

1 NATIONAL CAPITOL CONTRACTING

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4 MARKUP OF H.R. 3279; H.R. 2834

5 Tuesday, October 27, 2015

6 House of Representatives,

7 Committee on the Judiciary,

8 Washington, D.C.

9 The committee met, pursuant to call, at 10:00 a.m., in
10 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
11 [chairman of the committee] presiding.

12 Present: Representatives Goodlatte, Sensenbrenner,
13 Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe,
14 Chaffetz, Marino, Gowdy, Labrador, Farenthold, Collins,
15 DeSantis, Walters, Buck, Ratcliffe, Trott, Bishop, Conyers,
16 Nadler, Lofgren, Cohen, Johnson, Pierluisi, Chu, Deutch,
17 Gutierrez, Bass, DelBene, Jeffries, Cicilline, and Peters.

18 Staff Present: Shelley Husband, Staff Director; Branden
19 Ritchie, Deputy Staff Director/Chief Counsel; Allison
20 Halataei, Parliamentarian & General Counsel; Kelsey

21 Williams, Clerk; Stephanie Gadbois, Senior Counsel; Zachary
22 Somers, Deputy Chief Counsel, Subcommittee on the
23 Constitution and Civil Justice; Daniel Flores, Chief
24 Counsel, Subcommittee on Regulatory Reform, Commercial and
25 Antitrust Law; Perry Apelbaum, Minority Chief Counsel,
26 Chief-of-Staff; Susan Jensen, Minority Chief Bankruptcy
27 Counsel; Danielle Brown, Minority Chief Legislative Counsel;
28 David Greengrass, Minority Counsel; James Park, Minority
29 Chief Civil Justice Counsel; Slade Bond, Minority Regulatory
30 Reform Counsel.

31 Chairman Goodlatte. Good morning. The Judiciary
32 Committee will come to order and without objection the chair
33 is authorized to declare a recess of the committee at any
34 time. Pursuant to notice, I now call up H.R. 3279 for
35 purposes of markup and move that the committee report the
36 bill favorably to the House. The clerk will report the
37 bill. You want to turn your microphone on there. It is not
38 working. All right. Without objection, the bill is
39 considered as read and open for amendment at any point, and
40 I will begin by recognizing myself for an opening statement.

41 I would like to begin by thanking Representative Doug
42 Collins and Constitution Subcommittee Ranking Member Steve
43 Cohen for introducing this important government transparency
44 legislation. Every year, pursuant to the Equal Access to
45 Justice Act, the Federal Government through a settlement or
46 court order pays millions of dollars in legal fees and costs
47 to parties to lawsuits at administrative adjudications that
48 involve the Federal Government. However, despite the large
49 amount of taxpayer dollars paid out each year, the Federal
50 Government no longer comprehensively keeps track of the
51 amount of fees and other expenses awarded under the Equal
52 Access to Justice Act. Nor does the government compile and
53 report on why these fees and expenses were awarded, and to
54 whom these costs were awarded.

55 This is because in 1995, Congress repealed the

56 Department of Justice's reporting requirements and defunded
57 the Administrative Conference of the United States, the
58 agency charged with reporting this basic information to
59 Congress. The Administrative Conference was reestablished
60 in 2010, but the requirements to report on fee and cost
61 payments have not been reenacted. Accordingly, there has
62 been no official government-wide accounting of this
63 information since fiscal year 1994, over 20 years ago. This
64 lack of transparency is troubling, given that the Equal
65 Access to Justice Act is considered by many to be the most
66 important Federal fee shifting statute. Fundamentally, the
67 Act recognizes that there is an enormous disparity of
68 resources between the Federal Government and individuals,
69 and small businesses who seek to challenge Federal actions.
70 Congress enacted the Equal Access to Justice Act to provide
71 individuals, small businesses, and small nonprofit groups
72 with financial incentives to challenge the Federal
73 Government, or defend themselves from lawsuits brought by
74 the Federal Government.

75 The Supreme Court has noted the Act was adopted with
76 the specific purpose of eliminating for the average person
77 the financial disincentive to challenge unreasonable
78 governmental actions, but how can we know if the Act is
79 working well toward this end, if we have no data on awards?
80 Without the data this bill requires the Administrative

81 Conference to compile and report, we have nothing more than
82 anecdotal evidence as to whether the Act is providing some
83 measure of relief to the financial disincentive to seeking
84 judicial and administrative redress against the Federal
85 Government. The legislation we are considering today will
86 end this lack of transparency and restore the reporting
87 requirements that were repealed in 1995. I want to once
88 again thank Representatives Collins and Cohen for
89 introducing this bill, and urge my colleagues to support its
90 passage. At this time it is my pleasure to recognize the
91 ranking member, the gentleman from Michigan, Mr. Conyers for
92 his opening statement.

93 [The prepared statement of Chairman Goodlatte follows:]

94 ***** COMMITTEE INSERT *****

95 Mr. Conyers. Thank you Chairman Goodlatte, and good
96 morning to the members, my colleagues on the committee. I
97 would like to tell you that I support H.R. 3279, the Open
98 Book on Equal Access to Justice Act for several reasons. To
99 begin with, it strengthens the Equal Access to Justice Act,
100 an important law that has helped senior citizens, veterans,
101 the disabled, and nonprofit organizations vindicate their
102 rights against unreasonable governmental action. Under the
103 so-called American Rule, parties pay their own litigation
104 costs. The Equal Access to Justice Act, however, creates an
105 exception by allowing a party to be reimbursed for
106 litigation court costs, when he or she is victorious against
107 the Federal Government, subject to certain limitations. For
108 example, if the United States can show that its position was
109 substantially justified or that special circumstances would
110 make an award unjust, then the prevailing party is not
111 entitled to be reimbursed for his or her litigation costs.
112 In addition, only certain parties are eligible to be
113 reimbursed for their litigation costs under the Act based on
114 their net worth or tax exempt status among other factors.

115 Whether these restrictions still make sense is an open
116 question, as Congress does not have adequate information to
117 assess the effectiveness of the Act. This is because there

118 has been no comprehensive federal report on the total amount
119 of fees awarded under the Act since 1995, and as a result
120 there has been simply conjecture. H.R. 3279 addresses this
121 shortcoming by requiring annual reports on the amount of
122 fees paid under the Act to prevailing litigants against the
123 government. As a result of this legislation, Congress will
124 know on an annual basis the agencies that have been required
125 to reimburse parties for their litigation costs, the claims
126 giving rise to the litigation, and the amount of the awards
127 made under the Act, as well as the basis for them. With
128 this information, Congress will be at a much better position
129 to assess the implementation of the Act, and the performance
130 of the agencies as litigants.

131 I also support this bill because it respects the
132 privacy interests of the parties who are reimbursed for
133 their litigation costs pursuant to the Act. Prior versions
134 of this legislation contained unnecessarily intrusive
135 provisions. Organizations such as the National Organization
136 of Social Security Claimants Representatives, and the
137 Paralyzed Veterans of America expressed serious concerns
138 that these provisions would infringe the privacy of
139 vulnerable people who have applied for Social Security and
140 veterans benefits. These are real concerns, and especially
141 given the fact that the bill requires the information
142 collected to be made available to the public via the

143 Internet. As currently drafted, however, H.R. 3279 strikes
144 the right balance between encouraging transparency, while
145 also respecting the legitimate privacy interests of parties.

146 Finally, I support the bill because it recognizes the
147 important role that the Administrative Conference of the
148 United States has historically played in helping Congress
149 identify inefficiencies among the federal agencies, and ways
150 to save taxpayer dollars. In addition, the Conference to
151 prepare an annual report -- in addition to requiring to
152 prepare an annual report to Congress detailing litigation
153 cost reimbursed by the Federal Government to parties, the
154 bill also requires the Conference to provide any other
155 relevant information that may aid Congress in evaluating the
156 scope and impact of such awards. I expect this report and
157 its attendant findings will be an invaluable aid to
158 Congress, and in closing I want to recognize my colleague,
159 Steve Cohen, for his diligence in helping to craft this
160 bipartisan legislation. I urge my colleagues to critically
161 evaluate this measure and support it. And I thank the
162 chairman and yield back my time.

163 [The prepared statement of Mr. Conyers follows:]

164 ***** COMMITTEE INSERT *****

165 Chairman Goodlatte. Thank you Mr. Conyers, and I would
166 now like to recognize Mr. Collins of Georgia, the sponsor of
167 the bill, for his opening statement.

168 Mr. Collins. Thank you, Mr. Chairman, and I want to
169 thank you for holding this markup today on H.R. 3279, the
170 Open Book to Equal Access to Justice Act. I also wanted to
171 thank the cosponsors of this bill, including our colleague
172 on the committee, Mr. Cohen. H.R. 3279 is bipartisan
173 legislation that passed this committee and the full House
174 last Congress on voice vote and with vocal bipartisan
175 support. The bill reinstates the needed transparency and
176 accountability measures to ensure that the Equal Access to
177 Justice Act is helping individuals, retirees, veterans, and
178 small businesses as intended. Congress originally passed
179 the Equal Access to Justice Act in 1980 to remove a barrier
180 to justice for those with limited access to the resources it
181 takes to sue the Federal Government and recover attorney's
182 fees and costs that go along with such suits. Payments to
183 the EAJA attorney's fees come from the budget of the agency
184 whose actions gave rise to the claim. While the original
185 legislation included a requirement to track payments and
186 report to Congress annually, Congress and the agencies
187 halted tracking and reporting of payments made through
188 this Act in 1995. Without any direction to track payments,
189 most agencies simply do not do it, and Congress and the

190 taxpayers are unable to exercise oversight over these funds.

191 H.R. 3279 requires that the Administrative Conference
192 of the United States to annually report to Congress on the
193 number, nature, and amounts of awards claims involved in the
194 controversy, and any other relevant information that may aid
195 the Congress in evaluating the scope and impact of such
196 awards. This report recovers both agency adjudications and
197 court proceedings. It also requires the ACUS to develop and
198 implement an online searchable database to facilitate public
199 and congressional oversight. The Open Book on Equal Access
200 to Justice Act helps ensure that agencies are operating
201 under the watchful public eye and that taxpayer dollars are
202 being spent efficiently, effectively, and properly, allowing
203 claimants to recoup legal costs when they sue the Federal
204 Government for reparations they deserve is only fair. Many
205 Americans do not have the resources to take on our vast and
206 sprawling bureaucracy, but this act gives them the power to
207 do that by removing a barrier to justice for those with
208 limited access to these resources. However, since the
209 original reporting requirements were halted by Congress,
210 information on payments made under the law is severely
211 lacking. Tracking and reporting payments will help preserve
212 the integrity of this law and help Congress make sure that
213 the law is working effectively for the people it was
214 intended to help. It is past time we shine light on this

215 important issue. H.R. 3279 represents a bipartisan
216 agreement, the transparency over payments made under the
217 EAJA needs to be restored, and will help to ensure that the
218 taxpayer dollars are being spent as intended under this
219 program. With that, I urge all my colleagues to support
220 this legislation and yield back.

221 [The prepared statement of Mr. Collins follows:]

222 ***** COMMITTEE INSERT *****

223 Chairman Goodlatte. The chair thanks the gentleman.
224 And we would now like to recognize Mr. Cohen of Tennessee,
225 the ranking member of the Subcommittee on the Constitution
226 and Civil Justice, and the primary cosponsor of the bill,
227 for his opening statement.

228 Mr. Cohen. Thank you, Mr. Chairman. Congress passed
229 the Equal Access to Justice Act to allow Americans to
230 recover attorney's fees and costs associated with lawsuits
231 against the Federal Government, successful lawsuits. This
232 has enabled ordinary citizens such as veterans, seniors,
233 small business owners, and advocates for clean air and clean
234 water to fight unfair or illegal government actions without
235 fear of court costs. The law has been a success. In 1995,
236 however, an important reporting requirement was removed from
237 it, which has made it harder for the public to see how much
238 money the government has in fact awarded. Our bill, H.R.
239 3279, the Open Book to Equal Access to Justice Act
240 reinstates the lost tracking and reporting requirements of
241 payments awarded, so the American people can have access to
242 this important information. It would do this by requiring
243 the American Conference of the United States, or ACUS, an
244 acronym which all Americans hold deep in their hearts, a
245 highly respected nonpartisan agency, to prepare an annual
246 report for Congress on the fees and cost awarded in these
247 cases. The reports would also include the number and nature
248 of the claims involved.

249 This has truly been a bipartisan effort, and it has
250 taken a while to come about. I want to thank my colleague,
251 Congressman Doug Collins for his partnership, thank
252 Congresswoman Cynthia Lummis who is not a member of this
253 committee, but she has worked doggedly on this legislation
254 for years. And we came together on this when I was I think
255 the ranking member, and maybe even when I was the chair, but
256 she has done a great job, and I thank her. And I want to
257 thank the chairman of the committee who is a gentleman and
258 done a fine job with this, and many other efforts that this
259 committee starting to function in a way like my other
260 committee, Transportation does in some bipartisan
261 legislation coming out to the floor. And of course my
262 ranking member, who has been a hero of mine before I was
263 elected, and continues to be so. And thank him for his
264 encouragement, and outstanding work, Mr. Conyers. I urge my
265 colleagues to support the Open Book on Equal Access to
266 Justice Act and help report it out of the committee. Thank
267 you.

268 [The prepared statement of Mr. Cohen follows:]

269 ***** COMMITTEE INSERT *****

270 Chairman Goodlatte. Thank you, Mr. Cohen. Are there
271 any amendments to H.R. 3279? There being none and a
272 reporting quorum being present, the question is on the
273 motion to report the bill H.R. 3279 favorably to the House.

274 Those in favor will say aye.

275 Those opposed, no.

276 The ayes have it.

277 The bill is ordered reported favorably, and members
278 will have two days to submit views. Pursuant to notice I
279 now call up H.R. 2834 for purposes of markup and move that
280 the committee report the bill favorably to the House. The
281 clerk will report the bill.

282 Ms. Williams. H.R. 2834, to enact certain laws
283 relating to the environment as Title 55, United States Code,
284 Environment.

285 [The bill follows:]

286 ***** COMMITTEE INSERT *****

287 Chairman Goodlatte. Without objection the bill is
288 considered as read and open for amendment at any point, and
289 I will begin by recognizing myself for an opening statement.
290 Over the past six decades, Congress has enacted a
291 substantial body of law consisting of separate acts dealing
292 with pollution of air, water, and land, as well as specific
293 pollutants. This body of law has come to be known generally
294 as environmental law. These acts are presently classified
295 to several titles of the United States Code in disparate
296 places. H.R. 2834 is the first in an anticipated series of
297 bills that will consolidate these acts as a new positive law
298 title of the United States Code, Title 55, Environment.
299 This bill was prepared by the Office of the Law Revision
300 Counsel as part of its ongoing responsibility to prepare and
301 submit to the committee on the judiciary one title at a time
302 a complete compilation, restatement, and revision of the
303 general and permanent laws of the United States. H.R. 2834
304 will enact Subtitle I, General Provisions, consisting
305 primarily of definitions for the title, establishment of the

306 Environmental Protection Agency, and national environmental
307 policy, and Subtitle II, Air, consisting of the Clean Air
308 Act and related laws. The Office of Law Revision Counsel
309 expects subsequent bills to enact subtitles relating to
310 water, land, and other particular substances. The
311 restatement of existing law does not change the meaning or
312 effect of the existing law. As such, this restatement
313 consolidates various provisions that were enacted separately
314 over a period of many years, reorganizing them, conforming
315 style and terminology, modernizing obsolete language, and
316 correcting errors. These changes serve to remove
317 ambiguities, contradictions, and other imperfections, but
318 they do not change the meaning or effect of the existing
319 law, or impair the precedential value of earlier judicial
320 decisions or interpretations.

321 The courts have repeatedly held that the restatement of
322 existing law in a bill such as this one does not change the
323 meaning or effect of the existing law, unless Congress
324 explicitly expresses the intent to do so. To reiterate, the
325 decision to transfer provisions in the United States Code is
326 taken very seriously. After careful study the Office of Law
327 Revision Counsel has concluded that certain organizational
328 deficiencies in the Code must be corrected. H.R. 2834 is an
329 important bill because it ensures that the U.S. Code is up
330 to date and usable. For these reasons I urge my colleagues

331 to support this important bill, and now recognize the
332 gentleman from Michigan, Mr. Conyers for his opening
333 statement.

334 [The prepared statement of Chairman Goodlatte follows:]

335 ***** COMMITTEE INSERT *****

336 Mr. Conyers. Thank you, Mr. Chairman. Members of the
337 committee, I oppose H.R. 2834 because of serious concerns
338 that I have about the process by which this legislation
339 comes before us today, as well as its substance. To begin
340 with, the process by which the bill is proceeding to a
341 markup with only minimum notice and in the absence of
342 collaborative and deliberative bipartisan review stands in
343 stark contrast with longstanding committee practice in this
344 area. This committee has a long tradition of considering
345 codification legislation pursuant to a thoroughly inclusive
346 process that often spans multiple Congresses. A positive
347 law codification such as this legislation requires close
348 scrutiny because once enacted, it repeals existing law, and
349 restates the law in a new form as a positive law title of
350 the United States Code. To that end, majority and minority
351 staff traditionally work closely with the Office of Law
352 Revision Counsel and relevant committees of jurisdiction, as

353 well as all affected agencies and interested parties in the
354 private sector to ensure that these bills are truly and
355 completely accurate restatements of current law.

356 I am unaware of a single instance in which this process
357 has not been completely bipartisan and in which the final
358 legislative product has not had the support of both the
359 chair and ranking member of the Judiciary Committee.
360 However, the bill we are considering today, my colleagues,
361 has no minority input, was introduced by neither the
362 chairman nor the ranking member of the full committee, and
363 appears to have had no comment from any relevant committee.
364 Based on consultation with Law Revision Counsel staff and
365 other interested parties, it appears that critical input
366 from affected agencies has not been adequately solicited
367 prior to the finalization of this legislative text.
368 Although the Environmental Protection Agency has given an
369 opportunity to consider prior iterations of the legislation,
370 such outreach appears to have been sporadic and without
371 closure.

372 When an actual bill was introduced this June, the
373 Environmental Protection Agency was then given only 30 days
374 to respond with comments on the 585 pages of text, when the
375 normal comment period would have been at least 180 days. In
376 addition, the chairman of the Regulatory Reform Subcommittee
377 sent letters to relevant committees requiring their feedback

378 on this voluminous legislation, also with only a 30-day
379 deadline to respond. Now, I would note that these request
380 letters which under normal procedures would have been sent
381 by both the chair and ranking member of the full committee
382 were not shared with the minority until this past Friday
383 evening. Other agencies such as the Justice Department's
384 Environment and Natural Resources Division and the Council
385 for Environmental Quality were never consulted on the
386 potential far-reaching effects that this legislation might
387 have on existing law.

388 Another concern that I have is that this legislation
389 goes far beyond simply restating current law. For example,
390 the EPA in the brief time it was given to respond identified
391 serious drafting issues with the bill that could be
392 reconstrued to change the meaning of existing law. In
393 particular, the agency adamantly disputes the bill's
394 interpretation of current law regarding its authority under
395 Section 111(d) of the Clean Air Act to issue the Clean Power
396 Plan and regulate greenhouse gas emissions from power plants
397 and other stationary sources. This provision has generated
398 significant confusions, and the EPA itself warns that this
399 bill, if it were law, would exacerbate the confusion.
400 Outside organizations, such as the Sierra Club have raised
401 similar concerns that the legislation will introduce
402 unnecessary ambiguity into the Clean Air Act. And finally,

403 I am concerned that this sharp departure from normal
404 committee process may have been influenced by broader
405 political considerations, and a desire to impact pending
406 legal disputes. Sorry to have to say that.

407 The Natural Resources Defenses Council, along with
408 other environmental groups have cautioned members that this
409 bill is a blatant effort by polluters and their allies to
410 bias current litigation against the Clean Power Plan.
411 Tellingly, this bill was noticed for markup on the very same
412 day that the EPA issued a final rulemaking regarding the
413 Clean Power Plan. As authority to issue the rulemaking, the
414 EPA explicitly cited Section 111(d) of the Clean Air Act,
415 and industry advocates have already cited this proposed
416 restatement of current law in support of their challenges to
417 the EPA's authority to implement the Clean Power Plan. So
418 at best, consideration of this bill today represents an
419 incomplete and irresponsible legislative process. At worst,
420 it represents an effort to push through a purely political
421 agenda to change substantive environmental law. I urge my
422 colleagues to carefully consider this measure and oppose
423 H.R. 2834. I thank the chairman and yield back.

424 [The prepared statement of Mr. Conyers follows:]

425 ***** COMMITTEE INSERT *****

426 Mr. Sensenbrenner. Mr. Chairman.
427 Chairman Goodlatte. Approach, the gentleman from
428 Wisconsin.
429 Mr. Sensenbrenner. Chairman, I move to strike last
430 word.
431 Chairman Goodlatte. Gentleman is recognized for 5
432 minutes.
433 Mr. Sensenbrenner. Chairman, I yield to the gentleman
434 from Virginia, the chairman of the committee.
435 Chairman Goodlatte. I thank the gentleman for
436 yielding. I do want to respond to the assertion that this
437 is a rush job, that this has been put in the works recently,

438 and I want to recount the history of this bill. On February
439 4, 2009, the bill was submitted to the House Judiciary
440 Committee and was posted on the Law Revision Counsel website
441 for comment by all interested persons. Also an introductory
442 letter was sent to the congressional committees of
443 legislative jurisdiction. Updated bills were submitted to
444 the House Judiciary Committee on August 12, 2010, and
445 September 20, 2013. In 2013, the Environmental Protection
446 Agency finally showed some interest in reviewing the draft,
447 so on the codification attorney's recommendation, the House
448 Judiciary Committee staff agreed to allow the EPA 180 days
449 to review the bill before taking further action on it. When
450 the codification attorney contacted the EPA near the end of
451 the 180-day period, the codification attorney was informed
452 that the EPA had decided not to review the bill after all.

453 On June 17, 2015, Representative Marino personally
454 wrote to the chairman and ranking member of the House
455 Committees on Natural Resources and Energy and Commerce, and
456 the Senate Committee on Environment and Public Works, as
457 well as the administrator of the EPA to let them know he
458 wished to introduce the bill. He invited each of these
459 individuals to review the text and to share it with other
460 interested parties as appropriate. He further requested
461 they bring any questions or suggestions to the attention of
462 the Office of the Law Revision Counsel. To date, not one of

463 the congressional leaders contacted by Representative Marino
464 has expressed any disagreement with the text. While the EPA
465 laments that providing technical assistance on H.R. 2834
466 would be quote, "an enormous undertaking," end quote, the
467 EPA had about 1,619 regular business days in which to review
468 the 576 pages of Title 55 text. As the Office of Law
469 Revision Counsel noted, if EPA had chosen to cooperate with
470 the codification project, the EPA could have given the draft
471 a complete review by examining about one third of a page per
472 day. I thank the gentleman for yielding.

473 Mr. Sensenbrenner. Mr. Chairman, I yield back the
474 balance of my time.

475 Chairman Goodlatte. What purpose does the gentleman
476 from New York seek recognition?

477 Mr. Nadler. Mr. Chairman, regardless of the dispute
478 over the length of time or the process by which this bill
479 came here, the fact is we are not to pass it for more
480 substantive reasons, and some of which were alluded to by
481 the ranking member. The fact is this bill, although it
482 purports to be a mere codification in the U.S. Code, in fact
483 makes substantive changes to the law, substantive changes to
484 the law that we do not know anything about, and that are
485 beyond the jurisdiction of this committee. It makes
486 substantive changes to the Environmental Protection Law, and
487 let me just read a couple of things that describe it a

488 little. In the 1990 Clean Air Act, the law adopted in 1990
489 included two provisions amending Section 111(d) of the prior
490 Clean Act. Both versions are contained in the statutes at
491 large, the official and authoritative record of our laws.

492 One version of the two that were passed by the Congress
493 and signed by the President, however, was omitted from the
494 U.S. Code consideration. This bill would effectively make
495 the U.S. Code version the final version of the law,
496 substantively altering the statute. Both versions of
497 Section 111(d) were duly enacted in 1990. They were passed
498 by both chambers of Congress and signed into law by the
499 President. Both versions reasonably authorize EPA's
500 regulation of carbon monoxide, I am sorry, carbon dioxide
501 emissions from existing power plants. The uncodified
502 provision is especially clear. In this regard, they are
503 both part of the Clean Air Act.

504 Adopting this bill would repeal the uncodified
505 provision of the law without debate or proper consideration.
506 Opponents of the Clean Air Act hope that by -- or the Clean
507 Power Plant, I should say -- hope that by deleting this
508 provision from our laws they will tilt current litigation in
509 a given way. Congress should not attempt to change the
510 Clean Air Act in this underhanded way. What I just read is
511 from a letter from the League of Conservation Voters,
512 Natural Resource Defense Council, among others. In other

513 words, what happened back in 1990 was the House passed one
514 version of an amendment to Section 111(d), the Senate passed
515 another version of an amendment to Section 111(d). The
516 Conference Committee put both versions, which is not exactly
517 the same, into the final bill. So maybe we should have
518 some words with the members of the Conference Committee back
519 in 1990.

520 But they put both versions into the bill. The bill
521 with both versions in it was passed by the House and the
522 Senate and signed into law by the President. One version,
523 for some reason, but not the other, was put into the U.S.
524 Code, and we are now in this bill, asked to enact that
525 version and in effect repeal the other version. We are
526 enacting one section of existing law and repealing another
527 section of existing law dealing with the same subject. Now,
528 those two sections can be read, and many people do read them
529 to do the same thing. Some people read them not to do quite
530 the same thing that is subject of a lawsuit. By passing
531 this bill, we would be in effect deciding that lawsuit one
532 way.

533 Now, we have no reason to do that. Some of what the
534 ranking members said, Mr. Conyers said, was that we would be
535 tilting against claims of people who want regulation of
536 certain things. That may be. I am not familiar enough with
537 the subject of the matter, nor is any member of this

538 committee, unless they happen to be members of the Energy
539 and Commerce Committee and really know the subject, familiar
540 with it, either, to really comment on the merits. But the
541 fact is, we are repealing one existing section of the law,
542 which is valid law passed by both houses, signed by the
543 President, and leaving the other section, and they are not
544 exactly the same. We are in effect deciding existing
545 lawsuit as to the power or jurisdiction in some specific of
546 the EPA.

547 Number one, we should not be doing that because we do
548 not know anything about the substance here. Number two, it
549 is not in our jurisdiction. This is substantive. This is a
550 substantive change of the law in the jurisdiction of the
551 Energy and Commerce Committee, and I have here a letter from
552 all the Democrats on the Energy and Commerce Committee dated
553 today, addressed to the chairman of the committee, and
554 saying, for example, "The text of H.R. 2834 makes changes to
555 the current Clean Air Act Section 111 by omitting key
556 language. It was passed by both Houses of Congress, and
557 signed into law by the President, appears as statute at
558 large. Such changes could have serious implications for
559 rulemaking at the EPA, and would inject added confusion into
560 the interpretation of an already complex law. Further, such
561 changes are not merely technical in nature, and they
562 represent substantive changes to the Clean Air Act. By

563 acting solely on H.R. 2834 Judiciary is in effect writing
564 national policy on matters within our, meaning E&C,
565 jurisdiction and running roughshod over the prerogatives of
566 our committee," meaning the other committee, "and the
567 legislative process."

568 Now, normally, I would not object to our riding
569 roughshod over the jurisdiction of another committee. I am
570 a champion of expansive jurisdiction of the Judiciary
571 Committee, when appropriate. But here, it is clearly not
572 appropriate. Here, we know nothing about the subject
573 matter, we have had no discussions, we do not know what we
574 are, I was about to say we know nothing about what we are
575 talking about, except we have not talked about it. There
576 has been no consideration and there is no expertise on
577 whether they are right or wrong, that the one provision that
578 we are enacting is not as good as the provision that we are
579 repealing, and there is a lawsuit on that. And frankly, if
580 this bill is what it purports to be, namely a codification,
581 then that would be fine. But at least in this one respect,
582 and I know it is got, I do not know, 500 pages or whatever;
583 I am sure 499 of them may be fine.

584 But this provision is a substantive change in the law,
585 in an area beyond our jurisdiction where we know nothing,
586 and we should not pass this bill. We should, however,
587 perhaps amend the bill to remove that specific reference,

588 and then we could recodify the rest of the law and let the
589 Energy and Commerce Committee deal with the substantive
590 change if they want to make it.

591 Chairman Goodlatte. The time of the gentleman has
592 expired. What purpose does the gentleman from Pennsylvania
593 seek recognition?

594 Mr. Marino. Move to strike the last word.

595 Chairman Goodlatte. The gentleman's recognized for 5
596 minutes. And would the gentleman yield to me to respond to
597 the gentleman from New York?

598 Mr. Marino. Of course.

599 Chairman Goodlatte. I thank the gentleman for
600 yielding. I want to quote Professor Laurence Tribe, who I
601 think people on both sides of the aisle would agree is an
602 eminent constitutional scholar, on the very point made by
603 the gentleman from New York. Here is what he says; it is a
604 lengthy quote. "It is not easy to know where to start in
605 dismantling this fantasy. To begin with, the EPA's version
606 of history is simply wrong. The 1990 amendments did not
607 create two different versions of Section 111(d). Rather,
608 the House adopted a substantive amendment changing Section
609 111(d) to bar duplicative regulation for any source category
610 already subject to regulation under Section 112, the version
611 of Section 111(d) now in the U.S. Code. And the Senate
612 amendment was simply a clerical or conforming one that

613 updated a statutory cross-reference to the previous version
614 of Section 111(d). The Senate conferees expressly stated in
615 the Conch report that they were receding to the House
616 version. Although both versions appear in the statutes at
617 large, that does not mean that there are two different
618 substantive versions of Section 111(d). Rather, once the
619 House amendment was made law, the Senate amendment was
620 rendered moot and could not be executed, because it referred
621 to language that no longer existed, as the Office of Law
622 Revision Counsel in the House of Representatives properly
623 concluded."

624 And I thank the gentleman for yielding.

625 Mr. Marino. I want to thank the chairman for setting
626 the record straight on the timeline. Thank you, Mr.
627 Chairman, for the time and opportunity to offer H.R. 2834.
628 I am pleased that today I can play a part in a mundane and
629 often forgotten yet critical important part of the Judiciary
630 Committee's jurisdiction, the codification of positive law.
631 This is a necessary job to clean up and centralize decades
632 upon decades of legislative action. I owe credit for all
633 585 pages in this current effort to the diligent and hard-
634 working attorneys at the nonpartisan Office of Law Revision
635 Counsel in the House of Representatives. And particularly,
636 I want to recognize Tim Trussell, a former counsel at OLRC,
637 who has worked on this project since 2007. And I also want

638 to recognize Ken Piotrowski [spelled phonetically]. As soon
639 as we can wrap this up, Tim will be able to fully enjoy the
640 retirement he so rightfully deserves.

641 Finally, I ask for unanimous consent to enter into the
642 record several letters sent and received by me. The first
643 set contains letters I sent on June 17th of this year to the
644 ranking member and chair of each committee in the House and
645 Senate with jurisdiction over the substance of future Title
646 55 and to the administrator of the EPA. In these letters, I
647 asked these entities to provide a substantive comment on the
648 Title 55 positive law codification. The second is a
649 response I received from the EPA on July 27th. This was the
650 only response comment letter received. The third is a
651 response to the EPA's comments that I received from the
652 Office of Law Revision Counsel on September 16th.

653 The central principle at stake with the rule of law: it
654 transcends policy preference and party affiliation. Article
655 II of the Constitution says explicitly that all legislative
656 powers shall be vested in Congress. Congress passed the law
657 in the 1990s to authorize EPA to regulate the coal fire
658 plants, either under Clean Air Act, Section 111 or Section
659 112, but not both. The law was organized into the U.S. Code
660 by the Office of Law Revision Counsel of the U.S. House of
661 Representatives. EPA argues that Congress passed two
662 different versions of the law, and the U.S. Code reflects

663 the wrong version, but the other version is merely a
664 confirming amendment, changing a cross-reference. Technical
665 amendments are, by definition, not substantive, and
666 therefore cannot override the substantive law currently in
667 the Code. That is why the Office of Law Revision Counsel
668 determined that the conforming amendment was simply a
669 drafting error and should be ignored.

670 Even if there was a substantive conflict between two
671 versions of the law, which there is not, certainly Congress'
672 own Office of the Law Revision Counsel has the stronger
673 claim to resolving it than do agency bureaucrats.
674 Similarly, even if there are substantive conflicts between
675 two versions of the law, what authority would EPA have to
676 prefer one to the other? EPA would be limited to enforcing
677 both, or if they are irreconcilable, neither. EPA's
678 assertion that it gets to pick the one it prefers is a
679 bizarre usurpation of the lawmaking process that belongs to
680 Congress. The net effect of this would be to permit an
681 unelected agency to radically restructure the U.S. economy
682 entirely on its own, and contrary to the manifest intent of
683 Congress. With that, I urge my colleagues to support the
684 bill, and I would like to enter as part of the record
685 exhibit titled "United States Code Positive Law
686 Codification." I yield back.

687

688 Chairman Goodlatte. Without objection, it will be made
689 a part of record.

690 [The information follows:]

691 ***** COMMITTEE INSERT *****

692

693 Chairman Goodlatte. For what purpose does the gentleman
694 from Georgia seek recognition?

695 Mr. Johnson. I move to strike the last word.

696 Chairman Goodlatte. Gentleman is recognized for 5
697 minutes.

698 Mr. Johnson. Thank you, Mr. Chairman. I have serious
699 concerns with H.R. 2834, a positive law codification bill
700 that represents a substantial departure from existing law,
701 which is a rarity for such legislation. Drafted by the
702 Office of Law Revision Counsel, H.R. 2834 is a 585-page bill
703 that is intended to consolidate various laws in a new title
704 of the Code without changing, quote, "the meaning or effect
705 of the existing law." Now, I might add here that on June
706 17th is when the author of this legislation, the chair of
707 the relevant committee, Regulatory Reform, sent letters to
708 the chairman and ranking members of the House Committees on
709 Natural Resources and Energy and Commerce, and also the
710 Senate Committee on Environment and Public Works, as well as
711 the administrator of the EPA to let them know that he wished

712 to introduce this bill. That was on June 17th; and he gave
713 them 30 days to comment on this 585-page bill.

714 However, it was the very next day, June 18th, 2015,
715 that this bill was introduced. And so it is been a rushed
716 and hasty event. And contrary to the stated intent of the
717 Law Revision Counsel, there is substantial evidence that
718 this bill is both substantive and political in nature, and
719 would disrupt decades of existing law to the detriment of
720 critical clean air protections, far exceeding the bounds of
721 simply reorganizing the U.S. Code. In 1990, Congress
722 amended the Clean Air Act to provide the Environmental
723 Protection Agency, EPA, with specific authority to regulate
724 certain pollutants under Section 111(d) of the law.
725 Although the 1990 amendments passed both the House and
726 Senate and were signed into law by the President, two
727 competing versions of Section 111(d) were never reconciled
728 in conference. Today, the House language is reflected in
729 the U.S. Code, while the statutes at large give effect to
730 both the House and the Senate amendments.

731 According to Professor Richard Revesz, the director of
732 the American Legal Institute, which is our Nation's leading
733 independent organization that provides recommendations to
734 clarify, modernize, and improve the law, there is little
735 doubt that the statutes at large controls today. Indeed,
736 the Supreme Court has long held that quote, "The Code cannot

737 prevail over the statutes at large when the two are
738 inconsistent," end quote, as established in 1943 in the
739 Stephan versus United States case. Furthermore, as
740 Professor Revesz has also observed, the EPA has repeatedly
741 interpreted Section 111(d) in ways that are consistent with
742 its authority, through both Republican and Democratic
743 administrations. Turning to the substance of H.R. 2834,
744 there is little doubt that this legislation is
745 controversial.

746 The bill rejects existing law as reflected in the
747 statutes at large, and instead adopts the House version of
748 Section 111(d). This alone represents a dramatic shift in
749 our current understanding of the EPA's authority under the
750 Clean Air Act, rejecting decades of statutory construction
751 by the EPA, under both Democratic and Republican
752 administrations. Perhaps most alarmingly, the bill does so
753 without key stakeholder input while masquerading as
754 noncontroversial legislation. While the Law Revision
755 Counsel has claimed that all changes in existing law made by
756 the bill are purely technical in nature, it is clear from
757 the robust debate that has already occurred in other
758 committees of jurisdiction on this issue, that there is
759 indeed serious controversy over this provision. It is also
760 clear that the role of the Office of Law Revision Counsel is
761 solely organizational and cannot change the meaning or

762 effect of existing laws. With that role in mind, it is
763 incontrovertible that H.R. 2834 should reflect existing
764 laws, the statutes at large, and not the law as Republicans
765 would like it to be.

766 Finally, as Ranking Member Conyers has already noted,
767 unlike the normal process for a codification bill, this
768 legislation is not bipartisan and was developed without
769 prior input from Federal agencies, congressional committees,
770 experts in the area of law being codified, and other
771 interested persons as is normally standard and indeed vital,
772 for legislation such as this. This deficiency alone is
773 sufficient cause for rethinking this legislation. I am
774 seriously concerned and dismayed by the majority's decision
775 to politicize something as straightforward as a positive law
776 codification bill, which normally would pass the House under
777 suspension of the rules and the Senate by unanimous consent,
778 and I strongly oppose this legislation and urge my
779 colleagues to do the same.

780 And for the record, I would like to submit, without
781 objection, a letter from Ranking Member Frank Pallone of the
782 Energy and Commerce Committee to the chairman of that
783 committee, the Honorable Fred Upton, dated October the 27th,
784 and outlining his deep concerns about H.R. 2834, and
785 requesting Chairman Upton to assume jurisdiction for those
786 parts of the bill that fall within that committee's

787 jurisdiction.

788 Chairman Goodlatte. Without objection.

789 [The information follows:]

790 ***** COMMITTEE INSERT *****

791

792 Mr. Johnson. With that, I yield back.

793 Mr. Collins. Mr. Chairman?

794 Chairman Goodlatte. What purpose does the gentleman
795 from Georgia seek recognition?

796 Mr. Collins. Mr. Chairman, I move to strike the last
797 word.

798 Chairman Goodlatte. Gentleman is recognized for 5
799 minutes.

800 Mr. Collins. Thank you, Mr. Chairman. At this time, I
801 yield to my colleague from Pennsylvania, Mr. Marino.

802 Mr. Marino. Thank you, Congressman Collins. A bill
803 containing an amendment to a statutory provision that fails
804 to execute because of another amendment to the same
805 provision contained earlier in the same bill is not unusual.
806 This happens often, and Congress and the Office of Law
807 Revision Counsel have an established rule to resolve it. An
808 amendment fails to execute if a prior amendment in the same
809 bill removes or alters the text that the subsequent
810 amendment would amend. The office consistently and

811 frequently applies this rule in this circumstance. This is
812 Congress' rule. Congress is aware of this rule, and drafts
813 legislation in light of it. And I yield back to Mr.
814 Collins.

815 Chairman Goodlatte. Would the gentleman from Georgia
816 yield?

817 Mr. Collins. Always to the chairman.

818 Chairman Goodlatte. I thank the gentleman for
819 yielding, and I want to second what the gentleman from
820 Pennsylvania said. That is exactly the point that Professor
821 Tribe makes in his statement on this very issue. He says,
822 "Once the House amendment was made law, the Senate amendment
823 was rendered moot and could not be executed because it
824 referred to language that no longer existed." I thank the
825 gentleman for yielding.

826 Mr. Collins. With that, Mr. Chairman, I yield back.

827 Chairman Goodlatte. For what purpose does the
828 gentlewoman from California seek recognition?

829 Ms. Lofgren. To strike the last word.

830 Chairman Goodlatte. The gentlewoman is recognized for
831 5 minutes.

832 Ms. Lofgren. I remember many years ago, Henry Hyde was
833 chairman of the committee, and of course, our ranking
834 member, John Conyers, was ranking, and we were having a
835 spirited discussion. And Henry Hyde said, you know, "The

836 Democrats are our adversaries. The Energy and Commerce
837 Committee are our enemies." And I remember that so very
838 well. But it actually does outline the distinction before
839 us today, which is this matter, which is a change in
840 substantive law, is really within the jurisdiction
841 completely, of the Energy and Commerce Committee. When we
842 were discussing the Telecom Act and when Henry Hyde
843 mentioned that the other committee was our enemy, there was
844 concurrent jurisdiction. But there is no concurrent
845 jurisdiction in this matter. And I am glad that Mr.
846 Pallone's letter was put into the record, but he does point
847 out in the letter that this bill does change the Clean Air
848 Act and is totally within the jurisdiction of the Energy and
849 Commerce Committee.

850 You know, I have a letter from the Biodiesel Group, and
851 they outline something that I had not been aware of, which
852 as their belief that the restatement makes what appears to
853 be a minor structural change in the renewable fuel standard,
854 that actually splits the general charge to the administrator
855 to promulgate regulations to implement the renewable fuel
856 standards into two subclauses, one with the heading
857 "Gasoline" and one with the heading, "Transportation Fuel."
858 Now, they point out, and I am quoting their letter, the most
859 natural reading of the restatement is that "Gasoline is not
860 a transportation fuel, which in turn may mean that the only

861 requirement for total renewable fuel content, and not for
862 subcategories such as advanced biofuel content or a biomass-
863 based diesel, apply to gasoline."

864 I do not think that the Office of Legal Counsel that
865 put this together, intended to change the blending of
866 gasoline with biofuel, but it looks like that is what has
867 occurred here. Now, whether or not that is a good idea, I
868 cannot opine at this moment. I do feel firmly this: that we
869 should not be making that change inadvertently through
870 adopting the changes that are before us today. Now, many of
871 us are aware of Professor Tribe's long work over the years.
872 We are an admirer, and we know he is not always right.
873 There are many scholars who believe, contrary to what he has
874 outlined, and in fact, I would like to ask unanimous consent
875 to put into the record, a letter from the Sierra Club that
876 indicates the codified text of the Clean Air Act, which by
877 law is subordinate to the text of the statute at large,
878 admits the key language that passes both Houses of Congress.
879 It was signed into law by the President.

880 The fact is that this dispute is currently being
881 litigated. And I think, you know, if you want to just think
882 about what we are doing here today, we are trying to put our
883 thumb on a scale, when in fact this is going to be reviewed
884 and decided ultimately in the courts. And I think -- I
885 certainly would not want to ascribe motives to any Member of

886 the House, but I think it would be improper, if that were
887 the result, to put our thumb on the scale when there is a
888 matter that is currently being litigated. I would like to
889 ask unanimous consent, Mr. Chairman, to put into the record
890 the letter from the Biodiesel Group, America's Advanced
891 Biodiesel Group, because they do believe that enactment of
892 the matter before us would have an adverse impact on the
893 advanced biofuel provision. And of course, we know that
894 that is a very important economic issue in many parts of the
895 country, and especially in the Midwest, and I think that the
896 evidence shows that stable growing biodiesel volumes may
897 achieve our goal of strengthening the economy and reducing
898 costly pollution.

899 Now, as someone who is not from the Midwest but from
900 the West, where technology rules, we know that there are
901 advanced biodiesels that did not come from crops but from
902 genetically modified material that directly produced
903 gasoline. All of this could be overturned inadvertently by
904 a yes vote on the matter before us today. I would also ask
905 unanimous consent, Mr. Chairman, to put into the record, the
906 letter from the Sierra Club in opposition to the bill.

907 Chairman Goodlatte. Without objection, both those
908 letters will be entered into the record.

909 [The information follows:]

910 ***** COMMITTEE INSERT *****

911

912 Ms. Lofgren. And I return the balance of my time.

913 Chairman Goodlatte. The chair thanks the gentlewoman.

914 Are there any amendments?

915 Mr. Marino. We are preparing them.

916 Chairman Goodlatte. You better prepare it fast.

917 Mr. Marino. Where is that amendment?

918 Mr. Pierluisi. Mr. Chairman?

919 Chairman Goodlatte. What purpose does the gentleman
920 from Puerto Rico seek recognition?

921 Mr. Pierluisi. I move to strike the last word.

922 Chairman Goodlatte. The gentleman is recognized for 5
923 minutes.

924 Mr. Pierluisi. I yield to Mr. Johnson of Georgia.

925 Mr. Johnson. Thank you, sir. I would like to read
926 into the record some comments from a brief by Professor
927 Ricky Revesz. And it reads as follows: "Opponents of the
928 Clean Power Plan agreed wholeheartedly with EPA's
929 longstanding interpretation when the agency, under President
930 George W. Bush, described its approach to the conflicting
931 amendments in a 2005 rule regarding mercury emissions from
932 power plants. These opponents now maintain, however, that
933 because EPA has already regulated power plants' mercury
934 emission under Section 112, it cannot regulate those same

935 plants' emissions of any other pollutant, including carbon
936 dioxide, the subject of the Clean Power Plan under Section
937 111(d). In order to reach their new conclusions that EPA
938 lacks authority to promulgate the Clean Power Plan,
939 opponents must, among other argumentative leaps, completely
940 disregard the Senate's amendment and rely on the
941 administrative decision of a staff member in the Office of
942 Law Revision Counsel to include just the House amendment in
943 the U.S. Code.

944 But this staff member cannot supplant the will of
945 Congress. In fact, adopting the approach urged by the
946 opponents of the Clean Power Plan would lead to a serious
947 constitutional problem. Law would be made without following
948 the constitutional requirements of bicameralism, passage by
949 both House and Senate, and presentment to the President or
950 veto override by Congress. The U.S. Supreme Court has made
951 clear in *Immigration and Naturalization Service versus*
952 *Chadha* that such arrangements are unconstitutional, and even
953 if one got past that problem, one would need to argue that
954 the House amendment is subject to a single meaning and
955 deprive EPA of the deference that it is owed under the
956 Chevron doctrine, when it interprets ambiguous statutory
957 provisions. In fact, reasonable interpretations of the
958 House amendments would support the Clean Power Plan." And
959 with that, Mr. Chairman, I would yield back.

960 Chairman Goodlatte. For what purpose does the
961 gentleman from Rhode Island seek recognition?

962 Mr. Cicilline. To strike the last word.

963 Chairman Goodlatte. The gentleman is recognized for 5
964 minutes.

965 Mr. Cicilline. Mr. Chairman, members of the committee,
966 I rise in opposition to this piece of legislation. It has
967 been described as a real departure from the traditional
968 codification process. It was convened in a partisan,
969 closed-door fashion with very little input, and very little
970 notice to the minority members of this committee. And most
971 importantly, from my perspective, it was not developed with
972 a kind of stakeholder participation or engagement that is
973 typical in this process. And I think a fair assessment of
974 this bill demonstrates unequivocally that it is a response
975 to the EPA's rulemaking, regarding the Clean Power Plan,
976 which is not a proper subject for the codification process,
977 but a substantive change in the law. And I would ask
978 unanimous consent that a letter dated July 27th, 2015, from
979 the General Counsel of the United States Environmental
980 Protection Agency to the chairman of the subcommittee be
981 introduced into the record.

982 Chairman Goodlatte. That document is already in the
983 record.

984 Mr. Cicilline. These were already entered? Yeah. I

985 yield back. Thank you, Mr. Chairman.

986 Chairman Goodlatte. The question is on the motion to
987 report the bill favorably.

988 Mr. Nadler. Mr. Chairman.

989 Chairman Goodlatte. What purpose does the gentlewoman
990 from California seek recognition?

991 Ms. Chu. I move to strike the last word.

992 Chairman Goodlatte. Gentlewoman is recognized for 5
993 minutes.

994 Ms. Chu. I yield to Mr. Nadler.

995 Mr. Nadler. I thank the gentlelady for yielding. I
996 want to make a couple comments about this bill before the
997 amendment that we are preparing is quite finished being
998 prepared. This is a massive bill, with one problem in it,
999 maybe some others, but one problem in it. This is
1000 supposedly a codification bill, which makes one substantive
1001 change to the law. And it, in effect, moots a current
1002 lawsuit with respect to the jurisdiction in power, the EPA.
1003 That is not the intent of the legislation; at least, it is
1004 not supposed to be the intent of the legislation. It will
1005 result in the President vetoing the bill, if it does not
1006 result in the Senate not passing the bill. So, if we are
1007 really interested, and the President clearly will veto the
1008 bill because this is a major question of the jurisdiction in
1009 power of the EPA in a major area. The Administration is

1010 taking a very clear position as to the jurisdiction of the
1011 EPA. They are pursuing it. They are defending a lawsuit on
1012 it.

1013 So, clearly, if we, in the name, or in the guise, I
1014 should say, of codification, and of not changing the law,
1015 make a major in the law, the bill will be vetoed. Now,
1016 frankly, that would not bother me terribly. It would
1017 represent the terrible waste of time for the committee, the
1018 committee staff, and other people. But maybe it is fitting
1019 retribution for putting in a substantive change in the law
1020 and refusing to remove it. We are going to have an
1021 amendment in a few minutes that says, in effect, all right,
1022 we are doing a codification of the law. Fine. There is one
1023 provision that is a substantive change, and there may be
1024 arguments between Professor Tribe and Professor Revesz and
1025 others. And I have a soft spot in my heart for Professor
1026 Revesz, since he was my son's professor, but putting that
1027 aside, there may be controversy between those two worthy
1028 gentlemen as to how, professors, as to how much of a
1029 substantive change this is, or whether it is intended, but
1030 that is before a court of law now. We should not be making
1031 that substantive change, or weighing in on that unless we
1032 own up to what we are doing, and saying what we are doing,
1033 and saying we want to change the law, in which case, it
1034 ought to be in the energy and commerce committee because we

1035 do not have jurisdiction or expertise in that field, in that
1036 area of law.

1037 So, the amendment we are going to have in a few minutes
1038 will simply amend the bill, to excise, to remove that small
1039 section of the bill that deals with this provision, with
1040 this 1990 amendment, these two conflicting, or inconsistent,
1041 perhaps, amendments to Section 111(d) of the law from 1990,
1042 and leave them as they are. Leave one section of the United
1043 States Code, leave one section out of the United States
1044 Code, not put either of them into positive law. In other
1045 words, leave the bill exactly as it is, but not deal with
1046 this small, not in the sense of unimportant, but small in
1047 the sense of limited area of the law and of one section, and
1048 say we can deal with that separately if we want to. If the
1049 Energy and Commerce Committee wants to, they can deal with
1050 that. We should not be dealing with that in a so-called --

1051 Chairman Goodlatte. Gentleman, yield.

1052 Mr. Nadler. In one second, codification law, which
1053 would cause the codification bill massive bill, which
1054 represents a lot of work, which I respect, to be vetoed. We
1055 take that off the table, and let the bill go forward. I
1056 yield.

1057 Chairman Goodlatte. I thank the gentleman for
1058 yielding. Two points. First of all, there are not two
1059 substantive versions of the law. One substantive version

1060 replaced the other, and all we are doing is conforming the
1061 law to the process that is properly followed by the Office
1062 of Law Revision Counsel.

1063 Mr. Nadler. Reclaiming my time, that statement you
1064 just made is a statement to which there is argument.

1065 Chairman Goodlatte. And there are always arguments.
1066 They are resolved by votes.

1067 Mr. Nadler. But the question --

1068 Chairman Goodlatte. Gentleman has an amendment. Let's
1069 offer it. Do we have it yet?

1070 Voice. It is at the table.

1071 Mr. Nadler. Okay. It is on the table now. I will
1072 offer it.

1073 Chairman Goodlatte. All right. The clerk will report
1074 the amendment. Where is it?

1075 Ms. Williams. Amendment to H.R. 2834.

1076 Mr. Marino. Mr. Chairman?

1077 Chairman Goodlatte. What purpose does gentleman from
1078 Pennsylvania seek recognition?

1079 Mr. Marino. I reserve a point of order.

1080 Chairman Goodlatte. Point of order is reserved. The
1081 clerk will report the amendment.

1082 Ms. Williams. Amendment to H.R. 2834, offered by Mr.
1083 Nadler in Section 211111 of title 55 as enacted by section 3
1084 of the bill, strike subsection (d), (bill page 127, line 11,

1085 through pages 128, line 11).

1086 In the Schedule of Laws Repealed in section 6 of the
1087 bill, (bill page 580), in the item relating to Section 111
1088 of the Clean Air Act in the 2d column strike "111" and
1089 insert "111(a) through (c), (e) through (j)" and in the 3d
1090 column, strike "42 U.S.C. 7411", and insert "42 U.S.C. 7411
1091 (a) through (c), (e) through (j)".

1092 Chairman Goodlatte. Does the gentleman from
1093 Pennsylvania insist upon his point of order?

1094 Mr. Marino. Yes, I do.

1095 Chairman Goodlatte. Can you state the point of order?

1096 Mr. Nadler. Let me, Mr. Chairman?

1097 Chairman Goodlatte. Gentleman from Pennsylvania is
1098 recognized.

1099 Mr. Nadler. Mr. Chairman, I think I should state the
1100 amendment before he makes a point of order?

1101 Mr. Marino. Okay. I withdraw the point of order.

1102 Chairman Goodlatte. Thank you. The gentleman from New
1103 York is recognized on his amendment.

1104 Mr. Nadler. Thank you. The normal procedure is he
1105 explains the amendment, and then he says what his point of
1106 order is.

1107 Chairman Goodlatte. But it has been withdrawn, so you
1108 can go ahead.

1109 Mr. Nadler. Okay, thank you. Mr. Chairman, this

1110 amendment simply excises from the bill subsection (d) from
1111 section 211111, if I got the number of ones right, of Title
1112 55, as enacted by Section 3 of the bill to do what I
1113 described a moment ago. It simply leaves this provision of
1114 law, or these two provisions of law, depending on how you
1115 want to read it, unchanged. And we have, anticipating Mr.
1116 Marino's point of order, the Law Revision Counsel assures us
1117 that this amendment would leave the existing law unchanged.
1118 The Law Revision Counsel refuses to opine as to whether the
1119 current bill would leave the existing law unchanged.
1120 However, since this amendment would mean that the bill
1121 leaves the existing law unchanged, the amendment leaves the
1122 existing law unchanged, we can do the amendment. And again,
1123 this simply takes out this controversial provision.

1124 And the chairman and others may say it is not
1125 controversial because it does not change the law. Other
1126 people say it does change the law. The members of the
1127 Energy and Commerce Committee, the minority members at least
1128 say it changes the law. All the environmental groups you
1129 have heard of say it changes the law. The EPA says it
1130 changes the law. There is a lawsuit on that question, as to
1131 whether it changes the law; and we ought to leave that to
1132 the courts. Again, it is perfectly within the province of
1133 Congress, by the way, if there is a lawsuit proceeding, as
1134 there is, as to what the law means, as applied in a given

1135 instance. It is perfectly okay for Congress to come in and
1136 say, if the contest is between the law means A or the law
1137 means B, it is perfectly okay for us to come in and say, "We
1138 are changing the law to make clear it means B. Moot the
1139 lawsuit."

1140 But it is not proper to do that without, A, admitting
1141 you are doing it, without saying we are changing the law to
1142 do it, without having the committee of proper jurisdiction
1143 and expertise in that area of the law do it. It is not
1144 proper to do it by saying, we are simply codifying the
1145 existing law when, in fact, you are perhaps, I would say,
1146 the EPA says we are changing existing law. Others would
1147 say, the chairman would say, we are not changing existing
1148 law, but that is the subject of a lawsuit. That is the
1149 subject of a dispute, and it ought not to be done in a so-
1150 called codification bill. This codification bill represents
1151 a lot of work. It is a massive work. I have no objection
1152 to most of it. This amendment simply takes out this one
1153 section and leaves it to the courts, or to the Congress, if
1154 we want to make the change. I yield back.

1155 Chairman Goodlatte. Chair recognizes himself in
1156 opposition of the amendment. Article 1, Section 1 of the
1157 United States Constitution states very plainly, all
1158 legislative powers herein granted shall be vested in a
1159 Congress of the United States. This is a legislative issue.

1160 It is a law drafted by the United States Congress, resolved
1161 in conference between the House and the Senate. The Office
1162 of Law Revision Counsel has noted that there is an
1163 inoperative section within that law that is being brought
1164 into conformance with the law under the standard procedures
1165 used to bring about conformity of the law. If the EPA wants
1166 to insist upon a misinterpretation of a non-existing part of
1167 the law, which was already made inoperative, made moot, by
1168 the final enactment of that law many years ago, they are
1169 entitled to do that in the courts, but that does not mean
1170 the Congress, which has supreme powers under our
1171 Constitution for writing the laws, not interpreting them,
1172 writing the laws, has the opportunity to do exactly what we
1173 are doing here today. And as was noted by an eminent
1174 constitutional scholar, we are doing it exactly the right
1175 way, and the EPA's position on this, in his word, is a
1176 fantasy. The Congress should not recognize a fantasy as the
1177 basis for passing legislation or not passing legislation. I
1178 strongly oppose the gentleman's amendment, and urge my
1179 colleagues to do the same.

1180 Ms. Lofgren. Mr. Chairman?

1181 Mr. Conyers. Mr. Chairman?

1182 Chairman Goodlatte. What purpose does gentleman from
1183 Michigan seek recognition?

1184 Mr. Conyers. I want to support the Nadler Amendment,

1185 and I would like to start off with a reminder of what
1186 Professor Revesz has explained, I think, in a very relevant
1187 way. The Clean Power Plan is an entirely permissible use of
1188 EPA's authority under section 111(d) of the Clean Air Act.
1189 That section presents an unusual situation because in the
1190 1990 amendments to the Clean Air Act, both House and Senate
1191 passed arguably different versions of the provision. And
1192 the two versions were never reconciled in conference. As I
1193 have already explained, this is Professor Revesz. Both
1194 provisions were then approved by both Chambers and signed by
1195 the President. However, since the passage of the 1990
1196 amendments, and through administrations of both parties, EPA
1197 has repeatedly interpreted Section 111(d) in ways that are
1198 consistent with its authority to promulgate the Clean Power
1199 Plan. This is Professor Revesz. Oh, it goes on. It is
1200 well established, when the statutes, at large, and the U.S.
1201 Code conflict, the texts in the statute, at large, controls
1202 -- the U.S. Code itself is adopted as legislation. Which is
1203 not the case here, because both the Senate amendment and the
1204 House amendment appear in the statutes at large, and
1205 interpretation of Section 111(d) must try to give effect to
1206 both. And so, I support the Nadler Amendment, and would
1207 note that this is just one of many concerns with the
1208 legislation. But this amendment would not take out the most
1209 controversial provision from the bill, and I urge support,

1210 and yield back the balance of my time.

1211 Chairman Goodlatte. What purpose does gentlewoman from
1212 California seek recognition?

1213 Ms. Lofgren. I would like to speak in favor of the
1214 amendment.

1215 Chairman Goodlatte. Gentlewoman is recognized for 5
1216 minutes.

1217 Ms. Lofgren. This matters, because beyond the
1218 legalistic arguments that we are having today, and I think
1219 the stronger view is, as has been described by the ranking
1220 member, in terms of the law itself, behind this argument,
1221 really, comes the opportunity to impact pollution related to
1222 health, as well as climate. California, in our central
1223 valley, has the highest asthma rate among children in the
1224 United States. And it is very much related to bad air,
1225 which is related to power plants, as well as fuels in
1226 vehicles. And the ability to ratchet down that pollution
1227 has a huge impact on the lives of those children. And by
1228 adopting this, we really would have the impact of deciding
1229 the case that is currently in the courts, in crippling the
1230 ability of the government to actually impact pollution that
1231 impacts health, especially among children. I know, also,
1232 that although people disagree in the Congress, although not
1233 so much in the country or the world, that climate change is
1234 one of the, if not the biggest issue that faces our planet.

1235 The ice caps at the North and South Pole are melting, and
1236 they relate to the emission of certain pollutants from power
1237 plants. And the ability to impact those is massively
1238 important for the future not only of us, but our children
1239 and our grandchildren. So, this is, on the merits, a very
1240 important matter, and I thank the gentleman for his
1241 amendment, and I would yield him further time.

1242 Mr. Nadler. I thank the gentlelady for the comments,
1243 and for yielding. You know, the chairman says that Congress
1244 has the legislative authority. Of course we do. And on the
1245 merits, I would oppose legislating here, because I think the
1246 EPA is right, and so forth. But putting that aside,
1247 clearly, there is a very basic, substantive dispute here.
1248 And if Congress wants to weigh in on this dispute and tell
1249 the EPA it is wrong in its interpretation of the law, or
1250 that the law to be changed so that it becomes wrong, then
1251 Congress ought to do so. We do have the legislative power.
1252 And we ought to do so. But we ought to do so through the
1253 Energy and Commerce Committee, which knows about the subject
1254 matter. It is dishonest to claim that this major change in
1255 the law is merely a codification.

1256 And you can quote Professor Tribe, and you can quote
1257 Professor Ravesz, and their difference is precisely what
1258 this question is about. And to say that: period. Their
1259 difference is what this is about. There were two

1260 conflicting provisions, one from the House, one from the
1261 Senate. Congress, in its wisdom, or the Conference
1262 Committee at that time, in its wisdom, adopted both without
1263 reconciling them. They were both signed into the President
1264 as part of the same bill. One somehow got into the U.S.
1265 Code, one did not. One could argue that they both have been
1266 relied upon for 20 years or whatever it is since 1990.
1267 Almost 20, almost 30 years. And now, we are coming along in
1268 the name of codification, saying that one takes precedence
1269 over the other, and we are not making a change. Of course
1270 we are making a change. Of course we are making a change.
1271 And the hyper-technical discussion of Professor Ravesz and
1272 Professor Tribe is, frankly, beside the point.

1273 Chairman Goodlatte. Would the gentleman yield?

1274 Mr. Nadler. Yes, I will yield.

1275 Chairman Goodlatte. If enactment of positive law
1276 codification, which follows a standard procedure for how to
1277 do it, and it simply restates existing law, word for word,
1278 seriously undermines an executive branch rulemaking, there
1279 must be serious flaws with the agency's rules.

1280 Mr. Nadler. Reclaiming my time. Whether that is what
1281 we are doing, frankly, whether the agency is right or wrong
1282 in saying that the two provisions of law are different, that
1283 both control, or one controls, that is before the courts in
1284 a lawsuit now. And as I said, if Congress wants to opine on

1285 that -- or not opine, to enact that, fine. But that should
1286 come from the Energy and Commerce Committee, which knows the
1287 subject area. We are talking off the top of our heads here,
1288 and this is not a simple matter of re-codification. It has
1289 a very substantive effect, and the fact that we are arguing
1290 so heatedly, and that all these different groups have
1291 weighed in, is not because of we are a bunch of professors
1292 of English, or of procedure, who care about that. It is
1293 because there is a substantive question here. And the
1294 substantive question should be decided either by the courts,
1295 where it is now, or Congress has the absolute prerogative to
1296 come in and moot the court case by saying, "We say A, or we
1297 say B." That is fine. But it ought to be done by the
1298 committee that knows what it is doing, and it ought to be
1299 done upfront and saying, "Here is a dispute in the law. We
1300 decide this."

1301 Instead, what we are doing here is saying, "There is no
1302 dispute in the law, and we are just simply codifying
1303 existing law." But the fact is the codification that we
1304 will do today, if we do it; never mind it will be vetoed by
1305 the President, so I do not know why we are wasting our time,
1306 but if we were to do this codification, it would put an end
1307 to that dispute. That says that we are doing something
1308 substantive. Whatever the form is, we are doing something
1309 substantive by mooting a court case, maybe for rightly or

1310 wrongly. By making clear with the laws where it is not
1311 clear now, at least to the court, and that a real effect,
1312 and we should not do it in this committee, where we have no
1313 jurisdiction. I yield back to the lady.

1314 Ms. Lofgren. Reclaiming my time. I yield back the
1315 balance of my time, Mr. Chairman.

1316 Chairman Goodlatte. The time of the gentlewoman has
1317 expired. The question is on the amendment offered by the
1318 gentleman from New York.

1319 All those in favor, respond by saying aye.

1320 Those opposed, no.

1321 In the opinion of the chair, the noes have it.

1322 The amendment is not agreed to.

1323 A recorded vote is requested, and the clerk will call
1324 the roll.

1325 Ms. Williams. Mr. Goodlatte?

1326 Chairman Goodlatte. No.

1327 Ms. Williams. Mr. Goodlatte votes no.

1328 Mr. Sensenbrenner?

1329 [No response.]

1330 Mr. Smith?

1331 [No response.]

1332 Mr. Chabot?

1333 Mr. Chabot. No.

1334 Ms. Williams. Mr. Chabot votes no.

1335 Mr. Issa?
1336 [No response.]
1337 Mr. Forbes?
1338 [No response.]
1339 Mr. King?
1340 Mr. King. No.
1341 Ms. Williams. Mr. King votes no.
1342 Mr. Franks?
1343 Mr. Franks. No.
1344 Ms. Williams. Mr. Franks votes no.
1345 Mr. Gohmert?
1346 Mr. Gohmert. No.
1347 Ms. Williams. Mr. Gohmert votes no.
1348 Mr. Jordan?
1349 [No response.]
1350 Mr. Poe?
1351 [No response.]
1352 Mr. Chaffetz?
1353 Mr. Chaffetz. No.
1354 Ms. Williams. Mr. Chaffetz votes no.
1355 Mr. Marino?
1356 Mr. Marino. No.
1357 Ms. Williams. Mr. Marino votes no.
1358 Mr. Gowdy?
1359 Mr. Gowdy. No.

1360 Ms. Williams. Mr. Gowdy votes no.
1361 Mr. Labrador?
1362 Mr. Labrador. No.
1363 Ms. Williams. Mr. Labrador votes no.
1364 Mr. Farenthold?
1365 Mr. Farenthold. No.
1366 Ms. Williams. Mr. Farenthold votes no.
1367 Mr. Collins?
1368 Mr. Collins. No.
1369 Ms. Williams. Mr. Collins votes no.
1370 Mr. DeSantis?
1371 Mr. DeSantis. No.
1372 Ms. Williams. Mr. DeSantis votes no.
1373 Ms. Walters?
1374 Ms. Walters. No.
1375 Ms. Williams. Ms. Walters votes no.
1376 Mr. Buck?
1377 Mr. Buck. No.
1378 Ms. Williams. Mr. Buck votes no.
1379 Mr. Ratcliffe?
1380 Mr. Ratcliffe. No.
1381 Ms. Williams. Mr. Ratcliffe votes no.
1382 Mr. Trott?
1383 Mr. Trott. No.
1384 Ms. Williams. Mr. Trott votes no.

1385 Mr. Bishop?

1386 Mr. Bishop. No.

1387 Ms. Williams. Mr. Bishop votes no.

1388 Mr. Conyers?

1389 Mr. Conyers. Aye.

1390 Ms. Williams. Mr. Conyers votes aye.

1391 Mr. Nadler?

1392 Mr. Nadler. Aye.

1393 Ms. Williams. Mr. Nadler votes aye.

1394 Ms. Lofgren?

1395 Ms. Lofgren. Aye.

1396 Ms. Williams. Mr. Lofgren votes aye.

1397 Ms. Jackson Lee?

1398 [No response.]

1399 Mr. Cohen?

1400 Mr. Cohen. Aye.

1401 Ms. Williams. Mr. Cohen votes aye.

1402 Mr. Johnson?

1403 Mr. Johnson. Aye.

1404 Ms. Williams. Mr. Johnson votes aye.

1405 Mr. Pierluisi?

1406 [No response.]

1407 Ms. Chu?

1408 Ms. Chu. Aye.

1409 Ms. Williams. Ms. Chu votes aye.

1410 Mr. Deutch?

1411 Mr. Deutch. Aye.

1412 Ms. Williams. Mr. Deutch votes aye.

1413 Mr. Gutierrez?

1414 [No response.]

1415 Ms. Bass?

1416 [No response.]

1417 Mr. Richmond?

1418 [No response.]

1419 Ms. DelBene?

1420 Ms. DelBene. Aye.

1421 Ms. Williams. Ms. DelBene votes aye.

1422 Mr. Jeffries?

1423 Ms. Jeffries. Aye.

1424 Ms. Williams. Mr. Jeffries votes aye.

1425 Mr. Cicilline?

1426 Mr. Cicilline. Aye.

1427 Ms. Williams. Mr. Cicilline votes aye.

1428 Mr. Peters?

1429 Mr. Peters. Aye.

1430 Ms. Williams. Mr. Peters votes aye.

1431 Chairman Goodlatte. What approach is the gentleman

1432 from California seeking?

1433 Mr. Issa. No.

1434 Ms. Williams. Mr. Isa votes no.

1435 Chairman Goodlatte. Gentleman from Virginia?

1436 Mr. Forbes. No.

1437 Ms. Williams. Mr. Forbes votes no.

1438 Chairman Goodlatte. Gentleman from Texas?

1439 Mr. Poe. No.

1440 Ms. Williams. Mr. Poe votes no.

1441 Chairman Goodlatte. Has every member voted who wishes

1442 to vote? Gentleman from Puerto Rico?

1443 Mr. Pierluisi. Yes.

1444 Ms. Williams. Mr. Pierluisi votes yes.

1445 Chairman Goodlatte. The clerk will report.

1446 Ms. Williams. Mr. Chairman, 12 members voted aye, 20

1447 members voted no.

1448 Chairman Goodlatte. The amendment is not agreed to.

1449 Are there further amendments? What approach is the

1450 gentleman from New York seeking?

1451 Mr. Nadler. Parliamentary inquiry, please?

1452 Chairman Goodlatte. Gentleman will state his

1453 parliamentary inquiry.

1454 Mr. Nadler. Mr. Chairman, has this committee, in its

1455 history, ever voted, or approved, I should say, a

1456 codification bill on a party line vote?

1457 Chairman Goodlatte. The chair does not have that

1458 information at his fingertips.

1459 Mr. Nadler. Thank you.

1460 Chairman Goodlatte. A reporting quorum being
1461 represent, the question is on the motion to report the bill,
1462 H.R. 2834, favorably to the House.

1463 Those in favor will say aye.

1464 Those opposed, no.

1465 The ayes have it. The bill is ordered reported
1466 favorably. A recorded vote is requested. The clerk will
1467 call the roll.

1468 Ms. Williams. Mr. Goodlatte?

1469 Chairman Goodlatte. Aye.

1470 Ms. Williams. Mr. Goodlatte votes aye.

1471 Mr. Sensenbrenner?

1472 [No response.]

1473 Mr. Smith?

1474 [No response.]

1475 Mr. Chabot?

1476 Mr. Chabot. Aye.

1477 Ms. Williams. Mr. Chabot votes aye.

1478 Mr. Issa?

1479 Mr. Issa. Aye.

1480 Ms. Williams. Mr. Isa votes aye.

1481 Mr. Forbes?

1482 Mr. Forbes. Aye.

1483 Ms. Williams. Mr. Forbes votes aye.

1484 Mr. King?

1485 Mr. King. Aye.

1486 Ms. Williams. Mr. King votes aye.

1487 Mr. Franks?

1488 [No response.]

1489 Mr. Gohmert?

1490 Mr. Gohmert. Aye.

1491 Ms. Williams. Mr. Gohmert votes aye.

1492 Mr. Jordan?

1493 [No response.]

1494 Mr. Poe?

1495 Mr. Poe. Yes.

1496 Ms. Williams. Mr. Poe votes yes.

1497 Mr. Chaffetz?

1498 Mr. Chaffetz. Aye.

1499 Ms. Williams. Mr. Chaffetz votes aye.

1500 Mr. Marino?

1501 Mr. Marino. Yes.

1502 Ms. Williams. Mr. Marino votes yes.

1503 Mr. Gowdy?

1504 Mr. Gowdy. Yes.

1505 Ms. Williams. Mr. Gowdy votes yes.

1506 Mr. Labrador?

1507 Mr. Labrador. Yes.

1508 Ms. Williams. Mr. Labrador votes yes.

1509 Mr. Farenthold?

1510 Mr. Farenthold. Aye.

1511 Ms. Williams. Mr. Farenthold votes aye.

1512 Mr. Collins?

1513 Mr. Collins. Aye.

1514 Ms. Williams. Mr. Collins votes aye.

1515 Mr. DeSantis?

1516 Mr. DeSantis. Aye.

1517 Ms. Williams. Mr. DeSantis votes aye.

1518 Ms. Walters?

1519 Ms. Walters. Aye.

1520 Ms. Williams. Ms. Walters votes aye.

1521 Mr. Buck?

1522 Mr. Buck. Aye.

1523 Ms. Williams. Mr. Buck votes aye.

1524 Mr. Ratcliffe?

1525 Mr. Ratcliffe. Yes.

1526 Ms. Williams. Mr. Ratcliffe votes yes.

1527 Mr. Trott?

1528 Mr. Trott. Yes.

1529 Ms. Williams. Mr. Trott votes yes.

1530 Mr. Bishop?

1531 Mr. Bishop. Aye.

1532 Ms. Williams. Mr. Bishop votes aye.

1533 Mr. Conyers?

1534 Mr. Conyers. No.

1535 Ms. Williams. Mr. Conyers votes no.
1536 Mr. Nadler?
1537 Mr. Nadler. No.
1538 Ms. Williams. Mr. Nadler votes no.
1539 Ms. Lofgren?
1540 Ms. Lofgren. No.
1541 Ms. Williams. Ms. Lofgren votes no.
1542 Ms. Jackson Lee?
1543 [No response.]
1544 Mr. Cohen?
1545 Mr. Cohen. No.
1546 Ms. Williams. Mr. Cohen votes no.
1547 Mr. Johnson?
1548 Mr. Johnson. No.
1549 Ms. Williams. Mr. Johnson votes no.
1550 Mr. Pierluisi?
1551 [No response.]
1552 Ms. Chu?
1553 Ms. Chu. No.
1554 Ms. Williams. Ms. Chu votes no.
1555 Mr. Deutch?
1556 Mr. Deutch. No.
1557 Ms. Williams. Mr. Deutch votes no.
1558 Mr. Gutierrez?
1559 Mr. Gutierrez. No.

1560 Ms. Williams. Mr. Gutierrez votes no.
1561 Ms. Bass?
1562 [No response.]
1563 Mr. Richmond?
1564 [No response.]
1565 Ms. DelBene?
1566 Ms. DelBene. No.
1567 Ms. Williams. Ms. DelBene votes no.
1568 Mr. Jeffries?
1569 Ms. Jeffries. No.
1570 Ms. Williams. Mr. Jeffries votes no.
1571 Mr. Cicilline?
1572 Mr. Cicilline. No.
1573 Ms. Williams. Mr. Cicilline votes no.
1574 Mr. Peters?
1575 Mr. Peters. No.
1576 Ms. Williams. Mr. Peters votes no.
1577 Chairman Goodlatte. The gentleman from Arizona?
1578 Mr. Franks. Aye.
1579 Ms. Williams. Mr. Franks votes aye.
1580 Chairman Goodlatte. The gentleman from Puerto Rico?
1581 Mr. Pierluisi. No.
1582 Ms. Williams. Mr. Pierluisi votes no.
1583 Chairman Goodlatte. Has every member voted who wishes
1584 to vote? Clerk will report. Make a motion.

1585 Ms. Williams. Mr. Chairman, 20 members voted aye, 13
1586 members voted no.

1587 Chairman Goodlatte. And the ayes have it. The bill is
1588 ordered reported favorably to the House. Members will have
1589 2 days to submit views. What purpose does gentleman from
1590 New York seek recognition?

1591 Mr. Nadler. Mr. Chairman, I move to amend my remarks
1592 earlier to delete the word dishonest and replace it with the
1593 word misleading.

1594 Chairman Goodlatte. Without objection, that change
1595 will be made.

1596 Mr. Nadler. Thank you.

1597 Chairman Goodlatte. This concludes our business for
1598 today. Thanks to all of our members for attending, and the
1599 markup is adjourned.

1600 [Whereupon, at 11:45 a.m., the committee adjourned
1601 subject to the call of the chair.]

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