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4 MARKUP OF

5 H.R. 4771, THE DESIGNER ANABOLIC STEROID CONTROL ACT OF 2014;

6 H.R. 4299, THE IMPROVING REGULATORY TRANSPARENCY FOR NEW

7 MEDICAL THERAPIES ACT;

8 H.R. 5108, TO ESTABLISH THE LAW SCHOOL CLINIC CERTIFICATION

9 PROGRAM OF THE UNITED STATES PATENT AND TRADEMARK OFFICE, AND

10 FOR OTHER PURPOSES;

11 H.R. 5401, THE PROTECTING THE HOMELAND ACT;

12 H.R. 5421, THE FINANCIAL INSTITUTION BANKRUPTCY ACT OF 2014;

13 AND

14 H.R. 5402, THE STANDARD MERGER AND ACQUISITION REVIEWS

15 THROUGH EQUAL RULES ACT OF 2014.

16 Wednesday, September 10, 2014

17 House of Representatives

18 Committee on the Judiciary

19 Washington, D.C.

20 The committee met, pursuant to call, at 10:11 a.m., in
21 Room 2141, Rayburn Office Building, Hon. Bob Goodlatte
22 [chairman of the committee] presiding.

23 Present: Representatives Goodlatte, Sensenbrenner,
24 Coble, Smith of Texas, Chabot, Bachus, Issa, Forbes, King,
25 Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy,
26 Labrador, Farenthold, Holding, Collins, DeSantis, Smith of
27 Missouri, Conyers, Nadler, Scott, Lofgren, Jackson Lee,
28 Cohen, Johnson, Pierluisi, Chu, Richmond, DelBene, Garcia,
29 Jeffries, and Cicilline.

30 Staff present: Shelley Husband, Majority Staff
31 Director; Branden Ritchie, Majority Deputy Staff
32 Director/Chief Counsel; Allison Halataei, Majority
33 Parliamentarian; Robert Parmiter, Majority Counsel; Vishal
34 Amin, Majority Counsel; Dimple Shah, Majority Counsel;
35 Anthony Grossi, Majority Counsel; Kelsey Deterding, Majority
36 Clerk; Perry Apelbaum, Minority Staff Director; Danielle
37 Brown, Minority Parliamentarian; Joe Graupensperger, Minority
38 Counsel; Vanessa Chen, Minority Counsel; Susan Jensen,
39 Minority Counsel; Jason Everett, Minority Counsel; Norberto
40 Salinas, Minority Counsel; James Park, Minority Counsel; Tom
41 Jawetz, Minority Counsel; Maggie Lopatin, Minority Clerk.

42

43 Chairman Goodlatte. Good morning. The Judiciary
44 Committee will come to order, and without objection the chair
45 is authorized to declare a recess at any time. And in that
46 regard, we will be recessing a few minutes before 11:00 so
47 that members can participate in the 9/11 ceremony that is in
48 the Capitol. But we also hope to move through some of these
49 bills before then because we have a total of seven, and we
50 would like to get them done or as many as possible done
51 today.

52 So first, pursuant to notice, I now call up H.R. 4771
53 for purposes of markup, and move that the committee report
54 the bill favorably to the House. The clerk will report the
55 bill.

56 Ms. Deterding. H.R. 4771, to amend the Controlled
57 Substances Act to more effectively regulate anabolic
58 steroids.

59 Chairman Goodlatte. Without objection the bill is
60 considered as read and open for amendment at any time.

61 [The information follows:]

62

63 Chairman Goodlatte. And I will begin by recognizing
64 myself for an opening statement.

65 H.R. 4771, the Designer Anabolic Steroid Control Act of
66 2014, was introduced by Congressman Joe Pitts and Frank
67 Pallone. This legislation is intended to more effectively
68 regulate anabolic steroids. Anabolic steroids do have a
69 number of therapeutic uses, but they are also used illicitly
70 as performance-enhancing drugs. Long-term or high-dosage use
71 of these substances can have severe adverse health effects,
72 including heart and liver damage.

73 The problem this legislation seeks to address is unique
74 because unlike controlled substances, like oxycodone,
75 anabolic steroids are often disguised as legal products, like
76 dietary supplements, which pose a substantial risk to
77 consumers. Anabolic steroids are listed as controlled
78 substances in Schedule III of the Controlled Substances Act.
79 However, chemists are able to design new products around the
80 list, creating designer anabolic steroids that are chemically
81 distinct from the listed steroids, but have the same
82 pharmacological effect.

83 The DEA, therefore, cannot take enforcement action
84 against those who manufacture, market, or distribute

85 unscheduled anabolic steroids. H.R. 4771 addresses this
86 problem by adding 27 new designer chemicals, all of which
87 have been marketed as anabolic steroids, to the list of
88 substances that meet the CSA definition of "anabolic
89 steroid." This will make it much easier for the DEA to
90 identify and address these illicit products.

91 The legislation amends DEA's scheduling authority to
92 allow the Attorney General to issue a temporary order adding
93 a drug or other substance to the list of anabolic steroids if
94 he determines, one, that the drug or other substance is an
95 anabolic steroid, and two, adding the drug or other substance
96 to the list of anabolic steroids will assist in preventing
97 the unlawful importation, manufacture, distribution, or
98 dispensing of the drug or other substance.

99 This is a common sense provision, as is the section
100 giving the Attorney General the authority to publish in the
101 *Federal Register* a list of products that contain anabolic
102 steroids and are improperly labeled. However, H.R. 4771 also
103 establishes a new section of the CSA criminalizing the false
104 labeling of anabolic steroids or substances containing
105 anabolic steroids, and establishes new criminal and civil
106 penalties for these violations.

107 I support the prohibition of false labeling of anabolic
108 steroids in this bill and the imposition of civil fines for
109 false labeling violations. However, the criminal penalties
110 contemplated by the bill are substantially similar to the
111 criminal penalties currently contained in the CSA for the
112 unlawful importation, exportation, manufacture, distribution,
113 or dispensation of a Schedule III controlled substance.

114 Building upon the lessons learned from this committee's
115 Overcriminalization Task Force, which was led by the chairman
116 and ranking member of the Crime Subcommittee, the creation of
117 a new section of the U.S. Code to impose largely redundant
118 criminal penalties is unnecessary. I, therefore, intend to
119 offer a substitute amendment to this legislation to remove
120 the unnecessary criminal provision and restructure the
121 prohibition on false labeling and attendant civil penalties
122 into existing sections of the Controlled Substances Act.

123 I now recognize our ranking member, the gentleman from
124 Michigan, Mr. Conyers, for his opening statement.

125 Mr. Conyers. Thank you, Mr. Chairman. I appreciate the
126 fact that we will shortly be considering a substitute
127 amendment to adequately address the concerns by clearing and
128 refining language in the bill. I thank the chairman for his

129 collaborative effort. I commend our ranking member on the
130 Subcommittee on Crime, Mr. Scott, and I am pleased to join in
131 in supporting the bill and urge its passage. And I ask
132 unanimous consent that the rest of my statement be entered
133 into the record and yield back.

134 Chairman Goodlatte. Without objection, the statement
135 will be entered into the record.

136 [The information follows:]

137

138 Chairman Goodlatte. And without objection, all other
139 members' opening statement will be made a part of the record.

140 [The information follows:]

141

142 Chairman Goodlatte. And at this time, I have an
143 amendment in the nature of a substitute, which is included in
144 the members' packets. And the clerk will report the
145 amendment.

146 Ms. Deterding. Amendment in the nature of a substitute
147 to H.R. 4771, offered by Mr. Goodlatte, strike all that
148 follows --

149 Chairman Goodlatte. Without objection, the amendment in
150 the nature of a substitute is considered as read.

151 [The amendment of Chairman Goodlatte follows:]

152

153 Chairman Goodlatte. And I recognize myself to explain
154 the amendment. This substitute amendment preserves the
155 provisions of the bill to schedule new anabolic steroids and
156 to enhance DEA's scheduling authority while streamlining the
157 false labeling prohibition and civil penalties. The
158 substitute leaves intact H.R. 4771's list of substances to be
159 added to the list of anabolic steroids in the Controlled
160 Substances Act, the amendment to the DEA's temporary and
161 permanent scheduling authority, and the provision giving the
162 Attorney General the authority to publish a list of
163 improperly-labeled substances. These are valuable
164 provisions, and I support them.

165 The substitute makes important revisions to the criminal
166 and civil penalties contemplated in the bill in lieu of
167 creating a new provision of the CSA. To prohibit false
168 labeling of anabolic steroids, the substitute inserts this
169 prohibition into an existing section of the law that is
170 currently addressing labeling restrictions. It removes the
171 redundant and unnecessary criminal provisions, and inserts
172 the civil penalties into the existing civil penalties section
173 of the act.

174 The substitute revises the civil penalties to ensure

175 that the civil penalties for false labeling violations that
176 apply to importers, exporters, manufacturers, distributors,
177 and dispensers, as well as retailers, are more clearly
178 defined and workable.

179 Lastly, the substitute makes an important clarifying
180 amendment to the Controlled Substances Import and Export Act.
181 In this way, the substitute will provide needed assistance to
182 Federal law enforcement in identifying and interdicting these
183 designer anabolic steroids. And I urge my colleagues to
184 support this amendment, and recognize the ranking member of
185 the committee.

186 Mr. Conyers. Thank you, and I join in with the
187 chairman. The amendment in the nature of a substitute is, I
188 think, a good step forward, and I am looking forward to the
189 gentleman from Virginia, Mr. Scott's, contribution to this as
190 well. I yield back my time.

191 Chairman Goodlatte. Thank you very much. For what
192 purpose does the gentleman from Virginia seek recognition?

193 Mr. Scott. I move to strike the last word.

194 Chairman Goodlatte. The gentleman is recognized for 5
195 minutes.

196 Mr. Scott. Mr. Chairman, I raised a number of concerns

197 regarding H.R. 4771 as reported by the Committee on Energy
198 and Commerce. First, it criminalizes "selling or offering to
199 sell," which is already incorporated into the statute's
200 definition of "distribution." Thus, it is confusing,
201 redundant, and unnecessary. Second, it introduces a new mens
202 rea of "reasonable cause to believe." This required state of
203 mind is not defined in the bill, the Controlled Substances
204 Act, nor is it an established term of art that carries
205 interpretive case law helpful to its application.

206 Finally, my most significant concern with the bill as
207 reported by the committee is that although the statute is
208 clear that each product is one violation, the question
209 remains how many violations exist when various items are
210 bundled together. One bottle of designer steroids is clearly
211 one product, and it is one violation. But considering a
212 shipping container that is wrapped and transported as one
213 cohesive item, but holds within it thousands of boxes
214 containing tens of thousands of bottles of these supplements,
215 what is a product and, hence, one violation?

216 It appears to say so when it describes a number of
217 articles of similarly packaged and bearing identical labels
218 shall be considered one product. That seems to answer the

219 question. But when one reads further in the bill, it becomes
220 evident that one shipping container constitutes tens of
221 thousands of products and, hence, tens of thousands of
222 violations, and tens of thousands of reiterations of a fine.
223 This is because the bill explains that "each package size,
224 form, or differently labeled article shall be considered a
225 separate product."

226 Thus, the varying boxes and bottles within one shipping
227 container could constitute many products and, arguably,
228 multiple instances of importation, exportation,
229 manufacturing, distribution, or possession with intent to
230 distribute, each carrying a separate criminal fine. The
231 point is that clarity matters. It matters because the
232 definition of "product" determines how many violations an
233 individual may be exposed to.

234 As drafted, this definition leaves great discretion for
235 both the prosecutorial and judicial interpretation as it
236 contains no clear definition as to the amount, weight,
237 packaging, style, or other falsely-labeled anabolic steroids
238 that may be considered one product for the purpose of
239 imposing criminal and civil penalties. The potential for
240 competing, yet valid, interpretations leading to vastly

241 different results is troubling. So I want to commend the
242 chairman for addressing these concerns in this substitute
243 amendment.

244 And, Mr. Chairman, one major issue in the
245 Overcriminalization Task Force was the need to have Judiciary
246 Committee jurisdiction over all bills with criminal
247 penalties. And we see in light of the changes you have made
248 the benefit of insisting on this jurisdiction. And so, your
249 substitute amendment removes the criminal penalties to the
250 bill as reported by the committee, and doing so resolves the
251 redundancy of criminalizing "selling," the problematic
252 introduction of a new mens rea standard of reason to believe,
253 and it leaves in place sufficiently serious and strong civil
254 penalties. It also sets a \$1,000 per violation fine for low-
255 level retailers. Most importantly the substitute amendment
256 has clarified the scope of what constitutes a violation
257 triggering the hefty \$500,000 fine.

258 An accompanying report will further elucidate for
259 manufacturers, exporters, importers, and wholesale-level
260 distributors that one shipping container's worth of product
261 should count as one violation, and, hence, one \$500,000 fine,
262 not multiple ones. With the assumption that the substitute

263 will be agreed to, I urge my colleagues to support the
264 legislation and yield back.

265 Chairman Goodlatte. The chair thanks the gentleman.

266 Are there any amendments to the amendment?

267 [No response.]

268 Chairman Goodlatte. The question is on the amendment to
269 the amendment in the nature of a substitute.

270 Those in favor will say aye.

271 Those opposed, no.

272 In the opinion of the chair, the ayes have it, and the
273 amendment is agreed to.

274 Are there any other -- I am sorry. Okay. We do not
275 have a reporting quorum, so we are going to move onto the
276 second bill in the series and come back to final passage of
277 that bill in a few moments.

278 Pursuant to notice, I now call up H.R. 4299 for purposes
279 of markup, and move that the committee report the bill
280 favorably to the House. The clerk will report the bill.

281 Ms. Deterding. H.R. 4299, to amend the Controlled
282 Substances Act with respect to drug scheduling
283 recommendations by the Secretary --

284 Chairman Goodlatte. Without objection, the bill is

285 considered as read and open for amendment at any point.

286 [The information follows:]

287

288 Chairman Goodlatte. And I will begin by recognizing for
289 an opening statement. H.R. 4299, the Improving Regulatory
290 Transparency for New Medical Therapies Act, introduced by
291 Congressman Joe Pitts and Frank Pallone, is intended to
292 streamline the process for scheduling new drugs under the
293 CSA. Congress designated the Attorney General as the agency
294 head with the discretionary authority to schedule new
295 controlled substances.

296 Under current law, controlled substances that have not
297 been marketed previously in the United States and that have a
298 potential for abuse must first be approved by the Food and
299 Drug Administration, and then must be scheduled under the
300 Controlled Substances Act by the Drug Enforcement
301 Administration before the drug can be prescribed to patients.

302 To conduct their review, both Federal agencies employ an
303 eight-factor analysis that is found in Section 811 of the
304 Controlled Substances Act. The factors include a drug's
305 potential for abuse, scientific evidence of its
306 pharmacological effect, if any, the state of current
307 scientific knowledge regarding the drug or other substance,
308 its history and current pattern of abuse, the scope,
309 duration, and significance of abuse, the risks to the public

310 health posed by the drug, its psychic or psychological
311 dependency liability, and whether the substance is an
312 immediate precursor of a currently-controlled substance.

313 After completing its review, the FDA transmits its
314 findings to DEA along with a recommendation in which schedule
315 the drug should be controlled. DEA then conducts its own
316 statutorily-mandated analysis. The FDA findings related to
317 scientific and medical matters are binding on the DEA, but
318 the FDA's scheduling recommendation is simply that, a
319 recommendation.

320 In recent years, some drug manufacturers have complained
321 that the DEA's analysis of new controlled substances has
322 taken longer than in previous years, thus delaying patient
323 access to new therapies. As introduced, H.R. 4299 removes
324 DEA from the review process for new drugs, and requires it to
325 issue an interim final rule within 45 days of receiving FDA's
326 scheduling recommendation.

327 The bill achieves its stated goal of streamlining the
328 scheduling of new controlled substances by binding the DEA to
329 the FDA's recommendation, thereby stripping DEA of its
330 statutorily-mandated review, and removing the Attorney
331 General's discretionary authority to schedule controlled

332 substances. But under the structure proposed by H.R. 4299,
333 the Attorney General, acting through the DEA, would continue
334 to be responsible for defending scheduling decisions in court
335 and enforcing the regulations and penalties associated with
336 illegal diversion and distribution of controlled substances.
337 To effectively enforce the Controlled Substances Act, the DEA
338 must be armed with its own evidentiary analysis. To require
339 it to rely solely on the recommendations of a wholly separate
340 agency would be untenable.

341 This legislation also amends the DEA approval process
342 for controlled substances used in clinical trials. H.R. 4299
343 allows registration applicants to indicate on their
344 application that they intend to use controlled substances
345 only in connection with clinical trials of a drug. In those
346 instances, the DEA must either approve the application within
347 180 days, or provide notice to the applicant of the
348 outstanding issues that must be resolved before a final
349 decision can be made and the estimated date that final
350 decision will be made.

351 Section 3 misunderstands how the application process for
352 clinical trial registration works. Under current law,
353 practitioners who wish to conduct a clinical trial using a

354 drug in Schedules II through V do not need a separate
355 registration. Manufacturers and distributors comprise
356 approximately one-tenth of a percent of current DEA
357 registrants, so it is unnecessary to provide a separate
358 registration process for that specific activity as with the
359 scheduling of new drugs.

360 The issue of approving drugs for use in clinical trials
361 is not one of process, but one of timing. Improving
362 patients' access to medication and injecting certainty into
363 the drug approval and scheduling processes are both laudable
364 goals and worthy of our consideration today. I intend to
365 offer a substitute amendment to provide greater certainty to
366 the scheduling process while addressing the issues I have
367 just outlined.

368 With that, I am pleased to recognize our ranking member,
369 the gentleman from Michigan, for his opening statement.

370 Mr. Conyers. Thank you, Mr. Chairman. Members of the
371 committee, we are creating a timetable for the DEA to process
372 applications to manufacture or distribute controlled
373 substances for use only in clinical trials. And so, what
374 we're doing here is considering a substitute amendment that
375 addresses one of the problems, which is to seek to get new

376 therapeutic treatments to patients as quickly as possible,
377 and, in addition, creating a timetable for DEA to conduct
378 these reviews to ensure that the new drugs get to patients
379 quickly.

380 Accordingly, and assuming that the chairman's amendment
381 will succeed, I want to indicate my support of the
382 legislation and commend members on both sides of the aisle
383 for their collaborative effort in crafting an amendment in
384 the nature of a substitute. And with these changes, I will
385 support the legislation. Thank the chairman, and yield back
386 the balance of my time.

387 Chairman Goodlatte. The chair thanks the gentleman. I
388 have an amendment in the nature of a substitute included in
389 the member packets, and the clerk will report the amendment.

390 Ms. Deterding. Amendment in the nature of a substitute
391 to H.R. 4299, offered by Mr. Goodlatte, strike all that
392 follows after the --

393 Chairman Goodlatte. Without objection, the amendment in
394 the nature of a substitute is considered as read.

395 [The amendment of Chairman Goodlatte follows:]

396

397 Chairman Goodlatte. And I will recognize myself to
398 explain the amendment. This substitute amendment makes a
399 number of important changes to H.R. 4299, while keeping in
400 place the bill's core provisions to improve patient access to
401 new medications and to ensure that the drug scheduling
402 process is conducted in an efficient, expeditious manner. It
403 is entirely reasonable to require DEA to adhere to a timeline
404 to ensure that patient access to medication does not get
405 bogged down in bureaucratic red tape.

406 The substitute accomplishes this goal by requiring DEA
407 to initiate the scheduling process within 120 days of
408 receiving FDA's findings and recommendations. It also
409 requires DEA to issue a final rule no later than 60 days
410 after the date on which both the public comment period has
411 closed and the FDA has approved the drug.

412 The substitute also revises Section 3 of H.R. 4299 to
413 require DEA, once it has received all the necessary
414 information, to either register a manufacturer for the
415 purpose of a clinical trial or serve an order to show cause
416 on the applicant within 180 days, which is the timeframe in
417 the bill as reported by the Energy and Commerce Committee.
418 In this way, the substitute will improve the DEA scheduling

419 process while preserving its existing statutory authority to
420 conduct its analysis of drugs for scheduling purposes. And I
421 urge my colleagues to support this amendment.

422 Who seeks recognition? For what purpose does the
423 gentleman from Virginia seek recognition?

424 Mr. Scott. Mr. Chairman, I move to strike the last
425 word.

426 Chairman Goodlatte. The gentleman is recognized for 5
427 minutes.

428 Mr. Scott. Mr. Chairman, the version of the bill
429 reported by the Committee on Energy and Commerce bypasses a
430 crucial layer of research and evaluation that the DEA
431 currently performs in substances. Prior to scheduling, the
432 DEA requires the ability and sufficient time to complete its
433 thorough review so that it can evaluate a substance's
434 potential for abuse and dependency. These findings, which
435 are distinct from the FDA's findings, are significant and
436 required in order to determine the appropriate schedule.

437 The amendment in the nature of a substitute, which you
438 have just introduced, allows time for the diligence by
439 removing the bill's requirement that the DEA simply rubber
440 stamp the FDA's scheduling recommendations within a 45-day

441 period. Mr. Chairman, as you have outlined, your substitute
442 still allows for a quicker and more timely scheduling of new
443 drugs, thereby affording patients greater access to potential
444 new drugs, while also protecting the health, safety, and
445 welfare of our citizens. I, therefore, urge support of the
446 amendment and the bill, as amended. I yield back.

447 Chairman Goodlatte. The chair thanks the gentleman.
448 Are there any amendments to the amendment? For what purpose
449 does the gentleman from Georgia seek recognition?

450 Mr. Collins. Mr. Chairman, move to strike the last
451 word.

452 Chairman Goodlatte. The gentleman is recognized for 5
453 minutes.

454 Mr. Collins. Thank you, Mr. Chairman, and thank you for
455 the recognition. I am a co-sponsor and a strong supporter of
456 H.R. 4299. Phillip Gattone, president and CEO of the
457 Epilepsy Foundation, stated in a March 28th op-ed that
458 "Families and patients who are in need of a new treatment
459 deserve a regulatory process that provides certainty and
460 clarity on when new innovative medicines will be available."
461 That is seemingly a simple statement, but one that carries
462 great weight. It is a type of philosophy that should be

463 guiding us when we make policy.

464 Currently, when we have a newly-developed drug or
465 substance that demonstrates abuse potential and has not been
466 previously scheduled is approved by the FDA, it must be
467 scheduled before a company can market the drug. During this
468 time of the schedule, the drug patients do not have access to
469 these FDA-approved products, and delays at the DEA leave
470 patients needlessly waiting for access to new therapies.

471 In one recent instance cited by the DEA to the Epilepsy
472 Foundation last year, it took the DEA almost a whole year
473 from receiving FDA's recommendation for the DEA to finally
474 schedule the new drug. Under current law, when a new drug is
475 being developed and there is an indication that there could
476 be a potential for abuse, then the FDA is required to provide
477 a recommendation to the Attorney General as to which schedule
478 the drug should be placed. The FDA conducts a thorough
479 eight-point analysis and provides its recommendation to the
480 Attorney General. This recommendation is provided to the DEA
481 around the time of FDA approval, sometimes a little before,
482 sometimes a little bit after.

483 Going back to 1996, the latest year we have public data,
484 the Attorney General and the DEA have never deviated from FDA

485 scheduling decisions, a fact that was corroborated by the DEA
486 when it testified on this bill before the Energy and Commerce
487 Committee in April. However, the DEA insists on performing
488 its own duplicative analysis that often mirrors the FDA's and
489 always ends up the same conclusion.

490 There is a reason that the DEA has never deviated from
491 the FDA's recommendation for newly-approved FDA products.
492 DEA's role and expertise is related to the real world and
493 actual abuse of products. However, since these are new
494 products, there is not a history of real world or actual
495 abuse of the drug. FDA's and HHS' role is related to
496 scientific and medical matters.

497 Under current law, if the FDA recommends that a drug not
498 be controlled, the Attorney General may not schedule the
499 drug. Under the current law, the recommendation of the FDA
500 shall be binding on the Attorney General as to scientific and
501 medical matters. When you are talking newly-developed
502 substances, there is not real world abuse history, and the
503 ultimate schedule of the drug is based on scientific and
504 medical matters.

505 H.R. 4299 recognizes those facts and takes a measured
506 approach to the improved patient access to new medical

507 therapies. The bill states that the Attorney General shall
508 issue an interim final rule that schedules drugs at the
509 schedule recommended by the FDA within 45 days of receiving
510 FDA's recommendation. It is important to emphasize that
511 these new drugs will be scheduled and will be subject to all
512 controls required by the schedule in which it is placed.

513 This bill is a balanced approach that ensures that drugs
514 have appropriate controls, but patients are not unnecessarily
515 denied access because of a duplicative and unnecessary
516 bureaucratic process. We in Congress are always looking to
517 how we can improve the lives of patients living with
518 debilitating diseases. This bill does that, and I hope to
519 see it make its way to the President's desk by the end of the
520 year. I thank the chairman and yield back.

521 Chairman Goodlatte. The chair thanks the gentleman.
522 Are there any amendments to the amendment in the nature of a
523 substitute?

524 [No response.]

525 Chairman Goodlatte. The question is on the amendment in
526 the nature of a substitute to H.R. 4299.

527 Those in favor will say aye.

528 Those opposed, no.

529 In the opinion of the chair, the ayes have it, and the
530 amendment is agreed to.

531 A reporting quorum being present, the question is on the
532 motion to report the bill, H.R. 4299, as amended, favorably
533 to the House.

534 Those in favor will say aye.

535 Those opposed, no.

536 The ayes have it, and the bill, as amended, is ordered
537 reported favorably. Members will have 2 days to submit
538 views.

539 Without objection, the bill will be reported as a single
540 amendment in the nature of a substitute incorporating all
541 adopted amendments. And staff is authorized to make
542 technical and conforming changes.

543 We will now return to H.R. 4771. And a reporting quorum
544 being present, the question is on the motion to report the
545 bill, H.R. 4771, as amended, favorably to the House.

546 Those in favor will say aye.

547 Those opposed, no.

548 The ayes have it, and the bill, as amended, is ordered
549 reported favorably. Members will have 2 days to submit
550 views.

551 Without objection, the bill will be reported as a single
552 amendment in the nature of a substitute incorporating all
553 adopted amendments. And staff is authorized to make
554 technical and conforming changes.

555 Pursuant to notice, I now call up 5108 for purposes of
556 markup, and move that the committee report the bill favorably
557 to the House. The clerk will report the bill.

558 Ms. Deterding. H.R. 5108, to establish the Law School
559 Clinic Certification Program of the United States Patent and
560 Trademark Office, and for other purposes.

561 Chairman Goodlatte. Without objection, the bill is
562 considered as read and open for amendment at any point.

563 [The information follows:]

564

565 Chairman Goodlatte. And I will begin by recognizing
566 myself for an opening statement. H.R. 5108, the U.S. PTO Law
567 School Clinic Certification Program Act, would make an
568 existing law school clinic certification pilot program at PTO
569 available to all law schools that provide an IAP clinic
570 program.

571 Law school clinic programs provide practical hands-on
572 experience to law students, preparing them for the real world
573 and provide individuals and small business with an avenue for
574 legal representation that they may otherwise be unable to
575 afford. I think this is a good bill. I want to thank
576 Congressman Jeffries for his work on it and for offering it,
577 and I support its passage. I will now recognize the ranking
578 member, the gentleman from Michigan.

579 Mr. Conyers. Thank you, Chairman. Making this valuable
580 program permanent and expanding it to all law schools will
581 give many more law students the important opportunity to
582 develop practical patent and trademark skills. The program
583 not only benefits student practitioners who learn firsthand
584 how to draft and file patent and trademark applications, it
585 also benefits innovators and entrepreneurs in need of free
586 legal assistance.

587 This is a bipartisan piece of legislation. It has
588 strong support from educational institutions and patent
589 organizations as well. And so, I am proud to urge my
590 colleagues to support this legislation, and I yield back the
591 balance of my time.

592 Mr. Chabot. Mr. Chairman?

593 Chairman Goodlatte. For what purpose does the gentleman
594 from Ohio seek recognition?

595 Mr. Chabot. Thank you, Mr. Chairman. Move to strike
596 the last word.

597 Chairman Goodlatte. The gentleman is recognized for 5
598 minutes.

599 Mr. Chabot. Thank you, and I want to thank Congressman
600 Jeffries in particular for his leadership on this issue, and
601 you, Mr. Chairman, for your support as well. It is my
602 pleasure to be the principal Republican co-sponsor of the
603 bill, which would establish, as we have talked about, a
604 nationwide law clinic certification program.

605 Expanding the Patent and Trademark Office's Law School
606 Clinic Certification Program is a win really for everyone
607 involved. Inventors and small businesses will gain access to
608 quality legal services and protections that they otherwise

609 probably could not afford. Additionally, this bill invests
610 in law students, affording them an opportunity to practice
611 patent law before the United States Patent and Trademark
612 Office. This practical experience will be invaluable, and it
613 will be a worthwhile investment in our Nation's future
614 lawyers.

615 Lastly, establishing this clinic will improve the
616 quality and efficiency of applications submitted to the
617 Patent and Trademark Office, thereby hopefully streamlining
618 the review process. And we have already had a number of
619 universities in my State, Ohio, participate in the program
620 very successfully, Case Western Reserve and the University of
621 Akron Law School among others.

622 So I want to again thank Congressman Jeffries for his
623 leadership in this area, and yield back the balance of my
624 time.

625 Mr. Nadler. Mr. Chairman?

626 Mr. Jeffries. Mr. Chairman?

627 Chairman Goodlatte. The chairman thanks for gentleman
628 for his good work on this legislation as well. And the chair
629 now turns to the sponsor of the legislation, the gentleman
630 from New York, Mr. Jeffries, for his opening statement.

631 Mr. Jeffries. Thank you, Mr. Chairman. H.R. 5108 is
632 legislation designed to enhance the education of law students
633 interested in practicing patent and trademark law while
634 simultaneously helping small businesses, inventors, and
635 entrepreneurs secure patents and trademarks. I am pleased to
636 partner with my Judiciary Committee colleague, Representative
637 Chabot, and thankful for the support of the chairman on this
638 meaningful bipartisan legislation.

639 This bill would establish permanently into law the Law
640 School Clinic Certification Program at the United States
641 Patent and Trademark Office. Currently this program exists
642 only in pilot form, but it has already helped budding
643 intellectual property law students and innovation throughout
644 the country. The pilot program began in 2008 with only six
645 law schools. Over time, it grew to approximately 45 schools.
646 To date, over 1,400 law students have participated in the
647 program.

648 Since 2008 in pilot form, law students under the
649 supervision of a faculty advisor, have submitted 220 patent
650 applications and 650 trademark applications for clients on a
651 pro bono basis. Establishing this program in law will both
652 ensure its continuation and permit law schools throughout the

653 country that meet the PTO's qualifications to participate.

654 Intellectual property, of course, is a highly technical
655 field. Ordinarily students do not have the opportunity to
656 submit patent and trademark applications until they become
657 lawyers. This program, as the ranking member indicated, will
658 provide real world professional training, and expanding it
659 will allow law students throughout the country with
660 invaluable practical experience that will not only enhance
661 their legal education, but give students that participate in
662 clinics an advantage in the upcoming job market.

663 Beyond the advantage to students, however, this program
664 provides benefits to inventors, entrepreneurs, and small
665 businesses that qualify for pro bono assistance. Some of
666 these inventors or small businesses may not be able to afford
667 patent or trademark attorneys, and unable to receive
668 technical and professional assistance in the absence of these
669 clinics. The small inventor or business of today may very
670 well become the next major American business of tomorrow in
671 part due to the assistance to the student practitioners.

672 This legislation has the support of key stakeholders in
673 the field, educational associations, including the
674 Association of American Universities, as well as the

675 International Trademark Association. And, Mr. Chairman, I
676 ask unanimous consent that a letter in support of the
677 legislation from the International Trademark Association
678 dated September 8th, be introduced into the record.

679 Chairman Goodlatte. Without objection, it will be made
680 a part of the record.

681 [The information follows:]

682

683 Mr. Jeffries. Thank you, Mr. Chairman. In conclusion,
684 H.R. 5108 is a bill that helps students, small business,
685 inventors, law school, startups, as well as the innovation
686 economy overall. It is a bipartisan bill, non-controversial,
687 and a meaningful step in the right direction. And I urge my
688 colleagues to support the legislation, and yield back the
689 balance of my time.

690 Chairman Goodlatte. The chair thanks the gentleman for
691 his good work on this legislation, and recognizes the
692 chairman of the Intellectual Property Subcommittee, the
693 gentleman from North Carolina, Mr. Coble.

694 Mr. Coble. I thank the chairman, and I will not use the
695 full 5 minutes, Mr. Chairman. I want to associate myself
696 with the favorable comments in support that have been spoken.
697 This is a good bill. It serves a good purpose and deserves
698 the Judiciary endorsement, as well as the full House. I
699 yield back, Mr. Chairman.

700 Chairman Goodlatte. The chair thanks the gentleman, and
701 recognizes the gentleman from New York, the ranking member of
702 the Intellectual Property Subcommittee, for his comments.

703 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, I
704 support H.R. 5108, a bill that would establish into law the

705 U.S. Patent and Trademark Office Law School Clinic
706 Certification Program. And I want to take this opportunity
707 to congratulate the leadership of our colleague, Congressman
708 Jeffries, in promoting and securing this legislation.

709 The Law School Clinic Certification Program has been
710 operating as a pilot program since 2008, and allows law
711 students enrolled in a participating law school's clinic
712 program to practice patent and trademark law before the U.S.
713 Patent and Trademark Office under the guidance of a law
714 school faculty clinic supervisor. I support this bill
715 because it would remove the pilot status and allow more law
716 students to receive training in patent and trademark law as
717 well as increase pro bono services for small and independent
718 inventors. The students participating in the program will
719 gain experience drafting and filing trademark applications
720 for clients of the law school clinic, and will gain
721 experience communicating with patent examiners and trademark
722 examining attorneys for the applications that they file.

723 Patents and trademarks are highly specialized areas of
724 law, and this bill will allow additional law schools across
725 the Nation to prepare a greater number of practitioners to
726 enter this increasingly important field. It will also allow

727 law students to receive real world experience to deal with
728 the complexities of intellectual property law, and I urge
729 support for the bill. Thank you. I yield back.

730 Ms. Lofgren. Mr. Chairman?

731 Chairman Goodlatte. The chair thanks the gentleman.
732 For what purpose does the gentlewoman from California seek
733 recognition?

734 Ms. Lofgren. Strike the last word.

735 Chairman Goodlatte. The gentlewoman is recognized for 5
736 minutes.

737 Ms. Lofgren. First, I want to thank my colleague from
738 New York for his extraordinary work on this measure, and the
739 chairman, and all the others who have worked on this. You
740 know, sometimes a matter like this may seem obscure, but it
741 really actually is very important. And I wanted to note that
742 as we know, San Jose is the capital of Silicon Valley, and
743 today on the front of the San Jose *Mercury News* is the
744 following headline: "Pro Bono Patent Help on the Way."

745 So this is being noticed in Silicon Valley. I think it
746 will make a difference for startups not only in the Valley,
747 but across the country. And it shows that although we can be
748 quite frustrated here in the House on not being able to get

749 things done, there are times when we can come together and
750 make a difference in the technology economy. This is one of
751 those times, and I wanted the headline in the *Mercury News* to
752 be made part of this record, and would ask unanimous consent.

753 Chairman Goodlatte. Without objection, it will be so
754 made.

755 [The information follows:]

756

757 Chairman Goodlatte. The chair thanks the gentlewoman,
758 and recognizes the gentleman from New York, Mr. Jeffries, to
759 offer his amendment in the nature of a substitute, which is
760 included in the member packets.

761 Mr. Jeffries. Thank you, Mr. Chair. The manager's
762 amendment will clarify three specific things in the
763 underlying bill.

764 Chairman Goodlatte. If the gentleman would suspend, the
765 clerk will report the amendment.

766 Ms. Deterding. An amendment in the nature of a
767 substitute to H.R. 5108, offered by Mr. Jeffries of New
768 York --

769 Chairman Goodlatte. Without objection, the amendment in
770 the nature of a substitute is considered as read.

771 [The amendment of Mr. Jeffries follows:]

772

773 Chairman Goodlatte. And Mr. Jeffries is recognized to
774 explain his amendment.

775 Mr. Jeffries. Thank you, Mr. Chair. The manager's
776 amendment will clarify three specific discreet issues in the
777 underlying bill, but otherwise has not changed the
778 fundamental structure or nature of the bill.

779 First, the manager's amendment adds a more detailed
780 description of the program that is being authorized under
781 law. Second, it specifies that "accredited" means accredited
782 by the American Bar Association. And third, the amendment
783 adds language to ensure that all applications are measured by
784 the United States Patent and Trademark Office using the same
785 criteria in order to make sure that law schools from
786 throughout the country -- every region, every State -- have
787 an equal opportunity to participate in the clinic program
788 moving forward.

789 And with that, again I thank Representative Chabot for
790 his leadership and all of my colleagues for their encouraging
791 words of support, and urge the committee to support students,
792 small inventors, as well as the innovation and technology
793 economy by voting for this amendment and for the underlying
794 bill. And I yield back.

795 Chairman Goodlatte. The chair thanks the gentleman.

796 Are there any amendments to the amendment?

797 [No response.]

798 Chairman Goodlatte. Being none, the question is on the

799 amendment in the nature of a substitute to H.R. 5108.

800 Those in favor will say aye.

801 Those opposed, no.

802 In the opinion of the chair, the ayes have it, and the

803 amendment is agreed to.

804 A reporting quorum being present, the question is on the

805 motion to report the bill, H.R. 5108, as amended, favorably

806 to the House.

807 Those in favor will say aye.

808 Those opposed, no.

809 The ayes have it, and the bill, as amended, is ordered

810 reported favorably. Members will have 2 days to submit

811 views.

812 Without objection, the bill will be reported as a single

813 amendment in the nature of a substitute incorporating all

814 adopted amendments, and staff is authorized to make technical

815 and conforming changes.

816 We are now just a few minutes before 11:00 when the 9/11

817 ceremony will begin in the Capitol. So the committee will
818 stand in recess until 1:00 p.m., and that is subject to
819 change depending on votes. But since the vote schedule may
820 fluctuate, plan to be here at 1:00. We can move further
821 through this list of bills.

822 The committee will stand in recess.

823 [Whereupon, at 10:52 a.m., the committee recessed, to
824 reconvene at 1:09 p.m. the same day.]

825 Chairman Goodlatte. Good afternoon. The committee will
826 reconvene.

827 And to mark our progress, I will let you know we had
828 seven bills listed. We have gone our way through three of
829 them. One of them we may not get to. So we may be halfway
830 there. And we want to proceed as expeditiously as possible
831 before that next series of votes.

832 So pursuant to notifying, I now call up H.R. 5421 for
833 purposes of markup and move that the committee report the
834 bill favorably to the House. And the clerk will report the
835 bill.

836 Ms. Deterding. H.R. 5421, to amend Title 11 of the
837 United States Code in order to facilitate the resolution of
838 an insolvent financial institution in bankruptcy.

839 Chairman Goodlatte. Without objection, the bill is
840 considered as read and open for amendment at any point.

841 [The information follows:]

842

843 Chairman Goodlatte. I will begin by recognizing myself
844 for an opening statement.

845 In 2008, our economy suffered one of the most
846 significant financial crises in history. In the midst of the
847 crisis and in response to a fear that some financial firms'
848 failures could cause severe harm to the overall economy, the
849 Federal Government provided extraordinary taxpayer-funded
850 assistance in order to prevent certain financial firms'
851 failures.

852 In the ensuing years, experts from the financial,
853 regulatory, legal, and academic communities have examined how
854 best to prevent another similar crisis from occurring and
855 avert the use of taxpayer monies to bail out failing firms.
856 The Judiciary Committee has advanced the review of this issue
857 with the aim of crafting a solution that will better equip
858 our bankruptcy laws to resolve failing firms and help prevent
859 a new financial crisis while also encouraging greater private
860 counterparty diligence in order to reduce the likelihood that
861 such a similar crisis will ever occur again.

862 During the course of the two hearings this Congress, the
863 Subcommittee on Regulatory Reform, Commercial and Antitrust
864 Law received testimony that the Bankruptcy Code could be

865 improved to better facilitate a resolution of a financial
866 firm and that an amendment to chapter 11 to provide for a
867 specialized subchapter would be the most efficient approach
868 to meeting that goal.

869 Following these hearings, the committee worked in a
870 bipartisan fashion to develop draft legislation that
871 conformed with witnesses' and leading experts'
872 recommendations. These efforts culminated in a discussion
873 draft of the Financial Institution Bankruptcy Act of 2014,
874 which was the subject of a legislative hearing on July 15th.
875 All four witnesses testified that subject to a few technical
876 modifications, the Financial Institution Bankruptcy Act
877 should be enacted into law.

878 In connection with the July 15th hearing, the committee
879 circulated the draft legislation to a number of interested
880 parties, including the Federal Reserve, the Federal Deposit
881 Insurance Corporation, the Office of the Comptroller of the
882 Currency, the Administrative Office of the United States
883 Courts, the National Conference of Bankruptcy Judges, the
884 National Bankruptcy Conference, and the International Swaps
885 and Derivatives Association. The committee again in a
886 bipartisan fashion received, reviewed, and incorporated

887 certain comments submitted by these and other parties. As a
888 result, the bill before us today is the product of a careful,
889 deliberate, and thorough process and is a reflection of a
890 diverse range of views from a variety of interested parties.

891 The Financial Institution Bankruptcy Act makes several
892 improvements to the Bankruptcy Code in order to enhance the
893 prospect of an efficient, resolution of a financial firm
894 through the bankruptcy process. The bill allows for a speedy
895 transfer of the operating assets of a financial firm over the
896 course of a weekend. This quick transfer allows the
897 financial firm to continue operating in the normal course,
898 which preserves the value of the enterprise for the creditors
899 of the bankruptcy without a significant impact on the firm's
900 employees, suppliers, and customers.

901 The bill also requires an expedited judicial review by
902 judges designated in advance and selected by the Chief
903 Justice for their expertise, experience, and willingness to
904 preside over these complex cases.

905 Furthermore, the legislation provides for key regulatory
906 input throughout the process.

907 The Financial Institution Bankruptcy Act is a
908 bipartisan, balanced approach that increases transparency and

909 predictability in the resolution of a financial firm.
910 Furthermore, it ensures that shareholders and creditors bear
911 the losses related to the failure of a financial company.

912 I am pleased that Ranking Member Conyers joined
913 introducing this important legislation and want to thank him
914 and his staff for working hand in hand with my staff
915 throughout the development of this bill.

916 I also would like to thank Chairman Bachus of the
917 Subcommittee on Regulatory Reform, Commercial and Antitrust
918 Law who has chaired several hearings on this issue, is a
919 longstanding advocate of the bankruptcy process, and is the
920 lead sponsor of the Financial Institution Bankruptcy Act.

921 I urge my colleagues to support this important
922 legislation.

923 And I now recognize the gentleman from Michigan, Ranking
924 Member Conyers.

925 Mr. Conyers. Thank you, Chairman Goodlatte.

926 I just want to add on some comments to that very
927 thorough description of the bipartisan legislation before us
928 because what it does is address a real need recognized by
929 regulatory agencies, bankruptcy experts, and the private
930 sector that bankruptcy law must be amended so that it can

931 expeditiously restore trust in the financial marketplace as
932 soon as possible after a major collapse of financial
933 institutions from 2008.

934 Now, the heart of the matter, as far as I am concerned,
935 is that we recognize the important role of Dodd-Frank
936 legislation regarding the regulation of large financial
937 institutions because, unlike its Senate counterpart, 5421
938 does not include any controversial provisions aimed at
939 undoing the important protections of the Dodd-Frank Act. And
940 I think it will be made even more effective by the bankruptcy
941 law making sure that that does not happen, that we do not --
942 to be candid, there is a concern that the Financial Services
943 Committee might end up trying to bring their idea of how we
944 make financial institutions more productive by compromising
945 the Dodd-Frank Act.

946 And it is that idea that is in the front of my mind, and
947 I think we have to be very careful as we move this measure
948 out of committee. We have worked in a very collaborative,
949 bipartisan way, and we must ensure that the bill continues to
950 be perfected in a balanced and responsive manner. Do not
951 repeal Dodd-Frank and be careful of any similar measures like
952 this one that may come out of another committee.

953 And with that, I yield back the balance of my time and
954 thank the chair.

955 Chairman Goodlatte. The chair thanks the gentleman.

956 And we will now turn to the sponsor of the legislation
957 and chairman of the Subcommittee on Regulatory Reform,
958 Commercial and Antitrust Law, Mr. Bachus of Alabama, for his
959 opening statement.

960 Mr. Bachus. Thank you, Mr. Chairman and Ranking Member.

961 Any of us that went through what I guess was a fiery
962 caldron in 2008 do not want that to happen again. We realize
963 that we did not have the tools necessary to respond. And
964 most of us agreed that if bankruptcy worked, it was the
965 preferred method in resolving an institution. Unfortunately,
966 title 13 -- or chapter 13 -- I am sorry -- there were several
967 problems with it and the result was that we had what is
968 commonly referred to as a bailout.

969 In Dodd-Frank, there is a provision -- and I would
970 remind both sides of this -- that actually instructed the
971 Federal regulators to come up with suggestions on changing
972 the bankruptcy law. And they carried forward with that and
973 pointed out shortcomings to regulators in why bankruptcy was
974 problematic at the time. So we had sort of an imperfect

975 resolution of these authorities. And I think several banks
976 disappeared or bankrupted -- I say "bankrupted" -- were
977 resolved, shut down that had we had bankruptcy, we could have
978 avoided some of that job loss and some of the financial loss.
979 So this is a result of that.

980 Let me just identify three ways which -- in fact, this
981 has been a collaborative effort as the Republican staff, the
982 Democratic staff has worked together. This is not a
983 Republican bill. It is not a Democratic bill. I really was
984 so pleased that the academic world, our witnesses from the
985 universities, bankruptcy authorities, lawyers who practice
986 for both debtors, creditors, all agreed that these were some
987 changes. And we took those that there was agreement on. We
988 put them in this bill. So part of this bill can be viewed as
989 a response to what Dodd-Frank asked us to do and that is
990 perfect the bankruptcy process.

991 First -- and I am going to give three reasons why
992 bankruptcy is the preferred approach. It is a predictable
993 process that includes clear rules for creditor recovery. It
994 is a rule of law. I mean, you can look at the rules and
995 there is predictability. As a result, creditors have really
996 a predictable process of what they can recover, how much they

997 can recover, and also what risks they take when they have
998 business transactions with a bank. So no one is surprised,
999 and it is rule of law.

1000 Second, bankruptcy benefits from judicial oversight.
1001 And I think we all agree that someone ought to have their day
1002 in court if possible. And if you do not have bankruptcy, you
1003 do not have your day in court. And we have enhanced that
1004 benefit in this Financial Institution Bankruptcy Act by
1005 designating and having the Chief Judge of the Supreme Court
1006 designate in advance skilled judges who preside in
1007 particularly complex bankruptcies and fast-moving cases.

1008 And third, we amend the bankruptcy law. We can do this
1009 without adopting a single regulation or transferring
1010 discretion to the regulators. This is Congress' obligation.
1011 We keep that obligation.

1012 So again, I want to compliment the staff on both sides.
1013 They have done a tremendous job on this. I want to
1014 compliment first Mr. Cohen, the ranking member at that time
1015 of our subcommittee on several of these hearings, and then
1016 later Mr. Johnson and Mr. Conyers. Most of our constituents
1017 are saying why can you not work together. Well, we have in
1018 this case, and we have come up with a bill that has attracted

1019 bipartisan support. And I urge passage of this legislation.

1020 If any of you want to know how this process goes on, the
1021 Judiciary Committee has written an excellent 11-page review
1022 of the individual provisions, and I would be glad to sit down
1023 with any of you. And if a financial institution in your
1024 district gets in trouble and wants to know how this process
1025 would work, the Judiciary staff can pretty much sit down with
1026 them. Let us hope that does not happen, but it will happen.
1027 We all know it will happen. And when it does, we need a good
1028 process.

1029 Thank you, Mr. Chairman.

1030 Chairman Goodlatte. I thank the chairman.

1031 And now it is my pleasure to recognize the ranking
1032 member of the Subcommittee on Regulatory Reform, Commercial
1033 and Antitrust Law, the gentleman from Georgia, Mr. Johnson,
1034 for his opening statement.

1035 Mr. Johnson. Thank you, Mr. Chairman.

1036 Mr. Chairman, I trust the courts and I am sympathetic to
1037 the notion that a judicial process may be preferable to an
1038 administrative process for resolving systemically important
1039 financial institutions.

1040 But I am concerned about the strict deadlines and the

1041 lack of a funding mechanism for H.R. 5421, the Financial
1042 Institution Bankruptcy Act, and I fear that it may be
1043 unworkable. Although the legislation attempts to strike a
1044 balance, the bill contains multiple deadlines within a tight
1045 window for a bankruptcy judge to resolve the collapse of an
1046 extremely complex institution. As the Judicial Conference
1047 noted in a letter to this committee concerning these
1048 provisions in the draft legislation, these, quote, severe
1049 time restrictions could be detrimental to thorough
1050 deliberation, particularly in large bankruptcy cases that
1051 could potentially impact a great many investors and creditors
1052 and may very well present matters of first impression. End
1053 quote.

1054 Among other concerns with the legislation, the Judicial
1055 Conference also notes that the bill may encourage judge
1056 shopping by requiring that the Chief Justice of the United
1057 States designate a minimum of 10 bankruptcy judges to hear
1058 Subchapter 5 cases, thereby encouraging the assignment of
1059 cases based on the perceived merits or abilities of a
1060 particular judge. Random case assignment is a hallmark of
1061 Federal courts which safeguards the judiciary's autonomy.

1062 The bill also lacks a funding mechanism. A key

1063 difference between an orderly resolution under Dodd-Frank and
1064 the resolution contemplated by this bill concerns the proper
1065 mechanism for funding the reorganization of the debtor. In a
1066 normal bankruptcy, the debtor's reorganization may be funded
1067 by private parties or by the Federal Government, as
1068 illustrated by the General Motors bankruptcy. Orderly
1069 liquidations likewise permit Government funding. In many
1070 cases, liquidity provided by the U.S. Government to prevent
1071 the collapse of financial institutions has either returned a
1072 profit to the Government or is likely to be repaid. The
1073 National Bankruptcy Conference, which includes the Nation's
1074 leading bankruptcy scholars and practitioners, has explained
1075 that stabilizing and permanently restructuring any financial
1076 institution will require some form of immediate liquidity
1077 source and/or credit support. This critical mechanism
1078 underscores the importance of the Government's role in the
1079 financial system and has prevented the collapse of many
1080 cornerstones of our Nation's financial system without cost to
1081 the taxpayer.

1082 In addition to these concerns, I would caution the chair
1083 against efforts to combine this bill with legislation that
1084 would strike title II of the Dodd-Frank Act. Such efforts

1085 would be unacceptable and meet with strong opposition. But I
1086 remain optimistic that the chair will work my staff to
1087 accommodate these concerns prior to the bill's consideration
1088 on the floor.

1089 Before I yield back, I would like to commend the chair
1090 and his staff for the thorough and evenhanded process in the
1091 committee's drafting and consideration of the Financial
1092 Institution Bankruptcy Act. Although the bill is imperfect,
1093 it has been a model in effective process that I hope will lay
1094 the groundwork for bipartisan cooperation in bills and
1095 hearings yet to come. Hopefully, as we work out resolving
1096 problems that large financial institutions may have, we can
1097 get around to working out some of the problems that young
1098 students with student loan debt have and also homeowners who
1099 are under water in their mortgages. It is important that we
1100 study the bankruptcy law and make the appropriate changes so
1101 that we can bring relief to those two classes of debtors.

1102 And with that, I will yield back. Thank you, Mr.
1103 Chairman.

1104 Chairman Goodlatte. For what purpose does the gentleman
1105 from New York seek recognition?

1106 Mr. Nadler. To strike the last word, Mr. Chairman.

1107 Chairman Goodlatte. The gentleman is recognized for 5
1108 minutes.

1109 Mr. Nadler. Thank you. I will not take 5 minutes.

1110 I just want to say that I want to commend everybody
1111 involved with this legislation. It is excellent legislation.
1112 It needs some work on some of these time limits that the
1113 Judicial Conference points out, and I hope that as the
1114 process proceeds, it will get it.

1115 This is an excellent improvement to the bankruptcy law
1116 in these situations. I just want to observe that using the
1117 bankruptcy law in this situation is sort of trying to close
1118 the barn door after the horse has left. It will be much
1119 better, although not under the jurisdiction of this committee
1120 -- and this does not to say we should not pass the bill. We
1121 should. But it would be a nice complementary thing to do if
1122 the Financial Services Committee or the regulatory agencies
1123 would increase the capitalization ratio of the banks to 15
1124 percent and then we probably would never have this problem in
1125 the first place.

1126 But until that happens, this is excellent legislation.
1127 It will give us some additional protections. And I commend
1128 the drafters and the sponsors.

1129 I yield back.

1130 Chairman Goodlatte. The chair thanks the gentleman.

1131 For what purpose does the gentleman from Virginia seek
1132 recognition?

1133 Mr. Scott. I move to strike the last word. Mr.
1134 Chairman, I move to strike the last word.

1135 Chairman Goodlatte. The gentleman is recognized for 5
1136 minutes.

1137 Mr. Scott. Mr. Chairman, thank you for calling up this
1138 bill. But as several of my colleagues and I have continued
1139 to point out, there are many other important bills that can
1140 help businesses and our economy that also deserve a markup,
1141 including the Marketplace Fairness Act.

1142 However, I would like to briefly mention H.R. 2992, the
1143 Business Activity Tax Simplification Act, BATSA, which I have
1144 cosponsored with the gentleman from Wisconsin, Mr.
1145 Sensenbrenner. The Regulatory Reform, Commercial and
1146 Antitrust Law Subcommittee held a hearing on our bill in
1147 February, and as the chairman knows, this bill has been
1148 marked up and reported out of committee several times in past
1149 Congresses. BATSA has always attracted strong bipartisan
1150 support and seeks to update a 50-year-old Federal statute

1151 that determines when States can impose income taxes on the
1152 sale of tangible personal goods in the taxing State.

1153 Over the years, States have adopted a series of business
1154 activity taxes that are proxies for State income tax,
1155 including gross receipt taxes, licensing agreements, and
1156 other charges that States frequently seek to impose on out-
1157 of-state companies. Several States have enacted overly
1158 aggressive and often unfair business activity taxes which has
1159 interfered with interstate commerce.

1160 Businesses in my State have been acutely affected by
1161 these aggressive business activity taxes. Smithfield Foods
1162 located near my district has had some of its trucks
1163 threatened with confiscation by New Jersey tax revenue
1164 agents. Virginia-based Capital One has joined other
1165 financial institutions in becoming easy prey for other States
1166 and localities seeking to increase their revenues by
1167 targeting out-of-state businesses. Other sectors of the
1168 Virginia economy, such as manufacturing and information
1169 technology, franchising, and media industries have also been
1170 targeted with overly aggressive business activity taxes by
1171 other States.

1172 There is an urgent need to modernize this decades-old

1173 law. BATSA would clarify the standard governing State
1174 assessment of corporate income taxes and comparable taxes on
1175 businesses. Specifically, the bill would articulate a bright
1176 line physical presence/nexus standard that includes either
1177 owning or leasing real property or tangible property in the
1178 State or assigning one or more employees to perform certain
1179 activities in the State for more than 15 days in a taxable
1180 year.

1181 Mr. Chairman, I understand that we are marking up
1182 several bills today but not BATSA, but given your strong
1183 support for the bill over the years, I hope that you will
1184 soon schedule a markup so that we can move forward with
1185 updating and modernizing the decades-old law to give
1186 businesses across the country a much needed certainty when
1187 conducting business across State lines.

1188 Thank you, Mr. Chairman. I yield back.

1189 Chairman Goodlatte. Will the gentleman yield?

1190 Mr. Scott. I yield.

1191 Chairman Goodlatte. I share the gentleman's sentiment
1192 and look forward to the opportunity to do that as soon as we
1193 can, but we are still in the works on that.

1194 Mr. Scott. Thank you, Mr. Chairman.

1195 Chairman Goodlatte. For what purpose does the gentleman
1196 from Alabama -- let me first ask are there any amendments to
1197 the bill.

1198 [No response.]

1199 Mr. Bachus. Let me just respond.

1200 Chairman Goodlatte. The gentleman has already been
1201 recognized once. So I will recognize myself and then --

1202 Mr. Bachus. Thank you. Let me respond to one or two
1203 things that Mr. Johnson mentioned.

1204 One -- and I think Mr. Nadler did too -- the time
1205 restraints. We have talked to the Administrative Office of
1206 the U.S. Courts and the Judicial Conference. As a matter of
1207 practice, they always oppose time limitations. And they
1208 actually said to us, now, we are opposing these because we
1209 always oppose time limitations. But we are dealing with --
1210 what we want to do by creating the bridge company is allow
1211 these subsidiaries to keep working. So time is of the
1212 essence, and forming that before there is a run on the
1213 subsidiaries like we witnessed in 2008 -- so there is a
1214 reason for that urgency.

1215 As far as the forum shopping, this will actually reduce
1216 forum shopping because it will designate all appellate court

1217 judges with expertise in this area. So, you know, you will
1218 not be able to go to a certain city and choose a Federal
1219 court in that city that you think is going to be more
1220 favorable. It actually will limit the amount of forum
1221 shopping.

1222 As far as cost, by allowing the profitable operating
1223 subsidiaries to continue to operate, that will actually be a
1224 cost-saving measure and it will preserve equity, which will
1225 be held in trust for the bankruptcy case. So it will
1226 actually mitigate the expense and the cost of the disruptive
1227 shutdown where the entire operation, including the
1228 subsidiaries, go in to bankruptcy. And most bankruptcy
1229 experts, Democratic witnesses and Republican witnesses, said
1230 this will actually result in cost savings.

1231 The only thing I can argue with Mr. Johnson is he says
1232 we ought to have Government funding. Well, we want to avoid
1233 as much of that as possible. Yes, we did make money in 2008,
1234 but we made it on the capital purchase program which required
1235 warrants and dividends. You cannot do that in a bankruptcy
1236 case. But where we made the money was on ongoing financial
1237 institutions which never did bankrupt. We made the money
1238 from them, which actually helped defer the expense on those

1239 who went into bankruptcy.

1240 Chairman Goodlatte. The chair thanks the gentleman and
1241 reclaims his time and would note a reporting quorum.

1242 Are there any amendments to H.R. 5421?

1243 [No response.]

1244 Chairman Goodlatte. There being none, a reporting
1245 quorum being present, the question is on the motion to report
1246 the bill, H.R. 5421, favorably to the House. Those in favor
1247 will say aye.

1248 [Chorus of ayes.]

1249 Chairman Goodlatte. Those opposed, no.

1250 [No response.]

1251 Chairman Goodlatte. The ayes have it and the bill is
1252 ordered reported favorably. Members will have 2 days to
1253 submit views.

1254 Pursuant to notice, I now call up H.R. 5401 for purposes
1255 of markup and move the committee to report the bill favorably
1256 to the House. The clerk will report the bill.

1257 Ms. Deterding. H.R. 5401, to impose limitations on the
1258 immigration status and immigration benefits for Libyan and
1259 third country nationals acting on behalf of Libyan entities.

1260 Chairman Goodlatte. Without objection, the bill is

1261 considered as read and open for amendment at any point.

1262 [The information follows:]

1263

1264 Chairman Goodlatte. And I will begin by recognizing
1265 myself for an opening statement.

1266 On February 1, 2010, then Assistant Secretary of State
1267 for the Bureau of Near Eastern Affairs Jeffrey Feltman
1268 requested ending the longstanding prohibition against Libyans
1269 entering the United States to study aviation maintenance,
1270 flight operations, or nuclear-related fields. The
1271 administration is getting closer and closer to taking this
1272 step. I commend the Immigration and Border Subcommittee
1273 chairman Trey Gowdy for introducing this vitally important
1274 bill to prevent such a dangerous action by the
1275 administration.

1276 Shortly after the 2010 request, widespread unrest in
1277 Libya precluded the U.S. Government from engagement with the
1278 country. The post-Arab Spring civil war in Libya led to the
1279 fall of the Muammar Gaddafi regime in August 2011. Following
1280 the revolution, the Obama administration once again began the
1281 process of, quote, normalizing relations with that country.

1282 However, on September 11th, 2012, U.S. Ambassador John
1283 Christopher Stevens and three other State Department
1284 officials were killed when terrorists stormed the U.S.
1285 consulate in Benghazi, Libya and set it ablaze.

1286 Despite this attack, the Obama administration has
1287 continued to push for a repeal of the prohibition. The
1288 longstanding prohibition on Libyans was put in place to
1289 protect the homeland against serious threats from terrorists
1290 from a particularly unstable, dangerous country. The Obama
1291 administration argues that this prohibition is no longer
1292 needed.

1293 Unfortunately, many of the characteristics regarding
1294 Libya that caused the regulations to be put in place persist
1295 today. Many extremists and terrorist groups operate
1296 unfettered in Libya. In early July, heaving fighting broke
1297 out between rival militias vying for control of Libya's main
1298 airport, killing seven people and forcing a halt to all
1299 flights in an effort to gain control of the airport in the
1300 worst fighting in the capital in 6 months.

1301 By the end of July, the United States suspended
1302 operations at its embassy in Tripoli, Libya and evacuated its
1303 diplomats to neighboring Tunisia under U.S. military escort
1304 amid a significant deterioration in security in Tripoli as
1305 fighting intensified between rival militias.

1306 In August, militia clashes in Libya killed more people
1307 while most foreign governments closed their embassies and

1308 evacuated staff.

1309 On August 27, 2014, Libya warned the UN Security Council
1310 that the country could descend into full-scale civil war if
1311 heavily armed warring factions were not disarmed. In
1312 response to the increasing chaos, the council passed a
1313 resolution tightening the arms embargo on Libya and extending
1314 sanctions to groups and individuals that threaten the
1315 country's peace and stability.

1316 3 years after Gaddafi's fall, Libya's Government has
1317 been unable to tame rival brigades of former rebel fighters
1318 who have allied themselves with competing political factions
1319 in a struggle over post-war spoils. Just last week we
1320 learned that militias in Libya took control of nearly a dozen
1321 commercial jetliners last month, and western intelligence
1322 agencies recently issued a warning that the jets could be
1323 used in terrorist attacks across north Africa. Allegedly
1324 intelligence reports of the stolen jetliners were distributed
1325 within the U.S. Government over recent weeks and included a
1326 warning that one or more of the aircraft could be used in an
1327 attack on the date marking the anniversary of the
1328 September 11, 2001 terrorist attacks against New York and
1329 Washington.

1330 Incredibly, the Department of Homeland Security is still
1331 moving forward to rescind the regulation. We learned via Web
1332 publication that the final regulation to reverse the current
1333 policy was approved by OMB and is now back at the Department
1334 of Homeland Security awaiting Secretary Johnson's signature.
1335 OMB completed its review on July 14, 2014. At any point in
1336 time now, DHS Secretary Johnson can sign the rule so that it
1337 can be published in the Federal Register and aviation and
1338 nuclear science students from Libya will be free to come to
1339 the United States, all of this despite the fact that Libya
1340 has descended into utter chaos since our hearing on the issue
1341 on April 3rd of this year.

1342 Four 9/11 hijacker pilots obtained their expertise in
1343 aviation primarily at U.S. flight schools. Do we want to
1344 risk Libyan terrorists learning how to fly airplanes in the
1345 U.S.? Given the desire of radical regimes and terrorists to
1346 obtain or build nuclear weapons or dirty bombs, do we want to
1347 possibly train Libyan terrorists in nuclear engineering?

1348 We need to prevent the administration from eliminating
1349 the present regulation barring Libyans from studying flight
1350 skills and nuclear-related fields in the U.S. That is what
1351 the Protecting the Homeland Act does. It codifies the

1352 current regulatory bar.

1353 I commend the gentleman from South Carolina, Mr. Gowdy,
1354 and the gentleman from Utah, Mr. Chaffetz, for their
1355 contribution to this effort, and I urge my colleagues to
1356 support this important bill.

1357 And I now recognize the ranking member for his opening
1358 statement.

1359 Mr. Conyers. Thank you, Mr. Chairman.

1360 My colleagues, H.R. 5401, Protecting the Homeland Act,
1361 would codify and make permanent a restriction that bans all
1362 Libyan nationals from coming to the United States to study or
1363 train in aviation maintenance, flight operations, or nuclear
1364 science.

1365 Just 1 day before the 13th anniversary of the attacks on
1366 the World Trade Center and the Pentagon and the second
1367 anniversary of the attack of the U.S. consulate in Benghazi,
1368 I have to wonder if consideration of this particular bill
1369 today is more politically motivated than facts and reason.

1370 Now, just join me in this examination. I take our
1371 national security seriously, and I believe we must be
1372 vigilant in preventing those who would do us harm from
1373 entering our country. And so I support background and

1374 security checks that all visa applicants now go through. I
1375 also support additional checks that are performed in
1376 cooperation with intelligence and law enforcement communities
1377 when a visa applicant raises potential security concerns or
1378 seeks to come to the United States to engage in flight
1379 training or work on issues related to sensitive technologies.

1380 But imposing a permanent blanket ban on visas for a
1381 whole class of persons is in my view not good policy. And in
1382 fact, it could be contrary to our own national security
1383 interests.

1384 Those most familiar with our security interests would
1385 agree that it is bad policy to impose a permanent ban. In
1386 fact, the Departments of Defense, Homeland Security, and
1387 State support rescinding the current regulatory ban that this
1388 bill would make permanent. These Departments, none of which
1389 are known for being soft on terror, have argued that lifting
1390 a ban would advance America's security interests and better
1391 enable our Government to support the new democratically
1392 elected Libyan Government in its battle against extremist
1393 elements that are our common enemy. And that is not to
1394 confer any particular plaudits or kudos on the Libyan
1395 Government newly elected. I have no illusions about that.

1396 But in a 2012 letter, the Department of Defense
1397 explained that it is in America's interests that Libyan Air
1398 Force personnel receive necessary flight training in our
1399 country to rebuild the fleet and that the current ban will
1400 have serious implications for U.S.-Libya military cooperation
1401 and the overall bilateral relationship. It is the Department
1402 of Defense.

1403 And Defense in a letter further explains that banning
1404 all Libyan students and scientists from pursuing studies and
1405 receiving training in nuclear-related fields in the United
1406 States actually interferes with the Department of Energy and
1407 the State Department to provide such people with skills and
1408 training that can be used for peaceful and economically
1409 viable pursuits.

1410 In April 2014, the Department of Defense again wrote to
1411 Homeland Security to urge rescission of the ban stating that
1412 now more than ever the Libyan Government needs capable,
1413 centrally controlled armed forces. In order to do that, the
1414 Libyan Air Force must have the ability to maintain and
1415 upgrade its aging and increasingly obsolete fleet of U.S.-
1416 made aircraft and helicopters. But the current visa
1417 restriction that today's bill would codify into law and

1418 permanently prevent us from providing much of this training
1419 and equipment makes it more likely that the extremists will
1420 prevail in their country. Of course, that is not an outcome
1421 that we want, but what can we do?

1422 Well, one option is to allow the Secretary of Homeland
1423 Security, Jeh Johnson, to continue consulting with the
1424 Department of Defense, the Department of State and Energy,
1425 and the Intelligence Community about whether keeping the
1426 current regulation in place continues to best serve our
1427 national security.

1428 Option number two, possible. The one that we are
1429 presented with today is to ignore the recommendations of our
1430 Defense, Homeland Security, and State Departments and
1431 permanently tie their hands from acting. It is my view, my
1432 judgment that that approach would cause more harm than good.
1433 Over the years, we have developed an immigration system that
1434 relies upon an ever-growing list of background and security
1435 checks that allow us to determine who should be allowed to
1436 come into the country. I do not think that we should be
1437 supplanting that system with a law that would keep out friend
1438 and foe alike. I think we are up to that job. I think we
1439 can do that without this permanent, all-inclusive ban.

1440 And so, my colleagues, I ask you to think long and
1441 seriously about the direction that a proposal that 5401
1442 contains and reject it.

1443 Thank you, Mr. Chairman. I yield back.

1444 Chairman Goodlatte. Thank you, Mr. Conyers.

1445 I will now turn to the chairman of the Subcommittee on
1446 Immigration and Border Security and the chief sponsor of this
1447 legislation, Mr. Gowdy of South Carolina, for his opening
1448 statement.

1449 Mr. Gowdy. Thank you, Mr. Chairman. I also want to
1450 thank you for your very hard work on this important issue.

1451 And before I yield to my friend from Utah, who has
1452 worked so assiduously on this issue, Mr. Chairman, I could
1453 not help but think when our friend from Michigan was talking
1454 if this were such a sound public policy, it should not prove
1455 to be impossible for this administration to explain both the
1456 change in policy and the timing. And heretofore, neither
1457 have been explained. All we get are perfunctory conclusions.
1458 There is no explanation for the change in policy, and God
1459 knows there is no explanation for the timing for the change
1460 in policy. So absent that, I am left to conclude this would
1461 be among the worst possible time to change the policy.

1462 And with that, I would yield to my friend from Utah.

1463 Mr. Chaffetz. I thank the gentleman. I thank Mr. Gowdy
1464 for his leadership and, Mr. Chairman, for yours.

1465 Generously the United States of America grants visas for
1466 people to come temporarily to the United States of America.
1467 But Libya, back in the early 1980's, was participating in a
1468 series of terrorist type of activities. Therefore, President
1469 Reagan instituted a ban. It prohibited Libyan nationals in
1470 1983 -- prohibited Libyan nationals from coming to the United
1471 States and from getting a visa to come to the United States
1472 so that they could be trained in aviation and nuclear
1473 sciences.

1474 Fast forward. Today our facility in Benghazi was bombed
1475 three times. We have lost four Americans. Our embassy in
1476 Tripoli had to be evacuated. When we go through the process
1477 of offering a visa, we rely on the host nation government to
1478 provide us background and information about those
1479 individuals. We have virtually no other way to assess the
1480 viability of these young candidates to come to the United
1481 States of America.

1482 And I defy anybody who thinks that they should vote no
1483 on this to tell me what they think the current state of Libya

1484 is. The administration sent forward their expert witness on
1485 this to make the case to the Congress because, Chairman, you
1486 did have a hearing on this. They sent Assistant Secretary
1487 for International Affairs and the chief diplomatic officer
1488 for the Department of Homeland Security, who said, quote,
1489 Libya is, as Dr. Wary described it, an unstable, dangerous,
1490 and insecure place.

1491 He went on to say, when I asked him why is it, who is it
1492 -- think about this. Who in the United States Government
1493 wakes up in the morning and says, you know what, giving
1494 Libyan nationals a visa to come to the United States to train
1495 on nuclear sciences makes the world a better place. Who
1496 wakes up and thinks that in this day and age and what we are
1497 dealing with right now here today? How does that happen?

1498 There are not any nuclear facilities in Libya. They do
1499 not have any facilities. Why do we feel an obligation to
1500 have to train Libyan nationals to do that? I asked them,
1501 quote, but they do not have any nuclear power plants there.
1502 Mr. Bersin, quote, this is a decision that was made, a policy
1503 decision that was made, and I cannot -- I can point to you
1504 the letters on which I relied and the points that were made
1505 in those letters. But for reasons that are not clear to me

1506 -- and he goes on. If it is not clear to the expert witness
1507 from the administration, why should we just simply blanketly
1508 say it is a good idea to give a visa to a Libyan national to
1509 come train on nuclear sciences and aviation? That is amazing
1510 to me.

1511 Mr. Chairman, I ask unanimous consent to enter into the
1512 record an article that was published yesterday in The
1513 Guardian. Here is the title of it: Libyan parliament takes
1514 refuge in Greek car ferry. Elyros liner is deployed as
1515 floating hotel for legislature that has fled the war-torn
1516 capital from eastern town of Tobruk. Second page, quote,
1517 Islamists and their allies have captured the capital Tripoli
1518 and most of Benghazi. The country's second city, Derna, the
1519 next town up the coast, has been declared an Islamic
1520 caliphate. And the front line begins at Tobruk airport where
1521 pickup trucks mounting anti-aircraft guns face out into the
1522 shimmering empty desert.

1523 Move forward a few paragraphs, quote, but in another
1524 way, time is running out with Libya's conflict already
1525 shaping up as a regional war. Qatar and the United Arab
1526 Emirates, the big Gulf players, have each taken a side:
1527 Qatar for the Islamists, the Emirates for the nationalists.

1528 Pentagon sources says the UAE and Egypt have launched air
1529 strikes against Libyan Dawn while Sudan is flying weapons for
1530 the Islamists, making parliament's job to find the middle
1531 ground all harder.

1532 There are two people that claim to be the current prime
1533 minister, and the Obama administration wants to give Libyan
1534 nationals visas to come to the United States to train on
1535 aviation and nuclear sciences. Seriously?

1536 We have gone through this a series of times. We have
1537 asked for letters. We have held hearings. There is no
1538 justification to do this today. That is why there is the
1539 imperative to pass this piece of legislation to prohibit this
1540 from happening. I did not ask for this to happen. Trey
1541 Gowdy did not ask for this to happen. But the Obama
1542 administration keeps pushing it through the process to the
1543 point they are one signature away from making this happen,
1544 and it is the duty and the responsibility of the United
1545 States Congress to weigh in on this issue. It is not in our
1546 Nation's best interests. We should say no to this by passing
1547 this piece of legislation.

1548 And I yield back.

1549 Chairman Goodlatte. Without objection, the unanimous

1550 consent request of the gentleman from Utah is granted. And
1551 at the same time, I will ask unanimous consent to add the
1552 following items to the record: a letter of support for this
1553 bill from the Air Line Pilots Association, International; a
1554 press release from the Air Line Pilots Association,
1555 International entitled "ALPA to DHS, Do Not Lift Libyan
1556 Restrictions on Flight Training;" and a letter from the Air
1557 Line Pilots Association, International's Captain Lee Monk to
1558 DHS Secretary Johnson strongly opposing permitting Libyan
1559 nationals to receive pilot or any other type of training in
1560 the United States; and four news articles describing the
1561 current situation in Libya.

1562 [The information follows:]

1563

1564 Chairman Goodlatte. For what purpose does the gentleman
1565 New York seek recognition?

1566 Mr. Nadler. I move to strike the last word.

1567 Chairman Goodlatte. The gentleman is recognized for 5
1568 minutes.

1569 Mr. Nadler. Mr. Chairman, I rise in opposition to this
1570 legislation. I think it is very unfortunate legislation.

1571 Libya is in turmoil now. True. The current government
1572 is supposedly friendly to us. There are plenty of factions
1573 that are unfriendly to us. No one can predict who is going
1574 to control tomorrow or next week.

1575 It is also true of Iraq. It is also true of a number of
1576 other countries in the region. The whole region is in
1577 turmoil.

1578 And our general practice, aside from declarations of war
1579 or authorizations for the use of military force, which we
1580 think Congress should do because that is our constitutional
1581 role -- our general practice is to let the executive branch
1582 try to deal with this. There are different factions in
1583 Libya, some of whom are friendly to us, some of whom we may
1584 want to have trained in flying so they can oppose the rebels
1585 or whoever that are unfriendly to us. That is why we need a

1586 flexibility in the executive branch, which we have for most
1587 countries.

1588 For example, the Libyan Government has people flying
1589 C-130's that we gave them and CH-47 helicopters that we gave
1590 them for supplies for helping Americans there. Replacement
1591 people may need training. We rely on whoever the
1592 administration is to say that these nationals of Libya or
1593 Iraq or wherever are people we can entrust because they are
1594 allied with factions supporting us or factions that we are
1595 trying to help, and these individuals are not because they
1596 are with factions on the other side. We do not pass a
1597 blanket ban on anybody in the country or anybody who is a
1598 citizen of the country, even if they happen to live in Italy
1599 or someplace else, getting training or whatever.

1600 Mr. Chaffetz. Will the gentleman yield?

1601 Mr. Nadler. In a moment. In a moment.

1602 This is just too rigid, and there is no good reason for
1603 it.

1604 Now, you may not trust the judgment of the
1605 administration at any given point, and that may be valid or
1606 not.

1607 Mr. Chaffetz. Will the gentleman --

1608 Mr. Nadler. I will yield in a moment.

1609 We have to trust the executive to make decisions like
1610 this. So we cannot tie their hands.

1611 We made a mistake in 1960 by putting an embargo on Cuba
1612 which may have been justified then but is still there 54
1613 years later and is very difficult to get off the books even
1614 though the circumstances have totally changed, et cetera.

1615 We should not tie the hands of the executive and put
1616 this kind of legislation on the books.

1617 I will now yield to the gentleman.

1618 Mr. Chaffetz. My question for the gentleman is the
1619 Reagan administration, the Bush administration, the Clinton
1620 administration, the Bush administration, all for 30 years --
1621 it has been the policy to prohibit this. Why now? why
1622 change now?

1623 Mr. Nadler. Reclaiming my time.

1624 For a very simple reason. During a long period of time
1625 during the Reagan administration, the Bush administration,
1626 the Clinton administration, you had a very hostile
1627 government, the Gaddafi government, and it made sense to say
1628 that we -- and it was total dictatorship. There was no
1629 organized opposition, no rebels in the hills or anything. It

1630 was, for all practical purposes -- we were not at war, but
1631 for all practice purposes an enemy government. It made
1632 sense.

1633 After the Gaddafi regime started changing their policy,
1634 then a number of administrations, which I think started with
1635 the Bush administration, after Gaddafi gave up his nuclear
1636 weapons program and opened up inspections and all sorts of
1637 things back in 2003 or 2004, as I recall, started relaxing
1638 these. And regulation by regulation, the Bush administration
1639 and then the Obama administration has been relaxing them
1640 point by point.

1641 Now, currently the administration or the regime in Libya
1642 is not an enemy regime. They are a regime that we support.
1643 Now, there is chaos there. There are opposition groups,
1644 rebels, and so forth. Who is going to prevail? Who knows?
1645 But that is true in many other countries, and we do not have
1646 blanket prohibitions that hurt our friends as well as our
1647 enemies. It just does not make sense. If it was only one
1648 faction and that faction controlled the government and they
1649 were enemies, then it made sense. It no longer does.

1650 I will yield.

1651 Chairman Goodlatte. I thank the gentleman for yielding.

1652 This assertion that we do not ban individuals from
1653 certain countries from getting visas is simply incorrect.
1654 Congress has banned Iranian nationals from engaging in
1655 nuclear studies. Military visitors from certain listed
1656 countries may not obtain a visa waiver to travel to the
1657 United States.

1658 Mr. Nadler. Reclaiming my time.

1659 Chairman Goodlatte. Cuba, Mongolia, North Korea,
1660 Vietnam, Peoples Republic of China.

1661 Mr. Nadler. Yes. Those are similar to the situations
1662 we had in Libya in the 1990's when you had a regime in total
1663 control and that regime is hostile. You do not need
1664 flexibility then. Of course, we do not want North Koreans to
1665 study nuclear science in the United States. Of course, we do
1666 not want Iranians. In Libya, there are factions --

1667 Chairman Goodlatte. Without objection, the gentleman is
1668 recognized for an additional minute.

1669 Mr. Nadler. I will only take 30 seconds.

1670 Chairman Goodlatte. Well, if you would yield to me, I
1671 will give you a minute.

1672 [Laughter.]

1673 Mr. Nadler. Okay. I will yield to you in a second.

1674 Just let me finish the sentence.

1675 In Libya and other places where there is contesting,
1676 where there are factions that are friendly to us, factions
1677 that are not friendly, a blanket ban does not make sense.

1678 I yield.

1679 Chairman Goodlatte. Well, the Iranian ban went into
1680 effect in 2007, and the fact of the matter is when you talk
1681 about regimes, which regime in Libya are you talking about?
1682 Which government there that is claiming authority is going to
1683 be the one that we are going to be dealing with in terms of
1684 processing applications to allow people to come here to study
1685 nuclear science?

1686 Mr. Nadler. Reclaiming my time.

1687 Chairman Goodlatte. The gentleman's time.

1688 Mr. Nadler. Time will tell. And that is why the
1689 administration needs flexibility. The answer may be none,
1690 but that should be up to the administration, be it this one
1691 or the next one. We should not tie its hands.

1692 Now, when you are dealing with a country with a stable
1693 administration and a hostile administration like North Korea
1694 or Iran, those things make sense or a Libya in the 1990's.
1695 When you are dealing with a situation which is very unstable

1696 where there are factions we are trying to work with, such a
1697 blanket prohibition does not make sense.

1698 I yield back.

1699 Ms. Lofgren. Mr. Chairman?

1700 Chairman Goodlatte. Who seeks time?

1701 Ms. Lofgren. Mr. Chairman?

1702 Chairman Goodlatte. For what purpose does the
1703 gentlewoman from California seek recognition?

1704 Ms. Lofgren. The regular order would have been to
1705 recognize me as the ranking member to issue my opening
1706 statement, which I would like to do at this time.

1707 Chairman Goodlatte. A very good point. The chair
1708 stands corrected, and the gentlewoman is recognized at this
1709 time.

1710 Ms. Lofgren. I would like to note, as has been
1711 mentioned earlier, that we did have a hearing in April in the
1712 subcommittee that was informative. And I think actually this
1713 issue is more complicated than it has been made to seem.
1714 Some comments made today -- over the last 30 years, we have
1715 gone back and forth with Libya. During that time, the U.S.
1716 and the EU have sometimes taken steps to normalizing
1717 relations and others not. In 2004, it is worth remembering

1718 the Bush administration lifted economic sanctions against in
1719 Libya, and in 2006, Secretary of State Condoleezza Rice
1720 removed Libya from the U.S. list of state sponsors of
1721 terrorism. And Secretary Rice said the decision was based on
1722 historic decisions taken by Libya's leadership to renounce
1723 terrorism. In 2008, the Bush administration entered into a
1724 science and technology cooperative agreement with Libya
1725 regarding nuclear and radiological cooperation, and the
1726 agreement specifically called for strengthened education and
1727 training.

1728 Now, during our hearing, it was clear -- and everyone
1729 agreed -- that the Libyan Government that replaced Gaddafi is
1730 fragile, and certainly there are extremist elements in the
1731 region who pose a threat to the Libyan Government and to the
1732 United States.

1733 Those who support codifying the 1983 regulation point to
1734 those facts as support for codification. However, I think it
1735 is important to note that who disagrees is the United States
1736 Department of Defense. And I would ask unanimous consent to
1737 place into the record the letter from the Department of
1738 Defense dated April 1st. It is the Department of Defense
1739 that has initiated the request to de-codify, to reverse this

1740 decision.

1741 And why would that be? It is because -- and this is not
1742 my argument. It is the Department of Defense's argument that
1743 they have to make efforts to work with those who are fighting
1744 the terrorists and the extremists in Libya. And they say --
1745 the Department of Defense -- that the visa restriction stands
1746 in their way. They want to train pro-western forces, and
1747 they point out that the Libyan aircraft being used, the
1748 C-130's, the Boeing CH-47's, are aging. It is the same
1749 transport planes that the Libyan Government used to rescue
1750 and evacuate the surviving consulate personnel after the
1751 attack in Benghazi, and the fleet is aging. It needs repair
1752 and replacement. They need pilots and a flight crew. And so
1753 I think it is important not to talk about the what if's, but
1754 to listen to our own Department of Defense about their needs
1755 to work with and strengthen those who want to fight the
1756 terrorists in Libya.

1757 And I think this is not a partisan issue. I mean, we
1758 know that Senator McCain and Senator Graham have vigorously
1759 argued that we work with freedom forces in Libya and that we
1760 strengthen those forces.

1761 Now, you would think from the discussion that unless we

1762 have this dated rule, there would be no inquiry as to the
1763 nature of applicants. That is not correct. These applicants
1764 are checked in numerous ways through the consular lookout and
1765 support system. We also run names through the consular
1766 consolidated database, and there are additional checks and
1767 security layers, including the security advisory opinions,
1768 the Counterterrorism Center's Kingfisher Extension Program,
1769 and the like.

1770 Now, later in this markup, I am going to be offering an
1771 amendment that will, I think, help us all to do the right
1772 thing, and that would be to limit visas for air training only
1773 to those individuals that the Defense Department has asked to
1774 be trained because of the efforts that they are making to
1775 fight terrorism.

1776 I would note, as the chairman mentioned, we are near the
1777 anniversary of 9/11. And I think sometimes we forget that
1778 our remedies have very little to do with the cause of terror.
1779 19 Saudis came and attacked our country. In response to
1780 that, we deported 2 million Mexicans and we did not impose a
1781 ban on training Saudi citizens in flight training. So let us
1782 make sure that our remedy bears some relationship to what we
1783 need to be afraid of. We should be afraid of hampering the

1784 Department of Defense as they do their important work of
1785 keeping us safe.

1786 And with that, I yield back.

1787 Chairman Goodlatte. Without objection, the
1788 gentlewoman's request that the letter from the Department of
1789 Defense be made a part of the record will be made a part of
1790 the record.

1791 [The information follows:]

1792

1793 Chairman Goodlatte. And the question now is are there
1794 amendments to H.R. 5401.

1795 For what purpose does the gentlewoman from California
1796 seek recognition?

1797 Ms. Lofgren. Mr. Chairman, I have an amendment at the
1798 desk.

1799 Chairman Goodlatte. The clerk will report the
1800 amendment.

1801 Ms. Deterding. Amendment to H.R. 5401, offered by Ms.
1802 Lofgren of California. Page 2, line --

1803 Chairman Goodlatte. Without objection, the amendment
1804 will be considered as read.

1805 [The amendment of Ms. Lofgren follows:]

1806

1807 Chairman Goodlatte. And the gentlewoman is recognized
1808 for 5 minutes on her amendment.

1809 Ms. Lofgren. Mr. Chairman, as I just mentioned, this
1810 issue is a somewhat complicated one. And I know that the
1811 Department of Homeland Security has been in discussions with
1812 the Department of Defense and the Department of State for a
1813 number of years regarding the proposal to rescind the 1983
1814 blanket visa restriction. And I am confident that all the
1815 parties are giving the issue the same level of scrutiny and
1816 care that the Bush administration gave to the questions of
1817 whether to lift economic sanctions on Libya and to remove
1818 that country from the list of state sponsors of terrorism.

1819 The concern I have with the bill before us today, as I
1820 mentioned, is that although facts and circumstances have
1821 changed significantly, both in the United States and in
1822 Libya, since 1983, this bill would simply codify in statute a
1823 31-year-old regulation. I have reviewed the materials
1824 prepared by the Department of Defense, and I would ask
1825 unanimous consent to place also in the record a statement by
1826 the Department of State on this subject.

1827 Chairman Goodlatte. Without objection, it will be made
1828 a part of the record.

1829 [The information follows:]

1830

1831 Ms. Lofgren. And the Department of Homeland Security.

1832 They all support --

1833 Chairman Goodlatte. Without objection, it will be made

1834 a part of the record.

1835 [The information follows:]

1836

1837 Ms. Lofgren. -- rescinding the regulation entirely.

1838 But I am listening carefully to the concerns of
1839 colleagues, and so the amendment I am offering now is
1840 intended to address the actual concern. My amendment would
1841 create a single exception to the visa ban contained in the
1842 act for Libyan nationals, the nationals of other foreign
1843 states acting on behalf of a Libyan entity who are engaging
1844 in or seeking to obtain aviation, flight operation, or
1845 nuclear-related studies or training, but only in a program
1846 that has been approved in consultation with the Secretary of
1847 Defense.

1848 Now, the Department of Defense explained in the letter,
1849 which we have made a part of this record, that they, quote,
1850 strongly support rescission of the 1983 regulation. And the
1851 only way for Libya to maintain its existing fleet of U.S.-
1852 made C-130's and CH-47's and to acquire newer models from
1853 American manufacturers is for the United States to train the
1854 necessary pilots and maintenance personnel. A blanket visa
1855 ban would continue to prevent that from happening. And as
1856 the Department of Defense further wrote in its letter in
1857 April, quote, we recognize that there is greater political
1858 uncertainty now than when we initially requested that the

1859 pilot ban be lifted in 2012. But now more than ever, the
1860 Libyan Government needs capable, centrally located and
1861 controlled armed forces.

1862 I think that this amendment strikes the right balance by
1863 allowing the issuance of visas when it is in our interest,
1864 when the U.S. Department of Defense tells us that it is
1865 something we need to make our country safer. And so I would
1866 recommend approval of this amendment. And I would note that
1867 if this amendment passes, even though I think it is poor
1868 policy to make blanket exceptions to visa issuance -- I mean,
1869 as I said earlier, we have not made a blanket exception to
1870 allowing Saudi citizens to come and study aviation in America
1871 -- I would support the bill with this amendment included.

1872 With that, Mr. Chairman, I would yield back.

1873 Chairman Goodlatte. The chair thanks the gentlewoman.

1874 For what purpose does the gentleman from Utah seek
1875 recognition?

1876 Mr. Chaffetz. Mr. Chairman, I stand in opposition to
1877 this amendment.

1878 Chairman Goodlatte. The gentleman is recognized for 5
1879 minutes.

1880 Mr. Chaffetz. I rise in opposition to this amendment.

1881 The amendment creates a major loophole. It essentially
1882 allows DOD and DHS to circumvent the prohibition by simply
1883 creating a program allowing Libyan nationals to come to the
1884 United States for the purpose of flight training and to study
1885 nuclear science. The amendment language would make the
1886 prohibition ineffective, particularly given that DHS and DOD
1887 want the program to exist now. They want such a program to
1888 exist despite the fact that our ambassador to the country was
1889 killed on the anniversary of September 11th, 2011 and the
1890 attacks on the country, and they want it despite the fact
1891 that Libya has descended into utter chaos in recent months.
1892 Indeed, just in mid-July, OMB approved lifting the
1893 longstanding regulation, and DHS Secretary Johnson -- all he
1894 has to do is sign it to take effect.

1895 Furthermore, it is of concern whether DOD and the
1896 Department of Homeland Security can effectively vet
1897 individuals who want to be part of the program. Mohamed Atta
1898 and the 9/11 hijackers got around the screening in place in
1899 2011, and Umar Farouk, the underwear bomber, got past all the
1900 high-tech screening in 2009.

1901 Ultimately we must determine whether national security
1902 has been adequately considered in rescinding this rule and

1903 whether the immigration system has adequate integrity to
1904 withstand potential uncertainties about applicants' potential
1905 long-term interest in obtaining sensitive security
1906 information and education in the United States of America.
1907 Any database will only be as good as the intelligence we
1908 possess. And given Libya's current state of disarray, our
1909 ability to make adequate findings of fact regarding the
1910 intentions of Libya visa applicants is questionable at best.

1911 I defy anybody to try to tell me who the good guys are
1912 in Libya. Tell me who the government is in Libya. They are
1913 on a boat. They are on a boat out in the ocean.

1914 Mr. Conyers. Would the gentleman yield?

1915 Mr. Chaffetz. Sure.

1916 Mr. Conyers. We have been finding out that
1917 notwithstanding the chaos and instability, that there is
1918 improvement in the government. And it is not something that
1919 we need to try to take on right here.

1920 Mr. Chaffetz. Reclaiming my time.

1921 This article that came out yesterday that I entered into
1922 the record -- their parliament is floating on a boat in the
1923 ocean. We had to abandon our United States embassy. We had
1924 two militias swimming in the pools of the United States of

1925 America. You cannot point to any functioning -- you have two
1926 people that are claiming to be the proper and rightful prime
1927 minister in the country. We do not have an operation there.
1928 We had to flee under armed guard. We had to put helicopters
1929 and SEAL's out there to make sure that our ambassador and the
1930 staff could escape in driving to Tunisia. There is no
1931 functioning government there. You cannot go into that place.
1932 Our own FBI could not even get into the country for 21 days
1933 after the attack because it was so dangerous. There is no
1934 government to function on.

1935 And yet, under Hillary Clinton's Department of State,
1936 this is what they put out on May 31st of 2012. Quote, the
1937 United States enjoys unprecedented popularity in Libya due in
1938 part to a strong support for a revolution. Now it is time to
1939 advance our policy goals and build a new relationship with
1940 emerging leaders.

1941 We have no reason to believe that this new government
1942 will support any form of terrorism. They had already bombed
1943 our facility once. And guess what. I think if my math is
1944 right, 7 or 8 days after they put out this sentence, we have
1945 no reason to believe this new government will support any
1946 form of terrorism, they bombed our facility in Benghazi

1947 again. 5 days later, the British ambassador had an
1948 assassination attempt.

1949 There is so much chaos going on. You have people
1950 fleeing by the tens of thousands. Now is not the time to
1951 change 30 years of precedence. And the only reason we are
1952 here is because the Obama administration and Secretary
1953 Clinton who put this into motion want to change it and
1954 suddenly open up this new education. Why in the world do
1955 they want to have people trained on nuclear sciences? There
1956 is no nuclear facility in the country. Why would we do that?
1957 Why?

1958 Chairman Goodlatte. For what purpose does the gentleman
1959 from New York seek recognition?

1960 Mr. Nadler. Strike the last word of the amendment.

1961 Chairman Goodlatte. The gentleman is recognized for 5
1962 minutes.

1963 Mr. Nadler. Mr. Chairman, I commend the gentlelady for
1964 introducing this amendment, and it really illustrates the
1965 flaw with the bill. It is true that things are chaotic in
1966 Libya. It is also true that things are chaotic in a lot of
1967 other places. It is also true that we were attacked by 19
1968 people from Saudi Arabia, but we do not have a ban on Saudi

1969 Arabia. We do not have a ban on Iraq. We do not have a ban
1970 on many other countries, on Yemen, from which problems could
1971 arise. And we do not do that because we trust the executive
1972 branch --

1973 Mr. Chaffetz. We do. We do.

1974 Mr. Nadler. -- to deal with the people over there, with
1975 the factions, and to make judgments.

1976 Now, the gentleman asked why do we need the nuclear
1977 sciences in Libya. We do not. On the other hand, what we
1978 are dealing with is an attempt to put into law a permanent
1979 ban on a number of things. That is among them.

1980 Now, the Libyan Government. It may be at some time that
1981 the Libyan Government has a reason with the Department of
1982 Defense and the Department of Homeland Security to be doing
1983 something that we judge in our interest that requires flight
1984 training for some of their people. Certainly many countries
1985 do. The gentlelady's amendment would enable that and would
1986 mitigate the damage of the bill by saying that when the
1987 Department of Homeland Security and the -- when the Secretary
1988 and the Secretary of Defense say that this program for flight
1989 training is in our interest and that they have approved it,
1990 they are supporting it, then we can do it. Instead, you want

1991 a rigid ban on Libya.

1992 And why only Libya? Why not Saudi Arabia? Why not
1993 Yemen? Why not a dozen different countries one could think
1994 of? Only because of the history of Libya 30 years ago. Yes,
1995 the administration is trying to relax this ban not because it
1996 thinks that all aspects of the ban ought to be relaxed, but
1997 because it thinks that the executive should have flexibility
1998 as it does in most countries. And that is self-evident.

1999 Ms. Lofgren. Would the gentleman yield?

2000 Mr. Conyers. Would the gentleman yield?

2001 Mr. Nadler. I will yield to the gentlelady.

2002 Ms. Lofgren. Thank you for yielding.

2003 I just want to make a couple of observations. In order
2004 to make law, we need to listen to each other and try and find
2005 common ground. That was the effort I tried to make in
2006 offering this amendment, even though as a general rule I
2007 think it is not good policy to make blanket rules relative to
2008 these matters. But I am willing to put that to one side and
2009 continue the limitation, codify the limitation provided that
2010 American interests are preserved by allowing the Department
2011 of Defense to pursue what it thinks it needs to do to keep
2012 America safe. I would think that that is something that we

2013 would all want to agree on.

2014 Now, I think to ignore the fact that there is a campaign
2015 going on. It is impossible to do. I would hope that this
2016 would not be a political matter, that this would just be a
2017 policy matter that we know --

2018 Mr. Chaffetz. Will the gentlewoman yield on this point?

2019 Ms. Lofgren. Let me finish.

2020 That we would keep the Department of Defense out of the
2021 political arena and understand that there is no way in the
2022 world that the Department of Defense is going to be asking to
2023 send us terrorists to be trained. They want to go work with
2024 freedom fighters, people that are fighting the terrorists.
2025 And so whether there is anybody at this moment that could fit
2026 into this category, I am not in a position to know, and my
2027 guess is not a single Member of the House really has that
2028 level of detailed knowledge, as do our intelligence agencies
2029 and the Department of Defense.

2030 But even prospectively, unless we are able to stop this
2031 bill from passing and becoming law, we will not have the
2032 opportunity to arm the freedom fighters, to make sure that a
2033 free Libyan Government can reclaim their country from the
2034 terrorists and the chaos in which it has devolved.

2035 It is not my time to yield. It is the gentleman from
2036 New York.

2037 And I yield back because I do think we have an
2038 opportunity here to act together, and I hope that we will
2039 take it. I yield back.

2040 Mr. Nadler. Reclaiming my time.

2041 I just want to point out I agree with everything the
2042 gentlelady said.

2043 I want to point out that the former chairwoman of the
2044 Foreign Affairs Committee, Ileana Ros-Lehtinen, yesterday at
2045 a public hearing of the Foreign Affairs subcommittee charged
2046 that Turkey and Qatar were actively financing and helping
2047 Hamas, a designated terrorist organization, and that we have
2048 to do something about that. Now, should we pass a ban such
2049 as this on Turkey and Qatar? Well, maybe we should do
2050 something about them, but I would think that we need the
2051 flexibility for the administration, for the executive to
2052 determine that because we are not in a position to say there
2053 should be a ban forever on flight training or on certain
2054 kinds of aid to Turkey and Qatar without knowing what is
2055 going on.

2056 The same thing goes here. You need flexibility in the

2057 executive. That is the way our foreign policy is designed to
2058 operate. And therefore, this bill is ill-considered,
2059 although with the gentlelady's amendment, it is much less
2060 dangerous. I commend her.

2061 I yield back.

2062 Chairman Goodlatte. For what purpose does the gentleman
2063 from Texas seek recognition?

2064 Mr. Gohmert. To speak opposed to the amendment.

2065 Chairman Goodlatte. The gentleman is recognized for 5
2066 minutes.

2067 Mr. Gohmert. I appreciate the intent behind the
2068 amendment. My concern comes down in how the exception is
2069 framed. It causes great trepidation to read that this ban
2070 would not apply to any Libyan national or any other foreign
2071 national who has been approved by the Secretary of Homeland
2072 Security in consultation with the Secretary of Defense. We
2073 have had hearings with the Secretary of Homeland Security,
2074 current and past, and as reported by a Muslim Brotherhood
2075 periodical in Egypt in December of 2012, they were bragging
2076 that six of the administration's top advisors, officials, are
2077 members of the Muslim Brotherhood. One of them is resigning
2078 from the advisory council of Homeland Security now. But he

2079 is a guy that spoke at --

2080 Ms. Lofgren. Would the gentleman yield?

2081 Mr. Gohmert. -- the Ayatollah Khomeini, man of vision,
2082 a man who still continues to defend --

2083 Ms. Lofgren. Would the gentleman yield for a question?

2084 Mr. Gohmert. No, ma'am.

2085 He has written repeatedly defending those convicted of
2086 supporting terrorism in the Holy Land Foundation Trial. He
2087 downloaded two documents, confirmed by everybody but the
2088 Homeland Security, and actually tried to shop them to a
2089 national media outlet. And Homeland Security is so inept or
2090 incompetent or trying to cover things that they never even
2091 called the reporter that published the article about that,
2092 the reporter who has said publicly that they never contacted
2093 him to find out what national media source Mr. Elibiary was
2094 trying to release the documents he downloaded to. So these
2095 people are either incompetent or they are acting in
2096 accordance with advice from people who are very much in favor
2097 of assisting the Muslim Brotherhood.

2098 The President was pushing initially to bomb in Syria a
2099 year ago, as was a couple of Republican Senators, who now
2100 say, see, we should have bombed last year. But the problem

2101 is if the President had gone with his initial instincts and
2102 bombed in support of the rebels a year ago, ISIS would be in
2103 full control of Syria at this time and even more weapons than
2104 they currently possess.

2105 So I have also seen firsthand many nights, all hours of
2106 the night, on our country's border the failure to secure our
2107 border by this Homeland Security. So when I see that we will
2108 allow exceptions made by Homeland Security that could not
2109 even take a hint or outright statement from the Russians that
2110 Tsarnaev had been radicalized and protect this country --
2111 there is currently an IG investigation regarding the complete
2112 deletion of the dots so that they could not be connected by
2113 Homeland Security. I have no faith in Homeland Security
2114 upper management and could never vote to allow them to pick
2115 and choose people who could be exceptions.

2116 And I know this is the State Department, but exactly a
2117 year ago, there were a few of us that were in Libya at the
2118 consulate that is now occupied -- or the embassy there that
2119 is now occupied by rebels. Why? Because this administration
2120 took out Gaddafi who friends in Israel and in moderate Muslim
2121 nations have made clear was helping us since 2003 eliminate
2122 terrorism. And I pointed out, look, there is no wall on this

2123 whole side over here. Is that not a matter of concern? And
2124 this administration's top officials there said, no, we do not
2125 have to worry about that here in Tripoli. It is not a
2126 problem. Well, it was a problem. It is a problem, and now
2127 they are jumping in our swimming pool in the embassy in
2128 Tripoli.

2129 So I cannot support giving Homeland Security the
2130 authority to make exceptions. We need to set this hard and
2131 fast.

2132 Thank you. I yield back.

2133 Mr. Conyers. Mr. Chairman?

2134 Chairman Goodlatte. For what purpose does the gentleman
2135 from Michigan seek recognition?

2136 Mr. Conyers. I rise in support of the Lofgren
2137 amendment.

2138 Chairman Goodlatte. The gentleman is recognized for 5
2139 minutes.

2140 Mr. Conyers. Ladies and gentlemen of the committee,
2141 what I think this discussion reveals is that we might be
2142 better served if we were to call in Defense and Homeland
2143 Security people to learn about the increasing numbers of
2144 investigations and security clearances that go on here.

2145 I think it is very discriminatory to forever ban anybody
2146 of Libyan citizenship from ever being able to participate in
2147 a program. Libya is in a very unstable situation, but so are
2148 a lot of others.

2149 But I think our Department of Defense, our Homeland
2150 Security, and our other intelligence agencies'
2151 representatives would make an excellent hearing in the House
2152 Judiciary Committee to determine more accurately what our
2153 feelings are about this matter and knowledge as opposed to
2154 picking out newspaper articles to quote as evidence of one
2155 position or the other. And so I am hoping that we would
2156 support Lofgren, vote down 5401, and have a hearing that
2157 continues the inquiry with Department of Defense,
2158 intelligence, and Homeland Security.

2159 And I thank the chairman and yield back.

2160 Chairman Goodlatte. The chair thanks the gentleman.

2161 For what purpose does the gentlewoman from Texas seek
2162 recognition?

2163 Ms. Jackson Lee. I thank the chairman very much.

2164 Chairman Goodlatte. The gentlewoman is recognized for 5
2165 minutes.

2166 Ms. Jackson Lee. To strike the last word. Thank you,

2167 Mr. Chairman.

2168 Let me associate myself with the words of my ranking
2169 member and the amendment that has been offered by the
2170 gentlelady from California.

2171 And to my good friend from Texas, I would offer to say
2172 to him that in the wake of 9/11 the Homeland Security
2173 Department was created, as well as the oversight committees
2174 which I happen to serve on were created as well. And without
2175 any added promotion of those committees, which the committees
2176 do not need, I can assure you that they are both relevant and
2177 productive and successful. We have not had an actual attack
2178 on the United States equal to the horrific tragedy of 9/11
2179 since 9/11, though we have had incidents that we certainly
2180 cannot ignore.

2181 Additionally I would say that my committee, the Border
2182 Security and Maritime Security Committee, has just had the
2183 first hearing on ISIL and is beginning to look at a number of
2184 issues. So Mr. Conyers' commentary I believe is an
2185 instructive one that to inquire of the experts or the
2186 individuals who are dealing with Homeland Security on a
2187 regular basis. There has been a lot of discussion about
2188 passport revocation. I am looking at the watch list and the

2189 no-fly list. But it is looking with expeditiousness but with
2190 deliberateness. So I take issue with those comments.

2191 Secondarily, I think that we are down an absolute wrong
2192 path when we begin to allow the terrorists to have us
2193 terrorize each other. And to make a blanket termination of
2194 the ability of Libyans without justification to remove their
2195 interaction on issues dealing with aviation maintenance,
2196 flight operations, or nuclear-related studies or training is
2197 something that I think needs if not a day or 2 review, a week
2198 review expeditiously, but certainly a collaborative review.
2199 We do not know what impact this will have on efforts at the
2200 State Department, the Defense Department making intelligence.
2201 None of this is taken into consideration. I do not even
2202 remember a hearing on this bill.

2203 So I would just suggest -- and though I know that in the
2204 backdrop of the thinking maybe of the proponent of this bill
2205 is that they remember the 19 individuals who were involved in
2206 the 9/11. Many of them learned to fly -- learning to take
2207 off without learning to fly, learning to land. Those are
2208 certainly telltale signs, but it had nothing to do, I think,
2209 with the fact that they were learning. It might have
2210 something to do with student visas.

2211 So I oppose the underlying bill.

2212 Mr. Conyers. Would the gentlelady yield?

2213 Ms. Jackson Lee. I will be happy to yield.

2214 Mr. Conyers. I want to thank her for her contribution.

2215 But it is not impossible, is it, that we might not let any

2216 Libyans in at all, even if we were not to approve this

2217 resolution? Maybe none would get in. Maybe one would get

2218 in. If we question what Defense and Homeland Security and

2219 intelligence is doing in this area, we could raise the same

2220 kinds of objections on maybe even as much as a half dozen

2221 other nations. And I thank the gentlelady.

2222 Ms. Jackson Lee. And I reclaim my time.

2223 The gentleman is absolutely right. And this one we are

2224 doing, from my knowledge, any independent assessment, any

2225 collaboration with any of the jurisdictional committees that

2226 deal with the practicalities of terror, which is the Armed

2227 Services, the Defense Department, intelligence, and Homeland

2228 Security. Judiciary certainly has its role, and it is a very

2229 vital role. So here we are knocking out certain aliens, and

2230 it may be that the collective body of thought will say you

2231 are interfering with our intelligence gathering. You are

2232 interfering with our President's structure in diplomacy. You

2233 are interfering with a number of things that we do not know.

2234 I oppose this amendment, the Lofgren amendment -- excuse
2235 me. I oppose the underlying bill. The Lofgren is making a
2236 bad bill better or at least making it, I would say, almost a
2237 new bill. And I support the Lofgren amendment and would
2238 argue vigorously against two premises that I heard as I came
2239 in, that the management of Homeland Security cannot be
2240 trusted -- at least that was my interpretation. It may have
2241 been said differently -- and that this is a bill that is
2242 going to help us protect the homeland.

2243 With that, I yield back.

2244 Chairman Goodlatte. For what purpose does the gentleman
2245 from Pennsylvania seek recognition?

2246 Mr. Marino. I move to strike the last word.

2247 Chairman Goodlatte. The gentleman is recognized for 5
2248 minutes.

2249 Mr. Marino. And I yield to Mr. Chaffetz.

2250 Mr. Chaffetz. I thank the gentleman.

2251 What right, what obligation do people feel to have to
2252 give a Libyan national a visa to come and train here in
2253 aviation or nuclear sciences? What drives that motivation?
2254 It has been in place for 30 years. 30 years. We had the

2255 person dedicated by Homeland Security in an open and
2256 transparent hearing come. I asked him this question. Quote
2257 from Mr. Bersin. This is a decision that was made. A policy
2258 decision was made. And I cannot. I can point to the letters
2259 on which I relied and the points that were made in those
2260 letters. But for reasons that are not clear to me,
2261 representatives of the Department of Defense and the State
2262 Department are not here to respond. Even the chief person
2263 from Homeland Security could not articulate to this. We have
2264 sent multiple letters asking for this information.

2265 The point was made earlier. Why the timing? Why now?

2266 Let me run through this.

2267 1983 President Reagan puts this into place.

2268 November 25th, 2013, Chairman Goodlatte and I sent a
2269 letter to Homeland Security with a number of questions, most
2270 of which were not answered.

2271 January 1st, 2014, Homeland Security sent the regulation
2272 to OMB without fully responding to our letter.

2273 March 19th, 2014, Chairman Goodlatte, Chairman Gowdy,
2274 myself -- we sent another letter to Homeland Security. We
2275 get a partial letter back on March 21st, only to find that
2276 the information that was in there was already publicly

2277 available. Did not answer our specific questions.

2278 April 3rd, 2014, we have a hearing.

2279 July 18th, 2014, OMB completed its review of the
2280 regulation and it now awaits the Homeland Security
2281 Secretary's signature.

2282 This is the first available time really since July 18th
2283 to bring this bill forward. So do not try to pretend that
2284 there is some political motivation. It is the Obama
2285 administration and the Clinton State Department that started
2286 this. I do not know why. That is why until you Democrats
2287 who want to see this happen can articulate why we should take
2288 a Libyan national and bring them to the United States to
2289 train them on nuclear sciences when they do not have any
2290 nuclear facilities -- explain that to me. We have a duty and
2291 obligation. It is mystifying to me that Democrats will sit
2292 here in argument today, we need to give the maximum
2293 flexibility to the administration.

2294 Ms. Lofgren. Would the gentleman yield?

2295 Mr. Chaffetz. In a moment.

2296 Ms. Lofgren. All right.

2297 Mr. Chaffetz. I did not hear you doing that. I was not
2298 in Congress then, but I certainly did not think you were

2299 arguing for maximum flexibility for George W. Bush. It seems
2300 a little selective to say, hey, with this President, we want
2301 maximum flexibility. I am sure you will just hand over
2302 whatever is asked for in the administration. That is not our
2303 job, is not to just rubber stamp what the administration
2304 wants. Our role and responsibility in the legislative branch
2305 is to weigh in on these issues. And there has not been a
2306 case made -- there has not been a case made -- that we have
2307 some sort of duty or some responsibility to make sure that a
2308 Libyan national can come to the United States and get
2309 trained. You have people in your districts that are not
2310 getting into these schools to get this training.

2311 Mr. Conyers. Would the gentleman yield?

2312 Mr. Chaffetz. Let me remind you of the terrorism that
2313 is going on, the chaos that is. There is no government to
2314 check off with. We have no U.S. representatives there. They
2315 have been run out.

2316 Mr. Conyers. Would the gentleman yield?

2317 Mr. Chaffetz. Yes.

2318 Mr. Conyers. Thank you very much, sir.

2319 What we are doing in these discussions among ourselves
2320 is very informative and interesting. But could we not call

2321 in the people that are making the decisions? We are assuming
2322 that there are going to be people coming in. We do not know
2323 if anybody is going to get in.

2324 Mr. Chaffetz. Reclaiming my time.

2325 We did have a hearing. We did ask for the experts.

2326 That is exactly who Homeland Security sent us. I have read
2327 you some of the quotes from how they testified. We asked if
2328 there was anyone specifically that could point to that they
2329 desperately needed to bring to the United States. They said
2330 that there was none.

2331 Ms. Lofgren. Would the gentleman yield?

2332 Mr. Chaffetz. It just begs the question of why are we
2333 doing this now. why?

2334 Yes, Ms. Lofgren, please.

2335 Ms. Lofgren. I was at that hearing as well. And I
2336 think here is the crux of the problem.

2337 I do not feel any obligation to Libyan nationals for
2338 their education. I do feel an obligation to the United
2339 States Department of Defense to allow them to do what they
2340 think is necessary to fight terrorists and to keep our
2341 country safe. It is the Department of Defense that initiated
2342 this request, not the Department of Homeland Security.

2343 Chairman Goodlatte. Will the gentleman yield?

2344 Mr. Chaffetz. Reclaiming my time. The chairman,
2345 please.

2346 Chairman Goodlatte. The Department of Defense was
2347 invited to that hearing and they declined to come and
2348 testify, and I am getting a little bit tired of thinking that
2349 somehow the Department of Defense is going to make all the
2350 right decisions when we have not seen that in our Middle
2351 Eastern policy with regard to what is going on, not just
2352 Libya but a whole host of other countries, that Congress as
2353 the representative body of the people of this country have
2354 the right and the responsibility to look at a policy that has
2355 been in place for 30 years and say there is nothing going on
2356 right now that would contradict it, in fact, would point at
2357 saying we should keep this policy in effect.

2358 I have not heard the Secretary of Homeland Security, in
2359 spite of every activity that has taken place in Libya over
2360 the summer, including what is going on there right now, say
2361 oh, you know what, this proposed end of this regulation, I am
2362 not going to end it right now, I am not going to put my
2363 signature on that document.

2364 So, we are sitting here without cooperation from the

2365 Defense Department, without communication from the Secretary
2366 of Homeland Security, and we are expected to act and make a
2367 decision.

2368 I think it is time to make a decision right now that we
2369 do not need Libyans in the United States training to fly
2370 commercial airliners, training to understand how nuclear
2371 science works, when the country is a hot bed of terrorist
2372 activity.

2373 I thank the gentleman for yielding.

2374 Mr. Chaffetz. Reclaiming my time with indulgence, there
2375 is not a person in my congressional district who has woken up
2376 and said Congressman, what we need is more Libyans in this
2377 country learning about aviation and security.

2378 You know what? Until the United States Ambassador to
2379 Libya can go to Libya, a Libyan national is not going to come
2380 to the United States of America. That is the way it should
2381 be.

2382 Mr. Scott. Mr. Chairman?

2383 Mr. Johnson. Mr. Chairman?

2384 Chairman Goodlatte. For what purpose does the gentleman
2385 from Georgia seek recognition?

2386 Mr. Johnson. Move to strike the last word.

2387 Chairman Goodlatte. The gentleman is recognized for
2388 five minutes.

2389 Mr. Johnson. Mr. Chairman, something makes me uneasy
2390 about lumping all of the Libyans together and sending them to
2391 hell in a hand basket, so to speak. That is not American.
2392 That is not a part of our values. We do not devalue a whole
2393 class of people just because of where they came from and
2394 condemn them permanently to some state of exile.

2395 It just seems like this conversation, this debate, has
2396 degenerated into something that I think is ugly. I hope that
2397 we will get to the end of it pretty soon.

2398 I will be glad to yield to anyone --

2399 Mr. Conyers. Would the gentleman yield?

2400 Ms. Lofgren. Would the gentleman yield?

2401 Mr. Johnson. To the gentleman from Michigan.

2402 Mr. Conyers. I want to thank the gentleman from Georgia
2403 because what we are saying, ladies and gentlemen of the
2404 committee, is that we have not had cooperation from the
2405 Defense Department or from somebody we wanted to hear from.
2406 We have been treated shabbily.

2407 Now, we are going to ban every person of citizenship of
2408 a certain country forever. This is not just temporarily

2409 until things change. We think we do not know who is what.

2410 Ladies and gentlemen, these kinds of foreign policy
2411 issues are far too important, as the gentleman from Georgia
2412 implies, for us to be fed up with our own methods of
2413 investigation and security clearance. Let's find out what
2414 that is.

2415 I would not feel badly if we did not let any Libyans in,
2416 but I would not want it to be because we decided to keep them
2417 out forever.

2418 I thank the gentleman for yielding.

2419 Ms. Lofgren. Would the gentleman yield?

2420 Mr. Johnson. Thank you, reclaiming my time, and I will
2421 yield to the gentlewoman from California.

2422 Ms. Lofgren. I thank the gentleman for yielding. There
2423 has been a lot said here today, but I think it is important
2424 to refer back to the letter that has been placed in the
2425 record dated April 1, 2014, and here is what it says. It is
2426 from the Department of Defense.

2427 "DOD's request to rescind the regulatory provision found
2428 in 8 CFR 214.5 is primarily intended to facilitate the
2429 training of Libyan military pilots and aircraft maintainers
2430 who seek to maintain an existing fleet of U.S. origin C-130

2431 tactical airlift aircraft, eight of them, and CH-47 medium
2432 lift cargo helicopters, seven of them, many of which are non-
2433 operational."

2434 They go on to say that the "Libyan Air Force is arguably
2435 the most professional force in the LAF, and has deployed in
2436 support of U.S. and Libyan chemical stockpile destruction
2437 efforts culminating in the elimination of Libyan chemical
2438 weapons in 2014."

2439 The letter goes on to say that this effort, the Libyan
2440 Air Force fleets that they are advocating to professionalize
2441 more fully, are essential for successful security in
2442 counterterrorism operations.

2443 So, obviously, things are not good in Libya. I mean the
2444 country is melting down. Now is not the time, as the
2445 Department of Defense has asked us, to turn our back on the
2446 professionals in the military who say that we need to work
2447 with freedom fighters in Libya so they can fight terrorism.

2448 We are all in the same boat here. We want to defeat the
2449 terrorists, and the way to do that is to listen, I think, to
2450 the professionals in our military and at least entertain the
2451 possibility that we may want to work with the anti-terrorist
2452 groups in Libya. That is what this is about.

2453 I thank the gentleman for yielding.

2454 Mr. Johnson. And reclaiming my time, if I were to think
2455 about what Jesus Christ would do in this situation, I believe
2456 that he would be opposed to this legislation, and with that,
2457 I yield back.

2458 Chairman Goodlatte. The question occurs on the
2459 amendment offered by the gentlewoman from California.

2460 All those in favor, respond by saying aye.

2461 Those opposed, no.

2462 In the opinion of the chair, the noes have it. The
2463 amendment is not agreed to.

2464 Ms. Lofgren. I would like a recorded vote, Mr.
2465 Chairman.

2466 Chairman Goodlatte. A recorded vote is requested, and
2467 the clerk will call the roll.

2468 Ms. Deterding. Mr. Goodlatte?

2469 Chairman Goodlatte. No.

2470 Ms. Deterding. Mr. Goodlatte votes no.

2471 Mr. Sensenbrenner?

2472 [No response.]

2473 Ms. Deterding. Mr. Coble?

2474 [No response.]

2475 Ms. Deterding. Mr. Smith of Texas?
2476 [No response.]
2477 Ms. Deterding. Mr. Chabot?
2478 Mr. Chabot. No.
2479 Ms. Deterding. Mr. Chabot votes no.
2480 Mr. Bachus?
2481 [No response.]
2482 Ms. Deterding. Mr. Issa?
2483 [No response.]
2484 Ms. Deterding. Mr. Forbes?
2485 [No response.]
2486 Ms. Deterding. Mr. King?
2487 Mr. King. No.
2488 Ms. Deterding. Mr. King votes no.
2489 Mr. Franks?
2490 Mr. Franks. No.
2491 Ms. Deterding. Mr. Franks votes no.
2492 Mr. Gohmert?
2493 Mr. Gohmert. No.
2494 Ms. Deterding. Mr. Gohmert votes no.
2495 Mr. Jordan?
2496 Mr. Jordan. No.

2497 Ms. Deterding. Mr. Jordan votes no.
2498 Mr. Poe?
2499 Mr. Poe. No.
2500 Ms. Deterding. Mr. Poe votes no.
2501 Mr. Chaffetz?
2502 Mr. Chaffetz. No.
2503 Ms. Deterding. Mr. Chaffetz votes no.
2504 Mr. Marino?
2505 Mr. Marino. No.
2506 Ms. Deterding. Mr. Marino votes no.
2507 Mr. Gowdy?
2508 Mr. Gowdy. No.
2509 Ms. Deterding. Mr. Gowdy votes no.
2510 Ms. Deterding. Mr. Labrador?
2511 Mr. Labrador. No.
2512 Ms. Deterding. Mr. Labrador votes no.
2513 Mr. Farenthold?
2514 Mr. Farenthold. No.
2515 Ms. Deterding. Mr. Farenthold votes no.
2516 Mr. Holding?
2517 Mr. Holding. No.
2518 Ms. Deterding. Mr. Holding votes no.

2519 Mr. Collins?

2520 Mr. Collins. No.

2521 Ms. Deterding. Mr. Collins votes no.

2522 Mr. DeSantis?

2523 Mr. DeSantis. No.

2524 Ms. Deterding. Mr. DeSantis votes no.

2525 Mr. Smith of Missouri?

2526 Mr. Smith of Missouri. No.

2527 Ms. Deterding. Mr. Smith of Missouri votes no.

2528 Mr. Conyers?

2529 Ms. Deterding. Mr. Conyers votes aye.

2530 Mr. Nadler?

2531 Mr. Nadler. Aye.

2532 Ms. Deterding. Mr. Nadler votes aye.

2533 Mr. Scott?

2534 Mr. Scott. Aye.

2535 Ms. Deterding. Mr. Scott votes aye.

2536 Ms. Lofgren?

2537 Ms. Lofgren. Aye.

2538 Ms. Deterding. Ms. Lofgren votes aye.

2539 Ms. Jackson Lee?

2540 Ms. Jackson Lee. Aye.

2541 Ms. Deterding. Ms. Jackson Lee votes aye.
2542 Mr. Cohen?
2543 [No response.]
2544 Ms. Deterding. Mr. Johnson?
2545 Mr. Johnson. Aye.
2546 Ms. Deterding. Mr. Johnson votes aye.
2547 Mr. Pierluisi?
2548 Mr. Pierluisi. Aye.
2549 Ms. Deterding. Mr. Pierluisi votes aye.
2550 Ms. Chu?
2551 Ms. Chu. Aye.
2552 Ms. Deterding. Ms. Chu votes aye.
2553 Mr. Deutch?
2554 [No response.]
2555 Ms. Deterding. Mr. Gutierrez?
2556 [No response.]
2557 Ms. Deterding. Ms. Bass?
2558 [No response.]
2559 Ms. Deterding. Mr. Richmond?
2560 Mr. Richmond. Aye.
2561 Ms. Deterding. Mr. Richmond votes aye.
2562 Ms. DelBene?

2563 Ms. DelBene. Aye.

2564 Ms. Deterding. Ms. DelBene votes aye.

2565 Mr. Garcia?

2566 [No response.]

2567 Ms. Deterding. Mr. Jeffries?

2568 Mr. Jeffries. Aye.

2569 Ms. Deterding. Mr. Jeffries votes aye.

2570 Mr. Cicilline?

2571 Mr. Cicilline. Aye.

2572 Ms. Deterding. Mr. Cicilline votes aye.

2573 Chairman Goodlatte. The gentleman from North Carolina?

2574 Mr. Coble. No.

2575 Ms. Deterding. Mr. Coble votes no.

2576 Chairman Goodlatte. The gentleman from Texas?

2577 Mr. Smith of Texas. Mr. Chairman, I vote no.

2578 Ms. Deterding. Mr. Smith of Texas votes no.

2579 Chairman Goodlatte. The gentleman from Alabama?

2580 Mr. Bachus. No.

2581 Ms. Deterding. Mr. Bachus votes no.

2582 Chairman Goodlatte. The gentleman from Virginia?

2583 Mr. Forbes. No.

2584 Ms. Deterding. Mr. Forbes votes no.

2585 Chairman Goodlatte. The gentleman from Tennessee?

2586 Mr. Cohen. Aye.

2587 Ms. Deterding. Mr. Cohen votes aye.

2588 Chairman Goodlatte. Has every member voted who wishes

2589 to vote? The clerk will report.

2590 Ms. Deterding. Mr. Chairman, 13 members voted aye, 20

2591 members voted no.

2592 Chairman Goodlatte. And the amendment is not agreed to.

2593 Are there further amendments to the bill?

2594 Ms. Jackson Lee. Mr. Chairman, I have an amendment at

2595 the desk.

2596 Chairman Goodlatte. The clerk will report the amendment

2597 of the gentlewoman from Texas.

2598 Ms. Deterding. Amendment to H.R. 5401 offered by Ms.

2599 Jackson Lee of Texas. "Add at the end of the bill --

2600 Chairman Goodlatte. Without objection, the amendment

2601 will be considered as read, and the gentlewoman will be

2602 recognized for five minutes on her amendment.

2603 [The amendment of Ms. Jackson Lee follows:]

2604

2605 Ms. Jackson Lee. We have had a very vigorous
2606 discussion, Mr. Chairman, and we are aware that H.R. 5401
2607 would codify and make permanent restrictions that prohibit
2608 Libyan nationals from obtaining certain immigration benefits
2609 for the purpose of engaging in or seeking to obtain studies
2610 or training in aviation maintenance, flight operations, or
2611 nuclear science.

2612 I think it is important to note that an amendment by Ms.
2613 Lofgren would have allowed this bill to have a better
2614 structure by insisting or having consultation with the
2615 Department of Defense and Homeland Security, two agencies
2616 directly responsible for the security of the homeland.

2617 My amendment also wants to add information to the
2618 Congress in a thoughtful manner and dispel the myth that we
2619 are in the business of blanketly eliminating visas and
2620 opportunities from individuals of Libyan descent. That is a
2621 wrong message to have.

2622 This bill deals with a very simple thing. The
2623 Department of Homeland has for several years been working
2624 with DOD to rescind an 1983 regulation and impose a blanket
2625 ban on visas to certain Libyan nationals and other foreign
2626 nationals. Therefore, they have been working discretely to

2627 make sure that this is a system that is workable.

2628 The Jackson Lee amendment would sunset the bill and
2629 therefore the blanket statutory ban after three years, and
2630 would require the President in consultation with the
2631 Department of Defense, the Department of Energy, the
2632 Department of Homeland Security and State Department to issue
2633 a report to Congress after two years describing the effect
2634 that the ban has on America's domestic and foreign interests,
2635 including any effects related to national security. That is
2636 our duty and responsibility.

2637 The point is that Congress should not generally restrict
2638 the discretion of the Administration in matters of national
2639 security. In addition, we should revisit this issue with
2640 updated information provided by the President in a few years.

2641 All of us who have been engaged with the issues of
2642 foreign diplomacy and/or engaging on certain issues and
2643 certain countries realize that the interest of the United
2644 States fluctuates with the crisis or the issue at hand, and
2645 we rely upon our experts to protect the American public but
2646 also engage internationally with that expertise.

2647 The committee should also be mindful that enacting a
2648 permanent statutory ban on Libyan nationals entering the

2649 country for certain purposes locks us into an unwise and
2650 unnecessary position.

2651 If the current Congress believes that the terrorist
2652 security situation in Libya justifies a statutory ban of this
2653 sort, such a ban should be sunset in a reasonable period of
2654 time to ensure that the decision is revisited based upon
2655 current facts.

2656 I would suggest that the current ban was put in place by
2657 regulation 31 years ago. The situation in Libya continuously
2658 changes. In the late 1990s, Libya became an ally. We have
2659 obviously had a crisis recently and the loss of life of our
2660 precious members of the foreign diplomacy along with other
2661 Americans. We understand that.

2662 But I do believe it is important that we are balanced
2663 and that we recognize the roles and responsibility, and that
2664 we not tie the hands of the Administration in protecting the
2665 national security of this Nation.

2666 Mr. Conyers. Will the gentlelady yield?

2667 Ms. Jackson Lee. I would be happy to yield.

2668 Mr. Conyers. I want to commend the gentlelady for a
2669 reasoned and rational approach to the Libyan question, to
2670 sunset the ban three years afterward and to allow our

2671 Executive Branch to intervene. It is very important that we
2672 remember that in the late 1990s, Libya became an ally in the
2673 war on terror, and in 2004, the Bush administration lifted
2674 economic sanctions against Libya.

2675 I thank the gentlelady for yielding to me.

2676 Mr. Chaffetz. Will the gentlelady further yield?

2677 Ms. Jackson Lee. I would be happy to yield.

2678 Mr. Chaffetz. I just had a question. You said "people
2679 of Libyan descent." Did you mean Libyan descent or did you
2680 mean Libyan nationals?

2681 Ms. Jackson Lee. Libyan nationals.

2682 Mr. Chaffetz. Thank you.

2683 Ms. Jackson Lee. And Libyan descent, that may not be
2684 citizens, but in any event, I thank the gentleman for his
2685 inquiry.

2686 The ban should not be random, and I close by simply
2687 saying that the gentleman from Michigan has made a very
2688 important statement, and that is that the relationship with
2689 the United States has changed over the years, and we have in
2690 instances been allies of Libya. This is a blanket ban. It
2691 is wrong headed, and I must say that we have always said
2692 after 9/11 that we would not allow the terrorists to have us

2693 terrorize ourselves.

2694 Let us be thoughtful. Let the appropriate authorities
2695 in the Administration make thoughtful decisions. Let us
2696 protect the homeland, and let us be level headed as we
2697 approach September 11 commemoration, mourning those who lost
2698 their lives, but making sure we are doing the right thing for
2699 the national security of this Nation.

2700 With that, I ask my colleagues to support the Jackson
2701 Lee amendment. I yield back my time.

2702 Chairman Goodlatte. For what purpose does the gentleman
2703 from Utah seek recognition?

2704 Mr. Chaffetz. Move to strike the last word.

2705 Chairman Goodlatte. The gentleman is recognized for
2706 five minutes.

2707 Mr. Chaffetz. Mr. Chairman, in the essence of time, I
2708 simply suggest my colleagues vote no on this. If the
2709 gentlewoman or others want to revisit this in the future, to
2710 lift this ban, they can simply come and try to move a piece
2711 of legislation, but I urge a no vote on this piece of
2712 legislation or this amendment, and yes, on the underlying
2713 bill. Thank you.

2714 Chairman Goodlatte. The question occurs on the

2715 amendment offered by the gentlewoman from Texas.

2716 Ms. Jackson Lee. Roll call.

2717 Chairman Goodlatte. All those in favor, respond by

2718 saying aye.

2719 Those opposed, no.

2720 In the opinion of the chair, the noes have it.

2721 Ms. Jackson Lee. I asked for a roll call.

2722 Chairman Goodlatte. A recorded vote is requested and

2723 the clerk will call the roll.

2724 Ms. Deterding. Mr. Goodlatte?

2725 Chairman Goodlatte. No.

2726 Ms. Deterding. Mr. Goodlatte votes no.

2727 Mr. Sensenbrenner?

2728 [No response.]

2729 Ms. Deterding. Mr. Coble?

2730 [No response.]

2731 Ms. Deterding. Mr. Smith of Texas?

2732 Mr. Smith of Texas. No.

2733 Ms. Deterding. Mr. Smith of Texas votes no.

2734 Mr. Chabot?

2735 Mr. Chabot. No.

2736 Ms. Deterding. Mr. Chabot votes no.

2737 Mr. Bachus?

2738 [No response.]

2739 Ms. Deterding. Mr. Issa?

2740 Mr. Issa. No.

2741 Ms. Deterding. Mr. Issa votes no.

2742 Ms. Deterding. Mr. Forbes?

2743 Mr. Forbes. No.

2744 Ms. Deterding. Mr. Forbes votes no.

2745 Mr. King?

2746 Mr. King. No.

2747 Ms. Deterding. Mr. King votes no.

2748 Mr. Franks?

2749 Mr. Franks. No.

2750 Ms. Deterding. Mr. Franks votes no.

2751 Mr. Gohmert?

2752 Mr. Gohmert. No.

2753 Ms. Deterding. Mr. Gohmert votes no.

2754 Mr. Jordan?

2755 Mr. Jordan. No.

2756 Ms. Deterding. Mr. Jordan votes no.

2757 Mr. Poe?

2758 Mr. Poe. No.

2759 Ms. Deterding. Mr. Poe votes no.
2760 Mr. Chaffetz?
2761 Mr. Chaffetz. No.
2762 Ms. Deterding. Mr. Chaffetz votes no.
2763 Mr. Marino?
2764 Mr. Marino. No.
2765 Ms. Deterding. Mr. Marino votes no.
2766 Mr. Gowdy?
2767 Mr. Gowdy. No.
2768 Ms. Deterding. Mr. Gowdy votes no.
2769 Ms. Deterding. Mr. Labrador?
2770 Mr. Labrador. No.
2771 Ms. Deterding. Mr. Labrador votes no.
2772 Mr. Farenthold?
2773 Mr. Farenthold. No.
2774 Ms. Deterding. Mr. Farenthold votes no.
2775 Mr. Holding?
2776 Mr. Holding. No.
2777 Ms. Deterding. Mr. Holding votes no.
2778 Mr. Collins?
2779 [No response.]
2780 Ms. Deterding. Mr. DeSantis?

2781 Mr. DeSantis. No.

2782 Ms. Deterding. Mr. DeSantis votes no.

2783 Mr. Smith of Missouri?

2784 [No response.]

2785 Ms. Deterding. Mr. Conyers?

2786 Mr. Conyers. Aye.

2787 Ms. Deterding. Mr. Conyers votes aye.

2788 Mr. Nadler?

2789 Mr. Nadler. Aye.

2790 Ms. Deterding. Mr. Nadler votes aye.

2791 Mr. Scott?

2792 Mr. Scott. Aye.

2793 Ms. Deterding. Mr. Scott votes aye.

2794 Ms. Lofgren?

2795 Ms. Lofgren. Aye.

2796 Ms. Deterding. Ms. Lofgren votes aye.

2797 Ms. Jackson Lee?

2798 Ms. Jackson Lee. Aye.

2799 Ms. Deterding. Ms. Jackson Lee votes aye.

2800 Mr. Cohen?

2801 Mr. Cohen. Aye.

2802 Ms. Deterding. Mr. Cohen votes aye.

2803 Mr. Johnson?

2804 Mr. Johnson. Aye.

2805 Ms. Deterding. Mr. Johnson votes aye.

2806 Mr. Pierluisi?

2807 Mr. Pierluisi. Aye.

2808 Ms. Deterding. Mr. Pierluisi votes aye.

2809 Ms. Chu?

2810 Ms. Chu. Aye.

2811 Ms. Deterding. Ms. Chu votes aye.

2812 Mr. Deutch?

2813 [No response.]

2814 Ms. Deterding. Mr. Gutierrez?

2815 [No response.]

2816 Ms. Deterding. Ms. Bass?

2817 [No response.]

2818 Ms. Deterding. Mr. Richmond?

2819 Mr. Richmond. Aye.

2820 Ms. Deterding. Mr. Richmond votes aye.

2821 Ms. DelBene?

2822 Ms. DelBene. Aye.

2823 Ms. Deterding. Ms. DelBene votes aye.

2824 Mr. Garcia?

2825 Mr. Garcia. Aye.

2826 Ms. Deterding. Mr. Garcia votes aye.

2827 Mr. Jeffries?

2828 Mr. Jeffries. Aye.

2829 Ms. Deterding. Mr. Jeffries votes aye.

2830 Mr. Cicilline?

2831 Mr. Cicilline. Aye.

2832 Ms. Deterding. Mr. Cicilline votes aye.

2833 Chairman Goodlatte. The gentleman from North Carolina?

2834 Mr. Coble. No.

2835 Ms. Deterding. Mr. Coble votes no.

2836 Chairman Goodlatte. The gentleman from Missouri?

2837 Mr. Smith of Missouri. No.

2838 Ms. Deterding. Mr. Smith of Missouri votes no.

2839 Chairman Goodlatte. Has every member voted who wishes

2840 to vote? The clerk will report.

2841 Ms. Deterding. Mr. Chairman, 14 members voted aye, 19

2842 members voted no.

2843 Chairman Goodlatte. And the amendment is not agreed to.

2844 Are there further amendments to H.R. 5401?

2845 [No response.]

2846 Chairman Goodlatte. Being none, a reporting quorum

2847 being present, the question is on the motion to report the
2848 bill, H.R. 5401, favorably to the House.

2849 Those in favor will say aye.

2850 Those opposed, no.

2851 In the opinion of the chair, the ayes have it.

2852 Mr. Scott. Mr. Chairman?

2853 Chairman Goodlatte. A recorded vote is requested and
2854 the clerk will call the roll.

2855 Ms. Deterding. Mr. Goodlatte?

2856 Chairman Goodlatte. Aye.

2857 Ms. Deterding. Mr. Goodlatte votes aye.

2858 Mr. Sensenbrenner?

2859 [No response.]

2860 Ms. Deterding. Mr. Coble?

2861 Mr. Coble. Aye.

2862 Ms. Deterding. Mr. Coble votes aye.

2863 Mr. Smith of Texas?

2864 Mr. Smith of Texas. Aye.

2865 Ms. Deterding. Mr. Smith of Texas votes aye.

2866 Mr. Chabot?

2867 Mr. Chabot. Aye.

2868 Ms. Deterding. Mr. Chabot votes aye.

2869 Mr. Bachus?

2870 [No response.]

2871 Ms. Deterding. Mr. Issa?

2872 Mr. Issa. Aye.

2873 Ms. Deterding. Mr. Issa votes aye.

2874 Ms. Deterding. Mr. Forbes?

2875 Mr. Forbes. Aye.

2876 Ms. Deterding. Mr. Forbes votes aye.

2877 Mr. King?

2878 Mr. King. Aye.

2879 Ms. Deterding. Mr. King votes aye.

2880 Mr. Franks?

2881 Mr. Franks. Aye.

2882 Ms. Deterding. Mr. Franks votes aye.

2883 Mr. Gohmert?

2884 Mr. Gohmert. Aye.

2885 Ms. Deterding. Mr. Gohmert votes aye.

2886 Mr. Jordan?

2887 Mr. Jordan. Yes.

2888 Ms. Deterding. Mr. Jordan votes yes.

2889 Mr. Poe?

2890 Mr. Poe. Yes.

2891 Ms. Deterding. Mr. Poe votes yes.
2892 Mr. Chaffetz?
2893 Mr. Chaffetz. Aye.
2894 Ms. Deterding. Mr. Chaffetz votes aye.
2895 Mr. Marino?
2896 Mr. Marino. Yes.
2897 Ms. Deterding. Mr. Marino votes yes.
2898 Mr. Gowdy?
2899 Mr. Gowdy. Yes.
2900 Ms. Deterding. Mr. Gowdy votes yes.
2901 Ms. Deterding. Mr. Labrador?
2902 Mr. Labrador. Yes.
2903 Ms. Deterding. Mr. Labrador votes yes.
2904 Mr. Farenthold?
2905 Mr. Farenthold. Aye.
2906 Ms. Deterding. Mr. Farenthold votes aye.
2907 Mr. Holding?
2908 Mr. Holding. Aye.
2909 Ms. Deterding. Mr. Holding votes aye.
2910 Mr. Collins?
2911 [No response.]
2912 Ms. Deterding. Mr. DeSantis?

2913 Mr. DeSantis. Aye.

2914 Ms. Deterding. Mr. DeSantis votes aye.

2915 Mr. Smith of Missouri?

2916 Mr. Smith of Missouri. Aye.

2917 Mr. Deterding. Mr. Smith of Missouri votes aye.

2918 Mr. Conyers?

2919 Mr. Conyers. No.

2920 Ms. Deterding. Mr. Conyers votes no.

2921 Mr. Nadler?

2922 Mr. Nadler. No.

2923 Ms. Deterding. Mr. Nadler votes no.

2924 Mr. Scott?

2925 Mr. Scott. No.

2926 Ms. Deterding. Mr. Scott votes no.

2927 Ms. Lofgren?

2928 Ms. Lofgren. No.

2929 Ms. Deterding. Ms. Lofgren votes no.

2930 Ms. Jackson Lee?

2931 Ms. Jackson Lee. No.

2932 Ms. Deterding. Ms. Jackson Lee votes no.

2933 Mr. Cohen?

2934 Mr. Cohen. No.

2935 Ms. Deterding. Mr. Cohen votes no.
2936 Mr. Johnson?
2937 Mr. Johnson. Nah.
2938 Ms. Deterding. Mr. Johnson votes no.
2939 Mr. Pierluisi?
2940 Mr. Pierluisi. No.
2941 Ms. Deterding. Mr. Pierluisi votes no.
2942 Ms. Chu?
2943 [No response.]
2944 Ms. Deterding. Mr. Deutch?
2945 [No response.]
2946 Ms. Deterding. Mr. Gutierrez?
2947 [No response.]
2948 Ms. Deterding. Ms. Bass?
2949 [No response.]
2950 Ms. Deterding. Mr. Richmond?
2951 Mr. Richmond. No.
2952 Ms. Deterding. Mr. Richmond votes no.
2953 Ms. DelBene?
2954 [No response.]
2955 Ms. Deterding. Mr. Garcia?
2956 [No response.]

2957 Ms. Deterding. Mr. Jeffries?

2958 Mr. Jeffries. No.

2959 Ms. Deterding. Mr. Jeffries votes no.

2960 Mr. Cicilline?

2961 [No response.]

2962 Chairman Goodlatte. The gentlewoman from California?

2963 Ms. Chu. No.

2964 Ms. Deterding. Ms. Chu votes no.

2965 Chairman Goodlatte. The gentlewoman from Washington?

2966 Ms. DelBene. Aye.

2967 Ms. Deterding. Ms. DelBene votes aye.

2968 Chairman Goodlatte. The gentleman from Alabama?

2969 Mr. Bachus. Aye.

2970 Ms. Deterding. Mr. Bachus votes aye.

2971 Chairman Goodlatte. Has every member voted who wishes

2972 to vote? The clerk will report.

2973 Ms. Deterding. Mr. Chairman, 21 members voted aye, 11

2974 voted no.

2975 Chairman Goodlatte. The ayes have it, and the bill is

2976 ordered reported favorably to the House. Members will have

2977 two days to submit views.

2978 Pursuant to notice, I now call up H.R. 5402 for purposes

2979 of markup and move that the committee report the bill
2980 favorably to the House. The clerk will report the bill.

2981 Ms. Deterding. H.R. 5402, to amend the Clayton Act and
2982 the Federal Trade Commission Act to provide that the Federal
2983 Trade Commission shall exercise authority with respect to
2984 mergers only under the Clayton Act, and only in the same
2985 procedural manner as Attorney General exercises such
2986 authority.

2987 Chairman Goodlatte. Without objection, the bill is
2988 considered as read and open for amendment at any point.

2989 [The information follows:]

2990

2991 Chairman Goodlatte. I will begin by recognizing myself
2992 for an opening statement. This year marks the 100th
2993 anniversary of the inception of the Federal Trade Commission
2994 and the formation of a dual antitrust enforcement regime in
2995 the United States.

2996 Because both the Department of Justice and the FTC
2997 enforce our Nation's antitrust laws, companies may and often
2998 do have different experiences when interacting with one
2999 agency relative to the other.

3000 One area in which the disparity can be the most striking
3001 is in the merger review process. When a company wishes to
3002 merge with or purchase another company, it must notify both
3003 antitrust enforcement agencies of the proposed transaction.

3004 DOJ and the FTC then determine which agency will be
3005 responsible for reviewing the transaction. As there are no
3006 fixed rules for making this determination, it can appear that
3007 the decision is made on the basis of a flip of a coin.

3008 There are two potential differences that companies can
3009 face based on the identity of the antitrust enforcement
3010 agency that reviews the company's proposed transaction. The
3011 first potential difference arises if the agency seeks to
3012 prevent the transaction by pursuing a preliminary injunction

3013 in Federal court. There is disparate legal standard applied
3014 to each antitrust enforcement agency when it requests a
3015 preliminary injunction.

3016 The second potential difference lies in the process
3017 available to each antitrust enforcement agency to prevent a
3018 transaction from proceeding. The FTC may pursue
3019 administrative litigation against a proposed transaction even
3020 after a court denies its preliminary injunction request. In
3021 contrast, DOJ cannot pursue administrative litigation. There
3022 is no justification for these disparities in the merger
3023 review processes and standards.

3024 The Bipartisan Antitrust Modernization Commission
3025 recommended that Congress remove the disparities, and the
3026 bill before us today, the Standard Merger and Acquisition
3027 Reviews Through Equal Rules Act of 2014, or the SMARTER Act,
3028 does just that.

3029 I applaud Mr. Farenthold for introducing this important
3030 legislation that will enhance the transparency,
3031 predictability, and credibility of the antitrust merger
3032 review process.

3033 By enacting the SMARTER Act into law, Congress will
3034 assure that companies no longer will be subjected to

3035 fundamentally different processes and standards based on the
3036 flip of a coin. The SMARTER Act is an important step to
3037 achieving this committee's goal of assuring that our Nation's
3038 antitrust laws are enforced in a manner that is fair,
3039 consistent, and predictable.

3040 I urge my colleagues to support this good government
3041 bill, and recognize the gentleman from Michigan, Mr. Conyers,
3042 for his opening statement.

3043 Mr. Conyers. Thank you, Mr. Chairman. I would ask
3044 unanimous consent to put into the record a letter from the
3045 chair of the Federal Trade Commission, Edith Ramirez.

3046 Chairman Goodlatte. Without objection, it will be made
3047 a part of the record.

3048 [The information follows:]

3049

3050 Mr. Conyers. And she said in the first paragraph of her
3051 letter to us "I have serious concerns about both the far
3052 reaching immediate effects of the draft bill," the one before
3053 us, "which would fundamentally alter the nature and function
3054 of the Federal Trade Commission, as well as the potential for
3055 significant unintended consequences."

3056 What I would like to say to my friends on the committee
3057 is that unfortunately, this Act, rather than strengthening
3058 the FTC's enforcement authority, does exactly the opposite.
3059 The bill effectively transforms the Commission from an
3060 independent agency into another enforcement agency
3061 indistinguishable from the Antitrust Division of the
3062 Department of Justice.

3063 Please observe this carefully because this so-called
3064 "SMARTER Act" may reach conduct beyond larger mergers which
3065 could further curtail the FTC's effectiveness. And last
3066 point, our preeminent goal here should be to strengthen, not
3067 weaken the antitrust enforcement to protect consumers.

3068 So, while there has been some improvement in recent
3069 years, antitrust scrutiny of mergers has been woefully
3070 deficit for at least several decades, as evidenced by the
3071 fact that many industries are now dominated by just a handful

3072 of very large firms.

3073 So, I urge opposition to H.R. 5402, and I yield back the
3074 balance of my time.

3075 Chairman Goodlatte. The chair thanks the gentleman, and
3076 I now would like to recognize the sponsor of the legislation,
3077 the gentleman from Texas, Mr. Farenthold, for his opening
3078 statement.

3079 Mr. Farenthold. Thank you, Mr. Chairman. In 2003, a
3080 bipartisan group of leading antitrust experts was formed and
3081 charged with looking at antitrust laws and existing
3082 enforcement practices. This was a bipartisan group, the
3083 Antitrust Modernization Commission, the AMC.

3084 They issued a number of recommendations for
3085 congressional action based on their extensive four year
3086 review of antitrust laws. Two of their recommendations dealt
3087 with the process by which our Nation's two antitrust
3088 enforcement agencies, the Department of Justice, the DOJ, and
3089 the Federal Trade Commission, the FTC, review proposed merger
3090 transactions.

3091 The court concluded that there were disparities in the
3092 standards and processes used by the DOJ and the FTC where
3093 they seek to prevent the consummation of a proposed merger.

3094 Common sense states that they should be the same or at least
3095 substantially similar. The AMC agreed.

3096 These disparities should be removed because in the words
3097 of the AMC "Parties to a proposed merger should receive
3098 comparable treatment and face similar burdens regardless of
3099 whether the FTC or DOJ reviews their merger.

3100 Divergence undermines the public trust in that the
3101 antitrust agencies will review transactions efficiently and
3102 fairly, and more importantly, it creates the impression that
3103 the ultimate decision as to whether or not a merger may
3104 proceed depends on substantial part on which agency reviews
3105 the transaction."

3106 You know, they were spot on. So, on Monday I introduced
3107 the Standard Merger and Acquisition Reviews Through Equal
3108 Rules Act of 2014 or the SMARTER Act, which is less of a
3109 mouthful to say, and it incorporates AMC's recommendations.

3110 The legislation has two components. First, it
3111 harmonizes the preliminary injunction standards that the DOJ
3112 and FTC must meet in court when they seek to block a merger.
3113 The second component removes the FTC's ability to pursue
3114 administrative litigation after a court denies the FTC's
3115 preliminary injunction request.

3116 Because the DOJ cannot conduct administrative
3117 litigation, it is unfair for some parties to be subject to
3118 administrative litigation while other parties avoid this
3119 prospect simply because the coin toss puts them before the
3120 FTC and not the DOJ.

3121 On April 3 of this year, the Subcommittee on Regulatory
3122 Reform, Commercial and Antitrust Law held a hearing on a
3123 discussion draft of the SMARTER Act. During the hearing, all
3124 four witnesses supported making the preliminary injunction
3125 standard the same for both agencies.

3126 The witnesses also testified in support of removing the
3127 FTC's ability to pursue administrative litigation with
3128 respect to proposed mergers. The witnesses agreed with the
3129 AMC that the administrative litigation does not add value in
3130 the context of a merger review case, and only introduces an
3131 element of unfairness and unpredictability to the process.

3132 The SMARTER Act ensures that companies receive the same
3133 treatment regardless of which antitrust enforcement agency
3134 reviews its proposed transaction. To be clear, the bill does
3135 not make it any easier or harder for a merger to be approved.

3136 As stated by former chairwoman of the AMC, Deborah
3137 Garza, during the subcommittee hearing on the SMARTER Act,

3138 "The idea here is not to change the number of transactions
3139 that on the merits get through or not. The whole idea is to
3140 simply make the process more transparent and clear and
3141 perceived as being fair."

3142 The SMARTER Act is a common sense good government,
3143 straightforward measure that implements reforms advanced by
3144 the bipartisan members of the AMC, and I urge my colleagues
3145 to support this bill and yield back the remainder of my time.

3146 Chairman Goodlatte. The chair thanks the gentleman and
3147 recognizes the ranking member of the Subcommittee on
3148 Regulatory Reform, Commercial and Antitrust Law, Mr. Johnson
3149 of Georgia, for his opening statement.

3150 Mr. Johnson. Thank you, Mr. Chairman. While I am
3151 comfortable with creating parity in the standard for
3152 preliminary injunctions or perhaps tinkering with Part III
3153 litigation in a pragmatic even handed way that does not
3154 undermine competition or consumer protection, I cannot stand
3155 by and support legislation that would dismantle government
3156 and a century of progress under the guise of symmetrical
3157 enforcement.

3158 The prospect of completely eliminating the FTC's
3159 adjudicative authority, a practice that has expertly guided

3160 our Nation's antitrust laws for a century, raises serious
3161 concerns.

3162 When Congress first established the Federal Trade
3163 Commission in 1914, it sought to safeguard consumers against
3164 anti-competitive behavior by breathing new life into
3165 antitrust enforcement.

3166 Congress specifically empowered the Commission with
3167 adjudicative authority to enforce, clarify, and develop
3168 antitrust law, and unlike generalist courts of that era, the
3169 Commission also had the mission to study and annunciate the
3170 law as an expert tribunal through its research and
3171 information gathering authority.

3172 A century later, the Commission continues to advance
3173 antitrust law through its expertise as a fact finding
3174 tribunal. Under the process for administrative litigation,
3175 also known as "Part III litigation," the Commission may seek
3176 permanent injunctions in its own administrative court.

3177 This additional authority is a unique mechanism that
3178 takes advantage of the Commission's long-standing expertise
3179 to develop some of the most complex issues in antitrust law.
3180 It is critical to the Commission's mission to promote
3181 competition and consumer welfare.

3182 The stated goal of the SMARTER Act to create an uniform
3183 process for merger review between Federal Trade Commission
3184 and Department of Justice is not without appeal. I consider
3185 myself a man of the law and strong supporter of the third co-
3186 equal branch of government, the Federal judiciary.

3187 I understand the objectives of reserving power for the
3188 Federal courts instead of agencies and creating symmetry in
3189 antitrust enforcement, but the prospect of dismantling an
3190 agency's core authority under the guise of symmetry is
3191 appalling.

3192 The stated concerns with administrative litigation are
3193 hardly new among corporate interests seeking less
3194 competition, less oversight, and fewer inquiries. These
3195 interests have doggedly attacked the Federal Trade
3196 Commission's authority, seeking to diminish its power and
3197 prestige through incremental policy changes that tip the
3198 scales against consumers.

3199 There is no proof of actual harm or unfairness that has
3200 arisen through the Federal Trade Commission's authority to
3201 advance antitrust trust through Part III litigation. Indeed,
3202 over the history of the Commission's use of its authority,
3203 there is scant evidence indicating abuse or harm.

3204 We should not impair the most important consumer
3205 protection agency in our agency. I urge my colleagues to
3206 oppose the SMARTER Act, and I yield back.

3207 Chairman Goodlatte. Are there any amendments to H.R.
3208 5402?

3209 [No response.]

3210 Chairman Goodlatte. There being none, the question
3211 occurs -- a reporting quorum being present, the question is
3212 on the motion to report the bill, H.R. 5402, favorably to the
3213 House.

3214 Those in favor will say aye.

3215 Those opposed, no.

3216 In the opinion of the chair, the ayes have it, and the
3217 bill is ordered reported favorably --

3218 Mr. Johnson. I ask for a recorded vote.

3219 Chairman Goodlatte. A recorded vote is requested. The
3220 clerk will call the roll.

3221 Mr. Johnson. Mr. Chairman, I will withdraw that
3222 request.

3223 Chairman Goodlatte. The request for a recorded vote has
3224 been withdrawn. The ayes have it, and the bill is ordered
3225 reported favorably to the House. Members will have two days

3226 to submit views.

3227 The chair thanks all the members for their
3228 participation. We will not need to return. We have one more
3229 bill. We will take that up next week. It is an important
3230 bill offered by the gentleman from North Carolina. It is the
3231 product of a lot of good, hard work, and we will take that up
3232 next week at a markup then.

3233 I want to thank the members for their help. We have
3234 covered the waterfront. We have covered intellectual
3235 property law, bankruptcy law, antitrust law, criminal law,
3236 and immigration law today. Thank you all for your good work.

3237 [Whereupon, at 3:19 p.m., the committee was adjourned.]