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MARKUP ON:

H.R. 4768, THE "SEPARATION OF POWERS RESTORATION ACT OF 2016"

Wednesday, June 8, 2016

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

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

Present: Representatives Goodlatte, Smith, Chabot, Issa, Forbes, Franks, Gohmert, Jordan, Chaffetz, Marino, Labrador, Farenthold, Collins, DeSantis, Buck, Ratcliffe, Trott, Bishop, Conyers, Jackson Lee, Cohen, Johnson, DelBene, Cicilline, and Peters.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director/Chief Counsel; Zachary Somers, Parliamentarian & General Counsel; Daniel Flores,

Counsel, Subcommittee on Regulatory Reform, Commercial and Antitrust Law; Alley Adcock, Clerk; Danielle Brown, Minority Parliamentarian and Chief Legislative Counsel; Aaron Hiller, Minority Chief Oversight Counsel; Joe Graupensperger, Minority Chief Counsel, Subcommittee on Crime, Terrorism, Homeland Security and Investigations; and Veronica Eligan, Minority Professional Staff.

Chairman Goodlatte. Good morning. The Judiciary Committee will come to order. And without objection, the chair is authorized to declare a recess of the committee at any time. Pursuant to notice, I now call up H.R. 4768 for purposes of markup and move that the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Adcock. H.R. 4768, to amend title 5, United States Code, with respect to the judicial review of agency interpretations of statutory and regulatory provisions.

[The bill follows:]

********** INSERT 1 **********

Chairman Goodlatte. Without objection, the bill is considered as read and open for amendment at any point, and I will begin by recognizing myself for an opening statement.

The modern Federal administrative state is an institution unforeseen by the Framers of our Constitution, and rapidly mushrooming out of control. The Separation of Powers Restoration Act of 2016 takes square aim at one of the biggest roots of this problem, the Chevron doctrine, under which Federal courts regularly defer to regulatory agencies' self-serving interpretations of the statutes that they themselves administer.

Similarly, the bill takes on the related Auer doctrine, under which courts defer to agencies' interpretations of their own regulations. In perhaps the most famous of the Supreme Court's early decisions, Marbury v. Madison, Chief Justice Marshall declared for a unanimous court that, "It is emphatically the province and duty of the judicial department to say what the law is."

Since the Chevron doctrine allows judges to evade interpreting the law, instead to defer to agencies' interpretations, one must ask is Chevron faithful -- pardon me -- to Marbury and the separation of powers?

In the Administrative Procedure Act of 1946, often

called the Constitution of Administrative Law, Congress provided for judicial review of agency actions in terms that were plain and direct. It stated that the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. That standard is consistent with Marbury and the separation of powers. But since Chevron allows judges to escape interpreting the statutory provisions themselves, one must ask, is Chevron unfaithful, not only to Marbury and the separation of powers, but also to the Administrative Procedure Act?

These are not just academic questions. They are fundamental questions that go to the heart of how our government works and whether the American people can still control it. Judicial deference under Chevron weakens the separation of powers, threatening liberty. It bleeds out of the judicial branch power to interpret the law, transfusing that power into the executive branch; and it tempts Congress to let the hardest work of legislating bleed out of Congress and into the executive branch, since Congress knows judges will defer to agency interpretations of ambiguities and gaps in statutes Congress did not truly finish.

This leads us down the dangerous slope James Madison warned against in Federalist 47, when he said the accumulation of all powers, legislative, executive, and judiciary in the same hands: "that may justly be pronounced

the very definition of tyranny."

The Separation of Powers Restoration Act of 2016 is timely, bold legislation, directed straight at stopping our slide down that dangerous slope. In one fell swoop, it restores the separation of powers by legislatively overturning the Chevron doctrine and the related Auer doctrine. This is reform that we must make reality for the good of the people.

I want to thank Representative Ratcliffe for his introduction of this important legislation. I thank subcommittee Chairman Marino for his work on the bill in the subcommittee, and I thank all of the bill's co-sponsors. I urge passage of the bill. At this time it is my pleasure to recognize the ranking member, the gentleman from Michigan, Mr. Conyers, for his opening statement.

[The statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Conyers. Thank you so much, chairman. Members of the committee, H.R. 4768, the Separation of Powers Restoration Act, would eliminate judicial deference to agencies, and require Federal courts to review all agency rulemakings and interpretations of statutes on a de novo basis.

As a result, the bill would empower a judge to override the determinations of agency experts, and to substitute his or her judgment, regardless of the judge's technical knowledge and understanding of the underlying subject matter. This legislation, in my view, is harmful for several reasons.

To begin with, 4768 would make the Federal rulemaking process even more time consuming and more costly. This process is already severely ossified. As the Nation's leading administrative law scholars observed, agency rulemaking is hampered by many burdens imposed by both the courts and Congress alike.

By eliminating any deference to agencies, H.R. 4768 would exacerbate this problem by forcing agencies to adopt even more detailed factual records and explanations, which would further delay the finalization of critical life-saving

regulations.

We are talking about regulations that protect the quality of the air we breathe, the water we drink, and the food we consume. Slowing down the rulemaking process means that rules intended to protect the health and safety of American citizens will take longer to promulgate and become effective, thereby putting us all at risk.

And H.R. 4768 could also have the perverse effect of undermining agency accountability and transparency by encouraging clandestine rulemaking through civil enforcement actions, for instance.

I am also concerned that 4768 will deter public participation in the rulemaking process. As the Congressional Research Service, non-partisan, has observed, public participation in agency decision-making is highly sensitive to cost and delay. By imposing greater scrutiny of agency rulemaking, the bill will skew the fact-finding process in favor of those with significant resources. Large corporate interests, devoted only to maximizing profits for the benefit of their shareholders, already have the edge with their vast resources to weaken regulatory standards by burying an agency with paperwork demands and litigation.

Rather than giving more opportunities for corporate interests to prevail, we should be evaluating ways to ensure that the voices of the public have a greater role in the

rulemaking process. And finally, H.R. 4768 would encourage judicial activism. What do I mean by that? By eliminating judicial deference, the bill would effectively empower the courts to make public policy from the bench, even though they may lack the specialized expertise that agencies possess.

Although the Supreme Court has had numerous opportunities to expand judicial review of rulemaking, the court has rejected this approach in recognition of the fact that generalist courts simply lack the subject matter expertise of agencies, are politically unaccountable, and should not engage in making substantive determinations from the bench.

It is somewhat ironic that some of those who have long decried judicial activism would now support facilitating a greater role for the judiciary in agency rulemaking. So, given these concerns and others presented by the bill, I accordingly urge you to join with me in opposing H.R. 4768. I thank the chairman and return any unused time.

[The statement of Mr. Conyers follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. The chair thanks the gentleman. For what purpose does the gentleman from Texas seek recognition?

Mr. Ratcliffe. Move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Ratcliffe. Thank you, Chairman. You know, when our Founding Fathers established this great Nation, they instituted a delicate balance of power to ensure a fair and long-standing system of governance. They wisely recognized that if too much power was concentrated in any one branch, that tyranny would soon follow.

That is why early in life, every student in America learns about the three coequal branches of government that our Founders intended; and they learn that the Constitution solely tasks Congress as the legislative branch, with making the laws. The executive is tasked with enforcing the laws,

the judiciary with resolving disagreements about the meaning of these laws.

But if we fast-forward to 2016, unfortunately, things look very different. There is an uninvited fourth party now on the scene, the unelected bureaucrat, working for executive agencies. These bureaucrats take laws passed by Congress, interpret them to mean whatever they want, and use them to issue sweeping regulations under the guise of executing the laws. And it is the American people who ultimately lose out by this circumvention of our Constitution.

Now, Congress is partly to blame. We have delegated too much of our lawmaking authority to Federal agencies, allowing the executive branch, under both political parties, to expand its role. This practice of administrative agencies engaging in de facto law-making has been exacerbated by a 1984 Supreme Court case, Chevron v. Natural Resources Defense Council.

The so-called Chevron doctrine that ensued says the courts defer to agencies' interpretation of the law as long as they are deemed reasonable. This low bar has given the agencies the liberty to play fast and loose with the laws that have been passed by Congress in order to achieve their own political goals.

In the years following the Chevron decision, court

deference to agencies has certainly proved to be politically expedient for Republican presidents and Democrat presidents alike. The problem is, this has come at the expense of the separation of powers, and at the neglect of the boundaries that are set forth in our Constitution. Chevron basically allows agencies to grade their own papers. This is totally unacceptable, and it has to be stopped.

We have to shift the balance of power back to what is clearly defined in our Constitution. Let me be clear. This is not a Republican or Democrat issue. This is not about partisan politics. This is about the three branches of government respecting the lanes of constitutional authority. In Congress, we have had vigorous and often politically-charged policy debates on issues ranging from healthcare, education, National security, and Federal spending. This bill does not address any of those.

Instead, it addresses and restores the separation of powers to ensure that these rightful policy debates manifest themselves in laws that follow the confines of the Constitution, not a process that rubber-stamps its abuse. Because this is a constitutional issue, it is something that all American can agree on, because when the Constitution is trampled on, America loses.

That is why I am grateful for the opportunity to introduce this bill, the Separation of Powers Restoration

Act. This bill clarifies the judicial branch, not unelected bureaucrats, should settle any disputes about congressional intent. It restores the proper separation of powers that has been eroded by the unintended consequences of the Chevron decision.

My colleagues on both sides of the aisle may not always agree with me about agency actions which are good -- which are bad. But if you agree that having three coequal branches of government is vital and essential to preserving democracy, then you should support this bill. I thank you and yield back.

Chairman Goodlatte. The chair thanks the gentleman. I now recognize myself for purposes of offering an amendment in the nature of a substitute. Does the gentleman from Georgia seek recognition?

Mr. Johnson. I do.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman. Mr. Chairman, I rise in opposition to this legislation. Judicial review of final agency action is a hallmark of administrative law and is critical to ensure that agency action does not harm or adversely affect the public.

But as the Supreme Court held in Chevron v. Natural Resources Defense Council, reviewing courts may only

invalidate an agency action when it violates a constitutional provision, or when an agency exceeds its statutory authority as clearly expressed by Congress.

For the past 30 years, this seminal decision has required deference to the substantive expertise and political accountability of Federal agencies. Judicial deference is borne from principles of political accountability and separation of powers.

As the court explained in Chevron, "Federal judges who have no constituency have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones. Our Constitution vests such responsibilities in the political branches."

H.R. 4768, the so-called Separation of Powers Restoration Act of 2016, would eliminate this long-standing tradition of judicial deference to agencies' interpretation of statutes and rules by requiring courts to review all agency interpretations of statutes and rules on a de novo basis -- de novo meaning there would be a trial, and the court would decide, after hearing evidence on the merits of a particular code and/or a particular rule. A very cumbersome process.

This misguided legislation is not the majority's first

attempt to come up the rulemaking process through enhanced judicial review. Since the 112th Congress, a number of de-regulatory bills that we have considered, such as H.R. 185, the Regulatory Accountability Act, would require generalist courts to supplant the expertise and political accountability of agencies in the rulemaking process with their own judgments.

Compare this approach with other de-regulatory bills passed this Congress that would greatly diminish judicial review over deregulatory actions by dramatically shortening the statute of limitations for judicial review, sometimes to just 45 days.

In other words, the majority is trying to gut rulemaking in this Nation by Federal agencies. It wants to do it in any way that it can: first, by closing the courthouse doors if it benefits their interest; or, on the other hand, if it benefits their interest, they want to gum up the process with a judicial de novo hearing. It is really threatening to impose years of delay, untold costs on the public, and it hurts the health, safety, and wellbeing, and welfare of the people of this country.

When it benefits the public or our environment, Republican legislation closes the courthouse door through sweeping restrictions on the court's ability to protect public health or the environment. When it benefits

corporate interests, Republican legislation heightens scrutiny of agency rulemaking, threatening to impose years of delay and, again, untold costs. That is exactly what this legislation would do.

These proposals, which are transparently the design of the donor class to minimize their exposure to legal accountability, are just another example of how some not only want the fox to guard the henhouse, they want to make sure that the fox constructs the henhouse in a way that has a trap door available for him.

H.R. 4768 is just more of the same type of impediment to protecting health, welfare, and safety of Americans. And in closing, I strongly oppose this bill and urge that my colleagues do the same. And with that, I yield back.

Chairman Goodlatte. The chair thanks the gentleman. The chair would advise members of the committee that we are going to recognize the gentleman from Pennsylvania, the subcommittee chairman, for his statement, and then we are going to recess for the prime minister of India's address to the Joint Session of Congress.

We will reconvene at 1:00 and move forward then. And then we will try to also get this done before the second series of votes late afternoon. That is our plan at this point. So, if you all cooperate and show up back up at 1:00, we will get that done. But at this time, the chair

recognizes the gentleman from Pennsylvania for 5 minutes.

Mr. Marino. I thank the chairman, and I will be very brief. I thank Chairman Goodlatte and Congressman Radcliffe for this piece of legislation. I am amazed but not surprised that my Democrat colleagues so often use the word "transparency" or variations of it, as though they invented it. I assume that, as we all have seen, now on almost a weekly basis, how the Obama administration has been anything but transparent.

Obviously, the IRS is not transparent. The State Department is not transparent. EPA is not transparent. The Justice Department is not transparent. And last but not least, the White House, itself, is not transparent -- just to name a few. They delete information from computers. They lose it. They do not follow subpoenas when we asked information to be turned over to us. And again, that is just a small example of what they mean by transparency.

Therefore, this legislation is required to preserve the separation of powers, and I yield back.

Chairman Goodlatte. The chair thanks the gentleman, and the committee will stand in recess until 1:00 p.m.

[Recess.]

Chairman Goodlatte. Before we last recessed, we were considering H.R. 4768. And I now recognize myself for purposes of offering an amendment in the nature of a

substitute. And the clerk will report the amendment.

Ms. Adcock. Amendment in the nature of a substitute to H.R. 4768, offered by Mr. Goodlatte of Virginia. Strike all that follows --

[The amendment of Chairman Goodlatte follows:]

********** INSERT 2 **********

Chairman Goodlatte. Without objection, the amendment in the nature of a substitute is considered as read and I will recognize myself for an opening statement. On May 17, 2016, the Sub-Committee on Regulatory Reform Commercial and Anti-Trust Law held a productive hearing on H.R. 4768, the Separation of Powers Restoration Act of 2016. This substitute amendment refines and improves H.R. 4768 based on the expert feedback received at that hearing.

The amendment makes three principal changes. First, it adds language to make crystal clear that under the bill, judges must stop deferring to administrative agency interpretations, not only in cases brought under the Administrative Procedures Act's judicial review chapter, but also under the various so-called mini-APA regimes that appear elsewhere in the U.S. Code. These include, for example, the Clean Air Act's mini-APA codified at 42 U.S.C. 7607.

In addition, the long title of the bill is revised to make clear that the bill's true intent is not to modify the substance of current APA language that supports de novo review, but to clarify that language so the courts stop ignoring it.

Lastly, the amendment modifies the ordering and terminology of the bill's provisions to further clarify the bill. The amendment strengthens the bill, and I urge my

colleagues to support it. At this time, the chair recognizes the gentleman from Georgia, Mr. Johnson, for his statement in response.

[The statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Johnson. Thank you, Mr. Chairman. I rise in opposition to the amendment in the nature of a substitute. It appears that this amendment is intended to clarify that H.R. 4768 would apply in all instances unless otherwise expressly provided by statute. And it specifies that the de novo standard review applies to all questions pertaining to the interpretation of constitutional, statutory, and regulatory provisions. Unfortunately, this amendment does nothing to address the overarching concerns that I have with H.R. 4768, as I expressed in my opening statement.

In fact, this amendment may raise additional concerns. This amendment is effectively a super mandate that will undermine areas where Congress has clearly intended courts to defer to agencies' reasonable statutory interpretations, such as under the Clean Air Act. Furthermore, the amendment may also have the effect of creating needless confusion and uncertainty surrounding legislative intent.

For example, at the legislative hearing on this bill, the majority's own witness, Professor Jack Beermann, warned that such mandates could be very complicated, as it would make it difficult for Congress to indicate situations in which it intends deference to agency statutory construction. Given these serious concerns, I must oppose the amendment and restate my opposition to this misguided legislation.

And with that, I yield back.

Chairman Goodlatte. The chair thanks the gentleman. Are there any amendments to the amendment?

Mr. Johnson. Mr. Chairman, I do have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 4768 offered by Mr. Johnson. Page 1, Line 9 --

[The amendment of Mr. Johnson follows:]

********** INSERT 3 **********

Chairman Goodlatte. Without objection, the amendment is considered as read and the gentleman is recognized for 5 minutes on his amendment.

Mr. Johnson. Thank you, Mr. Chairman. My amendment exempts from the bill rules issued by agencies pursuant to their expressed statutory authority. H.R. 4768 is a misguided and dangerous bill that simply does not comprehend the well-settled principle that courts must always give effect to clearly expressed congressional intent under current law.

H.R. 4768 would dismantle decades of judicial practice and establish generalist courts as super-regulators, with sweeping authority over the outcome, and perhaps even substance of agency rulemaking, even where Congress expressly grants authority for agency action.

At the subcommittee hearing on the bill, the majority's own witness, Professor Jack Beermann, testified that the bill may "go too far," by disabling, "reviewing courts from taking into account the views of an administering agency on questions of statutory interpretation."

Professor Beermann expressed additional concerns that H.R. 4768 may frustrate Congress's intent for highly technical areas in which Congress expects an agency to apply

its expertise. Furthermore, as Professor Beermann testified, in areas where Congress expressly grants authority for an agency to undertake an action, such as defining a term, H.R. 4768 would represent a fundamental shift in authority while making it difficult for Congress to allow deference where appropriate.

The late Justice Scalia held a similar view on judicial deference. Writing for the majority in City of Arlington v. FCC, Justice Scalia argued that requiring a de novo review of every agency rule without any standards to guide this review, would result in an "open-ended hunt for congressional intent," rendering the binding effect of agency rules unpredictable and eviscerating, "the whole stabilizing purpose of Chevron. The excessive agency power that the dissent fears would be replaced by chaos."

In recognition of these concerns, my amendment would exempt from the bill agency rules promulgated in response to a clear an unequivocal mandate from Congress. Without my amendment, and notwithstanding the endearing title of the bill, H.R. 4768 would create countervailing separation of powers concerns by casting aside Congress' role in shaping agency rules in favor of judicial intervention.

As a group of our Nation's leading administrative law experts have observed, "H.R. 4768 is disruptive to the careful equilibrium that the full body of administrative law

doctrine seeks to achieve. Administrative law is not perfect, but this bill tilts too strongly in favor of judicial power at the expense of the other two branches." In other words, the likely outcome of enacting this unwise proposal would be more power in the hands of single branch of government that is unelected and unaccountable to the public.

This policy concern is the very foundation of the Chevron doctrine. As the court noted in Chevron, judges, "are not experts in the field and are not part of either political branch of the government."

In closing, H.R. 4768 is not a new idea. Congress considered and rejected a similar proposal over three decades ago. It was not a good idea then and it is a worse idea now. I urge my colleagues to support my amendment to oppose this dangerous bill and yield back the balance of my time.

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

Mr. Ratcliffe. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Ratcliffe. Mr. Chairman, I oppose this amendment. The gentleman from Georgia's amendment carves out of the bill agency actions based on statutes that expressly grant

agency discretion. But as agencies seek to act within areas of statutory discretion, courts are more than able to determine responsibly whether the agencies have, in fact, acted within their discretion.

Furthermore, I think it is imperative that courts no longer defer to agencies in defining as a matter of statutory interpretation precisely what the limits of that discretion are. Otherwise, self-serving, unelected, and unaccountable bureaucrats will continue to interpret statutes to empower agency overreach, and the courts will continue to stand idly by and let them get away with it. I urge my colleagues to oppose the amendment and I yield back.

Chairman Goodlatte. Thank you very much. For what purpose does the gentlewoman from Washington seek recognition?

Ms. DelBene. I move to strike the last word.

Chairman Goodlatte. The gentlewoman is recognized for 5 minutes.

Ms. DelBene. Thank you, Mr. Chair. I rise in support of Mr. Johnson's amendment. Demand for wireless broadband service is growing exponentially as society becomes increasingly dependent on mobile devices, only becoming more dependent with the growth of the Internet of things. And some have estimated that mobile data use will multiply by 10 times in just the next few years; and experts agree that the

4G network is going to fall short.

The FCC has worked to make progress in meeting demand, but we still have a long way to go to 5G. There have been bipartisan efforts in Congress to direct the FCC to initiate rulemaking on higher frequency bands and develop a national plan for opening up more unlicensed spectrum.

We have even worked in a bipartisan way to cut bureaucratic red tape so we can speed up deployment. But innovation and the development of 5G would be thwarted under this legislation. While Congress is pushing FCC in the right direction, it generally is and should be left to the agency to figure out the highly technical aspects of implementing these proposals.

It is not an unintentional drafting error or bad drafting when Congress directs the FCC to initiate rulemaking. Rather, it is responsible policymaking to ensure technical experts can implement our policy objectives.

As spectrum increasingly becomes critical infrastructure, it is important that we support agency action that will help us maintain a competitive edge in the global economy. And when an agency is directed by Congress to reduce red tape and improve our technology infrastructure, it should not be hampered by misguided legislation like this.

However exceptional our judges across the country may be, the courts are not equipped to second guess the FCC's technical experts, nor should they. This is not their role, and we should not undermine the Supreme Court's wisdom with this legislation. And I urge my colleagues to support the amendment, and I yield back.

Chairman Goodlatte. The chair would advise the members that we do not have a working quorum at the moment, so votes are pending. The committee will stand in recess until after this vote series. We will come back immediately. We will vote on this amendment and move on to other amendments, and urge your colleagues to come back with you. Thank you very much. The committee stands in recess.

[Recess.]

Mr. Johnson. Mr. Chairman?

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

Mr. Johnson. Mr. Chairman, I would like to submit for the record a letter to Chairman Goodlatte, and Ranking Member Conyers from Earth Justice opposing H.R. 4768, a letter from a group of administrative law experts at the Center for Progressive Reform opposing 4768; a letter from the Coalition for Sensible Safeguards which includes 150 labor, consumer health and safety, financial reform, faith, environmental, and scientific integrity groups who oppose

H.R. 4768; and lastly, a blog posting by Public Knowledge, which opposes H.R. 4768 -- for the record without objection.

Chairman Goodlatte. Without objection, they will be made a part of the record, and [inaudible].

Mr. Johnson. Mr. Chairman, I would ask for a recorded vote.

[inaudible]

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

[No response.]

Mr. Issa?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Mr. Forbes?

Mr. Forbes. No.

Ms. Adcock. Mr. Forbes votes no.

Mr. King?

[No response.]

Mr. Franks?

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Chaffetz?

[No response.]

Mr. Marino?

[No response.]

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Farenthold?

[No response.]

Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

[No response.]

Ms. Walters?

[No response.]

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Trott?

Mr. Trott. No.

Ms. Adcock. Mr. Trott votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mr. Conyers?

[No response.]

Mr. Nadler?

[No response.]

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Adcock. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

Ms. Adcock. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

Ms. Chu?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Ms. DelBene?

Ms. DelBene. Aye.

Ms. Adcock. Ms. DelBene votes aye.

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Peters?

Chairman Goodlatte. The gentleman from Pennsylvania?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Adcock. Mr. Chairman, 5 members voted aye, 10 members voted no.

Chairman Goodlatte. And the amendment is not agreed to. For what purpose does the gentleman from Rhode Island seek recognition?

Mr. Cicilline. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 4768 offered by Mr. Cicilline. Page 1, Line 9, insert after extent necessary the following: "and accept as otherwise provided in this section" --

Chairman Goodlatte. Without objection, the amendment is considered as read and --

Mr. Ratcliffe. Mr. Chairman?

Chairman Goodlatte. The gentleman from Texas is recognized.

Mr. Ratcliffe. I would like to reserve a point of order.

Chairman Goodlatte. Point of order reserved, and the gentleman from Rhode Island is recognized for 5 minutes on

his amendment.

Mr. Cicilline. Thank you Mr. Chairman. My amendment would exempt rules made by the Food and Drug Administration pertaining to consumer safety from the heightened judicial review requirements of this legislation. This bill would effectively eliminate judicial deference, empowering activist courts to substitute their policy preferences for the specialized expertise of Federal agencies. Ultimately, it would bring the agency rulemaking process to a halt, incentivizing judges to rewrite current regulations and introducing uncertainty into the effort to make new ones.

In the more specific context of the FDA, it would hinder the agency's efforts to protect American consumers. Every year one out of six people in the United States, roughly 48 million people, suffer from food borne illness. More than 100,000 Americans are hospitalized, and 3,000 die.

In economic terms, these illnesses impose a cost of $77 billion upon the U.S. economy. My amendment would preserve the ability of the FDA to react quickly to sudden crises in food or drug safety, saving lives and money in the process. It would preserve the ability of the agency to define dangerous levels of toxins, and protect our drinking water. And it recognizes the importance of the role that the FDA serves and the expertise that they provide on a daily basis to protect the health and wellbeing of our constituents. I

urge my colleagues to support this amendment. And with that, I yield back, Mr. Chairman.

Chairman Goodlatte. The chair recognizes himself in opposition to the amendment. The amendment carves out of the bill consumer safety regulations from the Food and Drug Administration. This is yet another important area of regulation, and it is yet another area subject to bureaucratic overreach and unelected, unaccountable bureaucrats' erroneous whims. We must strengthen the court's ability to check overreaching and erroneous statutory and regulatory interpretations, not weaken it as the amendment would do. I urge my colleagues to oppose the amendment.

For what purpose does the gentleman from Tennessee seek recognition?

Mr. Cohen. To strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cohen. And I just want to ask the chair a question. You were saying this would avoid whims and caprices of the agency. Is not there a process now that -- it makes no sense? The regulation or the order that the courts can overrule it?

Chairman Goodlatte. Well, if the gentleman would yield.

Mr. Cohen. I will.

Chairman Goodlatte. What this deals with is a presumption that the Supreme Court adopted, saying that, because Congress was silent on this issue, they would presume that the Congress wanted the courts to defer to the agency bureaucrats' interpretation of the legislation passed. And this legislation makes it clear that the courts should not do that, and the courts should base their decision looking at the clear language of the statute, and not based upon a bureaucrat's interpretation of that statute.

Mr. Cohen. But, if there is a presumption that this interpretation is right, if it is whimsical or capricious, would there not be an ability to overlook that presumption? The presumption falls at a certain level, does it --

Chairman Goodlatte. Oh, absolutely. Yeah.

Mr. Cohen. Yeah.

Chairman Goodlatte. No question about that. What this says is -- to the court, "Do not take a look at one of the other branch's point of view on this issue. Take a look at it from the standpoint of the court itself."

Mr. Cohen. I yield. Thank you sir.

Chairman Goodlatte. For what purpose does the gentleman from Texas --

Mr. Radcliffe. Mr. Chairman, I would just like to

withdraw my point of order with respect to the gentleman's amendment, and yield back.

Chairman Goodlatte. The order is withdrawn. The question occurs on the amendment.

Mr. Johnson. Mr. Chairman?

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

Mr. Johnson. I ask to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson. Thank you Mr. Chairman. When it comes to the question of whether or not an unelected bureaucrat trained and steeped in the intricacies of the particular subject matter that the code, or regulation, or rule addresses, is in a much better position to make the call than an unelected judge with lifetime tenure.

This amendment I speak in support of, it would exempt from the bill any rule issued by the Food and Drug Administration that pertains to consumer safety. This amendment is necessary to safeguard the public health and safety of American consumers from the bill's burdensome, regulatory framework, which would significantly delay or prevent critical agencies, including the FDA, from protecting public health and safety.

Just last week the FDA finally implemented the

bipartisan FDA Food Safety Modernization Act, which was passed by Congress and signed into law by President Obama in 2011, representing the most substantial reform to food safety in over 70 years. With the legislation having been passed in 2011, and the rules finally implemented, if this legislation were to pass, then the rule would be subjected to a time consuming, and also costly litigation process in the courts, already overburdened with work and already understaffed because the Senate, under Republican leadership, refuses to confirm the judges that have been nominated by the President. So, we have judicial gridlock.

We have judicial emergences. And here we are with this legislation seeking to put more work onto an already-overburdened judiciary, and then strap them with the kind of sophisticated rulemaking authority that should be vested in what is referred to on this panel as unelected bureaucrats. But actually, these are hardworking Federal employees who are concerned about their job, doing the best job that they can under the limited funding that Congress appropriates because Congress cannot pass any appropriations bills.

And so, we continue with continuing resolutions, funding at last year's number, when in fact costs are going up. And we are trying to strangle the Federal Government, our Congress -- we just heard from Prime Minister Modi this morning, talking about the aspirations, and ideals, and

investment that he is proposing to make in his country over the next 10 years.

Would it not be something if America decided to invest in its country, in its infrastructure, in its government, in its ability to create and promote prosperity among all people, not just the already wealthy, i.e. the top one percent? Would it not be nice? But, instead, we go about cutting government and then trying to gum up the works of the agencies that protect the health, safety, and wellbeing of Americans.

According to the Center for Disease Control, one in six Americans get sick every year from food borne diseases, or 48 million people a year. Of these, 3,000 die every year from diseases that are largely preventable. Under the authority and clear regulatory framework achieved by the Food safety Modernization Act, the FDA's finalized rules would prevent food-borne illnesses from outbreaking and contaminating produce and other important situations that need protection.

In its letter opposing H.R. 4768, the Coalition for Sensible Safeguards, which represents more than 150 labor, food, and health, safety, and environmental public interest groups, notes that H.R. 4768 will lead to regulatory paralysis, particularly for rules relating to food safety and in that sector.

So, without this amendment, at best, rules protecting the public's food supply would be delayed for months or even years, causing substantial confusion and delay in all agency rulemaking. And at worst, the bill provides generalist courts with unbridled discretion to make substantive determinations concerning agency statutory authority. So, I support the amendment and encourage my colleagues to do the same. And with that, I yield back.

Chairman Goodlatte. The time of the gentleman has expired.

Mr. Issa. Mr. Chairman, could I move to strike the last word?

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Issa. I will be brief. I would like to enter into a short colloquy with the chairman, both you and Mr. Ratcliffe, as authors of the bill. I just want to understand. The last two members on the other side of the aisle seem to doubt the qualifications of the Federal judiciary to adjudicate these cases.

A couple of questions. Currently, does the Federal judiciary not already adjudicate these cases?

Chairman Goodlatte. The Federal judiciary does adjudicate these cases. And in doing so, they have, under the Chevron doctrine, deferred, when there is ambiguity, to

the interpretation given not by the Congress through legislative history, but to the regulatory agency. We are not asking them to do that. We are asking them to look at the plain language of the law and make decisions based thereon rather than having a tilt toward the bureaucracy.

The bureaucracy, as one of the speakers on the other side said, has some expertise in this area. But they are also often -- having come from interest group organizations that lobby that very regulatory agency for the interpretation that they want. And now, they have jobs there and they are definitely interpreting it the way the organizations they used to work for want.

So, we think the better rule here is to tell the judiciary that their assumption that the Congress wants them to look at the bureaucracy's interpretation no longer applies, and that they should look at the plain language of the law and decide it based on that.

Mr. Issa. Thank you. And one quick follow up, Mr. Ratcliffe. As the primary author of the bill, under the current law, if I understand correctly, the judges are trying to understand basically the interpretation of these agencies. Under your bill, will it not be true that they will be looking at the law, which they are more qualified to look at, and not some of the complexities of the interpretation for purposes of size? Will it not simplify

their expertise relative to what they are ruling on?

Mr. Ratcliffe. I absolutely agree. It absolutely will. And that is one of the reasons behind this bill. And I think it is worth pointing out that, in response to one of the comments, these, you know, Article III judges are vetted and confirmed based on their education, training, and experience. No, they are not elected, but they are not simply just hired, like many bureaucrats are.

And so, you know, our Founders set this up intentionally for those in the judicial branch to interpret any ambiguity that we have, and I think that this bill sets us back on the right path.

Mr. Issa. Excellent. I want to thank the chairman and Mr. Ratcliffe for bringing us something that has judges decide what they are qualified to do on, and I object to -- or I will vote no on the amendment, and I yield back.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman from Rhode Island.

All those in favor, respond by saying aye.

Those opposed no.

Being the chair, the noes have it and the amendment is not agreed to.

Mr. Cicilline. Mr. Chairman, I ask for a recorded vote.

Chairman Goodlatte. A recorded vote is requested, and

the clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

[No response.]

Mr. Issa?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Mr. Forbes?

[No response.]

Mr. King?

[No response.]

Mr. Franks?

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Chaffetz?

[No response.]

Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Farenthold?

[No response.]

Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

[No response.]

Ms. Walters?

[No response.]

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Trott?

Mr. Trott. No.

Ms. Adcock. Mr. Trott votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Adcock. Mr. Conyers votes aye.

Mr. Nadler?

[No response.]

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Adcock. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

Ms. Adcock. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

Ms. Chu?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Ms. DelBene?

Ms. DelBene. Yes.

Ms. Adcock. Ms. DelBene votes yes.

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Peters?

[No response.]

Chairman Goodlatte. The gentleman from Virginia?

Mr. Forbes. No.

Ms. Adcock. Mr. Forbes votes no.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Adcock. Mr. Chairman, 6 members voted aye, 10

members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

For what purpose does the gentlewoman from Texas seek recognition?

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

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 4768 offered by Ms. Jackson Lee.

[The amendment of Ms. Jackson Lee follows:]

********** INSERT 4 **********

Ms. Jackson Lee. Mr. Chairman, I ask that the amendment be considered as unanimous consent.

Chairman Goodlatte. Without objection, the amendment is considered as read and the gentlewoman is recognized for 5 minutes on her amendment.

Ms. Jackson Lee. Thank you very much, Mr. Chairman. And it is interesting that I, as we speak, have a markup in Homeland Security. And I wanted to make sure that this amendment was considerate of the responsibilities that the Homeland Security Department has in ensuring the security and safety -- but security -- of the people of the United States.

So, this legislation falls short of that. It would abolish judicial deference to agencies' statutory interpretations in Federal rulemaking and create harmful and costly burdens to the administrative process. Having sat on this committee, and I am saddened to say that -- I have said this before and others -- I have listened to this before, I am sure -- I have seen this legislation before.

H.R. 4768 will shift the scope and authority of judicial review of agency actions away from Federal agencies by amending Section 706 of the Administrative Procedures Act, APA, to require that courts decide all relevant questions of law, including all questions of interpretation of constitutional, statutory, and regulatory provisions on a de novo basis without deference to the agency that promulgated the final rule. And that is, of course, the agency that has held any number of hearings and fact-finding to ensure that this is a provision that is necessary for their administrative and statutory responsibilities.

In particular, I am concerned about the ability for agencies to act in times of imminent danger and the need to protect citizens. Specifically, this is a sweeping and dangerous measure that would jeopardize the ability of the Department of Homeland Security to protect our Nation in times of urgent, an imminent need.

The Jackson Lee Amendment 014, would remedy this flaw in case of a rule made by the Secretary of Homeland Security pertaining to any matter of National security, by requiring the reviewing court to decide all relevant questions of law, interpret constitutional statutory provisions, and determine the meaning or applicability of the terms of an agency action.

As a senior member of the Homeland Security Committee, I understand the many challenges the Department of Homeland Security has, and the many facets of its work. I bring to the attention not only the work that engages visa and border protection, both in the northern and southern border, which is what we happen to be discussing in Homeland Security, but the Transportation Security Administration, the Secret Service, as well as FEMA and natural disasters -- manmade disasters.

The Department is the first line of defense in protecting the Nation and leading recovery efforts from all hazards and threats, which include everything from weapons

of mass destruction to natural disasters. We do not need to be reminded of the heightened state of security we are in now, and the ever-increasing demands imposed upon our government agencies tasked with keeping our borders and citizens safe. The overall mission of DHS is too critical and its function indispensably essential, such that it would be impugned to do anything that will slow down the process that allows DHS to do its job.

We have heard that refrain: "Do your job." And DHS, because of its very unique, particular, and crucial responsibility, needs to be unfettered in doing its job, depending on or based on emergency crisis-oriented work. Now is not the time to undermine or slow the ability of DHS in its ability to address growing threats and active acts of terrorism. Rather than engage in a wasteful and redundant analysis of all of its rules, DHS will be focused on the crucial mission of securing the homeland.

The Jackson Lee Amendment, 014, will keep in place the appropriate and needed expertise and specialized abilities of the Department of Homeland Security to makes rules, regulations necessary for our Nation's security. I would ask my colleagues to consider and support the Jackson Lee Amendment. With that, I yield back.

Chairman Goodlatte. The chair thanks the gentlewoman. For what purpose does the gentleman from Texas seek

recognition?

Mr. Ratcliffe. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Ratcliffe. Mr. Chairman, I oppose the amendment. The amendment from my friend and colleague from Texas, Ms. Jackson Lee, carves out of this bill National security regulations from the Department of Homeland Security. But as we all know, the Department of Homeland Security has a record of significant regulatory overreach. In fact, from my perspective, some of the most egregious and offensive interpretations of congressional intent have occurred by bureaucrats operating at the Department of Homeland Security.

So, we should be strengthening the court's ability to check that, not weakening it, as this amendment would do. Unelected bureaucrats at the Department of Homeland Security are no less influenced by political agendas than bureaucrats at any other Federal agency.

And, again, no area of regulation is so important that we should allow those unelected bureaucrats to avoid the vigorous system of checks and balances that our Framers intended, and that this bill would restore.

So, while I appreciate the spirit in which the gentlelady offers this amendment, I urge my colleagues to

oppose it, and I yield back.

Mr. Conyers. Mr. Chairman?

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

Mr. Conyers. I rise in support of the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Conyers. Thank you, sir. This bill exempts from the bill rules issued by the Department of Homeland Security pertaining to matters of National security. And it is necessary because H.R. 4768's heightened judicial review requirements will stall or sometimes prevent rulemaking by the Department of Homeland Security, which is essential to the Nation's safety.

Effective rulemaking is a critical tool for the Department of Homeland Security to prevent acts of terrorism, among other things. Section 550 of the Department of Homeland Security Appropriations Act authorizes the Department of Homeland Security to promulgate regulations pertaining to the security of high-risk chemical facilities.

Pursuant to this authority, Homeland Security issued the chemical facility anti-terrorism standards regulation back in 2007, which mandated security requirements for over 4,000 high-risk chemical facilities Nationwide. If

released, stole, or sabotaged, chemicals produced at these facilities pose a significant risk to human life and public health.

Homeland Security is currently reviewing public comments on a proposal to expand this rule to make these standards more effective. Once proposed, this rule will concern areas within Homeland Security's technical expertise, such as protecting National security and public health. H.R. 4768 would cause unnecessary paralysis of such rulemaking by permitting a generalist court to nullify Homeland Security's reasonable interpretations of its own statutory authority.

Mr. John Walke, Senior Counsel at National Resource Defense Council, testified at the subcommittee hearing on the bill that this is because 4768 permits the judiciary, and I quote, "to ignore administrative records and expertise, and to substitute its own inexpert views and limited information," end quotation. This form of judicial fiat would empower generalist courts to make these determinations on a de novo basis while reviewing agency action.

This amendment underscores the importance of preserving our system of checks and balances where courts defer to agencies' reasonable statutory interpretations and substantive expertise.

So, I urge that the members carefully consider supporting this amendment, as I am going to do. I thank the --

Ms. Jackson Lee. Will the gentleman yield?

Mr. Conyers. Yes. Of course.

Ms. Jackson Lee. Now, first of all, let me thank the gentleman for his very detailed explanation on the basis of this amendment. And I also want to add, and I think the gentleman said it, so let me say that I would like to reinforce that Section 702 of the APA in its current form subjects agency rulemaking to judicial review for any person suffering legal wrong because of agency action or adversely affected or aggrieved for agency action within the meaning of the relevant statute.

And so, there is relief for those who, for whatever reason, feel offended by the regulatory process of an agency. My amendment suggests that Homeland Security needs a carve-out because of the responsibilities that it has. It is securing the Nation. I would argue that its intent to make sure that we are safe -- secure is the appropriate terminology; we deal with security of the Nation -- and to protect us from terrorism and terrorist acts, along with being prepared for a natural and manmade disasters, warrants the idea that there is a safety net if someone is offended by a particular rulemaking that occurs by the agency.

And the processes that this legislation has immediately subjects Homeland Security to constant review of their efforts to secure the Nation. I ask support of the Jackson Lee amendment, and I yield back. Thank you.

Chairman Goodlatte. The time of the gentleman has expired.

Mr. Conyers. I yield back.

Chairman Goodlatte. The chair thanks the gentleman. The question occurs on the amendment offered by the gentlewoman.

Mr. Johnson. Mr. Chairman?

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson. Mr. Chairman, we have been talking a whole lot about bureaucrats. And it is as if these bureaucrats have no substantive expertise in the field within which they are employed, oftentimes having worked for decades.

And so, these bureaucrats are actually Federal workers. They are human beings. They are our neighbors. They are our friends and relatives. They work in the Federal Government. Yes, they are Federal employees. And yes, they

are bureaucrats, but that does not make them bad. So, a bureaucrat is simply someone who has developed the substantive expertise in a particular field who has risen to a top position and who makes calls after going through the administrative process, which has been carefully constructed, both statutorily and by case law, throughout American jurisprudence.

It is a carefully-constructed and delicately balanced process by which administrative rules are promulgated. And the public has the ability to weigh in on these rules through the notice and comment period, oftentimes.

And then, on occasion, there are administrative -- there is administrative litigation that takes place. And then a decision is made. Now what this legislation would do is to just scuttle all of that, and replace it with a de novo review in a Federal court, putting a judge in a position to substitute his or her judgment for that of the expertise of an agency bureaucrat, as they are called here, derisively.

And what it is, is harmful for the American people. And it is an unelected judge with lifetime tenure that makes the call, who is not amenable to the people, not politically connected, disassociated from politics and from the people -- the decision-making process of politics; and that inures to only the benefit of those who the judge, in his or her

esteemed wisdom, decides should be the winners or losers. That is not the way that our administrative process should operate.

I rise in support of the Jackson Lee Amendment, and I would ask my colleagues to think carefully about what they are doing by supporting this legislation and opposing this amendment, which is only going to protect the health, safety, and well-being of the people. With that, I will --

Ms. Jackson Lee. Will the gentleman yield for just a moment?

Mr. Johnson. I will yield to the gentlelady from Texas.

Ms. Jackson Lee. I will take just a moment. It is not too long ago that we know this Nation faced a horrific tragedy in 9/11. I have indicated that anyone offended by the regulatory scheme or regulatory efforts of the Homeland Security department has a process under Section 702 of the Administrative Procedures Act.

In this instance, when urgency may be the call of the day to protect the American people, why would we then subject the reason and the expertise of the department while it is trying to secure the American people, to a de novo review by a judge -- who I have great respect for? I certainly have great respect and I have heard some of our presidential candidates acknowledge.

But what I would say that that is a de novo review, which would take away the factual basis upon why we are making decisions to secure airports, to protect the border. And so, I would ask my colleagues to support the Jackson Lee Amendment. With that, I yield back to the gentleman. Thank you.

Mr. Johnson. And I yield back the balance of my time.

Chairman Goodlatte. The question occurs on the amendment offered by the gentlewoman from Texas.

All those in favor, respond by saying aye.

Those opposed no.

The noes have it.

Ms. Jackson Lee. Roll call.

Chairman Goodlatte. A roll call is requested, and the clerk will call the roll.

Ms. Jackson Lee. Thank you.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

[No response.]

Mr. Issa?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Mr. Forbes?

[No response.]

Mr. King?

[No response.]

Mr. Franks?

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Chaffetz?

[No response.]

Mr. Marino?

[No response.]

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Farenthold?

[No response.]

Mr. Collins?

[No response.]

Mr. DeSantis?

[No response.]

Ms. Walters?

[No response.]

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Trott?

Mr. Trott. No.

Ms. Adcock. Mr. Trott votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Adcock. Mr. Conyers votes aye.

Mr. Nadler?

[No response.]

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Adcock. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

Ms. Adcock. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

Ms. Chu?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Ms. DelBene?

[No response.]

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Peters?

[No response.]

Chairman Goodlatte. The gentleman from Virginia?

Mr. Forbes. No.

Ms. Adcock. Mr. Forbes votes no.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Jackson Lee. Mr. Chairman, how am I recorded?

Ms. Adcock. Aye.

Ms. Jackson Lee. Thank you.

Ms. Adcock. Mr. Chairman, five members voted aye, eight members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Mr. Conyers. Mr. Chairman?

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

Mr. Conyers. I have an amendment at the desk. I ask it be reported.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 4768 offered by Mr. Conyers. Page 1, Line 9, insert after "extent necessary" the following: "And accept as --

[The amendment of Mr. Conyers follows:]

********** INSERT 5 **********

Chairman Goodlatte. Without objection, the amendment is considered as read and the gentleman is recognized for 5 minutes on his amendment.

Mr. Conyers. Thank you. This is an absolutely necessary amendment, and it would exempt from the bill rulemakings by the Environmental Protection Agency pertaining to the regulation of lead and copper in drinking water.

The recent Flint water crisis, in my state of Michigan, illustrates the critical importance of safe drinking water and the need for this amendment. The facts show that the Flint crisis was a preventable public health disaster.

The lead contamination occurred because an unelected

and unaccountable emergency manager decided to switch the city's water source to the Flint River without the benefit of proper corrosion control. This corrosive water leached highly toxic lead from residents' water pipes, exposing thousands of children to lead, which in turn can cause permanent developmental damage.

Although much of the blame for the Flint Water crisis rests with unelected officials who prioritized saving money over saving lives, the presence of lead in drinking water is not unique to Flint. Potentially, millions of Americans across the Nation have the same risk.

Urgent rulemakings, such as the Environmental Protection Agency's proposed revisions to its lead and copper rule, must not be impeded or delayed. Even before the Flint water crisis, the agency had begun the process of updating this rule, which it was originally promulgated in 1991 after years of analysis.

Rather than hastening this rulemaking, however, H.R. 4768 would have the opposite result. Under the bill, a court lacking the requisite scientific or technical knowledge would be empowered to ignore administrative records and expertise, and to make its own determination based on its perhaps inexpert views and limited information.

So, my amendment simply preserves current legal doctrine in cases involving review of regulations designed

to prevent the contamination of drinking water by dangerous substances such as lead and copper.

Clearly, it is critical that American have access to safe drinking water and that we do not hinder the ability of Federal agencies, such as the Environmental Protection Agency, to prevent future lead contamination events like the Flint water crisis. Federal judges who are constitutionally insulated from political accountability should not have the power to second-guess the agency experts concerning the appropriateness of highly technical regulations crucial to protecting the health and safety of millions of Americans.

And so, I urge my fellow colleagues to carefully examine this amendment, support it. And Mr. Chairman, I thank you and yield back the balance of my time.

Chairman Goodlatte. The chair thanks the gentleman and recognizes himself in opposition to the amendment.

The amendment carves out of the bill regulations on lead and copper in drinking water. It would preserve unelected bureaucrats' broad discretion to impose on the public overreaching statutory and regulatory interpretations in this area of policy. It would guarantee that those unaccountable bureaucrats do not have to worry any more than they do now about courts checking their self-serving interpretations.

It would let agencies get away just as much as now with

resting overreaching regulations on tortured interpretations of existing statutes, instead of coming to Congress for new legislation, because the plain terms of existing law really do not support what they want to do.

In short, the amendment seeks to perpetuate the Chevron and Auer doctrines, a weakening of the separation of powers, a weakening that threatens liberty and undermines accountable government of the people, by the people, and for the people.

Drinking water regulation is important, but no area of regulation is so important that it should allow unelected bureaucrats to avoid the vigorous system of checks and balances the Framers intended, and this bill would restore. Indeed, bureaucrats should know that they will face vigorous judicial checks and balances when they act so that they have the strongest incentives to offer the best possible statutory and regulatory grounds for their actions and carry out the most responsible and fair enforcement possible. And I urge my colleagues to oppose this amendment.

Mr. Cicilline. Mr. Chairman?

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

Mr. Cicilline. Move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cicilline. Thank you, Mr. Chairman. I rise in strong support of this amendment, which would exempt the EPA rulemaking related to the regulation of lead and copper in drinking water. In its place, the amendment preserves current law, which gives appropriate deference to EPA regulations issued with the input of scientific and industry experts to prevent contamination through the corrosion of lead pipes.

One of the most important functions Congress has delegated to executive branch agencies is the formulation and enforcement of regulations to protect public health and safety. Perhaps foremost among these rules are those that ensure that Americans have access to safe drinking water. The Flint water crisis is an unfortunate reminder that we cannot take access to clean drinking water for granted. It is essential that the EPA continues to retain the ability to protect our Nation's public water systems from lead contamination.

Congress originally tasked the EPA with this important job in 1986, because the agency possesses the requisite technical and scientific expertise necessary to craft the complicated but vital rules necessary to ensure millions of Americans, our constituents, have access to lead-free water.

Unfortunately, H.R. 4768 would undermine Congress's legislative mandate to the EPA by permitting a generalist

court to substitute its own policy judgments for those of scientific and environmental experts regarding the substantive regulations that are necessary to ensure Americans can safely drink the water from their kitchen faucets. That is because H.R. 4768, like many of the anti-regulatory bills supported by the majority, treats all regulations the same, regardless of the subject matter, and creates no distinction for those which protect public health and safety.

Given the well-known and harmful effects lead can have on human health, particularly the health of developing children, it is critical that we pass this amendment to ensure the EPA can continue to effectively carry out its congressional mandate to protect our drinking water from hazardous contaminants.

And I want to personally thank the gentleman from Michigan for offering this amendment, and urge my colleagues to support it so that we could ensure that all of our constituents are protected from contaminated water. And with that, I yield back.

Chairman Goodlatte. The chair thanks the gentleman. The question occurs on the amendment offered by the gentleman from Michigan.

All those in favor, respond by saying aye.

Those opposed no.

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

Mr. Conyers. May I have a record vote, Mr. Chairman?

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

Mr. Chabot. No.

Ms. Adcock. Mr. Chabot votes no.

Mr. Issa?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Mr. Forbes?

[No response.]

Mr. King?

[No response.]

Mr. Franks?

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Chaffetz?

[No response.]

Mr. Marino?

[No response.]

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Farenthold?

[No response.]

Mr. Collins?

[No response.]

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Adcock. Mr. DeSantis votes no.

Ms. Walters?

[No response.]

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Trott?

Mr. Trott. No.

Ms. Adcock. Mr. Trott votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Adcock. Mr. Conyers votes aye.

Mr. Nadler?

[No response.]

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Adcock. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

Ms. Adcock. Mr. Cohen votes aye.

Mr. Johnson?

[No response.]

Mr. Pierluisi?

[No response.]

Ms. Chu?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Ms. DelBene?

[No response.]

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Peters?

[No response.]

Chairman Goodlatte. Has every member voted who wishes to vote? The gentleman from Virginia?

Mr. Forbes. No.

Ms. Adcock. Mr. Forbes votes no.

Chairman Goodlatte. The clerk will report.

Ms. Adcock. Mr. Chairman, 10 members voted no, 4 members voted aye.

Chairman Goodlatte. And the amendment is not agreed to. Are there further amendments to H.R. 4768?

Mr. Cicilline. Mr. Chairman?

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

Mr. Cicilline. I have an amendment at the desk, Mr. Chairman.

Chairman Goodlatte. The clerk will report the amendment. For what purpose does the gentleman from Texas seek recognition?

Mr. Ratcliffe. Mr. Chairman, I would like to reserve a point of order on this amendment.

Chairman Goodlatte. The point of order is reserved. The clerk will report.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 4768 offered by Mr. Cicilline. Page 2, Line 7 --

[The amendment of Mr. Cicilline follows:]

********** INSERT 6 **********

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes on his amendment.

Mr. Cicilline. Thank you, Mr. Chairman. This amendment would ensure that race, national origin, or religion of a judge not be a proper grounds for recusal from any action or proceeding, and I will just use a few moments

to address the issue of a point of order with respect to germaneness, and suggest to the chairman my amendment is germane for several reasons.

First, H.R. 4768 concerns the appropriate scope of review of an agency action by a reviewing court. My amendment goes to the heart of the issue by codifying existing judicial standards applicable to the review of agency action. A strong independent Federal judiciary is critical to the functioning of our democracy.

No Federal judge who has been nominated by the President and confirmed by the Senate should ever be subject to calls for disqualification simply because of their ethnic origin or background. It is shameful and outrageous that anyone would suggest a judge's race, national origin, or religion would prevent them from rendering fair and impartial decisions.

It does not matter if a judge is Mexican American, African American, Irish American, Jewish, Muslim, or Christian. The only thing that matters is whether the judge adheres to the Constitution and properly applies the law. And that is why my amendment reaffirms and codifies the principle that the race, National origin, or religion of a judge are not proper grounds for recusal from legal proceedings.

My Republican colleagues have argued H.R. 4768 is a

necessary reform, assuring that would curb so-called executive overreach. But in doing so, H.R. 4768 would elevate the role of judicial review. It would extend the reach of the Federal bench and allow judges to supplant the role that agencies serve in the policy-making process -- a very misguided idea, in my view. However, if we are going to reorganize the process of judicial review, let's take this opportunity to reassert that no Federal judge is subject to discrimination based on their race, color, or creed.

Second, if the purpose of this bill is to give more power to the judicial branch, then an amendment ensuring that these judges are protected from spurious efforts to have them recused based on race, National origin, or religion, is unequivocally germane. Federal courts have already recognized this principle.

For example, in MacDRAW Inc. v. CIT Equipment Financing, the plaintiff argued to the Second Circuit on appeal that then-U.S. District Court Judge Denny Chin was biased in part due to his Asian ancestry. In its decision, the Second Circuit found that race and ethnicity are improper bases for challenging a judge's impartiality, and that such claims violate the code of professional responsibility. My amendment simply codifies this principle into law.

And finally, if there is any uncertainty concerning the principle that race, ethnicity, or National origin must not serve as a basis for judicial disqualification of review of agency action, we should err on the side of caution by adopting this amendment to make clear that discrimination has no place in determining the outcome of judicial review of agency action.

My amendment will protect judges from the claim that the color of their skin or the place of the birth of their parents somehow prevents them from serving as an impartial arbiter. It would insulate them from the claim that they are somehow less able to preside over a Federal court based on nothing more than their race or faith that they practice. It would shield those who have served for years on the Federal bench with dignity from baseless and hurtful allegations of bias and prejudice.

We are a diverse Nation. The makeup of our Federal courts increasingly reflects this fact. Let's put an end to the kind of prejudice that we have seen. Our constituents deserve a strong, independent Federal judiciary that is immune to racist attacks. And my amendment simply preserves their ability to serve without prejudice or bias and enshrines the principles of nondiscrimination that are the founding principles of our great Nation. I urge my colleagues to support my amendment, and with that, yield

back the balance of my time.

Chairman Goodlatte. Does the gentleman from Texas insist upon his point of order?

Mr. Ratcliffe. Yes, Mr. Chairman. I insist on my point of order.

Chairman Goodlatte. The gentleman is recognized for 5 minutes on his point of order.

Mr. Ratcliffe. Mr. Chairman, H.R. 4768, as you well know, amends the Administrative Procedure Act to overturn the so-called Chevron and Auer doctrines of judicial deference to agency interpretations of statutory and regulatory provisions.

The Cicilline Amendment, by contrast, addresses an entirely different subject matter, the basis for which a Federal judge could be disqualified from hearing a case. And because the gentleman's amendment addresses an entirely different subject matter than the substitute amendment, the amendment is not germane. With that, I yield back.

Chairman Goodlatte. The chair thanks the gentleman. Does the gentleman offering the amendment wish to speak on the point of order?

Mr. Cicilline. Mr. Chairman, I would just say --

Chairman Goodlatte. He is recognized.

Mr. Cicilline. Thank you, Mr. Chairman. I would just say that, in fact, as I articulated in my earlier comments,

H.R. 4768 is elevating the role of the Federal courts in review of agency action. And in that context, I think it is perfectly germane and appropriate to use this as an opportunity to state this principle, that notwithstanding any other provisions of law, race, National origin, or religion of a judge shall not be a proper grounds for recusal from an action or proceeding.

And in fact, that is, in fact, the law. It simply sets forth in statute what is existing law. And in the context of H.R. 4768, which is really about empowering the Federal court to conduct agency reviews in a new way, and enhance the power of the court to do that, not offering the deference to agencies that have previously existed.

It is in that context now that I think it is appropriate and certainly germane and relevant to this, that we ensure that in this elevated role, that the judicial officers are not subjected to recusal requests based on race, religion, or national origin. And so, I urge the chairman to find that this amendment is in order, and I urge my colleagues to support the amendment.

Ms. Jackson Lee. I was going to ask to speak to the point of order.

Mr. Cicilline. I yield to the gentlelady from Texas on her point of order.

Chairman Goodlatte. The gentleman may yield.

Ms. Jackson Lee. I thank the gentleman for yielding. I want to build on the gentleman's point that this is germane. In the alternative, I would ask that the point of order or the issue of germaneness be waived, and it has been done before. We do it frequently when a rule comes from the Rules Committee, and points of order are waived.

So, I would make the point. And the reason I make this point is that the amendment of Mr. Cicilline goes to the activities of the bench. It goes to the fact that now the bill, the underlying bill, is providing another pathway for the court to be engaged actively in the review of the regulatory process under the Administrative Procedure Act, meaning that they now will step in de novo, and have added duties to be able to, in essence, review regulations promulgated by our agencies.

This amendment ties directly to that court's potential review of those regulations. Why is that? All of us have heard reports in the press that seemingly have called into question a judge's ethnicity. Wrongly so, of course. But we have heard a particular judge called a Mexican.

Those of us from Texas have great umbrage of that articulation of individuals who may be of certain descent, as we have different definitions for them. And so, it was a shocking terminology in the first place. But putting aside someone's misinformation and inappropriate talk, it does

bring into question the gentleman's amendment. That is --

Mr. Conyers. Would the gentlelady yield?

Ms. Jackson Lee. I would be happy to yield, if I just finish -- if I might -- this one sentence. It brings into question the idea that a judge's duties, which is what this bill is about -- you would be calling into question the ethnicity. And so, I think the gentleman's amendment is germane, and I would be happy to yield -- and if not, the point of order can be waived. I would be happy to yield to the gentleman, the ranking member.

Mr. Conyers. Thank you. Thank you very much, Ms. Jackson Lee. This amendment is important because it clarifies that a judge may not be disqualified from reviewing an agency action or proceeding on the basis of race, ethnicity, or National origin. One of the hallmarks of our justice system is the notion that justice is blind. And we are a Nation that believes we should be judged by the content of our character, not the color of our skin, as Dr. King so eloquently explained so many times.

And this amendment ensures that Federal judges who have been appointed by the President, confirmed by the Senate, are not disqualified from reviewing agency action on the basis of race, ethnicity, or National origin. We can all agree that disqualification on these grounds is dangerous, morally repugnant, and belies the foundations of our system

of justice. And those are the reasons that I join with those who support this amendment. And I thank the chairman.

Chairman Goodlatte. The chair thanks the gentleman and is prepared to rule on the point of order. It is the opinion of the chair that the amendment is not germane. Are there --

Mr. Cicilline. Mr. Chairman? I respectfully appeal the ruling of the chair.

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

Mr. Chabot. Mr. Chair, I move to table the motion.

Chairman Goodlatte. The motion is made to table the appeal of the ruling of the chair.

All those in favor of tabling the motion, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the ayes have it, and the appeal of the ruling of the chair is tabled.

Mr. Cicilline. Mr. Chairman, I request a recorded vote.

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Adcock. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Adcock. Mr. Chabot votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Adcock. Mr. Issa votes aye.

Mr. Forbes?

[No response.]

Mr. King?

[No response.]

Mr. Franks?

Mr. Franks. Aye.

Ms. Adcock. Mr. Franks votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Adcock. Mr. Gohmert votes aye.

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Chaffetz?

[No response.]

Mr. Marino?

[No response.]

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Farenthold?

[No response.]

Mr. Collins?

[No response.]

Mr. DeSantis?

Mr. DeSantis. Yes.

Ms. Adcock. Mr. DeSantis votes yes.

Ms. Walters?

[No response.]

Mr. Buck?

Mr. Buck. Yes.

Ms. Adcock. Mr. Buck votes yes.

Mr. Ratcliffe?

Mr. Ratcliffe. Yes.

Ms. Adcock. Mr. Ratcliffe votes yes.

Mr. Trott?

Mr. Trott. Yes.

Ms. Adcock. Mr. Trott votes yes.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Adcock. Mr. Bishop votes yes.

Mr. Conyers?

Mr. Conyers. No.

Ms. Adcock. Mr. Conyers votes no.

Mr. Nadler?

[No response.]

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Adcock. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Mr. Johnson?

Mr. Johnson. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

Ms. Chu?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Ms. DelBene?

Ms. DelBene. No.

Ms. Adcock. Ms. DelBene votes no.

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Adcock. Mr. Cicilline votes no.

Mr. Peters?

[No response.]

Chairman Goodlatte. The gentleman from Texas, Mr. Smith. Have you already voted?

Mr. Smith. Yes.

Ms. Adcock. Mr. Smith votes yes.

Chairman Goodlatte. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. Yes.

Ms. Adcock. Mr. Forbes votes yes.

Chairman Goodlatte. The gentleman from Tennessee?

Mr. Cohen. No.

Ms. Adcock. Mr. Cohen votes no.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Adcock. Mr. Chairman, 12 members voted aye, 6 members voted no.

Chairman Goodlatte. And the appeal of the ruling of the chair is tabled. Are there further amendments to the amendment in the nature of a substitute to H.R. 4768?

The question is on the amendment to the amendment in the nature of a substitute.

Those in favor will respond by saying aye.

Those opposed, no.

Being the chair, the ayes have it, and the amendment is agreed to.

The chair would advise the members of the committee that we do not have a reporting quorum present to vote on final passage of the bill, so the committee will remain in session to give members an opportunity to get here until the next vote series. If we do not get numbers here by that time, we will have to reconvene tomorrow to vote on this measure.

We will take a recorded vote and we will suspend the final action on the vote until members have a chance to get here the vote. So, the clerk will call the roll on final passage of H.R. 4768.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Adcock. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

Mr. Smith. Aye.

Ms. Adcock. Mr. Smith votes aye.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Adcock. Mr. Chabot votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Adcock. Mr. Issa votes aye.

Mr. Forbes?

[No response.]

Mr. King?

[No response.]

Mr. Franks?

Mr. Franks. Aye.

Ms. Adcock. Mr. Franks votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Adcock. Mr. Gohmert votes aye.

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Chaffetz?

[No response.]

Mr. Marino?

[No response.]

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Farenthold?

[No response.]

Mr. Collins?

[No response.]

Mr. DeSantis?

Mr. DeSantis. Aye.

Ms. Adcock. Mr. DeSantis votes aye.

Ms. Walters?

[No response.]

Mr. Buck?

[No response.]

Mr. Ratcliffe?

Mr. Ratcliffe. Yes.

Ms. Adcock. Mr. Ratcliffe votes yes.

Mr. Trott?

Mr. Trott. Yes.

Ms. Adcock. Mr. Trott votes yes.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Adcock. Mr. Bishop votes yes.

Mr. Conyers?

Mr. Conyers. No.

Ms. Adcock. Mr. Conyers votes no.

Mr. Nadler?

[No response.]

Ms. Lofgren?

Ms. Lofgren. No.

Ms. Adcock. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Adcock. Ms. Jackson Lee votes no.

Mr. Cohen?

Mr. Cohen. No.

Ms. Adcock. Mr. Cohen votes no.

Mr. Johnson?

Mr. Johnson. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Pierluisi?

[No response.]

Ms. Chu?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Ms. DelBene?

Ms. DelBene. No.

Ms. Adcock. Ms. DelBene votes no.

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Adcock. Mr. Cicilline votes no.

Mr. Peters?

[No response.]

Chairman Goodlatte. The gentleman from Virginia.

Mr. Forbes. Yes.

Ms. Adcock. Mr. Forbes votes yes.

Chairman Goodlatte. The gentlewoman from California.

Ms. Lofgren. I already voted.

Chairman Goodlatte. Oh, sorry.

Chairman Goodlatte. The gentleman from California, Mr. Peters?

Mr. Peters. No.

Ms. Adcock. Mr. Peters votes no.

Mr. Farenthold. I am not recorded.

Chairman Goodlatte. The gentleman from Texas, Mr. Farenthold?

Mr. Farenthold. I am not recorded. I vote yes.

Ms. Adcock. Mr. Farenthold votes yes.

Chairman Goodlatte. The clerk will report.

Ms. Adcock. Mr. Chairman, 12 members voted aye, 8 members voted no.

Chairman Goodlatte. The ayes have it, and the bill, as amended, is ordered reported favorably to the House. Members will have 2 days to submit views. And without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments, and staff is authorized to make technical and conforming changes.

This completes the work of the committee today, and I thank all the members for attending. Markup is adjourned.

[Whereupon, at 3:52 p.m., the committee adjourned subject to the call of the chair.]