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6 MARKUP OF:

7 H.R. 3843, THE "MERGER FILING FEE

8 MODERNIZATION ACT OF 2021";

9 H.R. 3460, THE "STATE ANTITRUST ENFORCEMENT

10 VENUE ACT OF 2021";

11 H.R. 3849, THE "AUGMENTING COMPATIBILITY AND

12 COMPETITION BY ENABLING SERVICE SWITCHING

13 ACT OF 2021" OR THE "ACCESS ACT OF 2021";

14 H.R. 3826, THE "PLATFORM COMPETITION AND

15 OPPORTUNITY ACT OF 2021";

16 H.R. 3816, THE "AMERICAN CHOICE AND

17 INNOVATION ONLINE ACT";

18 AND H.R. 3825, THE "ENDING PLATFORM

19 MONOPOLIES ACT"

20 Wednesday, June 23, 2021

21 House of Representatives,

22 Committee on the Judiciary,

23 Washington, D.C.

24

25

26           The committee met, pursuant to call, at 10:13 a.m., in Room  
27 2141, Rayburn House Office Building, Hon. Jerrold Nadler  
28 [chairman of the committee] presiding.

29           Members present: Representatives Nadler, Lofgren, Jackson  
30 Lee, Cohen, Johnson of Georgia, Deutch, Bass, Jeffries,  
31 Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa,  
32 Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Escobar, Jones,  
33 Ross, Bush, Jordan, Chabot, Gohmert, Issa, Buck, Gaetz, Johnson  
34 of Louisiana, Biggs, McClintock, Steube, Tiffany, Massie, Roy,  
35 Bishop, Fischbach, Spartz, Fitzgerald, Bentz, and Owens.

36           Staff present: Perry Apelbaum, Staff Director and Chief  
37 Counsel; Aaron Hiller, Deputy Chief Counsel; Amy Rutkin, Chief  
38 of Staff; David Greengrass, Senior Counsel; John Doty, Senior  
39 Advisor; Moh Sharma, Member Services and Outreach & Policy  
40 Advisor; Priyanka Mara, Professional Staff Member/Legislative  
41 Aide; Jordan Dashow, Professional Staff Member; Cierra Fontenot,  
42 Chief Clerk; John Williams, Parliamentarian; Merrick Nelson,  
43 Digital Director; Kayla Hamedi, Deputy Press Secretary; Amanda  
44 Lewis, Counsel for ACAL; Joseph Van Wye, Professional Staff  
45 Member/Legislative Aide for ACAL; Slade Bond, Chief Counsel for  
46 ACAL; Philip Berenbroick, Counsel for ACAL; Will Emmons,  
47 Professional Staff Member/Legislative Aide for Constitution;  
48 Chris Hixon, Minority Staff Director; David Brewer, Minority

49 Deputy Staff Director; Tyler Grimm, Minority Chief Counsel for  
50 Policy and Strategy; Katy Rother, Minority Deputy General Counsel  
51 and Parliamentarian; Ella Yates, Minority Member Services  
52 Director; Douglas Geho, Minority Chief Counsel for Administrative  
53 Law; James Lesinski, Minority Counsel; Andrea Woodard, Minority  
54 Professional Staff Member; and Kiley Bidelman, Minority Clerk.

55 Chairman Nadler. The Judiciary Committee will please come  
56 to order, a quorum being present. Without objection, the chair  
57 is authorized to declare a recess at any time.

58 Pursuant to Committee Rule 2 and House Rule 11, Clause 2,  
59 the chairman can postpone further proceedings on the question  
60 of approving any measure or matter or adopting an amendment for  
61 which a recorded vote for the ayes and nays are ordered.

62 I would like to remind members that we have established an  
63 email address and distribution list dedicated to circulating  
64 amendments, exhibits, motions or other written materials that  
65 members might want to offer as part of our markup today. If you  
66 would like to submit materials, please send them to the email  
67 address that has been previously distributed to your offices and  
68 we will circulate the materials to members and staff as quickly  
69 as we can.

70 For those in the room, current guidance from the Office of  
71 the Attending Physician that individuals who are fully vaccinated  
72 for COVID-19 do not need to wear masks or maintain social  
73 distancing. Fully vaccinated individuals may, of course, choose  
74 to continue to wearing masks based on their specific risk  
75 considerations. If you are not fully vaccinated, the Office of  
76 Attending Physician requires you to continue wearing a mask and  
77 maintaining six feet of social distancing.

78 Finally, I would ask all members, both those in person and

79 those appearing remotely, to mute your microphones when you are  
80 not speaking. This will help prevent feedback and other  
81 technical issues. You may unmute yourself any time you seek  
82 recognition.

83 Pursuant to notice, I now call up H.R. 3843, the Merger Filing  
84 for Fee Modernization Act of 2021 for purposes of markup and move  
85 that the committee report the bill favorably to the House. The  
86 clerk will report the bill.

87 [The Bill H.R. 3843 follows:]

88

89 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

90 Ms. Fontenot. H.R. 3843 to promote anti-trust enforcement  
91 and protect competition for adjusting --

92 Chairman Nadler. Without objection, the bill is considered  
93 as read and open for amendment at any point. I will begin my  
94 recognizing myself for an opening statement.

95 Nearly two years ago to the day, the Judiciary Committee  
96 launched a bipartisan investigation into the state of competition  
97 in digital markets. The investigation spent 16 months  
98 culminating in a majority staff report that documented a range  
99 of problems affecting competition in the digital economy and it  
100 made a series of recommendations to address those problems.

101 The New York Times referred to this as the most significant  
102 government effort to check the world's largest tech companies  
103 since the government sued Microsoft for antitrust violations in  
104 the 1990s.

105 In a farewell address earlier this year, the former Deputy  
106 Attorney General for the Antitrust Division described it as a  
107 landmark report on market power in digital markets. More  
108 critically, the committee's extensive documentation of these  
109 problems was a clarion call to action.

110 Today, we will answer that call through the consideration  
111 of a historic package of bipartisan legislation to restore  
112 competition online. The bills that the committee will consider  
113 at today's markup will pave the way for a stronger economy and

114 a stronger democracy for the American people by reigning in  
115 anti-competitive abuses of the most dominant firms online.

116 Each bill is an essential part of a bipartisan plan to level  
117 the playing field for innovative entrepreneurs and startups and  
118 to bring the benefits of increased innovation and choice to  
119 American consumers. Our goal should be to ensure that there is  
120 a space for opportunity, innovation, and choice to thrive online.

121 For consumers and businesses, that is exactly what these bills  
122 accomplish.

123 I have long believed that the unchecked concentration of  
124 economic power in any industry poses a danger to our democracy.

125 Our country and our political institutions will be stronger as  
126 a result of the important reforms to open markets, to new  
127 competition that are set forth in the legislation we are  
128 considering today.

129 The package of bills before the committee echoes prior  
130 legislative efforts to confront abuses of market power that stifle  
131 competition and innovation in emerging technology markets.  
132 These efforts include the 1992 Cable Television Consumer  
133 Protection and Competition Act, and the Telecommunications Act  
134 of 1996.

135 As President Bill Clinton remarked during the signing of  
136 the landmark '96 Act, it was designed to promote competition as  
137 the key to opening new markets and new opportunities. That

138 legislation helped serve as a catalyst for the digital revolution  
139 of the past 25 years.

140           Similar to the legislation we are considering today, the  
141 Telecommunications Act established nondiscrimination  
142 requirements, line of business restrictions, and  
143 interoperability and data portability mandates for the dominant  
144 firms of the day. These prohibitions are well grounded in long  
145 standing and well understood antitrust principles that are  
146 important complements to robust antitrust enforcement.

147           One critical failing of the Telecommunications Act, however,  
148 was that it did not prevent the waves of consolidation in the  
149 telecommunications market that stymied the pro-competitive goals  
150 of the Act. As a result of this consolidation, Americans pay  
151 higher prices for critical services by broadband internet, while  
152 millions remain on the wrong side of the digital divide because  
153 services are unavailable or unaffordable. That is why one  
154 critical piece of legislation that we are considering today,  
155 Congressman Jeffries' Platform Competition and Opportunity Act,  
156 will tighten merger review for coveted platforms to help ensure  
157 that we do not repeat this mistake.

158           Importantly, we are not alone in taking steps to reigning  
159 in abuses by dominant online platforms. The United Kingdom,  
160 Australia, and the European Union are each considering  
161 significant updates to their competition laws governing the



162 digital economy, motivated by the same concerns that give rise  
163 to the legislation we will consider today. For example,  
164 following a landmark report by the United Kingdom's Competition  
165 and Market Authority, Great Britain has begun work on a new  
166 pro-competitive regime that is tailored to the most powerful  
167 companies in the digital economy.

168 Today is the start of an opportunity for the United States  
169 to reassert its leadership role on this issue internationally.

170 With this package of historic legislation, we have the  
171 opportunity to take control of our own destiny, to be a global  
172 leader in developing rules of the road to the digital economy.

173 We cannot be complacent and we cannot delay.

174 I want to thank Chairman Cicilline for his work leading the  
175 investigation and the Antitrust Subcommittee on a bipartisan  
176 basis. I also want to thank Ranking Member Ken Buck and all the  
177 members of the subcommittee on both sides of the aisle for their  
178 dedication to this work, as well as the members of the committee  
179 who have contributed to the legislation we will consider today.

180 The first bill we will consider is H.R. 3843, the Merger  
181 Filing Modernization Act of 2021. This legislation will ensure  
182 that the Department of Justice and the Federal Trade Commission  
183 have the resources they need to aggressively enforce the antitrust  
184 laws and to protect consumers and competition.

185 We have not updated the merger filing fees in more than two

186 decades. The budgets for the antitrust enforcement agencies have  
187 not kept pace with the demands placed on them. Officials from  
188 both parties agree that these agencies need additional resources  
189 to perform their critical work. Antitrust enforcement and  
190 litigation is hugely expensive and time consuming. For example,  
191 in monopolization cases the Department of Justice and the Federal  
192 Trade Commission filed last year against Google and Facebook,  
193 respectively, may take years to litigate.

194 This bipartisan legislation, which passed the Senate earlier  
195 this month, will provide more funding for antitrust enforcement  
196 by increasing filing fees on the largest transactions, by reducing  
197 filing fees on smaller transactions. The bill ensures that the  
198 mergers that are most likely to consume agencies' time and  
199 resources pay more than those that place less of the burden on  
200 the agencies.

201 Providing the antitrust agencies with sufficient funding  
202 will ensure that they can effectively investigate and litigate  
203 cases to stop illegal mergers, to hold monopolists accountable  
204 for anti-competitive conduct, and to protect consumers.

205 I want to thank Mr. Neguse and Mrs. Spartz for sponsoring  
206 this important bipartisan legislation and I urge all members to  
207 support it.

208 I now recognize the Ranking Member of the Judiciary  
209 Committee, the gentleman from Ohio, Mr. Jordan, for his opening

210 statement.

211 Mr. Jordan. Thank you, Mr. Chairman. Here is the question.

212 Do we think House Democrats want to stop big tech censorship  
213 of Republicans, big tech censorship of conservators?

214 Remember, three months, two Democrats wrote a letter to big  
215 carriers encouraging them to take Fox News, Newsmax, One America  
216 News off their platform.

217 Chairman Nadler, Subcommittee Chairman Cicilline, Democrat  
218 Conference Chair Jeffries, Democrat Policy Chair Neguse, all  
219 impeachment managers, do we really think they want Facebook to  
220 put President Trump back on their platform? Actually, we know  
221 the answer to that question. They don't. Chairman Nadler said  
222 I think Facebook was right. They have a right to ban the  
223 President, even though these big tech platforms allow the  
224 Ayatollah to put tweets on there, they have a right to ban the  
225 President.

226 The chairman said it is a right wing conspiracy theory and  
227 a fantasy dreamed up by some conservative. Maybe that is because  
228 he hasn't been shadow banned like Congressman Gaetz has or  
229 Congressman Nunez.

230 Subcommittee Chairman Cicilline said we don't need to  
231 develop a solution for a problem that doesn't exist. Big tech  
232 censors conservatives. These bills don't fix that problem.  
233 They make it worse. They don't break up big tech. They don't

234 stop censorship.

235 Let's look at the ACCESS bill. This is the one that is  
236 supposed to be the least problematic. Let's just run through  
237 the ACCESS bill, what this does, the power that it gives to the  
238 Federal Trade Commission. Page 15 of that legislation, the FTC  
239 shall issue standards specific to each covered platform. Covered  
240 platform is defined online presence, 50 million users a month,  
241 100,000 business users a month, and a \$600 billion market cap.

242 That currently includes Amazon, Apple, Facebook, Google, but  
243 I think it is soon to include Microsoft, Walmart, Visa, and who  
244 knows where it ends.

245 What is the process for issuing these standards for a covered  
246 platform? Page 17 of the legislation, by establishing technical  
247 committees for each business. Not one technical committee that  
248 advises, there will be a technical committee for each covered  
249 platform, one for Amazon, one for Apple, one for Facebook, one  
250 for Google, and then one for each new business that is added and  
251 defined as a covered platform.

252 How big are these technical committees? Page 18 of the  
253 legislation tells it. The size of the technical committee is  
254 at the sole discretion of the FTC. It could be ten people. It  
255 could be a handful of people. It could be I don't know. Totally  
256 up to the FTC.

257 Who is on these technical committees? Page 20. Page 20

258 of the legislation tells us. Three categories, competitors,  
259 people from advocacy groups, and independent academics, and then  
260 someone from the National Institutes of Standards and Technology.

261 Which sort of raises the obvious question who runs the FTC?

262 Until last week, the acting chair was Ms. Slaughter, Ms.  
263 Slaughter who said it is "Perfectly appropriate for us to use  
264 antitrust enforcement tools to right the wrong of systemic  
265 racism." Wow.

266 The new chair last week, Ms. Lina Khan, previously worked  
267 for Chairman Nadler, Subcommittee Chair Cicilline, and House  
268 Democrats on the Judiciary Committee. So the person who helped  
269 write the bill, they give all the power to the FTC, now is going  
270 to run the FTC. Such a deal.

271 The Federal Trade Commission, run by Biden Democrats who  
272 want to fix systemic racism, set up special government committees  
273 of whatever size they want, technical committees made up of your  
274 competitors, advocacy groups, and academics. Or in other words,  
275 people who want your business to fail, so let's back individuals  
276 and someone like Senator Warren.

277 Now if you don't like the fact that you are a covered  
278 platform, you can petition the FTC, page four and five of the  
279 legislation. And if the FTC doesn't like your petition, you can  
280 go to court. But your chances of winning in court aren't too  
281 good because on page 20 of the legislation it says in a proceeding

282 for judicial review, the findings of the Commission shall be  
283 conclusion. I don't think your chances are going to be too well.

284 Oh, and I forgot this. One more thing. Page 20 of the  
285 legislation, the Federal Advisory Committee Act shall not apply  
286 with respect to these technical committees. In other words, it  
287 is all done in secret. The Federal Advisory Review Act doesn't  
288 even apply. So secret technical committees for each business  
289 made up of left-wing individuals, advocacy groups, someone from  
290 academic, independent academic, that is who is going to decide.

291 Now do you really think the individuals running the FTC  
292 again, as I said before, want Facebook to let President Trump  
293 back on? Do they want Twitter to stop shadow banning Matt Gaetz?

294

295 A few months ago, Democrats brought in front of the committee  
296 a newspaper bill in front of this committee. The bill that would  
297 have allowed big tech and big media to collude. We had a great  
298 hearing on that. They have dropped that bill. I thought the  
299 witnesses put it out, the concerns, with that legislation.

300 Today, we have bills that aren't big tech and big media  
301 working together, but big tech and big government now marrying  
302 up and working together. And frankly, we have already seen this.

303 We have already seen this. We saw it with recently released emails  
304 between Mr. Zuckerberg and Mr. Fauci where we saw big tech and  
305 big government work together to frankly keep information from

306 the American people, information that turns out may have been  
307 accurate. So that is our concern overall with the package.

308 There are some bills that okay, may be all right, but overall  
309 the power this gives to the FTC, big tech working together with  
310 big government doesn't address the issue of breaking these  
311 companies up, doesn't address the issue of censorship which so  
312 many Americans are concerned about. That is our concern.

313 We are going to have a number of amendments, Mr. Chairman.  
314 I know you guys have several amendments on your side as well.  
315 I look forward to a robust debate as we move forward. With that,  
316 I yield back.

317 Chairman Nadler. Thank you. I now recognize the chair of  
318 the Subcommittee on Antitrust, Commercial, and Administrative  
319 Law, the gentleman from Rhode Island, Mr. Cicilline for his  
320 opening statement.

321 Mr. Cicilline. Thank you, Mr. Chairman. Before I turn to  
322 the historic bipartisan legislation the committee will consider  
323 today, I want to take a moment to reflect on the comprehensive  
324 and painstaking investigative and oversight work that the  
325 subcommittee completed over the past two years.

326 By every measure, the committee's digital markets'  
327 investigation stands as one of the most extensive and in-depth  
328 antitrust investigation in the history of Congress. We launched  
329 our bipartisan investigation in June 2019. Since then, we held

330 a total of ten legislative and oversight hearings and 17-member  
331 round tables and briefings. We heard direct testimony from the  
332 CEOs of Google, Amazon, Apple, and Facebook for nearly six hours.  
333 All tolled, 56 witnesses testified before the subcommittee or  
334 committee.

335 We interviewed more than 240 market participants and  
336 received written submissions from 60 leading antitrust experts  
337 and scholars. We collected nearly 1.3 million documents from  
338 the investigated companies, third parties, and antitrust  
339 enforcement agencies.

340 In October of 2020, the subcommittee issued a 450 page  
341 investigative report, setting forth specific and concrete  
342 recommendations for a path forward. The digital markets report  
343 was approved by the full committee on April 15th and since then,  
344 we have continued to move forward in a serious, thoughtful, and  
345 deliberate manner.

346 And just to respond briefly to the Ranking Member's  
347 suggestion, the bills were written by subcommittee members and  
348 the staff in a bipartisan way, not by Lina Khan.

349 On June 11th, we introduced each of the six pieces of  
350 legislation that we will consider today both on process and  
351 substance. From June of 19th through today, I am immensely proud  
352 of the Antitrust Subcommittee's effort.

353 The legislation the committee will consider at today's



354 market is essential to build a better online economy with  
355 opportunity, innovation for consumers, workers, and small  
356 businesses. These bills are a direct and measured response to  
357 the competition problems we identified in our investigation and  
358 documented in our comprehensive report.

359 The digital marketplace suffers from a lack of competition.  
360 Many digital markets are defined by monopoly or duopoly control.  
361 Amazon, Apple, Facebook, and Google are gatekeepers to the online  
362 economy. They bury or buy rivals and abuse their monopoly power,  
363 conduct that is harmful to consumers, competition, innovation,  
364 and our democracy.

365 In testimony, submissions, and numerous interviews with  
366 subcommittee staff, businesses of all types and sizes described  
367 how dominant platforms exploit their gatekeeper power to charge  
368 exorbitant fees, advantage their own products and services,  
369 impose oppressive contract terms, and extract valuable data from  
370 the people and businesses that rely on them.

371 Over and over words like fear, bullying, and hardship came  
372 up in interviews. App developers, third party sellers, and even  
373 large publishers reported being victims of predatory behavior.

374 According to these businesses, they are dependent on platform  
375 gatekeepers to connect with their users or customers because they  
376 have few, if any, other options. They feel trapped. They are,  
377 in fact, trapped.

378           By maintaining control of the infrastructure of the digital  
379 age, Facebook, Google, Amazon, and Apple can conduct surveillance  
380 to identify potential rivals and ultimately bury or buy any  
381 competitive threats. For example, during the investigation, the  
382 subcommittee uncovered emails from Mark Zuckerberg to Facebook's  
383 Chief Financial Officer describing the purpose of purchasing  
384 Instagram as an opportunity to neutralize a competitive threat.

385       Before its company was acquired, the cofounder of Instagram told  
386 an investor that he was worried Mr. Zuckerberg would go into  
387 "destroy mode" if he refused to sell the company.

388           Facebook later required the surveillance company Onavo to  
389 identify other competitive threats and then neutralize them  
390 through acquisition, cloning their features or blocking them from  
391 Facebook's platform.

392           During our legislative hearing in February on proposals to  
393 address online gatekeeper power, we received written testimony  
394 from Cliff Pemble, the CEO of Garmin, about this exact topic.

395       He noted that as gatekeepers of the ecosystem for virtually all  
396 app developers, Apple and Google and I quote "have the ability  
397 and incentive to harm competition and that these super dominant  
398 companies should not be allowed to use their ability to control  
399 key inputs and distribution as a sword to eliminate or impede  
400 competition."

401           Due to high barriers to entering these markets such as strong

402 network effect and high switching costs, new entrants are unable  
403 to enter the market with better products or services to contest  
404 the dominance of these firms. In other words, businesses and  
405 consumers are stuck with few or no alternatives.

406 I want to be very clear about two things. This problem is  
407 not just about market failure. At its core, this issue is  
408 fundamentally about whether or not we have an economy where a  
409 business is fighting for economic survival can actually succeed.

410 It is about whether our economy future is going to be defined  
411 by the success of the best businesses with the best ideas or simply  
412 the biggest companies with the biggest lobbying budgets.

413 Second, this problem is fundamentally about what kind of  
414 country we want to live in, a country where Congress actually  
415 works for the people to tackle the major problems of our time  
416 or a country where Congress does nothing in the face of the  
417 confusion, doubt, and delay caused by the same unregulated tech  
418 monopolies that want to see absolutely nothing change.

419 America has had enough. According to multiple surveys over  
420 the past year, Republicans and Democrats agree on an overwhelming  
421 basis that these companies have too much power and that Congress  
422 must curb their dominance. As Chairman Nadler has said, we must  
423 answer that call. Today's legislative package is the start of  
424 that effort.

425 And I want to just particularly acknowledge the members of

426 the subcommittee on both sides of the aisle for the seriousness  
427 in which they have conducted this work and the report that was  
428 generated and the legislation that we are considering today.

429 The first bill we will consider is H.R. 3843, the Merger  
430 Filing Fee Modernization Act of 2021. This is a common sense  
431 bipartisan legislation that will provide a much needed update  
432 to the fee schedule for mergers that require review by the Federal  
433 Trade Commission or the Department of Justice. This bill updates  
434 merger filing fees for the first time in more than two decades  
435 to ensure there are antitrust agencies have the resources they  
436 need to enforce the law against the wealthiest companies the world  
437 has ever known.

438 The updated fee structures ensures that companies proposing  
439 the largest transactions will pay more because these transactions  
440 are likely to consume more agency resources. On the other hand,  
441 companies with transactions under \$500 million will pay less under  
442 this bill than they currently do.

443 Earlier this month, this legislation was adopted by the  
444 Senate. It was previously approved by a voice vote in the  
445 Senate's Judiciary Committee. And I want to thank Mr. Neguse  
446 for his leadership on this legislation and I encourage my  
447 colleagues to support this bill and I yield back.

448 Chairman Nadler. The gentleman yields back. I now  
449 recognize the Ranking Member of the Antitrust Subcommittee, the

450 gentleman from Colorado, Mr. Buck, for his opening statement.

451 Mr. Buck. Thank you, Mr. Chairman. And I want to thank  
452 Mr. Cicilline, the chairman of the subcommittee for his work on  
453 this and the bipartisan investigation that occurred.

454 The bills we introduced over a week ago are the culmination  
455 of an 18 month long bipartisan investigation into the monopoly  
456 power of big tech. Throughout the investigation, we heard first  
457 hand the gross abuses of Amazon, Apple, Facebook, and Google,  
458 and how they engaged in using their market-dominant positions.

459 These monopolists routinely use their gatekeeper power to crush  
460 competitors, harm innovation, distort, and destroy the free  
461 market and silence conservatives.

462 This legislation represents a scalpel, not a chain saw, to  
463 deal with the most important aspects of antitrust reform. We  
464 are giving the Department of Justice and the Federal Trade  
465 Commission the tools they need to restore the free market,  
466 incentivize innovation, and give small businesses a fair share  
467 against oligarchs like Jeff Bezos and Mark Zuckerberg.

468 Amazon, Apple, Facebook, and Google are already spending  
469 millions of dollars on lobbyists in the D.C. swamp to fight us.

470 They have spread lies about these bills calling them communist  
471 in one breath and argue that they won't actually break up big  
472 tech in the other.

473 These bills are conservative. One of them has been

474 introduced by Senator Mike Lee. Several of these bills are  
475 supported by Senators Cotton, Grassley, and Cruz. And these  
476 bills include co-sponsors like Representatives Cawthorn, Good,  
477 Gosar, and Donalds.

478 Tucker Carlson recently voiced his support for these bills  
479 on multiple Fox News segments. Big government created big tech  
480 monopolists through antitrust amnesty. The conservative thing  
481 to do is to hold big tech accountable. These bills do just that.

482 It is time to do what we said and reign in big tech and I yield  
483 back.

484 Chairman Nadler. The gentleman yields back. Without  
485 objection, all other opening statements will be included in the  
486 record.

487 I now recognize myself for purposes of offering an amendment  
488 in the nature of a substitute. The clerk will report the  
489 amendment.

490 [The Amendment offered by Mr. Nadler follows:]

491

492 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

493 Ms. Fontenot. Amendment in the nature of a substitute to  
494 H.R. 3843 offered by Mr. Nadler of New York. Strike all after  
495 the enacting clause --

496 Chairman Nadler. Without objection, the amendment in the  
497 nature of a substitute will be considered as read and shall be  
498 considered as base text for purposes of amendment. I will  
499 recognize myself to explain the amendment.

500 This amendment changes the title to better reflect the goals  
501 of the bill. It makes no substantive changes and I urge all  
502 members to support the amendment. I yield back the balance of  
503 my time.

504 Are there any amendments to the amendment in the nature of  
505 a substitute?

506 For what purpose does Mr. Neguse response to the bill seek  
507 recognition?

508 Mr. Neguse. Move to strike the last word.

509 Chairman Nadler. The gentleman is recognized.

510 Mr. Neguse. Thank you, Mr. Chairman, for your leadership  
511 and I want to, in particular, thank the Chairman of the  
512 Subcommittee, Representative Cicilline, and the Ranking Member,  
513 Mr. Buck, for their leadership as we embarked on a very thorough  
514 and comprehensive 18-month investigation into the concentration  
515 of power within the digital marketplace.

516 I think the bills we are considering today are important

517 and I know we are going to have robust debate and I certainly  
518 look forward to that debate today.

519 I would like to take a moment to talk about my bill, in  
520 particular, the bill that we are considering first this morning.  
521 This bill, in my view, is a clarion call to our regulators, to  
522 our enforcement agencies, namely, the FTC, to step up and do what  
523 is necessary to protect our small businesses, to protect  
524 innovation, to protect consumers, and ultimately to protect our  
525 economy.

526 Before I was elected to the United States Congress, I served  
527 as a regulator in my home state of Colorado, leading our state's  
528 Consumer Protection Agency, a counterpart to the SEC and CFPB.

529 And that experience certainly gave me the underpinning in terms  
530 of the knowledge of knowing just how important it is for our  
531 regulators and our enforcement agencies to have the resources  
532 that they need to do the job that they are charged to do under  
533 the law. And this bill would accomplish precisely that. It  
534 would modernize a filing fee structure that has not been changed  
535 in any substantive way in 20 years. Literally, these fees have  
536 not been adjusted in 20 years.

537 And what is interesting about the approach that we have taken  
538 and I thank my colleague, Representative Spartz from the State  
539 of Indiana, for her leadership in this regard, is that this bill  
540 is not a one size all approach. It increases the fees on



541 substantial mergers of transactions that total over \$160 million,  
542 but lowers the filing fees for small businesses. That, to me,  
543 is a common sense, reasonable, prudent approach that ultimately  
544 will ensure that the FTC has additional resources to be able to  
545 do the job, as I said, that they are charged to do under the law.

546

547 This is a bipartisan bill. It passed the United States  
548 Senate unanimously. Senator Klobuchar and Senator Grassley led  
549 the charge in the Senate.

550 I would hope that every member of this committee, Republican  
551 and Democrat, would agree that lowering fees for small businesses  
552 is a good step forward. And with that, Mr. Chairman, I would  
553 implore my colleagues to vote in favor of both this amendment  
554 and ultimately final passage of the bill. And with that, I would  
555 yield back.

556 Chairman Nadler. The gentleman yields back. What purpose  
557 does Mrs. Spartz, lead sponsor of this legislation, seek  
558 recognition.

559 Ms. Spartz. Strike the last word.

560 Chairman Nadler. The gentlelady is recognized.

561 Mrs. Spartz. Well, it's a very difficult and challenging  
562 topic, and I'm glad to see the conversation because we have to  
563 acknowledge we do have monopoly oligopoly in a lot of sectors  
564 of our businesses, and we are task FTC, Department of Justice,

565 to be enforcers to promote competition.

566 So what this does is we're going to have a lot of debate,  
567 and I know we're talking about the package, but I want us to be  
568 on -- look on a stand-alone basis. Is it a good legislation?

569 Can we agree on it or not?

570 Without getting in the whole debate because there are a lot  
571 of things that I agree, disagree, but I have to applaud my  
572 colleague not to put this omnibus bills, which it's hard to find  
573 a reason to vote yes for them. You know, it's much easier to  
574 vote no. But actually put it in the pieces so we can have a  
575 deliberation.

576 I just wanted to clarify what exactly this particular bill  
577 does. I know that FTC has been criticized in recent years for  
578 failing to be an effective enforcer dealing with illegal  
579 anti-competitive behaviors.

580 We know that litigation costs skyrocketed. This function  
581 has become more complex. Business structure become more complex  
582 and new. So it's more -- you know, they have to use a lot more  
583 experts.

584 We also -- a lot of critics argues that they're not really  
585 doing a good job to move on more cases through their legal systems,  
586 through the court system in order to clearly establish the limits  
587 of the law, and instead they just do some unajudicated and  
588 negotiated consent decrees, and that's really not what we want.

589

590           You know, we also know that, you know, in the last 40 years,  
591 you know, FTC has -- actually has 30 percent less employees but  
592 economy increased three times. So, definitely, we have to look  
593 how we can make this agency more effective.

594           You know, but we're talking about the promoted competition  
595 functions. I look at their financial statements. I'm an  
596 accountant, so I'll just share some numbers with you.

597           So on that function, FTC spend \$167 million last year --  
598 billion last year, and they were -- kind of two of them were  
599 actually -- were financed with this user fee, and \$65 billion  
600 were financed through general appropriation.

601           So what this bill, hopefully, will do will adjust more user  
602 fee finances of the function they have to do. You know, also,  
603 if we look at that the bill actually reduces the filing -- the  
604 fee for most of -- you know, for any company under \$1 billion.

605

606           So as of right now, it's about -- it's about -- by 25 to  
607 50 percent. So it's about from 0.05 percent to 0.13 percent,  
608 you know, where now it will be from 0.02 percent to 0.05 percent.

609           The only difference it does it's created new brackets. So now  
610 everything above billion is treated the same.

611           So it doesn't matter if you have billion-dollar merger, a  
612 \$100 billion merger, you still pay the same fee and that creates

613 two new brackets where they're going to be difference for \$2  
614 billion mergers and \$5 billion and above transactions.

615 So I think this just create new brackets because, ultimately,  
616 there is much more resources. Larger transaction require and  
617 right now smaller piece pay more of this effort. So it reduces  
618 this for the smaller companies' merger transaction and creates  
619 brackets for some larger one.

620 You still don't have -- there's still a big gap between \$5  
621 billion and \$100 billion, but at least it create a couple more  
622 brackets. So, hopefully, that will be sufficient that we don't  
623 have to actually finance this through general appropriations.

624

625 I'm also going to be talking a little bit later about  
626 potential guardrails. I know some people have concerns, you  
627 know, how the money is spent and we can put some particular  
628 guardrails to make sure to have transparency and accountability  
629 because I truly believe FTC and Department of Justice have to  
630 be accountable to this branch and they need to do more on that,  
631 and we can discuss it further.

632 But I also want to kind of explain that this is not related  
633 to any particular company or industry. It applies equally to  
634 everyone and it also deal in not just FTC but Department of Justice  
635 because both of this entity are responsible for this function.

636 Maybe it's a different discussion how it should be handled, but

637 that's what this is doing.

638 So I appreciate our work of -- on a bipartisan basis. At  
639 least then we can agree on some narrow issues, and I would really  
640 appreciate my colleagues to support this bill.

641 I yield back.

642 Chairman Nadler. The gentlelady yields back.

643 Are there any amendments to -- for what purpose does Ms.  
644 Lofgren seek recognition?

645 Ms. Lofgren. To strike the last word.

646 Chairman Nadler. The gentlelady is recognized.

647 Ms. Lofgren. First, I want to just thank Congressman Neguse  
648 and Congresswoman Spartz for their leadership on this bill, as  
649 well as Chairman Cicilline and Ranking Member Buck. I support  
650 the bill, and I think it's important that the filing fees for  
651 mergers be updated for the first time in two decades.

652 You know, the -- if the other bills that are on our agenda  
653 today are passed, the need will be even greater. The ACCESS Act  
654 alone would require a major increase in the FTC's budget and  
655 capacity far beyond the privacy lawyers it has on staff today.

656 The FTC only has 1,131 employees today. It's my  
657 understanding that only 40 are assigned to privacy and security  
658 issues and just five of them as technologists.

659 So this is going to provide much needed resources for  
660 enforcement. My understanding is that, according to the CBO,

661 the antitrust agencies will collect an additional \$135 million  
662 in merger filing fee revenue in the first year of this bill.

663 That's an increase of 50 percent of the total filing fees  
664 collected in 2020.

665 Now, it's important that we have adequate resources to  
666 enforce antitrust laws. I recently received a report analyzing  
667 the impact of technology on the -- on jobs and the economy in  
668 the state of California.

669 It's worth note noting that Amazon alone employs more workers  
670 in California, more than 153,000 employees than it does in  
671 Washington, more than 80,000 employees. That's a lot of people  
672 to be reviewed by an FTC staff of 1,131.

673 So, you know, as we do in the patent arena, it's absolutely  
674 appropriate that these companies should pay. The antitrust laws  
675 are part of the environment that allows our economy to flourish  
676 and they should be charged an increased fee.

677 And I want to thank the committee for taking this bill up.

678 I have a number of concerns about the details of some of the  
679 other bills, which I will raise in the appropriate forum. But  
680 all of us believe that we ought to have a vigorous competition  
681 and economy that serves the American public and this filing fee  
682 bill is part of that effort.

683 And with that, Mr. Chairman, I'd be happy to yield back.

684 Chairman Nadler. The gentlelady yields back.

685 For what purpose does Mr. Roy seek recognition?

686 Mr. Roy. I thank the chairman. I move to strike the last  
687 word.

688 Chairman Nadler. The gentleman is recognized.

689 Mr. Roy. I have an amendment at the desk.

690 Chairman Nadler. Clerk will report the amendment.

691 Ms. Fontenot. Amendment to the amendment --

692 Mr. Issa. Point of -- point of -- point of order. The  
693 gentleman asked -- I understood that the gentleman asked to strike  
694 the last word, which is different than an amendment. Many of  
695 us have not yet been allowed to strike the last word prior to  
696 an amendment. I just want to know what he was recognized for.

697 Mr. Roy. I have an amendment at the desk.

698 Ms. Lofgren. Has a point of order been raised --

699 Chairman Nadler. The gentleman -- the gentleman -- the  
700 gentleman was recognized for his amendment and the debate on his  
701 amendment may continue.

702 Ms. Lofgren. I raise a point of order on the amendment.

703 Chairman Nadler. The gentlelady will state the point of  
704 order.

705 Ms. Lofgren. The point of order is it's not germane to the  
706 underlying bill. I'm reserving a point of order.

707 Chairman Nadler. Reserving a point of order. Okay. Mr.  
708 Roy is recognized.

709 Mr. Roy. I thank the chairman, and I want to take a moment  
710 to --

711 Chairman Nadler. The clerk will report the amendment.

712 Ms. Fontenot. Amendment to the amendment in the nature of  
713 a substitute to H.R. 3843, offered by Mr. Roy of Texas. Page  
714 4 line 2 strike "there" and insert "eight" there. Page 4 after  
715 line 7 insert the following: "None of the funds authorized in  
716 this act may be used to promote Critical Race Theory or any other  
717 policy that discriminates based on race, including through  
718 rulemaking or selective enforcement."

719 [The Amendment offered by Mr. Roy follows:]

720

721 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*



722 Chairman Nadler. The gentleman is recognized to speak on  
723 the amendment.

724 Mr. Roy. Just kind of warming up here. Appreciate that,  
725 Mr. Chairman.

726 I'd, first, want to just take a moment to say that I  
727 appreciate the work of the chairman and the ranking member on  
728 the subcommittee, Mr. Cicilline and Mr. Buck.

729 I appreciate that we're here and that there's a bipartisan  
730 recognition of the concerns we have with the power of large  
731 corporations, particularly with respect to privacy, with respect  
732 to competition, and making sure that we have a robust free market.

733

734 I think that the balance here that -- I mean, I'll in full  
735 candor acknowledge that I'm trying to strike is how much power  
736 are we giving the government or how much power do we entrust in  
737 government to deal with the concerns that we're seeing with  
738 respect to the size of these companies.

739 So with respect to this particular measure, this bill that  
740 I appreciate my friend, Mrs. Spartz and Mr. Neguse from Colorado,  
741 for their effort.

742 As a former federal prosecutor in the Department of Justice,  
743 I know we need resources. When I was there, we needed resources  
744 to be able to go carry out our job, to go carry out our function,  
745 and it's important.

746 I think one of the concerns that I know a number, at least  
747 of my colleagues, at least on this side of the aisle, have is  
748 when we empower those in the FTC, the Department of Justice, or  
749 any other agency, what are they doing with that power? And I  
750 think that's a core question here.

751 So I'm conflicted. I will acknowledge being conflicted  
752 here. I co-sponsored this because I do recognize that we haven't  
753 adjusted fees since 1985. I like the fact that this equalizes  
754 a little bit and puts more of the fees into bigger companies and  
755 reduces the fees for smaller companies and acquisitions.

756 And it's self-funding. We have talked about the Patent  
757 Office model and others. I think those are good steps forward.

758

759 I think the question becomes is, if we were in a world in  
760 which I thought this was a pure objective use of that power to  
761 root out anti-competitive behavior and ensure a robust free market  
762 under the rules that antitrust law were originally anticipated  
763 and created, then I think there would be -- I think there would  
764 be more general agreement and interest in making sure they've  
765 got the right powers and tools to carry out that endeavor.

766 But I think some of the concern here is when you see the  
767 former acting commissioner of the FTC putting out very specific  
768 kind of politically-charged statements about how the power of  
769 the FTC would be used with respect to targeting systemic racism.

770           And all of us oppose racism and want to make sure that we're  
771 rooting that out of society appropriately. But when you talk  
772 about the power of the FTC or the power of the Department of  
773 Justice, and then targeting companies based on those ideas, and  
774 then when you see what those ideas end up looking like in practice  
775 in our education system, in corporate America, and then you say,  
776 well, what is the FTC going to use their power to do? Who are  
777 they going to go after and for what reason?

778           And I think that's -- I think that is at the core of some  
779 of the discontent with some on at least our side of the aisle.  
780       Maybe there's some bipartisan concerns about that.

781           And so some might say this is a political poison pill kind  
782 of thing to start with. I would say this is a very sincere issue  
783 about an issue that I have grave concern about, when we look at  
784 the language with -- at least for the acting FTC commissioner,  
785 obviously now, no longer in that role, saying that they're  
786 prioritizing investigations that address systemic racism, as  
787 opposed to looking through the lens of are these businesses  
788 engaged in anti-competitive behavior?

789           Are these businesses, you know, restricting free enterprise  
790 in the free market, which is what we're supposed to be have --  
791 have with respect to antitrust laws.

792           So with that, I offer this amendment to just simply say that  
793 we want to make sure that these dollars are being used clearly

794 for antitrust enforcement and not to advance any agenda outside  
795 of that lane, in particular, in this instance, an agenda tied  
796 to Critical Race Theory or systemic racism.

797 And with that, I would yield back.

798 Chairman Nadler. Does the gentlelady withdraw her --  
799 gentlelady withdraw her reservation?

800 Ms. Lofgren. I believe the amendment is not germane, Mr.  
801 Chairman, for two reasons. First, it relates to what the FTC  
802 may do, which is under the jurisdiction of the Energy and Commerce  
803 Committee, not the Judiciary Committee.

804 And secondly, it relates to the substance of what  
805 enforcements can be taken, which is nowhere in the base text of  
806 H.R. 3843. So I believe the amendment is not germane.

807 Mr. Roy. Will the gentlelady yield?

808 Chairman Nadler. Does Ms. --

809 Ms. Lofgren. Sure.

810 Mr. Roy. Well, we're addressing an important issue of fees  
811 in this committee and how those fees are collected and then,  
812 therefore, how those fees are used, right. We're suggesting  
813 changing those fees, so how can it not be germane to say, hey,  
814 hold on a second?

815 Some of us would support increasing the fees under certain  
816 conditions and then condition those fees. That seems by --  
817 facially germane?

818 Ms. Lofgren. Reclaiming my time. If you will -- directing  
819 your attention to the actual bill, nowhere in the bill does it  
820 relate to the nature of the enforcement. It has only to do with  
821 the fees that will then be directed to the enforcement agencies.

822

823 That's why the amendment is not germane.

824 Mr. Roy. Would the gentlelady yield?

825 Ms. Lofgren. Certainly.

826 Mr. Roy. We're offering in this bill a fee increase, and  
827 now we're amending to say these fees should be limited to the  
828 appropriate use.

829 Ms. Lofgren. Reclaiming my time. It may be possible that  
830 this amendment would be germane to one of the other bills before  
831 us. I just don't believe it's germane to this bill. Maybe that's  
832 what makes horse races a difference of opinion.

833 I yield --

834 Mr. Jordan. Would the gentlelady --

835 Ms. Lofgren. I would back to the -- I would yield to --

836 Mr. Jordan. I thank the gentlelady for yielding. I think  
837 there's kind of two questions. The funds in this legislation  
838 aren't limited to dealing with -- the fee increases in the funds  
839 aren't limited to dealing with the covered platforms. It can  
840 be used for anything and everything, as the gentleman from Texas  
841 has pointed out.

842           And then second, he's pointed out that the former acting  
843 chairman -- current commissioner and former chairman of the FTC  
844 has said it's perfectly appropriate to use antitrust law to deal  
845 with systemic racism.

846           So you have -- you have two sort of fundamental questions.  
847       Nothing in the bill limits where the funds can go. Doesn't talk  
848 about just the covered platforms, which is defined in all the  
849 other legislation.

850           And the fact that the current commissioner -- excuse me,  
851 current member of the FTC and former acting commissioner has said  
852 he specifically wants to use the legislation for the very item  
853 he points out in his amendment.

854           Ms. Lofgren. Reclaiming -- reclaiming my time. Reclaiming  
855 my time.

856           I think it's important to understand that germaneness rules  
857 have to do with the technical issue, not -- and the gentleman  
858 speaks, obviously, passionately about his views on the  
859 substantive issue.

860           This is a technical issue, and I would defer to the chairman  
861 and the parliamentarian whether my objection is sound or not.

862       They will decide, and I yield back.

863           Chairman Nadler. The gentlelady yields back.

864           The parliamentarian informs me that it's partially germane  
865 and partially not germane. So I'll allow it.

866 Mr. Cicilline. Mr. Chairman?

867 Chairman Nadler. Who seeks --

868 Mr. Issa. Move to strike the last word.

869 Chairman Nadler. Who's that?

870 Mr. Issa. Move to strike the last word.

871 Chairman Nadler. The gentleman is recognized.

872 Mr. Issa. Thank you, Mr. Chairman.

873 I'm very happy that that's partially germane. I'm also very

874 happy that's the first time I've heard a parliamentarian give

875 that ruling. Hopefully, there'll be many more to come.

876 First of all, a question was asked that's very good. What

877 part is germane, if I can inquire? So I'll speak on the germane

878 part.

879 Chairman Nadler. The portion of the amendment that has to

880 do with the antitrust matters at the FTC.

881 Mr. Issa. Excellent. Thank you.

882 Mr. Chairman, I could offer a lot of amendments to this bill,

883 but it's clear that it has a lot of momentum. I'd like to take

884 my few moments to opine on two points.

885 One is that I do believe that, like will be brought up by

886 others, that we have not truly thought about the fee creation

887 structure consistent with the need, and I'll just give you two

888 examples.

889 As one of the minority of people here who have paid those

890 fees for acquisitions in companies over the years, all of them  
891 post-1985, I'm sensitive to the fact that they were not indexed  
892 for inflation.

893 But what is not indexed for the inflation is a company does  
894 an \$80 or \$90 million acquisition who are now going to lower a  
895 1985 fee, and I would opine that if we were to -- regardless of  
896 what happens to this bill today, if we were to study it and the  
897 cost at the FTC and have a rulemaking process that says each  
898 category should pay its own way, I don't believe we would  
899 necessarily be lowering fees for a \$90 million acquisition.

900 I think that's one of the challenges that we're facing is  
901 in our rush to raise on the fat cats and lower on others, the  
902 question is if people that were here, actually, quite frankly,  
903 before almost anyone in the room, in 1985 thought a price was  
904 reasonable, why is it reasonable it will be less in today's  
905 dollars?

906 If I'm, roughly, right, since 1985 probably you've had about  
907 100 percent inflation. So the fact is that people have already  
908 received a reduction in constant dollars over these decades.

909 So one of my challenges is --

910 Chairman Nadler. Would the gentleman yield?

911 Mr. Issa. Of course, Mr. Chairman.

912 Chairman Nadler. I simply don't understand one thing.

913 While your comments are relevant to the merits of the bill, I



914 don't see how they are relevant to this amendment.

915 Mr. Issa. Mr. Chairman, I tried to strike the last word  
916 before this amendment got put in. I didn't get an opportunity.

917 But I do appreciate that you picked that up almost immediately.

918 So, Mr. Chairman, I do not expect to offer the amendment  
919 on that. But I do believe that in the days, weeks, months, and  
920 years to come that this committee should look at how the PTO does  
921 its fees arrangement with the idea that a full funding mechanism  
922 for the effort but one that is more flexible as to large and small  
923 acts, rather than us picking arbitrary numbers.

924 And in this case, I think, as much as I would always have  
925 been one of those small businesses for purposes of this bill,  
926 I don't believe that my companies would need a reduction from  
927 a 1985 amount if, in fact, what we believe is we need more money  
928 total.

929 So sometimes you have amendments. Sometimes you have  
930 comments, Mr. Chairman. My comment as a businessman of many years  
931 and one who has done dozens of acquisitions, at least as a board  
932 member, I think that we didn't quite get this right.

933 And in closing, with my last 50 seconds, we don't have the  
934 jurisdiction to do this. But, quite frankly, the Federal Trade  
935 Commission should be a three/three commission and no longer a  
936 polarized commission that keeps changing between presidents.

937 That belongs, I believe, to the Energy and Commerce

938 Committee. But I strongly recommend that in the days to come  
939 that members here think about when the next president comes in  
940 do we want to have made the Federal Trade Commission less of a  
941 tool of each administration and more of a sustaining tool against  
942 antitrust?

943 And with that, I yield back.

944 Mr. Cicilline. Mr. Chairman?

945 Chairman Nadler. The gentleman yields back.

946 For what purpose does Mrs. McBath seek recognition?

947 Mrs. McBath. Thank you, Chairman Nadler, and thank you,  
948 Subcommittee Chair Cicilline, Congressman Neguse and  
949 Congresswoman Spartz.

950 My remarks are very simple and very, very easy. And I just  
951 want to thank you all so much for bringing this bipartisan  
952 legislation to get more resources to the FTC and the antitrust  
953 division of the Department of Justice.

954 And as Commissioner Rebecca Kelly Slaughter told us in the  
955 past -- told the Antitrust Subcommittee in March that the FTC  
956 is always looking to use resources as efficiently as possible.  
957

958 But it needs more resources to be able to keep up with the  
959 demands of the work. And so we can't cut corners here, and when  
960 it comes to protecting consumers and promoting a competitive  
961 economy, that is our responsibility to do so.

962           So I just wanted to say that I'm a really proud co-sponsor  
963 of this bipartisan legislation today, and I know that it makes  
964 sure that our agencies really have the resources that they need  
965 to examine the large and costly mergers that we see coming forth  
966 and making sure that we're examining these mergers by just  
967 increasing their fees for these -- for these types of really huge  
968 conglomerates that we're going to have.

969           And this bill also just really decreases, you know, the  
970 merger fee for our small less costly mergers, which are often  
971 kind of more straightforward and more likely to involve our small  
972 businesses, which we're just as responsible for protecting.

973           So these adjustment I truly believe are going to enable our  
974 agencies to have what they need to do the important work and as  
975 we continue to kind of carefully monitor and manage and review  
976 what we know is going to be happening in the future.

977           So we also want to make sure that we're not burdening our  
978 taxpayers or the small business community as we do so.

979           I just urge all of my colleagues to support this legislation,  
980 and I yield back the balance of my time.

981           Chairman Nadler. The gentlelady yields back.

982           For what purpose does Ms. Jackson Lee seek recognition?

983           Ms. Jackson Lee. To strike the last word.

984           Chairman Nadler. The gentlelady is recognized.

985           Ms. Jackson Lee. Thank you very much, Mr. Chairman. And

986 we certainly thank Mr. Roy for contributing. And certainly we  
987 thank him for his support of the other initiatives as we move  
988 forward. I may have some different opinion as to the virtual  
989 germaneness of his particular amendment.

990 But I do want to speak to the underlying bill and to thank  
991 the sponsor, Mr. Neguse of Colorado, in this Merger Filing Fee  
992 Modernization Act of 2021, and indicate to him that it is  
993 enormously astute and long-overdue.

994 For those of us who spent some time in the administrative  
995 law world in Washington, DC, in my early practice for a number  
996 of federal agencies, overall we understand filing fees can be  
997 helpful to keep the operations of the agency going forward. But  
998 in many instances they can be a denial of access to the rights  
999 and the privileges of that agency, depending on the level of the  
1000 individual or entity.

1001 In this instance of merger filing, I think this is common  
1002 sense, one, for budgets that have not been able to keep up with  
1003 the demand for the antitrust enforcement agency's work that  
1004 continues to grow. We are in a new world. It is a 21st world  
1005 of big tech, and big tech is very large.

1006 We understand that some of the companies that we are dealing  
1007 with are larger than the economies of many nations in the world.

1008 And the demands on agencies have gone -- grown, due to a  
1009 significant increase in merger activity, filing fees for these

1010 transactions have not increased.

1011 And it is the responsibility of these agency to be the lawyer  
1012 for the American people, to be the investigator for the American  
1013 people. To be the consumer advocate for the American people.

1014 And amid rising concerns about anti-competitive mergers,  
1015 the business activities of dominant firms, and the privacy and  
1016 security of personal data, the public has increasingly called  
1017 on the Federal Trade Commission, Department of Justice Antitrust  
1018 Division, to investigate and take action. They have been  
1019 underfunded.

1020 So I thank Mr. Neguse and Mr. Cicilline for this coming out  
1021 of his committee. This updates the structure filing fees. But  
1022 in particular, it will allow the antitrust agencies will collect  
1023 an additional 135 million in merger filing fees in the first year.

1024 I like the idea of the moderated rates, which I'm always  
1025 concerned about, small, minority, and women-owned businesses.

1026 And in this instance, these might not be very small, but the  
1027 decrease that is required based upon the deal, under \$500,000,  
1028 I think opens up a lot of opportunities. And also the capping  
1029 of what the ultimate fee would be.

1030 So I am challenged by the underlying amendment, but I am  
1031 supporting enthusiastically HR 3843, long overdue.

1032 And I want to conclude by saying that as we look at America,  
1033 I've always said that the federal government is an umbrella on

1034 a rainy day. That means that the American people look to the  
1035 federal government when they don't even know that they do.

1036 We certainly know in disasters that we immediately seek help  
1037 from the federal government. But in our normal, day-to-day  
1038 functioning, the American people realize that someone is in the  
1039 gap. Some lawyer is standing there to watch what is going on  
1040 to protect their resources, the ability to be impacted negatively  
1041 by anti-competitive forces. They have a lawyer that will provide  
1042 the representation for them.

1043 That's what the Filing Fee Modernization Act will contribute  
1044 to. And I thank my colleagues for this legislation, and I rise  
1045 to support it.

1046 With that, I yield back to the Committee, with the last  
1047 sentence of my challenging understanding of the present  
1048 amendment. But I thank the gentleman for offering it. With  
1049 that, I yield back.

1050 Chairman Nadler. The gentlelady yields back. For what  
1051 purpose does Mr. Jordan seek recognition?

1052 Mr. Jordan. Thank you, Mr. Chairman, I'll be quick. I  
1053 think the amendment raises the basic question, maybe the  
1054 fundamental question: how is the FTC going to use the money?  
1055 Are they going to use it for what we're all, you know, hoping  
1056 they use it for, dealing with making sure there's competition,  
1057 making sure they deal with big tech?

1058           Or are they going to use it for other things? Other things  
1059 like the gentleman points out in his amendment, Critical Race  
1060 Theory?

1061           It's a fair question because we know the statements made  
1062 by the former Commissioner, current member of the FTC. So it's  
1063 a basic question. Vote yes on this amendment and we all send  
1064 a message we want the FTC, with this increased money that they're  
1065 going to get from this merger fee change, we want them to deal  
1066 with big tech, to promote competition, to do what they're supposed  
1067 to do.

1068           Simple. That's the basic question. With that, Mr.  
1069 Chairman, I yield back.

1070           Mr. Cicilline. Mr. Chairman

1071           Chairman Nadler. The gentleman yields back. For what  
1072 purpose does Mr. Cicilline seek recognition?

1073           Mr. Cicilline. Mr. Chairman, seek recognition in  
1074 opposition to the amendment.

1075           Chairman Nadler. The gentleman is recognized.

1076           Mr. Cicilline. I want to first thank Mr. Roy for his  
1077 remarks. And I know he's not making them just in this committee,  
1078 he made them last night on the floor of the House. And I know  
1079 Mr. Buck and I both appreciate the seriousness with which you're  
1080 approaching this work.

1081           I just want to say that the amendment, I was startled a little

1082 bit to hear the ranking member say how are they going to use the  
1083 money. The ranking member has called for Facebook to be broken  
1084 up. That will be one of the most expensive cases in FTC history,  
1085 and they will need resources to do it.

1086 The competition mission of the Federal Trade Commission is  
1087 to prevent or stop anti-competitive business practices and  
1088 enhance informed consumer choice in the marketplace. The Agency  
1089 accomplishes this goal by identifying illegal practices and  
1090 stopping and taking action against those illegal practices.

1091 The mission of the Antitrust Division of the Department of  
1092 Justice is to promote economic competition through enforcing and  
1093 providing guidance on antitrust laws and principles. In recent  
1094 years, it's become clear that our antitrust forces need additional  
1095 resources.

1096 Leadership of our antitrust agencies from both parties have  
1097 explained in oversight hearings that they need additional  
1098 resources to sufficiently enforce the antitrust laws. Amending  
1099 this legislation to restrict how antitrust agencies can use funds  
1100 for merger filing fees is really unnecessary and  
1101 counterproductive.

1102 The budgets of our antitrust enforcers are already stretched  
1103 beyond their limits. Instead of fighting to protect consumers  
1104 and competition and stopping anti-competitive conduct at every  
1105 turn, budgets constraints are forcing them to pick and choose



1106 whether and how aggressively to enforce the laws.

1107           Aggressive enforcement of our anti-monopoly laws and our  
1108 merger laws is critical. For example, providing the anti-trust  
1109 agencies with sufficient resources will enable them to  
1110 investigate and take action to address monopolization and illegal  
1111 mergers of healthcare markets that increase healthcare costs on  
1112 all Americans. Enforcers will be able to protect small farmers  
1113 from anti-competitive practices in the agricultural industry,  
1114 just to name a few.

1115           So I urge my colleagues to reject this amendment, to support  
1116 the underlying bill.

1117           And I would just note in closing that Mr. Issa raised concerns  
1118 about how these fees may fare over time. I just would hope that  
1119 the fact that they are indexed to inflation will bring some  
1120 comfort.

1121           And I yield the balance of my time to Mr. --

1122           Mr. Neguse. Would the gentleman yield? Thank you, Mr.  
1123 Chairman.

1124           I would just echo your sentiments. I appreciate that  
1125 Representative, my colleague from Texas, Representative Roy, is  
1126 passionate about this subject. I would just simply say this  
1127 amendment is unnecessary. And would remind the Committee again  
1128 that this bill passed on a unanimous basis through the Senate  
1129 Judiciary Committee and ultimately was adopted by the full Senate.

1130           And for those who wonder who serves on the Senate Judiciary  
1131 Committee, it includes Senators such as Ted Cruz, Mike Lee, Josh  
1132 Hawley, Lindsey Graham. All of them unanimously approved the  
1133 legislation that we are considering right now.

1134           So again, I would hope that my colleagues would support this  
1135 important bill, which I think is certainly a prudent step forward.

1136           And with that, I would back the balance --

1137           I yield to the gentleman from -- well, I will yield back  
1138 to the Subcommittee Chairman.

1139           Mr. Cicilline. I yield to Mr. Raskin.

1140           Mr. Raskin. Thank you, Mr. Cicilline. And I want to salute  
1141 you and Mr. Neguse for your great leadership on this. And thank  
1142 you, Mr. Neguse, for pointing out that this is all passed on the  
1143 Senate side on a strong bipartisan basis.

1144           And I just wanted to mention to my friend, Mr. Roy, that  
1145 this is indeed unnecessary because there's nothing in the bill  
1146 that is designed to promote any theory, any academic theory, any  
1147 political philosophy in the world.

1148           And there's something strange and perhaps unconstitutional  
1149 about pulling one theory out and saying that this will not be  
1150 the subject of any of the funding when there's no theory that's  
1151 being funded by it, whether it's free market theory, anarcho  
1152 syndicalism, Critical Race Theory, Darwinism, neo-Darwinism,  
1153 anti-Darwinism, paleo-conservatism, progressive liberalism,

1154 classical liberalism, none of it.

1155 And do we have to go down a list of every political moral  
1156 philosophy and theory in the world that's not the subject of,  
1157 you know, the collection of money? So I think that this is a  
1158 distraction from what we're doing here. It's unnecessary, and  
1159 arguably, unconstitutional as a form of First Amendment viewpoint  
1160 discrimination just to pull out one theory to target in this way.

1161 But luckily, it's not necessary. None of the money being  
1162 raised here goes to any theory at all. To, you know, any, I don't  
1163 know if there are conferences that support different theories  
1164 in academia. None of them will be funded this way.

1165 I yield back.

1166 Chairman Nadler. The gentleman yields back. So what  
1167 purpose does Mr. Swalwell seek recognition?

1168 Mr. Swalwell. Thank you, Chairman, I move to strike the  
1169 last word.

1170 Chairman Nadler. The gentleman is recognized.

1171 Mr. Swalwell. Well, first, I oppose this pessimistic  
1172 amendment. And it's interesting, my colleagues on the Democratic  
1173 side are being far too generous about the aim of this amendment.

1174 I mean, this is just a cynical way to try and torpedo an  
1175 important dialog that this committee needs to have. I mean,  
1176 insert whatever Fox News buzzword of the week you have, we could  
1177 do amendments like this all afternoon. This is not about anything

1178 other than just trying to divide the country on the grounds of  
1179 race.

1180 So I'm not going to spend any more time on that because it's  
1181 not worthy of it. What is worthy of discussing is that Chairman  
1182 Cicilline for that last two years has exhaustively tried to  
1183 undergo a study, a report on antitrust needs in this country.

1184 And I want to commend him for doing that at the Subcommittee  
1185 level and working with his colleagues on the Committee.

1186 And I think that this piece of legislation from Mr. Neguse  
1187 goes a long way toward ensuring that there is adequate  
1188 enforcement. It was passed in a bipartisan fashion in the Senate.

1189 It's estimated that this would increase by more than \$154  
1190 million, or 30%, the ability of the Federal Trade Commission and  
1191 the Antitrust Division at DOJ to provide enforcement

1192 And it would adjust the merger filing fee so that fees would  
1193 be -- more equitably fall on larger deals. Whereas right now,  
1194 it's pretty clear that smaller deals are paying a  
1195 disproportionately higher amount of fees.

1196 I look at this the same way as I look at IRS enforcement.

1197 If you bludgeon the IRS and reduce their ability to do audits,  
1198 that really allows the largest and wealthiest Americans and  
1199 companies in America to skirt tax laws.

1200 And it's really the middle class, working class Americans  
1201 who are going to get audited because it's cheaper to do an audit

1202 of a working class, middle American family than a larger family.

1203 So a robust IRS would probably make sure that there are fewer  
1204 tax cheats. And a robust Antitrust Division with a filing fee  
1205 system that reflects inflation will make sure that we can better  
1206 go after deals that are not good for consumers.

1207 So again, I just want to thank Mr. Cicilline for his two-plus  
1208 year study, and Mr. Neguse. And I will be supporting this bill,  
1209 and I yield back.

1210 Chairman Nadler. The gentleman yields back. The question  
1211 occurs on the Roy amendment. All in favor?

1212 (Chorus of aye.)

1213 Chairman Nadler. Opposed?

1214 (Chorus of no.)

1215 Chairman Nadler. The noes have it.

1216 Mr. Roy. Request for the yays and nays.

1217 Chairman Nadler. The yays and nays are requested. The  
1218 Clerk will call the roll.

1219 Ms. Fontenot. Mr. Nadler.

1220 Chairman Nadler. No.

1221 Ms. Fontenot. Mr. Nadler votes no.

1222 Ms. Lofgren.

1223 Ms. Lofgren. No.

1224 Ms. Fontenot. Ms. Lofgren votes no.

1225 Ms. Jackson Lee.

1226 Ms. Jackson Lee. No.

1227 Ms. Fontenot. Ms. Jackson Lee votes no.

1228 Mr. Cohen.

1229 Mr. Cohen. No.

1230 Ms. Fontenot. Mr. Cohen votes no.

1231 Mr. Johnson of Georgia.

1232 Mr. Johnson of Georgia. No.

1233 Ms. Fontenot. Mr. Johnson of Georgia votes no.

1234 Mr. Deutch.

1235 Ms. Bass.

1236 Ms. Bass. No.

1237 Ms. Fontenot. Ms. Bass votes no.

1238 Mr. Jeffries.

1239 Mr. Jeffries. No.

1240 Ms. Fontenot. Mr. Jeffries votes no.

1241 Mr. Cicilline.

1242 Mr. Cicilline. No.

1243 Ms. Fontenot. Mr. Cicilline votes no.

1244 Mr. Swalwell.

1245 Mr. Swalwell. No.

1246 Ms. Fontenot. Mr. Swalwell votes no.

1247 Mr. Lieu.

1248 Mr. Lieu. No.

1249 Ms. Fontenot. Mr. Lieu votes no.

1250 Mr. Raskin.

1251 Mr. Raskin. No.

1252 Ms. Fontenot. Mr. Raskin votes no.

1253 Ms. Jayapal.

1254 Ms. Jayapal. No.

1255 Ms. Fontenot. Ms. Jayapal votes no.

1256 Ms. Demings.

1257 Ms. Demings. No.

1258 Ms. Fontenot. Ms. Demings votes no.

1259 Mr. Correa.

1260 Mr. Correa. No.

1261 Ms. Fontenot. Mr. Correa votes no.

1262 Ms. Scanlon.

1263 Ms. Scanlon. No.

1264 Ms. Fontenot. Ms. Scanlon votes no.

1265 Ms. Garcia.

1266 Ms. Garcia. No.

1267 Ms. Fontenot. Ms. Garcia votes no.

1268 Mr. Neguse.

1269 Mr. Neguse. No.

1270 Ms. Fontenot. Mr. Neguse votes no.

1271 Ms. McBath.

1272 Ms. McBath. No.

1273 Ms. Fontenot. Ms. McBath votes no.

1274 Mr. Stanton.

1275 Mr. Stanton. No.

1276 Ms. Fontenot. Mr. Stanton votes no.

1277 Ms. Dean.

1278 Ms. Dean. No.

1279 Ms. Fontenot. Ms. Dean votes no.

1280 Ms. Escobar.

1281 Mr. Jones.

1282 Mr. Jones. Jones votes no.

1283 Ms. Fontenot. Mr. Jones votes no.

1284 Ms. Ross.

1285 Ms. Ross. Ross votes no.

1286 Ms. Fontenot. Ms. Ross votes no.

1287 Ms. Bush.

1288 Ms. Bush. Bush votes no.

1289 Ms. Fontenot. Ms. Bush votes no.

1290 Mr. Jordan.

1291 Mr. Jordan. Yes.

1292 Ms. Fontenot. Mr. Jordan votes yes.

1293 Mr. Chabot.

1294 Mr. Chabot. Aye.

1295 Ms. Fontenot. Mr. Chabot votes aye.

1296 Mr. Gohmert.

1297 Mr. Gohmert. Aye.



1298 Ms. Fontenot. Mr. Gohmert votes aye.  
1299 Mr. Issa.  
1300 Mr. Issa. Aye.  
1301 Ms. Fontenot. Mr. Issa votes aye.  
1302 Mr. Buck.  
1303 Mr. Buck. Aye.  
1304 Ms. Fontenot. Mr. Buck votes aye.  
1305 Mr. Gaetz.  
1306 Mr. Gaetz. Aye.  
1307 Ms. Fontenot. Mr. Gaetz votes aye.  
1308 Mr. Johnson of Louisiana.  
1309 Mr. Johnson of Louisiana. Aye.  
1310 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.  
1311 Mr. Biggs.  
1312 Mr. Biggs. Aye.  
1313 Ms. Fontenot. Mr. Biggs votes aye.  
1314 Mr. McClintock.  
1315 Mr. McClintock. Aye.  
1316 Ms. Fontenot. Mr. McClintock votes aye.  
1317 Mr. Steube.  
1318 Mr. Steube. Yes.  
1319 Ms. Fontenot. Mr. Steube votes yes.  
1320 Mr. Tiffany.  
1321 Mr. Tiffany. Aye.

1322 Ms. Fontenot. Mr. Tiffany votes aye.

1323 Mr. Massie.

1324 Mr. Massie. Aye.

1325 Ms. Fontenot. Mr. Massie votes aye.

1326 Mr. Roy.

1327 Mr. Roy. Aye.

1328 Ms. Fontenot. Mr. Roy votes aye.

1329 Mr. Bishop.

1330 Mr. Bishop. Yes.

1331 Ms. Fontenot. Mr. Bishop votes yes. Ms. Fischbach.

1332 Ms. Fischbach. Aye.

1333 Ms. Fontenot. Ms. Fischbach votes aye.

1334 Ms. Spartz.

1335 Mrs. Spartz. Yes.

1336 Ms. Fontenot. Ms. Spartz votes yes. Mr. Fitzgerald.

1337 Mr. Fitzgerald. Aye.

1338 Ms. Fontenot. Mr. Fitzgerald votes aye.

1339 Mr. Bentz.

1340 Mr. Bentz. Yes.

1341 Ms. Fontenot. Mr. Bentz votes yes. Mr. Owens.

1342 Mr. Owens. Aye.

1343 Ms. Fontenot. Mr. Owens votes aye. Chairman Nadler.

1344 Mr. Deutch.

1345 Mr. Deutch. No.

1346 Ms. Fontenot. Mr. Deutch votes no.  
1347 Chairman Nadler. Ms. Escobar.  
1348 Ms. Escobar. No.  
1349 Ms. Fontenot. Ms. Escobar votes no.  
1350 Chairman Nadler. Are there any other members who wish to  
1351 vote who haven't voted yet? The Clerk will report.  
1352 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 25 noes.  
1353 Chairman Nadler. The amendment is not agreed to.  
1354 For what purpose does Mr. Bishop seek recognition?  
1355 Mr. Bishop. Move to strike the last word.  
1356 Chairman Nadler. The gentleman is recognized.  
1357 Mr. Bishop. Thank you, Mr. Chairman.  
1358 As I have listened to the debate on that amendment, I was  
1359 struck again with something, an overall sense I've had about these  
1360 bills as they've come up for this hasty markup.  
1361 The motto of North Carolina, from which I hail, is esse quam  
1362 videri, to be rather than to seem. Now, I think there is a  
1363 widespread view that big tech is abusive. There ought to be  
1364 widespread agreement on the desirability of legislation to  
1365 respond to that.  
1366 But that only begs the question of how, and the devil is  
1367 in the details. That's never truer than here. This package of  
1368 bills seems at first glance to strike a blow against the dangers  
1369 of big tech power, but they likely constitute in fact something

1370 different.

1371 Taken as a whole, the package of legislation being hastily  
1372 marked up provides no comfort at all once it is examined closely.

1373 To sum it up, the bills grant a great deal of new power, regulatory  
1374 as well as enforcement power, to agencies, without much definition  
1375 of policy at all, certainly not clear and specific policy.

1376 And to take any comfort in that, to take any comfort that  
1377 that amounts to dealing with the abuses of big tech, one would  
1378 have to indulge this assumption, that granting a great big blank  
1379 check of administrative power to agencies will lead to effective  
1380 remediation of big tech's abuses and avoid unintended  
1381 counterproductive consequences.

1382 I happen to concur with the consensus about big tech and  
1383 I'm interested in the right policies, as I said. But, and I don't  
1384 have some purist laissez faire notion opposed to effective  
1385 antitrust legislation. But the best indication or the best  
1386 evidence of my thesis here about these bills is which bill is  
1387 the first to be taken up.

1388 It just says, here's a lot more money to the agencies. We  
1389 assume something good will happen. And to that point, it's  
1390 completely undefined, and hence that's why Mr. Roy's amendment  
1391 was germane to start trying to pick out things you shouldn't do  
1392 with it.

1393 And again, I just think that's the problem. When you dig

1394 into the detail of these bills, every one of them gives serious  
1395 cause for concern and not nearly enough definition of policy to  
1396 be confident that administrative agencies will do something  
1397 that's helpful to American -- the American people,  
1398 appropriately remediates big tech, and doesn't cause great and  
1399 new harms or make the regulatory state that much more powerful  
1400 without serving the American people.

1401 I yield back.

1402 Chairman Nadler. The gentleman yields back. For what  
1403 purpose does Mr. Chabot seek recognition?

1404 Mr. Chabot. Move to strike the last word, Mr. Chairman.

1405 Chairman Nadler. The gentleman is recognized.

1406 Mr. Chabot. Thank you, and I'll be relatively brief. At  
1407 first light, as the gentleman just mentioned, I think there's  
1408 some reason to think that there's some good things in some of  
1409 these bills and there are. But overall, I think they're bad for  
1410 the country, they're bad for the economy.

1411 The bill that we're -- the current bill, 3843, that's  
1412 under discussion would significantly increase the fees for all  
1413 types of businesses. And that's an important point, I think,  
1414 to be made, that this is not limited just to the technology sector,  
1415 which has gotten most the attention. This could spread to other  
1416 businesses, obviously larger at first, but you know, one questions  
1417 how far it actually would go.

1418 Congress ought to be doing what we can to reduce the costs  
1419 rather than increase them, which is what this first bill does  
1420 in particular. You know, especially after just having gone  
1421 through this pandemic, with the business community, many of them  
1422 through government action having been shut down. A lot of workers  
1423 being laid off.

1424 We need to get this economy moving again. There are a lot  
1425 of indications that this could hurt the economy and move in the  
1426 opposite direction.

1427 You know, there is another reason I think to be opposed to  
1428 this particular bill, as it inappropriately delegates  
1429 congressional power to agencies by significantly increasing fees  
1430 that exist outside the appropriations process, which is what we're  
1431 supposed to have actual influence, control over, and it's our  
1432 responsibility there.

1433 And overall with all of the bills for the most part, I think  
1434 there are a whole range of reason for people to object to them  
1435 and be opposed to them. And the reason I oppose the vast majority  
1436 of these bills, they give unelected bureaucrats new power to  
1437 regulate businesses, and therefore to regulate the overall  
1438 American economy.

1439 They do nothing about some of the major problems that many  
1440 people see out there today, such as the censorship and the shadow  
1441 banning that's been going on. These bills really don't address

1442 that at all.

1443 Some people want to break up these companies. There's  
1444 arguments to be made both pro and con that. But these bills don't  
1445 do that. They don't break up Google, they don't break up  
1446 Facebook, they don't break up anybody else. But they certainly  
1447 do have an impact on those companies and a lot of other companies  
1448 beyond that in the near future.

1449 I mean, it basically imports European antitrust policy here  
1450 to our country rather than traditional American anti-trust  
1451 policy. I think we ought not to be doing that.

1452 And you know, some of the bills require disclosure of  
1453 sensitive customer data to their competitors. That's the last  
1454 thing a business wants to do. But in one of the bills, that's  
1455 what it -- that's what it does.

1456 And another bill outlaws the -- a broad range of new  
1457 acquisitions and assumes that companies are guilty of  
1458 anti-competitive conduct until proven innocent. So basically,  
1459 these companies are considered to be guilty till proved innocent,  
1460 and that's not the American way.

1461 And, to wrap it up, I would say overall, this is an effort  
1462 basically for big government to take over big tech, to the  
1463 disadvantage, I believe, of the public in many ways. I think  
1464 that it's going to hurt innovation, most of these bills. And  
1465 I think it would also hurt consumers.

1466           So I think -- I think in general that people of good faith  
1467           came together and tried to do something good. Unfortunately,  
1468           I think what they've done is bad, bad for the country, bad for  
1469           the economy, bad for job creation. And therefore, oppose most  
1470           of these legislation, pieces of legislation. I would urge my  
1471           colleagues to do so as well.

1472           I yield back.

1473           Chairman Nadler. The gentleman yields back. Are there any  
1474           further amendments?

1475           Mr. Fitzgerald. Mr. Chair?

1476           Chairman Nadler. Who seeks recognition?

1477           Mr. Fitzgerald. Mr. Chair, I have an amendment at the desk.

1478           Chairman Nadler. For what purpose does Mr. -- for what  
1479           purpose does Mr. Fitzgerald seek recognition?

1480           Mr. Fitzgerald. Mr. Chair, I have an amendment at the desk.

1481           Chairman Nadler. The Clerk will report the amendment.

1482           Ms. Fontenot. Amendment to the amendment in the nature of  
1483           a substitute to HR 3843 offered by Mr. Fitzgerald of Wisconsin.

1484           After Section 3, insert the following --

1485           Mr. Cicilline. Mr. Chairman, I reserve a point of order.

1486           Chairman Nadler. The gentleman reserves a point of order.

1487           The Clerk will -- the gentleman is recognized.

1488           Mr. Fitzgerald. Mr. Chairman, thank you. And this might  
1489           be just what the doctor ordered, I think, after the discussion



1490 we just had on the first amendment.

1491 I fully support giving antitrust regulators the resources  
1492 they need to enforce the laws against the big tech companies,  
1493 especially when it's discovered that they're abusing their power.

1494 You know, the companies that use their market power to increase  
1495 prices, reduce output, and otherwise harm innovation should be  
1496 held accountable. It can have an effect on quality, it can have  
1497 an effect on consumer choice.

1498 But like some other members brought up earlier, I have a  
1499 real problem with just giving a blank check to the bureaucracy  
1500 who would like to use the antitrust laws to advance other policy  
1501 goals, environmental, maybe labor, maybe even social justice  
1502 goals.

1503 So this amendment would do I think what some members were  
1504 just talking about. Let's limit it to just enforcement. If we  
1505 could draw those clear lines and say sure, if there's abuse going  
1506 on, go ahead, enforce it. But don't take those same taxpayer  
1507 dollars and advance your own agenda as the bureaucracy.

1508 So this would ensure that the FTC and DOJ can be held  
1509 accountable and work with big tech. I'm not sure exactly how  
1510 this would play out, but work with big tech and still not have  
1511 that open checkbook. I mean, I think that's what our  
1512 responsibility would be under this bill.

1513 And I would urge members who may have not supported the last

1514 amendment, this may be the answers to the questions that were  
1515 being asked just earlier. And I would urge my colleagues to  
1516 support the amendment. And I yield back.

1517 Chairman Nadler. The gentleman yields back. Does the  
1518 gentleman insist on his point of order?

1519 Mr. Cicilline. Mr. Chairman, I'll withdraw my point of  
1520 order because I think it's partially germane. But if I might  
1521 be just heard briefly on the amendment.

1522 Chairman Nadler. The gentleman is recognized.

1523 Mr. Cicilline. You know, again, as I stated in response  
1524 to the last amendment, the enforcement agencies have a very  
1525 specific mission for antitrust enforcement to promote a  
1526 competition policy and are already stretched well beyond the  
1527 resources they currently have.

1528 I think this rider would invite some potential problems when  
1529 you think about, you know, keeping the lights on in the building  
1530 or doing their enforcement to protect children online, would those  
1531 be part of enforcements?

1532 I just think it's unnecessary, that it would create potential  
1533 problems about just the agency operating. And I urge my  
1534 colleagues to vote against the amendment. I yield back.

1535 Chairman Nadler. The gentleman yields back.

1536 Mr. Bishop. Mr. Chairman.

1537 Chairman Nadler. Who seeks recognition?

1538 Mr. Bishop. Mr. Chairman -- Bishop.

1539 Chairman Nadler. For what purpose does Mr. Bishop seek  
1540 recognition?

1541 Mr. Bishop. Move to strike the last word.

1542 Chairman Nadler. The gentleman is recognized.

1543 Mr. Bishop. I think this illustrates -- this amendments  
1544 illustrates what I was just speaking of in more general terms.  
1545 The cart is before the horse. So I commend the sponsor of the  
1546 amendment for raising the question what the money is to be used  
1547 for, at least implicitly.

1548 Is it to be -- are we just offering additional resources  
1549 to the FTC and DOJ for their existing mission, as defined by prior  
1550 legislation over the years in this congress? Or, are we  
1551 anticipating that they're going to do something else with it?

1552

1553 I think it's implicit in the fact that this entire markup  
1554 on all the several panoply of bills is about something new and  
1555 different. That these resources seem to be tied to that, but  
1556 how?

1557 And is it for, I mean, as I say, there's regulatory and  
1558 enforcement policy, although not very well defined, in the several  
1559 bills. So what are we doing? And I think that is the problem.

1560 We have the cart before the horse.

1561 And so I commend the gentleman's amendment. I yield back.

1562 Chairman Nadler. The gentleman yields back. Who else  
1563 seeks recognition? The Clerk -- in that case -- in that  
1564 case the question occurs on the amendment. All in favor, say  
1565 aye.

1566 (Chorus of aye.)

1567 Chairman Nadler. Opposed, no.

1568 (Chorus of no.)

1569 Chairman Nadler. In the opinion of the Chair, the noes have  
1570 it.

1571 Mr. Fitzgerald. Mr. Chair, can I get the yays and nays,  
1572 please.

1573 Chairman Nadler. The yays and nays are requested. The  
1574 Clerk will call the roll.

1575 PARTICIPANT: I have to do a vote in just a second.

1576 Chairman Nadler. What? The Clerk will call the roll.

1577 Ms. Fontenot. Mr. Nadler.

1578 Chairman Nadler. No.

1579 Ms. Fontenot. Mr. Nadler votes no.

1580 Ms. Lofgren.

1581 Ms. Lofgren. No.

1582 Ms. Fontenot. Ms. Lofgren votes no.

1583 Ms. Jackson Lee.

1584 Ms. Jackson Lee. No.

1585 Ms. Fontenot. Ms. Jackson Lee votes no.

1586 Mr. Cohen.

1587 Mr. Cohen. No.

1588 Ms. Fontenot. Mr. Cohen votes no.

1589 Mr. Johnson of Georgia.

1590 Mr. Johnson of Georgia. No.

1591 Ms. Fontenot. Mr. Johnson of Georgia votes no.

1592 Mr. Deutch.

1593 Ms. Bass.

1594 Ms. Bass. No.

1595 Ms. Fontenot. Ms. Bass votes no.

1596 Chairman Nadler. Mr. Deutch? Okay.

1597 Ms. Fontenot. Mr. Jeffries.

1598 Mr. Jeffries. No.

1599 Ms. Fontenot. Mr. Jeffries votes no.

1600 Mr. Cicilline.

1601 Mr. Cicilline. No.

1602 Ms. Fontenot. Mr. Cicilline votes no.

1603 Mr. Swalwell.

1604 Mr. Swalwell. No.

1605 Ms. Fontenot. Mr. Swalwell votes no.

1606 Mr. Lieu.

1607 Mr. Lieu. No.

1608 Ms. Fontenot. Mr. Lieu votes no.

1609 Mr. Raskin.

1610 Mr. Raskin. No.

1611 Ms. Fontenot. Mr. Raskin votes no.

1612 Ms. Jayapal.

1613 Ms. Jayapal. No.

1614 Ms. Fontenot. Ms. Jayapal votes no.

1615 Ms. Demings.

1616 Ms. Demings. No.

1617 Ms. Fontenot. Ms. Demings votes no.

1618 Mr. Correa.

1619 Mr. Correa. No.

1620 Ms. Fontenot. Mr. Correa votes no.

1621 Ms. Scanlon.

1622 Ms. Scanlon. No.

1623 Ms. Fontenot. Ms. Scanlon votes no.

1624 Ms. Garcia.

1625 Mr. Neguse.

1626 Ms. McBath.

1627 Ms. McBath. No.

1628 Ms. Fontenot. Ms. McBath votes no.

1629 Mr. Stanton.

1630 Mr. Stanton. No.

1631 Ms. Fontenot. Mr. Stanton votes no.

1632 Ms. Dean.

1633 Ms. Dean. No.

1634 Ms. Fontenot. Ms. Dean votes no.  
1635 Ms. Escobar.  
1636 Ms. Escobar. No.  
1637 Ms. Fontenot. Ms. Escobar votes no.  
1638 Mr. Jones.  
1639 Mr. Jones. No.  
1640 Ms. Fontenot. Mr. Jones votes no.  
1641 Ms. Ross.  
1642 Ms. Ross. No.  
1643 Ms. Fontenot. Ms. Ross votes no.  
1644 Ms. Bush.  
1645 Ms. Bush. Bush votes no.  
1646 Ms. Fontenot. Ms. Bush votes no.  
1647 Mr. Jordan.  
1648 Mr. Jordan. Yes.  
1649 Ms. Fontenot. Mr. Jordan votes yes.  
1650 Ms. Chabot -- Mr. Chabot.  
1651 Mr. Chabot. Aye.  
1652 Ms. Fontenot. Mr. Chabot votes aye.  
1653 Mr. Gohmert.  
1654 Mr. Gohmert. Aye.  
1655 Ms. Fontenot. Mr. Gohmert votes aye.  
1656 Mr. Issa.  
1657 Mr. Issa. Aye.

1658 Ms. Fontenot. Mr. Issa votes aye.  
1659 Mr. Buck.  
1660 Mr. Buck. Aye.  
1661 Ms. Fontenot. Mr. Buck votes aye.  
1662 Mr. Gaetz.  
1663 Mr. Johnson of Louisiana.  
1664 Mr. Johnson of Louisiana. Aye.  
1665 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.  
1666 Mr. Biggs.  
1667 Mr. Biggs. Aye.  
1668 Ms. Fontenot. Mr. Biggs votes aye.  
1669 Mr. McClintock.  
1670 Mr. McClintock. Aye.  
1671 Ms. Fontenot. Mr. McClintock votes aye.  
1672 Mr. Steube.  
1673 Mr. Steube. Yes.  
1674 Ms. Fontenot. Mr. Steube votes yes.  
1675 Mr. Tiffany.  
1676 Mr. Tiffany. Aye.  
1677 Ms. Fontenot. Mr. Tiffany votes aye.  
1678 Mr. Massie.  
1679 Mr. Massie. Aye.  
1680 Ms. Fontenot. Mr. Massie votes aye.  
1681 Mr. Roy.



1682 Mr. Roy. Aye.

1683 Ms. Fontenot. Mr. Roy votes aye.

1684 Mr. Bishop.

1685 Mr. Bishop. Yes.

1686 Ms. Fontenot. Mr. Bishop votes yes. Ms. Fischbach.

1687 Ms. Fischbach. Yes

1688 Ms. Fontenot. Ms. Fischbach votes yes.

1689 Ms. Spartz.

1690 Mrs. Spartz. Yes.

1691 Ms. Fontenot. Ms. Spartz votes yes. Mr. Fitzgerald.

1692 Mr. Fitzgerald. Aye.

1693 Ms. Fontenot. Mr. Fitzgerald votes aye.

1694 Mr. Bentz.

1695 Mr. Bentz. Yes.

1696 Ms. Fontenot. Mr. Bentz votes yes. Mr. Owens.

1697 Mr. Owens. Yes.

1698 Ms. Fontenot. Mr. Owens votes yes. Chairman Nadler.

1699 Mr. Deutch.

1700 Mr. Deutch. No.

1701 Ms. Fontenot. Mr. Deutch votes no.

1702 Chairman Nadler. Ms. Garcia.

1703 Ms. Garcia. No.

1704 Ms. Fontenot. Ms. Garcia votes no.

1705 Chairman Nadler. Are there any other members who haven't

1706 voted who wish to vote?

1707 Mr. Gaetz.

1708 Ms. Fontenot. Mr. Gaetz, you are not recorded. Mr.

1709 Gaetz. Yes.

1710 Ms. Fontenot. Mr. Gaetz votes yes.

1711 Chairman Nadler. The Clerk will report.

1712 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 24 noes.

1713 Chairman Nadler. The amendment is not agreed to.

1714 Are there any further amendments to the amendment in the

1715 nature of a substitute?

1716 Mrs. Spartz. Mr. Chairman, I have an amendment at the desk.

1717 Chairman Nadler. Ms. Spartz is recognized. For what

1718 purpose does Ms. Spartz seek?

1719 Mrs. Spartz. I have an amendment at the desk.

1720 Chairman Nadler. The Clerk will report the amendment.

1721 Mrs. Spartz. Thank you, Mr. Chairman, member of the

1722 Committee --

1723 Chairman Nadler. The Clerk will report the amendment.

1724 Ms. Fontenot. Amendment to the amendment in the nature of

1725 a substitute to HR 3843 offered by Ms. Spartz of Indiana. On

1726 page 3, after line 23, add the following: Five for each fiscal

1727 year commencing after September 30, 2022 through September 30,

1728 2027, the Federal Trade Commission and Department of Justice shall

1729 include in its joint annual report pursuant to the

1730 Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 US Code  
1731 18A, et cetera sequence, the following --

1732 Chairman Nadler. The amendment is considered as read. The  
1733 gentlelady is recognized.

1734 Mrs. Spartz. Thank you, Mr. Chairman, member of the  
1735 Committee.

1736 As a lot of my colleagues, I do share the concern over big  
1737 government and lack of transparency in check and balances. But  
1738 we also have to acknowledge that, you know, we have a significant  
1739 issues with monopolic, oligopolic powers in a lot of sectors in  
1740 a lot of markets, hospital monopolies, PBM monopolies, big tech  
1741 monopolies.

1742 And we can debate the reasons. I truly believe there are  
1743 a lot of government-created barriers of entry or ineffective legal  
1744 framework to protect people's rights. But what we need to also  
1745 think what about the solutions.

1746 And I not believe in something like being all or nothing  
1747 or not looking at positive incremental changes, or look at  
1748 something be perfect that be the enemy of the good. So I wanted  
1749 to work with my colleagues and see if we can improve things what  
1750 we have right now.

1751 And I think what is this amendment will do, it actually will  
1752 provide these guardrails. But I wanted to kind of clarify a few  
1753 things. You know, when we talk about this, the bill, that just

1754 want to make sure that people understand that this bill does not  
1755 increase funding for this, you know, appropriate funding for this,  
1756 for FTC and Department of Justice.

1757 Because it's only Appropriations Committee can increase  
1758 funding. We don't even know what these fees are going to do,  
1759 you know. What this bill does is look at how we can more evenly  
1760 allocate the burden, you know, of paying for this mergers, you  
1761 know. And then for enforcements actions.

1762 So it's shifting the burden, you know, from some smaller  
1763 entities to even the more evenly allocated. So if before we have  
1764 the allocation from 0.05% up to 0.13%, now everybody is going  
1765 to be not more from 0.02 to 0.05%. And then we actually also  
1766 exempt the little bit larger company not paying for that, which  
1767 just seems reasonable.

1768 You know, I agree with Congressman Issa and a lot of issues  
1769 he brought up. But ultimately our economy grew three times.  
1770 So why don't we let smaller stakeholders pay less? Nothing wrong  
1771 with actually reducing the fees, you know.

1772 But I also want to talk about the guardrails in this  
1773 amendment, you know. I know that, you know, a lack of  
1774 transparency brings a lot of distrust between our branches. But  
1775 we have to be effective, effective check and balance to the other  
1776 branch.

1777 So what this is going to do, that effective after the next

1778 fiscal year, we'll actually have Federal Trade Commission,  
1779 Department of Justice to report us on the numbers, you know, on  
1780 the actions they're doing. Ask them what are you going to --  
1781 what is your increase of funds by different type of -- by  
1782 different tiers, which maybe will allow us to rethink and readjust  
1783 these fees.

1784 It also say what is the total revenue derived from this  
1785 pre-emergent notification filing fees. What is the cost of  
1786 operation and what are you doing with these revenues?

1787 And this actually specifically asks them to come and to this  
1788 and the Senate committee in front of us and present it and justify  
1789 actions or answer the question why they doing something, not doing  
1790 it.

1791 Also, specifically it asks them to report on any actions  
1792 that were taken or not taken on three-to-two vote and what a  
1793 percentage of this action. Because we want to make sure that  
1794 the Committee actually is doing a good job and not being too  
1795 political, the Commission.

1796 And the last thing, I understand that spending money without  
1797 congressional authorization was always a concern of our Founding  
1798 Fathers. It's always been a concern in Congress, I think, with  
1799 our convoluted budget process creating opportunity for back-door  
1800 spending.

1801 And even though these fees, I just want to kind of say that

1802 these fees in the total appropriation is set in Appropriation  
1803 Committee. It actually might not even increase the total amount,  
1804 it just allocation the burden between different stakeholders.

1805 But I wanted to make sure and be clear and specifically say  
1806 that none of the funds collected by the FTC that are used by FTC  
1807 and DOJ could be spent without specifically be appropriated by  
1808 Congress. I think it's very important, even though it's already  
1809 is in the law, I wanted to add it to this bill to address some  
1810 of the concerns since our budget process is too convoluted.

1811 So I would really appreciate the support this amendments.  
1812 It would put good guardrails and bring more transparency to this  
1813 legislation and make it better the processes what we have. Thank  
1814 you so much, and I yield back.

1815 Chairman Nadler. The gentlelady yields back. I now  
1816 recognize myself to strike the last word.

1817 I'm not sure that the reports -- I'm not sure that the  
1818 reports required by this amendment are not already required, but  
1819 if they aren't, they ought to be. And so I support the amendment.

1820 I urge everybody to support the amendment. And I yield to Mr.  
1821 Cicilline.

1822 Mr. Cicilline. Thank you, Mr. Chairman. I just want to  
1823 thank Congresswoman Spartz for her sponsorship of the underlying  
1824 bill and for this excellent amendment, which I think will bring  
1825 more transparency, build confidence in the work of the Agency.

1826 I thank her for offering it, and I urge my colleagues to support  
1827 the amendment.

1828 Mr. Raskin. Will the gentleman yield?

1829 Mr. Cicilline. Happy to yield to Mr. -- actually, it's  
1830 Mr. Chairman's time. I'll yield back to Mr. --

1831 Chairman Nadler. Yes, I will yield.

1832 Mr. Raskin. Thank you, Mr. Chairman. I also want to just  
1833 speak in strong support of the Spartz amendment and thank her  
1834 for raising this point. A lot of the debate today has been based  
1835 on the false notion that this somehow an appropriation, and of  
1836 course we have a separate appropriations process.

1837 And as she shrewdly points out, this is just about the  
1838 allocation of the burden of money raised under the statute. So  
1839 I want to thank her for her substantive and refreshing leadership,  
1840 and I yield back to Mr. Chairman.

1841 Chairman Nadler. The gentleman yields back. I will yield  
1842 -- and I yield back. Does anyone else seek recognition on this  
1843 amendment?

1844 In that case, the question occurs on the amendment. The  
1845 Clerk will call -- all those in favor?

1846 (Chorus of aye.)

1847 Chairman Nadler. Opposed? In the opinion of the Chairs  
1848 the ayes obviously have it. The amendment is agreed to.

1849 Are there any other amendments to the amendment in the nature

1850 of a substitute?

1851 Mr. Johnson of Louisiana. Mr. Chairman?

1852 Chairman Nadler. Mr. Johnson. For what purpose does Mr.  
1853 Johnson seek recognition?

1854 Mr. Johnson of Louisiana. I have an amendment at the desk.

1855 Chairman Nadler. The Clerk will report the amendment.

1856 Ms. Fontenot. Amendment to the amendment in the nature of  
1857 a substitute to HR 3843 offered by Mr. Johnson of Louisiana.

1858 Strike Section 3 --

1859 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

1860 Chairman Nadler. The gentleman reserves a point of order.

1861 The amendment will be considered as read. The gentleman is  
1862 recognized.

1863 Mr. Johnson of Louisiana. Thank you, Mr. Chairman.

1864 The American people are deeply concerned about the  
1865 anti-competitive actions and censorship abuses of big tech.  
1866 That's what's brought us here. And infamously, the big platforms  
1867 have suppressed and silenced conservatives in particular and  
1868 conservative viewpoints. We all know it, objectively that's  
1869 true.

1870 They have brazenly weaponized their biases. And it concerns  
1871 everybody, not just those on our side of the aisle, because it's  
1872 ultimately a threat to free speech everywhere and to all  
1873 viewpoints. And in many cases, they've also eroded the free



1874 market and ultimately closed down the operations of many small  
1875 businesses, job creators, and entrepreneurs.

1876 Many of us believe our focus should be on how to enforce  
1877 the current antitrust laws and how we use those to address the  
1878 anti-competitive behavior.

1879 So my amendment is pretty simple. It would insert the text  
1880 of my bill, the One Agency Act, into HR 3843. For more than 100  
1881 years, enforcement of our country's antitrust laws has been split  
1882 between the Department of Justice and the Federal Trade  
1883 Commission. In light of today's markup, I think it's fair to  
1884 ask what the American people have gotten for their tax dollars.

1885 The split jurisdiction in executing our antitrust laws has  
1886 created an untenable bureaucratic process with poor communication  
1887 among the enforcement bodies, unreasonable delays, and an  
1888 unacceptable level of inconsistency in administering the current  
1889 law.

1890 Take one example. In a recent antitrust case brought  
1891 against a company by the FTC, the DOJ filed a motion in support  
1892 of the company, both at the trial level and on appeal. In other  
1893 words, the DOJ and the FTC were arguing the opposite sides. The  
1894 DOJ said the FTC was wrong.

1895 We had two federal agencies tasked with enforcing antitrust  
1896 law openly arguing against one another in federal court. On top  
1897 of that, the FTC's case was so problematic that the Department

1898 of Defense and the Department of Energy also weighed in at the  
1899 appellate level in support of the defendant company.

1900 This is the very definition of a broken system, and it's  
1901 what the taxpayers get when there's an utter lack of consistency.

1902 Considering the subject matter of today's markup, I think the  
1903 majority would agree with me that the process has just not worked  
1904 as it was intended.

1905 Again, Mr. Chairman, my amendment is simple. It would  
1906 consolidate antitrust enforcement within the Department of  
1907 Justice. The FTC would still be able to carry out its consumer  
1908 protection functions, which are important, but competition  
1909 enforcement would fall squarely within the DOJ's Antitrust  
1910 Division.

1911 This would improve our ability to police anti-competitive  
1912 behavior by streamlining our efforts at the federal level. For  
1913 that reason, I urge a yes vote on my amendment, and I yield back.

1914 Chairman Nadler. Does Mr. Cicilline insist on his point  
1915 of order?

1916 Mr. Cicilline. I do, Mr. Chairman.

1917 Chairman Nadler. The gentleman will be heard.

1918 Mr. Cicilline. Thank you, Mr. Chairman. Mr. Chairman,  
1919 this piece of legislation before us is a very narrow piece of  
1920 legislation with respect to fees for proposed mergers. The  
1921 amendment is a gigantic, substantively different piece of

1922 legislation, in fact, that abolishes the FTC. That is not germane  
1923 to the narrow purpose of the underlying bill, and I ask you to  
1924 --

1925 Mr. Johnson of Louisiana. Would the gentleman yield?  
1926 Would you yield for a moment?

1927 Mr. Cicilline. Sure. I don't typically yield to someone  
1928 who is going to argue against me, but for you, Mr. Johnson, I'll  
1929 do it.

1930 Mr. Johnson of Louisiana. You're a good friend. If you  
1931 read the text of the amendment, it doesn't abolish the FTC. As  
1932 I acknowledged in my opening, there's an important function that  
1933 the FTC is involved in, that's consumer protection, that was its  
1934 intent.

1935 Mr. Cicilline. I'm sorry, I'll -- correct that you are  
1936 absolutely right. It abolishes the antitrust enforcement of the  
1937 FTC, which is a huge policy -- it's a broad policy proposal  
1938 which is well beyond the very narrow purpose of an increase in  
1939 filing fees. And therefore I think it's not germane.

1940 Mr. Johnson of Louisiana. Could I ask if you think that's  
1941 running efficiently and effectively as designed?

1942 Mr. Cicilline. Look, I think the -- I think the  
1943 Subcommittee, the Antitrust Subcommittee, spent two years  
1944 studying this issue of antitrust. And I think we generated  
1945 reports, both a majority report and a minority report, that I

1946 think bring very needed reforms to this work.

1947 And I think there have been failings on both Democratic and  
1948 Republican administrations. That's what this body of bills is  
1949 intended to do. But more antitrust enforcement, not less, to  
1950 me is the answer. But that's, again, not the issue. This is  
1951 a germaneness question. I yield to Mr. Buck, who looks like he  
1952 wants to --

1953 Mr. Buck. Would the gentleman?

1954 Mr. Cicilline. Of course.

1955 Mr. Buck. Thank you. I just wanted to ask the gentleman,  
1956 I believe that, Mr. Johnson, correct me if I'm wrong, that Senator  
1957 Lee has offered this bill in the United States Senate.

1958 Mr. Johnson of Louisiana. I think so.

1959 Mr. Buck. And I'm just wondering if the ranking member on  
1960 the Antitrust Subcommittee would be willing to look at this bill  
1961 separately, aside from today's markup, and be willing to work  
1962 towards maybe some resolution on this bill.

1963 Mr. Cicilline. Absolutely, happy to work with you, Mr.  
1964 Buck, and Mr. Johnson.

1965 Mr. Buck. And I yield back. Thank you very much.

1966 Mr. Cicilline. Yield back, Mr. Chairman.

1967 Chairman Nadler. The Chair is prepared to rule. Clause  
1968 7 of House Rule 16 prohibits amendments that are on a different  
1969 subject matter than the proposal that is under consideration.

1970           The subject of the bill we are currently considering is the levels  
1971 of Hart-Scott-Rodino fees.

1972           The gentleman's amendment proposes to restructure bureaus  
1973 in DOJ and FTC, a much broader proposition, which is a subject  
1974 that is different from what we are considering in this bill.  
1975 The amendment therefore is not germane and violates Clause 7 of  
1976 Rule 16.

1977           Are there any further amendments?

1978           Mrs. Spartz. Mr. Chairman, I have an amendment at the desk.  
1979 Chairman Nadler. For what purpose does Ms. Spartz seek  
1980 recognition?

1981           Mrs. Spartz. I have an amendment at the desk.

1982           Chairman Nadler. The Clerk will report the amendment.

1983           Mr. Cicilline. Mr. Chairman, I preserve a point of order.

1984           Chairman Nadler. The gentleman reserves a point of order.

1985           The Clerk will report the amendment.

1986           Ms. Fontenot. Amendment to the amendment in the nature of  
1987 a substitute to HR 3843 offered by Rep. Spartz. On page 4 at  
1988 line 4, strike \$252 million and replace with \$201 million. On  
1989 page 4, line 6, strike \$418 million and replace with \$390 million.

1990           Chairman Nadler. The gentlelady is recognized for the  
1991 purposes of explaining her amendment.

1992           Mrs. Spartz. Thank you, Mr. Chairman, member of the  
1993 Committee. I just kind of wanted to have a discussion, because

1994 I think one of the questions, you know, as I mentioned, we don't  
1995 do appropriations. In general, appropriation will significantly  
1996 increase for many years.

1997 But we do that, set up the authorized ceiling, you know.  
1998 And what I just thought, you know, maybe we should just keep that  
1999 ceiling in line what actually the Agency asked for in their budgets  
2000 requests.

2001 So I think Department of Justice asked for 201 million and  
2002 FTC asked for 390 million. They still will be able to do it since  
2003 actually 390 million is 11% increase from prior year. And 201,  
2004 it's a nine percent increase, you know, from prior year.

2005 So they still get the increase, but it also will allow us,  
2006 you know, when we do these reviews and at least for next five  
2007 years to assess do we need to do more, do we need do less to  
2008 authorize the top level. As I said, it's only set up the ceiling,  
2009 but I just wanted to see we should discuss why do we need to set  
2010 up a ceiling with much higher than what they asked.

2011 We can just align it because maybe it's a fair statement  
2012 to align it at the level they actually requested for their budget  
2013 request. So I would appreciate your support for this amendment.

2014 Chairman Nadler. The gentlelady yields back. I'm going  
2015 to rule this amendment -- does the gentleman insist on his point  
2016 of order?

2017 Mr. Cicilline. About to rule, yes.

2018 Chairman Nadler. The gentleman does insist on his point  
2019 of order. And I agree, the amendment is not germane because it  
2020 -- is not in order, I should say, because it deals with subject  
2021 matter the subject -- that is subject to the jurisdiction of  
2022 the Committee on Energy and Commerce, not of this committee.  
2023 Therefore, the amendment is not germane.

2024 Is there any other amendment? Are there any further  
2025 amendments?

2026 Mr. Roy. Amendment at the desk, sorry.

2027 Chairman Nadler. The Clerk will report the amendment.

2028 Ms. Fontenot. Amendment to the amendment in the nature of  
2029 a substitute to HR 3843 offered by Mr. Roy of Texas.

2030 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

2031 Chairman Nadler. Gentleman reserves a point of order. The  
2032 Clerk will continue to report.

2033 Ms. Fontenot. Page 3, after line 23, insert the following:  
2034 and make such technical and --

2035 Chairman Nadler. The amendment will be considered as read.  
2036 The gentleman is recognized for the purposes of explaining his  
2037 amendment.

2038 Mr. Roy. Mr. Chairman, this is a continuation, I think,  
2039 of a theme on at least our side of the aisle about ensuring how  
2040 these fees will be used and ensuring the focus of these fees,  
2041 and, you know, the revenues from those fees be targeted on the

2042 specific activities that we want them to be focused on. This  
2043 version, obviously, limits the fees to say, "They shall be used  
2044 to enforce antitrust laws," as defined in the first section of  
2045 the Clayton Act in this particular instance.

2046 We have had debate and discussion on this overall concept  
2047 here now on a number of different fronts. This is just another  
2048 way to go about it to try to focus and making sure on how they  
2049 are going to be used.

2050 Again, I think when I opened the discussion in support,  
2051 conceptually, of what my colleagues on a bipartisan basis were  
2052 trying to do to ensure that we've got the adequate resources to  
2053 enforce antitrust laws, and when we're seeing this in the  
2054 explosion of the information age, the amount of wealth and power  
2055 that is accreted in these large corporations, which many of us,  
2056 both sides of the aisle -- and maybe particularly on my side of  
2057 the aisle -- would defer as a starting place instinctually that  
2058 the market will sort that out.

2059 Amazon grows and gets big and they're competing with Walmart  
2060 and Target and online entities. So, yes, they are buying a bunch  
2061 of companies. There's some concerns about competition. We're  
2062 all looking at that, but we're watching the market play out.

2063 Back in the days of fighting and worrying about Netscape  
2064 Navigator versus Internet Explorer, and now, we're in a different  
2065 universe of how we deal with navigating the internet, you know,



2066 at some point there's a lot of concerns here about how much power  
2067 are we giving to a federal bureaucracy to, in essence, make these  
2068 determinations about the market. This is a philosophical debate  
2069 and question.

2070 So, I think all that I think is being attempted to be done  
2071 on at least amendments, the last five or six that have been  
2072 offered, or at least a few of them, is to try to -- and I think  
2073 not to crib from my friend from North Carolina -- but try to make  
2074 sure that we do have the cart and the horse in the right place,  
2075 and trying to ensure that we know how these fees are going to  
2076 be used and what they're going to be used for, and focused very  
2077 clearly on antitrust and competition. And that's the purpose  
2078 of the amendment.

2079 Mr. Buck. Would the gentleman yield?

2080 Mr. Roy. I will yield to the ranking member.

2081 Mr. Buck. I appreciate my friend yielding.

2082 I'm just wondering, in this amendment, it limits it to the  
2083 definition in the Clayton Act. Are you attempting to make sure  
2084 that the Sherman Act, the fees are not used to enforce the Sherman  
2085 Act for some reason?

2086 Mr. Roy. In this instance, it is specific to trying to  
2087 define it with respect to that particular definition, knowing  
2088 that there are plenty of fees, obviously, that are otherwise  
2089 available to use in the Department, but in this case these fees.

2090 Mr. Cicilline. Mr. Roy? Mr. Roy? Will you yield?

2091 Mr. Roy. Sure.

2092 Mr. Cicilline. Thank you.

2093 Mr. Chairman, I'll withdraw my point of order. I do think  
2094 it's germane.

2095 But, Mr. Roy, I would just offer to you the same concerns  
2096 I have about limiting the way the phrase, "shall be used to enforce  
2097 antitrust laws," does that include keeping the lights on and other  
2098 issues like that? I can assure you that the Antitrust  
2099 Subcommittee is going to continue to do very vigorous oversight.

2100 We can provide briefings to members of the subcommittee and  
2101 members of the full committee on what they intend to do with these  
2102 additional resources. So, I am committed to working with you  
2103 to make certain that robust antitrust enforcement is being done  
2104 with the additional resources that might be available to the  
2105 agency, if that's helpful.

2106 And with that, I'll yield back to you.

2107 Mr. Roy. I yield back.

2108 Chairman Nadler. The gentleman yields back.

2109 Does anyone else seek to speak on this amendment?

2110 [No response.]

2111 In that case, the question occurs on the amendment. All  
2112 in favor, say aye.

2113 Opposed, no.

2114 In the opinion of the chair, the noes have it.

2115 Mr. Roy. The yeas and nays.

2116 Chairman Nadler. The clerk will report. The clerk will

2117 call the roll, rather.

2118 Ms. Fontenot. Mr. Nadler?

2119 Chairman Nadler. No.

2120 Ms. Fontenot. Mr. Nadler votes no.

2121 Ms. Lofgren?

2122 Ms. Lofgren. No.

2123 Ms. Fontenot. Ms. Lofgren votes no.

2124 Ms. Jackson Lee?

2125 Ms. Jackson Lee. No.

2126 Ms. Fontenot. Ms. Jackson Lee votes no.

2127 Mr. Cohen?

2128 Mr. Cohen. No.

2129 Ms. Fontenot. Mr. Cohen votes no.

2130 Mr. Johnson of Georgia?

2131 [No response.]

2132 Mr. Deutch?

2133 Mr. Deutch. No.

2134 Ms. Fontenot. Mr. Deutch votes no.

2135 Ms. Bass?

2136 Ms. Bass. No.

2137 Ms. Fontenot. Ms. Bass votes no.

2138 Mr. Jeffries?  
2139 Mr. Jeffries. No.  
2140 Ms. Fontenot. Mr. Jeffries votes no.  
2141 Mr. Cicilline?  
2142 Mr. Cicilline. No.  
2143 Ms. Fontenot. Mr. Cicilline votes no.  
2144 Mr. Swalwell?  
2145 Mr. Swalwell. No.  
2146 Ms. Fontenot. Mr. Swalwell votes no.  
2147 Mr. Lieu?  
2148 Mr. Lieu. No.  
2149 Ms. Fontenot. Mr. Lieu votes no.  
2150 Mr. Raskin?  
2151 Mr. Raskin. No.  
2152 Ms. Fontenot. Mr. Raskin votes no.  
2153 Ms. Jayapal?  
2154 Ms. Jayapal. No.  
2155 Ms. Fontenot. Ms. Jayapal votes no.  
2156 Mrs. Demings?  
2157 Mrs. Demings. No.  
2158 Ms. Fontenot. Mrs. Demings votes no.  
2159 Mr. Correa?  
2160 Mr. Correa. No.  
2161 Ms. Fontenot. Mr. Correa votes no.

2162 Ms. Scanlon?

2163 [No response.]

2164 Ms. Garcia?

2165 Ms. Garcia. No.

2166 Ms. Fontenot. Ms. Garcia votes no.

2167 Mr. Neguse?

2168 Mr. Neguse. No.

2169 Ms. Fontenot. Mr. Neguse votes no.

2170 Mrs. McBath?

2171 Mrs. McBath. No.

2172 Ms. Fontenot. Mrs. McBath votes no.

2173 Mr. Stanton?

2174 Mr. Stanton. No.

2175 Ms. Fontenot. Mr. Stanton votes no.

2176 Ms. Dean?

2177 Ms. Dean. No.

2178 Ms. Fontenot. Ms. Dean votes no.

2179 Ms. Escobar?

2180 Ms. Escobar. No.

2181 Ms. Fontenot. Ms. Escobar votes no.

2182 Mr. Jones?

2183 Mr. Jones. No.

2184 Ms. Fontenot. Mr. Jones votes no.

2185 Ms. Ross?

2186 Ms. Ross. Ross votes no.

2187 Ms. Fontenot. Ms. Ross votes no.

2188 Ms. Bush?

2189 Ms. Bush. Bush votes no.

2190 Ms. Fontenot. Ms. Bush votes no.

2191 Mr. Jordan?

2192 Mr. Jordan. Yes.

2193 Ms. Fontenot. Mr. Jordan votes yes.

2194 Mr. Chabot?

2195 Mr. Chabot. Aye.

2196 Ms. Fontenot. Mr. Chabot votes aye.

2197 Mr. Gohmert?

2198 [No response.]

2199 Mr. Issa?

2200 Mr. Issa. Aye.

2201 Ms. Fontenot. Mr. Issa votes aye.

2202 Mr. Buck?

2203 Mr. Buck. Aye.

2204 Ms. Fontenot. Mr. Buck votes aye.

2205 Mr. Gaetz?

2206 [No response.]

2207 Mr. Johnson of Louisiana?

2208 Mr. Johnson of Louisiana. Aye.

2209 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

2210 Mr. Biggs?

2211 Mr. Biggs. Aye.

2212 Ms. Fontenot. Mr. Biggs votes aye.

2213 Mr. McClintock?

2214 Mr. McClintock. Aye.

2215 Ms. Fontenot. Mr. McClintock votes aye.

2216 Mr. Steube?

2217 [No response.]

2218 Mr. Tiffany?

2219 [No response.]

2220 Mr. Massie?

2221 Mr. Massie. Aye.

2222 Ms. Fontenot. Mr. Massie votes aye.

2223 Mr. Roy?

2224 Mr. Roy. Aye.

2225 Ms. Fontenot. Mr. Roy votes aye.

2226 Mr. Bishop?

2227 Mr. Bishop. Yes.

2228 Ms. Fontenot. Mr. Bishop votes yes.

2229 Mrs. Fischbach?

2230 Mrs. Fischbach. Yes.

2231 Ms. Fontenot. Mrs. Fischbach votes yes.

2232 Mrs. Spartz?

2233 Mrs. Spartz. Yes.

2234 Ms. Fontenot. Mrs. Spartz votes yes.

2235 Mr. Fitzgerald?

2236 [No response.]

2237 Mr. Bentz?

2238 Mr. Bentz. Yes.

2239 Ms. Fontenot. Mr. Bentz votes yes.

2240 Mr. Owens?

2241 Mr. Owens. Yes.

2242 Ms. Fontenot. Mr. Owens votes yes.

2243 Chairman Nadler. Mr. Johnson?

2244 Mr. Johnson?

2245 Mr. Johnson of Georgia. Johnson of Georgia votes aye.

2246 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

2247 Chairman Nadler. Mr. Fitzgerald?

2248 Mr. Fitzgerald. Aye.

2249 Ms. Fontenot. Mr. Fitzgerald votes aye.

2250 Chairman Nadler. Mr. Gohmert?

2251 [No response.]

2252 Ms. Scanlon?

2253 Ms. Scanlon. No.

2254 Ms. Fontenot. Ms. Scanlon votes no.

2255 Mr. Johnson of Georgia. Mr. Chairman, how am I recorded?

2256 Ms. Fontenot. Mr. Johnson, you are recorded as aye.

2257 Mr. Johnson of Georgia. I wish to change my vote to no.



2258 Ms. Fontenot. Mr. Johnson of Georgia votes no.

2259 Mr. Johnson of Georgia. Thank you.

2260 Ms. Bush. How is Ms. Bush recorded?

2261 Ms. Fontenot. Ms. Bush, you are recorded as no.

2262 Ms. Bush. Thank you.

2263 Chairman Nadler. The clerk will report.

2264 Ms. Fontenot. Mr. Chairman, there are 15 ayes and 25 noes.

2265 Chairman Nadler. The amendment is not agreed to.

2266 For what purpose does Mr. Massie seek recognition?

2267 Mr. Massie. Mr. Chairman, I move to strike the last word.

2268 Chairman Nadler. The gentleman is recognized.

2269 Mr. Massie. On the point of this bill overall, I'm uneasy

2270 about several things.

2271 The first is the analogy of the fee that's charged by this

2272 Department, making an analogy to the Patent Office. The Patent

2273 Office provides a service to entrepreneurs. You don't go to

2274 the Patent Office to ask for permission to do business. You ask

2275 for a title or a deed to your property, which enables you to do

2276 business. You're not asking for permission to do business from

2277 the Patent Office. So, I think it's inappropriate to make

2278 analogies of charging these fees to businesses who are asking

2279 permission for the government to do something they shouldn't

2280 really, frankly, need permission to do. So, that analogy is

2281 inaccurate in my opinion.

2282           The other uncomfortableness or uneasiness I have about this  
2283 bill is a fee is a tax. Okay? It's a user fee. It's a targeted  
2284 tax. It's probably the fairest tax that you could levy, but it's  
2285 still a tax. And it's a tax on business transactions.

2286           If you're a small company, or if you're an entrepreneur and  
2287 you're thinking about starting a company, assuming your company  
2288 is successful, you've got several exit strategies. How are you  
2289 going to succeed from this company? It's not by dying with the  
2290 stock in your possession. It's by getting some kind of  
2291 liquidation event. And for small companies, you could go public;  
2292 you could go on the public market. That rarely occurs. You could  
2293 create an ongoing concern which creates a profit. But what  
2294 happens to actually most small successful companies is they are  
2295 acquired. This is not something that's out of the ordinary.  
2296 This is the ordinary circumstances; you get acquired.

2297           And so, whether you're taxing the small company or the big  
2298 company on that event, the acquirer is going to diminish the value  
2299 of the smaller company, the successful entrepreneur who's finally  
2300 receiving their paycheck for all of their hard work. They're  
2301 just going to mark down the price based on the tax, because that's  
2302 how much less it's worth to them when they have to go about it.

2303           And then, finally, the thing that I'm most uncomfortable  
2304 about with this amendment is we really think we're going to give  
2305 more money to a federal agency in a less accountable manner.

2306 You know, we have the power of the purse here, and that is the  
2307 strongest power that Congress has with respect to the other  
2308 branches. And we're talking about how we are going to give up  
2309 some of that power to this agency to let them raise their own  
2310 money. And then, we're sitting here fretting about what they  
2311 might do with that money.

2312 I mean, the fact that there have been a half a dozen  
2313 amendments already offered trying to foresee all the ways that  
2314 this agency will misuse the money that they are no longer subject  
2315 to coming to Congress to get demonstrates that others of my  
2316 colleagues here on the dais are uncomfortable with this bill.

2317 And so, for these reasons, these three reasons, I am going  
2318 to vote against this bill, and I urge --

2319 Ms. Lofgren. Would the gentleman yield?

2320 Mr. Massie. I would yield to the lady.

2321 Ms. Lofgren. I just want to note that you're correct. I  
2322 mean, the analogy to the Patent Office is not a direct one, and  
2323 I think I was the one who mentioned that.

2324 Mr. Massie. Okay.

2325 Ms. Lofgren. To the extent that they are both fees related  
2326 to funding an agency that regulates business, they are apt, but,  
2327 obviously, they're quite different. And I take the criticism  
2328 to heart.

2329 Mr. Massie. No criticism --

2330 Ms. Lofgren. And I thank the gentleman for yielding back.

2331 Mr. Massie. Thank you.

2332 No criticism was meant to the gentlelady. I'm just trying  
2333 to point out the analogy is not exact here, and the Patent Office  
2334 doesn't regulate business. They provide a service. They issue  
2335 a title to your property. And so, that's the only exception that  
2336 I had with the analogy, and no criticism was meant to the  
2337 gentlelady from California.

2338 And so, I'm going to vote against this, and I urge my  
2339 colleagues to vote against this. We don't need to give another  
2340 federal agency the power to fund itself with less accountability  
2341 to Congress and sit here and fret about what they're going to  
2342 do with that money.

2343 And I yield back the balance of my time.

2344 Chairman Nadler. The gentleman yields back.

2345 Mr. Jordan. Mr. Chairman?

2346 Chairman Nadler. For what purpose does Mr. Jordan seek  
2347 recognition?

2348 Mr. Jordan. Well, again, Mr. Chairman, I'll be brief, but  
2349 I just wanted to echo --

2350 Chairman Nadler. Move to strike the last word?

2351 Mr. Jordan. Yes, move to strike the last word, Mr.  
2352 Chairman.

2353 Chairman Nadler. The gentleman is recognized.

2354 Mr. Jordan. The gentleman from Kentucky is right on. A  
2355 government agency getting more money with no limits placed on  
2356 what they can do with the money, that's usually a bad thing,  
2357 usually a dangerous thing.

2358 We offered three simple amendments, and the Democrats said  
2359 no to them. They said, no, we're not going to prohibit you from  
2360 using for CRT, critical race theory; we're not going to limit  
2361 it to just enforcement actions; we're not going to focus on big  
2362 tech and promoting competition. They can use the money however  
2363 they darn well want.

2364 So, that's the fundamental question in front of us: do you  
2365 want to give more money with no limitations on that money? That's  
2366 what this bill does, and I share the concerns the gentleman from  
2367 Kentucky raised and would urge a no vote on the legislation.

2368 With that, I yield back.

2369 Mr. Bishop. Mr. Chairman?

2370 Chairman Nadler. The gentleman yields back.

2371 Who seeks recognition?

2372 Mr. Bishop. Bishop. Bishop.

2373 Chairman Nadler. Mr. Owens is recognized.

2374 Mr. Owens. I'd like to strike the last word.

2375 Chairman Nadler. The gentleman is recognized.

2376 Mr. Owens. I'd like to yield my time over to the gentlelady  
2377 from Indiana.

2378 Mrs. Spartz. Again, I'd like to thank you. I'd like to  
2379 strike the last word.

2380 I just wanted to clarify a few things because I have similar  
2381 concerns with Congressman Massie. But I just wanted to clarify  
2382 again we are not debating here restriction of an agency, what  
2383 we're going to do. We're actually not changing anything  
2384 structurally or in the appropriation process. We are actually  
2385 adding more transparency, where the agency will have to report  
2386 to us more specifically what they're doing with this money, where  
2387 we specifically say that they cannot do any -- even though they  
2388 already have that, they have to come to the Appropriations  
2389 Committee, and the Appropriations Committee sets the limit on  
2390 total appropriation, how much goes from the General Fund and how  
2391 much goes from offsetting collection. Anything about that  
2392 actually goes to the General Fund, to the Treasury.

2393 So, what it does, it allows us to look at how we can have  
2394 more user fee funding and shift it from the taxpayer and smaller  
2395 company, more allocated in large and smaller companies; the  
2396 percentage stays about the same. Still, very large companies  
2397 still pretty much pay very, very little percentage, almost  
2398 nothing. If it's \$100 billion merger, it doesn't change. And  
2399 it's also, for under \$160 million, it's not -- \$160 million, it's  
2400 not even -- no fees there.

2401 So, it's a question about it: are we going to be taxpayer

2402 funding? Are we going to be more user funding? And if we decide  
2403 to do user funding, so how we can more evenly allocate that?  
2404 It doesn't increase any funding. Actually, we don't even know  
2405 -- it might actually decrease -- we don't know what these fees  
2406 are.

2407 But these fees, I want to just say it, this does not to  
2408 authorize any amounts here. You actually have to go to the  
2409 Appropriations Committee. You have actually go and make your  
2410 case, and Congress has to vote for that.

2411 But, with the amendment that I did, it specifically  
2412 stipulates that no funds above the amount that the Appropriations  
2413 Committee told you to do for these fees, including, you know,  
2414 because it specifically says, for these offsetting collections,  
2415 no amount above it can be used. None of the funds can be used  
2416 by FTC or DOJ. It's very explicit, not in figures, but right  
2417 now sometimes it is in figures, because, as I said, our budgeting  
2418 process is so convoluted. It has to be fixed. It's all over  
2419 the place with all the gimmicks of accounting.

2420 But I wanted to be very precise that, as of the passage of  
2421 this bill, no gimmicks in accounting could be used. They would  
2422 have to come back. If they need a reappropriation of anything  
2423 else, they would have to come back to Congress and get  
2424 authorization for that. I think that would address it. And it's  
2425 generally allocated.

2426           So, I wanted to make sure that we don't go further. It also  
2427 allows more transparency. I have the same concern that our  
2428 government is getting too big, too powerful, and controlling the  
2429 businesses, and really deciding, picking losers and winners, and  
2430 not protecting people's rights to life, liberty, and property.

2431           And this is the function of this antitrust, to make sure people's  
2432 rights are protected and we have healthy competition. And if  
2433 we don't believe they're doing a good job, with the amendment  
2434 we did, it allows an aggression to the entity and we decide what  
2435 should we do. Are they doing it or not doing it? And what is  
2436 their function? How are they using this money?

2437           They actually have to come and tell us what exactly are they  
2438 doing with this money, based on this amendment, and actually how  
2439 much it costs them, this function; how much is financed through  
2440 taxpayers; how much finances by user fees; how they're allocated;  
2441 what they get from each category, and what exactly they're doing  
2442 with this money. And you cannot do more than is proper.

2443           So, I think it puts more guardrails than has actually existed  
2444 right now. So, it's actually moving in a better direction, and  
2445 it doesn't give anyone more money, because, as I said, we cannot  
2446 even here appropriate more money. Our committee cannot even do  
2447 this function.

2448           So, I wanted to clarify because I think we have concerns,  
2449 but this is not what's in this bill. This bill actually makes



2450 movement incrementally in the right direction, and we can do more.

2451 You know, I agree with you. But I just wanted to clarify that.

2452 Thank you. I yield back.

2453 Mr. Issa. Could the gentlelady yield?

2454 Mr. Raskin. Would the gentleman yield?

2455 Mrs. Spartz. I yield. I think my time expired.

2456 Chairman Nadler. It's Mr. Owens' time.

2457 Mr. Raskin. Would Mr. Owens yield to Mr. Raskin?

2458 Chairman Nadler. The gentleman yielded back.

2459 Mr. Owens. Yes, I do. Yes, I yield.

2460 Chairman Nadler. You yield to --

2461 Mr. Owens. Yes, I yield to --

2462 Chairman Nadler. -- yield to Mr. Issa?

2463 Mr. Owens. Mr. Issa, yes, I do.

2464 Mr. Issa. Thank you. I thank the gentleman. I'll be very  
2465 brief.

2466 One thing that I hope everyone, before they make this final  
2467 vote, will understand is that, if we went into court today and  
2468 we had an agreement that we just wanted two companies to file  
2469 a common piece of paperwork, the bailiff wouldn't say that it  
2470 costs you more based on how big you are. And then, if we went  
2471 in and we had a six-week trial, they wouldn't expect the fees  
2472 to be the same as if you just went in and said, "We just need  
2473 this thing agreed to."

2474           And yet, this legislation is going to assume that, based  
2475           on how big you are, not how complex an acquisition is, or even  
2476           if it's a related field. So, I just hope everyone will understand  
2477           that what we're doing is based on size, not actually based on  
2478           complexity, even though sometimes size is complex; sometimes it  
2479           isn't.

2480           I yield back. I thank the gentleman.

2481           Mr. Raskin. Would the gentleman yield?

2482           Chairman Nadler. The gentleman yields back.

2483           Does Mr. Raskin seek recognition?

2484           Mr. Raskin. Thank you, Mr. Chairman.

2485           I just wanted to underscore the point made by Mrs. Spartz,  
2486           which I thought was excellent. Nothing here is appropriating  
2487           any money. So, it's a misnomer when members are saying we're  
2488           giving them all this money. That's not what this is about. This  
2489           is about creating a fee which goes into the Treasury, and the  
2490           appropriation is a completely separate process.

2491           And if you agree with the gentleman from Kentucky that this  
2492           fee is the fairest form of tax, then you would support the  
2493           legislation because it is putting the tax on the people who are  
2494           being regulated within this business.

2495           And I guess I would try to resurrect the analogy which had  
2496           been rejected by our friend from Kentucky because I think all  
2497           businesses profit from and benefit from antitrust legislation

2498 and regulatory enforcement. The whole purpose of an antitrust  
2499 system is to keep businesses from being unfairly crushed by  
2500 monopolists and people who come in, and then, use their monopoly  
2501 power to drive out the smaller businesses.

2502 And the fee here also is a fee that is being reduced for  
2503 the smaller businesses and it's being increased for the largest  
2504 businesses, for whom it's barely even an accounting error to pay  
2505 this money, when you're talking about multibillion conglomerates  
2506 in the country.

2507 So, I wanted to thank Mrs. Spartz for, again, a very  
2508 illuminating description of what's actually taking place with  
2509 this legislation.

2510 Mr. Massie. Would the gentleman yield for a quick question?

2511 Mr. Raskin. Yes, by all means.

2512 Mr. Massie. I don't want the bigger picture to get lost  
2513 in the debate here. Does the bill generate more money for  
2514 antitrust enforcement or less money than the status quo?

2515 Mr. Raskin. Well, I think that, first of all, it depends  
2516 on the number of mergers and acquisitions that are taking place.

2517 So, it depends on the number of people who are going to end up  
2518 paying the fee, right? So, I don't know whether there's some  
2519 kind of fiscal projection that's been made about it.

2520 But, in an event, the gentlelady's point remains, which is  
2521 that we're not appropriating money here. We're changing the fee

2522 structure to make it more fair.

2523 Mr. Buck. Would the gentleman yield?

2524 Mr. Raskin. Yes. It's not my time to yield, but I am --

2525 Mr. Buck. Well, who's time is it?

2526 Chairman Nadler. It is your time to yield.

2527 Mr. Raskin. Okay. Yes, then, I will yield. Yes.

2528 Mr. Buck. I thank the gentleman.

2529 And I just wanted to mention to the gentleman -- and first,  
2530 I wanted to thank Congresswoman Spartz for her leadership on this  
2531 bill and her amendment, and I thank the majority for accepting  
2532 the amendment to this bill. And I think it shows the bipartisan  
2533 nature of this bill.

2534 I also want to mention that the Federal Trade Commission  
2535 has less resources now than it had, FTEs now than it had 10 years  
2536 ago, is my understanding. And these fees have not been updated  
2537 in 20 years. And it's one of the reasons why, when this bill  
2538 went through the Senate Judiciary Committee, it received  
2539 unanimous support from both sides of the aisle.

2540 It's worth mentioning, on the Senate Judiciary Committee,  
2541 you've got Senator Cruz, Senator Hawley, Senator Blackburn, all  
2542 fiscal conservatives, all outspoken on the need to protect federal  
2543 funds and, also, the need to now allow the federal government  
2544 to encroach into areas where it doesn't belong.

2545 It passed the Senate Floor 100-to-0 -- 100-to-zero, this

2546 bill, this very language. To suggest that somehow this bill is  
2547 giving a rogue agency more money -- we can debate what happened  
2548 with the IRS and Lois Lerner; we can debate what happened with  
2549 the FBI and Jim Comey. This agency is tasked with something that  
2550 is essential, something that President Trump and others have  
2551 talked about the need to do, and that is to rein in big tech.  
2552 That is to create competition in the marketplace.

2553 And I thank the gentlelady for her leadership on this issue,  
2554 and I yield back to Mr. Raskin.

2555 Mrs. Spartz. Would the gentleman yield?

2556 Mr. Raskin. I just wanted to thank Mr. Buck for his  
2557 important leadership on this legislation. And this has been a  
2558 point of great bipartisan progress and pride in American history  
2559 that the parties can agree about the importance of antitrust  
2560 enforcement and making sure that we have a truly free market,  
2561 and not a market that is distorted and crushed by anticompetitive  
2562 activity.

2563 Did somebody else --

2564 Mrs. Spartz. Would the gentleman yield?

2565 Mr. Raskin. Yes, I would.

2566 Mrs. Spartz. Thank you.

2567 I just wanted to clarify, actually, there is 30 percent less  
2568 resources than 40 years ago. But I also wanted to say that we  
2569 can have a discussion about the size of company, but there is

2570 no easy, objective way to adjust the fees. In general, larger  
2571 transactions take more resources, and that's what FTC is arguing,  
2572 that 70 percent of resources are actually dedicated to larger  
2573 companies and they're paid by smaller companies. So, the burden  
2574 isn't even. So, it's not changing; it's just reallocating the  
2575 burden from taxpayers and smaller companies, and then, a bigger  
2576 discussion is going to be happening. But the FTC does have 30  
2577 percent less resources than 40 years ago.

2578 And I think under the Trump administration everyone  
2579 complained and the current administration. But this bill  
2580 provides much experience where they actually have to tell us how  
2581 much fees are going to be generated by this category, because  
2582 we cannot even tell right now.

2583 So, the amendment, I appreciate that the amendment was  
2584 accepted because it allows more transparency to actually see how  
2585 much is being generated, because we don't even know, and ask them,  
2586 hold the agency more accountable. So, I appreciate it and would  
2587 appreciate your support.

2588 Chairman Nadler. The gentleman's time has expired.

2589 Does anyone else seek recognition?

2590 Mr. McClintock. Mr. Chairman?

2591 Chairman Nadler. For what purpose does Mr. McClintock seek  
2592 recognition?

2593 Mr. McClintock. Mr. Chairman, to strike the last word.

2594 Chairman Nadler. The gentleman is recognized.

2595 Mr. McClintock. I yield my time to Mr. Bishop.

2596 Mr. Bishop. I thank the gentleman for yielding.

2597 And I just wanted to follow up Mr. Massie's comments by  
2598 pointing this out: that we are here today again for a series  
2599 of bills to take on the abuses of big tech. And I guess it's  
2600 worth pointing out that this bill, there is nothing in it that  
2601 would require any of the changed resources to be devoted even  
2602 generally to the topic of big tech -- nothing at all.

2603 With that, I yield back to the gentleman from California.

2604 Mr. McClintock. Mr. Chairman, I will, then, yield to Mr.  
2605 Gohmert -- or to Mr. Jordan.

2606 Mr. Jordan. I thank the gentleman for yielding.

2607 The gentleman from Maryland, Mr. Raskin, indicated that we  
2608 don't know how much money the DOJ and the FTC are going to get  
2609 because it depends on how many mergers and acquisitions happen.

2610 But the bill actually specifies an authorized amount. Of  
2611 course, we can't appropriate. We're the Judiciary Committee;  
2612 we're not the Appropriations Committee. But the bill specifies  
2613 DOJ gets \$252 million and the FTC gets \$418 million, which sort  
2614 of raises the question, what if there aren't that many -- what  
2615 if there's not as many mergers and acquisitions to generate that  
2616 money?

2617 So, at some point, the taxpayer is going to be on the hook,

2618 right? We don't know how that's going to play out. So, that's  
2619 one of the concerns we have about the legislation, not to mention  
2620 everything else we've talked about, not to mention everything  
2621 about the limits, as the gentleman from North Carolina just  
2622 mentioned, the limits. We would like this focused on actually  
2623 addressing the problem the committee is focused on.

2624 Chairman Nadler. Would the gentleman yield? Would the  
2625 gentleman yield briefly?

2626 Mr. Jordan. It's Mr. McClintock's time. I'll yield back  
2627 to him, and he can yield to you, if he wants to.

2628 Chairman Nadler. Yes, I would just point out that the  
2629 gentleman's comments are inapropos because this is an  
2630 authorization, not an appropriation.

2631 Mr. Jordan. That's my point. We're authorizing a certain  
2632 amount of money. We can't appropriate, I know, but we're putting  
2633 a number in the bill -- actually, two numbers, 252 and 418, for  
2634 the respective agencies. Who knows if it's going to generate  
2635 that amount? We don't know. That's my point.

2636 I yield back to the gentleman from California. Appreciate  
2637 it.

2638 Mr. McClintock. Thank you.

2639 And I'd also just like to point out on my own time that markets  
2640 are fundamentally regulated by consumer choices. Consumers vote  
2641 every day with every dollar that they spend what the market will



2642 provide and at what prices. The consumers in a market decide  
2643 who is best providing them with services.

2644 A monopoly can't survive in a market for very long unless  
2645 consumer choice is restricted by governmental intervention.

2646 Chairman Nadler. Would the gentleman yield?

2647 Mr. McClintock. No, I will not.

2648 That substitutes their judgment for the government's  
2649 judgment, and the government simply cannot know what every  
2650 consumer in the marketplace chooses to serve their best interests.

2651 Amazon is gargantuan because consumers have voted with their  
2652 dollars every day that the services provided by Amazon are better  
2653 than the other alternatives that they have in the marketplace.

2654 The moment they decide otherwise, Amazon will shrink and  
2655 competitors will begin to emerge to fill those gaps.

2656 No business can survive by displeasing its consumers.  
2657 Substituting our judgment for theirs is wrong and, ultimately,  
2658 undermines the consumers' right to decide for themselves who's  
2659 best at providing for their own needs.

2660 And with that, I yield.

2661 Mr. Massie. Would the gentleman yield?

2662 Chairman Nadler. Would the gentleman yield?

2663 Mr. McClintock. Yes, I'll yield.

2664 Chairman Nadler. Let me just say that what the gentleman  
2665 just said is exactly, in my opinion, wrong. If the marketplace

2666 regulated, was sufficient to regulate this, we wouldn't need  
2667 antitrust laws at all. Ever since the Sherman Act of 1890, we've  
2668 recognized that the marketplace by itself is not sufficient to  
2669 prevent monopolies.

2670 Mr. McClintock. Reclaiming my time, that is correct, but  
2671 monopolies can only exist with the support of government. They  
2672 cannot exist on their own if they're displeasing their consumers.  
2673 That's the point --

2674 Mr. Massie. Would the gentleman yield?

2675 Mr. McClintock. And I'll be happy to yield to Mr. Massie.

2676 Mr. Massie. Thank you.

2677 I think the impression is being given that this bill doesn't  
2678 increase money for these activities at the DOJ or the FTC, but  
2679 it seems to me like the \$252 million that's authorized -- and  
2680 we all know the difference between authorization and  
2681 appropriation; we don't need a lecture on that -- that it's greater  
2682 than \$184 million that was authorized last year.

2683 And I yield back.

2684 Chairman Nadler. And the gentleman yields back.

2685 Mr. McClintock. I yield to Mr. Issa --

2686 Chairman Nadler. The gentleman's time has expired.

2687 Mr. Issa. I'll grab my own time.

2688 Chairman Nadler. The gentleman's time has expired.

2689 For what purpose does Mr. Issa -- Mr. Issa. Move to

2690 strike the last word.

2691 Chairman Nadler. -- seek recognition?

2692 Mr. Issa. Move to strike the last word.

2693 Chairman Nadler. The gentleman is recognized.

2694 Mr. Issa. Thank you, Mr. Chairman.

2695 I think, as we close, I'd like to echo what Mr. McClintock  
2696 said. And he was accurate and I understood him, but it appears  
2697 as though some did not.

2698 Using the example of Apple, the first \$2 trillion market  
2699 cap company, or Amazon, somewhat behind that, or even Microsoft,  
2700 who today or yesterday broke \$2 trillion in market cap, these  
2701 companies, we can debate and we can talk about their being  
2702 monopolies. Microsoft was once found to be a monopoly. It was  
2703 under a consent decree for many years, corrected, and was let  
2704 out of that consent decree. We can talk about it all we want,  
2705 but I think the point that Mr. McClintock made is today the  
2706 American consumer -- and I'll use Amazon for a moment -- is  
2707 delighted with a product and a service, looking at the Consumer  
2708 Product Division, that is doing something better than anyone has  
2709 ever done before.

2710 Last night, I realized I needed a couple of little batteries.

2711 I realized it at about four o'clock. They were in my door this  
2712 morning before I came to work, and I didn't even pay a special  
2713 fee. It was a service that did not exist a decade ago -- at any

2714 price.

2715           So, I think when we look at the consumer, the consumer is  
2716 seeing a system that is working. What often happens with  
2717 monopolies, and especially as Mr. McClintock would have said,  
2718 a government-created monopoly, with monopolies, you end up with  
2719 something like you had with Ma Bell, a company that was lethargic,  
2720 that wasn't innovating, and prices were not going down. They  
2721 were, in fact, in constant dollars going up.

2722           But when you have products and services which are becoming  
2723 less expensive, more pervasive, without government intervention,  
2724 the market at least is working. We often talk about competition  
2725 as though competition is inherently good. The consumer getting  
2726 a better product and a better service and a better deal is the  
2727 reason that we promote competition, because it often leads to  
2728 that. But let's make no mistake, the companies we are talking  
2729 about, many of them, in fact, have delivered better, faster, less  
2730 expensive, and more desirable product year over year over year.

2731           So, as we begin attacking in these later bills companies as though  
2732 big is bad, I hope we understand that the consumer doesn't think  
2733 that, or you wouldn't see the exponential growth, particularly  
2734 during the pandemic, of these products and services.

2735           So, I, for one, certainly, of course, want to regulate  
2736 monopolies and want to stop trusts that prohibit entry into the  
2737 market. And we'll have that lively discussion. But, in this

2738 first least controversial bill, we're spending a lot of time  
2739 talking about raising more money to go after companies. Quite  
2740 frankly, there's a real question of whether the Federal Trade  
2741 Commission has chosen to go after companies that they should have  
2742 gone after; many of them are small, but unfair.

2743 And I'll close with this, Mr. Cicilline. You and the FTC  
2744 have a problem. Every day, you and everyone else on this dais  
2745 gets a couple of phone calls from somebody wanting to extend your  
2746 warranty on your car, or some other service that you didn't ask  
2747 for and you don't have. And yet, the Federal Trade Commission  
2748 has been impotent to stop it, and they've told us how difficult  
2749 it is for more than a decade of our oversight and complaining.

2750 So, yes, I want to see the Federal Trade Commission have  
2751 enough funds to do their job, but I think there's a real question  
2752 about whether simply giving them enough money to harass companies,  
2753 and particularly giving special powers to determine that there's  
2754 a different standard -- which will come in the later bill -- a  
2755 different standard for large companies who want to acquire perhaps  
2756 unrelated.

2757 And I'd yield to the gentlelady from San Jose.

2758 Ms. Lofgren. I would just ask if the gentleman would be  
2759 happy if we could identify/go harass the car warranty extension  
2760 --

2761 Mr. Issa. You're darn right I would.

2762 Ms. Lofgren. I think we could get unanimous support of that.

2763 Mr. Issa. I think if we ever really controlled the FTC on  
2764 this committee, we would definitely get it. But I do make the  
2765 point that the Federal Trade Commission has all kinds of unfair  
2766 competition, unfair practices that those 1100 people are supposed  
2767 to do, and for the most part, DOJ is the antitrust vehicle.

2768 And with that, I will yield back my 2 seconds.

2769 Mr. Cicilline. [Presiding.] Mr. Roy, do you seek  
2770 recognition?

2771 Mr. Roy. I do. I move to strike the last word.

2772 Mr. Cicilline. The gentleman is recognized.

2773 Mr. Roy. I move to strike the last word.

2774 Mr. Cicilline. The gentleman is recognized.

2775 Mr. Roy. I want to clarify a handful of things here. First  
2776 of all, my understanding -- and the record can please correct  
2777 me if I'm wrong -- but my understanding of the record is that  
2778 in the United States Senate this bill did, in fact, pass  
2779 unanimously out of the Senate Judiciary Committee. However,  
2780 Senator Mike Lee, obviously, a key person on this, was not present  
2781 and has expressed some reservations about this bill moving as  
2782 a standalone. Those reservations being that he wanted more  
2783 reforms tied to this, if the fees were going to be increased.

2784 I believe that is his position. Obviously, he can speak for  
2785 himself.

2786           The bill, then, moved to the Senate Floor, but it has not  
2787 moved by itself. It moved in a package which had 32 no votes,  
2788 including Senators Cruz, Lee, Hawley, and others, on the Floor  
2789 of the Senate. I do think it's important to clarify, because  
2790 there's been a lot of talk about how much it just kind of moved  
2791 through the Senate. Maybe as a former Senate Judiciary staffer,  
2792 I just want to kind of get that on the record to be clear about  
2793 it.

2794           That having been said, I also think there's a lot of kind  
2795 of noise about the fees, when it's, I think, a pretty simple  
2796 question about whether this possibility of the additional revenue  
2797 that could be raised from these larger companies making  
2798 acquisition, that this bill would authorize an increase in those  
2799 numbers, ostensibly, to be used for increased enforcement of  
2800 acquisitions, due to the information that I think was received  
2801 by the chairman and ranking member on antitrust in the various  
2802 reports about concerns about the lack of enforcement against  
2803 a number of the acquisitions in big tech. That's as I understand  
2804 the facts before me.

2805           And so, I look at this and I go, okay, do I support -- again,  
2806 through the lens of a former federal prosecutor -- I will lay  
2807 bare before the committee I've got very strong opinions on a lot  
2808 of matters -- immigration, border security, a whole lot of  
2809 different things, the talk about critical race theory. I'm not

2810 an antitrust expert. And so, I struggle with this. I struggle  
2811 with how much power to give the government to interfere in what  
2812 I would generally want to say is leave it to the market. My friend  
2813 from California, Mr. McClintock has expressed these concerns,  
2814 and my friend, Mr. Massie from Kentucky. Generally, that's my  
2815 starting place.

2816 And so, that having been said, I'm reminded of when I was  
2817 a federal prosecutor and I was prosecuting felons in possession  
2818 when I was in the United States Attorney's Office. I don't  
2819 particularly like the federal crime a felon in possession. I  
2820 don't think that's a federal issue. I think that should be left  
2821 to states. But I was an Assistant United States Attorney  
2822 representing the Department of Justice and I was tasked with  
2823 enforcing the laws of the United States. So, I did.

2824 And I think, much like on my side of the aisle these debates  
2825 often about -- oh, and the other side of the aisle -- about do  
2826 we support bills that will make it difficult, or I'm sorry, make  
2827 it easier for banking to fund pot. And to me, that's an end run  
2828 around the core question as to whether or not you de-schedule  
2829 pot. We should have the debate on the merits.

2830 So, in this instance, for me, I've got some core concerns  
2831 about the whole power of government in the whole field of antitrust  
2832 in the first place, while I've got a concern about the massive  
2833 power we're creating in big tech in the information age. So,



2834 in that conflict, honoring my word to the chairman and ranking  
2835 member, I'm going to vote for this bill because I do believe that,  
2836 when you're talking about having an authorization, I think this  
2837 bill simply restructures it a bit, makes it fall, the burden,  
2838 on larger corporations acquiring more than on smaller, because,  
2839 generally, it's probably pretty good.

2840 I do so with great trepidation because we haven't clarified,  
2841 I think, some of the direction of where the FTC is going,  
2842 particularly under the current administration. But, at some  
2843 point, you either have enforcement or you don't, right? We either  
2844 have the Department of Justice and FTC engaging in antitrust  
2845 activity or we don't. And if we do, then we should certainly  
2846 have the tools there necessary to do in an expanded field where  
2847 you've got big tech making massive acquisitions, which has serious  
2848 competition implications, which all of the reports that were laid  
2849 bare last year on a bipartisan basis indicate.

2850 So, I'm going to honor my commitment to do that. I will  
2851 reserve the right to review that on the Floor because I think  
2852 we need to have a continued conversation. And I would agree with  
2853 Senator Lee, my good friend from the Senate, that we should have  
2854 a robust conversation still about where this all goes, and none  
2855 of this should be viewed in isolation.

2856 And I would yield to the ranking member.

2857 Mr. Jordan. I just wanted to thank the gentleman for

2858           correcting the record, and I stand corrected and appreciate that.

2859           Mr. Roy. Yes, sir.

2860           I yield back.

2861           Chairman Nadler. [Presiding.] The gentleman yields back.

2862           Does anyone else seek recognition?

2863           For what purpose does Mr. Gohmert seek recognition?

2864           Mr. Gohmert. To strike the last word.

2865           Chairman Nadler. The gentleman is recognized.

2866           Mr. Gohmert. And I appreciate Mr. Roy's point. I didn't  
2867 know about Senator Lee not being present.

2868           But we've heard a number of times, gee, it was unanimous  
2869 in the Senate. And I've got to tell you, just based on my years  
2870 here in Congress, when I hear that something was unanimous in  
2871 the Senate, my immediate reaction is, wow, we'd better take a  
2872 look at this because a bunch of people down there weren't looking  
2873 close enough.

2874           [Laughter.]

2875           It's often attributed to Johnson, but my parents heard it  
2876 years before he was around, and that is, if everybody agrees on  
2877 everything, all but one is unnecessary.

2878           But I think I appreciate the robust discussion here. I  
2879 really do think there have been some great points made on the  
2880 amendments.

2881           I do agree that it's the American concept; we like free

2882 enterprise; we like competition. And the only time the  
2883 government should step in is when there is a monopoly. The only  
2884 time that we allow monopolies is with a patent or a copyright.  
2885 And even then, it's only for a limited time.

2886 But I recall having a field hearing out in California over  
2887 Comcast buying NBC, and there were very few of us that had great  
2888 concerns. I had trouble seeing how Comcast, as a cable provider,  
2889 was going to own a network with a duty toward that network, and  
2890 yet, still treat all other networks the same way. But that went  
2891 through.

2892 So, we do, I agree, need an FTC. They need to be  
2893 appropriately funded, but I've just seen a lot of mega-opolies  
2894 that DOJ never went after that sure seemed like they were engaged  
2895 in unfair business.

2896 So, I'm thrilled we're having this discussion, but I do think  
2897 one of the least persuasive things I've heard is that the Senate  
2898 agreed unanimously.

2899 Mrs. Spartz. Would the gentlemen yield?

2900 Mr. Gohmert. Yes, to my friend, Mrs. Spartz.

2901 Mrs. Spartz. I just wanted to clarify a few things.  
2902 Actually, you know, the bill, as amended, is actually an  
2903 incremental step in a better direction from what we have from  
2904 the Senate. And I notice that Senator Lee has his own bill that's  
2905 very similar to this one. And if this bill passes, it would go

2906 to conference, and we can talk with the Senate how we can make  
2907 this bill even better, and maybe make some other adjustment.  
2908 And Senator Lee, since he wasn't present, but he has a bill in  
2909 the Senate, and Grassley. But with other Senators that were  
2910 present, we still can deliberate how to make it better.

2911 But I just don't want us to be looking at everything, you  
2912 know, be, as I said, all or nothing. The perfect is the enemy  
2913 of the good. If we can make an incremental step in the right  
2914 direction and see how we can have more accountability, more  
2915 transparency, and know what the FTC and the Department of Justice  
2916 are doing, we're looking at what is the fee structure, we will  
2917 actually know and they have to report to us on those fees. What  
2918 are their total fees and what are they doing? They don't even  
2919 have to tell us now.

2920 So, I just wanted to kind of clarify that, from the status  
2921 quo, it's incrementally moving -- incrementally. You know, I  
2922 could do it probably much more. I would like to do much more.  
2923 Hopefully, we can do it, right, with the Senate to make it even  
2924 better. But I think it's an incremental step in the right  
2925 direction.

2926 And for all of the people who grappling with a totalitarian  
2927 government, I think government should be very limited, and it's  
2928 maybe the debate for us to have. How can we do better to actually  
2929 protect people's rights and not harass businesses, not infringe

2930 on businesses, and have a functioning market. But, ultimately,  
2931 we are also a country of law and rule of law, and we need to have  
2932 a legal framework and a mechanism how to enforce it. And maybe  
2933 we have to reassess it, and that bill actually allows us to do  
2934 that, too, because we have a conversation with the Commission  
2935 and DOJ how we can have maybe a better way to enforce it than  
2936 we decided a hundred years ago.

2937 And I appreciate your discussion and yielding the time.

2938 Mr. Gohmert. Certainly, and I appreciate those comments,  
2939 and yield back.

2940 Chairman Nadler. The gentleman yields back.

2941 Does anyone else seek recognition?

2942 Ms. Jackson Lee. Mr. Chairman?

2943 Chairman Nadler. For what purpose does the gentlelady seek  
2944 recognition?

2945 Ms. Jackson Lee. To strike the last word, Mr. Chairman.

2946 Chairman Nadler. The gentlelady is recognized.

2947 Ms. Jackson Lee. If I recall correctly, I think we are  
2948 dealing with -- maybe I need to speak louder. It is on [referring  
2949 to the microphone]. I'm sorry, Mr. Chairman.

2950 If I recall correctly, I think we are still discussing the  
2951 legislation dealing with, the appropriate legislation dealing  
2952 with fees. And I am very grateful that the intense work of Mr.  
2953 Cicilline's committee over a period of at least two years, I

2954 believe, in a number of committees. A lot of us have been in  
2955 those kinds of hearings. We are doing that, obviously, with the  
2956 voting rights reauthorization.

2957 And in that, a number of issues came to the forefront. And  
2958 as I understand, I think it's important, because we are being  
2959 recorded, that this particular bill has to do with the fees to  
2960 ensure the appropriate enforcement on behalf of the American  
2961 people by the DOJ Antitrust Division and, of course, the FTC.

2962 As I indicated, they are the lawyers for the consumers.  
2963 They are the lawyers for those who have no lawyers. They're the  
2964 lawyers to prevent an anticompetitive approach that typically  
2965 happens in a capitalistic structure, that cannot be defended  
2966 and/or protected necessarily by the individual consumer.

2967 The good news is that -- and forgive me because these are  
2968 my good friends on the other side of the aisle -- I had no clue  
2969 of any antitrust work that's being done the last four years by  
2970 the Department of Justice -- none. A series of Attorney Generals,  
2971 most of them in the quagmire of Russia and a variety of other  
2972 issues, and I couldn't find any efforts dealing with this very  
2973 finite and precise issue.

2974 So, as I welcome the debate, because many of us do engagement  
2975 in it, I do want us to focus that what we will do with these fees  
2976 is to ensure staffing, to ensure that the cases that are  
2977 appropriate for the FTC to be involved in -- the Commission, rather

2978 -- and the DOJ, they will be able to be engaged with the appropriate  
2979 resources to do what their dictates are. And that is to represent  
2980 the American people in these very difficult anticompetition  
2981 cases. They're very difficult. For those of us who have  
2982 practiced before the FTC on the administration side, they're very  
2983 complex.

2984 And then, the other aspect of it is to ensure -- and these  
2985 are in mergers, of course -- to ensure that, if you've got a small  
2986 deal, a smaller deal, \$500,000, that you get some relief.

2987 I think this is a good thing, and I wouldn't want us to end  
2988 on a note that doesn't clarify that we're doing a good thing --  
2989 I thank Mr. Cicilline and the committee -- to get us where we  
2990 are today.

2991 And so, I thank you, Mr. Chairman. With that, I will  
2992 certainly yield back. Thank you again.

2993 Chairman Nadler. The gentlelady yields back.

2994 Does anyone else seek recognition?

2995 [No response.]

2996 In that case, the question occurs on the amendment in the  
2997 nature of a substitute, as amended. This will be followed  
2998 immediately by a vote and final passage of the bill.

2999 All those in favor, respond by saying aye.

3000 Opposed, no.

3001 In the opinion of the chair, the ayes have it, and the

3002 amendment in the nature of a substitute is agreed to.

3003 A reporting quorum being present, the question is on the  
3004 motion to report the bill H.R. 3843, as amended, favorably to  
3005 the House.

3006 Those in favor, respond by saying aye.

3007 Opposed, no.

3008 The ayes have it, and the bill is ordered to be reported  
3009 -- a roll call is requested. The clerk will call the roll.

3010 Ms. Fontenot. Mr. Nadler?

3011 Chairman Nadler. Aye.

3012 Ms. Fontenot. Mr. Nadler votes aye.

3013 Ms. Lofgren?

3014 Ms. Lofgren. Yes.

3015 Ms. Fontenot. Ms. Lofgren votes yes.

3016 Ms. Jackson Lee?

3017 Ms. Jackson Lee. Aye.

3018 Ms. Fontenot. Ms. Jackson Lee votes aye.

3019 Mr. Cohen?

3020 Mr. Cohen. Aye.

3021 Ms. Fontenot. Mr. Cohen votes aye.

3022 Mr. Johnson of Georgia?

3023 Mr. Johnson of Georgia. Aye.

3024 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

3025 Mr. Deutch?



3026 Mr. Deutch. Aye.

3027 Ms. Fontenot. Mr. Deutch votes aye.

3028 Ms. Bass?

3029 Ms. Bass?

3030 Ms. Bass. Aye.

3031 Ms. Fontenot. Ms. Bass votes aye.

3032 Mr. Jeffries?

3033 [No response.]

3034 Mr. Cicilline?

3035 Mr. Cicilline. Aye.

3036 Ms. Fontenot. Mr. Cicilline votes aye.

3037 Mr. Swalwell?

3038 Mr. Swalwell. Aye.

3039 Ms. Fontenot. Mr. Swalwell votes aye.

3040 Mr. Lieu?

3041 Mr. Lieu. Aye.

3042 Ms. Fontenot. Mr. Lieu votes aye.

3043 Mr. Raskin?

3044 Mr. Raskin. Aye.

3045 Ms. Fontenot. Mr. Raskin votes aye.

3046 Ms. Jayapal?

3047 Ms. Jayapal. Aye.

3048 Ms. Fontenot. Ms. Jayapal votes aye.

3049 Mrs. Demings?

3050 Mrs. Demings. Aye.

3051 Ms. Fontenot. Mrs. Demings votes aye.

3052 Mr. Correa?

3053 Mr. Correa. Aye.

3054 Ms. Fontenot. Mr. Correa votes aye.

3055 Ms. Scanlon?

3056 Ms. Scanlon. Aye.

3057 Ms. Fontenot. Ms. Scanlon votes aye.

3058 Ms. Garcia?

3059 Ms. Garcia. Aye.

3060 Ms. Fontenot. Ms. Garcia votes aye.

3061 Mr. Neguse?

3062 Mr. Neguse. Aye.

3063 Ms. Fontenot. Mr. Neguse votes aye.

3064 Mrs. McBath?

3065 Mrs. McBath. Aye.

3066 Ms. Fontenot. Mrs. McBath votes aye.

3067 Mr. Stanton?

3068 Mr. Stanton. Aye.

3069 Ms. Fontenot. Mr. Stanton votes aye.

3070 Ms. Dean?

3071 Ms. Dean. Aye.

3072 Ms. Fontenot. Ms. Dean votes aye.

3073 Ms. Escobar?

3074 Ms. Escobar. Aye.

3075 Ms. Fontenot. Ms. Escobar votes aye.

3076 Mr. Jones?

3077 Mr. Jones. Aye.

3078 Ms. Fontenot. Mr. Jones votes aye.

3079 Ms. Ross?

3080 Ms. Ross. Ross votes aye.

3081 Ms. Fontenot. Ms. Ross votes aye.

3082 Ms. Bush?

3083 Ms. Bush. Bush votes aye.

3084 Ms. Fontenot. Ms. Bush votes aye.

3085 Mr. Jordan?

3086 Mr. Jordan. Yes. Or excuse me. No.

3087 Ms. Fontenot. Mr. Jordan votes no.

3088 Mr. Chabot?

3089 Mr. Chabot. No.

3090 Ms. Fontenot. Mr. Chabot votes no.

3091 Mr. Gohmert?

3092 Mr. Gohmert. No.

3093 Ms. Fontenot. Mr. Gohmert votes no.

3094 Mr. Issa?

3095 Mr. Issa. No.

3096 Ms. Fontenot. Mr. Issa votes no.

3097 Mr. Buck?

3098 Mr. Buck. Aye.

3099 Ms. Fontenot. Mr. Buck votes aye.

3100 Mr. Gaetz?

3101 [No response.]

3102 Mr. Johnson of Louisiana?

3103 [No response.]

3104 Mr. Biggs?

3105 Mr. Biggs. No.

3106 Ms. Fontenot. Mr. Biggs votes no.

3107 Mr. McClintock?

3108 Mr. McClintock. No.

3109 Ms. Fontenot. Mr. McClintock votes no.

3110 Mr. Steube?

3111 Mr. Steube. No.

3112 Ms. Fontenot. Mr. Steube votes no.

3113 Mr. Tiffany?

3114 Mr. Tiffany. No.

3115 Ms. Fontenot. Mr. Tiffany votes no.

3116 Mr. Massie?

3117 Mr. Massie. No.

3118 Ms. Fontenot. Mr. Massie votes no.

3119 Mr. Roy?

3120 Mr. Roy. Aye.

3121 Ms. Fontenot. Mr. Roy votes aye.

3122 Mr. Bishop?

3123 Mr. Bishop. No.

3124 Ms. Fontenot. Mr. Bishop votes no.

3125 Mrs. Fischbach?

3126 Mrs. Fischbach. No.

3127 Ms. Fontenot. Mrs. Fischbach votes no.

3128 Mrs. Spartz?

3129 Mrs. Spartz. Yes.

3130 Ms. Fontenot. Mrs. Spartz votes yes.

3131 Mr. Fitzgerald?

3132 Mr. Fitzgerald. No.

3133 Ms. Fontenot. Mr. Fitzgerald votes no.

3134 Mr. Bentz?

3135 [No response.]

3136 Ms. Fontenot. Mr. Owens?

3137 Mr. Owens. Aye.

3138 Ms. Fontenot. Mr. Owens votes aye.

3139 Chairman Nadler. Mr. Gaetz?

3140 Ms. Fontenot. Mr. Gaetz, you're not recorded. Mr.

3141 Gaetz. Aye.

3142 Ms. Fontenot. Mr. Gaetz votes aye.

3143 Chairman Nadler. Are there any other members who wish to

3144 be recorded who haven't been recorded?

3145 [No response.]

3146 Chairman Nadler. The clerk will report.

3147 Ms. Fontenot. Mr. Chairman, there are 29 ayes and 12 noes.

3148

3149 Chairman Nadler. The bill is reported favorably -- the bill  
3150 -- the ayes have it. The bill is amended is reported -- is ordered  
3151 reported favorably to the House. Members will have two days to  
3152 submit views.

3153 Without objection, the bill will be reported as a single  
3154 amendment in the nature of a substitute incorporating all adopted  
3155 amendments, and staff is authorized to make technical and  
3156 conforming changes.

3157 Pursuant to notice, I now call up H.R. 3460, the State  
3158 Antitrust Enforcement Venue Act of 2021 for purposes of markup  
3159 and move that the committee report the bill favorably to the House.

3160 The clerk will report the bill.

3161 Ms. Fontenot. H.R. 3460, to amend Title 28 of the United  
3162 States Code to prevent the transfer --

3163 Chairman Nadler. Without objection, the bill is considered  
3164 as read and open for amendment at any point.

3165 [The Bill H.R. 3460 follows:]

3166

3167 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3168 Chairman Nadler. I will begin by recognizing myself in an  
3169 opening statement.

3170 H.R. 3460, the State Antitrust Enforcement Venue Act of 2021,  
3171 ensures that state attorneys general who bring antitrust cases  
3172 in federal court do not face delays or higher costs due to the  
3173 transfer of such cases to a different venue.

3174 Congress has long recognized the essential role that states  
3175 playing in enforcing the antitrust laws. State attorneys general  
3176 are often a crucial partner for federal antitrust enforcers.

3177 They also playing an important role in independently  
3178 enforcing the antitrust laws to protect consumers and competition  
3179 in their states.

3180 Under current law, the judicial panel on multi-district  
3181 litigation, or JPML, which plays an important coordinating role  
3182 in litigation filed across multiple districts, cannot transfer  
3183 an antitrust case brought by the United States from one federal  
3184 district court to another.

3185 Additionally, antitrust cases brought by the United States  
3186 cannot be combined with similar litigation brought by private  
3187 plaintiffs.

3188 That means that, in general, when the United States files  
3189 an antitrust case, its choice of venue is final and the case cannot  
3190 be slowed down by having to coordinate or consolidate cases with  
3191 private litigants.

3192 States do not enjoy these benefits. As a result, states  
3193 may be forced to litigate in an inconvenient venue, even when  
3194 the original venue they chose is appropriate.

3195 Additionally, states' ability to bring timely action to  
3196 protect their citizens can be delayed.

3197 H.R. 3460 updates this law to prevent state antitrust  
3198 litigation from being transferred to another venue or  
3199 consolidated with private antitrust claims by the judicial panel  
3200 on multi-district legislation litigation.

3201 This change ensures that states can effectively litigate  
3202 antitrust cases without unnecessary delays, inefficiencies, and  
3203 higher costs that occur when state antitrust cases are transferred  
3204 or combined.

3205 Importantly, this legislation applies only to the JPML  
3206 process and it does not affect the rights of defendants to seek  
3207 to transfer a case to a more convenient or appropriate forum under  
3208 the federal change of venue statute.

3209 In testimony before the Antitrust Subcommittee earlier this  
3210 year, one witness explained that cost and time are the biggest  
3211 obstacles to antitrust enforcement, explained that every extra  
3212 year it takes an antitrust case to get to trial is an extra year  
3213 of monopoly.

3214 Earlier this month, the National Association of Attorneys  
3215 General wrote to the committee to express its strong support for



3216 H.R. 3460. In a letter signed by every state attorney general  
3217 in the country, they urged Congress to pass this urgent  
3218 legislation, quote, "as soon as possible so that our citizens  
3219 can benefit from more efficient, effective, and timely  
3220 adjudication of antitrust actions," closed quote.

3221 I agree with the state attorneys general, including my  
3222 friend, Letitia James, the attorney general of New York, that  
3223 H.R. 3460 will promote better and more timely enforcement of the  
3224 antitrust laws.

3225 I thank Subcommittee Ranking Member Buck and Subcommittee  
3226 Chairman Cicilline for their leadership on this issue and I urge  
3227 all members to support this important bipartisan legislation.

3228

3229 I now recognize the ranking member of the Judiciary  
3230 Committee, the gentleman from Ohio, Mr. Jordan, for his opening  
3231 statement.

3232 Mr. Jordan. Thank you, Mr. Chairman.

3233 The bill seeks to empower state attorney generals to fight  
3234 to enforce our antitrust laws. States play an important role  
3235 in this space, as we well know. The recent lawsuit against Google  
3236 brought by several states is of the utmost importance in holding  
3237 big tech accountable.

3238 We hope those states are, ultimately, successful in that  
3239 action. Under current law, the U.S. Judicial Panel, as the

3240 chairman mentioned, on multi-district litigation, also known as  
3241 the MDL Panel, can consolidate and centralize similar civil  
3242 actions that may involve overlapping questions of fact for  
3243 pretrial proceedings.

3244 When the United States brings an antitrust action, the case  
3245 is exempt from being transferred by the MDL Panel to ensure the  
3246 United States does not experience delays. However, under current  
3247 law, the MDL Panel can transfer cases where a state has sued a  
3248 defendant under federal antitrust laws.

3249 This bill, as the chairman indicated, would amend current  
3250 law, prohibit the MDL Panel from transferring states' federal  
3251 antitrust cases under federal laws to other jurisdictions.

3252 While this seems like a prudent way to embolden the states,  
3253 there are some concerns, I think, that need to be raised for the  
3254 record.

3255 First, our staff reached out to the Judicial Conference,  
3256 the internal policymaking body for our court system, to get  
3257 feedback on the effect of this bill on federal courts.

3258 While we are awaiting feedback, and the conference has not  
3259 taken a position on the legislation, the initial informal reaction  
3260 we got was that there are concerns about the legislation and its  
3261 effect on efficiencies in the judicial branch of our government.

3262

3263 Additionally, while we may see this bill as prudent right

3264 now in the fight against Google, as said, what we will -- what  
3265 will the effect be for other companies? Remember, this bill is  
3266 not just limited to big tech. We had that debate for a couple  
3267 hours on the fees and trying to limit them.

3268 This bill is not limited to big tech. What if the Democrat  
3269 state attorney generals begin bringing suits against oil and gas  
3270 companies, for example, that they don't like, or if they come  
3271 after companies simply because they're owned by conservatives?

3272 We need to think through those issues and, hopefully, find  
3273 some solutions here today in the form of amendments before we  
3274 pass this legislation.

3275 With that, Mr. Chairman, I yield back.

3276 Chairman Nadler. I now recognize -- the gentleman yields  
3277 back.

3278 I now recognize the chair of the Subcommittee on Antitrust,  
3279 Commercial and Administrative Law, the gentleman from Rhode  
3280 Island, Mr. Cicilline, for his opening statement.

3281 Mr. Cicilline. Thank you, Mr. Chairman.

3282 H.R. 3460, the State Antitrust Enforcement Venue Act of 2021,  
3283 is a common sense solution that will enable state attorneys  
3284 general to better enforce the antitrust laws and protect consumers  
3285 and competition.

3286 It makes state antitrust enforcement more efficient and more  
3287 cost effective. States play a key role in enforcing the antitrust

3288 laws. In many cases, they are crucial allies of the Federal Trade  
3289 Commission and the Department of Justice.

3290 In others, states attorney generals step in and protect their  
3291 citizens where federal enforcers have not done their jobs.

3292 Earlier this year, Phil Weiser, the attorney general of  
3293 Colorado, and Doug Peterson, the attorney general of Nebraska,  
3294 each testified about the important role the states play in the  
3295 work they are doing to protect and promote competition.

3296 We see clear evidence of the leadership of state attorney  
3297 Generals in protecting their citizens from anti-competitive  
3298 conduct by dominant online platforms. In December, General  
3299 Weiser led a bipartisan coalition of state attorneys general in  
3300 filing a monopolization case against Google. In another case,  
3301 15 states are taking action against Google.

3302 New York Attorney General Letitia James is leading a  
3303 coalition of 48 states in a monopolization case against Facebook,  
3304 and most recently, Washington, D.C. Attorney General Karl Racine  
3305 filed an antitrust case against Amazon.

3306 State attorneys general do critical work to protect their  
3307 citizens and promote competition. Often, they do so with  
3308 extremely limited budgets and staff.

3309 This bill ensures that states are not forced to waste  
3310 precious time and resources that come with consolidating state  
3311 actions with private actions or by unnecessarily relocating to

3312 an inconvenient venue.

3313 H.R. 3460 is sponsored by Congressman Ken Buck, my friend  
3314 and the ranking member of the Antitrust, Commercial Law and  
3315 Administrative Law Subcommittee. I want to thank Congressman  
3316 Buck for his top leadership on this issue. There's a lot we don't  
3317 agree on, but we do agree that there is a monopoly problem in  
3318 the digital marketplace and we agree that Congress needs to fix  
3319 it.

3320 The legislation that we're considering today is the result  
3321 of months of painstaking and bipartisan negotiations. We have  
3322 heard from dozens of stakeholders from industry, academia, public  
3323 interest, legal practitioners, economists, and former  
3324 enforcement officials.

3325 Congressman Buck and the members of the subcommittee have  
3326 been deeply engaged in this work, and I know from all of those  
3327 conversations that Congressman Buck has been a strong advocate  
3328 for free markets, competition, and enforcing the laws. I want  
3329 to just acknowledge his leadership and urge my colleagues to  
3330 support H.R. 3460.

3331 And, Mr. Chairman, I would ask unanimous consent to put in  
3332 the record the letter from the National Association of Attorneys  
3333 General in support of Congressman Buck's legislation.

3334 Chairman Nadler. Without objection.

3335 [The information follows:]

3336

3337

\*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3338 Chairman Nadler. Does the gentleman yield back?

3339 Mr. Cicilline. Yield back, Mr. Chairman.

3340 Chairman Nadler. The gentleman yields back.

3341 I now recognize the ranking member of the Antitrust  
3342 Subcommittee, the gentleman from Colorado, Mr. Buck, for his  
3343 opening statement.

3344 Mr. Buck. Thank you, Mr. Chair.

3345 I think we have seen the importance of the state attorneys  
3346 general in picking up the enforcement ball while our federal  
3347 antitrust agencies have wrung their hands.

3348 Last year alone, we saw the state AGs file three cases against  
3349 big tech monopolies. Yet, despite the increasingly important  
3350 role states play in the enforcement of federal antitrust laws,  
3351 they do not currently possess the federal government's authority  
3352 to choose and remain in their preferred venue, even when they  
3353 file in a federal court in their home state.

3354 We are seeing this big tech forum shopping tactic play out  
3355 in real time. For example, Google has filed a motion to change  
3356 venue, trying to move Texas' ad tech case to the Northern District  
3357 of California under the Ninth Circuit, where they have -- where  
3358 Google has more favorable case law on appeal.

3359 The State Antitrust Enforcement Venue Act of 2021 would fix  
3360 this problem. My bill will give the states the same deference  
3361 as the United States with regard to venue selection in federal

3362 antitrust cases.

3363 Under current law, the Judicial Panel on Multi-District  
3364 Litigation cannot transfer an antitrust case that is brought by  
3365 the United States.

3366 By also exempting state antitrust cases from consolidation  
3367 under the JPML process, we are removing the inefficiencies that  
3368 arise when states are required to coordinate or consolidate their  
3369 actions with slower-moving private actions.

3370 This also respects our federalist system of government.  
3371 When Congress authorized MDL transfers it carved out United States  
3372 antitrust enforcement at the behest of the Department of Justice.

3373

3374 It did so because it recognized that permitting United States  
3375 antitrust actions to remain independent was justified by the  
3376 importance to the public of securing relief in antitrust cases  
3377 as quickly as possible.

3378 This exact same reasoning applies equally to the sovereign  
3379 states. Like federal antitrust enforcers, state enforcement  
3380 actions serve profound public interests beyond those served by  
3381 private actions.

3382 Their cases should be prioritized for adjudication,  
3383 reflecting their importance. The states have been important  
3384 antitrust enforcers even before enactment of the federal  
3385 antitrust laws, and like their federal counterparts, states have



3386 played powerful tool -- states have powerful tools for the  
3387 investigation of antitrust violations, rendering much of the  
3388 pretrial discovery proceedings in private actions superfluous  
3389 in actions brought by states.

3390 This bill enjoys universal popularity among state antitrust  
3391 enforcers with 52 attorney generals from the states and  
3392 territories having signed a letter to this committee urging its  
3393 passage and explaining how it represents a vital tool in their  
3394 future oversight of big tech.

3395 This reflects the considered view of those at the front line  
3396 of recent antitrust enforcement efforts representing states as  
3397 diverse as Ohio, California, Florida, Minnesota, Indiana, Oregon,  
3398 Texas, Louisiana, and Wisconsin.

3399 Therefore, Mr. Chair, at this point, I would like to ask  
3400 to enter this letter. I guess it already has been entered into  
3401 the record, and I thank the gentleman.

3402 In sum, this bill strengthens our federalist system of  
3403 government by respecting the sovereignty of the states and,  
3404 practically speaking, it would tackle the unfair gamesmanship  
3405 and forum shopping which the big tech monopolies engage in to  
3406 avoid justice.

3407 The companion bill has been introduced by Senator Mike Lee  
3408 and Senator Klobuchar in the -- in the Senate, and I am thankful  
3409 to have the support of my fellow Republicans Representatives

3410 Bishop, Gosar, Norman, Herrell, Owens, Roy, Bilirakis, and  
3411 support from two Democrat members, Representative Neguse and  
3412 Cicilline.

3413 Mr. Chairman, I do want to mention that of the 52 attorney  
3414 generals who have signed this letter of support, 24 are  
3415 Republican, 24 are Democrat, two -- state attorney generals, two  
3416 Democrat territory attorney generals and two independent  
3417 territory attorney generals.

3418 So there is, again, broad bipartisan support among the  
3419 attorney generals to get this bill done, and I yield back.

3420 Chairman Nadler. The gentleman yields back.

3421 Without objection, all other opening statements will be  
3422 included in the record.

3423 I now recognize myself for purposes of offering an amendment  
3424 in the nature of a substitute.

3425 The clerk will report the amendment.

3426 Ms. Fontenot. Amendment in the nature of a substitute to  
3427 H.R. 3460 offered by Mr. Nadler of New York. Strike all after  
3428 the enacting clause --

3429 Chairman Nadler. Without objection, the amendment in the  
3430 nature of a substitute will be considered as read and shall be  
3431 considered as base text for purposes of amendment.

3432 [The Amendment of Chairman Nadler follows:]

3433

3434

\*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3435 Chairman Nadler. I will recognize myself to explain the  
3436 amendment.

3437 This amendment changes the title to better reflect the goals  
3438 of the bill. It makes no substantive changes to the bill, and  
3439 I urge all members to support the amendment.

3440 I yield back the balance of my time.

3441 Are there any amendments to the amendment in the nature of  
3442 a substitute?

3443 Ms. Lofgren. Mr. Chairman?

3444 Chairman Nadler. For what purpose does Ms. Lofgren seek  
3445 recognition?

3446 Ms. Lofgren. To strike the last word.

3447 Chairman Nadler. The gentlelady is recognized.

3448 Ms. Lofgren. I have very serious concerns about this bill,  
3449 and I realize that this is a moment where there's been an effort  
3450 to have bipartisan support. But I really do think there are  
3451 serious problems with this proposal.

3452 There are policy reasons for not adopting the change to the  
3453 multi-district litigation process. The ability to centralize  
3454 cases that arise from a central common set of facts is so important  
3455 to ensuring a system that promotes judicial efficiency and  
3456 eliminates contradictory pretrial rulings.

3457 The policy priority to centralize is nowhere more important  
3458 than antitrust litigation, which frequently involves multi-state

3459 or national businesses that face claims spanning multiple states  
3460 and alleging widespread economic injury and trebled damages.

3461 These cases shouldn't be litigated piecemeal. Now, the  
3462 potential through the MDL process for transfer of these related  
3463 cases to a single federal district court judge enhances  
3464 coordination and the manager provides an avenue for significant  
3465 efficiencies for the parties, for the conveniences of witnesses,  
3466 for judicial economy, and the avoidance of risk of inconsistent  
3467 decisions.

3468 Moreover, in antitrust actions, the state AGs are primarily  
3469 enforcing federal antitrust laws as opposed to their own state  
3470 laws. Were that not so, the AGs' claims would not even be in  
3471 the federal court system. That should substantially reduce  
3472 deference to their desire to bring a case in their home field.

3473

3474 I think the overlap is even more evident in cases brought  
3475 by state AGs under the Clayton Act. There are also benefits for  
3476 a single judge to oversee multiple competing cases where state  
3477 AGs hire law firms -- plaintiffs' law firms as outside counsel,  
3478 whose fee incentives are similar to those of plaintiffs' counsel  
3479 in related private actions, and this happens very often.

3480 The court has a statutory duty to review fee applications  
3481 in these cases.

3482 Now, if this legislation passes, multiple different states

3483 could simultaneously pursue their own separate actions against  
3484 the same antitrust defendant in numerous different federal  
3485 courts. Businesses, inevitably, would find themselves facing  
3486 multiple costly lawsuits in countless courts across the country.

3487

3488 Unlike cases brought by private plaintiffs, these businesses  
3489 would have no way of consolidating those cases into a single fair  
3490 proceeding, and that's the outcome that Congress has tried to  
3491 avoid over the years.

3492 The legislation also increases the risk of conflicting  
3493 judgments in cases brought on behalf of the same set of defendants.

3494 For instance, class action plaintiffs and state AGs may bring  
3495 identical claims based on identical facts on behalf of an  
3496 identical set of consumers but in different district courts.

3497 The judicial system has sought to avoid these scenarios  
3498 because of the risk of divergent judgments including damage awards  
3499 and restitution. And by not -- we have avoided that by allowing  
3500 such cases to be consolidated where appropriate.

3501 Importantly, this risk does not arise in antitrust cases  
3502 brought by the Department of Justice, which only seeks injunctive  
3503 relief, and so keeping such cases separate doesn't raise the same  
3504 risk.

3505 This was the scenario that Congress tried to prevent when  
3506 it passed the legislation permitting defendants to ask the

3507 judicial panel on multi-district legislation to consolidate  
3508 antitrust lawsuits brought by the state.

3509 The multi-district litigation proceeding system has worked.  
3510 It's a process that has benefitted from more than 50 years of  
3511 development. It entrusts senior federal judges, not companies  
3512 and not politicians, elected AGs, to determine which cases are  
3513 most efficiently and justly resolved through centralized  
3514 litigation.

3515 I think we should think twice before enacting drastic changes  
3516 that disrupt the system, that is efficient, and has worked well  
3517 for all parties for decades.

3518 And I would just note this. There is a lot of animosity  
3519 towards big companies. But this is not limited to big companies,  
3520 and if a medium-sized company is forced to respond across the  
3521 United States to a multiplicity of AGs in various states, you're  
3522 going to be hearing from them, as you should.

3523 Changing this venue rule at this point, even without the  
3524 input from the Judicial Council, I think is a serious mistake,  
3525 and I oppose this measure at this time.

3526 And I yield back, Mr. Chairman.

3527 Chairman Nadler. The gentlelady yields back.

3528 For what purpose does Mr. Gaetz seek recognition?

3529 Mr. Gaetz. Strike the last word.

3530 Chairman Nadler. The gentleman is recognized.

3531 Mr. Gaetz. Thank you, Mr. Chairman.

3532 I am enthusiastically in support of this legislation from  
3533 Chairman Cicilline and Ranking Member Buck, and I must confess  
3534 it is a bit awkward to be defending a Cicilline bill against a  
3535 critique from the gentlelady from California, Ms. Lofgren, but  
3536 perhaps speaks to the bipartisan nature of this entire process.

3537

3538 And it is worth noting that in the hearings and meetings  
3539 the Chairman Cicilline described the conduct of these technology  
3540 platforms was brazen and egregious and harmful to our country.

3541

3542 I only wish that we had not had so much turnover on the  
3543 Antitrust Subcommittee that we would not be evaluating the  
3544 legislation in a Congress that is somewhat detached from the  
3545 Congress where we conducted the investigation.

3546 But, nonetheless, the report documents that evidence well.

3547 Washington is at its best when we are empowering our states  
3548 to do more. There's a reason now why more state attorney generals  
3549 are not successful in their litigation against big tech.

3550 It is this home venue provision. The home venue provision  
3551 creates an extreme strain on resources and it gives the very  
3552 platforms that have acted unfavorably toward the market this  
3553 tremendous home court advantage.

3554 One of the major -- one of the major critiques that the



3555 ranking member of the full committee offered of this package of  
3556 bills is that it empowers the FTC, and I think that's a fair  
3557 criticism to debate.

3558 But if what you're most concerned about is an FTC or a  
3559 Department of Justice co-mingling with big tech, then you should  
3560 be most enthusiastically for this venue bill because it will  
3561 empower the litigation process to be liberated from the corrupt  
3562 influences of this town.

3563 And I have a number of pieces of evidence that I think back  
3564 that point up, Mr. Chairman. I ask unanimous consent to enter  
3565 into the record a Politico piece that was written on March 16th,  
3566 2021, entitled "How Washington Fumbled the Future."

3567 Chairman Nadler. Without objection.

3568 [The information follows:]

3569

3570 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3571 Mr. Gaetz. I would also seek to enter into the record a

3572 Politico piece of entitled "Google Files: Power Players."

3573 Chairman Nadler. Also without objection.

3574 [The information follows:]

3575

3576 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3577           Mr. Gaetz. I would also like to seek unanimous consent to  
3578 enter in the record a piece from Protocol.com titled, "We Counted  
3579 FTC Staffers Who Moved to Tech. Is Reform Needed?"

3580           Chairman Nadler. Without objection.

3581           [The information follows:]

3582

3583           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3584           Mr. Gaetz. What all of these pieces of evidence demonstrate  
3585 is that there is a revolving door that exists between the DOJ,  
3586 the FTC, and big tech.

3587           And so if you want out of that revolving door, if you don't  
3588 want the regulators then cashing in on their regulation, then  
3589 we should empower our state attorneys general to go and do this  
3590 work and to hold big tech to account.

3591           There is a final piece of evidence here, Mr. Chairman, and  
3592 I did not expect to obtain this when we had our transcribed  
3593 interview of the former U.S. Attorney for the Southern District  
3594 of New York, Mr. Berman.

3595           But in the inquiry of Mr. Berman, the majority asked a number  
3596 of questions about why Attorney General Barr was asking him to  
3597 leave the Southern District of New York and take over as head  
3598 of the Civil Division.

3599           And Mr. Berman explicitly says that the reason that the  
3600 attorney general is trying to coax him into the acceptance of  
3601 that assignment is that it would be, and I'm quoting direct from  
3602 the transcript here, "A good resume builder."

3603           Mr. Berman testifies, "He said that I should want to create  
3604 a book of business once I returned to the private sector, which  
3605 that role would help to achieve."

3606           How improper for Attorney General Barr to be attempting to  
3607 lure the U.S. Attorney for the Southern District of New York to

3608 the Civil Division of the Department of Justice for the explicit  
3609 purpose of building a business and then engaging in the revolving  
3610 door back to the private sector to be able to leverage those  
3611 contacts.

3612 I was struck by Attorney General Barr's conduct as reflected  
3613 in Mr. Berman's testimony, and I would seek to enter Mr. Berman  
3614 -- a transcript of Mr. Berman's testimony into the record as well,  
3615 Mr. Chairman.

3616 Chairman Nadler. Without objection.

3617 [The information follows:]

3618

3619 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3620 Mr. Gaetz. So we can, I think, sift through a lot of the

3621 --

3622 Chairman Nadler. Would the gentleman yield for a moment?

3623 Would the gentleman yield for a moment?

3624 Mr. Gaetz. Yes, sir.

3625 Chairman Nadler. I'll just observe that a lot of us were  
3626 very upset by a lot of things that Attorney General Barr did.

3627

3628 Mr. Gaetz. Yeah. Well, a lot of us are growing more upset  
3629 by the day.

3630 But I would -- I would say that in this particular case,  
3631 the most noteworthy objection from the ranking member is that  
3632 these bills constitute a growth in the power of Washington, and  
3633 this bill is the antidote to that.

3634 It is what balances and tempers the package to ensure that  
3635 we invigorate and animate the 10th Amendment principles that would  
3636 allow our state attorneys general to at least have a fair fight  
3637 when engaging with these platforms that have participated in such  
3638 searing conduct.

3639 I thank the chairman for his indulgence, and I yield back.

3640

3641 Chairman Nadler. The gentleman yields back.

3642 Does anyone else seek recognition?

3643 Chairman Nadler. For what purpose does Mr. Issa seek

3644 recognition?

3645 Mr. Issa. I move to strike the last word.

3646 Chairman Nadler. The gentleman is recognized.

3647 Mr. Issa. Well, I'd like to associate myself with my good  
3648 friend from San Jose. Ms. Lofgren said it very well, and she  
3649 covered a great many points. I just want to piggyback on that.

3650

3651 This bill would cause a company that happens to have a large  
3652 market share or in some way infuriate some hometown company in  
3653 Alabama or Georgia or you name the state to find itself being  
3654 sued.

3655 Now, that's bad enough. But then when it's backed by a  
3656 plaintiff's lawyer who's going to share in the proceeds, and then  
3657 when it ends up having not one state, but two states, three states,  
3658 four states, five states.

3659 Earlier, the terms efficient and effective were used.  
3660 There's nothing efficient, and I've been sued away from my home  
3661 little business, a little -- comparatively small business  
3662 compared to what we're talking about in California.

3663 I've been sued on the other end of the country where  
3664 somebody's got a convenient venue. I was actually once sued by  
3665 Chrysler in Detroit.

3666 And I've got to tell you, they had a hell of a hometown  
3667 advantage suing an auto company from California, and they did

3668 it. Now, it was bad enough, but it was only one.

3669 Can you imagine if you're a small company and you get sued  
3670 five, 10, 15, 20 times? It's the same basic suit. It alleges  
3671 the same conduct. The same officers, directors, and individuals  
3672 in the company are being deposed.

3673 And yet, you're being hauled hither and yon on behalf of  
3674 a dozen or maybe 48 states. There's no efficiency or  
3675 effectiveness there.

3676 Yes, Google, for example, is saying the people you want to  
3677 depose, the information you want, happens to all be in the Northern  
3678 District of California. And yes, it might be a favorable -- I  
3679 object to the Ninth Circuit ever being called favorable, by the  
3680 way. But it might be favorable in some ways.

3681 But you know what? Those attorneys general are, in self  
3682 interest, very clearly looking to favor their benefit and their  
3683 political affiliations, in some cases, with plaintiffs' trial  
3684 lawyers who will participate in the revenue.

3685 So the idea that we're going to throw away the consolidation  
3686 for companies large or small, and I understand there's an  
3687 amendment that's going to limit this only to the very largest  
3688 companies, which would at least eliminate the idea that a company  
3689 of \$10 million or \$100 million or \$200 million could find itself  
3690 in a dozen or more venues chosen by the plaintiffs to, in fact,  
3691 drain you into finding a need to settle.



3692           And you can imagine, an antitrust case costs the defendant  
3693 millions of dollars. If you have the ability to have 10 cases  
3694 consolidated into one when they have substantially the same  
3695 factors, it saves both sides those tens of millions of dollars.

3696           If you allow this proliferation to continue then it doesn't.  
3697 I would contend that if we were only talking about one state  
3698 filing in its own venue for itself, then we could have a discussion  
3699 that there's no need -- there's no justification for consolidation  
3700 or maybe even venue change.

3701           But we're not. We are talking about cases in which there  
3702 will be multiple -- and Google's a good example -- there will  
3703 be multiple cases filed by multiple different attorneys general  
3704 and they will each piggyback each other, they will coordinate,  
3705 and the like.

3706           So let's be honest. This is a bad change, as Ms. Lofgren  
3707 said, of 50 years of effective historic consolidation, which is  
3708 to the benefit, particularly, of our limited federal judges.

3709           And I'd yield to the gentlelady.

3710           Ms. Lofgren. I thank the gentleman for yielding.

3711           I just remember the years we put in to avoid the forum  
3712 shopping provision that we had in terms of patent litigation.

3713           Mr. Issa. And Mr. Gohmert is getting up, as we mention that.

3714           Ms. Lofgren. That's right, because it is the Eastern  
3715 District of Texas.

3716 But, really, it is a shakedown on the local bar because the  
3717 lawyers from the headquarters, wherever that company is, have  
3718 to affiliate with the lawyers who are in the district.

3719 So there's that aspect to it. It is very abusive. If  
3720 there's a problem in terms of bringing these cases quickly without  
3721 this, then let's look at adding some resources so those cases  
3722 can be properly brought.

3723 Let's not blow up a system that's worked for 50 years,  
3724 especially without getting input from the Judicial Council.

3725 And I thank the gentlemen for yielding.

3726 Mr. Issa. I thank the gentlelady, and I would just close  
3727 by saying if you want to mend the system, let's work with the  
3728 Judicial Conference to find ways to increase the efficiency, not  
3729 end it in hopes that 50 cases will be more efficient than one.

3730 I yield back.

3731 Chairman Nadler. The gentleman yields back.

3732 For what purpose does Mr. Lieu seek recognition?

3733 Mr. Lieu. I move to strike the last word.

3734 Chairman Nadler. The gentleman is recognized.

3735 Mr. Lieu. Thank you, Chairman Nadler.

3736 On this specific bill, I, frankly, just don't understand  
3737 the consequences of what would happen if it became law. Many  
3738 of us on this committee have had no hearings on this specific  
3739 bill related to venue for antitrust.

3740 I don't really understand the complexities of this bill.  
3741 What Representatives Issa and Lofgren said seem to make a lot  
3742 of sense to me. I'm going to vote yes on this bill and allow  
3743 the legislating process to continue.

3744 But I may not vote for this bill on the House floor. I'm  
3745 simply going to have to learn more about it. This bill was kind  
3746 of put in at the last minute, and it just seems to me that without  
3747 a lot of notice, there's not a lot for me to go on.

3748 I don't actually know who to trust on this bill. I've heard  
3749 no expert witnesses about it, and it makes some pretty drastic  
3750 changes.

3751 So I will vote yes, but reserve the right to vote no on the  
3752 House floor.

3753 With that, I yield back.

3754 Chairman Nadler. The gentleman yields back.

3755 For what purpose does Mr. Bishop seek recognition?

3756 Mr. Bishop. Thank you, Mr. Chairman. I have an amendment  
3757 at the desk.

3758 Chairman Nadler. The clerk will report the amendment.

3759 Mr. Cicilline. Mr. Chairman, I'll reserve a point of order.

3760 Chairman Nadler. A point of order is reserved.

3761 Ms. Fontenot. Amendment to the amendment in the nature of  
3762 a substitute to H.R. 3460, offered by Mr. Bishop of North Carolina.

3763 Page 1, strike lines 7 and 8 and insert the following. One,

3764 in subsection (g) by inserting before the period at the end of  
3765 the first sentence, or any action in which a state is a complainant  
3766 arising under the antitrust --

3767 Chairman Nadler. The amendment is considered as read.

3768 [The Amendment of Mr. Bishop follows:]

3769

3770 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3771 Chairman Nadler. The gentleman will explain his amendment.

3772

3773 Mr. Bishop. Thank you, Mr. Chairman. Did you say I'm  
3774 recognized?

3775 Chairman Nadler. Yes. Yes. Yes.

3776 Mr. Bishop. Thank you.

3777 You know, we have been here several hours. We're talking  
3778 about big tech abuses. Let's do something about big tech.

3779 So the bill as originally offered would amend current law  
3780 to prohibit the Judicial Panel on Multi-District Litigation from  
3781 transferring antitrust cases brought by state attorney generals  
3782 under federal law to other jurisdictions.

3783 So that would apply generally to state antitrust cases and  
3784 would cover any type of antitrust case, not just cases against  
3785 big tech.

3786 Consider the prospect of antitrust cases in some matter that  
3787 arises by state attorney generals in, I don't know, 30 or 40 states  
3788 against any kind of big business, big businesses having nothing  
3789 to do with big tech. Maybe airlines or drug companies or some  
3790 high-profile target for other reasons.

3791 I think Mr. Jordan suggested oil and gas companies, or  
3792 whatever. You know, you'd have the prospect of not being able  
3793 to have those cases coordinated before a single judge for  
3794 handling, transferred to a single district for handling.

3795           You'd have the procedural jockeying of each case, the state  
3796 attorney general in each case trying to get ahead of the others  
3797 and rush things so that it -- so they'd be at the front of the  
3798 line for the determinations to come.

3799           And I'm prepared to see some change to that system in an  
3800 appropriate circumstance, but I'm not sure I see a reason to do  
3801 it for all antitrust law across the board.

3802           Again, what I understand we're here for is to do something  
3803 about big tech. So my amendment would limit the scope of H.R.  
3804 3460 to only allow big tech antitrust actions brought by state  
3805 attorneys general to be exempt from consolidation by the Judicial  
3806 Panel on Multi-District Litigation.

3807           That will ensure that -- as a general proposition, the  
3808 Judicial Panel -- the MDL Panel will be able to achieve its goal  
3809 of reducing judicial efficiencies during pretrial proceedings,  
3810 and yet, it will also have the effect of amplifying the  
3811 availability of other enforcement resources from state attorneys  
3812 general in big tech cases.

3813           And so let's see if I got anything else to say. I think  
3814 that's it, and I urge the amendment to your consideration.

3815           Thank you. Yield back.

3816           Chairman Nadler. The gentleman yields back.

3817           For what purpose does the gentleman from Rhode Island seek  
3818 recognition?

3819 Mr. Cicilline. Mr. Chairman, I withdraw my point of order,  
3820 and I -- if I might just be heard briefly.

3821 Again, I just would remind my colleagues that this is a piece  
3822 of legislation that's supported by every attorney general in the  
3823 United States.

3824 We have not heard any concerns from the Judicial Conference.  
3825 They're never shy about sharing their concerns, and I'd yield  
3826 the balance of my time to Mr. Buck if he'd like to respond to  
3827 the amendment.

3828 No? I yield back.

3829 Chairman Nadler. The gentleman yields back. Does anyone  
3830 else seek recognition on this amendment?

3831 Does Mr. Correa -- for what purpose does Mr. Correa seek  
3832 recognition?

3833 Mr. Correa. Mr. Chairman, I move to strike the last word,  
3834 but on underlying bill and not the amendment.

3835 Chairman Nadler. The gentleman is recognized.

3836 Mr. Correa. Thank you very much. I just wanted to also  
3837 concur with some of my colleagues from California, the Bay Area  
3838 that this is a very important piece of legislation complicated  
3839 in terms of its legislative -- excuse me, litigation and public  
3840 policy implications.

3841 Big tech -- back in 2010, 4 percent of all Californians worked  
3842 in big tech today. Today, that number is about 12 percent or

3843 about 2 million Californians work directly in big tech, high tech,  
3844 and that number is even greater when you take into account the  
3845 multiplier effect where others, millions of others, work or  
3846 support these industries as well as communities around them.

3847 At our state level, the state of California, these firms,  
3848 high tech, are the reason California has a budget surplus as  
3849 opposed to a deficit, enabling the state of California to invest  
3850 in public education, to help those that have been affected by  
3851 COVID, the middle class, and those that are trying to get to the  
3852 middle class. It is because of these budget surplus dollars that  
3853 we're able to take care of our friends and neighbors in California.

3854

3855 Of course, as we speak about -- at the national levels we  
3856 speak about the challenges this country has in investing in  
3857 research and development, fighting cyber crimes, competing with  
3858 China and others around the world. This is exactly what these  
3859 firms are doing on a day-to-day basis.

3860 So for us today to vote on legislation whose implications  
3861 may not be totally comprehended is, I think, irresponsible.  
3862 That's why I'll be voting no on this legislation.

3863 Thank you.

3864 Chairman Nadler. The gentleman yields back.

3865 For what -- the gentleman yields back. For what purpose  
3866 does Mr. Jordan seek recognition?



3867 Mr. Jordan. Strike the last word.

3868 Chairman Nadler. The gentleman is recognized.

3869 Mr. Jordan. Thank you, Mr. Chairman.

3870 I just -- I support the gentleman's amendment, and it's as  
3871 basic as it gets. If this is about big tech then let's make this  
3872 amendment or let's adopt this amendment and let's make this  
3873 legislation about big tech.

3874 If I -- if I get this right, all it says is the covered  
3875 platform definition is his amendment. So we define covered  
3876 platforms and in the next four bills we're going to deal with  
3877 a defined covered platform.

3878 Six hundred billion market cap, 50 million users per month,  
3879 online presence. If that's what we're focused on, then why not  
3880 apply it to this bill?

3881 My guess is all 48 or 52 attorney generals from states and  
3882 territories -- my guess is they would agree with that. If their  
3883 focus, too, is on addressing big tech, my guess is -- we have  
3884 heard several times now all the attorney generals support this.

3885

3886 My guess is they support this amendment, because if their  
3887 focus is on Google, if their focus is on big tech, this doesn't  
3888 change anything. In fact, this just clarifies it. It says,  
3889 look, if we're going to go after big tech and deal with that,  
3890 let's do it.

3891           So it is as basic amendment as you could have. If we really  
3892 want to focus on what we're supposed to be doing all day long,  
3893 and I'm sure we'll go into this evening, then let's do it.

3894           It's that simple. The covered platform definition is in  
3895 every other bill. Why not have it here if that's what we're going  
3896 to do? That's all this amendment says. So this should be simple.  
3897 We should just say, okay, we're all for it. Let's move on.  
3898 But we'll see what the Democrats do.

3899           I yield back.

3900           Chairman Nadler. The gentleman yields back. The gentleman  
3901 yields back.

3902           For what purpose does the gentlelady from California see  
3903 --

3904           Ms. Lofgren. To strike the last word on the amendment.

3905           Chairman Nadler. The gentlelady is recognized.

3906           Ms. Lofgren. I understand what the intent of the amendment  
3907 is. However, the definitions of covered platforms in the other  
3908 bills include a market cap definition as well, and I'm just trying  
3909 to find out who this would include, and going on the fly searching  
3910 Dr. Google, it looks like this would include Reddit, Twitter,  
3911 Zoom, Skype, LinkedIn. I don't know what the impact would be.

3912           Mr. Bishop. Would the gentlelady yield?

3913           Ms. Lofgren. I would be happy to yield.

3914           Mr. Bishop. I thank the gentlelady.

3915 I think it is -- you're correct. Here's the language. It  
3916 says that there would be -- you could -- the state attorney  
3917 generals would be able to have the venue in their home states  
3918 in any case arising under the antitrust laws as the antitrust  
3919 laws pertain to any company that owns or operates an online  
3920 platform with at least 50 million United States-based monthly  
3921 active users.

3922 I'll confess to the lady -- the gentlewoman -- that I also  
3923 do not know precisely who is in that category. But I know that  
3924 it is limited to companies that are at least in the big tech  
3925 vicinity.

3926 So the covered platform definition as it appears in all of  
3927 its complexity and all the details about having to be designated  
3928 by the FTC and other things we'll talk about in due course, the  
3929 full definition is not replicated, but certainly the essence of  
3930 it here -- a company that has 50 million United States-based  
3931 monthly active users in an online platform. That narrows it very  
3932 significantly.

3933 And I yield.

3934 Ms. Lofgren. Reclaiming my time. I'm not sure that it  
3935 does. And, for example, listed as with more than 50 million users  
3936 is Viber, owned by Rakuten, which has got a big headquarters.

3937 Not in my district, just up 101.

3938 What's the impact on them? I mean, they're not, you know,

3939 who you think, this gigantic big company. And yet, they could  
3940 be hauled all over the United States. Reddit has a very large  
3941 number of users, and yet they don't have this enormous footprint  
3942 in terms of market cap or in terms of employees.

3943 So I understand what you're trying to do. I'm just -- I  
3944 don't think we know what the impact of this would be. Zoom also  
3945 would be included. That is in my district, headquartered in my  
3946 district, and they have a lot of users. We have all been using  
3947 it.

3948 I think we're using it today to broadcast this hearing.  
3949 And yet, it is not -- in terms of market cap and in terms of number  
3950 of employees, it's more on the modest side.

3951 So I am --

3952 Mr. Bishop. Would the gentlelady yield one more time?

3953 Ms. Lofgren. I'd be happy to yield.

3954 Mr. Bishop. Thank you. Thank you, ma'am.

3955 I would say one thing we do know is that it will be much  
3956 more limited than the bill as originally drafted by virtue of  
3957 the amendment.

3958 I yield back.

3959 Ms. Lofgren. I just -- you know, I appreciate that the  
3960 gentleman is trying to fix something that, honestly, I think we  
3961 should postpone until we can study more.

3962 We didn't have -- I realize this is the Antitrust

3963 Subcommittee, but I served on the Courts Subcommittee and we  
3964 didn't have any review of this either. I just think it's a pretty  
3965 big change to do on the fly. I was not aware we were going to  
3966 be doing this until just recently, and I don't -- I think it's  
3967 a big mistake to leap ahead of where we know we're going.

3968 And with that, Mr. Chairman, I yield back.

3969 Chairman Nadler. The gentlelady yields back.

3970 There are votes on the floor. There are three votes on the  
3971 floor. The committee will stand in recess until immediately  
3972 after the votes.

3973 [Recess.]

3974 Chairman Nadler. The committee will come to order.

3975 The pending question is the amendment offered by Mr. Bishop  
3976 of North Carolina. I recognize myself to speak in opposition  
3977 to the amendment and to address some of the process concerns that  
3978 have been raised about this legislation and the record that has  
3979 been developed in support of it.

3980 Earlier this year, the Antitrust Subcommittee held a hearing  
3981 on reviving competition where it examined recommendations to  
3982 address gatekeeper power and lower barriers to entry online.

3983 Longtime antitrust attorney John Thorne testified that  
3984 Congress should enact legislation to clarify that antitrust cases  
3985 brought by states cannot be transferred by the Judicial Panel  
3986 on Multi-District Litigation.

3987           Mr. Thorne expressed concern that the transfer of state  
3988 antitrust litigation slows down enforcement by state attorneys  
3989 general. These delays impede the ability of state attorneys  
3990 general to protect their citizens from monopoly power.

3991           In May, Senators Amy Klobuchar and Mike Lee introduced the  
3992 companion to this legislation. Senator Klobuchar explained that  
3993 this bipartisan legislation will allow for more efficient and  
3994 more effective antitrust enforcement by state attorneys general,  
3995 which is good for competition and consumers.

3996           Senator Lee explained that the federal antitrust enforcement  
3997 -- enforcers already benefit from protection against the delays  
3998 or threats from private antitrust suits and there is no reason  
3999 that state attorneys general should not receive the same  
4000 protection.

4001           He concluded that this bill will strengthen federalism by  
4002 putting state antitrust enforcers on an equal footing.

4003           As was noted previously, earlier this month, 52 state and  
4004 territorial attorneys general wrote to the committee to urge us  
4005 to enact this bill. This legislation enjoys significant  
4006 bipartisan bicameral support, and I encourage my colleagues to  
4007 support it.

4008           I yield back.

4009           And who seeks recognition?

4010           And if no one seeks recognition --

4011 Mr. Buck. Mr. Chairman?

4012 Chairman Nadler. Who --

4013 Mr. Buck. I move to strike last word.

4014 Chairman Nadler. The gentleman is recognized.

4015 Mr. Buck. Thank you, Mr. Chairman. I would urge my  
4016 colleagues to vote no on this amendment. This bill is a  
4017 procedural bill to promote antitrust enforcement, not -- and this  
4018 is not a substantive bill.

4019 In every antitrust case, there's a trade off between limiting  
4020 the burden on the accused defendant versus expediting  
4021 enforcement. Congress discussed that trade off in preventing  
4022 JPML interference with DOJ antitrust cases.

4023 Deputy Attorney General Ramsey Clark explained inclusion  
4024 of United States enforcement actions in complex multi-district  
4025 proceedings would almost certainly cause substantial delay for  
4026 the government's enforcement.

4027 In passing Section 1407(g), Congress was aware that keeping  
4028 United States antitrust actions separate from multi-district  
4029 proceedings might occasionally burden defendants by requiring  
4030 them to answer similar questions posed by both the government  
4031 and by private parties.

4032 But permitting United States antitrust actions to remain  
4033 independent was justified by the importance to the public of  
4034 securing relief in antitrust cases as quickly as possible.

4035           That exact same principle applies here. The importance to  
4036 the public of securing relief in antitrust cases as quickly as  
4037 possible is equally true for state cases as it is for the cases  
4038 brought by the United States.

4039           The state should get the same procedural ability to file  
4040 in a faster court without the drag of being joined with private  
4041 cases that have, one, different incentives and, two, lack the  
4042 precomplaint investigation that makes state cases faster.

4043           Before I yield back, I would remind everyone here that your  
4044 state AG signed a letter supporting this bill in its current form.

4045           They are the ones on the front lines and know what they need.  
4046 They think this is a good bill as drafted.

4047           Additionally, Senator Mike Lee and Senator Klobuchar  
4048 introduced an identical bill in the Senate. Senator Lee is,  
4049 obviously, supportive of the bill as is because we decided to  
4050 introduce this bill as is.

4051           This is a simple procedural bill that is good policy.

4052           Mr. Chairman, I yield back.

4053           Chairman Nadler. The gentleman yields back. Does any --  
4054 who else seeks recognition? For what purpose does Mr. Roy seek  
4055 recognition?

4056           Mr. Roy. Move to strike the last word.

4057           Chairman Nadler. The gentleman is recognized.

4058           Mr. Roy. It is rare that I come to a different conclusion



4059 than my friend from North Carolina. So it gave me pause, which  
4060 I've, you know, discussed and called some of my friends back in  
4061 the Office of the Attorney General where the chairman will  
4062 remember I was the first assistant attorney general.

4063 So I talked to the antitrust division, trying to understand  
4064 how this would play out and how it work in my conversation with  
4065 them, and ultimately, why -- and I'll talk about the bill, the  
4066 underlying bill in a minute off of this amendment.

4067 But on this in particular, I was reminded -- he reminded  
4068 me and I was thinking through this, the federal enforcers here  
4069 don't get a carve out for big tech. And so in this case, I just  
4070 think all this does by adding in "or states" it aligns that  
4071 incentive and give states the ability and the power to do what  
4072 the feds are doing.

4073 And for that reason, I will oppose my friend's amendment.

4074 Chairman Nadler. Gentleman yield back? Does the gentleman  
4075 yield back?

4076 Mr. Roy. Yield back. Yield back.

4077 Chairman Nadler. The gentleman yields back.

4078 Does anyone else seek recognition?

4079 [No response.]

4080 Chairman Nadler. In that case, the question occurs on the  
4081 amendment.

4082 All in favor say aye.

4083 Opposed, no.

4084 In the opinion of the chair the noes have it.

4085 Mr. Bishop. Mr. Chairman, I'd ask for the yeas and nays.

4086 Chairman Nadler. The yeas and nays are requested. The

4087 clerk will call the roll.

4088 Ms. Fontenot. Mr. Nadler?

4089 Chairman Nadler. No.

4090 Ms. Fontenot. Mr. Nadler votes no.

4091 Ms. Lofgren?

4092 Ms. Lofgren. No.

4093 Ms. Fontenot. Ms. Lofgren votes no.

4094 Ms. Jackson Lee?

4095 Ms. Jackson Lee. No.

4096 Ms. Fontenot. Ms. Jackson Lee votes no.

4097 Mr. Cohen?

4098 Mr. Cohen?

4099 Mr. Cohen. No. No.

4100 Ms. Fontenot. Mr. Cohen votes no.

4101 Mr. Johnson of Georgia?

4102 Mr. Johnson of Georgia. No.

4103 Ms. Fontenot. Mr. Johnson of Georgia votes no.

4104 Mr. Deutch?

4105 Ms. Bass? Ms. Bass?

4106 Chairman Nadler. You need to unmute.

4107 Ms. Bass. No. No.  
4108 Ms. Fontenot. Ms. Bass votes no.  
4109 Mr. Jeffries?  
4110 Mr. Jeffries. No.  
4111 Ms. Fontenot. Mr. Jeffries votes no.  
4112 Mr. Cicilline?  
4113 Mr. Cicilline. No.  
4114 Ms. Fontenot. Mr. Cicilline votes no.  
4115 Mr. Swalwell?  
4116 Mr. Swalwell. No.  
4117 Ms. Fontenot. Mr. Swalwell votes no.  
4118 Mr. Lieu?  
4119 Mr. Lieu. No.  
4120 Ms. Fontenot. Mr. Lieu votes no.  
4121 Mr. Raskin?  
4122 Ms. Jayapal?  
4123 Ms. Jayapal. No.  
4124 Ms. Fontenot. Ms. Jayapal votes no.  
4125 Mrs. Demings?  
4126 Mrs. Demings. No.  
4127 Ms. Fontenot. Mrs. Demings votes no.  
4128 Mr. Correa?  
4129 Ms. Scanlon?  
4130 Ms. Scanlon. No.

4131 Ms. Fontenot. Ms. Scanlon votes no.  
4132 Ms. Garcia?  
4133 Ms. Garcia. No.  
4134 Ms. Fontenot. Ms. Garcia votes no.  
4135 Mr. Neguse?  
4136 Mrs. McBath?  
4137 Mr. Stanton?  
4138 Mr. Stanton. Aye.  
4139 Ms. Fontenot. Mr. Stanton votes aye.  
4140 Ms. Dean?  
4141 Ms. Dean. No.  
4142 Ms. Fontenot. Ms. Dean votes no.  
4143 Ms. Escobar?  
4144 Mr. Jones?  
4145 Ms. Ross?  
4146 Ms. Ross. No.  
4147 Ms. Fontenot. Ms. Ross votes no.  
4148 Ms. Bush?  
4149 Ms. Bush. Bush votes no.  
4150 Ms. Fontenot. Ms. Bush votes no.  
4151 Mr. Jones. Mr. Chairman, how am I recorded?  
4152 Ms. Fontenot. Mr. Jones, you are not recorded.  
4153 Mr. Jones. Jones votes no.  
4154 Mr. Neguse. Mr. Chair, how am I recorded?

4155 Ms. Fontenot. Mr. Neguse, you are not recorded.

4156 Mr. Neguse. Neguse votes no.

4157 Ms. Fontenot. Mr. Neguse votes no.

4158 Mr. Jordan?

4159 Mr. Jordan. Yes.

4160 Ms. Fontenot. Mr. Jordan votes yes.

4161 Mr. Chabot?

4162 Mr. Chabot. Aye.

4163 Ms. Fontenot. Mr. Chabot votes aye.

4164 Mr. Gohmert?

4165 Mr. Issa?

4166 Mr. Issa. Yes.

4167 Ms. Fontenot. Mr. Issa votes aye.

4168 Mr. Buck?

4169 Mr. Buck. No.

4170 Ms. Fontenot. Mr. Buck votes no.

4171 Mr. Gaetz?

4172 Mr. Gaetz. No.

4173 Ms. Fontenot. Mr. Gaetz votes no.

4174 Mr. Johnson of Louisiana?

4175 Mr. Johnson of Louisiana. Aye.

4176 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

4177 Mr. Biggs?

4178 Mr. Biggs. No.

4179 Ms. Fontenot. Mr. Biggs votes no.  
4180 Mr. McClintock?  
4181 Mr. McClintock. Aye.  
4182 Ms. Fontenot. Mr. McClintock votes aye.  
4183 Mr. Steube?  
4184 Mr. Steube. No.  
4185 Ms. Fontenot. Mr. Steube votes no.  
4186 Mr. Tiffany?  
4187 Mr. Tiffany. Aye.  
4188 Ms. Fontenot. Mr. Tiffany votes aye.  
4189 Mr. Massie?  
4190 Mr. Massie. Aye.  
4191 Ms. Fontenot. Mr. Massie votes aye.  
4192 Mr. Roy?  
4193 Mr. Roy. No.  
4194 Ms. Fontenot. Mr. Roy votes no.  
4195 Mr. Bishop?  
4196 Mr. Bishop. Aye.  
4197 Ms. Fontenot. Mr. Bishop votes aye.  
4198 Mrs. Fischbach?  
4199 Mrs. Fischbach. Aye.  
4200 Ms. Fontenot. Mrs. Fischbach votes aye.  
4201 Mrs. Spartz?  
4202 Mrs. Spartz. No.

4203 Ms. Fontenot. Mrs. Spartz votes no.  
4204 Mr. Fitzgerald?  
4205 Mr. Bentz?  
4206 Mr. Bentz. Aye.  
4207 Ms. Fontenot. Mr. Bentz votes aye.  
4208 Mr. Owens?  
4209 Mr. Owens. No.  
4210 Ms. Fontenot. Mr. Owens votes no.  
4211 Mr. Raskin. Mr. Chairman, am I recorded?  
4212 Ms. Fontenot. Mr. Raskin, you are not recorded.  
4213 Mr. Raskin. I vote no.  
4214 Ms. Fontenot. Mr. Raskin votes no.  
4215 Mrs. McBath. Mr. Chairman, how am I recorded? This is Rep.  
4216 McBath.  
4217 Ms. Fontenot. Mrs. McBath, you are not recorded.  
4218 Mrs. McBath. I vote no.  
4219 Ms. Fontenot. Mrs. McBath votes no.  
4220 Chairman Nadler. Mr. Correa?  
4221 Mr. Correa. Mr. Chairman, how am I recorded?  
4222 Ms. Fontenot. Mr. Correa, you are not recorded.  
4223 Mr. Correa. Correa is no.  
4224 Ms. Fontenot. Mr. Correa votes no.  
4225 Ms. Escobar. Mr. Chairman?  
4226 Chairman Nadler. Ms. Escobar?

4227 Ms. Escobar. I vote no.

4228 Ms. Fontenot. Ms. Escobar votes no.

4229 Chairman Nadler. Mr. Deutch?

4230 Mr. Deutch. No.

4231 Ms. Fontenot. Mr. Deutch votes no.

4232 Chairman Nadler. Has every member who wishes to be recorded

4233 recorded?

4234 [No response.]

4235 Chairman Nadler. The clerk will report.

4236 Ms. Fontenot. Mr. Chairman, there are 11 ayes and 31 noes.

4237 Chairman Nadler. The amendment is not agreed to.

4238 Are there any further amendments?

4239 In that case --

4240 Mr. Roy. Mr. Chairman?

4241 Chairman Nadler. Who -- Mr. Roy?

4242 Mr. Roy. Yeah. Move to strike the last word.

4243 Chairman Nadler. The gentleman is recognized.

4244 Mr. Roy. I want to only add to what I was saying before,

4245 and after talking with the folks that I worked with in the

4246 antitrust division AG's offices, and, obviously, we have got 52

4247 AGs in support of this, that for those who have concerns about

4248 it that it very simply adds "or state" into the text to draw parity

4249 and empower state AGs to be able to engage in this, and I think

4250 that is an improvement across all areas of -- and in industries



4251 and, therefore, I support the -- support the underlying bill.  
4252 I thank the chairman. Yield back.  
4253 Chairman Nadler. The gentleman yields back.  
4254 Are there any further amendments?  
4255 [No response.]  
4256 Chairman Nadler. In that case, a question occurs on the  
4257 amendment in the nature of a substitute.  
4258 All those in -- this will be followed immediately by a vote  
4259 on final passage of the bill.  
4260 All those in favor respond by saying aye.  
4261 Opposed, no.  
4262 In the opinion of the chair, the ayes have it and the  
4263 amendment in the nature of a substitute is agreed to.  
4264 A reporting quorum being present, the question is on the  
4265 motion to report the bill H.R. 3460 as amended favorably to the  
4266 House.  
4267 Those in favor respond by saying aye.  
4268 Opposed, no.  
4269 The ayes have it and the bill is ordered reported favorably.  
4270 Ms. Lofgren. Mr. Chairman, I request a recorded vote.  
4271 Chairman Nadler. A recorded vote is requested. The clerk  
4272 will call the roll.  
4273 Ms. Fontenot. Mr. Nadler?  
4274 Chairman Nadler. Aye.

4275 Ms. Fontenot. Mr. Nadler votes aye.

4276 Ms. Lofgren?

4277 Ms. Lofgren. No.

4278 Ms. Fontenot. Ms. Lofgren votes no.

4279 Ms. Jackson Lee?

4280 Ms. Jackson Lee. Aye.

4281 Ms. Fontenot. Ms. Jackson Lee votes aye.

4282 Mr. Cohen?

4283 Mr. Cohen. Aye.

4284 Ms. Fontenot. Mr. Cohen votes aye.

4285 Mr. Johnson of Georgia?

4286 Mr. Johnson of Georgia?

4287 Mr. Johnson of Georgia. Aye.

4288 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

4289 Mr. Deutch?

4290 Mr. Deutch. Aye.

4291 Ms. Fontenot. Mr. Deutch votes aye.

4292 Ms. Fontenot. Ms. Bass?

4293 Ms. Bass. Aye.

4294 Ms. Fontenot. Ms. Bass votes aye.

4295 Mr. Jeffries?

4296 Mr. Jeffries. Aye.

4297 Ms. Fontenot. Mr. Jeffries votes aye.

4298 Mr. Cicilline?

4299 Mr. Cicilline. Aye.

4300 Ms. Fontenot. Mr. Cicilline votes aye.

4301 Mr. Swalwell?

4302 Mr. Swalwell. No.

4303 Ms. Fontenot. Mr. Swalwell votes no.

4304 Mr. Lieu?

4305 Mr. Lieu. Aye.

4306 Ms. Fontenot. Mr. Lieu votes aye.

4307 Mr. Raskin?

4308 Ms. Jayapal?

4309 Ms. Jayapal. Aye.

4310 Ms. Fontenot. Ms. Jayapal votes aye.

4311 Mrs. Demings?

4312 Mrs. Demings. Aye.

4313 Ms. Fontenot. Mrs. Demings votes aye.

4314 Mr. Correa?

4315 Mr. Correa. No.

4316 Ms. Fontenot. Mr. Correa votes no.

4317 Ms. Scanlon?

4318 Ms. Scanlon. No.

4319 Ms. Fontenot. Ms. Scanlon votes no.

4320 Ms. Garcia?

4321 Mr. Neguse?

4322 Mrs. McBath?

4323 Mrs. McBath. McBath votes aye.

4324 Ms. Fontenot. Mrs. McBath votes aye.

4325 Mr. Stanton?

4326 Mr. Stanton. Aye.

4327 Ms. Fontenot. Mr. Stanton votes aye.

4328 Ms. Dean?

4329 Ms. Dean. Aye.

4330 Ms. Fontenot. Ms. Dean votes aye.

4331 Ms. Escobar?

4332 Mr. Jones?

4333 Mr. Jones. Jones votes aye.

4334 Ms. Fontenot. Mr. Jones votes aye.

4335 Ms. Ross?

4336 Ms. Ross. Ross is aye.

4337 Ms. Fontenot. Ms. Ross votes aye.

4338 Ms. Bush?

4339 Ms. Bush. Bush votes aye.

4340 Ms. Fontenot. Ms. Bush votes aye.

4341 Mr. Raskin. Mr. Chairman, how am I recorded? Raskin.

4342 Ms. Fontenot. Mr. Raskin, you are not recorded.

4343 Mr. Raskin. I vote aye. Thank you.

4344 Mr. Neguse. Mr. Chairman, how am I recorded? Neguse.

4345 Ms. Fontenot. Mr. Neguse, you are not recorded.

4346 Mr. Neguse. Neguse votes aye.

4347 Ms. Fontenot. Mr. Neguse votes aye.

4348 Ms. Scanlon. And how am I recorded?

4349 Ms. Fontenot. Ms. Scanlon, you are recorded as no.

4350 Ms. Scanlon. That was supposed to be aye. Thank you.

4351 Ms. Fontenot. Ms. Scanlon votes aye.

4352 Mr. Jordan?

4353 Mr. Jordan. Yes.

4354 Ms. Fontenot. Mr. Jordan votes yes.

4355 Mr. Chabot?

4356 Mr. Chabot. Aye.

4357 Ms. Fontenot. Mr. Chabot votes aye.

4358 Mr. Gohmert?

4359 Mr. Gohmert. Aye.

4360 Ms. Fontenot. Mr. Gohmert votes aye.

4361 Mr. Issa?

4362 Mr. Buck?

4363 Mr. Buck. Aye.

4364 Ms. Fontenot. Mr. Buck votes aye.

4365 Mr. Gaetz?

4366 Mr. Gaetz. Aye.

4367 Ms. Fontenot. Mr. Gaetz votes aye.

4368 Mr. Johnson of Louisiana?

4369 Mr. Johnson of Louisiana. Aye.

4370 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

4371 Mr. Biggs?

4372 Mr. Biggs. Aye.

4373 Ms. Fontenot. Mr. Biggs votes aye.

4374 Mr. McClintock?

4375 Mr. McClintock. No.

4376 Ms. Fontenot. Mr. McClintock votes no.

4377 Mr. Steube?

4378 Mr. Steube. Yes.

4379 Ms. Fontenot. Mr. Steube votes yes.

4380 Mr. Tiffany?

4381 Mr. Tiffany. Aye.

4382 Ms. Fontenot. Mr. Tiffany votes aye.

4383 Mr. Massie?

4384 Mr. Massie. No.

4385 Ms. Fontenot. Mr. Massie votes no.

4386 Mr. Roy?

4387 Mr. Roy. Aye.

4388 Ms. Fontenot. Mr. Roy votes aye.

4389 Mr. Bishop?

4390 Mr. Bishop. Yes.

4391 Ms. Fontenot. Mr. Bishop votes yes.

4392 Mrs. Fischbach?

4393 Mrs. Fischbach. No.

4394 Ms. Fontenot. Mrs. Fischbach votes no.

4395 Mrs. Spartz?

4396 Mrs. Spartz. Yes.

4397 Ms. Fontenot. Mrs. Spartz votes yes.

4398 Mr. Fitzgerald?

4399 Mr. Bentz?

4400 Mr. Bentz. Yes.

4401 Ms. Fontenot. Mr. Bentz votes yes.

4402 Mr. Owens?

4403 Mr. Owens. Yes.

4404 Ms. Fontenot. Mr. Owens votes yes.

4405 Chairman Nadler. Has everyone who wishes to vote, voted?

4406 Ms. Fontenot. Mr. Issa, you're not recorded.

4407 Mr. Issa. No.

4408 Ms. Fontenot. Mr. Issa votes no.

4409 Chairman Nadler. Anybody else?

4410 The clerk will report.

4411 Ms. Fontenot. Mr. Chairman, there are 34 ayes, and 7 noes.

4412 Chairman Nadler. The ayes have it. The bill is amended,

4413 and is ordered reported favorably to the House.

4414 Members will have two days to submit views.

4415 Without objection, the bill will be reported as a single

4416 amendment in the nature of a substitute, incorporating all adopted

4417 amendments. The staff is authorized to make technical and

4418 conforming changes.

4419 Pursuant to notice, I now call up H.R. 3849, the "Augmenting  
4420 Compatibility and Competition by Enabling Service Switching Act  
4421 of 2021" or the "ACCESS Act of 2021," for purposes of markup.

4422 I move that the committee report the bill favorably to the House.

4423 [The Bill H.R. 3849 follows:]

4424

4425 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*



4426 Chairman Nadler. The clerk will report the bill.

4427 Ms. Fontenot. H.R. 3949, to promote competition, lower  
4428 entry barriers, and reduce --

4429 Chairman Nadler. Without objection, the bill is considered  
4430 as read and open for amendment at any point. I will begin by  
4431 recognizing myself for an opening statement.

4432 H.R. 3949, the Augmenting Compatibility and Competition By  
4433 Enabling Service Act, or ACCESS Act, requires dominant online  
4434 platforms to provide competing platforms the ability to connect  
4435 and communicate with their systems, a concept known as  
4436 interoperability, and requires these dominant platforms to allow  
4437 users to transfer their data to another competing platform, which  
4438 is known as data portability.

4439 Too often the segments of the digital economy that are  
4440 dominated by the largest platforms are closed off to competition.

4441 These markets often have high barriers to entry, switching costs,  
4442 and other characteristics that lock in consumers and businesses  
4443 to using one company in that industry. These market  
4444 characteristics also reinforce the dominance of powerful firms,  
4445 while blocking new entries into the market, and depriving  
4446 consumers and small businesses of choice.

4447 The ACCESS Act of 2021 addresses these concerns by giving  
4448 the Federal Trade Commission new authority and the enforcement  
4449 tools to establish pro-competitive rules for interoperability

4450 and data portability online. To do so, the bill creates a  
4451 technical committee inside the FTC comprised of relevant  
4452 businesses, agencies, and experts to develop these standards for  
4453 adoption by the FTC.

4454 The ACCESS Act also gives the FTC new authority to swiftly  
4455 challenge abusive conduct that violates these interoperability  
4456 and portability requirements.

4457 Importantly, the ACCESS Act also protects user privacy and  
4458 data security. The bill empowers users to determine how and with  
4459 whom their data is shared. It also requires data minimization  
4460 for firms interoperating under the bill so that companies do not  
4461 monetize, collect, or use more data than is necessary.

4462 Throughout its investigation, the Antitrust Subcommittee  
4463 heard testimony from several witnesses about the benefits of  
4464 interoperability and data portability, which are well-proven  
4465 tools to promote competition and break down barriers in highly  
4466 concentrated markets. Congress relied on these same tools in  
4467 the Telecommunications Act of 1996, which required the regional  
4468 Bell operating companies to interconnect with rivals, and  
4469 required them to allow consumers to take their phone numbers with  
4470 them if they switched to another phone company.

4471 This bill strikes the right balance to encourage  
4472 competition, give consumers more choices, and protect user  
4473 privacy.

4474 I thank my colleagues, Congresswoman Scanlon and Congressman  
4475 Owens, for their leadership on this important bipartisan measure,  
4476 and I urge its adoption.

4477 I now recognize the ranking member of the Judiciary  
4478 Committee, the gentleman from Ohio, Mr. Jordan, for his opening  
4479 statement.

4480 Mr. Jordan. I thank you, Mr. Chairman.

4481 This bill creates secret advisory committees. I want to  
4482 stress that. Page 18 of the amendment in the nature of a  
4483 substitute, bottom, line 21, "Non-applicability of the Federal  
4484 Advisory Committee Act. The Federal Advisory Committee Act shall  
4485 not apply with respect to the technical committees."

4486 Each of these technical committees for every single one of  
4487 the covered platforms, covered companies, we don't know what goes  
4488 on there, we are not allowed to know what goes on there because  
4489 the law that normally applies to any advisory committee has been  
4490 waived for this legislation.

4491 If that is not bad enough, this structure could jeopardize  
4492 those companies' data security, making them more vulnerable to  
4493 hacking and illegal surveillance. The idea of data being  
4494 portable and interoperable is something sounds great and,  
4495 frankly, something I think most of us would like to get to, figure  
4496 out how to do this right. It is something that has broad support.

4497 This bill's issue, however, is absolutely unworkable. For

4498 starters, there is ambiguity about the definition of data that  
4499 will give broad discretion to the regulators. In other words,  
4500 a bill about data never directly defines that. Instead, the bill  
4501 tells the FTC to do it.

4502 We should do that. We write the laws; they regulate. We  
4503 shouldn't give that authority to them. Talk about a blank check  
4504 for big government regulators, the so-called advisory committee  
4505 that this bill sets up would include "representatives of  
4506 competition or privacy advocacy organizations" and "independent  
4507 academics."

4508 Under the bill the committee size, as I said in my opening  
4509 statement, and its membership are also within the sole discretion  
4510 of the FTC.

4511 So, what does that all mean? There is nothing in this bill  
4512 to prevent any number of left-leaning groups from getting a seat  
4513 at the table to direct how data practices work or, frankly, any  
4514 right-leaning group, they might be concerned about that. We  
4515 don't know, and we never get to see who, how they operate, what  
4516 these technical committees do. That is a lot of power.

4517 And what happens if the companies run afoul of this act or  
4518 the regulation or, excuse me, or its regulations? The government  
4519 can take up to 15 percent of their total revenue and all their  
4520 CEOs' pay, or the pay of any other corporate officer. And we  
4521 may think that is great. We want to get these guys. If they

4522 do something wrong, we want to get them.

4523 But what that, I think, means in practice, no one is going  
4524 to, the CEO is not going to lose his whole pay, her whole pay.

4525 They are not going to want to give up 15 percent of total revenue.

4526 They are just going to say, What do you want us to do, Government?

4527 Government-run companies is what we are talking about. And  
4528 I talked about this in the opening statement when we started at  
4529 10:30 this morning, but my other big concern about this is privacy,  
4530 what this means to -- and it is something we all should care about  
4531 as members of the Judiciary Committee, members should care about  
4532 privacy rights, the competition bill of rights. I am very nervous  
4533 about that as this bill is currently drafted.

4534 With that, Mr. Chairman, I yield back.

4535 Chairman Nadler. The gentleman yields back.

4536 I now recognize the chair of the Subcommittee on Antitrust,  
4537 Commercial, and Administrative Law, the gentleman from Rhode  
4538 Island, Mr. Cicilline, for his opening statement.

4539 Mr. Cicilline. Thank you, Mr. Chairman.

4540 H.R. 3849, the ACCESS Act of 2021, creates interoperability  
4541 and data portability requirements for the largest online  
4542 platforms. Interoperability and data portability will encourage  
4543 new competition in digital markets by lowering barriers to entry  
4544 for new firms, and lowering switching costs for consumers.

4545 The high levels of concentration in segments of the digital

4546 marketplace can be attributed in part to network effects, data  
4547 advantages, and economies of scale and scope that advantage the  
4548 largest platforms. New competitors often face daunting barriers  
4549 to entry. Consumers face high switching costs. Some markets  
4550 become winner-take-all, locking in the dominance of a few firms  
4551 and blocking new entries from meaningfully competing.

4552 The ACCESS Act introduced by Congresswoman Scanlon and  
4553 Congressman Owens, helps address high levels of concentration  
4554 online and creates new opportunities for competition. The ACCESS  
4555 Act requires dominant platforms be interoperable with other  
4556 businesses. It also empowers users of dominant platforms to take  
4557 relevant data to another service.

4558 Data portability will empower consumers to switch to other  
4559 services more easily. They will not have to start over. They  
4560 will not lose access to their list of friends, photos,  
4561 communications, or cell arrays when they switch from one social  
4562 network, e-commerce platform, or mobile operating system to  
4563 another.

4564 For example, a small business selling on Amazon will be able  
4565 to take its customer reviews and other information to use it on  
4566 its own retail website on a rival e-commerce platform. An iPhone  
4567 user will not lose access to her prior communications simply  
4568 because she switched to an Android phone.

4569 New competitors in these markets will have a better chance

4570 to convince users to switch. They will be able to compete by  
4571 offering better prices, higher quality, or more privacy, the very  
4572 essence of competition. Interoperability will ensure consumers  
4573 do not have to choose between communicating with users of the  
4574 dominant platform when migrating to a platform that better serves  
4575 their needs.

4576 Interoperability opens new opportunities for competition.  
4577 As a result, we will have more and more dynamic digital economy,  
4578 and consumers will have more choices.

4579 Interoperability and data portability are not without  
4580 challenges. And that is why the ACCESS Act directs the Federal  
4581 Trade Commission to establish technical committees bringing  
4582 together industry, government, academic, and other experts to  
4583 help design interoperability that works. The key is to get it  
4584 right. The interoperability requirements under this bill  
4585 effectively promote competition and reduce the need for  
4586 government oversight and intervention.

4587 This bill also includes enforcement mechanisms to deter  
4588 dominant platforms from undermining the interoperability and data  
4589 portability requirements.

4590 Additionally, the ACCESS Act includes strong safeguards to  
4591 protect privacy and security. Any transfers of data from one  
4592 business to another under this bill may only occur at the express  
4593 direction of the user. Online firms are required to minimize

4594 the data they use, and share to make services interoperable.

4595 By opening up new opportunities for competition, the ACCESS  
4596 Act promotes new investment and innovation. Small businesses  
4597 and start-ups will have more opportunity to attract users.  
4598 Rather than resting on their laurels and relying on their ability  
4599 to lock consumers in, the dominant platforms will have to  
4600 rededicate themselves to improving their product and keeping  
4601 their users happy. They will have to compete in a more dynamic  
4602 marketplace, bring more investment and more innovation.

4603 Consumer and public interest advocates like Consumer  
4604 Reports, Public Knowledge, the Electronic Frontier Foundation,  
4605 and New America's Open Technology Institute have all called for  
4606 interoperability requirements as a way to promote more  
4607 competition online. I agree with them. This is important and  
4608 common sense legislation. Consumers will benefit. They will  
4609 have more choices. They will have more access to more products  
4610 and services that compete on metrics such as privacy, quality,  
4611 and security.

4612 I want to thank Congresswoman Scanlon and Congressman Owens  
4613 for their leadership on this issue. I encourage my colleagues  
4614 to support the ACCESS Act.

4615 And I yield back.

4616 Chairman Nadler. The gentleman yields back.

4617 I now recognize the ranking member of the Antitrust



4618 Subcommittee, the gentleman from Colorado, Mr. Buck, for his  
4619 opening statement.

4620 Mr. Buck. Thank you, Mr. Chair.

4621 The ACCESS Act will create consumer-oriented data  
4622 portability and interoperability policies to further facilitate  
4623 competition in the marketplace. Perhaps one of the most popular  
4624 and pro-competitive acts Congress ever took was mandating mobile  
4625 phone portability in the Telecommunications Act of 1996 authored  
4626 by Newt Gingrich. Consumers were empowered to shop between  
4627 carriers without having to worry about changing numbers. The  
4628 result was a competitive and pro-consumer marketplace that  
4629 Americans take for granted today.

4630 Unfortunately, pro-monopoly lobbyists have embarked on a  
4631 massive disinformation campaign against this legislation. For  
4632 this reason, I want to spend my time debunking their  
4633 misinformation campaign.

4634 First, this bill will not create additional data security  
4635 and private concerns for covered platforms. In an attempt to  
4636 keep precious user data firmly in the hands of big tech, their  
4637 lobbyists have conjured the spectre of data theft and privacy  
4638 breaches, even though sections 3(b) and 4(b) clearly mandate those  
4639 other businesses have security and private measures in place to  
4640 protect consumer data.

4641 Section 4(b) (3) also allows for terminating a business' data

4642 access in the event of security or privacy violations.

4643 It is interesting that big tech now cares about data security  
4644 and privacy. Just this year it was reported that the personal  
4645 information of over 533 million -- million -- Facebook users from  
4646 106 countries, including over 32 million records on users in the  
4647 U.S., 11 million on users in the U.K., and 6 million on users  
4648 in India was stolen.

4649 The data in this tranche of stolen information included  
4650 users' phone numbers, Facebook I.D.s, full names, locations,  
4651 birth dates, bios, and in some cases email addresses.

4652 In 2019, Facebook was fined \$5 billion for privacy  
4653 violations.

4654 It seems like data privacy and security were not much of  
4655 a concern for big tech until their monopoly was on the line.

4656 Second, this is not a big government bill. Big tech and  
4657 their lobbyists claim that this legislation will give more power  
4658 to the Federal Government to pick winners and losers. It does  
4659 the exact opposite. It changes the law so that big tech, who  
4660 became monopolies solely because of favorable government  
4661 policies, no longer have a vice grip on Americans' data.  
4662 Consumers get to choose who has their data, and that has Google  
4663 and Facebook very worried.

4664 We are kicking their 300 mill -- 300 billion dollar wasps'  
4665 nest. It is no surprise they are fighting to keep their status

4666 quo in place.

4667 Section 3(a) requires big tech work with any business user  
4668 who wants to compete, so that consumers can move their data around  
4669 when they want to. No data moves until a consumer makes an  
4670 affirmative choice. Additionally, the bill doesn't list who the  
4671 competing businesses are that big tech must work with. It leaves  
4672 that to the market.

4673 Third, it does not create new opportunities for companies  
4674 controlled by China or other foreign actors. Apple and Google  
4675 have already let the fox in the proverbial hen house because they  
4676 have Tik Tok and Alibaba available on their respective app stores  
4677 and interfacing with their operating systems. If these companies  
4678 actually cared about not letting Chinese companies into our  
4679 digital marketplaces, those two apps wouldn't be available to  
4680 U.S. consumers.

4681 Fourth, another argument against this bill is it is somehow  
4682 Chinese or European in origin or inspiration. Our K Street  
4683 friends point to the GDPR data portability requirement as proof  
4684 that this is somehow importing European competition law and policy  
4685 into the U.S.

4686 The Europeans got their ideas from us, not the other way  
4687 around. Data portability and interoperability are American  
4688 ideas. Both concepts were in the 1996 Telecommunications Act  
4689 that was passed under Speaker Newt Gingrich and Senate Majority

4690 Leader Bob Dole, and signed into law by President Clinton.

4691 On the China front I can't make much sense of how someone  
4692 acting in good faith could say this bill imports a Chinese model  
4693 into our laws. The national champion model that big tech backs  
4694 where regulators single out favored firms for special treatment  
4695 is the Chinese model. In China there is one giant company for  
4696 every sector, like Alibaba for e-commerce, or Huawei for  
4697 telecommunications. That is a model Facebook and Google want  
4698 because it cements their monopolies.

4699 Next we have the argument that liberals like Madison  
4700 Cawthorn, Burgess Owens, Lance Gooden, and I say "liberals"  
4701 tongue-in-cheek, and me, are unwittingly turning over the keys  
4702 to regulate the entire U.S. economy to Lina Khan in the Biden  
4703 administration. Supposedly, there is text in this bill that has  
4704 yet to be identified or cited for that matter, where we are turning  
4705 over sweeping rulemaking authority to the bureaucrats at the FTC  
4706 and, therefore, turning over the reins of the American economy  
4707 to the progressives in the Biden administration. This one is  
4708 deserving of a 5 out of 5 Pinocchio rating.

4709 First, the rulemaking authority granted in section 6(c) is  
4710 limited by the very text of the bill, rulemaking only for the  
4711 purposes of implementing sections 3 and 4 of this bill. By the  
4712 words of the bill we are not granting general rulemaking  
4713 authority. The text is very narrowly tailored.

4714           And, lastly, we have the secret committees spectre. The  
4715           general gist of this argument is that we are authorizing secret  
4716           technical committees that will help the FTC come up with secret  
4717           standards that no one knows about until they spring forth from  
4718           Lina Khan's FTC to haunt all American businesses forevermore.

4719           This is obviously not happening. Under section 6(c) the  
4720           Commission must issue the standards recommended by the technical  
4721           committee. The secret technical committee doesn't get to set  
4722           the terms big tech will have to live by. The Commission, the  
4723           Federal Trade Commission, whose votes are on the record and who  
4724           are accountable to us here in Congress, must ultimately choose  
4725           what the standards are.

4726           In summary, when you look at the bill, at what the bill  
4727           actually says instead of listening to the hysterics of well-paid  
4728           obfuscators you will see that this bill is very thoughtful in  
4729           its approach and is narrowly tailored to address just the concerns  
4730           the bill seeks to address.

4731           Mr. Chair, I request unanimous consent to enter into the  
4732           record the following documents:

4733           A September 2019 White Paper by -- I apologize. I won't.  
4734           I won't offer those.

4735           I yield back.

4736           Chairman Nadler. The gentleman yields back.

4737           Without objection, all other opening statements will be

4738 included in the record.

4739 I now recognize myself for purposes of offering an amendment  
4740 in the nature of a substitute. The clerk will report the  
4741 amendment.

4742 [The Amendment of Mr. Nadler follows:]

4743

4744 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

4745 Ms. Fontenot. Amendment in the nature of a substitute to  
4746 H.R. 3849 offered by Mr. Nadler of New York. Strike all after  
4747 the enacting clause --

4748 Chairman Nadler. Without objection, the amendment in the  
4749 nature of a substitute will be considered as read, and shall be  
4750 considered as base text for purposes of amendment.

4751 I recognize myself to explain the amendment.

4752 The amendment in the nature of a substitute makes several  
4753 revisions to improve the bill. To better effect the goals of  
4754 the bill, the amendment replaces the term "competing business  
4755 or potential competing business" with the term "business user."

4756 In section 5 of the bill, the amendment defines the required  
4757 affirmative consent in terms of users, rather than consumers,  
4758 to provide additional clarity.

4759 The amendment also makes technical changes to section 6 of  
4760 the bill to clarify when and how the agencies may remove a covered  
4761 platform designation.

4762 In section 7, the amendment provides additional clarity  
4763 about the role that a representative of the covered platform may  
4764 have on a technical committee.

4765 Finally, the amendment makes additional technical and  
4766 conforming changes in section 8 to clarify the scope of judicial  
4767 review.

4768 All of these provisions improve an already good bill, and

4769 I urge all members to support the bill -- to support the amendment.

4770 I yield back the balance of my time.

4771 Are there any amendments to the amendment in the nature of  
4772 a substitute.

4773 Ms. Scanlon. I move to strike the last word.

4774 Chairman Nadler. The gentlelady is recognized.

4775 Ms. Scanlon. Mr. Chairman, thank you. And thank you,  
4776 Ranking Member Buck, for your remarks debunking some of the myths  
4777 that have been promoted about this bill.

4778 During our seven hearings, the extensive briefings, and  
4779 document review that the Intel Subcommittee conducted over the  
4780 last year-and-a-half, we developed a record to reflect what most  
4781 Americans know from personal experience. For too long, the  
4782 largest online platforms have dominated key parts of the digital  
4783 economy, acting as gatekeepers to stifle competition while  
4784 compromising online user privacy and quality of service.

4785 We have seen the tech giants take advantage of a phenomenon  
4786 known as network effect, which occurs in which the increase in  
4787 the number of users of a service increases its value. This strong  
4788 network effect of firms such as Facebook and Google have made  
4789 it all but impossible for users to switch to competing platforms  
4790 if they are unhappy with their service. Regardless of the quality  
4791 of service, a user whose entire network is on Facebook can't simply  
4792 switch to another social media platform that none of their friends



4793 use, and a new social media platform will struggle to attract  
4794 new users for this very reason.

4795 While theoretically a consumer could simply leave a covered  
4796 platform if they are unhappy, the services these firms provide  
4797 have often become too ingrained in everyday life for that to be  
4798 a real option. In other words, these huge platforms have  
4799 monopolized the conversation.

4800 Facebook and Google, for instance, offer space for minority  
4801 groups to organize as nets, for parents to get information about  
4802 school closures or COVID-19 updates, and for small businesses  
4803 to bring in customers. But the growing dominance of these firms  
4804 in the digital marketplace has come with serious downsides, and  
4805 it doesn't mean that they are the only or the best possible  
4806 platforms for users to access vital services.

4807 In a truly competitive landscape we might expect the best  
4808 companies to rise to the top. The strong network effect of the  
4809 dominant platforms, however, have perverted this expectation in  
4810 the digital marketplace. We know this because many users are  
4811 unhappy with the costs associated with using these platforms,  
4812 often being forced to compromise their privacy, their data, or  
4813 their assets to participate online.

4814 A mom and dad organizing a bake sale or soccer practice online  
4815 may prefer to do so on a platform that doesn't expose them or  
4816 their children to misleading advertising. But doing so is near

4817 impossible because of a notable lack of competition in the digital  
4818 ecosystem. Without meaningful competition there is little  
4819 incentive for firms like Facebook and Google to respond to users'  
4820 privacy and platform quality concerns, and there are few, if any,  
4821 competing firms for Americans to turn to when these companies  
4822 drop the ball.

4823 That is why I, along with my colleague Congressman Owen,  
4824 introduced the ACCESS Act. This bipartisan, bicameral bill  
4825 promotes competition online by disrupting network effect and  
4826 lowering switching costs for consumers and businesses. The bill  
4827 establishes data interoperability and portability requirements  
4828 for dominant firms, thereby allowing new entrants to compete more  
4829 effectively online, and giving users meaningful choice by  
4830 ensuring that they can easily move their data to competing  
4831 services.

4832 Much like texting allows iPhone owners to communicate with  
4833 Android owners, so, too, would this bill allow individuals  
4834 switching to new social media platforms to be able to communicate  
4835 and interact with their friends and family on Facebook. For  
4836 start-ups and small businesses, this would be a game changer.

4837 Small businesses could capture and store important data, such  
4838 as their Google reviews or Amazon sales numbers, and take this  
4839 information with them if they are unhappy with platform quality.

4840 Consumers would also find themselves emboldened and better

4841 served by increased competition. The mom or dad organizing the  
4842 bake sale or soccer team could do so on a platform that relies  
4843 on a business model free of ad revenue, or one that works harder  
4844 to prevent the spread of misinformation.

4845 The bill also provides meaningful protection for user  
4846 privacy, a priority for me and my colleagues on the committee.

4847 Businesses that choose to interoperate with covered platforms  
4848 would have to meet the same security and privacy standards as  
4849 the platforms themselves. And the FTC would oversee the creation  
4850 of a strong privacy standard to protect user data.

4851 No longer would these companies be the only kids on the block.

4852 Instead of squeezing out competitors, they would have to compete  
4853 for users, and consumers would have more choices if they found  
4854 platforms coming up short.

4855 Big tech companies have convinced us that anticompetitive  
4856 tactics and degradations in user privacy are just the costs of  
4857 doing business; that to have access to great products we just  
4858 have to settle. But this bill rejects that premise. This bill  
4859 says let's do away with some of those barriers to entry and allow  
4860 online competition to flourish. If better platforms arise from  
4861 this legislation, then great. If Facebook or Google step up their  
4862 service in response to competition, that is also great. Because  
4863 in the end, consumers and small businesses will benefit from the  
4864 additional choice. And that is what this bill is about: to give

4865 Americans the freedom to have a real say in the online platforms  
4866 that work best for them and their family.

4867 I urge my colleagues to consider this legislation and to  
4868 vote yes to advance it through today's markup.

4869 With that, I yield back.

4870 Chairman Nadler. The gentlelady yields back.

4871 Who else seeks recognition?

4872 Mr. Jordan, for what purpose do you seek recognition?

4873 Mr. Jordan. Strike the last word, Mr. Chairman.

4874 Chairman Nadler. The gentleman is recognized.

4875 Mr. Jordan. Thank you, Mr. Chairman.

4876 I just wanted to say that my good friend from Colorado said  
4877 that, earlier, that there are no secret committees in this  
4878 legislation. I just beg to differ.

4879 If the technical committees, if the technical committees  
4880 in this bill aren't really secret, why do they operate in secrecy?

4881 Again, I will read from the legislation.

4882 Page 18 in the amendment in the nature of a substitute,  
4883 "non-applicability of the Federal Advisory Committee Act. The  
4884 Federal Advisory Committee Act shall not apply with respect to  
4885 the technical committees."

4886 So, what does that mean? Normally when you have the Federal  
4887 Advisory Committee Act apply there is notice of meetings, there  
4888 is a notice of who is on the committee, the meetings are open,

4889 records are subject to inspection. But that doesn't apply. So,  
4890 somehow you can all say that is not secret committees, but that  
4891 sure sounds like a secret committee.

4892 Normally when there is an advisory committee created by the  
4893 Congress they have to notice the meeting, tell you who is the  
4894 member -- who are the members of the committee, when they are  
4895 going to meet, you can go to those meetings and the records are  
4896 subject to inspection. Obviously, the trade secret information,  
4897 that wouldn't go public. I get that. But to say that there are  
4898 no secret committee when in fact it specifically says there are  
4899 secret committees in the legislation itself.

4900 So, first we are giving the FTC more money. We offered  
4901 several amendments to limit the amount of money, where the money  
4902 could be used, how it could be used. And, no, can't do that.

4903 They are going to get more money. We can't limit how it is spent.

4904 And, oh, they get to use that money to operate in secret.

4905 Such a deal. Such a deal for the taxpayers.

4906 And nowhere in there do we address the concern that I think  
4907 most of the folks I get the privilege of representing in the 4th  
4908 District of Ohio care about, which is censorship by big tech of  
4909 their First Amendment liberties of their speech. So, that is  
4910 my concern with this legislation, that is why I referenced it  
4911 in my opening statement, as I said several hours ago, there are  
4912 secret committees in here because the legislation says so, and

4913 it specifically says the law that we put, that Congress has passed  
4914 at some point which says that you shouldn't have advisory  
4915 committees that aren't subject to some kind of open transparency  
4916 specifically doesn't apply.

4917 Mr. Buck. Will the gentleman yield?

4918 Mr. Jordan. I would be happy to yield to my friend.

4919 Mr. Buck. I would ask the gentleman why don't we just move  
4920 or have an amendment to strike the language on page 18, lines  
4921 21 to 24, and take care of that issue? There won't be secret  
4922 committees if we do that.

4923 Mr. Jordan. I will certainly support that amendment. But  
4924 reclaiming my time, I was responding to what you said. You said  
4925 there are no secret committees. And I am, like, it is right there.

4926 Now you want to take, get rid of the language and get rid  
4927 of the secret committees. So, it can't be both. That is what  
4928 I was responding to. If you want to offer that amendment, I would  
4929 be happy to support it for my good friend from Colorado.

4930 With that, Mr. Chairman, I yield back.

4931 Chairman Nadler. The gentleman yields back.

4932 For what purpose does the gentlelady from California seek  
4933 recognition?

4934 Ms. Lofgren. To strike the last word.

4935 Chairman Nadler. The gentlelady is recognized.

4936 Ms. Lofgren. I want to thank Congresswoman Scanlon and Mr.

4937 Cicilline for identifying interoperability and portability as  
4938 a very important item. That can give users fundamental control  
4939 over their personal data when otherwise it would be locked away,  
4940 and de facto owned by private companies.

4941 Ultimately, this gets to a central privacy right that each  
4942 of us would have meaningful control over how our personal  
4943 information is stored, used, and shared. Here, privacy rights  
4944 aren't just about keeping information out of public view, they  
4945 are also about users being free to share and use their data with  
4946 others as they choose.

4947 For these reasons, portability and interoperability are  
4948 policy goals I have long supported, although portability and  
4949 interoperability are not the same.

4950 For example, in the Online Privacy Act, which I introduced  
4951 with Representative Eshoo last year, we included extensive  
4952 authority for a new data agency to require different online  
4953 services to give users the power to make their data portable and  
4954 interoperable at least when merited by the nature of the data  
4955 service. And, thus, I strongly support the overall goal of this  
4956 act.

4957 However, I must note that I do have substantial concerns  
4958 with some of the provisions of the bill as drafted. Importantly,  
4959 we need to make sure that bill contains the necessary safeguards  
4960 to privacy and security risks from interoperability and

4961 portability. In order to achieve these goals, platforms must  
4962 open up their systems and user data to third parties. And while  
4963 this can be beneficial to both users and the competition, the  
4964 risk from abuse or neglect of the technical details are quite  
4965 obvious.

4966 Some of the biggest privacy scandals of the last decade,  
4967 including Cambridge Analytica's debacle of the mass scraping of  
4968 Facebook data without users' consent, were essentially the result  
4969 of insecure schemes of portability and interoperability. Any  
4970 time one app or device communicates with another, especially when  
4971 it involves the transfer of sensitive information, there can be  
4972 privacy security risks.

4973 I acknowledge this bill does contain some provisions  
4974 obligating the FTC to write standards to address these issues,  
4975 however, I believe these mandates need to be clear and more  
4976 detailed in several respects in terms of what the FTC must do  
4977 to ensure the interoperability required under the bill does not  
4978 harm users or platform security. The underlying issue most past  
4979 proposals of platform portability and interoperability have been  
4980 just one part of a larger piece of privacy legislation. That's  
4981 the approach we took in the Online Privacy Act. Setting forth  
4982 a larger framework of privacy guarantees and enforcement is  
4983 probably the only way to fully address this issue.

4984 That said, if we are going to make and mandate platform



4985 interoperability and standalone legislation through the FTC, we  
4986 must at least include a minimum set of robust privacy protections.

4987 Unfortunately, given the speedy nature of this process, and both  
4988 the legal and technical complexities of these challenges, it has  
4989 not been possible to fix this concern prior to today.

4990 However, one of the amendments I intend to offer to the ACCESS  
4991 Act would at least address a core problem in the bill, as drafted,  
4992 involving interoperability and user consent. And regardless of  
4993 the outcome in either these or the other amendments I intend to  
4994 offer, work on privacy and security issues in the bill will, I  
4995 am sure, continue.

4996 Ms. Scanlon is right, the big platforms have all your  
4997 information. And if you can't move it, then you are really a  
4998 prisoner of that platform. Who wants to leave a platform if they  
4999 have all your baby pictures and all of your videos of your  
5000 grandchildren locked up?

5001 So, although the big platforms now provide for portability,  
5002 the principle of it is sound but the privacy interoperability  
5003 needs to be enhanced.

5004 I look forward to working with Congresswoman Scanlon and  
5005 Chairman Cicilline and any other members to address these  
5006 concerns. And I am hopeful that we can ultimately craft a  
5007 solution that gives users more control over their personal data  
5008 that will boost competition, which I believe in, and will also

5009 protect privacy, security, and the legitimate business and  
5010 technical interests of the platform.

5011 And I see that my time has expired. So, I will yield back,  
5012 Mr. Chairman.

5013 Chairman Nadler. The gentlelady yields back.

5014 For what purpose does Mr. Biggs seek recognition?

5015 Mr. Biggs. Move to strike the last word.

5016 Chairman Nadler. The gentleman is recognized.

5017 Mr. Biggs. Thank you, Mr. Chairman.

5018 It was said this morning that a monopoly will fail if it  
5019 doesn't satisfy its customers. And that is true. But a monopoly  
5020 may also enhance its staying power by engaging in unfair business  
5021 practices. Even the great Austrian economist Friedrich Hayek  
5022 suggested that markets work when the players are engaged in fair  
5023 competition.

5024 For instance, we provide enforcement institutions and  
5025 regimes to deal with issues such as fraud or tortious conduct  
5026 to keep our markets fair.

5027 Almost 130 years ago a movement was undertaken to cure  
5028 inequities in the market. Remedies were undertaken to  
5029 particularly address barriers to entry and unfair competitive  
5030 practices. Yes, a monopoly may develop because of environmental  
5031 conditions: first out of the box, development of increasingly  
5032 recurring factors, et cetera. But if a business rises to a

5033 position not just as a dominant player, but in a monopolistic  
5034 position of unfair practices designed to crush competition and  
5035 inhibit barriers to entry, then there is a limited role for  
5036 government to intervene on behalf of society, consumers,  
5037 competitors, entrepreneurs.

5038 We have reached the point where big tech companies regularly  
5039 have obtained and maintained a monopolistic practice or, excuse  
5040 me, position. These companies have crushed competitors,  
5041 prevented entrepreneurs from entering the field, used their power  
5042 positions to stifle voices of individuals, exceeding the scope  
5043 of a normal platform. They have undertaken demonstrably to  
5044 censure certain viewpoints, particularly conservative  
5045 viewpoints.

5046 Judicial proceedings concerning unjust treatment of  
5047 business and individuals will not obtain due process because these  
5048 big tech companies can crush a plaintiff in discovery proceedings.

5049 Normal market forces will not bring this back into balance.  
5050 These companies need to be reined in and, frankly, should be  
5051 dismantled.

5052 Each of the four substantive bills that we are considering  
5053 are rooted in strong soil, but each is also in danger of succumbing  
5054 to a sort of weeds and brambles. In this particular bill that  
5055 we are considering, on page 17 one of my concerns is the -- it  
5056 says that "A failure by the covered platform to participate in

5057 good faith in development of standards by the Technical Committee  
5058 shall be a violation of this statute." I would suggest to you  
5059 that a covered platform required to participate as large as these  
5060 are may actually try to take over that technical committee. That  
5061 is a concern I have.

5062 What makes that a concern particularly is on page 18, line  
5063 15 through 20, when it says the role of a technical committee  
5064 established under this act "is advisory in nature" -- that seems  
5065 appropriate -- "and such committee shall have no implementation  
5066 or enforcement authority." I agree with that position.

5067 "However, the Commission shall give strong consideration to the  
5068 recommendations of such committees in implementing this Act."

5069 What does "strong consideration" mean? How is it visible?  
5070 How is it interpreted? Particularly in light of the fact that  
5071 I agree with my friends Mr. Jordan and Mr. Buck that maybe lines  
5072 21 through 24 should be modified. But how does that, how does  
5073 that deal with it should you get the situation where it is closed  
5074 door, you can't see what is going on, and one of these, one of  
5075 these big bad actors -- and I do believe they are bad actors --  
5076 tries to manipulate that system? I am concerned about that.

5077 I thank the folks who participated in putting this together.

5078 I do believe that to solve these issues, including the issue  
5079 that the ranking member mentioned which is paramount in the minds  
5080 of my constituency, and that is the unfair censorship of

5081 conservative voices by these tech oligarchs, I do believe that  
5082 the best way we are going to find to resolve that issue is to  
5083 attack them through the antitrust laws.

5084 So, I appreciate the effort to try to craft laws that work.  
5085 I just want to make sure they do work and if we are going to  
5086 engage in this.

5087 And with that, Mr. Chairman, I will yield back.

5088 Chairman Nadler. The gentleman yields back.

5089 For what purpose does the gentlelady from Texas seek  
5090 recognition?

5091 Ms. Jackson Lee. Move to strike the last word.

5092 Chairman Nadler. The gentlelady is recognized.

5093 Ms. Jackson Lee. If I place myself in the shoes of an  
5094 ordinary consumer, and certainly one that has been either both  
5095 plagued and benefitted from the amazing tech revolution, I can  
5096 assure you that one of the elements of their concern is the ability  
5097 to protect their data and to have flexibility in the device service  
5098 that they use.

5099 So, I want to thank Congresswoman Scanlon and Congressman  
5100 Cicilline and the committee for a very utilitarian legislation,  
5101 and Republican co-sponsor as well, Mr. Owens. Because the idea  
5102 of being able to augment compatibility in competition, for  
5103 enabling service switching access is an idea long overdue.

5104 I do think it is important as well to ensure your protected

5105 privacy. But there is social networking going on with consumers  
5106 as young as probably four years old, e-commerce, app stores.  
5107 Wasn't their Prime Day just Monday or Tuesday of this week? Maybe  
5108 it is still going on.

5109 One of the things that I think is noteworthy that all of  
5110 the use that our devices are subjected to, they are inescapably  
5111 put into the public sphere with susceptibility to cyber hacking.

5112 And so, as we look at this legislation, want to be concerned  
5113 about and ensure that we continue to focus on that as we are able  
5114 to move our data from one place to the next.

5115 The digital economy, strong network effects, and high  
5116 switching costs often result in a winner-take-all market, locking  
5117 in the dominance of some firms while blocking new entrants from  
5118 contesting these markets. In the middle of this, of course, are  
5119 the consumers.

5120 The ACCESS Act is a catalyst for competition requiring that  
5121 dominant online platforms are interoperable with other services  
5122 and gives users more choice online by allowing them to move their  
5123 data to a competing service.

5124 H.R. 3849 promotes competition online by lowering barriers  
5125 to entry and switching costs for businesses and consumers through  
5126 interoperability and data portability requirements. H.R. 3849  
5127 is similar to the interconnection and phone number portability  
5128 requirements under the Telecommunications Act of 1996, pretty

5129 long time ago. But, under H.R. 3849, coveted platforms are  
5130 required to maintain interfaces to facilitate portability of user  
5131 data and interoperability with competing businesses.

5132 I am always reminded of the importance of protecting the  
5133 data of consumers who don't have their own infrastructure to do  
5134 so.

5135 I think it is important to comment on these various tech  
5136 committees because the legislation charges the FTC to oversee  
5137 the process, including establishing platform-specific standards,  
5138 and setting up technical advisory committees to assist in the  
5139 standards-making process. I want my good friends to know that  
5140 I don't believe these are Pfizer courts. These are committees  
5141 that have a logistical and mechanical responsibility. And that  
5142 is that they help with the standards to ensure that the bill or  
5143 the legislation works, that data can be switched, that the  
5144 consumer is protected, and to review when there is a need to  
5145 improve that.

5146 They assist in the standards-making process. I don't think  
5147 you can say they do any more or do any less. And to suggest that  
5148 there might be some hidden agenda, I think we can only assume  
5149 that they are simply working to make sure that the consumer is  
5150 protected with the right kind of standards.

5151 Finally, the legislation also includes privacy safeguards,  
5152 user consent, data minimization, and requires the FTC to include

5153 privacy and security guardrails in the interoperability and  
5154 portability standards it develops and issues. These are ongoing  
5155 efforts. Privacy always requires enhanced review. It always  
5156 requires responding to new technology and, of course, the  
5157 capability of those who are intent on criminal activities, use  
5158 ransomware, and to undermine either Colonial Pipeline or any other  
5159 entity, including consumers.

5160 So, I support this legislation, look forward to its passage  
5161 and our continuing work in this committee on these efforts.

5162 With that, I yield back.

5163 Chairman Nadler. The gentlelady yields back.

5164 For what purpose does Mr. Buck seek recognition?

5165 Mr. Buck. I have an amendment at the desk.

5166 [The Amendment of Mr. Buck follows:]

5167

5168 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*



5169 Chairman Nadler. The clerk will report the amendment.  
5170 Ms. Lofgren. Reserve a point of order.  
5171 Chairman Nadler. Point of order is reserved.  
5172 Ms. Fontenot. Amendment to the amendment in the nature of  
5173 a substitute to H.R. 3849 offered by Mr. Buck of Colorado. Page  
5174 18, strike lines --  
5175 Chairman Nadler. The amendment will be considered as read.  
5176 The gentleman is recognized.  
5177 Mr. Buck. I thank the Chair.  
5178 So, this is the amendment that I mentioned a moment ago with  
5179 Mr. Jordan. It moves, on page 18 it moves to strike lines 21  
5180 through 24. And in that, in their place adds a reporting  
5181 requirements, which is something that I heard from a number of  
5182 members that they felt strongly about that we should have a  
5183 reporting requirement.  
5184 So, I don't, I don't believe that the lines make this a secret  
5185 committee any more than to say that our bills, for example, in  
5186 Congress are drafted in secret. The fact that a --  
5187 [Alarm sounds.]  
5188 Ms. Lofgren. It is a traffic emergency light.  
5189 I withdraw my point of order, by the way.  
5190 Mr. Buck. So, as I was saying, this amendment moves to  
5191 strike this language and add a reporting requirement. It is very  
5192 simple and straightforward, and I would ask for member support

5193 on it.

5194 Mr. Jordan. Will the gentleman yield?

5195 Mr. Buck. I will yield, yes.

5196 Mr. Jordan. So, I just want to be clear. In the draft of  
5197 the bill prior to this amendment, prior to this amendment, the  
5198 current draft of the bill are there secret committees?

5199 Mr. Buck. In my view they are not secret because any action  
5200 that the committee takes needs to be approved by the Commission.

5201 Mr. Jordan. Well, then why do we need your amendment?

5202 I mean, a little bit ago, 15 minutes ago, if the gentleman  
5203 will yield, 15 minutes ago you said you wanted to debunk certain  
5204 false statements made earlier. Fifteen minutes ago you said  
5205 that. Now all of a sudden you need an amendment. Even though  
5206 you said there are no secret committees there, now you need an  
5207 amendment to take out the language that actually says there are  
5208 secret committees because it says the Federal Advisory Committee  
5209 Act does not apply, which means no notice, no open meetings, no  
5210 records subject to inspection, and no notice of who the members  
5211 are of the secret committee.

5212 So, which is it? Is there a secret committee or is there  
5213 not a secret committee?

5214 Mr. Buck. There is not a secret committee. But to address  
5215 your concerns, Mr. Jordan, I am offering this amendment to strike  
5216 the language so that this, this won't be an issue in gaining

5217 support for this bill.

5218 And I yield back.

5219 Ms. Scanlon. Mr. Chairman, I would move to strike the last  
5220 word.

5221 Chairman Nadler. The gentleman yields back.

5222 For what purpose does --

5223 Ms. Scanlon. I would move to strike the last word.

5224 Chairman Nadler. Well, the gentlelady is recognized.

5225 Ms. Scanlon. Thank you.

5226 As I understood Mr. Jordan's objection, it was to language  
5227 indicating that the, sorry, that a certain act did not apply.

5228 Mr. Jordan. Federal Advisory Committee Act.

5229 Ms. Scanlon. Yes, Federal Advisory Committee Act. And,  
5230 in fact, that only applies to fully government committees. And  
5231 this is a partially government committee, and also partially  
5232 private actors.

5233 So, I thank Representative Buck for this amendment. I  
5234 completely agree that transparency should be a pillar of any  
5235 comprehensive legislation. And I think this amendment will help  
5236 Congress to understand the positive impacts of the ACCESS Act.

5237 It allows us to better oversee implementation of its provisions.

5238 So, I plan to vote in favor of this amendment, and would  
5239 encourage my colleagues to do the same.

5240 With that, I would yield back.

5241 Chairman Nadler. Does anyone else want to speak on this  
5242 amendment?

5243 Mr. Massie. Mr. Chairman.

5244 Chairman Nadler. Mr. Massie.

5245 Mr. Massie. Yes. Move to strike the last word.

5246 Chairman Nadler. The gentleman is recognized.

5247 Mr. Massie. I'm glad we're talking about transparency here  
5248 because I'm trying to figure out why one of the biggest offenders  
5249 of big tech has mysteriously evaded the scrutiny of this committee  
5250 and this broad swath of bills that seek to radically rewrite our  
5251 antitrust law.

5252 I'm talking about Microsoft. Is anybody here concerned that  
5253 on behalf of the Communist Party, Microsoft censored Bing, search  
5254 engine results of Tank Man on the anniversary of the Tiananmen  
5255 Square protests, including results for users in the United States,  
5256 and has muzzled the voices of China critics on LinkedIn?

5257 We need transparency. LinkedIn also has restricted  
5258 accounts for posts related to COVID-19, citing its misinformation  
5259 policy. LinkedIn censored posts that the coronavirus originated  
5260 from a dangerous laboratory in Wuhan, China.

5261 Finally -- there are lots of examples -- for one of the  
5262 biggest tech companies in the world it is not covered by this  
5263 bill, it seems.

5264 They've got -- they've got a function in their software in

5265 Microsoft Word called Ideas in Word. It's a tool that urges users  
5266 to avoid language that Microsoft dislikes, and instead to adopt  
5267 language Microsoft considers to be appropriate -- appropriate  
5268 and politically correct.

5269 So how did -- how is it that one of these billion-dollar  
5270 tech companies seemingly -- trillion -- sorry, \$2 trillion --  
5271 is not covered by this bill?

5272 I mean, we're supposed to believe that we are here rewriting  
5273 antitrust laws to protect the little guy from these dangerous  
5274 big companies, and I just came into possession of a document that  
5275 everybody needs to know about. It's marked confidential  
5276 Microsoft. A whistleblower provided this.

5277 It's the first draft of one of these bills that would have  
5278 covered Microsoft. This begs the question. Did Microsoft have  
5279 this bill and the other bills that we are voting on today before  
5280 I had this bill?

5281 Why would you have to mark it confidential Microsoft if they  
5282 found it on the website for Congress? Why would it have to be  
5283 marked this way?

5284 And so, you know, okay, they're going to be affected. Maybe  
5285 they need to know this is coming. I don't know why they would  
5286 need to know it before me.

5287 But isn't it strange that one of the biggest changes in this  
5288 bill, and it's particular not just to one of the bills, but several

5289 of the bills today, it was -- the bills were going to cover anybody  
5290 that has at least 500,000 United States-based monthly active  
5291 users.

5292 But now the threshold -- maybe the author of this bill can  
5293 explain to me why the threshold was moved from 500,000 to 50  
5294 million. Is there a single tech company that meets every other  
5295 definition of this bill that would have been covered that is no  
5296 longer covered because of this change except for Microsoft? And  
5297 were they given an advanced copy of this bill?

5298 Why do -- why am I holding one, the first copy of this bill  
5299 that says confidential Microsoft, and it came from Microsoft?

5300 Can somebody answer that question?

5301 Chairman Nadler. The gentleman yields back?

5302 Mr. Massie. Well, I would like to yield time to anybody.  
5303 Maybe the author of the bill could explain, or the broad swath  
5304 of bills, why this change was made and why it seemingly only  
5305 affects Microsoft, none of the other big tech companies, and did  
5306 Microsoft have an -- did Microsoft have a copy of this bill before  
5307 I had a copy.

5308 I'd gladly yield.

5309 Mr. Cicilline. I'd like my own time because there's only  
5310 54 seconds left. So --

5311 Mr. Massie. All right. Well, I'll be interested to hear  
5312 that. I would like to respond to it. Maybe we'll get some more

5313 time later.

5314 Mr. Issa. Would the gentleman make a copy of that available  
5315 to the rest of us?

5316 Mr. Massie. It will be -- the staff, I hope, can distribute  
5317 a copy of this.

5318 Mr. Issa. I thank the gentleman.

5319 Mr. Massie. Thank you. And if nobody wants to answer that  
5320 question, I'll yield -- I'll yield back.

5321 Chairman Nadler. The gentleman yields -- the gentleman  
5322 yields back.

5323 Mr. Swalwell?

5324 Mr. Swalwell. Thank you, Chairman, and thank you to my  
5325 colleague, Ms. Scanlon of Pennsylvania.

5326 Allowing users to carry data between applications and  
5327 platforms, which is known as portability, and ensuring that  
5328 applications and platforms work with each other, known as  
5329 interoperability, are good principles.

5330 But I think what we are seeing is that interoperability  
5331 especially can be a hornet's nest, and so it having thousands  
5332 of companies in my districts and five-digit number of employees,  
5333 thousands of employees who work at these companies, from one to  
5334 two employees up to companies that have thousands of their  
5335 workforce, I have sought to understand what each of these bills  
5336 would mean for them.

5337           And so I've got just a couple of concerns, and I hope that  
5338 my colleagues could sort out some of these, and I think Ms. Lofgren  
5339 seeks to address some of them in her amendments.

5340           First, with scope, again, I'm for interoperability and  
5341 portability. But why would we not want any tech company to be  
5342 required to have interoperability and portability? And I think  
5343 Ms. Lofgren made the point earlier about Zoom and some other  
5344 smaller companies that are widely used but may not meet the tech  
5345 giant criteria that are here.

5346           And so I do think, if we are really looking out for consumers,  
5347 we would want to make sure that interoperability and portability  
5348 was required everywhere.

5349           As it relates to consent, I do have concerns that under the  
5350 bill it would involve third party access to data, as Ms. Lofgren  
5351 pointed out. I do think we need to protect privacy and user data  
5352 control and give the user an ability to consent to the use of  
5353 third party access to data.

5354           I'm really concerned about China, and if this bill would  
5355 require a U.S. company to be interoperable with a Chinese company,  
5356 and we all can imagine the dangers if the Chinese government has  
5357 access to U.S. person data, particularly, you know, people who  
5358 work in the government or work at companies that have valuable  
5359 trade secrets.

5360           I am wondering about GDPR and if any of this would violate



5361 GDPR, considering that most of the companies contemplated here  
5362 are international companies and, you know, we would hate to set  
5363 American companies up to not be competitive overseas.

5364 On the issue of security, there are security and privacy  
5365 standards for interoperability but not for portability, and I  
5366 think Ms. Lofgren is going to address this, but I have a concern  
5367 about that.

5368 And then as it relates to API platforms, this would allow  
5369 the FTC -- this would require the FTC to be involved in API  
5370 platforms and approving API platforms before any anti-competitive  
5371 allegation is made.

5372 And again, it just concerns me that you would have to go  
5373 through the government if you are creating an application and  
5374 get approval from the government rather than commit a violation  
5375 and then have the government say that it is a violation.

5376 Again, I think that would slow innovation and make us less  
5377 competitive, particularly to China.

5378 So those are my questions and concerns. I think we're going  
5379 to sort some of this out with Ms. Lofgren's amendments.

5380 Again, I thank the gentlelady from Pennsylvania for wanting  
5381 to take this on. As I said, this is a very challenging area and  
5382 she has worked very hard to try and take it on, and I hope we  
5383 can find a way to sort out some of these issues.

5384 And I yield back.

5385 Mr. Cicilline. Mr. Chairman?

5386 Chairman Nadler. The gentleman yields back. Who seeks  
5387 recognition?

5388 Mr. Jordan. Mr. Chairman? Mr. Chairman?

5389 Chairman Nadler. The gentleman from Ohio.

5390 Mr. Jordan. Thank you, Mr. Chairman. Move to strike the  
5391 last word.

5392 Chairman Nadler. The gentleman is recognized.

5393 Mr. Jordan. If what the gentleman from Kentucky just told  
5394 us is accurate, think about this. We got bills that are supposed  
5395 to go after big tech being written by big tech.

5396 Oh, and remember this. The secret committees, Microsoft  
5397 will get to sit on those secret committees because you have to  
5398 have a competitor on those committees. So they get to weigh in  
5399 on the front end on how the bill is written.

5400 They get to sit in on the secret committees that aren't  
5401 subject to the Federal Advisory Committee Act and weigh in with  
5402 what the technical committee will then advise the FTC to do.

5403 And the FTC is supposed to do what under this legislation?

5404 Strongly take into consideration what the technical committee  
5405 tells them. Wow. This is amazing. This is amazing.

5406 Now, again, we don't know if this is a whistleblower --  
5407 this information but somehow Mr. Massie got it. But that is  
5408 amazing. That's what we have here.

5409 Bills that supposedly go after big tech being written by  
5410 big tech, the same big tech who can sit on the secret technical  
5411 committees advising the FTC, the FTC who says we should use  
5412 antitrust law for all kinds of things. Wow. We're going to pass  
5413 this stuff.

5414 What we want to deal with is the censorship of conservatives.  
5415 That's what we want to focus -- that's what our constituents  
5416 care about. It's amazing. This is amazing.

5417 I'll yield to anyone who to wants to talk on our side, but  
5418 I'll yield to Mr. Issa.

5419 Mr. Issa. You know, Ranking Member Jordan, I share your  
5420 concern that we really cannot answer the question except that  
5421 there's no reason, and I don't believe anyone at Microsoft would  
5422 believe that a \$2 trillion company that is one of only two in  
5423 existence with more customers worldwide than virtually any  
5424 company in the history of our planet would be exempt from this.

5425

5426 So I do agree with you that if -- that there is a concern  
5427 that all of us need to ask, and I know Ms. Lofgren is going to  
5428 be dealing with some of this later.

5429 This committee needs to seriously consider whether this is  
5430 a bill of attainder, whether or not we have narrowed it  
5431 artificially to four companies when, in fact, there should be  
5432 four or 400 or 4,000 companies that potentially, in the case of

5433 this particular bill, okay, if interoperability needs to go from  
5434 Facebook, Amazon, Apple, and Google, then doesn't it need to go  
5435 from Alibaba back?

5436 On what basis would we have the dominant player in China  
5437 and all over the rest of the world able to take from all four  
5438 of these companies but have no requirement to be interoperable  
5439 back?

5440 You know, Mr. Owens has studied a lot of this and we talk  
5441 about it, because he's supportive of the bill, but he talks about  
5442 phones. But phones are interoperative both directions every  
5443 single phone.

5444 That's the way the system was designed. We are looking at  
5445 four companies, not Microsoft, but only for companies that would  
5446 have to give up their jewels, give up information to make their  
5447 product send but not receive back.

5448 So I wouldn't say that this is ill conceived with Microsoft  
5449 out of it. I think Microsoft knows that and I think that all  
5450 of us need to ask the question of are we looking at too few  
5451 companies, particularly when it comes to interoperability and  
5452 portability.

5453 I don't think that any of us think that if we're on a different  
5454 platform -- if instead of Gmail I'm on Hotmail that somehow there  
5455 shouldn't be any interoperability, because Hotmail, which might  
5456 have almost as many users, or Microsoft Outlook, but there's no

5457 interoperability requirement because they're not covered.

5458 I think that's a valid point, and I think that what the  
5459 gentleman from Kentucky showed us should cause us all to pause,  
5460 maybe even pause on this markup until we know more.

5461 And I yield back.

5462 Chairman Nadler. The gentleman yields back.

5463 Mr. Jordan. I yield to the gentleman the last 40 seconds.  
5464 The gentleman from North Carolina.

5465 Mr. Bishop. Thank you. Thank you, Mr. Jordan.

5466 Chairman Nadler. The gentleman's time --

5467 Mr. Jordan. I yield to the gentleman from North Carolina,  
5468 Mr. Bishop.

5469 Mr. Bishop. Thank you to the gentleman from Ohio.

5470 You know, one of the things that's interesting about where  
5471 we are is we're marking up these bills within a week or so after  
5472 they've emerged, and I understood the reason for that -- and I  
5473 don't know if I got it explicitly or implicitly or read it  
5474 somewhere -- was because the concern that once they're out there,  
5475 the big tech companies will be shooting at them and trying to  
5476 shoot them down.

5477 But this development that Mr. Massie revealed would suggest  
5478 they've had the bills or at least one of them had the bills in  
5479 advance anyway.

5480 So why not take the time to have hearings on the bills and

5481 develop them fully and solve some of these problems about what  
5482 interoperability means and the like, rather than do this on the  
5483 fly?

5484 I yield back.

5485 Chairman Nadler. The gentleman yields back. For what  
5486 purpose does the gentleman from Rhode Island seek recognition?

5487 Mr. Cicilline. I move to strike the last word.

5488 Chairman Nadler. The gentleman is recognized.

5489 Mr. Cicilline. I want to begin, Mr. Chairman, by thanking  
5490 the gentlelady from California for working with me and our staffs  
5491 have been working together on this privacy issue, and someone  
5492 who has been such a champion of privacy and I am confident that  
5493 we're going to get to a good place on that and really appreciate  
5494 her suggestions to make some amendments that I think will improve  
5495 the bill.

5496 But I want to say, first, very clearly, throughout this  
5497 process, and this was an investigation that was conducted for  
5498 16 months, there are no exemptions in these bills. Zero. No  
5499 company is exempted, period. Each of these bills is broadly  
5500 applicable to firms that meet a definition for covered platform.

5501

5502 That's a determination made by the enforcement agencies.

5503 So no one on this committee can make that determination. We  
5504 had an investigation which focused on four companies in

5505 particular, but there are -- there's a criteria that's not company  
5506 specific.

5507 The three things are is the online platform owned or  
5508 controlled by a parent company that has a market capitalization  
5509 in excess of \$600 billion; two, does the online platform have  
5510 at least 50 million U.S.-based monthly active users or 100,000  
5511 monthly active business users; and three, is the only -- is the  
5512 platform a critical trading partner, meaning an online platform  
5513 that has gatekeeper power or the ability to restrict or impede  
5514 access to users or a tool that businesses need to effectively  
5515 serve their users or consumers.

5516 That's the definition. There are no exemptions.

5517 Mr. Massie. Would the gentleman yield?

5518 Mr. Cicilline. No, I'm not done.

5519 And whether or not a particular company is covered or not  
5520 is determined by whether or not they meet that standard, period.

5521

5522 And so I want to thank Ms. Scanlon again because this  
5523 legislation acknowledges these competition problems online,  
5524 develops a competition base solution that's narrow and targeted  
5525 so there aren't unintended consequences.

5526 And we have had three hearings on remedies specifically after  
5527 the committee approved the report that all provided testimony  
5528 with respect to each of these bills that are before us.

5529           So this is a two and a half year process, and while there  
5530 will be more opportunities to continue to think about these  
5531 issues, this is a bill that, by the way, was introduced in the  
5532 last Congress. So you don't have to be a detective to have found  
5533 a copy of it. It was introduced by national security hawk Mark  
5534 Warner.

5535           And so this idea of portability and interoperability is not  
5536 a new one. It's been out there for two years. And so this is  
5537 a very specific definition. There are no exemptions. There's  
5538 no mystery here.

5539           This is a bill that was previously introduced and I urge  
5540 my colleagues to support it. And with that, I yield back.

5541           Chairman Nadler. The gentleman yields back.

5542           There are a series of -- there are a series of votes on the  
5543 floor. The committee will be in -- the committee will stand in  
5544 recess until the end of those votes.

5545           [Recess.]

5546           Chairman Nadler. The committee will come to order. The  
5547 pending question is the amendment offered by Mr. Buck of Colorado.

5548           Who seeks recognition?

5549           Mr. Issa. Chairman?

5550           Chairman Nadler. For what purpose does the gentleman --

5551           Mr. Issa. To move to strike the last word.

5552           Chairman Nadler. The gentleman is recognized.



5553           Mr. Issa. Mr. Chairman, you can fix some things and some  
5554 things will be better. But let me just go through a couple of  
5555 quick questions of what won't be fixed while still having a  
5556 committee to decide things whether it's public or private, as  
5557 it currently is.

5558           They will be asked, for example, with Amazon what will be  
5559 -- what did you buy, how much did you pay, how much were you willing  
5560 to pay, and all the things that were sold to you, and that will  
5561 be interoperable under this bill with Alibaba.

5562           And the committee that will decide it, whether public or  
5563 private, will be a subentity created by the Federal Trade  
5564 Commission that'll decide what Alibaba gets to know about what  
5565 you bought from Amazon, potentially allowing for better  
5566 competition, Alibaba, to in fact interoperatively bid on the same  
5567 product or a similar product, probably made in China, that, in  
5568 fact, they will offer you at a lower price in competition with  
5569 Amazon because they're interoperable.

5570           They're simultaneously able to see the data. That's the  
5571 interoperability, Mr. Chairman, and that's what the secret or  
5572 not secret committee will decide.

5573           In Facebook, of course, where you are, what you're doing,  
5574 and what you've posted, in fact, could be -- could go not just  
5575 to a competitor of Facebook but to hundreds or thousands or tens  
5576 of thousands of other apps that will be developed that will want

5577 to scrape that data. Scraping data sounds pretty coarse, but  
5578 interoperability and scraping data are the same thing, Mr.  
5579 Chairman.

5580 So under this bill, hundreds or thousands of companies will  
5581 be able to scrape data from Facebook and we'll have that available,  
5582 and the only thing stopping it will be some subcommittee of the  
5583 Federal Trade Commission, whether it's public or secret, that,  
5584 in fact, will decide that.

5585 Now, then we go to Apple. Now, you know, I remember having  
5586 Microsoft-compatible Intel clones, and as a result, there was  
5587 a clone to the Intel IBM AT.

5588 But the reality is an Apple clone is, essentially, guaranteed  
5589 in this bill. Somebody can make something. Since all the apps  
5590 have to be interoperable, since Apple has to open up its system  
5591 to be interoperable, that means that, in fact, there can be a  
5592 competing app store selling products that Apple has nothing to  
5593 do with but they all work with Apple, but they also work with  
5594 an Apple clone that could easily be developed.

5595 And, of course, we go to Google. Now, Google has to make  
5596 all of its platforms interoperable because it's, clearly,  
5597 covered. That means that all the work on geolocation, Google  
5598 Maps, and all of that is available to hundreds or thousands of  
5599 would-be competitors.

5600 Now, we like competition. But at what point is this bill

5601 in its mandate -- not for privacy and portability, but with the  
5602 term interoperability going to, clearly, make it possible for  
5603 companies to come in and compete using one direction the data  
5604 of Amazon, Facebook, Apple, and Google?

5605 It might seem fair to some on the dais that since these  
5606 companies are worth a trillion-plus dollars, some of them two-plus  
5607 trillion, that it's okay to take their data but not be  
5608 interoperable back.

5609 But the current legislation not only mandates that they make  
5610 their data available to any and all competitors, quote,  
5611 "interoperable" but that, in fact, they do so based currently  
5612 on the secret committee.

5613 And I want to thank the gentleman from Colorado. In  
5614 fairness, I think he's making a good faith effort to try to get  
5615 rid of the secret nature of this committee.

5616 But we still have the question, and I would try to -- I don't  
5617 want to say shame but ask all of you, if I've got a form here  
5618 and I'm going to ask that it be placed at all of your desks that  
5619 simply says, defining intellectual property what would you  
5620 consider to be your property on the following platforms, and it  
5621 says Amazon, Facebook, Apple, Google, and I threw in Twitter,  
5622 because I will bet you that when you get done filling out what  
5623 you think is yours and you pass it to the person to your left  
5624 or right, it will not match.

5625           If it will not match with your feelings, then we, as a body,  
5626           have an obligation go a lot further before we hand it off to a  
5627           bureaucracy that hands it off to a secret committee.

5628           And if it's not a secret committee, because if the gentleman  
5629           has fixed it with this amendment, he will, in fact still be handing  
5630           it to a committee, including competitors, that is created to allow  
5631           data to go one direction and not another under this bill.

5632           And with that, I thank the gentleman and yield back.

5633           Chairman Nadler. Okay. The gentleman yields back.

5634           Mr. Tiffany. Mr. Chair? Mr. Chair?

5635           Chairman Nadler. Who seeks recognition?

5636           Mr. Cicilline. Mr. Chairman?

5637           Chairman Nadler. For what purpose does gentleman from Rhode  
5638           Island seek recognition?

5639           Mr. Cicilline. Move to strike last word. Oh, I'm sorry.

5640

5641           Chairman Nadler. The gentleman is recognized.

5642           Mr. Cicilline. Sorry.

5643           Ms. Lofgren. I'll ask to be recognized and yield to the  
5644           gentleman to strike the last word.

5645           Chairman Nadler. The gentl lady from California is  
5646           recognized to strike the last word.

5647           Ms. Lofgren. I yield to Mr. Cicilline.

5648           Mr. Cicilline. I thank the gentl lady for yielding.

5649           It's important to note that this legislation in its very  
5650 text requires the secure transfer of data, and I know that Ms.  
5651 Lofgren is going to offer some amendments and I think that will  
5652 strengthen that.

5653           But the ACCESS Act already includes robust safeguards to  
5654 protect user privacy and data security.

5655           First, the bill directs the FTC to establish baseline privacy  
5656 rules that makes certain that user data sent through  
5657 interoperability interfaces is protected. This creates clear  
5658 privacy guardrails for interoperability.

5659           The ACCESS Act also directs the FTC to establish technical  
5660 committees to develop interoperability standards for individual  
5661 covered platforms. The FTC is expressly directed to protect data  
5662 security and privacy in the development of these technical  
5663 standards.

5664           The ACCESS Act empowers a covered platform to make changes  
5665 necessary to address security vulnerabilities without running  
5666 afoul of the Act's interoperability requirements without having  
5667 to get prior approval from the FTC.

5668           Additionally, the bill includes data minimization  
5669 requirements that ensure companies that are interoperating are  
5670 not unnecessarily sharing or using data.

5671           Companies that receive shared data from the covered  
5672 platforms under the Act and fail to take steps to protect user

5673 privacy or protect the security of the covered platform will be  
5674 in violation of the Act, subject to penalties, and the FTC may  
5675 require the covered platform to cut off interoperability with  
5676 that business user

5677 The Electronic Frontier Foundation wrote to the committee  
5678 yesterday urging us to approve the ACCESS Act and the other bills.

5679 EFF explained that privacy and security protections are already  
5680 addressed by the ACCESS Act, and as they noted, and I quote, "Under  
5681 no circumstance does the ACCESS Act prevent a big tech platform  
5682 from taking steps that are genuinely necessary to secure their  
5683 product or service," end quote.

5684 In response to criticism from the largest platforms about  
5685 the ACCESS Act, EFF explained, and I quote, "It would be  
5686 categorically false to assert that user privacy would worsen under  
5687 the legislation, given the requirements to safeguard privacy and  
5688 the remedies included for lack of compliance," end quote.

5689 Public Knowledge also wrote to the committee in support these  
5690 bills and explained that the privacy safeguards are built into  
5691 the ACCESS Act so that data is shared only at the behest of the  
5692 user and unscrupulous competitors are cut off.

5693 And so I thank the gentlelady for yielding and yield back.

5694

5695 Ms. Lofgren. The gentleman yields back.

5696 I would just note, since we're on the Buck Amendment, that

5697 I will have an amendment that, I think, tightens up the provisions  
5698 that the chairman says he favors and, hopefully, we'll all be  
5699 able to be in agreement on that.

5700 But that is for the next amendment, and I would yield back,  
5701 Mr. Chairman.

5702 Chairman Nadler. The gentlelady yields back. For what  
5703 purpose does Mr. Bentz seek recognition?

5704 Mr. Bentz. Strike the last word, Mr. Chair.

5705 Chairman Nadler. The gentleman is recognized.

5706 Mr. Bentz. Thank you.

5707 Mr. Chair, I had an amendment prepared, actually, and brought  
5708 it with me this morning to indeed strike out the language that  
5709 exempted these so-called secret committees from the Federal  
5710 Advisory Committee Act. Here it is. And I replaced it with the  
5711 applicability of the Federal Advisory Committee Act.

5712 I find that under Mr. Buck's amendment, and I had to ask  
5713 -- I was going to ask him to explain if we needed my amendment  
5714 to supplement his. I was told, however, by staff that we don't,  
5715 that should the Buck Amendment be adopted then the FACA, the  
5716 Federal Advisory Committee Act, applies.

5717 And so with that, Mr. Chair, I yield back.

5718 Chairman Nadler. The gentleman yields back.

5719 For what purpose does Mr. Lieu seek recognition?

5720 Mr. Lieu. I move to strike the last word.

5721 Chairman Nadler. The gentleman is recognized.

5722 Mr. Lieu. Thank you, Chairman Nadler.

5723 I want to thank again Antitrust Subcommittee Chairman David  
5724 Cicilline and members who authored this package of antitrust bills  
5725 and staff for their hard work. They have put in approximately  
5726 two years of effort on very complicated issues.

5727 At the same time, this highlights that for everybody else  
5728 on the Judiciary Committee we have not had a single hearing on  
5729 this package of bills.

5730 Many members of this committee are now grappling for the  
5731 first time with the complex field of antitrust law as applied  
5732 to the complicated area of computer technology.

5733 The proposed legislation has enormous consequences and  
5734 Judicial Committee members who are not on the subcommittee have  
5735 not heard from a single expert witness, software engineer, or  
5736 third party seller to understand how this recently-introduced  
5737 bill text would actually operate in real life.

5738 I reiterate again my request that the Judiciary Committee  
5739 still schedule at least one hearing on these bills so we can better  
5740 understand how the legislation would impact consumers and our  
5741 economy.

5742 I support the intent of these bills. However, I have a  
5743 number of concerns with the way the bill language is drafted.

5744 I'm voting to advance all these antitrust bills out of the



5745 committee to allow the legislative process to continue.

5746 But depending on whether these concerns are fixed, I may  
5747 or may not vote for these bills on the House floor. And as  
5748 Representative Massie, Swalwell, and Issa pointed out with  
5749 respect to this particular bill and some of the other bills, why  
5750 are we only applying it to a very small handful of companies that  
5751 I can count on one hand?

5752 Representative Issa analogized this to a bill of attainder.  
5753 We are writing what looks like special legislation directed at  
5754 very specific companies. Why is Microsoft not included?

5755 Why, for example, is Walmart.com not included? Walmart has  
5756 more retail sales than Amazon. It's got a market cap over \$380  
5757 billion. Why are we excluding Walmart.com from this legislation?

5758 And when we're talking about interoperability, we don't just  
5759 want four companies to have interoperability. We want the  
5760 thousands of companies that are in the technology field dealing  
5761 with software and hardware to have interoperability.

5762 So I agree with what some of the other members have raised.  
5763 We should not just be applying this to only a very small number  
5764 of companies. If we believe that either a practice is  
5765 anti-competitive and it should be banned, then no company should  
5766 be able to engage in it.

5767 If we think interoperability is good, then let's make every  
5768 company engage in it. We should not be doing special legislation,

5769 and I hope that this can resolve prior to the floor. And for  
5770 the other bills, I also have specific concerns as they come up.

5771

5772 And with that I yield back.

5773 Chairman Nadler. The gentleman yields back.

5774 For what purpose does Mr. McClintock seek recognition?

5775 Mr. McClintock. To strike the last word.

5776 Chairman Nadler. The gentleman is recognized.

5777 Mr. McClintock. Thank you.

5778 Mr. Chairman, Mr. Buck's amendments really don't do anything  
5779 to alleviate the number of concerns that I have over this bill.

5780 Let me mention three of them.

5781 As I understand it, this imposes a technical standard for  
5782 the transfer of data based presumably on today's technology.

5783 But if that standard is to be imposed by the federal bureaucracy  
5784 it's going to stifle innovation on new ways to share and  
5785 communicate and manage data.

5786 I mean, think of telecommunications technology 50 years ago  
5787 and ask if consumers would be better off or worse off today if  
5788 we'd imposed standards for interoperability on a technology based  
5789 on phone books and punch cards.

5790 Any innovations even contemplated by a company would first  
5791 have to be approved by the government for permission to proceed.

5792 Government is not renowned for technological innovation.

5793           By requiring a government sign off on any innovations to improve  
5794 data communication and management, I think, effectively answers  
5795 that there's just not going to be much.

5796           The second concern that I have Mr. Massie raised, these big  
5797 tech companies comprising a committee to write standards for the  
5798 handling of this data.

5799           You know, Milton Friedman warned that regulatory agencies  
5800 are formed ostensibly to protect the consumer, as in this case,  
5801 but they're always ultimately captured and controlled by the very  
5802 interests that they're supposed to be policing.

5803           That's because those interests have the most to gain and  
5804 the most to lose, and they always use those powers to protect  
5805 themselves from competitors at the expense of consumers.

5806           You know, Adam Smith made that point when he said people  
5807 of the same trade seldom meet together, even for merriment and  
5808 diversion, but the conversation ends in a conspiracy against the  
5809 public or in some contrivance to raise prices, and I'm afraid  
5810 you're setting in motion exactly that sad experience that we  
5811 failed learn from.

5812           One other concern, we've recently witnessed the enthusiastic  
5813 leaking of strictly private, strictly confidential, tax data by  
5814 the IRS.

5815           Imagine the potential for abuse made possible by the mandated  
5816 government interface that companies will be required to trust

5817 with all of the data in their -- in their possession. Data, in  
5818 many ways, is the foundation of all human experience.

5819 Centralizing its management under the authority of  
5820 government, I think, is an extraordinary expression of trust and  
5821 faith that we are and will forever be governed by angels. And  
5822 I don't think we are and I don't think we will be.

5823 I think it's far better that that data be held and managed  
5824 and used according to the voluntary agreements made between many  
5825 providers and their customers, those voluntary agreements  
5826 protected by a consumer's right to say yes or no to the terms  
5827 of those agreements.

5828 I think that's a far safer repository of the information  
5829 that defines our lives and our society.

5830 I yield back.

5831 Chairman Nadler. The gentleman yields back.

5832 Who else seeks --

5833 Mr. Bishop. Mr. Chairman?

5834 Chairman Nadler. For what purpose does Mr. Bishop seek  
5835 recognition?

5836 Mr. Bishop. To strike the last word.

5837 Chairman Nadler. The gentleman is recognized.

5838 Mr. Bishop. Thank you, Mr. Chairman.

5839 I want to revisit for a moment a point about the definition  
5840 of covered platform raised by Mr. Massie on the revelation about

5841 the Microsoft document and the possibility that Microsoft may  
5842 perhaps -- or speculation, maybe, that Microsoft had some input  
5843 into its draftsmanship and then Mr. Cicilline's response to that,  
5844 and Mr. Cicilline offered two arguments about the definition of  
5845 covered platform.

5846 And I submit that they conflict with each other and they  
5847 get at something that's been bothering me about this definition  
5848 of covered platform that is repeated in all of the substantive  
5849 bills.

5850 On the one hand, the gentleman from Rhode Island said that,  
5851 first of all, no one's been cut out because there are criteria  
5852 that decide who's been -- who is a covered platform, and those  
5853 criteria appear on page 9 and 10 of the bill. Fifty million  
5854 monthly active users or 100,000 users of a -- business-based users  
5855 -- business users, a \$600 billion market cap for revenues, and  
5856 then if it's a critical trading partner, which is a whole separate  
5857 problem.

5858 Those are the criteria except the section doesn't end there.  
5859 It says you can be a covered platform either by meeting those  
5860 criteria or by being designated by the FTC. And if you go over  
5861 to the designation program, the FTC is to designate based on  
5862 whether or not they meet those criteria. It's circular and it  
5863 begs the question, why.

5864 So Mr. Cicilline says, well, there are criteria and

5865 everybody's saying, well, they're four companies. If it's that  
5866 clear that four companies are identified, why do we need the FTC  
5867 to designate someone?

5868 And so, on the one hand, Mr. Cicilline said the criteria  
5869 establish who is there. No one's cut out. Well, I submit that  
5870 you could draft the criteria to cut somebody out, first, and then  
5871 the second point is the fact that you can have this disjunctive  
5872 way -- you can have the FTC designate someone.

5873 What is the purpose of that if the criteria are clear and  
5874 pick understandable companies, particularly if, as Mr. Lieu just  
5875 said, we're talking about a number of companies you can count  
5876 on one hand?

5877 It just doesn't make sense and it's another indication that,  
5878 to me, goes back to my trouble about all the substantive bills.

5879 What if we had a hearing on these and had that kind of development,  
5880 and then you could -- someone could either explain why it has  
5881 to be that way or change it. But instead --

5882 Mr. Cicilline. Mr. Bishop, if you'll yield I'm happy to  
5883 answer your question.

5884 Mr. Bishop. I'd be glad to yield.

5885 Mr. Cicilline. Great. Thank you.

5886 So two things I would say. First of all, the FTC is the  
5887 authority that can make a designation. However, state AGs also  
5888 have antitrust authority, and so if someone meets the definition

5889 of a covered platform -- so, for example, Ken Paxton, the attorney  
5890 general of Texas, wanted to sue Google and determine that they  
5891 were a covered platform under this definition, the state AG  
5892 doesn't have the authority to designate them.

5893 So we had to provide a definition, which is the definition  
5894 that's provided with those three components. This definition  
5895 was used because it came out of the investigation, the evidence  
5896 that was uncovered during that 16 months that these were markets  
5897 that were particularly concentrated, and we determined that this  
5898 was the appropriate way to be sure that we were capturing the  
5899 conduct that resulted in the findings that there was significant  
5900 market power, that they were gatekeepers to commerce, that they  
5901 were crushing innovation, disadvantaging consumers, and small  
5902 businesses.

5903 So it grew out of the factual record that was generated in  
5904 that 500-page report. It wasn't sort of just pulled out of the  
5905 air. It was that was the scope of the investigation, and this  
5906 recommendation or language is consistent with our findings in  
5907 the investigation.

5908 Thank you. I yield back.

5909 Mr. Bishop. I thank the gentleman, and reclaiming my time.

5910 I submit that that makes it even clearer that the idea of the  
5911 FTC designating is superfluous.

5912 The FTC could proceed with an action in the very same way

5913           you just posited a state attorney general could proceed with an  
5914           action if a company meets the definition, meets the criteria.

5915

5916           The only reason I can think of to have the FTC designate  
5917           is so that the FTC, rather than an Article 3 judge or jury, becomes  
5918           the determiner of fact and the decision -- the fact-based decision  
5919           whether they're covered they're bound on appeal -- on the  
5920           administrative appeal.

5921           And to me that is -- reinforces the notion that you're  
5922           delivering power to the administrative agency far beyond what  
5923           there's a need for. You only need to do that when you can't define  
5924           something in the legislation, and if these criteria are  
5925           sufficiently clear and they derive from the investigation, which  
5926           has gone on for years, then we ought to be able to stop at that.

5927

5928           I yield back my time.

5929           Chairman Nadler. Who else seeks recognition? For what  
5930           purpose does the gentleman from Kentucky seek recognition?

5931           Mr. Massie. Thank you, Mr. Chairman. I move to strike the  
5932           last word on this amendment.

5933           Chairman Nadler. The gentleman is recognized.

5934           Mr. Massie. You know, portability and interoperability,  
5935           this -- if you're a user of software, that sounds like a great  
5936           thing. But we need to understand how technologically difficult



5937 interoperability is and also how dangerous it is.

5938           If you look at the biggest hacks that have occurred, they  
5939 rely on aspects of interoperability -- what is the piece of code  
5940 that all these pieces of software have in common that we can  
5941 exploit?

5942           Because the more interoperability there is, the more  
5943 vulnerability there is, and so imposing interoperability, I  
5944 think, is a dangerous thing.

5945           Portability sounds good. It's going to be hard to achieve.  
5946           Maybe you're talking about export ability, because to require  
5947 a company to comply with the standards of another company, you  
5948 may be violating their intellectual property.

5949           But to export the data that might be an okay thing. But  
5950 understand this. Natural monopolies -- companies love to have  
5951 their standard as the standard that everybody has to comply with  
5952 in order to compete with them.

5953           This is what they do. They want interoperability. They  
5954 use interoperability to maintain their market dominance. If you  
5955 can have the standard for how the videos are stored or if you  
5956 can have the standard for how documents are shared, then you can  
5957 dominate a market.

5958           And so what we're doing is saying let's get the government  
5959 in there and impose this aspect of market dominance. Let's help  
5960 these companies establish these standards that they use to keep

5961 their monopolies.

5962           What am I talking about? For instance, let me give you an  
5963 example. If you want to do business with the federal government,  
5964 the federal -- and you've invented a new operating system or a  
5965 new computer and it's better than anything that ever existed,  
5966 guess what the government is going to tell you today?

5967           Oh, you're going to have to interoperate with the Intel  
5968 management engine and you're gonna have to interoperate with the  
5969 Microsoft operating system if you want to do business with the  
5970 government.

5971           Who got that in the purchasing agreements. Those companies  
5972 that have the monopolies. They love to enforce interoperability  
5973 because the smaller company cannot dedicate millions of dollars  
5974 to develop swaths of code that have already been developed by  
5975 Microsoft or Intel. They can't create a foundry.

5976           So what do they have to do to interoperate? They're going  
5977 to have to license. They're going to have to buy a license from  
5978 the monopoly to compete with the monopoly if interoperability  
5979 is a requirement.

5980           That's the way it works today. If you want to do business  
5981 with the government and you got a better computer or a better  
5982 operating system, well, go talk to Intel and go talk to Microsoft  
5983 because they've got market dominance and if you want to sell to  
5984 the government you got to interoperate.

5985 Mr. Cicilline. Mr. Massie, will you yield?

5986 Mr. Massie. I will yield.

5987 Mr. Cicilline. Yeah. So I think, again -- sorry.

5988 Mr. Massie. If you'll -- and then you -- I've got a question  
5989 for you, too.

5990 Mr. Cicilline. Yeah. So this interoperability and  
5991 portability only applies to covered platforms. So the little  
5992 guy that you just described would have the ability to opt in but  
5993 would not be required to provide interoperability and data  
5994 portability.

5995 So it's exactly the little guy that would not be obligated  
5996 to do that, only those firms that meet the covered platform  
5997 definition because of their market dominance, because of the size  
5998 of the market that they control, the number of users, their market  
5999 caps, that they would be required to --

6000 Mr. Massie. But what if -- reclaiming my time.

6001 What if the little guy wants to be a big guy? What if --  
6002 what if --

6003 Mr. Cicilline. You may -- however, you're not required to  
6004 is my point under legislation.

6005 Mr. Massie. So you don't have to interoperate? We're not  
6006 going to require that from these companies?

6007 Mr. Cicilline. Correct. It is not required other than for  
6008 the covered platforms.

6009 Mr. Massie. Well, that's a problem. What if you want to  
6010 grow up and --

6011 Mr. Cicilline. Then you're allowed to. You may volunteer  
6012 this standard. You're not required to.

6013 [Cross talk.]

6014 Mr. Massie. -- interoperate with -- I mean, I've developed  
6015 software, CAD software and, boy, that was the Holy Grail to  
6016 interoperate with the big guys. It was just not achievable  
6017 without buying a license --

6018 Mr. Cicilline. And you would be permitted to do that.  
6019 Nothing in this legislation would prevent you from doing that.  
6020 It's a requirement for the covered platforms --

6021 [Cross talk.]

6022 Mr. Massie. Reclaiming -- reclaiming -- reclaiming my time.  
6023 I've got a question for you. Did -- was this -- was your  
6024 bill or any of the bills that we're debating today changed to  
6025 exclude Microsoft, the standard?

6026 Mr. Cicilline. Absolutely not.

6027 Mr. Massie. Did Microsoft get an early copy of the bill?

6028 Mr. Cicilline. Absolutely not. We share drafts of bills  
6029 throughout the investigation with people who participated in the  
6030 investigation to get their feedback.

6031 That happened all throughout the investigation and the  
6032 drafting. So they were -- they were -- all of the people who

6033 participated in the investigation. That included advocates,  
6034 think tanks --

6035 Mr. Massie. Yeah. I would -- reclaiming my time. I wasn't  
6036 -- reclaiming my time. I wasn't here for the investigation.  
6037 I thought we were debating a bill, not an investigation.

6038 And it just feels a little swampy to me that we find this  
6039 document that says Microsoft confidential and it's a copy of the  
6040 bill, and they probably had a copy of the bill before I did, and  
6041 then -- I'm talking about your bill, not the particular bill we  
6042 have here.

6043 And then it got changed so that it miraculously doesn't apply  
6044 to Microsoft anymore. That just feels a little bit swampy to  
6045 me.

6046 My time is expired and I yield back.

6047 Mr. Johnson of Louisiana. Mr. Chairman?

6048 Chairman Nadler. For what purpose does -- for what purpose  
6049 does Mr. Johnson seek recognition?

6050 Mr. Johnson of Louisiana. To strike the last word.

6051 Chairman Nadler. The gentleman is recognized.

6052 Mr. Johnson of Louisiana. Thank you, Mr. Chairman.

6053 A lot has been said today and we have a lot longer to go.

6054 But, on the general idea that this is a rush to the full committee,  
6055 I just want to point out it's not just members here in the room,  
6056 and not just conservatives, that are concerned about this.

6057           I wanted to seek consent to enter into the record a letter  
6058           from some of our colleagues on the chairman's side of the aisle,  
6059           the New Democrat Coalition. This is a letter dated June 18,  
6060           signed by a number of Members on the Democrat side in the House,  
6061           and they address it to Speaker Pelosi and Majority Leader Hoyer,  
6062           yourself, and Subcommittee Chair Cicilline.

6063           And they note -- and I'm just going to read from the letter  
6064           -- quote, "The scope and impact of these bills" -- meaning all  
6065           of them, the five antitrust bills -- "could have a tremendous  
6066           impact on the products and services many American consumers  
6067           currently enjoy and the competitiveness of our innovation  
6068           economy. Notably, stakeholders and policy experts are raising  
6069           concerns these proposals may weaken personal privacy protections,  
6070           cybersecurity, and increase the spread of dangerous conspiracy  
6071           theories and misinformation. On behalf of the New Democrat  
6072           Coalition, instead of proceeding directly to markup, we  
6073           respectfully request you hold full legislative hearings on these  
6074           specific bills to better understand their impacts and the intended  
6075           and unintended consequences of legislation."

6076           And the letter goes on to say that these are just complex  
6077           and far-reaching issues, that there seems to be a rush to judgment,  
6078           as you heard from Mr. Lieu, Mr. Bishop, and many others here today.

6079           And there's a lot of us that have that pause and that concern.

6080           I just want to note it's signed by the following Members

6081 of Congress: Suzan DelBene, Scott Peters, Sharize Davids, Ann  
6082 McLane Kuster, Chrissy Houlahan, Kathy Manning, Brad Schneider,  
6083 Stacey Plaskett.

6084 I'd like to seek consent to enter this into the record and  
6085 just want to make note here --

6086 Chairman Nadler. Without objection.

6087 Mr. Johnson of Louisiana. Thank you.

6088 [The information follows:]

6089

6090 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

6091           Mr. Johnson of Louisiana. I make the note here that there's  
6092 a lot of good faith, I think, I mean I would acknowledge, on both  
6093 sides. I think there is broad bipartisan agreement with the top  
6094 lines and what we need to accomplish here, what we're trying to  
6095 accomplish. But, as we know, with all legislation, the devil  
6096 is in the details, and many of us are having grave concern about  
6097 some of the details.

6098           So, with that, I yield --

6099           Mr. Gaetz. Would the gentleman yield for a question?

6100           Mr. Johnson of Louisiana. I yield.

6101           Mr. Gaetz. I'm a bit curious because at the beginning of  
6102 the hearing I heard the ranking member suggest that one of the  
6103 reasons to oppose the legislation is because someone who had  
6104 worked for Chairman Nadler supported it. And now, I'm hearing  
6105 from my friend from Louisiana that we should oppose the  
6106 legislation because there's some Democrats who also oppose it.

6107           Does the gentleman from Louisiana have a guess as to whether  
6108 or not the individuals who signed the New Democrat Coalition  
6109 letter might be extensively financially supported by the  
6110 Political Action Committees that are funded by the employees of  
6111 the four major platforms?

6112           Mr. Johnson of Louisiana. Reclaiming my time, I don't have  
6113 any information about these individuals, but I'll say that we  
6114 don't impugn the motives of any of our colleagues. And I do



6115 believe -- I do believe -- that most of the people on this  
6116 committee, and elsewhere in Congress, have similar concerns that  
6117 we're in a "Brave New World"; we need to address what big tech  
6118 is doing and how it's done. But to come into committee with these  
6119 five hugely important, encompassing bills is difficult.

6120 Mr. Jordan. Will the gentleman yield?

6121 Mr. Johnson of Louisiana. I'm happy to yield. I yield to  
6122 the ranking member.

6123 Mr. Gaetz. It might be something other than bravery.

6124 Mr. Jordan. I thank the gentleman for yielding.

6125 I just want to go back to the point Mr. Bishop raised in  
6126 conjunction with what Mr. Massie raised. Mr. Massie raised the  
6127 idea that Microsoft got a copy of the bill, the Cicilline bill,  
6128 before any of us did. And Mr. Bishop was talking about how this  
6129 definition of covered platform was determined.

6130 The response I thought I heard from the gentleman from Rhode  
6131 Island was a 16-month investigation -- I think this is a direct  
6132 quote -- "The 16-month investigation determined the definition  
6133 we use for covered platform," which sort of begs the obvious  
6134 question: well, then, why did it change in the last week and  
6135 a half? If it was a 16-month investigation, talking with all  
6136 these big tech companies that determined the definition of what  
6137 a covered platform is, why did, a week and a half ago, it say  
6138 500,000 users a month, and then, it went to 50,000 -- or excuse

6139 me -- 50 million users a month? Why did that change? That's  
6140 the fundamental question.

6141 Something happened in the week and a half, not in the 16  
6142 months, something happened in a week and a half, because the  
6143 definition we were under a week and a half ago when the Democrats  
6144 first talked about these bills was 500,000 users per month, and  
6145 that changed to 50 million. Something changed. And we do, under  
6146 that change, Microsoft would have been covered under the 500,000  
6147 definition, not covered under the 50 million. I don't know.  
6148 I don't know. That's the question.

6149 Mr. Johnson of Louisiana. Reclaiming my time, it's not a  
6150 rhetorical question. I think we need an answer. I'm wondering  
6151 if Chairman Cicilline or the subcommittee, or anyone else, might  
6152 have an answer. I'm happy to yield to Mr. Cicilline if he's got  
6153 --

6154 Mr. Gaetz. I thank the gentleman for yielding.

6155 I was on the subcommittee with Mr. Cicilline. And when the  
6156 investigation began, the four companies that we invited to  
6157 participate, these four CEOs that we examined were Mr. Pichai,  
6158 Mr. Zuckerberg, Mr. Bezos, and Mr. Cook. So, it's certainly not  
6159 surprising to me that those are the four companies that we arrive  
6160 at with legislation, because that's where the investigation  
6161 originated.

6162 Mr. Johnson of Louisiana. I'm out of time.

6163 Chairman Nadler. The gentleman's time has expired.

6164 For what purpose does Mr. Tiffany seek recognition?

6165 Mr. Tiffany. To strike the last word.

6166 Chairman Nadler. The gentleman is recognized.

6167 Mr. Tiffany. Thank you, Mr. Chairman.

6168 So, what I heard, I think it was just before the break, from  
6169 the gentleman from Rhode Island -- and I know he's brought this  
6170 before us in good faith, as others have -- but I what heard was  
6171 that there was not -- we can count on the FTC that there's not  
6172 going to be a release of information; that we're not going to  
6173 see unauthorized releases of information; that there will be some  
6174 privacy that will be respected, and things like that.

6175 And I just think about the point that Mr. McClintock made  
6176 in regards to the IRS, and it really concerns me. All of the  
6177 bills that we're seeing today, what we heard earlier today was  
6178 that the IRS needs more money; the FTC needs more money, and that  
6179 the FTC is not going to release information that they shouldn't,  
6180 when we've got a record of the IRS that they're doing that. And  
6181 they've been doing it for a long time.

6182 And, in fact, this goes back, we saw it very personally in  
6183 Wisconsin a decade ago by Lois Lerner, when Lois Lerner conspired  
6184 with an election official, the top election official in Wisconsin,  
6185 and it ended up where they raided people's homes. They raided  
6186 people's homes in the early morning hours in something that,

6187 ultimately, was struck down by the courts. But this enormous  
6188 power is being sent to our federal government.

6189 I want to piggyback, also, on the comments that Mr. Lieu  
6190 made, because I think he really hit the nail on the head. So,  
6191 I'm hearing today that there's this two-and-a-half-year process,  
6192 and this is a classic argument I've seen so many times in  
6193 legislative proceedings, is "We've worked so hard at this."  
6194 Well, you've got to make sure that these bills are ready for  
6195 primetime.

6196 And I think what we're seeing right now is that there are  
6197 some real concerns, and Mr. Lieu brought that up today, that,  
6198 boy, I don't know if I can vote on this because I just don't have  
6199 enough information. And I think there's quite a few people that  
6200 are sitting both on this committee and in this legislative body  
6201 that they're not prepared to be able to vote on this.

6202 So, I would just close by saying this: big tech is a big  
6203 problem. They are a big problem for this country. From what  
6204 I've been seeing, they are not loyal to the United States of  
6205 America at times, the country that has had the laws in place,  
6206 the framework in place, to be able to establish what they did,  
6207 to be as successful as they have. And you really wonder sometimes  
6208 why they, I think, actively diss the United States of America,  
6209 which the framework of our government is the reason why they were  
6210 so successful.

6211           And the censorship that they've exercised is just  
6212 unconscionable in a country like this that believes in freedom  
6213 of speech. I mean they are virtually at times the book-burners  
6214 of decades ago. And so, that's really of great concern. Big  
6215 tech is a big problem.

6216           But you know what a bigger problem is? There's one other  
6217 thing that's a bigger problem, and that is big government. And  
6218 that is when government does not stay in its lane to make sure  
6219 that it's serving the people, in this instance, of the United  
6220 States of America.

6221           And what we saw with the IRS -- and we just saw recently,  
6222 as Mr. McClintock alluded to -- they took the liberty of violating  
6223 people's privacy. And I think we have to be deeply concerned  
6224 about that, as we go through all of these bills. And I know most  
6225 of people here, if not all, that they are concerned about that.

6226           But I would just go back to Mr. Lieu's point. I don't know  
6227 if this stuff is ready with all the questions that are arising.

6228           Mr. Bishop. Would the gentleman yield?

6229           Mr. Tiffany. I yield back.

6230           Mr. Bishop. Would the gentleman yield.

6231           Mr. Jordan. Will the gentleman yield?

6232           Mr. Tiffany. I would yield the balance of my time to Mr.  
6233 Jordan.

6234           Mr. Jordan. I just want to ask the question for the fourth

6235 time. Mr. Massie has asked it twice. I've asked it once; I want  
6236 to ask it again. Why did the definition change?

6237 I mean, we've heard now since 10 o'clock this morning that  
6238 this was the greatest investigation in history, the most  
6239 bipartisan investigation; everyone was onboard. The 16-month  
6240 investigation determined the definition of what a covered  
6241 platform is, and then, the last week and a half the definition  
6242 changed. And no one will answer the question, why? Why did it  
6243 change? Now we have one piece of evidence that Mr. Massie put  
6244 in front of the committee, which is a confidential copy of the  
6245 Cicilline bill given to Microsoft. Why did the definition  
6246 change?

6247 I mean, we've heard it from everyone: everyone worked  
6248 together; we all were in this. Sixteen months, that determined  
6249 the definition. But, then, it changed. Someone answer that  
6250 question. No one will answer. I think the American people, when  
6251 we're getting now to see big tech marry up with big government,  
6252 the American people deserve an answer to that simple question.

6253 I thank the gentleman for yielding.

6254 Mr. Tiffany. I yield back, Mr. Chairman.

6255 Chairman Nadler. The gentleman yields back.

6256 I'll recognize myself and I'll yield to Mr. Cicilline.

6257 Mr. Cicilline. Thank you, Mr. Chairman.

6258 I'm going to try to answer this again for my colleagues.

6259 I think what they might be referring to is an early draft of  
6260 the bill which had a bracketed figure around it. This bill was  
6261 introduced in the Senate with a \$100 million cap, and I think  
6262 that was a month ago. And I think the final bills that were  
6263 introduced in all of these bills that are before us today have  
6264 the same covered platform definition, which went lower to 50  
6265 million. So, it's different than the Senate version.

6266 I think maybe what you're holding, although I've not seen  
6267 it, was an earlier version which had bracketed numbers while these  
6268 determinations were being made. But all the bills that were  
6269 introduced settled on this same definition. It's a lower  
6270 threshold than the Senate introduced in the ACCESS Act of 100  
6271 million. It's 50 million. And again, I think it was the sense  
6272 of the sponsors of the bill that this reflected the record that  
6273 was developed in the investigation, as Mr. Gaetz said, of four  
6274 companies.

6275 Mr. Massie. Would the gentleman yield for a quick question?

6276 The document -- and I'm sorry you don't have a copy; we'll  
6277 run it over to you right now -- it says, "H.R." It doesn't say  
6278 Senate. It's says, "H.R."

6279 Mr. Cicilline. No, no, that's what I said. It's probably  
6280 an early draft of the House version of it.

6281 Mr. Massie. But it's not the ACCESS Act. It's your bill.  
6282 It's the nondiscrimination -- it's the bill you're sponsoring.

6283           That's the one we're bringing up.

6284           Mr. Cicilline. We used the same covered platform definition  
6285 in all five bills.

6286           Mr. Massie. No, I know that, but we're talking about the  
6287 Cicilline bill, not the ACCESS bill. That's what we have that  
6288 says, "Confidential Microsoft". Not that was introduced by the  
6289 Senate; we're talking about your bill.

6290           Chairman Nadler. It's my time. Okay. Let me just say  
6291 that, in general, I want to thank Ranking Member Buck for offering  
6292 this amendment. The amendment eliminates the bill's exemption  
6293 to the Federal Advisory Committee Act, to the FTC technical  
6294 committees established under the Act. The Federal Advisory  
6295 Committee Act is, arguably, inapplicable to the technical  
6296 committees, since they are private public advisory commissions.

6297           There will be opportunity for public oversight and input  
6298 in the standard-setting process. Regardless of this amendment,  
6299 any standards issued by the FTC under the Act, under this Act,  
6300 will be subject to notice and comment requirements. These  
6301 requirements will increase transparency. They reflect best  
6302 practices for these types of private public technical committees.

6303           And therefore, I support the amendment and I urge my colleagues  
6304 to do the same.

6305           I yield back.

6306           Who seeks recognition?



6307 Mr. Gaetz, for what purpose does Mr. Gaetz --

6308 Mr. Gaetz. To strike the last word.

6309 Chairman Nadler. The gentleman is recognized.

6310 Mr. Gaetz. I thank the chairman.

6311 I support the Buck amendment. I think that the improvements  
6312 we can make to these bills to enhance transparency will build  
6313 confidence in the ultimate legislative outcome.

6314 I wanted to address a couple of points that my friends have  
6315 made on the right side of the aisle. When one of my colleagues  
6316 says the government just needs to stay in its lane, it really,  
6317 I think, sharpens the digital interface and the consumer  
6318 interaction with it, the importance of it, and the inability to  
6319 be able to rein in these platforms in any other way.

6320 And I'm glad that we've taken a measured approach in this  
6321 package to not only give the FTC additional tools, but also to  
6322 allow state attorneys general to do that, so that people can have  
6323 multiple lanes with which to approach the abuses of big tech.

6324 And when my friend from California says that people can  
6325 choose to enter into these relationships or not, based on the  
6326 terms of service, I just have to wonder whether any of our fellow  
6327 Americans have ever found a moment where they've said, "Thank  
6328 goodness for the Twitter terms of service." Or the Google or  
6329 YouTube or Facebook terms of service. That typically is there  
6330 to protect the company, and they are contracts of adhesion. They

6331 are explicitly contracts of adhesion, and I think that that  
6332 recognition would be helpful.

6333           Hearing all the concern about the Microsoft exclusion raises  
6334 a question in my mind. If the legislation were to reflect the  
6335 original thresholds, would my colleagues from Kentucky and Ohio  
6336 be more amenable to the legislation? I understand it's a fair  
6337 question to ask why someone's perspective on a bill changed, but  
6338 it seems like a strawman if that's not something substantive  
6339 relevant to your ultimate determination on whether to support  
6340 the bill.

6341           So, I would ask my friend from Ohio, if the draft which Mr.  
6342 Massie has uncovered for us were an amendment, would he vote for  
6343 it? No?

6344           Mr. Massie. Would the gentleman yield?

6345           Mr. Gaetz. Yes, certainly. Certainly. I would yield to  
6346 Mr. Massie.

6347           Mr. Massie. To me, it's more of a red flag. Who wrote these  
6348 bills? Like if Microsoft got a crack at rewriting it, did the  
6349 other four companies get a crack at rewriting it? And to Ken  
6350 Buck's amendment, which would improve the bill, will they get  
6351 another crack at writing the details in this committee?

6352           Mr. Gaetz. Well, I wonder that myself.

6353           Mr. Massie. Yes, good point. Good point.

6354           Mr. Gaetz. I'm going to reclaim my time.

6355 I wondered that myself. And one piece of evidence that's  
6356 very persuasive to me is that these four companies that are covered  
6357 are doing everything possible to oppose these bills. That's what  
6358 The New York Times has reported. That's what, even today,  
6359 Politico is reporting that they are lobbying up; that they are  
6360 spending money; that they are squeezing and threatening Members  
6361 of Congress. They are threatening to withhold Political Action  
6362 Committee dollars. And we all know that big tech is one of the  
6363 major industries that funds political campaigns and that motivate  
6364 Members of Congress to do things for those reasons.

6365 I want to explicitly say I don't think that's the case for  
6366 anyone on this committee. I think all of the debate we've heard  
6367 has been thoughtful and based on people's view of how the  
6368 legislation would impact our fellow Americans. But I can't help  
6369 but notice that the big tech companies seem to think that they  
6370 have the ability to motivate people with their lobbyists and with  
6371 their donations, and that's where they're trying to kill the  
6372 bills.

6373 Mr. Bishop. Would the gentleman yield?

6374 Mr. Gaetz. And I don't think they would be doing that if  
6375 -- look, if Google and Facebook thought that they could go to  
6376 these committees in the FTC and wrap the apparatus of big  
6377 government around their businesses, they would be for it. But  
6378 they're not because they know it would limit their power.

6379 I'll yield to the gentleman from North Carolina.

6380 Mr. Bishop. And Mr. Massie said it's a red flag. It's what  
6381 we'd call biased evidence, right? In other words, what is the  
6382 source of the legislation? And to the extent it's been authored  
6383 by or passed by or improved or edited by the targets of the  
6384 regulation, it begs the question whether there are things lurking  
6385 there that we haven't recognized, especially when we get today  
6386 --

6387 Mr. Gaetz. Right, Mr. Bishop, but reclaiming my time, all  
6388 of that comes to the point of whether they're for it or against  
6389 it, right? At the end of the day, these companies have a binary  
6390 decision for them: do they believe this is going to be helpful to  
6391 them or are they going to believe it's harmful?

6392 And, of course, Mr. Cicilline has socialized the legislation  
6393 to stakeholders. One would expect in almost any bill that that  
6394 would happen. We all do that with the bills that we sponsor.

6395 Chairman Nadler. Would the gentleman yield?

6396 Mr. Gaetz. I would be willing to accept the lower threshold  
6397 because I think Mr. Massie makes a point for how Microsoft should  
6398 be included.

6399 I yield to the chairman.

6400 Chairman Nadler. I simply want to say I find myself in rare  
6401 agreement with the gentleman.

6402 Mr. Gaetz. Let's not make it too common, Mr. Chairman.

6403 [Laughter.]

6404 Chairman Nadler. That was all I wanted to say, actually.

6405 Mr. Gaetz. Thank you. I yield back.

6406 Chairman Nadler. The gentleman yields back.

6407 Okay.

6408 Mr. Roy. Mr. Chairman?

6409 Chairman Nadler. Who else seeks recognition on the  
6410 amendment?

6411 Mr. Roy. Roy.

6412 Chairman Nadler. Mr. Roy?

6413 Mr. Roy. Move to strike the last word.

6414 Chairman Nadler. The gentleman is recognized.

6415 Mr. Roy. So, at the current moment, we're debating the Buck  
6416 amendment that changes the provision, right, with respect to the  
6417 committees or the secret committees, and so forth? So, on that  
6418 point, I certainly think that amendment is an improvement and  
6419 I think a good-faith effort to improve it.

6420 I am currently not inclined to support the underlying bill.

6421 I'm going to look at all the amendments here as it unfolds in  
6422 this debate.

6423 I think that the gentleman from North Carolina has said it;  
6424 I think the ranking member has said it, and others, about the  
6425 need for legislative hearings and further debate on this important  
6426 matter.

6427           The only thing that I think, though, that I worry is getting  
6428 kind of lost here, or jumbled here a little bit, is I just want  
6429 to know what our actual goal here and our approach on what we  
6430 want to do about the size and scope of these companies and their  
6431 influence on competitive behavior. And I don't know the answer.  
6432 I don't. I don't know the answer.

6433           We've got legislation in front of us. We're debating it,  
6434 and right now I can't support the bill because it goes too far  
6435 with respect to interoperability, some of the issues that have  
6436 been raised, what I think that might do with respect to some of  
6437 the stuff that my friend from Kentucky raised in terms of pressures  
6438 on small companies, and so forth.

6439           But, at the end of the day, the Microsoft provision, I mean  
6440 we all -- like I haven't seen a bill in this town that the lobbyists  
6441 down on K Street didn't have before me ever.

6442           [Laughter.]

6443           I literally never have seen that. I've never seen that in  
6444 any appropriations context, anything. I am always getting  
6445 information from K Street, not from inside this building. That's  
6446 how this place works, America.

6447           And so, I usually vote no on almost everything because I  
6448 think most of the things that happen here are making things worse.

6449           And so, I'm starting from that premise here. It takes me a lot  
6450 to move off of no. So, I'm on no. People want to go down the

6451 Floor? I wear that little red button out because I start on no.

6452 But I do think in this context we're having a debate; the  
6453 American people are watching -- some. Lord help you, it's  
6454 beautiful out; don't watch this. But we're watching this, and  
6455 what are we going to do? Are we going to do anything?

6456 I think the gentleman from Kentucky raised an important  
6457 point. The gentleman from Florida asked the question, "Would  
6458 you support this bill without the Microsoft?" I think the answer  
6459 is probably no. I think because of a lot of the sensibilities  
6460 that I have about not really wanting to empower government to  
6461 interfere and jump in and start mandating what companies can and  
6462 can't do, and who they can acquire and who they can't acquire.

6463 But I'm troubled, and we should all be troubled, I think  
6464 we're all troubled by the size and scope of these companies.  
6465 They're massive. So, I think if you take this legislation as  
6466 a starting place or not, I'm troubled by the fact that it just  
6467 focuses on the four companies. That's something I've shared with  
6468 the ranking member, that it just zeroes in on a definition that  
6469 kind of outlines those four companies, although I've heard that  
6470 Microsoft might actually get swept into the definition, depending  
6471 on -- but I don't know. I'll take a look at it.

6472 But my point is, if we zero in, you're picking winners and  
6473 losers if we define a class and we say it's these four versus  
6474 some other company or not. And I don't like being in that

6475 business.

6476 But I think we ought to be having a further debate, whether  
6477 it's in the context of a markup, where we're effectively having  
6478 a debate that's, more or less, like a legislative hearing, but  
6479 it would be great if we had witnesses and we're having a  
6480 legislative hearing about where we actually go with respect to  
6481 what Congress does with respect to antitrust law inserting itself  
6482 into the market. And that's where I would hope that we would  
6483 go in having a conversation about this.

6484 And as we offer more amendments and we continue to debate  
6485 this particular measure, I hope we will go down the road of  
6486 figuring that out and figuring out what's going to be in the best  
6487 interest of providing a competitive landscape and knowing how  
6488 much power should actually be invested in any federal agency,  
6489 when it inserts its fingers, or Congress inserts its fingers,  
6490 into what private enterprise can or can't do.

6491 With that, I'll yield back.

6492 Chairman Nadler. The gentleman yields back.

6493 For what purpose does Mr. Correa seek recognition?

6494 Mr. Correa. Thank you, Mr. Chairman. Move to strike the  
6495 last word.

6496 Chairman Nadler. The gentleman is recognized.

6497 Mr. Correa. I also want to join my colleagues in thanking  
6498 Mr. Cicilline and the other members of the committee for a



6499 tremendous job in addressing this very important issue of  
6500 antitrust, high tech, mega-firms, so to speak.

6501 And as I think, and I was listening to the debate here, I'm  
6502 struck by the fact that this is a big job. We've spent almost  
6503 to years working on this issue. Yet, I think, as I listen to  
6504 some possible unintentional drafting errors of one firm being  
6505 benefitted over another, that's not our job.

6506 I have in front of me this article, "California Tech,  
6507 Commerce, Jobs, and Tax Revenues" by Michael Mandel. And I would  
6508 ask that it be submitted for the record, without objection.

6509 Chairman Nadler. Without objection.

6510 [The information follows:]

6511

6512 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

6513           Mr. Correa. And this article really sums it up. The  
6514 ecosystem dominance, good or bad for our country? Invested a  
6515 stunning \$65 billion in the United States alone in the year 2020,  
6516 playing a crucial role, thriving ecosystem benefitting workers.

6517       From 2015 to 2020, e-commerce generated 1.7 million net new jobs  
6518 -- 1.7 net new jobs, a million in the U.S. -- and added over almost  
6519 \$300 billion in labor income.

6520           I think antitrust is an important goal. It's a tradition  
6521 of this country. Yet, at the same time, as we look at these areas,  
6522 these industries that compete not in the United States, but  
6523 compete internationally, we want to make sure that we don't kill  
6524 the goose that lays the golden eggs. We want to make sure that  
6525 we do not kill future job creation, future wealth creation for  
6526 our nation.

6527           So, I would ask that we slow down. And as my colleague from  
6528 California, Mr. Lieu, said, we need to look at this issue, address  
6529 it with a much, much finer introspection.

6530           With that, I yield.

6531           Chairman Nadler. The gentleman yields back.

6532           Does anyone else seek recognition?

6533           [No response.]

6534           If not, the question occurs on the amendment. All in favor,  
6535 say aye.

6536           Opposed, no.

6537           The ayes have it. The amendment is agreed to.

6538           Are there any further amendments to the amendment in the  
6539 nature of a substitute?

6540           Ms. Lofgren. Mr. Chairman?

6541           Chairman Nadler. For what purpose does the gentlelady from  
6542 California seek recognition?

6543           Oh, for what purpose does Ross seek recognition?

6544           Ms. Ross. I move to strike the last word, Mr. Chairman.

6545           Chairman Nadler. The gentlelady is recognized.

6546           Ms. Ross. Thank you.

6547           And hopefully, this will be a nice lead-in to some  
6548 amendments.

6549           So, we've been talking a lot about the bill, and we've been  
6550 talking about minor amendments. But I think we're going to see  
6551 some bigger amendments.

6552           And I want to, first, thank our colleague, Ms. Scanlon, for  
6553 bringing this bill forward, along with her Republican cosponsor,  
6554 and say that I do believe that consumers should have the right  
6555 to have their personal data, to know when it's collected, how  
6556 it's used, who it's shared with, and the right to data portability.

6557           This bill is a step in the right direction toward giving  
6558 consumers that control, but, as we've heard, it does raise some  
6559 concerns. And there's currently no comprehensive federal data  
6560 privacy law. There's a patchwork of state laws, but they hardly

6561 offer consumers the robust protections that they deserve. And  
6562 in the absence of comprehensive data privacy protections, we need  
6563 to make sure that this bill does not inadvertently make it easier  
6564 for bad actors to get a hold of personal information.

6565 We also need to make sure that intellectual property remains  
6566 protected. It's that intellectual property that we want to keep  
6567 in this country and not in other countries.

6568 I'm glad that we're about to hear some amendments that will  
6569 help to address some of these concerns. I think these amendments  
6570 will strengthen the bill and make it easier for more of us to  
6571 support it.

6572 And with that, Mr. Chairman, I yield back.

6573 Chairman Nadler. The gentlelady yields back.

6574 For what purpose does the gentlelady from California seek  
6575 recognition?

6576 Ms. Lofgren. I have an amendment at the desk. It's the  
6577 amendment amending page 10 and page 12.

6578 Chairman Nadler. The clerk will report the amendment.

6579 Ms. Fontenot. "Amendment to the amendment in the nature  
6580 of a substitute to H.R. 3849 offered by Ms. Lofgren of California.

6581 "Page 10, line 14, strike '\$600 billion'" --

6582 Chairman Nadler. Without objection, the amendment to the  
6583 amendment is considered as read.

6584 [The amendment of Ms. Lofgren follows:]

6585

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

6586 Chairman Nadler. The gentlelady is recognized.

6587 Ms. Lofgren. Thank you, Mr. Chairman.

6588 There's been a lot of discussion here on the Buck amendment  
6589 about, actually, my amendment, which would be to address the issue  
6590 of covered platforms. What this amendment would do would alter  
6591 the definitions. As drafted, the bill requires minimum revenues  
6592 or market capitalization of \$600 billion in order to qualify as  
6593 a covered platform, among other requirements. This amendment  
6594 would lower that threshold amount to \$250 billion.

6595 In addition, the bill strikes an addition that the manager's  
6596 amendment made to the definition of online platforms. In the  
6597 bill as introduced, operating systems were included among the  
6598 services that qualified as online platforms. The manager's  
6599 amendment limited this to only, quote, "mobile online platforms".

6600 That had the effect of, for the most part, exempting Microsoft  
6601 from coverage of the bill. This amendment would restore the  
6602 original term, including operating restrictions without  
6603 restriction.

6604 Here's why I believe this amendment deserves support. The  
6605 market capitalization, as drafted, is really an arbitrary amount.

6606 It's plainly designed, as members have said, to target just a  
6607 few of the largest platform companies. This amendment was  
6608 designed based on the approximate market capitalization of the  
6609 25 largest U.S. companies. With this change, covered platforms

6610 may also be applied to other companies with enormous potential  
6611 market power in online markets.

6612 And I'd ask unanimous consent to put two articles in the  
6613 record from Techtured, one June 11th and one June 16th. Techtured  
6614 is one of the most incisive analysts of the tech scene.

6615 Chairman Nadler. Without objection.

6616 [The information follows:]

6617

6618 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

6619 Ms. Lofgren. But here's what they said, looking at the  
6620 valuation. "It looks like it only applies to the covered  
6621 platforms. That's it. It seems notable that companies which  
6622 are also kind of powerful and dominant would happen to fall just  
6623 somewhat beneath the threshold, including Visa, Mastercard,  
6624 JPMorgan Chase, Bank of America, Walmart, Disney, Comcast, AT&T,  
6625 and Verizon" would not be included.

6626 Now to be clear, covered platforms would not automatically  
6627 include all companies above the \$250 billion threshold. For  
6628 example, they would still have to be offering an online platform  
6629 and meet the user thresholds in the bill. Most importantly, a  
6630 company would also have to be a critical trading partner under  
6631 the bill. But if a company has such power, there's no good reason  
6632 for not subjecting it to the same regulations as other powerful  
6633 platforms.

6634 Now operating systems, as an online platform, there's no  
6635 good reason to limit the bill's coverage to only smartphone and  
6636 mobile service device operating systems, as opposed to other  
6637 computing devices like laptops and desktop operating systems.

6638 This amendment would also better future-proof the definition  
6639 of covered platforms, which otherwise would require further  
6640 legislation before they apply to operating systems for other  
6641 platform technologies, such as virtual reality, where future  
6642 corporate dominance is certainly possible.



6643           Now, while it's unclear, it appears that the elimination,  
6644           as I mentioned, of the mobile operating system may have had the  
6645           effect of excluding Microsoft Windows from the covered platform.

6646           That happened between the bill and the manager's amendment.  
6647           I don't think there's any good reason for that distinction.  
6648           Microsoft services qualify as a critical trading partner and meet  
6649           the other requirements. If they do, they should be covered.

6650           And I'll just say this: you know, in my district I have  
6651           tens of thousands of constituents who work in the technology  
6652           industry. Every one of these companies has a footprint in my  
6653           district. I do think that there is a lot that needs to be  
6654           corrected in terms of problems in the tech sector, but it's  
6655           important that the remedy be fitting the problem. And I'm hoping  
6656           that these amendments will help improve this bill and get us closer  
6657           to what we all want to achieve, which is a vigorous market that  
6658           well serves the American people.

6659           So, with that, Mr. Chairman, I yield back.

6660           Mr. Cicilline. Mr. Chairman?

6661           Chairman Nadler. The gentlelady yields back.

6662           For what purpose does the gentleman from Rhode Island seek  
6663           recognition?

6664           Mr. Cicilline. I move to strike the last word.

6665           Chairman Nadler. The gentleman is recognized.

6666           Mr. Cicilline. Thank you.

6667 I thank the gentlelady and I appreciate her concerns. And  
6668 I would just say at the outset, of course, Microsoft nor any other  
6669 company is not exempt from the provisions of the statute. But  
6670 I understand the issue that she proposes or the solution, but  
6671 her amendment would significantly alter the covered platform  
6672 definition in the bill. And I think, for example, lowering the  
6673 threshold in the way that the amendment suggests may have, in  
6674 fact, unintended consequences. One thing that comes to mind  
6675 immediately is payment processors.

6676 So, I think the second part of the amendment, striking the  
6677 word "mobile," I think is something that I could certainly  
6678 support. And so, what I would ask the gentlelady is to agree  
6679 to continue to work with us. This is the definition sets used  
6680 throughout all the pieces of legislation; that is, the definition  
6681 of covered platforms and sort of understanding what the  
6682 implications are.

6683 Chairman Nadler. Would the gentleman yield?

6684 Mr. Cicilline. Certainly.

6685 Chairman Nadler. I would simply ask if the gentlelady would  
6686 consider separating her amendment, so we could take -- so, people  
6687 could vote on the two different things.

6688 Ms. Lofgren. I would be happy to divide the question between  
6689 the page 10 amendment and the page 12 amendment.

6690 Mr. Cicilline. In which case, I would certainly support

6691 striking the word "mobile," and I would just offer to the  
6692 gentlelady if she would continue to work with me and my staff  
6693 about examining that threshold amount between now and the time  
6694 these bills go to the Floor.

6695 Chairman Nadler. So, I'm not sure, parliamentarily, how  
6696 we do this, but I would ask that there be a --

6697 Mr. Cicilline. Yes, I mean, it would have to apply to all  
6698 the bills, Mr. Chairman. That's why I'm suggesting we would have  
6699 an opportunity to work on it between now and --

6700 Ms. Lofgren. Well, let's do it for this bill, and we can  
6701 do the same thing for the other bills.

6702 Mr. Cicilline. I mean, yes, I don't think -- I'm suggesting  
6703 that changing the covered platform definition, which, again, is  
6704 supported by the record that was generated in the investigation  
6705 -- I think before anyone at least should agree to changing that  
6706 definition, we have to have a much better understanding of what  
6707 the implications are. We built and developed a factual record  
6708 to support the covered platform definition, and all I'm suggesting  
6709 is, if we could vote on striking the word "mobile," and then,  
6710 agree to continue to work on a threshold, because we'd have to  
6711 work -- it would have to be a modification to all the bills, not  
6712 just this one.

6713 Chairman Nadler. As I started saying, I'm not sure how to  
6714 do this parliamentarily, but I'd like --

6715 Mr. Cicilline. Well, if the gentlelady would proceed --

6716 Chairman Nadler. I'd like to get a vote on the "mobile".

6717 Mr. Cicilline. Okay.

6718 Ms. Lofgren. Well, I would ask unanimous consent that the  
6719 amendment be divided and that we vote on each of page 10 and page  
6720 12 separately. I'd just divide the question.

6721 Chairman Nadler. All right. I am told that we don't need  
6722 unanimous consent. The sponsor can divide the question. All  
6723 right.

6724 So, we're now considering -- we'll do it one at a time --  
6725 we're now considering the amendment on page 12.

6726 Ms. Lofgren. Parliamentary inquiry, Mr. Chairman.

6727 Chairman Nadler. Yes.

6728 Ms. Lofgren. Just for expedition's sake, I think that if  
6729 we could discuss both at the same time, so we don't get 5 minutes  
6730 for each --

6731 Chairman Nadler. Sure, we can discuss both at the same time.

6732 Ms. Lofgren. -- we'll get to the end of the evening and  
6733 finish the markup.

6734 Chairman Nadler. Yes, but I'd like a separate vote on each.

6735 Ms. Lofgren. Correct.

6736 Chairman Nadler. For what purpose does Mr. Lieu seek  
6737 recognition?

6738 Mr. Lieu. I move to strike the last word.

6739 Chairman Nadler. The gentleman is recognized.

6740 Mr. Lieu. Okay. I support both parts of Congresswoman  
6741 Lofgren's amendment because, again, I think we should not be doing  
6742 special legislation directed only at four companies. And my  
6743 understanding, based on the subcommittee chair's responses, is  
6744 that, well, this is based on investigation. So, I read just the  
6745 very first paragraph of the report, and it says, "As part of a  
6746 top-to-bottom review of the market, the subcommittee examined  
6747 the dominance of Amazon, Apple, Facebook, and Google." So, if  
6748 you're only going to pick four companies to investigate, then,  
6749 of course, your criteria is going to apply to those four companies,  
6750 and that's the problem. Because why are we excluding Microsoft?  
6751 Or for that matter, Ebay, or Twitter, or Uber, or a whole range  
6752 of tech companies?

6753 And if we think that we should have interoperability, the  
6754 whole point of interoperability is to be interoperable, which  
6755 means you need a lot of buy-in, not just four companies. So,  
6756 it would make sense to expand this to as many possible companies  
6757 as you can. You want as many companies to be involved in having  
6758 software and hardware that is interoperable. And that's why the  
6759 whole covered definition is very problematic, because it's based  
6760 on an investigation that hand-selected four companies to go after.

6761 And especially with interoperability, you want more than four  
6762 companies to be able to participate in this.

6763           So, I will be voting yes on both parts of Congresswoman  
6764 Lofgren's amendment.

6765           Chairman Nadler. Does the gentleman yield back?

6766           Mr. Lieu. Actually, one more point. I also know that it  
6767 is, also, sort of arbitrary, right? Without the benefit of a  
6768 hearing, I don't really know what \$250 billion means in terms  
6769 of market cap; I don't really know what companies are affected,  
6770 because, again, approximately half this committee has had zero  
6771 hearings on this very complicated area of law applied to a very  
6772 complicated computer area.

6773           And with that, I yield back.

6774           Chairman Nadler. The gentleman yields.

6775           For what purpose does Mrs. Fischbach seek recognition?

6776           Mrs. Fischbach. Mr. Chair, I have a parliamentary inquiry.  
6777 Mr. Chair, I am just wondering if you can clearly explain exactly  
6778 we are doing. We are dividing the amendment. The amendment has  
6779 been divided, and where is it divided and what we are discussing  
6780 now?

6781           Chairman Nadler. All right. The amendment has two parts.  
6782 It's very simple. One is the amendment to page 10; the other  
6783 is the amendment to page 12. We've divided them and we're going  
6784 to vote on them separately.

6785           Does the gentlelady yield back?

6786           Mrs. Fischbach. It was just a parliamentary --

6787 Chairman Nadler. It was a parliamentary inquiry, that's  
6788 right.

6789 Who else seeks recognition? Does anyone else seek  
6790 recognition on this amendment?

6791 Okay. For what purpose does the gentlelady seek  
6792 recognition?

6793 Ms. Scanlon. I move to strike the last word.

6794 Chairman Nadler. The gentlelady is recognized.

6795 Ms. Scanlon. I would agree with Mr. Cicilline and agree  
6796 to the page 12 amendment to strike "mobile" because I think that  
6797 does make sense in this context.

6798 But I would oppose the amendment that reduces the coverage  
6799 definition of 250. I mean, the four mega, big tech companies  
6800 that were the subject of the investigation were at the higher  
6801 level. We don't have sufficient information to say what would  
6802 happen at the other levels. I mean, someone has asked why  
6803 Microsoft wasn't covered. Microsoft was the subject of a large,  
6804 longstanding antitrust investigation and lawsuit, and for that  
6805 reason, has been dealt with in some contexts.

6806 But I think the existing definition is tailored to address  
6807 the concerns that were identified during our rigorous  
6808 investigation, which was the subject of the report that this  
6809 committee reviewed and adopted in April of this year. So, while  
6810 I appreciate the gentlelady's concerns, I think it does

6811 dramatically expand the scope of the interoperability and data  
6812 portability requirements far beyond the record that we have.

6813 So, I would urge my colleagues to adopt the striking of  
6814 "mobile" on page 12, but, then, reject the change to the definition  
6815 of the platform.

6816 I yield back.

6817 Chairman Nadler. The gentlelady yields back.

6818 Does anyone else seek recognition on these now two separate  
6819 amendments, or either one of them?

6820 For what purpose does the gentleman from Texas seek  
6821 recognition?

6822 Mr. Gohmert. To strike the last word.

6823 Chairman Nadler. The gentleman is recognized.

6824 Mr. Gohmert. There's a saying I heard when I first got to  
6825 Congress that seems to have application here: that no matter  
6826 how cynical you get, it's never enough to catch up.

6827 [Laughter.]

6828 So, I came in here and I had read the material, looked at  
6829 the bills, and I wasn't sure how I was going to vote on things.

6830 We need to rein in high tech, which could someday be controlling  
6831 the government instead of the other way around.

6832 And then, one other troubling aspect is seeing over the last  
6833 few years some of the high tech companies, noticing that China  
6834 has four-five times more people than we have, whatever it is,



6835 a lot more money to be made over there in that country, and even  
6836 seeing high tech companies censor things said here that China  
6837 may find offensive.

6838 So, there is some sensitivity to -- and I know it's  
6839 conservatives that have been censored in the last year or so,  
6840 but that could easily end up going the other way. So, we really  
6841 should be working together on this.

6842 When you see that the Act grants the FTC authority to penalize  
6843 a business that -- well, the offending platform -- for up to 15  
6844 percent of its total U.S. revenue from the previous calendar year,  
6845 or 30 percent of its U.S. revenue in any line of business affected  
6846 by the unlawful conduct, I mean that could really be a sufficient  
6847 penalty to put a business out of business. So, we could be giving  
6848 the U.S. Government enough power to intimate high tech companies  
6849 even more than China is intimidating them.

6850 So, there needs to be some control to keep U.S. privacy  
6851 private, because that has been a concern. Okay, what if China  
6852 says, "We'll let you into our market, but here's the data we need  
6853 about your folks in the United States."? You know, at what point  
6854 is the money so much that a high tech company worth hundreds of  
6855 billions of dollars cannot afford to turn it down?

6856 So, what we're doing, I'm so pleased that there's the  
6857 bipartisan discussion, and we've had that on issues and votes  
6858 throughout this day. And I'm gratified for that, because this

6859 is really serious, and it affected conservatives in the last year  
6860 or so, but that worm could sure turn in the next few years.

6861 Ms. Lofgren. Would the gentleman yield?

6862 Mr. Gohmert. Yes, certainly.

6863 Ms. Lofgren. Because there's good evidence that there are  
6864 technology companies that have, in fact, turned over data about  
6865 their users to China right now, and there's nothing in this bill  
6866 that would stop that. That's why we really need a very strong,  
6867 mandatory privacy bill, and I'm hoping that we will get to that  
6868 in this Congress and that we'll be able to do that in a bipartisan  
6869 way.

6870 And I thank the gentleman for yielding.

6871 Mr. Gohmert. That's exactly what I am concerned, one of  
6872 the big concerns I have. And, I mean, we've seen the intrusion  
6873 of the federal executive branch. I mean, when the FBI, under  
6874 Mueller, raided William Jefferson's office, I mean it went way  
6875 beyond anything they should have been allowed to do. And I think  
6876 both sides of the aisle were concerned about the intrusion of  
6877 the executive branch manipulating the legislative branch, and  
6878 we shared some of those concerns.

6879 So, I would like to see that same shared concern put together  
6880 a bill that would address these things, that is more clear what  
6881 platforms we're talking about; is more inclusive of the platforms  
6882 that we're talking about.

6883 Chairman Nadler. Will the gentleman yield?

6884 Let me simply say that I agree with the gentleman and with  
6885 Ms. Lofgren. We have to put together a strong privacy bill, and  
6886 we'll working on that, hopefully, on a bipartisan basis. But  
6887 a strong privacy bill is, I think, essential.

6888 Mr. Gohmert. But there are too many questions still here,  
6889 and I wish we could restart with this. And I know you're invested  
6890 in this a great deal, but I would like to see some fresh work  
6891 on this.

6892 I yield back.

6893 Chairman Nadler. The gentleman yields back. The gentleman  
6894 yields back.

6895 For what purpose does the gentlelady from Washington seek  
6896 recognition?

6897 Ms. Jayapal. Move to strike the last word, Mr. Chairman.

6898 Chairman Nadler. The lady is recognized.

6899 Ms. Jayapal. Thank you, Mr. Chairman.

6900 I'm confused about the assumptions that are being made in  
6901 this hearing, and specifically, the assumption that Microsoft  
6902 would not be covered by this definition. They meet the market  
6903 cap definition. The big question is whether or not they meet  
6904 the critical trading partner definition. And their online  
6905 platform, their cloud platform, I think does meet that definition.

6906 So, I'm confused about why everyone is assuming that Microsoft

6907 is not covered.

6908 We actually talked about this quite a bit. I think as  
6909 committee members may know, Amazon is headquartered in my  
6910 district; Microsoft is right next to my district, but many of  
6911 the Microsoft employees live in Seattle. So, I have looked at  
6912 these bills extremely carefully, and it's, frankly, a big deal  
6913 for me to be taking this step. But because of our 20-month  
6914 investigation, 16-month investigation plus four months leading  
6915 up to it, after it the continued discussion that we have had,  
6916 the whole reason we took on the investigation was because of the  
6917 big tech platforms.

6918 And so, the assumption that Microsoft is not covered is  
6919 incorrect. That is just not correct.

6920 Ms. Lofgren. Would the gentlelady yield?

6921 Ms. Jayapal. I will in a minute.

6922 Ms. Lofgren. Sure.

6923 Ms. Jayapal. And the other piece I think that we really  
6924 have to understand is, to make such a big change in the threshold  
6925 amount I think would take a lot of discussion. And I would just  
6926 ask -- I'm supportive of striking "mobile". I think that's fine.

6927 But I think in terms of the actual number for the threshold  
6928 amount, that would require a lot of discussion.

6929 And I would ask the gentlewoman from California to withdraw  
6930 that piece of the amendment, so that we can work on it and figure

6931 out what is right. But let's not undermine the work, bipartisan  
6932 work, of the subcommittee that met for 20, for 16 months an  
6933 investigation, has been working very closely to understand this  
6934 issue, particularly for people who have -- I mean, we're talking  
6935 about how many constituents we have that work for the big four.

6936 I'm thinking that I probably have about 60 percent of my  
6937 constituents who work for one of these big four companies. If  
6938 you add in Microsoft, maybe it's more.

6939 So, this is not something that we do lightly. This is  
6940 something that has taken a tremendous amount of work. And the  
6941 arguments around process, while I respect my colleagues, of  
6942 course, for their views on this, I would just say that this is  
6943 not different than other committees that have the expertise and  
6944 the jurisdiction over the issue, that go through and make the  
6945 decisions on those subcommittees, and then, move the bills  
6946 forward.

6947 And this is unusual in that it is so bipartisan. There is  
6948 bipartisan support for these bills.

6949 And so, Ms. Lofgren, I'm happy to yield to you.

6950 Ms. Lofgren. Just by way of some thoughts -- and I'm  
6951 certainly not opposed to Microsoft. I mean, they have a research  
6952 center right in Santa Clara County. But the exemption of Windows  
6953 is a major exclusion from the bill, and the lack of a cloud provider  
6954 being a part of the online platform definition really protects

6955 Microsoft's integration of Windows and Office 365 and other cloud  
6956 services.

6957 I would note, also, that the change in the threshold  
6958 protected their growing effort on XBox, which will be protected  
6959 because of the change in valuation. And although there's been  
6960 criticism of Apple for their app store -- and I've actually made  
6961 that criticism of the percentage -- Microsoft does the exact same  
6962 percentage on their XBox sales.

6963 So, those are some of the reasons why it's clear that they  
6964 had managed to get carved out of here. I'm not suggesting  
6965 skulduggery, or anything like that, but the way the manager's  
6966 amendment was put together and the change in the threshold did,  
6967 in fact, have the effect of protecting them.

6968 I'm of the view -- I'm not on the subcommittee, and I want  
6969 to thank the members of the subcommittee who spent so much time.

6970 I mean, the fact that I'm trying to make this better in a way  
6971 I think is productive for America does not diminish in any way  
6972 the thoughtfulness that was put in and the work, and the like.

6973 Ms. Jayapal. Well, thank you. I appreciate that because,  
6974 just reclaiming my time, I appreciate that because I know that  
6975 you, as an expert on immigration, would not want other people  
6976 to undermine, if you had undertaken a 16-month investigation into  
6977 an immigration issue, you would hope that the members of the  
6978 committee would respect that. I think we have done that in a

6979 bipartisan way.

6980 I would just say that I would support striking "mobile".

6981 I would not support the change in the threshold until we had  
6982 had an opportunity to do real research into what that meant and  
6983 why -- what is the right level, if it's not the level we put in  
6984 here, which I firmly believe is, based on our investigation.

6985 Thank you, Mr. Chairman. I yield back.

6986 Chairman Nadler. The gentlelady yields back.

6987 For what purpose does the gentleman from California seek  
6988 recognition?

6989 Mr. Issa. Mr. Chairman, I move to strike the last word.

6990 Chairman Nadler. The gentleman is recognized.

6991 Mr. Issa. Mr. Chairman, I'm going to support the gentlelady  
6992 from San Jose's very well-thought-out movement and disagree with  
6993 some others.

6994 And let me just give you some references. First of all,  
6995 I'd ask unanimous consent that Barron's from December 7th, 2020,  
6996 be put in the record, in which it says, "Tesla becomes only the  
6997 sixth company to top \$600 billion in value."

6998 And then, from the Fortune magazine, April 24th, 2017,  
6999 "Google passes \$600 billion for the first time."

7000 Chairman Nadler. Without objection.

7001 Mr. Issa. Thank you, Mr. Chairman.

7002 [The information follows:]

7003

7004

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



7005           Mr. Issa. This investigation apparently began in 2019, when  
7006 I as on my sabbatical. Well, Google just barely qualified for  
7007 this thing back then, and Tesla hadn't crossed it until after  
7008 they had reached the conclusion. And today, we still have less  
7009 than a dozen companies that have crossed \$600 billion.

7010           This bill currently has a static number of \$600 billion.  
7011 It doesn't index for somebody who comes up. Actually, I'm not  
7012 sure if it affects if you go down, if you get out from underneath  
7013 it.

7014           The fact is, though, that if we go back to Microsoft, in  
7015 1998, when they were adjudicated to be a monopoly, and they entered  
7016 into a consent decree, what do you think they were worth? Two  
7017 hundred fifty-six billion dollars. The fact is the number is  
7018 an arbitrary number. And in the light of day, with all due respect  
7019 to those who picked the number, the number is not only arbitrary,  
7020 but it is too high.

7021           Chairman Nadler. Would the gentleman yield for a second?

7022           Mr. Issa. Of course, Mr. Chairman.

7023           Chairman Nadler. Isn't any number arbitrary?

7024           Mr. Issa. Absolutely, except that those who disagree with  
7025 changing the number are saying that we shouldn't meddle with the  
7026 years of research. Well, a fairly quick look at where markets  
7027 have been, what things are valued, if in 1998 -- which is, Mr.  
7028 Chairman, with all due respect to the younger folks here, for

7029 you and me, that ain't that long ago -- the fact is when they  
7030 were adjudicated to be a monopoly, they were \$256 a billion market  
7031 cap. Yes, they're \$2 trillion today, but you have to look and  
7032 say you can easily be a \$250 billion monopoly if you get the  
7033 relevant market. If Twitter's market is not worth \$600 billion,  
7034 but Twitter has the power to shut down the President of the United  
7035 States with impunity, trust me, they have the kind of power that  
7036 they should be covered by antitrust laws. And that's what we're  
7037 saying today, and that's what the gentlelady is saying, and she  
7038 is right.

7039 Mr. Cicilline. Mr. Issa, will you just yield, just so I  
7040 can clarify?

7041 Mr. Issa. Of course, I'd yield to the --

7042 Mr. Cicilline. So, just to be clear, the legislation  
7043 includes an indexing to inflation. So, your concern that, as  
7044 time progresses and companies grow, it will not be contemplated  
7045 by the statute, it's actually indexed. You mentioned it's not  
7046 indexed. It actually is.

7047 Mr. Issa. Reclaiming my time, if we look, for example, at  
7048 Google, in 2017 at \$600 billion, or Tesla just a couple of years  
7049 ago, these companies have doubled in value in about two years.

7050 You're not indexing for what's really happening in the  
7051 marketplace with tech. Yes, you can add 3 percent a year to a  
7052 statutory; that's not going to cover the likely monopolies, and

7053 it certainly doesn't anticipate that you can easily have a \$90  
7054 billion entity that has the market power that these companies  
7055 have in their space.

7056 Let's remember that, for all of us who have looked at  
7057 antitrust for 2 years or 22 years, antitrust starts off, normally,  
7058 with what is the market, and then, it looks at the market share.

7059 The fact is we're throwing all of that, a hundred years of history  
7060 of market share and market size and market power and tie-ins,  
7061 we're throwing all of that out and we're saying \$600 billion,  
7062 that's the number. I'm sorry, but the worse thing in the world  
7063 to do is throw out a hundred years of experience and throw an  
7064 arbitrary number in that I believe can be easily demonstrated  
7065 to be far too high.

7066 I think the gentlelady's number, if I were to pick it, I  
7067 would have made it lower, because I'm not sure what Alibaba is  
7068 worth, but I know this: if I'm going to demand that a company  
7069 like Amazon be interoperable, I'm sure as heck going to see that  
7070 Alibaba is reciprocally interoperable. And right now, they're  
7071 not. Right now, it's a one-way street. They can take and don't  
7072 have to give back. And that's the current law. They can take  
7073 -- they can tell everyone, "Go ahead and scrape the data. We'll  
7074 even create a tool to do it for you automatically. We'll scrape  
7075 the data and give you competitive pricing at Alibaba, but we don't  
7076 have to share that back with Amazon because they're big and we're

7077 small." That's where we are.

7078 And I thank the --

7079 Ms. Lofgren. Will the gentleman yield?

7080 Mr. Issa. I'm afraid my time has expired. The chairman  
7081 has been very understanding, and I yield back.

7082 Ms. Lofgren. I was just going to say the market cap of  
7083 Alibaba appears to be \$582 million.

7084 Mr. Issa. It sounds like under 600, and I appreciate the  
7085 gentlelady.

7086 Chairman Nadler. The gentleman's time has expired,  
7087 obviously.

7088 Does anyone else seek recognition?

7089 [No response.]

7090 Okay. So, no one else seeks recognition, we will vote  
7091 separately -- the gentleman from Colorado.

7092 Mr. Buck. Thank you, Mr. Chairman.

7093 I have to tell you, I strongly disagree with the amendment  
7094 at page 10, line 14. The investigation involved a very specific  
7095 problem that we identified. It overlapped with a -- and the  
7096 problem was the monopoly, anticompetitive behavior of four  
7097 corporations -- it overlapped to a certain extent, not completely,  
7098 because I recognize the gentleman's argument about Twitter, and  
7099 it's absolutely right. Twitter acts like a monopoly, especially  
7100 when the monopoly platforms took down Parler, one of the prime

7101 competitors, even though it wasn't market-share-wise very much  
7102 of a competitor, but one of the prime competitors of Twitter.

7103 But these companies have acted in a way that makes them  
7104 unique. I don't have a problem in the future talking about  
7105 whether payment processors should fall under antitrust laws.  
7106 I personally now believe they should, but it's a fair point.

7107 But by putting them under, in this amendment, putting payment  
7108 processors and Walmart and other companies into this category,  
7109 what we end up doing is applying these statutes to sectors of  
7110 the economy that we have not studied. And in that situation,  
7111 I would absolutely be in favor of more investigation or hearings  
7112 to determine what the side effects would be.

7113 If there's one thing that I heard from my constituents, and  
7114 if there's one thing I heard from business people that I talk  
7115 to, and if there's one thing that I heard, frankly, from experts  
7116 in this area, it is that we should be overly careful not to include  
7117 other sectors of the economy, because during this COVID relief  
7118 or this COVID recovery point, we would be ill-served to apply  
7119 antitrust law in too broad a way.

7120 And that's what we do with this amendment. If we move away  
7121 from the definition that's set, we move away from four, five,  
7122 six corporations and we move into 25-30 corporations, we are going  
7123 to turn this economy on its head.

7124 This amendment will kill the idea that American consumers

7125 own their data. And that's an idea that I think we should be  
7126 embracing right now, and we should move forward with. This  
7127 portability idea, it comes from the 1996 Telecommunications Act.  
7128 It comes from something that is very popular with American  
7129 consumers.

7130 There is a digital file that Google has on every American.  
7131 To be able to move that digital file to competitors is a way  
7132 of creating competition. We don't have a government top-down  
7133 system where we're breaking up a company arbitrarily through the  
7134 FTC or the Department of Justice, or through a court. We will  
7135 create a system with this of allowing competitors to grow from  
7136 the bottom up. That is a conservative answer to the problem that  
7137 we face with Google.

7138 Google changed its algorithms six months before the election  
7139 to specifically disadvantage Mr. Trump and to specifically  
7140 advantage Mr. Biden. Now we may disagree on the other side of  
7141 the aisle on that. I believe it's true, and I believe that what  
7142 we do here today in creating competition for Google is absolutely  
7143 essential. And to adopt this amendment is to gut this bill and  
7144 to make sure that American consumers don't own their data. And  
7145 that, I think is a very serious mistake.

7146 Ms. Lofgren. Would the gentleman yield?

7147 Mr. Buck. I will yield to the gentleman from -- where are  
7148 you from?

7149 Mr. Gaetz. Florida.

7150 Mr. Buck. Florida.

7151 Mr. Gaetz. A Florida man.

7152 I thank the gentleman for yielding.

7153 There is nothing that does more to empower people than to  
7154 give them portability. There's been so much concern over the  
7155 growth of big government. But, at its core, the gentleman from  
7156 Colorado is right; this legislation empowers our fellow Americans  
7157 probably more than any other bill in the entire package.

7158 And for my colleagues to say, well, this is all such a rush;  
7159 this has all been in such haste, and then, to try to expand the  
7160 definition -- it would include a number of additional companies  
7161 that were not part of the investigation -- would be the ultimate  
7162 haste. The reason the definitions are the way they are is because  
7163 it coincides with the investigative work that we did.

7164 Now, if other Congresses in the future want to take a swing  
7165 at Walmart or American Express, sign me up; I'm here for it.  
7166 But I don't think that that ought to subsume the work that we've  
7167 done on the Antitrust Subcommittee.

7168 And in my final moments, I seek unanimous consent to enter  
7169 into the record a publication from roughly 40 minutes ago in The  
7170 Hill entitled, "Tim Cook Called Pelosi to say Tech Antitrust Bills  
7171 Were Rushed". So, if big tech really wants these bills, it is  
7172 one hell of a head fake.

7173           And I yield back.

7174           Chairman Nadler. Without objection. Without objection.

7175           [The information follows:]

7176

7177           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



7178 Mr. Swalwell. Mr. Chairman?

7179 Chairman Nadler. For what purpose does Mr. Swalwell seek  
7180 recognition?

7181 Mr. Swalwell. Thank you, Mr. Chairman. I move to strike  
7182 the last word.

7183 Chairman Nadler. To strike the last word. The gentleman  
7184 is recognized.

7185 Mr. Swalwell. Mr. Chairman, I will be supporting the  
7186 gentlelady's amendments as divided.

7187 But I do just want to note that Mr. Issa stated that these  
7188 numbers are arbitrary. I would argue that they are intended and  
7189 aimed at these four companies. And I understand that's justified  
7190 by the investigation the subcommittee has conducted, but my fear  
7191 is, if you want true interoperability, why would we only want  
7192 four companies to have that interoperability? Why would we not  
7193 want consumers to benefit from interoperability across any  
7194 platform where their data is?

7195 And so, that's my concern. That's why I'm voting for the  
7196 gentlelady's bills, or amendments. But I just want to make it  
7197 clear, there's nothing arbitrary about the numbers that were  
7198 chosen. They were chosen to encompass just four companies.

7199 And I yield back.

7200 Chairman Nadler. The gentleman yields back.

7201 For what purpose does the gentleman from Kentucky seek

7202 recognition?

7203 Mr. Massie. I move to strike the last word.

7204 Chairman Nadler. The gentleman is recognized.

7205 Mr. Massie. If folks are concerned that we shouldn't  
7206 capture companies that are between 250 and 600, then please  
7207 realize that those companies in that range are going to be above  
7208 600. A lot of them are going to go above 600, even if this is  
7209 indexed for inflation. I mean, the NASDAQ grows faster than the  
7210 rate of inflation. The Dow grows faster than the rate of  
7211 inflation.

7212 So, the odds are a lot of those companies, if we are worried  
7213 that we're going to capture companies that weren't part of the  
7214 investigation if we lower this to 250 from 600, folks, that's  
7215 going to happen anyway pretty darn soon for a lot of these  
7216 companies.

7217 And I yield back.

7218 Chairman Nadler. The gentleman yields back.

7219 Does anyone else seek recognition?

7220 For what purpose does Mr. Roy seek recognition?

7221 Mr. Roy. I move to strike the last word.

7222 Chairman Nadler. Without objection. I mean the gentleman  
7223 is recognized.

7224 [Laughter.]

7225 Mr. Roy. Thank you, sir.

7226 I mean, don't we all often?

7227 [Laughter.]

7228 I find myself in a strange position here in the Twilight  
7229 Zone in this moment. I actually think this is a great  
7230 conversation about an important issue. It's forced because now  
7231 we're having to deal with whether we're going to vote for these  
7232 bills. If this were a broad legislative hearing, many of us  
7233 probably wouldn't be here because we would have other things we  
7234 have to do, and so forth. So, to some degree, it's forcing us  
7235 to have an important conversation.

7236 I'm still in the position of not being able to support the  
7237 underlying measure. So now, I'm sitting here, and am I going  
7238 to support this amendment? And I'm not sure. I'm debating as  
7239 I speak.

7240 Because I do think it's designed to kill the underlying  
7241 measure. I think that is what it's designed to do. Because \$250  
7242 billion is just as arbitrary, as we've established, as \$600  
7243 billion. As the chairman noted and as Mr. Issa noted, these are  
7244 arbitrary numbers. And you say, well, they're not arbitrary;  
7245 \$250 billion is a certain threshold. Whatever. It's not like  
7246 we're having a hearing here with an expert here telling us why  
7247 it should be \$100 billion or \$250 billion or \$600 billion. So,  
7248 we're expanding the zone and making it, just picking a number.

7249 My whole problem with it is I'm not sure why market cap has

7250 anything to do with your actual monopoly power.

7251 Ms. Lofgren. Would the gentleman yield?

7252 Mr. Roy. Yes, I'll yield to the gentlelady.

7253 Ms. Lofgren. I appreciate that.

7254 I just want to clarify this amendment is not intended to  
7255 kill the underlying bill. It's intended to improve the  
7256 underlying bill to a point where I could support it. So, I just  
7257 wanted to make that clear.

7258 In terms of the coverage, it is an arbitrary number and I  
7259 believe Mr. Swalwell made a point it was actually designed to  
7260 capture four companies. But, as I said in my opening statement,  
7261 it is a somewhat arbitrary number, but it's the top 25 companies.  
7262 They're not mom-and-pop stores. They have people's data. And  
7263 I think it's not unreasonable to have Comcast and Verizon that  
7264 has your data to also be transparent and to cough it up, when  
7265 you want to recover.

7266 Mr. Roy. But would the gentlelady --

7267 Ms. Lofgren. And I thank the gentleman for yielding.

7268 Mr. Roy. Of course, and I'll yield back if she has another  
7269 point.

7270 But reclaiming, you know, Verizon is actually \$232 million,  
7271 the current market cap. I just pulled it up.

7272 My point is, you're just kind of making this up. And we're  
7273 making it up based on a number that -- and I'm not sure why, except

7274 that I know that my friend from Colorado and the chairman, in  
7275 terms of studying last year and going through all of the -- \$600  
7276 billion was a magic number with respect to those particular  
7277 companies. Well, the idea is we're just zeroing in on those four  
7278 companies. But, yet, it's not a bill of attainder.

7279 Like what I'm trying to figure out is, I think the goals  
7280 are laudable. I think data privacy is exceptionally laudable.

7281 I think we should start with the right of each American to his  
7282 or her data and work from there out. I think we should start  
7283 with I have a right to that data, and then, the power of the  
7284 individual American to be able to go after and empower them with  
7285 the right of a cause of action to go after corporations that use  
7286 your data, and have the power to protect your data. I'd start  
7287 there and work from that, and then, figure out, all right, what  
7288 do I do and what's my right to, then, have portable information,  
7289 and so forth?

7290 We're focused on these big companies because of the amount  
7291 of power they have and the influence they have, and we're all  
7292 concerned. But I can't figure out exactly why we're defining  
7293 what we're defining. I mean, again --

7294 Mr. Raskin. Would the gentleman yield?

7295 Mr. Roy. Who was that? Was that --

7296 Mr. Raskin. It's Raskin.

7297 Mr. Roy. Sure. Yes, sir.

7298 Mr. Raskin. Mr. Roy, thank you so much.

7299 But I think your underlying point seems to have a lot of  
7300 merit to it. I just want to make one narrow constitutional point.

7301 It's definitely not a bill of attainder, which is an act of  
7302 Congress declaring someone guilty of a crime. And no one is being  
7303 declared guilty of a crime. I think the whole purpose here is  
7304 to try to wrestle with these dramatic transformations in the  
7305 American economy and to deal with them with civil law, which is  
7306 antitrust law.

7307 Mr. Roy. Yes, reclaiming my time, I don't disagree with  
7308 the gentleman on that. I don't think it's a bill of attainder.

7309 But my point was just the debate here is, are we focusing in  
7310 and writing a bill directed specifically to these four companies?

7311 And that always gives us a little pause and heartburn. As  
7312 opposed to, are we defining something for good policy to say we've  
7313 got a structure here that applies equally, with the least amount  
7314 of choosing winners and losers, to figure out good policy and  
7315 to protect privacy, protect data, protect the market, which is  
7316 our goal. And that's what I keep hanging up on.

7317 So, that's why I'm stuck here thinking I don't think I support  
7318 the amendment, even though I don't fully support where we are  
7319 in the construct of the bill, but I think we ought to keep having  
7320 this debate. That's why what I would hope the chairman does at  
7321 the end of this is we shelve it and we have a legislative hearing,

7322 and we call people in, and we debate it and we come back and we  
7323 address this later.

7324 Anyway, I yield back.

7325 Chairman Nadler. The gentleman yields back.

7326 Does anyone else seek recognition?

7327 Mr. Chabot. Very, very briefly, Mr. Chairman.

7328 Chairman Nadler. What?

7329 Mr. Chabot. Move to strike the last word.

7330 Chairman Nadler. The gentleman is recognized.

7331 Mr. Chabot. Yes, I'll be brief.

7332 Just following up with the gentleman from Texas, his comment.

7333 He's absolutely right, we should have had hearings on this.

7334 In essence, we had an investigation going on for 20 months or  
7335 so, which a lot of us didn't know about at all. And so, there  
7336 was, essentially, a secret investigation, and we're setting up  
7337 secret committees here that are going to investigate this stuff.

7338 So, there's a hell of a lot going on in secret here, other than  
7339 the private information of the American people which isn't being  
7340 protected in this process at all.

7341 So, I would strongly urge go back to the drawing board here,  
7342 and let's have some hearings on this because this is significant  
7343 legislation.

7344 Chairman Nadler. Would the gentleman yield?

7345 Mr. Chabot. I'd be happy to yield.

7346 Chairman Nadler. I simply want to say, what everyone thinks  
7347 of the amendment or the bill is whatever. One certainly cannot  
7348 say it was in secret. There were months of hearings. There were  
7349 public hearings. It was all over the press. No attempt at  
7350 secrecy was made.

7351 Mr. Issa. Would the gentleman further yield?

7352 Mr. Chabot. I'd be happy to yield, yes.

7353 Mr. Issa. I thank the gentleman.

7354 You know, I'll let the Supreme Court decide what a bill of  
7355 attainder is. But what I do see when I read the simple Wikipedia  
7356 definition and take out the word "person" for a moment because  
7357 it says, "or group," "A bill of attainder is an act or writ of  
7358 attainder or bill of penalties, an act by the legislature  
7359 declaring a group or a person is guilty of some crime and punishing  
7360 them without a trial."

7361 Clearly, we are choosing to order companies to do certain  
7362 things without a trial, unless you include those hearings. And  
7363 clearly, we've decided to pick just four companies, which is  
7364 certainly a small group. Henry VIII would have thought it was  
7365 about the right number, although he did more when he executed  
7366 royals that he didn't like. So, I think we certainly have picked  
7367 a narrow group.

7368 The reason that some of the other bills that we will consider  
7369 later tonight might be different than this one is this one is



7370 about your personal property and your right to have it and to  
7371 have it interact. And the standard should not be our antitrust  
7372 authority. It should be, essentially, the ability comply. If  
7373 the ability to comply exists in a \$50 million or \$20 million market  
7374 cap company doing business, then, quite frankly, they should be  
7375 just as covered.

7376 Now I know that we have limited jurisdiction, but I think  
7377 it's important that we have very powerful companies, and I would  
7378 use Alibaba that is just under \$600 billion, they're not going  
7379 to be covered by this. And yet, they're not going to be said  
7380 to be interoperability or portable, while another company will.

7381 Picking winners and losers, and penalizing four companies versus  
7382 one that is a few billion dollars less market cap, is certainly  
7383 not the test of antitrust.

7384 And I think that's the important thing, is we have a stick  
7385 of antitrust which we're using, but if we're going to use it to  
7386 open up interoperability and portability, let's use it as broadly  
7387 as we can. And that's what the gentlelady is doing. I've got  
7388 to tell you, \$250 billion, it's not a big burden to make your  
7389 software portable and interoperable. But, certainly, to tell  
7390 four companies to send it one way and everyone else not is simply  
7391 saying we're going to punish them and we're going to make them  
7392 not be able to compete against companies that do not have to  
7393 comply.

7394 I thank the gentleman.

7395 Mr. Chabot. Reclaiming my time, there's one other point  
7396 I'd like to make. I happen to be the ranking member of the Foreign  
7397 Affairs Subcommittee on Asia and the Pacific, and something that  
7398 Mr. Gohmert said before is absolutely important, and critical,  
7399 too. And that's that you've got a couple of countries,  
7400 particularly the PRC, China; Russia; North Korea, and Iran, who  
7401 have been trying consistently to screw up the works here in the  
7402 U.S. They've been hacking, the ransomware most recently. I  
7403 mean, they're after all this private information, and this  
7404 committee ought to be delving into that and work hard to actually  
7405 come up with something that's going to protect the American  
7406 people's privacy.

7407 And I yield back.

7408 Chairman Nadler. The gentleman yields back.

7409 Does anyone else seek recognition on this amendment?

7410 [No response.]

7411 This amendment contains two questions that are divisible.

7412 We will have separate votes on each proposition.

7413 The first question is on striking "\$600 billion" and  
7414 inserting, instead, "\$250 billion".

7415 All in favor, say aye.

7416 Opposed, no.

7417 I believe the ayes have it.

7418 Mr. Issa. It's close. I'd ask for a recorded vote on that.  
7419 Chairman Nadler. A recorded vote is requested. The clerk  
7420 will call the role.  
7421  
7422 Ms. Fontenot. Mr. Nadler?  
7423 Chairman Nadler. No.  
7424 Ms. Fontenot. Mr. Nadler votes no.  
7425 Ms. Lofgren?  
7426 Ms. Lofgren. Aye.  
7427 Ms. Fontenot. Ms. Lofgren votes aye.  
7428 Ms. Jackson Lee?  
7429 [No response.]  
7430 Mr. Cohen?  
7431 Mr. Cohen?  
7432 Mr. Cohen. Aye. Yes.  
7433 Ms. Fontenot. Mr. Cohen votes aye.  
7434 Mr. Johnson of Georgia?  
7435 Mr. Johnson of Georgia. Johnson of Georgia votes aye.  
7436 Ms. Fontenot. Mr. Johnson of Georgia votes aye.  
7437 Mr. Deutch?  
7438 Mr. Deutch. No.  
7439 Ms. Fontenot. Mr. Deutch votes no.  
7440 Ms. Bass?  
7441 [No response.]

7442 Mr. Jeffries?  
7443 Mr. Jeffries. No.  
7444 Ms. Fontenot. Mr. Jeffries votes no.  
7445 Mr. Cicilline?  
7446 Mr. Cicilline. No.  
7447 Ms. Fontenot. Mr. Cicilline votes no.  
7448 Mr. Swalwell?  
7449 Mr. Swalwell. Aye.  
7450 Ms. Fontenot. Mr. Swalwell votes aye.  
7451 Mr. Lieu?  
7452 Mr. Lieu. Aye.  
7453 Ms. Fontenot. Mr. Lieu votes aye.  
7454 Mr. Raskin?  
7455 Mr. Raskin. No.  
7456 Ms. Fontenot. Mr. Raskin votes no.  
7457 Ms. Jayapal?  
7458 Ms. Jayapal. No.  
7459 Ms. Fontenot. Ms. Jayapal votes no.  
7460 Mrs. Demings?  
7461 Mrs. Demings. No.  
7462 Ms. Fontenot. Mrs. Demings votes no.  
7463 Mr. Correa?  
7464 Mr. Correa. Aye.  
7465 Ms. Fontenot. Mr. Correa votes aye.

7466 Ms. Scanlon?  
7467 Ms. Scanlon. No.  
7468 Ms. Fontenot. Mr. Scanlon votes no.  
7469 Ms. Garcia?  
7470 Ms. Garcia. No.  
7471 Ms. Fontenot. Ms. Garcia votes no.  
7472 Mr. Neguse?  
7473 Mr. Neguse. No.  
7474 Ms. Fontenot. Mr. Neguse votes no.  
7475 Mrs. McBath?  
7476 Mrs. McBath. No.  
7477 Ms. Fontenot. Mrs. McBath votes no.  
7478 Mr. Stanton?  
7479 Mr. Stanton. No.  
7480 Ms. Fontenot. Mr. Stanton votes no.  
7481 Ms. Dean?  
7482 Ms. Dean. No.  
7483 Ms. Fontenot. Ms. Dean votes no.  
7484 Ms. Escobar?  
7485 [No response.]  
7486 Mr. Jones?  
7487 Mr. Jones. No.  
7488 Ms. Fontenot. Mr. Jones votes no.  
7489 Ms. Ross?

7490 Ms. Ross. No.

7491 Ms. Fontenot. Ms. Ross votes no.

7492 Ms. Bush?

7493 Ms. Bush. Bush votes no.

7494 Ms. Fontenot. Ms. Bush votes no.

7495 Mr. Jordan?

7496 Mr. Johnson of Georgia. Madam Clerk, this is Hank Johnson.

7497 How am I recorded?

7498 Ms. Fontenot. Mr. Johnson, you are recorded as aye.

7499 Mr. Johnson of Georgia. I wish to change my vote to no.

7500 Ms. Fontenot. Mr. Johnson votes no.

7501 Mr. Johnson of Georgia. Thank you.

7502 Ms. Fontenot. Mr. Jordan?

7503 Mr. Jordan. Yes.

7504 Ms. Fontenot. Mr. Jordan votes yes.

7505 Mr. Chabot?

7506 Mr. Chabot. Aye.

7507 Ms. Fontenot. Mr. Chabot votes aye.

7508 Mr. Gohmert?

7509 Mr. Gohmert. Aye.

7510 Ms. Fontenot. Mr. Gohmert votes aye.

7511 Mr. Issa?

7512 Mr. Issa. Aye.

7513 Ms. Fontenot. Mr. Issa votes aye.

7514 Mr. Buck?

7515 Mr. Buck. No.

7516 Ms. Fontenot. Mr. Buck votes no.

7517 Mr. Gaetz?

7518 Mr. Gaetz. No.

7519 Ms. Fontenot. Mr. Gaetz votes no.

7520 Mr. Johnson of Louisiana?

7521 Mr. Johnson of Louisiana. Aye.

7522 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

7523 Mr. Biggs?

7524 Mr. Biggs. No.

7525 Ms. Fontenot. Mr. Biggs votes no.

7526 Mr. McClintock?

7527 Mr. McClintock. Aye.

7528 Ms. Fontenot. Mr. McClintock votes aye.

7529 Mr. Steube?

7530 Mr. Steube. No.

7531 Ms. Fontenot. Mr. Steube votes no.

7532 Mr. Tiffany?

7533 Mr. Tiffany. Aye.

7534 Ms. Fontenot. Mr. Tiffany votes aye.

7535 Mr. Massie?

7536 Mr. Massie. Aye.

7537 Ms. Fontenot. Mr. Massie votes aye.

7538 Mr. Roy?

7539 Mr. Roy. No.

7540 Ms. Fontenot. Mr. Roy votes no.

7541 Mr. Bishop?

7542 Mr. Bishop. Aye.

7543 Ms. Fontenot. Mr. Bishop votes aye.

7544 Mrs. Fischbach?

7545 Mrs. Fischbach. Aye.

7546 Ms. Fontenot. Mrs. Fischbach votes aye.

7547 Mrs. Spartz?

7548 Mrs. Spartz. Yes.

7549 Ms. Fontenot. Mrs. Spartz votes yes.

7550 Mr. Fitzgerald?

7551 Mr. Fitzgerald. Aye.

7552 Ms. Fontenot. Mr. Fitzgerald votes aye.

7553 Mr. Bentz?

7554 Mr. Bentz. Yes.

7555 Ms. Fontenot. Mr. Bentz votes yes.

7556 Mr. Owens?

7557 [No response.]

7558 Ms. Jackson Lee. How am I recorded? Jackson Lee.

7559 Ms. Fontenot. Ms. Jackson Lee, you are not recorded.

7560 Ms. Jackson Lee. No.

7561 Ms. Fontenot. Ms. Jackson Lee votes no.



7562 Chairman Nadler. Are there any other members who wish to  
7563 be recorded who haven't been recorded?  
7564 Ms. Bass. How am I recorded?  
7565 Ms. Fontenot. Ms. Bass, you are not recorded.  
7566 Ms. Bass. No. Vote no.  
7567 Ms. Fontenot. Ms. Bass votes no.  
7568 Mr. Owens. How am I recorded?  
7569 Ms. Fontenot. Mr. Owens, you are not recorded.  
7570 Mr. Owens. No.  
7571 Ms. Fontenot. Mr. Owens votes no.  
7572 Chairman Nadler. Do any other members wish to be recorded  
7573 who haven't been recorded?  
7574 [No response.]  
7575 The clerk will report.  
7576 Ms. Fontenot. Mr. Chairman, there are 18 ayes and 25 noes.  
7577 Chairman Nadler. The amendment is not agreed to.  
7578 The second question is on striking the word "mobile".  
7579 All in favor, say aye.  
7580 Opposed, no.  
7581 The ayes have it. The ayes have it.  
7582 Without objection, the staff is authorized to amend the  
7583 definitions of "online platform" in the bills H.R. 3826, H.R.  
7584 3816, and H.R. 3825, if they are reported by the committee, to  
7585 make them conform with our amendment to this bill, H.R. 3894.

7586           That is, to strike the word "mobile" that immediately precedes  
7587 the term "operating system".

7588           Are there any other amendments to the amendment in the nature  
7589 of a substitute?

7590           Ms. Lofgren. I have an amendment at the desk, unless there's

7591 --

7592           Chairman Nadler. Okay.

7593           Ms. Lofgren. It's the amendment on page 3, line 15.

7594           Chairman Nadler. The clerk will report the amendment.

7595           Ms. Fontenot. "Amendment to the amendment in the nature  
7596 of a substitute to H.R. 3849 offered by Ms. Lofgren of California.

7597           Page 3, after line 15, insert the following and make such  
7598 technical and conforming changes as may be appropriate.

7599           C. User Consent. Interoperability with the business user"

7600 --

7601           Chairman Nadler. Without objection, the amendment is  
7602 considered as read.

7603           [The amendment of Ms. Lofgren follows:]

7604

7605           \*\*\*\*\* INSERT \*\*\*\*\*

7606 Chairman Nadler. The gentlelady is recognized.

7607 Ms. Lofgren. Thank you, Mr. Chairman.

7608 As I mentioned -- well, it wasn't a short while ago -- when  
7609 we first started talking about this, I strongly believe that the  
7610 data that you generate should belong to you. And I don't know  
7611 whether you want to call it portability or exportability, as Mr.  
7612 Massie, but you shouldn't be a prisoner of a platform because  
7613 they have your data and you can't go someplace else with it because  
7614 you can't take it with you. That is addressed.

7615 What is not addressed adequately, in my judgment, is the  
7616 need for user consent when it comes to the transfer of data for  
7617 interoperability. What this amendment would do is, the  
7618 interoperability, as currently written under the bill, if it  
7619 involves any transfer or third-party access to user data, the  
7620 associated user has to give their consent. In other words,  
7621 interoperability involving using data can only happen with the  
7622 consent or at the direction of the user.

7623 Now I think this is very important. As the bill is currently  
7624 drafted, the bill could effectively require platforms to give  
7625 third-party users access to user data on the platform, even when  
7626 those users have not requested such interoperability or otherwise  
7627 given their consent. It raises a broad range of fundamental  
7628 privacy concerns. At a basic level, I doubt that anyone on this  
7629 committee would want their Google, Facebook, or Amazon data shared

7630 with a third party without their consent.

7631 Third-party recipients could also -- and this has been  
7632 discussed by some of us on both sides of the aisle -- could also,  
7633 conceivably, be based in foreign countries, perhaps raising even  
7634 bigger concerns about user data escaping beyond the control of  
7635 U.S. privacy and consumer protection laws.

7636 I think this amendment is necessary to prevent future abuses.

7637 We all can recall the debacle of Cambridge Analytica, which  
7638 fundamentally was about data-sharing between platforms and third  
7639 parties without user consent. They vacuumed up the data out of  
7640 Facebook and used it for their own purposes.

7641 I think that this amendment makes this bill stronger by  
7642 increasing protection for users of platforms and their data when  
7643 it comes to interoperability. And I think, to some extent, when  
7644 we look at this whole issue of antitrust, there are times when  
7645 the interests of competing businesses may actually conflict with  
7646 the interests of consumers. And in that case, the consumer should  
7647 always win, not the competing businesses.

7648 So, I think when it comes to interoperability, which I favor,  
7649 but favoring it broadly is difficult, but because you get into  
7650 weeds, it's not so easy when you come into encrypted data and  
7651 other things that deserve protection. I do think, at a minimum,  
7652 we should allow users to prevent their data from being utilized  
7653 by other businesses with out their consent. That is, in essence,

7654 this amendment. I hope it will be adopted. I think it will  
7655 strengthen the bill.

7656 And with that, I would yield to the gentleman from  
7657 California.

7658 Mr. Issa. And I can say, just breaking the word myself by  
7659 joining the gentlelady and saying, this is one of those that  
7660 shouldn't be controversial. It's not intended to be. Clearly,  
7661 we all look at the practical reality the gentlelady is talking  
7662 about, that we really don't want, let's just say, Facebook and  
7663 Google to decide that they're going to be interoperable and share  
7664 this vast amount of information they both have, if you choose  
7665 not to. Some of these platforms already give you a limited  
7666 ability to not provide certain data, not be followed, but, right  
7667 now, they're not bound to do so and they might under the  
7668 legislation, if not for the gentlelady's amendment, they might,  
7669 in fact, not give you that ability.

7670 So, I think it's extremely important that we simply say,  
7671 if we're going to order interoperability, it's interoperability  
7672 by individual customer, that customer having choice. And I thank  
7673 the gentlelady for her thoughtful amendment.

7674 Chairman Nadler. Would the gentlelady yield?

7675 Ms. Lofgren. I would be happy to yield my remaining 12  
7676 seconds.

7677 Chairman Nadler. And I shouldn't take much more than that.

7678 I simply want to say that the logic of the gentlelady and the  
7679 logic of the gentleman are very persuasive to me, and I urge people  
7680 to support this for that reason.

7681 Mr. Cicilline. Mr. Chairman?

7682 Chairman Nadler. The gentlelady's time has expired.

7683 For what purpose does Ms. Scanlon seek recognition?

7684 Ms. Scanlon. I move to strike the last word.

7685 Chairman Nadler. The gentlelady is recognized.

7686 Ms. Scanlon. Thank you.

7687 I support this amendment to the ACCESS Act. A priority  
7688 throughout the drafting process has been to include robust privacy  
7689 and data security safeguards to protect users and their data.

7690 For example, the existing data portability provisions under the  
7691 bill already require affirmative consent of users, but this  
7692 amendment will improve the privacy safeguards in the bill by  
7693 requiring users to provide consent when interoperability will  
7694 result in a business user acquiring, processing, transmitting,  
7695 or otherwise gaining access to user data.

7696 So, I appreciate the gentlelady's amendment and I urge my  
7697 colleagues to support it.

7698 Chairman Nadler. For what purpose does the gentleman from  
7699 Rhode Island seek recognition?

7700 Mr. Cicilline. To move to strike the last word.

7701 Chairman Nadler. The gentleman is recognized.

7702 Mr. Cicilline. I just wanted to thank the gentlelady from  
7703 California. I think she is absolutely right. This strengthens  
7704 the bill. I thank her for her engagement on this. I urge my  
7705 colleagues to support the amendment. And I hope between  
7706 prevailing on this amendment and prevailing on the one that  
7707 preceded it, it will earn the gentlelady from California's  
7708 support.

7709 And I yield back.

7710 Chairman Nadler. The gentleman yields back.

7711 Does anyone else seek recognition on this amendment?

7712 [No response.]

7713 Then, the question occurs on the amendment.

7714 All in favor, say aye.

7715 Opposed, no.

7716 The ayes, obviously, have it. The amendment is adopted.

7717 Are there any other amendments to the amendment in the nature  
7718 of a substitute?

7719 Mr. Issa. Mr. Chairman, I have an amendment at the desk.

7720 Chairman Nadler. The clerk will report the amendment.

7721 Mr. Cicilline. Reserve a point of order, Mr. Chairman.

7722 Ms. Fontenot. "Amendment to the amendment in the nature  
7723 of a substitute to H.R. 3849 offered by Mr. Issa of California.

7724 Page 5, strike lines 9 through 14 and insert the following"

7725 --

7726 Chairman Nadler. Without objection, the amendment is  
7727 considered as read.

7728 [The amendment of Mr. Issa follows:]

7729

7730 \*\*\*\*\* INSERT \*\*\*\*\*



7731 Chairman Nadler. The gentleman is recognized.

7732 Mr. Issa. Thank you, Mr. Chairman.

7733 We're on a roll. We're getting things done by voice. I  
7734 think this one will be similar. We narrowed this considerably  
7735 in that what this amendment does is simply say that there needs  
7736 to be transparency if there's censorship. And so, very simple,  
7737 you take somebody's material down; you shadow ban them; you do  
7738 whatever. You are required to post it. You are required to  
7739 notify. Nothing more than that, but it does give the transparency  
7740 that somebody doesn't have to find out long after the fact that  
7741 they've been taken down. And, of course, the public has to know  
7742 that something is taken down.

7743 We understand say what they've taken down without reposting,  
7744 it effectively, but they would have to post that they've taken  
7745 something down and the characteristic of it. Some of the covered  
7746 platforms do a form of this now. We simply believe, for  
7747 transparency, it should be mandated. If we're going to mandate  
7748 these companies, these four companies, do certain things, this  
7749 certainly seems to be one, and it's consistent, I believe, with  
7750 the Republican position of transparency, but it's also the  
7751 Democrat position of transparency.

7752 Chairman Nadler. Would the gentleman yield?

7753 Mr. Issa. I, of course, would yield.

7754 Chairman Nadler. I just have a question about the meaning

7755 of the amendment. The first part of the amendment's meaning is  
7756 obvious, but why does the amendment strike lines 7 through 16  
7757 on page 10?

7758 Mr. Cicilline. We just debated this. I believe that  
7759 changes the market cap definition.

7760 Chairman Nadler. Yes, it's a totally different matter.

7761 Mr. Issa. Right. Right. Basically, it says that, if you  
7762 take somebody's words down, if you're Twitter, which isn't  
7763 covered, you still have to.

7764 Mr. Cicilline. Would the gentleman yield?

7765 Mr. Issa. Of course.

7766 Mr. Cicilline. I think you're mistaken. It says, "Page  
7767 10, strike lines 7 through 16." That's the market cap definition,  
7768 which we just heard that amendment and it was defeated.

7769 Mr. Issa. That's because for this particular subsection  
7770 you would need to include Twitter, is the way we viewed it, that  
7771 you would be including a greater amount of those.

7772 Are you offering a secondary amendment to my amendment?

7773 Mr. Cicilline. I still don't understand what this amendment  
7774 is attempting to do. I just know it would change the definition  
7775 of covered platform, which, again, we've had a pretty lengthy  
7776 debate about that. So, I'm happy to work with you on a bill that  
7777 relates to Twitter, if you want to do that. This is a different  
7778 subject.

7779 Mr. Issa. Well, the intent of this was to include Twitter.

7780 Mr. Cicilline. I got you.

7781 Ms. Lofgren. Would the gentleman yield for a question?

7782 Mr. Issa. Of course, I'd yield.

7783 Ms. Lofgren. Because you and I agreed on the market cap  
7784 issue. But it looks like what you're intending to do is to remove  
7785 the market cap only for the purposes of line 8, but it doesn't  
7786 say that. It strikes entirely from the bill.

7787 Mr. Issa. Well, we had intended for this narrow one to  
7788 include greater than those four companies. If we've lost that  
7789 issue, Mr. Cicilline, I am not opposed to at least getting some  
7790 transparency on the covered platform, which would mean that we  
7791 would strike, below 11, we would strike -- we would strike page  
7792 10, strike 7 and 16, and make such technical corrections --

7793 Chairman Nadler. Would the gentleman yield?

7794 Mr. Issa. Yes.

7795 Chairman Nadler. If the gentleman would do that, I would  
7796 support the -- I don't see why we shouldn't require reasonable  
7797 advance notice, unless someone can give me a good reason.

7798 Mr. Issa. I think there's a second part --

7799 Mr. Biggs. Would the gentleman yield?

7800 Mr. Issa. There's nothing on the back of the page.

7801 Of course, I would yield.

7802 Mr. Biggs. Thank you, and I hope this will help. Because

7803 my question is, how are we defining "reasonable advance notice"?

7804 I mean, what would that look like?

7805 Mr. Issa. They would simply post it before they take you  
7806 down.

7807 The bill already has reasonable advance notice. We didn't  
7808 invent that term.

7809 Mr. Biggs. Okay.

7810 Mr. Issa. It's already in the bill.

7811 Mr. Biggs. Thank you.

7812 Mr. Cicilline. Yield, Mr. Issa? I don't know if you have  
7813 the time.

7814 With respect to line 3, A, you're talking about notice to  
7815 a business owner of changes to interoperability interface. I  
7816 don't think that presents any problem. I think the B section  
7817 is a content moderation question which I think is very different.

7818 And so, if you'd accept a friendly amendment to get rid of lines  
7819 8 to 11, I'd support the balance of your amendment to provide  
7820 notice.

7821 Mr. Issa. No, I would take the friendly amendment of the  
7822 chairman very happily and strike -- page 10, strike 7 through  
7823 16 out of it.

7824 But the idea of notice and takedown, notice and takedown  
7825 is a term that we know very well in this committee, and I think  
7826 that that's all I'm really asking for.

7827           Mr. Cicilline.   Yes, Mr. Issa, I would just ask you, because  
7828           I think there are several problems with this, if you would consider  
7829           withdrawing the amendment, and we'll work with you on some  
7830           language that makes sense.

7831           Mr. Issa.    Later tonight?

7832           Mr. Cicilline.   Later tonight or whenever it's appropriate.

7833           Mr. Issa.    Tonight?

7834           Mr. Cicilline.   Or certainly before Floor action.

7835           Mr. Issa.    Well, before Floor action, I --

7836           Mr. Cicilline.   It's just like I think --

7837           Mr. Issa.    With all due respect -- and I know my time has  
7838           expired -- but, with all due respect, I know one thing.   We don't  
7839           get open rules around here anymore.

7840           Mr. Cicilline.   No, I understand.

7841           Mr. Issa.    So, that's why I'd like to get it done in  
7842           committee.

7843           Mr. Cicilline.   It's just we did just have a lot of  
7844           conversation about why we were focusing on four companies.   And  
7845           now, you're trying to craft an amendment that focused on one  
7846           company.

7847           Mr. Issa.    No.   No, I've already agreed to scrap any  
7848           expansion past the four companies.   But, for these four  
7849           companies, notice and takedown and notice of changes, that's all  
7850           we're asking for.

7851 Yes, Mr. Chairman?

7852 Chairman Nadler. The gentleman's time has expired.

7853 I'll seek my own time. I recognize myself.

7854 I think I agree with Mr. Cicilline; there are some problems  
7855 with the entire amendment. I could not support it in its current  
7856 form, or even with -- unless you did what Mr. Cicilline suggested.

7857 Mr. Issa. Well, we'll work the rest tonight, and I'd ask  
7858 to withdraw the amendment at this time and at least give it a  
7859 little time before we come back.

7860 Chairman Nadler. Sure.

7861 Mr. Issa. The gentlelady had --

7862 Ms. Lofgren. Would the gentleman yield for a further  
7863 question? Mr. Chairman?

7864 Chairman Nadler. Yes, I'll yield.

7865 Ms. Lofgren. If there's going to be further work done on  
7866 this, I actually think it might have a positive impact if the  
7867 public knew what kind of content is impermissible; like if it's  
7868 hate speech, it's going to be taken down. If it's virulent  
7869 antisemitism, if it's X or Y, you know, letting people know that  
7870 is a good thing. How you do that without republication is a  
7871 question I have, and I don't know how that would be done. So,  
7872 as you're working on it, I'm interested in how you would address  
7873 that.

7874 Thank you. Thank you for yielding.

7875 Chairman Nadler. The amendment is withdrawn.

7876 Are there any other amendments to the amendment in the nature  
7877 of a substitute?

7878 Mr. Bishop. Mr. Chairman? Well, I would be glad to defer  
7879 to Ms. Lofgren.

7880 Chairman Nadler. The gentlelady from California is  
7881 recognized.

7882 Ms. Lofgren. It's amendment to page 4.

7883 Chairman Nadler. The clerk will report the amendment, I  
7884 should say.

7885 Ms. Lofgren. If I may recall that, let me do the other.  
7886 I have two amendments. One is on page 2 and page 3. Let me  
7887 take that up first, if I could, please.

7888 Chairman Nadler. The clerk will --

7889 Ms. Lofgren. I think that's at the desk.

7890 Chairman Nadler. The clerk will report the amendment.

7891 Ms. Lofgren. I don't think the clerk has the amendments.  
7892 Would you please distribute them?

7893 Ms. Fontenot. "Amendment to the amendment in the nature  
7894 of a substitute to H.R. 3849 offered by Ms. Lofgren of California.  
7895 Page 2, after" --

7896 Chairman Nadler. Without objection, the amendment is  
7897 considered as read.

7898 [The amendment of Ms. Lofgren follows:]

7899

7900       \*\*\*\*\* INSERT \*\*\*\*\*



7901 Chairman Nadler. The gentlelady is recognized.

7902 Ms. Lofgren. Thank you, Mr. Chairman.

7903 This allows platforms to take action, when necessary, when  
7904 there is a risk to user privacy or security. Currently, the bill  
7905 gives only the FTC, not the platforms, the power to order that  
7906 third parties be cut off from interoperability and portability.

7907 Given the risk to third-party abuse -- and I'm thinking Cambridge  
7908 Analytica -- I think it's not prudent to always wait for the FTC  
7909 to act. This amendment would give platforms the direct power  
7910 to terminate portability and interoperability with business users  
7911 -- this isn't dealing with individuals for getting their own data,  
7912 but business users -- when it's reasonably necessary to address  
7913 the privacy and security risk or to enforce the other standards  
7914 the FTC has put in place under the Act.

7915 It seems to me that platforms should be empowered to take  
7916 immediate action, when necessary, to stop a third party who is  
7917 abusing the interfaces under this bill; for example, to steal  
7918 mass amounts of user data or to hack into platforms or other  
7919 systems. This amendment would still leave plenty of safeguards  
7920 against platforms abusing this termination power. The  
7921 termination would only be allowed when done in good faith and  
7922 reasonably necessary to prevent the harm at issue.

7923 More generally, the FTC would still have broad regulatory  
7924 authority to set any necessary standards in this area, including

7925 further restrictions on platform termination powers, when  
7926 warranted in specific cases.

7927 I'll just note that you can grab or scrape data from a  
7928 platform in an instant. And to allow that kind of data transfer  
7929 while waiting for a government agency to take action and stop  
7930 it is not prudent. There is plenty of authority for the FTC to  
7931 intervene if this safeguard isn't properly used. But I do think  
7932 it's important that platforms have this opportunity to protect  
7933 the user data of their own customers who they have forged a  
7934 relationship with.

7935 I think this amendment improves the bill. Again, I think  
7936 that it addresses a privacy or security issue that was not fully  
7937 dealt with, and I hope that we can adopt the amendment and improve  
7938 the bill.

7939 And with that, Mr. Chairman, I would yield back.

7940 Mr. Cicilline. Mr. Chairman?

7941 Chairman Nadler. The gentlelady yields back.

7942 For what purpose does the gentleman from Rhode Island seek  
7943 recognition?

7944 Mr. Cicilline. I move to strike the last word.

7945 Chairman Nadler. The gentleman is recognized.

7946 Mr. Cicilline. I thank the gentlelady for her amendment,  
7947 and I appreciate the concerns that she's expressed. I am,  
7948 however, concerned that the amendment would expand the ability

7949 of covered platforms to terminate interoperability and data  
7950 portability for business users. And at least in the way that  
7951 it's currently drafted, it would give, in my view, too much  
7952 discretion to the covered platform on the decision to cease  
7953 interoperability with a business user. And that could have the  
7954 potential, at least, of really upending the pro-competitive goals  
7955 of the bill. And I know a number of public interests and advocacy  
7956 organizations strongly oppose the amendment in its current form.

7957 And so, I would like to continue to work on this issue with  
7958 the gentlelady, and just ask her if she would consider withdrawing  
7959 this amendment, so that we can do that before the bill comes to  
7960 the Floor.

7961 Ms. Lofgren. Well, let's hear some further discussion, if  
7962 the gentleman would yield --

7963 Mr. Cicilline. Sure. Of course.

7964 Ms. Lofgren. -- because this is, the FTC maintains their  
7965 control, if there is a lack of good faith. This is just an  
7966 opportunity to take immediate action. The FTC, I mean it could  
7967 be a weekend. They may not be meeting. They may not be  
7968 available, and you may want to keep your users data from being  
7969 vacuumed to Russia, or some other country.

7970 Mr. Cicilline. Yes, but I guess one of the things that  
7971 immediately comes to mind is the ability of a covered platform  
7972 to kill a competitor by this decision. And so, it seems to me

7973 that's one of the things that would be of real concern and would  
7974 really undermine the pro-competitive purpose of the bill.

7975 Ms. Lofgren. Well, if the gentleman would further yield  
7976 --

7977 Mr. Cicilline. Yes.

7978 Ms. Lofgren. -- that would not be in good faith. Here's  
7979 what it says, "A covered platform may cease to transfer data to  
7980 a business when such an action is a good-faith, reasonably  
7981 necessary means of enforcing the standards issued under 6C or  
7982 addressing a risk to user privacy or security." And then, the  
7983 platform has to report the termination to the Commission. So  
7984 that, if it hasn't been in good faith, the roof comes down on  
7985 them.

7986 I yield back.

7987 Mr. Cicilline. Yes, thank you.

7988 I think, again, that's a role the FTC could play as part  
7989 of their enforcement responsibility. I just think the danger  
7990 of giving that ability to the covered platform that already, by  
7991 definition, has enormous market power -- there's a tremendous  
7992 imbalance in terms of their power as gatekeepers -- just presents  
7993 such a great risk that they would use that in a way that would  
7994 crush a competitor, further entrench their dominance. And I just  
7995 think conveying that ability to a cover platform is fraught with  
7996 significant problems and could really make this, what is intended

7997 to be a pro-competitive piece of legislation, be used as a cudgel  
7998 to actually crush competitors.

7999 So, again, I appreciate the concern you're raising and would  
8000 welcome the opportunity to work with you on it, but I would oppose  
8001 the amendment in its current form.

8002 I yield back.

8003 Chairman Nadler. The gentleman yields back.

8004 Does anyone else seek recognition on this amendment?

8005 [No response.]

8006 In that case, the question occurs on the amendment.

8007 All in favor, say aye.

8008 All opposed, no.

8009 In the opinion of the chair, the noes have it.

8010 Ms. Lofgren. Mr. Chairman, I'd like a recorded vote.

8011 Chairman Nadler. A recorded vote is requested. The clerk  
8012 will call the roll.

8013 Ms. Fontenot. Mr. Nadler?

8014 Chairman Nadler. No.

8015 Ms. Fontenot. Mr. Nadler votes no.

8016 Ms. Lofgren?

8017 Ms. Lofgren. Yes.

8018 Ms. Fontenot. Ms. Lofgren votes yes.

8019 Ms. Jackson Lee?

8020 Ms. Jackson Lee. No.

8021 Ms. Fontenot. Ms. Jackson Lee votes no.  
8022 Mr. Cohen?  
8023 Mr. Cohen. Pass.  
8024 Ms. Fontenot. Mr. Cohen passes.  
8025 Mr. Johnson of Georgia?  
8026 Mr. Johnson of Georgia. No.  
8027 Ms. Fontenot. Mr. Johnson of Georgia votes no.  
8028 Mr. Deutch?  
8029 Mr. Deutch. No.  
8030 Ms. Fontenot. Mr. Deutch votes no.  
8031 Ms. Bass?  
8032 Ms. Bass. No.  
8033 Ms. Fontenot. Ms. Bass votes no.  
8034 Mr. Jeffries?  
8035 Mr. Jeffries. No.  
8036 Ms. Fontenot. Mr. Jeffries votes no.  
8037 Mr. Cicilline?  
8038 Mr. Cicilline. No.  
8039 Ms. Fontenot. Mr. Cicilline votes no.  
8040 Mr. Swalwell?  
8041 Mr. Swalwell. Aye.  
8042 Ms. Fontenot. Mr. Swalwell votes aye.  
8043 Mr. Lieu?  
8044 [No response.]

8045 Mr. Raskin?

8046 Mr. Raskin. No.

8047 Ms. Fontenot. Mr. Raskin votes no.

8048 Ms. Jayapal?

8049 Ms. Jayapal. No.

8050 Ms. Fontenot. Ms. Jayapal votes no.

8051 Mrs. Demings?

8052 Mrs. Demings. No.

8053 Ms. Fontenot. Mrs. Demings votes no.

8054 Mr. Correa?

8055 Mr. Correa. Aye.

8056 Ms. Fontenot. Mr. Correa votes aye.

8057 Ms. Scanlon?

8058 Ms. Scanlon. No.

8059 Ms. Fontenot. Mr. Scanlon votes no.

8060 Ms. Garcia?

8061 Ms. Garcia. No.

8062 Ms. Fontenot. Ms. Garcia votes no.

8063 Mr. Neguse?

8064 Mr. Neguse. No.

8065 Ms. Fontenot. Mr. Neguse votes no.

8066 Mrs. McBath?

8067 Mrs. McBath. Aye.

8068 Ms. Fontenot. Mrs. McBath votes aye.

8069 Mr. Stanton?

8070 Mr. Stanton. Aye.

8071 Ms. Fontenot. Mr. Stanton votes aye.

8072 Ms. Dean?

8073 Ms. Dean. No.

8074 Ms. Fontenot. Ms. Dean votes no.

8075 Ms. Escobar?

8076 Ms. Escobar. No.

8077 Ms. Fontenot. Ms. Escobar votes no. Mr. Jones?

8078 Mr. Jones. No.

8079 Ms. Fontenot. Mr. Jones votes no.

8080 Ms. Ross?

8081 Ms. Ross. Ross votes aye.

8082 Ms. Fontenot. Ms. Ross votes aye.

8083 Ms. Bush?

8084 Ms. Bush. Pass.

8085 Ms. Fontenot. Ms. Bush passes.

8086 Mr. Jordan?

8087 Mr. Jordan. No.

8088 Ms. Fontenot. Mr. Jordan votes no.

8089 Mr. Chabot?

8090 Mr. Chabot. Pass.

8091 Ms. Fontenot. Mr. Chabot passes.

8092 Mr. Gohmert?



8093 Mr. Gohmert. No.

8094 Ms. Fontenot. Mr. Gohmert votes no.

8095 Mr. Issa?

8096 Mr. Issa. Yes.

8097 Ms. Fontenot. Mr. Issa votes yes.

8098 Mr. Buck?

8099 Mr. Buck. No.

8100 Ms. Fontenot. Mr. Buck votes no.

8101 Mr. Gaetz?

8102 Mr. Gaetz. No.

8103 Ms. Fontenot. Mr. Gaetz votes no.

8104 Mr. Johnson of Louisiana?

8105 Mr. Johnson of Louisiana?

8106 [No response.]

8107 Mr. Biggs?

8108 Mr. Biggs. No.

8109 Ms. Fontenot. Mr. Biggs votes no.

8110 Mr. McClintock?

8111 [No response.]

8112 Mr. Steube?

8113 Mr. Steube. No.

8114 Ms. Fontenot. Mr. Steube votes no.

8115 Mr. Tiffany?

8116 Mr. Tiffany. Aye.

8117 Ms. Fontenot. Mr. Tiffany votes aye.

8118 Mr. Massie?

8119 Mr. Massie. Aye.

8120 Ms. Fontenot. Mr. Massie votes aye.

8121 Mr. Roy?

8122 Mr. Roy. Aye.

8123 Ms. Fontenot. Mr. Roy votes aye.

8124 Mr. Bishop?

8125 Mr. Bishop. No.

8126 Ms. Fontenot. Mr. Bishop votes no.

8127 Mrs. Fischbach?

8128 Mrs. Fischbach. No.

8129 Ms. Fontenot. Mrs. Fischbach votes no.

8130 Mrs. Spartz?

8131 Mrs. Spartz. Yes.

8132 Ms. Fontenot. Mrs. Spartz votes yes.

8133 Mr. Fitzgerald?

8134 Mr. Fitzgerald. Aye.

8135 Ms. Fontenot. Mr. Fitzgerald votes aye.

8136 Mr. Bentz?

8137 Mr. Bentz. Yes.

8138 Ms. Fontenot. Mr. Bentz votes yes.

8139 Mr. Owens?

8140 Mr. Owens. No.

8141 Ms. Fontenot. Mr. Owens vote no.

8142 Chairman Nadler. Does anyone --

8143 Mr. Lieu. Mr. Chair, how am I recorded?

8144 Ms. Fontenot. Mr. Lieu, you are not recorded.

8145 Mr. Lieu. I vote no.

8146 Ms. Fontenot. Mr. Lieu votes no.

8147 Chairman Nadler. Mr. Chabot?

8148 Mr. Chabot?

8149 Mr. Chabot. No.

8150 Ms. Fontenot. Mr. Chabot votes no.

8151 Chairman Nadler. Mr. Johnson of Louisiana?

8152 Mr. Johnson of Louisiana. How am I recorded?

8153 Ms. Fontenot. Mr. Johnson of Louisiana, you are not

8154 recorded.

8155 Mr. Johnson of Louisiana. No.

8156 Ms. Fontenot. Mr. Johnson of Louisiana vote no.

8157 Mr. McClintock?

8158 Mr. McClintock. No.

8159 Ms. Fontenot. Mr. McClintock votes no.

8160 Mr. Cohen. Mr. Cohen votes no.

8161 Ms. Fontenot. Mr. Cohen votes no.

8162 Chairman Nadler. Has everyone voted who wishes to vote?

8163 [No response.]

8164 The clerk will report.

8165 Ms. Bush. I'm sorry, Mr. Chairman, I would like to change  
8166 my vote to a no. This is Ms. Bush.

8167 Ms. Fontenot. Ms. Bush votes no.

8168 Mr. Chairman, there are 13 ayes and 31 noes.

8169 Chairman Nadler. The amendment is not agreed to.

8170 Are there any other amendments to the amendment in the nature  
8171 of a substitute?

8172 Mr. Bentz. Mr. Chair?

8173 Ms. Lofgren. I've got one more. I'll be happy to wait.  
8174 I mean, we should go back and forth.

8175 Mr. Cicilline. [Presiding.] Mr. Benz, for what purpose  
8176 do you seek recognition?

8177 Mr. Bentz. I have an amendment at the desk.

8178 Mr. Cicilline. The clerk will report the amendment.

8179 Ms. Fontenot. "Amendment to the amendment in the nature  
8180 of a substitute to H.R. 3849 offered by Mr. Benz of Oregon.

8181 Beginning page 2, strike line 18 and all that follows through  
8182 page 6, line 3, and redesignate the following sections  
8183 accordingly."

8184 [The amendment of Mr. Benz follows:]

8185

8186 \*\*\*\*\* INSERT \*\*\*\*\*

8187           Mr. Cicilline. The gentleman is recognized to explain his  
8188 amendment.

8189           Mr. Bentz. Thank you, Mr. Chair.

8190           Before I begin, I want it clear that big tech is not perfect,  
8191 is guilty of bad acts, is evolving, has a long way to go, and  
8192 there are aspects of big tech that need congressional attention.

8193           Having said that, the interoperability provisions in this  
8194 bill are a huge step backwards. Although I agree  
8195 interoperability is a good thing in many places, but antitrust  
8196 law is not the proper means of bringing this function forward.

8197           Let me also be clear that I do not object to the part of  
8198 the bill that concerns portability. Although complex, this is  
8199 a necessary element of the internet universe and I think will  
8200 be occurring one way or the other.

8201           But I do object to that portion of the bill which requires  
8202 interoperability. Here's why: the purpose of the bill is to  
8203 establish the fact that, without interoperability, a platform  
8204 is competing illegally. In other words, a platform that fails  
8205 to provide interoperability to others or fails to offer an  
8206 interface is, of itself, anticompetitive and is, thus, illegal.

8207           This is clearly stated in the Section 2 where the bill provides  
8208 that a failure to comply with this Act is a violation of Section  
8209 5 of the Federal Trade Commission Act.

8210           The question that must be asked: is this bill consistent

8211 with antitrust law, as it has evolved over the past 40 or 50 years?

8212 The answer is no. The bill is a huge step backwards away from  
8213 the understood and refined consumer welfare standard and back  
8214 toward a simplistic and arbitrary focus on market structure and  
8215 concentration. Big is bad, according to this bill, ignoring the  
8216 need to analyze actual competitive effects.

8217 This bill is a clear example of government-engineered  
8218 industrial policy and nothing makes it more clear than a quick  
8219 look at page 15, lines 11-12, which read, quote, "The Commission  
8220 shall issue standards of interoperability specific to the  
8221 platform." That is, the Commission, the government will issue  
8222 those standards. This is absolutely government engineering and  
8223 government-designed industrial policy. The government is taking  
8224 control under the guise of improving competition.

8225 This bill presumes that all will be more competitive by  
8226 forcing successful companies to give all of that that they have  
8227 created to others. This is what the bill does. The  
8228 interoperability portions of this bill are not good for innovation  
8229 and not good for the American consumer.

8230 This is a step back to the days when small was celebrated.  
8231 A discussion of this can be found in the United States v.  
8232 Trans-Missouri Freight Association, a rather elderly case issued  
8233 in 1897 which held that the antitrust law was to protect "small  
8234 dealers and worthy men". The Court concluded that "small dealers

8235 and worthy men" should be protected, even if doing so came at  
8236 the expense of mere reduction in the price of commodity.

8237 That is what the interoperability provisions do in this bill.  
8238 They force large companies who have been successful in business  
8239 to protect less successful firms from more efficient competitors.  
8240 The result: the consumer is the worse for it.

8241 This bill reflects a shift of control to the government.  
8242 It reflects a chilling of innovation. It reflects a means of  
8243 damaging privacy. The bill throws open the door to our  
8244 competitors -- China being the most obvious -- putting not only  
8245 consumer privacy at risk, but also the nation's security. Let  
8246 me say again: big tech is certainly not perfect, but this bill  
8247 is not the way to fix the problem. I urge the support of my  
8248 amendment.

8249 I yield back.

8250 Mr. Cicilline. The gentleman yields back.

8251 I now recognize myself in opposition to the amendment.

8252 I understand the gentleman's amendment is, essentially, to  
8253 remove the interoperability provisions of the legislation, which  
8254 essentially guts the bill and only leaves portability in place,  
8255 which I thank him for his support of half of the bill, but this,  
8256 again, is a competition-based solution to ensure actually more  
8257 innovation and more ability to compete.

8258 And I reference a letter from the Electronic Frontier

8259 Foundation that says, "Requiring interoperability, as envisioned  
8260 by the ACCESS Act, will fix the core problem users have with  
8261 today's dominant platforms -- the ability to leave a platform  
8262 while remaining in contact with their personal networks."

8263 The difficulty of leaving today's dominant platforms means  
8264 that those platforms have inadequate incentives to safeguard  
8265 consumer privacy and freedom of expression. By breaking down  
8266 the power of network effects, Congress will enable new markets,  
8267 products, and services to emerge within the ecosystem where a  
8268 super-majority of internet users currently reside. The ACCESS  
8269 Act gives consumers meaningful ways to vote with their feet,  
8270 should they disagree with big tech's platform decision on how  
8271 to deliver their service.

8272 So, I would respectfully say that the interoperability will  
8273 lead to more innovation, a better quality of products, better  
8274 service to consumers, and the ability for people to vote with  
8275 their feet.

8276 And with that, I'll yield the balance of my time to  
8277 Congresswoman Scanlon.

8278 Ms. Scanlon. Thank you, Representative Cicilline.

8279 Yes, I do appreciate the gentleman's support for the  
8280 portability portions of the bill, but, as the gentleman from Rhode  
8281 Island noted, this would gut the interoperability portions of  
8282 the bill, and that is required for successful implementation of



8283 this competition-based solution.

8284 We need to lower barriers to entry and growth for competing  
8285 companies and enable effective consumer and business choice among  
8286 alternatives, and that's what this bill would do.

8287 So, I would urge a no vote on this amendment, and I yield  
8288 back.

8289 Mr. Cicilline. The gentlelady yields back.

8290 Anyone else seek recognition?

8291 Ms. Lofgren. Mr. Chairman?

8292 Mr. Cicilline. Yes, the gentlelady from California.

8293 Ms. Lofgren. I move to strike the last word.

8294 Mr. Cicilline. The gentlelady is recognized.

8295 Ms. Lofgren. Unlike the author, I actually believe  
8296 interoperability is an important means of promoting competition.

8297 I do worry, however, about the structure of the bill. Now we  
8298 solve a big problem by making sure that users' data can only be  
8299 transferred with their request. I do have continuing concerns  
8300 about the other security issues, not just the privacy issues,  
8301 but the security issues. I'm struggling with whether you would  
8302 support an interoperability provision with adequate security  
8303 provisions, or whether you're just opposed to interoperability  
8304 per se, if I could yield.

8305 Mr. Cicilline. The gentleman's recognized.

8306 Mr. Bentz. Thank you for the yield and thank you for the

8307 time.

8308 I think it unlikely. I think the interoperability space  
8309 is incredibly complex and those who I have spoken to that are  
8310 aware of how it works are wondering how many years and how many  
8311 billions will be spent trying to achieve the goal suggested in  
8312 this bill.

8313 I will also point out that I have had a modest amount of  
8314 experience in this space in the healthcare arena and I will just  
8315 share with you this is going to be extraordinarily difficult at  
8316 every level. So the short answer is no, but thank you. Thank  
8317 you for the--

8318 Ms. Lofgren. I thank the gentleman and I yield back.

8319 Mr. Cicilline. The gentlelady yields back. If there are  
8320 no further requests for recognition, the question now occurs on  
8321 the amendment.

8322 All those in favor, say aye.

8323 Voice. Aye.

8324 Opposed, say nay.

8325 In the opinion of the Chair--

8326 Voice. Nay.

8327 Mr. Cicilline --the noes have it.

8328 Anyone else have an additional--

8329 Voice. Yeas and nays.

8330 Mr. Cicilline. --amendment? I am sorry?

8331 Mr. Bishop. I do.

8332 Mr. Cicilline. The yeas and nays. Yeas and nays have been  
8333 requested. The clerk will please call the roll.

8334 Ms. Fontenot. Mr. Nadler?

8335 Ms. Fontenot. Ms. Lofgren?

8336 Ms. Lofgren. [inaudible].

8337 Ms. Fontenot. Ms. Lofgren passes.

8338 Ms. Jackson Lee?

8339 Ms. Jackson Lee?

8340 Ms. Jackson Lee. Passing.

8341 Ms. Fontenot. Ms. Jackson Lee passes.

8342 Mr. Cohen?

8343 Mr. Cohen. No.

8344 Ms. Fontenot. Mr. Cohen votes no.

8345 Mr. Johnson of Georgia?

8346 Mr. Johnson of Georgia. No.

8347 Ms. Fontenot. Mr. Johnson of Georgia votes no.

8348 Mr. Deutch?

8349 Mr. Deutch. No.

8350 Ms. Fontenot. Mr. Deutch votes no.

8351 Ms. Bass?

8352 Ms. Bass. No.

8353 Ms. Fontenot. Ms. Bass votes no.

8354 Mr. Jeffries?

8355 Mr. Jeffries. No.

8356 Ms. Fontenot. Mr. Jeffries votes no.

8357 Mr. Cicilline?

8358 Mr. Cicilline. No.

8359 Ms. Fontenot. Mr. Cicilline votes no.

8360 Mr. Swalwell?

8361 Mr. Swalwell. No.

8362 Ms. Fontenot. Mr. Swalwell votes not.

8363 Mr. Lieu?

8364 Mr. Lieu. No.

8365 Ms. Fontenot. Mr. Lieu votes no.

8366 Mr. Raskin?

8367 Mr. Raskin. No.

8368 Ms. Fontenot. Mr. Raskin votes no.

8369 Ms. Jayapal?

8370 Ms. Jayapal. No.

8371 Ms. Fontenot. Ms. Jayapal votes no.

8372 Mrs. Demings?

8373 Mrs. Demings. No.

8374 Ms. Fontenot. Mrs. Demings votes no.

8375 Mr. Correa?

8376 Mr. Correa. No.

8377 Ms. Fontenot. Mr. Correa votes no.

8378 Ms. Scanlon?

8379 Ms. Scanlon. No.

8380 Ms. Fontenot. Ms. Scanlon votes no.

8381 Ms. Garcia?

8382 Ms. Garcia. No.

8383 Ms. Fontenot. Ms. Garcia votes no.

8384 Mr. Neguse?

8385 Mr. Neguse. No.

8386 Ms. Fontenot. Mr. Neguse votes no.

8387 Mrs. McBath?

8388 Ms. McBath. No.

8389 Ms. Fontenot. Mrs. McBath votes no.

8390 Mr. Stanton?

8391 Mr. Stanton. No.

8392 Ms. Fontenot. Mr. Stanton votes no.

8393 Ms. Dean?

8394 Ms. Dean. No.

8395 Ms. Fontenot. Ms. Dean votes no.

8396 Ms. Escobar?

8397 Ms. Escobar. No.

8398 Ms. Fontenot. Ms. Escobar votes no.

8399 Mr. Jones?

8400 Mr. Jones. No.

8401 Ms. Fontenot. Mr. Jones votes no.

8402 Ms. Ross?

8403 Ms. Ross. Ross votes no.

8404 Ms. Fontenot. Ms. Ross votes no.

8405 Ms. Bush?

8406 Ms. Bush. Bush votes no.

8407 Ms. Fontenot. Ms. Bush votes no.

8408 Ms. Jackson Lee. How am I recorded?

8409 Ms. Fontenot. Ms. Jackson Lee, you are recorded as present.

8410 Ms. Jackson Lee. No.

8411 Ms. Fontenot. Ms. Jackson Lee votes no.

8412 Mr. Jordan?

8413 Mr. Jordan. Yes.

8414 Ms. Fontenot. Mr. Jordan votes yes.

8415 Mr. Chabot?

8416 Mr. Chabot. Aye.

8417 Ms. Fontenot. Mr. Chabot votes aye.

8418 Mr. Gohmert?

8419 Mr. Gohmert. Aye.

8420 Ms. Fontenot. Mr. Gohmert votes aye.

8421 Mr. Issa?

8422 Mr. Issa. Aye.

8423 Ms. Fontenot. Mr. Issa votes aye.

8424 Mr. Buck?

8425 Mr. Buck. No.

8426 Ms. Fontenot. Mr. Buck votes no.

8427 Mr. Gaetz?

8428 Mr. Johnson of Louisiana?

8429 Mr. Johnson of Louisiana. Aye.

8430 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

8431 Mr. Biggs?

8432 Mr. Biggs. No.

8433 Ms. Fontenot. Mr. Biggs votes no.

8434 Mr. McClintock?

8435 Mr. McClintock. Aye.

8436 Ms. Fontenot. Mr. McClintock votes aye.

8437 Mr. Steube?

8438 Mr. Steube. No.

8439 Ms. Fontenot. Mr. Steube votes no.

8440 Mr. Tiffany?

8441 Mr. Tiffany. Aye.

8442 Ms. Fontenot. Mr. Tiffany votes aye.

8443 Mr. Massie?

8444 Mr. Massie. Aye.

8445 Ms. Fontenot. Mr. Massie votes aye.

8446 Mr. Roy?

8447 Mr. Roy. Aye.

8448 Ms. Fontenot. Mr. Roy votes aye.

8449 Mr. Bishop?

8450 Mr. Bishop. Yes.

8451 Ms. Fontenot. Mr. Bishop votes yes.

8452 Mrs. Fischbach?

8453 Mrs. Fischbach. Yes.

8454 Ms. Fontenot. Mrs. Fischbach votes yes.

8455 Mrs. Spartz?

8456 Mrs. Spartz. Yes.

8457 Ms. Fontenot. Mrs. Spartz votes yes.

8458 Mr. Fitzgerald?

8459 Mr. Fitzgerald. Aye.

8460 Ms. Fontenot. Mr. Fitzgerald votes aye.

8461 Mr. Bentz?

8462 Mr. Bentz. Yes.

8463 Ms. Fontenot. Mr. Bentz votes yes.

8464 Mr. Owens?

8465 Mr. Owens. No.

8466 Ms. Fontenot. Mr. Owens votes no.

8467 Chairman Nadler. Nadler votes no.

8468 Ms. Fontenot. Mr. Nadler votes no.

8469 Ms. Lofgren. Lofgren votes no.

8470 Ms. Fontenot. Ms. Lofgren votes no.

8471 Mr. Cicilline. Has everyone recorded their vote who desires

8472 to vote?

8473 The clerk will report?

8474 Ms. Fontenot. Mr. Chair, there are 14 ayes and 29 noes.



8475 Mr. Cicilline. The amendment is not adopted.

8476 For what reason does the gentlelady from California seek  
8477 recognition?

8478 Ms. Lofgren. I have an amendment at the desk.

8479 Mr. Cicilline. The clerk will report the amendment.

8480 Ms. Fontenot. Amendment to the amendment in the nature of  
8481 a substitute.

8482 Ms. Lofgren. Could you hold for a minute and see are there  
8483 further Republican amendments? Let me hold off on this and let  
8484 another amendment-

8485 Mr. Bishop. Then I have an amendment.

8486 Mr. Issa. I have another one, too.

8487 Mr. Bishop. Or he has one. Go ahead.

8488 Mr. Cicilline. You haven't had a chance. Mr. Issa has gone  
8489 a lot.

8490 Mr. Issa. Go right ahead.

8491 Mr. Bishop. All right. Thank you, Mr. Chairman. I have  
8492 an--

8493 Mr. Cicilline. We need a break from Mr. Issa.

8494 Mr. Bishop. I have an amendment at the desk.

8495 Mr. Cicilline. The clerk will please report the amendment.  
8496 Reserve a point of order.

8497 Ms. Fontenot. Amendment to the amendment in the nature of  
8498 a substitute to H.R. 3849 offered by Mr. Bishop of North Carolina.

8499 Page 14, line 22, enter the following and redesignate the  
8500 subsequent subsection accordingly: Interoperability standards  
8501 issued by the Commission shall not require a business user to  
8502 alter the content moderation policies and practices on their own  
8503 online platform.

8504 Page 18, line 4, enter quote, "provided that the standard  
8505 shall not regulate any user content moderation policies or  
8506 practices of the business user," end quote, before the semicolon.

8507 Page 18, line 4, strike, quote, "and," quote.

8508 Page 18, line 14, strike the period. Insert quote, "and,"  
8509 quote.

8510 Page 18, line 14, enter the following: Five, prevent a  
8511 covered platform from conditioning by limiting access to their  
8512 online platform on the basis of a business user's content  
8513 moderation practices or policies.

8514 Mr. Bishop. Mr. Chairman?

8515 Mr. Cicilline. The gentleman is recognized to explain his  
8516 amendment.

8517 Mr. Bishop. Thank you, sir.

8518 You know, we have had a lengthy debate tonight and about  
8519 10 hours ago approximately I said that the thing about this package  
8520 of bills substantively is that it seems to turn over a lot of  
8521 power for the regulatory agency to decide a lot of stuff that  
8522 we should decide.

8523           When the concepts in these bills were first shared, I  
8524 actually thought that this bill, the affordability and  
8525 interoperability concepts were inviting. I still think that that  
8526 is true about portability and I could live with some versions  
8527 of interoperability, but one of the things that is very  
8528 interesting about the bill, and many of these bills, is a lot  
8529 of terms are not defined.

8530           If you start off on page 1 of this bill, Section 3,  
8531 Portability, if you go down to line 14, it is defined as something:  
8532 to enable the secure transfer of data to a user.

8533           You go over to Interoperability on the next page, Section  
8534 4; look at line 22, it says covered platforms shall maintain a  
8535 set of transparent third-party accessible interfaces to  
8536 facilitate and maintain interoperability. It doesn't define  
8537 what that is.

8538           I have had some conversations with a member or two in which  
8539 member says, well, all that is is instead of data being--your  
8540 portable data being delivered to you, it--interoperability would  
8541 allow it to be delivered to another platform. Well, I am not  
8542 so sure.

8543           So as I was digging into this; and to Mr. Cicilline, you've  
8544 pointed out a couple times, it has been a long investigation.

8545           There is a really big majority staff committee report, and I  
8546 have read a lot of it. And I went back to that to try to understand

8547 what it would be, what interoperability might mean and I came  
8548 upon in particular an article or a paper written by Michael Kades,  
8549 who I understand is going to be legislative counsel and antitrust  
8550 to Senator Klobuchar called Interoperability as a Competition  
8551 Remedy for Digital Networks. And he contemplates there that  
8552 interoperability would be like--would be like Twitter  
8553 users being able to friend or get access to users on Facebook.  
8554 Facebook was a place he really seemed to focus.

8555 And I thought about--well, so what would happen if somebody  
8556 on Parler wanted to friend somebody on Facebook? And whose rules  
8557 would govern if Facebook said, for example, you are forbidden  
8558 to mention the origin of COVID-19 coming from a lab in Wuhan,  
8559 China? Can't say that. That is against our rules, our community  
8560 rules. Or you can't say anything about the Hunter Biden laptop.  
8561 It is against our community rules. Or maybe something a little  
8562 bit more--you can't mis-gender somebody. That is one that--you  
8563 know, so whose rules are going to govern?

8564 And in fact, if that--that not being too farfetched, there  
8565 is a paragraph herein where he says in the social network context  
8566 there will likely be ample disputes. For example, a defendant  
8567 platform rejects interoperability with an entrant because it  
8568 claims the entrant traffics in hateful and deceptive information  
8569 which the defendant's platform forbids. The entrant responds  
8570 that it does not allow such information to be posted and reports

8571 that defendant discriminates against posts of the entrant.

8572 So the concern is that; particularly if you go over to page  
8573 18 of the bill, one of the things that the Technical Committee  
8574 is told to do is to prevent fraudulent, malicious, or abusive  
8575 activity by a business user interoperating with the covered  
8576 platform. I am not in favor of fraud; no in favor of malice.

8577 I don't really know what abusive means. And it is yet another  
8578 area for the FTC to decide. And it seems like what is likely  
8579 to happen is the FTC is probably going to follow the practices  
8580 of a Facebook in many circumstances and say you can't talk about  
8581 the origins of the--and if you are on Parler, instead of having  
8582 a unique platform, you are going to be stuck with the same kind  
8583 of oppressive rules that say you can't talk about the origin of  
8584 the COVID-19 virus.

8585 Now, I think this has been helped today by Ms. Lofgren's  
8586 amendment that says nobody is going to get--interoperate except  
8587 on a user-by-user consent basis. But if a user grants consent  
8588 to interoperate with Parler, then there is no reason that Parler's  
8589 rules or its community need to be overridden by Facebook. And  
8590 that is what this amendment would do. I yield back.

8591 Mr. Cicilline. The gentleman yields back.

8592 I now recognize myself in opposition to the amendment.

8593 Again--I withdraw the point of order. This legislation that  
8594 is before us is narrowly crafted to build a more competitive and

8595 dynamic digital marketplace. The legislation does not involve  
8596 content moderation. It is targeted at anticompetitive conduct  
8597 in the digital economy. There are a number of proposals; I know  
8598 one from the ranking member, related to this issue and it has  
8599 been referred to the Committee on Energy and Commerce, which  
8600 has--is the appropriate venue for addressing this.

8601 But one thing that I am particularly concerned about is if  
8602 you look at the bottom, lines 5 through 8, your amendment would  
8603 prevent a covered platform from conditioning or limiting access  
8604 to their online platform on the basis of a business user's content  
8605 moderation practices or policies. So if you had a platform that  
8606 allowed pornography, child pornography, that would not be a basis  
8607 if this amendment passes to prevent the platform from limiting  
8608 access to the online platform.

8609 And so that would essentially say there is nothing you could  
8610 do, FTC. You can not in fact rely upon a business user's content  
8611 moderation practices or policies and we would be forced, or  
8612 consumers would be forced to live with whatever decisions, however  
8613 outrageous those practices or policies might be. It could not  
8614 form a basis for preventing a covered platform from conditioning  
8615 or limiting access.

8616 I think that is very dangerous. And I am certain that's  
8617 not what you intend to do, but I think that is the practical effect  
8618 of the amendment. And so I urge my colleagues to vote no on the

8619 amendment.

8620 Mr. Jordan. Mr. Chairman?

8621 Mr. Cicilline. Yes, Ranking Member, Jordan?

8622 Mr. Jordan. I yield time to the gentleman from North  
8623 Carolina who sponsored--

8624 Mr. Cicilline. The gentleman from North Carolina is  
8625 recognized.

8626 Mr. Bishop. I thank the gentleman from Ohio.

8627 So the big question for conservatives in this entire process  
8628 here needs to be are we making progress for the interests of  
8629 conservatives in this package of bills or not? And now the answer  
8630 has been laid bare.

8631 Mr. Cicilline. Will the gentleman yield?

8632 Mr. Bishop. Let me finish for a minute and I will be glad  
8633 to if I have got any of Mr. Jordan's time left to yield, or actually  
8634 I am not sure it would even be mine to yield.

8635 But let me just say this: So what we see--and consider that  
8636 situation. So Parler interoperating with Facebook. In all of  
8637 the circumstances I gave maybe one that just really is the most  
8638 outrageous that for a year people on Facebook have been prohibited  
8639 from mentioning the fact that it--and what now seems to be the  
8640 likeliest of theories about the origin of COVID and that it came  
8641 from a lab in Wuhan. It has been forbidden by their censorship.

8642 And so if Parler is interoperating with Facebook, even if

8643 a Facebook user has to consent one-off in order for that to happen,  
8644 now we can see what this language, this vague language means  
8645 vis-a-vis the FTC. They are going to be the police of what can  
8646 be said on Parler and any other network.

8647 How are you going to have unique and dynamic competitive  
8648 environments popping up where--if Facebook can decide across the  
8649 social network universe that you can't say what the origin of  
8650 the Wuhan virus is?

8651 And of course I am using that as an example, but to any  
8652 conservative who would say this is the way to embark on a solution  
8653 to big tech's censorship of conservatives and that particular  
8654 abuse, this--that response, that opposition to this amendment  
8655 gives the lie to that. And I yield back to Mr. Jordan.

8656 Mr. Jordan. I yield back. Thanks.

8657 Mr. Cicilline. Does anyone else seek recognition?

8658 Ms. Jackson Lee?

8659 Ms. Jackson Lee. Mr. Chairman, I strike the last word and  
8660 yield to you.

8661 Mr. Cicilline. Thank you. I thank the gentlelady for  
8662 yielding.

8663 I just want to quickly respond. The question of and the  
8664 purpose of these bills is to promote competition, to promote  
8665 innovation, to ensure that there are more choices for consumers  
8666 and more opportunities for entrepreneurs and innovators. The



8667 purpose of these bills is not to curate content. There is a bill,  
8668 as I mentioned, introduced by the ranking member of this committee  
8669 on this very issue that was referred to the Energy and Commerce  
8670 Committee that has exclusive jurisdiction over it.

8671 So I think one of the challenges is trying to solve a problem  
8672 that is the subject matter of the jurisdiction of another  
8673 committee which is not the subject of the antitrust bills. But  
8674 as I mentioned--

8675 Mr. Bishop. Would the gentleman yield?

8676 Mr. Cicilline. Let me just finish and then I am happy to,  
8677 even though you didn't.

8678 2018 Tumblr--

8679 Mr. Bishop. I am running out of time.

8680 Mr. Cicilline. No, I am trying to model good behavior.  
8681 2018 Tumblr was delisted for harboring child pornography. And  
8682 if your amendment is adopted, it would prevent a covered platform  
8683 from conditioning or limiting access to the online platform on  
8684 the basis of a user's content moderation practices or policies.

8685 There would be nothing you could do; we would have to live with  
8686 that.

8687 I know you don't intend that to be the result, but I think  
8688 that is the problem if you say it prevents a covered platform  
8689 from conditioning or limiting access to their online platform  
8690 on the basis of a business user's content moderation practices

8691 or policies.

8692 So set aside the criminal aspect of that. Suppose you had  
8693 a platform that said we don't have any content moderation  
8694 policies. We let everyone--no matter how violent, no matter what  
8695 they say, invite that. You would not have the ability in any  
8696 way to limit access to that online platform or the business user  
8697 wouldn't have an opportunity to do that if this amendment passes.

8698

8699 So I get the purpose, but I think what ends up happening  
8700 is this blows a hole that will make it virtually impossible to  
8701 prevent people from maintaining--or forcing people to be  
8702 interoperable and portable with platforms that pose real dangers  
8703 to the community, and I just don't know if that language achieves  
8704 what you intend to achieve.

8705 Mr. Bishop. Mr. Chairman--

8706 Mr. Cicilline. I am happy to yield. Of course.

8707 Ms. Jackson Lee. It is my time. I am happy to yield--

8708 Mr. Cicilline. Oh, I am sorry. Yield back to Ms. Jackson  
8709 Lee.

8710 Ms. Jackson Lee. I am happy to yield to the gentleman.

8711 Mr. Bishop. I thank the gentlelady from Texas.

8712 I understand that this poses a complexity for the issue of  
8713 interoperability. And you say, Mr. Chairman, that there is  
8714 no--that this is outside the jurisdiction of the Committee, but

8715 the language here imparts power to the FTC to deal with this issue.  
8716 It allows the FTC to pass rules to protect against, quote,  
8717 "abusive activity." And one person's pornography, if that--that  
8718 would be abusive as far as I am concerned, but I don't think it  
8719 is abusive to say that the Wuhan virus--my theory is the Wuhan  
8720 virus came out of the lab. But Facebook said that was abusive.

8721

8722 So your bill, the language of your bill empowers the FTC  
8723 to do that. And you are saying you want to have an environment  
8724 in which interoperability occurs and yet you have all these  
8725 different flavors springing up and competitors that do things  
8726 differently and yet you are going to have--you are empowering  
8727 the FTC to impose content moderation policies on every business  
8728 user that wants to interoperate--

8729 Ms. Jackson Lee. Reclaim my time.

8730 Mr. Bishop. --for the sakes of its customers.

8731 Ms. Jackson Lee. Reclaim my time. I just want to make one  
8732 quick point. Laymen will have to understand this and this is  
8733 going to go through a lot of machinations before these bills become  
8734 law, but I do think in all of the discussion on interoperability  
8735 and the content truth is a factor. And what has been happening  
8736 is there has been a question of whether or not the issues around  
8737 COVID and other matters have been truthful, and I think the covered  
8738 entity has a right to make that determination as the bill would

8739 do. I yield back. I mean I yield to the gentleman--

8740 Mr. Cicilline. I thank the gentlelady for yielding. And  
8741 again I think this issue with respect to content moderation is  
8742 an important one, but I think it requires a discussion within  
8743 the committee of jurisdiction. I think the attempt to insert  
8744 that into this competition-based solution on data portability  
8745 and interoperability poses real danger and I urge my colleagues  
8746 to vote no on the amendment.

8747 Mr. Tiffany. Mr. Chairman?

8748 Mr. Cicilline. For what purpose do you seek recognition?

8749 Mr. Tiffany. Move to strike the last word.

8750 Chairman Nadler. The gentleman is recognized.

8751 Mr. Tiffany. Thank you very much. I speak in support of  
8752 the gentleman from North Carolina's amendment, and one of the  
8753 key issues here for us is censorship. And he mentioned this in  
8754 his comments in regards to--conservatives are very concerned  
8755 about this and we are not seeing anything in these bills in regards  
8756 to censorship and--but I would give a little different take than  
8757 the gentleman from North Carolina and some others--is that  
8758 ultimately this is not just about conservatives.

8759 All we have to do is witness the cancel culture over the  
8760 last couple years. They are coming for us now. They are coming  
8761 for people like me, certainly the ranking member. They have come  
8762 after him hard here over the last year and we have seen the results

8763 of that. I mean, I just look at in the State of Wisconsin when  
8764 we had the riots in Madison, they went--the rioters, they went  
8765 and tore down the statue of a guy who died at Chickamauga to save  
8766 the Union and end slavery. And they were tearing him down. I  
8767 mean, that is the kind of stuff that goes on with cancel culture  
8768 and it extends to speech also.

8769 They are coming for us now, but they don't stop there. They  
8770 will come for you ultimately also, and that is why it is so  
8771 important to have something like this amendment where you have  
8772 platforms that can share their speech even if some people disagree  
8773 with it. I yield back. I will yield the balance of my time--

8774 Mr. Jordan. Yes, I thank the gentleman for yielding, and  
8775 I support the gentleman from North Carolina's amendment. The  
8776 gentlelady from Texas said truth is a factor. That's the point.

8777 All kinds of content was taken down off of these platforms.  
8778 The gentleman's example is the best, about the origins of the  
8779 virus. And at the time people said that was not truthful.  
8780 Shazam, it looks like it is now. That's the whole point. That's  
8781 why we need this amendment. Truth does matter, but sometimes  
8782 if people have a disagreement on it, if only one side is allowed  
8783 to talk, that's not going to get us to the answer. That's not  
8784 going to get us to the truth, as the gentlelady from Texas pointed  
8785 out. That is what this amendment is about and that is why it  
8786 is a good amendment. I urge its adoption. Yield back to the

8787 gentleman from Wisconsin.

8788 Mr. Tiffany. And I will yield some time to the gentleman  
8789 from North Carolina.

8790 Mr. Bishop. I thank the gentleman. I thought he was going  
8791 to ask for more time.

8792 Yes, I thank the gentlewoman from Texas for her candid  
8793 statement. What she just described is the Ministry of Truth.

8794 The Ministry of Truth. So it is not going to be that we have  
8795 to put up with Facebook at the cost of not being on that platform  
8796 and going to Parler, which they trampled on one time and sort  
8797 of is trying to build itself back up.

8798 No, the Facebook regime will be picked up by Ms. Khan at  
8799 the FTC. And with the academics on the Technical Committee it  
8800 will--you will take these rules of--that are about truth according  
8801 to the gentlewoman from Texas and it will be imposed as a matter  
8802 of government power across social media. You can compete in  
8803 different ways. We can have a lot of competition in terms of  
8804 flavors of social media, but they will all be under the Ministry  
8805 of Truth. That is what this bill--these bills do. And I yield  
8806 back to Mr. Tiffany.

8807 Mr. Jordan. Will the gentleman will yield again?

8808 Mr. Tiffany. I will yield to the gentleman from Ohio.

8809 Mr. Jordan. We saw this--

8810 Mr. Cicilline. The gentleman from Ohio is recognized.

8811 Mr. Jordan. We saw this last year. I got the email where  
8812 Mr. Zuckerberg emailed Dr. Fauci. Tony, he says, I wanted to  
8813 send a note of thanks for your leadership. Everything you are  
8814 doing to make the country's response as effective as possible.

8815 I also wanted to share a few ideas with you. Then the next  
8816 paragraph he says this: This isn't public yet, but we are  
8817 building a coronavirus information hub that we are going to put  
8818 at the top of Facebook for everyone with two goals: make sure  
8819 people get authoritative information from reliable sources.  
8820 Authoritative information from reliable sources. They were 0  
8821 for 2. Right?

8822 The information Dr. Fauci was giving him on the origin of  
8823 the virus wasn't true; at least it sure appears that way. So  
8824 this is exactly the scenario that we need to deal with. It is  
8825 already happened. Now we are going to codify it. That is the  
8826 concern. That is why this amendment is so darn important. I  
8827 yield back to the gentleman from Wisconsin.

8828 Mr. Tiffany. So I would just conclude by saying for those  
8829 of you that are Harry Potter fans and are not familiar with the  
8830 Ministry of Truth, think of the Ministry of Magic. It is much  
8831 similar. I yield back.

8832 Mr. Cicilline. The gentleman yields back.

8833 Mr. Roy is recognized. For what purpose does the gentleman  
8834 seek recognition?

8835 Mr. Roy. Strike the last word.

8836 Chairman Nadler. The gentleman is recognized.

8837 Mr. Roy. I believe that the gentleman from North Carolina's  
8838 amendment is offered in good faith with respect to ensuring that  
8839 what we are doing in this bill to empower the FTC, which it clearly  
8840 in the abusive language and generally does, to make these  
8841 determinations that we would take off the table these issues of  
8842 content moderation policies. And what the gentlelady from Texas  
8843 referred to and which my friend from Ohio and others have now  
8844 talked about in terms of truth, this is the whole thing. This  
8845 is the whole issue. Who decides? Who decides?

8846 I mean, for the better part now of, what is this June--for  
8847 the better part of 15 months--I mean an entire campaign last year  
8848 I had \$16 million worth of ads run against me saying I was saying  
8849 the virus was a hoax because I dared to talk about where I thought  
8850 the virus came from; turns out to be true, because I dared to  
8851 talk about the nature of the virus, that I dared to talk about  
8852 what might happen if we shut down our schools, shut down our  
8853 economy, talk about the cancer that would not be detected, the  
8854 mental illness that would flow, the masks and the damage to our  
8855 children.

8856 And yet technology companies with all of the power that we  
8857 are agreeing on a bipartisan basis they have, with all of their  
8858 power they were shutting down our voice in the name of truth.



8859       That is what was happening. I mean, it is clear as day. I mean,  
8860       and I would be happy to engage in a discussion about that matter,  
8861       but I experienced it. I saw it. And here we sit.

8862             And we talk about truth. When we talk about truth of a virus  
8863       that a great deal of evidence suggests came out of Wuhan--allow  
8864       me to insert the funny rant by John Stewart the other night on  
8865       late night TV about that chocolate and Hershey came from  
8866       somewhere. I think it came from the factory. I mean, here we  
8867       sit. If you are Wuhan, where did the virus come from? e know.

8868

8869             And so we talk about that for a year and you have got these  
8870       people using a \$600 billion corporation that--I mean, I don't  
8871       use Facebook. My wife shows me pictures from friends and family  
8872       every once in a while. I don't use it. I try not to use Twitter  
8873       too much anymore. But if you want to go out there and talk to  
8874       people, we kind of have to use Facebook. Right? That is our  
8875       monopoly problem that we are addressing.

8876             And I have said and I agree that I think there is bipartisan  
8877       good faith efforts to try to address the monopoly problem, but  
8878       here the gentleman from North Carolina is just trying to say wait  
8879       a minute, if we are going to have interoperability standards,  
8880       the FTC is going to be inserted into that, how about we just say  
8881       you know what, we should make sure that we are not requiring these  
8882       users to alter the content moderation policies and practices on

8883 their online platform.

8884 I think that is a reasonable thing the gentleman from North  
8885 Carolina is doing and I would suggest that if we are going to  
8886 figure out the monopoly power of these high-tech companies, we  
8887 should actually talk about the truth. That is the truth. What  
8888 we have been seeing and experiencing in the shutdown of free speech  
8889 and thought.

8890 If anything should send chills down the spines of members  
8891 of the People's House, it is the power of corporate entities  
8892 shutting down speech and thought in the name of what they declare  
8893 is truth and then insert the Government into that in the wisdom  
8894 of the FTC with these corporations to determine what the truth  
8895 is.

8896 Mr. Jordan. Does the gentleman yield?

8897 Mr. Roy. Yes, I yield to the ranking member.

8898 Mr. Jordan. I just want to keep reading from Mr.  
8899 Zuckerberg's communication with Dr. Fauci. People want to hear  
8900 from experts than political leaders. Turned out Mr. Roy was  
8901 right, Dr. Fauci, the expert, was wrong last year. But no, Mr.  
8902 Roy's comments, they got censored. They got taken down. And  
8903 I could read you more from their email back and forth, but the  
8904 Government redacted a bunch of what Mr. Zuckerberg said to Mr.  
8905 Fauci. So we didn't even know part of what they had going with  
8906 this coordination.

8907 Mr. Cicilline. The time of the gentleman has expired.

8908 For what reason does the gentlelady from Texas seek  
8909 recognition?

8910 Ms. Garcia. Mr. Chairman, I move to strike the last word.

8911 Mr. Cicilline. The gentlelady is recognized.

8912 Ms. Garcia. Mr. Chairman, I yield my time to my colleague  
8913 from Texas, Sheila Jackson Lee.

8914 Mr. Cicilline. The gentlelady from Texas is recognized.

8915 Ms. Jackson Lee. I thank the gentlelady from Texas for her  
8916 generosity and kindness. I am certainly most moved by the fact  
8917 that my words have now been cited by so many of my good friends  
8918 on the other side of the aisle. This place is a place for truth,  
8919 equality, and justice, so I am glad that we are discussing truth.

8920 I would make the simple point before I make my larger point  
8921 that I am looking at some of what Google says where scientists  
8922 battle over the ultimate origin story, where did coronavirus come  
8923 from? So I don't think we have found the truth yet, but there  
8924 are many different scientific perspectives, but I do want to go  
8925 back to the point Mr. Cicilline has made and I want to in particular  
8926 look at Congresswoman Scanlon's bill, if I might.

8927 The bill reads to promote competition, lower entry barriers,  
8928 and reduce switching costs for consumers and business online.

8929 Obviously the short title is Augmenting Compatibility and  
8930 Competition by Enabling Service Switching Act Access. It also

8931 says a violation of this act or standards issued pursuant to this  
8932 act by a person, partnership, or corporation operating a covered  
8933 platform in or affecting commerce shall be an unfair method of  
8934 competition in violation of Section 5(a)(1) of the Federal Trade  
8935 Commission.

8936 To bring the argument back to where we should be, I just  
8937 want to say to my friends on the amendment that Mr. Bishop has  
8938 offered this is a bill about competition. I think content is  
8939 a very important discussion. It might be apropos for us to have  
8940 a separate legislation that overlaps the Energy and Commerce  
8941 jurisdiction on content. Content is very important and truth  
8942 in that content is very important. And frankly, to my friends  
8943 we--those of us who may not be in the conservative alignment but  
8944 we respect it have been battered untruth ourselves.

8945 So to my good friend from Texas, he might want to encourage  
8946 his colleagues, Republican colleagues in the Senate to vote for  
8947 H.R. 1, Mr. Roy, so you won't have all that dark money coming  
8948 after you in the next campaign. But that is another story. I  
8949 simply want to remind us that the bill is about competition and  
8950 I think this amendment does not fit within the four corners as  
8951 it relates to content. We can discuss truth and content, but  
8952 I don't think that it fits within this particular bill. And with  
8953 that I will yield back to the gentlelady. Thank you.

8954 Chairman Nadler. The gentlelady yields back.

8955           For what purpose does the gentleman from Kentucky seek  
8956 recognition?

8957           Mr. Massie. Move to strike the last word.

8958           Chairman Nadler. The gentleman is recognized.

8959           Mr. Massie. My friend Mr. Bishop offers this amendment in  
8960 good faith with the concern that millions of people, if they were  
8961 watching this hearing, would have, that they have generally, which  
8962 is if they get mistreated on one platform, can they go to the  
8963 other platform? And that is what seduced many folks on this side  
8964 of the aisle into supporting some of this legislation, but the  
8965 amendment possibly more so than any other amendment that has been  
8966 offered to any of these bills tonight exposes a problem with this  
8967 whole interoperability pipedream.

8968           Are you going to homogenize the terms of service? Do all  
8969 four companies have to have the same terms of service?  
8970 If somebody gets banned on one platform, are they banned on the  
8971 others? Does the FTC decide that? If one platform has a security  
8972 issue, are all the other platforms going to have to be that?  
8973 I mean, there have been amendments offered to try and deal with  
8974 the security of the user and the security of the platform. What  
8975 about the privacy of the user? The ownership issue? Who owns  
8976 this stuff? Proprietary algorithms. I mean some of these  
8977 companies spent millions of dollars and got intellectual  
8978 property. Is there compulsory licensing required for

8979 somebody--for one company? Do they have to take their  
8980 intellectual property and give it to other companies in order  
8981 to facilitate interoperability?

8982 But you don't need any of those complicated questions. Just  
8983 the simplest question that Mr. Bishop's amendment asks, which  
8984 is does the content moderation policy of one platform extend to  
8985 the other? And the content moderation policies, they don't  
8986 invite content; they exclude content.

8987 So what if we have got four platforms and one is conservative  
8988 and it doesn't let liberal viewpoints on there? And one if is  
8989 liberal and doesn't let conservative viewpoints on there? And  
8990 then you merge the two terms of service, which--does the FTC choose  
8991 either one or do they pick them both so that you can't say anything  
8992 political on any of the four platforms? Because that is what  
8993 terms of--that is what the user agreement does, it excludes  
8994 certain speech.

8995 Okay. You can't say it might have come from Wuhan. All  
8996 right. Well, our terms of service are you can't say it came  
8997 naturally. Well, our terms of service say, well, the vaccine  
8998 might be hurtful. Well, our terms of service say, no, you can't  
8999 speak ill of the vaccine. You merge all of those and what you  
9000 end up with is nobody can say anything.

9001 And it was offered in good faith. It is not meant to blow  
9002 this bill up. It is not meant to blow it up at all. But it has

9003 the unintended side effect, this amendment does, of exposing that  
9004 this interoperability thing is a pipedream. It fails even the  
9005 simplest test. Even the sponsor of a bunch of the bills here  
9006 tonight admitted it blows it up. It jsut blows it up to even  
9007 try and think about, oh, what if--what does interoperability-how  
9008 does it handle content moderation policies? I can't think about  
9009 it. It just blows the bill up. So we can't vote for your  
9010 amendment.

9011 Well, this bill is not ready to prime time and the  
9012 interoperability part of it, which people have tried to fix  
9013 tonight, it is unfixable. It is just not fixable. And as I said  
9014 before, interoperability--your standards are what--when one  
9015 company becomes dominant in a market, they use interoperability  
9016 to exclude their customers. They say if you want to  
9017 interoperate--

9018 Chairman Nadler. Does the gentleman yield?

9019 Mr. Massie. Let me continue this thought and then I will  
9020 yield. If you want to interoperate with this, you got a license  
9021 from us. You got to pay to compete with us because you don't  
9022 have the resources to recreate million of lines of code that we  
9023 did. I would yield to Ms. Jackson Lee.

9024 Ms. Jackson Lee. I think this discussion is very worth,  
9025 but I was beginning to think about what could happen under this  
9026 amendment: ISIS, Chinese propaganda, and who knows what else?

9027 I think there is a great concern here and whether or not it fits  
9028 into this legislation is a question and I would just argue that  
9029 it does not because the basis is competition and the content could  
9030 be open to anything. I yield back to the gentleman.

9031 Mr. Massie. I thank the gentlelady for yielding and just  
9032 the questions that she poses I believed also exposed this. If  
9033 you can't make his amendment work, then this interoperability  
9034 thing is not ready for prime time. And that sums up my thoughts  
9035 and I will yield back the last 10 seconds.

9036 Chairman Nadler. The gentleman yields back.

9037 For what purpose does the gentlelady from California seek  
9038 recognition?

9039 Ms. Bass. Thank you, Mr. Chairman. I move to strike the  
9040 last word.

9041 Chairman Nadler. The gentlelady is recognized.

9042 Ms. Bass. Well first of all, let me just recognize the hard  
9043 and long work of the subcommittee, the subcommittee chairman and  
9044 the ranking member and all the members and especially the staff  
9045 of the subcommittee in both the 116th Congress and now in this  
9046 Congress.

9047 I know that the Committee spent almost two months working  
9048 on their investigation; actually it was much, much longer than  
9049 two months, through numerous hearings, briefings, drafting of  
9050 the 450-page report and a package of six bills, and I know that



9051 they are subject area specialists.

9052 As some of our colleagues have mentioned, many of us on this  
9053 Committee haven't participated though in one hearing on the  
9054 markets, the monopolistic markets, or even the package of  
9055 antitrust bills we have before us today. And obviously we all  
9056 want to foster competition, promote innovation, and provide both  
9057 benefits and protections to our constituents.

9058 However, as our economy rebounds from a global pandemic we  
9059 do have to understand both the intended and unintended  
9060 consequences the bills will have on these companies, their  
9061 competitors, and consumers. So that is why holding at least one  
9062 hearing even after the fact for all the members of the full  
9063 Judiciary Committee definitely will be my preference, and would  
9064 have been my preference.

9065 So I do strongly support providing a dedicated and consistent  
9066 funding source for both the FTC and the Department of Justice  
9067 Antitrust Division. As enforcement demands rise with  
9068 increasingly complex mergers and major monopolization cases at  
9069 both the FTC and the Justice Department we can't continue to hold  
9070 agency funding flat. So these additional funds will help the  
9071 agencies to adequately promote competition.

9072 The bill we are considering is important. Incorporating  
9073 data, interoperability, and to privacy legislation is essential  
9074 to empowering consumer data rights and fostering a competitive

9075 marketplace.

9076 I am going to vote to move these bills out of committee and  
9077 to continue to move this process forward, but I want to be clear  
9078 that I believe that more work will need to be done between passage  
9079 later tonight and the consideration of these bills on the floor  
9080 of the House of Representatives. So before I agree to move to  
9081 vote on the floor I want to state that for the record, that I  
9082 believe that much more work needs to be done. And I will vote  
9083 in committee, but will not commit to what my vote will be on the  
9084 floor. And with that I yield back.

9085 Chairman Nadler. The gentlelady yields back.

9086 For what purpose does Mrs. Fischbach seek recognition?

9087 Mrs. Fischbach. Mr. Chair, I move to strike the last word.

9088 Chairman Nadler. The gentlelady is recognized.

9089 Mrs. Fischbach. And, Mr. Chair and members, it has been  
9090 I think very frustrating for many of us. I have heard the  
9091 frustration, I have heard the amendments, I have heard the  
9092 questions regarding the bills, and this bill in particular, and  
9093 I think it is very, very obvious we need more time on these bills.  
9094 And we owe it to the people we all represent that we do this  
9095 right and that we take our time. And it is important. It is  
9096 important that we get all of the input we should.

9097 And with that being said, Mr. Chairman, pursuant to Clause  
9098 4, Rule 16, I have a privileged motion. I therefore, respectfully

9099 make a motion to adjourn.

9100 Chairman Nadler. The motion to adjourn is a privileged  
9101 motion.

9102 All those in favor, say aye?

9103 Opposed, no?

9104 In the opinion of the chair, the noes have it.

9105 Mrs. Fischbach. Recorded vote.

9106 Chairman Nadler. A recorded vote is requested. The clerk  
9107 will call the roll.

9108 Ms. Fontenot. Mr. Nadler?

9109 Chairman Nadler. No.

9110 Ms. Fontenot. Mr. Nadler votes no.

9111 Mr. Lofgren?

9112 Ms. Lofgren Aye.

9113 Ms. Fontenot. Ms. Lofgren votes aye.

9114 Ms. Jackson Lee?

9115 Mr. Cohen?

9116 Mr. Cohen. No.

9117 Ms. Fontenot. Mr. Cohen votes no.

9118 Mr. Johnson of Georgia?

9119 Mr. Johnson of Georgia. No.

9120 Ms. Fontenot. Mr. Johnson of Georgia votes no.

9121 Mr. Deutch?

9122 Ms. Fontenot. Ms. Bass?

9123 Ms. Fontenot. Mr. Jeffries?  
9124 Mr. Jeffries. No.  
9125 Ms. Fontenot. Mr. Jeffries votes no.  
9126 Mr. Cicilline?  
9127 Mr. Cicilline. No.  
9128 Ms. Fontenot. Mr. Cicilline votes no.  
9129 Mr. Swalwell?  
9130 Mr. Lieu?  
9131 Mr. Lieu. No.  
9132 Ms. Fontenot. Mr. Lieu votes no.  
9133 Mr. Raskin?  
9134 Mr. Raskin. No.  
9135 Ms. Fontenot. Mr. Raskin votes no.  
9136 Ms. Jayapal?  
9137 Ms. Jayapal. No.  
9138 Ms. Fontenot. Ms. Jayapal votes no.  
9139 Mrs. Demings?  
9140 Mrs. Demings. No.  
9141 Ms. Fontenot. Mrs. Demings votes no.  
9142 Mr. Correa?  
9143 Mr. Correa.  
9144 Ms. Fontenot. Mr. Correa votes no.  
9145 Ms. Scanlon?  
9146 Ms. Scanlon. No.

9147 Ms. Fontenot. Ms. Scanlon votes no.  
9148 Mr. Garcia?  
9149 Ms. Garcia. No.  
9150 Ms. Fontenot. Ms. Garcia votes no.  
9151 Mr. Neguse?  
9152 Mr. Neguse. No.  
9153 Ms. Fontenot. Mr. Neguse votes no.  
9154 Mrs. McBath?  
9155 Mrs. McBath. No.  
9156 Ms. Fontenot. Mrs. McBath votes no.  
9157 Mr. Stanton?  
9158 Mr. Stanton. No.  
9159 Ms. Fontenot. Mr. Stanton votes no.  
9160 Ms. Dean?  
9161 Ms. Dean. No.  
9162 Ms. Fontenot. Ms. Dean votes no.  
9163 Ms. Escobar?  
9164 Ms. Escobar. No.  
9165 Ms. Fontenot. Ms. Escobar votes no.  
9166 Mr. Jones?  
9167 Mr. Jones. No.  
9168 Ms. Fontenot. Mr. Jones votes no.  
9169 Ms. Ross?  
9170 Ms. Ross. Ross votes no.

9171 Ms. Fontenot. Ms. Ross votes no.

9172 Ms. Bush?

9173 Ms. Bush. Bush votes no.

9174 Ms. Fontenot. Ms. Bush votes no.

9175 Ms. Jackson Lee, you are not recorded.

9176 Ms. Jackson Lee. No.

9177 Ms. Fontenot. Ms. Jackson Lee votes no.

9178 Mr. Jordan?

9179 Mr. Jordan. Yes.

9180 Ms. Fontenot. Mr. Jordan votes yes.

9181 Mr. Chabot?

9182 Mr. Chabot. Aye.

9183 Ms. Fontenot. Mr. Chabot votes aye.

9184 Mr. Gohmert?

9185 Mr. Issa?

9186 Mr. Issa?

9187 Mr. Issa. Yes.

9188 Ms. Fontenot. Mr. Issa votes yes.

9189 Mr. Buck?

9190 Mr. Buck. Aye.

9191 Ms. Fontenot. Mr. Buck votes aye.

9192 Mr. Gaetz?

9193 Mr. Johnson of Louisiana?

9194 Mr. Johnson of Louisiana. Aye.

9195 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.  
9196 Mr. Biggs?  
9197 Mr. Biggs. Aye.  
9198 Ms. Fontenot. Mr. Biggs votes aye.  
9199 Mr. McClintock?  
9200 Mr. McClintock. Aye.  
9201 Ms. Fontenot. Mr. McClintock votes aye.  
9202 Mr. Steube?  
9203 Mr. Steube. Yes.  
9204 Ms. Fontenot. Mr. Steube votes yes.  
9205 Mr. Tiffany?  
9206 Mr. Tiffany. Aye.  
9207 Ms. Fontenot. Mr. Tiffany votes aye.  
9208 Mr. Massie?  
9209 Mr. Massie. Aye.  
9210 Ms. Fontenot. Mr. Massie votes aye.  
9211 Mr. Roy?  
9212 Mr. Roy. Aye.  
9213 Ms. Fontenot. Mr. Roy votes aye.  
9214 Mr. Bishop?  
9215 Mr. Bishop. Yes.  
9216 Ms. Fontenot. Mr. Bishop votes yes.  
9217 Mrs. Fischbach?  
9218 Mrs. Fischbach. Yes.

9219 Ms. Fontenot. Mrs. Fischbach votes yes.

9220 Mrs. Spartz?

9221 Mrs. Spartz.

9222 Ms. Fontenot. Mrs. Spartz votes yes.

9223 Mr. Fitzgerald?

9224 Mr. Fitzgerald. Aye.

9225 Ms. Fontenot. Mr. Fitzgerald votes aye.

9226 Mr. Bentz?

9227 Mr. Bentz. Yes.

9228 Ms. Fontenot. Mr. Bentz votes yes.

9229 Mr. Owens?

9230 Mr. Owens. Yes.

9231 Ms. Fontenot. Mr. Owens votes yes.

9232 Mr. Swalwell. Mr. Chairman, how am I recorded?

9233 Ms. Fontenot. Mr. Swalwell, you are not recorded.

9234 Mr. Swalwell. No.

9235 Ms. Fontenot. Mr. Swalwell votes no.

9236 Mr. Deutch. Mr. Chairman, how am I recorded?

9237 Ms. Fontenot. Mr. Deutch, you are not recorded.

9238 Mr. Deutch. No.

9239 Ms. Fontenot. Mr. Deutch votes no.

9240 Ms. Lofgren. How am I recorded?

9241 Ms. Fontenot. Ms. Lofgren, you are recorded as yes.

9242 Ms. Lofgren. No.



9243 Ms. Fontenot. Ms. Lofgren votes no.

9244 Mr. Gaetz. Mr. Chairman, how am I recorded?

9245 Ms. Fontenot. Mr. Gaetz, you are not recorded.

9246 Mr. Gaetz. No.

9247 Mr. Issa. Mr. Chairman, now am I recorded? How am I  
9248 recorded?

9249 Ms. Fontenot. Mr. Issa, you are recorded as aye.

9250 Mr. Issa. Can I vote twice? Just once? Just once? Oh,  
9251 well. Thank you.

9252 Chairman Nadler. Are there any members who wish to be  
9253 recorded who have not been recorded?

9254 The clerk will report.

9255 Ms. Fontenot. Mr. Chairman, there are 17 ayes and 25 noes.

9256 Chairman Nadler. The motion to adjourn is defeated.

9257 Does anybody else to be recognized on the bill?

9258 Mr. Owens, for what purpose --

9259 Mr. Owens. I would like to strike the last word.

9260 Chairman Nadler. For what purpose does the gentleman seek  
9261 recognition?

9262 Mr. Owens. I would like to strike the last word.

9263 Chairman Nadler. The gentleman is recognized.

9264 Mr. Owens. I just want to kind of give a perspective. I  
9265 am very excited about this opportunity to work with everyone to  
9266 find a way that we can give control back to consumer and--the

9267 control of these monopolies. I would have to say though that  
9268 the gentlelady from Texas gave all of us a very easy lay-up who  
9269 have concerns about the truth control. And we have seen this  
9270 this last year and I think it strikes to the point that we do  
9271 need to have an amendment like this to give us safeguards, that  
9272 we should all feel comfortable that not one or two people can  
9273 tell us what the truth is, not their truth, but what we all know  
9274 the truth really comes from.

9275 But anyway, that being said, I just would like to again hope  
9276 that we can all agree this amendment would be good for this process  
9277 to get us moving forward so we can really come together and say  
9278 that--the American people, we are looking out for their interest.

9279 I would like to yield the rest of my time over to Mr. Roy.

9280 Mr. Roy. Well, I appreciate my friend from Utah for making  
9281 that point and doing so eloquently as someone who obviously is  
9282 invested in this piece of legislation as an original sponsor,  
9283 if I am correct, or the underlying bill because he, like myself  
9284 and others, want to ensure data privacy, data portability.

9285 These are important issues, trying to work in good faith  
9286 to do it, but again what we saw right here to--pretty much kind  
9287 of give up the ghost in terms of what the objectives are, at least  
9288 for I think some of our colleagues.

9289 And my friend from Texas, who unfortunately is not here at  
9290 the moment, referred to jumping aboard H.R. 1 to allegedly

9291 eliminate all the dark money that came after me. It wasn't the  
9292 dark money; it was my opponent. My opponent, her own remarks  
9293 and speeches, and hard dollars and making the point. She was  
9294 just saying, oh, Roy is saying it is a hoax. Roy saying--oh,  
9295 he talked about herd immunity.

9296 Well heaven forbid I talk about science and herd immunity,  
9297 right? But if you dare mention something like herd immunity or  
9298 science, you are banned, right? You are saying, no, you can't  
9299 talk about that. You can't talk about the virus coming from  
9300 Wuhan. And that is exactly what we are seeing occur when we are  
9301 talking about truth. And that is what is so concerning to me.

9302

9303 And the stories that we see right now even just recently  
9304 about--the stories about Google funding some of this research  
9305 in Wuhan, the stories that we have seen. If you go through  
9306 Facebook and everything that Facebook did in quashing reports,  
9307 questioning that the virus leaked from the Chinese lab. There  
9308 is story after story. Just Google it. Really. Pull it up.

9309 And then you have got a Chinese virologist talking about  
9310 Fauci's emails, backing up the Chinese virologist who is getting  
9311 banned by China.

9312 And let's talk about Dr. Li Wenliang, who was silent when  
9313 Dr. Li Wenliang blew the whistle. We were all talking about that  
9314 and then suddenly these massive big tech companies are silencing

9315 our voice. And I am just--I am literally stunned and blown away  
9316 that we are talking about it in those terms when we are here talking  
9317 about the power of these big tech companies and it is proving  
9318 the very point.

9319 So I very much agree with my friend from Utah about the  
9320 importance of this amendment and I certainly support the  
9321 amendment, and I yield back to my friend from Utah.

9322 Mr. Owens. I give back my time.

9323 Chairman Nadler. The gentleman yields back.

9324 For what purpose does Ms. Escobar seek recognition?

9325 Ms. Escobar. Move to strike the last word.

9326 Chairman Nadler. The gentlelady is recognized.

9327 Ms. Escobar. Thank you so much, Mr. Chairman. And I want  
9328 to thank--I am really speaking to all of these pieces of  
9329 legislation, not necessarily one particular. I want to thank  
9330 my colleagues for their incredible work, both in their  
9331 subcommittee as well as working across party lines to make sure  
9332 that we do everything possible to tackle these very challenging  
9333 issues that have unfortunately gone unaddressed for so long.

9334 And but I also at the same time do want to say that I have  
9335 heard the concerns expressed by colleagues who have asked for  
9336 additional hearings and colleagues who believe that there are  
9337 still steps left to go in the process going forward.

9338 And I am supportive of going forward on our committee and

9339 again I echo what I have heard from other members through this  
9340 process. I look forward to continuing the work ahead before these  
9341 bills get to the floor because it is clear that there is still  
9342 more work to do going forward.

9343 Just wanted to put that on the record and thank everyone  
9344 who has worked so hard to get us to this point. I know that it  
9345 has taken an awful lot of intellectual work and a lot of dedication  
9346 and I am grateful for it. I yield back, Mr. Chairman.

9347 Chairman Nadler. The gentlelady yields back.

9348 Mr. Johnson of Louisiana. Mr. Chairman?

9349 Chairman Nadler. For what purpose does the Mr. Johnson seek  
9350 recognition?

9351 Mr. Johnson of Louisiana. Move to strike the last word.

9352 Chairman Nadler. The gentleman is recognized.

9353 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. Since  
9354 we are having all of this illuminating discussion and everyone  
9355 is pointing out the epiphanies that we have had as we have gone  
9356 through the last whatever, 11 hours, I will just point something  
9357 out as well.

9358 What we are doing here is adding to Government, the bills  
9359 are, and there is no other way to summarize and assess this.  
9360 Each of the bills has a provision that will empower more FTC  
9361 rulemaking. These bills say a violation of the act also  
9362 constitutes, quote, "an unfair method of competition," unquote,

9363 under Section 5 of the FTC Act.

9364 And the Access Act, the bill that we are still on now,  
9365 specifically says on page 1, quote, "A violation of this act or  
9366 standards issued under this act shall be an unfair method of  
9367 competition," unquote. That text will empower FTC rulemaking,  
9368 because under current case law the FTC has authority to issue  
9369 new rules about unfair methods of competition under Section 5.

9370 Now not everybody agrees with that precedent, but you know  
9371 who does? All three of President Biden's Democrat FTC  
9372 commissioners. That is Chairwoman Khan, Commissioner Chopra,  
9373 Commissioner Slaughter. In fact, in March 2020, before moving  
9374 to her current role as chairwoman of the FTC, Lina Khan and current  
9375 Commissioner Chopra published an article entitled, The Case for,  
9376 quote, "Unfair Methods of Competition Rulemaking," unquote.

9377 And this March acting Chairwoman Slaughter started a new  
9378 rulemaking group at the FTC. Just coincidence I guess. By  
9379 making violations of these bills, quote, "unfair methods of  
9380 competition," unquote, each bill opens the door for future  
9381 rulemaking, not just interpretive rules, but substantive rules  
9382 that this administration will argue should get chevron deference  
9383 from the court.

9384 So I mean, just while we are doing full disclosure let's  
9385 acknowledge that that is going to happen, and some of us are a  
9386 little uncomfortable about giving the FTC all of this new

9387 discretion and empowerment. And I think that is worthy of note.

9388 I yield back.

9389 Chairman Nadler. The gentleman yields back.

9390 Does anyone else seek recognition?

9391 Mr. Gaetz?

9392 Mr. Gaetz. Move to strike the last word.

9393 Chairman Nadler. The gentleman is recognized.

9394 Mr. Gaetz. I just think it is going to be hard to tell people  
9395 that you can't own your own data; big tech owns your own data  
9396 because we are afraid Government is going to grow too much. If  
9397 that is the argument here, you have to look at the final outcome  
9398 of the legislation, which is that people have greater control  
9399 over the information that they create that large companies  
9400 exploit. And if it is not the FTC that is going to do it, it  
9401 is hard to wonder who is.

9402 Right now it is a unipolar system where all of the power  
9403 in these relationships emanate from the terms of service that  
9404 are solely drafted by the big technology companies. And they  
9405 want to maintain that unipolarity. They want to maintain it so  
9406 much that Tim Cook was calling Speaker Pelosi today begging to  
9407 slow these bills down. They want it so much the New York Times  
9408 is reporting that they have an army of lobbyists. They want it  
9409 so much that Politico is reporting that some of those very  
9410 lobbyists have been threatening members for signing onto the

9411 legislation.

9412 So it is very clear that the outcome we face in passing these  
9413 bills are not is whether or not at the end of the day we want  
9414 to empower the human beings who create the data to own it or whether  
9415 we simply want to surrender to the big tech oligarchy, the big  
9416 tech rule. And that to me feels a lot more like life in China  
9417 that is pretty dangerous than perhaps creating some multipolar  
9418 force at the FTC, creating some opportunity for consumer  
9419 protection, and to create a new paradigm over data that will allow  
9420 people to be able to utilize it and so that when people are on  
9421 these platforms they are the consumer and not the product. I  
9422 yield back.

9423 Chairman Nadler. The gentleman yields back.

9424 Does anyone else seek recognition?

9425 If not the question occurs on the amendment.

9426 All in favor, say aye?

9427 Oppose, nay?

9428 In the opinion of the Chair, the noes have it.

9429 Mr. Roy. Yeas and nays, please, Mr. Chairman.

9430 Chairman Nadler. Yeas and nays are requested. The clerk  
9431 will call the roll.

9432 Ms. Fontenot. Mr. Nadler?

9433 Chairman Nadler. No.

9434 Ms. Fontenot. Mr. Nadler votes no.



9435 Ms. Lofgren?

9436 Ms. Lofgren. No.

9437 Ms. Fontenot. Ms. Lofgren votes no.

9438 Ms. Jackson Lee?

9439 Ms. Jackson Lee. No.

9440 Ms. Fontenot. Ms. Jackson Lee votes no.

9441 Mr. Cohen?

9442 Mr. Cohen. No.

9443 Ms. Fontenot. Mr. Cohen votes no.

9444 Mr. Johnson of Georgia?

9445 Mr. Johnson of Georgia. No.

9446 Ms. Fontenot. Mr. Johnson of Georgia votes no.

9447 Mr. Deutch?

9448 Ms. Bass?

9449 Mr. Jeffries?

9450 Mr. Jeffries. No.

9451 Ms. Fontenot. Mr. Jeffries votes no.

9452 Mr. Cicilline?

9453 Mr. Cicilline. No.

9454 Ms. Fontenot. Mr. Cicilline votes no.

9455 Mr. Swalwell?

9456 Mr. Swalwell. No.

9457 Ms. Fontenot. Mr. Swalwell votes no.

9458 Mr. Lieu?

9459 Mr. Lieu. No.

9460 Ms. Fontenot. Mr. Lieu votes no.

9461 Mr. Raskin?

9462 Mr. Raskin. No.

9463 Ms. Fontenot. Mr. Raskin votes no.

9464 Ms. Jayapal?

9465 Ms. Jayapal. No.

9466 Ms. Fontenot. Ms. Jayapal votes no.

9467 Mrs. Demings?

9468 Mrs. Demings. No.

9469 Ms. Fontenot. Mrs. Demings votes no.

9470 Mr. Correa?

9471 Mr. Correa. No.

9472 Ms. Fontenot. Mr. Correa votes no.

9473 Ms. Scanlon?

9474 Ms. Scanlon. No.

9475 Ms. Fontenot. Ms. Scanlon votes no.

9476 Ms. Garcia.

9477 Ms. Garcia. No.

9478 Ms. Fontenot. Ms. Garcia votes no.

9479 Mr. Neguse?

9480 Mr. Neguse. No.

9481 Ms. Fontenot. Mr. Neguse votes no.

9482 Mrs. McBath?

9483           Mrs. McBath.   No.

9484           Ms. Fontenot.   Mrs. McBath votes no.

9485           Mr. Stanton?

9486           Mr. Stanton.   No.

9487           Ms. Fontenot.   Mr. Stanton votes no.

9488           Ms. Dean?

9489           Ms. Dean.    No.

9490           Ms. Fontenot.   Ms. Dean votes no.

9491           Ms. Escobar?

9492           Ms. Escobar.   No.

9493           Ms. Fontenot.   Ms. Escobar votes no.

9494           Mr. Jones?

9495           Mr. Jones.    No.

9496           Ms. Fontenot.   Mr. Jones votes no.

9497           Ms. Ross?

9498           Ms. Ross.    Ross votes no.

9499           Ms. Fontenot.   Ms. Ross votes no.

9500           Ms. Bush?

9501           Ms. Bush.    Bush votes no.

9502           Ms. Fontenot.   Ms. Bush votes no.

9503           Mr. Jordan?

9504           Mr. Jordan.   Yes.

9505           Ms. Fontenot.   Mr. Jordan votes yes.

9506           Mr. Chabot?

9507 Mr. Chabot. Aye.

9508 Ms. Fontenot. Mr. Chabot votes aye.

9509 Mr. Gohmert?

9510 Mr. Issa?

9511 Mr. Issa. Aye.

9512 Ms. Fontenot. Mr. Issa votes aye.

9513 Mr. Buck?

9514 Mr. Buck. Aye.

9515 Ms. Fontenot. Mr. Buck votes aye.

9516 Mr. Gaetz?

9517 Mr. Gaetz. No.

9518 Ms. Fontenot. Mr. Gaetz votes no.

9519 Mr. Johnson of Louisiana?

9520 Mr. Johnson of Louisiana. Aye.

9521 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

9522 Mr. Biggs?

9523 Mr. Biggs. Pass.

9524 Ms. Fontenot. Mr. Biggs passes.

9525 Mr. McClintock?

9526 Mr. McClintock. Aye.

9527 Ms. Fontenot. Mr. McClintock votes aye.

9528 Mr. Steube?

9529 Mr. Steube. Yes.

9530 Ms. Fontenot. Mr. Steube votes yes.

9531 Mr. Tiffany?

9532 Mr. Tiffany. Aye.

9533 Ms. Fontenot. Mr. Tiffany votes aye.

9534 Mr. Massie?

9535 Mr. Massie. Aye.

9536 Ms. Fontenot. Mr. Massie votes aye.

9537 Mr. Roy?

9538 Mr. Roy. Aye.

9539 Ms. Fontenot. Mr. Roy votes aye.

9540 Mr. Bishop?

9541 Mr. Bishop. Yes.

9542 Ms. Fontenot. Mr. Bishop votes yes.

9543 Mrs. Fischbach. Yes.

9544 Ms. Fontenot. Mrs. Fischbach votes yes.

9545 Mrs. Spartz?

9546 Mrs. Spartz. Yes.

9547 Ms. Fontenot. Mrs. Spartz votes yes.

9548 Mr. Fitzgerald?

9549 Mr. Fitzgerald. Aye.

9550 Ms. Fontenot. Mr. Fitzgerald votes aye.

9551 Mr. Bentz?

9552 Mr. Bentz. Yes.

9553 Ms. Fontenot. Mr. Bentz votes yes.

9554 Mr. Owens?

9555           Mr. Owens.   Yes.

9556           Ms. Fontenot.   Mr. Owens votes yes.

9557           Chairman Nadler.   Mr. Deutch?

9558           Mr. Deutch.   No.

9559           Ms. Fontenot.   Mr. Deutch votes no.

9560           Mr. Biggs.      Mr. Chairman, how am I recorded?

9561           Ms. Fontenot.   Mr. Biggs, you're recorded as present.

9562           Mr. Biggs.   Yes.

9563           Ms. Fontenot.   Mr. Biggs votes yes.

9564           Mr. Gaetz.      Mr. Chairman, how am I recorded?

9565           Ms. Fontenot.   Mr. Gaetz, you are recorded as no.

9566           Mr. Gaetz.   Aye.

9567           Ms. Fontenot.   Mr. Gaetz votes aye.

9568           Chairman Nadler.   Are there any members who wish to vote

9569           who haven't voted?

9570           Clerk will report.

9571           Ms. Fontenot.   Mr. Chairman, there are 18 ayes and 24 noes.

9572           Chairman Nadler.   The amendment is not agreed to.

9573           Are there any further amendments to the amendment in the

9574           nature of a substitute?

9575           Ms. Lofgren.    Mr. Chairman?

9576           Chairman Nadler.   For what purpose does the gentlelady from

9577           California seek recognition?

9578           Ms. Lofgren.    I have an amendment at the desk on page 4.

9579 Chairman Nadler. The clerk will report the amendment.

9580 Ms. Fontenot. Amendment to the amendment in the nature of  
9581 a substitute to H.R. 3849 offered by Ms. Lofgren of California.

9582 Page 4, strike lines 1 through 20 and insert the following:

9583 Chairman Nadler. Without objection the amendment is  
9584 considered as read. The gentlelady is recognized.

9585 Ms. Lofgren. Mr. Chairman, as currently written I think  
9586 the bill is--really micromanages technical changes unless there  
9587 is some urgent circumstance involving security and privacy, and  
9588 I think that that is a mistake. As drafted the bill would require  
9589 prior FTC approval really for all the technical changes except  
9590 in some kind of an emergent situation.

9591 Most of the changes that are done are technical in nature,  
9592 security issues, and/or a platform to have to apply to the  
9593 Government before using technology I think is just--it will unduly  
9594 burden the commission and will unduly burden companies. This  
9595 amendment would allow the commission, to the extent that it is  
9596 necessary, to ensure that changes are not being made with a purpose  
9597 or effect of unreasonably denying access or undermining  
9598 interoperability for users. In that case the commission can  
9599 require the platform to obtain permission.

9600 I think that is the right balance. I mean, if there is  
9601 conduct that is to defeat the purpose, then the commission should  
9602 go in and require approval and go through it, but every technical

9603 change that you seek to make go to the FTC, I just think that  
9604 is unreasonable and the--it will--it could even delay platforms  
9605 from executing basic security updates and other technical  
9606 updates. I think platforms shouldn't have to consult their legal  
9607 department every time they perform a good-faith interface update  
9608 or even to determine if a security risk is imminent.

9609 So this amendment is plenty of safeguards. The FTC has the  
9610 power to require prior approval when it is necessary, but it  
9611 wouldn't require the Government to grant permission to every  
9612 single change ever made to a technical system. And I hope that  
9613 this amendment will be adopted. I think it improves the bill,  
9614 and I yield back.

9615 Chairman Nadler. The gentlelady yields back.

9616 Will the gentlelady yield for a question?

9617 Ms. Lofgren. I would be happy to yield, but I yielded back.

9618 Chairman Nadler. Oh.

9619 Ms. Lofgren. So if the Chairman will give it back to me,  
9620 I will yield.

9621 Chairman Nadler. I will give it back to you.

9622 Mr. Cicilline. I thank the gentlelady for the amendment  
9623 and I know you have worked in good faith with us all throughout  
9624 this process. And in terms of voting for this amendment, this  
9625 would be the third amendment, the third improvement you have made.

9626 And my question is having acted in good faith will passage of



9627 this amendment, support by members of the subcommittee earn your  
9628 support for the underlying bill?

9629 Ms. Lofgren. I continue to have concerns about the security  
9630 aspects of the bill and the coverages of the bill, as I said at  
9631 some great length. So I am trying to balance that.

9632 Mr. Cicilline. No, I appreciate that. And as I said, I  
9633 obviously would continue and will continue to work with you to  
9634 address those, but I just hope--we are acting in good faith as  
9635 well and I hope if this third amendment is adopted, you will  
9636 support the underlying bill as a kind of step in this process.  
9637 And I yield back.

9638 Chairman Nadler. The gentleman yields back.

9639 Does anyone else seek recognition on the amendment?

9640 The then the question occurs on the amendment to the  
9641 amendment in the nature of a substitute.

9642 All in favor, say aye?

9643 Opposed, no?

9644 In the opinion of the Chair, the ayes have it. The ayes  
9645 have it.

9646 Are there any other amendments to the amendment in the nature  
9647 of a substitute?

9648 Mr. Jordan. Mr. Chairman?

9649 Chairman Nadler. For what purpose does the gentleman from  
9650 Ohio seek recognition?

9651 Mr. Jordan. Strike the last word. I have an amendment at  
9652 the desk.

9653 Chairman Nadler. The gentleman has an amendment. The  
9654 clerk will report the amendment.

9655 Mr. Jordan. It's the Protect Speech Act.

9656 Ms. Fontenot. Amendment to the amendment in the nature of  
9657 a substitute to H.R. 3849 offered by Mr. Jordan of Ohio.

9658 Chairman Nadler. Without objection the amendment will be  
9659 considered as read. The gentleman will explain his amendment.

9660 Mr. Cicilline. Reserve a point of order, Mr. Chairman?

9661 Chairman Nadler. Point of order is reserved.

9662 Mr. Jordan. Thank you, Mr. Chairman. A couple hours ago  
9663 the gentleman from Texas, Mr. Roy, asked sort of the fundamental  
9664 question. He said what is our goal here? What is the overall  
9665 objective.

9666 I know what mine is. My goal in dealing with subject is  
9667 to stop the censorship. Frankly, that is what the folks in the  
9668 4th District of Ohio that I talk to care about. They don't like  
9669 the fact that certain content is censored, many times done for  
9670 political reasons. So I mean, we have a--we just had a big  
9671 discussion on the gentleman's amendment from North Carolina,  
9672 which I thought was great.

9673 My good friend, and I mean that--my good friend from Florida,  
9674 he said, well, but your data is going to be portable. Great.

9675           We are all for that. It is going to be portable, but it is still  
9676 going to be censored. that was the point of the amendment, to  
9677 stop the censorship.

9678           So we have introduced legislation a week-and-a-half ago,  
9679 I think sponsored by almost every Republican, which says let's  
9680 overall Section 230. Let's take away the liability protection  
9681 that these big tech companies have. Let's get rid of the  
9682 language, the catchall language otherwise objectionable. That  
9683 is where they throw all this stuff and keep you from learning  
9684 about the things Mr. Roy was talking about relative to the origin  
9685 of the virus last fall that Facebook was censoring. So that is  
9686 our legislation, overhaul Section 230, something I thought that  
9687 we were all for.

9688           And if we are going to get to the truth, you know how you  
9689 get to the truth? It is called the First Amendment. That is  
9690 why we have the First Amendment. More speech, more argument,  
9691 more debate is how you arrive at the truth. That is why the  
9692 Founders put it first. And this Committee should understand that  
9693 more than any other committee in Congress. But think about  
9694 what we have seen over the last few years. Every liberty we enjoy  
9695 under the First Amendment has been assaulted. Every single one.

9696

9697           There are still places--you think about it. You have got  
9698 five liberties: right to practice your faith, right to assemble,

9699 right to petition your Government, freedom of the press, freedom  
9700 of speech. Every one. There are still places today on a Sunday  
9701 morning the full congregation can't meet. Still places today  
9702 in this country.

9703 Five weeks ago I spoke to the New Mexico Republican Party  
9704 in Amarillo, Texas, because they had to go to Texas to get freedom  
9705 because in Amarillo they weren't allowed to--or excuse, because  
9706 in New Mexico they weren't allowed to assemble.

9707 And you can go right down the list, but speech is the most  
9708 fundamental one. So let's focus on that. Let's add this to the  
9709 bill and let's deal with the censorship issue. We tried it with  
9710 the great amendment I thought the gentleman from Mr. Chairman  
9711 brought, but that got voted down.

9712 So we will try again with an overhaul of Section 230. That  
9713 is what this does. If you want the truth, truth is a factor,  
9714 as the gentlelady from the Texas said. If you want the truth,  
9715 embrace the First Amendment, allow more speech, don't censor.

9716 And one way to do that--a key way to do that is take away the  
9717 liability protection, overhaul this section of the law that was  
9718 passed 20-some years ago. That will help us.

9719 Other things need to be done as well. I am not saying this  
9720 is the end-all-be-all. We are willing to work with our colleagues  
9721 on more things that need to happen relative to speech, but this  
9722 is a good first step.

9723 Mr. Gaetz. Will the gentleman yield?

9724 Mr. Jordan. I would be happy to yield to my friend.

9725 Mr. Gaetz. Has the gentleman ever been censored?

9726 Mr. Jordan. Yes. Yes, so have you.

9727 Mr. Gaetz. And how did the gentleman come to learn that  
9728 he had been censored?

9729 Mr. Jordan. Yes, I know this story. Got a call from the  
9730 gentleman from Florida telling me I was shadow banned. My first  
9731 response was, Mr. Gaetz, what is shadow banning? So that is--but  
9732 you are making my point. Reclaiming my time, you are making my  
9733 point. And it wasn't just you and it wasn't just I. It was two  
9734 of our Republican colleagues. Four hundred thirty-five members  
9735 of the House. Only four were shadow banned by Twitter, which  
9736 by the way none of this legislation covers.

9737 That is why we should have adopted some of the earlier  
9738 amendments we had. That is why there needs to be more work in  
9739 this area to deal with the fundamental issue, censorship of the  
9740 folks we represent, attacks on speech. And again, I have said  
9741 it many times, this Committee should be more concerned about that  
9742 than any other thing when we are attacked--when we see limits  
9743 on First Amendment liberties. So I would urge adoption of the  
9744 amendment.

9745 Mr. Chairman, I yield back.

9746 Mr. Cicilline. Mr. Chairman.

9747 Chairman Nadler. Does the gentleman insist on his point  
9748 of order?

9749 Mr. Cicilline. Yes, Mr. Chairman. This amendment is not  
9750 germane. It is outside the jurisdiction of the bill. It is  
9751 another provision of law over which this Committee has no  
9752 jurisdiction, Section 230.

9753 Mr. Swalwell. Will you yield before the ruling?

9754 Mr. Cicilline. Yes.

9755 Mr. Swalwell. Mr. Chairman, with all due respect, Mr.  
9756 Jordan, you are not being censored. The Government can censor,  
9757 the Government can put restrictions on the public--

9758 Chairman Nadler. Mr. Swalwell, that is an argument on the  
9759 amendment we are talking about.

9760 Mr. Swalwell. I know, but we have to listen to him all night.  
9761 He is not being censored.

9762 Chairman Nadler. We have to rule on the point of order.

9763 Mr. Jordan. Can I respond?

9764 Chairman Nadler. To the point of order, not to the argument.

9765

9766 Mr. Jordan. Well, you let him make his--

9767 Chairman Nadler. I just stopped him.

9768 Mr. Jordan. I appreciate that. I appreciate you stopping  
9769 him.

9770 Mr. Swalwell. Now you are being censored.

9771 Mr. Jordan. Now you should have stopped him--

9772 Chairman Nadler. As a proponent of the amendment you can  
9773 defend it.

9774 Mr. Jordan. I have defended that. That is fine. Thank  
9775 you. I yield.

9776 Chairman Nadler. Okay. Back to Mr. Cicilline. The  
9777 gentleman insisting on his point order.

9778 Mr. Cicilline. Yes, Mr. Chairman.

9779 Chairman Nadler. I will rule that the amendment is out of  
9780 order for two reasons: Clause 7 of House Rule 16 prohibits  
9781 amendments that are on a different subject matter than the  
9782 proposal that is under consideration. The subject of the bill  
9783 we are currently considering is portability and interoperability  
9784 requirements for covered platform.

9785 The gentleman's amendment proposes to amend a law that is  
9786 not addressed in the bill, which is a subject that is different  
9787 from what we are considering in this bill. The amendment is  
9788 therefore not germane and violates Clause 7 of Rule 16, in addition  
9789 to which it is out of order because it proposes to amend matters  
9790 not within the jurisdiction of the Committee. So the amendment  
9791 is not in order.

9792 Are there any other amendments to the amendment in the nature  
9793 of a substitute?

9794 If there are no other amendments--

9795 Mr. Bentz. Mr. Chair? Mr. Chair?

9796 Chairman Nadler. Who seeks recognition?

9797 Mr. Bentz. Down here, Mr. Chair, down here in the--

9798 Chairman Nadler. Mr. Bentz?

9799 Mr. Bentz. -- low-rent space. Yes.

9800 Chairman Nadler. For what purpose does the gentleman seek  
9801 recognition?

9802 Mr. Bentz. I have an amendment on the desk.

9803 Chairman Nadler. The clerk will report the amendment.

9804 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

9805 Chairman Nadler. The gentleman reserves a point of order.  
9806 The clerk will report the amendment.

9807 Ms. Fontenot. Amendment to the amendment in the nature of  
9808 a substitute to H.R. 3849 offered by Mr. Bentz of Oregon.

9809 Page 20, strike beginning --

9810 Chairman Nadler. Without objection the amendment is  
9811 considered as read. The gentleman will explain his amendment.

9812 Mr. Bentz. Thank you, Mr. Chair. The proposal is to strike  
9813 the emergency relief paragraph in the bill. It is found on page  
9814 20, begins at line 4. Actually ends on the next page. It  
9815 inadvertently included the statute of limitations, which I didn't  
9816 like either because it was too long. So it is fine with me if  
9817 they both go. But my main focus is on the emergency relief  
9818 paragraph.



9819           This is what we would call in our law practice back in Oregon  
9820 a provisional process provision. In the normal course  
9821 provisional process is frowned upon by the law because it is  
9822 granted before a hearing on the merits. This is probably one  
9823 of the most overreaching and egregious emergency relief  
9824 provisions I have ever seen because if you will note in line 10,  
9825 11, it says that you--the commission, the Government may seek  
9826 a temporary injunction requiring the covered platform operator  
9827 to take or stop taking any action; it doesn't say which action,  
9828 for not more than 120 days and the court shall grant such relief  
9829 if the commission approves that there is a plausible claim.

9830           What is plausible? In the normal course of an injunction  
9831 you have to show irreparable harm, and yet you don't see that  
9832 here. What you see here is a quote, "plausible" claim that the  
9833 platform operator took an action that could violate this act,  
9834 not that it did, but that it might. It goes onto say the word  
9835 and that action impairs significantly the ability of at least  
9836 one business user to compete with the covered platform operator.

9837           Probably the lowest standard I have ever seen in any temporary  
9838 injunction provision.

9839           The emergency relief shall not last more than 120 days after  
9840 filing the complaint and then the court shall terminate the  
9841 emergency at any time the covered platform operator proves the  
9842 commission has not taken unreasonable steps. This reflects a

9843 grant of power to the Government of--that is really astounding  
9844 if you note that they don't define any action. So what they could  
9845 do is say stop doing business. Stop doing business. Because  
9846 one business user might say that that action impaired their  
9847 ability to compete.

9848 This is an incorrectly inappropriately crafted provision.  
9849 It should be removed from the statute. At the very least it  
9850 should be amended to impose an obligation of a showing of  
9851 irreparable harm and should also show that there has been a  
9852 significant impairment of ability to compete.

9853 With that, Mr. Chair, I yield back. I urge--before I yield  
9854 back I urge your support of my amendment. Now I yield back.  
9855 Thank you.

9856 Chairman Nadler. The gentleman yields back.

9857 Does the gentleman insist on his point of order?

9858 Ms. Fontenot. No, I withdraw my point of order. I do seek  
9859 recognition to speak in opposition to the amendment.

9860 Chairman Nadler. The gentleman is recognized.

9861 Mr. Cicilline. Thank you, Mr. Chairman. This provision  
9862 for emergency relief is really an essential part of this  
9863 legislation. It is necessary to ensure that the economic harm  
9864 can be responded to quickly before a competitor is destroyed.

9865 And it is not emergency relief which is available for any action,  
9866 but only an action that a covered platform takes that would violate

9867 the provisions of this act and impair the ability of at least  
9868 one business competitor to compete.

9869 So this is a tool that is available to ensure that the  
9870 economic harm can be responded to swiftly and is really a central  
9871 part of the relief in the bill and I urge my colleagues to oppose  
9872 the amendment.

9873 Mr. Bishop. Mr. Chairman?

9874 Mr. Cicilline. --back.

9875 Chairman Nadler. The gentleman yields back.

9876 Mr. Bishop. Mr. Chairman?

9877 Chairman Nadler. Who seeks recognition?

9878 Mr. Bishop. I do. Bishop.

9879 Chairman Nadler. For what purpose does the gentleman seek  
9880 recognition?

9881 Mr. Bishop. To move to stroke the last word.

9882 Chairman Nadler. The gentleman is recognized.

9883 Mr. Bishop. Thank you, sir. I appreciate the gentleman  
9884 pointing this out. I have tried to focus on those things that  
9885 I thought were most critical in this bill and the ones most  
9886 substantive, but as a--like Mr. Bentz, a lawyer who has practiced  
9887 civil litigation, commercial, complex litigation for 29 years,  
9888 this is an unbelievable departure from the rules that govern  
9889 litigation. It is clear to me that this is a violation of due  
9890 process of anyone who falls under its sway.

9891           If, as Mr. Cicilline suggested, an act by a covered platform  
9892 threatened to destroy a business user, then irreparable injury  
9893 would have--would be threatened and that one of the standards  
9894 of a preliminary injunction under existing law would be met.

9895           Mr. Bentz, you didn't focus on this point, but Rule 65 also  
9896 requires the showing of a reasonable likelihood of success on  
9897 the merits, not a plausible claim that a covered platform operator  
9898 took an action that could violate this act. That is extraordinary  
9899 and it is--unfortunately it typifies these bills. They are a  
9900 disaster of not being ready for prime time. This is a goat rodeo  
9901 and it just goes on and on.

9902           We are on the first of the four substantive bills, I believe  
9903 it is. And I have heard repeatedly tonight from members of the  
9904 majority party, who know better, that there should have been  
9905 hearings on these bills, that we leapt from the two-year or what,  
9906 a three-year investigation and the massive report, which by the  
9907 way if you read the report, it says these things should be  
9908 evaluated.

9909           Interoperability and portability and all thee things should  
9910 be evaluated by the Committee. It doesn't say we ought to jump  
9911 into a markup on some half-baked draft that until days ago, by  
9912 the way, had errors in references to sections of the bills. It  
9913 is egregious. And the way you fix that is by no means to approve  
9914 these, vote for them and pass them out of the purview of the

9915 Committee. That is not how you deal with the situation.

9916 But, Mr. Bentz, I appreciate your raising this because I  
9917 have never seen anything like this proposed in any bill that would  
9918 say you are going to have a court impose a court's order on you  
9919 with the lowest kind of threshold. I am not even sure--I don't  
9920 think it rises to the level of notice and opportunity to be heard  
9921 because there is no meaningful opportunity to be heard if the  
9922 other side doesn't even have to raise the showing of an irreparable  
9923 injury and the reasonable likelihood of success on the merits.  
9924 Just never heard of such a thing. And I yield back.

9925 Ms. Lofgren. Would the gentleman yield?

9926 Mr. Bishop. I have yielded back.

9927 Chairman Nadler. The gentleman yields. The gentleman  
9928 yielded back.

9929 Who seeks recognition?

9930 Mr. Tiffany. Tiffany. Wisconsin.

9931 Chairman Nadler. For what purpose does the gentleman from  
9932 Wisconsin--

9933 Mr. Tiffany. Move to strike the last word.

9934 Chairman Nadler. The gentleman is recognized.

9935 Mr. Tiffany. Thank you, Mr. Chairman. So I heard the  
9936 terms quickly and swiftly from the author, or the rebuttal in  
9937 regards to this amendment and it causes me some concern here.  
9938 And just hearing some of the debate on our side here from Mr.

9939 Bentz and Mr. Bishop, I would like to address a question to Mr.  
9940 Bentz.

9941 Do you have any concerns here at all about the  
9942 constitutionality of this provision?

9943 Mr. Bentz. Well, you're yielding me some of your time, I  
9944 hope.

9945 Mr. Tiffany. I yield time to you.

9946 Mr. Bentz. Thank you. Well, of course. Failure of due  
9947 process would of course raise constitutional issues.

9948 I do want to take this opportunity though to mention that  
9949 this emergency relief provision applies to any time a platform  
9950 operator takes an action that could violate this act.

9951 And I need to remind everybody what this act is about.  
9952 Perhaps we have been here too long and everyone has forgotten,  
9953 but we have that interoperability piece, which is probably more  
9954 complex than anything else one could dream up, running across  
9955 the entire world, frankly. And what could possibly happen that  
9956 one of these platforms might violate the terms of this act? All  
9957 kinds of things could happen.

9958 And so why we would grace the Government with this type of  
9959 power is unclear to me. Why would we do this to ourselves? That  
9960 is one of the reasons I moved earlier to take interoperability  
9961 out because it opened the gate, the door to so many unknowns.

9962 And this makes it even worse giving this kind of unfettered power

9963 to the commission. Thanks for your question.

9964 Ms. Lofgren. Would the gentleman yield?

9965 Mr. Bentz. I yield back.

9966 Mr. Tiffany. Just a second, ma'am.

9967 And I want to address it. At a minimum it goes to what we  
9968 have been talking about here tonight, that this stuff is not  
9969 ready--these bills are not ready for prime time and to go to the  
9970 floor of the House of Representatives.

9971 But I want to address the same question to the gentleman  
9972 from North Carolina; I yield the time to you, in regards to may  
9973 there be constitutional concerns here?

9974 Mr. Bishop. I thank the gentleman for yielding. And that  
9975 was what I meant by saying this appears--it appears to me to be  
9976 a violation of due process. The reason Rule 65 in the Rules of  
9977 Civil Procedure exists to govern the imposition of temporary  
9978 injunctive relief is because of a recognition that parties are  
9979 entitled to process. You can't just start ordering parties to  
9980 do things because somebody want to. There has to be grounds for  
9981 that.

9982 In fact, if you go down Part 3 under this emergency relief  
9983 provision, it is the most--it is the funniest of all. The court  
9984 shall terminate the emergency relief at any time that the covered  
9985 platform operator proves that the commission has not taken  
9986 reasonable steps to investigate whether a violation has occurred.

9987 I am sorry. That is ridiculous.

9988 So the party who has been subjected to injunctive relief  
9989 can come in and get a dissolution of such relief if you show that  
9990 the proponent of the relief hasn't even investigated whether there  
9991 is any kind of a predicate for it. Who wrote this?

9992 Anyway, I am sorry. I yield back.

9993 Ms. Lofgren. Would the gentleman yield?

9994 Mr. Massie. I yield time to--

9995 Ms. Lofgren. I just want to--I think you have  
9996 raised--actually I even thought about doing an amendment at this  
9997 section because I think there are serious problems here that you  
9998 have identified.

9999 One of the things I was trying to figure out was how to fix  
10000 it, whether we could put some standards in that would be in keeping  
10001 with American jurisprudence, and I got stuck on that. But I am  
10002 wondering have you thought of how we might change this section  
10003 so it would--I mean, if you have a serious violation that is  
10004 imminent, I mean, that meets the standards for ordinary relief  
10005 on an injunctive basis, but I actually couldn't come up with it.

10006 So I am wondering have you looked at that, the author of the  
10007 amendment?

10008 Mr. Massie. I yield time to Mr. Bentz.

10009 Mr. Bentz. Thank you. I won't take much. The short answer  
10010 is I tried to draft some of the changes exactly as you just



10011 suggested in some of the time we have had this evening, and I  
10012 realize it was going to take a lot more time than even we are  
10013 going to spend here. And so the short answer is maybe you could  
10014 do it, but it would take a lot of work and that is because of  
10015 the scope of the activity it purports to apply to.

10016 Ms. Lofgren. Thanks to the gentleman for yielding.

10017 Mr. Bentz. I yield back.

10018 Chairman Nadler. Mr. Bentz, will you yield for a question?

10019 Mr. Bentz. Yes.

10020 Mr. Tiffany. Thank you very much for the comments there.

10021 I mean, this once again shows that this really needs some serious  
10022 review to make sure that we get this right because if we don't  
10023 get it right--I mean, think about the description we just had  
10024 from Mr. Bishop, and it sounds like people are going to be twisted  
10025 in knots here in America in figuring this out. I yield back.

10026 Chairman Nadler. The gentleman yields back.

10027 I strike the last word myself and I yield to Mr. Cicilline.

10028 Mr. Cicilline. Thank you, Mr. Chairman. I'm just asking  
10029 the sponsor of the amendment, I think one thing that might address  
10030 the concern is, and if you would accept a friendly amendment,  
10031 is on line 8, to change the court shall grant to the court may  
10032 grant.

10033 Because I think what the legislation is trying to do is strike  
10034 that balance, as Ms. Lofgren said, maybe in those instances where

10035 immediate action is necessary to prevent a competitor from being  
10036 put out of business, that won't come back. The example of Vine  
10037 on Facebook is one example. There's no recovery after they've  
10038 been excluded.

10039 So I think if you change that to may, then you no longer  
10040 require the court to do it, but it's a tool available in those  
10041 circumstances in which a competitor may be extinguished as a  
10042 result of the conduct.

10043 So I don't if that works. If it does, I'd offer that as  
10044 a friendly amendment.

10045 Mr. Bentz. You're yielding me some time?

10046 Mr. Cicilline. Yes.

10047 Mr. Bentz. So thank you. Well, that would be one very small  
10048 step in the proper direction. But there is a great more that  
10049 would have to be done to make this come anywhere close. And one  
10050 has to understand that I'd moved earlier to get rid of the  
10051 interoperability standard, which --

10052 Mr. Cicilline. No, I remember.

10053 Mr. Bentz. So I'm not enthusiastic about trying to fix  
10054 something I don't agree with. But I'll just -- thank you for  
10055 your attempt, but it's a little bit, and we need a lot. Thank  
10056 you.

10057 Chairman Nadler. So the gentleman from Rhode Island would  
10058 continue to oppose this amendment.

10059 Mr. Cicilline. Yes, I'm -- yes. I don't know if there's  
10060 a mechanism for me to propose changing shall to may separately.  
10061 Maybe unanimous consent -- yeah, if I just ask unanimous  
10062 consent, I don't think the sponsor minds that modification. I  
10063 can offer another amendment, but this might be easier just to  
10064 do it by unanimous consent if no one objects.

10065 Chairman Nadler. Is there unanimous consent? Is there  
10066 objection to unanimous consent? Hearing none, the -- it is  
10067 agreed to.

10068 Mr. Cicilline. Thank you, Mr. Chairman. I yield back.

10069 Chairman Nadler. The gentleman yields back. Does anyone  
10070 else -- what? Yeah. Are there any further speakers on this  
10071 amendment? There are no further speakers on this amendment.  
10072 The question occurs on the amendment.

10073 Mr. Owens. I have an amendment at the desk. I have an  
10074 amendment -- oh, okay, I'm sorry.

10075 Mr. Roy. We haven't --

10076 Chairman Nadler. Is there? So we're going to vote on Mr.  
10077 Bentz's amendment. All in favor say aye.

10078 (Chorus of aye.)

10079 Chairman Nadler. Opposed, no.

10080 (Chorus of no.)

10081 Chairman Nadler. In the opinion of the Chair, the noes have  
10082 it. The noes have it.

10083           Are there any further of the amendments to the amendment  
10084 in the nature of a substitute? For what purpose does Mr. Owens  
10085 seek recognition?

10086           Mr. Owens. I have an amendment at the desk.

10087           Chairman Nadler. The Clerk will report the amendment.

10088           Mr. Cicilline. Mr. Chairman, I reserve a poitn of order.

10089           Chairman Nadler. A point of order is reserved.

10090           Ms. Fontenot. Amendment to the amendment in the nature of  
10091 a substitute to HR 3849 offered by Mr. Owens of Utah. Page 18,  
10092 strike lines 1 and 2 and insert --

10093           Chairman Nadler. Without objection the amendment is  
10094 considered as read. The sponsor is recognized -- Mr. Owens  
10095 is recognized to explain his amendment.

10096           Mr. Owens. Thank you, Mr. Chairman.

10097           I'd first of all like to thank my colleague, Representative  
10098 Scanlon and Buck for their leadership and their remarks earlier  
10099 this afternoon on HR 3849, the ACCESS Act.

10100           I'm encouraged to see the good faith efforts on both sides  
10101 of the aisle and to grant the American consumer a gift, a great  
10102 gift, to control their data. And I'm hoping we can continue to  
10103 -- continue that process and reach some common ground as we  
10104 go through this.

10105           Twenty years ago I was a telecommunication rep who helped  
10106 customers transition their data from one platform to the other.

10107        Although it was a very specific area of cellphone data, it was  
10108        eye-opening to see the access and power companies had over the  
10109        consumer personal's data. It was also encouraging and empowering  
10110        to understand and realize the control I had of my own data.

10111                This process we're going through is an important one as we  
10112        work to address each other's concerns. As we do so in a bipartisan  
10113        way we can protect the American consumer and begin the process  
10114        of breaking up the monopolies where these Big Tech resides.

10115                I'm a conservative who happens to represent a very purple  
10116        district. It is refreshing when I can support a piece of  
10117        bipartisan legislation that upholds my principles. I believe  
10118        the ACCESS Act has potential to be that type of legislation.

10119                I see the data portability and interoperability as a concept  
10120        that American consumer can readily embrace. I firmly believe  
10121        that we're doing the right thing today as we take up this  
10122        legislation. America has recognized that communication and  
10123        personal online data we use every day should be ours. It is our  
10124        data that gives power to Big Tech. It is our data that this bill  
10125        will give back to the consumer.

10126                We need to have a conversation today so we can move forward  
10127        and give Americans more control over the data based on their  
10128        personal decisions, not on the form that's used by Google, Apple,  
10129        and Facebook.

10130                The majority has accepted amendment that would ensure the

10131 portability status of this legislation opt in -- as an opt-in,  
10132 further protecting consumer data. In response to concerns from  
10133 my side of the aisle, I would like to offer another amendment  
10134 that would strengthen the privacy provisions of this bill.

10135 Simply put, this amendment would apply to privacy standards  
10136 of the National Institute of Standards and Technology, NIST,  
10137 privacy framework. The NIST privacy framework is a voluntary  
10138 tool developed in collaboration with stakeholders and is intended  
10139 to help organizations identify and manage privacy risk --  
10140 privacy risk to build innovative products and services while  
10141 protecting individuals' privacy.

10142 Work on the framework began under the direction of the Trump  
10143 White House and continues to do so today so that the standards  
10144 and the framework can be updated to reflect changes in a  
10145 fast-moving technology. The framework is scalable, meaning it  
10146 can be adapted to fit the needs of small businesses.

10147 I urge my colleagues to vote in favor of this amendment,  
10148 and I yield back the remainder --

10149 Mr. Buck. Would the gentleman yield?

10150 Mr. Owens. I'm sorry, I will yield my time over to Mr. Buck.

10151 Mr. Buck. I thank the gentleman for yielding, and I thank  
10152 the gentleman for this thoughtful amendment. I think it's clear  
10153 that there are a number of privacy concerns that members have  
10154 expressed, and I think you have given great thought to that and

10155 have come up with a solution that strengthens this bill.

10156 And I thank you very much for your leadership, and I intend  
10157 to vote for this and I appreciate it. And I yield back.

10158 Mr. Cicilline. Would the gentleman yield for a question?

10159 Mr. Owens. Yes, please.

10160 Mr. Cicilline. Thank you, Mr. Owens. I'm just trying to  
10161 understand. So it may be just a drafting error in the amendment,  
10162 but it seems like this is language you intend to add to page 18  
10163 of the bill, is that right? I don't know if this pursuant is  
10164 supposed to be after interoperability pursuant to 15 USC?

10165 Mr. Owens. Pursuant is consistent?

10166 Mr. Cicilline. Pursuant or consistent.

10167 Mr. Owens. Pursuant or consistent to comply with the  
10168 National Institute of Standards and Technology privacy.

10169 Mr. Cicilline. Got it. So added to the end of number 2  
10170 at the top of page 18.

10171 Mr. Owens. Yes.

10172 Mr. Cicilline. Okay, I just think that just might be a  
10173 drafting -- thank you, I yield back.

10174 Mr. Owens. I yield back my time.

10175 Chairman Nadler. The gentleman yields back. Are there any  
10176 further?

10177 Mr. Cicilline. Mr. Chairman, I'd just ask that that  
10178 amendment reflect Mr. Owens's intention, that it go at the top

10179 of page 18, I think after interoperability.

10180 Chairman Nadler. Instead of strike it should be add.

10181 Mr. Cicilline. Correct.

10182 Chairman Nadler. Is the gentleman agreeable to that?

10183 Mr. Owens. Yes, yes.

10184 Chairman Nadler. Mr. Issa. We will -- we will make

10185 those technical and conforming changes in the amendment. Are

10186 there any further -- is there -- is there any further

10187 speakers on this amendment? If not, the question occurs on the

10188 amendment. All in favor, say aye.

10189 (Chorus of aye.)

10190 Chairman Nadler. Opposed, no. The ayes have it. Are

10191 there any -- the amendment is agreed to.

10192 Are there any further amendments to the amendment in the

10193 nature of a substitute?

10194 Mr. Issa. Mr. Chairman, I have a familiar amendment at the

10195 desk.

10196 Chairman Nadler. The Clerk will report the amendment. The

10197 Clerk will report the amendment.

10198 Ms. Fontenot. Amendment to --

10199 Mr. Cicilline. Chairman, I reserve a point of order.

10200 Chairman Nadler. The gentleman reserves a point of order.

10201 Ms. Fontenot. Amendment to the amendment in the nature of

10202 a substitute to HR 3849.



10203 Chairman Nadler. Without objection the amendment is  
10204 considered as read. The gentleman will explain his amendment.

10205 Mr. Issa. Thank you, Mr. Chairman.

10206 Having struck the parts that would have changed the platforms  
10207 that would be affected by this bill so that we're down to the  
10208 four companies, and recognizing that only the portion at the  
10209 bottom, which is B, the public-facing website, what we seek to  
10210 do here is to recognize that this bill is in fact a trial and  
10211 a decision that four platforms are infringing antitrust entities.

10212 We basically tried them over 20 months and found them guilty.  
10213 That's why we're picking four companies and choosing to have  
10214 them do things. Some of the later bills will try to break them  
10215 up and so on.

10216 In this case, I'm doing a lot less. I'm recognizing, as  
10217 the ranking member has recognized, that when you're a monopoly  
10218 and you can do a lot of things, one of the things you can do is  
10219 you can mishandle the striking of information. As we know, under  
10220 Section 230, you do so with impunity.

10221 This amendment simply recognizes that these monopolies  
10222 should have to, in addition to what the legislation says in Part  
10223 A, should simply have to post without identity essentially the  
10224 total number of times they do it and the reason they do it.

10225 Many of the reasons they'll take down information or take  
10226 down postings will be profanity. It will be obscenity. It might

10227 even be terrorist information and the like. But it may not always  
10228 be. And it certainly has been at times interpretation of what  
10229 the medicine is that is usable or not usable for COVID-19. What  
10230 is or isn't an appropriate answer to climate change. Whatever  
10231 it happens to be.

10232 All this is saying is because these are monopolies, because  
10233 we are essentially giving them a consent decree, these four  
10234 companies, and only four companies, will simply have to post this  
10235 so that they can be reviewed. In a typical consent decree,  
10236 somebody would be getting all kinds of information, typically  
10237 DOJ would get it.

10238 In this case, it seems most appropriate for the public to  
10239 get it so that, like any antitrust, not only can state or can  
10240 individuals, but states, like the attorneys general, could look  
10241 and say, hey, this is -- the way they're doing this appears  
10242 to be further proof of antitrust behavior.

10243 So for that reason, this simple amendment that does not  
10244 infringe on anyone else's jurisdiction is clearly something that  
10245 could be anticipated and could be ordered under or agreed to under  
10246 a consent decree. I think it's appropriate to do.

10247 It is not burdensome since these companies already imply  
10248 that they're giving notice before -- when they do this they  
10249 imply that they have reasons for everything they do.

10250 As a matter of fact, they imply that they do it by an automated

10251 system, artificial intelligence. But if artificial intelligence  
10252 knows why it's taking it down, it ought to be able to post to  
10253 a list that it's done so. And we would then know how many times.

10254 So it's a short, simple amendment, and I think it at least  
10255 is an olive branch to those of us who would like to know about  
10256 what we think the antitrust behavior relative to the First  
10257 Amendment is, and that's why we're offering it.

10258 And with that, I yield back. I would yield to the gentlelady  
10259 from San Jose.

10260 Ms. Lofgren. A question. When you asked me about this  
10261 during the break, one concern I had was whether the reasonable  
10262 notice provision applied to the capacity of a platform to actually  
10263 remove content that they -- that didn't comply with their --  
10264 their requirements. And you indicated that no, it was only  
10265 intended to -- for the notification of the action. Is that  
10266 correct?

10267 Mr. Issa. Right, the Part A, four in Part A are already  
10268 in the bill, so they're already going to have to do the advance  
10269 notice. All we're saying is after the fact, you post, in a  
10270 reasonable period of time, you post why you did it.

10271 Now, we all know that the way computer systems and artificial  
10272 intelligence works, this will be done probably in seconds in the  
10273 ordinary course. I would yield to the gentleman from Ohio.

10274 Mr. Jordan. I thank the gentleman for his amendment. I

10275 think this makes a lot of sense. My understanding is is,  
10276 basically if, it says if you're going to limit speech, tell us  
10277 why. That's what --

10278 Mr. Issa. Tell us why you did it, that's all.

10279 Mr. Jordan. That is -- that's great. If you're going  
10280 to limit what people say on your platform, tell us why you're  
10281 doing it. Pretty simple.

10282 Mr. Issa. And by the way, in some cases it'll be copyrighted  
10283 material that they think belongs to somebody else. There's lots  
10284 of good reasons to take down content. I yield to the Chairman.

10285 Chairman Nadler. I didn't request the yield.

10286 Mr. Issa. I yield back.

10287 Mr. Cicilline. Mr. Chairman,

10288 Chairman Nadler. The gentleman yields back. For what  
10289 purpose does the gentleman from Rhode Island seek recognition?

10290 Mr. Cicilline. Move to strike the last word.

10291 Chairman Nadler. The gentleman is recognized.

10292 Mr. Cicilline. Thank you. I rise in opposition to this  
10293 amendment. Again, this is outside the purpose of the legislation,  
10294 which is about interoperability and portability to create more  
10295 competition to give consumers and users a control over their  
10296 information so they can easily move from one platform to another.

10297 This is a content moderation proposal.

10298 There's another piece of legislation called Shop Safe that

10299 the IP Subcommittee currently has before them. But I think one  
10300 of the things that concerns me is it seems as if it would make  
10301 if difficult, if not prohibit, Amazon, as an example, from taking  
10302 down counterfeit goods.

10303 And so again, I think this is the problem of trying to jam  
10304 into a competition-based proposal that is to provide for  
10305 interoperability and portability other objectives that get to  
10306 content moderation. And for all the reasons that I've repeated  
10307 throughout this hearing, I urge my colleagues to vote no on this  
10308 amendment.

10309 Chairman Nadler. Does the gentleman yield back?

10310 Mr. Cicilline. Yield back, Mr. Chairman.

10311 Chairman Nadler. The gentleman yields back. Who else --  
10312 who seeks recognition? Oh, Mr. Raskin. For what purpose does  
10313 --

10314 Mr. Raskin. Thank you, Mr. Chairman. I suppose would the  
10315 author of amendment just yield for a question?

10316 Mr. Issa. Of course.

10317 Mr. Raskin. I just want to make sure I'm reading it  
10318 correctly. Is the purpose of the amendment to say that before  
10319 a cover platform could exercise any content review and decisions,  
10320 it would have to post -- it would have to post a notice on the  
10321 website explaining it in the particular case of the person? Or,  
10322 I mean -- let me see if I can clarify my question.

10323           Would a content provider, or rather a cover platform has  
10324 to just publish once we do not accept Holocaust revisionism on  
10325 our site, and they do that once and then they can exercise  
10326 according to that principle in the future? Or do they have to  
10327 post it every single time that they would remove content for that  
10328 reason?

10329           Mr. Issa. Would the gentleman yield?

10330           Mr. Raskin. Yes, by all means.

10331           Mr. Issa. That's a great question. In this case, it would  
10332 be the tracking of the numbers. They don't have to do it  
10333 beforehand, they do it afterwards. But it would -- they would  
10334 effectively say we have taken down 330,000 times Holocaust denial.

10335

10336           But, and they wouldn't have to say who they took it down.  
10337 But they would accumulate a list of how many times so that you  
10338 would know that their systems took down tens of thousands of things  
10339 a day. Then you would have a breakdown of what they took down.

10340           Remember the gentleman that -- this is about the power  
10341 of these platforms and holding them accountable. And it allows  
10342 the public to have transparency as to their exert of power and  
10343 whether it's reasonable, which is consistent with the bill.

10344           Mr. Raskin. So again, just to pursue this line of  
10345 questioning, Mr. Issa. So if a cover platform basically listed  
10346 the kinds of speech they don't accept, like incitement to violent

10347 insurrection, racist speech, harassing speech, whatever, you're  
10348 saying that if you -- they publish that in advance, that would  
10349 be sufficient. They don't have to then record on each occasion  
10350 when someone's speech is being removed from their platform. Is  
10351 that right?

10352 Mr. Issa. Maybe, if the gentleman would yield.

10353 Mr. Raskin. Yeah.

10354 Mr. Issa. Basically they wouldn't -- they don't have to  
10355 repeat the words, they have to simply describe that it fits, let's  
10356 say we'll call that -- we'll call that item number 12 of a list  
10357 of reasons for takedown. And they would say we took down another  
10358 one of that description.

10359 You're absolutely right that you would create takedown  
10360 reasons, and then you would total the number of those takedown  
10361 reasons. But you'd still be reporting that it occurred 1200 more  
10362 times, which of course allows people to know the scope.

10363 But it's the, as you said, it's the reason that they're taking  
10364 down and then it's cumulatively. And let's just say that somebody  
10365 decided to say that masks for COVID-19 were not necessary and  
10366 that they chose to take that down. Then they would say we took  
10367 that down because it was inconsistent with our view of medicine,  
10368 and we took it down 300,000 times. So there would be an  
10369 accumulation and a recognition of the type of item.

10370 The type of item, as the gentleman is alluding to, is the

10371 most important part, but the total number of times is also  
10372 important. In a perfect world --

10373 Mr. Raskin. Okay, well, Mr. Issa, just reclaim my time for  
10374 a second. But I'm not seeing where your amendment covers the  
10375 idea of reporting the number of times it's happened within a  
10376 particular category. And I guess I'm just concerned because  
10377 [inaudible]. But so that's one question.

10378 The other question is does -- what's throwing me off is  
10379 the use of reasonable advance notice in this context, because  
10380 it does make it seem as if -- I mean, say somebody, say they  
10381 say you can't deny, you know, you can't deny, or you can't lie  
10382 about the results of a public election that's been certified,  
10383 okay.

10384 And they say that's a principle and we're not going to publish  
10385 speech that we view as false propoganda. Does that have to be  
10386 done in advance with each case, or is it sufficient to create  
10387 the category and then exercise it? Where is the thing about  
10388 --

10389 Mr. Issa. If the gentleman will quickly yield.

10390 Mr. Raskin. Yes.

10391 Mr. Issa. The advance notice is already in the bill. We're  
10392 simply saying essentially the public-facing website would have  
10393 to have it. By definition, there's no advance notice to posting  
10394 of a website. That occurs afterwards.



10395 Mr. Raskin. All right --

10396 Chairman Nadler. The gentleman's time has expired.

10397 Mr. Raskin. Okay, I will yield back. Let me just say I'm  
10398 not going to support this amendment for the reason that Mr.  
10399 Cicilline says, which is it deals with a different subject, which  
10400 is content regulation, which I think is a really important subject  
10401 that the Judiciary Committee or the House should get to at some  
10402 point.

10403 And you know, and I just don't think that we need to obscure  
10404 what we're really working on here with the antitrust principles.

10405 But thank you, Mr. Issa, for your answers.

10406 Chairman Nadler. The gentleman yields back. For what  
10407 purpose does the gentlelady from California seek recognition?

10408 Ms. Lofgren. To strike the last word.

10409 Chairman Nadler. The gentlelady is recognized.

10410 Ms. Lofgren. In talking to -- you're right, Mr. Raskin,  
10411 this is not the core part of the bill. But you know, we seek  
10412 comity, we seek to, you know, where we can. So I think it's  
10413 reasonable on that basis at least to see where we go with it.

10414 As I look at it further, though, I'm becoming more concerned  
10415 because even though the posting is subsequent to the action, the  
10416 remedy provision, I'm not sure how it works with the remedy  
10417 provision beginning on page 21 and the recovery in the amounts.

10418

10419 I'm just not sure how this works together, Mr. Issa. And  
10420 I'm concerned that it's been -- I know you worked in good faith  
10421 to make this work, but I -- it's a little too uncertain for  
10422 me, unless you could answer that. Because what is the --  
10423 theoretically, the person who feels that they're aggrieved, what  
10424 is the reasonable modus, and do they get to recover some unknown  
10425 amount?

10426 Mr. Issa. If the gentlelady would yield.

10427 Ms. Lofgren. Sure.

10428 Mr. Issa. The, in this case, you know, you have an agency  
10429 that is making decisions about whether they comply with the act.

10430 There's non-individual right here at all. As a matter of fact,  
10431 we took out, on Mr. Buck's request, we took out personally  
10432 identifiable information.

10433 So the posting to this website so that the public knows how  
10434 many times it has occurred is completely different from any notice  
10435 the individual that might lead to some sort of complaint. So  
10436 we really are simply giving the transparency of the conduct of  
10437 these four platforms and nothing more.

10438 And so the only remedy would be if the Federal Trade  
10439 Commission or the Department of Justice or somebody else decided  
10440 that they would look at this conduct and object to it. But it's  
10441 -- they would then probably ask for the individual information,  
10442 the details, all the things that are not going to be posted to

10443 the website.

10444 Ms. Lofgren. Recovering my time. I understand -- I  
10445 can't support this today, but maybe we can work on this some more  
10446 between now and the floor. I yield back, Mr. Chair.

10447 Chairman Nadler. The gentlelady yields back. For what  
10448 purpose does the gentleman from Louisiana seek recognition?

10449 Mr. Johnson of Louisiana. Sorry, Mr. Chairman, move to  
10450 strike the last word.

10451 Chairman Nadler. The gentleman is recognized.

10452 Mr. Johnson of Louisiana. Yield to Mr. Issa.

10453 Mr. Issa. I thank you. And I guess the -- a remote user  
10454 did mute.

10455 I recognize that many people would like to say that the  
10456 egregious acts of these companies, which have been noted by the  
10457 ranking member time and time again, not just today but for months,  
10458 is not germane to this bill. But it is germane to whether or  
10459 not, if you feel that these companies have wielded this excess  
10460 strength because they're monopolies, it's appropriate to know  
10461 how much.

10462 And you know, sometimes, and Ms. Lofgren, I take you at your  
10463 word that we may -- we may not succeed tonight, but we may  
10464 continue to work. Transparency is one of the things that gives  
10465 the opportunity for people who may not currently agree that  
10466 there's wrongdoing to see the wrongdoing.

10467           And I think if we can't tonight add this to the bill, then  
10468 to a certain extent what we're saying is we only want what we  
10469 want, and we only want to do to these four companies what we want  
10470 to do to them.

10471           And since later tonight we anticipate bills that actually  
10472 break up the companies, order them to break up and we're going  
10473 to limit their ability to make acquisitions in the ordinary  
10474 course, the same as other companies do, we are clearly doing things  
10475 much more radical but not as transparent or possibly as much able  
10476 to change the conduct of these companies.

10477           The fact is that shadow banning is something that goes on  
10478 and they get away with it because they don't have to explain it.

10479           The mysterious disappearance of hundreds of thousands or tens  
10480 of thousands of accounts with no explanation. These kinds of  
10481 things occur, and they would not occur if these companies had  
10482 real competition.

10483           So I understand why in their fields they have so much market  
10484 power, and I've seen the effects of it, Mr. Jordan's seen the  
10485 effects of it. So I understand that people can always say, well,  
10486 I don't understand this or I'm not comfortable with that.

10487           But I think for Mr. Cicilline, if you had taken the  
10488 recommendation of the new Democrats and held hearings on the  
10489 actual bills, we probably would have worked through a lot of these  
10490 through that process.

10491           The reality is the suggestion that was made by many of your  
10492 colleagues to the Speaker was the appropriate one, which is many  
10493 of these bills should have had weeks of hearings, the way we did  
10494 on patent reform, where we put out draft and then we looked at  
10495 those draft bills.

10496           And yes, we knew that some people would attack them, but  
10497 over time they became robust and sustained. And ultimately the,  
10498 particularly the Leahy bill, became law. And so I think if these  
10499 are going to become law, they're going to have to go through that  
10500 test.

10501           I would rather it go through the test in committee than go  
10502 through the test somewhere between here and the Senate or maybe  
10503 die in the Senate, as so often these bills do. I believe many  
10504 of these bills are going to die in the Senate, if they even get  
10505 out of the House, and that would be a shame for portability, for  
10506 Mr. Owens's bill, and so on.

10507           So I thank the gentleman for yielding. I've exhausted my  
10508 ability to say I believe this is the minimum that anyone should  
10509 want to have in transparency. And I yield back.

10510           Chairman Nadler. The gentleman yields back.

10511           Mr. Massie. I yield back my remaining time

10512           Chairman Nadler. The gentleman yields back. Who seeks  
10513 recognition? For what purpose does Mr. McClintock seek  
10514 recognition?

10515 Mr. McClintock. To strike the last word.

10516 Chairman Nadler. The gentleman is recognized.

10517 Mr. McClintock. Mr. Chairman, I'm deeply concerned with  
10518 sentiments I keep hearing that only the truth as certain people  
10519 see it should be permitted in the public forum that these internet  
10520 platforms are supposed to be. It reminds me of the law professor  
10521 who always began his class on First Amendment rights with  
10522 Soviet-era joke.

10523 An American and a Russian are comparing their two countries.  
10524 The American says, well, in America we can say whatever we feel  
10525 without fear. And the Russian replies, well, our government lets  
10526 people do that too. They just don't allow people to lie. He  
10527 said that always got a laugh until the last few years. It doesn't  
10528 get a laugh anymore, and that should scare the hell out of all  
10529 us.

10530 There are only two ways to resolve disputes among human  
10531 beings. There's reason, and there's force. I don't know of any  
10532 other way that human disputes are resolved. America has always  
10533 prided itself on being an empire of reason. That's made possible  
10534 by our First Amendment, and what until recently was a deeply held  
10535 belief that united all of us as Americans.

10536 When we resolve our disputes with reason there are facts  
10537 and there are opinions. Facts may be accurate, they may be  
10538 inaccurate. Often, they're contradictory. One study finds that

10539 masks and lockdowns are effective, another finds they're not.

10540           The only way to tease out the truth from these facts is to  
10541 put them all on the table, test them, challenge them, and correct  
10542 them when necessary. Opinions may be sound or unsound. The only  
10543 way to determine which are which is to put them on the table,  
10544 test them, challenge them, and when necessary revise them.

10545           Even after this process, not all of us will agree on them.

10546           But enough of us will to resolve these disputes and wisely guide  
10547 our path forward. That's what this process is all about. That's  
10548 what makes these statements from the left so frightening. They'd  
10549 stop this process cold. The truth, as the left sees it, is  
10550 proclaimed ex cathedra, as it were.

10551           Under that process the truth cannot be determined, sound  
10552 opinions cannot be allowed to rise from it, and reason can no  
10553 longer guide our discussions and resolve our disputes.

10554           In the 1950s and 60s, the ACLU made a point to defend the  
10555 most hateful conceivable speech on this planet, neo-Nazi  
10556 propaganda. This was just years after the Holocaust. Now, the  
10557 ACLU had many Jewish members, but they took that stand because  
10558 they knew that the death of free speech means the death of freedom.

10559           And the death of free speech doesn't start with the most popular  
10560 speech, but rather the most unpopular speech.

10561           You know, speaking of the European dictatorships, Winston  
10562 Churchill said this, he said, You see these dictators on their

10563 pedestals surrounded by the bayonets of their soldiers and the  
10564 truncheons of their police, but in their hearts there's unspoken  
10565 fear.

10566         They're afraid of words and thoughts, words spoken abroad,  
10567 thoughts stirring home all the more powerful because forbidden,  
10568 terrified them. Little mouse of thought enters the room and even  
10569 the mightiest potentates are thrown into panic and make frantic  
10570 efforts to bar out words and thoughts.

10571         They are afraid of the workings of the human mind, a state  
10572 of society where men may not speak their minds, where children  
10573 denounce their parents to the police, where a businessman or a  
10574 small shopkeeper ruins his competitor by telling tales about his  
10575 private opinions. Such a state of society cannot long endure  
10576 if brought into contact with the healthy outside world.

10577         I hope my colleagues will consider that before they take  
10578 us any farther down the road that we're on. These tech platforms  
10579 gained a competitive advantage because of government protections  
10580 that were predicated on the promise that they would serve as public  
10581 forums where all could express their opinions and submit facts  
10582 to be challenged by others.

10583         It if can be said on a street corner, it can be said in these  
10584 forums. That was the promise. It turns out that promise was  
10585 a lie told by people who shared the sentiment that only those  
10586 who agree with them have a moral or legal right to express



10587 themselves.

10588           The answer to that is to remove the government advantages  
10589 that were based on this broken promise, let these companies and  
10590 their competitors and their customers make their own choices and  
10591 express their own opinions.

10592           What these bills do, I am afraid, is to place the tech  
10593 platforms under tighter control of a government. Far from  
10594 fostering a healthy and open forum, I'm afraid they  
10595 institutionalize exactly the behavior that my Republican  
10596 colleagues fear and that many of our leftist colleagues applaud.

10597           I yield back.

10598           Chairman Nadler. The gentleman yields back. Who else  
10599 seeks recognition? Mr. Roy, for what purpose does Mr. Roy seek  
10600 recognition?

10601           Mr. Roy. Move to strike the last word.

10602           Chairman Nadler. The gentleman is recognized.

10603           Mr. Roy. Won't take long. I'd like to associate myself  
10604 with the remarks of the gentleman from California in broad terms,  
10605 and only add that, and very specifically, I mean, earlier I brought  
10606 up and we talked about and I won't repeat the examples about the  
10607 Wuhan virus and so forth from last spring.

10608           But there were a number of folks last year that I was relying  
10609 upon to try to get information about what was happening with the  
10610 virus in real time, people out there, smart data folks analyzing

10611 it. And I'd see people on Twitter.

10612 And there were several folks that I interacted with, never  
10613 met, I DMed them, looked in their background to what they were  
10614 doing. They were posting data and analyzing information to try  
10615 to get to the truth.

10616 And a number of them were removed from Twitter, were removed  
10617 from Facebook. And I tried DMing one, I couldn't get a hold,  
10618 I finally got a hold of one of them. And I asked, well, why were  
10619 you removed, and they said we don't know. And they never got  
10620 an answer and they never could get an answer.

10621 So I reached out to the government relations teams for these  
10622 guys. Never got an answer. Member of Congress asking to figure  
10623 out well, why did this person get removed. And the person was  
10624 literally a financial, you know, expert, in whatever industry  
10625 in finance he was working, who was poring over data looking to  
10626 analyze where COVID was spreading and then opine about it  
10627 publically.

10628 That was it. That's all he was doing. He was opining on  
10629 his beliefs about what the deal was, and he gets pulled down.

10630 Now, if we don't find that to be problematic, I mean, that's  
10631 what I'm saying. On a bipartisan basis, I mean, that's what I  
10632 would be asking my colleagues about this being an enormous  
10633 problem.

10634 When that truth that we're seeking, that my friend from

10635 California just outlined, seeking the truth through reason when  
10636 you do not necessarily know the answers but you're being told  
10637 to follow whatever a particular individual who happens to have  
10638 the last name Fauci says about whatever we're supposed to believe.

10639 And yet, that's what we were told.

10640 And I see the snickering of my colleagues on the other side  
10641 of the aisle, but that's exactly what happened. It is literally  
10642 the truth of what happened. That's -- we saw it. Whatever  
10643 that guy said, that's what goes.

10644 And now you got the former Director of CDC comes out and  
10645 says hey, maybe there's some more going on. And yet right now  
10646 as we speak, again, shaking heads on the other side of the aisle,  
10647 we reject that. But that's exactly what my friend from California  
10648 is talking about when you just want to seek the truth.

10649 And why am I bringing it up here in this context? Because  
10650 I want to know why the fella that I've never met before and who  
10651 I was looking at the background who was putting information out  
10652 on Twitter that was interesting, tracking the data, got canned  
10653 from Twitter. And I never found out and he never found out.

10654 But literally was just out there posting good data to go  
10655 analyze. Is that not troubling? Is that not concerning? And  
10656 if it's not, I just really, I don't, I do not understand. That's  
10657 a break. It's just a gap that I don't understand why that's not  
10658 concerning.

10659 Mr. Massie. Does the gentleman yield?

10660 Mr. Roy. I'd yield to my friend from Kentucky.

10661 Mr. Massie. I had the same experience on Twitter back in  
10662 December, seeking to know whether you should get the vaccine if  
10663 you've already had the virus. People on Twitter were -- they  
10664 directed me to the CDC's own information. I called up the --  
10665 and by the way, their information was wrong.

10666 I called up the CDC, we said we can't believe how you found  
10667 this. How did you find this error in our reporting of the data?  
10668 We're going to -- they said we're going to call you Eagle Eye  
10669 Massie. We've been all over this.

10670 But it was people on Twitter that found the mistakes, the  
10671 misstatements, the incredible claim that the vaccine was 92%  
10672 efficacious if you'd already had the virus. Totally false, not  
10673 proven out by the Pfizer data. CDC admitted I was wrong. By  
10674 the way, they -- or they were wrong. They never changed the  
10675 website.

10676 So I went back to find those Twitter people that had directed  
10677 me to that information that the CDC was providing. Their accounts  
10678 are gone, deleted, de-platformed. Have no way of contacting  
10679 them, don't know who they are. But they were just erased, they  
10680 were deleted, they were cancelled.

10681 And this is a scary world that we live in if that can go  
10682 on. I yield back to the gentleman from Texas.

10683 Mr. Roy. I appreciate that, and I would just -- I would  
10684 just reiterate I have seen that happen time and time again now.  
10685 You know, and those of us trying to seek the truth and getting  
10686 -- the technology company standing in the way of seeking the  
10687 truth.

10688 And I again associate myself with the remarks of the  
10689 gentleman from California. I yield back.

10690 Chairman Nadler. The gentleman yields back.

10691 Mr. Swalwell. Mr. Chairman, I move to strike the last word.

10692 Chairman Nadler. For what purpose does Mr. Swalwell seek  
10693 recognition?

10694 Mr. Swalwell. I move to strike the last word.

10695 Chairman Nadler. The gentleman is recognized.

10696 Mr. Swalwell. Mr. Chairman, I hope the same arguments that  
10697 were -- that are being made now -- I wish the arguments that  
10698 are being made now would have been made back in 2012 in the  
10699 Masterpiece Cakeshop c. Colorado Civil Rights Commission case,  
10700 where a gay couple went to a cakeshop and asked to have their  
10701 wedding cake made. And they were turned down, they were shadow  
10702 banned, they were censored, to use the parlance of the other side.

10703 And the Supreme Court in that decision upheld the cakeshop  
10704 and their ability to do that. And I never heard a single person  
10705 over there say, you know what, they shouldn't be canceled, they  
10706 shouldn't be shadow banned. No, they supported that decision.

10707           The right supported that Supreme Court decision.

10708           This is about a private company.  If you don't like what  
10709 the private company's doing, go to Parler, which you all did.

10710           So Mr. Chairman, the issue -- the issue here is this side,  
10711 they oppose regulation on anything.  Oil and gas, airlines, don't  
10712 touch the free market, don't touch the free market.  But when  
10713 their guy tries to start an insurrection and he gets banned from  
10714 Twitter, now it's called shadow banning or censoring.

10715           So I'm really convinced, Mr. Chairman, that they don't  
10716 understand the difference between the public square and  
10717 government censorship and free market decisions that they defend  
10718 when it's for oil and gas, when it's for airlines, when it's for  
10719 any industry that they're for, they can make their own decisions  
10720 and if Democrats want to regulate, we're touching the free market.

10721           But when they say something about an insurrection or they  
10722 lead to a bad healthcare outcome and they have a tweet taken down,  
10723 they have been censored.  So that's what's really at stake here.

10724           And I yield back to the Chair.

10725           Mr. Johnson of Louisiana.  Will the gentleman yield?

10726           Chairman Nadler.  The -- for what purpose does Mr. Biggs  
10727 seek recognition?

10728           Mr. Biggs.  Move to strike the last word.

10729           Chairman Nadler.  The gentleman is recognized.

10730           Mr. Biggs.  Before I yield time to some of my colleagues,

10731 I just want to reiterate what I said I think five hours ago when  
10732 we were talking about the same bill. About sometimes monopolies  
10733 rise and it's just natural and they could fail with bad service  
10734 or bad product. Other times they engage in misbehavior. And  
10735 we do regulate that. Fraud, tortious conduct.

10736 And similarly, we file antitrust laws. We have antitrust  
10737 laws, we can bring antitrust lawsuits. And that's been about  
10738 130 years of tradition in the United States of America. And so  
10739 with that, I think that's important to realize that the market  
10740 cannot solve all problems in a monopoly situation.

10741 But with that, I'm going to yield to my friend from Louisiana.

10742 Mr. Johnson of Louisiana. Thank the gentleman for yielding.

10743 I just want to point out to Mr. Swalwell, you know, the facts  
10744 of the Masterpiece Cakeshop case have nothing whatsoever to do  
10745 with what we're talking about here.

10746 And if you knew the facts of that case, you would understand  
10747 that, that you know, just parenthetical note that it was the state  
10748 of Colorado's commission that was discriminating against the cake  
10749 baker. And the persons who wanted to get the cake had multiple  
10750 other options in the same town within just a few blocks and all  
10751 that.

10752 So the facts are important, and let's not -- this is  
10753 already confusing enough, let's not -- let's not bring in cases  
10754 that are a complete non sequitur. Yield back.

10755 Mr. Biggs. And I will yield some time to Mr. Roy.

10756 Mr. Roy. I would just say in response, I mean, my friend  
10757 from Louisiana just explained the absurdity of comparing what  
10758 we're talking about right here to the man, who by the way is back  
10759 in the news being forced to have to ignore his deeply held  
10760 religious beliefs protected in First Amendment of the United  
10761 States Constitution, being forced again to do, despite the fact  
10762 -- there is literally no comparison whatsoever to what the  
10763 gentleman just raised and what we're talking about here.

10764 With corporations with the power, by the way, that we're  
10765 here on a bipartisan basis. And that's the thing that I think  
10766 is so critically important. And why did I think it was important?  
10767 We're having these conversations.

10768 I understand that there's disagreements on where we're going  
10769 to go with this, but we're here because of the power of massive  
10770 corporations. That's why we're here. On a bipartisan basis,  
10771 we agree on that.

10772 The point being made, and my friend from California Mr. Issa  
10773 that's talking about with respect to making sure this  
10774 information's available and suggesting that we should have these  
10775 massive corporations post this information and make it available  
10776 is precisely this point about we're looking at this and seeing  
10777 what they're doing.

10778 And I can accept the idea, the difference in what the



10779 gentleman is saying with respect to censorship, right, government  
10780 censorship. What we're trying to talk about is when you've got  
10781 these massive corporations who because of their size, scope, and  
10782 power, but also because, as the gentleman from California alluded  
10783 to, power that they've also got in part because of government  
10784 and what government's involvement with those corporations have  
10785 been.

10786 And now they're exercising that power in a way that's  
10787 blocking people, pulling people, removing people from the public  
10788 domain in conversation. That's happening as we speak, and it's  
10789 happening, and it tends to be very one-sided, it would appear.

10790 But even if we accept it's not one-sided, it should trouble  
10791 us all that anyone be silenced with these corporations at the  
10792 size and scope they're doing it. No one here is saying that a  
10793 corporation doesn't have the right to determine how they want  
10794 to set up their corporations and make decisions about who can  
10795 use their platforms. We're not saying that.

10796 What we're saying is that a lot of this stuff is being done,  
10797 the shadow banning, the decisions that are being made without  
10798 regard to any public-facing, to use the words of the gentleman  
10799 from California's amendment, available information to know what  
10800 they're doing.

10801 And by the way, they're doing that with liability  
10802 protections, they're doing with government-protected power. And

10803 we should be concerned that \$600 billion corporations are doing  
10804 that. I mean, that should trouble us.

10805 I mean, I'm not saying that -- I'm not trying to say that  
10806 that's the same, necessarily, as the government coming in and  
10807 saying what speech can look like. But when you have a private  
10808 user that goes on and all of a sudden they say whup, you're removed.  
10809 And you don't know how, you don't know why. And that's your  
10810 avenue for communicating and going and sharing your thoughts and  
10811 information.

10812 That should be troubling to us and we should want to know  
10813 more about what those corporations are doing, and we should want  
10814 to try to address it. And I think the gentleman from California's  
10815 amendment is a step in that direction.

10816 Mr. Biggs. I will reclaim and yield.

10817 Chairman Nadler. The gentleman's time has expired. Ms.  
10818 Escobar, for what purpose does the gentlelady seek recognition?

10819 Ms. Escobar. Strike the last word.

10820 Chairman Nadler. The gentlelady is recognized.

10821 Ms. Escobar. I'd like to yield to my colleague Mr. Raskin.

10822 Mr. Raskin. Oh, that's very kind. Thank you, Ms. Escobar.

10823 I suppose I want to just make two points. One was in response  
10824 to the gentleman from Texas. I think people are raising  
10825 legitimate concerns. I think it's a little bit jarring and  
10826 surprising for a lot of people across the aisle who've been talking

10827 about the dangers of runaway corporate power for many, many years  
10828 if not decades.

10829           And I'm sorry, you know, the putative censorship of Donald  
10830 Trump lying about the election is one that really doesn't tug  
10831 at my heartstrings compared to the thousands and thousands of  
10832 workers at large corporations who've been fired for supporting  
10833 a union, or because of their political views.

10834           But if what you're saying is that we need to look at the  
10835 question of corporate power and the speech of people who are  
10836 consumers and workers who deal with corporations, let's deal with  
10837 it systematically.

10838           Let's not pretend as if large corporations are principally  
10839 a threat to right-wing conservatives in America, because they're  
10840 not. And as you know, you know, right-wing conservatives have  
10841 been aligned with large corporate power for a long time.

10842           But in any event, that doesn't de-legitimize whatever your  
10843 concerns are, and we should look at it in a principled way. It's  
10844 just not what we're doing here. What we're talking about now  
10845 is a regulation of commerce in order to prevent antitrust  
10846 violations, monopolization concerns. And so I think it doesn't  
10847 help us to conflate the two issues.

10848           As for cancel culture, I think that the gentleman from  
10849 California, Mr. Swalwell, makes a very powerful point. Cancel  
10850 culture is in the eye of beholder. I know Donald Trump thinks

10851 that he's the victim of cancel culture.

10852 Others would think that he launched cancel culture with his  
10853 attack on Colin Kaepernick, and has continued it all the way up  
10854 through the vilification and demonization and overthrow of Liz  
10855 Cheney simply for voting her conscience and her understanding  
10856 of what happened on January 6.

10857 There's been a vicious attack to try to cancel out every  
10858 Republican who voted to impeach or convict Donald Trump. They've  
10859 tried to censure them, they've tried to admonish them, they've  
10860 tried to get party resolutions against them. I mean, what's that  
10861 if not cancel culture? And it runs throughout what's going on  
10862 in the right wing today.

10863 Tom Cotton wrote a whole bill aimed at purging and censoring  
10864 the teaching of the 1619 Project. I know you guys don't like  
10865 the 1619 Project, but it is intellectual thought. So to try to  
10866 ban it and censor it is an exercise of precisely the kind of  
10867 censorship that you claim to be deploring.

10868 So you know, we could stay here all night, perhaps that's  
10869 the idea, offering counter-examples and examples to each other  
10870 of the cancel culture that's going on. Now, I've gotten awards  
10871 from the American Civil Liberties Union for standing up for  
10872 everybody's freedom of speech, and I would love to bring you,  
10873 Mr. Roy, to an ACLU meeting, because it's all about defending  
10874 everybody's right to speak.

10875 Mr. Roy. Will the gentleman yield?

10876 Mr. Raskin. And the right of free press across the board,  
10877 not just the right of my party to speak, or my favorite candidate  
10878 to speak --

10879 Mr. Roy. Would the gentleman yield?

10880 Mr. Raskin. But for everybody to speak. I'm sorry?

10881 Mr. Roy. Would the gentleman yield?

10882 Mr. Raskin. Yes, by all means, yes.

10883 Mr. Roy. Just a hypothetical question. If --

10884 Chairman Nadler. It's Ms. Escobar's time.

10885 Mr. Roy. Oh, I'm sorry.

10886 Ms. Escobar. Yeah, so no. I'll -- Jamie.

10887 Mr. Raskin. Well, in the interest of freedom of speech,  
10888 look, let me just say this. I think that, you know, it's late  
10889 at night and I don't want to be impolite or impolitic with my  
10890 friends here.

10891 But really, I think that there's something that's a --  
10892 it's a little bit much sometimes to have everybody posing as a  
10893 victim of censorship when you turn around and would easily censor  
10894 people in a lot of different contexts, and we have a lot of examples  
10895 of that. So cancel culture is in the eye of the beholder.

10896 But if we want to look at it systematically and seriously,  
10897 as I think that we should, then let's talk about the threat that  
10898 large corporations present to the free speech of the people.

10899 I mean, let's do that and let's analyze that seriously.

10900 And not in terms of this or that case or what have you, but  
10901 right now these are First Amendment entities and they have a right  
10902 to decide if they don't want hate speech or they don't want, you  
10903 know, climate denialism on their platform or what have you.  
10904 They've got a right to do that.

10905 If we want to change that around in some way, we should look  
10906 at it separately. But I don't think we should conflate it with  
10907 the regulation of commerce that's taking place here and the  
10908 promotion of antitrust policy. That's what we're doing.

10909 Chairman Nadler. The gentlelady's --

10910 Mr. Raskin. I yield back and I thank Ms. Escobar for her  
10911 kindness.

10912 Chairman Nadler. The gentlelady's time has expired.

10913 Ms. Escobar. Yield back.

10914 Chairman Nadler. For what purpose does Ms. Spartz seek  
10915 recognition?

10916 Mrs. Spartz. Move to strike the last word.

10917 Chairman Nadler. The gentlelady is recognized.

10918 Mrs. Spartz. Thank you, Mr. Chairman.

10919 It's a good discussion, but I wanted, you know, just to kind  
10920 of enliven something that the congressman from California  
10921 mentioned. You know, I think there are a lot of different  
10922 protections that provided by our constitution, and including

10923 First Amendment rights, Second Amendment right, and other rights.

10924

10925 And also, I believe, you know, a top-down approach is  
10926 usually not the best way, you know, to deal with this issue.  
10927 But unfortunately what's happened, and in this case we can talk  
10928 about the markets and here and there, but ultimately when the  
10929 government provide blanket immunities in return some  
10930 unenforceable regulations, we create an environment where the  
10931 issues that should be resolved in tort, you know, through tort  
10932 and all around should be done through that now cannot be resolved  
10933 through that.

10934 And this is a discussion we should have. You know, I, when  
10935 I was in state senate I was joking with my colleagues, I said  
10936 if we create more immunities, all these trial lawyers will be  
10937 out of business. But when government create -- that's --  
10938 our system was set up that the tort should be the one who deal  
10939 -- which deals with wrongful acts and someone infringing on  
10940 their rights.

10941 But we have created an environment with this monopoly powers  
10942 of information which can have enormous amount of information about  
10943 individual and can really manipulate in the way how they want.

10944 And if I want to go and sue them, they have so much broad  
10945 protection that this body gave them for reason to protect First  
10946 Amendment.

10947           But it seems like it's not working. So maybe we should  
10948 reassess if that immunity should be adjusted, because I personally  
10949 would prefer not to deal with these issues through FTC or  
10950 Department of Justice, but actually deal through tort. And I  
10951 think that's a better approach, and I think this is a very valid  
10952 approach to do that and we should reevaluate.

10953           And I think, you know, the intent was different and the  
10954 application of the law is different. And I think, you know, this  
10955 is a valid discussion as part of this process. We cannot just  
10956 look at one side, and it's because a lot times it's monopoly powers  
10957 created by the government allowed the behaviors that wouldn't  
10958 happen in arm's length transactions in free markets.

10959           You know, the free markets would not use broad protections,  
10960 you know, that was given at the government. We would not create  
10961 barriers of entry and have a healthcare monopoly, hospital  
10962 monopolies, PBM monopolies.

10963           We have oligopoly markets everywhere that created because  
10964 we as a government allow some of the players not to follow the  
10965 laws and legal framework of have equal rights to pursue happiness  
10966 in whichever want.

10967           The rights are not equal. And that's the government that  
10968 functions for us to provide the framework for equal rights for  
10969 any citizens, regardless if you're large and small. You know,  
10970 I hope we continue this discussion because it's very important



10971 discussion. And I think bottom-up approach generally works  
10972 better than top-down, you know.

10973 And I just kind of want to follow up because there is a big  
10974 difference. You know, they are private entity was given very  
10975 large immunities by this body. And I think that should be also  
10976 discussed.

10977 Thank you, I yield.

10978 Mr. McClintock. Would the gentlelady yield for a moment?

10979 Mrs. Spartz. I yield to Mr. McClintock.

10980 Mr. McClintock. I just want to make one point. We seem  
10981 to be confusing criticism with censorship. Criticism's central  
10982 to vigorous speech, and the more vigorous speech the more  
10983 withering the criticism. That's part and parcel to the process.

10984 But that is fundamentally different from denying a person the  
10985 right to express their opinions at all.

10986 And that seems to be what the left is confusing. You have  
10987 a right to express your opinions and other people have a right  
10988 to subject those opinions to withering criticism. But no one  
10989 has the right to silence you, and that is the problem that we  
10990 are facing today.

10991 Yield back.

10992 Mr. Raskin. Would the gentleman yield?

10993 Mrs. Spartz. I yield.

10994 Mr. Raskin. Thank you, Ms. Spartz. I just wanted to ask

10995 Mr. McClintock whether he thinks Fox News has an obligation to  
10996 put on views that it disagrees with. They once invited me to  
10997 come on, and my local Fox News is actually very kind and open.

10998

10999 But I went on national Fox News and I was treated very rudely.  
11000 They kept interrupting me and they didn't let me speak and get  
11001 my message out. But there was nothing really I could do about it  
11002 because they were exercising their First Amendment rights. Could  
11003 I sue them for that?

11004 Mr. McClintock. So they gave you a forum and then they  
11005 criticized you. That reminds me of something Mayor Daly once  
11006 said -- it's my time. I believe the gentlelady just gave it  
11007 back to me. Reminds me of something Mayor Daly once said. He  
11008 said they have criticized me -- or pardon me, they have vilified  
11009 me, they have crucified me, yes, they have even criticized me.

11010 There is a difference between criticism and censorship.

11011 Mr. Raskin. Yes, would the gentleman --

11012 Mr. McClintock. You were criticized, you were not censored.

11013 Chairman Nadler. The gentlelady's time --

11014 Mr. Raskin. A private entity cannot censor you.

11015 Chairman Nadler. The gentlelady's time has expired. For  
11016 what purpose does Mr. Cohen seek recognition?

11017 Mr. Cohen. Well, I was going to get into some extraneous  
11018 conversation to counter some of the extraneous stuff I've heard

11019 today, but that's not worth anybody's time. Nor is much of what  
11020 I've heard been worth anybody's time, and I would hope we just  
11021 kind of get back to the subject matter.

11022 We know this bill's going to pass. There probably won't  
11023 be any more amendments and get it over with and get it done.  
11024 The fat lady sung. And I yield my time.

11025 Chairman Nadler. The gentleman yields back. For what  
11026 purpose does the gentleman?

11027 Mr. Issa. I have a unanimous consent.

11028 Chairman Nadler. Oh, the gentleman from California is  
11029 recognized for a unanimous consent request.

11030 Mr. Issa. Chairman, I ask unanimous consent that the  
11031 Heritage Foundation article of June 22 entitled Weaponizing  
11032 Antitrust to Achieve Radical Ideological Goals be put into the  
11033 record. I also ask that the May 4, 2021 Heritage bill -- or  
11034 press release, which says that they pledge not to take Big Tech  
11035 money, be placed into the record.

11036 Chairman Nadler. Without objection.

11037 Mr. Issa. I thank the gentleman.

11038 Chairman Nadler. For what purpose does Mr. Gohmert seek  
11039 recognition?

11040 Mr. Gohmert. Strike the last word.

11041 Chairman Nadler. The gentleman is recognized.

11042 Mr. Gohmert. Thank you. Following up on what Ms. Spartz

11043 was saying, I know that our side of the aisle has had proposals  
11044 on how to reform Section -- I know, I do too. So but we've  
11045 had proposed reforms to Section 230. I'm one of those I think  
11046 we're better off just repealing Section 230 immunity.

11047 You know, Mr. Raskin brought up the issue of Fox News. We  
11048 had a hearing here, and I can't remember if it was Google or  
11049 Twitter's representative, one of them said kind of smugly to me,  
11050 we just want to be treated like your Fox News. And I said exactly,  
11051 that's what I want you treated like.

11052 Fox News can be sued for their improprieties. But we have  
11053 given blanket immunity to these entities that said they were going  
11054 to be a market -- just a open town square when anybody could  
11055 come speak.

11056 So we give them this immunities because anybody can come  
11057 speak and they decide they don't like conservatives, they're going  
11058 to cut them off. They don't like people like Donald Trump and  
11059 others, but lots of others. So they do the shadow banning. They  
11060 do all kinds of restrictions on speech.

11061 If they want to be like Fox News, then they should be sued  
11062 like Fox News or capable of being sued. And that's one of the  
11063 problems here. We gave them the ability to grow into monopolies  
11064 because we protected them.

11065 You give any entity the authority that they're exempt, nobody  
11066 can sue them, they can't be held accountable for what they do,

11067 and they're going to end up growing to be a monopoly because they  
11068 can do all kinds of things that people without immunity cannot  
11069 do.

11070 And so here we are today, we're trying to figure out, gee,  
11071 how do we deal with high tech that's become so big that they can  
11072 tell the government what to do. They can say, whoops,  
11073 hypothetically, you've got me included in those companies that  
11074 you're coming after and so I'm giving enough money to all these  
11075 campaigns. I don't want to be part of that.

11076 So, hypothetically, they could get people to exempt them  
11077 from having the bill apply to them. I mean, you give enough  
11078 exemptions and companies will grow to be monopolies. So here  
11079 we are dealing with the results of that Section 230 immunity.

11080 If it weren't there, I don't think we'd been here all day because  
11081 they wouldn't be the monopolies they've grown into.

11082 And there would be more competition. But they've got  
11083 immunity and people that try to take them on don't necessarily  
11084 have immunity, and so they're able to shut them down and not be  
11085 sued for shutting them down.

11086 So maybe we could simplify everything if we just said, you  
11087 know what, instead of trying to figure out who's a monopoly, how  
11088 big you have to be before you fall under these antitrust  
11089 violations, why not just eliminate Section 230. People would  
11090 start suing them.

11091           And I tell you, I have known some incredible plaintiff's  
11092 lawyers in my time. I've watched -- I've worked with some,  
11093 I have watched them try cases in my court, extraordinary lawyers  
11094 from all over the country. They're amazing. And you know, they  
11095 were lawyers I didn't like, but I could see myself warming up  
11096 to them because they were that good in court.

11097           So I think if we pull back the immunity and let the  
11098 plaintiff's lawyers do their thing, that we could have this all  
11099 taken care of in no time. I got a minute --

11100           Mr. Issa. Would the gentleman yield?

11101           Mr. Gohmert. Yes, absolutely.

11102           Mr. Issa. I think the gentleman's absolutely right.  
11103 Although I will note that, you know, we're trying to very little  
11104 and within our jurisdiction here what we're really trying to do  
11105 is have transparency and accountability as to some of the activity  
11106 that may in fact be antitrust and heavy-handed. I thank the  
11107 gentleman for yielding.

11108           Mr. Gohmert. And I yield back.

11109           Chairman Nadler. The gentleman yields back. Does any --  
11110 who seeks recognition? The question then occurs on the  
11111 amendment. All in favor, say aye.

11112           (Chorus of aye.)

11113           Chairman Nadler. Opposed, no.

11114           (Chorus of no.)

11115 Chairman Nadler. In the opinion of the Chair the noes have  
11116 it. The yeas and nays are requested, the Clerk will call the  
11117 roll.

11118 Ms. Fontenot. Mr. Nadler.

11119 Chairman Nadler. No.

11120 Ms. Fontenot. Mr. Nadler votes no.

11121 Ms. Lofgren.

11122 Ms. Lofgren. Pass.

11123 Ms. Fontenot. Ms. Lofgren passes.

11124 Ms. Jackson Lee.

11125 Ms. Jackson Lee. No.

11126 Ms. Fontenot. Ms. Jackson Lee votes no.

11127 Mr. Cohen. Mr. Cohen.

11128 Mr. Johnson of Georgia.

11129 Mr. Johnson of Georgia. No.

11130 Mr. Johnson of Georgia.

11131 Mr. Johnson of Georgia. No.

11132 Ms. Fontenot. Mr. Johnson of Georgia votes no.

11133 Mr. Deutch.

11134 Mr. Deutch. No.

11135 Ms. Fontenot. Mr. Deutch votes no.

11136 Ms. Bass.

11137 Ms. Bass. Bass votes no.

11138 Ms. Fontenot. Ms. Bass votes no.

11139 Mr. Jeffries.  
11140 Mr. Jeffries. No.  
11141 Ms. Fontenot. Mr. Jeffries votes no.  
11142 Mr. Cicilline.  
11143 Mr. Cicilline. No.  
11144 Ms. Fontenot. Mr. Cicilline votes no.  
11145 Mr. Swalwell.  
11146 Mr. Swalwell. No.  
11147 Ms. Fontenot. Mr. Swalwell votes no.  
11148 Mr. Lieu.  
11149 Mr. Lieu. No.  
11150 Ms. Fontenot. Mr. Lieu votes no.  
11151 Mr. Raskin.  
11152 Mr. Raskin. No.  
11153 Ms. Fontenot. Mr. Raskin votes no.  
11154 Ms. Jayapal.  
11155 Ms. Jayapal. No.  
11156 Ms. Fontenot. Ms. Jayapal votes no.  
11157 Ms. Demings.  
11158 Ms. Demings. No.  
11159 Ms. Fontenot. Ms. Demings votes no.  
11160 Mr. Correa.  
11161 Mr. Correa. No.  
11162 Ms. Fontenot. Mr. Correa votes no.



11163 Ms. Scanlon.  
11164 Ms. Scanlon. No.  
11165 Ms. Fontenot. Ms. Scanlon votes no.  
11166 Ms. Garcia.  
11167 Ms. Garcia. No.  
11168 Ms. Fontenot. Ms. Garcia votes no.  
11169 Mr. Neguse.  
11170 Mr. Neguse. No.  
11171 Ms. Fontenot. Mr. Neguse votes no.  
11172 Ms. McBath.  
11173 Ms. McBath. No.  
11174 Ms. Fontenot. Ms. McBath votes no.  
11175 Mr. Stanton.  
11176 Mr. Stanton. No.  
11177 Ms. Fontenot. Mr. Stanton votes no.  
11178 Ms. Dean.  
11179 Ms. Dean. No.  
11180 Ms. Fontenot. Ms. Dean votes no.  
11181 Ms. Escobar.  
11182 Ms. Escobar. No.  
11183 Ms. Fontenot. Ms. Escobar votes no.  
11184 Mr. Jones.  
11185 Mr. Jones. No.  
11186 Ms. Fontenot. Mr. Jones votes no.

11187 Ms. Ross.

11188 Ms. Ross. No.

11189 Ms. Fontenot. Ms. Ross votes no.

11190 Ms. Bush.

11191 Ms. Bush. Bush votes no.

11192 Ms. Fontenot. Ms. Bush votes no.

11193 Mr. Jordan.

11194 Mr. Jordan. Yes.

11195 Ms. Fontenot. Mr. Jordan votes yes.

11196 Mr. Chabot.

11197 Mr. Chabot. Aye.

11198 Ms. Fontenot. Mr. Chabot votes aye.

11199 Mr. Gohmert.

11200 Mr. Gohmert. Aye.

11201 Ms. Fontenot. Mr. Gohmert votes aye.

11202 Mr. Issa.

11203 Mr. Issa. Aye.

11204 Ms. Fontenot. Mr. Issa votes aye.

11205 Mr. Buck.

11206 Mr. Buck. Aye.

11207 Ms. Fontenot. Mr. Buck votes aye.

11208 Mr. Gaetz.

11209 Mr. Gaetz. Aye.

11210 Ms. Fontenot. Mr. Gaetz votes aye.

11211 Mr. Johnson of Louisiana.

11212 Mr. Johnson of Louisiana. Aye.

11213 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

11214 Mr. Biggs.

11215 Mr. Biggs. Yes.

11216 Ms. Fontenot. Mr. Biggs votes yes.

11217 Mr. McClintock.

11218 Mr. McClintock. Aye.

11219 Ms. Fontenot. Mr. McClintock votes aye.

11220 Mr. Steube.

11221 Mr. Steube. Yes.

11222 Ms. Fontenot. Mr. Steube votes yes.

11223 Mr. Tiffany.

11224 Mr. Tiffany. Aye.

11225 Ms. Fontenot. Mr. Tiffany votes aye.

11226 Mr. Massie.

11227 Mr. Massie. Aye.

11228 Ms. Fontenot. Mr. Massie votes aye.

11229 Mr. Roy.

11230 Mr. Roy. Aye.

11231 Ms. Fontenot. Mr. Roy votes aye.

11232 Mr. Bishop.

11233 Mr. Bishop. Yes.

11234 Ms. Fontenot. Mr. Bishop votes yes. Ms. Fischbach.

11235           Ms. Fischbach.   Yes.

11236           Ms. Fontenot.   Ms. Fischbach votes yes.

11237           Ms. Spartz.

11238           Mrs. Spartz.   Yes.

11239           Ms. Fontenot.   Ms. Spartz votes yes.       Mr. Fitzgerald.

11240           Mr. Fitzgerald.   Aye.

11241           Ms. Fontenot.   Mr. Fitzgerald votes aye.

11242           Mr. Bentz.

11243           Mr. Bentz.   Yes.

11244           Ms. Fontenot.   Mr. Bentz votes yes.       Mr. Owens.

11245           Mr. Owens.   Yes.

11246           Ms. Fontenot.   Mr. Owens votes Yes.

11247           Mr. Cohen.   How is Mr. Cohen reported?

11248           Ms. Fontenot.   Mr. Cohen, you are not recorded.

11249           Mr. Cohen.   Not surprising.   I vote no.

11250           Ms. Fontenot.   Mr. Cohen votes no.

11251           Chairman Nadler.   Are there any other members who have not

11252           been recorded who wish to be recorded?   The Clerk will report.

11253           Ms. Fontenot.   Mr. Chairman, there are 19 ayes, 24 noes,

11254           and one present.

11255           Chairman Nadler.   The amendment is not agreed to.

11256           Are there any further amendments to the amendment in the

11257           nature of a substitute?

11258           Mr. Bishop.   Yes, Mr. Chairman, I have one.

11259 Chairman Nadler. For what purpose does the -- does Mr.  
11260 Bishop seek recognition?

11261 Mr. Bishop. I have an amendment at the desk.

11262 Chairman Nadler. The Clerk will report the amendment.

11263 Ms. Fontenot. Amendment to the amendment in the nature of  
11264 a substitute to HR 3849 offered by Mr. Bishop --

11265 Mr. Cicilline. Reserve a point of order, Mr. Chairman.

11266 Chairman Nadler. Point of order reserved.

11267 Ms. Fontenot. Offered by Mr. Bishop of North Carolina.

11268 Page 16 --

11269 Chairman Nadler. Without objection the amendment is  
11270 considered as read. The gentleman is recognized to explain his  
11271 amendment.

11272 Mr. Bishop. Thank you, Mr. Chairman.

11273 This concerns the composition of the technical committee  
11274 that will advise the FTC as to the establishment of standards.

11275 On page 17, paragraph 2 says representatives of competition or  
11276 privacy advocacy organizations and independent academics that  
11277 possess technical, legal, economic, financial, or other knowledge  
11278 that the Commission may deem useful.

11279 The amendment will replace all of that with just the word  
11280 -- tech, the words technical experts. So we're seeking  
11281 technical standards, advice, let's just make it technical  
11282 experts.

11283           The -- one thing in particular, the notion of independent  
11284           -- why they need to be academics has never been clear to me  
11285           as I've reviewed this bill. And given the particularly broad  
11286           range of knowledge, it can be technical, legal, economic,  
11287           financial, or other knowledge, meaning it can be any kind of  
11288           knowledge at all.

11289           So the only academics who would be omitted would be those  
11290           of you have who have no knowledge. And there are a lot of those.  
11291           I think of one particular law professor that writes a lot of  
11292           op-eds.

11293           But since it's so broad and says only academics, I don't  
11294           know why academics are what the FTC needs. It seems to me they  
11295           need technical experts and that's what this bill -- this  
11296           amendment proposes to substitute. I yield back.

11297           Chairman Nadler. The gentleman yields back. For what  
11298           purpose does Mr. Cicilline seek recognition?

11299           Mr. Cicilline. I move to -- move to strike the last word,  
11300           and I'm not pressing my point of order anymore. I withdraw my  
11301           point of order.

11302           Chairman Nadler. Point of order is withdrawn, the gentleman  
11303           is recognized.

11304           Mr. Cicilline. Thank you, Mr. Chairman. I would urge my  
11305           colleagues to reject this amendment. It's important that the  
11306           relevant expertise be available to this committee so that the

11307 interoperability and portability standards work. And that's why  
11308 a technical committee needs to have representation from  
11309 individuals who have relevant and important expertise. That's  
11310 what the legislation provides.

11311 Stripping out the expertise I think would be a terrible  
11312 mistake and I think it would undermine the effectiveness of the  
11313 bill. I urge my colleagues to defeat this amendment. I yield  
11314 back.

11315 Chairman Nadler. The gentleman yields back. Does anyone  
11316 else seek recognition on this amendment? For what purpose does  
11317 Mr. Roy seek recognition?

11318 Mr. Roy. I move to strike the last word.

11319 Chairman Nadler. The gentleman is recognized.

11320 Mr. Roy. I think this amendment is important. I think the  
11321 gentleman from North Carolina's finger on I think part of the  
11322 problem.

11323 We addressed some of this earlier in amendments that  
11324 unfortunately were rejected when we were talking about ensuring  
11325 that we weren't going to have issues such as systemic racism and  
11326 critical race theory a part of the issue when we were debating  
11327 the FTC fees earlier and trying to limit and narrow that scope  
11328 of how those fees could be used.

11329 And I think here the gentleman I think is simply trying to  
11330 ensure that we're not going to try to inject things that aren't

11331 within the very pure scope of what's allegedly trying to be done  
11332 here. And I think it's a fairly straightforward amendment by  
11333 focusing on technical so that we don't end up with political  
11334 organizations, left or right.

11335 But you know, I think that they're, given a lot of the things  
11336 we've talked about today and given the extent to which we've talked  
11337 about truth being the goal of what, you know, is being attempted  
11338 here and who the purveyors of truth are, if we've got left, you  
11339 know, and from the perspective of those of us on this side of  
11340 the aisle, we've got left-leaning or left-wing organizations that  
11341 are putting in the so-called experts.

11342 When you've got a vague criteria such as academics, you know,  
11343 under the sort of broad description with other knowledge, I'm  
11344 not sure what this is, pretty much whoever they want. They can  
11345 just pick, pick and choose. And this is one of those things that  
11346 Congress, we punt so often down to the bureaucrats in this fourth  
11347 branch, the power to make these determinations.

11348 I think that's one of the concerns being laid out. And you  
11349 know, certainly there would some on our side of the aisle that  
11350 would be bothered if determinations were being made by the FTC  
11351 about what was, you know, violative of the act, which of course  
11352 there's some fairly broad ways to violate the act, whether it  
11353 be something, it could be Black Lives Matter or Planned Parenthood  
11354 or some leftist organizations.



11355           And I assume some on the other side of the aisle might now  
11356 want, you know, some political organizations representing our  
11357 views on our side of the aisle to have influence. I think this  
11358 would be a good amendment to force this to be a technical-based  
11359 expertise that's provided. And I yield back.

11360           Chairman Nadler. The gentleman yields back. Does anyone  
11361 else seek recognition on this amendment? If not, the question  
11362 occurs on the amendment. All in favor say aye.

11363           (Chorus of aye.)

11364           Chairman Nadler. Opposed, no.

11365           (Chorus of no.)

11366           Chairman Nadler. In the opinion of the Chair the noes have  
11367 it.

11368           Mr. Bishop. Yeas and nays requested, Mr. Chair.

11369           Chairman Nadler. Yeas and nays are requested. The Clerk  
11370 will call the roll.

11371           Ms. Fontenot. Mr. Nadler.

11372           Chairman Nadler. No.

11373           Ms. Fontenot. Mr. Nadler votes no.

11374           Ms. Lofgren.

11375           Ms. Lofgren. No.

11376           Ms. Fontenot. Ms. Lofgren votes no.

11377           Ms. Jackson Lee.

11378           Ms. Jackson Lee. No.

11379 Ms. Fontenot. Ms. Jackson Lee votes no.  
11380 Mr. Cohen.  
11381 Mr. Cohen. No.  
11382 Ms. Fontenot. Mr. Cohen votes no.  
11383 Mr. Johnson of Georgia.  
11384 Mr. Deutch.  
11385 Mr. Deutch. No.  
11386 Ms. Fontenot. Mr. Deutch votes no.  
11387 Ms. Bass.  
11388 Mr. Jeffries.  
11389 Mr. Jeffries. No.  
11390 Ms. Fontenot. Mr. Jeffries votes no.  
11391 Mr. Cicilline.  
11392 Mr. Cicilline. No.  
11393 Ms. Fontenot. Mr. Cicilline votes no.  
11394 Mr. Swalwell.  
11395 Mr. Swalwell. No.  
11396 Ms. Fontenot. Mr. Swalwell votes no.  
11397 Mr. Lieu.  
11398 Mr. Lieu. No.  
11399 Ms. Fontenot. Mr. Lieu votes no.  
11400 Mr. Raskin.  
11401 Mr. Raskin. No.  
11402 Ms. Fontenot. Mr. Raskin votes no.

11403 Ms. Jayapal.  
11404 Ms. Jayapal. No.  
11405 Ms. Fontenot. Ms. Jayapal votes no.  
11406 Ms. Demings.  
11407 Ms. Demings. No.  
11408 Ms. Fontenot. Ms. Demings votes no.  
11409 Mr. Correa.  
11410 Mr. Correa. No.  
11411 Ms. Fontenot. Mr. Correa votes no.  
11412 Ms. Scanlon.  
11413 Ms. Scanlon. No.  
11414 Ms. Fontenot. Ms. Scanlon votes no.  
11415 Ms. Garcia.  
11416 Ms. Garcia. No.  
11417 Ms. Fontenot. Ms. Garcia votes no.  
11418 Mr. Neguse.  
11419 Mr. Neguse. No.  
11420 Ms. Fontenot. Mr. Neguse votes no.  
11421 Ms. McBath.  
11422 Ms. McBath. No.  
11423 Ms. Fontenot. Ms. McBath votes no.  
11424 Mr. Stanton.  
11425 Mr. Stanton. No.  
11426 Ms. Fontenot. Mr. Stanton votes no.

11427 Ms. Dean.

11428 Ms. Dean. No.

11429 Ms. Fontenot. Ms. Dean votes no.

11430 Ms. Escobar.

11431 Ms. Escobar. No.

11432 Ms. Fontenot. Ms. Escobar votes no.

11433 Mr. Jones.

11434 Mr. Jones. No.

11435 Ms. Fontenot. Mr. Jones votes no.

11436 Ms. Ross.

11437 Ms. Ross. No.

11438 Ms. Fontenot. Ms. Ross votes no.

11439 Ms. Bush.

11440 Ms. Bush. Bush votes no.

11441 Ms. Fontenot. Ms. Bush votes no.

11442 Mr. Jordan.

11443 Mr. Jordan. Yes.

11444 Ms. Fontenot. Mr. Jordan votes yes.

11445 Mr. Chabot.

11446 Mr. Chabot. Aye.

11447 Ms. Fontenot. Mr. Chabot votes aye.

11448 Mr. Gohmert.

11449 Mr. Gohmert. Aye.

11450 Ms. Fontenot. Mr. Gohmert votes aye.

11451 Mr. Issa.

11452 Mr. Issa. Aye.

11453 Ms. Fontenot. Mr. Issa votes aye.

11454 Mr. Buck.

11455 Mr. Buck. Aye.

11456 Ms. Fontenot. Mr. Buck votes aye.

11457 Mr. Gaetz.

11458 Mr. Gaetz. Aye.

11459 Ms. Fontenot. Mr. Gaetz votes aye.

11460 Mr. Johnson of Louisiana.

11461 Mr. Johnson of Louisiana. Aye.

11462 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

11463 Mr. Biggs.

11464 Mr. Biggs. Aye.

11465 Ms. Fontenot. Mr. Biggs votes aye.

11466 Mr. McClintock.

11467 Mr. McClintock. Aye.

11468 Ms. Fontenot. Mr. McClintock votes aye.

11469 Mr. Steube.

11470 Mr. Steube. Yes.

11471 Ms. Fontenot. Mr. Steube votes yes.

11472 Mr. Tiffany.

11473 Mr. Tiffany. Aye.

11474 Ms. Fontenot. Mr. Tiffany votes aye.

11475 Mr. Massie.

11476 Mr. Massie. Aye.

11477 Ms. Fontenot. Mr. Massie votes aye.

11478 Mr. Roy.

11479 Mr. Roy. Aye.

11480 Ms. Fontenot. Mr. Roy votes aye.

11481 Mr. Bishop.

11482 Mr. Bishop. Yes.

11483 Ms. Fontenot. Mr. Bishop votes yes. Ms. Fischbach.

11484 Ms. Fischbach. Yes.

11485 Ms. Fontenot. Ms. Fischbach votes yes.

11486 Ms. Spartz.

11487 Mrs. Spartz. Yes.

11488 Ms. Fontenot. Ms. Spartz votes yes. Mr. Fitzgerald.

11489 Mr. Fitzgerald. Aye.

11490 Ms. Fontenot. Mr. Fitzgerald votes aye.

11491 Mr. Bentz.

11492 Mr. Bentz. Yes.

11493 Ms. Fontenot. Mr. Bentz votes yes. Mr. Owens.

11494 Mr. Owens. Yes.

11495 Ms. Fontenot. Mr. Owens votes yes.

11496 Chairman Nadler. Ms. Bass?

11497 Ms. Bass. Bass votes no.

11498 Ms. Fontenot. Ms. Bass votes no.

11499 Chairman Nadler. Are there any members who haven't been  
11500 recorded who wish to vote? The Clerk will report.

11501 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 24 noes.

11502 Chairman Nadler. The amendment is not agreed to.

11503 Are there any further amendments to the amendment in the  
11504 nature of a substitute?

11505 In that case, the question occurs on the amendment in the  
11506 nature of a substitute. This will be followed immediately by  
11507 a vote on the final passage of the bill.

11508 All those in favor, respond by saying aye.

11509 (Chorus of aye.)

11510 Chairman Nadler. Opposed, no.

11511 (Chorus of no.)

11512 Chairman Nadler. In the opinion of the -- in the opinion  
11513 of the Chair, the ayes have it and the amendment in the nature  
11514 of a substitute is agreed to.

11515 Mr. Issa. No, I'd like a recorded vote.

11516 Chairman Nadler. A recording quorum being present, the  
11517 question is on the motion to report the bill HR 3849 as amended  
11518 favorably to the House. Those in favor, respond by saying aye.

11519 (Chorus of aye.)

11520 Chairman Nadler. Opposed, no.

11521 (Chorus of no.)

11522 Chairman Nadler. The ayes have it, and the bill is ordered

11523 reported favorably.

11524 Mr. Issa. Recorded vote.

11525 Chairman Nadler. Recorded vote has been requested, the

11526 Clerk will call the roll.

11527 Ms. Fontenot. Mr. Nadler.

11528 Chairman Nadler. Yes.

11529 Ms. Fontenot. Mr. Nadler votes yes.

11530 Ms. Lofgren.

11531 Ms. Lofgren. No.

11532 Ms. Fontenot. Ms. Lofgren votes no.

11533 Ms. Jackson Lee.

11534 Ms. Jackson Lee. Aye.

11535 Ms. Fontenot. Ms. Jackson Lee votes aye.

11536 Mr. Cohen.

11537 Mr. Cohen. Aye.

11538 Ms. Fontenot. Mr. Cohen votes aye.

11539 Mr. Johnson of Georgia.

11540 Mr. Deutch.

11541 Mr. Deutch. Aye.

11542 Ms. Fontenot. Mr. Deutch votes aye.

11543 Ms. Bass.

11544 Ms. Bass. Aye.

11545 Ms. Fontenot. Ms. Bass votes aye.

11546 Mr. Jeffries.



11547 Mr. Jeffries. Aye.

11548 Ms. Fontenot. Mr. Jeffries votes aye.

11549 Mr. Cicilline.

11550 Mr. Cicilline. Aye.

11551 Ms. Fontenot. Mr. Cicilline votes aye.

11552 Mr. Swalwell.

11553 Mr. Swalwell. No.

11554 Ms. Fontenot. Mr. Swalwell votes no.

11555 Mr. Lieu.

11556 Mr. Lieu. Aye.

11557 Ms. Fontenot. Mr. Lieu votes aye.

11558 Mr. Raskin.

11559 Mr. Raskin. Aye.

11560 Ms. Fontenot. Mr. Raskin votes aye.

11561 Ms. Jayapal.

11562 Ms. Jayapal. Aye.

11563 Ms. Fontenot. Ms. Jayapal votes aye.

11564 Ms. Demings.

11565 Ms. Demings. Aye.

11566 Ms. Fontenot. Ms. Demings votes aye.

11567 Mr. Correa.

11568 Mr. Correa. No.

11569 Ms. Fontenot. Mr. Correa votes no.

11570 Ms. Scanlon.

11571 Ms. Scanlon. Aye.

11572 Ms. Fontenot. Ms. Scanlon votes aye.

11573 Ms. Garcia.

11574 Ms. Garcia. Aye.

11575 Ms. Fontenot. Ms. Garcia votes aye.

11576 Mr. Neguse.

11577 Mr. Neguse. Aye.

11578 Ms. Fontenot. Mr. Neguse votes aye.

11579 Ms. McBath.

11580 Ms. McBath. Aye.

11581 Ms. Fontenot. Ms. McBath votes aye.

11582 Mr. Stanton.

11583 Mr. Stanton. Aye.

11584 Ms. Fontenot. Mr. Stanton votes aye.

11585 Ms. Dean.

11586 Ms. Dean. Aye.

11587 Ms. Fontenot. Ms. Dean votes aye.

11588 Ms. Escobar.

11589 Ms. Escobar. Aye.

11590 Ms. Fontenot. Ms. Escobar votes aye.

11591 Mr. Jones.

11592 Mr. Jones. Aye.

11593 Ms. Fontenot. Mr. Jones votes aye.

11594 Ms. Ross.

11595           Ms. Ross.   Aye.

11596           Ms. Fontenot.   Ms. Ross votes aye.

11597           Ms. Bush.

11598           Ms. Bush.   Bush votes aye.

11599           Ms. Fontenot.   Ms. Bush votes aye.

11600           Mr. Jordan.

11601           Mr. Johnson of Georgia.   Madam Clerk, Madame Clerk, this

11602           is Congressman Hank Johnson, how am I recorded?

11603           Ms. Fontenot.   Mr. Johnson, you are not recorded.

11604           Mr. Johnson of Georgia.   I vote aye.

11605           Ms. Fontenot.   Mr. Johnson of Georgia votes aye.

11606           Mr. Jordan.

11607           Mr. Jordan.   No.

11608           Ms. Fontenot.   Mr. Jordan votes no.

11609           Mr. Chabot.

11610           Mr. Chabot.   No.

11611           Ms. Fontenot.   Mr. Chabot votes no.

11612           Mr. Gohmert.

11613           Mr. Gohmert.   No.

11614           Ms. Fontenot.   Mr. Gohmert votes no.

11615           Mr. Issa.

11616           Mr. Issa.   No.

11617           Ms. Fontenot.   Mr. Issa votes no.

11618           Mr. Buck.

11619           Mr. Buck.   Aye.

11620           Ms. Fontenot.   Mr. Buck votes aye.

11621           Mr. Gaetz.

11622           Mr. Gaetz.   Aye.

11623           Ms. Fontenot.   Mr. Gaetz votes aye.

11624           Mr. Johnson of Louisiana.

11625           Mr. Johnson of Louisiana.   No.

11626           Ms. Fontenot.   Mr. Johnson of Louisiana votes no.

11627           Mr. Biggs.

11628           Mr. Biggs.   No.

11629           Ms. Fontenot.   Mr. Biggs votes no.

11630           Mr. McClintock.

11631           Mr. McClintock.   No.

11632           Ms. Fontenot.   Mr. McClintock votes no.

11633           Mr. Steube.

11634           Mr. Steube.   No.

11635           Ms. Fontenot.   Mr. Steube votes no.

11636           Mr. Tiffany.

11637           Mr. Tiffany.   No.

11638           Ms. Fontenot.   Mr. Tiffany votes no.

11639           Mr. Massie.

11640           Mr. Massie.   No.

11641           Ms. Fontenot.   Mr. Massie votes no.

11642           Mr. Roy.

11643           Mr. Roy.   No.

11644           Ms. Fontenot.   Mr. Roy votes no.

11645           Mr. Bishop.

11646           Mr. Bishop.   No.

11647           Ms. Fontenot.   Mr. Bishop votes no.       Ms. Fischbach.

11648           Ms. Fischbach.   No.

11649           Ms. Fontenot.   Ms. Fischbach votes no.

11650           Ms. Spartz.

11651           Mrs. Spartz.   No.

11652           Ms. Fontenot.   Ms. Spartz votes no.       Mr. Fitzgerald.

11653           Mr. Fitzgerald.   No.

11654           Ms. Fontenot.   Mr. Fitzgerald votes no.

11655           Mr. Bentz.

11656           Mr. Bentz.   No.

11657           Ms. Fontenot.   Mr. Bentz votes no.   Mr. Owens.

11658           Mr. Owens.   Yes.

11659           Ms. Fontenot.   Mr. Owens votes yes.

11660           Chairman Nadler.   How is Mr. Deutch recorded?

11661           Ms. Fontenot.   Mr. Deutch is recorded as aye.

11662           Chairman Nadler.   Are there any members who wish to vote

11663           who haven't voted?   The Clerk will report.

11664           Ms. Fontenot.   Mr. Chairman, there are 25 ayes and 19 noes.

11665           Chairman Nadler.   The ayes have it and the bill as amendment

11666           is ordered reported favorably to the House.   Members will have

11667 two days to submit views. Without objection the bill will be  
11668 reported as a single amendment in the nature of a substitute  
11669 incorporating all adopted amendments, and staff is authorized  
11670 to make technical and conforming changes.

11671 Pursuant to notice, I now call up HR 3826, the Platform  
11672 Competition and Opportunity Act of 2021 for purposes of markup  
11673 and move that the Committee report the bill favorably to the House.

11674 [The Bill H.R. 3826 follows:]

11675

11676 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

11677           The Clerk will report the bill.

11678           Ms. Fontenot.   HR 3826 to promote competition and economic  
11679 opportunity --

11680           Chairman Nadler.   Without objection the bill is considered  
11681 as read and open for amendment at any point.   I will begin by  
11682 recognizing myself for an opening statement.

11683           HR 3826, the Platform Competition and Opportunity Act of  
11684 2021, improves merger enforcement in the digital economy by  
11685 shifting the burden of proof for transactions involving a dominant  
11686 platform that are most likely to harm competition, eliminate  
11687 consumer choice, and prevent new competition from entering the  
11688 market.

11689           During the past decade, the platforms investigated by the  
11690 Committee were able to reinforce their market power and eliminate  
11691 competition by acquiring hundreds of smaller firms that in several  
11692 critical examples were competitors or nascent rivals.

11693           In May, the Washington Post noted that these firms dominate  
11694 many facets of our lives precisely because they, quote, Acquired  
11695 hundreds of companies over decades to propel them to become some  
11696 of the most powerful tech behemoths in the world, unquote.

11697           Importantly, antitrust enforcers closely reviewed only a  
11698 handful of these transactions and none were challenged.   In other  
11699 words, antitrust enforcers across both Democratic and Republican  
11700 administrations stood idly by while what was once a dynamic and

11701 fast-growing market became concentrated and monopolized.

11702 This problem has only been exacerbated by decades of  
11703 disastrous legal precedents that have imposed near-impossible  
11704 standards for antitrust agencies to satisfy in order to stop  
11705 harmful mergers.

11706 The Platform Competition and Opportunity Act of 2021 targets  
11707 this problem by prohibiting the largest online platforms from  
11708 engaging in mergers that would eliminate competitors or potential  
11709 competitors or that would serve to enhance or reinforce monopoly  
11710 power.

11711 This legislation strikes the right balance by shifting the  
11712 burden to these firms, which are extremely well-capitalized and  
11713 employ thousands of attorneys, to show that these types of  
11714 acquisition will not harm competition.

11715 Earlier this year, then-Acting FTC Chairwoman Rebecca Kelly  
11716 Slaughter testified before the Antitrust Subcommittee that this  
11717 form of burden shifting would substantially help deter unlawful  
11718 mergers. Not only will this legislation give antitrust enforcers  
11719 the tools they need to block anti-competitive mergers, it will  
11720 also deter companies from entering into these harmful  
11721 transactions in the first place.

11722 All too often, antitrust enforcers are forced to spend time  
11723 and resources on transactions that should have never made it out  
11724 of the boardroom. Importantly, this legislation includes



11725 reasonable exceptions for the types of routine transactions that  
11726 should not require enhanced review.

11727 HR 3826 is limited in scope and successfully remedies a  
11728 problem that prevents our antitrust enforcers from stopping  
11729 anti-competitive acquisitions in the digital marketplace. This  
11730 bipartisan legislation would help promote greater competition,  
11731 more choices, and increase innovation in the marketplace.

11732 I thank Congressman Jeffries and Ranking Member Buck for  
11733 their leadership on this vital legislation, and I urge all members  
11734 to support it.

11735 I now recognizes the ranking member of the Judiciary  
11736 Committee, the gentleman from Ohio, Mr. Jordan, for his opening  
11737 statement.

11738 Mr. Jordan. Thank you, Mr. Chairman.

11739 This bill doesn't break up Big Tech, this bill doesn't even  
11740 frankly stop mergers, it just shifts the burden. Under current  
11741 law, the Department of Justice and the Federal Trade Commission  
11742 can challenger mergers despite the fact that the Obama Federal  
11743 Trade Commission failed to do so.

11744 What this bill does is allow Big Tech companies to continue  
11745 to engage in acquisitions mergers so long as they effectively  
11746 have the permission of the FTC and DOJ to proceed. Changing this  
11747 standard in this way radically empowers the government's ability  
11748 to apply pressure to the Big Tech firms in or outside the context

11749 of any given merger or acquisition. Cases would turn in no small  
11750 part on the government's enforcement discretion, which means  
11751 companies acting ways that please their regulators.

11752 You can bet that those changes in behavior will not be in  
11753 ways that give conservatives a better deal. These new and vague  
11754 standards will be uncharted territory, resulting in significant  
11755 incentive for companies to preview behavior with regulators and  
11756 seek their blessing before acting.

11757 This bill doesn't break up Big Tech, as I said, the bill  
11758 does not even prevent Big Tech from getting bigger. It does tell  
11759 Big Tech that it can only grow if it does so in the ways that  
11760 please the regulators, please the big government, please Ms. Khan,  
11761 Ms. Slaughter that the Chairman cited.

11762 The merger activity of these companies is definitely  
11763 something we should take a look at, but not in the way that is  
11764 laid out in this legislation. I would urge a -- that we oppose  
11765 this vote, oppose this bill and vote no.

11766 I yield back, Mr. Chair.

11767 Chairman Nadler. The gentleman yields back. I now  
11768 recognize the Chair of the Subcommittee on Antitrust, Commercial,  
11769 and Administrative Law, the gentleman from Rhode Island, Mr.  
11770 Cicilline, for his opening statement.

11771 Mr. Cicilline. Thank you, Mr. Chairman.

11772 HR 3826, the Platform Competition and Opportunity Act of

11773 2021, is an important piece of legislation that will prevent  
11774 dominant online platforms from using mergers to increase their  
11775 gatekeeper power and destroy competition. Dominant platforms  
11776 have used acquisitions to neutralize competitor threats,  
11777 reinforce their monopoly power, and expand their dominance into  
11778 new markets.

11779 HR 3826 addresses this problem by requiring dominant firms  
11780 to show an acquisition will not eliminate a potential competitive  
11781 threat. Today, these firms are focused on transactions that  
11782 allow them to control the technologies of tomorrow, like  
11783 artificial intelligence and augmented reality.

11784 HR 3826 promotes a more competitive digital marketplace by  
11785 giving antitrust enforcers stronger tools to stop  
11786 anti-competitive mergers that snuff out competition online.  
11787 This legislation takes clear aim at a problem plaguing digital  
11788 markets.

11789 Over the past decade, antitrust enforcers have been too timid  
11790 challenging mergers, even in highly concentrated markets. When  
11791 they have, courts have helped monopolists by moving the goalposts.

11792 As a result, our antitrust agencies are forced to waste  
11793 limited time and resources reviewing mergers that clearly violate  
11794 our antitrust laws. All too often, these transactions go  
11795 unchallenged or are approved with toothless conditions.

11796 Contrary to the claims made by the largest tech companies,

11797 this legislation is not a merger ban. Far from it. This bill  
11798 acknowledges the obvious, that digital markets are dominated by  
11799 a handful of gatekeeper platforms that use mergers to kill  
11800 competition and protect their monopolies.

11801 This legislation merely requires that these companies show  
11802 that their mergers will not expand or reinforce their monopoly  
11803 power or kill off competitors or potential competitors.  
11804 Transactions that do not trigger those concerns are not  
11805 restricted.

11806 Earlier this year, the Antitrust Subcommittee received a  
11807 letter from Consumer Reports advising that legislation is needed  
11808 to, quote, Reaffirm and clarify the longstanding presumption that  
11809 acquisitions by the largest corporations that already have  
11810 significant market power are anti-competitive and unlawful,  
11811 subject to a clear showing they are not, end quote.

11812 I could not agree more, and that's exactly what this  
11813 legislation does. I want to thank my friend, Congressman  
11814 Jeffries and Congressman Buck, for introducing this important  
11815 legislation. I encourage my colleagues to support it, and I yield  
11816 back.

11817 Chairman Nadler. The gentleman yields back. I now  
11818 recognize the ranking member of the Antitrust Subcommittee, the  
11819 gentleman from Colorado, Mr. Buck, for his opening statement.

11820 Mr. Buck. Thank you, Mr. Chair.

11821           Google, Amazon, Facebook, and Apple were great American  
11822 corporate success stories. Their stories of scrappy founders  
11823 starting a business in garages and college dorm rooms, working  
11824 tirelessly to build their companies and fend off competitors and  
11825 acquirers, and ultimately overcoming tremendous odds to reach  
11826 meteoric success had immense emotional resonance with the  
11827 American people, and they were rightly celebrated.

11828           I wish that was where the story stopped, but unfortunately  
11829 it didn't. We now have just a handful of tech titans that dominate  
11830 our digital sector. They did not reach this status through  
11831 investments in brilliant engineers or scientists and well-funded  
11832 R&D programs. They achieved their monopolies through an  
11833 aggressive merge-to-monopoly strategy.

11834           The strategy has meant Big Tech buys any potential  
11835 competitive threat and then mothballs their technology. This  
11836 is not good for our markets, our nation's future competitiveness,  
11837 or the American consumer. So how have they been able to get away  
11838 with this? It has all been made possible by a dithering Congress  
11839 and judges who are all too willing to legislate from the bench.

11840           Judge-made doctrines made it possible for Facebook to  
11841 acquire Instagram and WhatsApp, even though they were identified  
11842 as competitors by Facebook.

11843           Mr. Chair, I yield back.

11844           Chairman Nadler. The gentleman yields back. Without

11845 objection, all other opening statements will be included in the  
11846 record.

11847 I now recognize myself for purposes of offering an amendment  
11848 in the nature of a substitute.

11849 [The Amendment offered by Mr. Smith follows:]

11850

11851 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

11852 Chairman Nadler. The clerk will report the amendment.

11853 Ms. Fontenot. Amendment in the nature of a substitute to  
11854 H.R. 3826 offered by Mr. Nadler of New York. Strike all after  
11855 the enactment clause --

11856 Chairman Nadler. Without objection, the amendment in the  
11857 nature of a substitute will be considered as read and shall be  
11858 considered as base text for purposes of the amendment.

11859 I will recognize myself to explain the amendment. In  
11860 addition to certain technical and conforming revisions, the  
11861 amendment in the nature of a substitute makes three important  
11862 changes in the bill.

11863 First, the amendment makes clear that to establish the  
11864 affirmative defense, a defendant must show by clear and convincing  
11865 evidence that the proposed acquisition does not fall within any  
11866 of the specific types of mergers described in paragraphs A through  
11867 D of Section 2(b).

11868 Second, the amendment clarifies that except as otherwise  
11869 provided, the Department of Justice, Federal Trade Commission,  
11870 and the Attorney General of the State, have the same enforcement  
11871 powers, duties, and other authorities under this act, as do  
11872 certain other relevant antitrust and procedural statutes.

11873 Third, to eliminate any doubt, the amendment to Section 5  
11874 explicitly provides for the availability of injunctive relief  
11875 for cases brought by the Department of Justice, the Commission,

11876 and the Attorney General of the State. These are brief, but  
11877 important updates to this bill and I ask my colleagues to support  
11878 the amendment in the nature of a substitute. I yield back the  
11879 balance of my time.

11880 Are there any amendments to the amendment in the nature of  
11881 a substitute?

11882 Mr. Jeffries. Mr. Chairman?

11883 Chairman Nadler. For what purpose does Mr. Jeffries seek  
11884 recognition?

11885 Mr. Jeffries. Move to strike the last word?

11886 Chairman Nadler. The gentleman is recognized.

11887 Mr. Jeffries. Thank you, Mr. Chairman. Our antitrust laws  
11888 are rooted in the fundamental principle that fairness and  
11889 competition are good for American business and good for American  
11890 workers. Over the years, antitrust guard rails have provided  
11891 the path for millions of small businesses and everyday Americans  
11892 to achieve the middle class dream and beyond. When companies  
11893 must compete for consumers, it pushes them to innovate and also  
11894 allows for new ventures to emerge filling needs left unmet by  
11895 dominant legacy platforms.

11896 Over the past decades things have changed, however. A  
11897 handful of companies have worked to undermine competition by often  
11898 engaging in the strategy of buying or burying smaller businesses  
11899 and startups that pose a threat to their dominance in the market.



11900        They have built monopolies and eliminated competition through  
11901        hundreds of mergers and acquisitions. This concentration of  
11902        market power weakens innovation and entrepreneurship, weakens  
11903        privacy protections for consumers, and weakens working conditions  
11904        for employees. If predatory monopoly behavior continues  
11905        unchecked, and competition remains suppressed, economic  
11906        consequences will be severe.

11907                In the past ten years, the rate of new startups has declined  
11908        dramatically. So has the number of people working for such  
11909        companies. Furthermore, the evidence reveals that a lack of  
11910        competition goes hand-in-hand with a decline in privacy and data  
11911        protection for consumers. The fact is that dominance of firms  
11912        with weak consumer protections has created a kill zone around  
11913        the market for products that give people tools to protect their  
11914        privacy online.

11915                We need 21st century antitrust laws to keep up with the 21st  
11916        century innovation economy that is increasingly dominated by  
11917        companies willing to do whatever is necessary to suffocate  
11918        competition.

11919                H.R. 3826, the Platform Competition and Opportunity Act,  
11920        would restore competition and entrepreneurship to the innovation  
11921        economy. The bill requires certain platforms that have engaged  
11922        in a pattern of buying or burying, for instance, to demonstrate  
11923        that a proposed acquisition will not eliminate competition or

11924 further intensify their concentration of market power. The bill  
11925 will not prohibit, as the ranking member acknowledged, all mergers  
11926 and acquisitions.

11927 Currently, antitrust law requires the American people,  
11928 through the FTC, to prove that a proposed acquisition would be  
11929 unlawful. That places the burden in the wrong place. Instead,  
11930 the burden should be on dominant platforms who have a market  
11931 capitalization. Over 600 billion show that the proposed  
11932 acquisition will not further enhance their concentration of  
11933 market power and violate the law.

11934 H.R. 3826 will allow the FTC and other enforcement agencies  
11935 to identify and address the most problematic types of transactions  
11936 and to prevent tech giants from detonating competition in the  
11937 market and undermining the American consumer.

11938 I would like to thank the Republican co-lead of this  
11939 legislation, Ranking Member Ken Buck, for his partnership and  
11940 tremendous leadership on this effort, as well as the chairs of  
11941 the full committee and of course, my good friend, the chair of  
11942 the Antitrust Subcommittee, David Cicilline.

11943 It is time to modernize our antitrust laws. Time to lift  
11944 up tech entrepreneurs, innovators, and startups. Time to restore  
11945 competitive balance in the marketplace, and stand up for the  
11946 American consumer. And I respectfully ask you to support H.R.  
11947 3826 and I yield back.

11948 Chairman Nadler. The gentleman yields back. Who seeks  
11949 recognition?

11950 Mr. Issa. Mr. Issa.

11951 Chairman Nadler. For what purposes does the gentleman from  
11952 California seek recognition?

11953 Mr. Issa. I move to strike the last word.

11954 Chairman Nadler. The gentleman is recognized.

11955 Mr. Issa. You know, there is going to be a series of  
11956 amendments tonight and I am sure they will all be well thought  
11957 out. But I think when we are on the underlying bill, the easiest  
11958 way to put into perspective what the authors misunderstood here  
11959 is the fact is that when you start a small company, these companies  
11960 that are claimed to have been bought and buried, when you start  
11961 a company like that, and anyone who had ever watched Shark Tank  
11962 has seen this. You don't have to do anything more than watch  
11963 NBC. That time of the evening it is a good thing to watch. And  
11964 what you discover is that when you start a tech company, you  
11965 generally, you and your investors, have an exit plan. And that  
11966 exit plan often is you know exactly who the ideal bidder is for  
11967 the technology, or at least you know a group of them.

11968 This bill will, among other things, likely take these four  
11969 large companies completely out of bidding for these companies  
11970 which might mean that there is no one to bid for them or, in fact,  
11971 that they get less for their exit. It also means that to a great

11972 extent these companies which often provide seed capital,  
11973 substantial seed capital, for these companies, will choose not  
11974 to do it because they won't be able to buy them if they succeed.

11975 So when you are taking a look and you are saying, oh, okay,  
11976 we want to take these four multi-trillion dollar companies out  
11977 of the process of buying and let somebody else buy them or invest  
11978 in them, what you are really saying is we want to slow the rate  
11979 of innovation by taking that amount of dollars in investment and  
11980 assistance out.

11981 The reason that we have always had a standard for a hundred  
11982 years for when and how you can buy or invest in a company is that  
11983 we don't want to have a purchase reduce competition, reduce the  
11984 consumer's benefit. This bill seeks to change it to where you  
11985 have to prove your innocence, you have to prove essentially that  
11986 you are going to make something more competitive in order to have  
11987 these four companies be at the table bidding for good ideas and  
11988 innovation.

11989 I understand the idea of buy and bury, but I will tell you  
11990 something. In my decades of looking at technology, it is a rare  
11991 exception that you buy and bury. We all heard about the 100 miles  
11992 or the 500 mile gasoline engine that got bought and buried multiple  
11993 times. It is a great old wife's tale. The fact is that great  
11994 ideas do not stay buried. They almost always get put into  
11995 production as quickly as possible.

11996           Apple has a market cap of over \$2 trillion. But Samsung  
11997 just one of the Android platform producers is about a half a  
11998 trillion dollars and doing everything it can to produce more  
11999 phones faster. It actually produces more phones than Apple, even  
12000 though its sales are lower.

12001           The reality is there is no guarantee of monopoly in any of  
12002 these companies and certainly not in one of the companies here  
12003 which is Apple. And so when you look at this, I hope you will  
12004 take a good look and say do you really want to take them out of  
12005 the bidding. And any and all of you that have a tech company,  
12006 if you don't figure it out tonight because it may be a little  
12007 to call unless you have got a tech company in Alaska, the fact  
12008 is that if you call any of these small businesses and say were  
12009 you thinking of your exit strategy including Apple or Microsoft  
12010 or Google? And they would say absolutely because I have seen  
12011 them pay billions of dollars for companies that are in some cases  
12012 not yet profitable, but have great opportunity.

12013           That is all I have to say. I thank the gentleman. I yield  
12014 back.

12015           Chairman Nadler. The gentleman yields back. For what  
12016 purpose does Ms. Ross seek recognition?

12017           Ms. Ross. Mr. Chairman, I have an amendment.

12018           Chairman Nadler. The clerk will report the amendment.

12019           Ms. Ross. We will suspend for a moment.

12020 Chairman Nadler. We will come back to Ms. Ross. For what  
12021 purpose does Mr. Gaetz seek recognition?

12022 Mr. Gaetz. Move to strike the last word.

12023 Chairman Nadler. The gentleman is recognized.

12024 Mr. Gaetz. Thank you, Mr. Chairman. I am proud to join  
12025 many of my colleagues from the subcommittee in introducing this  
12026 legislation.

12027 And many of the things my friend from California said are  
12028 true regarding taking the four major platforms out of the bidding  
12029 for some startups. But innovation is not a value just for the  
12030 sake of innovation. It has to be able to be utilized and deployed.

12031 And the value proposition on innovation is that it can make  
12032 people's lives better.

12033 And the investigation that we conducted showed time and again  
12034 that oftentimes, the very first thing that the four major  
12035 platforms would contemplate in order to deal with a competitor  
12036 was acquisition. They would say so brazenly, not with no  
12037 disregard for the impact of the marketplace, but with a keen  
12038 understanding that they would harm the marketplace with such  
12039 an acquisition.

12040 The legislation does not require someone to prove their  
12041 innocence. It does require them to prove by clear and convincing  
12042 evidence that they are not harming the marketplace. They don't  
12043 have to enhance the marketplace, they just have to prove by that

12044 standard that they aren't harming it.

12045 Much of the critique of this legislative package has been  
12046 that the legislative efforts require this excessive entanglement  
12047 of the government in day in, day out decisions, whether it is  
12048 the design of some sort of a la carte system to deal with  
12049 portability or interoperability. And those objections would  
12050 fall flat relative to this bill because it has a prophylactic  
12051 effect.

12052 If the four major platforms understand that they are facing  
12053 a different standard and that they are going to have to come up  
12054 with a different amount of proof, then they are less likely to  
12055 engage in that conduct in the first place, and so there is less  
12056 of it to police and less concern that we are wrapping government  
12057 around the axle of this particular industry.

12058 I want to encourage my colleagues to support the legislation.

12059 I yield back.

12060 Chairman Nadler. The gentleman yields back. For what  
12061 purpose does Mr. Lieu seek recognition?

12062 Mr. Lieu. I move to strike the last word.

12063 Chairman Nadler. The gentleman is recognized.

12064 Mr. Lieu. Thank you, Chairman Nadler. Let me, first of  
12065 all, thank Congressman Jeffries for your hard work on this issue.  
12066 I agree with you that large companies buying up small companies  
12067 to stifle competition is a bad thing and need to address this

12068 issue. It is a nuanced complicated issue. I commend you for  
12069 taking it on.

12070 I do have two concerns. Because of the way that this  
12071 subcommittee investigation happened, the subcommittee picked  
12072 four companies to investigate. But because the subcommittee did  
12073 not investigate Microsoft, which is competing against Apple and  
12074 competing against Google, it is not now covered by this  
12075 legislation. So if we think it is bad for Apple to buy up  
12076 companies to help its own operating system, we are letting  
12077 Microsoft do this, even though Microsoft's operating system is  
12078 twice the size of Apple's iOS operating system.

12079 So before these bills get to the floor, I just would urge  
12080 you again to look at the definition of covered platform because  
12081 you can't just exclude other companies in exact same space  
12082 competing with these same companies where they actually have more  
12083 dominant products. The Microsoft operating system is just more  
12084 dominant than the iOS operating system and yet we are treating  
12085 these two companies disparately.

12086 And the second concern before this bill hits the floor for  
12087 you to look at, is I met with a lot of entrepreneurs and know  
12088 entrepreneurs, as well as startup employees and investors, and  
12089 all of them would love to be the next Google or Apple. But it is  
12090 also clear that they understand that they might not become the  
12091 next Google or Apple and they will be thrilled to be bought out.



12092

12093

The way that this legislation works, it could have the unintended consequence of basically trapping these companies with sort of their stark reality either they have got to make it big, or due to events, you are going to get stuck and fail because they have no exit strategy. They can't be purchased. And I think that could stifle innovation in our tech sector.

12099

And if you would look at maybe having some sort of floor that says okay, for certain size companies we would not apply this bill to. Because I think there would be a difference, for example, between Apple buying a small startup of 15 people versus let's say Google buying Twitter. And I think you should look at making that kind of distinction before this bill gets to the floor.

12106

Thank you for taking this very big challenge on and I yield back.

12107

12108

Mr. Cicilline. [presiding] The gentleman yields back.

12109

Ms. Spartz is recognized. For what purpose do you seek

12110

recognition?

12111

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

12112

Mr. Cicilline. The gentlelady is recognized.

12113

Mrs. Spartz. Thank you, Mr. Chairman. I am not a legal scholar, but sometimes I think it is probably good to have not just attorneys from this committee, but common sense people

12115

12116 because the lawyers are not rooting for ordinary people to be  
12117 able to understand. Otherwise, things get so complicated unless  
12118 you a very wealthy and can afford very expensive attorneys. The  
12119 system is stacked against you.

12120 But what really what has surprised me, being a state  
12121 legislator and I was kind of joking if we can waive the law school,  
12122 I probably could pass the bar and I said to the state senator,  
12123 I said after the committee I definitely could do it which actually  
12124 is a big protection is all this licensing from all of the very  
12125 expensive academia making a lot of money on that and most of them  
12126 now going to create more barriers to a lot of professions.

12127 So I look at things very simply. You know, I always believe  
12128 American system is built on the presumption of innocence and  
12129 burden of proof all of us have to be on the side who is accusing  
12130 or the government? You know, it never should be something someone  
12131 should prove that I am not causing harm. You have to prove that  
12132 I caused this harm.

12133 So I think it was very surprising and appalling to me in  
12134 so many cases we have become this society you are guilty until  
12135 you prove you are innocent. And it is a very dangerous precedent  
12136 we're setting up with all of these laws like that. So I think  
12137 it is a very serious discussion. And I don't really care if it  
12138 is a small or big company. Instead of actually providing  
12139 preferential treatment to some of the larger companies, we a lot

12140 of times do with a lot of loopholes, but also shouldn't pick losers  
12141 and winners and come after some of them. I think that is the  
12142 wrong way to do it. It should apply equally to all of the  
12143 stakeholders and all of the markets.

12144 But I think it is a very dangerous precedent to actually  
12145 move the burden of proof from the government to actually to these  
12146 companies to prove that they are innocent and they are not causing  
12147 any harm. And I do not think we as the legislators should be  
12148 legislating laws like that because our system is based -- this  
12149 is where Americans' freedom and the beauty of the American system  
12150 that you actually have a protection from the government.

12151 And we have a different standard with government who accusing  
12152 you have to prove, but ultimately whoever is accusing you of  
12153 something, they have to do their work to prove that you did  
12154 something wrong. If they cannot prove it, too bad. Then you are  
12155 innocent.

12156 And I am really concerned with moving the standard and the  
12157 whole system is moving in that direction. It is very disturbing  
12158 for me to see that. And I hope maybe we can fix it with some  
12159 amendments, look at other details, but this thing sets a very  
12160 dangerous precedent and I would not be able to --

12161 Mr. Cicilline. Would the gentlelady yield?

12162 Ms. Spartz. Yes, I yield.

12163 Mr. Cicilline. I just would mention that this burden

12164 shifting is well-established practice in antitrust law and  
12165 particularly concentrated markets. And it has been very  
12166 effective, so it has worked, in part, because the moving party  
12167 has most information with respect to the transaction. So it has  
12168 been an effective tool in terms of preventing deeper and deeper  
12169 concentration in very concentrated --

12170 Ms. Spartz. If you believe that if it is already there,  
12171 so why do you need this legislation?

12172 Mr. Cicilline. No, I said that practice of burden shifting  
12173 has been used in antitrust --

12174 Ms. Spartz. But you tried to put it in the code, in this.  
12175 I mean you codified it. You believe that practice already exists.  
12176 Because this is a codified -- specific in the law, what I have  
12177 to do to be able to prove that. It seems to me it is really a  
12178 standard that I haven't seen it. It seems like it exists in our  
12179 current environment, but to actually put it into law the burden  
12180 of proof would be on this company.

12181 Mr. Cicilline. For these covered platforms in these kind  
12182 of concentrated markets that we --

12183 Ms. Spartz. But don't you believe it is set up as kind of  
12184 a precedent, dangerous precedent in the law to see who actually  
12185 has to prove that?

12186 Mr. Cicilline. I mean I don't actually think it is a  
12187 dangerous precedent. I think it is an effective tool to ensure

12188 that these markets which are highly concentrated don't become  
12189 more highly concentrated, don't become stronger gatekeepers,  
12190 don't have higher market concentration, and can exclude and crush  
12191 competitors and undermine competition.

12192 Ms. Spartz. Well, I agree with you, but actually government  
12193 has to prove that the harm is created. They created a lot of  
12194 harm in things, but the government should actually make that  
12195 determination and create that you are guilty. And until the  
12196 government proves that you are guilty, you have to be innocent  
12197 and I think that is an important part of our system. And I yield  
12198 back.

12199 Mr. Cicilline. The gentlelady yields back. For what  
12200 reason does the gentlelady from North Carolina seek recognition?

12201 Ms. Ross. Thank you, Mr. Chairman. I know have an  
12202 amendment.

12203 Mr. Cicilline. The clerk will please report the amendment.

12204 [The Amendment offered by Ms. Ross follows:]

12205

12206 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

12207 Ms. Fontenot. Amendment to the amendment in the nature of  
12208 a substitute to H.R. 3826 offered by Ms. Ross of North Carolina.

12209 Mr. Cicilline. The gentlelady is recognized to explain her  
12210 amendment.

12211 Ms. Ross. Thank you, Mr. Chairman. And this amendment  
12212 addresses some of the concerns that have been raised about tech  
12213 companies that are startups that really don't intend to get fully  
12214 fleshed out.

12215 My district is part of the Research Triangle in North  
12216 Carolina and has a proud history of innovation and is part of  
12217 the innovation economy. We are home to top tier research  
12218 institutions, a high-skilled work force, and cutting-edge  
12219 companies.

12220 We also have a large population of innovators and  
12221 entrepreneurs and many of these people start small businesses  
12222 they have no desire to operate in the long time. Instead, their  
12223 ultimate goal, as we have heard, is to sell their businesses so  
12224 they can move on to the next product, the next innovation.

12225 My amendment allows these small business owners to continue  
12226 to do what they do best, innovate. It adds a floor so that  
12227 transactions below \$50 million are exempt from the bill. With  
12228 this amendment, innovators may be -- without the amendment,  
12229 innovators could be disincentivized from starting their own  
12230 businesses and small businesses might not be able to attract the

12231 financing they need to bring an idea to fruition. For this  
12232 reason, I urge my colleagues to support our small businesses,  
12233 our innovators, our serial entrepreneurs, and vote yes for this  
12234 amendment. And I yield back.

12235 Mr. Cicilline. Will the gentlelady yield?

12236 Ms. Ross. Yes, I yield.

12237 Mr. Cicilline. I think the gentlelady. I thank you for  
12238 this excellent amendment and for working with the staff of the  
12239 subcommittee and with the lead sponsor, Mr. Jeffries. I think  
12240 it is very important to protect the innovators as you described.

12241 I urge everyone to support this amendment. And with that I yield  
12242 back.

12243 Ms. Ross. Thank you, Mr. Chairman. I yield back.

12244 Mr. Cicilline. The gentlelady yields back. Mr. Gaetz, for  
12245 what purpose do you seek recognition?

12246 Mr. Gaetz. To strike the last word of the amendment.

12247 Mr. Cicilline. The gentleman is recognized.

12248 Mr. Gaetz. I would ask the chair to indulge me in a colloquy.

12249

12250 Would the effect of the amendment in the opinion of the chair  
12251 allow these four major tech platforms to catch and kill anything  
12252 under \$50 million?

12253 Mr. Cicilline. I think the investigation really showed that  
12254 the transactions that were of great concern are transactions above

12255 that amount. These are typically in the billions of dollars.

12256 Mr. Gaetz. Mr. Chairman, I recall observing some evidence  
12257 I can't cite at the moment, but that oftentimes it was just when  
12258 the new technology or new business was showing promise and maybe  
12259 hadn't reached the \$50 million threshold that they would be most  
12260 susceptible to the anti-competitive practice.

12261 Mr. Cicilline. Yes, I would say to the gentleman, the  
12262 Clayton Act remains in effect and so those standards still must  
12263 be applied with respect to merger transactions.

12264 Mr. Gaetz. But isn't the whole premise of this legislation  
12265 that the Clayton Act is insufficient when dealing with these four  
12266 behemoths?

12267 Mr. Cicilline. I think the amendment strikes the right  
12268 balance. It protects some of these early-stage innovators that  
12269 I think Ms. Ross spoke about in offering the amendment. And  
12270 again, I think the bulk of the harm comes in much larger  
12271 transactions.

12272 Mr. Gaetz. And my concern is that now we have -- if this  
12273 amendment were to be adopted to the bill, we will have created  
12274 a system where if you are big enough, you can't be caught and  
12275 killed, but if you are smaller, you can. And it would seemingly  
12276 create this massive loophole in the legislation. I don't know,  
12277 I am a big caught off guard by the amendment and am somewhat  
12278 surprised the chair supports it.



12279           Mr. Cicilline. I would just say that we did look at all  
12280 the transactions of the parties that were the subject of the  
12281 investigation and none that fell below that amount were of any  
12282 concern to anyone who would nee back.

12283           Mr. Cicilline. I thank the gentleman for yielding.

12284           Mr. Gaetz. I yield back.

12285           Mr. Cicilline. The gentleman yields back. Mrs. McBath,  
12286 for what reason does the gentlelady from Georgia seek recognition?

12287           Mrs. McBath. Thank you, Mr. Chairman, and I am really  
12288 pleased to be able to support Congresswoman Ross' amendment and  
12289 Congressman Jeffries' legislation.

12290           I think this amendment, as you have stated, really kind of  
12291 strengthens the ultimate goal of this legislation, and definitely  
12292 promotes competition and innovation and throughout our discussion  
12293 today, we have been listening all day. There has been definitely  
12294 some disagreement about some of the aspects of these bills, but  
12295 I think that we can all agree that competition and innovation  
12296 definitely go hand in hand.

12297           And you know, when one company has all the power, even the  
12298 most creative new approach can have a hard time kind of breaking  
12299 through to new customers and consumers end up being just saddled  
12300 with limited kinds of choices. But when there is healthy  
12301 competition, this is what we have been doing all day long.

12302           You know, companies win over their customers by giving them

12303 the best products and services and improving consumer choices  
12304 for them. So they respond to competitors by constantly seeking  
12305 to improve those products and those services and not simply just  
12306 buying out the competition. And at the same time, innovators  
12307 and consumers alike, they all benefit from some of these  
12308 acquisitions.

12309 So I am pleased to support this amendment and making sure  
12310 that small innovators have options to be able to reap the rewards  
12311 of all the work that they have put in and whether by licensing  
12312 their software or selling their businesses, whatever they choose  
12313 do, selling their businesses to another company in a way that  
12314 does not harm overall competition, I am really excited to support  
12315 this legislation through this amendment.

12316 And I urge all my colleagues to support this amendment and  
12317 I yield back the balance of my time.

12318 Mr. Cicilline. The gentlelady yields back. For what  
12319 purpose does the gentleman seek recognition.

12320 Mr. Jordan. To strike the last word, Mr. Chairman.

12321 Mr. Cicilline. The gentleman is recognized.

12322 Mr. Jordan. I am just trying to understand. So do we have  
12323 three standards now? If you are not a covered platform and you  
12324 want to some kind of merge or some kind of acquisition, the burden  
12325 is on the government to show that that would be anti-competitive  
12326 or it proceeds. If you are a covered platform, the burden is

12327 on you, as Ms. Sparks pointed out with her comments, to show that  
12328 the merger would not harm competition. And then we have a third  
12329 category, if you are a covered platform, but you are acquiring  
12330 someone below \$50 million in market capital, market value,  
12331 whatever, then it is back to the original standard. Well, that  
12332 is going to work well, right, three standards? That is going  
12333 to work great I think.

12334 I will yield to the gentleman from -- I just want to make  
12335 sure I understand. I will yield to the gentleman from Arizona.

12336 Mr. Biggs. I thank the gentleman for yielding. As I read  
12337 the amendment, I think it is interesting, but if I was counsel  
12338 to an innovator, I would be telling them that we are going to  
12339 be looking to split this company. We are going to be splitting  
12340 this company which we can do under most state laws that I am  
12341 familiar with. And we would never be hitting the \$50 million  
12342 mark. We are going to be sitting somewhere between \$25 and \$45  
12343 million dollars every time as -- and I do know innovators. And  
12344 this is what they do. They build up the company. While they  
12345 are building their company, they are already in negotiations to  
12346 sell, to be acquired.

12347 And what I would be doing advising my client is let's split,  
12348 make sure that we don't have to go through this onerous FTC  
12349 requirement and away we go.

12350 I yield back to the gentleman from Ohio.

12351 Mr. Issa. Would the gentleman further yield?

12352 Mr. Cicilline. The gentleman from California is  
12353 recognized.

12354 Mr. Issa. Thank you. And not only is the gentleman  
12355 accurate that you can slice and dice this, but as I much as I  
12356 agree with the gentlelady that the more companies we carve out  
12357 of this, the less bad this idea is.

12358 But let's go through a couple other simple examples. You  
12359 had dollars. How about it is \$1 billion, but it is simply a patent  
12360 portfolio of a university, would that be allowed? How about if  
12361 it is a whole new area not currently held by that company?  
12362 Berkshire Hathaway can bid for it, but Apple can't.

12363 So as much as I -- and I will be voting for your amendment.

12364 As much as I agree with the amendment, the amendment shows the  
12365 vulnerability of the bill because we can go through example after  
12366 example and each one will say well, wait a second, in that case,  
12367 you ought to allow it. In this case, you out to allow it. Pretty  
12368 soon what you realize is there is an awful lot of situations in  
12369 which this new standard just doesn't make any sense. And it  
12370 doesn't make any sense because for so long we have always asked.

12371 Is it anti-competitive? We can prohibit it. If, in fact, it  
12372 is not anti-competitive, why not let them do it? It might be a  
12373 good idea.

12374 I know you held hearings and I appreciate that, but I think

12375 the gentlelady's amendment which you have endorsed, which does  
12376 make sense, is the beginning of half a dozen equally good ideas  
12377 that you should be accepting. I yield back.

12378 Mr. Cicilline. And the point is where does it end? What  
12379 is next? Do we go from three to four, five standards, six  
12380 standards? Where does it end?

12381 And we know that the folks making the decision at the FTC,  
12382 certainly the majority there now, the chairman, the former acting  
12383 chairman, have this left for dead, big time, they want to do all  
12384 kinds of things with antitrust law. They have told that. They  
12385 have said that.

12386 I don't know. I just think this adds that much more concern  
12387 to what is happening here.

12388 With that, I will yield back, Mr. Chairman.

12389 Mr. Cicilline. The gentleman yields back.

12390 Mr. Jones, for what purpose do you seek recognition?

12391 Mr. Jones. I move to strike the last word.

12392 Mr. Cicilline. The gentleman is recognized.

12393 Mr. Jones. Let me begin by thanking you, Mr. Chairman, and  
12394 your staff. For over two years, you have presided with courage  
12395 and conviction over one of the most thorough and bipartisan, as  
12396 we have seen today, legislative investigations and a generation  
12397 and now along side the ranking member, you have led a legislative  
12398 agenda that would truly take on big tech.

12399 I want to thank also Representative Jeffries and Ranking  
12400 Member Buck for introducing the courageous legislation that is  
12401 this bill to prevent big tech from buying its way to even more  
12402 power over the American people.

12403 I am proud to co-sponsor this bill with you. And of course,  
12404 thanks to all of my colleagues and their staffs for sticking with  
12405 this for so long today and I do hope that we can complete this  
12406 at a godly hour, so to speak.

12407 The Platform Competition and Opportunity Act strikes at the  
12408 heart of how the big tech companies have become so powerful, buying  
12409 up and often killing off their potential competitors or locking  
12410 down the assets that they need to entrench their dominance.

12411 Google captured the online advertising market by acquiring  
12412 Doubleclick and a host of other advertising technology firms.

12413 Amazon bought over 100 companies in the last two decades,  
12414 including rivals like Zappo's, Diapers.com, and Whole Foods,  
12415 consolidating its dominance as the quote everything store.

12416 Facebook's purchases of Instagram and Whatsapp left us with  
12417 three major social networking options, Facebook, Facebook, and  
12418 Facebook. All tolled in the last decade, the dominant platforms  
12419 made over \$400 acquisitions. Yet, antitrust enforcers did not  
12420 block even one of them for being anti-competitive, not a single  
12421 one.

12422 And why not? In part, because the tech companies assured

12423 the Commission and the courts that bigger was somehow better,  
12424 that letting the biggest corporations kill their competitors and  
12425 consolidate their power would work out for the best. By now,  
12426 we know the truth. It has not.

12427 Of course, bigger is better if you are a big tech billionaire,  
12428 like Jeff Bezos or Mark Zuckerberg, and all you care about are  
12429 your corporate profits. But for the rest of us and I hope every  
12430 member of this committee, though I have been disappointed by much  
12431 of today's discussion on these bills, this unchecked dominance  
12432 is much worse. Corporate consolidation drives down worker pay,  
12433 increases layoffs, reduces opportunity for small businesses, and  
12434 denies all of us meaningful choices online.

12435 This bill calls big tech's bluff. If bigger is really  
12436 better, they should have to prove it before they can buy their  
12437 way to more market power. And if they can't by clear and  
12438 convincing evidence prove that their acquisitions will harm  
12439 competition, then maybe, just maybe, some of the riches, most  
12440 powerful companies in human history don't need to get any bigger.

12441 So it is time to take on these anti-competitive acquisitions  
12442 that have created this crisis of consolidation and to ensure that  
12443 once we break up big tech, these companies can't just consolidate  
12444 all over again. I sincerely hope that all of us will support this  
12445 essential legislation.

12446 Thank you and I yield back the balance of my time.

12447 Mr. Cicilline. The gentleman yields back. Who seeks  
12448 recognition? Mr. Neguse. Oh, sorry, Ms. Jackson Lee, I  
12449 apologize.

12450 For what purpose do you seek recognition?

12451 Ms. Jackson Lee. Mr. Chairman, I ask to strike the last  
12452 word.

12453 Mr. Cicilline. The gentlelady is recognized.

12454 Ms. Jackson Lee. As my colleagues, it is interesting that  
12455 we would go down memory lane in this high-tech moment of  
12456 innovation, but I ask to do so as I thank Mr. Jeffries for his  
12457 thoughtful legislation, based upon the long years of  
12458 investigation and of course, with the committee, Mr. Cicilline  
12459 and other members who are on this subcommittee.

12460 I am glad that we in the full committee have an opportunity  
12461 to begin the journey. This is only the beginning. This bill,  
12462 these bills have to go to the floor. There will be much intensity  
12463 and of course, the Senate, where they are worthy of our  
12464 consideration because this has been going on for a very long time.

12465 Memory lane will have us looking at the banking industry  
12466 and what we banked 20 or 30 years ago and where we are banking  
12467 today. Industry has been depleted by bigger and bigger, buying  
12468 smaller, and the competition and opportunity for the consumer  
12469 have gotten worse.

12470 Or maybe we should take a memory lane journey down the



12471 aviation industry and watch as what was many years ago a multitude  
12472 of aviation opportunities now where airlines are shutting off  
12473 a thousand flights and telling consumers do the best you can,  
12474 maybe take your own flight, take your wings.

12475 And then of course, the auto industry that again bigger is  
12476 better and we saw the diversity and the choices of autos going  
12477 down, down, down.

12478 So I think this is vital in this new tech industry with giants  
12479 that certainly have made an enormous impact economically on this  
12480 capitalistic society. But these dominant platforms again have  
12481 acquired hundreds of companies and as well, the fact of this bill  
12482 prohibiting acquisitions of competitive threats by dominant  
12483 platforms, as well as acquisitions that expand or entrench the  
12484 market, the power of online platforms, is important.

12485 And I think it is important that there is some framework  
12486 that includes the DOJ and State Attorney Generals. Many of these  
12487 incidences occur with state entities. And in many notable cases,  
12488 these firms acquired actual or potential rivals to neutralize  
12489 competitive threats or further expand their dominance.

12490 Innovation is extremely important and I think Ms. Ross has  
12491 a very important contribution to this particular legislation  
12492 because in the midst of those companies under \$50 million are  
12493 many minorities and women. And young people really did want to  
12494 have a startup, be innovative, and then go on to the next. That

12495 is okay, but in the instance of this legislation there are  
12496 firewalls. This doesn't stop large companies from achieving or  
12497 obtaining a willing purchased entity. It provides a firewall  
12498 of determining whether this does not compete with the covered  
12499 platform, represents potential competition, enhances the covered  
12500 platform's market position, enhances the covered platform's  
12501 ability to maintain its market position.

12502 I think innovation is extremely important. I think the  
12503 growth of the interest of women and minorities in this business  
12504 is extremely important. But as has been noted, name brands have  
12505 gone. Maybe they could have survived. Not that this is completely  
12506 parallel, but it saddens me to hear that a paper down the road  
12507 in Maryland that suffered major tragedy of shootings on site are  
12508 being consumed by private equity and guess what, that little paper  
12509 that saw so many of their employees killed are getting employees  
12510 laid off as the private equity purchased them. Same parallel  
12511 with these big dominant platforms that would go after some  
12512 important names and all of a sudden you see the shutdown of the  
12513 entity and the loss of jobs.

12514 So I think this is long overdue and the killer acquisitions  
12515 should stop. Innovation should go up. And these dominant  
12516 platforms need to make their case, that these are not threats  
12517 and that they are not there to decrease employment, but actually  
12518 to improve and enhance the American economy.

12519           So I support the gentleman's legislation underlying  
12520 amendment. Thank you for his leadership, as to my colleagues as  
12521 well, to support this legislation. I yield back.

12522           Mr. Cicilline. The gentlelady yields back. Who seeks  
12523 recognition? Ms. Lofgren.

12524           Ms. Lofgren. Thank you, Mr. Chairman. I seek to strike  
12525 the last word.

12526           Mr. Cicilline. The gentlelady is recognized.

12527           Ms. Lofgren. First, I want to thank Mr. Jeffries because  
12528 he has identified what I think is a serious problem, which looking  
12529 at some of the mergers and acquisitions that have happened in  
12530 the space -- of course, hindsight is 20/20 -- but clearly there  
12531 were some mergers and some acquisitions that should not have been  
12532 approved. And I do agree that we need a change in the standards  
12533 moving forward to prevent that kind of situation in the future.

12534           Having said that, I think while the problem has been  
12535 identified, the proposed solution is a bit overbroad. I heard  
12536 with interest Congresswoman Spartz talking about proving that  
12537 you are going to not compete. Actually, that is not what the  
12538 standard in the bill is.

12539           I think, really, an honest reading of this is it would prevent  
12540 any merger or acquisition on the tech companies that are the  
12541 object, because if you look at page 2, line 3, the acquired stock  
12542 do not compete with the covered platform operator for the

12543 provision of any product of service.

12544 Well, if you look at the broad range of what is being offered,  
12545 that is almost everything. And it is not just actual competition.

12546 It is potential competition to the covered platform, and that  
12547 includes something. Potential competition for the sale or  
12548 provision of any product or services, which includes competition  
12549 for a user's attention.

12550 So I think, really, this is a prohibition -- would result  
12551 in a prohibition of mergers and acquisitions. Well, that could  
12552 be problematic at some -- in some cases. We have talked about  
12553 the model of entrepreneurs starting a company with the hopes --  
12554 I mean, there is really three things that can happen. You can  
12555 go bankrupt, you can get acquired, or you can go public. And  
12556 it is very hard to go public because you need a certain kind of  
12557 market capitalization and some "umph."

12558 And so it is not always wrong that there is an acquisition,  
12559 although it can be wrong. And so I think the idea that the remedy  
12560 is to prohibit acquisitions entirely by these platforms is not  
12561 the right remedy.

12562 I would note that there are reasons why a company can acquire  
12563 another company that had nothing to do with competition. For  
12564 example, Apple acquired a voice recognition company, but the  
12565 reason why they acquired it was to get the technology and the  
12566 hotshot employees who they -- who helped them build the Siri app

12567 on the iPhone -- that wasn't to get market power; that was to  
12568 create a new technology, and yet the acquisition for talent and  
12569 technology would also be precluded.

12570 I will note that Senator Klobuchar has introduced a bill  
12571 on the other side of the building that would change the language  
12572 in the Clayton Act to make it easier to sustain challenges against  
12573 anti-competitive mergers. And I am not an expert on her bill,  
12574 but the standards she would set would put the burden on the  
12575 acquiring company to establish, by a preponderance of the  
12576 evidence, that the transaction will not create an appreciable  
12577 risk of materially lessening competition.

12578 I think that that is something that we ought to be looking  
12579 at, because it is not just harm to consumer. We do want to foster  
12580 competition.

12581 Finally, I will say that, once again, we have limited this  
12582 to just a few of the tech platforms who could not merge or acquire  
12583 at all. But that doesn't preclude foreign competitors from  
12584 coming into the United States and buying up these very same  
12585 companies. And I think the potential detriment to our national  
12586 competitiveness is something that may have been overlooked in  
12587 this case.

12588 So I am hoping that we can do some refinements on this bill.

12589 I agree that this is very much a legitimate issue for us to pursue,  
12590 and I am hopeful that we can refine the approach, as I think the

12591 measure before us is overbroad.

12592 And with that, I see my time has expired, and I yield back,  
12593 Mr. Chairman.

12594 Chairman Nadler. [Presiding] The gentlelady yields back.

12595 For what purpose does Ms. Jayapal seek recognition?

12596 Ms. Jayapal. Move to strike the last word, Mr. Chairman.

12597 Chairman Nadler. The gentlelady is recognized.

12598 Ms. Jayapal. Thank you, Mr. Chairman. I want to thank you  
12599 for holding this important markup, and I want to thank Chairman  
12600 Cicilline and Ranking Member Buck for all of the work that they  
12601 have done in our subcommittee to get us to this point.

12602 We have gone through a 16-month investigation, reviewed  
12603 nearly 1.3 million documents collected as part of that  
12604 investigation, consulted with 60 experts, and held 10 hearings,  
12605 including 4 hearings on proposals to restore competition online  
12606 and strengthen our Nation's antitrust laws.

12607 The bills that we are marking up today are a direct result  
12608 of that work and the 450-page report that this committee approved  
12609 in April of this year. What we uncovered was clear and damning.

12610 These unregulated tech monopolies have grown too big and too  
12611 powerful to care, yet they are the gatekeepers controlling access  
12612 to markets for sellers and buyers.

12613 These giants have the power to pick winners and losers, the  
12614 power to set the rules for everyone else, while they break them

12615 to benefit their own self-interest.

12616 So the bills that we are marking up today restore fairness  
12617 in competition for consumers and small businesses, ensure our  
12618 democracy and innovation continue to thrive. And I am grateful  
12619 to my colleague, Congressman Jeffries, for proposing this bill,  
12620 the Platform Competition and Opportunity Act, which would prevent  
12621 dominant online platforms from buying competitors or potential  
12622 competitors in order to expand their market power.

12623 Last July, I asked Mark Zuckerberg about this very issue.  
12624 Through our investigation, we looked at Facebook's emails and  
12625 interviewed its competitors and found a clear record of Facebook's  
12626 attempts to copy, buy, or kill its competitors.

12627 In one instance, we looked at emails from March of 2012 in  
12628 which Mr. Zuckerberg suggested by email to his management team  
12629 that moving faster and copier other apps could, quote, "prevent  
12630 our competitors from getting footholds."

12631 Sheryl Sandberg responded that, quote, "It is better to do  
12632 more and move faster, especially if that means you don't have  
12633 competitors build products that take some of our users."

12634 Facebook's product manager director -- management director  
12635 added, quote, "I would love to be far more aggressive and nimble  
12636 and copying competitors."

12637 One key example is Instagram and Facebook Camera. In this  
12638 instance, Mr. Zuckerberg threatened Instagram's founder, Kevin

12639 Systrom, telling Mr. Systrom that Facebook was, quote,  
12640 "developing our own photo strategy. So how we engage now will  
12641 also determine how much we are partners versus competitors down  
12642 the line."

12643 Instagram's founder seemed to think it was a threat. He  
12644 confided in an investor at the time that he feared Mr. Zuckerberg  
12645 would go into, quote, "destroy mode" if he didn't sell Instagram  
12646 to Facebook. Bottom line: Facebook copied a successful  
12647 product, went to the company it identified as a threat, and told  
12648 them that if Facebook couldn't buy it, there would be  
12649 consequences.

12650 In the nearly 2 decades since Facebook's founding, it has  
12651 grown into a corporate giant that isn't simply trying to help  
12652 people connect with friends and family; it has morphed into a  
12653 monopoly power that harvests and monetizes our data for its own  
12654 profit, for the purposes of spying on and destroying its rivals.

12655 Facebook's practices have stifled competition and made it  
12656 impossible for new companies to prosper. Under Mr. Jeffries'  
12657 bill, Facebook's predatory practices would be prohibited. This  
12658 is a necessary step to protect our democracy and ensure that small  
12659 businesses and startups can thrive.

12660 I urge my colleagues to support this bill, and I yield back.

12661 Chairman Nadler. The gentlelady yields back.

12662 For what purpose does Mr. Neguse seek recognition?



12663 Mr. Neguse. Move to strike the last word, Mr. Chairman.

12664 Chairman Nadler. The gentleman is recognized.

12665 Mr. Neguse. Thank you, Mr. Chairman. First and foremost,  
12666 I again want to thank Chairman Cicilline, the chairman of the  
12667 subcommittee, and of course the ranking member for their  
12668 leadership, and to Chairman Jeffries for bringing forward this  
12669 very important bill for the various reasons that my colleague  
12670 from Washington, Representative Jayapal, so eloquently stated  
12671 the rationale and the reasoning for this particular piece of  
12672 legislation. And I am grateful again to Chairman Jeffries and  
12673 to Ranking Member Buck for leading the effort.

12674 I wonder, and I assume that Chairman Cicilline would be  
12675 available for a brief colloquy with respect to this particular  
12676 amendment, I have some trepidation about the amendment, and so  
12677 would benefit from perhaps a deeper explanation as to the  
12678 rationale for the number that is purportedly to be used in terms  
12679 of the limitation and the \$50 million number.

12680 And I guess just by way of background, first, I would say  
12681 it is unclear to me as to whether or not this language would  
12682 preclude a company from structuring a transaction in a way that  
12683 ultimately escapes the scrutiny that this bill attempts to impose,  
12684 along the lines of what Representative Biggs I believe was  
12685 referencing. You can envision a scenario in which an asset  
12686 purchase agreement is structured so that the \$50 million number

12687 is -- you know, that threshold isn't crossed.

12688 And then, more broadly, I guess I would just say it was my  
12689 understanding that while the most problematic transactions that  
12690 our committee examined and I think found significant evidence  
12691 to indicate were, you know, deeply problematic and warranted the  
12692 scrutiny of regulators, in particular the transactions with  
12693 respect to Facebook that Representative Jayapal mentioned, I  
12694 think there are other transactions that would certainly fall  
12695 within the \$50 million range.

12696 And so it just -- it is unclear to me why that number, which  
12697 appears to be somewhat arbitrary, would have the impact that folks  
12698 are suggested.

12699 I am certainly opening -- open, rather, to tightening the  
12700 competition language. And, you know, I think Representative  
12701 Lofgren made an important point in that regard, and so that would  
12702 be a discussion that I am open to having. But I have, as I said,  
12703 some trepidation about imposing a financial condition in this  
12704 particular context.

12705 And if the chairman would like to respond to any of that,  
12706 I would welcome his input.

12707 Ms. Ross. Mr. Chairman, I am happy to answer Mr. Neguse's  
12708 questions, if that is okay. Mr. Neguse?

12709

12710 Mr. Neguse. Yes, of course. I will yield to Ms. Ross.

12711 Ms. Ross. Yes. So in negotiating the amount, we looked  
12712 at the amounts of a lot of the transactions that had gone through  
12713 and had learned that the FTC doesn't give that much scrutiny to  
12714 transactions that are under about 30, \$35 million, and that there  
12715 aren't that many more transactions that go up to \$50 million.

12716 But, you know, we are going to have this -- hopefully, this  
12717 bill will be in -- or the law will be in effect for a period of  
12718 time, so that \$15 million margin seemed to be appropriate, so  
12719 that we wouldn't get into the problematic ones and we would be  
12720 closer to the ones that didn't receive as much scrutiny or concern  
12721 from the FTC. And that was the rationale for the amount.

12722 Mr. Neguse. Thank you. And that is helpful context. And  
12723 I should say I appreciate your efforts, Ms. Ross, and of course  
12724 the efforts of other members, to provide the kind of robust debate  
12725 that we are having in terms of how to improve these bills.

12726 So with that, I don't know if my time is expired, but I will  
12727 yield back the balance of my time, Mr. Chairman.

12728 Chairman Nadler. The gentleman yields back.

12729 For what purpose does Mr. Issa seek recognition?

12730 Mr. Issa. Move to strike the last word on this amendment.

12731 Chairman Nadler. The gentleman is recognized.

12732 Mr. Issa. Thank you. I am going to point out a couple of  
12733 things that trouble me on this bill that -- I know we are working  
12734 on the underlying amendment, but there are some requirements here

12735 that boggle the mind, and I wondered how they got in here.

12736           These prohibitions on the companies -- for example, the role  
12737 of data on page 3 covered platform -- or platform or covered  
12738 platform operator is not allowed to make an acquisition to  
12739 maintain a market position. And presumably we would -- this 50  
12740 million would strike that.

12741           So, you know, one of the challenges is, and also the role  
12742 of data, you know, you can't do this if you are acquiring data.

12743           Now, I have made a couple dozen acquisitions over my years, and  
12744 there was always data that came with every acquisition. So by  
12745 definition nobody could meet that, and I am presuming that if  
12746 it is under 50 million, then we don't mind.

12747           But that is one of the real questions here. The gentlelady  
12748 from Seattle was nicely talking about Facebook, and she described  
12749 an evil, rotten, terrible company headed by a person who was  
12750 inherently evil who had to be stopped. And that may or may not  
12751 be true, but what I found was that exactly what King Henry VIII  
12752 did that we prohibit in our Constitution is what I think we are  
12753 doing here tonight.

12754           And I just want to make it -- this point one more time.  
12755 We have tried. Mr. Cicilline has apparently for 2 years held  
12756 court, and he has tried and convicted four companies of being  
12757 monopolies, of being trusts, of being appropriate to put a consent  
12758 decree on.

12759           And these bills, one after another, fashioned with the help  
12760 of the Federal Trade Commission detailees and others, in fact  
12761 are nothing but bills that in fact would do much -- maybe more  
12762 than what a normal consent decree would do.

12763           And I have to question, and I will question it now, and I  
12764 will question it on the floor, and I suspect we will question  
12765 it in the courts, whether or not this is in fact a trial by the  
12766 House, sent to the Senate, to convict four companies without a  
12767 trial that they get to defend themselves at, and give them what  
12768 would be effectively an antitrust decision by us.

12769           And I can't find -- when I find there are limitations in  
12770 this bill -- and I could go through them for another half hour  
12771 and find more of them -- I can't find that we won't do that.

12772           And so although I will be voting for the gentlelady's  
12773 amendment because it makes it less bad, I must admit that whether  
12774 they circumvent it or not, we are still going to have to ask:  
12775 on what basis did we try people -- companies -- without their  
12776 ability to offer a defense, without the ability to go through?  
12777 Why are we making accusations about -- basically criminal  
12778 accusations, or certainly accusations that would be unfair  
12779 competition, but they are not here to defend themselves.

12780           We are only hearing one side of somebody's story, and we  
12781 are making a decision to -- when they can do what in the future  
12782 because we have written a consent decree, except of course there

12783 is no consent, there is no trial, there is no defense. And we  
12784 are figuring that we know them better, but we are going to send  
12785 it to the Federal Trade Commission and they can continue to execute  
12786 the consent decree.

12787 That is really where we are here tonight, and I know we are  
12788 not going to resolve this before 4:00 or 5:00 or 6:00 in the morning  
12789 when we get through all of the bills, but I cannot find that we  
12790 have gotten past that fundamental question that we in fact are  
12791 violating the constitutional prohibition on penalizing people  
12792 without a trial. Penalizing people by passing a law that finds  
12793 them guilty without due process. They have not been given due  
12794 process. They certainly have not been given their day in court.

12795 And I will vote for this amendment, but I will be voting  
12796 against the underlying bill, and I yield back.

12797 Chairman Nadler. The gentleman yields back.

12798 Who seeks recognition? Mr. Jeffries? For what purpose  
12799 does Mr. Jeffries seek recognition?

12800 Mr. Jeffries. Move to strike the last word.

12801 Chairman Nadler. The gentleman is recognized.

12802 Mr. Jeffries. I just wanted to thank the distinguished  
12803 gentlelady from North Carolina for this amendment, which I think  
12804 is a step in the right direction, trying to address the concern  
12805 that many of my colleagues have articulated related to the  
12806 potential inability of tech entrepreneurs and small startup

12807 innovators to be able to realize their dream of being able to  
12808 grow a modest company and then sell it.

12809           And I certainly don't think it is the intent of the authors  
12810 of this legislation to squelch that dream, although I do ask the  
12811 question in the broader context of this country and the framers  
12812 of the Constitution, who of course gave this Congress the power  
12813 to create a robust intellectual property system, in the words  
12814 of the framers, in Article 1, Section 8, clause 8, to promote  
12815 the progress of science and useful arts.

12816           Those are the words of the framers, and I don't think that  
12817 the framers were intending to incentivize people -- incentivize  
12818 investors and entrepreneurs to dream big so they can sell a modest  
12819 company. I think they were incentivizing investors and  
12820 entrepreneurs and innovators perhaps to dream big, so they could  
12821 change the world, dream big so that they could create an innovative  
12822 product, build companies that would lead the world in a wide  
12823 variety of things.

12824           I think that is the fundamental problem that we are trying  
12825 to address, that because of these tech giants that ability for  
12826 entrepreneurs and innovators to dream big and grow companies that  
12827 would change the world -- and that has been the American journey.

12828           That has been crushed in many instances because of these dominant  
12829 tech giants, who have a clear strategy of copy, acquire, or kill.

12830           And I don't want to compare them to organized crime figures,

12831 but there was a famous saying in the Godfather, "I am going to  
12832 give you an offer that you can't refuse." And a 2-year  
12833 investigation revealed that that in fact was the case.

12834 And I have heard a lot about due process concerns. I wasn't  
12835 on the antitrust subcommittee. Chairman Cicilline did a  
12836 tremendous job. I think the four CEOs testified before this very  
12837 Congress, and they were very clear about the terms of their  
12838 appearance and they weren't going to appear in person, and this  
12839 is how long it was going to last, and we are going to provide  
12840 these documents. That kind of sounds like due process to me.

12841 And they have got an army of lawyers at their disposal.  
12842 And so this particular piece of legislation -- and I think Ken  
12843 Buck, who has been extraordinary as a leader in this area -- it  
12844 is not cutting off the ability for a merger or acquisition to  
12845 take place. It is addressing the burden question.

12846 And I think the fundamental question here is, when you have  
12847 got tech giants, when you have got big tech, many of whom have  
12848 engaged in predatory behavior, hundreds of acquisitions, a small  
12849 handful of them have ever been scrutinized. Not a single one  
12850 was challenged in court by the FTC. Why? Because they did not  
12851 have the vehicle to do it statutorily. Not a single one.  
12852 Hundreds of mergers and acquisitions, many of which have been  
12853 discussed -- Instagram, WhatsApp, others -- not a single one  
12854 challenged, because the legal landscape didn't exist.



12855           And it is the prerogative of this Congress to perhaps say,  
12856           if we have got a choice, should the American people bear the burden  
12857           of proof? Or should a multi-trillion-dollar company that has  
12858           engaged in anti-competitive behavior, predatory behavior, bear  
12859           the burden of proof?

12860           Mr. Gaetz. Will the gentleman yield for a question?

12861           Mr. Jeffries. Yes, sir.

12862           Mr. Gaetz. Is the gentleman concerned that if this  
12863           amendment were to pass that companies might break up and it  
12864           undermine the intent of the bill?

12865           Mr. Jeffries. I am not. And I am not because I think that  
12866           there will always be entities that endeavor to engage in behavior  
12867           to evade laws that are being put into place by the Congress.

12868           But I think this strikes a reasonable balance, because the  
12869           overwhelming majority of concern, as uncovered by the  
12870           investigation from David Cicilline and Representative Buck, is  
12871           that the transactions that are problematic are much higher in  
12872           volume in terms of the scope and scale of the acquisition.

12873           Chairman Nadler. The gentleman's time has expired.

12874           For what purpose does Mr. Roy seek recognition?

12875           Mr. Roy. Move to strike the last word.

12876           Chairman Nadler. The gentleman is recognized.

12877           Mr. Roy. I will talk a little bit more about the bill in  
12878           a minute, and I have an amendment to offer. But with respect

12879 to the amendment offered by the gentlelady from North Carolina,  
12880 I, too, represent an area with a lot of high-tech interest in  
12881 Austin, Texas; San Antonio, Texas.

12882 And I understand the desire to carve out small startups,  
12883 but I am troubled by the fact that -- I am troubled by the fact  
12884 that we have to carve out any one in the first place, right?  
12885 I mean, there is a reason for seeking the carveout, and it is  
12886 because of a significant burden shift.

12887 And 51 million, 55 million, 100 million, I understand. We  
12888 set these -- we set an arbitrary number to just sort of basically  
12889 represent a smaller business in this case. And I understand there  
12890 is a record, and that I think this is an attempt to reflect the  
12891 record with respect to trying to preserve small businesses in  
12892 this case.

12893 But this gets to the heart for me of when we had the debate  
12894 earlier this morning with the gentlelady from California, you  
12895 know, lowering it to \$250 billion, but then that doesn't really  
12896 include everybody. And this whole framework is built on the  
12897 notion of the 600 billion and the 500 million. I mean, we are  
12898 -- it seems like to me we are grasping at straws to try to define  
12899 something that is going to be shifting sand, because we are not  
12900 defining the behavior and we are not focusing on the behavior,  
12901 the monopolistic behavior.

12902 We are focusing on trying to define entities that fit within

12903 what we are currently defining as the behavior. And that to me  
12904 is the problem. So we are going to come back on the back end  
12905 of this, and we are going to go, well, we are going to have to  
12906 amend this because 50 million isn't right. And we are going to  
12907 have to amend the 600 billion or amend the 250 billion.

12908 We are going to have to keep tweaking this to try to chase  
12909 the market, and that I think is not getting to what we want to  
12910 get at. And I will have more in a minute with an amendment that  
12911 I am going to offer that is trying to get at the actual monopolistic  
12912 behavior, maybe not perfectly. And we will talk about that in  
12913 a little bit.

12914 But my concern about the amendment offered by the gentlelady  
12915 is that we are carving out something because it needs to be carved  
12916 out, because we have set the standard by reversing the burden  
12917 in a way that I think is really concerning. And having companies  
12918 having to come say, "Mother, may I?" I mean, do I care that, you  
12919 know, currently Google, Facebook, and these large companies have  
12920 to come say, "Mother, may I?"

12921 I am not particularly bothered by that personally at the  
12922 moment, but that is going to change. Those sands are going to  
12923 shift. There is going to be more companies that is going to fall  
12924 into that. We are going to go down that road. That is my concern.

12925 That is my unease with this is why I will likely oppose the  
12926 amendment.

12927 Chairman Nadler. Does the gentleman yield back?

12928 Mr. Roy. Yes, I yield back, Mr. Chairman.

12929 Chairman Nadler. The gentleman yields back.

12930 For what purpose does Mrs. Spartz week recognition?

12931 Mrs. Spartz. I move to strike the last word.

12932 Chairman Nadler. The gentlelady is recognized.

12933 Mrs. Spartz. Thank you. I want to -- as I mentioned before,

12934 I don't like this bill, but I think this amendment actually even

12935 makes it worse, and I will tell you why.

12936 As the gentleman from New York talking about the dream, it

12937 is actually -- a smaller company, it actually limits my dream,

12938 because now it puts me in a position I am thinking, okay, should

12939 I try to bail out and sell, or maybe I should grow company?

12940 And I am like, okay, if I grow more than 50 million, I am

12941 going to be in a position that the choice of who wants to buy

12942 me are going to be much smaller. You also put me in the position

12943 of a negotiation power. I will get the large big companies to

12944 say, "Hey, I am not going to pay you 55 or 65 because I will pay

12945 you 49.9. I don't -- I am going to be in all this jurisdiction

12946 that I -- I will not want you."

12947 So that puts me in a real tough position, too, and actually

12948 maybe otherwise I would be grown and become 100 million company

12949 or 100 billion company and actually create a competition to these

12950 large big tech companies.

12951           But I am now thinking, no, that might be actually much worse  
12952 for me. So I think this actually puts a lot of entrepreneurs  
12953 in smaller company in much worse situation and create the  
12954 environment right now where you limit -- create a limit at what  
12955 -- how much I can grow and how competitive, because ultimately  
12956 we want to have an environment that anyone can decide either to  
12957 sell the company, either to grow it and become a  
12958 multi-billion-dollar company.

12959           And I should have the choice and not to be limited because  
12960 there are some subjective rules that set up and limited my choice.

12961           So I think it actually will hurt some entrepreneurs in smaller  
12962 companies to create wealth and become more competitive in this  
12963 market, and allow that bigger companies have more negotiation  
12964 power on the market.

12965           And I truly believe this amendment makes the bill that I  
12966 do not like already -- make it even worse, and I think my colleagues  
12967 should not support this bill.

12968           I yield back.

12969           Mr. Jones. Would the gentlelady yield?

12970           Chairman Nadler. The gentlelady yields back. Was --

12971           Mrs. Spartz. I already yield back.

12972           Chairman Nadler. Is someone trying to --

12973           Mr. Jones. Yes. Mr. Chairman, I just -- I move to strike  
12974 the last word on the amendment.

12975 Chairman Nadler. Okay. The gentleman -- for what purpose  
12976 does the gentleman --

12977 Mr. Jones. This would be on the --

12978 Chairman Nadler. The gentleman has already spoken on this  
12979 amendment.

12980 Mr. Jones. Point of order, Mr. Chairman.

12981 Chairman Nadler. I recognize myself and yield to the  
12982 gentleman.

12983 Mr. Jones. Thank you, Mr. Chairman. I just -- something  
12984 was said that I thought just greatly exaggerated the impact of  
12985 this legislation, that the number of potential acquiring  
12986 companies would be dramatically reduced. I mean, this is a bill  
12987 that would literally only impact four big tech companies.

12988 And so I just think it is important to clarify for those  
12989 who may be confused about, you know, the opportunity that would  
12990 still exist for the smaller companies as proposed by my colleague  
12991 from North Carolina. And I say this as someone who is not going  
12992 to vote for this amendment, that I think that once we acknowledge  
12993 that these companies are monopolies, we should be opposed to their  
12994 growth.

12995 And so -- but I just think it is important to clarify that,  
12996 and I yield back.

12997 Chairman Nadler. The gentleman yields back.

12998 Mr. Issa. Would the gentleman yield for a question?

12999 Chairman Nadler. I will.

13000 Mr. Issa. The gentleman just said this would only affect  
13001 four companies, and maybe they are hearing my point. But, you  
13002 know, we have had this debate. If it only represents four  
13003 companies, are we in fact clearly doing four companies? Not  
13004 covered platforms; it might be more.

13005 You know, we have never settled the question of Microsoft  
13006 here, which would make it five. Certainly, we haven't gotten  
13007 into Twitter and lots of other companies that enjoy tremendous  
13008 market power. You know, it does seem like they are saying that,  
13009 but on one hand they are saying that they have done all of these  
13010 acquisitions, and that is a lot of acquisitions.

13011 Now I just heard, well, there aren't very many acquisitions.  
13012 But if you were -- you know, if you were any of these companies  
13013 that were acquired by those four or five companies, you certainly  
13014 I think wanted them to be bidders, because in every case they  
13015 were the high bidder.

13016 Chairman Nadler. I thank the gentleman for -- if you could  
13017 at least tell me how many -- how many companies do you think these  
13018 bills cover?

13019 Mr. Jeffries. Mr. Chairman? Mr. Chairman?

13020 Chairman Nadler. Who seeks recognition?

13021 Mr. Jeffries. Would you yield?

13022 Chairman Nadler. I yield to Mr. Cicilline. To

13023 Mr. Jeffries, rather.

13024 Mr. Jeffries. Yeah. I think that the legislation is clear,  
13025 as with the other bills, that ultimately that is a determination  
13026 that will be made by the FTC.

13027 I would also add that I think entrepreneurs have at least  
13028 three options consistent with what is available in America's  
13029 market-based economy that, yes, there will be some entrepreneurs  
13030 presumably who are developing a company with the objective to  
13031 sell it, and they will still be able to sell it in this environment,  
13032 if this legislation is offered.

13033 It is just that the burden in terms of demonstrating that  
13034 that sale won't have an anti-competitive effect on consumers has  
13035 shifted from the FTC to these multi-trillion-dollar companies  
13036 that meet the definition of a covered platform.

13037 But beyond sale, you can still grow a company and then take  
13038 it public, into the stock market, or you can grow the company  
13039 and maintain it as a successful privately-held business.  
13040 Multiple options that are available to allow innovation and  
13041 entrepreneurship in America to flourish.

13042 I yield back.

13043 Chairman Nadler. The gentleman yields back. I yield back.

13044 The question occurs on the amendment.

13045 All in favor of the amendment will say aye.

13046 Opposed, no.



13047           In the opinion of the chair, the ayes have it, and the  
13048 amendment is agreed to.

13049           Are there any further amendments to the amendment in the  
13050 nature of a substitute? For what purpose does Mr. Roy seek  
13051 recognition?

13052           Mr. Roy. I have an amendment at the desk.

13053           Chairman Nadler. The clerk will report the amendment.

13054           Mr. Cicilline. I reserve a point of order, Mr. Chairman.

13055           Chairman Nadler. A point of order is reserved.

13056           Ms. Fontenot. Amendment to the amendment in the nature of  
13057 a substitute to H.R. 3826 offered by Mr. Roy of Texas, page 1,  
13058 strike line 4 and all that follows to the amendment to the title  
13059 on page 15.

13060           [The amendment offered by Mr. Roy follows:]

13061

13062           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

13063 Chairman Nadler. Without objection, the amendment is  
13064 considered as read, and the gentleman is recognized to explain  
13065 his amendment.

13066 Mr. Roy. I thank the chairman. As we have been discussing,  
13067 I do believe the goal of the underlying bill that we need to make  
13068 it easier to challenge mergers of these very large companies --  
13069 as I have already established, I have some concern about how we  
13070 define those -- is a reasonable goal and important.

13071 You know, acquisitions, as we discussed, like Facebook,  
13072 Instagram, et cetera, obviously deserve scrutiny. But my concern  
13073 is that the underlying bill will have the effect of -- its starting  
13074 place is outlawing, you know, all mergers by these covered  
13075 platforms. I have already described my concerns about the  
13076 definition of the platforms and that that is overall bad for the  
13077 market.

13078 And that doesn't necessarily consider consumer value. It  
13079 does not consider the monopoly power in a given market. It makes  
13080 the burden clear and convincing evidence to allow any merger for  
13081 these covered platforms to go through in some ways almost  
13082 insurmountable, which may be viewed as a feature, not a bug.

13083 You know, nearly 60 percent of all startups have as their  
13084 expressed business strategy to be acquired. We have been talking  
13085 about that. These E-backed startups disproportionately  
13086 positively impact innovation. You know, M&A is an option. Frees

13087 capital for innovative investments instead of locking capital  
13088 into a long horizon, so that is obviously, you know, what drives  
13089 a lot of the investments.

13090 Ninety percent of U.S. startup exits happened through  
13091 acquisition between 2008 and 2019. You know, this bill, the best  
13092 I can understand it, would have stopped at least 100 acquisitions  
13093 over the last 5 years.

13094 And that sort of thing, you know, I have already mentioned  
13095 from the gentlelady from North Carolina's amendment, it would  
13096 disproportionately in many ways impact the district I represent  
13097 in Austin, Texas; San Antonio; in many ways to some degree versus  
13098 Silicon Valley. Startups, often on the coast, often grow large  
13099 enough to go onto public markets.

13100 My amendment that I am offering here is the result of  
13101 conversations I have had with Senator Lee and Senator Lee's  
13102 efforts in moving legislation in the Senate. I think it is a  
13103 different approach that I think is a, in my view, better approach  
13104 at trying to target and tackle a problem. And my amendment is  
13105 designed to protect the startup ecosystem, protect innovation,  
13106 and achieving the goal of making it easier to challenge mergers  
13107 when the resulting firm is dominant in a given market.

13108 It creates a presumption against mergers where the combined  
13109 firm would have the market power to meaningfully increase prices  
13110 or reduce output innovation or quality; and, two, the combined

13111 firm's market share is more than one-third of a given market.

13112 It allows companies to rebut the presumption when the weight  
13113 of the evidence, a preponderance, shows no anti-competitive  
13114 effects or that pre-competitive effects outweigh them. We  
13115 shouldn't demand more proof than that, in my view. We should  
13116 err on the side of letting the market sort it out.

13117 But I do believe that we should put instructions and  
13118 standards in place to be able to deal with the obvious concerns  
13119 we all share. I believe my amendment furthers the goal of the  
13120 underlying bill without the harm that I think some of us, or at  
13121 least speaking for myself, believes could result from the way  
13122 that we are going about it in the current form.

13123 And, again, I want to reiterate my, you know, belief that  
13124 there is a good faith effort here to try to address this problem.

13125 And I have had many conversations with colleagues on my side  
13126 of the aisle generally about the goal to try to address this  
13127 problem of the anti-competitive behavior that we are seeing from  
13128 certain companies.

13129 But without repeating myself, I have strong reservations  
13130 about the way we have defined these, and I would like to focus  
13131 more on the behavior than these arbitrary ways in terms of how  
13132 we define this. So this is an attempt to do that, and I think  
13133 it is in keeping with the purpose and spirit of what we are trying  
13134 to accomplish.

13135 With that, I will yield back.

13136 Chairman Nadler. Does the gentleman insist on his point  
13137 of order?

13138 Mr. Cicilline. I do, Mr. Chairman. The proposed amendment  
13139 expands the bill beyond the confines of the underlying bill and  
13140 amends an entirely different section, and, therefore, is not  
13141 germane.

13142 Chairman Nadler. Does the gentleman wish to --

13143 Mr. Roy. Yeah. I mean, I would like to address that.

13144 Chairman Nadler. -- be heard on the ruling?

13145 Mr. Roy. Move to strike the last word. Is that what I --  
13146 or what -- understanding the point being made, I still think it  
13147 is worthy of debate in this committee when we are talking about  
13148 something as fundamental as restructuring and changing the burden  
13149 that these companies face.

13150 And here trying to address it in a different way, in my view  
13151 in good faith, to say, "Hey, let's focus on the fact that these  
13152 guys are reaching a certain dominant portion of the market,"  
13153 rather than saying, "Hey, we are defining a class of companies  
13154 that will then change over time" and say -- we are just going  
13155 to say, "you can't acquire, oh, unless you can come forward and  
13156 prove X."

13157 I think the Government should still have to be able to come  
13158 in and say, "Hey, you guys" -- all the market, by the way, this

13159 amendment that I am offering is trying to -- it broadens it,  
13160 changing to if you have got --

13161 Mr. Cicilline. That is the whole point, Mr. Roy. That is  
13162 what makes it not germane, that it broadens it to the entire  
13163 market. And it is an interesting debate, but for purposes of  
13164 this hearing, it is not germane to the bill before us.

13165 Mr. Roy. Mr. Chairman, who has the time? Do I have --  
13166 Chairman Nadler. You have the time.

13167 Mr. Roy. So, right, I understand that -- look, I mean, I  
13168 understand the technicalities of germaneness. I mean, I was a  
13169 lawyer on the Senate Judiciary Committee. I get it. The point  
13170 here is it is germane to the debate. It is definitively germane  
13171 to the debate, because the whole point of the debate is about  
13172 what we are going to do about how certain companies can acquire  
13173 other companies.

13174 And the whole point here is to try to have a debate about  
13175 antitrust, and the size and scope of these companies, whom they  
13176 can acquire, and all I am trying to say is I think we ought to  
13177 go about it a different way. So I think that is --

13178 Chairman Nadler. Mr. Roy, if you will yield to --

13179 Mr. Cicilline. I look forward to working with you on this.

13180 Chairman Nadler. The gentleman's --

13181 Mr. Roy. I would yield to --

13182 Chairman Nadler. The gentleman's --

13183 Mr. Roy. I would yield to the gentleman if I can, if I am  
13184 allowed.

13185 Mr. Cicilline. Thank you.

13186 Chairman Nadler. No, no, no. The chairman is prepared to  
13187 -- the chair is prepared to rule. Clause 7 of House Rule 16  
13188 prohibits amendments that are on a different subject matter than  
13189 the proposal that is under consideration. The subject of the  
13190 bill we are currently considering is anti-competitive  
13191 acquisitions by covered platforms.

13192 The gentleman's amendment proposes to amend Section 7 of  
13193 the Clayton Act, which the bill does not amend, and applies to  
13194 the entire economy, not just to covered platforms. This is a  
13195 subject that is different from what we are considering in this  
13196 bill.

13197 The amendment is, therefore, not germane and violates Clause  
13198 7 of Rule 16.

13199 Mr. Roy. Appeal the ruling of the chair.

13200 Mr. Cicilline. Move to table.

13201 Chairman Nadler. The motion to table is not debatable.

13202 All in favor, say aye.

13203 Opposed, nay.

13204 The motion -- in the opinion of the chair, the ayes have  
13205 it.

13206 Mr. Roy. Ask for the yeas and nays.

13207 Chairman Nadler. The yeas and nays are requested. The  
13208 clerk will call the roll.  
13209 Ms. Fontenot. Mr. Nadler?  
13210 Chairman Nadler. Aye.  
13211 Ms. Fontenot. Mr. Nadler votes aye.  
13212 Ms. Lofgren?  
13213 Ms. Lofgren. Aye.  
13214 Ms. Fontenot. Ms. Lofgren votes aye.  
13215 Ms. Jackson Lee?  
13216 Ms. Jackson Lee. Aye.  
13217 Ms. Fontenot. Ms. Jackson Lee votes aye.  
13218 Mr. Cohen?  
13219 [No response.]  
13220 Mr. Johnson of Georgia?  
13221 [No response.]  
13222 Mr. Deutch?  
13223 [No response.]  
13224 Ms. Bass?  
13225 Ms. Bass. Aye.  
13226 Ms. Fontenot. Ms. Bass votes aye.  
13227 Mr. Jeffries?  
13228 Mr. Jeffries. Aye.  
13229 Ms. Fontenot. Mr. Jeffries votes aye.  
13230 Mr. Cicilline?



13231 Mr. Cicilline. Aye.

13232 Ms. Fontenot. Mr. Cicilline votes aye.

13233 Mr. Swalwell?

13234 Mr. Swalwell. Aye.

13235 Ms. Fontenot. Mr. Swalwell votes aye.

13236 Mr. Lieu?

13237 Mr. Lieu. Aye.

13238 Ms. Fontenot. Mr. Lieu votes aye.

13239 Mr. Raskin?

13240 Mr. Raskin. Aye.

13241 Ms. Fontenot. Mr. Raskin votes aye.

13242 Ms. Jayapal?

13243 Ms. Jayapal. Aye.

13244 Ms. Fontenot. Ms. Jayapal votes aye.

13245 Mrs. Demings?

13246 Mrs. Demings. Aye.

13247 Ms. Fontenot. Mrs. Demings votes aye.

13248 Mr. Correa?

13249 Mr. Correa. Aye.

13250 Ms. Fontenot. Mr. Correa votes aye.

13251 Ms. Scanlon?

13252 Ms. Scanlon. Aye.

13253 Ms. Fontenot. Ms. Scanlon votes aye.

13254 Ms. Garcia?

13255 Ms. Garcia. Aye.

13256 Ms. Fontenot. Ms. Garcia votes aye.

13257 Mr. Neguse?

13258 Mr. Neguse. Aye.

13259 Ms. Fontenot. Mr. Neguse votes aye.

13260 Mrs. McBath?

13261 Mrs. McBath. Aye.

13262 Ms. Fontenot. Mrs. McBath votes aye.

13263 Mr. Stanton?

13264 Mr. Stanton. Aye.

13265 Ms. Fontenot. Mr. Stanton votes aye.

13266 Ms. Dean?

13267 Ms. Dean. Aye.

13268 Ms. Fontenot. Ms. Dean votes aye.

13269 Ms. Escobar?

13270 Ms. Escobar. Aye.

13271 Ms. Fontenot. Ms. Escobar votes aye.

13272 Mr. Jones?

13273 [No response.]

13274 Ms. Ross?

13275 Ms. Ross. Ross votes aye.

13276 Ms. Fontenot. Ms. Ross votes aye.

13277 Ms. Bush?

13278 Ms. Bush. Bush votes aye.

13279 Ms. Fontenot. Ms. Bush votes aye.

13280 Mr. Johnson of Georgia. Madam Chair, how am I recorded?

13281 Madam Clerk? Hank Johnson.

13282 Ms. Fontenot. Mr. Johnson, you are not recorded.

13283 Mr. Johnson of Georgia. Vote aye.

13284 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

13285 Mr. Jordan?

13286 Mr. Jordan. No.

13287 Ms. Fontenot. Mr. Jordan votes no.

13288 Mr. Chabot?

13289 Mr. Chabot. No.

13290 Ms. Fontenot. Mr. Chabot votes no.

13291 Mr. Gohmert?

13292 [No response.]

13293 Mr. Issa?

13294 Mr. Issa. No.

13295 Ms. Fontenot. Mr. Issa votes no.

13296 Mr. Buck?

13297 Mr. Buck. No.

13298 Ms. Fontenot. Mr. Buck votes no.

13299 Mr. Gaetz?

13300 Mr. Gaetz. No.

13301 Ms. Fontenot. Mr. Gaetz votes no.

13302 Mr. Johnson of Louisiana?

13303 Mr. Johnson of Louisiana. No.

13304 Ms. Fontenot. Mr. Johnson of Louisiana votes no.

13305 Mr. Biggs?

13306 Mr. Biggs. No.

13307 Ms. Fontenot. Mr. Biggs votes no.

13308 Mr. McClintock?

13309 Mr. McClintock. No.

13310 Ms. Fontenot. Mr. McClintock votes no.

13311 Mr. Steube?

13312 Mr. Steube. No.

13313 Ms. Fontenot. Mr. Steube votes no.

13314 Mr. Tiffany?

13315 Mr. Tiffany. No.

13316 Ms. Fontenot. Mr. Tiffany votes no.

13317 Mr. Massie?

13318 Mr. Massie. No.

13319 Ms. Fontenot. Mr. Massie votes no.

13320 Mr. Roy?

13321 Mr. Roy. No.

13322 Ms. Fontenot. Mr. Roy votes no.

13323 Mr. Bishop?

13324 Mr. Bishop. No.

13325 Ms. Fontenot. Mr. Bishop votes no.

13326 Mrs. Fischbach?

13327           Mrs. Fischbach.   No.

13328           Ms. Fontenot.   Mrs. Fischbach votes no.

13329           Mrs. Spartz?

13330           Mrs. Spartz.   No.

13331           Ms. Fontenot.   Mrs. Spartz votes no.

13332           Mr. Fitzgerald?

13333           Mr. Fitzgerald.   No.

13334           Ms. Fontenot.   Mr. Fitzgerald votes no.

13335           Mr. Bentz?

13336           Mr. Bentz.   No.

13337           Ms. Fontenot.   Mr. Bentz votes no.

13338           Mr. Owens?

13339           Mr. Owens.   No.

13340           Ms. Fontenot.   Mr. Owens votes no.

13341           Mr. Gohmert.   Mr. Gohmert votes no.

13342           Chairman Nadler.   Mr. Deutch?

13343           Ms. Fontenot.   Mr. Gohmert votes no.

13344           Chairman Nadler.   Mr. Deutch?

13345           Mr. Deutch.   Aye.

13346           Ms. Fontenot.   Mr. Deutch votes aye.

13347           Chairman Nadler.   Are there any other members who wish to

13348           vote who haven't voted?

13349           The clerk will report.

13350           Ms. Fontenot.   Mr. Chairman, there are 23 ayes and 19 noes.

13351 Chairman Nadler. The gentleman's appeal of the chair's  
13352 ruling on the germaneness of the Roy amendment is laid on the  
13353 table.

13354 Are there any further amendments to the amendment in the  
13355 nature of a substitute?

13356 Mr. Tiffany. Mr. Chairman, I have an amendment at the desk.

13357 Chairman Nadler. The clerk will report the amendment.

13358 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

13359 Chairman Nadler. A point of order is reserved.

13360 Ms. Fontenot. Amendment to the amendment in the nature of  
13361 a substitute to H.R. 3826 offered by Mr. Tiffany of Wisconsin.

13362 Beginning on page 4, strike --

13363 [The amendment offered by Mr. Tiffany follows:]

13364

13365 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

13366 Chairman Nadler. Without objection, the amendment -- the  
13367 reading of the amendment is waived, and the gentleman is  
13368 recognized.

13369 Mr. Tiffany. Thank you, Mr. Chairman. What this amendment  
13370 does is a server in China will be required as a covered platform.

13371 Without this amendment, this bill could present a serious threat  
13372 to Americans' privacy and our national security, and we have been  
13373 seeing those threats here, especially over the past decade.

13374 I mean, I think about what happened in Houston last year  
13375 where we had to clear out the Chinese Assembly -- or, excuse me,  
13376 Embassy. And I think about companies like Google and NBC and  
13377 others. I mean, they have given up their info, huge companies  
13378 that have felt so threatened by the Chinese Communist government  
13379 that they just give up their -- some of their information.

13380 We have to prevent Chinese companies, in particular those  
13381 with ties to the Chinese military and intelligence apparatus,  
13382 from acquiring companies that hold Americans' sensitive data.

13383 We should be very concerned with members of the CCP and its  
13384 aggressive military and intelligence services having access to  
13385 Americans' data. More about that in a second. The CCP has  
13386 conducted cyber attacks against the American Government and U.S.  
13387 companies to steal sensitive personal information about  
13388 Americans.

13389 The CCP has breached a large American health insurance

13390 company, a consumer credit reporting agency, the Office of  
13391 Personnel Management, and the list goes on. The CCP has further  
13392 used social media platforms and mobile applications to collect  
13393 information on Americans. Allowing the CCP to acquire American  
13394 companies, and almost certainly Americans' data, would be  
13395 disastrous.

13396 I am going to read something to you that I just received  
13397 tonight, just a couple hours ago. I suspect many of you are  
13398 familiar with Apple Daily, which has been shut down. Here is  
13399 the message that they sent out. Thank you for being a subscriber  
13400 and loyal reader. Tonight at 11:59 p.m. Hong Kong time -- that  
13401 is tonight -- we will cease publication. Good luck, and goodbye.

13402 I mean, think about that. I mean, they just wiped out the  
13403 Apple Daily, one of the best publications that talked about the  
13404 news coming out of Hong Kong, China, Southeast Asia. They are  
13405 gone. That is the kind of threat that the Chinese Communist  
13406 government holds over all of the world, including the United  
13407 States.

13408 So I urge all of you to vote for this amendment. If you  
13409 want to make sure and protect Americans' data, America's security,  
13410 we need to adopt this amendment, and I sure hope that you will  
13411 do that.

13412 I have got a couple of minutes here yet, Mr. Chairman. I  
13413 want to comment on one thing that I heard a little bit earlier



13414 from the gentlewoman from Texas. And she was talking about  
13415 consolidation, and she specifically mentioned the banking  
13416 industry.

13417 And she was also quoted during her remarks, which she is  
13418 absolutely correct, innovation is important. But she commented  
13419 about the integration of the banking company or the banking  
13420 industry where we are seeing fewer banks as a result of  
13421 acquisitions.

13422 And I have got to tell you, the point that she was making  
13423 actually is a point in regards to the bills that we are hearing  
13424 tonight, that you probably shouldn't support them, because do  
13425 you know what precipitated this? It was Dodd-Frank. It was  
13426 Dodd-Frank over a decade ago.

13427 All you have to do, and I have done it in our State of  
13428 Wisconsin, is look at when the Dodd-Frank law was passed, we  
13429 stopped having new community banks that were formed. I wish I  
13430 had the data before me, but I would be happy to get it for anybody  
13431 that is interested in it. New entrants into the banking industry  
13432 virtually stopped with Dodd-Frank.

13433 And I understand it was a well-intentioned piece of  
13434 legislation, but let's look at the results that happened. Is  
13435 the same thing going to happen here? If this stuff passes, it  
13436 is very possible. I mean, that to me was really a warning sign  
13437 by citing the banking industry. And even the oil industry is

13438 true of that, where we have seen real integration of the oil  
13439 industry and not having as many new startups. And a lot of that  
13440 is because of so much regulation.

13441 I believe in regulation, but it needs to be done in an  
13442 appropriate sense. This is really giving me even more pause about  
13443 what we are hearing tonight.

13444 But, anyhow, to the amendment, in regards to servers in  
13445 China, I believe there should be a covered platform, and I hope  
13446 you will support this amendment.

13447 I yield back.

13448 Chairman Nadler. The gentleman yields back.

13449 Mr. Cicilline. Mr. Chairman?

13450 Chairman Nadler. Who seeks recognition?

13451 Ms. Lofgren. Mr. Chairman?

13452 Chairman Nadler. The gentlelady from -- for what purpose  
13453 does the gentlelady from California --

13454 Ms. Lofgren. To strike the last word.

13455 Chairman Nadler. The gentlelady is recognized.

13456 Mr. Cicilline. Mr. Chairman, point of order. I believe  
13457 I have reserved a point of order.

13458 Ms. Lofgren. I am sorry.

13459 Chairman Nadler. Oh, yes.

13460 Mr. Cicilline. Mr. Chairman, I would like to press my point  
13461 of order. I think the amendment clearly expands the scope of

13462 the bill. Currently, we have a very well-crafted definition.  
13463 It has to meet three requirements -- market capitalization,  
13464 monthly users, and be a critical trading partner. This  
13465 eliminates two of those, simply has the \$600 million market cap  
13466 and then expands it to service in China.

13467 So you have expanded it essentially outside the borders of  
13468 the United States, and you have removed the other two requirements  
13469 for all businesses over \$600 million. So it is significantly  
13470 expanding the reach of the covered platforms and actually doing  
13471 it outside the United States. So I don't think it is germane.

13472 Chairman Nadler. Does the gentleman wish to be heard on  
13473 the point of order?

13474 Mr. Tiffany. Yes. May I comment, Mr. Chairman? So, as  
13475 I am looking at the bill in regards to implementation, covered  
13476 platform designation, Federal Trade Commission, or Department  
13477 of Justice shall designate whether an entity is a covered  
13478 platform. I mean, isn't this similar to what we did with the  
13479 \$50 million? Isn't that similar to that amendment?

13480 So I think that there is a place within this bill to be able  
13481 to insert this. And even more importantly, in regards to -- I  
13482 think our national security is always important, regardless of  
13483 what we are doing. So I think we have the place to insert that  
13484 here in this bill, especially in light of the amendment that we  
13485 just heard.

13486 Mr. Cicilline. Mr. Tiffany, will you yield?

13487 Mr. Tiffany. Yes, I will yield.

13488 Mr. Cicilline. I think the difference in the Ross  
13489 amendment, that narrowed the scope of the bill. This expands  
13490 it, so it is exactly the opposite.

13491 Mr. Issa. Would the gentleman yield?

13492 Mr. Tiffany. Yes.

13493 Mr. Issa. Briefly.

13494 Mr. Tiffany. I will yield to the gentleman.

13495 Mr. Issa. I have never heard that expanding the scope within  
13496 our jurisdiction, within a section, is a germaneness question.  
13497 The fact is that defining "covered," you are simply adding  
13498 additional -- define "covered," there is nothing inconsistent  
13499 with that under our jurisdiction.

13500 It can't possibly fall outside of our jurisdiction or the  
13501 intent of the bill, which is to define a covered platform. And  
13502 as the gentleman said, we are adding and subtracting covered  
13503 platform all the time.

13504 Chairman Nadler. The chair is prepared to rule on the point  
13505 of order. Under House precedents, an amendment to a definition  
13506 is generally in order. And, therefore, the appeal of the  
13507 amendment is in order.

13508 Mr. Issa. Thank you, Mr. Chairman.

13509 Mr. Tiffany. I mean, I think we have stated the case here,

13510 whether an entity is a covered platform. I mean, that is what  
13511 -- that is where this fits in is it is under a covered platform.  
13512 And it is just so important. It is so important to put this  
13513 in with what we have seen from the Communist Chinese government.

13514

13515 With what they are doing in our country, whether it is in  
13516 our universities, whether it is in -- like in Houston, Texas,  
13517 with our Embassy, we have to make sure that we protect Americans'  
13518 information. We have been talking about that all tonight, is  
13519 that we want to make sure we protect Americans' data, and this  
13520 will accomplish that.

13521 Ms. Lofgren. Would the gentleman yield?

13522 Mr. Tiffany. I will yield to you, yes.

13523 Ms. Lofgren. First, a concern. I don't want to reaffirm  
13524 the market capitalization amount that I object to, number 1.  
13525 But, number 2, a question on the servers located in China to host  
13526 the platforms. There are platforms where the data travels  
13527 through servers in China, even though they are not hosted in China.

13528 And I am aware of some companies who have managed to do that  
13529 successfully through encryption, so that the Chinese government  
13530 is unaware of the data flow or the content of the data flow.

13531 What you are trying to accomplish I agree with, but I am  
13532 wondering as to the scope and whether it would include data flows  
13533 that are encrypted through networks that are really not hosted.

13534 Mr. Tiffany. Yeah. Ma'am, if it is traveling through  
13535 China, then I believe it should be regulated under what is being  
13536 proposed in this bill.

13537 Ms. Lofgren. Okay. Thank you for answering that question.

13538 Mr. Tiffany. And, Mr. Chairman, I yield back.

13539 Chairman Nadler. The gentleman yields back.

13540 Who seeks recognition? For what purpose does Mr. Chabot  
13541 seek recognition?

13542 Mr. Chabot. Move to strike the last word.

13543 Chairman Nadler. The gentleman is recognized.

13544 Mr. Chabot. Thank you. I will be brief. I would comment  
13545 I think it is an excellent amendment. I appreciate the gentleman  
13546 offering it. I would hope that this would get bipartisan support.

13547 We all know that the Chinese Communist Party is trying to  
13548 obtain as much personal information on all of us, as well as every  
13549 citizen of this Nation. This is a national security issue. I  
13550 would hope, if you care about national security on either side,  
13551 I think you would support this amendment. It is a great  
13552 amendment, and you certainly have my support, and I yield back.

13553 Chairman Nadler. The gentleman yields back.

13554 For what purpose does the gentleman from Rhode Island seek  
13555 recognition?

13556 Mr. Cicilline. I move to strike the last word, Mr. Chairman.

13557 Chairman Nadler. The gentleman is recognized.

13558           Mr. Cicilline. Mr. Chairman, again, I rise to urge my  
13559           colleagues to vote against this amendment. The legislation  
13560           before us has provided a definition for covered platforms that  
13561           identifies three factors. That is, the market capitalization;  
13562           does the online platform have at least 50 million U.S.-based  
13563           monthly active users? And is the platform a critical trading  
13564           partner as defined in the statute?

13565           This takes away two of those, and this definition was  
13566           developed as a result of the market dominance, the extraordinary  
13567           market dominance of the largest technology platforms in the United  
13568           States, for a reason -- because of the market power they had and  
13569           to shift the burden as to acquisitions by designated platforms  
13570           that have that kind of dominance.

13571           So it has removed two of the tests to determine whether or  
13572           not it is a covered platform, and then says either \$600 million  
13573           or has servers in China. The purpose of the underlying bill is  
13574           to promote competition in the United States, to create jobs, to  
13575           foster innovation. That is why the definition was developed that  
13576           was included in the bill and amended by Ms. Ross' amendment.

13577           This does not achieve that objective by taking away two  
13578           factors and expanding it to all platforms with a value over \$600  
13579           million or that have servers in China. It just -- it doesn't  
13580           achieve the objective of the underlying bill. This was a  
13581           definition that is aligned in all of the legislation that we are

13582 considering tonight.

13583 And, again, I urge the committee to reject this amendment  
13584 and stick with the covered platform definition as that is the  
13585 one that is really going to promote American innovation, job  
13586 creation, competition, all of the things that we know are  
13587 important for a strong economy.

13588 And with that, I yield back.

13589 Chairman Nadler. The gentleman yields back.

13590 For what purpose does Mr. Gohmert seek recognition.

13591 Mr. Gohmert. Move to strike the last word.

13592 Chairman Nadler. The gentleman is recognized.

13593 Mr. Gohmert. And I would like to yield at this early time  
13594 of the hearing to my good friend from Wisconsin, Mr. Tiffany.

13595 Chairman Nadler. I hope the gentleman is being sarcastic  
13596 when he says "early time."

13597 A Participant. It is early in the morning.

13598 Mr. Gohmert. Perhaps I was. Oh, yeah, it is early, 1:00  
13599 a.m.

13600 Mr. Tiffany?

13601 Mr. Tiffany. Thank you, Mr. Gohmert, and I know you are  
13602 not sarcastic in situations like this.

13603 So I think the point was made by the gentleman from Rhode  
13604 Island in regards to market dominance. I mean, think about it.

13605 The Chinese Community Party versus Google? Google has knuckled



13606 under. Google has knuckled under in the past. Who do you think  
13607 is more powerful?

13608 I mean, we have seen it. It is the Chinese Communist Party,  
13609 and they have done it in a whole variety of ways, including to  
13610 the biggest of the big tech companies to Google. And what can  
13611 be more important, though, than American security, than our  
13612 national security? Nothing is more important than that when we  
13613 are discussing this.

13614 I think this is clearly germane, and I think this is one  
13615 of the -- there has been many good amendments here tonight, but  
13616 I think this is so important to adopt this amendment. If you  
13617 believe that Americans' security of their data is important, if  
13618 you think America's national security is important, you have got  
13619 to vote for this amendment.

13620 Thank you for the time, Mr. Gohmert.

13621 Mr. Gohmert. The point is very well made. The actual  
13622 language or that uses servers located in China to host the  
13623 platform, that is just common sense, and I hope that we can have  
13624 a bipartisan vote to affirm that. That ought to be in there.

13625 It ought to be there to protect the United States and our --  
13626 as my friend from California across the aisle had pointed out  
13627 earlier, we know that high-tech companies have already provided  
13628 private information to China.

13629 So I applaud the gentleman for bringing this amendment, and

13630 I would encourage everyone to support it.

13631 Thank you. I yield back.

13632 Chairman Nadler. The gentleman yields back.

13633 Does Mr. Issa -- for what purpose does Mr. Issa seek  
13634 recognition?

13635 Mr. Issa. Mr. Chairman, I want to strike the last word.

13636 Chairman Nadler. The gentleman is recognized.

13637 Mr. Issa. Thank you, Mr. Chairman. I appreciate the  
13638 gentleman from Rhode Island wanting to maintain the four companies  
13639 that he has tried and convicted and now wants to have this bill  
13640 go after.

13641 And I say it at this early hour because it is becoming more  
13642 and more obvious that any amendment that would possibly include  
13643 even one more company would break up this perfect Henry VIII sort  
13644 of a system where we found four companies, and only four companies,  
13645 and we are going to hang those four companies with these rules.

13646 And I find it more and more transparent that the idea that  
13647 you would have let's just say Ali Baba or somebody like that get  
13648 covered by this just is unacceptable. And I find it amazing that  
13649 we can't find any possibility that some other company might have  
13650 to meet this test. Just four companies -- four companies, and  
13651 four companies that each came to market dominance in a different  
13652 way.

13653 And I am old enough to remember that Apple had to get a bailout

13654 from Microsoft because it was on the skids and just about out  
13655 of business, you know, having stammered and stuttered a little  
13656 bit. They had been a good leader early on, and they fell apart.

13657 Yes, they are back on the top today, but they are still  
13658 actually quite a narrow company, and I find it amazing that we  
13659 are going after Apple, which does have about half the world's  
13660 smartphones, but of course it also did invent the smartphone,  
13661 innovate it.

13662 The late Steve Jobs bet the company, first on the Mac --  
13663 well, first on the Apple, but then on the Mac, having failed with  
13664 the Lisa and his other earlier ones. He bet the company. Then,  
13665 when his successor screwed it up, he came back and he fixed it,  
13666 but he reinvented whole new categories. He didn't buy somebody's  
13667 company and bury some technology nearly as much as he hit home  
13668 runs by creating some amazing products.

13669 And for the most part, today that \$2 trillion company is  
13670 for the most part those exact products that the late Steve Jobs  
13671 left the company. I don't know whether Tim Cook is going to build  
13672 successfully or not. What I do know is that as we are vilifying  
13673 Facebook and Amazon and Google, we have also thrown a company  
13674 in that doesn't even fit the rest of the model.

13675 And I guess we are upset because of something, because if  
13676 we held up the phones, there is probably four people in this room  
13677 that have a phone other than an Apple. So we are going to be

13678 upset that we have got this product because somehow the product  
13679 that has reinvented how we do business must have ruined our lives  
13680 and ruined everything else.

13681 Well, I, for one, think that including and expanding is the  
13682 only way to save any legitimacy to what we are doing. And if  
13683 we don't, and I caution, if you don't, I suspect that the court  
13684 will strike down this legislation if it ever becomes law, because  
13685 it is transparently this evening become nothing but an attack  
13686 on four companies that have been tried and convicted by a  
13687 subcommittee.

13688 And I know that there is a lot of good merit, and a lot of  
13689 things that were done wrong, and we have all seen things that  
13690 we would like to see changed, but I don't believe for a moment  
13691 that when you resist any expansion to any other company that it  
13692 is anything but trying and convicting four companies.

13693 I am not prepared to do that tonight, and I don't think I  
13694 will be prepared to do it in the weeks to come. And I thank the  
13695 chairman, and I yield back.

13696 Chairman Nadler. The gentleman yields back.

13697 Who seeks recognition? Mr. Roy? For what purpose does Mr.  
13698 Roy seek recognition?

13699 Mr. Roy. To strike the last word.

13700 Chairman Nadler. The gentleman is recognized.

13701 Mr. Roy. I just want to thank the gentleman from Wisconsin

13702 for offering this amendment. I think it is a good amendment.

13703 I think if the purpose of these bills is to target and reduce  
13704 the power of certain bad actors, why not the Chi-coms? I mean,  
13705 that is -- I just don't get it.

13706 We all get that the harm that they are perpetrating and the  
13707 danger that they pose to the United States, not just from a  
13708 national security standpoint, but generally speaking with respect  
13709 to impact on our markets and what they do in terms of their own  
13710 anti-competitive behavior, in terms of what they do with respect  
13711 to stealing intellectual property, with respect to espionage.

13712 It sure seems like this is a well-thought-out and good  
13713 amendment, and I support it.

13714 I yield back.

13715 Chairman Nadler. The gentleman yields back. The question  
13716 occurs on the amendment.

13717 All in favor, say aye.

13718 Opposed, nay.

13719 In the opinion of the chair, the nays have it.

13720 A recorded vote is requested. The clerk will call the roll.

13721 Ms. Fontenot. Mr. Nadler?

13722 Chairman Nadler. No.

13723 Ms. Fontenot. Mr. Nadler votes no.

13724 Ms. Lofgren?

13725 Ms. Lofgren. No.

13726 Ms. Fontenot. Ms. Lofgren votes no.

13727 Ms. Jackson Lee?

13728 Ms. Jackson Lee. No.

13729 Ms. Fontenot. Ms. Jackson Lee votes no.

13730 Mr. Cohen? Mr. Cohen?

13731 Mr. Cohen. Aye. Or no. Better yet, no. No.

13732 Ms. Fontenot. Mr. Cohen votes no.

13733 Mr. Johnson of Georgia?

13734 Mr. Johnson of Georgia. Johnson votes no.

13735 Ms. Fontenot. Mr. Johnson of Georgia votes no.

13736 Mr. Deutch?

13737 Mr. Deutch. No.

13738 Ms. Fontenot. Mr. Deutch votes no.

13739 Ms. Bass?

13740 Ms. Bass. No.

13741 Ms. Fontenot. Ms. Bass votes no.

13742 Mr. Jeffries?

13743 Mr. Jeffries. No.

13744 Ms. Fontenot. Mr. Jeffries votes no.

13745 Mr. Cicilline?

13746 Mr. Cicilline. No.

13747 Ms. Fontenot. Mr. Cicilline votes no.

13748 Mr. Swalwell?

13749 Mr. Swalwell. No.

13750 Ms. Fontenot. Mr. Swalwell votes no.  
13751 Mr. Lieu?  
13752 Mr. Lieu. Nyet. No.  
13753 Ms. Fontenot. Mr. Lieu votes no.  
13754 Mr. Raskin?  
13755 Mr. Raskin. No.  
13756 Ms. Fontenot. Mr. Raskin votes no.  
13757 Ms. Jayapal?  
13758 Ms. Jayapal. No.  
13759 Ms. Fontenot. Ms. Jayapal votes no.  
13760 Mrs. Demings?  
13761 Mrs. Demings. No.  
13762 Ms. Fontenot. Mrs. Demings votes no.  
13763 Mr. Correa?  
13764 Mr. Correa. No.  
13765 Ms. Fontenot. Mr. Correa votes no.  
13766 Ms. Scanlon?  
13767 Ms. Scanlon. No.  
13768 Ms. Fontenot. Ms. Scanlon votes no.  
13769 Ms. Garcia?  
13770 Ms. Garcia. No.  
13771 Ms. Fontenot. Ms. Garcia votes no.  
13772 Mr. Neguse?  
13773 [No response.]

13774 Mrs. McBath?

13775 Mrs. McBath. No.

13776 Ms. Fontenot. Mrs. McBath votes no.

13777 Mr. Stanton?

13778 Mr. Stanton. No.

13779 Ms. Fontenot. Mr. Stanton votes no.

13780 Ms. Dean?

13781 Ms. Dean. No.

13782 Ms. Fontenot. Ms. Dean votes no.

13783 Ms. Escobar?

13784 Ms. Escobar. No.

13785 Ms. Fontenot. Ms. Escobar votes no.

13786 Mr. Jones?

13787 Mr. Jones. No.

13788 Ms. Fontenot. Mr. Jones votes no.

13789 Ms. Ross?

13790 Ms. Ross. Ross votes no.

13791 Ms. Fontenot. Ms. Ross votes no.

13792 Ms. Bush?

13793 Ms. Bush. No.

13794 Ms. Fontenot. Ms. Bush votes no.

13795 Mr. Jordan?

13796 Mr. Jordan. Yes.

13797 Ms. Fontenot. Mr. Jordan votes yes.



13798 Mr. Chabot?

13799 Mr. Chabot. Aye.

13800 Ms. Fontenot. Mr. Chabot votes aye.

13801 Mr. Gohmert?

13802 Mr. Gohmert. Aye.

13803 Ms. Fontenot. Mr. Gohmert votes aye.

13804 Mr. Issa?

13805 Mr. Issa. Yes.

13806 Ms. Fontenot. Mr. Issa votes yes.

13807 Mr. Buck?

13808 Mr. Buck. Aye.

13809 Ms. Fontenot. Mr. Buck votes aye.

13810 Mr. Gaetz?

13811 Mr. Gaetz. Aye.

13812 Ms. Fontenot. Mr. Gaetz votes aye.

13813 Mr. Johnson of Louisiana?

13814 Mr. Johnson of Louisiana. Aye.

13815 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

13816 Mr. Biggs?

13817 Mr. Biggs. Aye.

13818 Ms. Fontenot. Mr. Biggs votes aye.

13819 Mr. McClintock?

13820 Mr. McClintock. Aye.

13821 Ms. Fontenot. Mr. McClintock votes aye.

13822 Mr. Steube?

13823 Mr. Steube. Yes.

13824 Ms. Fontenot. Mr. Steube votes yes.

13825 Mr. Tiffany?

13826 Mr. Tiffany. Aye.

13827 Ms. Fontenot. Mr. Tiffany votes aye.

13828 Mr. Massie?

13829 Mr. Massie. Aye.

13830 Ms. Fontenot. Mr. Massie votes aye.

13831 Mr. Roy?

13832 Mr. Roy. Aye.

13833 Ms. Fontenot. Mr. Roy votes aye.

13834 Mr. Bishop?

13835 Mr. Bishop. Yes.

13836 Ms. Fontenot. Mr. Bishop votes yes.

13837 Mrs. Fischbach?

13838 Mrs. Fischbach. Yes.

13839 Ms. Fontenot. Mrs. Fischbach votes yes.

13840 Mrs. Spartz?

13841 Mrs. Spartz. Yes.

13842 Ms. Fontenot. Mrs. Spartz votes yes.

13843 Mr. Fitzgerald?

13844 Mr. Fitzgerald. Aye.

13845 Ms. Fontenot. Mr. Fitzgerald votes aye.

13846 Mr. Bentz?

13847 Mr. Bentz. Yes.

13848 Ms. Fontenot. Mr. Bentz votes yes.

13849 Mr. Owens?

13850 Mr. Owens. Yes.

13851 Ms. Fontenot. Mr. Owens votes yes.

13852 Chairman Nadler. Are there any other members who wish to  
13853 be recorded who have not been recorded?

13854 The clerk will report.

13855 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 24 noes.

13856 Chairman Nadler. The amendment is not agreed to. Are there  
13857 any other amendments to the amendment in the nature of a  
13858 substitute?

13859 Mr. Issa. Mr. Chairman, I have an amendment.

13860 Chairman Nadler. For what purpose does Mr. Issa seek  
13861 recognition?

13862 Mr. Issa. I have an amendment at the desk.

13863 Chairman Nadler. The clerk will report the amendment.

13864 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

13865 Chairman Nadler. A point of order is reserved.

13866 Ms. Fontenot. Amendment to the amendment in the nature of  
13867 a substitute to H.R. 3826 offered by Mr. Issa of California.  
13868 Page 3, line 8, insert intellectual property, nothing in this  
13869 Act shall be constructed to limit a covered platform from

13870 acquiring or licensing patents, trademarks, or other intellectual  
13871 property.

13872 [The amendment offered by Mr. Issa follows:]

13873

13874 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

13875 Chairman Nadler. The gentleman is recognized to explain  
13876 his amendment.

13877 Mr. Issa. Thank you, Mr. Chairman. As you can imagine,  
13878 companies are constantly being threatened with a violation or  
13879 infringement of intellectual property, particularly patents, but  
13880 patents, trademarks, and copyrights, and the like.

13881 Companies often have no choice but to take licenses. Those  
13882 licenses can be very expensive. They are not mergers in the sense  
13883 of an acquisition of a business, but they may represent a  
13884 substantial amount of money. Clearly, like the \$50 million  
13885 carveout, this is a carveout of a type of purchase.

13886 Having been in the world of technology, I have both licensed  
13887 others and taken licenses. They are not something that you  
13888 necessarily do. They are not anti-competitive. And yet they  
13889 could not meet the test for these covered platforms.

13890 So for these covered platforms, it is clear that this sort  
13891 of a carveout would at least make it clear that these kinds of  
13892 acquisitions do not have to stand a test that might be impossible  
13893 to test. Giving, let's just say, Microsoft a license versus a  
13894 company that they couldn't meet the test of buying could well  
13895 be the only way for Microsoft to continue doing existing business  
13896 or to follow a normal train of development.

13897 These companies often -- I will give you the example, if  
13898 you wanted to produce -- we all remember the DVD -- there was

13899 a packet of literally dozens and dozens of various optical and  
13900 other technologies owned by multiple companies. The only way  
13901 you could produce a DVD was to buy or license the entire packet.

13902 It wasn't cheap. It happened to be sold on a per piece basis,  
13903 but some are sold in lump and some are sold per piece. So can't  
13904 predict what those would cost. It might be a few million dollars,  
13905 but it might be a few billion dollars.

13906 As we know, for example, I believe it was Intel just lost  
13907 a patent suit against a non-practicing patent holder. And I  
13908 believe the award was more than \$1.2 billion. If one of these  
13909 covered companies finds itself in that situation, they could find  
13910 themselves between a rock and a hard spot.

13911 So that is why this very narrow carveout, similar to the  
13912 50 million, was designed to recognize that we are talking about  
13913 acquisitions of full companies and not the often-necessary  
13914 acquisition of intellectual property.

13915 And with that, I would yield to my friend, Ms. Lofgren.

13916 Ms. Lofgren. Thank you for yielding. I will be honest,  
13917 I hadn't actually thought of this before --

13918 Mr. Issa. And neither had I.

13919 Ms. Lofgren. -- your amendment, and I think it is a good  
13920 amendment, but it also shows the problem with the underlying bill,  
13921 which is you don't have to engage or even be alleging to engage  
13922 in anti-competitive practice. And that is the whole point of

13923 what we are trying to do here.

13924 I think, unfortunately, because of the underlying bill, your  
13925 amendment is likely necessary, and I would support it. I mean,  
13926 if you can't do this, you are going to end up with other problems.

13927 But I think this is just another example of why going back to  
13928 standards of competitiveness would be -- we would be on much firmer  
13929 ground.

13930 And I do think that the standard in law today is too low  
13931 and needs to be adjusted and needs to be -- and the burden needs  
13932 to shift. I don't disagree with that, but it should be about  
13933 competition.

13934 And I thank the gentleman for yielding.

13935 Mr. Issa. I thank the gentlelady.

13936 And with that, do you want your own time, or do you want  
13937 to use mine?

13938 Mr. Cicilline. I would like my own.

13939 Mr. Issa. Then I would yield back.

13940 Mr. Cicilline. Thank you.

13941 Chairman Nadler. The gentleman yields back.

13942 Does the gentleman from Rhode Island insist on his point  
13943 of order?

13944 Mr. Cicilline. No.

13945 Chairman Nadler. The point of order is withdrawn.

13946 Mr. Cicilline. Thank you. Mr. Chairman, I seek

13947 recognition in opposition to the amendment.

13948 Chairman Nadler. For what purpose does the gentleman from  
13949 Rhode Island seek --

13950 Mr. Cicilline. I move to strike the last word.

13951 Chairman Nadler. The gentleman is recognized.

13952 Mr. Cicilline. I would just say very briefly that I believe  
13953 this is an inappropriate carveout. Just as an example, Google  
13954 acquired Motorola for billions of dollars solely for its patents.

13955 And the test should be if it expands their market power, there  
13956 is no reason to treat this kind of acquisition differently from  
13957 any other kind of acquisition.

13958 And so I urge you to vote no on this amendment. It is an  
13959 inappropriate carveout. And I yield back.

13960 Chairman Nadler. The gentleman yields back.

13961 Does anyone else seek recognition on this amendment? If  
13962 not, the question occurs on the amendment.

13963 All those in favor, say aye.

13964 Opposed, no.

13965 In the opinion of the chair, the noes have it.

13966 Mr. Issa. Mr. Chairman, could we possibly verify that with  
13967 a recorded vote?

13968 Chairman Nadler. You certainly can. The clerk will call  
13969 the roll.

13970 Ms. Fontenot. Mr. Nadler?



13971 Chairman Nadler. No.

13972 Ms. Fontenot. Mr. Nadler votes no.

13973 Ms. Lofgren?

13974 Ms. Lofgren. Yes.

13975 Ms. Fontenot. Ms. Lofgren votes yes.

13976 Ms. Jackson Lee?

13977 [No response.]

13978 Mr. Cohen?

13979 [No response.]

13980 Mr. Johnson of Georgia?

13981 Mr. Johnson of Georgia. No.

13982 Ms. Fontenot. Mr. Johnson of Georgia votes no.

13983 Mr. Deutch?

13984 Mr. Deutch. No.

13985 Ms. Fontenot. Mr. Deutch votes no.

13986 Ms. Bass?

13987 Ms. Bass. No.

13988 Ms. Fontenot. Ms. Bass votes no.

13989 Mr. Jeffries?

13990 Mr. Jeffries. No.

13991 Ms. Fontenot. Mr. Jeffries votes no.

13992 Mr. Cicilline?

13993 Mr. Cicilline. No.

13994 Ms. Fontenot. Mr. Cicilline votes no.

13995 Mr. Swalwell?

13996 Mr. Swalwell. No.

13997 Ms. Fontenot. Mr. Swalwell votes no.

13998 Mr. Lieu?

13999 Mr. Lieu. No.

14000 Ms. Fontenot. Mr. Lieu votes no.

14001 Mr. Raskin?

14002 Mr. Raskin. No.

14003 Ms. Fontenot. Mr. Raskin votes no.

14004 Ms. Jayapal?

14005 Ms. Jayapal. No.

14006 Ms. Fontenot. Ms. Jayapal votes no.

14007 Mrs. Demings?

14008 Mrs. Demings. No.

14009 Ms. Fontenot. Mrs. Demings votes no.

14010 Mr. Correa?

14011 Mr. Correa. No.

14012 Ms. Fontenot. Mr. Correa votes no.

14013 Ms. Scanlon?

14014 Ms. Scanlon. No.

14015 Ms. Fontenot. Ms. Scanlon votes no.

14016 Ms. Garcia?

14017 Ms. Garcia. No.

14018 Ms. Fontenot. Ms. Garcia votes no.

14019 Mr. Neguse?

14020 [No response.]

14021 Mrs. McBath?

14022 Mrs. McBath. No.

14023 Ms. Fontenot. Mrs. McBath votes no.

14024 Mr. Stanton?

14025 Mr. Stanton. Aye.

14026 Ms. Fontenot. Mr. Stanton, you will have to turn your camera

14027 on to be recorded.

14028 Mr. Stanton. Aye.

14029 Ms. Fontenot. Mr. Stanton votes aye.

14030 Ms. Dean?

14031 Ms. Dean. No.

14032 Ms. Fontenot. Ms. Dean votes no.

14033 Ms. Escobar?

14034 Ms. Escobar. No.

14035 Ms. Fontenot. Ms. Escobar votes no.

14036 Mr. Jones?

14037 Mr. Jones. No.

14038 Ms. Fontenot. Mr. Jones votes no.

14039 Ms. Ross?

14040 Ms. Ross. Ross votes no.

14041 Ms. Fontenot. Ms. Ross votes no.

14042 Ms. Bush?

14043           Ms. Bush.   No.

14044           Ms. Fontenot.   Ms. Bush votes no.

14045           Mr. Jordan?

14046           Mr. Jordan.   Yes.

14047           Ms. Fontenot.   Mr. Jordan votes yes.

14048           Mr. Chabot?

14049           Mr. Chabot.   Aye.

14050           Ms. Fontenot.   Mr. Chabot votes aye.

14051           Mr. Gohmert?

14052           Mr. Gohmert.   Aye.

14053           Ms. Fontenot.   Mr. Gohmert votes aye.

14054           Mr. Issa?

14055           Mr. Issa.    Aye.

14056           Ms. Fontenot.   Mr. Issa votes aye.

14057           Mr. Buck?

14058           Mr. Buck.    No.

14059           Ms. Fontenot.   Mr. Buck votes no.

14060           Mr. Gaetz?

14061           Mr. Gaetz.    No.

14062           Ms. Fontenot.   Mr. Gaetz votes no.

14063           Mr. Johnson of Louisiana?

14064           Mr. Johnson of Louisiana.   Aye.

14065           Ms. Fontenot.   Mr. Johnson of Louisiana votes aye.

14066           Mr. Biggs?

14067           Mr. Biggs.   Aye.

14068           Ms. Fontenot.   Mr. Biggs votes aye.

14069           Mr. McClintock?

14070           Mr. McClintock.   Aye.

14071           Ms. Fontenot.   Mr. McClintock votes aye.

14072           Mr. Steube?

14073           Mr. Steube.   Yes.

14074           Ms. Fontenot.   Mr. Steube votes yes.

14075           Mr. Tiffany?

14076           Mr. Tiffany.   Aye.

14077           Ms. Fontenot.   Mr. Tiffany votes aye.

14078           Mr. Massie?

14079           Mr. Massie.   Aye.

14080           Ms. Fontenot.   Mr. Massie votes aye.

14081           Mr. Roy?

14082           Mr. Roy.   Aye.

14083           Ms. Fontenot.   Mr. Roy votes aye.

14084           Mr. Bishop?

14085           Mr. Bishop.   Yes.

14086           Ms. Fontenot.   Mr. Bishop votes yes.

14087           Mrs. Fischbach?

14088           Mrs. Fischbach.   Yes.

14089           Ms. Fontenot.   Mrs. Fischbach votes yes.

14090           Mrs. Spartz?

14091           Mrs. Spartz. No.

14092           Ms. Fontenot. Mrs. Spartz votes no.

14093           Mr. Fitzgerald?

14094           Mr. Fitzgerald. Aye.

14095           Ms. Fontenot. Mr. Fitzgerald votes aye.

14096           Mr. Bentz?

14097           Mr. Bentz. Yes.

14098           Ms. Fontenot. Mr. Bentz votes yes.

14099           Mr. Owens?

14100           Mr. Owens. No.

14101           Ms. Fontenot. Mr. Owens votes no.

14102           Ms. Jackson Lee. How am I recorded?

14103           Ms. Fontenot. Ms. Jackson Lee, you are not recorded.

14104           Ms. Jackson Lee. No.

14105           Ms. Fontenot. Ms. Jackson Lee votes no.

14106           Chairman Nadler. Has everyone who wishes to vote -- wishes

14107           to be recorded been recorded?

14108           The clerk will report.

14109           Ms. Fontenot. Mr. Chairman, there are 17 ayes and 25 noes.

14110           Chairman Nadler. The amendment is not agreed to. Are there

14111           any other amendments to the amendment in the nature of a

14112           substitute?

14113           Mr. Issa. As a matter of fact, Mr. Chairman, I have one

14114           at the desk.

14115 Chairman Nadler. The clerk will report the amendment.  
14116 Mr. Cicilline. Mr. Chairman, I reserve a point of order.  
14117 Chairman Nadler. A point of order is reserved.  
14118 Ms. Fontenot. Amendment to the amendment in the nature of  
14119 a substitute to H.R. 3826 offered by Mr. Issa of California.  
14120 Page 3, line 8, insert bankruptcy proceedings. Nothing in this  
14121 Act shall be construed --  
14122 [The amendment offered by Mr. Issa follows:]  
14123  
14124 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

14125 Chairman Nadler. Without objection, the amendment is  
14126 considered as read, and the gentleman is recognized to explain  
14127 his amendment.

14128 Mr. Issa. Thank you, Mr. Chairman. And I will finish the  
14129 reading for clarity. Bankruptcy proceedings. Nothing in the  
14130 Act shall be construed to prevent a covered platform from  
14131 acquiring assets or businesses from a bankruptcy proceeding.  
14132 And it means just what it says, Mr. Chairman.

14133 Bankruptcy is a shifting of a great many priorities. And,  
14134 in short, if a company goes into bankruptcy, a bankruptcy judge  
14135 is overseeing and attempting to get the highest and best value  
14136 for the creditors. In that situation, a great many other items,  
14137 including whether their data is being gathered, and the like,  
14138 the balance really comes down to you want to make sure you have  
14139 the highest bidder.

14140 Bankruptcy is not something people enter into lightly, but  
14141 it happens, and it happens very often. So to not have these four  
14142 large companies, along with Berkshire Hathaway and plenty of other  
14143 companies, able to bid for a company and bid quickly, what you  
14144 have in this situation under the underlying bill is you have a  
14145 great deal of delay and uncertainty that would make it impossible  
14146 for these four companies to bid in bankruptcy in an effective  
14147 way for all or part of a company, any of its portfolio, and the  
14148 like.



14149           You have to be able to go to the bankruptcy court and go  
14150 with their timelines, go with their requirements, and you have  
14151 to make a commitment, which you cannot say I am making the  
14152 commitment, but mine is subject to a 120-day delay. It is subject  
14153 to interference with others and perhaps an adjudication that you  
14154 don't know how it is going to go.

14155           So in the situation in which the federal court is already  
14156 involved, and they are making a decision on behalf of an entity,  
14157 that entity could be large or small, but these four companies  
14158 clearly should be able to represent the highest and the best value  
14159 for the creditors. And that is the reason that I think it is  
14160 a narrow carveout, and it is, quite frankly, simply one that I  
14161 think was unforeseen by the authors, that in addition to others  
14162 you might have this occur.

14163           But in the real business world, this occurs all the time.  
14164           And in technology it occurs a lot more often than people might  
14165 think, and you have to be able to bid and bid without asking the  
14166 FTC in advance of a deal that you don't have.

14167           So that is the reason that I thought that this narrow one  
14168 would probably slip past the objections of some, and I think it  
14169 will, because I believe that it won't happen that often. But  
14170 when it does happen, we want to make sure that the creditors and  
14171 the employees, and so on, get the best synergy and the highest  
14172 value, and that would include all bidders at the table.

14173 And with that, I thank the chairman, and I will yield back.

14174 Chairman Nadler. The gentleman yields back.

14175 Does the gentleman from Rhode Island insist on his point  
14176 of order?

14177 Mr. Cicilline. I withdraw my point of order, but I seek  
14178 recognition in opposition.

14179 Chairman Nadler. The point of order is withdrawn. The  
14180 gentleman is recognized.

14181 Mr. Cicilline. I would just say, once again, I don't think  
14182 this is an appropriate carveout. The value -- the asset value  
14183 of a company in bankruptcy can still be very substantial. It  
14184 only has to be that their liabilities exceed the value of their  
14185 assets.

14186 Radio Shack is one that comes to mind had very, very valuable  
14187 patents. There is no reason to treat those any differently for  
14188 purposes of this piece of legislation. I urge my colleagues to  
14189 vote against this amendment.

14190 Chairman Nadler. Does the gentleman yield back?

14191 Mr. Cicilline. I yield back, Mr. Chairman.

14192 Chairman Nadler. The gentleman yields back.

14193 For what purpose does Mr. Gaetz seek recognition?

14194 Mr. Gaetz. Strike the last word.

14195 Chairman Nadler. The gentleman is recognized.

14196 Mr. Gaetz. I would point out that a company in bankruptcy

14197 can have substantial assets. And you might even see a perversion  
14198 of the bankruptcy laws where people would try to access bankruptcy  
14199 just for the point of facilitating an acquisition that might not  
14200 otherwise be allowed.

14201 But the real problem I have with this amendment is one of  
14202 priorities, because the amendment seems to prioritize creditors  
14203 getting their money over the health of the marketplace. And I  
14204 think the author of the amendment was pretty clear that that is  
14205 the equity that he values most, but the objective of the committee  
14206 ought to be to keep the marketplace healthy, even if a few  
14207 creditors have to take a little less from a company in bankruptcy.

14208 I yield back.

14209 Chairman Nadler. The gentleman yield back.

14210 Who else seeks recognition?

14211 Mr. Bentz. Mr. Chair?

14212 Chairman Nadler. For what purpose does the gentleman seek  
14213 recognition?

14214 Mr. Bentz. To strike the last word.

14215 Chairman Nadler. The gentleman is recognized.

14216 Mr. Bentz. Thank you, Mr. Chair. So it would be helpful  
14217 if someone who helped write this bill could define the term in  
14218 line 4, page 2, the whole or any part of the assets. I do not  
14219 see a description or a definition of the term "assets."

14220 So, for example, would "the assets" mean something that you

14221 need every day in the operation of your business? Or are you  
14222 suggesting it is something larger than that? If anyone knows.

14223 Mr. Cicilline. Consistent with the Clayton Act.

14224 Mr. Bentz. And you will have to forgive me, but I don't  
14225 enjoy the knowledge that you apparently do, perhaps you can share  
14226 with me.

14227 Mr. Cicilline. Anything of value.

14228 Mr. Bentz. So let me see if I have this right. This means  
14229 that once this bill passes, these four companies cannot buy  
14230 anything. Is that what you are saying? What can they buy?

14231 Mr. Cicilline. If the gentleman will yield?

14232 Mr. Bentz. Yes, I will yield. Go ahead, please.

14233 Mr. Cicilline. Thank you. So if they are a covered  
14234 platform, the presumption shifts for their acquisition and they  
14235 have to demonstrate their acquisition will not enlarge their  
14236 market dominance and impair competition. And so it doesn't  
14237 prohibit mergers.

14238 It simply says the burden shifts to the acquiring platform  
14239 to demonstrate that they will not enlarge their market dominance  
14240 as a result of that acquisition and thereby diminish competition,  
14241 innovation, and all of the things that come from a competitive  
14242 market. It doesn't bar any transactions. It simply shifts the  
14243 burden to the covered platform to demonstrate that the acquisition  
14244 will not do those things. Nothing more.

14245 I yield back.

14246 Mr. Bishop. Would the gentleman yield?

14247 Mr. Bentz. I will yield. Sure.

14248 Mr. Bishop. Mr. Bentz, you would yield to me? Would you  
14249 yield?

14250 Mr. Bentz. I yield. Sure.

14251 Mr. Bishop. So I just want to understand the import of your  
14252 question and your colloquy with Mr. Cicilline. So if, say, Google  
14253 wants to go out and buy a ream of copier paper, and they would  
14254 need to prove to the FTC these four prongs here. They would have  
14255 to -- is that what your understanding is?

14256 Mr. Bentz. I think that is what we just heard, if that ream  
14257 paper would assist Google in conducting its business and  
14258 competing, which Google probably does as a business.

14259 Mr. Bishop. Wow. Thank you, sir.

14260 Mr. Issa. Would the gentleman further yield?

14261 Mr. Bentz. Yes.

14262 Mr. Issa. I think another example might be if we put the  
14263 Post Office up that has been losing \$10 billion out -- \$60 billion  
14264 worth of revenue every year for a decade now, if it went up for  
14265 sale, Amazon would not be able to buy it, even though they could  
14266 run it better, even though it would be good for the consumer,  
14267 because of course it would increase their market share.

14268 So, yes, the "all or part" would include about anything from

14269 paper, if it was over \$50 million, to even the Post Office, even  
14270 if you would in fact be benefitting the consumer, but you would  
14271 clearly be reducing competition.

14272 And it is one of the reasons that I included bankruptcy,  
14273 because our Post Office is currently beyond bankruptcy. The only  
14274 reason it doesn't enjoy the term "bankruptcy" is because you and  
14275 the other taxpayers are bailing out their billions of losses every  
14276 year.

14277 So you are exactly right to point out one of the flaws in  
14278 the bill which is, yes, they are prohibited from buying all or  
14279 part of anything, unless this passes, and then it will be up to  
14280 \$50 million.

14281 Mr. Cicilline. Mr. Issa, if you will yield, I will explain  
14282 to you why -- oh, I am sorry.

14283 Mr. Bentz. Just so -- I am thinking that perhaps if Google  
14284 had lost maybe \$10 million in the previous year, it could -- I  
14285 guess it doesn't quite know when it has to establish this baseline.

14286 But maybe it could add \$10 million back, but we are not quite  
14287 sure what baseline we are working from.

14288 So is it more competitive now than it was then? You get  
14289 my drift. But I would love to be enlightened.

14290 I yield back.

14291 Chairman Nadler. The gentleman yields back, and I yield  
14292 my -- I will recognize myself to strike the last word. And I

14293 will yield to Mr. Cicilline.

14294 Mr. Cicilline. Thank you, Mr. Chairman. With respect to  
14295 the suggestion of having to buy paper, that would not be required  
14296 to be reviewed, according to Section 7A8 of the Clayton Act, which  
14297 is specifically exempted in the bill.

14298 In addition to that, the acquired assets do not compete with  
14299 the covered platform or covered -- or an operator for the sale  
14300 or provision of any product, constitute nascent or potential  
14301 competition. So it has to meet one of those things, and it does  
14302 not meet any of those, so you are not precluded from making  
14303 acquisitions that relate to paper.

14304 And with that, I yield back, Mr. Chairman.

14305 Mr. Issa. Would the chairman further yield?

14306 Chairman Nadler. Yes.

14307 Mr. Issa. My understanding is Amazon does sell a lot of  
14308 paper, and I also understand that Amazon delivers in competition  
14309 with the Post Office. So at least in the examples that we were  
14310 using, yes, it would fall under this prohibition. And even if  
14311 the Post Office or UPS or somebody went into bankruptcy, they  
14312 wouldn't be able to compete for bidding, even if they were the  
14313 best future operator, because consumer benefit is not in the bill,  
14314 just this question of sort of market share.

14315 If the consumer would benefit, that doesn't -- that isn't  
14316 the test here where under current bankruptcy law -- I mean, sorry,

14317 under current antitrust law, it would be a consideration. The  
14318 consumer benefit would matter. It is not mattering the way you  
14319 have written this bill for these covered platforms.

14320 I thank the gentleman for yielding.

14321 Chairman Nadler. I will back.

14322 Does anyone else seek recognition on this amendment?

14323 In that case, the question occurs on the amendment.

14324 All those in favor, say aye.

14325 Opposed, no.

14326 In the opinion of the chair, the noes have it.

14327 Mr. Issa. On that I would request a recorded vote.

14328 Chairman Nadler. The yeas are requested. The clerk will  
14329 call the roll.

14330 Ms. Fontenot. Mr. Nadler?

14331 Chairman Nadler. No.

14332 Ms. Fontenot. Mr. Nadler votes no.

14333 Ms. Lofgren?

14334 Ms. Lofgren. No.

14335 Ms. Fontenot. Ms. Lofgren votes no.

14336 Ms. Jackson Lee?

14337 Ms. Jackson Lee. No.

14338 Ms. Fontenot. Ms. Jackson Lee votes no.

14339 Mr. Cohen?

14340 [No response.]



14341 Mr. Johnson of Georgia?

14342 Mr. Johnson of Georgia. No.

14343 Ms. Fontenot. Mr. Johnson of Georgia votes no.

14344 Mr. Deutch?

14345 Mr. Deutch. No.

14346 Ms. Fontenot. Mr. Deutch votes no.

14347 Ms. Bass?

14348 Ms. Bass. No.

14349 Ms. Fontenot. Ms. Bass votes no.

14350 Mr. Jeffries?

14351 Mr. Jeffries. No.

14352 Ms. Fontenot. Mr. Jeffries votes no.

14353 Mr. Cicilline?

14354 Mr. Cicilline. No.

14355 Ms. Fontenot. Mr. Cicilline votes no.

14356 Mr. Swalwell?

14357 Mr. Swalwell. No.

14358 Ms. Fontenot. Mr. Swalwell votes no.

14359 Mr. Lieu?

14360 Mr. Lieu. No.

14361 Ms. Fontenot. Mr. Lieu votes no.

14362 Mr. Raskin?

14363 Mr. Raskin. No.

14364 Ms. Fontenot. Mr. Raskin votes no.

14365 Ms. Jayapal?

14366 Ms. Jayapal. No.

14367 Ms. Fontenot. Ms. Jayapal votes no.

14368 Mrs. Demings?

14369 Mrs. Demings. No.

14370 Ms. Fontenot. Mrs. Demings votes no.

14371 Mr. Correa?

14372 Mr. Correa. No.

14373 Ms. Fontenot. Mr. Correa votes no.

14374 Ms. Scanlon?

14375 Ms. Scanlon. No.

14376 Ms. Fontenot. Ms. Scanlon votes no.

14377 Ms. Garcia?

14378 Ms. Garcia. No.

14379 Ms. Fontenot. Ms. Garcia votes no.

14380 Mr. Neguse?

14381 [No response.]

14382 Mrs. McBath?

14383 Mrs. McBath. No.

14384 Ms. Fontenot. Mrs. McBath votes no.

14385 Mr. Stanton?

14386 Mr. Stanton. No.

14387

14388 Ms. Fontenot. Mr. Stanton votes no.

14389 Ms. Dean?

14390 Ms. Dean. No.

14391 Ms. Fontenot. Ms. Dean votes no.

14392 Ms. Escobar?

14393 Ms. Escobar. No.

14394 Ms. Fontenot. Ms. Escobar votes no.

14395 Mr. Jones?

14396 Mr. Jones. No.

14397 Ms. Fontenot. Mr. Jones votes no.

14398 Ms. Ross?

14399 Ms. Ross. Ross votes no.

14400 Ms. Fontenot. Ms. Ross votes no.

14401 Ms. Bush?

14402 Ms. Bush. No.

14403 Ms. Fontenot. Ms. Bush votes no.

14404 Mr. Jordan?

14405 Mr. Jordan. Yes.

14406 Ms. Fontenot. Mr. Jordan votes yes.

14407 Mr. Chabot?

14408 Mr. Chabot. Aye.

14409 Ms. Fontenot. Mr. Chabot votes aye.

14410 Mr. Gohmert?

14411 Mr. Gohmert. No.

14412 Ms. Fontenot. Mr. Gohmert votes no.

14413 Mr. Issa?

14414 Mr. Issa. Yes.

14415 Ms. Fontenot. Mr. Issa votes yes.

14416 Mr. Buck?

14417 Mr. Buck. Aye.

14418 Ms. Fontenot. Mr. Buck votes aye.

14419 Mr. Gaetz?

14420 Mr. Gaetz. No.

14421 Ms. Fontenot. Mr. Gaetz votes no.

14422 Mr. Johnson of Louisiana?

14423 Mr. Johnson of Louisiana. Aye.

14424 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

14425 Mr. Biggs?

14426 Mr. Biggs. No.

14427 Ms. Fontenot. Mr. Biggs votes no.

14428 Mr. McClintock?

14429 Mr. McClintock. Aye.

14430 Ms. Fontenot. Mr. McClintock votes aye.

14431 Mr. Steube?

14432 Mr. Steube. Yes.

14433 Ms. Fontenot. Mr. Steube votes yes.

14434 Mr. Tiffany?

14435 Mr. Tiffany. Aye.

14436 Ms. Fontenot. Mr. Tiffany votes aye.

14437 Mr. Massie?

14438 Mr. Massie. Aye.

14439 Ms. Fontenot. Mr. Massie votes aye.

14440 Mr. Roy?

14441 Mr. Roy. Aye.

14442 Ms. Fontenot. Mr. Roy votes aye.

14443 Mr. Bishop?

14444 Mr. Bishop. Yes.

14445 Ms. Fontenot. Mr. Bishop votes yes.

14446 Mrs. Fischbach?

14447 Mrs. Fischbach. Yes.

14448 Ms. Fontenot. Mrs. Fischbach votes yes.

14449 Mrs. Spartz?

14450 Mrs. Spartz. Yes.

14451 Ms. Fontenot. Mrs. Spartz votes yes.

14452 Mr. Fitzgerald?

14453 Mr. Fitzgerald. Aye.

14454 Ms. Fontenot. Mr. Fitzgerald votes aye.

14455 Mr. Bentz?

14456 Mr. Bentz. Yes.

14457 Ms. Fontenot. Mr. Bentz votes yes.

14458 Mr. Owens?

14459 Mr. Owens. Yes.

14460 Ms. Fontenot. Mr. Owens votes yes.

14461 Chairman Nadler. Has everyone who wishes to vote -- has  
14462 everyone who wishes to vote voted? The clerk will report.

14463 Ms. Fontenot. Mr. Chairman, there are 16 ayes and 26 noes.  
14464 Chairman Nadler. The amendment is not agreed to.

14465 Are there any further amendments to the amendment in the  
14466 nature of a substitute? In that case, the question occurs --  
14467 the question occurs on the amendment in the nature of a substitute.  
14468 This will be followed immediately by a vote of final passage  
14469 of the bill.

14470 All those in favor, respond by saying aye.  
14471 Opposed, no.

14472 In the opinion of the chair, the ayes have it, and the  
14473 amendment in the nature of a substitute is agreed to.

14474 Reporting quorum being present, the question is on the motion  
14475 to report the bill H.R. 3826, as amended, favorably to the House.  
14476 Those in favor, respond by saying aye.  
14477 Those opposed, no.

14478 The ayes have it, and the bill is ordered to be reported  
14479 favorably to the House. On this, the yeas and nays are requested.  
14480 The clerk will call the roll.

14481 Ms. Fontenot. Mr. Nadler?  
14482 Chairman Nadler. Aye.  
14483 Ms. Fontenot. Mr. Nadler votes aye.  
14484 Ms. Lofgren?

14485 Ms. Lofgren. No.

14486 Ms. Fontenot. Ms. Lofgren votes no.

14487 Ms. Jackson Lee?

14488 Ms. Jackson Lee. No.

14489 Ms. Fontenot. Ms. Jackson Lee votes no.

14490 Mr. Cohen?

14491 [No response.]

14492 Mr. Johnson of Georgia?

14493 Mr. Johnson of Georgia. Aye.

14494 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

14495 Mr. Deutch?

14496 Mr. Deutch. Aye.

14497 Ms. Fontenot. Mr. Deutch votes aye.

14498 Ms. Bass?

14499 Ms. Bass. Aye.

14500 Ms. Fontenot. Ms. Bass votes aye.

14501 Mr. Jeffries?

14502 Mr. Jeffries. Aye.

14503 Ms. Fontenot. Mr. Jeffries votes aye.

14504 Mr. Cicilline?

14505 Mr. Cicilline. Aye.

14506 Ms. Fontenot. Mr. Cicilline votes aye.

14507 Mr. Swalwell?

14508 Mr. Swalwell. No.

14509 Ms. Fontenot. Mr. Swalwell votes no.  
14510 Mr. Lieu?  
14511 Mr. Lieu. Aye.  
14512 Ms. Fontenot. Mr. Lieu votes aye.  
14513 Mr. Raskin?  
14514 Mr. Raskin. Aye.  
14515 Ms. Fontenot. Mr. Raskin votes aye.  
14516 Ms. Jayapal?  
14517 Ms. Jayapal. Aye.  
14518 Ms. Fontenot. Ms. Jayapal votes aye.  
14519 Mrs. Demings?  
14520 Mrs. Demings. Aye.  
14521 Ms. Fontenot. Mrs. Demings votes aye.  
14522 Mr. Correa?  
14523 Mr. Correa. No.  
14524 Ms. Fontenot. Mr. Correa votes no.  
14525 Ms. Scanlon?  
14526 Ms. Scanlon. Aye.  
14527 Ms. Fontenot. Ms. Scanlon votes aye.  
14528 Ms. Garcia?  
14529 Ms. Garcia. Aye.  
14530 Ms. Fontenot. Ms. Garcia votes aye.  
14531 Mr. Neguse?  
14532 [No response.]



14533 Mrs. McBath?

14534 Mrs. McBath. Aye.

14535 Ms. Fontenot. Mrs. McBath votes aye.

14536 Mr. Stanton?

14537 Mr. Stanton. Aye.

14538 Ms. Fontenot. Mr. Stanton votes aye.

14539 Ms. Dean?

14540 Ms. Dean. Aye.

14541 Ms. Fontenot. Ms. Dean votes aye.

14542 Ms. Escobar?

14543 Ms. Escobar. Aye.

14544 Ms. Fontenot. Ms. Escobar votes aye.

14545 Mr. Jones?

14546 Mr. Jones. Aye.

14547 Ms. Fontenot. Mr. Jones votes aye.

14548 Ms. Ross?

14549 Ms. Ross. Ross votes aye.

14550 Ms. Fontenot. Ms. Ross votes aye.

14551 Ms. Bush?

14552 Ms. Bush. Bush votes aye.

14553 Ms. Fontenot. Ms. Bush votes aye.

14554 Ms. Jackson Lee. How am I recorded?

14555 Ms. Fontenot. Ms. Jackson Lee, you are recorded as no.

14556 Ms. Jackson Lee. Aye.

14557 Ms. Fontenot. Ms. Jackson Lee votes aye.

14558 Mr. Jordan?

14559 Mr. Jordan. No.

14560 Ms. Fontenot. Mr. Jordan votes no.

14561 Mr. Chabot?

14562 Mr. Chabot. No.

14563 Ms. Fontenot. Mr. Chabot votes no.

14564 Mr. Gohmert?

14565 Mr. Gohmert. No.

14566 Ms. Fontenot. Mr. Gohmert votes no.

14567 Mr. Issa?

14568 Mr. Issa. No.

14569 Ms. Fontenot. Mr. Issa votes no.

14570 Mr. Buck?

14571 Mr. Buck. Aye.

14572 Ms. Fontenot. Mr. Buck votes aye.

14573 Mr. Gaetz?

14574 Mr. Gaetz. Aye.

14575 Ms. Fontenot. Mr. Gaetz votes aye.

14576 Mr. Johnson of Louisiana?

14577 Mr. Johnson of Louisiana. No.

14578 Ms. Fontenot. Mr. Johnson of Louisiana votes no.

14579 Mr. Biggs?

14580 Mr. Biggs. No.

14581 Ms. Fontenot. Mr. Biggs votes no.  
14582 Mr. McClintock?  
14583 Mr. McClintock. No.  
14584 Ms. Fontenot. Mr. McClintock votes no.  
14585 Mr. Steube?  
14586 Mr. Steube. No.  
14587 Ms. Fontenot. Mr. Steube votes no.  
14588 Mr. Tiffany?  
14589 Mr. Tiffany. No.  
14590 Ms. Fontenot. Mr. Tiffany votes no.  
14591 Mr. Massie?  
14592 Mr. Massie. No.  
14593 Ms. Fontenot. Mr. Massie votes no.  
14594 Mr. Roy?  
14595 Mr. Roy. No.  
14596 Ms. Fontenot. Mr. Roy votes no.  
14597 Mr. Bishop?  
14598 Mr. Bishop. Yes.  
14599 Ms. Fontenot. Mr. Bishop votes yes.  
14600 Mrs. Fischbach?  
14601 Mrs. Fischbach. No.  
14602 Ms. Fontenot. Mrs. Fischbach votes no.  
14603 Mrs. Spartz?  
14604 Mrs. Spartz. No.

14605 Ms. Fontenot. Mrs. Spartz votes no.  
14606 Mr. Fitzgerald?  
14607 Mr. Fitzgerald. No.  
14608 Ms. Fontenot. Mr. Fitzgerald votes no.  
14609 Mr. Bentz?  
14610 Mr. Bentz. No.  
14611 Ms. Fontenot. Mr. Bentz votes no.  
14612 Mr. Owens?  
14613 Mr. Owens. Present.  
14614 Ms. Fontenot. Mr. Owens votes present.  
14615 Chairman Nadler. Has everyone who wishes to vote voted?  
14616 Ms. Fontenot. Mr. Chairman, there are 24 ayes, 17 --  
14617 Chairman Nadler. The clerk will report.  
14618 Ms. Fontenot. Mr. Chairman, there are 24 ayes, 17 noes,  
14619 and 1 present.  
14620 Chairman Nadler. The amendment -- the ayes have it, and  
14621 the bill, as amended, is ordered to be reported favorably to the  
14622 House. Members will have 2 days to submit views. Without  
14623 objection, the bill will be reported as a single amendment in  
14624 the nature of a substitute, incorporating all adopted amendments,  
14625 and staff is authorized to make technical and conforming changes.  
14626 Pursuant to notice, I now call up H.R. 3816, the American  
14627 Choice and Innovation Online Act, for purposes of markup, and  
14628 move that the committee report the bill favorably to the House.

14629           The clerk will report the bill.

14630           Ms. Fontenot. H.R. 3816, to provide that certain  
14631           discriminatory --

14632           [The Bill H.R. 3816 follows:]

14633           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

14634 Chairman Nadler. Without objection, the bill is considered  
14635 as read and open for amendment at any point. I will begin by  
14636 recognizing myself for an opening statement.

14637 H.R. 3816, the American Innovation and Choice Online Act,  
14638 restores competition online and ensures that digital markets are  
14639 fair and open. It does so by preventing dominant online platforms  
14640 from using their market power to pick winners and losers, favor  
14641 their own products, or otherwise distort the marketplace through  
14642 abusive conduct online.

14643 The open internet has delivered enormous benefits to  
14644 Americans and our economy. The internet and the services  
14645 available online have increased economic opportunity and  
14646 innovation and have greatly expanded access to information,  
14647 communications, and education.

14648 Online platforms have been an important part of this success  
14649 story. Businesses of all types rely on digital platforms to serve  
14650 customers all over the world. Consumers rely on these platforms  
14651 to serve customers all over the world. Consumers rely on these  
14652 platforms to communicate with one another and to enhance their  
14653 lives.

14654 However, a small set of online platforms have become  
14655 gatekeepers for much of the digital marketplace. In many cases,  
14656 businesses and consumers no longer have meaningful alternatives  
14657 online. As the committee's investigation has shown, these

14658 dominant platforms can have the incentive and ability to abuse  
14659 their market power to pick winners and losers among the firms  
14660 that rely on their platforms to reach users and customers.

14661 Additionally, these dominant platforms often compete  
14662 directly against the very businesses that rely on their platform.

14663 This allows these gatekeepers to exploit their control over the  
14664 platform to favor their own products or to exclude or disadvantage  
14665 rivals.

14666 Such conduct harms competition. It eliminates incentives  
14667 and opportunities for small businesses and entrepreneurs to  
14668 compete in the digital economy, undermining innovation, and  
14669 depriving consumers of meaningful choice online.

14670 This legislation would address this sort of anti-competitive  
14671 behavior by prohibiting certain forms of discriminatory conduct  
14672 which causes harm to the competitive process. It also includes  
14673 important safeguards. It ensures that online platforms may  
14674 continue to police conduct, stop malicious and illegitimate  
14675 activity, protect user privacy and security, and pull down illegal  
14676 content.

14677 The American Innovation and Choice Online Act is bipartisan  
14678 legislation tailored to improve opportunity and innovation  
14679 online. It serves to prevent gatekeepers from abusing their  
14680 power in ways that harm competition and consumers, and it does  
14681 so without disrupting the benefits of the open internet that

14682 consumers enjoy today.

14683 I thank Chairman Cicilline for his leadership on this bill,  
14684 together with Congressman Gooden, and I urge all members to  
14685 support it.

14686 I now recognize the ranking member of the Judiciary  
14687 Committee, the gentleman from Ohio, Mr. Jordan, for his opening  
14688 statement.

14689 Mr. Jordan. Thank you, Mr. Chairman. This bill would give  
14690 the Biden Administration extensive new power to define and  
14691 prohibit a wide variety of practices as, quote, "discriminatory."

14692 This bill does nothing, as the previous four did nothing, to  
14693 address the real problem: censorship, the limits on speech.

14694 In fact, it will mean big tech will censor more. Think about  
14695 it. The Biden FTC will effectively have the power to approve  
14696 or disapprove the business practices of companies. Do you think  
14697 the Biden appointees are going to look more or less favorably  
14698 at business practices that advance, quote, "woke causes"? They  
14699 won't even have to say it. The companies will know that if they  
14700 don't heel to the Democrats, they won't be able to make as much  
14701 money. That is how business in America -- that is not how business  
14702 in America is supposed to work.

14703 To accomplish all of this, the bill creates a new Bureau  
14704 of Digital Markets, a fourth bureau at the FTC charged with  
14705 enforcement, solely with enforcement of this legislation.



14706           So a couple of bills ago, a few hours ago, in the so-called  
14707 access bill, we had the secret committees. Now we have a new  
14708 bureau. And even if you agree with the premise of this bill,  
14709 it is a totally unnecessary expansion of the administrative state.

14710

14711           The Trump Administration already created a big tech and  
14712 focused enforcement division appropriately placed in FTC's Bureau  
14713 of Competition. This bureau was responsible for investigating  
14714 all anti-competitive conduct in markets in which digital  
14715 technology is an important dimension.

14716           This bill takes power away from judges, transfers it to  
14717 regulators. If you want to challenge these rules, the bill  
14718 demands clear and convincing evidence to establish unclear  
14719 defenses, so firms can bring evidence showing conduct did not  
14720 result in harm to the competitive process by eliminating, quote,  
14721 "legitimate business activity." But none of these standards --  
14722 none of these standards are defined.

14723           So, again, this legislation and related rulemaking would  
14724 interlock the government and big tech to the detriment of anyone  
14725 who dares challenge Democrat orthodoxy.

14726           And with that, Mr. Chairman, I yield back.

14727           Chairman Nadler. The gentleman yields back.

14728           I now recognize the ranking -- the chair of the subcommittee  
14729 on antitrust, commercial, and administrative law, the gentleman

14730 from Rhode Island, Mr. Cicilline, for his opening statement.

14731 Mr. Cicilline. Thank you, Mr. Chairman. I am proud to  
14732 be the sponsor of H.R. 3816, the American Innovation and Choice  
14733 Online Act. This legislation will stop the largest online  
14734 platforms from abusing their gatekeeper power. It will ensure  
14735 that there is free and fair competition online.

14736 Dominant platforms possess enormous gatekeeper power over  
14737 the digital marketplace. Too often they exploit their power to  
14738 harm rivals and boost their own products and services.  
14739 Ultimately, this conduct destroys competition and harms  
14740 consumers.

14741 Firms that abuse their gatekeeper power to gain and advance  
14742 in the marketplace have less incentive to invest and innovate.

14743 Firms that have destroyed their competitors and hold their  
14744 customers hostage have little reason to improve the quality of  
14745 their products and lower their prices.

14746 H.R. 3816 includes prohibitions to stop dominant platforms  
14747 from abusing their gatekeeper power to advantage their own  
14748 products and services and discriminate against rivals. This bill  
14749 also restricts other specific types of anti-competitive and  
14750 harmful conduct. For example, dominant platforms will be  
14751 prohibited from requiring users of the platform to buy other  
14752 services to access the platform over preferential treatment.

14753 This means that a dominant platform will be restricted from

14754 requiring the use of its advertising, logistics, or payment  
14755 processing service in exchange for use of the platform. As a  
14756 result, this bill will lead to a more dynamic and competitive  
14757 digital economy, and I urge my colleagues to support this  
14758 amendment to restore competition and to combat monopoly power  
14759 online.

14760 And with that, Mr. Chairman, I yield back.

14761 Chairman Nadler. The gentleman yields back.

14762 I now recognize the ranking member of the antitrust  
14763 subcommittee, the gentleman from Colorado, Mr. Buck, for his  
14764 opening statement.

14765 Mr. Buck. Thank you, Mr. Chair. At the beginning of the  
14766 big tech investigation, I was skeptical about what we would find.

14767 I was fairly sure these companies were monopolies in the academic  
14768 sense, but I didn't see what harm they were causing to small  
14769 businesses or consumers. If a small enterprise was put out of  
14770 business by big tech, I assumed that was just the unfortunate  
14771 byproduct of our robust free enterprise system.

14772 Then we had a field hearing in Colorado. We heard firsthand  
14773 from companies like PopSockets, Sonos, and Tile, about the abuses  
14774 they have suffered at the hands of big tech.

14775 This bill allows consumers, not big tech monopolists, to  
14776 decide who wins in the marketplace. Online consumers will no  
14777 longer face the Henry Ford conundrum presented by these companies.

14778 For those who may not remember, Henry Ford famously told  
14779 Americans they could have any color car so long as it is black.  
14780 Today we have Tim Cook telling consumers, "You can have any app  
14781 you like, so long as it is Apple."

14782 This bill would break the big tech stranglehold by freeing  
14783 up competition. This bill is also a pro-small business bill.  
14784 It levels the playing field, but, importantly, it respects our  
14785 free enterprise system because it does not pick winners and  
14786 losers. This bill means that entrepreneurs will no longer see  
14787 their businesses -- business ideas stolen and products throttled  
14788 by Amazon once they have become successful.

14789 Leveling the playing field for small business is a worthy  
14790 policy goal, because it is the backbone of our economy. Small  
14791 businesses employ approximately 60 million Americans, or about  
14792 47 percent of Americans in the workforce. According to their  
14793 10-K reports filed with the SEC, Google, Amazon, Apple, and  
14794 Facebook employ about 1.639 million people worldwide.

14795 This bill does not create a heavy-handed new regulatory  
14796 scheme. It does not establish a new agency ripe for capture by  
14797 industry. It is narrowly scoped and addresses the problem of  
14798 big tech discrimination through classic American antitrust  
14799 solutions, prioritizing free markets and access to the internet  
14800 highways of commerce.

14801 It also aligns with conservative views of how government

14802 should interact with the private sector, not dictating outcomes  
14803 but ensuring the market function in a free and neutral manner.

14804 Republicans must stand with American consumers and small  
14805 businesses against big tech monopolies and their lobbyists.

14806 And with that, Mr. Chair, I yield back.

14807 Chairman Nadler. Without objection, all other opening  
14808 statements will be included in the record.

14809 I now recognize myself for purposes of offering an amendment  
14810 in the nature of a substitute. The clerk will report the  
14811 amendment.

14812 Ms. Fontenot. Amendment in the nature of a substitute to  
14813 H.R. 3816 offered by Mr. Nadler of New York. Strike all after  
14814 the --

14815 [The amendment offered by Chairman Nadler follows:]

14816

14817 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

14818 Chairman Nadler. Without objection, the amendment in the  
14819 nature of a substitute will be considered as read and shall be  
14820 considered as base text for purposes of amendment.

14821 I recognize myself to explain the amendment. In addition  
14822 to certain technical revisions to enhance clarity and to make  
14823 conforming changes, the amendment in the nature of a substitute  
14824 makes several substantive changes which serve to strengthen the  
14825 bill.

14826 The amendment makes technical changes to Section 2E of the  
14827 bill to clarify when and how the agencies may remove a covered  
14828 platform designation. The amendment also makes technical  
14829 changes to Section 2F of the bill to clarify that the Department  
14830 of Justice, the Federal Trade Commission, and the Attorney General  
14831 of any state may seek, and the court may grant, the specified  
14832 remedies.

14833 In addition, the amendment adds to Section 2F that a court  
14834 may order any corporate officer to forfeit the specified amount  
14835 of compensation as appropriate to deter violations.

14836 In Section 2G, the amendment corrects the drafting error  
14837 for the definition of the term "online platform."

14838 In Section 2H, the amendment clarifies that except as  
14839 otherwise provided, the Department of Justice, the commission,  
14840 and the attorney general of the state has the same enforcement  
14841 powers, duties, and other authorities under this Act as certain

14842 other relevant antitrust and procedural statutes.

14843 The amendment makes final technical edits to Section 3 of  
14844 this bill to clarify the scope of judicial review.

14845 Finally, the amendment makes an important substantive change  
14846 to Section 7 of the bill to establish that actions taken by a  
14847 covered platform operator that are reasonably tailored to protect  
14848 certain intellectual property rights shall not be considered  
14849 unlawful under Section 2.

14850 I urge members to support the amendment, and I yield back  
14851 the balance of my time.

14852 Are there any amendments to the amendment in the nature of  
14853 a substitute? Are there any amendments to the amendment in the  
14854 nature of a substitute?

14855 For what purpose does Mr. Jones seek recognition?

14856 Mr. Jones. I move to strike the last word, Mr. Chairman.

14857 Chairman Nadler. The gentleman is recognized.

14858 Mr. Jones. I want to thank you, Mr. Chairman, as well as  
14859 Chairman Cicilline, for introducing the American Choice and  
14860 Innovation Online Act. I also want to thank Ranking Member Buck  
14861 and Representative [audio malfunction] to secure equal treatment  
14862 online for users and small businesses.

14863 There is no question that today big tech writes the rules  
14864 of the internet. The question is: should big tech be allowed  
14865 to write those rules? Does this bill [audio malfunction] people

14866 deserve and demand? No.

14867 Enough of the biggest corporations telling us how to shop  
14868 [audio malfunction]. There is no good reason that the  
14869 corporation [audio malfunction] products and destroy their  
14870 livelihoods.

14871 There is no good reason that the internet's largest search  
14872 engine, Google, should be scraping data from smaller competitors  
14873 like Yelp and Trip Advisor, then ranking their results lower than  
14874 its own. There is no good reason that Facebook should be able  
14875 to devastate local independent journalism by conditioning news  
14876 organizations' access to its social networks, using its ad market  
14877 [audio malfunction] trying to restore and protect the fair, open,  
14878 and inclusive online economy we deserve.

14879 And that is just what this bill would do. None of the big  
14880 tech companies could engage in these practices, by the way, unless  
14881 they show that they would not be anti-competitive or that they  
14882 are necessary to protect privacy or comply with the law.

14883 There is a dark irony to how big tech has abused its dominance  
14884 over small businesses. These massive corporations owe their  
14885 early success to the free and open internet that they now deny  
14886 to everyone else. If the big tech companies had had to overcome  
14887 the same obstacles they now pose to others, they might never have  
14888 taken off in the first place.

14889 Imagine if AOL had had the power to prevent its internet



14890 subscribers from switching to Gmail. Imagine if Yahoo had had  
14891 the power to make it impossible to find Google. Or take an actual  
14892 case. If antitrust action had not compelled Microsoft to give  
14893 rival web browsers a fair shot to compete with Internet Explorer,  
14894 Chrome might never have stood a chance.

14895 Today's biggest tech companies, the innovators of the past,  
14896 are entrenching their power by making sure the innovators of the  
14897 future don't have the same opportunities that they did. After  
14898 climbing to the heights of power, these massive corporations are  
14899 pulling up the ladder behind them, so that no one else can rise.

14900 So fundamentally this is a bill that would restore the fair  
14901 and open online economy that the big tech companies once relied  
14902 on themselves, ensuring that today's small businesses have the  
14903 same opportunities that today's giants once enjoyed.

14904 And, finally, I want to emphasize how important it is that  
14905 his legislation includes a private right of action. The bill  
14906 empowers anyone injured by a violation to have their day in court  
14907 and to win treble damages.

14908 I am proud to have championed this provision. And as excited  
14909 as I am that the brilliant Lina Khan is now chairing the FTC,  
14910 we may not always have such staunch anti-monopolists in power.

14911 And so a private right of action ensures that no matter who is  
14912 in charge in Washington, the people have the power to right the  
14913 wrongs of big tech. So I urge all of my colleagues in both parties

14914 to support this legislation.

14915 And with that, Mr. Chairman, I would yield back the balance  
14916 of my time.

14917 Chairman Nadler. The gentleman yields back.

14918 Who seeks recognition? For what purpose does Ms. Lofgren  
14919 seek recognition?

14920 Ms. Lofgren. To strike the last word.

14921 Chairman Nadler. The gentlelady is recognized.

14922 Ms. Lofgren. Once again, we have identified an actual  
14923 serious problem, which is large platforms that have a large share  
14924 of the market, in some cases abusing that market share to the  
14925 disadvantage of competitors.

14926 There is a long history in antitrust of industries  
14927 discriminating and the Government taking action about that  
14928 discrimination. For example, common carriers such as railroads  
14929 and freight companies and telecommunication providers, and the  
14930 like.

14931 So that issue is important. But before we get into it, I  
14932 have to say, even though that is an important discussion, this  
14933 bill goes so far, far beyond what would be necessary to address  
14934 the specific real-world allegations of self-prefacing and other  
14935 abuses by the platform that is simply extreme.

14936 In presumptively deeming broad and abstract categories of  
14937 platform conduct as, quote, "unlawful discrimination" in Section

14938 2, it would have a result that I think will be unwelcome in the  
14939 country. I will just give you one example.

14940 It will broadly deem it unlawful for a platform to interfere  
14941 with or restrict a business user's pricing of its products or  
14942 services. What does this mean in practice? Would it include  
14943 all limitations by Google or Apple in how apps are priced in their  
14944 app store?

14945 What about Amazon regulating in any way how third party  
14946 sellers price their goods? And would this broad category of  
14947 presumptively unlawful conduct prohibit Amazon or another  
14948 platform from establishing price limits for certain products to  
14949 prevent misleading price gouging?

14950 The other question about the overreach here is legitimate  
14951 questions about how the bill might deem as unlawful, because it  
14952 is preferencing one's own product, everything from Amazon Prime  
14953 to pre-installed apps. For example, Amazon Prime does preference  
14954 Amazon products. And I will tell you, I like Amazon Prime. I  
14955 think if that were prevented from being available to American  
14956 consumers, there would be great distress.

14957 Now, I recognize there is a defense, but that is only provable  
14958 after months of litigation, with a heavy burden of proof and  
14959 requiring platforms to disprove any harm to the competitive  
14960 process. And because there is a private right of action included  
14961 in the bill, at a minimum this would create a huge risk of

14962 unnecessary litigation for platforms throughout every part of  
14963 their business. And given the way the bill is structured, I think  
14964 it is highly likely this will include and promote bad faith,  
14965 troll-style litigation, trying to exact quick settlements.

14966 I think this reflects a basic flaw in how this bill is  
14967 designed by not requiring any sort of anti-competitive arm,  
14968 anti-competitive intent, or any particular facts of concern in  
14969 order to deem conduct as unlawful under Section 2. I think this  
14970 creates a risk of drastic overreach far beyond what is necessary  
14971 to address the specific harms and competitive risks.

14972 And just mentioning some of the alternatives, the platform  
14973 product services and useful integrations would be presumptively  
14974 unlawful. As I have mentioned, Amazon Prime could be eliminated  
14975 because it advantages non-prime products. Google presumably  
14976 would not be able to display Google Maps with information boxes  
14977 on that map.

14978 Apple would be blocked from pre-installing it on my phone  
14979 in Apple's iOS because pre-installation advantages its product.

14980 Those are all in Section 2A(1) and (2) and 2B.

14981 I think there are other concerns about the bill relative  
14982 to disinformation sites. If you discriminate among  
14983 similarly-situated business users, aren't you telling Apple that  
14984 they can't kick Infowars out of their app store unless they also  
14985 do something about 4chan, Parler, and Gab? And, if not, they

14986 are going to result in litigation.

14987 I think, as I say, there is a serious problem in this space,  
14988 and it deserves a serious answer. But this bill is so flawed,  
14989 and is such an overreach, that it will not actually solve the  
14990 problems that we face. I say this with some regret because I  
14991 know Mr. Cicilline has worked diligently for many months, really  
14992 even years, and yet this bill does not provide the remedy to the  
14993 problems that have been identified.

14994 So, Mr. Chairman, I see that my time has expired, and I yield  
14995 back.

14996 Chairman Nadler. The gentlelady yields back.

14997 For what purpose does Mr. Lieu seek recognition?

14998 Mr. Lieu. I move to strike the last word.

14999 Chairman Nadler. The gentleman is recognized.

15000 Mr. Lieu. Thank you, Chairman Nadler, and once again, I  
15001 do want to thank Subcommittee Chairman David Cicilline for taking  
15002 on this very challenging and tough issue, and you've identified  
15003 a lot of practices that we do need to change.

15004 I am going to give you some of my concerns I hope you can  
15005 work on prior to your bill reaching the House floor.

15006 My first concern is that your bill would arbitrarily give  
15007 Walmart.com a massive advantage. If the committee believes that  
15008 these practices are really bad and that they should be banned  
15009 because they're anti-competitive, then why are we applying the

15010 bill to only a very small handful of companies?

15011 So, for example, your bill would bar Amazon from giving  
15012 preference to Amazon-branded products. Yet, Walmart.com would  
15013 be able to give preference to Walmart-branded products.

15014 Walmart has more retail sales than Amazon and Walmart has  
15015 a market cap of over \$380 billion dollars. Why would we exempt  
15016 Walmart from your bill?

15017 In fact, your bill would give an unfair advantage to any  
15018 online retailer not named Amazon. A few days ago, I entered a  
15019 search query, Bose Noise Cancelling Headphones Version 700. The  
15020 search turned up over a dozen online platforms that sold that  
15021 headphone. I'm going to give you some of those prices.

15022 Bestbuy.com was selling those headphones for \$299. Amazon  
15023 was selling them for \$329, Qvc.com for \$329, eBay for \$374 and  
15024 Nordstrom.com for \$379.

15025 So for that headphone product on that particular day,  
15026 Bestbuy.com had a better deal than Amazon in a very robust  
15027 marketplace with a lot of consumer choice. Yet, of all these  
15028 online platforms, each of which is also tracking your buying  
15029 habits, we're applying your bill to only one online retail  
15030 platform.

15031 We don't do this in other contexts in antitrust law. For  
15032 example, current antitrust law bans price fixing, but we don't  
15033 say, hey, medium-sized companies and large companies can engage

15034 in price fixing but one really large company can't do that. We  
15035 deem price fixing anti-competitive so we ban it across the board.

15036

15037 So my view is if this committee believes a practice is bad  
15038 when Amazon does it, then it should be bad when Walmart.com does  
15039 it or any other retailer.

15040 So I strongly urge that before your bill hits the House floor,  
15041 you've got to change the definition of the covered entity.

15042 My second concern is that this package of bills as written  
15043 will likely weaken cybersecurity. Apple has chosen iPhone  
15044 business model with a closed system. One advantage of that model  
15045 is Apple iPhones have better privacy and cybersecurity.

15046 There's far less malware on Apple iPhones because of Apple's  
15047 iOS operating system and because Apple screens the type of apps  
15048 it allows on the App Store.

15049 Your proposed bill, which in the way it also interacts with  
15050 their interoperability bill, would appear to dismantle Apple's  
15051 closed system approach that has resulted in better privacy and  
15052 cybersecurity than other business models.

15053 One of the provisions of legislation could also be read to  
15054 require Apple to give unimpeded access to iPhone hardware. I'm  
15055 a recovering computer science major, and I know that can cause  
15056 significantly huge problems.

15057 Apple would, essentially, have to weaken its operating

15058 system to provide a direct path for another business to have  
15059 unimpeded access to the iPhone hardware. That means malware  
15060 could exploit that path, get direct access to iPhone hardware,  
15061 and install viruses on your iPhone.

15062 And I just want to conclude again with the way that the report  
15063 was generated. I commend their extensive work done on the report,  
15064 except the report and the investigation focused on only four  
15065 companies.

15066 How do we know Walmart.com isn't engaged in all sorts of  
15067 anti-competitive practices? Or Microsoft or eBay or Twitter or  
15068 Uber?

15069 And so it's sort of a circular definition to say, well, the  
15070 reason we're only doing these bills on four companies is because  
15071 we only investigated four companies.

15072 Well, the problem is there are other companies directly  
15073 competing with these four companies that the subcommittee did  
15074 not investigate.

15075 And so you're giving a massive advantage to every company  
15076 that this subcommittee did not investigate by putting on all these  
15077 restrictions on the only four companies that the subcommittee  
15078 did investigate.

15079 So, again, I think a better approach is if you deem a practice  
15080 anti-competitive, then apply it not just to Amazon but to other  
15081 companies that do the same anti-competitive practice.



15082           With that, I yield back.

15083           Chairman Nadler. The gentleman yields back.

15084           For what purpose does Ms. Jackson Lee seek recognition?

15085           Ms. Jackson Lee. Mr. Chairman, I have an amendment at the

15086 desk, Amendment No. 1.

15087           Chairman Nadler. The clerk will report the amendment.

15088           Ms. Jackson Lee. And I have an Amendment No. 2.

15089           Chairman Nadler. Well, one at a time.

15090           Ms. Fontenot. Amendment to the amendment in the nature of

15091 a substitute to H.R. 3816 offered by Ms. Jackson Lee of Texas.

15092           [The Amendment offered by Ms. Jackson Lee follows:]

15093

15094           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

15095 Chairman Nadler. Without objection, the amendment is  
15096 considered as read and the gentlelady is recognized in support  
15097 of the amendment.

15098 Ms. Jackson Lee. Again, let me thank Mr. Cicilline and his  
15099 co-sponsor, Mr. Gooden, for this legislation, and as well to the  
15100 chairman and for the members who are here for this important  
15101 historic moment.

15102 I rise to support -- no, I'm doing them in order -- I rise  
15103 to support -- ladies and gentlemen, it's No. 1 that's coming to  
15104 you.

15105 [Pause.]

15106 Ms. Fontenot. Amendment to the amendment in the nature of  
15107 a substitute to H.R. 3816 offered by Ms. --

15108 Chairman Nadler. Without objection, the amendment is  
15109 considered as read and the gentlelady is recognized in support  
15110 of the amendment.

15111 Ms. Jackson Lee. Do all the members have No. 1?

15112 [Pause.]

15113 Ms. Jackson Lee. Again, thank you, Chairman, for the  
15114 opportunity to explain my amendment to H.R. 3816, the American  
15115 Choice and Innovation Online Act, which I'm proud to strongly  
15116 support.

15117 My amendment is easy to understand and vitally important.  
15118 It simply expands the prohibition on retaliation already in the

15119 bill to protect all persons who might raise concerns with law  
15120 enforcement about a covered platform's violation of state and  
15121 federal law rather than only protecting business users and covered  
15122 platform users.

15123 My amendment also expands the prohibition on retaliation  
15124 to include retaliation from participating in litigation to  
15125 enforce this act. This amendment is critically important because  
15126 it expands protection to the employees and independent  
15127 contractors of public platforms, among others.

15128 It is employees and independent contractors who are most  
15129 intimately familiar with an organization's business practices,  
15130 and those are the individuals who are most likely to uncover  
15131 potential violations of law.

15132 If retaliation for contacting law enforcement entities were  
15133 not prohibited, it would have a chilling effect on the willingness  
15134 of individuals to speak out upon uncovering such violations.

15135 Mr. Chairman, history is littered with accounts of brave  
15136 individuals who spoke out when they discovered that the  
15137 organization they were a part of was potentially violating the  
15138 law for Mark Felt, a former FBI officer who anonymously provided  
15139 the Washington Post with critical information about the Watergate  
15140 scandal, to Sherron Watkins, a former vice president of Enron  
15141 Corporation who raised the alarm about accounting irregularities  
15142 in the company's financial reports.

15143           Again, this is a very straightforward amendment. I ask my  
15144 colleagues to support it, and I yield back my time.

15145           Chairman Nadler. The gentlelady yields back.

15146           I recognize myself in support of the amendment. This  
15147 amendment clarifies the bill to improve the bill in that -- in  
15148 that retaliation against certain parties -- to clarify the  
15149 retaliation against certain parties is not permitted.

15150           And I urge support of the amendment and I yield back.

15151           Anyone else seek recognition?

15152           [No response.]

15153           Chairman Nadler. If not, the --

15154           Mr. Swalwell. Mr. Chairman?

15155           Chairman Nadler. Who seeks recognition?

15156           Mr. Swalwell. Swalwell.

15157           Chairman Nadler. The -- for what purpose does the gentlemen  
15158 seek recognition?

15159           Mr. Swalwell. Move to strike the last word.

15160           Chairman Nadler. The gentleman is recognized.

15161           Mr. Swalwell. Mr. Chairman, my concern with this amendment  
15162 and, frankly, the bill is the scope, and let me begin by saying,  
15163 essentially, if the scope was to include every American business,  
15164 you would be telling Walmart or Target that they would have to  
15165 carry any widget that any person wants to bring into their store  
15166 in addition to what that store would want to sell to its consumers.

15167           You would tell a Mexican restaurant that they would have  
15168 to sell French food, and a French restaurant that they would have  
15169 to sell Mexican food if someone came into their store and said,  
15170 I want you to do this.

15171           It's called side loading, as it relates to Apple, and the  
15172 real scope here is that this is aimed directly at Apple and Amazon,  
15173 and you are telling Apple that their curated App Store, which  
15174 is not a defect but a feature that its users, with other choices  
15175 of Samsung, Google, multiple Chinese phones, have signed up to  
15176 use would no longer be curated by Apple.

15177           But, rather, it would essentially be a flea market where  
15178 anyone could bring any app into the store, regardless of security  
15179 or privacy concerns.

15180           So the Chinese, for example, could flood the App Store with  
15181 apps that would allow the Chinese government to go all the way  
15182 down the stack into all of our data. This new flea market style  
15183 App Store would also have no regard to the privacy restrictions,  
15184 the high privacy standards, that Apple has always had in place.

15185           I don't think we want to go there. There is enough  
15186 competition in the market. And while Mr. Issa said earlier that  
15187 Apple has, you know, I think half of the iPhone -- half of the  
15188 smart phones in the United States, I don't think it's that high.

15189

15190           Actually, as I said earlier, you have Samsung, you have

15191 Google, you have other Chinese products on the market. Consumers  
15192 have choices. If they don't like the curated Apple Store, they  
15193 can go to the Google Play Store or the Samsung store or the other  
15194 devices.

15195 I will tell the committee that I have about 3,500 Apple  
15196 employees who live in my district. But this is not a bias I carry.

15197

15198 This is knowledge that I have from interacting with these  
15199 employees and understanding what makes the secret sauce at Apple  
15200 and how you would essentially break this brand because they would  
15201 be required to do something that no other business is going to  
15202 be asked to do.

15203 We are all aware of the Parler example after the January  
15204 6th insurrection where Apple told Parler because they were  
15205 allowing violence and messages of violence to be displayed on  
15206 their platform they would be de-platformed unless they cleaned  
15207 that up.

15208 They were able to do that because this legislation was not  
15209 in place. If this legislation is in place, Parler, with no  
15210 restrictions, being a platform to allow insurrection, goes right  
15211 back onto the Apple platform into the App Store.

15212 Also, I think it's important to note that only 70 of the  
15213 2 million apps in the App Store are Apple products. And so this  
15214 is not a case where the store is flooded with Apple products and

15215 consumers do not have a choice.

15216 Mr. Lieu brought up an example about Amazon, and just two  
15217 nights ago I had to buy aluminum foil for our house. We have  
15218 got a four-year-old and a two-year-old. We go through a lot of  
15219 leftovers.

15220 I went on Amazon, and actually Amazon's choice -- and if  
15221 you all look this up right now on your phone on your Amazon Prime  
15222 account, Amazon's choice is not even its own Amazon product.  
15223 It's a Reynolds product that Amazon features as Amazon's choice.

15224

15225 So, again, I don't accept that this is an abuse that is  
15226 occurring, especially when you have so much competition in the  
15227 market.

15228 So one final point, Mr. Chair. You know, Apple's biggest  
15229 competitor is a foreign competitor in Samsung, but Samsung would  
15230 not be -- would not have to comply with any of these rules.

15231 So we would make an American company that has thousands of  
15232 American jobs here in the United -- here in the United States,  
15233 they would be subjected to these rules while foreign companies  
15234 would not.

15235 So that's why I'm going to oppose this bill. I would also  
15236 ask to insert into the record a June 22 letter from Apple to the  
15237 chairman, as well as a June 2021 white paper from Apple laying  
15238 out their concerns.

15239           And I yield.

15240           Chairman Nadler. Without objection.

15241           [The information follows:]

15242

15243           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*



15244 Chairman Nadler. The gentleman yields back?

15245 Mr. Swalwell. Yield back. Yes.

15246 Chairman Nadler. The gentleman yields back.

15247 For what purpose -- for what purpose does Mrs. Spartz seek  
15248 recognition?

15249 Mrs. Spartz. I move to strike the last word.

15250 Chairman Nadler. The gentlelady is recognized.

15251 Mrs. Spartz. Thank you, Mr. Chairman.

15252 I should not oppose this amendment. But I do have a similar  
15253 problem what my -- some other colleagues mentioned with this bill.

15254 You know, I thank you for work further on this bill. You know,  
15255 maybe that could be resolved.

15256 But as of right now, there is some conflict of interest and  
15257 conducts can be outrageous and, really, can get to the level where  
15258 they become unlawful. But what is good for the goose it should  
15259 be good for the gander, right?

15260 So we cannot adjust apply to some people and not apply to  
15261 other entities. So I think if we evenly apply we believe this  
15262 is about illegal conduct. If we believe it's bad then it's bad  
15263 regardless who is doing that conduct, and I think that is a big  
15264 flaw with this particular bill.

15265 We shouldn't be just target it to any particular entities.

15266 Are they bad or good, and we should decide and deliberate on  
15267 some of these items. Some of them sounds pretty bad and -- but

15268 I think the whole application of the bill is very concerning to  
15269 me.

15270 So I'll support this amendment and I know we have, I think,  
15271 a lot of amendments, and I'll be open minded to this bill. But  
15272 I think in the form like it is, I think it just really targets  
15273 only a few entities and it should -- we should apply law equally  
15274 to all of the stakeholders.

15275 If it's a crime, it's a crime. If it's not, if it's not.  
15276 It should be applied equally to any and not exempt anyone from  
15277 the effects of the law.

15278 I yield back.

15279 Chairman Nadler. The gentlelady yields back.

15280 Mr. Cicilline. Mr. Chairman?

15281 Chairman Nadler. For what purpose does the gentleman from  
15282 Rhode Island seek recognition?

15283 Mr. Cicilline. Move to strike the last word.

15284 Chairman Nadler. The gentleman is recognized.

15285 Mr. Cicilline. I, first, want to thank the gentlelady from  
15286 Texas for her amendment. I think it's an excellent one and  
15287 improves the bill, and I strongly urge my colleagues to support  
15288 the amendment.

15289 I also want to use this opportunity to respond to some of  
15290 the issues that have been raised that I think, you know, to be  
15291 very frank, are part of the industry talking points.

15292           Nothing in this bill prevents Amazon Prime from existing.

15293           Nothing in this bill prevents preinstalled apps.

15294           With respect to Amazon Prime, that is a service that is  
15295 offered both for Amazon products and third party sellers. So  
15296 it's not discriminatory.

15297           With respect to preinstalled apps, so long as those apps  
15298 can be uninstalled and users have the option to do that easily,  
15299 it's not discriminatory. And so if you look at the definitions  
15300 in the bill that are included in the American Innovation and Choice  
15301 Online, it will not prevent dominant platforms also from  
15302 protecting user privacy and data security.

15303           In fact, the legislation includes explicit protections to  
15304 ensure that covered platforms can protect user privacy and data  
15305 security to make certain these firms can stop malware, scams,  
15306 and illegal conduct and prevent the spread of malicious content.

15307

15308           I would understand my colleagues' concerns if this bill  
15309 actually stopped a covered platform from these beneficial  
15310 activities, but it does not. It's not -- it is not  
15311 anti-competitive for platforms to protect user privacy.

15312           It's not anti-competitive for platforms to protect the  
15313 security of their ecosystems. And it's not anti-competitive for  
15314 platforms to protect users from malware, scams, or illegal and  
15315 malicious content.

15316 I'll repeat it loudly and clearly the bill does not prohibit  
15317 platforms from protecting their users. It does not prohibit  
15318 platforms from protecting security. What the bill does is  
15319 narrowly targets a discrete set of abusive and exploitative  
15320 practices that dominant platforms engage in to disadvantage  
15321 rivals and boost their own products and services.

15322 Time and again, these companies rely on buzzwords like  
15323 privacy and security as a pretext to justify anti-competitive  
15324 conduct. All too often these firms use privacy as a sword and  
15325 a shield. They justify anti-competitive conduct under the guise  
15326 of enhancing privacy and security.

15327 They decry efforts to rein in their monopoly power by  
15328 claiming it will impede their ability to protect user privacy  
15329 and security. These claims are nothing but gaslighting. These  
15330 companies are counting on their ability to scare us into doing  
15331 nothing.

15332 This legislation before us will stop monopolistic practices  
15333 by covered platforms and, importantly, will inject much-needed  
15334 competition and dynamism to the digital marketplace.

15335 And the examples that have been given do not violate the  
15336 statute and, again, the legislation was developed after an  
15337 extensive record where we heard from small businesses about the  
15338 unfair treatment by these large platforms that routinely favored  
15339 their own products and services to the disadvantage of small

15340 businesses, often resulting in driving them out of business.

15341 This eliminates that. It creates a level playing field to  
15342 bring more dynamism, more competition, better results for  
15343 consumers, more opportunities for small businesses, and more  
15344 competition.

15345 And with that, I yield.

15346 Mr. Bishop. Would the gentleman yield for a question?

15347 Will the gentleman yield?

15348 Mr. Cicilline. I've already yielded back to the chairman  
15349 but -- was that Mr. Jones?

15350 Mr. Jones. Yes.

15351 Mr. Cicilline. Yes. If I'm allowed to, yes. Mr. Jones,  
15352 I'm happy to yield to you.

15353 Mr. Jones. Thank you.

15354 I just want to -- I want to sort of elaborate one of the  
15355 points that you made, because we have heard more than one person  
15356 say, well, why doesn't this cover Walmart? Why doesn't -- why  
15357 doesn't this affect certain other companies?

15358 And the fact is [inaudible] anti-competitive [inaudible]  
15359 size of the company as well as the structure to that company.

15360 So let's use Walmart, for example, right. What separates  
15361 Amazon from Walmart is that Amazon is a -- both a platform and  
15362 a seller whereas Walmart is barely a platform at all.

15363 So Amazon's self-preferencing hurts small businesses in a

15364 way that Walmart's could never hurt small businesses, one, because  
15365 Amazon hosts 50 percent of all online retail and an even larger  
15366 percentage of third party small business sales.

15367 So unlike Walmart, it has the power to decide whether those  
15368 small businesses live or die.

15369 And second, Amazon has complete access to its third party  
15370 sellers' data, so it can copy them, kill them, or extort them.

15371 And so I just think it's important to clarify that like, again,  
15372 practices are only anti-competitive in the context of the size  
15373 of these companies as well as the structure of those companies.

15374

15375 And with that, I yield back.

15376 Mr. Cicilline. Yield back, Mr. Chairman.

15377 Chairman Nadler. The gentleman yields back.

15378 Does anyone else seek recognition on this --

15379 In that case, the question occurs on the amendment.

15380 All in favor say aye.

15381 Opposed, no.

15382 The ayes, obviously, have it. The amendment is agreed to.

15383

15384 Ms. Jackson Lee. Mr. Chairman?

15385 Chairman Nadler. For what purpose does the gentlelady from  
15386 Florida seek recognition?

15387 Ms. Jackson Lee. I'm from Texas.

15388 Chairman Nadler. Texas. I'm sorry. I keep doing that.  
15389 [Laughter.]  
15390 Chairman Nadler. From Texas seek recognition?  
15391 Ms. Jackson Lee. I have an amendment at the desk, Amendment  
15392 No. 2. I don't mind sharing with my sister.  
15393 Chairman Nadler. The clerk will report the amendment.  
15394 Ms. Fontenot. Amendment to the amendment in the nature of  
15395 a substitute to H.R. 3816 offered by Ms. Jackson Lee of Texas.  
15396 On page 1 line 17 amend Section 2(a)(3) by inserting before the  
15397 period the following quote: "including those business users  
15398 employed by businesses owned by -- "  
15399 Chairman Nadler. Without objection, the amendment is  
15400 considered as read and the gentlelady is recognized in support  
15401 of the amendment.  
15402 [The Amendment offered by Ms. Jackson Lee follows:]  
15403  
15404 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

15405 Ms. Jackson Lee. Thank you very much, Mr. Chairman. And  
15406 I really -- let me, first of all, thank my colleagues on the other  
15407 side of the aisle for their support of the previous amendment.

15408 Excuse me for my raspy voice.

15409 Let me, again, thank Mr. Cicilline and Mr. Buck, and thank  
15410 the chairman and ranking member of the full committee as well,  
15411 and thank you for this opportunity to express my concerns, which  
15412 I hope that I can draw up bipartisan support.

15413 My amendment is easy to understand. It's vitally important.  
15414 It simply specifies that discrimination among business users  
15415 includes discrimination against minority and women-owned  
15416 businesses.

15417 Let me share some numbers with you. According to a 2014  
15418 special report of the Equal Employment Opportunity Commission,  
15419 African Americans make up 7.4 percent of tech workers, Latinx  
15420 make up 8 percent of tech workers, AAPI make up 14 percent of  
15421 tech workers, women make up 36 percent of tech workers, compared  
15422 with others at 68.5 percent.

15423 After six years of diversity reports by the largest  
15424 technology, it is clear that there has been difficulty in change.

15425

15426 Without diverse employees, bias is a serious problem that  
15427 creeps into artificial intelligence models, negatively affecting  
15428 enterprises that use artificial intelligence tools that resulted



15429 in harmful consequences.

15430 As one extreme example, it was reported in 2015 that the  
15431 Google image recognition algorithm was classifying African  
15432 Americans as gorillas. It took Google three years to fix this  
15433 issue. And that's due to lack of diverse employees.

15434 It is difficult to ensure that women and minority-owned  
15435 businesses are not disadvantaged by algorithms designed primarily  
15436 by others.

15437 Over the -- over the first two months of the health crisis,  
15438 the number of active minority business owners plummeted. Black  
15439 business owners dropped 41 percent, Latino business owners  
15440 dropped 32 percent, Asian business owners dropped 26 percent,  
15441 as compared to the majority.

15442 This is a very small provision that I hope will get bipartisan  
15443 support that simply emphasizes in a simple manner that the  
15444 minority and women-owned businesses should, in particular, not  
15445 be discriminated against.

15446 We hope that what we will do is increase the diversity, build  
15447 on the economy, and as you well know, when you build on diverse  
15448 communities you build on the economic engine of America.

15449 So I ask my colleagues to support this amendment, and I  
15450 reserve --

15451 Mr. Cicilline. Will the gentlelady yield?

15452 Ms. Jackson Lee. Which way is -- oh. I yield to the

15453 gentleman.

15454 Mr. Cicilline. I thank the gentlelady, and I thank her for  
15455 raising this issue because while her remarks relate to specific  
15456 discrimination against women and communities of color and the  
15457 focus of the underlying bill is about economic discrimination,  
15458 there is no question that the absence of competition and the  
15459 crushing power of these monopolies has been particularly harmful  
15460 to women and minority-owned businesses.

15461 And so I would ask the gentlelady if she would work with  
15462 me to figure out what's the best language to make sure that we  
15463 embed that in a way that kind of reflects the concerns you've  
15464 raised in this bill and perhaps in others that we have considered  
15465 tonight, because I think this is a very, very important issue  
15466 and I thank you for raising it.

15467 And I'd ask if you would withdraw this particular amendment  
15468 just and commit to work with me before this reaches the floor  
15469 to be sure it has a provision that reflects your concerns that  
15470 you've articulated tonight.

15471 Ms. Jackson Lee. As the gentleman knows, this is an  
15472 extremely important issue to many of us and extremely important  
15473 issue to me. I would hope that this would have bipartisan  
15474 support.

15475 I would look forward to working with the gentleman. I'd  
15476 like to do so in the immediacy of this committee session so that

15477 we have language that we can work on that actually expands  
15478 opportunity for minority and women-owned businesses, which I  
15479 think the statistics suggest that there is a great need.

15480 At this time I will withdraw the amendment.

15481 Chairman Nadler. The amendment is withdrawn.

15482 Mr. Bishop. Mr. Chairman, move to strike the last word.

15483

15484 Chairman Nadler. The gentleman is -- for what purpose does  
15485 the gentleman --

15486 Mr. Bishop. Move to strike the last word.

15487 Chairman Nadler. The gentleman is recognized.

15488 Mr. Bishop. Thank you, Mr. Chairman.

15489 I think the amendment offered and then withdrawn sort of  
15490 raises something that is of interest. The gentleman from Rhode  
15491 Island, I think, a moment ago said that there are a series of  
15492 discrete ways in which discrimination against business users is  
15493 prohibited, and, indeed there is.

15494 If you go down to subsection (b) of Section 2, you got a  
15495 lengthy series of them. You ban tying arrangements. You ban  
15496 -- you have a mandate -- let's say you have a derived data  
15497 exploitation ban. You have a derived data access court  
15498 portability mandate, a hard default, apps and services ban, an  
15499 anti-redirect ban. It goes on at some length.

15500 But I think what the -- what the attempt of the member or

15501 the tentative amendment that was then withdrawn stuck in there  
15502 at the end of subsection (a) tends to point out is, what is the  
15503 purpose of having (a)?

15504 You can't tell what it is that it bans, particularly, given  
15505 that you've got this impressive list of specific economic wrongs  
15506 that are -- that are banned in subsection (b). I don't think  
15507 it's understandable, and I think it is -- it could mean anything.  
15508

15509 And as I said a long time ago now, when you -- this is another  
15510 example of empowering regulators to make up something that none  
15511 of us can possibly predict.

15512 And I'd be inclined to yield to the gentleman if he would  
15513 be interested in responding to that.

15514 Mr. Cicilline. Thank you. Happy to.

15515 So Section (a) reflects prohibitions on self-preferencing  
15516 and exclusion. What's contained in subsection (b) are a set of  
15517 prohibited conduct for which there's really no competitive  
15518 justification.

15519 All of those things were identified during the course of  
15520 the investigation. I think each of them, section (b) (1) through  
15521 (3), (4), (5), (6) are all discriminatory behaviors with no  
15522 competitive justification.

15523 Mr. Bishop. I thank the gentleman and reclaiming my time.

15524 I guess what I -- I think all of those discrete examples

15525 in subsection (b) are ways in which the covered platforms are  
15526 not going to be permitted to preference themselves.

15527 But they are -- they're specific and, therefore,  
15528 understandable. (A) doesn't add anything and, certainly, when  
15529 you get to a (a) (3), it says it's unlawful for any person operating  
15530 in a covered platform to engage in any conduct in connection with  
15531 the operation of that covered platform that discriminates among  
15532 similarly situated business users. It's just indecipherable.

15533 It's so vague and vacuous it leaves someone to make it up as  
15534 they go.

15535 And unless there's somebody else who wants to take over.

15536 Do you want to yield?

15537 I yield to the gentlewoman from Indiana, Mrs. Spartz.

15538 Mrs. Spartz. Thank you. I just wanted to add to that.  
15539 It seems like this section is really broad, ambiguous, and very  
15540 -- have a lot of application because what is really discriminate  
15541 amongst similar situated businesses, it's very broad and seems  
15542 like -- I can understand bringing some of the other questions  
15543 that is more particular with behavior.

15544 But interpretation -- it's open to a lot of interpretations.

15545 So you can argue that, you know, minority and women-owned  
15546 businesses are already included. That's part of that, is similar  
15547 situated.

15548 You can argue anything you want, and it's really becoming

15549 very, you know -- you know, needs to be tied. And if this bill  
15550 should proceed, this section really needs some work because it  
15551 really opens cans of worms with applications. Such a broad  
15552 language.

15553 Mr. Cicilline. Will the gentlelady yield for a question?

15554 Oh, I'm sorry. The gentleman.

15555 Mr. Bishop. I would -- I would yield to Mr. Cicilline for  
15556 an answer.

15557 Mr. Cicilline. Thank you. So I think, again, that language  
15558 in subsection (3) discriminates among similarly situated business  
15559 uses intended to create an even playing field and prevent  
15560 platforms from picking winners and losers.

15561 But I agree with you that there's a lot of detail in the  
15562 other discriminatory conduct in subsection (b). So, you know,  
15563 we have accepted some of your amendments in the past.

15564 If you're saying striking (3) as an amendment would cause  
15565 you to support the balance of the bill, that's something I would,  
15566 certainly, contemplate because I think if that -- if that raises  
15567 concern, I think it's, clearly, intended -- that language is  
15568 intended to ensure that platforms don't get to pick winners and  
15569 losers and discriminate amongst similarly situated businesses.

15570

15571 But if you're uncomfortable with that language, part of this  
15572 process is deliberative. If it would earn your support to remove

15573 (3) and leave (1) and (2) intact I'd, certainly, entertain that.

15574

15575 Mr. Bishop. My time has expired. I yield back.

15576 Chairman Nadler. The gentleman --

15577 [Laughter.]

15578 Mr. Cicilline. We'll take that as a no.

15579 Chairman Nadler. The gentleman yields back.

15580 Mr. Jordan. I have an amendment.

15581 Chairman Nadler. For what purpose does the gentleman from  
15582 Ohio seek recognition?

15583 Mr. Jordan. Thank you, Mr. Chairman. I have an amendment  
15584 -- the amendment at the desk.

15585 Chairman Nadler. The clerk will report the amendment.

15586 Mr. Cicilline. Reserve a point of order, Mr. Chairman.

15587 Chairman Nadler. A point of order is -- a point of order  
15588 is reserved.

15589 Ms. Fontenot. Amendment to the amendment in the nature of  
15590 a substitute to H.R. 3816, offered by Mr. Jordan. Page 1 line  
15591 15 strike --

15592 Chairman Nadler. Without objection, the amendment is  
15593 considered as read and the gentleman is recognized in support  
15594 of the amendment.

15595 [The Amendment offered by Mr. Jordan follows:]

15596

15597

\*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*



15598 Mr. Jordan. Thank you, Mr. Chairman.

15599 Democrats have told us that we can't change the definition  
15600 of covered platform, even though a week ago they change the  
15601 definition. They changed it in an effort to keep Microsoft out  
15602 of the four companies that they want to have covered.

15603 Democrats told us that there's a burden shift for any  
15604 mergers, and then they changed that and said, well, there's a  
15605 burden shift for any mergers for the covered platforms unless  
15606 they're merging with a company of \$50 million or less.

15607 And Democrats said we have to give the FTC and DOJ more money  
15608 but we can't put any limits on how that money is spent. And then  
15609 time and time again, they've said no to the most important  
15610 question, in my judgment.

15611 I think probably the most important question, certainly,  
15612 for the Republican side of the aisle and that is the censorship  
15613 of speech, the restriction on speech, the limits placed on free  
15614 speech, the content moderation that is done by these big  
15615 companies.

15616 So I'm going to try one more time. This amendment explicitly  
15617 creates a private right of action. The amendment would prohibit  
15618 a covered platform from engaging in politically biased content  
15619 moderation.

15620 Time and again, we have seen big tech stifle viewpoints that  
15621 don't align with their political ideologies, and all too often

15622 these viewpoints are conservative. If a person believes that  
15623 they've been discriminated against by a qualifying company, they  
15624 will be able to seek a remedy in federal court.

15625 If the person prevails, they will be able to recover actual  
15626 damages, costs, and punitive damages. During the 2020 election,  
15627 we saw big tech play politics under the guise of enforcing content  
15628 moderation standards.

15629 Big tech is out to get conservatives, from elected officials  
15630 to everyday Americans across the country, and this gives the  
15631 average American a remedy.

15632 It is very similar to what the governor of Florida has done  
15633 with the Florida legislature, empowering candidates, empowering  
15634 people to bring causes of action when their content has been taken  
15635 down, when it's been censored, when it's been restricted.

15636 That's all this amendment does. It seems straightforward.

15637 I hope that the majority will not, once again, say, oh, we can't  
15638 deal with this. We can't deal with the most important issue when  
15639 it comes to big tech, at least the most important issue I hear  
15640 from my constituents.

15641 My guess is you all hear -- and someone said this earlier.

15642 This whole thing, it's going to -- if it hasn't hit you yet it's  
15643 going to hit everyone. So it seems to me, as I've said before,  
15644 that this committee should -- the Judiciary Committee should want  
15645 to give American people an explicit private right of action when

15646 this, in fact, this kind of behavior happens to them on these  
15647 platforms.

15648 Ms. Lofgren. Would the gentleman yield?

15649 Mr. Jordan. With that -- yeah, I'll yield to the lady --  
15650 the gentlelady from California.

15651 Ms. Lofgren. It seems to me, and I will -- you know, we  
15652 see this differently, and I will have an amendment that would  
15653 cure the problem I'm about to point out.

15654 But I think this -- your amendment is unnecessary because  
15655 if you take a look at Section 2(a)(3) --

15656 Mr. Jordan. Page?

15657 Ms. Lofgren. On the first page. You're in violation if  
15658 you discriminate among similarly situated business users. So  
15659 if you are doing content moderation for a particular entity but  
15660 not another, you're discriminating among the business users of  
15661 the site, and because the remedy includes a private right of action  
15662 for damages in the bill, you could sue under the bill without  
15663 this amendment.

15664 Mr. Jordan. Yeah, I think -- I think our amendment is  
15665 representing people, too, not just business entities.

15666 Ms. Lofgren. An entity, for example, the Republican Party  
15667 or Jim Jordan for Congress --

15668 Mr. Jordan. I appreciate that.

15669 Ms. Lofgren. -- all of which you would have a private right

15670 of action, too.

15671 Mr. Jordan. As a political -- as a political entity.

15672 Ms. Lofgren. Correct. And I thank the gentleman for  
15673 yielding.

15674 Mr. Jordan. What I was talking about is individuals as well.

15675 Ms. Lofgren. I thank the gentleman for yielding.

15676 Mr. Jordan. You bet. Thank you.

15677 Mr. Chairman, I yield back.

15678 Chairman Nadler. The gentleman yields back.

15679 Mr. Cicilline. Mr. Chairman?

15680 Chairman Nadler. For what purpose does the gentleman from  
15681 Rhode Island seek recognition?

15682 Mr. Cicilline. Move to strike the last word.

15683 Chairman Nadler. The gentleman is recognized.

15684 Mr. Cicilline. Mr. Jordan will not be surprised to hear  
15685 that I oppose this amendment. I know he has tried a number of  
15686 times to have a content moderation discussion.

15687 But this legislation does not involve content moderation.

15688 It's targeted at anti-competitive conduct in the digital  
15689 economy.

15690 I understand that the ranking member has introduced  
15691 legislation to address his concerns about this matter. That  
15692 legislation has been referred to the Committee on Energy and  
15693 Commerce. That is the appropriate venue for addressing these

15694 concerns.

15695 And again, this is about promoting competition online which,  
15696 of course, is the purpose of antitrust law, broadly, and the  
15697 purpose of this statute, to prevent discriminatory behavior that  
15698 favors the product or services of a covered platform, not about  
15699 the content and content moderation. And, again, there's a --

15700 Mr. Bishop. Would the gentleman yield for a question?

15701 Mr. Cicilline. Mr. Chairman, I yield back.

15702 Mr. Bishop. Will the gentleman yield for a question before  
15703 yielding back?

15704 Mr. Jordan. Is he allowed to -- can we respond?

15705 Mr. Bishop. I don't think the chairman has recognized that.

15706 Chairman Nadler. Did the gentleman yield back?

15707 Mr. Bishop. Mr. Cicilline?

15708 Chairman Nadler. The gentleman yields back.

15709 For what purpose does Mr. Bishop seek recognition?

15710 Mr. Jordan. Can you yield me some time? Thank you. I  
15711 thank the gentleman.

15712 Well, I would just --

15713 Chairman Nadler. The gentleman is recognized.

15714 Mr. Jordan. Thank you. Thank you, Mr. Chairman.

15715 Just to respond to the gentleman from Rhode Island, I think  
15716 the gentlelady from California said there is a right of action.

15717 She just said it's in the bill. Now you're telling me that we

15718 can't do it. Looks like you did it in your own bill. That's  
15719 what Ms. Lofgren just pointed out.

15720 Mr. Cicilline. It's to business users, Mr. Jordan.

15721 Mr. Jordan. Pardon?

15722 Mr. Cicilline. Applies to business users in the bill.

15723 Mr. Jordan. Well, I know, and I said that earlier. We want  
15724 to -- we want to extend it to individuals, and you're saying you're  
15725 -- is it -- you're making a germane argument or you're saying  
15726 you're just opposed to it?

15727 Mr. Cicilline. No, it's different. The bill prohibits it  
15728 with respect to business use --

15729 Mr. Jordan. So you are making a germane argument?

15730 Mr. Cicilline. No. No. I'm not making a -- I'm just  
15731 opposing your amendment.

15732 Mr. Jordan. Oh, okay. Okay. I got it. I got it.

15733 So I would have a question for the gentlemen then. Do you  
15734 support the idea of the amendment I offered -- I don't know if  
15735 it was today or yesterday -- but the amendment I offered --

15736 Mr. Issa. Earlier.

15737 Mr. Jordan. -- earlier, definitely earlier, the taking  
15738 away the liability protection, do you or do any of the Democrats  
15739 support the idea of allowing an explicit private right of action  
15740 for an individual and taking away the liability protection that  
15741 big tech currently enjoys.

15742           Do you guys support that idea? Because you keep saying no  
15743 to it in this context. I want to know if there's any context  
15744 that you'll support that. Because, certainly, again, the  
15745 constituents I get the privilege of representing they certainly  
15746 like that concept.

15747           Mr. Cicilline. Will the gentleman yield? I'm happy to --

15748           Mr. Jordan. Of course.

15749           Mr. Cicilline. I can't remember precisely your proposal,  
15750 but I'm certain that I share the views put forth by Mr. Raskin  
15751 that I think we need reform of Section 230. That's a matter that,  
15752 obviously, is not within the jurisdiction of this committee, but  
15753 it's something I believe in strongly.

15754           I would be delighted to work with you and I know Mr. Raskin  
15755 would as well, to think -- and Ms. Lofgren -- what the right  
15756 contours of that are. I just don't think that this is the  
15757 appropriate place to do it. But I --

15758           Mr. Jordan. Then and how about this, if I could, Mr.

15759 Chairman --

15760           Chairman Nadler. Sure.

15761           Mr. Jordan. -- reclaim my time. How about the second  
15762 question, do you support this amendment that you're -- I mean,  
15763 in a different context. I know you don't support it in this  
15764 context. But in a different context do you support a private  
15765 right of action if, in fact, an individual's content has been

15766 taken down for political reasons?

15767 Mr. Cicilline. I've explained to you my position on your  
15768 amendment. You're talking about revisions to the content  
15769 moderation rules governed by Section 230. I think that requires  
15770 reform. I just don't think that's appropriate in this bill.  
15771 I don't think your amendment --

15772 Mr. Jordan. I know -- I know you don't. I get that. I  
15773 know you don't think it's appropriate in this bill. Do you think  
15774 it's appropriate in a different bill? Because --

15775 Mr. Cicilline. I told you I think we need to reform Section  
15776 230.

15777 Mr. Jordan. I'm not talking about Section 230 here. I'm  
15778 talking about explicit private right of action. There are two  
15779 different ideas. One is to take away the liability protection  
15780 they have, in other words, to allow you to sue explicitly.

15781 Mr. Cicilline. I'm happy to have that conversation after  
15782 the markup and talk to you about it. I have no sort of fixed  
15783 views on it. I think reform is necessary. Making sure those  
15784 rights can be vindicated is an important part of the conversation.

15785

15786 Mr. Jordan. I think it's Mr. Bishop's time, but if he can  
15787 yield to the gentlelady --

15788 Ms. Lofgren. Could you yield for a question because it's  
15789 getting late and it's hard not to feel grumpy, honestly.



15790           But I think what's being suggested or the question that the  
15791 ranking member is asking is whether -- essentially, he's saying  
15792 discriminates among similar situated businesses would be expanded  
15793 to individuals who are discriminated against.

15794           Mr. Jordan. Yeah. Exactly. Exactly.

15795           Ms. Lofgren. And that's -- I am opposed to that. But that's  
15796 what the issue that he's raising. Thank you for yielding.

15797           Mr. Jordan. I thank the gentleman for yielding. I yield  
15798 back.

15799           Mr. Bishop. You yield to me, Mr. Jordan.

15800           Mr. Jordan. I think it's your time that I'm yielding back  
15801 to you.

15802           Mr. Bishop. Thank you. And I -- excuse me, I'm getting  
15803 choked up. My peanuts, which I do have a mild allergy.

15804           I wanted to ask another question to Mr. Cicilline, if you'd  
15805 yield to him, and that is his answer to the proposed amendment  
15806 then withdrawn from Ms. Jackson Lee was that he thought there  
15807 needed to be an amendment to deal with that issue in an appropriate  
15808 way. That is to say, the notion of racial or women-owned business  
15809 discrimination.

15810           Why not the same sort of treatment here to have something  
15811 that avoids discrimination on the basis of political motivation  
15812 by virtue of politically biased content moderation?

15813           Mr. Cicilline. Is that -- is that question for me?

15814           Mr. Bishop. But he'd have to yield to you. That's my --  
15815 I yield back to Mr. Jordan with the request. I hope that he'll  
15816 yield to you.

15817           I beg your pardon. I didn't -- I thought it was Mr. Jordan's.  
15818 So he yielded to me.

15819           Mr. Jordan. No, that's yours.

15820           Mr. Bishop. So I'd offer to yield to you, Mr. Cicilline,  
15821 if you'd like to answer.

15822           Mr. Cicilline. Yeah. Again, I think one of them relates  
15823 to economic discrimination, which is what the purpose of antitrust  
15824 and the purpose of this proposal that's before the committee right  
15825 now. I think that's quite different, though.

15826           As I mentioned to Ms. Jackson Lee, the consequences to women  
15827 and communities of color have been particularly devastating with  
15828 respect to this market concentration, and I think that's an  
15829 important issue. But that is different than economic harms that  
15830 are intended to be covered by this bill.

15831           Mr. Bishop. But you said -- you acknowledged that some  
15832 amendment needed to be made to take account of her concern, but  
15833 not Mr. Jordan's?

15834           Mr. Cicilline. Because, again, her concern relates to the  
15835 economic implications for women-owned businesses and communities  
15836 of color. His relates to content moderation for individuals.  
15837 They're different issues.

15838 I yield back.

15839 Chairman Nadler. The gentleman's time -- the gentleman's

15840 time has expired. The question occurs on the amendment.

15841 All in favor say aye.

15842 Opposed no.

15843 The noes have it.

15844 Mr. Jordan. A recorded vote on this.

15845 Chairman Nadler. A recorded vote is requested. The clerk

15846 will call the roll.

15847 Ms. Fontenot. Mr. Nadler?

15848 Chairman Nadler. No.

15849 Ms. Fontenot. Mr. Nadler votes no.

15850 Ms. Lofgren?

15851 Ms. Lofgren. No.

15852 Ms. Fontenot. Ms. Lofgren votes no.

15853 Ms. Jackson Lee?

15854 Ms. Jackson Lee. No.

15855 Ms. Fontenot. Ms. Jackson Lee votes no.

15856 Mr. Cohen?

15857 Mr. Johnson of Georgia?

15858 Mr. Johnson of Georgia. No.

15859 Ms. Fontenot. Mr. Johnson of Georgia votes no.

15860 Mr. Deutch?

15861 Ms. Bass?

15862 Ms. Bass. No.

15863 Ms. Fontenot. Ms. Bass votes no.

15864 Mr. Jeffries?

15865 Mr. Cicilline?

15866 Mr. Cicilline. No.

15867 Ms. Fontenot. Mr. Cicilline votes no.

15868 Mr. Swalwell?

15869 Mr. Swalwell. No.

15870 Ms. Fontenot. Mr. Swalwell votes no.

15871 Mr. Lieu?

15872 Mr. Lieu. No.

15873 Ms. Fontenot. Mr. Lieu votes no.

15874 Mr. Raskin?

15875 Mr. Raskin. No.

15876 Ms. Fontenot. Mr. Raskin votes no.

15877 Ms. Jayapal?

15878 Ms. Jayapal. No.

15879 Ms. Fontenot. Ms. Jayapal votes no.

15880 Mrs. Demings?

15881 Mrs. Demings. No.

15882 Ms. Fontenot. Mrs. Demings votes no.

15883 Mr. Correa?

15884 Mr. Correa. No.

15885 Ms. Fontenot. Mr. Correa votes no.

15886 Ms. Scanlon?  
15887 Ms. Scanlon. No.  
15888 Ms. Fontenot. Ms. Scanlon votes no.  
15889 Ms. Garcia?  
15890 Ms. Garcia. No.  
15891 Ms. Fontenot. Ms. Garcia votes no.  
15892 Mr. Neguse?  
15893 Mr. Neguse. No.  
15894 Ms. Fontenot. Mr. Neguse votes no.  
15895 Mrs. McBath?  
15896 Mrs. McBath. No.  
15897 Ms. Fontenot. Mrs. McBath votes no.  
15898 Mr. Stanton?  
15899 Mr. Stanton. No.  
15900 Ms. Fontenot. Mr. Stanton votes no.  
15901 Ms. Dean?  
15902 Ms. Dean. No.  
15903 Ms. Fontenot. Ms. Dean votes no.  
15904 Ms. Escobar?  
15905 Ms. Escobar. No.  
15906 Ms. Fontenot. Ms. Escobar votes no.  
15907 Mr. Jones?  
15908 Mr. Jones. No.  
15909 Ms. Fontenot. Mr. Jones votes no.

15910 Ms. Ross?

15911 Ms. Ross. No.

15912 Ms. Fontenot. Ms. Ross votes no.

15913 Ms. Bush?

15914 Ms. Bush. No.

15915 Ms. Fontenot. Ms. Bush votes no.

15916 Mr. Jordan?

15917 Mr. Jordan. Yes.

15918 Ms. Fontenot. Mr. Jordan votes yes.

15919 Mr. Chabot?

15920 Mr. Chabot. Aye.

15921 Ms. Fontenot. Mr. Chabot votes aye.

15922 Mr. Gohmert?

15923 Mr. Gohmert. Aye.

15924 Ms. Fontenot. Mr. Gohmert votes aye.

15925 Mr. Issa?

15926 Mr. Issa. Aye.

15927 Ms. Fontenot. Mr. Issa votes aye.

15928 Mr. Buck?

15929 Mr. Buck. Aye.

15930 Ms. Fontenot. Mr. Buck votes aye.

15931 Mr. Gaetz?

15932 Mr. Gaetz. Aye.

15933 Ms. Fontenot. Mr. Gaetz votes aye.

15934 Mr. Johnson of Louisiana?

15935 Mr. Johnson of Louisiana. Aye.

15936 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

15937 Mr. Biggs?

15938 Mr. Biggs. Aye.

15939 Ms. Fontenot. Mr. Biggs votes aye.

15940 Mr. McClintock?

15941 Mr. McClintock. Aye.

15942 Ms. Fontenot. Mr. McClintock votes aye.

15943 Mr. Steube?

15944 Mr. Steube. Yes.

15945 Ms. Fontenot. Mr. Steube votes yes.

15946 Mr. Tiffany?

15947 Mr. Tiffany. Aye.

15948 Ms. Fontenot. Mr. Tiffany votes aye.

15949 Mr. Massie?

15950 Mr. Massie. Aye.

15951 Ms. Fontenot. Mr. Massie votes aye.

15952 Mr. Roy?

15953 Mr. Roy. Aye.

15954 Ms. Fontenot. Mr. Roy votes aye.

15955 Mr. Bishop?

15956 Mr. Bishop. Yes.

15957 Ms. Fontenot. Mr. Bishop votes yes.

15958 Mrs. Fischbach?

15959 Mrs. Spartz?

15960 Mrs. Spartz. Yes.

15961 Ms. Fontenot. Mrs. Spartz votes yes.

15962 Mr. Fitzgerald?

15963 Mr. Fitzgerald. Aye.

15964 Ms. Fontenot. Mr. Fitzgerald votes aye.

15965 Mr. Bentz?

15966 Mr. Bentz. Yes.

15967 Ms. Fontenot. Mr. Bentz votes yes.

15968 Mr. Owens?

15969 Mr. Owens. Aye.

15970 Ms. Fontenot. Mr. Owens votes aye.

15971 Chairman Nadler. Mr. Deutch?

15972 Mr. Deutch. No.

15973 Ms. Fontenot. Mr. Deutch votes no.

15974 Chairman Nadler. Mrs. Fischbach?

15975 Mrs. Fischbach. Yes. Or, I'm sorry. No.

15976 Ms. Fontenot. Ms. Fischbach votes no.

15977 Chairman Nadler. Has everyone voted who wishes to vote?

15978 [No response.]

15979 Chairman Nadler. The clerk will report.

15980 [Pause.]

15981 Ms. Fontenot. Mr. Chairman, there are 18 ayes and 24 noes.



15982 Chairman Nadler. The amendment is not agreed to.

15983 Are there any further amendments to the amendment in the  
15984 nature of a substitute?

15985 Ms. Lofgren. Mr. Chairman, I --

15986 Chairman Nadler. For what purpose does the gentlelady from  
15987 California seek recognition?

15988 Ms. Lofgren. I have an amendment at the desk.

15989 Chairman Nadler. The clerk will report the amendment.

15990 Ms. Lofgren. 15 XML, page 23.

15991 Ms. Fontenot. Amendment to the amendment in the nature of  
15992 a substitute to H.R. 3816 offered by Ms. Lofgren of California.

15993 Page 23 after line 5 --

15994 Chairman Nadler. Without objection, the amendment is  
15995 considered as read and the gentlelady is recognized in support  
15996 of the amendment.

15997 [The Amendment offered by Ms. Lofgren follows:]

15998

15999 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

16000 Ms. Lofgren. Mr. Chairman, this amendment provides an  
16001 action taken by a covered platform operator shall not be  
16002 considered unlawful conduct under subsection 2(a) or (b) of this  
16003 act if it is good faith, nonpretextual, and reasonably tailored  
16004 in its application of content moderation policies intended to  
16005 restrict access to or availability of material that a covered  
16006 platform operator or user considers to be obscene, lewd,  
16007 lascivious, filthy, excessively violent, harassing, hateful,  
16008 facilitating unlawful content, or otherwise objectionable,  
16009 whether or not such material is constitutionally protected.

16010 Now, why am I offering this? If you take a look at Section  
16011 2(a)(3), for example, it is a violation to discriminate among  
16012 similarly situated businesses, and there's no requirement that  
16013 there be an anti-competitive aspect to it.

16014 It's simply the discrimination on its face. That would  
16015 allow a moderated business to seek redress. For example, recall  
16016 a few years ago Apple removed Infowars, that app, from its App  
16017 Store for violating Apple's content policies, spreading  
16018 misinformation and hateful content in bad faith.

16019 Now, they could bring a claim that similarly situated apps  
16020 were left up on the platform and that they were discriminated  
16021 against.

16022 Now, I know Mr. Cicilline will likely argue that the  
16023 affirmative defense in the bill would protect content moderation

16024 policies. But I think that is uncertain at best and that we would  
16025 be much better off to affirmatively defend the right to moderate  
16026 content.

16027 There's no stable body of law on this concept and I would  
16028 note that Mr. Buck said earlier in this markup that Google had  
16029 changed its algorithm to advantage Mr. Biden and disadvantage  
16030 Mr. Trump, which is the exact language of the bill in identifying  
16031 unlawful categories of discriminatory content.

16032 Now, I'm very skeptical of that claim about Google. But  
16033 the bigger point here is the very argument shows how content  
16034 moderation decisions could be the subject of litigation.

16035 I do think creating disincentives to good faith platform  
16036 actions is not a good idea, and if anything that the last few  
16037 years have shown us that we need more content moderation because  
16038 of the hateful sites and the violent sites that continue to be  
16039 on these platforms.

16040 I recognize that my Republican colleagues will almost  
16041 certainly oppose this amendment, and I accept that. But I do  
16042 want to make an observation.

16043 While I think it's often grossly exaggerated, I do recognize  
16044 there is concern about over censorship by the platforms and that  
16045 my colleagues feel genuine about this and, certainly, it is  
16046 possible that there could be action, you know, against perfectly  
16047 innocuous activity.

16048           That said, it's simply not possible to have functional social  
16049           media and other online services without at least some significant  
16050           moderation, and the question is how far should it go, what's too  
16051           far, the devil is in the detail, and in that regard, antitrust  
16052           will never really fix censorship.

16053           Here, I note that it's not just the dominant platforms who  
16054           have policed hate speech and disinformation. Also many other  
16055           platforms from Reddit to Twitter to Discord and many other sites.

16056

16057           But I do think it would be of value to us not to rely on  
16058           the affirmative defense, the possibility that litigation will  
16059           deter platforms from taking the steps that we want them to take,  
16060           which is to moderate hateful conduct -- content, to moderate  
16061           racist, anti-Semitic, or content that incites to violence or other  
16062           disorders.

16063           So I think this improves the bill. I hope that we can adopt  
16064           it. And with that, Mr. Chairman, I yield back.

16065           Mr. Cicilline. Mr. Chairman?

16066           Chairman Nadler. The gentlelady yields back. For what  
16067           purposes does the gentleman from Rhode Island seek recognition?

16068           Mr. Cicilline. Move to strike the last word.

16069           Chairman Nadler. The gentleman is recognized.

16070           Mr. Cicilline. Thank you, Mr. Chairman.

16071           I oppose the gentlelady's amendment. This amendment is

16072 unnecessary because, again, this bill does not involve content  
16073 moderation. A platform that applies its policies in a uniform  
16074 way to similarly situated business users' standards would face  
16075 no liability.

16076 So the amendment is unnecessary. You don't even need to  
16077 get to the affirmative defenses. The American Innovation and  
16078 Choice Online Act does not restrict the ability of platforms to  
16079 moderate user content.

16080 The bill does not apply to user-generated content or online  
16081 speech by individual users. They do not do anything to prevent  
16082 a covered platform from moderating content by the individual users  
16083 on the platform.

16084 The legislation only applies to the covered platforms'  
16085 conduct that affects businesses that use the platform. In short,  
16086 the bill tells covered platforms they can have rules and they  
16087 can enforce those rules.

16088 But those rules have to be applied evenly, and the platform  
16089 services that use the platform have to play by the same rules  
16090 as every everyone else.

16091 Nothing in this bill prevents a covered platform from  
16092 adopting or enforcing policies to remove hate speech,  
16093 misinformation, scams, or illegal activity. A platform that  
16094 uniformly applies its content moderation standards would face  
16095 no liability.

16096 Ms. Lofgren. Would the gentleman yield?

16097 Mr. Cicilline. So the amendment is unnecessary. I urge  
16098 my colleagues to --

16099 Ms. Lofgren. Would the gentleman yield?

16100 Mr. Cicilline. Sure. Of course.

16101 Ms. Lofgren. I understand that you believe that this is  
16102 covered. But let me just make this point.

16103 If you have hateful content on YouTube and you're making  
16104 money, you're running a business, and you might not be able to  
16105 moderate all of the hateful contact.

16106 Maybe you've only found some of it. Infowars made money.  
16107 It was a business. But not every right wing hateful business  
16108 was removed from the platform. Therefore, that is  
16109 discrimination.

16110 Mr. Cicilline. In that instance -- reclaiming my time.

16111 In that instance, I would say to the gentlelady, that's,  
16112 in fact, when the affirmative defense comes into play. But,  
16113 again, if you have a standard and that is applied evenly, there's  
16114 no liability.

16115 Mr. Cicilline. With that, I yield back.

16116 Mr. Jordan. Mr. Chairman?

16117 Chairman Nadler. The gentleman yields back. The gentleman  
16118 yields back.

16119 For what purpose does the gentleman from Ohio seek

16120 recognition?

16121 Mr. Jordan. Strike the last word.

16122 Chairman Nadler. The gentleman is recognized.

16123 Mr. Jordan. Yeah, the concern here is the two words  
16124 "otherwise objectionable." That's the catch-all. That's where  
16125 they can say if you disagreed with what Dr. Fauci was saying last  
16126 year, even though it looks like he was absolutely wrong about  
16127 the origin of the virus, that they could take that content down.

16128 We had a long discussion from the gentleman from Texas  
16129 talking about that issue a year ago. So that's the problem, and  
16130 this is exactly the language we think needs to come out, needs  
16131 to be dealt with in the amendment offered again several hours  
16132 ago relative to Section 230.

16133 So that's the concern here, and Ms. Lofgren wants to add  
16134 that -- keep that in. So I guess I'm with Mr. Cicilline in  
16135 opposing this amendment, but I'm opposing specifically for what  
16136 it means to -- what these platforms can do to Americans' speech.

16137

16138 That is the problem. That is the area that needs to change.

16139 That's what's in our legislation we introduced a week ago and  
16140 the amendment I offered earlier, or yesterday sometime.

16141 With that I yield back.

16142 Mr. Johnson of Louisiana. Would the gentleman --

16143 Chairman Nadler. The gentleman yields --

16144 Mr. Jordan. Yeah, I yield to Mr. -- I yield to Mr. Johnson  
16145 of Louisiana.

16146 Mr. Johnson of Louisiana. I thank the gentleman from Ohio.  
16147 I just want to say that, I mean, I'm just stunned. I know  
16148 it's 3:00 o'clock in the morning, but everybody needs to pay  
16149 attention to this, that this would -- the "otherwise  
16150 objectionable" phrase, of course, is a problem.

16151 But there's a lot here as well. It's hopelessly subjective  
16152 language, harassing and hateful. What does that even mean?

16153 I mean, that's part of the problem with the -- that we have  
16154 with the big tech censorship right now is that some people in  
16155 a room somewhere determine what is appropriate to be online, which  
16156 is the equivalent of the free marketplace of ideas now and the  
16157 public square. It's the modern public sidewalk.

16158 I mean, for 20 years I was in federal courts defending free  
16159 speech, religious freedom, and the idea of free expression, and  
16160 it was under assault. And we used to routinely go in and sue,  
16161 you know, public universities because they had these crazy,  
16162 oppressive, hopelessly subjective speech codes and they would  
16163 say, you know, a Christian student wants to, you know, quietly  
16164 respectfully express what the Bible says about human sexuality  
16165 and it was deemed, you know, hate speech or whatever, and they  
16166 would try to, you know, discipline them and it was just blatantly  
16167 unconstitutional.



16168           So, look, I'm just saying this is a Pandora's box. I would  
16169           oppose the amendment, too, just because -- I mean, basically,  
16170           why don't we just say we're going to give a license to the liberal  
16171           operators of big tech to just censor and silence conservatives  
16172           in perpetuity. Let's just make that --

16173           Mr. Gohmert. Would my friend yield? Would Mr. Johnson  
16174           yield?

16175           Mr. Johnson of Louisiana. I would yield. I'll be happy  
16176           to yield to Mr. Gohmert.

16177           Mr. Gohmert. Yeah. What about the language "otherwise  
16178           objectionable?" I think that pretty well just leaves the door  
16179           open to anyone who doesn't like what a conservative is saying,  
16180           because we don't eliminate outrageous liberal speech. It's only  
16181           conservative.

16182           Mr. Johnson of Louisiana. It's celebrated, yeah.

16183           Mr. Gohmert. So "otherwise objectionable," I think, pretty  
16184           well does embrace everything you're concerned about.

16185           Mr. Johnson of Louisiana. Yeah.

16186           Mr. Jordan. It's -- and it's -- if I could reclaim my time  
16187           -- and it's further qualified. "Otherwise objectionable," even  
16188           if it's constitutional.

16189           Mr. Gohmert. Right. There you go.

16190           Mr. Jordan. Shazam. Well, whatever they want it to be  
16191           that's the standard. That's our concern, and it's been our

16192 concern the last two days when we talked about it. It has been  
16193 our concern forever with dealing with what is happening to  
16194 people's speech right now.

16195 Ms. Lofgren. Would the gentleman --

16196 Mr. Jordan. I will yield to you. But I think the gentleman  
16197 from North Carolina -- and then I'll come to you.

16198 Mr. Bishop. Let me just point out one other thing. It's  
16199 availability of material that a covered platform operator or user  
16200 considers to be otherwise objectionable.

16201 So it may not be otherwise objectionable except in someone's  
16202 extraordinary subjective judgment, and yet, it still is covered.

16203

16204 So and I think the same issue -- it's the same issue we  
16205 uncovered in the interoperability bill earlier tonight, which  
16206 Mr. Massie, I think, observed. You cannot avoid this, and what  
16207 all of these bills are doing -- and again, I think it's most  
16208 relevant to those Republicans who decided to support these bills  
16209 that confer all this discretion upon the FTC -- is it locks in  
16210 government control and government imprimatur upon this censorship  
16211 that, you know, Facebook will describe as exercising content  
16212 moderation in its -- in its humble discretion?

16213 Mr. Jordan. I would argue, and I'll yield the last few  
16214 seconds I have -- but I would argue I think that's what the  
16215 Democrats want. I hate to say it, but I think that's what they

16216 want. They've sent letters to the big carriers telling them to  
16217 take certain networks off their platform.

16218 I mean, we had -- we had -- the gentleman from Maryland said  
16219 earlier he went on Fox one time and he thought it was a -- it  
16220 was a tough interview.

16221 Welcome to the world. That happens every time we go on CNN.  
16222 But I don't -- I don't write letters to carriers saying, don't  
16223 carry CNN on your platform. I'm for free speech. I'm for the  
16224 First Amendment.

16225 But it sure seems like the other party isn't and that's the  
16226 scary thing. That's what -- and now the other party wants to  
16227 give so much power to the FTC. That's what we're all concerned  
16228 about.

16229 I yield to the --

16230 Mr. Cicilline. Mr. Jordan, it sounds like we agree. So  
16231 maybe we can --

16232 Chairman Nadler. The gentleman's time -- the gentleman's  
16233 time has expired.

16234 For what purpose does -- for what purpose --

16235 Mr. Raskin. Move to strike the last word.

16236 Chairman Nadler. For what purpose does Mr. Raskin seek  
16237 recognition?

16238 Mr. Raskin. I move to strike the last word, Mr. Chairman.

16239 Chairman Nadler. The gentleman is recognized.

16240 Mr. Raskin. So at 3:08 in the morning, maybe we have begun  
16241 to achieve some analytical clarity about what the real questions  
16242 are here.

16243 I'm listening to Mr. Johnson, and it seems to me that he  
16244 wants to treat any website on the internet as a state actor, as  
16245 a -- as the government, and I just want to see whether that's  
16246 the case. In other words, does everybody have a right to speak  
16247 on everyone else's website or platform?

16248 Mr. Johnson of Louisiana. Would the gentleman yield?

16249 Mr. Raskin. By all means.

16250 Mr. Johnson of Louisiana. Let me give it to you in a  
16251 nutshell. Okay? Conservatives, as the gentleman from Ohio was  
16252 saying just a moment ago, are for more free speech. We defend  
16253 the free marketplace of the ideas. We want more free speech.

16254 Our liberal friends, our progressive friends, what to restrict  
16255 and censor and silence speech with which they disagree.

16256 Mr. Raskin. Well, wait. Well, then perhaps let me pursue  
16257 it with you, if we could, Mr. Johnson. The reason I raised the  
16258 example of Fox News is it's a private corporation and they very  
16259 clearly wanted to censor my speech when they invited me on. Do  
16260 I have a right to sue them for not allowing me to speak as much  
16261 as the other people on the platform or is it up to them? Is Fox  
16262 News a speaker or are they like the state? Are they like a  
16263 marketplace of speech?

16264 Mr. Johnson of Louisiana. No, Fox News is a broadcast  
16265 channel, and I probably would dispute that they censored you.  
16266 I'm not sure about that. I've had rough interviews on CNN --  
16267 Mr. Raskin. And I agree with you. I agree with you. But,  
16268 Mr. Johnson, don't miss my point. What I'm saying is Fox News  
16269 is just like websites that you're accusing of censoring  
16270 conservatives. They are a speech --

16271 Mr. Johnson of Louisiana. Now, listen -- sorry, all right.  
16272 So, clearly, Fox News is a private company.

16273 Mr. Raskin. So, what's the difference?

16274 Mr. Johnson of Louisiana. Jamie, my friend, what we are  
16275 looking at here, the reality is that the big tech oligarchs, the  
16276 online community is the equivalent of what you and I used to talk  
16277 about in teaching con law as being the quintessential public  
16278 square. This is public fora now. I mean --

16279 Mr. Raskin. Okay. Good. So, let me ask you, if you're  
16280 saying it's a public square, you're saying it should be treated  
16281 like the government.

16282 Mr. Johnson of Louisiana. No, no.

16283 Mr. Raskin. And the First Amendment should apply against  
16284 it and everybody should have a right to speak there.

16285 Mr. Johnson of Louisiana. No, I'm not saying --

16286 Mr. Raskin. Is that right.

16287 Mr. Johnson of Louisiana. I am not arguing that, but I am

16288 saying --

16289 Mr. Raskin. Well, you just said it was the public square.  
16290 People have the right in the public square under the public forum  
16291 doctrine.

16292 Mr. Johnson of Louisiana. It is --

16293 Mr. Raskin. So, I'm not trying to catch you up here. Okay?

16294 Mr. Johnson of Louisiana. And you're not catching me up  
16295 at all.

16296 Mr. Raskin. Not everything is conservative and Democrat,  
16297 Republican. Just reclaiming my time, my question is this: how  
16298 do you want to treat websites and how do you want to treat the  
16299 internet?

16300 Mr. Johnson of Louisiana. Bingo.

16301 Mr. Raskin. Are you saying it is like government property  
16302 and everybody's got an equal right to be there? Or are you saying  
16303 that private speakers are entitled to control their own speech?  
16304 What is the analogy you're making?

16305 Mr. Johnson of Louisiana. So, here you have just, I think,  
16306 illustrated the point that we've been trying to make for the last  
16307 12-15 hours, however long we've been here, that this is a very  
16308 complex, unprecedented, unusual Brave New World situation that  
16309 we have. We don't know what this is, and you and I could debate  
16310 and discuss the contours of this for a month.

16311 Mr. Cicilline. Mr. Raskin, will you yield for just a moment?

16312 Mr. Raskin. I will. Just to reclaim my time for 1 second,  
16313 I just want to make the point it can't be the case that, if hate  
16314 speech gets kicked off of a liberal platform, that that is a First  
16315 Amendment free speech violation. But if a liberal speaker gets  
16316 kicked off of a conservative private corporate platform --

16317 Mr. Johnson of Louisiana. I didn't say --

16318 Mr. Raskin. -- that that's just free speech. It's got  
16319 to work in both directions. So, you've got to decide what your  
16320 analogy is.

16321 Mr. Johnson of Louisiana. Right.

16322 Mr. Jordan. Would the gentleman yield to speak to that?

16323 Mr. Raskin. Do you want to treat all speech that takes place  
16324 on the internet as an open public forum like people going out  
16325 to a park?

16326 Mr. Jordan. Would the gentleman yield?

16327 Mr. Johnson of Louisiana. They're not treating it that way.  
16328 They're not treating it that way.

16329 Mr. Jordan. Would the gentleman yield? Mr. Raskin, would  
16330 you yield for a question?

16331 Mr. Raskin. I'm going to yield to the gentleman from Rhode  
16332 Island.

16333 Mr. Cicilline. Thank you, Mr. Raskin.

16334 I think you've made the point that competition in this space  
16335 is important because it gives people options. But we've had a

16336 long discussion about content moderation. That's not the purpose  
16337 of the bill. I think we're all ready to vote.

16338 And I yield back to Mr. Raskin.

16339 Mr. Raskin. Right. But I guess here's the point we need  
16340 to be clear about. Okay? I know that some people view there  
16341 being political mileage and whining about they're victims and  
16342 they have a victim complex, and everybody's discriminating  
16343 against them, and so on.

16344 Mr. Johnson of Louisiana. You're the one who did that.

16345 Mr. Raskin. The point is --

16346 Mr. Johnson of Louisiana. Well, you just said you were  
16347 censored by Fox.

16348 Mr. Raskin. -- if you want to have a discussion about  
16349 content moderation at some point, let's have a serious discussion  
16350 about it and decide whether people have a free speech right to  
16351 speak on other people's websites if they don't want them there.

16352 And it can be right on left websites or left on right websites,  
16353 or whatever. But that is a very different question from the  
16354 antitrust question which is being posed here.

16355 And I yield back to you, Mr. Chairman.

16356 Chairman Nadler. The time is expired.

16357 For what purpose does Mr. Issa seek recognition?

16358 Mr. Issa. I move to strike the last word.

16359 Chairman Nadler. The gentleman is recognized.



16360 Mr. Issa. Okay. Thank you, Mr. Chairman.

16361 I'd yield to the ranking member for a minute.

16362 Mr. Jordan. We're not the ones asking for networks to be  
16363 taken off of the platforms; Democrats are. I didn't write the  
16364 letter saying, "Are you planning to continue to carry Fox News,  
16365 Newsmax, and One America News?" Democrats wrote that letter.

16366 I didn't bring up Fox News today. Democrats brought up Fox News.  
16367 Mr. Raskin brought up Fox News saying, "Oh, they mistreated me  
16368 when I went on for an interview." I'll go on Fox News anytime  
16369 you want.

16370 Mr. Raskin. Would the gentleman yield, please?

16371 Mr. Jordan. Mr. Raskin, I'll go on Fox News anytime you  
16372 want. I'll debate you. I'll go on CNN and debate you. That's  
16373 just, as Mr. Johnson I think eloquently said, we're for speech.  
16374 We're for the First Amendment. You guys are the ones who want  
16375 to stop it. You wrote the letter.

16376 Mr. Raskin. Not for Liz Cheney, you're not.

16377 Mr. Jordan. You wrote the letter. Republicans didn't  
16378 write the letter. I have never once said CNN shouldn't be on  
16379 the --

16380 Mr. Raskin. Are you for Colin Kaepernick's free speech?

16381 Mr. Jordan. I'm for free speech. God bless America.  
16382 Right? There's the thing called the First Amendment. That's  
16383 what I'm for.

16384 I yield back to the gentleman from California.

16385 Mr. Issa. I thank the gentleman.

16386 The gentlelady from California, Ms. Lofgren, you had  
16387 something you wanted to say earlier?

16388 Ms. Lofgren. I did. And actually, I was just going to read  
16389 the First Amendment, which is that "Congress shall make no law  
16390 respecting an establishment of religion, or prohibiting the free  
16391 exercise thereof; or abridging the freedom of speech, or the  
16392 press;" et cetera.

16393 These platforms are not Congress and they're not the  
16394 government. They have the right to define the speech that's going  
16395 to appear on their platforms. And they have policies, most of  
16396 them, I believe. And I don't expect that you will support this  
16397 amendment, I mean, because it goes in a different direction than  
16398 where you think we ought to go.

16399 But my point is, for those of us who believe that there ought  
16400 to be some content moderation, that there is some material out  
16401 there that is polluting the mind of the public, driving people  
16402 into crazy conspiracy theories, leading them to attack the  
16403 Capitol, that we would like that content moderated.

16404 And in my judgment -- and I think Mr. Cicilline pretty much  
16405 admitted that -- if you have a business that is thrown off a  
16406 platform and other businesses similarly situated are not, which  
16407 is quite possible because content moderation is not an easy thing

16408 to do -- then there is a cause of action and it will lead platforms  
16409 to be less willing to moderate that content. And I think the  
16410 remedy, from my point of view -- I know you don't see it the same  
16411 way -- is to explicitly say that the content moderation is not  
16412 covered by the discrimination discussed in 2A(3).

16413 And I thank the gentleman for yielding.

16414 Mr. Issa. I thank the gentlelady. And I'm more sympathetic  
16415 to your goal than you might imagine. I'm not prepared to support  
16416 the amendment in its current form, but I think it's a lively,  
16417 it's an appropriate discussion. Hopefully, both sides can come  
16418 to an understanding, at least as the Republican position, and  
16419 that is that we think that we should have more content, not less  
16420 content; that when in doubt, it's fine to have a dissenting view.

16421 The idea that a particular treatment might have been helpful,  
16422 and some medical doctors have thought it was helpful for patients  
16423 with COVID-19, and yet, those were taken down because a platform  
16424 made a medical decision in favor of one side's view or another,  
16425 it worries me. I want to have more debate. And more importantly,  
16426 if these platforms, these platforms that hold themselves out to  
16427 be immune from prosecution or civil suit for any prejudice or  
16428 wrongdoing, if they say, well, look, we're not interfering with  
16429 content, except when needed because it's pornographic or  
16430 threatening, or et cetera -- the famous example of fire in a movie  
16431 theater -- then they have to live up to that. And that's what

16432 we'd like to choose to have them do.

16433 I don't think that CNN has to welcome me on or not yell at  
16434 me or talk me down. I understand these are private companies.

16435 The challenge is that CNN and Fox, and the others, are not immune  
16436 from lawsuits for their action, and periodically, there will be  
16437 lawsuits and they're meritorious.

16438 So, my concern with this amendment is that I don't think  
16439 it's well enough drafted to be narrow enough to meet the  
16440 requirement of limiting it to the kind of prohibited speech that  
16441 we could all agree on. And for that reason, I won't support it,  
16442 but I appreciate the gentlelady's motives.

16443 And I yield back.

16444 Chairman Nadler. The gentleman yields back.

16445 For what purpose does Mrs. Spartz seek recognition?

16446 Mrs. Spartz. Move to strike the last word.

16447 Chairman Nadler. The gentlelady is recognized.

16448 Mrs. Spartz. I just wanted to kind of echo Congressman Issa  
16449 because, you know, to give an example, Amazon just recently  
16450 decided that, no, that they don't like some conservative writer;  
16451 they decided to kick off his book and not to sell it. And they  
16452 have an opinion, and they're a private company. Ultimately, I  
16453 would say from my personal opinion, Karl Marx's Capital book  
16454 probably caused more damage, and a lot of people died because  
16455 of this very bad philosophy, but I will still defend the right

16456 to be sold. And I will not go and say to them and object that  
16457 they shouldn't be selling it. We should have no dictatorship  
16458 of opinion. We should have an open place where people can have  
16459 differences of opinion, unless it's harmful and where a particular  
16460 court said their opinion is bad. And I think the courts should  
16461 rule on that.

16462 The problem that we have, we keep expanding immunity, and  
16463 this even gives further immunity, which already these companies  
16464 have an enormous amount of blanket immunity. If they're really  
16465 a private company, why do they have the Section 230? I mean,  
16466 if we're going to go with that, we don't even really need them.

16467 Why should they even worry about the content, if they are really  
16468 private entities?

16469 So, we kind of have a double standard here. And I think  
16470 we have to have the discussion because it's a very serious  
16471 discussion. I don't have a problem what they do in a private  
16472 company. I have a problem with unlimited amount of immunity,  
16473 and if they harm me as a business, I have no way to have recourse  
16474 in the tort law and through courts.

16475 And I think our American system is based not on government  
16476 regulations, but me, as a business, doing the right things because  
16477 I have a liability, and you can sue me for wrongdoing, because  
16478 the government almost has no ways to enforce all these rules or  
16479 regulations. But if I know that I'm going to get sued if I cause

16480 harm, I will try to treat people properly and not violate their  
16481 rights. And I think that is an important discussion we should  
16482 have.

16483 And to expand and expand immunity, it's really unreasonable,  
16484 and it really suppresses the people who cannot afford to have  
16485 an expensive attorney, people who don't have the money to have  
16486 this Bohemia of a legal system, you know, to be stuck against  
16487 them because it doesn't treat everyone equally.

16488 We either believe in equality of rights or don't believe  
16489 in the equality of rights. And equality of rights doesn't give  
16490 immunity for larger players and not to the smaller ones. And  
16491 I think it's a very discussion we should have.

16492 And I am very happy to see that Congressman Cicilline is  
16493 open to talking about Section 230, and Congressman Raskin, because  
16494 I think that is a discussion we should have as Congress. And  
16495 I hope we can work on that.

16496 I yield back.

16497 Chairman Nadler. The gentlelady yields back.

16498 For what purpose does Mr. Chabot seek recognition?

16499 For what purpose does Mr. Gohmert seek recognition?

16500 Mr. Gohmert. I move to strike the last word.

16501 Chairman Nadler. The gentleman is recognized.

16502 Mr. Gohmert. And I appreciate the gentlelady from

16503 California pointing out what the First Amendment said, that

16504 Congress shall make no laws -- and yet, Congress created Section  
16505 230. That made a law and it made these entities completely immune  
16506 when they went about violating people's constitutional right.  
16507 We gave the authority that I wish we would end to say, we're  
16508 going to shut people down. We've got this town square. We  
16509 assured Congress that we were going to let anybody speak, say  
16510 whatever, as long as it was not constitutionally prohibited.  
16511 And yet, once they got the immunity, here's where we moved, and  
16512 apparently, being encouraged by some on the other side of the  
16513 aisle.

16514 So, it is a congressional action that some of us say, sure,  
16515 fine, they are free to choose anybody they want to speak on their  
16516 platform or to shut down anybody they want on their platform.

16517 But the way they got to be such a big monopoly is by that immunity  
16518 that Congress made laws to create. So, we created the monster,  
16519 and now, we're trying to come up with legislation of how to rein  
16520 the monster in. And yet, we're still letting them keep the  
16521 immunity that let them grow more powerful in some ways than the  
16522 federal government.

16523 Now the allegation about a victim complex, we don't have  
16524 a victim complex. Just like Mr. Jordan said, you know, you go  
16525 on CNN; they turn off your mic; they mistreat you. But none of  
16526 us have said, "Oh, we're going to sue them. We want to shut them  
16527 down. We want them kicked off any cable." Like Mr. Jordan said,

16528 we never asked that happen.

16529 Now some of us have sent letters wanting channels added,  
16530 like One America News or Newsmax added, you know, Fox Business,  
16531 things that are not always on. But we're not asking to  
16532 discriminate and to take things off. We've been asking just for  
16533 a fair shot.

16534 And until this committee gets ready to say, you know what,  
16535 Congress really should not have made a law that discriminates,  
16536 allows someone else to discriminate with our protection all around  
16537 them -- we need to pull that law back, Section 230, or 320 rather,  
16538 and -- yes, that's right, it's 230. Yes, it's 320 or 325.

16539 But that is a problem, and we could fix that. And I think  
16540 you'd find a lot more harmony between both sides of the aisle  
16541 if we weren't protecting entities that got to discriminate and  
16542 eliminate free speech. And to put in the amendment, though,  
16543 "otherwise objectionable, whether or not such material is  
16544 constitutionally protected," that would be fine if Section 230  
16545 were not there giving them immunity.

16546 But we've cloaked them in congressional protection, and  
16547 then, we're saying, you know, you can discriminate with our  
16548 blessing, with our protection, and we'll protect you because we're  
16549 not going to pull back your immunity. So, you just keep on  
16550 discriminating and eliminating free speech of conservatives, or  
16551 even worse, what we've seen this week, there's ruling that if



16552 you referred to biblical viewpoints, that that somehow needs to  
16553 be eliminated; it's somehow offensive. Man, we've come a long  
16554 way the wrong way.

16555 But, anyway, as long as 230 is there giving immunity, that's  
16556 an act of Congress. And I'm hoping that the Supreme Court is  
16557 getting ready to do what Congress should have done and say that  
16558 is where we violated the Constitution, the First Amendment, and  
16559 we've got to get rid of it. So, hopefully, the Supreme Court  
16560 will help.

16561 I yield back.

16562 Chairman Nadler. The gentleman yields back.

16563 For what purpose does Mr. Gaetz seek recognition?

16564 Mr. Gaetz. To strike the last word.

16565 Chairman Nadler. The gentleman is recognized.

16566 Mr. Gaetz. I agree with almost everything the gentleman  
16567 from Texas said, but he took some liberty in suggesting that none  
16568 of us on this side of the aisle would sue CNN. I want to make  
16569 clear for the record that does not include me.

16570 [Laughter.]

16571 I have been voting along with the bipartisan majority in  
16572 favor of these bills, and if this amendment were to pass, it would  
16573 drive me off the bill. The sponsor of the amendment suggested  
16574 that this would allow us to combat conspiracy theories. Well,  
16575 I remember saying that our own government had been weaponized

16576 against the President of the United States using illegal tools  
16577 to try to destabilize an election that resulted in Donald Trump's  
16578 victory. And folks said that was a conspiracy theory, and then,  
16579 we did some investigation and found out that it was not.

16580 I remember saying that COVID erupted from Wuhan Institute  
16581 of Virology, and the powers that be all suggested that that was  
16582 a conspiracy theory. Now it turns out it might not be.

16583 The time we find ourselves in is certainly unique. I can't  
16584 imagine that we would have a liberal Democrat from California  
16585 offering an amendment to limit obscene, lewd, lascivious, filthy  
16586 content on the internet, and then, a Southern Baptist from  
16587 Louisiana arguing against that amendment. It is certainly not  
16588 the '90s anymore because now we have the left in America trying  
16589 to constrain what is accessible to people not just in these areas  
16590 of obscenity, where there's well-developed law, but also just  
16591 in defining the nature of truth itself.

16592 I believe that this amendment embodies the desire of the  
16593 political left to embrace cancel culture and to allow tech  
16594 companies to be able to define the characteristics of truth, to  
16595 set the four corners of truth, to be the arbiters of truth. I  
16596 think that some of these platforms probably would have banned  
16597 Galileo.

16598 So, it's essential that we not empower these platforms even  
16599 more. I think that this amendment would do. And that's why I'm

16600 voting against, and I would encourage all my colleagues to do,  
16601 so we could continue our great bipartisan --

16602 Mr. Johnson of Louisiana. Will the gentleman yield for just  
16603 a moment?

16604 Mr. Gaetz. I'll yield to my friend from Louisiana.

16605 Mr. Johnson of Louisiana. The Southern Baptist from  
16606 Louisiana.

16607 Let me just point out that we were just talking here, a  
16608 sidebar. It's very late and our wheels are turning slowly. But,  
16609 I mean, I think that Ms. Lofgren read from the First Amendment,  
16610 and, of course, the famous phrase there is "abridging the freedom  
16611 of speech". And I'm not so sure that her amendment on its face  
16612 doesn't do exactly that, because you're empowering tech companies  
16613 to ban, in your words, "material that is constitutionally  
16614 protected". So, this is an act of Congress, and therefore, you're  
16615 abridging the freedom of speech of people or empowering others  
16616 to do so.

16617 Ms. Lofgren. Would the gentleman yield?

16618 Mr. Gaetz. Yes, I'll yield to the gentleman from Texas for  
16619 a moment.

16620 Turn your mic on, Chip.

16621 Mr. Roy. I would just add to the gentleman from Louisiana  
16622 that, when you say, "Congress shall make no law," that that's  
16623 what we're talking about right here. This is the problem, right?

16624       We're not talking about the lack of the ability of a private  
16625       company to say what they want to say or do what they want to do.

16626       We're talking about the act of Congress that is actually stepping  
16627       on -- I mean, that's making the case. That's the whole point.

16628             Ms. Lofgren. Would the gentleman yield?

16629             Mr. Roy. Well, it's not my time to yield. I yield back  
16630       to --

16631             Mr. Gaetz. I would observe before yielding to the  
16632       gentlelady from California that I believe we do need more than  
16633       a legalistic view of the First Amendment. I think that we need  
16634       to embrace the values of free speech in American, and that means  
16635       that the terms of service on social media platforms shouldn't  
16636       be more important than the values that undergird the First  
16637       Amendment.

16638             I'd yield to the gentlelady from California.

16639             Ms. Lofgren. I realize we disagree on this issue. But just  
16640       to be clear about the meaning of the amendment, under the bill,  
16641       the capacity of these private companies to ban speech that they  
16642       have decided not to host -- violent speech antisemitic, and the  
16643       like -- that would otherwise be protected, were it the government,  
16644       is diminished because of the Section 3, the discrimination and  
16645       the private right of action.

16646             My intent was simply to, once again, empower the platforms  
16647       to freely do that. You disagree with that; I understand that.

16648 But, clearly, that's what the amendment.

16649 And I thank the gentleman for yielding.

16650 Mr. Gaetz. No, I appreciate of that. I mean, it is that

16651 reposing that power in these platforms, when all of the work of

16652 Mr. Cicilline's subcommittee just shows how that power can be

16653 abused, gives us, I think, enhanced reservation.

16654 And I yield back.

16655 Chairman Nadler. The gentleman yields back.

16656 Does anybody else seek recognition on the amendment?

16657 [No response.]

16658 The question occurs on the amendment.

16659 All in favor, say aye.

16660 Opposed, no.

16661 In the opinion of the chair, the noes have it.

16662 Ms. Lofgren. Mr. Chairman, I'd like a recorded vote on that.

16663 Chairman Nadler. A recorded vote has been requested. The

16664 clerk will call the roll.

16665 Ms. Fontenot. Mr. Nadler?

16666 Chairman Nadler. No.

16667 Ms. Fontenot. Mr. Nadler votes no.

16668 Ms. Lofgren?

16669 Ms. Lofgren. Aye.

16670 Ms. Fontenot. Ms. Lofgren votes aye.

16671 Ms. Jackson Lee?

16672 Ms. Jackson Lee. No.

16673 Ms. Fontenot. Ms. Jackson Lee votes no.

16674 Mr. Cohen?

16675 [No response.]

16676 Mr. Johnson of Georgia?

16677 Mr. Johnson of Georgia. No.

16678 Ms. Fontenot. Mr. Johnson of Georgia votes no.

16679 Mr. Deutch?

16680 Mr. Deutch. Aye.

16681 Ms. Fontenot. Mr. Deutch votes aye.

16682 Ms. Bass?

16683 [No response.]

16684 Mr. Jeffries?

16685 Mr. Jeffries. No.

16686 Ms. Fontenot. Mr. Jeffries votes no.

16687 Mr. Cicilline?

16688 Mr. Cicilline. No.

16689 Ms. Fontenot. Mr. Cicilline votes no.

16690 Mr. Swalwell?

16691 Mr. Swalwell. Aye.

16692 Ms. Fontenot. Mr. Swalwell votes aye.

16693 Mr. Lieu?

16694 [No response.]

16695 Mr. Raskin?

16696 Mr. Raskin. No.

16697 Ms. Fontenot. Mr. Raskin votes no.

16698 Ms. Jayapal?

16699 Ms. Jayapal. No.

16700 Ms. Fontenot. Ms. Jayapal votes no.

16701 Mrs. Demings?

16702 Mrs. Demings. No.

16703 Ms. Fontenot. Mrs. Demings votes no.

16704 Mr. Correa?

16705 Mr. Correa. Aye.

16706 Ms. Fontenot. Mr. Correa votes aye.

16707 Ms. Scanlon?

16708 Ms. Scanlon. No.

16709 Ms. Fontenot. Ms. Scanlon votes no.

16710 Ms. Garcia?

16711 Ms. Garcia. No.

16712 Ms. Fontenot. Ms. Garcia votes no.

16713 Mr. Neguse?

16714 Mr. Neguse. With great respect for my colleague from

16715 California, no.

16716 Ms. Fontenot. Mr. Neguse votes no.

16717 Mrs. McBath?

16718 Mrs. McBath?

16719 Mrs. McBath. No. Sorry, I was looking at --

16720 Ms. Fontenot. Mrs. McBath votes no.  
16721 Mr. Stanton?  
16722 Mr. Stanton. Aye.  
16723 Ms. Fontenot. Mr. Stanton votes aye.  
16724 Ms. Dean?  
16725 Ms. Dean. No.  
16726 Ms. Fontenot. Ms. Dean votes no.  
16727 Ms. Escobar?  
16728 Ms. Escobar. No.  
16729 Ms. Fontenot. Ms. Escobar votes no.  
16730 Mr. Jones?  
16731 Mr. Jones. No.  
16732 Ms. Fontenot. Mr. Jones votes no.  
16733 Ms. Ross?  
16734 Ms. Ross. No.  
16735 Ms. Fontenot. Ms. Ross votes no.  
16736 Ms. Bush?  
16737 Ms. Bush. No.  
16738 Ms. Fontenot. Ms. Bush votes no.  
16739 Mr. Jordan?  
16740 Mr. Jordan. No.  
16741 Ms. Fontenot. Mr. Jordan votes no.  
16742 Mr. Chabot?  
16743 Mr. Chabot. No.



16744 Ms. Fontenot. Mr. Chabot votes no.

16745 Mr. Gohmert?

16746 Mr. Gohmert. No.

16747 Ms. Fontenot. Mr. Gohmert votes no.

16748 Mr. Issa?

16749 Mr. Issa. No.

16750 Ms. Fontenot. Mr. Issa votes no.

16751 Mr. Buck?

16752 Mr. Buck. No.

16753 Ms. Fontenot. Mr. Buck votes no.

16754 Mr. Gaetz?

16755 Mr. Gaetz. Present.

16756 Ms. Fontenot. Mr. Gaetz votes present.

16757 Mr. Johnson of Louisiana?

16758 Mr. Gaetz?

16759 Mr. Gaetz. No.

16760 Ms. Fontenot. Mr. Gaetz votes no.

16761 Mr. Johnson of Louisiana?

16762 Mr. Johnson of Louisiana. No.

16763 Ms. Fontenot. Mr. Johnson of Louisiana votes no.

16764 Mr. Biggs?

16765 [No response.]

16766 Mr. McClintock?

16767 Mr. McClintock. No.

16768 Ms. Fontenot. Mr. McClintock votes no.  
16769 Mr. Steube?  
16770 [No response.]  
16771 Mr. Tiffany?  
16772 Mr. Tiffany. No.  
16773 Ms. Fontenot. Mr. Tiffany votes no.  
16774 Mr. Massie?  
16775 Mr. Massie. No.  
16776 Ms. Fontenot. Mr. Massie votes no.  
16777 Mr. Roy?  
16778 Mr. Roy. No.  
16779 Ms. Fontenot. Mr. Roy votes no.  
16780 Mr. Bishop?  
16781 Mr. Bishop. No.  
16782 Ms. Fontenot. Mr. Bishop votes no.  
16783 Mrs. Fischbach?  
16784 Mrs. Fischbach. No.  
16785 Ms. Fontenot. Mrs. Fischbach votes no.  
16786 Mrs. Spartz?  
16787 Mrs. Spartz. No.  
16788 Ms. Fontenot. Mrs. Spartz votes no.  
16789 Mr. Fitzgerald?  
16790 Mr. Fitzgerald. No.  
16791 Ms. Fontenot. Mr. Fitzgerald votes no.

16792 Mr. Bentz?

16793 Mr. Bentz. No.

16794 Ms. Fontenot. Mr. Bentz votes no.

16795 Mr. Owens?

16796 Mr. Owens. No.

16797 Ms. Fontenot. Mr. Owens votes no.

16798 Mr. Biggs. Mr. Chairman? Mr. Chairman?

16799 Chairman Nadler. Yes?

16800 Mr. Biggs. Biggs here. How am I recorded?

16801 Ms. Fontenot. Mr. Biggs, you are not recorded.

16802 Mr. Biggs. I vote no.

16803 Ms. Fontenot. Mr. Biggs votes no.

16804 Mr. Lieu. Mr. Chairman, how am I recorded?

16805 Ms. Fontenot. Mr. Lieu, you are not recorded.

16806 Mr. Lieu. Lieu votes no.

16807 Ms. Fontenot. Mr. Lieu votes no.

16808 Chairman Nadler. Has everyone who wishes to be recorded

16809 been recorded?

16810 Ms. Jackson Lee. How am I recorded?

16811 Ms. Fontenot. Ms. Jackson Lee, you are recorded as no.

16812 Chairman Nadler. The clerk will report.

16813 Ms. Fontenot. Mr. Chairman, there are 5 ayes and 36 noes.

16814 Chairman Nadler. The amendment is not agreed to.

16815 Are there any further amendments to the amendment in the

16816 nature of a substitute?

16817 Mr. Bentz. Yes, Mr. Chair.

16818 Chairman Nadler. For what purpose does the gentlelady from  
16819 California seek recognition?

16820 Ms. Lofgren. It's their turn.

16821 Chairman Nadler. Oh. For what purpose does Mr. Bentz seek  
16822 recognition?

16823 Mr. Bentz. I have an amendment at the desk, Mr. Chair.

16824 Chairman Nadler. The clerk will report the amendment.

16825 Ms. Fontenot. "Amendment to the amendment in the nature  
16826 of a substitute to H.R. 3816 offered by Mr. Bentz of Oregon.

16827 Page 4" --

16828 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

16829 Chairman Nadler. A point of order is reserved.

16830 Ms. Fontenot. "Page 4, after line 16, enter the following"

16831 --

16832 Chairman Nadler. Without objection, the amendment is  
16833 considered as read.

16834 [The amendment offered by Mr. Bentz follows:]

16835

16836 \*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

16837 Chairman Nadler. And the gentleman is recognized in support  
16838 of the amendment.

16839 Mr. Bentz. Thank you, Mr. Chair.

16840 This is a modest and simple amendment to the affirmative  
16841 defenses found on page 4 of the bill. Currently, there are two  
16842 affirmative defenses. Both require a showing by a clear and  
16843 convincing evidence standard.

16844 The first is that, if you can show that your conduct would  
16845 not result in harm to the competitive process by restricting or  
16846 impeding legitimate activity by business users, and the second  
16847 one is a narrowly tailored, "could not be achieved through less  
16848 discretionary means".

16849 My amendment would add a third affirmative defense, which  
16850 would be "increases consumer welfare". The concept here is quite  
16851 simple, and that is that, under our current approach to antitrust  
16852 law, we focus on whether or not competition leads to an increase  
16853 in consumer welfare. If it does, then it's viewed as not being  
16854 violative antitrust principles.

16855 Thus, if we were to add this to the list of affirmative  
16856 defenses, keeping in mind that it must be proven by clear and  
16857 convincing evidence, a business who could show it was operating  
16858 to the benefit of the consumers would not be subject to the  
16859 discriminatory standard set forth in Section A and B of the bill.

16860 I think this, if you look at the definition of "business

16861 users," you'll find, of course, that they are business people,  
16862 and that's how the definition is set up on page 9, lines 17, 18,  
16863 and 19. And so, what we have is a clear reflection of the approach  
16864 this bill is trying to use by saying that, as currently written  
16865 without my amendment, you are safe if you benefit businessmen  
16866 and women, business users. I would add in the fact that we should  
16867 also take into consumers, since that is the proper focus and  
16868 long-time focus, over the past 40 years at least, of our antitrust  
16869 law.

16870 It seems to me, Mr. Chair, that we couldn't have a better  
16871 comparison of what is underlying this bill than my amendment.

16872 Because either we are only interested in benefitting business  
16873 users or we are interested in benefitting consumers. I think  
16874 the better bet is consumers, and therefore, I suggest everyone  
16875 support my amendment.

16876 Thank you.

16877 Ms. Lofgren. Would the gentleman yield?

16878 Mr. Bentz. I would yield, yes.

16879 Ms. Lofgren. I thank the gentleman.

16880 This is very similar to an amendment that I was going to  
16881 offer, now will not, essentially, providing that the benefits  
16882 to consumers or end users substantially outweighs competitive  
16883 harms.

16884 You know, it's interesting that there are times when the

16885 interests of competitors are at odds with the interests of the  
16886 consumer. And in such a case, the consumers' interest ought to  
16887 be considered. But in this bill there's no consideration  
16888 whatsoever for consumer benefit. For example, third-party  
16889 websites don't want Google to put direct information boxes right  
16890 at the top of the search results. They want you to always click  
16891 through, but it might be more convenient for consumers.

16892 I love that Apple now has a thing where you can ask the apps  
16893 not to track you. It's one of my favorite things that they've  
16894 done. But that may not be something that would be competitive  
16895 and might fall if your amendment is not approved.

16896 So, I think there is a serious risk the law will end up  
16897 protecting specific competitors, to the detriment of consumers  
16898 generally. And I'm grateful that you offered this amendment.

16899 And I yield back.

16900 Mr. Bentz. Thank you.

16901 And I would remind everyone that, long ago when we started  
16902 this hearing, and I was talking about another one of the bills,  
16903 I referenced a case that was decided back in 1897 which talked  
16904 about the focus of antitrust law at that time, which was upon  
16905 benefitting "small dealers and worthy men" who should be  
16906 protected, even if doing so came at the expense of mere reduction  
16907 in the price of a commodity. The point is we moved away from  
16908 that, and we moved away from that about 40 years ago. And we

16909 have focused, instead, upon benefitting the consumer.

16910 It's not perfect. And I want to take this opportunity to  
16911 say how much I appreciate the efforts of those who have tried  
16912 to address the challenges of big tech. These bills don't get  
16913 us there, but it's hard to fault the effort. But I think I --

16914 Mr. Swalwell. Will the gentleman yield?

16915 Mr. Bentz. I would yield. Go ahead.

16916 Mr. Swalwell. All right. Thank you.

16917 And I just wanted to associate my comments with the  
16918 gentlelady from San Jose. I, too, will be supporting this  
16919 amendment for the same reasons that she has stated.

16920 And I'll yield back to the gentleman.

16921 Mr. Bentz. Thank you.

16922 And I yield back, Mr. Chair.

16923 Chairman Nadler. The gentleman yields back.

16924 For what purpose does the gentleman from Rhode Island seek  
16925 recognition?

16926 Mr. Cicilline. To strike the last word.

16927 Chairman Nadler. The gentleman is recognized.

16928 Mr. Cicilline. Mr. Chairman, I would just say that this  
16929 amendment is redundant because in Section C1, where this is added  
16930 on page 4, it reflects to harm to the competitive process, which  
16931 includes consumer welfare as a kind of standard in antitrust law.  
16932 So, it's redundant and unnecessary, and urge my colleagues to



16933 defeat the amendment.

16934 Mr. Issa. Mr. Chairman.

16935 Chairman Nadler. Does the gentleman yield back?

16936 Mr. Cicilline. Yes, I yield back, Mr. Chairman.

16937 Chairman Nadler. The gentleman yields back.

16938 Mr. Issa. Mr. Chairman?

16939 Chairman Nadler. For what purpose does the gentleman from  
16940 California --

16941 Mr. Issa. To speak in support of the bill and strike the  
16942 last word.

16943 Chairman Nadler. The gentleman is recognized.

16944 Mr. Issa. Thank you, Mr. Chairman.

16945 You know, the term "this is redundant and it's already in  
16946 the bill," when I chaired a committee, my staff gave me that  
16947 statement to make from time to time. But you can say in a bill  
16948 something twice or three times, and it does not invalidate the  
16949 fact that you might be saying it twice or three times. As a matter  
16950 of fact, much legislation, in fact, repeats things again and again  
16951 and again. It's not uncommon. This is not the Constitution.

16952 We do not have to make it super-succinct to make understood by  
16953 a future court.

16954 And so, I join the gentlelady in wanting to say, even if  
16955 some would say that there's a level of redundancy, I want it to  
16956 be said that, in fact, if this is to the benefit of the consumer,

16957 if, in fact, it is more efficient and effective and drives down  
16958 the cost of living, and thus, increases the value of a hardworking  
16959 person's dollar and how far it goes, then, in fact, that is a  
16960 benefit to our economy. And that has to be considered.

16961 More than a hundred years ago, Sears & Roebuck, in fact,  
16962 drove a lot of small businesses out of business, but it did not  
16963 lead to a less efficient distribution system. It led to others  
16964 forming companies to compete at that level. And it hasn't  
16965 completely eliminated the mom-and-pop, but, of course, we all  
16966 understand that efficient distribution systems and logistic  
16967 systems and computer systems that deliver high-quality goods at  
16968 a good price on time to the consumer is now the standard around  
16969 the world. And it was led by the United States. And it was led  
16970 by Sears & Roebuck, but, then, it was led by Walmart, and now,  
16971 it is being led by Amazon.

16972 I believe that competition is generational. I think the  
16973 gentlelady from San Jose is right to say that we have to consider  
16974 this, and failure to do so would, in fact, persecute these  
16975 companies without looking out for the consumer we claim is being  
16976 disenfranchised by some of their activities. If what they're  
16977 doing is anticompetitive and anti-consumer, that would be  
16978 evaluated. But if what they're doing is, in fact, good for the  
16979 consumer, truly good for the consumer, it has to be considered  
16980 in the process.

16981           And so, again, I join with the gentlelady in believing this  
16982 is a good amendment. It makes a bill that I could not support  
16983 less bad, and perhaps even good enough for some people to change  
16984 their mind on. And hopefully, the authors would consider that.

16985           And with that, I thank the gentlelady for her thoughtful  
16986 amendment and yield back.

16987           Ms. Lofgren. It's not; it's his.

16988           Mr. Issa. Oh, I'm sorry. I'm sorry. The gentleman's  
16989 amendment, which the gentlelady spoke on. I apologize. She so  
16990 eloquently in favor, I got confused. Thank you.

16991           Mr. Lieu. Mr. Chairman, I'd like to move to strike the last  
16992 word as well.

16993           Chairman Nadler. The gentleman yields back? The gentleman  
16994 yields back.

16995           Who just --

16996           Mr. Lieu. Congressman Lieu. I'd like to move to strike  
16997 the last word.

16998           Chairman Nadler. The gentleman is recognized.

16999           Mr. Lieu. I thank you, Chairman Nadler.

17000           I, too, will be supporting this amendment. I think focusing  
17001 on the consumer is critical and it's very important.

17002           And I also want to take this opportunity to respond to a  
17003 member that somehow suggested that walmart.com wasn't an adequate  
17004 competitor to Amazon. And I just want to enter for the record

17005 an article from CNN Business, dated June 27, 2019. The title  
17006 is that article is, "Scathing report says Walmart's grocery store  
17007 dominance must be stopped." And then, the article talks about  
17008 how Walmart has monopolized the grocery business across the  
17009 United States. And then, I'm going to read you this sentence:  
17010 "But growing pressure from rivals, such as Amazon, Kroger, and  
17011 Dollar General, has forced Walmart to keep prices low and  
17012 innovate. Amazon bought Whole Foods in 2017." And then, it goes  
17013 on.

17014 [The information follows:]

17015

17016 \*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

17017           Mr. Lieu. And again, what this bill does, because the  
17018           subcommittee never investigated Walmart or walmart.com, it simply  
17019           puts on all the restrictions just on Amazon, even though Whole  
17020           Foods is competing with Walmart. Walmart.com is competing  
17021           directly with amazon.com. And to simply have not investigated  
17022           a bunch of these online retailers, it's just not clear to me why  
17023           we would do that.

17024           And so, I think focusing on consumer harm and focusing on  
17025           anticompetitive practice -- so, if Walmart is preferencing its  
17026           own brand and product and we think that's bad, then it should  
17027           be bad for Walmart to do it, just as it's bad for Amazon to do  
17028           it.

17029           Mr. Jones. Will the gentleman yield?

17030           Mr. Lieu. That's why I support this amendment.

17031           I yield back.

17032           Mr. Jones. Will the gentleman yield? Will the gentleman  
17033           yield?

17034           Mr. Lieu. I'm sorry, I'll yield. I'll yield to whoever  
17035           would like to speak.

17036           Mr. Jones. Yes. I hope that we can agree that competing  
17037           in the context of selling groceries is very different than the  
17038           much more expansive context of amazon.com, which sells all  
17039           varieties of goods, right? And so, I think that we're comparing  
17040           apples and oranges here. My point remains that you have one

17041 platform, or one company rather, that has so much more of the  
17042 market share than the other. And one is able to engage in what  
17043 legitimately be defined as anti-competitive conduct. Whereas,  
17044 Walmart, I think, for the intention of our antitrust statutes,  
17045 is nowhere on that level and I think is in a completely different  
17046 league. And it's not just Walmart, obviously. There's a whole  
17047 bunch of other companies that I don't think should be falling  
17048 into the coverage that people, that some people at least, have  
17049 been suggesting.

17050 And I guess I'm curious to know what your response would  
17051 be to that.

17052 Mr. Lieu. Well, thank you so much for raising that. So,  
17053 that's why I entered that article into the record. Walmart is  
17054 clearly not in a different league, for example, when it comes  
17055 to food. It's dominant. And so, we're somehow going to now allow  
17056 walmart.com and Walmart to do all these practices that we have  
17057 now deemed unlawful and uncompetitive when Whole Foods does it.

17058 That's the problem, right? And also, we don't know if Walmart  
17059 is dominant, or walmart.com is dominant, because the subcommittee  
17060 never did an investigation of Walmart or walmart.com or, for that  
17061 matter, eBay or Uber or Twitter, or I could go on and on.

17062 And so, let me give this analogy: imagine if the  
17063 subcommittee said, hey, we're going to look at monopoly power  
17064 in the airline industry. And the subcommittee looks at American

17065 Airlines, Delta Airlines, and United Airlines, and then, it comes  
17066 out with a bunch of bills that only apply to those three airlines.  
17067 And we're like, hey, what about Southwest? And then, the  
17068 committee says, well, we can't write laws about Southwest because  
17069 we never investigated Southwest. But, then, you have the issue  
17070 of you write all these laws just on three airlines, but not on  
17071 the other ones. Then, you're going to give Southwest a huge  
17072 unfair advantage.

17073 But the analogy is actually slightly worse than that. It's  
17074 as if the subcommittee just investigated American Airlines,  
17075 because Amazon is literally the only online retailer that the  
17076 subcommittee investigated. And then, it's putting all these  
17077 restrictions on Amazon, but not on Walmart or walmart.com. And  
17078 so, that's my point. That's why I support this amendment.

17079 Mr. Swalwell. Hey, Ted, will you yield quickly?

17080 Mr. Lieu. I'll yield to Representative Swalwell.

17081 Mr. Swalwell. Thanks, Ted.

17082 And I appreciate what Mondaire is saying, but pull up  
17083 walmart.com right now. You'll see they're offering a credit  
17084 card. They are offering a prescription drug benefit, and they  
17085 are offering a grocery delivery service. So, I don't think it's  
17086 that much different from Amazon. And so, that's just why I'm  
17087 concerned that we have not fully delved into the likeness between  
17088 the two companies.

17089           And I'll yield back to Ted.

17090           Mr. Neguse.   Would the gentleman yield?

17091           Chairman Nadler.   The gentleman's time has expired.

17092           Who seeks recognition?

17093           Mr. Neguse.   Mr. Neguse seeks to --

17094           Chairman Nadler.   Mr. Neguse?   For what purpose does Mr.

17095   Neguse seek recognition?

17096           Mr. Neguse.   Move to strike the last word.

17097           Chairman Nadler.   The gentleman is recognized.

17098           Mr. Neguse.   Thank you, Mr. Chairman.   I'll be very brief.

17099           I just wanted to jump in the colloquy here or perhaps extend

17100   the colloquy between my good friend from California -- well, both

17101   of my good friends from California, Mr. Lieu and Mr. Swalwell,

17102   and my colleague from New York, Mr. Jones, because I do think

17103   that the distinction here is an important one.   As I understand

17104   it, Amazon, in this year, just based on a recent article, will

17105   represent 40 percent of e-sale market in the United States --

17106   40 percent entirely.   Walmart will be second and it's at 7

17107   percent.

17108           So, I think the distinction here is that Amazon, as we've

17109   discussed repeatedly throughout the course of this hearing, and

17110   as was, I think, gleaned during the course of the subcommittee's

17111   investigation, ultimately, is becoming,   if not has already

17112   become, the marketplace itself.   When a firm has 40 percent of



17113 the sales of online sales in the United States, clearly, it's  
17114 moved past dominant, in my view. And I think that that's what  
17115 has animated much of the committee's, the subcommittee's, rather,  
17116 work in terms of the investigation that it did.

17117 Mr. Jones. Would the gentleman yield?

17118 Mr. Neguse. And I'm happy to yield to Representative Jones,  
17119 if he'd like to expand on that further.

17120 Mr. Jones. Thank you so much.

17121 Look, I mean, it is no answer today that if you go to  
17122 walmart.com, you'll see them selling a couple of different  
17123 products. But the fact remains that it is not large enough in  
17124 terms of its market share and its dominance to be comparable,  
17125 and even to rise to the level of being able to impact the market  
17126 in a significant way, certainly not with Amazon and the four big  
17127 tech companies, which are, again, a league of their own. It's  
17128 why we have to limit the discussion to the grocery context and  
17129 talk about the ways in which they are competitive as against each  
17130 other. But we are looking at holistically at the dominance of  
17131 these companies in the market, and it's why we're not focused  
17132 on a particular niche industry in which they happen to be selling  
17133 their products, very specific products.

17134 And I'll just also add that the stat in that report was 50  
17135 percent and not 40 percent.

17136 Ms. Lofgren. Would the gentleman yield? Lofgren here.

17137           Mr. Neguse. Yes. Sorry, I was muted. Yes, I'd be happy  
17138 to yield to the gentlewoman from California.

17139           Ms. Lofgren. It just seems to me that the consumer benefit  
17140 is, obviously, not limited to the fight between Walmart groceries  
17141 and Whole Foods groceries. There are times when you're  
17142 theoretically discriminating among similarly situated  
17143 businesses, but it helps or benefits the consumer.

17144           And I'll go back -- I know Mr. Cicilline said that it wouldn't  
17145 be the case. But there are people selling on Amazon's platform  
17146 that are not eligible for Amazon Prime. And arguably, Amazon  
17147 Prime would, therefore, be discriminatory towards those vendors.

17148           I like Amazon Prime, and I think a lot of Americans do.

17149           We've got Apple that is discriminating against other  
17150 platforms that are trying to track across ad platforms, and that  
17151 would, theoretically, violate the same section. And yet, I think  
17152 that does benefit consumers. In fact, that's moving us towards  
17153 the privacy direction that we were trying to accomplish when  
17154 Congresswoman Eshoo and I wrote the strongest privacy bill that's  
17155 been introduced into the Congress in the last Congress.

17156           So, I think it's not just this. It's, if there is a benefit  
17157 to the consumer, that should be factored in. It shouldn't just  
17158 be what's good for some other business competitor.

17159           And I thank the gentleman for yielding, Mr. Lieu.

17160           Mr. Neguse. And, Mr. Chairman, I yield back the balance

17161 of my time.

17162 Chairman Nadler. The gentleman yields. The gentleman  
17163 yields back.

17164 Does anyone else seek recognition on the amendment?

17165 [No response.]

17166 The question occurs on the amendment.

17167 All in favor, say aye.

17168 Opposed, no.

17169 In the opinion of the chair, the noes have it.

17170 Ms. Lofgren. We should have a recorded vote.

17171 Chairman Nadler. A recorded vote having been requested,  
17172 the clerk will call the roll.

17173 Ms. Fontenot. Mr. Nadler?

17174 Chairman Nadler. No.

17175 Ms. Fontenot. Mr. Nadler votes no.

17176 Ms. Lofgren?

17177 Ms. Lofgren. Aye.

17178 Ms. Fontenot. Ms. Lofgren votes aye.

17179 Ms. Jackson Lee?

17180 Ms. Jackson Lee. No.

17181 Ms. Fontenot. Ms. Jackson Lee votes no.

17182 Mr. Cohen?

17183 [No response.]

17184 Mr. Johnson of Georgia?

17185 Mr. Johnson of Georgia. No.

17186 Ms. Fontenot. Mr. Johnson of Georgia votes no.

17187 Mr. Deutch?

17188 Mr. Deutch. No.

17189 Ms. Fontenot. Mr. Deutch votes no.

17190 Ms. Bass?

17191 Ms. Bass. No.

17192 Ms. Fontenot. Ms. Bass votes no.

17193 Mr. Jeffries?

17194 Mr. Jeffries. No.

17195 Ms. Fontenot. Mr. Jeffries votes no.

17196 Mr. Cicilline?

17197 Mr. Cicilline. No.

17198 Ms. Fontenot. Mr. Cicilline votes no.

17199 Mr. Swalwell?

17200 Mr. Swalwell. Aye.

17201 Ms. Fontenot. Mr. Swalwell votes aye.

17202 Mr. Lieu?

17203 Mr. Lieu. Aye.

17204 Ms. Fontenot. Mr. Lieu votes aye.

17205 Mr. Raskin?

17206 Mr. Raskin. No.

17207 Ms. Fontenot. Mr. Raskin votes no.

17208 Ms. Jayapal?

17209 Ms. Jayapal. No.

17210 Ms. Fontenot. Ms. Jayapal votes no.

17211 Mrs. Demings?

17212 Mrs. Demings. No.

17213 Ms. Fontenot. Mrs. Demings votes no.

17214 Mr. Correa?

17215 Mr. Correa. Aye.

17216 Ms. Fontenot. Mr. Correa votes aye.

17217 Ms. Scanlon?

17218 Ms. Scanlon. No.

17219 Ms. Fontenot. Ms. Scanlon votes no.

17220 Ms. Garcia?

17221 Ms. Garcia. No.

17222 Ms. Fontenot. Ms. Garcia votes no.

17223 Mr. Neguse?

17224 Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

17225 Mrs. McBath?

17226 Mrs. McBath. Aye.

17227 Ms. Fontenot. Mrs. McBath votes aye.

17228 Mr. Stanton?

17229 Mr. Stanton. Aye.

17230 Ms. Fontenot. Mr. Stanton votes aye.

17231 Ms. Dean?

17232 Ms. Dean. No.

17233 Ms. Fontenot. Ms. Dean votes no.

17234 Ms. Escobar?

17235 [No response.]

17236 Mr. Jones?

17237 Mr. Jones. No.

17238 Ms. Fontenot. Mr. Jones votes no.

17239 Ms. Ross?

17240 Ms. Ross. Ross votes aye.

17241 Ms. Fontenot. Ms. Ross votes aye.

17242 Ms. Bush?

17243 Ms. Bush. No.

17244 Ms. Fontenot. Ms. Bush votes no.

17245 Mr. Jordan?

17246 Mr. Jordan. Yes.

17247 Ms. Fontenot. Mr. Jordan votes yes.

17248 Mr. Chabot?

17249 Mr. Chabot. Aye.

17250 Ms. Fontenot. Mr. Chabot votes aye.

17251 Mr. Gohmert?

17252 Mr. Gohmert. Aye.

17253 Ms. Fontenot. Mr. Gohmert votes aye.

17254 Mr. Issa?

17255 Mr. Issa. Aye.

17256 Ms. Fontenot. Mr. Issa votes aye.

17257 Mr. Buck?

17258 Mr. Buck. No.

17259 Ms. Fontenot. Mr. Buck votes no.

17260 Mr. Gaetz?

17261 Mr. Gaetz. No.

17262 Ms. Fontenot. Mr. Gaetz votes no.

17263 Mr. Johnson of Louisiana?

17264 Mr. Johnson of Louisiana. Aye.

17265 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

17266 Mr. Biggs?

17267 Mr. Biggs. No.

17268 Ms. Fontenot. Mr. Biggs votes no.

17269 Mr. McClintock?

17270 Mr. McClintock. Aye.

17271 Ms. Fontenot. Mr. McClintock votes aye.

17272 Mr. Steube?

17273 Mr. Steube. Yes.

17274 Ms. Fontenot. Mr. Steube votes yes.

17275 Mr. Tiffany?

17276 Mr. Tiffany. Aye.

17277 Ms. Fontenot. Mr. Tiffany votes aye.

17278 Mr. Massie?

17279 Mr. Massie. Aye.

17280 Ms. Fontenot. Mr. Massie votes aye.

17281 Mr. Roy?

17282 Mr. Roy. Aye.

17283 Ms. Fontenot. Mr. Roy votes aye.

17284 Mr. Bishop?

17285 Mr. Bishop. Yes.

17286 Ms. Fontenot. Mr. Bishop votes yes.

17287 Mrs. Fischbach?

17288 Mrs. Fischbach. Yes.

17289 Ms. Fontenot. Mrs. Fischbach votes yes.

17290 Mrs. Spartz?

17291 Mrs. Spartz. Yes.

17292 Ms. Fontenot. Mrs. Spartz votes yes.

17293 Mr. Fitzgerald?

17294 Mr. Fitzgerald. Aye.

17295 Ms. Fontenot. Mr. Fitzgerald votes aye.

17296 Mr. Bentz?

17297 Mr. Bentz. Yes.

17298 Ms. Fontenot. Mr. Bentz votes yes.

17299 Mr. Owens?

17300 Mr. Owens. No.

17301 Ms. Fontenot. Mr. Owens votes no.

17302 Ms. Escobar. Mr. Chairman, how am I recorded?

17303 Ms. Fontenot. Ms. Escobar, you are not recorded.

17304 Ms. Escobar. Vote no.



17305 Ms. Fontenot. Ms. Escobar votes no.

17306 Chairman Nadler. Has everyone voted who wishes to vote?

17307 The clerk will report.

17308 The clerk will report.

17309 Ms. Fontenot. Mr. Chairman, there are 22 ayes and 21 noes.

17310 Chairman Nadler. The amendment is agreed to.

17311 Are there any further amendments to the amendment in the

17312 nature of a substitute?

17313 Ms. Lofgren. Mr. Chairman, I have two amendments at the

17314 desk, which I would ask unanimous consent to consider en bloc.

17315 Chairman Nadler. Without objection.

17316 Ms. Lofgren. The clerk will report?

17317 Yes, it's on page 1, line 7, and also on page 23. 013 and

17318 016.

17319 Mr. Cicilline. [Presiding.] The clerk will report the

17320 amendments.

17321 Ms. Fontenot. "Amendment to the amendment in the nature

17322 of a substitute to H.R. 3816 offered by Ms. Lofgren of California.

17323 Page 1, line 7, strike, quote, "any conduct," quote, "and

17324 enter", quote --

17325 Mr. Cicilline. The gentlelady is recognized to explain her

17326 amendments.

17327 [The amendments en bloc offered by Ms. Lofgren follow:]

17328

17329

\*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

17330 Ms. Lofgren. Thank you, Mr. Chairman.

17331 These are two amendments which, given the hour, I thought  
17332 I would offer together.

17333 They're really quite simple. The first amendment moves  
17334 "harm to the competitive process" out of affirmative defenses  
17335 and, instead, requires it as an upfront element to establish  
17336 unlawful conduct, discriminatory conduct, under Section 2.

17337 The bill as currently drafted actually requires no proof  
17338 or element of any anti-competitive intent or harm to establish  
17339 unlawful conduct under the bill. This in many ways is the  
17340 fundamental problem with the bill and the cause of its  
17341 overreaching. If the authors of this bill believe in the standard  
17342 of harm to the competitive process, then it should be a basic  
17343 element to establish a legal claim under the bill. But, at a  
17344 minimum, it should be an upfront element, not a further burden  
17345 on platforms to establish the only affirmative defense with clear  
17346 and convincing evidence.

17347 The second amendment relates to actions that would permit  
17348 platforms who are making a good-faith effort reasonably necessary  
17349 to protect the core privacy and security interests, so they will  
17350 not be classified as unlawful conduct under Section 2.

17351 These bills closely regulate the platforms' day-to-day  
17352 operations and technical decisions, and that includes the  
17353 platforms' effort to safeguard the security of user data and

17354 against other threats.

17355 Examples of platform privacy and security actions that could  
17356 qualify as presumptive unlawful conduct under Section 2 include:

17357 Restricting third-party access to user data versus the  
17358 platform's own access to such data could be construed as the  
17359 platform advantaging its own services or disadvantages those of  
17360 third parties. That's in Section 2A(1) and (2).

17361 Restrictions or impediments on third-party businesses  
17362 accessing platform user data are broadly prohibited under Section  
17363 2B(4), and restrictions or impediments on a business user  
17364 interoperating or connecting to any product or service are broadly  
17365 prohibited under Section 2B(9). For example, under this bill,  
17366 it appears to me that, when Apple restricts the extent of  
17367 third-party app tracking of users on the iPhone, they may be able  
17368 to challenge such privacy protections as unlawful discrimination  
17369 against invasive advertising-based business models. And that's  
17370 not something I think any of us want.

17371 Another example, alleged inconsistencies in the enforcement  
17372 of platform privacy policies can become the subject of litigation  
17373 as unlawful discrimination against similarly situated users.  
17374 Now, I grant you, the bill does an affirmative defense for actions  
17375 taken to defend user privacy, but it's far too difficult to assert  
17376 and the platform can only prevail after months, if not years,  
17377 of litigation, overcoming a heightened burden of proof. And

17378 let's recall that there is a private right of action on this.

17379 Further, the affirmative defense only extends to narrowly  
17380 tailored privacy actions when the goal could not be achieved,  
17381 quote, "through less discriminatory means". Now I think forcing  
17382 platform actions on privacy and security declares such a high  
17383 bar, it's unwise. Introducing litigation risk and legal  
17384 uncertainty is not necessary.

17385 And to the extent that I am sure my friend, Mr. Cicilline,  
17386 will say this is covered in the bill, let's make clear upfront  
17387 that these privacy and security measures are protected and that  
17388 we actually want to have a standard of anti-competitive conduct  
17389 as part of the initial screen for bad conduct.

17390 And with that, because it is after 4:00 a.m., I will yield  
17391 back to the chairman and offer no other amendments.

17392 Mr. Cicilline. I thank the gentlelady for yielding back.

17393 I recognize myself in opposition to the amendment.

17394 And I oppose the gentlelady's amendments. The gentlelady's  
17395 amendments will make it more difficult for our antitrust agencies  
17396 to enforce this Act and stop anti-competitive conduct by covered  
17397 platforms. Importantly, as the gentlelady acknowledged, this  
17398 bill establishes an affirmative defense for conduct that does  
17399 not cause harm to the competitive process or that was narrowly  
17400 tailored, could not be achieved through less discriminatory  
17401 means. It's not pretextual and necessary to grant a violation

17402 of law or to protect user privacy, or other non-public data.  
17403 So, privacy protections are built into the bill. Creating  
17404 additional carveouts, as proposed in this amendment, could serve  
17405 to swallow the entire rule.

17406 I urge my colleagues to oppose the amendments.

17407 And with that, I yield back.

17408 Seeing no one else who seeks recognition, the question now  
17409 is on the amendments en bloc.

17410 All those in favor, say aye.

17411 Opposed, say nay.

17412 In the opinion of the chair, the nays have it.

17413 Are there any additional -- oh, yes. Ms. Jackson Lee, I've  
17414 conferred with Mr. Gaetz and Mr. Buck, and there has been a  
17415 discussion and I think a modification to the language she offered  
17416 earlier, and to add, "including, but not limited to those business  
17417 users employed by businesses owned by women and minorities."

17418 Does anyone have any objection to adding that?

17419 Ms. Jackson Lee. Mr. Chairman?

17420 Mr. Cicilline. So ordered.

17421 Ms. Jackson Lee. Unanimous consent? Okay.

17422 Mr. Cicilline. Mr. Roy, you're recognized.

17423 Mr. Roy. Amendment at the desk.

17424 Mr. Cicilline. Oh, the gentleman has an amendment at the  
17425 desk. Will the clerk please report?

17426 Ms. Fontenot. "Amendment to the amendment in the nature  
17427 of" --

17428 Ms. Jackson Lee. Reserve a point of order.

17429 Mr. Cicilline. Ms. Jackson Lee reserves a point of order.  
17430 I'm sorry, proceed.

17431 Ms. Fontenot. -- "in the nature of a substitute to H.R.  
17432 3816 offered by Mr. Roy of Texas.

17433 Beginning on page 1, strike line 1 and all that follows  
17434 through the amendment to the title on page 23 and insert the  
17435 following:

17436 Section 1, Prohibiting Discrimination and Distribution.  
17437 The Clayton Act, 15 USC Code 12, et seq, is amended by inserting  
17438 after Section 28 the following:"

17439 Quote, "Section 29, Prohibiting Discrimination and  
17440 Distribution.

17441 A. Definitions" --

17442 Mr. Cicilline. I'm sorry, the gentleman is recognized to  
17443 explain his amendment. My apologies to the clerk.

17444 [The amendment offered by Mr. Roy follows:]

17445

17446 \*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

17447 Mr. Cicilline. Mr. Roy, you're recognized.

17448 Mr. Roy. I thank the chairman.

17449 Obviously, due to the late hour, I'll try to make this brief.

17450 It will not be new. This is the same as before where I applaud

17451 the efforts and recognize --

17452 Mr. Cicilline. You can never do that enough.

17453 Mr. Roy. I'm aware.

17454 We know that there's discriminatory conduct that we all

17455 recognize the need to address. The only question is, how? I've

17456 laid out my concerns about how we target certain companies and

17457 how that's going to be an evolving standard and we'll be picking

17458 winners and losers, and my belief is we should try to avoid that.

17459 And I wish we were able to do that. We, obviously, did not get

17460 the amendment earlier that I had worked with in conjunction with,

17461 again, Senator Lee and Senator Lee's staff. This is similar from

17462 the TEAM Act. This has got language that Senator Lee is

17463 advancing.

17464 And the purpose of this is to amend the Clayton Act to specify

17465 that a company with monopoly power in a distribution market that

17466 also offers a product or service in that market -- again, it's

17467 on marketplace; the Apple app store, for instance -- if that

17468 company has monopoly power in that distribution market, then the

17469 company may not engage in discrimination that harms competition.

17470 Again, the goal here is to try to look at the conduct. The



17471 goal here is to look at the market broadly, not to define the  
17472 class of \$600 billion above and \$500 million, and so forth, which,  
17473 as I've established before, is going to keep changing and put  
17474 Congress in the situation of having to chase where the market  
17475 is. Rather, we should be focusing on the content and come up  
17476 with standards that make sense to target the discriminatory  
17477 conduct. Or, as before when I was trying to address the issues  
17478 of when certain mergers, certain acquisitions could occur.

17479 I think this amendment improves the bill in a number of ways.

17480 I think it brings the focus of antitrust back to monopoly power  
17481 and practices that harm competition. I don't believe it's  
17482 overinclusive. I think it will not lump in practices that benefit  
17483 competition and benefit consumers that I fear the other might.

17484 It takes the heavy hand of government out of the process.

17485 As a limited-government conservative, I'm a little skeptical  
17486 of empowering FTC and DOJ. Obviously, we had a debate over the  
17487 fees use earlier. But, again, I don't want it to be taken away  
17488 about my belief of the good-faith effort here to try to address  
17489 this discriminatory practice by my friend, Mr. Buck, and by the  
17490 chair, and the purpose of this amendment is also in good faith.

17491 I expect someone might be trying to raise a germaneness  
17492 issue. I'm just going to go out on a limb and assume that may  
17493 occur.

17494 Mr. Cicilline. I believe it's already occurred. Ms.

17495 Jackson Lee has reserved that, but --

17496 Mr. Roy. And I would just preemptively go ahead and address  
17497 it by saying, as similarly as before, you know, it's directly  
17498 on point on the question. I understand the four corners of the  
17499 technicality of how we deal with respect to germaneness, but this  
17500 is the whole question. The whole question is how we do it, how  
17501 we go about doing it. I mean, heck, you could raise a question  
17502 of whether the amendments in the nature a substitute are germane  
17503 because of the nature of what they do.

17504 So, I would just throw out to the committee that we should  
17505 debate this, and then, I wish we would.

17506 I will yield.

17507 Mr. Cicilline. The gentleman yields back.

17508 Does the gentlelady press her germaneness objection?

17509 Ms. Jackson Lee. I press and continue to object on the  
17510 grounds that it is not germane. The amendment amends a law that  
17511 the bill is not amending. So, it is, therefore, not germane to  
17512 this bill and at this time.

17513 I thank the gentleman very much and I yield back.

17514 Mr. Cicilline. The chair is prepared to rule. Clause 7  
17515 of House Rule 16 prohibits amendments that are on a different  
17516 subject matter than the proposal that is under consideration.

17517 The subject of the bill we are currently considering is  
17518 discriminatory conduct of covered platforms. The gentleman's

17519 amendment proposes to amend a statute not addressed in the bill,  
17520 which is a subject that is different from what we are considering  
17521 in the bill. The amendment is, therefore, not germane and  
17522 violates Clause 7 of Rule 16.

17523 But, as I did in the last amendment, I look forward to working  
17524 with Mr. Roy and Mr. Buck and Senator Lee with respect to revisions  
17525 to the Clayton Act, and we'll be sure to include this in that  
17526 discussion.

17527 Mr. Roy. And I take the chairman at his word that we'll  
17528 do that and I appreciate it. And I would yield to the ruling  
17529 of the chair.

17530 Mr. Cicilline. All right. And you appeal the ruling, you  
17531 said? But I'm saying I want to work with you to address this  
17532 issue when it's appropriate.

17533 Mr. Roy. All right.

17534 Mr. Cicilline. All right. We'll just do it by a voice vote  
17535 then.

17536 All those who support -- I'm sorry. A motion to table has  
17537 been made by Representative Lee. Those in favor of a motion to  
17538 table, say aye.

17539 Opposed?

17540 The ayes have it. The motion's tabled.

17541 Thank you, Mr. Roy.

17542 Any additional amendments?

17543 Ms. Jackson Lee. I'd like to strike the last word.

17544 Mr. Cicilline. The gentlelady is recognized.

17545 Ms. Jackson Lee. Mr. Chairman, you were very generous, but  
17546 very fast. So, I just want to make sure that it reflects that  
17547 we did come to an agreement on the Jackson Lee amendment. We  
17548 ask unanimous consent, and it's Amendment No. 3, which adds  
17549 language, "including, but not limited to those business users  
17550 employed by businesses owned by women and minorities."

17551 Mr. Cicilline. Yes, we have already done that, Ms. Jackson  
17552 Lee.

17553 Ms. Jackson Lee. By unanimous consent?

17554 Mr. Cicilline. Yes, correct.

17555 Ms. Jackson Lee. The amendment is in, right?

17556 Mr. Cicilline. Correct.

17557 Ms. Jackson Lee. Thank you very much, Mr. Chair. I just  
17558 wanted to get a ruling that I could hear.

17559 Mr. Cicilline. Yes.

17560 Ms. Jackson Lee. Thank you. I yield back.

17561 Mr. Cicilline. Oh, the chairman's back.

17562 Chairman Nadler. [Presiding.] Are there any further  
17563 amendments on the bill?

17564 [No response.]

17565 Hearing none, the question occurs on the --

17566 Mr. Fitzgerald. Mr. Chair?

17567 Chairman Nadler. For what purpose does Mr. Fitzgerald seek  
17568 recognition?

17569 Mr. Fitzgerald. I have an amendment at the desk.

17570 Chairman Nadler. The clerk will report the amendment.

17571 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

17572 Chairman Nadler. A point of order is reserved.

17573 Ms. Fontenot. "Amendment to the amendment in the nature  
17574 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of Wisconsin  
17575 and Mr. Issa of California.

17576 Page 4, after line 16, insert the following and make" --

17577 Chairman Nadler. Without objection, the amendment is  
17578 considered as read.

17579 [The amendment offered by Mr. Fitzgerald and Mr. Issa  
17580 follows:]

17581

17582 \*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

17583 Chairman Nadler. And the gentleman is recognized in support  
17584 of the amendment.

17585 Mr. Fitzgerald. Thank you, Mr. Chair.

17586 I'll be briefed. I worked on this amendment with Mr. Issa  
17587 as well. He may have some comments on it.

17588 Because the bill would prevent platforms from doing the  
17589 necessary vetting on apps, which was already discussed, to  
17590 determine if they are operated by a foreign entity -- and let's  
17591 focus on the CCP -- how would that information flow directly from  
17592 China? The former Director of the National Counterintelligence  
17593 and Security Center recently stated that China has stolen the  
17594 personal identifiable information of 80 percent of Americans.

17595 You know, there are big concerns about some of the apps that  
17596 many kids throughout the U.S. have on their phones right now.

17597 This amendment would allow platforms to ban an app if it would  
17598 likely result in data from another user being transferred to China  
17599 or another foreign adversary.

17600 I'm not sure if Mr. Issa has comments on it.

17601 Mr. Issa. Would the gentleman yield?

17602 Mr. Fitzgerald. Absolutely, I yield.

17603 Mr. Issa. Thank you.

17604 Again, one of the challenges with the bill in its current  
17605 form is that we have now agreed to be interoperable with entities  
17606 that are one-directional. And as we all know, in some cases,

17607 all they really want to do is scrape the data. But, in this case,  
17608 the gentleman's amendment seeks to ensure that your personally  
17609 identifiable information, your proprietary information, is not  
17610 sent to a foreign country, particularly an adverse one.

17611 And I think the most important thing is that it would likely  
17612 result in data from another business user being transferred, too.

17613 And that's the important thing, is they can allow it to go to  
17614 anybody, but not allow it to go out of the country to a foreign  
17615 adversary, either directly or indirectly. It limits the  
17616 interoperability. It limits the transfer. But it limits your  
17617 data going where you didn't want it to go. You might choose to  
17618 opt in for interoperability, but you're not choosing to have your  
17619 information used by a foreign power, and that's why I support  
17620 the amendment and cosponsored it.

17621 I thank the gentleman and yield back.

17622 Mr. Gaetz. Will the gentleman yield for a question?

17623 Mr. Fitzgerald. Yes, I'd yield.

17624 Mr. Gaetz. Is there a portion of the bill or federal law  
17625 or the amendment that defines what constitutes a foreign  
17626 adversary?

17627 Mr. Fitzgerald. It's not further defined, I think, other  
17628 than what you would find in the bill itself. So, no.

17629 Mr. Gaetz. Would the gentleman acknowledge that our foreign  
17630 relationships are at times complex, and definitionally, it would

17631 seem challenging to have to determine who's a foreign adversary  
17632 pursuant to the amendment?

17633 Mr. Fitzgerald. Absolutely. Yes, I think, I mean, that's  
17634 part of the question, is how do you make that determination.  
17635 And then, how much of that software possibly had made its way  
17636 through the states? I mean, that's our big concern. As soon  
17637 as we heard that Tik Tok was on every kid's phone in America,  
17638 how to deal with it?

17639 Mr. Issa. Will the gentleman yield again?

17640 I think the important thing about the gentleman's amendment  
17641 that makes it make sense is, in light of the other portions of  
17642 these bills where the Federal Trade Commission and its committees  
17643 are deciding things, where the Federal Trade Commission has  
17644 authority, we certainly have the ability. In addition, the chair  
17645 has the ability to make technical and conforming decisions.

17646 So, this is a principled item, and if Mr. Gaetz, as one of  
17647 the coauthors of much of this legislation, feels that it needs  
17648 to be more clear, that's not difficult. But it's very clear that  
17649 the gentleman's amendment is really about people's privacy and  
17650 their rights, and the platforms being able to protect that. And  
17651 so, that's the reason I support it, and I think it's well enough  
17652 written for everyone to understand.

17653 I yield back to the gentleman.

17654 Chairman Nadler. Does the gentleman yield back?



17655 Mr. Fitzgerald. I would yield, yield back.

17656 Chairman Nadler. Does the gentleman yield back?

17657 Mr. Fitzgerald. Yes.

17658 Chairman Nadler. The gentleman yields back.

17659 For what purpose does the gentleman from Rhode Island seek  
17660 recognition?

17661 Mr. Cicilline. Move to strike the last word.

17662 Chairman Nadler. The gentleman is recognized.

17663 Mr. Cicilline. And, Mr. Chairman, I'll be brief.

17664 First of all, Mr. Gaetz's point about foreign adversary not  
17665 being defined. The FTC is not authorized to make that  
17666 definitional determination. They are a highly qualified agency,  
17667 but, clearly, not equipped to do that. So, I think there's a  
17668 very serious problem with that.

17669 But, even more fundamentally, it's drafted incorrectly  
17670 because it currently says, "Sections A and B shall not apply if  
17671 the defendant establishes by clear and convincing evidence that  
17672 the conduct described..., " and then, it lists one, two, three.

17673 So, the defendant would establish by clear and convincing  
17674 evidence that the conduct described in Subsections A and B "would  
17675 likely result in data from another business being transferred  
17676 to China." So, you make an affirmative defense if the user  
17677 demonstrates it actually goes to China. It's exactly the  
17678 opposite, I think, of what you intend to do. So, I urge my

17679 colleagues to vote against the amendment.

17680 Chairman Nadler. Does the gentleman yield back?

17681 Mr. Cicilline. I yield back, Mr. Chairman.

17682 Chairman Nadler. The gentleman yields back.

17683 Mr. Jordan. Mr. Chairman?

17684 Chairman Nadler. For what purpose does the gentleman from  
17685 Ohio seek recognition?

17686 Mr. Jordan. To strike the last word and --

17687 Chairman Nadler. The gentleman is recognized.

17688 Mr. Jordan. -- and just to support the gentleman from  
17689 Wisconsin's amendment.

17690 It's interesting that we're raising questions about defining  
17691 a foreign adversary. I think we know what a foreign adversary  
17692 is. It's China. It's North Korea. It's Russia. But there's  
17693 all kinds of words in the bill -- we don't know what the definition  
17694 of "advantages" are. We don't even know what "discrimination"  
17695 is. We're leaving that all up to the FTC. And we don't know  
17696 -- we had a big debate on how you define "interoperability".  
17697 There are tons of terms that aren't defined that the FTC is going  
17698 to define, but, suddenly, now we're going to make an issue of  
17699 "foreign adversary"? Those are the bad guys out there that want  
17700 to do harm to America. I'll define it.

17701 I think the gentleman from Wisconsin knows what the term  
17702 means. But, somehow, now we can't take this amendment because

17703 "foreign adversaries," we can't define that.

17704 Mr. Gaetz. Would the gentleman yield for a question?

17705 Mr. Jordan. There are countless number of terms in the bill  
17706 that we haven't defined, and we've had hours and hours of debate  
17707 on those, but, suddenly, now it's, "Oh, foreign adversary has  
17708 to be defined." I just fail to see --

17709 Mr. Gaetz. Would the gentleman yield?

17710 Mr. Jordan. I'd be happy to yield to my friend, good friend.

17711 Mr. Gaetz. Is Pakistan a foreign adversary?

17712 Mr. Jordan. Yes. You want to include them in? Go ahead.  
17713 You can define it, too. You can define it, too.

17714 Mr. Gaetz. Mr. Jordan, I'm asking you because you're a  
17715 supporter of the amendment and you just debated that you know  
17716 what a foreign adversary is. So, I have a series of questions,  
17717 as a member of the Armed Services Committee.

17718 Mr. Jordan. Yes, Pakistan is.

17719 Mr. Gaetz. Okay. Is Turkey a foreign adversary?

17720 Mr. Jordan. I don't know that one.

17721 [Laughter.]

17722 But it may. It may be, but --

17723 Mr. Gaetz. I'll yield back to the gentleman.

17724 Mr. Jordan. Well, I'll ask you a question. What is

17725 "advantages"? What is "disadvantages"? What's

17726 "discrimination"? What's "interoperability"? How are we going

17727 to define all those terms?

17728 Mr. Gaetz. I think those are far easier to define than a  
17729 foreign adversary for the FTC. The gentleman from Ohio and the  
17730 gentleman from California have been spending a good portion of  
17731 the last 20 hours telling us that the FTC should not have the  
17732 ability to define these digital interactions, and now you would  
17733 give the FTC the ability to define what constitutes a foreign  
17734 adversary, and even you don't know what constitutes a foreign  
17735 adversary by your own admission in this --

17736 Mr. Jordan. You don't know countless other terms in the  
17737 bill you've been supporting, all the bills you've been supporting,  
17738 and you're going to give all that power to Lina Khan.

17739 Mr. Gaetz. It is a different question to define technical  
17740 terms within the jurisdiction of the FTC and to literally use  
17741 the FTC to define international relationships. The sponsors of  
17742 this amendment must understand spatially that it is improperly  
17743 drafted. And to maintain that this is somehow definable at some  
17744 later time, when the gentleman from Ohio can't define it, when  
17745 the FTC couldn't possibly define it, strains credulity.

17746 Mr. Jordan. I yield back.

17747 Mr. Issa. Would the gentleman yield?

17748 Mr. Jordan. I'll be happy to yield.

17749 Mr. Issa. Thank you. I thank the gentleman for yielding.

17750 Mr. Chairman, you know, a lot of people are going to say

17751 it's difficult to decide that, but I will say that it was defined  
17752 in the last administration repeatedly. Wilbur Ross defined it  
17753 and used the term and gave examples of countries at that time.  
17754 In this administration, they've already used multiple times the  
17755 term "foreign adversary".

17756 And I will agree with the gentleman from Florida that, in  
17757 fact, at a given time to say this is an adversary or that is an  
17758 adversary may not be possible, only because from time to time  
17759 our adversary changes. And so, the term "foreign adversary" is  
17760 often used not for our permanent adversaries, which seems to be  
17761 Iran and North Korea, but for the shifting sands of who we can  
17762 trust and we can't.

17763 And when it comes to data security, when it comes to the  
17764 idea that it's going to be used against us, yes, we have decades  
17765 of China and Russia being foreign adversaries, but we will from  
17766 time to time have countries that become adverse. So, the term  
17767 "foreign adversary" is very appropriate. It has been used by  
17768 administrations back to at least before Truman, and it has been  
17769 used by the last administration and already used repeatedly by  
17770 this administration.

17771 And I thank the gentleman for yielding.

17772 Mr. Jordan. Mr. Chairman, I yield back.

17773 Chairman Nadler. The gentleman yields back.

17774 I recognize myself in opposition to the amendment.

17775           In addition to the reasons stated by the gentleman from Rhode  
17776           Island, in addition to those amendments, I find myself in  
17777           agreement, I think, with Mr. Gaetz. The term "foreign adversary"  
17778           is impossible of definition. It is impossible. China may be  
17779           an adversary today. In World War II, it was a great ally. Russia  
17780           was an ally in World War II. Today, it is an adversary.

17781           One writes legislation for ages or until it is amended.  
17782           One doesn't write legislation that is impossible of definition  
17783           because the term changes all the time. Therefore, I must agree  
17784           with Mr. Gaetz and Mr. Cicilline in opposition to this amendment.

17785           And I yield back.

17786           The question occurs on the amendment.

17787           Oh, for what purpose does Mr. Roy seek recognition?

17788           Mr. Roy. Move to strike the last word.

17789           Chairman Nadler. The gentleman is recognized.

17790           Mr. Roy. I would only say the chairman made a really good  
17791           point about the underlying bill structure of \$600 billion, \$250  
17792           billion, of the many variables that you could stick with  
17793           throughout the bills. That's the point of that flexibility.  
17794           This, I think China is going to be an adversary a lot longer than  
17795           \$600 billion will be the standard.

17796           [Laughter.]

17797           I yield back.

17798           Chairman Nadler. The gentleman yields back.

17799           The question occurs on the amendment.   The question occurs  
17800   on the amendment.  
17801           All in favor, say aye.  
17802           Opposed, no.  
17803           The noes have it.  
17804           Mr. Fitzgerald.   The yeas and nays.  
17805           Chairman Nadler.   The yeas and nays are requested.   The  
17806   clerk will call the roll.  
17807           Ms. Fontenot.   Mr. Nadler?  
17808           Chairman Nadler.   No.  
17809           Ms. Fontenot.   Mr. Nadler votes no.  
17810           Ms. Lofgren?  
17811           Ms. Lofgren.   No.  
17812           Ms. Fontenot.   Ms. Lofgren votes no.  
17813           Ms. Jackson Lee?  
17814           Ms. Jackson Lee.   No.  
17815           Ms. Fontenot.   Ms. Jackson Lee votes no.  
17816           Mr. Cohen?  
17817           [No response.]  
17818           Mr. Johnson of Georgia?  
17819           Mr. Johnson of Georgia.   No.  
17820           Ms. Fontenot.   Mr. Johnson of Georgia votes no.  
17821           Mr. Deutch?  
17822           Mr. Deutch.   No.

17823 Ms. Fontenot. Mr. Deutch votes no.

17824 Ms. Bass?

17825 Ms. Bass. No.

17826 Ms. Fontenot. Ms. Bass votes no.

17827 Mr. Jeffries?

17828 Mr. Jeffries. No.

17829 Ms. Fontenot. Mr. Jeffries votes no.

17830 Mr. Cicilline?

17831 Mr. Cicilline. No.

17832 Ms. Fontenot. Mr. Cicilline votes no.

17833 Mr. Swalwell?

17834 Mr. Swalwell. No.

17835 Ms. Fontenot. Mr. Swalwell votes no.

17836 Mr. Lieu?

17837 Mr. Lieu. No.

17838 Ms. Fontenot. Mr. Lieu votes no.

17839 Mr. Raskin?

17840 [No response.]

17841 Ms. Jayapal?

17842 Ms. Jayapal. No.

17843 Ms. Fontenot. Ms. Jayapal votes no.

17844 Mrs. Demings?

17845 Mrs. Demings. No.

17846 Ms. Fontenot. Mrs. Demings votes no.



17847 Mr. Correa?

17848 Mr. Correa. No.

17849 Ms. Fontenot. Mr. Correa votes no.

17850 Ms. Scanlon?

17851 Ms. Scanlon. No.

17852 Ms. Fontenot. Ms. Scanlon votes no.

17853 Ms. Garcia?

17854 Ms. Garcia. No.

17855 Ms. Fontenot. Ms. Garcia votes no.

17856 Mr. Neguse?

17857 Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

17858 Mrs. McBath?

17859 Mrs. McBath. No.

17860 Ms. Fontenot. Mrs. McBath votes no.

17861 Mr. Stanton?

17862 Mr. Stanton. No.

17863 Ms. Fontenot. Mr. Stanton votes no.

17864 Ms. Dean?

17865 Ms. Dean. No.

17866 Ms. Fontenot. Ms. Dean votes no.

17867 Ms. Escobar?

17868 [No response.]

17869 Mr. Jones?

17870 Mr. Jones. No.

17871 Ms. Fontenot. Mr. Jones votes no.

17872 Ms. Ross?

17873 Ms. Ross. No.

17874 Ms. Fontenot. Ms. Ross votes no.

17875 Ms. Bush?

17876 [No response.]

17877 Mr. Jordan?

17878 Mr. Jordan. Yes.

17879 Ms. Fontenot. Mr. Jordan votes yes.

17880 Mr. Chabot?

17881 Mr. Chabot. Aye.

17882 Ms. Fontenot. Mr. Chabot votes aye.

17883 Mr. Gohmert?

17884 Mr. Gohmert. Aye.

17885 Ms. Fontenot. Mr. Gohmert votes aye.

17886 Mr. Issa?

17887 Mr. Issa. Aye.

17888 Ms. Fontenot. Mr. Issa votes aye.

17889 Mr. Buck?

17890 Mr. Buck. No.

17891 Ms. Fontenot. Mr. Buck votes no.

17892 Mr. Gaetz?

17893 Mr. Gaetz. No.

17894 Ms. Fontenot. Mr. Gaetz votes no.

17895 Mr. Johnson of Louisiana?

17896 Mr. Johnson of Louisiana. No.

17897 Ms. Fontenot. Mr. Johnson of Louisiana votes no.

17898 Mr. Biggs?

17899 Mr. Biggs. No.

17900 Ms. Fontenot. Mr. Biggs votes no.

17901 Mr. McClintock?

17902 Mr. McClintock. Aye.

17903 Ms. Fontenot. Mr. McClintock votes aye.

17904 Mr. Steube?

17905 Mr. Steube. Yes.

17906 Ms. Fontenot. Mr. Steube votes yes.

17907 Mr. Tiffany?

17908 Mr. Tiffany. Aye.

17909 Ms. Fontenot. Mr. Tiffany votes aye.

17910 Mr. Massie?

17911 Mr. Massie. Yes.

17912 Ms. Fontenot. Mr. Massie votes yes.

17913 Mr. Roy?

17914 Mr. Roy. Aye.

17915 Ms. Fontenot. Mr. Roy votes aye.

17916 Mr. Bishop?

17917 Mr. Bishop. Yes.

17918 Ms. Fontenot. Mr. Bishop votes yes.

17919 Mrs. Fischbach?

17920 Mrs. Fischbach. Yes.

17921 Ms. Fontenot. Mrs. Fischbach votes yes.

17922 Mrs. Spartz?

17923 Mrs. Spartz. Yes.

17924 Ms. Fontenot. Mrs. Spartz votes yes.

17925 Mr. Fitzgerald?

17926 Mr. Fitzgerald. Aye.

17927 Ms. Fontenot. Mr. Fitzgerald votes aye.

17928 Mr. Bentz?

17929 Mr. Bentz. Yes.

17930 Ms. Fontenot. Mr. Bentz votes yes.

17931 Mr. Owens?

17932 Mr. Owens. Yes.

17933 Ms. Fontenot. Mr. Owens votes yes.

17934 Mr. Raskin. Mr. Chairman, how am I recorded? It's Raskin.

17935 Ms. Fontenot. Mr. Raskin, you are not recorded.

17936 Mr. Raskin. I vote no.

17937 Ms. Fontenot. Mr. Raskin votes no.

17938 Chairman Nadler. Are there any members who wish to be

17939 recorded who have not been recorded?

17940 [No response.]

17941 The clerk will report.

17942 Ms. Fontenot. Mr. Chairman, there are 15 ayes and 26 noes.

17943 Chairman Nadler. The amendment is not agreed to.

17944 Are there any further amendments to the amendment in the  
17945 nature of a substitute?

17946 Mr. Issa. Well, Mr. Chairman, I have an amendment at the  
17947 desk.

17948 Chairman Nadler. The clerk will report the amendment.

17949 Ms. Jackson Lee. A point of order. I reserve a point of  
17950 order.

17951 Chairman Nadler. The point of order is reserved.

17952 Ms. Fontenot. "Amendment to the amendment in the nature  
17953 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of Wisconsin  
17954 and Mr. Issa of California.

17955 Page 4, after line 16" --

17956 Chairman Nadler. Without objection, the amendment is  
17957 considered as read.

17958 [The amendment offered by Mr. Fitzgerald and Mr. Issa  
17959 follows:]

17960

17961 \*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

17962 Chairman Nadler. And the gentleman is recognized in support  
17963 of the amendment.

17964 Mr. Issa. Thank you, Mr. Chairman.

17965 As the freshman offering this the second time, I wanted to  
17966 make the point that we heard you loud and clear. We heard the  
17967 objections. And we have now struck for another foreign  
17968 adversary. And the bill now says simply "would likely result  
17969 in data from another business user being transferred to China."

17970 I don't think we have any question about China being a current  
17971 adversary and even an existential threat. Our President,  
17972 President Joseph Biden, has already made that clear. It is clear  
17973 that, in fact, we have a foreign adversary that we cannot trust,  
17974 one who is scraping our data, one who is, in fact, trying to eat  
17975 everyone's lunch, including these four, and if given the  
17976 opportunity, will.

17977 So, it's very straightforward. It is not what we might have  
17978 wanted, but we do want to be expansive for expansive's sake, and  
17979 therefore, we heard you loud and clear. We've made the secondary  
17980 amendment and we now offer a perfected amendment with the hopes  
17981 that it will be taken in the spirit in which it's given.

17982 And with that, I yield to -- Mr. Fitzgerald, do you want  
17983 to comment further on it? I yield.

17984 Mr. Fitzgerald. I'm in full support.

17985 Mr. Johnson of Louisiana. Would the gentleman yield?

17986 Mr. Issa. I would yield to the gentleman from Louisiana.

17987 Mr. Johnson of Louisiana. Just to play devil's advocate  
17988 here, how do we determine likely results? I mean, what's the  
17989 objective criteria on that? I mean, I'm all against China.  
17990 We're going to vote unanimously for this, I think. But, I mean,  
17991 how do we -- the problem is that there's so much subjectivity  
17992 in this whole package of bills.

17993 Mr. Issa. And I agree with the gentleman that it is  
17994 difficult, but it is clear that every day in the cyber world our  
17995 companies, including these four large and many much smaller, and  
17996 including, by the way, every one of your servers being hosted  
17997 here at the Capitol, are dealing with attacks from China. So,  
17998 do we know that China is an adversary? Absolutely. Do we know  
17999 there's a likelihood, if you deal directly with Alibaba, that  
18000 you're going to have it taken? Yes. Will China use surrogates  
18001 and will companies have to play cat and mouse to determine that?  
18002 Absolutely.

18003 And that's the reason that it says that these four companies  
18004 will have the ability to make that -- that can be second-guessed,  
18005 that it's not being abused, but it's pretty clear that every day  
18006 they're in battle with China, and so are tens of thousands of  
18007 other companies and millions of Americans.

18008 So, I appreciate the gentleman's question. I think that  
18009 by narrowing it to China -- we have no doubt that they are every

18010 day attacking everything, including every one of our sites that  
18011 we use as Members of Congress. Tens of thousands of times,  
18012 hundreds of thousands of times, they attack the House of  
18013 Representatives every day.

18014 Mr. Johnson of Louisiana. But is this a known or  
18015 should-have-known standard? Is that what you would -- I mean,  
18016 how is that to be determined? I still don't know the answer to  
18017 my question. Maybe there is no answer to it.

18018 Mr. Issa. There's no question at all that "would likely  
18019 result" is less than "could result," "might result". So, it's  
18020 very clear that these companies are not in a position where they  
18021 can lackadaisically say, well, anything could result. They have  
18022 to have a level of confidence that it would likely result, which  
18023 is a standard that is well understood in the law. Is it variable?

18024 Yes. Is it certainly one in which we would know that doing  
18025 business with Alibaba or other Chinese companies directly that  
18026 are owned by the Chinese Communist Government would clearly lead  
18027 to that.

18028 And, of course, our government works with all four of these  
18029 large companies on a cyber basis cooperatively. So, they do share  
18030 data. And the federal government, many departments of the  
18031 federal government, share with these companies, and vice versa.

18032 As a matter of fact, Google operates on behalf of the federal  
18033 government with cleared personnel. So, there's no question at



18034 all that there is a synergy in which these companies, for all  
18035 their shortcomings, are some of the most qualified to know what,  
18036 in fact, is likely to go to the Chinese.

18037 And I appreciate the gentleman's question. I think it is  
18038 well thought out.

18039 Mr. Johnson of Louisiana. I yield. Thank you.

18040 Chairman Nadler. Does the gentleman yield back?

18041 Mr. Issa. If no one else seeks my time, I would happily  
18042 yield back.

18043 Chairman Nadler. The gentleman yields back.

18044 For what purpose does the gentleman from --

18045 Ms. Jackson Lee. Mr. Chairman, I withdraw my point of order.

18046 Chairman Nadler. The point of order is withdrawn.

18047 Mr. Issa. We're good to go.

18048 [Laughter.]

18049 Chairman Nadler. For what purpose does the gentleman from  
18050 Rhode Island seek recognition?

18051 Mr. Cicilline. I move to strike the last word.

18052 Chairman Nadler. The gentleman is recognized.

18053 Mr. Cicilline. And before Mr. Issa got too smug with Mr.  
18054 Fitzgerald, he actually didn't fix the amendment, because it  
18055 provides an affirmative defense if the defendant establishes by  
18056 clear and convincing evidence. And it adds this: so, if the  
18057 defendant establishes by clear and convincing evidence that the

18058 conduct described in Subsections A and B would likely result in  
18059 data from another business user being transferred to China, they,  
18060 then, have an affirmative defense available to them. I don't  
18061 think that's what you intend to do.

18062 I urge my colleagues to vote against this amendment. Mr.  
18063 Issa corrected half of it, but left the other part exactly as  
18064 it is. I urge you to vote no.

18065 I yield back.

18066 Chairman Nadler. The gentleman yields back.

18067 For what purpose does the gentleman from Texas seek  
18068 recognition?

18069 Mr. Gohmert. To delightfully strike the last word.

18070 Chairman Nadler. The gentleman is recognized to  
18071 delightfully strike the last word.

18072 [Laughter.]

18073 Mr. Gohmert. Thank you.

18074 With that, I would yield to my friend from California.

18075 Mr. Issa. I thank the gentleman from Texas.

18076 Chairman Nadler. Delightfully.

18077 Mr. Issa. I'm sure that if I had said "would likely not  
18078 result in data from another business user being transferred to  
18079 China," the gentleman from Rhode Island would find it just as  
18080 objectionable. So, the fact that it's an affirmative defense,  
18081 yes, we want to have these four large companies have affirmative

18082 defenses when they are, in fact, protecting data from being  
18083 transferred to a hostile competitor -- a hostile country that  
18084 means to, in fact, eat our lunch militarily, economically, and  
18085 in every other possible way.

18086 This is a country that has developed specifically the ability  
18087 to take our satellites out of space; to shut down our  
18088 communications; to build islands; to, in fact, take back Taiwan  
18089 by force. The list is endless. But, in this case, it is, in  
18090 fact, their stripping of data, their cyberattacks that, in fact,  
18091 should give these companies certain abilities to defend on behalf  
18092 of all of us.

18093 And I trust that the gentleman from Rhode Island would agree  
18094 that China is, in fact, a clear and convincing threat. Our  
18095 President has said so.

18096 I would yield to --

18097 Mr. Cicilline. Only that your amendment doesn't achieve  
18098 that objective.

18099 Mr. Issa. And so, I would query the gentleman. If I said,  
18100 "would likely not result in" --

18101 Mr. Cicilline. With all due respect, Mr. Issa, I'm not going  
18102 to rewrite your amendment at this late hour. I oppose it.

18103 Mr. Issa. But you know I can scratch it and submit another  
18104 one. I just want to know --

18105 Mr. Cicilline. I'm happy to work on it with you before it

18106 goes to the Floor.

18107 Mr. Issa. You know, we're here and we've got all the time  
18108 in the world. It's a new day.

18109 Mr. Cicilline. It is a new day, but I'm happy to work on  
18110 it with you before it goes to the Floor, Mr. Issa.

18111 Mr. Issa. Yes, but, you know, the problem is, even the  
18112 Supreme Court, when they turn things down, generally tell us why.

18113 I remember the Stolen Valor. They didn't like how we did it,  
18114 but they told us what was wrong. So, we as a Congress -- you  
18115 were here -- could pass a new bill that protected against that  
18116 kind of statement.

18117 I only say that, if you're going to say no, then, in fact,  
18118 the question is, do you want to give these people the out to protect  
18119 from China or not? Because you're not going to work with us in  
18120 good faith if that's --

18121 Mr. Cicilline. Mr. Issa, I've never offered to work on an  
18122 issue and haven't worked in good faith, and I wouldn't start  
18123 tonight. So, I promise you I'm speaking good --

18124 Mr. Issa. Well, with the remaining two and a half minutes,  
18125 the question is, what is it that you find technically wrong with  
18126 this? So, "would not likely result"?

18127 I'm pausing. It's that poignant pause that it takes to get  
18128 30 copies of the change.

18129 Chairman Nadler. You have one minute and 44 seconds left

18130 in your pause.

18131 Mr. Issa. Mr. Chairman, if I may inquire during te minute  
18132 of remaining time, how much further do you think we can get before  
18133 we have to vote on the Floor on today's bills?

18134 Chairman Nadler. I don't know, but we're going to persist  
18135 until we finish our business.

18136 Mr. Issa. I'm looking forward to that, and I hope we don't  
18137 have to adjourn anytime soon. I suspect they won't have votes  
18138 before, oh, 8:00 or 9:00 in the morning, would you think?

18139 Chairman Nadler. I think we're good to go.

18140 Does the gentleman yield back?

18141 Mr. Issa. No, no, I'm pausing for the moment. Sometimes  
18142 an opportunity to think, and for people to reflect, can be  
18143 productive.

18144 Chairman Nadler. For some members, that may be a new  
18145 experience.

18146 Mr. Issa. Yes. Yes, the pause for thought, Mr. Chairman,  
18147 that could be reflective.

18148 And with that, Mr. Chairman, I urge support of this first  
18149 amendment -- or second amendment, as it is, and the third one  
18150 soon to come.

18151 And I happily yield back.

18152 Chairman Nadler. The gentleman yields back.

18153 Mr. Swalwell. Mr. Chairman, I call the previous question.

18154 Chairman Nadler. The motion on the previous question, on  
18155 the Issa amendment or on the bill?

18156 Mr. Swalwell. On the bill.

18157 Chairman Nadler. On the bill. There is a pending  
18158 amendment. There is a pending amendment.

18159 Are we ready to vote on the amendment?

18160 Mr. Swalwell. Then, I call it on the amendment.

18161 Chairman Nadler. The question occurs on the amendment.

18162 All in favor, say aye.

18163 Opposed, no.

18164 In the opinion of the chair, the noes have it.

18165 Is a recorded vote requested?

18166 Mr. Issa. Mr. Chairman, Mr. Chairman, the ayes have it --  
18167 or the noes have it. Mr. Chairman, I have another amendment at  
18168 the desk.

18169 Mr. Swalwell. Mr. Chairman, I call the previous question.

18170 Chairman Nadler. Wait. Wait, wait, wait, wait, wait.

18171 Mr. Swalwell. I call the previous question on the bill.

18172 Chairman Nadler. The gentleman from California moves the  
18173 previous question on -- the gentleman from California moves the  
18174 previous question. The motion on the previous question is --  
18175 we'll suspend for a moment.

18176 For what purpose does Mr. Issa --

18177 Mr. Issa. Mr. Chairman, I have a final amendment at the

18178 desk. It is at the desk. It's reduced to writing. It's my final  
18179 amendment.

18180 Ms. Jackson Lee. Point of order, Mr. Chairman. What  
18181 happened to Mr. Swalwell's motion to call the question?

18182 Chairman Nadler. He wasn't recognized for that purpose.

18183 Mr. Swalwell. Mr. Chairman, I seek recognition.

18184 Chairman Nadler. The gentleman from California is  
18185 recognized.

18186 Mr. Swalwell. I call the previous question.

18187 Chairman Nadler. Not that gentleman. I'm sorry. Mr. Issa  
18188 is recognized.

18189 Mr. Issa. Mr. Chairman, I have an amendment at the desk.

18190 Chairman Nadler. The gentleman will --

18191 Mr. Issa. It is my final amendment on this bill.

18192 Chairman Nadler. The clerk will report the amendment.

18193 Ms. Fontenot. "Amendment to the amendment in the nature  
18194 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of Wisconsin  
18195 and Mr. Issa of California.

18196 Page 4, after line 16" --

18197 Chairman Nadler. Without objection, the amendment is  
18198 considered as read.

18199 [The amendment offered by Mr. Fitzgerald and Mr. Issa  
18200 follows:]

18201

18202

\*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*



18203 Chairman Nadler. And the gentleman is recognized in support  
18204 of the amendment.

18205 Mr. Issa. Mr. Chairman, I will not waste any of the  
18206 committee's time. This final change is well understood. It  
18207 changes it to "not," which the gentleman from Rhode Island kindly  
18208 agreed would be the fix, at least for the intent. So, regardless  
18209 of whether it's going to be voted up or down, I think it's  
18210 understood, and would urge that it now be accepted.

18211 And I yield back.

18212 Chairman Nadler. The gentleman yields back.

18213 Does anyone else seek recognition on the amendment?

18214 Mr. Cicilline. Mr. Chairman?

18215 Chairman Nadler. For what purpose does the gentleman from  
18216 Rhode Island --

18217 Mr. Cicilline. Move to strike the last word.

18218 Chairman Nadler. The gentleman is recognized.

18219 Mr. Cicilline. Once again, now Mr. Issa's amendment would  
18220 provide that all the prohibited conduct is now permissible so  
18221 long as it would not likely result in data from another business  
18222 user being transferred to China. That, clearly, doesn't make  
18223 any sense. So, I urge people to vote no.

18224 Chairman Nadler. The question occurs on the amendment.

18225 All in favor, say aye.

18226 Opposed, no.

18227 In the opinion of the chair, the noes have it.

18228 Mr. Issa. The yeas and nays.

18229 Chairman Nadler. The yeas and nays are requested. The

18230 clerk will call the roll.

18231 Ms. Fontenot. Mr. Nadler?

18232 Chairman Nadler. No.

18233 Ms. Fontenot. Mr. Nadler votes no.

18234 Ms. Lofgren?

18235 Ms. Lofgren. Aye.

18236 Ms. Fontenot. Ms. Lofgren votes aye.

18237 Ms. Jackson Lee?

18238 Ms. Jackson Lee. No.

18239 Ms. Fontenot. Ms. Jackson Lee votes no.

18240 Mr. Cohen?

18241 [No response.]

18242 Mr. Johnson of Georgia?

18243 [No response.]

18244 Mr. Deutch?

18245 Mr. Deutch. No.

18246 Ms. Fontenot. Mr. Deutch votes no.

18247 Ms. Bass?

18248 Ms. Bass. No.

18249 Ms. Fontenot. Ms. Bass votes no.

18250 Mr. Jeffries?

18251 [No response.]

18252 Mr. Cicilline?

18253 Mr. Cicilline. No.

18254 Ms. Fontenot. Mr. Cicilline votes no.

18255 Mr. Swalwell?

18256 Mr. Swalwell. No.

18257 Ms. Fontenot. Mr. Swalwell votes no.

18258 Mr. Lieu?

18259 [No response.]

18260 Mr. Raskin?

18261 Mr. Raskin. No.

18262 Ms. Fontenot. Mr. Raskin votes no.

18263 Ms. Jayapal?

18264 Ms. Jayapal. No.

18265 Ms. Fontenot. Ms. Jayapal votes no.

18266 Mrs. Demings?

18267 Mrs. Demings. No.

18268 Ms. Fontenot. Mrs. Demings votes no.

18269 Mr. Correa?

18270 Mr. Correa. No.

18271 Ms. Fontenot. Mr. Correa votes no.

18272 Ms. Scanlon?

18273 Ms. Scanlon. No.

18274 Ms. Fontenot. Ms. Scanlon votes no.

18275 Ms. Garcia?

18276 Ms. Garcia. No.

18277 Ms. Fontenot. Ms. Garcia votes no.

18278 Mr. Neguse?

18279 Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

18280 Mrs. McBath?

18281 Mrs. McBath. No.

18282 Ms. Fontenot. Mrs. McBath votes no.

18283 Mr. Stanton?

18284 Mr. Stanton. No.

18285 Ms. Fontenot. Mr. Stanton votes no.

18286 Ms. Dean?

18287 Ms. Dean. No.

18288 Ms. Fontenot. Ms. Dean votes no.

18289 Ms. Escobar?

18290 Ms. Escobar. No.

18291 Ms. Fontenot. Ms. Escobar, you will have to turn your camera

18292 on.

18293 Ms. Escobar. I'm sorry. No.

18294 Ms. Fontenot. Ms. Escobar votes no.

18295 Mr. Jones?

18296 Mr. Jones. No.

18297 Ms. Fontenot. Mr. Jones votes no.

18298 Ms. Ross?

18299 Mr. Jeffries. Mr. Chairman, how am I recorded?

18300 Ms. Fontenot. Mr. Jeffries, you are not recorded.

18301 Mr. Jeffries. No.

18302 Ms. Fontenot. Mr. Jeffries votes no.

18303 Ms. Ross?

18304 Ms. Ross. No.

18305 Ms. Fontenot. Ms. Ross votes no.

18306 Ms. Bush?

18307 Ms. Bush. Bush votes no.

18308 Ms. Fontenot. Ms. Bush votes no.

18309 Mr. Jordan?

18310 Mr. Johnson of Georgia. Madam Clerk? Madam Clerk, this

18311 is Hank Johnson. How am I recorded?

18312 Ms. Fontenot. Mr. Johnson, you are not recorded.

18313 Mr. Johnson of Georgia. Vote no.

18314 Thank you.

18315 Ms. Fontenot. Mr. Johnson of Georgia votes no.

18316 Mr. Jordan?

18317 Mr. Jordan. Yes.

18318 Ms. Fontenot. Mr. Jordan votes yes.

18319 Mr. Chabot?

18320 Mr. Chabot. Aye.

18321 Ms. Fontenot. Mr. Chabot votes aye.

18322 Mr. Gohmert?

18323 Mr. Gohmert. Aye.

18324 Ms. Fontenot. Mr. Gohmert votes aye.

18325 Mr. Issa?

18326 Mr. Issa. Aye.

18327 Ms. Fontenot. Mr. Issa votes aye.

18328 Mr. Buck?

18329 Mr. Buck. Aye.

18330 Ms. Fontenot. Mr. Buck votes aye.

18331 Mr. Gaetz?

18332 Mr. Gaetz. Aye.

18333 Ms. Fontenot. Mr. Gaetz votes aye.

18334 Mr. Johnson of Louisiana?

18335 Mr. Johnson of Louisiana. Aye.

18336 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

18337 Mr. Biggs?

18338 Mr. Biggs. Aye.

18339 Ms. Fontenot. Mr. Biggs votes aye.

18340 Mr. McClintock?

18341 Mr. McClintock. Aye.

18342 Ms. Fontenot. Mr. McClintock votes aye.

18343 Mr. Steube?

18344 Mr. Steube. Yes.

18345 Ms. Fontenot. Mr. Steube votes yes.

18346 Mr. Tiffany?

18347 Mr. Tiffany. Aye.

18348 Ms. Fontenot. Mr. Tiffany votes aye.

18349 Mr. Massie?

18350 Mr. Massie. Aye.

18351 Ms. Fontenot. Mr. Massie votes aye.

18352 Mr. Roy?

18353 Mr. Roy. Aye.

18354 Ms. Fontenot. Mr. Roy votes aye.

18355 Mr. Bishop?

18356 Mr. Bishop. Yes.

18357 Ms. Fontenot. Mr. Bishop votes yes.

18358 Mrs. Fischbach?

18359 Mrs. Fischbach. Yes.

18360 Ms. Fontenot. Mrs. Fischbach votes yes.

18361 Mrs. Spartz?

18362 Mrs. Spartz. Yes.

18363 Ms. Fontenot. Mrs. Spartz votes yes.

18364 Mr. Fitzgerald?

18365 Mr. Fitzgerald. Aye.

18366 Ms. Fontenot. Mr. Fitzgerald votes aye.

18367 Mr. Bentz?

18368 Mr. Bentz. Yes.

18369 Ms. Fontenot. Mr. Bentz votes yes.

18370 Mr. Owens?

18371 Mr. Owens. Yes.

18372 Ms. Fontenot. Mr. Owens votes yes.

18373 Mr. Lieu. Mr. Chair, how am I recorded?

18374 Ms. Fontenot. Mr. Lieu, you are not recorded.

18375 Mr. Lieu. Lieu votes no.

18376 Ms. Fontenot. Mr. Lieu votes no.

18377 Mr. Cohen. This is Congressman Cohen. How am I recorded?

18378 Ms. Fontenot. Mr. Cohen, you are not recorded, but you will

18379 have to turn your camera on.

18380 Mr. Cohen. No.

18381 Ms. Fontenot. Mr. Cohen votes no.

18382 Chairman Nadler. How is Ms. Bass recorded? How is Ms. Bass

18383 recorded?

18384 Ms. Bass. As no. I voted.

18385 Ms. Fontenot. Ms. Bass, you're recorded as no.

18386 Chairman Nadler. The clerk will report.

18387 Ms. Fontenot. Mr. Chairman, there are 20 ayes and 24 noes.

18388 Chairman Nadler. The amendment is not agreed to.

18389 Are there any further amendments to the amendment in the

18390 nature of a substitute?

18391 Mr. Fitzgerald. Mr. Chairman?

18392 Chairman Nadler. For what purpose does Mr. Fitzgerald seek

18393 recognition?

18394 Mr. Fitzgerald. I have one more amendment.



18395 Chairman Nadler. The clerk will report the amendment.  
18396 Mr. Cicilline. Mr. Chairman, I reserve a point of order.  
18397 Chairman Nadler. A point of order is reserved.  
18398 Ms. Fontenot. "Amendment to the amendment in the nature  
18399 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of  
18400 Wisconsin.  
18401 Page 4, after line 16, insert the following and make such  
18402 technical and conforming changes as may be appropriate" --  
18403 Chairman Nadler. Without objection, the amendment will be  
18404 considered as read.  
18405 [The amendment offered by Mr. Fitzgerald follows:]  
18406  
18407 \*\*\*\*\*COMMITTEE INSERT \*\*\*\*\*

18408 Chairman Nadler. And the gentleman is recognized in support  
18409 of his amendment.

18410 Mr. Fitzgerald. Thank you, Mr. Chair.

18411 In 2018, over the objections of big tech, Congress passed  
18412 the Stop Enabling Sex Trafficking Act and the Fight Online Sex  
18413 Traffickers Act, known collectively as FOSTA/SESTA. These bills  
18414 give victims the ability to hold internet platforms accountable  
18415 for facilitating sex trafficking.

18416 I'm concerned that this bill would undermine these  
18417 protections by making it more difficult for platforms to remove  
18418 apps and users that facilitate sex trafficking. My amendment  
18419 would fix this by allowing a platform to remove the apps that  
18420 do not comply with the standard set in the Fighting Online Sex  
18421 Traffickers/Stop Enabling Sex Traffickers Act.

18422 I urge my colleagues to support the amendment.

18423 Mr. Cicilline. Mr. Chairman?

18424 Chairman Nadler. Does the gentleman yield back?

18425 Mr. Fitzgerald. I do, Mr. Chair.

18426 Chairman Nadler. The gentleman yields back.

18427 For what purpose does the gentleman from Rhode Island seek  
18428 recognition?

18429 Mr. Cicilline. I move to strike the last word.

18430 Chairman Nadler. The gentleman is recognized.

18431 Mr. Cicilline. I thank Mr. Fitzgerald for this amendment

18432 and I appreciate the intention. The good news is it's already  
18433 covered in the existing text. If you look at No. 2, this was  
18434 narrowly tailored. "Could not be achieved through less  
18435 discriminatory means." "Was non-pretextual and was necessary  
18436 to prevent a violation of or comply with federal or state law."  
18437 This is a federal law, so it's already included. So, it's  
18438 unnecessary to pull out this particular statute. Yes, it's  
18439 included in the legislative history.

18440 I yield back.

18441 Chairman Nadler. The gentleman yields back.

18442 Are there any further amendments?

18443 Mr. Issa. Well, Mr. Chair, I move to strike the last word.

18444 Chairman Nadler. The gentleman is recognized.

18445 Mr. Issa. On this amendment, which is still under debate,  
18446 once again, people love to tell us that something's covered, and  
18447 I appreciate that. But saying it twice on something as important  
18448 as this does not seem to be a problem. This certainly would not  
18449 negate the first time, if it was said again. So, I strongly  
18450 support that, since it will do no harm, and we certainly want  
18451 to do good when it comes to preventing sex trafficking, I certainly  
18452 think that gentleman has hit the nail on the head. And I would  
18453 hope that saying it twice is appropriate.

18454 And with that, I thank the gentleman and yield back.

18455 Chairman Nadler. The gentleman yields back.

18456 The question occurs on the amendment.

18457 All in favor, say aye.

18458 Opposed, no.

18459 In the opinion of the chair, the noes have it.

18460 Mr. Issa. Yeas and nays.

18461 Chairman Nadler. The yeas and nays are requested. The

18462 clerk will call the roll.

18463 Ms. Fontenot. Mr. Nadler?

18464 Chairman Nadler. No.

18465 Ms. Fontenot. Mr. Nadler votes no.

18466 Ms. Lofgren?

18467 Ms. Lofgren. No.

18468 Ms. Fontenot. Ms. Lofgren votes no.

18469 Ms. Jackson Lee?

18470 Ms. Jackson Lee. No.

18471 Ms. Fontenot. Ms. Jackson Lee votes no.

18472 Mr. Cohen?

18473 Mr. Cohen. No.

18474 Ms. Fontenot. Mr. Cohen votes no.

18475 Mr. Johnson of Georgia?

18476 Mr. Johnson of Georgia. No.

18477 Ms. Fontenot. Mr. Johnson of Georgia votes no.

18478 Mr. Deutch?

18479 Mr. Deutch. No.

18480 Ms. Fontenot. Mr. Deutch votes no.  
18481 Ms. Bass?  
18482 Ms. Bass. No.  
18483 Ms. Fontenot. Ms. Bass votes no.  
18484 Mr. Jeffries?  
18485 Mr. Jeffries. No.  
18486 Ms. Fontenot. Mr. Jeffries votes no.  
18487 Mr. Cicilline?  
18488 Mr. Cicilline. No.  
18489 Ms. Fontenot. Mr. Cicilline votes no.  
18490 Mr. Swalwell?  
18491 Mr. Swalwell. No.  
18492 Ms. Fontenot. Mr. Swalwell votes no.  
18493 Mr. Lieu?  
18494 Mr. Lieu. No.  
18495 Ms. Fontenot. Mr. Lieu votes no.  
18496 Mr. Raskin?  
18497 Mr. Raskin. No.  
18498 Ms. Fontenot. Mr. Raskin votes no.  
18499 Ms. Jayapal?  
18500 Ms. Jayapal. No.  
18501 Ms. Fontenot. Ms. Jayapal votes no.  
18502 Mrs. Demings?  
18503 Mrs. Demings. No.

18504 Ms. Fontenot. Mrs. Demings votes no.

18505 Mr. Correa?

18506 Mr. Correa. No.

18507 Ms. Fontenot. Mr. Correa votes no.

18508 Ms. Scanlon?

18509 Ms. Scanlon. No.

18510 Ms. Fontenot. Ms. Scanlon votes no.

18511 Ms. Garcia?

18512 Ms. Garcia. No.

18513 Ms. Fontenot. Ms. Garcia votes no.

18514 Mr. Neguse?

18515 Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

18516 Mrs. McBath?

18517 Mrs. McBath. No.

18518 Ms. Fontenot. Mrs. McBath votes no.

18519 Mr. Stanton?

18520 Mr. Stanton. No.

18521 Ms. Fontenot. Mr. Stanton votes no.

18522 Ms. Dean?

18523 Ms. Dean. No.

18524 Ms. Fontenot. Ms. Dean votes no.

18525 Ms. Escobar?

18526 Ms. Escobar. No.

18527 Ms. Fontenot. Ms. Escobar votes no.

18528 Mr. Jones?

18529 Mr. Jones. No.

18530 Ms. Fontenot. Mr. Jones votes no.

18531 Ms. Ross?

18532 Ms. Ross. Ross votes no.

18533 Ms. Fontenot. Ms. Ross votes no.

18534 Ms. Bush?

18535 Ms. Bush. No.

18536 Ms. Fontenot. Ms. Bush votes no.

18537 Mr. Jordan?

18538 Mr. Jordan. Yes.

18539 Ms. Fontenot. Mr. Jordan votes yes.

18540 Mr. Chabot?

18541 Mr. Chabot. Aye.

18542 Ms. Fontenot. Mr. Chabot votes aye.

18543 Mr. Gohmert?

18544 Mr. Gohmert. Aye.

18545 Ms. Fontenot. Mr. Gohmert votes aye.

18546 Mr. Issa?

18547 [No response.]

18548 Mr. Buck?

18549 Mr. Buck. Aye.

18550 Ms. Fontenot. Mr. Buck votes aye.

18551 Mr. Gaetz?

18552 Mr. Gaetz. Aye.

18553 Ms. Fontenot. Mr. Gaetz votes aye.

18554 Mr. Johnson of Louisiana?

18555 Mr. Johnson of Louisiana. Aye.

18556 Ms. Fontenot. Mr. Johnson of Louisiana votes aye.

18557 Mr. Biggs?

18558 Mr. Biggs. Aye.

18559 Ms. Fontenot. Mr. Biggs votes aye.

18560 Mr. McClintock?

18561 Mr. McClintock. Aye.

18562 Ms. Fontenot. Mr. McClintock votes aye.

18563 Mr. Steube?

18564 Mr. Steube. Yes.

18565 Ms. Fontenot. Mr. Steube votes yes.

18566 Mr. Tiffany?

18567 Mr. Tiffany. Aye.

18568 Ms. Fontenot. Mr. Tiffany votes aye.

18569 Mr. Massie?

18570 Mr. Massie. Present.

18571 Ms. Fontenot. Mr. Massie votes present.

18572 Mr. Roy?

18573 Mr. Roy. Aye.

18574 Ms. Fontenot. Mr. Roy votes aye.

18575 Mr. Bishop?



18576 Mr. Bishop. Yes.

18577 Ms. Fontenot. Mr. Bishop votes yes.

18578 Mrs. Fischbach?

18579 Mrs. Fischbach. Yes.

18580 Ms. Fontenot. Mrs. Fischbach votes yes.

18581 Mrs. Spartz?

18582 Mrs. Spartz. Yes.

18583 Ms. Fontenot. Mrs. Spartz votes yes.

18584 Mr. Fitzgerald?

18585 Mr. Fitzgerald. Aye.

18586 Ms. Fontenot. Mr. Fitzgerald votes aye.

18587 Mr. Bentz?

18588 Mr. Bentz. Yes.

18589 Ms. Fontenot. Mr. Bentz votes yes.

18590 Mr. Owens?

18591 Mr. Owens. Yes.

18592 Ms. Fontenot. Mr. Owens votes yes.

18593 Mr. Issa. Mr. Chairman, how am I recorded?

18594 Ms. Fontenot. Mr. Issa, you are not recorded.

18595 Mr. Issa. Yes.

18596 Ms. Fontenot. Mr. Issa votes yes.

18597 Chairman Nadler. Are there any members who wish to be

18598 recorded who haven't been recorded?

18599 [No response.]

18600 The clerk will report.

18601 Ms. Fontenot. Mr. Chairman, there are 18 ayes, 25 noes,  
18602 and 1 present.

18603 Chairman Nadler. The amendment is not agreed to.

18604 Are there any further amendments to the amendment in the  
18605 nature of a substitute?

18606 [No response.]

18607 The question occurs on the amendment in the nature of a  
18608 substitute.

18609 This will be followed immediately by a vote on final passage  
18610 of the bill.

18611 All those in favor, respond by saying aye.

18612 Opposed, no.

18613 In the opinion of the chair, the ayes have it. The amendment  
18614 in the nature of a substitute is agreed to.

18615 A reporting quorum being present, the question is on the  
18616 motion to report the bill H.R. 3816, as amended, favorably to  
18617 the House.

18618 Those in favor, respond by saying aye.

18619 Opposed, no.

18620 The ayes have it, and the bill is ordered to be reported  
18621 favorably.

18622 The yeas and nays are requested. The clerk will call the  
18623 roll.

18624 Ms. Fontenot. Mr. Nadler?

18625 Chairman Nadler. Aye.

18626 Ms. Fontenot. Mr. Nadler votes aye.

18627 Ms. Lofgren?

18628 Ms. Lofgren. No.

18629 Ms. Fontenot. Ms. Lofgren votes no.

18630 Ms. Jackson Lee?

18631 Ms. Jackson Lee. Aye.

18632 Ms. Fontenot. Ms. Jackson Lee votes aye.

18633 Mr. Cohen?

18634 Mr. Cohen. Aye.

18635 Ms. Fontenot. Mr. Cohen votes aye.

18636 Mr. Johnson of Georgia?

18637 Mr. Johnson of Georgia. Aye.

18638 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

18639 Mr. Deutch?

18640 Mr. Deutch. Aye.

18641 Ms. Fontenot. Mr. Deutch votes aye.

18642 Ms. Bass?

18643 Ms. Bass. Aye.

18644 Ms. Fontenot. Ms. Bass votes aye.

18645 Mr. Jeffries?

18646 Mr. Jeffries. Aye.

18647 Ms. Fontenot. Mr. Jeffries votes aye.

18648 Mr. Cicilline?  
18649 Mr. Cicilline. Aye.  
18650 Ms. Fontenot. Mr. Cicilline votes aye.  
18651 Mr. Swalwell?  
18652 Mr. Swalwell. No.  
18653 Ms. Fontenot. Mr. Swalwell votes no.  
18654 Mr. Lieu?  
18655 Mr. Lieu. Aye.  
18656 Ms. Fontenot. Mr. Lieu votes aye.  
18657 Mr. Raskin?  
18658 Mr. Raskin. Aye.  
18659 Ms. Fontenot. Mr. Raskin votes aye.  
18660 Ms. Jayapal?  
18661 Ms. Jayapal. Aye.  
18662 Ms. Fontenot. Ms. Jayapal votes aye.  
18663 Mrs. Demings?  
18664 Mrs. Demings. Aye.  
18665 Ms. Fontenot. Mrs. Demings votes aye.  
18666 Mr. Correa?  
18667 Mr. Correa. No.  
18668 Ms. Fontenot. Mr. Correa votes no.  
18669 Ms. Scanlon?  
18670 Ms. Scanlon. Aye.  
18671 Ms. Fontenot. Ms. Scanlon votes aye.

18672 Ms. Garcia?

18673 Ms. Garcia. Aye.

18674 Ms. Fontenot. Ms. Garcia votes aye.

18675 Mr. Neguse?

18676 Mr. Neguse. Aye. Ms. Fontenot. Mr. Neguse votes aye.

18677 Mrs. McBath?

18678 Mrs. McBath. Aye.

18679 Ms. Fontenot. Mrs. McBath votes aye.

18680 Mr. Stanton?

18681 Mr. Stanton. No.

18682 Ms. Fontenot. Mr. Stanton votes no.

18683 Ms. Dean?

18684 Ms. Dean. Aye.

18685 Ms. Fontenot. Ms. Dean votes aye.

18686 Ms. Escobar?

18687 Ms. Escobar. Aye.

18688 Ms. Fontenot. Ms. Escobar votes aye. Mr. Jones?

18689 Mr. Jones. Aye.

18690 Ms. Fontenot. Mr. Jones votes aye.

18691 Ms. Ross?

18692 Ms. Ross. Ross votes aye.

18693 Ms. Fontenot. Ms. Ross votes aye.

18694 Ms. Bush?

18695 Ms. Bush. Aye.

18696 Ms. Fontenot. Ms. Bush votes aye.

18697 Mr. Jordan?

18698 Mr. Jordan?

18699 Mr. Jordan. No.

18700 Ms. Fontenot. Mr. Jordan votes no.

18701 Mr. Chabot?

18702 Mr. Chabot. No.

18703 Ms. Fontenot. Mr. Chabot votes no.

18704 Mr. Gohmert?

18705 Mr. Gohmert. No.

18706 Ms. Fontenot. Mr. Gohmert votes no.

18707 Mr. Issa?

18708 Mr. Issa. No.

18709 Ms. Fontenot. Mr. Issa votes no.

18710 Mr. Buck?

18711 Mr. Buck. Aye.

18712 Ms. Fontenot. Mr. Buck votes aye.

18713 Mr. Gaetz?

18714 Mr. Gaetz. Aye.

18715 Ms. Fontenot. Mr. Gaetz votes aye.

18716 Mr. Johnson of Louisiana?

18717 Mr. Johnson of Louisiana. No.

18718 Ms. Fontenot. Mr. Johnson of Louisiana votes no.

18719 Mr. Biggs?

18720 Mr. Biggs. Nay.

18721 Ms. Fontenot. Mr. Biggs votes nay.

18722 Mr. McClintock?

18723 Mr. McClintock. No.

18724 Ms. Fontenot. Mr. McClintock votes no.

18725 Mr. Steube?

18726 Mr. Steube. No.

18727 Ms. Fontenot. Mr. Steube votes no.

18728 Mr. Tiffany?

18729 Mr. Tiffany. No.

18730 Ms. Fontenot. Mr. Tiffany votes no.

18731 Mr. Massie?

18732 Mr. Massie. No.

18733 Ms. Fontenot. Mr. Massie votes no.

18734 Mr. Roy?

18735 Mr. Roy. Nay.

18736 Ms. Fontenot. Mr. Roy votes nay.

18737 Mr. Bishop?

18738 Mr. Bishop. Nay.

18739 Ms. Fontenot. Mr. Bishop votes nay.

18740 Mrs. Fischbach?

18741 Mrs. Fischbach. No.

18742 Ms. Fontenot. Mrs. Fischbach votes no.

18743 Mrs. Spartz?

18744 Mrs. Spartz. No.

18745 Ms. Fontenot. Mrs. Spartz votes no.

18746 Mr. Fitzgerald?

18747 Mr. Fitzgerald. No.

18748 Ms. Fontenot. Mr. Fitzgerald votes no.

18749 Mr. Bentz?

18750 Mr. Bentz. No.

18751 Ms. Fontenot. Mr. Bentz votes no.

18752 Mr. Owens?

18753 Mr. Owens. Yes.

18754 Ms. Fontenot. Mr. Owens votes yes.

18755 Chairman Nadler. Are there any members who have not voted

18756 who wish to be recorded?

18757 [No response.]

18758 The clerk will report.

18759 Ms. Fontenot. Mr. Chairman, there are 24 ayes and 20 noes.

18760 Chairman Nadler. The ayes have it, and the bill, as amended,

18761 is ordered reported favorably to the House.

18762 Members will have two days to submit views.

18763 Without objection, the bill will be reported as a single

18764 amendment in the nature of a substitute incorporating all adopted

18765 amendments.

18766 And staff is authorized to make technical and conforming

18767 changes.



18768           The committee will now stand in recess until 11:00 a.m. this  
18769 morning, when we will take up H.R. 3825.

18770           [Whereupon, at 5:10 a.m., the committee recessed, to  
18771 reconvene at 11:00 a.m., Thursday, June 24, 2021.]

1 NEAL R. GROSS & CO., INC.

2 RPTS MORRISON

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4

5

6 MARKUP OF:

7 H.R. 3843, THE "MERGER FILING FEE

8 MODERNIZATION ACT OF 2021";

9 H.R. 3460, THE "STATE ANTITRUST ENFORCEMENT

10 VENUE ACT OF 2021";

11 H.R. 3849, THE "AUGMENTING COMPATIBILITY AND

12 COMPETITION BY ENABLING SERVICE SWITCHING

13 ACT OF 2021" OR THE "ACCESS ACT OF 2021";

14 H.R. 3826, THE "PLATFORM COMPETITION AND

15 OPPORTUNITY ACT OF 2021";

16 H.R. 3816, THE "AMERICAN CHOICE AND

17 INNOVATION ONLINE ACT";

18 AND H.R. 3825, THE "ENDING PLATFORM

19 MONOPOLIES ACT"

20 Thursday, June 24, 2021

21 House of Representatives,

22 Committee on the Judiciary,

23 Washington, D.C.

24

25

26           The committee met, pursuant to call, at 11:34 a.m., in Room  
27 2141, Rayburn House Office Building, Hon. Jerrold Nadler  
28 [chairman of the committee] presiding.

29           Members present: Representatives Nadler, Lofgren, Jackson  
30 Lee, Cohen, Johnson of Georgia, Deutch, Bass, Jeffries,  
31 Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa,  
32 Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Escobar, Jones,  
33 Ross, Bush, Jordan, Chabot, Gohmert, Issa, Buck, Gaetz, Johnson  
34 of Louisiana, Biggs, McClintock, Steube, Tiffany, Massie, Roy,  
35 Bishop, Fischbach, Spartz, Fitzgerald, Bentz, and Owens.

36           Staff present: Perry Apelbaum, Staff Director and Chief  
37 Counsel; Aaron Hiller, Deputy Chief Counsel; Amy Rutkin, Chief  
38 of Staff; David Greengrass, Senior Counsel; John Doty, Senior  
39 Advisor; Moh Sharma, Member Services and Outreach & Policy  
40 Advisor; Priyanka Mara, Professional Staff Member/Legislative  
41 Aide; Jordan Dashow, Professional Staff Member; Cierra Fontenot,  
42 Chief Clerk; John Williams, Parliamentarian; Merrick Nelson,  
43 Digital Director; Kayla Hamedi, Deputy Press Secretary; Amanda  
44 Lewis, Counsel for ACAL; Joseph Van Wye, Professional Staff  
45 Member/Legislative Aide for ACAL; Slade Bond, Chief Counsel for  
46 ACAL; Philip Berenbroick, Counsel for ACAL; Will Emmons,  
47 Professional Staff Member/Legislative Aide for Constitution;  
48 Chris Hixon, Minority Staff Director; David Brewer, Minority

49 Deputy Staff Director; Tyler Grimm, Minority Chief Counsel for  
50 Policy and Strategy; Katy Rother, Minority Deputy General Counsel  
51 and Parliamentarian; Ella Yates, Minority Member Services  
52 Director; Douglas Geho, Minority Chief Counsel for Administrative  
53 Law; James Lesinski, Minority Counsel; Andrea Woodard, Minority  
54 Professional Staff Member; and Kiley Bidelman, Minority Clerk.

55 Chairman Nadler. The Judiciary Committee will reconvene  
56 -- oh, sorry. We are about to resume the markup.

57 I am now going to count down to five so the technicians can  
58 begin the public streaming of this markup.

59 Five, four, three, two, one.

60 The committee will come to order. Pursuant to notice, I  
61 now call up H.R. 3825, the "Ending Platform Monopolies Act," for  
62 purposes of markup, and move that the committee report the bill  
63 favorably to the House.

64 [The Bill H.R. 3825 follows:]

65

66 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

67 Chairman Nadler. The clerk will report the bill.

68 Ms. Fontenot. H.R. 3825, to promote competition and  
69 economic opportunity in digital markets by eliminating the  
70 conflicts --

71 Chairman Nadler. Without objection, the bill is considered  
72 as read, and open for amendment at any point.

73 I will begin by recognizing myself for an opening statement.

74 H.R. 3825, the "Ending Platform Monopolies Act," prevents  
75 dominant online platforms from leveraging their monopoly powers  
76 to distort or destroy competition in markets that rely on that  
77 platform. Online platforms provide valuable services to  
78 business users and consumers. They enable businesses to reach  
79 customers around the world. They allow consumers to act with  
80 a nearly unlimited array of goods and services with a simple swipe  
81 or click.

82 However, as our investigation has shown, the largest online  
83 platforms can abuse this power. In some cases, these firms have  
84 dual roles in the market: they operate as both a channel for online  
85 commerce, and they compete directly against businesses that rely  
86 on the platform to reach customers or consumers in the market.

87 By operating as both the platform and its competitor in the  
88 platform, these firms often possess an irreconcilable conflict  
89 of interest, enabling them to harm competition by preferencing  
90 their own products and harming rivals.

91           Inevitably, these conflicts of interest, and the  
92           anticompetitive conduct they incentivize and enable, distort and  
93           destroy competition. They reduce incentives for small  
94           businesses and entrepreneurs to take risks, and they rob consumers  
95           of choices.

96           H.R. 3825 authorizes the Federal Trade Commission and the  
97           Department of Justice to take action to eliminate these conflicts  
98           of interest, providing a structural solution to the structural  
99           problems that impair competition online. This bipartisan  
100          legislation would help bring more choices to consumers, and would  
101          help small businesses focus on improving their products and  
102          serving customers, rather than on avoiding discrimination by the  
103          platform.

104          I thank Congresswoman Jayapal and Congressman Gooden for  
105          introducing this important legislation. And I urge all members  
106          to support it.

107          I now recognize the ranking member of the Judiciary  
108          Committee, the gentleman from Ohio, Mr. Jordan, for his opening  
109          statement.

110          Mr. Jordan. Thank you, Chairman.

111          This bill gives the Biden administration wide discretion  
112          to sculpt companies in ways it chooses. It will put the DOJ and  
113          FTC in a position of quite literally central planning. And more  
114          fundamentally, it addresses -- it fails to address some of the

115           Republicans' most significant concerns.

116           As with the other antitrust bills we dealt with earlier today  
117           and yesterday, this bill has significant ambiguities, ambiguities  
118           that empower the administrative state. While granting big  
119           government significant power over big tech, this bill does not  
120           break up the power of big tech in ways that protect conservative  
121           speech and speakers online.

122           If Alphabet must sell YouTube and Google Maps, that won't  
123           keep Google Search from burying The Federalist or promoting The  
124           New York Times. If Amazon must sell Amazon Basics or Fulfillment  
125           by Amazon, that won't keep Amazon Marketplace from banning Senator  
126           Hawley's book.

127           The bill won't keep Apple or Amazon from booting Parler again  
128           down the road. And it won't solve Facebook's ban of President  
129           Trump.

130           Instead of addressing real concerns, this bill creates  
131           results that will ultimately harm Americans. It will hurt  
132           consumers, and it does nothing to protect speech. But it will  
133           make people in the government, people in the bureaucracy an army  
134           of woke civil servants, and will give them a lot more power.

135           I urge a no vote on the legislation, and yield back to the  
136           chairman.

137           Chairman Nadler. I now recognize the chair of the  
138           Subcommittee on Antitrust, Commercial, and Administrative Law,



139 the gentleman from Rhode Island, Mr. Cicilline, for his opening  
140 statement.

141 Mr. Cicilline. Thank you, Mr. Chairman.

142 H.R. 3825, the "Ending Platform Monopolies Act," requires  
143 dominant online platforms to choose between operating a platform  
144 or operating businesses that compete on the platform. As a  
145 result, this bill will create a fairer, more open, and vibrant  
146 digital marketplace for everyone.

147 Dominant platforms use their power over central internet  
148 infrastructure to enter and dominate other markets that rely on  
149 the platform. The gatekeeper power of these dominant platforms  
150 gives them significant advantages when they enter downstream  
151 markets. For example, dominant platforms use the sensitive  
152 business information they collect from the businesses that depend  
153 on the platform to create clones of those businesses' products.

154 When they enter downstream markets to compete against firms that  
155 rely on their platform, the dominant engage in a host of  
156 anticompetitive practices to advantage themselves or  
157 disadvantage or sue rivals.

158 The dual roles that the dominant platforms occupy create  
159 irreconcilable conflicts of interest. For example, Google,  
160 Amazon, and Apple each favor their own products in search results,  
161 giving themselves an unfair advantage over competitors.  
162 Ultimately, the platforms' gatekeeper power and incentives to

163 distort the marketplace leads to conduct that destroys  
164 competition and limits choices for consumers.

165 H.R. 3825, which was introduced by Congresswoman Jayapal,  
166 resolves this problem by requiring dominant platforms to choose  
167 whether to be in the business of being a platform or the business  
168 of offering products and services that rely on the platform.  
169 In some instances, antitrust enforcers may require a dominant  
170 platform to divest lines of business.

171 Critics of this legislation said that it will take popular  
172 products and services away from consumers. That is not true.

173 In situations where a dominant platform has divested a line of  
174 business, the most probable outcome is that lines of business  
175 would be spun off, either sold to other companies, or stasured  
176 as standalone independent businesses.

177 Structural separations and line of business restrictions  
178 are proven tools to combat monopoly power. Makan Delrahim, the  
179 former Deputy Attorney General for Antitrust, explained that  
180 structural remedies for antitrust problems are preferable for  
181 ongoing monitoring and oversight by the Federal Government.

182 FTC Commissioner Rebecca Kelly Slaughter, recently the  
183 Acting Chairwoman of the Commission, testified before the  
184 Antitrust Subcommittee in March. She explained that structural  
185 remedies like those in H.R. 3825 are the, and I quote,  
186 "conservative resolution" to antitrust harm because "breakups

187 can provide a clean separation and a fresh start for a business,  
188 while behavioral remedies require ongoing involvement and  
189 monitoring by government overseers."

190         Leading edges of scholars, advocates, and practitioners also  
191 support structural separation and line of business restrictions  
192 for dominant online platforms. For example, prominent antitrust  
193 economists, like John Kwoka and Tommaso Valletti, have written  
194 that structural separation is the only policy with sufficient  
195 scope and power to remedy the competition problems that plague  
196 the digital marketplace.

197         Congress has long relied on these tools as a remedy to stop  
198 abuses of power by dominant firms in industries like  
199 telecommunications and banking. As recently as 1996, the  
200 Telecommunications Act included line of business restrictions  
201 for the telecom industry. As a result, we have experienced an  
202 explosion of growth and innovation in telecom over the last 25  
203 years.

204         I expect that divestitures and line of business restrictions  
205 required of the dominant online platforms as a result of this  
206 legislation will have similar pro-competitive, pro-innovation  
207 effects for the American economy.

208         I want to thank Congresswoman Jayapal for introducing this,  
209 along with Congressman Gooden. This is a very important piece  
210 of legislation. And I urge my colleagues to support this bill.

211           And I yield back.

212           Chairman Nadler. Without objection, all other opening  
213 statements will be included in the record.

214           I now recognize myself for purposes of offering an amendment  
215 in the nature of a substitute.

216           [The Amendment of Mr. Nadler follows:]

217

218           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

219 Ms. Fontenot. Amendment in the nature of a substitute to  
220 H.R. 3825 offered by Mr. Nadler of New York. Strike all after  
221 the enacting clause --

222 Chairman Nadler. Without objection, the amendment in the  
223 nature of a substitute will be considered as read, and shall be  
224 considered as base text for the purposes of amendment.

225 I will recognize myself to explain the amendment.

226 This amendment in the nature of a substitute makes a few  
227 substantive changes as well as several technical changes to  
228 enhance the clarity of the bill.

229 First, the amendment provides that it is the covered  
230 platform's ownership or control of another line of business that  
231 gives rise to a violation under section 2, and makes conforming  
232 changes to the definitions in section 5.

233 Second, the amendment makes technical revisions in section  
234 3 to clarify that the Department of Justice and the Federal Trade  
235 Commission have the same enforcement powers, duties, and other  
236 authorities under the act as in certain other relevant antitrust  
237 and procedure statutes.

238 Also in section 3, the amendment makes improvements to the  
239 civil penalties provision to deter violations more effectively  
240 and correct a drafting error. If an individual violates section  
241 4 of this bill, the amendment establishes a daily civil penalty  
242 appropriate to deter violation.

243           The amendment revises section 4 of the bill to better reflect  
244           the goals of this section by providing that an individual who  
245           violates the specified limits on board membership or other service  
246           must resign as soon as practicable.

247           In section 5 of the bill, the amendment clarifies that a  
248           "formerly affiliated person" refers to a person who was owned  
249           or controlled by the covered platform operator prior to  
250           termination of the affiliation prohibited under section 2. It  
251           also corrects a drafting error for the definition of the term  
252           "online platform."

253           The amendment makes technical changes to section 6 of the  
254           bill to clarify when and how the agencies may remove a covered  
255           platform designation.

256           Finally, the amendment makes final technical edits to  
257           section 7 of the bill to clarify the scope of judicial review.

258           I urge all members to support the amendment. And I yield  
259           back the balance of my time.

260           Are there any amendments to the amendment in the nature of  
261           a substitute?

262           Mr. Issa. Are we accepting move to strike the last word  
263           or just additional amendments?

264           Chairman Nadler. Ms. Jayapal. For what purpose does Ms.  
265           Jayapal seek recognition?

266           Ms. Jayapal. Mr. Chairman, I move to strike the last word.

267 Chairman Nadler. The gentlelady is recognized.

268 Ms. Jayapal. Thank you.

269 Mr. Chairman, my bipartisan bill with Representative Gooden,  
270 "Ending Platform Monopolies Act," provides a structural remedy  
271 to the ability of dominant platforms to leverage their own control  
272 over multiple lines of business to self-preference their own  
273 business lines. In these situations, the dominant platform's  
274 dual ownership creates a clear conflict of interest, an  
275 irresistible urge, if you will, for platforms to preference their  
276 own business lines over competitors.

277 In simple language, this would be like being a person who  
278 sets the rules of the game, calls all the plays on the field,  
279 while also playing on one of the teams. It is unfair and it is  
280 bad for small businesses, consumers, and innovation.

281 During our 16-month bipartisan investigation we heard  
282 numerous small businesses testify about the harm that big tech  
283 monopolies inflict on them. Jason Boyce from Sammamish,  
284 Washington, ran a successful third party seller of sporting goods  
285 beginning in 2003. Initially he was "Amazon's biggest proponent,  
286 cheerleader, and fan." But the company copied his most  
287 successful product, offering identical or near-identical  
288 versions at discounted prices. Mr. Boyce was eventually forced  
289 to sell his business.

290 Mr. Boyce is far from alone. In July of 2019, I asked Amazon

291 about its use of third party seller data to create products that  
292 compete with sellers on their platform. Under oath the tech  
293 giant's associate general counsel said, "We do not use any of  
294 that specific seller data in creating our own private brand  
295 products" to compete with businesses on Amazon's platform.

296 Nearly a year later the Wall Street Journal had an  
297 investigation that revealed this as a lie, that Amazon routinely  
298 uses the data it obtains from third party sellers. In fact, a  
299 former Amazon employee told us that it was "a candy shop where  
300 everyone can have access to anything they want."

301 When I asked Amazon's CEO Jeff Bezos about this  
302 anticompetitive practice, he was unable to deny that that  
303 happened.

304 We also heard from numerous small businesses who have seen  
305 Amazon direct consumers to Amazon private label products instead  
306 of theirs, effectively making it impossible to compete.  
307 Consumers say that, too, by the way, that you are being directed  
308 to the dominant platform's product instead of seeing the choices  
309 that you deserve to see.

310 But it isn't just the ability of small businesses to compete,  
311 or even consumer choice. It's also about the future of local  
312 newspapers and independent journalism. What became clear is that  
313 Google has total control of the ad market, runs the marketplace  
314 where local newspapers have to advertise, and then it controls



315 both the buy side and the sell side of that marketplace.

316 If Google were a bank, it would be prohibited on acting on  
317 both sides. But in this big tech world there is no regulation  
318 to prevent this monopolistic practice. The effects on  
319 independent journalism are clear: from 1990 to 2017 almost 30,000  
320 newspaper jobs have disappeared, news media ad revenue plunged  
321 by 60 percent, and over 20 percent of all newspapers have closed  
322 in less than 15 years.

323 With all of these platforms, our investigation showed that  
324 these dominant platforms have just become too big to care. Last  
325 summer, over 1,000 companies and racial justice organizations  
326 pulled their advertising from Facebook as part of the Stop Hate  
327 for Profit campaign. But Mark Zuckerberg told his employees not  
328 to change course, saying everyone would be forced to come back.

329 That is the ultimate proof of a monopoly power.

330 My bipartisan bill is an important tool in the toolbox, if  
331 and when it is needed, to regulate dominant online platforms,  
332 taking on the fundamental unfairness of conflicts of interest  
333 when a platform owns multiple lines of business that allow the  
334 platform to use its gatekeeper power to favor its own services  
335 or disadvantage rivals. This is a new story for these big tech  
336 monopolies, but it is an old story for our democracy.

337 In the late 1800s we saw what happened when railroads were  
338 permitted to grow into monopolies. Similarly, we saw it with

339 AT&T in the 1980s, and Microsoft in the 1990s. Congress acted.

340 And guess what? We still have railroads, we still have phones,  
341 and Microsoft is a thriving, successful company worldwide.

342 I appreciate the innovation that these companies have  
343 provided. My district is a hub for innovation and creativity,  
344 and we are grateful for that. However, just as was said with  
345 the AT&T breakup, and even with the Microsoft antitrust lawsuit,  
346 it was strong antitrust regulation that created the space for  
347 the great renaissance of technology that later drove a lot of  
348 the U.S. economy.

349 We don't want competition and innovation to stop here. We  
350 want it to continue for many others. By reasserting the power  
351 of Congress, our landmark bipartisan bills rein in  
352 anticompetitive behavior, prevent monopolistic practices, and  
353 restore fairness and competition, all while leveling the playing  
354 field and allowing innovation to thrive. That is how we ensure  
355 more businesses, small businesses can start, innovate and thrive;  
356 that is how we protected consumers; and that is how we ensure  
357 fairness.

358 Mr. Chairman, I seek unanimous consent to enter into the  
359 record the Wall Street Journal's April 2020 article, "Amazon  
360 Scooped Up Data from Its Own Sellers to Launch Competition  
361 Products;" two Seattle Times articles published in June of 2021  
362 on my bill and how Amazon systematically targets 6 percent

363 employee turnover every year.

364 Chairman Nadler. Without objection.

365 [The information follows:]

366

367 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

368 Chairman Nadler. And the gentlelady's time has expired.

369 Who else?

370 For what purpose does Mr. Chabot seek recognition?

371 Mr. Chabot. Move to strike the last word.

372 Chairman Nadler. The gentleman is recognized.

373 Mr. Chabot. Thank you, Mr. Chairman.

374 As a free market conservative, it is my belief that unless  
375 businesses are engaged in clearly-defined anticompetitive  
376 behavior we should not get in their way. We ought to let them  
377 grow and succeed, or fail on their own. Whatever the market and  
378 consumers decide.

379 As we have been debating these pieces of legislation into  
380 the wee hours of this morning, and took a little break there,  
381 and now we are back again, there was a certain quote out of one  
382 president who I think was one of our greatest president, if not  
383 our greatest president in the last 100 or so years, and that is  
384 Ronald Reagan. He once said that "Government is not the solution  
385 to our problem, government is the problem." And he was right.

386 And I think what we are seeing here in trying to legislate  
387 on really virtually all these bills, except of course the one  
388 I voted for, that is what we are seeing here.

389 H.R. 3825, this bill is yet another example of legislation  
390 which would put government smack in the middle of business  
391 decisions. While it is perfectly appropriate to make sure that

392 the FTC and the Department of Justice have the resources they  
393 need to investigate potential anticompetitive behavior, or to  
394 ensure that litigation isn't delayed due to venue issues, deciding  
395 how an online platform or marketplace operates, and what it can  
396 and cannot do, should not be the focus of their efforts.

397 It seems to me that H.R. 3825, this bill, would ultimately  
398 have the effect of stifling future innovation and investment,  
399 and allow government bureaucrats selected by this current  
400 administration, the Biden administration, to dismantle  
401 successful companies.

402 Writing legislation under the guise of antitrust law is not  
403 how we innovate if we want to compete with China. Protecting  
404 corporations and consumers from intellectual property theft, or  
405 the counterfeiting of products which is a huge problem in most  
406 of our districts. Procter & Gamble has talked to me, it is  
407 headquartered in my district, many times about the counterfeiting  
408 of their products. I think it is a billion and a half that they  
409 lose each year due to that. So, you know, protecting our American  
410 businesses and the people that they employ from counterfeit  
411 products or intellectual property, doing that, that is how we  
412 could become more globally competitive.

413 Of course, that is not what this bill or any of the other  
414 bills that we have been discussing are about. And, therefore,  
415 I urge my colleagues to oppose this legislation.

416 And I yield back.

417 Chairman Nadler. Would the gentleman yield?

418 Mr. Chabot. I would be happy to yield.

419 Chairman Nadler. I simply want to differ from the  
420 gentleman. I don't think Ronald Reagan was the greatest  
421 president in the last 100 years. I think FDR was the greatest  
422 president in 100 years. But I do want to say that I think that  
423 discussion is not within the jurisdiction of this committee.

424 Mr. Chabot. Reclaiming my time. I think, unfortunately,  
425 I think this current president is trying to model himself after  
426 the gigantic grace of government respect following the Great  
427 Depression, or during the Great Depression actually. Maybe made  
428 some sense, but it makes absolutely no sense when we have just  
429 gone through a pandemic.

430 Chairman Nadler. That discussion is also not within the  
431 jurisdiction of this committee.

432 Mr. Chabot. Doesn't mean we are not going to talk about  
433 it.

434 But in any event, I will take Reagan and you can take FDR.  
435 And I yield back.

436 Chairman Nadler. The gentleman yields back.

437 For what purpose does the gentlelady from California seek  
438 recognition.

439 Ms. Lofgren. To strike the last word.

440 Chairman Nadler. The gentlelady is recognized.

441 Ms. Lofgren. I think, and I appreciate especially Chairman  
442 Cicilline's introduction of this bill because I think it makes  
443 very clear what the choice is before us. The bill does not require  
444 anticompetitive conduct. It just requires a company being in  
445 the position where they could. They might have the incentive,  
446 they have the ability, but that doesn't mean that they did engage  
447 in anticompetitive behavior.

448 However, despite that, the bill really mandates the breakup  
449 of these companies.

450 Now, I think that is an extreme remedy. And I am someone  
451 who actually agrees that there has been anticompetitive actions  
452 on the part of some of these companies and that there should be  
453 remediation using the antitrust tools. Those tools include  
454 breakup, as well as fines and other remedial actions. But the  
455 breakup of companies is not the goal of antitrust enforcement,  
456 it is a tool to achieve a competitive environment.

457 So, I do believe that this is a very extreme measure.

458 I will just say that I, looking at the impact of the tech  
459 sector in our economy, it is an important one. If you look at  
460 the hiring of the tech giants, you know, it is very large. But  
461 if they were dominating overall in an unpermissive way, you would  
462 see like tall trees, things shriveling at the bottom. And that  
463 is not what we have found.

464           In California, for example, in the last twenty, well, five  
465           years, from 2015 to 2020, wages and salaries in the tech commerce  
466           sector rose 76 percent for employees in the tech sector, whereas  
467           private sector wages and salaries outside of tech only were raised  
468           31 percent.

469           The period of the pandemic, the tech commerce ecosystem  
470           generated 1.7 million net new jobs, and added \$289 billion in  
471           labor income. And in comparison, other private sectors lost  
472           360,000 jobs. So, we can see that the role of the tech sector  
473           has been key in keeping the economy afloat, in keeping Americans  
474           employed, and keeping Americans employed at good-paying jobs.

475           I say that because this bill would essentially,  
476           metaphorically take a grenade and just roll it into the tech  
477           economy, blow it up, and see what happens. I think that that  
478           is unreasonable. I think it is unnecessary. And I think it could  
479           lead to severe adverse consequences for Americans who live in  
480           my district, who are employed in the tech sector, whose mortgages  
481           depend on the salaries that they receive on their jobs. There  
482           is a lot at stake here.

483           I will say, also, that I think it undercuts our position  
484           relative to our international competitors.

485           I would like to ask unanimous consent to include an article  
486           from The Financial Times pointing out, of June 15th, that the  
487           National Security Council in the White House contacted the



488 European Union and explicitly warned them not to target the five  
489 companies that are the target of this bill. This markup itself  
490 undercuts the action that the National Security Council took just  
491 a week ago relative to the European Union.

492 Chairman Nadler. Without objection.

493 [The information follows:]

494

495 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

496 Ms. Lofgren. I do believe, as I say, there are actions in  
497 the tech sector that I disapprove of and that I think violate  
498 antitrust law. I think we ought to have vigorous enforcement,  
499 we ought to protect the competitive environment, and we ought  
500 to protect consumers. But I think this bill is over broad and  
501 will have serious adverse consequences for Americans and the  
502 economy.

503 And with that, Mr. Chairman, I see that my time has expired,  
504 and I yield back.

505 Chairman Nadler. The gentleman -- The gentleman? The  
506 gentlelady yields back.

507 For what purpose does Mr. Issa seek recognition?

508 Mr. Issa. Mr. Chairman, I ask unanimous consent that The  
509 Wall Street Journal article of today entitled "Jack Ma's Ant in  
510 Talks to Share Data Trove with Chinese State (Owned) Firms."  
511 For the record.

512 Chairman Nadler. Without objection.

513 [The information follows:]

514

515 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

516 Mr. Issa. Mr. Chairman, further I ask to move to strike  
517 the last word.

518 Chairman Nadler. The gentleman is recognized.

519 Mr. Issa. I thank the gentleman.

520 I think Mr. Cicilline has been open and transparent about  
521 what his investigation found. And I am fine that he feels that  
522 way. I am even, since I wasn't here, willing to essentially,  
523 without knowing for sure all the right or wrong, take him and  
524 the others at their word that they found a number of problems,  
525 antitrust problems.

526 What I am not able to do, and what this last bill does, is  
527 I am not able to buy into this rosy history of breaking up  
528 companies, even when they have been adjudicated. The chairman  
529 of the subcommittee cited the Ma Bell breakup, perhaps the largest  
530 and most distinctive breakup in our lifetime. I am sure that  
531 Standard Oil was bigger in many ways. But what I find interesting  
532 is, yes, they ordered it; yes, the companies went along with it;  
533 yes, it was designed by government to take care of that, and;  
534 yes, today AT&T/Comcast is effectively Ma Bell on steroids, and  
535 there is a real question of how much competition there is because  
536 the conglomeration of synergistic companies and the efficiencies  
537 that come from it are, in fact, often undeniable and, as a result,  
538 even in what many would call legacy tests. Because as great as  
539 the technology is at AT&T and Comcast, realistically this is a

540 continuously improved set of products. The cable industry, and  
541 the data and voice industry simply are old businesses that keep  
542 reinventing themselves by modernizing the electronics.

543         Oddly enough, most of the products that are used by AT&T  
544 and Comcast to deliver this ever-higher data rate come from a  
545 very small group of companies who have succeeded in concentrating  
546 into great market share. Without the Qualcomms in their area,  
547 Broadcom and Qualcomm, without Cisco, without these other very  
548 successful near monopolies, even AT&T/Comcast wouldn't be able  
549 to deliver the kind of benefits -- higher, better, faster, cheaper  
550 -- that they do.

551         So, having said that, I want to get on to the point of this  
552 bill and subsequent amendments and, in fact, my disagreement with  
553 the final passage.

554         This bill assumes that the chairman's committees,  
555 subcommittee and full committee, in their investigation have held  
556 an effective trial, have found four companies to be guilty and,  
557 in fact, have determined that a breakup, effectively, is now  
558 necessary.

559         I am sorry, but I didn't see any of us go through Senate  
560 confirmation successfully and become federal judges. I didn't  
561 see the kind of back and forth that it takes to establish the  
562 harm and then, of course, fashions a solution, either by a judgment  
563 or by consent decrees.

564           The fact is, we have tried and convicted four companies  
565 because they are big. We have decided in this bill that big is  
566 bad, that big in fact needs to be broken up. The question is  
567 a little bit like a generation ago, somewhat reminiscent of the  
568 FDR period, where we couldn't, we couldn't find a way not to vilify  
569 the Rockefellers and the Carnegies so that we could in fact tax  
570 them.

571           I understand why the breakup of those trusts was necessary  
572 and good. And it was done through the court system. But I also  
573 find that the history of, for example, tax increases are that  
574 we vilify a handful. They could afford it; we will get our money  
575 from them. They have taken so much.

576           And then, of course, it trickles down. We often talk about  
577 trickle-down economics as a Republican thing. But trickle-down  
578 government, trickle-down control is in fact the reality that we  
579 are facing. If we today give to the Federal Trade Commission  
580 in a pre-packaged "you have been found guilty, and this needs  
581 to happen, and these things need to occur," then what is going  
582 to happen is we have done four, we will do five, we will do six,  
583 we will do ten. At some point success will be punished.

584           Now, one of the interesting things, then I am going to close,  
585 Warren Buffett is not named in this bill. And yet, he has been  
586 the ultimate roll up and acquire. One of the things that will  
587 probably happen in this bill is he, or people like him, when we,

588 if we are forcing these spinoffs, they will be spun off and people  
589 like Berkshire Hathaway will buy them and profit from them.

590 And with that, I yield back.

591 Chairman Nadler. The gentleman yields back.

592 For what purpose does Mr. Jones seek recognition?

593 Mr. Jones. Mr. Chairman, I move to strike the last word.

594 Chairman Nadler. The gentleman is recognized.

595 Mr. Jones. I want to start by thanking my colleagues  
596 Representative Jayapal, Chairman Cicilline, you, Chairman  
597 Nadler, Ranking Member Buck, and Representative Gooden for their  
598 courageous leadership on this bill.

599 We have all heard that with great power comes great  
600 responsibility. But the fact is, no matter how much we wish that  
601 were true, big tech is teaching us a different lesson. It is  
602 teaching us that with monopoly power comes no responsibility.

603 We should not have to hope that the biggest corporations  
604 wield their power responsibly. We should have an economy and  
605 a democracy where they can't get away with not doing so. And  
606 that is why I am so proud to co-sponsor this bipartisan legislation  
607 called the "Ending Platform Monopolies Act," because it is long  
608 past time to break up big tech.

609 This legislation is a reminder that the other bills we have  
610 thus far considered in this marathon markup do not go far enough  
611 despite the fallacious arguments of the big tech talking points

612 that have been trotted out at times. Unsurprisingly, this  
613 committee's investigation has demonstrated that the fundamental  
614 power with the big tech companies is their power. That is the  
615 nature of monopolies after all.

616 To truly rein in these dominant platforms, we must break  
617 them up. Regulation without structural separation is not some  
618 reasonable middle ground, it is in fact no position at all.  
619 Because the fact is we can only solve the issue of monopoly power  
620 effectively if we break up those monopolies. Unless we break  
621 them up, these corporations are going to have the same incentives  
622 to abuse their dominance that they do now, the same conflicts  
623 of interests that fit their profits against our privacy, our  
624 mental health, our local small businesses, and our democracy.

625 Breaking up the big tech monopolies helps empower workers  
626 and small businesses alike. Fact: well, take Amazon. Amazon's  
627 power to exploit the people who work there depends on its power  
628 to put other companies out of business, leaving workers fewer  
629 and fewer other places to find jobs. Together with the  
630 non-discrimination requirements we have just reported favorably  
631 to the House, breaking Amazon up would deny this monopoly the  
632 incentive and the power to kill small, local, independent  
633 businesses which, by the way, are disproportionately owned by  
634 women and people of color.

635 Workers would have more choices about where to work and,

636 as a result, more power to bargain for better pay, more benefits,  
637 and the just working conditions that they deserve.

638 Unless we break up these monopolies, these corporations will  
639 also remain too big to rein in. That is not a prediction by the  
640 way, it is a description of their history of stalling, deceiving,  
641 and outmaneuvering, frankly, federal regulators as well as the  
642 United States Congress, I would submit.

643 Let's be clear, I appreciate much of what these companies  
644 have to offer. In fact, I use their products and their services  
645 just like most other people on this committee, I suspect. Last  
646 night I chuckled to myself when I got an email from Amazon saying  
647 that my order from a few days ago was on its way. So, for me  
648 this is not about punishing these companies, this is about the  
649 simple fact that we do not have to accept their dominance as the  
650 price of our convenience. We don't have to accept that workers  
651 can't take bathroom breaks as the price of Amazon products. That  
652 is a false choice.

653 Unless we break these companies up, the big tech monopolies  
654 will continue to be above the law. In other words, with monopoly  
655 power comes no responsibility. Breaking up big tech is about  
656 building the economy and the democracy that we deserve.

657 When corporations write what are effectively the laws that  
658 govern our small businesses, our workplaces, and our communities,  
659 we don't have a true democracy. When the richest corporations



660 can distort our debate, including this markup, frankly, with their  
661 dominant influence, we don't have a true democracy. When the  
662 people have to follow the law as corporations get to break it,  
663 we don't have a true democracy.

664 So, breaking up big tech is far from a radical idea. It  
665 is, in fact, common sense. We don't let the players referee the  
666 game. We don't let a plaintiff or a defendant be the judge in  
667 their own case. And we shouldn't let big tech companies write  
668 the rules of the market that they compete with anymore.

669 With that said, thank you very much for your leadership.  
670 And I yield back the balance of my time.

671 Chairman Nadler. The gentleman yields back.

672 For what purpose does Mr. Bishop seek recognition?

673 Mr. Bishop. To strike the last word, Mr. Chairman.

674 Chairman Nadler. The gentleman is recognized.

675 Mr. Bishop. Thank you, sir.

676 The chairman of the subcommittee has a number of times cited  
677 to the Telecommunications Act of 1996, the explosion of growth  
678 in competition that it triggered as somehow a progenitor of this  
679 legislation, this package of legislation. And it is a  
680 singularly inapt comparison.

681 The 1996 Telecom Act was a deregulatory bill, passed by a  
682 Republican Congress in the House, sponsored by Tim Bliley. This  
683 is totally different. This is 180 degrees the opposite.

684           And as I have said a number of times in speaking about the  
685 other bills, particularly the interoperability bill and th  
686 nondiscrimination bill are prescribing a new regime of intensive  
687 regulation, management, and oversight of an industry by the FTC.

688       Again, going exactly the opposite direction the Telecom Act of  
689 1996 went.

690           To that point, there is, you know, academic, I guess, support  
691 for doing this. I read from the Cady article yesterday that cited  
692 in the majority's report on the investigation, and there is a  
693 section that is very instructive. Now, if you are granting new  
694 authority under a statute, but they were referring to the  
695 availability of authority under section 6(d) of the FTC Act for  
696 the FTC to issue rules and procedures. That has been interpreted,  
697 if you interpret that broadly, to give the FTC the right to issue  
698 substantive rules.

699           Current FTC Commissioner Rohit Chopra and Lina Khan argue  
700 that rulemaking has three main benefits over adjudication: the  
701 Commission can issue clear rules to give market participants clear  
702 notice about what the law is, helping ensure that enforcement  
703 is predictable; relieve antitrust enforcement's steep costs for  
704 long trials. They are talking about prescribing detailed rules  
705 by which a business operates, exactly the nature of regulation  
706 in the telecom space before the 1996 act.

707           And it was this author observed that this has never been

708 exercised by the FTC except in one instance. That commission  
709 has issued only one competition rule "to prevent discriminatory  
710 practices in the sale of men's and boys' pants to retailers."

711 The commission never enforced the rule, and withdrew it in the  
712 1990s.

713 This is a brand new regime that the Democrat majority  
714 perceives to be wise. That is where you are going to appoint  
715 the FTC the CEO of the tech sector. That is the plan.

716 Given this, again, I think if we were hearing these bills  
717 and developing them, there would be an opportunity to come up  
718 with a structure that is far more inviting than that. I supported  
719 yesterday one of the bills, the one that does the least of that,  
720 the one that is essentially the no merger rule, or the merger  
721 presumption is what it is called I guess. Because at least the  
722 role of the FTC is somewhat less expansive there. It just  
723 basically locks up these big companies and says you can't merge,  
724 can't acquire businesses.

725 But, again, if you want to learn the lessons from the Telecom  
726 Act of 1996 then do the same thing that statute did.

727 Mr. Cicilline. Will the gentleman yield?

728 Mr. Bishop. I will.

729 Mr. Cicilline. I thank the gentleman.

730 I am wondering if the gentleman is aware that the 1996 Act  
731 delegated authority to the FTC to do the rulemaking on issues

732 of portability, interoperability to prohibit other lines of  
733 conflict, monopolization. So they delegated the authority to  
734 the FTC exactly the same way, under a Republican president and  
735 a Republican administration.

736 Mr. Bishop. I beg to differ, sir. It delegated authority  
737 to the FCC.

738 Mr. Cicilline. Sorry, FCC.

739 Mr. Bishop. The FCC is a regulatory agency. The FTC is  
740 an antitrust enforcement agency. It has no experience or  
741 competency in regulating this in detail. Moreover, the FCC had  
742 been overseeing telecommunications since 1934.

743 Mr. Cicilline. It is still actually rulemaking authority.

744 Mr. Bishop. Since 1934. And that bill ended the regime.

745 And you are going the opposite direction with an agency that  
746 has no experience in it whatsoever. That is the problem.

747 I will say that I am going to offer an amendment shortly  
748 on the current bill, because it is the other one, that although  
749 it is something of a brutal bill in terms of what it proposes  
750 to do, at least, again, can be fixed so that it is not setting  
751 up a big regulatory oversight operating-the-industry regime.

752 And with that, my time has expired. Thank you, Mr. Chairman.

753 Chairman Nadler. The gentleman yields back.

754 For what purpose does Ms. Jackson Lee seek recognition?

755 Ms. Jackson Lee. To strike the last word.

756 Chairman Nadler. The gentlelady is recognized.

757 Ms. Jackson Lee. I congratulate the gentlelady from  
758 Washington. And really, in particular, I think it is important,  
759 Congresswoman Jayapal, because we all know the State of  
760 Washington. We know the heavy emphasis, the number of employees,  
761 the identification almost synonymous with tech.

762 Those of us who live in states like Texas have long admired,  
763 from Washington to California, your initial beginnings. Our only  
764 encounters, of course, were companies like Verizon and AT&T and,  
765 of course, that years-back antitrust disengagement of those  
766 conglomerates.

767 We also see, as I said yesterday, that as the conglomerates  
768 begin to disengage it is interesting, they managed to come back  
769 together again and get bigger and bigger. And so I didn't put  
770 in the industries of Verizon and AT&T where they have caused so  
771 many smaller companies to drop off.

772 This legislation is extremely important for America. And  
773 it is extremely important for America because there is something  
774 about equity that is enormously important. Equity means that  
775 if you are a gatekeeper there is a key. In this instance, the  
776 gatekeeper over the platform continues to dominate the business  
777 and never opens the door. We have worked with these companies  
778 over the years. I am glad my colleague from New York said that  
779 this is not personal, this is only to be able to move America

780 forward.

781 Yesterday I want to thank my colleagues for at least allowing  
782 a mention of women and minorities in this whole scheme. The  
783 legislation that is H.R. 3825 even gives a key to those small  
784 companies that have been trying for a very long time to be able  
785 to address their interests, code, high school students learning  
786 code because they have interest in technology.

787 What kind of field will be available for them? Will they  
788 be able to have start-ups? Will they be able to go into  
789 medium-sized companies? Or will it be the kind of story where  
790 monopolies will decide the fate of western democracy?

791 An article in the Insider that shows the pictures of Apple  
792 CEO, Amazon CEO, Google CEO, Facebook CEO decide the fate of  
793 western monopolies.

794 Platforms impose rules in terms of service on companies that  
795 use the platform but enable their own services to ignore those  
796 rules to gain an unfair competitive advantage. So, the  
797 gatekeeper has their rules, and they also have the key. But they  
798 themselves don't adhere to those rules.

799 Under this bill I am very glad that covered platforms are  
800 prohibited from having a line of business that utilizes the  
801 covered platform for the sale or provision of products or  
802 services, offers a product or service that a business user needs  
803 to purchase for access to or preferred placement on the covered

804 platform, gives rise to a conflict of interest which is designed  
805 as an incentive to advantage the covered platform's own products  
806 over those of competitors.

807 Yes, during the COVID-19 there was a great deal of emphasis  
808 on how small business can truly survive utilizing, for example,  
809 Amazon. Good things did happen. But the question is, as I have  
810 indicated in my remarks, the number of businesses that closed  
811 during pandemic COVID-19 were enormously severe. The heavy hit  
812 were African American, Latinx, and women-owned businesses that  
813 failed and may never come back.

814 The question for what we do today is what America will be  
815 tomorrow. And I believe to provide and remove, or to provide  
816 the ability and incentives for competition and to remove those  
817 incentives of the dominant platform to control multiple  
818 businesses, preferences, and disadvantage competitors is not the  
819 American way.

820 So, I argue, what will happen after the passage of this  
821 legislation? In my neighborhood, maybe my small company, medium  
822 size company, women-owned, minority-owned will be able to provide  
823 the services that lend into the dominance force. That will create  
824 jobs.

825 And I close on this point very quickly. I do think that,  
826 hopefully, the industry is listening as they spin off or as they  
827 have additional extended businesses to be able to have quality

828 workplaces for those essential workers, truck drivers, and  
829 package delivers, and others that are part of the infrastructure  
830 of the tech industry. Maybe this will be the propeller to be  
831 able to move them forward so that America is a democracy with  
832 companies who believe in competition.

833 With that, Madam, I thank you for your legislation, Mr.  
834 Chairman, I thank you, Mr. Cicilline, and I yield back.

835 Chairman Nadler. The gentlelady yields back.

836 Mr. Issa. Mr. Chairman.

837 Chairman Nadler. For what purpose does Mr. Issa seek  
838 recognition?

839 Mr. Issa. Mr. Chairman, I move to have an amendment at the  
840 desk, my Amendment No. 1.

841 Chairman Nadler. You don't have to move it. But you have  
842 an amendment at the desk.

843 [The Amendment of Mr. Issa follows:]

844 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*



845 Chairman Nadler. The clerk will report the amendment.

846 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

847 Chairman Nadler. A point of order is reserved.

848 Mr. Issa. Dave, when you see this one you are not going  
849 to have a problem. You will love this one.

850 Mr. Cicilline. Somehow I find that hard to believe.

851 Mr. Issa. I just want you to know that if you accept this  
852 amendment, it could be my last.

853 Mr. Cicilline. Very tempting, but very unlikely.

854 Chairman Nadler. The clerk will read the amendment.

855 Ms. Fontenot. Amendment to the amendment in the nature of  
856 a substitute to H.R. 3825 offered by Mr. Issa of California.  
857 Page 2, line 21, insert --

858 Chairman Nadler. Without objection, the amendment is  
859 considered as read, and the gentleman is recognized in support  
860 of the amendment.

861 Mr. Issa. Thank you so much, Mr. Chairman.

862 As someone who remembers that during the FDR period Ronald  
863 Reagan was a Democrat, I hope that by the time we finish there  
864 will at least be recognition that there could be two great  
865 presidents in one century.

866 On that note, to explain my amendment, you have seen it  
867 before. It was not ruled out of order and, in fact, was passed.

868 This is one of the few amendments that enjoyed a bipartisan and

869 successful vote in that it calls for affirmative defense for  
870 increased consumer welfare. This was good on a previous bill.

871 We believe that it is good for this one that, in fact, if you  
872 meet that standard which, by definition, I think the gentlelady  
873 from San Jose would say this is a, still a proactive, improved  
874 increased consumer welfare. But that, in fact, by definition  
875 may not meet some of these other standards, but it is a standard  
876 that we can all live with, and one we would not want to lose in  
877 the process.

878 Obviously, everyone has their definition of increased  
879 consumer welfare. But, fortunately, in case law there are plenty  
880 of good definitions of it that I believe the regulators could  
881 easily adhere to.

882 And with that, I urge this passage, and use none of my five  
883 remaining minutes and yield back.

884 Chairman Nadler. The gentleman yields back.

885 Mr. Cicilline. Mr. Chairman.

886 Chairman Nadler. For what purpose does Mr. Cicilline seek  
887 recognition?

888 Mr. Cicilline. I move to strike the last word.

889 Chairman Nadler. The gentleman is recognized.

890 Mr. Cicilline. Mr. Chairman, I oppose the amendment. A  
891 consumer welfare standard is obviously too limited. And the  
892 entire underlying bill and all the work we did yesterday is about

893 the harm to competition in the competitive process. And consumer  
894 welfare is much too narrow a standard to allow the kind of monopoly  
895 power to continue to persist in our economy.

896 But, you know, as I listened to the opening remarks of my  
897 colleagues on the other side of the aisle, it seems important  
898 to remember that one of the centerpieces of American capitalism  
899 that has made our economy the envy of the world is, in fact,  
900 competition and innovation. And those two things work  
901 hand-in-hand.

902 And it is why during the course of the hearing we heard --  
903 the investigation, we heard overwhelmingly from businesses, small  
904 and large, about the dangers of the market consolidation that  
905 these large technology platforms have, and what it means to  
906 innovation, business growth, and job growth.

907 And that is why, for example, we have a letter from Small  
908 Business Rising, a coalition of more than 25 independent business  
909 organizations representing more than 150,000 independent  
910 business owners who say, and I quote from the letter, "for small  
911 businesses, H.R. 3825 is a critical piece in the package of five  
912 bills. This bill prevents the big tech platforms from abusing  
913 their dominance to favor their own products, services, and  
914 business lines."

915 This is a top priority for Small Business Rising, and  
916 critical to stop Amazon's anticompetitive tactics against

917 independent small businesses and safeguarding independent  
918 businesses' right to compete and serve the needs of our community.

919 It is why the National Grocers' Association wrote to the  
920 committee and said, "NGA members have for decades witnessed the  
921 same troubling behavior in the grocery sector that the Antitrust  
922 Subcommittee exposed in big tech. In our industry, a small  
923 handful of companies have amassed incredible economic power over  
924 their rivals in this society. This leverage exists because  
925 dominant food retailers are critical gatekeepers between  
926 suppliers and consumers, dictating discriminatory terms and  
927 conditions to suppliers, including by demanding more favorable  
928 pricing and price terms, more favorable supply, and access to  
929 exclusive product."

930 That is why the Institute for Self-Reliance wrote a letter  
931 in support of this bill and said, and I quote, "To solve this  
932 issue permanently and without fail, Amazon's various divisions  
933 must be spun off into separate companies to eliminate the  
934 conflicts of interest and monopoly leveraging that their  
935 integration invites and entails. Structural separation will  
936 become a standard regulatory tool and a key antitrust remedy in  
937 network industries, applied in industries including railroads,  
938 banks, holding companies, television networks, and  
939 telecommunications trade."

940 That is why the Coalition for App Fairness wrote to us, and

941 I quote from the letter, in support of this bill. "Congress must  
942 act because dominant mobile platforms like Apple have gained and  
943 maintain monopoly power over app distribution, creating captive  
944 audiences for the app stores tied to their mobile devices. They  
945 have used this power to impose abusive terms and conditions for  
946 their app stores. This unchecked power has resulted in harm to  
947 businesses and consumers through increased prices, decreased  
948 choice and information, stifled innovation, and unfair  
949 competition."

950 And that is why Consumer Reports likewise sent a letter in  
951 strong support of this legislation and said that "Consumer Reports  
952 last summer confirmed that consumers across the political  
953 spectrum tell us these companies have too much power, and there  
954 is widespread support for laws to discipline platforms and reduce  
955 harms to consumers. These bills are the right starting point,  
956 well conceived, well written. And we look forward to working  
957 with the committee to achieve these important goals."

958 That is just a handful of examples.

959 We also heard from venture capitalists. You know, this  
960 whole idea of, like, oh, we are going to stifle innovation. It  
961 is just the opposite: if we don't eliminate these conflicts of  
962 interest and restore competition it is going to result in a decline  
963 of innovation. You don't have to take my word for it. Paul  
964 Arnold, son of Don Arnold of Arnold & Porter, from Switch Ventures

965 said, "Innovation kill zones are real. Trying to pitch a venture  
966 firm on your new search engine, or how about the @network you  
967 have dreamt up, you get the idea big tech has the most and  
968 entrenched their market power."

969 Another interview with a venture capitalist, and I quote,  
970 "I think of Amazon as the sun: useful but also dangerous. If  
971 you are far enough away you can bathe. If you get too close you  
972 will get incinerated. But you have to be far enough from Amazon  
973 to be doing something they wouldn't do. If you are a net consumer  
974 of Amazon's infrastructure like Uber, then you are okay as long  
975 as Amazon doesn't want to get into ride sharing. But it is hard  
976 to predict what Amazon wants to get into. If they are going to  
977 stop at retail and computer, you are safe, but you can't know."

978 And, finally, Patrick Spencer, the CEO of Sonos, said, "These  
979 companies have gone so far to demanding that we suppress our  
980 inventions in order to work with them. The most recent example  
981 of this is Google's refusal to allow us to compete, use multiple  
982 voice assistance on our product simultaneously. I think the  
983 whole spirit of trying to encourage small businesses, encourage  
984 new innovation and new start-ups is at risk given how dominant  
985 these firms are."

986 Those are just examples. I urge my colleagues to read the  
987 report, the pleas from small businesses begging that we do  
988 something to restore competition so they can survive and thrive.

989       And, so, sitting here and claiming that somehow it is better  
990 for innovation to have monopoly power, it is just not true.

991       And I yield back.

992       Chairman Nadler. The gentleman yields back.

993       For what purpose does Mr. Gaetz seek recognition.

994       Mr. Gaetz. I move to strike the last word.

995       Chairman Nadler. The gentleman is recognized.

996       Mr. Gaetz. Thank you, Mr. Chairman.

997       And we have heard the case for Ronald Reagan, and we have  
998 heard the case for Franklin Delano Roosevelt. Perhaps on this  
999 day we could agree that there is a different Roosevelt whose  
1000 politics might be reflected in our bipartisan efforts. I would  
1001 suspect that the Bull Moose would be incredibly proud of the  
1002 gentlelady from Washington's bill.

1003       I take note that the gentlelady from California suggested  
1004 that this bill would be like rolling a grenade into big tech.

1005       I agree with that assessment. And that is exactly why I am voting  
1006 for this bill.

1007       Many of my colleagues have talked about the need to break  
1008 up big tech. It is time to put your vote where your rhetoric  
1009 has been. This is a pro-innovation bill precisely because it  
1010 creates more wellheads for innovation. Now so much of that  
1011 innovation is constrained with these four platforms, and you don't  
1012 have the opportunities for investment and collaboration and

1013 development than you otherwise would.

1014 And I share this observation hoping that it doesn't drive  
1015 some of my Democrat colleagues off the bill, but this is also  
1016 a very pro-family bill from the standpoint of groups that are  
1017 typically very socially conservative. And those are groups that  
1018 don't always align with my particular viewpoint on things.

1019 But I found it noteworthy that groups like the American  
1020 Principles Project were supporting this package of legislation  
1021 because they thought that today maybe their viewpoint would be  
1022 more likely to be constrained. And if there was a breakup of  
1023 these platforms, that there would be more diversity in thought,  
1024 and debate, and discussion. And there are people even on the  
1025 social conservative right who believe that that would advance  
1026 their opportunity to be able to make their case for people.

1027 It is no surprise that in America businesses seek to become  
1028 monopolies. I guess they all should. But statesmen should seek  
1029 to break those monopolies up. And that is why this bill is the  
1030 big enchilada. This is the piece of legislation within this  
1031 package that I think facilitates and animates the value of the  
1032 rest of the pieces, because once you achieve the sculpting and  
1033 the reshaping of the industry, then all the work we have done  
1034 on mergers, on venue, creates I think, like, a hardening of the  
1035 concrete so that you are able to actually build a foundation of  
1036 a more competitive marketplace, and one that so many innovators



1037 and so many people in the tech space are calling for.

1038 Let's not pretend that the only people in technology work  
1039 for these four companies. More and more you are seeing start-ups  
1040 that are constituting that worker base. And I think that there  
1041 is a lot of support in small tech for this reshaping bill  
1042 specifically.

1043 So much of our discussion over the last couple days has been  
1044 on control and manipulation, and so I will just share this  
1045 observation. I do believe the nation was quite taken with the  
1046 control that the guardianship and conservatorship process has  
1047 on far too many Americans. I am glad Britney Spears got to speak  
1048 out on this issue finally yesterday.

1049 And I would reiterate the call that Ranking Member Jordan  
1050 and I have made to Chairman Nadler to allow us to hold hearings  
1051 on conservatorship and guardianship and abuse. And I think the  
1052 very first witness before the Judiciary Committee should be  
1053 Britney Spears.

1054 Free Britney.

1055 I yield back.

1056 Chairman Nadler. The gentleman yields back.

1057 For what purpose does Mr. Cohen seek recognition?

1058 Mr. Cohen, you are on mute.

1059 Mr. Cohen. There I am.

1060 Thank you, Mr. Chair. First, I want to compliment you on

1061 your fortitude last night. I don't know if everybody knows that  
1062 the committee went till 5:00 in the morning, and you and the  
1063 committee stayed to the end. But your chairmanship and fortitude  
1064 are to be admired.

1065 Secondly, I just want to agree with what pretty much what  
1066 Mr. Cicilline said. This isn't about big tech per se. It is,  
1067 but it is about their effect on Main Street. And big tech has  
1068 hurt Main Street.

1069 Main Street used to be the center of small town economies  
1070 and lives, and also big cities, too. And all of the retail  
1071 merchants have been hurt by this power of big tech.

1072 There was an article I read recently, either by I think it  
1073 was Gerson, it might have been Brooks, but it was somebody with  
1074 a Republican bent talking about how the country 50 years ago was  
1075 going away, nations were going away for being the powers to  
1076 industry and corporate names controlling what went on in the  
1077 world. It is even more so now.

1078 When you see the immense wealth that Mr. Bezos has, that  
1079 the creators of Facebook and Google have, it just, it is an  
1080 indictment of our tax system in that they don't, many don't pay  
1081 taxes. And even if they do, the wealth they have accumulated  
1082 is beyond the robber barons. And it is our duty to see to it  
1083 that Main Street and the average American gets the opportunity  
1084 to compete in industry and not have to be a slave to the big tech

1085 controllers which are out there. And these bills do give more  
1086 power to the individual, and more choices to the individual, and  
1087 helps preserve Main Street and the old basis of our society.

1088 So, I thank Mr. Cicilline and the other sponsors of these  
1089 bills, Ms. Jayapal's bill coming up, Mr. Jeffries' bills, and  
1090 the others that we have had, Mr. Buck's bill, that will give a  
1091 more level playing field and area of fair play.

1092 And I don't know who the best president was in the last 100  
1093 years. I suspect Franklin Roosevelt or Lyndon Johnson gets that  
1094 vote from me. But certainly, you know, Mr. Chabot said what Mr.  
1095 Roosevelt did, he ended a war, he saved democracy, he saved our  
1096 economy from the Great Recession, and he set the opportunities  
1097 for Lyndon Johnson then to give people Social Security and  
1098 Medicaid to protect people's health and their welfare when they  
1099 get older. Those are concepts which we need to embrace and that  
1100 we need to look forward to in our coming bills to protect American  
1101 society.

1102 And I yield back the balance of my time.

1103 Chairman Nadler. Will the gentleman yield?

1104 Mr. Cohen. I yield.

1105 Chairman Nadler. FDR did Social Security. LBJ did  
1106 Medicare.

1107 Mr. Cohen. Thank you.

1108 Chairman Nadler. Will the gentleman yield back?

1109 Mr. Cohen. I will give you FDR. He gets the points for  
1110 Social Security. He is a New Yorker.

1111 Chairman Nadler. Does the gentleman yield back?

1112 Mr. Cohen. I yield back.

1113 Chairman Nadler. The gentleman yields back.

1114 For what purpose does Mr. Spartz seek recognition?

1115 Ms. Spartz. I move to strike the last word.

1116 Chairman Nadler. The gentlelady is recognized.

1117 Ms. Spartz. Thank you, Mr. Chairman. I would like this  
1118 committee to consider supporting this amendment, and I'll give  
1119 a little bit different rationale why I think it's a good amendment.

1120 We all have to acknowledge that we do have oligopoly-,  
1121 monopoly-dominated economy. And I do not believe it's working  
1122 greatly for the American people. And if we're talking about,  
1123 I mean, if this monopolist can take down President Trump, you  
1124 know, arguably, at that time, was powerful, one of the most  
1125 powerful people in the world, they definitely have a lot of power.

1126 But talking about President Reagan, he was also a great  
1127 president. Actually, under President Reagan, his administration  
1128 permitted the breakup of AT&T monopoly, and a lot of people would  
1129 argue the breakup of AT&T helped more internet providers to create  
1130 this, you know, compete and create this whole internet economy.

1131 We can also argue that pressure that was put on Microsoft  
1132 to back off allowed more competition for company's like Google

1133 and Facebook. So we can arguably say that we have some good track  
1134 record that putting pressure on these tech companies provided  
1135 more growth and spurs growth and competition for smaller entities.

1136 It might happen on its own maybe in 50 years or so but definitely  
1137 speeds up, you know. And, generally, we're kind of facing a  
1138 situation the choice if we use an antitrust or regulated monopoly,  
1139 and sometimes actual regulated monopoly, a lot of times, we can  
1140 see a hospital monopoly become actually so protectionist and use  
1141 the government-created frozen barriers and maybe create more harm  
1142 than good.

1143 But I think what it does, you know, I actually like this  
1144 standard of consumer welfare. I truly believe then the  
1145 protection by the court making it very different, sometimes almost  
1146 impossible, for the government to actually to prove that standard,  
1147 which is a good thing. It's kind of keep a check and balance  
1148 on the government, and I think it will give us a good opportunity  
1149 for FTC to litigate it in the courts the limitations of the law  
1150 versus actually changing the standard because I think it's a good  
1151 standard as a check and balance, and I don't think it needs to  
1152 be changed. But maybe it needs to be better litigated in the  
1153 courts.

1154 So I think this amendment with actually, with the current  
1155 bill together might provide us actually a good check and balance  
1156 to look at antitrust in a court of law versus some other options.

1157       And, personally, if this committee accepts this amendment, it  
1158 will make me personally maybe more open-minded supporting this  
1159 bill. Otherwise, I cannot support this bill.

1160           Mr. Cicilline. Will the gentlelady yield for -- Ms.  
1161 Spartz. I yield.

1162

1163           Mr. Cicilline. Thank you. I would just ask the gentlelady,  
1164 I think, you know, we've had a lot of discussion most of yesterday  
1165 and early this morning about the market concentration. I think  
1166 people on both sides of the aisle have identified this as a  
1167 problem. And the standard of consumer welfare was the standard  
1168 that was in place that led to all the problems we're grappling  
1169 with today. And so my fear is if you reassert that standard,  
1170 it's what created this kind of market concentration because it  
1171 doesn't recognize non-price harms, which are real and which  
1172 members on both sides of the aisle have talked a lot about. So  
1173 if we return to that, why would we expect a different result?

1174       We're going to have greater concentration by these large --

1175           Ms. Spartz. I recall my time. And I agree but it also check and balance and I think maybe was  
1176 actually cease, maybe also rise in more resources that give them maybe better ability to  
1177 challenge it in the court of law. And I --

1178           Mr. Cicilline. We're developing the right --

1179           Ms. Spartz. -- and it is something maybe should be  
1180 litigated versus changing the standard. But it allows that

1181 ability. We provide them more tools to do that, and maybe it  
1182 needs to be done because it's also check and balance. We do not  
1183 want to be a government where we actually can come up to company,  
1184 and I think the government should have a high standard when they  
1185 were going to do that.

1186 But I think, you know, the discussion regulated, you know,  
1187 monopoly actually sometimes could be more dangerous than  
1188 antitrust and maybe the discussion we should have, but I think  
1189 that puts a safeguard, you know, in this discussion for the  
1190 government not to be too powerful. And I think it's a good  
1191 standard, and I think, together, it would make sure this bill  
1192 is much better.

1193 I yield back.

1194 Chairman Nadler. Gentlelady yields back. Mr. Jones, he  
1195 wishes to --

1196 Mr. Jones. The other Jones. To strike the last word, Mr.  
1197 Chairman. I appreciate the gentlelady's agreement with the  
1198 subcommittee chairman that the so-called consumer welfare  
1199 standard is what got us into this problem in the first place.

1200 And so, for that reason, I want to strongly urge my colleagues  
1201 not to be fooled by this amendment. The so-called consumer  
1202 welfare standard is a nice name for a terrible thing. We needed  
1203 this crisis of monopoly power. It should not even be called the  
1204 consumer welfare standard. It should be called the corporate

1205 welfare standard.

1206           And this is what I mean. This is a standard that directs  
1207 courts and regulators to focus solely on prices, disregarding  
1208 everything else that matters, specifically whether consumers have  
1209 meaningful choices, whether small businesses can thrive, how  
1210 consolidated the economy is, whether big businesses are engaged  
1211 in discriminatory practices or predatory pricing, and so much  
1212 more. The consumer welfare standard is completely unsuited for  
1213 the monopoly power posed by the big tech companies. It lets  
1214 Amazon off the hook, for example, because often uses predatory  
1215 pricing to drive its competitors out of business. It protects  
1216 Facebook and Google because consumers don't pay either of them  
1217 anything for their core services.

1218           In practice, the consumer welfare standard has been worse  
1219 for the very people it claims to protect: consumers, not to mention  
1220 small businesses and workers. In fact, in our subcommittee's  
1221 hearing on strengthening antitrust laws to address monopoly  
1222 power, Judge Diane Wood testified that our antitrust statutes  
1223 were created to protect consumer welfare and to prevent  
1224 concentrated economic power. That is what we need to recognize  
1225 today in our antitrust laws.

1226           In sum, the consumer welfare standard has been an abject  
1227 disaster for competition, especially of the kind that we seek  
1228 to regulate today. It has hollowed out our middle class, our



1229 communities, and competition itself. And if we adopt this  
1230 amendment, we will let big tech off the hook. This is an attempt  
1231 to destroy the entirety of this bill, and, for that reason, I  
1232 oppose this amendment and I intend to work to strike its from  
1233 the other bill, by the way --

1234 Chairman Nadler. Does the gentleman yield?

1235 Mr. Jones. Yes, sir.

1236 Chairman Nadler. I thank the gentleman, and I commend him for his perspicacity. In fact, it  
1237 was Judge Bork back in 1976 who wrote a seminal article saying that the purpose of the antitrust laws should be judged  
1238 simply by consumer welfare and that, of course, it followed that and that is eviscerated antitrust enforcement. And  
1239 most of the problems we have had permitting the growth of these monopolies in different sectors of society date from the  
1240 adoption by the courts, the unfortunate adoption of the courts, of Judge Bork -- he wasn't judge then -- but of Judge Bork's  
1241 law article, which, in effect, enacted this amendment and  
1242 established this, established this standard, which has proven  
1243 to have created most of the problems we're trying to solve.

1244 So I certainly join the gentleman in opposing the amendment  
1245 because I do believe that, if this amendment were to pass, it  
1246 would destroy everything we are trying to do and it would destroy  
1247 attempts at reducing monopoly power in the country.

1248 Mr. Raskin. Would the gentleman yield? Would Mr. Jones  
1249 yield?

1250 Chairman Nadler. Oh, it's Mr. Johnson's time.

1251 Mr. Jones. I will yield but not without first noting that  
1252 I haven't heard the word perspicacity since studying for the SAT

1253 over a decade ago.

1254 Mr. Raskin. Well, I also wanted to commend you just for the sheer lucidity of your remarks,  
1255 Congressman Jones. But you make an essential point, and thank you for invoking Judge Diane Wood because, as the  
1256 Chairman just pointed out, the so-called Chicago School took antitrust jurisprudence sharply to the right by fetishizing  
1257 this idea of consumer welfare by which they meant short-term prices. So they didn't even incorporate long-term  
1258 consumer welfare, much less the other critical components that were part of the political movements that gave us  
1259 antitrust law in America, the progressive movement, the populist movement, which insisted that we wanted an economy  
1260 that would be open for small business entrepreneurs to get in and not to allow big monopolist players to squeeze  
1261 everybody else out. And they saw that as a danger to economic free markets but also as a danger to a political free  
1262 market because you could get economic players that had such concentrated wealth they would use it to convert it into  
1263 political power in order to control and own politicians and political parties.

1264 Thank you for yielding. I yield back to you.

1265 Mr. Jones. My time is expired.

1266 Chairman Nadler. The gentleman yields back. For what purpose does Mr. Bishop seek  
1267 recognition?

1268 Mr. Bishop. Strike the last word.

1269 Chairman Nadler. Gentleman is recognized.

1270 Mr. Bishop. Thanks, sir. I'm going to agree with Mr. Jones, the Chairman, Mr. Cicilline, and I'm  
1271 going to take issue with Ms. Spartz. And I'm also going to try, I think, contextualize this in terms of the entire picture  
1272 that we're in. I've been critical of the idea of granting a blank check of regulatory authority to the FTC for the purpose of  
1273 nanny-stating this industry. And I will tell you I'm not 100-percent there to break up big tech, but I'm close. And this  
1274 is the bill that, if it were done right, would be the vehicle to put that on the table.

1275 And I think, to Ms. Spartz, the reason this amendment is inappropriate is indeed the consumer welfare standard  
1276 has been a judicially-created doctrine that has been one of the many evolved under a common law fashion by the courts

1277 over time to adjudicate antitrust policy questions.

1278 This bill takes a different approach. Effectively, it makes that policy question here in Congress. It skips the  
1279 -- it doesn't leave to a court to adjudicate monopolization. It says we've seen enough, we think it's a problem in the  
1280 sector with the companies at the very biggest of size and, consequently, let's roll; we're ready to break them up.

1281 Now, I think the problem in terms of the investigation being foreshortened and this coming to this forum for a  
1282 markup rather than a policy discussion is we've been deprived of the opportunity to examine what break-up would look  
1283 like as it rolled out. Consequently, I've got to make and some other folks who are reticent about the tremendous use of  
1284 government power like this, so there's a decision -- I mean, the case, I think, began in 1974, the AT&T case, and I think the  
1285 break-up order was in '82, if I'm not mistaken. And that was a judge's decision, and that judge had to superintend that  
1286 and figure out how it looked. And there was 20, you know, another 14 - 15 years of, you know, moving the parts  
1287 around before you got to the point you could do the 1996 Telecom Act and deregulate. That's ahead if this decision is  
1288 taken.

1289 But I got to tell you I think you could find not just one or two republicans prepared to go with whatever, but a  
1290 substantial agreement if you went and said let's get it breaking up big tech and because I think that's the design of the bill.

1291 There's not a policy decision we're asking a court to undertake through an antitrust adjudication. The analysis is really  
1292 simple.

1293 Now, I will say it's another indication of where this stands that the first substantive paragraph of the  
1294 amendment in the nature of a substitute has a typo in it. But it's really simple. As of a date, an online platform is  
1295 designated as a covered platform under Section 6(a). It shall be unlawful for a covered platform operator to own or  
1296 control -- it should say a line of businesses -- in a line of business other than the covered platform. So there's a typo in  
1297 the very first paragraph. Well, that wouldn't be the case if we had worked this up carefully and together.

1298 Mr. Cicilline. Will the gentleman yield?

1299 Mr. Bishop. Well, just let me finish a point, and then I'd be delighted to. As I said before, this is, it's a brutal  
1300 exercise of power. I'm not 100-percent sure it doesn't constitute a taking under the Constitution because what you're

1301 doing is you're taking, for a company that owns a platform in another line of business, on day one, completely in  
1302 compliance with law. On day two, after this law becomes effective or after, you know, after they've become a  
1303 designated covered platform, they're in violation of the law. That's what this says. And all they have to do is utilize  
1304 the covered platform for the sale or provision of products or services or they have a conflict of interest. Boom. The  
1305 decision about whether they're a monopolist is not left to the court. That little simple factual determination is all that's  
1306 left for a court to decide. And if you put a consumer welfare standard in there, it reinserts the policy decision to be  
1307 made by an Article 3 court.

1308 Now, as I say, I'm going to come up with an amendment shortly that might, if you want to do that, I might be  
1309 onboard. Let's do it. Let's not give it to the FTC to go through some designation process for a number of months.  
1310 Let's not give it to the FTC to go through some administrative process. In fact, this says it doesn't get unlawful, as it's  
1311 written, until the FTC does a designation of them as a covered platform. You don't need to have a designation process  
1312 and bureaucratic delay in getting at this. If you want to do, let's belly up to the bar and do it.

1313 And with that, I yield back. I'm sorry, Mr. Cicilline, I ran out of time. I apologize.

1314 Mr. Cicilline. I was just going to say thank you. I really appreciate your discussion because I  
1315 think you clearly understand what the court-imposed consumer welfare standard has meant, and thank you for your  
1316 comments. I yield back.

1317 Chairman Nadler. The gentleman's time is expired. For our purposes, Ms. Jayapal --

1318 Ms. Jayapal. Move to strike the last word.

1319 Chairman Nadler. The gentlelady is recognized.

1320 Ms. Jayapal. Thank you, Mr. Chairman. I want to thank Mr. Bishop because I do think there is a  
1321 clear understanding of what we're trying to do here. There is a process in this bill. It doesn't happen immediately.  
1322 We can certainly discuss exactly what that looks like, but I think the designation and the process that follows to ensure  
1323 that we are providing opportunities for these platforms to make their case is, it is in the bill. And so for the people that  
1324 think we're throwing a grenade, I would say to the grenade analogy, there have been a few analogies made here with

1325 grenades, I would say the grenade that is being thrown right now is being thrown at small businesses. I mean, we are  
1326 not allowing the space for small businesses to compete and to thrive.

1327 And so to the colleagues on both sides of the aisle that are supportive of a strong tool, a hammer if you will, in  
1328 the toolbox, it allows for at least a push that is very, very, a very, very real threat to break up these monopolies.

1329 And to those who are opposing it, I have been stunned to just listen to all of the support for big tech, big tech, big  
1330 tech. And I get it. I've got big tech in my district. I am grateful for the things that they do. I am grateful for the  
1331 jobs that are provided. But why are we not talking about small businesses in this country? Why are we not talking  
1332 about small businesses? For those who are opposing this bill on both sides of the aisle, you want to fight for big tech?  
1333 Let me read you some of the things that we have gotten on this bill, not just from democrats, not from democratic districts,  
1334 from republicans, independents, and people across this country in conservative districts.

1335 Here's one that we received from a Florida-based online reseller of beauty products who describes himself as a  
1336 conservative lifelong republican: "I'd like to take a moment and express our support for H.R. 3825, Ending Platform  
1337 Monopolies Act. This bill as written directly and effectively addresses the abuses online sellers like ourselves have been  
1338 suffering over many years. For years, we have seen Amazon.com suppress our listings by putting us at the bottom of  
1339 the seller queue and denying us the buy box, even though we offer the best price. Sellers that pay for Amazon services,  
1340 such as FBA, that's fulfillment by Amazon, and advertising, are given the inside track on product pages, even though their  
1341 prices can be up to 25-percent higher than sellers like us that do not use Amazon fulfillment services or advertising. For  
1342 years, we have seen how Amazon.com colludes with brands to knock off third-party sellers that offer exponentially better  
1343 prices. We have seen them use our sales data to determine which brands and products sell well in order to reach out to  
1344 these brands and offer to remove third-party sellers if Amazon is given exclusive rights to the brand on Amazon.com.  
1345 This practice ends up increasing prices dramatically for consumers and devastates sellers that make huge investments in  
1346 infrastructure, inventory, and personnel. This bill will allow us to expand our operation, help us grow, help us hire  
1347 employees, and provide better prices to American consumers. This bill transcends politics and hits at the heart of -- " at  
1348 the heart, my emphasis, "of what America is about: free market, small business access to grow, and, more importantly,

1349 better choices for Americans. Bottom line," and this is in capitals, all capitals, "this bill will create jobs, foster healthy  
1350 competition, and will promote better prices for Americans."

1351 Mr. Bishop. Would the gentlewoman yield?

1352 Ms. Jayapal. I would.

1353 Mr. Bishop. Thank you, ma'am.

1354 Ms. Jayapal. I was getting so passionate, though.

1355 Mr. Bishop. Very effectively. To the point that I was arguing a moment ago in terms of what this  
1356 bill represents, you don't have any doubt about the fact that the four companies are covered by the covered platform  
1357 definition, do you?

1358 Ms. Jayapal. I do not.

1359 Mr. Bishop. Okay. And you don't have any doubt in your mind that those four companies are  
1360 going to meet the factual test here. That is to say they are, they're a covered platform and they own or control a line of  
1361 business other than the platform, so they're selling services or -- you don't have any doubt about that either, right?

1362 Ms. Jayapal. I do not.

1363 Mr. Bishop. You don't really think that there's some need for an elongated bureaucratic process for  
1364 the FTC to adjudicate whether that's the case, do you?

1365 Ms. Jayapal. Well, I believe there should be some process. I'm willing to talk with you about  
1366 what that process should be, but what we tried to do in the bill is ensure that, you know, that we are crafting a bill that  
1367 actually allows for a legitimate process so that there isn't just a designation that comes along.

1368 You know, I was saying to Mr. Roy earlier that there was a lot of discussion about Alibaba and other companies.

1369 The reality is this isn't just targeting these four companies down the road because companies are growing very quickly.

1370 Alibaba has a growth rate of 26 percent and is at 580, not 600, but very quickly they will move into this. But the

1371 question is these three determinations together, if you have to look at, it's not just market cap. You have to look at the

1372 users, and you have to look at the competing lines of business. Alibaba does not compete with Amazon not only on

1373 scale but in terms of the services and lines of business that they occupy.

1374 So there is a difference between having an Alibaba that is a platform for selling products versus an Amazon that  
1375 is selling third-party products and is managing the platform that sells those third-party products and then having the  
1376 actual rules for who gets to sell. I mean, where is the free choice in that, for my republican colleagues and my  
1377 democratic colleagues, to say that you are supporting choice, but a consumer doesn't have the choice to look at all of the  
1378 products that are actually there.

1379 I'm sorry, Mr. Chairman. I didn't realize my time had expired.

1380 Mr. Bishop. It was a longer answer than I anticipated.

1381 Ms. Jayapal. Well, it was my time, Mr. Bishop.

1382 Mr. Bishop. Yes, it was. Absolutely.

1383 Chairman Nadler. The gentlelady's time is expired.

1384 Mr. Johnson of Louisiana. Mr. Chairman.

1385 Chairman Nadler. What purpose does, for what purpose does Mr. Johnson of Louisiana seek  
1386 recognition?

1387 Mr. Johnson of Louisiana. It's been a long couple of days. Move to strike the last word.

1388 Chairman Nadler. Gentleman is recognized.

1389 Mr. Johnson of Louisiana. Mr. Chairman, I yield to Ms. Spartz. Ms. Spartz. Thank you. I just, I  
1390 appreciate the sentiment from the gentleman from North Carolina, and I think it's a great discussion. I'm glad we have  
1391 deliberation. I hope we continue this deliberation. But I think it's important, and maybe gentleman has in his  
1392 amendment some other things that he's going to propose, some guardrails. But, ultimately, I think is it government who  
1393 suddenly decides by the act of law that something is illegal that was legal, I want to have some level of defense. And,  
1394 generally, here, he talks about the thing that I have to prove in this case, a platform, consumer welfare. No one come to  
1395 me and has to prove it. It's all FTC that I have a defense to say and defend myself because suddenly you have decided  
1396 that I am illegal company.

1397                   So I think we should have some guardrails, and I'm open not some other ways.    But the way how it's written  
1398 without any particular, you know, protections, you're going to hit me with a hammer pretty hard, I don't think it's fair  
1399 practice for the government to do that and we need to provide these guardrails.    And I think it's important discussion  
1400 and open to other options but --

1401                   Mr. Johnson of Louisiana.    Would the lady yield?

1402                   Ms. Spartz.    I yield back to Mr. Johnson.

1403                   Mr. Johnson of Louisiana.    It's a flurry of activity.    Let me yield to Mr. Roy.    I had committed already.

1404                   Mr. Roy.    All I really want is for the conversation that was just occurring right here to continue.    So however  
1405 that time gets yield --

1406                   Mr. Johnson of Louisiana.    Reclaiming my time.    I'll yield to Mr. Bishop.    Until you're finished, my friend.

1407                   Mr. Roy.    Before I yield time back on that, just for ten seconds, I very much associate myself with my colleague  
1408 from North Carolina, and I think this conversation, and I don't know where this goes in terms of our vote on this  
1409 underlying bill, this is the heart of it and this is what we need to continue to flush out and be able to get to an  
1410 understanding where and how this can transpire and work because we all recognize the issues that are at play.

1411                   And I'll yield back to the gentleman from Louisiana.

1412                   Mr. Johnson of Louisiana.    I associate myself with that and yield to Mr. Bishop.

1413                   Mr. Bishop.    I thank the gentleman.    And I'm going to ask Ms. Spartz a question in a moment, but the  
1414 problem is this: there's one big policy question here, and that is, Ms. Spartz, your comment suggests that, whether or not  
1415 the Congress should take cognizance of a situation involving the biggest tech companies out there, look at it, examine it  
1416 through its investigation process, come to a conclusion that they're damaging commerce or they're doing something that's  
1417 inimical to the interest of Americans, that policy decision, whether it's appropriately vested here or not, I can tell you that  
1418 in every antitrust case a court, an Article 3 court, is making a policy decision about competition, what's best for the market,  
1419 and so forth.    We're using doctrines that have been evolved and some disciplines and so forth.

1420                   I don't think that's necessarily an inappropriate policy question to be decided here, and I think it is a very, very



1421 widespread consensus in America that the policy problem exists. And so I don't see the problem with taking the step.

1422 I don't think we have to defer that necessarily to an Article 3 court to make that policy decision.

1423 Now, to Ms. Jayapal, I would say -- maybe I don't even have a question here -- Ms. Jayapal or to the democrats I  
1424 would say, on the other hand, I do not want to hand you the weapon of the threat of a breakup of these businesses just so  
1425 that you can bring them under your thumb. So when you do the interoperability and the nondiscrimination bill which  
1426 envisions this sweeping control of the industry, and, as I said in response to Joan from Rhode Island earlier, exactly the  
1427 opposite direction from what happened with the telecom industry going back to 1934 with this intensive controlling  
1428 regulation and then give you a bill that purports on its face to talk about breaking up, but you're handing it into the hands  
1429 for an elongated bureaucratic process to do something other than what the bill requires because, as, Ms. Jayapal, your  
1430 answers just indicated, there's nothing complicated about deciding whether or not Facebook or, excuse me, Amazon is  
1431 covered by this language. And if it is, they're acting unlawfully and the remedy is break them up. That's the only  
1432 Article 3 determination that would be left. And if you want to really have that discussion, let's have the discussion.  
1433 Don't ram it through in a bill that's not ready with that discussion and the implications not fully vetted out. That's what  
1434 I'm saying. I think you're missing an opportunity to develop genuine bipartisan support and consensus for proceeding,  
1435 but I will not join you and this is, frankly, with all respect, the mistake that's been made by the ranking member of the  
1436 subcommittee and his compatriot, Mr. Gaetz, providing credibility to your effort without first getting the right negotiation  
1437 laid out. I would never support and I will fight you tooth and nail on the idea that you're going to have bureaucrats take  
1438 over this industry and run it for the good of the American people. That's a disaster, and it is an accretion of power that  
1439 will have sweeping and negative implications for the American society for a hundred years.

1440 Mr. Johnson of Louisiana. Amen. I'm out of time. I yield back.

1441 Chairman Nadler. Gentleman yields back. I now recognize myself, and I yield to Ms. Jayapal.

1442 Ms. Jayapal. Thank you, Mr. Chairman. And I do think this is a really good discussion. I would  
1443 just argue with you, Mr. Bishop, that we have had extensive discussions about how to address it. And the fact that you  
1444 wouldn't want somebody like me, us, in Congress to actually be the deciders of this, I think, I mean --

1445 Mr. Bishop. I do want that.

1446 Ms. Jayapal. Well, I don't. At the end, you said, at the very end of your statement just now, you  
1447 said I don't want to put these decisions, because you're afraid of the accretion of power, that would --

1448 Mr. Bishop. Leave it to the FTC.

1449 Ms. Jayapal. Well, what our belief is in this bill and the path we tried to strike here is that it  
1450 shouldn't, Congress, you know, this whole idea as a legislative branch, we are constitutionally responsible for enacting the  
1451 will of the people, right? By establishing laws that create agencies to help enact those laws, conducting both  
1452 government and corporate oversight. The Executive Branch through the Department of Justice's Antitrust Division and  
1453 the Federal Trade Commission is charged with enforcing the laws that we here in Congress created, and the courts then  
1454 are charged with interpreting and applying those laws.

1455 And so to Ms. Spartz's point, this is the process we have established so that there is some fairness so that we  
1456 don't just decide, okay, this -- you asked me do I believe that these companies meet the threshold definition. I said yes.

1457 But I'm not sure that you want that decision to be made by just one person or one body. I think I agree with Ms. Spartz  
1458 there's got to be a process here with some definition for these platforms that are being designated to be able to -- hang on  
1459 -- to be able to challenge that decision but quick. So we've tried to make sure that it's expedited in the bill.

1460 It is not appropriate and it would be unconstitutional for Congress to act as jury, judge, and executioner. So  
1461 what we have done in this bill is we have crafted a very clear process, clear directions to the DOJ, to the FTC, to the courts  
1462 about when they can seek to require, require, that a covered platform divest another line of business. So based on our  
1463 record, you could say it would require that Amazon's ecommerce and logistics service fulfillment by Amazon be separated  
1464 from Amazon Marketplace, but that's a decision that the agencies would make independently based on the facts before  
1465 them which would then be subject to judicial review.

1466 So I get that you want a quicker process. We can have that discussion. I just take issue with the fact that we  
1467 have, you know, Mr. Buck, Mr. Gaetz, others on the subcommittee, Mr. Gooden, my co-sponsor of this, my republican  
1468 co-sponsor of this, have thought through what is a fair process that respects the rules of Congress, of the agencies, and of

1469 the courts.

1470 Ms. Spartz. Will the gentlelady yield?

1471 Ms. Jayapal. It's Mr. Nadler's time.

1472 Chairman Nadler. Yield. Ms. Spartz. I just quickly wanted to mention, I  
1473 think it's a great discussion and I hope the gentleman from North Carolina provides some deliberations and solutions how  
1474 to do it because I also think we're applying very subjective criteria. We should set a policy, but we're applying these  
1475 time frames and it looks to me like a witch hunt just to come after four companies, and we get in the middle of this  
1476 oligopoly of five oligopoly powers. And, unfortunately, as we see in other markets, they come to legislature and  
1477 hospitals, PBMs, everyone come to legislature to be on us to get in the middle of the fight. I'd rather them fight with the  
1478 charter and actually us protecting the consumer and we the people. So when we create these subjective criterias to few  
1479 entities but not on everyone, that could create me pause and I think it has to be deliberated. And I want to give some  
1480 ways for them to defend themselves if we go that far.

1481 I think maybe gentleman from North Carolina has some better solution, but it is very concerning the way it puts  
1482 a hammer on these companies. And I yield back.

1483 Mr. Cicilline. Mr. Chairman -- will the gentleman yield?

1484 Chairman Nadler. I'll yield to Mr. Cicilline.

1485 Mr. Cicilline. I just want to say I appreciate Mr. Bishop's thoughts, and I think it feels as if  
1486 everyone is trying to get to the same place, that these monopoly powers of these large technology platforms has been  
1487 established and a breakup is appropriate.

1488 I would just suggest that I think what Ms. Jayapal is saying is right, that there's a reason because of separation of  
1489 powers that the antitrust enforcement, which is a law enforcement function, is vested with the Executive Branch through  
1490 the agencies, that Congress doesn't typically take on that role. And while I'm sitting here now, I just think of colleagues  
1491 on both sides of the aisle who would be very concerned that Congress would take on that specific function as it relates to  
1492 a specific company. We set broad policy, we set standards, we can set time lines, we can do a bunch of things to make it

1493 clear.

1494 What I think the amendment actually gets to is courts changing the almost express policy of the Congress of the  
1495 United States about competition policy, but I do think Ms. Jayapal is right. And we want it as much as you do that we  
1496 would face some pretty significant constitutional challenges if Congress engaged in that kind of enforcement with  
1497 particular companies.

1498 But that's, again, I thank the gentleman for this debate and I yield back.

1499 Chairman Nadler. I simply want to say that I agree with the astute analysis by Ms. Jayapal and  
1500 by Mr. Cicilline, and I yield back the balance of my time. For what purpose does Mr. Biggs seek recognition?

1501 Mr. Biggs. Move to strike the last word.

1502 Chairman Nadler. Gentleman is recognized.

1503 Mr. Biggs. Thank you. This is a very interesting discussion. I'm grateful that we're having it. I  
1504 actually wish we would have had it about a month and a half - two months ago and then rolled into this, but this is very  
1505 good. And I'm glad that we're trying to look through the same lens. I mean, you've heard me say that I think these  
1506 guys need to be broken up. I do believe that.

1507 But with that, I think I understand where the sponsor is coming from. She's trying to provide a mechanism  
1508 that, once a baseline is triggered of inappropriate conduct, as determined by a commission, there's an avenue then to go  
1509 forward with the punitive clause of breaking it up. That's what I think is happening here.

1510 Mr. Bishop, I understand, I think, where he's coming from where he's talking about it doesn't necessarily need to  
1511 be that all-encompassing because, if you define covered platform and you have the misconduct that's apparent, you could  
1512 actually just roll that into, I think he said Article 3 court. I may be mischaracterizing that.

1513 So I want to ask Mr. Bishop, because I understand, I think, why the bill sponsor is doing it the way she's doing it,  
1514 what would, would there even be a piece of legislation, what would that piece of legislation look like to accomplish a  
1515 breakup akin to the AT&T breakup due to misconduct on the part of these monopolies.

1516 Mr. Bishop. I thank the gentleman. Here's the thing: the elements of it are in this bill, but then the

1517 bill erects this procedural deliberative process that's totally unnecessary given the steps that are taken in the bill. I  
1518 mean, as I say, the first substantive paragraph declares it to be unlawful to own a covered platform and a business that  
1519 sells on the covered platform, a business line that sells on the covered platform.

1520 In other words, it's not, there's no monopolization question. You haven't set up, you know, you don't want to  
1521 have combinations that restrain trade because that's a complicated and evolved question. That's why the courts have  
1522 developed all their doctrine over time. That's why you'd have to have an enforcement agency to theorize that case, to  
1523 bring it in front of an Article 3 court to persuade the judge that it ought to be thought of this way. That's why the hugely  
1524 broad language of the Sherman Act and et cetera have been, that's the way they were devised, that's how they've been  
1525 done over time.

1526 The proponents of this bill are saying we can sidestep all of that because we're seen enough, and so we're going  
1527 to declare as a matter of law that you cannot be a covered platform, \$60 billion in revenue, 50 million users, or whatever  
1528 the tests are, on the one hand and sell stuff on that line at the same time basically. And if so, if they say that, that's the  
1529 thing. When you say there needs to be some deliberative and enforcement process and people have to have due  
1530 process, yes, you get due process. But if you're prepared to prescribe what the law requires, you know, make that  
1531 unlawful, number one, and you're, number two, prepared to prescribe the remedy, say you can't continue to own the two  
1532 things, then the only thing that's left, if somebody really wants to seriously contest that, that's a summary judgment  
1533 motion, right? But that's due process. There's no factual controversy or, if there is, it's going to be very narrow.  
1534 And all you got to do is walk in, file the case in district court, FTC, get those two little factual determinations, and then  
1535 enter your remedial order.

1536 So instead of doing that, you want to have the FTC go through a designation process. Why? So that they  
1537 can find whether or not Amazon is a covered platform in an administrative procedure and make sure that you've got a  
1538 factual record that can't be contested on appeal in an Article 3 court. Why?

1539 Mr. Biggs. So reclaiming my time. Yes, sir. So my question is, I think I understand where you're  
1540 coming from, is there a legislative remedy here that you propose? That's what I want to know.

1541 Mr. Bishop. Yes.

1542 Mr. Biggs. What is it?

1543 Mr. Bishop. I have an amendment at the desk if I get recognized for that --

1544 Mr. Biggs. You might get there. But what it would look like in the last 30 seconds?

1545 Mr. Bishop. It would look like -- actually, if I had a little more -- I'd take out the part about the designation  
1546 process. I'd just define the covered platform and covered criteria, I would make the thing unlawful just as they have, I'd  
1547 prescribe the remedy of a breakup just as they have, and then I'd say the FTC shall go to court and I'd get it done quick.  
1548 I'd provide everybody the procedures, and I'd provide for a direct appeal route to the Supreme Court of the United States.  
1549 Get it done just like that.

1550 Mr. Biggs. Thank you, Mr. Chairman. My time is expired. Thank you, Mr. Bishop.

1551 Chairman Nadler. The gentleman's time is expired. For what purposes does Mr. Raskin seek  
1552 recognition?

1553 Mr. Raskin. I move to strike the last word, Mr. Chairman.

1554 Chairman Nadler. The gentleman is recognized.

1555 Mr. Raskin. Thank you. I wanted to pursue this very interesting and fruitful colloquy taking place between  
1556 Mr. Bishop and Ms. Jayapal. As I understand Mr. Bishop's most recent answer, he's basically saying let's skip over the  
1557 stage of administrative law designation of the entities which we are all clear are covered by the central statutory  
1558 command. And if that's right, I don't think that creates any kind of constitutional problem. It does create an issue in  
1559 terms of the evolution of antitrust laws which have formulated their prohibitions in general terms rather than naming  
1560 Standard Oil or other particular targets of, you know, antitrust policy enforcement. One reason that you don't do that  
1561 is, you know, if you name Facebook today, Facebook will not necessarily always be part of the statutory coverage because  
1562 their, you know, their market capitalization could change or other criteria could be altered, which is why Congress does  
1563 like to try to frame things in the general.

1564 But I guess what I want to ask Ms. Jayapal, and I don't know whether or not she had a chance to think about this

1565 before Mr. Bishop raising it today. But I wanted to ask her whether we had considered doing precisely what he's  
1566 suggesting, which is to name the current entities that are clearly within statutory coverage and then say and all others that  
1567 may come. And, you know, if you considered that and decided not to, why not?

1568 But, basically, I'm very cheered and encouraged by how close the two sides are on this issue. And I would  
1569 yield to Ms. Jayapal, if she would entertain the question.

1570 Ms. Jayapal. Thank you, Mr. Raskin. Actually, Mr. Bishop and I are just having a conversation right now  
1571 about what his amendment looks like because I do think we're very close actually. And I'm open to looking at that  
1572 amendment and seeing if we can get there, so we may -- give us just a minute here. And maybe while we're doing that,  
1573 because I'm just having my staff look at, the committee staff look at the amendment and see if we can get there.

1574 I did want to just say that, I want to go back to just another message from a small business owner actually in  
1575 North Carolina. And I think this is why, I just want to keep reemphasizing the point that there's a lot here that we all  
1576 agree on. And these messages from small business owners across the country have been really compelling, for me  
1577 certainly, and an opportunity to hear from people across the country, not just in my district. And by the way, even in my  
1578 district, I think I have the honor of being the member of Congress elected by the most votes in the country of any member  
1579 of Congress. Even in my district, people who work for these companies are working for the companies because they do  
1580 want innovation to thrive and competition, but they also don't like the practices of the companies that they work for.  
1581 Some of them even feel trapped by their jobs.

1582 But I just wanted to read, since we have a little bit of time while we're looking at Mr. Bishop's amendment, I just  
1583 want to read from a small business owner in North Carolina. "I am one of the Amazon sellers that has been subject to  
1584 Amazon's arbitrary and unfair treatment. My business was completely cut off last August. Amazon is holding tens of  
1585 thousands of dollars of money that I earned and even more in inventory. It has been almost a year and I am no closer to  
1586 getting it back. We have no recourse against them."

1587 In another message from an attorney in Georgia who has represented third-party merchants and others who  
1588 depend on Amazon, this attorney describes how little recourse merchants have when Amazon unilaterally steals their

1589 intellectual property, seizes their property, shifts Amazon's costs onto them, or changes the rules to benefit itself. Here's  
1590 what this attorney said, "I have seen how afraid merchants are to stand up because Amazon can extinguish their  
1591 businesses with the push of a button. Really. It is that easy for Amazon to shut down an account and nearly  
1592 impossible to get it reinstated. No one can hold Amazon accountable if Congress doesn't."

1593 So all of these stories show why small businesses support this bill and why this bill is necessary to sustain small  
1594 mom-and-pop businesses across the country. And I --

1595 Chairman Nadler. Would the gentlelady --

1596 Ms. Jayapal. I yield to the Chairman.

1597 Chairman Nadler. Thank you. I just have a quick question for Mr. Raskin. Wouldn't naming  
1598 four companies specifically raise bill of attainder problems?

1599 Mr. Raskin. Well, I was discussing this yesterday with Mr. Roy. A bill of attainder is a  
1600 determination of criminal guilt by the legislature. So, I mean, you could say that there's a constitutional value there  
1601 which is obviously closely related to procedural due process, which suggests that Congress doesn't get into the business of  
1602 naming particular defendants, even if it's in a civil context. And I think that's why we've shied away from it.

1603 On the other hand, if we're talking about a major transformation of American commerce and the American  
1604 economy and there are certain players that are so dominant and vast that they need to be named, I don't think that that  
1605 raises any direct constitutional problem, which is why I'm saying we should look at Mr. Bishop's thoughtful suggestion.  
1606 But, again, it is somewhat of a departure from the way we've legislated before where, you know, if you go back and look at  
1607 the Sherman Act or the Clayton Act, there's not the naming of particular companies, even though they have those  
1608 companies very much in their minds.

1609 Chairman Nadler. Thank you. The gentleman's time is expired. For what purposes does  
1610 Mr. Roy seek recognition?

1611 Mr. Roy. I move to strike the last word.

1612 Chairman Nadler. The gentleman is recognized.



1613 Mr. Roy. Well, Mr. Chairman, I think the conversation going on by the gentleman from North Carolina  
1614 and the gentelady from Washington I think is really important and valuable and is what I was saying before that I wanted  
1615 it to continue and I hope it will continue. Whether it gets to some sort of resolution that allows us to agree on some  
1616 path forward, I'm not sure because this is an extremely complicated issue and a big deal.

1617 And one thing that I just wanted to raise in response to the gentelady from Washington is I recognize, and also  
1618 to the chairman of the subcommittee, is I recognize that there were a lot of hearings in the last Congress, I recognize that  
1619 there are a lot of people in the subcommittee. Keep in mind a lot of the folks who were part of that they aren't on the  
1620 committee now, and some of us, like the gentleman from North Carolina and others, are basically having to read the  
1621 reports from last year and insert into this and catch up to some of the investigations and the information. And this is  
1622 massively complex.

1623 This is part of why I was saying yesterday it would have been my preference for us to walk through some of the  
1624 bills yesterday, move on a couple of them, maybe have a legislative hearing, have further discussion, have witnesses that  
1625 can talk through a few more levels of details of this in front of the full committee, et cetera, for such a monumental and big  
1626 task because, by the way, when this goes to the floor of the House, I will not be able to offer an amendment on the floor of  
1627 the House and either will any of you because we don't do that anymore. And that's not a criticism of the Speaker, by the  
1628 way. That's a criticism for both republicans and democrats because we've both been doing it for years. We haven't  
1629 offered an amendment on the floor of the House since May of 2016 that wasn't prepackaged in rules. I think we should  
1630 change that. Different conversation, different day, but it impacts my thinking here. I'm not going to get another bite  
1631 of this apple. This will blow out of committee, it will go to rules, and then powers that be will then start negotiating and  
1632 preening in front of cameras to figure out what's going to happen.

1633 So for me --

1634 Ms. Jayapal. Will the gentleman yield?

1635 Mr. Roy. I'll yield; yes, ma'am.

1636 Ms. Jayapal. Thank you so much. Let me just say that if we, you know, I think if there is real

1 6 3 7 interest in this -- Mr. Bishop, I don't know if he's left. Oh, okay. I'm looking at your amendment, Mr. Bishop, and I  
1 6 3 8 think that there are some things that you've pointed out that we really agree on and specifically around these four  
1 6 3 9 platforms, to Congressman Raskin's point. But the way your amendment is crafted right now, it really eliminates  
1 6 4 0 adjudication almost entirely. I'm not sure that that is, that is constitutional.

1 6 4 1 So what I would like to propose is --

1 6 4 2 Mr. Roy. I'm going to reclaim my time in just a minute.

1 6 4 3 Ms. Jayapal. Okay. What I'd like to propose is we invite you to work with us. Mr. Roy, you're  
1 6 4 4 not wrong that the amendment process is very difficult on both sides. But I will tell you that when we have a bipartisan  
1 6 4 5 bill with real interest on getting to a solution, we do have a process, even if it's in rules, to allow those amendments to go  
1 6 4 6 forward. So I invite you to work with us.

1 6 4 7 I would just say that this is the time. We can't keep delaying. We can't keep delaying. We have done so  
1 6 4 8 much work, and there is so much urgency to this, which I hear from both of you actually and from Mr. Gaetz and others,  
1 6 4 9 Mr. Buck. And so my proposal is let's move this bill forward. We will work with you with the understanding that  
1 6 5 0 what we're trying to get to, and let me see if I get it right, that there's -- I'm sorry. Can I keep going? Okay.

1 6 5 1 So what I'm hearing is these four platforms find a way to ensure that that process can proceed extremely  
1 6 5 2 quickly, perhaps even designated from the start, and that others, there would be a more deliberative process because  
1 6 5 3 there will be others down the road potentially that could be incorporated.

1 6 5 4 So I'm willing to work with you on that, and I'd like to get --

1 6 5 5 Mr. Roy. If I could reclaim my last minute --

1 6 5 6 Ms. Jayapal. Yes, of course.

1 6 5 7 Mr. Roy. -- because I'm going to lose my minute. I might be able to get one back in a minute, only  
1 6 5 8 to say I think this is good and is valuable. I would just suggest that this is not, while critically important and all the  
1 6 5 9 stories, they hit home for every small business, and I think we should be championing small businesses immensely as a  
1 6 6 0 body. But this isn't an AUMF. I mean, we could wait a week, right? We could -- I get that, I understand that. But

1661 missiles aren't flying in. We can decide and we can have conversations about a massive restructuring and ordering of  
1662 what we're talking about here in the committee of jurisdiction before kicking this down to the floor to be determined in  
1663 Rules Committee. When you've got a meeting of the minds like this where we can have a conversation about how  
1664 much power these guys have, there's still a lot to work out here.

1665 I would just submit when I opposed several of these bills yesterday, it was with still a heartfelt belief that there  
1666 was a lot of positive things that were being discussed, but I couldn't get over the hump. For example, interoperability  
1667 concerns with respect to nondiscrimination, with respect to, you know, the burden flipping on mergers and acquisitions.  
1668 So I offered the Lee approaches, which the chairman of the subcommittee said wasn't germane. I understand the  
1669 technicalities of germaneness, but we never got a chance to really debate alternative approaches to that which is  
1670 massively restructuring the way we handle mergers and so forth. So now we're kicking those out to the floor. I won't  
1671 get a chance to amend them on the floor. And all I'm saying is on this, this is massive and I would just suggest we'd be  
1672 well suited if we could pull back and have some more conversations, particularly for some of us who haven't had the  
1673 benefit of being here last year.

1674 I appreciate the Chairman's indulgence. I yield back.

1675 Chairman Nadler. The gentleman yields back. For what purposes does Ms. Garcia seek  
1676 recognition?

1677 Ms. Garcia. I move to strike the last word.

1678 Chairman Nadler. The gentlelady is recognized.

1679 Ms. Garcia. Mr. Chairman, I yield to the sponsor of the bill, Ms. Jayapal. Ms. Jayapal.  
1680 Thank you, Ms. Garcia. I don't know if I need it right now actually.

1681 Mr. Bishop. You could yield to me.

1682 Ms. Jayapal. Yes, I could yield to you. Why don't I yield to you. Well, actually, it's Ms. Garcia's

1683 --

1684 Ms. Garcia. No, you can't. I would have to.

1685 Mr. Bishop. Beg your pardon. I would invite you to yield. I'd like to respond to some of what  
1686 Ms. Jayapal was saying, if you wish.

1687 Ms. Garcia. Absolutely.

1688 Mr. Bishop. Thank you, ma'am. I appreciate it. Let me be clear about this. So I consider to be  
1689 very material to advance a bill out of markup that is inimical to what I think should happen. Consequently, I will not do  
1690 anything to support a bill that is part of a package that appears designed to, as I said, put the tech industry under the  
1691 thumb of big government to operate. Consequently, I won't support the bill. And, in fact, I will support the consumer  
1692 welfare standard amendment in order because I know that some of the representatives from Google, Amazon, and the like  
1693 will be on my side. And I think that I would rather have that as a scuffling agent to make sure you can't move a bill that  
1694 will put big tech under your thumb.

1695 However, I've laid out in great detail that the idea of breaking up big tech, if you really want to do that and  
1696 you're really not looking to build some super state infrastructure to arise out of this, then I would have, at any point in  
1697 time, a productive discussion. I do also want to say, as I say that, that I think there are, even though I'm probably willing  
1698 to do that, there's got to be some substitute for the fact that our investigation process has never stepped in to evaluating  
1699 what it will look like to break up. We ought to have some sense of what that is going to be across those companies you  
1700 expect to be covered.

1701 And I yield back. Thank you.

1702 Ms. Jayapal. Ms. Garcia.

1703 Ms. Garcia. I yield the remainder of my time to --

1704 Ms. Jayapal. Thank you so much, Ms. Garcia. Thank you, Mr. Bishop. I understand. Your  
1705 position is very clear. I understand -- you know, my feeling is this is the time we need to move this forward.  
1706 However, I am really looking forward to working with you to see if we can get to some place that we can agree on. I  
1707 understand your position, I think I understand it pretty clearly. And I want to appreciate that you have identified the  
1708 same thing that I and the committee have identified actually. This is the heart of what we're talking about.

1709                   And so we will, I'm going to propose that we move forward and, hopefully, we'll pass this through committee.  
1710 I believe we will.   And then I look forward to working with you, with Mr. Roy, with others who are truly interested in  
1711 getting to a place.   And I believe we could do that before we get to the floor.   So I appreciate it, Ms. Garcia.  
1712                   Chairman Nadler.   Would the gentlelady yield?  
1713                   Ms. Garcia.   Mr. Chairman, I reclaim my time and yield to --  
1714                   Chairman Nadler.   Would the gentlelady yield?  
1715                   Ms. Garcia.   -- the chairman.  
1716                   Chairman Nadler.   Thank you.   I don't want to cut off this discussion, and I won't.   But I just  
1717 do want to remind people that when we vote in a couple of minutes we're voting on Ms. Issa's amendment, not on all of  
1718 this.   We're voting on an amendment that simply says that Subsection H will not apply to a defendant who establishes  
1719 by clear and convincing evidence that the conduct described in Subsection A increases consumer welfare.   So we heard  
1720 Mr. Cicilline opposing the amendment and various others.   I just want to remind people that's what we're going to vote  
1721 on.  
1722                   And I yield back to the --  
1723                   Ms. Lofgren.   Mr. Chairman, would the gentlelady yield for just ten seconds?  
1724                   Ms. Garcia.   Well, I had Mr. Raskin next up if --  
1725                   Ms. Lofgren.   I just wanted to make an announcement.   I wanted to make an announcement that  
1726 we had a 2 p.m. immigration hearing, which we're going to still be here, so we're going to reschedule that for witnesses  
1727 and members of the subcommittee.   That's going to be rescheduled.   Thank you for yielding.  
1728                   Ms. Garcia.   All right.   Reclaiming my time, I yield to Mr. Raskin.  
1729                   Mr. Raskin.   Thank you, thank you so much, Ms. Garcia.   Just on the amendment from Mr. Issa, our  
1730 rule should not be an antitrust.   There's no price fixing unless it advances consumer welfare.   There should be no  
1731 monopoly unless it advances consumer welfare.   There should be no collusion unless it advances consumer welfare.  
1732                   So I think the fetishizing of consumer welfare is a really dangerous thing, and we've seen how it's a court-made

1733 doctrine that's been used to undermine what antitrust has been about, which is making sure that you don't get monopoly  
1734 players that use their power to squeeze other people out, squeeze small businesses out, and exercise tyranny within the  
1735 economic sphere or within the political sphere.

1736 And I just wanted to say to Ms. Jayapal and Mr. Bishop, as a member of the Rules Committee, I would be thrilled  
1737 to work with both of you on advancing this common vision. And I'm very drawn to a number of the things that Mr.  
1738 Bishop had to say today.

1739 And I yield back to you, Ms. Garcia. And thank you.

1740 Ms. Garcia. Thank you. Mr. Chairman, I yield back my one second left, and I would call the  
1741 question on the amendment.

1742 Chairman Nadler. The gentleman yields back. For what purposes does Mr. Gohmert seek  
1743 recognition?

1744 Mr. Gohmert. I move to strike the last word.

1745 Chairman Nadler. The gentleman is recognized.

1746 Mr. Gohmert. Thank you, Mr. Chairman. I have heard Ms. Jayapal and really appreciated your  
1747 earlier speech in support of the bill. And I've agreed with so much I've heard on both sides of the aisle. My problem is  
1748 that I can't forget experiences I've had since I've been here in Congress.

1749 I remember in October 2008 it was the evil big banks that brought us to the brink of ruin. They just came so  
1750 close to destroying this country. And so Barack Obama was elected president, and the democrats had the majority in  
1751 Congress, so they passed Dodd-Frank. And since Bush left office, as I understand, one out of every four local banks is  
1752 out of business. They've either been absorbed by the banks that brought us to the brink of ruin or they've had to go out  
1753 of business because they couldn't compete with the banks that brought us to the brink of ruin.

1754 And so all the talk was about these evil investment banks and how we have got to stop them. And that  
1755 brought about Dodd-Frank, which shut down local banks and allowed the big banks to just take over the country and  
1756 control things.

1757 Mr. Bishop. Will the gentleman yield?

1758 Mr. Gohmert. No, not yet. And back also, I remember when President Obama took over and he  
1759 had all these nasty comments about Wall Street and how bad they were and we have got to stop Wall Street, they're  
1760 ruining the country. And he was going to see that Wall Street was reigned in. And I also happen to remember in  
1761 2008 a big majority of executives from Wall Street and their spouses gave to Obama over McCain. And so I'm going,  
1762 wait, these things don't really balance out. It doesn't make sense.

1763 And then you can go online and find, CNBC has a good article about it, but in September of 2013, apparently it's  
1764 the first time in American history. This president that said he was going to help the little folks at work making enough  
1765 money. He was going after those people that Wall Street, the big banks and all, he had to admit in September of 2013  
1766 that between 2009 and 2012 95 percent of income gains went to the top one percent. You can find other articles and  
1767 information about how the income gap grew between the working poor and the mega rich that were giving to democrats.

1768 And so, as I mentioned last night, my experience here is really, it brings it back to line, you know. No matter  
1769 how cynical you get, it seems to never be enough to catch up.

1770 And so, here, I like what I've been hearing here, but I remember this talk before and something clicked.  
1771 Looking back, Elizabeth Warren was leading the charge in 2019 saying we're going to break up Google and Amazon, these  
1772 big companies, and lo and behold there's an article here about after she started advocating that Silicon Valley gave to her  
1773 bigger than anybody else. She brought in \$19 million, I think, in the first quarter.

1774 And so I keep coming back to this thing and what Mr. Bishop said. Gee, if we give all this power to the FTC, is  
1775 it going to follow the pattern of what I've been personally witnessing here for the last 12 years that people are going to be  
1776 so afraid that are part of these big four that they're going to come in, I'm going to contribute big to your campaigns, I'm  
1777 going to do whatever you want me to do, just please don't break me up. Google went to the point, as I recall seeing  
1778 somewhere that they were saying, look, Elizabeth Warren can't break us up because we have got to be together to defeat  
1779 Donald Trump.

1780 Chairman Nadler. Will the gentleman yield?

1781 Mr. Gohmert. So I'm very concerned about all of this, and my time is expired, unfortunately. But I  
1782 would just warn the FTC will have power to strip 15 percent of a year's venue or 30 percent. I mean, this is a powerful  
1783 tool. We've got to be -- that's not in this bill. It's one we've already passed.

1784 Chairman Nadler. The gentleman yields back. For what purposes does Ms. Jackson Lee seek  
1785 recognition?

1786 Ms. Jackson Lee. Strike the last word, Mr. Chairman.

1787 Chairman Nadler. Gentlelady is recognized. Gentlelady is recognized.

1788 Ms. Jackson Lee. I thank the gentleman very much. I want to just continue a theme. As I  
1789 read the section that the amendment is attempting to provide an affirmative defense, the section includes the prohibition  
1790 of utilizing a covered platform for the sale or provision of products or services. That creates an expanded opportunity  
1791 for services by smaller entities. It prohibits offering a product or service that the covered platform requires a business  
1792 user to purchase or utilize as a condition for access to the covered platform or as a condition for preferred status or  
1793 placement of a business user's products or services in the covered platform or gives rise to conflict.

1794 And so I know it's not printed in the prohibitions, but the affirmative defense says that you can present clear and  
1795 convincing evidence that the conduct described in Subsection A increases consumer welfare. And I just want to put into  
1796 the public sphere again comments that I made late into the night, very, very late into the night, and I think it needs  
1797 sunshine. And I would just have my colleagues entertain the question of consumer welfare. Note that the  
1798 interpretation is such that it's in the tech framework, but I don't know whether or not the proponent of the bill would  
1799 entertain the idea or reflect on the point that, again, I want to cite these numbers in the record and these numbers have  
1800 increased. But I'd also say that there is a great affection among small businesses and minority businesses for tech  
1801 because they believe that that gives them the opportunity to become entrepreneurs with a sense of ability to thrive.  
1802 And I would like to think that the affirmative defense would include if this amendment was to be fully vetted, which I  
1803 believe it is not at this point, and so I think it will be very difficult for us at this moment because they don't know what it  
1804 actually means. But I am going to put on the record that in the tech industry, again, African-Americans make up 7.4



1805 percent of tech workers. Just imagine how large tech is. They are worldwide, of course, but this is as it relates to the  
1806 United States. The Latinx makes up 8 percent of tech workers, AAPI makes up 14 percent of tech workers, and women  
1807 make up 36 percent of tech workers complete with the majority, as defined here, of 68.5 percent of tech workers and men  
1808 making up 64 percent of tech workers.

1809 So you can see there's a lot of work that doesn't necessarily be defined as an affirmative defense, but there's a lot  
1810 of work to be interpreted as consumer welfare. And, again, I want to put on the record, though it's unpleasant, that one  
1811 of the companies had an algorithm that was classifying African-Americans as gorillas, and it took them a period of time to  
1812 fix.

1813 I think when we begin to talk about oversight, it is different than what some of the legislation did for some of the  
1814 other industries. And it does now have another perspective in the 21st Century when there are growing, diverse  
1815 communities, and we have been bashed for the last four years. We have been subjected to a big lie. We've seen  
1816 January 6th where, in addition to a big lie, actual race was used, the Confederate flag and attacks on black officers, as well  
1817 as others.

1818 So we're in a different atmosphere, and I think it is important that there's a cautiousness by big tech. There's a  
1819 responsibility, there's a civic responsibility, and consumer welfare becomes a more expanded concept.

1820 And, again, to put on the record about what happened to small businesses during the pandemic. Black  
1821 business owners dropped 41 percent, Latino business owners dropped 32 percent, Asian business officers -- excuse me --  
1822 owners dropped 26 percent compared with the majority that dropped 17 percent.

1823 So I believe, collectively, what we've been doing over these last 24 hours is to find a way to increase the  
1824 civic-mindedness of this industry, along with the strictures that have been put in place regarding the prefaces, regarding  
1825 the business users, regarding have to use their products in order to have access. All of that should culminate to what I  
1826 think is a better civic attitude about your place in society. And I'd like to see layers and layers of increased, those  
1827 dropped businesses, what about having the ability for those numbers to be decreased over the next year or two years.  
1828 Why? Giving opportunities to those businesses, which are much smaller businesses.

1829 So, Mr. Chairman, I've just dissected the amendment and said what is consumer welfare in terms of a defense.

1830 But in any event, I believe that this is what this legislation will bring about: opportunity. I yield back.

1831 Chairman Nadler. The gentlelady yields back. For what purpose does Mr. Tiffany seek  
1832 recognition?

1833

1834 Mr. Tiffany. I move to strike the last word, Mr. Chairman.

1835 Chairman Nadler. The gentleman is recognized.

1836 Mr. Tiffany. Thank you very much. I want to comment in support of this amendment, as well as  
1837 a couple of other things. But you were going back into the Wayback Machine not too long ago in our discussion, and I  
1838 would just say in regards to the comments about LBJ, I hope that they're reading the life story of LBJ that was written by  
1839 Robert Caro because Robert Caro wrote the definitive tomes about his life. And I can tell you some of the things that  
1840 LBJ did, he would be censored now. He would definitely be censored, especially if you read his book you'll notice that.

1841 But I want to comment in regards to the impugning of Judge Bork by the Chairman in regards to the consumer  
1842 welfare standard. Saying it is just about price is an attempt to gaslight those of us who are opposed to a  
1843 centrally-planned economy. The consumer welfare standard has always involved considerations of price but also  
1844 customer choice, quality, and competition.

1845 The consumer welfare standard is largely to thank for Americans' economic security over the last few decades.  
1846 Decoupling antitrust law from the consumer welfare standard would lead to regulators having too much authority.  
1847 We've got to make sure that we're striking a balance.

1848 This was exactly the thesis that Lina Khan's paper about how she wants to run the economy, and this is one of  
1849 my concerns with the bills that have been before us, including this one, is are we going to have a command-and-control  
1850 economy?

1851 So I want to give credit to Ms. Jayapal in that she's correct that action needs to be taken, and I've heard from it,  
1852 including from relatives, about working with companies like Amazon. So there is concern. We do need to act, but we

1853 also need to be circumspect in those actions to make sure that we're going the right thing. And what we heard last night  
1854 from Mr. Lieu and others, it was real consistent throughout our debate last night, as well as into today, is that these bills  
1855 are not ready for prime time, that they need more work. And from my perspective, we have to make sure that we're not  
1856 giving government too much control. Big tech is a big problem, but big government can crush ideas in their infancy.  
1857 They can crush that germ of an idea that has always been the strength of America: the creativity of the American people.  
1858 It is ideas that have made us a great country and then the right to property and being able to execute that.

1859 So last night I brought up the issue of Dodd-Frank and I'm going to again today, following up on what Mr.  
1860 Gohmert said. And for me, this was a crystalizing moment last night when we were talking about this. I believe it was  
1861 Mr. Cohen that said, he was commenting about Main Street and that we have to make sure -- Main Street has been  
1862 diminished. We are seeing main streets across America that are being hollowed out. What is what of the main  
1863 reasons that main streets are being hollowed out? It is because of the Dodd-Frank law and community banks no longer  
1864 being able to be creative. We're seeing very few of them. In my state of Wisconsin there's only a couple small  
1865 community banks that have been created over the last decade since the Dodd-Frank law was passed, and are we going to  
1866 do the same thing with the tech sector if we are too broad, if we take too broad of a reach with these bills? And that is  
1867 my concern.

1868 And thinking about Dodd-Frank is what is really causing me to pump the brakes on these bills. Are we giving  
1869 too much authority? And it deeply concerns me that we are giving carte blanche to the regulatory agencies. We  
1870 actually took a little different approach in Wisconsin when I was there for nine and a half years, and I think my colleague,  
1871 Mr. Fitzgerald, would echo this, is that we began to write bills a little more definitively rather than just giving this catch-all  
1872 of deferring to the agencies to write the rules. And that's one of the things that I think we should consider here is that  
1873 maybe we should be a little more definitive. We should be a little more detailed in how we're writing these bills rather  
1874 than just saying, hey, we're going to turn this over to the agencies because that does not always end well.

1875 So Dodd-Frank kind of guides me in regards to this. I am concerned about these bills. I think we really  
1876 need to be circumspect. I think there's much more work that needs to be done, and it's great to hear people talking

1877 about doing that. I hope that Ms. Jayapal will follow through with her commitment that she has made to Mr. Bishop  
1878 that she will include him and others in helping craft better bills here.

1879 And, Mr. Chairman, I yield back.

1880 Chairman Nadler. The gentleman yields back. For what purpose does Mr. Fitzgerald seek  
1881 recognition?

1882 Mr. Fitzgerald. Move to strike the last word.

1883 Chairman Nadler. The gentleman is recognized.

1884 Mr. Fitzgerald. Can I yield my time to Ms. Spartz?

1885 Ms. Spartz. Thank you, thank you, Mr. Fitzgerald. I kind of wanted to, I really want to touch upon  
1886 actually this vibrant bipartisan debate made me hopeful about this situation. I actually appreciate it very much, and I  
1887 actually didn't expect it in this committee, so I'm very proud of our committee.

1888 And one thing I wanted to say, I actually, when I started my, you know, speech or presentation, I actually  
1889 mentioned that I am actually one to be open-minded because we have to assess, as Mr. Gohmert and Mr. Tiffany brought  
1890 up, the issue of regulated monopoly. And I would argue, as someone who has been involved with Fortune 500 America  
1891 under M&As, I can tell you, you know, regulated monopoly are used, including Sarbanes-Oxley and Dodd-Frank were  
1892 used really by larger companies to suppress competition, and a regulated monopoly could potentially be more dangerous  
1893 than breaking up and using antitrust. I would like to have that discussion, and I'm open-minded to the discussion that  
1894 Mr. Bishop, Mr. Roy, and Ms. Jayapal had, and I would be very supportive to talking about it. But the way how the bill is  
1895 written right now, it gives government so much power and FTC and it's very dangerous to do that. So I'd rise it for us, as  
1896 a policymaker, debate the policy, look at implications of our policy, and make these decisions here.

1897 So I'm not disagreeing with a lot of my colleagues, and I think we're talking about similar things, you know. I  
1898 just want to make sure how this process could happen through all of the procedures because, generally, the way how the  
1899 committee works, if we don't get something done here, we, unfortunately, don't have too many opportunities to improve  
1900 legislation before it goes to the floor. And I would, you know, like to see that. I would like to have more deliberation

1901 because I think the work should be done in the committee, an amendment should be allowed on the floor. We need to  
1902 have more open process to deliberate legislation and good policies in this body, and that is the biggest difference for me  
1903 was coming from state legislature. And it's actually somewhat refreshing for me to see it right now, and I'm very happy  
1904 to see it. So I would like, you know, to be involved in some way to help because I think it's extremely important  
1905 discussion, it's extremely concern for a lot of people. American people are very concerned what's happening. The  
1906 greatest distortion of power, few entities controlling a lot of information, and I would say very ill-informed electorate.  
1907 It's a lot of manipulation and distortion of power, and it's very concern for us, you know, as a lawmaker and how we can  
1908 do more effectively to allow more free markets and competition and working the market.

1909 So I want to commit to work on this, you know. And if you suggest some ways, and, Mr. Bishop, I'm looking  
1910 forward to your amendment to see. But we have to have some guardrails and we have to, you know, evaluate this  
1911 policy in a meaningful way and implications. We cannot just legislate with a stroke of a pen, and I think that's very  
1912 important, very significant decisions we're making that can affect in a positive or negative way millions of people in this  
1913 country. And I hope we have a positive outcome.

1914 So I appreciate this debate again, and thank you so much. I look forward to working with everyone. I yield  
1915 back.

1916 Chairman Nadler. The gentlelady yields back.

1917 Mr. Fitzgerald. Mr. Chairman, I yield back.

1918 Mr. Bishop. Mr. Chairman, I have an amendment at the desk. Mr. Chairman, I have an  
1919 amendment at the desk.

1920 Mr. Issa. If you'll vote for this, we can dispense it quickly.

1921 Ms. Demings. Mr. Chairman, Mr. Chairman.

1922 Chairman Nadler. For what purpose does Ms. Demings seek recognition?

1923 Ms. Demings. Move to strike the last word.

1924 Chairman Nadler. The gentlelady is recognized.

1925 Ms. Demings. Mr. Chairman, I'd like to yield my time to Mr. Raskin.

1926 Mr. Raskin. Thank you very much. Let's see. I'm not sure I needed the time to be yielded to me.

1927 So I'm afraid I'm going to yield it back to you.

1928 Ms. Demings. Mr. Chairman, I yield back.

1929 Mr. Issa. Mr. Chairman, could I have the honor of moving the previous question?

1930 Chairman Nadler. I don't believe you can move the previous question in the middle before

1931 we've voted on an amendment. Okay. Does anyone else seek, does anyone else seek recognition on the

1932 amendment? The question then occurs on the amendment. All in favor, say aye.

1933 (Chorus of aye.)

1934 Chairman Nadler. Opposed, nay.

1935 (Chorus of nay.)

1936 Chairman Nadler. The Chair believes the nays have it.

1937 Mr. Issa. Roll call vote.

1938 Chairman Nadler. Roll call vote is requested. The clerk will call the roll.

1939 Ms. Fontenot. Mr. Nadler.

1940 Chairman Nadler. No.

1941 Ms. Fontenot. Mr. Nadler votes no. Ms. Lofgren.

1942 Ms. Lofgren. Yes.

1943 Ms. Fontenot. Ms. Lofgren votes yes. Ms. Jackson Lee.

1944 Ms. Jackson Lee. Yes.

1945 Ms. Fontenot. Ms. Jackson Lee votes yes.

1946 Ms. Jackson Lee. No, I'm sorry. No.

1947 Ms. Fontenot. Ms. Jackson Lee votes no. Mr. Cohen.

1948 Mr. Cohen. No.

1949 Ms. Fontenot. Mr. Cohen votes no. Mr. Johnson of Georgia.  
1950 Mr. Johnson of Georgia. No.  
1951 Ms. Fontenot. Mr. Johnson of Georgia votes no. Mr. Deutch.  
1952 Mr. Deutch. No.  
1953 Ms. Fontenot. Mr. Deutch votes no. Ms. Bass.  
1954 Ms. Bass. No.  
1955 Ms. Fontenot. Ms. Bass votes no. Mr. Jeffries.  
1956 Mr. Jeffries. No.  
1957 Ms. Fontenot. Mr. Jeffries votes no. Mr. Cicilline.  
1958 Mr. Cicilline. No.  
1959 Ms. Fontenot. Mr. Cicilline votes no. Mr. Swalwell.  
1960 Mr. Swalwell. Aye.  
1961 Ms. Fontenot. Mr. Swalwell votes aye. Mr. Lieu.  
1962 Mr. Lieu. Aye.  
1963 Ms. Fontenot. Mr. Lieu votes aye. Mr. Raskin.  
1964 Mr. Raskin. No.  
1965 Ms. Fontenot. Mr. Raskin votes no. Ms. Jayapal.  
1966 Ms. Jayapal. No.  
1967 Ms. Fontenot. Ms. Jayapal votes no. Ms. Demings.  
1968 Ms. Demings. No.  
1969 Ms. Fontenot. Ms. Demings votes no. Mr. Correa.  
1970 Mr. Correa. Aye.  
1971 Ms. Fontenot. Mr. Correa votes aye. Ms. Scanlon.  
1972 Ms. Scanlon. No.

1973 Ms. Fontenot. Ms. Scanlon votes no. Ms. Garcia.

1974 Ms. Garcia. No.

1975 Ms. Fontenot. Ms. Garcia votes no. Mr. Neguse.

1976 Mr. Neguse. No.

1977 Ms. Fontenot. Mr. Neguse votes no. Ms. McBath. Mr. Stanton.

1978 Mr. Stanton. Aye.

1979 Ms. Fontenot. Mr. Stanton votes aye. Ms. Dean.

1980 Ms. Dean. No.

1981 Ms. Fontenot. Ms. Dean votes no. Ms. Escobar.

1982 Ms. Escobar. No.

1983 Ms. Fontenot. Ms. Escobar votes no. Mr. Jones.

1984 Mr. Jones. No.

1985 Ms. Fontenot. Mr. Jones votes no. Ms. Ross. Ms. Bush.

1986 Ms. Bush. No.

1987 Ms. Fontenot. Ms. Bush votes no. Mr. Jordan.

1988 Mr. Jordan. Yes.

1989 Ms. Fontenot. Mr. Jordan votes yes. Mr. Chabot.

1990 Mr. Chabot. Aye.

1991 Ms. Fontenot. Mr. Chabot votes aye. Mr. Gohmert.

1992 Mr. Gohmert. Aye.

1993 Ms. Fontenot. Mr. Gohmert votes aye. Mr. Issa.

1994 Mr. Issa. Aye.

1995 Ms. Fontenot. Mr. Issa votes aye. Mr. Buck. Mr. Gaetz. Mr. Johnson of Louisiana.

1996 Mr. Johnson of Louisiana. Aye.



1997 Ms. Fontenot. Mr. Johnson of Louisiana votes aye. Mr. Biggs.

1998 Mr. Biggs. Aye.

1999 Ms. Fontenot. Mr. Biggs votes aye. Mr. McClintock. Mr. McClintock.

2000 Mr. McClintock. Aye.

2001 Ms. Fontenot. Mr. McClintock votes aye. Mr. Steube.

2002 Mr. Steube. Yes.

2003 Ms. Fontenot. Mr. Steube votes yes. Mr. McClintock votes aye. Mr. Tiffany.

2004 Mr. Tiffany. Aye.

2005 Ms. Fontenot. Mr. Tiffany votes aye. Mr. Massie.

2006 Mr. Massie. Aye.

2007 Ms. Fontenot. Mr. Massie votes aye. Mr. Roy.

2008 Mr. Roy. Aye.

2009 Ms. Fontenot. Mr. Roy votes aye. Mr. Bishop.

2010 Mr. Bishop. Yes.

2011 Ms. Fontenot. Mr. Bishop votes yes. Ms. Fischbach.

2012 Ms. Fischbach. Yes.

2013 Ms. Fontenot. Ms. Fischbach votes yes. Ms. Spartz.

2014 Mr. Spartz. Yes.

2015 Ms. Fontenot. Ms. Spartz votes yes. Mr. Fitzgerald.

2016 Mr. Fitzgerald. Aye.

2017 Ms. Fontenot. Mr. Fitzgerald votes aye. Mr. Bentz.

2018 Mr. Bentz. Bentz votes aye.

2019 Ms. Fontenot. Mr. Bentz votes aye. Mr. Owens.

2020 Chairman Nadler. Ms. Bass. I'm sorry. Ms. McBath.

2021 Ms. McBath. Mr. Chairman, how am I recorded?

2022 Ms. Fontenot. Ms. McBath, you are not recorded.

2023 Ms. McBath. No.

2024 Ms. Fontenot. Ms. McBath votes no.

2025 Mr. Issa. Well, Mr. Chairman, it looks like you're in the last minute. You just have to gavel this.

2026 Now would be a good time. Anytime now. Mr. Chairman, do you have anything particularly going on during the 4th

2027 of July? Any good parades or holiday events?

2028 Mr. Cicilline. Mr. Issa, the oldest 4th of July parade in America is in Bristol, Rhode Island.

2029 Mr. Issa. You don't understand. I was in that.

2030 Mr. Cicilline. I bet you were.

2031 Ms. Dean. For the record, the oldest continuous 4th of July parade is in Glenside, Pennsylvania.

2032 Mr. Issa. For the record, the best weather at a parade is in my district.

2033 Mr. Chairman, perhaps announcing the vote would stop the extraneous things outside of our jurisdiction.

2034 You're waiting for someone to come in so that you can have a different outcome. I respect that that could be what

2035 you're waiting for. I suspected it, actually, Mr. Chairman.

2036 Mr. Tiffany. Justice delayed is justice denied.

2037 Ms. Demings. The time is always right to do what's right, Dr. Martin Luther King, Jr.

2038 Mr. Issa. Mr. Chairman, point of inquiry? The point of inquiry is do you have a limit to your --

2039 Chairman Nadler. In the middle of a vote, a point of inquiry is not in order.

2040 Mr. Issa. Well, at least you responded to my point of inquiry with an answer. I appreciate that. I

2041 think Don Young, at this moment, would be saying regular order, regular order, loudly.

2042 Mr. Gaetz. Mr. Chairman, how am I recorded?

2043 Ms. Fontenot. Mr. Gaetz, you are not recorded.

2044 Mr. Gaetz. Hello?

2045 Ms. Fontenot. Mr. Gaetz, you are not recorded.

2046 Mr. Gaetz. I would like to vote no on the Issa amendment.

2047 Ms. Fontenot. Mr. Gaetz vote no.

2048 Chairman Nadler. How is Mr. Owens recorded?

2049 Ms. Fontenot. Mr. Owens, you are not recorded.

2050 Mr. Owens. I vote no.

2051 Ms. Fontenot. Mr. Owens votes no.

2052 Chairman Nadler. The Clerk will report.

2053 Ms. Fontenot. Mr. Chairman, there are 21 ayes and 21 nos.

2054 Chairman Nadler. The amendment is not agreed to. Are there

2055 other amendments -- I am sorry. Yes, are there any other

2056 amendments tot he amendment consumer in the nature of a

2057 substitute?

2058 Mr. Bishop. I am ready. I have an amendment at the desk,

2059 Mr. Chairman.

2060 [The Amenzment offered by Mr. Bishop follows:]

2061

2062 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2063 Chairman Nadler. The Clerk will report the amendment.

2064 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

2065 Chairman Nadler. The point of order is reserved.

2066 Ms. Fontenot. Amendment to the amendment in the nature of  
2067 a substitute to H.R. 3825 offered by Mr. Bishop of North Carolina.

2068 Page 2, line 23 strike "A in general" and all that follows through  
2069 page 3, line 13 and re-designate accordingly. Page 4, line 18,  
2070 insert the following: In general, notwithstanding any other  
2071 provision of law --

2072 Chairman Nadler. Without objection, the amendment is  
2073 considered as read and the gentleman is recognized in support  
2074 of the amendment.

2075 Mr. Bishop. Thank you, Mr. Chairman. This makes concrete  
2076 basically the discussion I was having, the colloquy I was having  
2077 with Ms. Jayapal and Mr. Cicilline. You could say it calls the  
2078 bluff or you could just say it puts in very concrete terms how  
2079 we could make this thing move forward if there is serious interest  
2080 on the part of the majority in a breakup of tech.

2081 And what we have seen as some have described in this area  
2082 is that our antitrust laws should be vigorously enforced. We  
2083 have seen in this area an apparent enforcement failure that has  
2084 extended a long period of time. Now the Trump administration  
2085 began two important efforts to enforce existing antitrust laws  
2086 against Google and Facebook, but it is too often the case that

2087 antitrust cases take years or a decade or more to resolve.

2088 If a company is violating our antitrust laws or if we are  
2089 prepared to do this to move substantially beyond some of the  
2090 existing antitrust laws to make a policy determination if there  
2091 is anti-competitive effect, then we owe it to the American people  
2092 to move it along. Resolve the issues quickly.

2093 Unless the primary objective is to set up, as I have described  
2094 it, as sort of the nanny state to administer the tech sector which  
2095 would be terrible, if you really want to break up big tech and  
2096 get on with that, then this amendment would expedite judicial  
2097 consideration of these cases by requiring district courts to give  
2098 them priority and providing for a direct appeal to the United  
2099 States Supreme Court. It would provide for a three-judge panel  
2100 at the district court level and as I said, a direct appeal.

2101 So we are not dealing, well, it is really that simple. There  
2102 is not a need to have -- as Ms. Jayapal has conceded, and I think  
2103 it is otherwise evident, once you establish the criteria for a  
2104 covered platform and certainly as to the first four in the chute,  
2105 it is pretty clear to everybody what they are and there is not  
2106 really any factual dispute about whether they are then covered  
2107 by the conflict of interest provisions here. They control a line  
2108 of business other than the covered platform and uses the covered  
2109 platform for the sale or provision of products or services. You  
2110 need go no farther.

2111           And so rather than having the run-of-the-mill usual and  
2112 enforcement processes, this bill or this amendment would say that  
2113 the FTC, Department of Justice will not undertake any  
2114 administrative adjudication, but will go to court. It tells  
2115 exactly where to go to court, provides for, as I said, a  
2116 three-judge panel, and requires the court to give precedence to  
2117 this determination over other matters before it. And then has  
2118 a speedy appeal to the United States Supreme Court.

2119           This is pretty familiar. You were laying that on a piece  
2120 of paper, so great minds think alike. And if folks are really  
2121 interested in breaking up big tech, why not go ahead and do it?

2122           And that is what this is. It puts the question. If you want  
2123 to do that, let's get that in the bill and make the bill much  
2124 more worthy of support.

2125           And having said that, I will see if anybody wants to yield  
2126 time. No. And I yield back then to the chairman.

2127           Mr. Cicilline. [presiding] The gentleman yields back.  
2128 I am prepared to rule on my germaneness issue and I am prepared  
2129 to rule in favor of Mr. Bishop. I think under Chapter 26, Rule  
2130 8, this amendment would satisfy the accomplishing the results  
2131 of the bill by different method amendment. And so because this  
2132 amendment has the same end of the bill, but contemplates a method  
2133 in the likes of the method, I will rule that the amendment is  
2134 in order.

2135           And I now will recognize myself, I hate to say in opposition,  
2136 but to engage in a colloquy with Mr. Bishop because I do think  
2137 that the discussion that he had this morning with Mr. Roy and  
2138 with the sponsor of the bill is a really interesting idea.

2139           And I guess if you wouldn't mind just walking through how  
2140 this might work because I think your amendment recognizes the  
2141 dominant size of the platform at issue here and the  
2142 anti-competitive behaviors that result when this sort of market  
2143 dominance exists and then essentially breaking up big tech.

2144           And you are right, the amendment proposes sort of a -- I  
2145 don't want to use the word radical, but a very provocative idea  
2146 of saying rather than having the traditional antitrust enforcers,  
2147 the agencies that were created to do this work, that Congress  
2148 would sort of do it directly in a fundamental way.

2149           And it is a really tempting idea because I think in many  
2150 ways our antitrust enforcers have really failed us and we are  
2151 here in large part -- and by the way, that is Republican and  
2152 Democratic administration.

2153           So I guess my first question it would surely be the case  
2154 that an action that would be brought under Section D of the  
2155 amendment would require a determination that a company is a  
2156 covered platform. And I guess that is my first question. Is  
2157 that a determination that the FTC would make in order to bring  
2158 the action, or is that a conclusion that your amendment

2159 contemplates is made by the Congress?

2160 Mr. Bishop. No, no. It would be made by an Article 3 court.

2161 Mr. Cicilline. By a court.

2162 Mr. Bishop. What I am suggesting and have suggested all  
2163 along, including in the way that the definition of covered  
2164 platform goes and you have a designation, if it is a straight  
2165 forward factual matter, as everyone says, it isn't a radical thing  
2166 to say once that legal principle is established, that having a  
2167 covered platform and a competing line of business is unlawful,  
2168 I would suggest that it is a summary judgment issue, right?

2169 You file a complaint and an affidavit in a case of a  
2170 particular business of one of the four that you are anticipating,  
2171 their response would have to be either we can contest that or  
2172 we can't. And you have a summary judgment decision in 30 days.

2173 That is not radical. It is not skipping some process. That  
2174 is due process. That is the way adjudication of facts against  
2175 parties are typically made under law.

2176 Now, the reason you would have an administrative agency go  
2177 through some further or elongated or duplicative process would  
2178 only -- you would only imagine the need for that if there is some  
2179 complicated thing to administer, some rulemaking that needs to  
2180 occur, and that is what I think your bill does. It says the facts  
2181 are clear and not particularly complicated. There is no  
2182 monopolization decision to be made and the like.



2183           Mr. Cicilline. If the gentleman will indulge me one more  
2184 -- I think the covered platform status is not complicated and  
2185 it is clear to you and I. My guess is that these monopolies with  
2186 armies of lawyers would say no, that is not at all clear, and  
2187 we want to contest that covered platform status.

2188           Under this amendment, where would that happen?

2189           Mr. Bishop. Then in that case it would happen in the  
2190 discovery process in civil litigation in exactly the place we  
2191 have provided for it. And I would submit that, again, if it is  
2192 not as simple as a summary judgment determination, based on your  
2193 investigation and what you know about these companies, it still  
2194 ought to be a fairly concise, narrow, factual context.

2195           And so the court would under direction to expedite and give  
2196 precedence to this over other matters would put that at the top  
2197 of its list. You would let the parties conduct their discovery,  
2198 they bring their witnesses, and present evidence, and the court  
2199 would decide it.

2200           And I will say, the provision here is for the provision in  
2201 equity. It would be a bench trial. It could be done on a very  
2202 expedited basis. It does have the advantage of being the more  
2203 appropriate place to do a determination like this is in an Article  
2204 3 independent court.

2205           But again, there is no need for the kind of rulemaking or  
2206 complicated administrative process that you would expect in many

2207 situations because your bill makes it quite clear and simple.

2208 Mr. Cicilline. If I could just ask one more question with  
2209 my remaining few seconds. The amendment also says that the  
2210 Federal Trade Commission and the Department of Justice shall not  
2211 undertake any administrative adjudication to enforce the  
2212 antitrust laws or this act. I get the act part. But there are  
2213 things that the Federal Trade Commission or the Department of  
2214 Justice might be required to undertake with respect to antitrust  
2215 other than a separation that we are carving out?

2216 Mr. Bishop. Look, I would be amenable to a friendly  
2217 modification of the amendment to adapt that, but again, I think  
2218 the spirit of it is -- this entire purpose of this bill is to  
2219 go ahead and shoot with a rifle rather than a shotgun and why  
2220 is there a need to go another path if we are just going --

2221 Mr. Cicilline. I thank the gentleman. I really do  
2222 appreciate the very extended -- oh, I am sorry, the ranking member  
2223 is recognized.

2224 Mr. Jordan. Well, you want to go?

2225 Mr. Gaetz. Sure.

2226 Mr. Cicilline. I recognize the gentleman from Florida.

2227 Mr. Gaetz. Thank you, Mr. Chairman. And I would ask --  
2228 first, let me ask that at my first read of the amendment, it would  
2229 actually achieve the objectives of the legislation more  
2230 efficiently and more rapidly because you have less bureaucratic

2231 activity required as a condition precedent for action here. This  
2232 seems to streamline that extensively.

2233 But I do have some questions for the sponsor of the amendment,  
2234 if you wouldn't mind entering into a colloquy with me.

2235 Mr. Bishop. I yield.

2236 Mr. Gaetz. Why in on the second page part two, do you  
2237 foreclose the option for a consent decree? For example, if the  
2238 amendment were operative and Google showed up and they said here  
2239 is our plan to divest of YouTube. This is our plan to divest  
2240 of these other product lines, why is that foreclosed as a way  
2241 to resolve the dispute?

2242 Mr. Bishop. Because, it goes precisely, Mr. Gaetz, to the  
2243 general point that I have made. If we are serious about breaking  
2244 up big tech, you have made the showing that is required quite  
2245 simple. It is not like it is some speculative long term thing.

2246 You have made that by virtue of the substantive provisions of  
2247 the bill very clear. Let's approve those and go do it.

2248 I don't want the situation where the threat of doing that  
2249 is held over the heads of tech companies for whether it is campaign  
2250 contributions or to come to heel on the way they are operating  
2251 so they can more effectively censor and repress conservatives,  
2252 whatever the objective may be. Let's get out of that. Let's  
2253 go forward and get them broken up, if that is really what they  
2254 want to do.

2255 Mr. Gaetz. Could you see the possibility though where a  
2256 consent decree would have terms that would be more market  
2257 favorable than the ultimate outcome of the litigation  
2258 contemplated?

2259 Mr. Bishop. Not if we are agreed that breaking them up is  
2260 the thing to do.

2261 Mr. Gaetz. Oh, no. You had me in hello there.

2262 Mr. Bishop. Then there should be no concern.

2263 Mr. Gaetz. Let me understand perhaps the reason why other  
2264 antitrust laws would be suspended in their enforcement beyond  
2265 the four corners of the act and this is like page 1, line 12 of  
2266 the amendment.

2267 Mr. Bishop. I would submit, as I just did to Mr. Cicilline,  
2268 that I wouldn't object to some friendly modification of the  
2269 amendment on that sole point. But again, the thrust of the  
2270 amendment in toto is to get at, in the most efficient way, the  
2271 breakup that the sponsors of this bill say they want.

2272 Mr. Gaetz. So I don't think it is a debatable point that  
2273 this is a more streamlined and efficient process than what is  
2274 contemplated in the Jayapal bill. But answer this question.  
2275 Do you believe that the outcome of the breakup is more likely  
2276 in the amendment than the Jayapal bill? Because to me the  
2277 underlying Jayapal bill might have greater likelihood, but with  
2278 lower efficiency, and the amendment might have lower likelihood,

2279 but greater efficiency, but I will allow you to disabuse me of  
2280 that.

2281 Mr. Bishop. I do not concur because I believe the factual  
2282 questions about what leads to a breakup are so clear in the bill  
2283 that the best way for that to proceed is without bureaucratic  
2284 dogma. I don't see why -- I see no reason to believe that a  
2285 breakup would be likelier. I think it is likelier that some  
2286 mischief creeps in if you leave is in an administrative process  
2287 or have intervening administrative processes before you get to  
2288 the real --

2289 Mr. Gaetz. What is the operative part of the amendment that  
2290 demands that the litigation commence?

2291 Mr. Bishop. It is here. It is at the bottom of the first  
2292 page. It says they shall not undertake an administrative  
2293 adjudication to enforce the antitrust laws of this act, the part  
2294 that you were concerned about, against a covered platform, and  
2295 shall only enforce the antitrust laws against a covered platform  
2296 by bringing a civil action in any judicial district proffered  
2297 under Section --

2298 Mr. Gaetz. But Mr. Bishop, that means that they could only  
2299 enforce through the litigation, but I don't see in that language  
2300 where it necessitates the litigation or prompts it specifically.

2301 Would you be amenable to a perfecting amendment on that  
2302 point?

2303 Mr. Bishop. I would. I would. But I think the word shall  
2304 is what is intended. But I could see the reading of it that would  
2305 lead that in question as to whether they still have discretion  
2306 whether to do it.

2307 Mr. Gaetz. So as I understand in my final 30 seconds of  
2308 this colloquy, you are amenable to a perfecting amendment on the  
2309 necessity to bring the action, the process by which is laid out,  
2310 and you are amenable to allow enforcement of ancillary antitrust  
2311 laws alongside this process that exist outside the four corners  
2312 of the legislation?

2313 Mr. Bishop. Very eloquent summary as always. Yes.

2314 Mr. Gaetz. Thank you. I yield back.

2315 Mr. Cicilline. The gentleman yields back. Does anyone  
2316 else seek recognition?

2317 Mr. Jones. Mr. Chairman.

2318 Mr. Cicilline. The ranking member is recognized.

2319 Mr. Jones. Thank you, Mr. Chairman, strike the last word.

2320

2321 This is a great amendment. I think this is a great  
2322 amendment. I think this is the amendment. As the gentleman from  
2323 North Carolina said, this is, if we are breaking up big tech this  
2324 is the way to do it in an expedited fashion in the judiciary.

2325 Instead of going to the FTC and the cumbersome process, the  
2326 definitions -- the words we don't have defined and everything,

2327 instead of going there, go to court.

2328 I mean there is a reason so many, from our side, so many  
2329 conservatives are opposed to this package of bills because they  
2330 don't want to invest all the power with this Commission,  
2331 particularly the people who are in charge of this Commission.

2332 The reason is the present chief of staff is against this,  
2333 Dan Bongino, individuals from Breitbart News, One America News,  
2334 Fox, Maria Bartiromo, Heritage Foundation, Larry Cutlass, Tara  
2335 Carter, just to name a few. There is a reason they are opposed  
2336 to this.

2337 So our position, I think the majority of Republicans, our  
2338 position over the last two days has been let's do three things.

2339 Let's first have accountability. Let's change Section 230, take  
2340 away the liability protection that big tech has. Let's allow  
2341 an explicit private right of action to hold big tech accountable.

2342

2343 et's have transparency, element two, the one agency bill  
2344 was offered as an amendment. Mr. Issa offered, the Democrats  
2345 voted it down. Mr. Issa offered an amendment for any content  
2346 moderation decisions made by big tech, they would have to post  
2347 why they did it, how they did it, who they did it to.

2348 And then I think the last element, we need accountability.

2349 We need transparency. And now we need speed. That is what the  
2350 gentleman's amendment does. It says you want an answer, you want

2351 to break them up? Let's do it. Expedited judicial review  
2352 process, get them to the Supreme Court. Let's get an answer to  
2353 this question that we all care about. That makes a lot of sense  
2354 to me.

2355 In fact, the Trump Justice Department has two such actions  
2356 as we speak. Trump Justice Department -- Justice Department has  
2357 sued -- excuse me, Trump Justice Department, Trump FTC, the Trump  
2358 FTC has also brought an antitrust action against Facebook. So  
2359 let's get the answers. Let's find out. That is what this  
2360 amendment does.

2361 So our plan, different from giving all the power to the FTC  
2362 is hold big tech accountable, take away their liability  
2363 protections, Section 230, explicit private right of action,  
2364 transparency, one agency, don't have this FTC, DOJ, all this  
2365 hodgepodge how it works, one agency. And when content moderation  
2366 decisions are made, big tech has to post why they did it to you,  
2367 and then speed. Mr. Bishop's amendment.

2368 I thought there was another point the chairman made. If  
2369 this amendment is not adopted, it is not going to preclude a long,  
2370 drawn out court process. We know that is going to happen. We  
2371 don't even know how many businesses we are dealing with here.

2372 On the one hand, the chairman had said it was a 16-month  
2373 investigation on four companies, four companies alone. And then  
2374 he also says, but maybe Microsoft is covered, we don't know.



2375 So the folks who wrote the bill don't even know how many covered  
2376 platforms, how many businesses we are talking about. That is  
2377 a concern.

2378 I think this a great amendment. I would urge its adoption.

2379 I think it cuts to the chase and is the remedy we have been looking  
2380 at. With that, I yield back.

2381 Mr. Cicilline. The gentleman yields back. For what  
2382 purposes does the gentleman from New York seek recognition?

2383 Mr. Jones. Thank you, Mr. Chairman. I was interested in  
2384 the discussion about --

2385 Mr. Cicilline. The gentleman is recognized for five  
2386 minutes.

2387 Mr. Jones. I am sorry. Motion to strike. I was interested  
2388 in this discussion of what conservatives want to see occur with  
2389 respect to the big tech monopolies in our economy because none  
2390 other than Ann Coulter retweeted me several months ago when I  
2391 said that we need to break up big tech in the midst of this Gilded  
2392 Age that we are currently experiencing.

2393 Of course, I am speaking in opposition to the amendment and  
2394 I am grateful, by the way, for the substantive debate that we  
2395 are having about this. I am grateful to Mr. Bishop for his  
2396 engagement on this issue throughout the markup. And I am also  
2397 grateful to Representative Jayapal, Gooden, and of course, you,  
2398 Mr. Chairman, and Chairman Nadler, and Ranking Member Buck,

2399 because I think we have struck the right balance in this bill  
2400 without the amendment that has been proposed  
2401 between congressional, executive, and judicial involvement in  
2402 this process.

2403 Let me add, too, by the way, that consent decrees are an  
2404 essential part of an efficient judicial administration of the  
2405 laws as they can help businesses, big and small alike, resolve  
2406 disputes on the best terms for them. We should not rule them  
2407 out and I am surprised to hear some of my free market friends  
2408 say otherwise.

2409 I want to address the issue Mr. Jordan just raised, constant  
2410 moderation. Because to me, structural separation is essential  
2411 to tackling our problems with content moderation. People on both  
2412 sides of the aisle have concerns about this issue on multiple  
2413 platforms.

2414 It is not lost on me that Facebook facilitated an  
2415 insurrection that almost took my life and the lives of many of  
2416 us here today. The truth is breaking up these monopolies is  
2417 essential to addressing the issue we all have with content  
2418 moderation problems.

2419 By any means, my conservative colleagues typically claim  
2420 that they support competition. I thought that is why Mr. Jordan  
2421 tweeted break them up not two months ago in reference to Facebook.

2422

2423           In three ways, breaking up big tech will create the  
2424 competition that we need to get better content moderation.

2425           First, the more competition there is for online platforms,  
2426 the more options all of us will have. Our democracy won't be  
2427 captive to the rules set by one or two unaccountable corporations.

2428           Second, the more competition there is, the more pressure  
2429 even the dominant platforms will face to develop the rules that  
2430 we want to see in our online spaces.

2431           And third, regulating and breaking up these companies makes  
2432 it easier than ever to compel them to actually follow the law  
2433 rather than get away with profiting from enabling and illegal  
2434 conduct.

2435           We bill, we need to do our part to address content moderation  
2436 problems, is the bill we have before us right now, unamended.

2437           So I oppose this amendment. I ask my colleagues to do the same.

2438           And I urge everyone to support the underlying bill. And I yield  
2439 back the balance of my time, Mr. Chairman.

2440           Mr. Cicilline. The gentleman yields back. Does anyone  
2441 else seek recognition? I am sorry.

2442           Mr. Biggs. Yes.

2443           Mr. Cicilline. I apologize. Mr. Biggs is recognized.

2444           Mr. Biggs. Thank you. I move to strike the last word.

2445           Mr. Cicilline. The gentleman is recognized for five  
2446 minutes.

2447           Mr. Biggs. Thank you so much, Mr. Chairman. I am intrigued  
2448 by this amendment. I think it gets at ultimately the location  
2449 that many of us want to get to and that is to basically break  
2450 up these, certainly, these four major bad actors that are abusing  
2451 the American consumer and businesses.

2452           So one of the things that I had jotted down earlier today  
2453 is what I would like to see when we were having this colloquy  
2454 with Mr. Bishop much earlier. I wanted to see, you would allow  
2455 the covered platform definition that has already been in place  
2456 in the legislation. You would define your triggering misconduct  
2457 which the underlying Jayapal bill does. And you would order your  
2458 administrative agency, the FTC, to bring the lawsuit. You would  
2459 allow -- this amendment doesn't do this, but you would allow to  
2460 provide an opportunity for affirmative defenses. You would have  
2461 a trial to the court in an Article 3 court. And if judgment was  
2462 made, you would have a special master appointed and a direct appeal  
2463 to the U.S. Supreme Court. I mean that was just broad terms.

2464           This amendment kind of covers most of that. And what  
2465 Representative Bishop has indicated is he would be willing to  
2466 entertain something.

2467           So for instance, on the amendment that I would offer to this  
2468 amendment were I was doing this, or the correction I should say,  
2469 or the difference I would make, is on line 13 of page 1. I would  
2470 delete the word only. So you would have that the FTC would bring

2471 the lawsuit. They would bring the litigation. They would go  
2472 forward with that litigation.

2473 And then on his prohibition on pre-litigation, it seems to  
2474 me that because he doesn't want it held over their head, so they  
2475 would come in and bust up on the settlement, that you would just  
2476 include on line nine, you would say prior to the conclusion of  
2477 the trial set forth in paragraph five, you couldn't, they couldn't  
2478 settle or bring -- enter into an agreement. That way you would  
2479 have the adjudication. They have the due process. And then they  
2480 could step in and if it has been adjudicated, indeed, that they  
2481 have violated these antitrust laws and they are going to have  
2482 to break it up, you need a mechanism. The mechanism is going  
2483 to be a special master.

2484 That is typically what is going to happen in these case,  
2485 and other antitrust cases as well. And so you would appoint your  
2486 special master. The special master would be free to accept the  
2487 proposed -- if there is a settlement agreement at that point,  
2488 an offer of settlement, you could do that. Or they could take  
2489 it on appeal.

2490 It seems to me that that is the much more streamline, quicker  
2491 way, efficient way to get to what, if I understand what we have  
2492 spent 20 some odd hours doing, is what we want to do. That is  
2493 why I am so intrigued by this amendment and I think it is fulsome  
2494 and it is good. And I would like to see us do that.

2495           And so, Mr. Chairman, I do support this amendment and I think  
2496 that with a couple of language changes in here, we could probably  
2497 certainly get to some of this.

2498           And I am going to ask Mr. Bishop if this language that I  
2499 have briefed you on, those kind of minor changes in here, would  
2500 you be amenable to those changes?

2501           Mr. Bishop. I thank the gentleman. And having looked at  
2502 them briefly, I think they are exactly the kind of perfecting  
2503 amendments that would be necessary to do as Mr. Gaetz suggested  
2504 in the colloquy we had. I think that is the right way to get  
2505 the amendment squared up.

2506           Mr. Biggs. Thank you, Mr. Bishop. And I will yield back  
2507 to the chair.

2508           Mr. Cicilline. Thank you, Mr. Biggs. I would say Mr. Biggs  
2509 expressed the sentiments of many people on both sides of the aisle  
2510 that this is a very intriguing amendment and even for those of  
2511 us who think there is some additional work that needs to be done,  
2512 we have a lot of confidence that you and Mr. Roy and Ms. Jayapal  
2513 can arrive at some language that will work. But I really just,  
2514 however I vote on this, I want to just acknowledge your very  
2515 thoughtful and really -- you get the award for the most interesting  
2516 amendment of the markup. So congratulations.

2517           Anyone else? All right, seeing no further request for  
2518 recognition, the question is on the amendment.

2519 Those in favor say aye.

2520 Those opposed no.

2521 In the opinion of the chair, the nos have it. The amendment  
2522 is not agreed to.

2523 Mr. Bishop. Call for a roll call vote, please

2524 Mr. Cicilline. Roll call has been requested. The Clerk  
2525 will please call the roll.

2526 Ms. Fontenot. Mr. Nadler.

2527 Ms. Lofgren.

2528 Ms. Lofgren. No

2529 Ms. Fontenot. Ms. Lofgren votes no.

2530 Ms. Jackson Lee.

2531 Ms. Jackson Lee. No.

2532 Ms. Fontenot. Ms. Jackson Lee votes no.

2533 Mr. Cohen.

2534 Mr. Cohen. No

2535 Ms. Fontenot. Mr. Cohen votes no.

2536 Mr. Johnson of Georgia.

2537 Mr. Johnson of Georgia. No.

2538 Ms. Fontenot. Mr. Johnson of Georgia votes no.

2539 Mr. Deutch.

2540 Mr. Deutch. No.

2541 Ms. Fontenot. Mr. Deutch votes no.

2542 Ms. Bass.

2543 Ms. Bass. No.

2544 Ms. Fontenot. Ms. Bass votes no.

2545 Mr. Jeffries.

2546 Mr. Cicilline.

2547 Mr. Cicilline. No.

2548 Ms. Fontenot. Mr. Cicilline votes no.

2549 Mr. Swalwell. Mr. Swalwell.

2550 Mr. Swalwell. No. Swalwell votes no.

2551 Ms. Fontenot. Mr. Swalwell votes no.

2552 Mr. Lieu.

2553 Mr. Raskin.

2554 Mr. Raskin. No.

2555 Ms. Fontenot. Mr. Raskin votes no.

2556 Ms. Jayapal.

2557 Ms. Jayapal. No.

2558 Ms. Fontenot. Ms. Jayapal votes no.

2559 Ms. Demings.

2560 Ms. Demings. No.

2561 Ms. Fontenot. Ms. Demings votes no.

2562 Mr. Correa.

2563 Mr. Correa. No.

2564 Ms. Fontenot. Mr. Correa votes no.

2565 Ms. Scanlon.

2566 Ms. Scanlon. No.



2567 Ms. Fontenot. Ms. Scanlon votes no.  
2568 Ms. Garcia.  
2569 Ms. Garcia. No.  
2570 Ms. Fontenot. Ms. Garcia votes no.  
2571 Mr. Neguse.  
2572 Mr. Neguse. No.  
2573 Ms. Fontenot. Mr. Neguse votes no.  
2574 Ms. McBath.  
2575 Mr. Stanton.  
2576 Mr. Stanton. No.  
2577 Ms. Fontenot. Mr. Stanton votes no.  
2578 Ms. Dean.  
2579 Ms. Escobar.  
2580 Ms. Escobar. No.  
2581 Ms. Fontenot. Ms. Escobar votes no.  
2582 Mr. Jones.  
2583 Mr. Jones. No.  
2584 Ms. Fontenot. Mr. Jones votes no.  
2585 Ms. Ross.  
2586 Ms. Bush.  
2587 Ms. Bush. No.  
2588 Ms. Fontenot. Ms. Bush votes no.  
2589 Mr. Jordan.  
2590 Mr. Jordan. Yes.

2591 Ms. Fontenot. Mr. Jordan votes yes.

2592 Mr. Chabot.

2593 Mr. Chabot. Aye.

2594 Ms. Fontenot. Mr. Chabot votes aye.

2595 Mr. Gohmert.

2596 Mr. Issa.

2597 Mr. Issa. Yes.

2598 Ms. Fontenot. Mr. Issa votes yes.

2599 Mr. Buck.

2600 Mr. Buck. No.

2601 Ms. Fontenot. Mr. Buck votes no.

2602 Mr. Gaetz.

2603 Mr. Gaetz. No.

2604 Ms. Fontenot. Mr. Gaetz votes no.

2605 Mr. Johnson of Louisiana.

2606 Mr. Johnson of Louisiana. Yes.

2607 Ms. Fontenot. Mr. Johnson of Louisiana votes yes.

2608 Mr. Biggs.

2609 Mr. Biggs. Yes.

2610 Ms. Fontenot. Mr. Biggs votes yes.

2611 Mr. McClintock.

2612 Mr. Steube.

2613 Mr. Steube. Yes.

2614 Ms. Fontenot. Mr. Steube votes yes.

2615 Mr. Tiffany.

2616 Mr. Tiffany. Mr. Chairman, is this the Bishop Amendment?

2617 Aye.

2618 Ms. Fontenot. Mr. Tiffany votes aye.

2619 Mr. Massie.

2620 Mr. Massie. Aye.

2621 Ms. Fontenot. Mr. Massie votes aye.

2622 Mr. Roy.

2623 Mr. Roy. Aye.

2624 Ms. Fontenot. Mr. Roy votes aye.

2625 Mr. Bishop.

2626 Mr. Bishop. Yes.

2627 Ms. Fontenot. Mr. Bishop votes yes. Ms. Fischbach.

2628 Ms. Fischbach. Yes.

2629 Ms. Fontenot. Ms. Fischbach votes yes.

2630 Ms. Spartz.

2631 Mrs. Spartz. Yes.

2632 Ms. Fontenot. Ms. Spartz votes yes. Mr. Fitzgerald.

2633 Mr. Fitzgerald. Aye.

2634 Ms. Fontenot. Mr. Fitzgerald votes aye.

2635 Mr. Bentz.

2636 Mr. Bentz. Mr. Bentz votes aye.

2637 Ms. Fontenot. Mr. Bentz votes aye. Mr. Owens.

2638 Chairman Nadler. Madam Clerk, how am I recorded?

2639 Ms. Fontenot. Mr. Nadler, you are not recorded.

2640 Chairman. Nadler. No

2641 Ms. Fontenot. Mr. Nadler votes no.

2642 Ms. Fontenot. Ms. Dean, you are not recorded.

2643 Ms. Dean. No.

2644 Ms. Fontenot. Ms. Dean votes no.

2645 Ms. Fontenot. Mr. Jeffries, you are not recorded.

2646 Mr. Jeffries. No.

2647 Ms. Fontenot. Mr. Jeffries votes no.

2648 Mr. Lieu.. Mr. Chair, how am I recorded?

2649 Ms. Fontenot. Mr. Lieu, you are not recorded.

2650 Mr. Lieu. Lieu votes no.

2651 Ms. Fontenot. Mr. Lieu votes no.

2652 Chairman Nadler. Are there any other members who wish to

2653 be recorded who have not been recorded? The Clerk will report.

2654 The Clerk will report.

2655 Ms. Fontenot. Mr. Chairman, there are 14 ayes and 25 noes.

2656 Chairman Nadler. The amendment is not agreed to. The

2657 question occurs on the amendment in the nature of a substitute.

2658 This will be followed immediately by a vote and final passage

2659 of the bill.

2660 All those in favor, respond say aye.

2661 (Chorus of aye.)

2662 Chairman Nadler. Opposed, no.

2663 (Chorus of no.)

2664 Chairman Nadler. In the opinion of the Chair the ayes have  
2665 it, and the amendment in the nature of a substitute is agreed  
2666 to.

2667 A reporting quorum being present, the question is on the  
2668 motion to report the bill HR 3825 as amended favorably to the  
2669 House. Those in favor, respond by saying aye.

2670 (Chorus of aye.)

2671 Chairman Nadler. Opposed, no.

2672 (Chorus of no.)

2673 Chairman Nadler. The ayes have it and the bill is ordered  
2674 reported favorably. I assume somebody wants a recorded vote.

2675 A recorded vote has been requested. The Clerk will call the  
2676 roll.

2677 Ms. Fontenot. Mr. Nadler.

2678 Chairman Nadler. Aye.

2679 Ms. Fontenot. Mr. Nadler votes aye.

2680 Ms. Lofgren.

2681 Ms. Lofgren. No.

2682 Ms. Fontenot. Ms. Lofgren votes no.

2683 Ms. Jackson Lee.

2684 Ms. Jackson Lee. Aye.

2685 Ms. Fontenot. Ms. Jackson Lee votes aye.

2686 Mr. Cohen. Mr. --

2687 Mr. Cohen. Cohen votes aye.

2688 Ms. Fontenot. Mr. Cohen votes aye.

2689 Mr. Johnson of Georgia.

2690 Mr. Johnson of Georgia. Aye.

2691 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

2692 Mr. Deutch.

2693 Mr. Deutch. Aye.

2694 Ms. Fontenot. Mr. Deutch votes aye.

2695 Ms. Bass.

2696 Ms. Bass. Aye.

2697 Ms. Fontenot. Ms. Bass votes aye.

2698 Mr. Jeffries.

2699 Mr. Jeffries. Aye.

2700 Ms. Fontenot. Mr. Jeffries votes aye.

2701 Mr. Cicilline.

2702 Mr. Cicilline. Aye.

2703 Ms. Fontenot. Mr. Cicilline votes aye.

2704 Mr. Swalwell.

2705 Mr. Swalwell. No.

2706 Ms. Fontenot. Mr. Swalwell votes no.

2707 Mr. Lieu.

2708 Mr. Lieu. Aye.

2709 Ms. Fontenot. Mr. Lieu votes aye.

2710 Mr. Raskin.

2711 Mr. Raskin. Aye.

2712 Ms. Fontenot. Mr. Raskin votes aye.

2713 Ms. Jayapal.

2714 Ms. Jayapal. Aye.

2715 Ms. Fontenot. Ms. Jayapal votes aye.

2716 Ms. Demings.

2717 Ms. Demings. Aye.

2718 Ms. Fontenot. Ms. Demings votes aye.

2719 Mr. Correa.

2720 Ms. Scanlon.

2721 Ms. Scanlon. Aye.

2722 Ms. Fontenot. Ms. Scanlon votes aye.

2723 Ms. Garcia.

2724 Ms. Garcia. Aye.

2725 Ms. Fontenot. Ms. Garcia votes aye.

2726 Mr. Neguse.

2727 Mr. Neguse. Aye.

2728 Ms. Fontenot. Mr. Neguse votes aye.

2729 Ms. McBath.

2730 Mr. Stanton.

2731 Mr. Stanton. No.

2732 Ms. Fontenot. Mr. Stanton votes no.

2733 Ms. Dean.

2734 Ms. Dean. Aye.

2735 Ms. Fontenot. Ms. Dean votes aye.  
2736 Ms. Escobar.  
2737 Ms. Escobar. Aye.  
2738 Ms. Fontenot. Ms. Escobar votes aye.  
2739 Mr. Jones.  
2740 Mr. Jones. Aye.  
2741 Ms. Fontenot. Mr. Jones votes aye.  
2742 Ms. Ross.  
2743 Ms. Bush.  
2744 Ms. Bush. Pass.  
2745 Ms. Fontenot. Ms. Bush passes.  
2746 Mr. Jordan.  
2747 Mr. Jordan. No.  
2748 Ms. Fontenot. Mr. Jordan votes no.  
2749 Mr. Chabot.  
2750 Mr. Chabot. No.  
2751 Ms. Fontenot. Mr. Chabot votes no.  
2752 Mr. Gohmert.  
2753 Mr. Issa.  
2754 Mr. Issa. No.  
2755 Ms. Fontenot. Mr. Issa votes no.  
2756 Mr. Buck.  
2757 Mr. Buck. Aye.  
2758 Ms. Fontenot. Mr. Buck votes aye.



2759 Mr. Gaetz.

2760 Mr. Gaetz. Aye.

2761 Ms. Fontenot. Mr. Gaetz votes aye.

2762 Mr. Johnson of Louisiana.

2763 Mr. Johnson of Louisiana. No.

2764 Ms. Fontenot. Mr. Johnson of Louisiana votes no.

2765 Mr. Biggs.

2766 Mr. Biggs. No.

2767 Ms. Fontenot. Mr. Biggs votes no.

2768 Mr. McClintock.

2769 Mr. McClintock. No.

2770 Ms. Fontenot. Mr. McClintock votes no.

2771 Mr. Steube.

2772 Mr. Steube. No.

2773 Ms. Fontenot. Mr. Steube votes no.

2774 Mr. Tiffany.

2775 Mr. Tiffany. No.

2776 Ms. Fontenot. Mr. Tiffany votes no.

2777 Mr. Massie.

2778 Mr. Massie. No.

2779 Ms. Fontenot. Mr. Massie votes no.

2780 Mr. Roy.

2781 Mr. Roy. No.

2782 Ms. Fontenot. Mr. Roy votes no.

2783 Mr. Bishop.

2784 Mr. Bishop. No.

2785 Ms. Fontenot. Mr. Bishop votes no. Ms. Fischbach.

2786 Ms. Fischbach. No.

2787 Ms. Fontenot. Ms. Fischbach votes no.

2788 Ms. Spartz.

2789 Mrs. Spartz. No.

2790 Ms. Fontenot. Ms. Spartz votes no. Mr. Fitzgerald.

2791 Mr. Fitzgerald. No.

2792 Ms. Fontenot. Mr. Fitzgerald votes no.

2793 Mr. Bentz.

2794 Mr. Bentz. Mr. Bentz votes no.

2795 Ms. Fontenot. Mr. Bentz votes no. Mr. Owens.

2796 Mr. Correa, you are not recorded.

2797 Mr. Correa. No.

2798 Ms. Fontenot. Mr. Correa votes no.

2799 Mr. Gohmert. How is Gohmert recorded?

2800 Ms. Fontenot. Mr. Gohmert, you are not recorded.

2801 Mr. Gohmert. No.

2802 Ms. Fontenot. Mr. Gohmert votes no.

2803 Ms. Bush. Ms. Bush votes yes.

2804 Ms. Fontenot. Ms. Bush votes yes.

2805 Chairman Nadler. The Clerk will report.

2806 Ms. Fontenot. Mr. Chairman, there are 21 ayes and 20 noes.

2807 Chairman Nadler. The ayes have it and the bill is -- the  
2808 bill is amended -- is it amended? The bill is amended, it is  
2809 ordered reported favorably to the House. Members will have two  
2810 days to submit vies.

2811 Without objection the bill be reported as a single amendment  
2812 in the nature of a substitute incorporating all adopted  
2813 amendments. The staff is authorized to make technical and  
2814 conforming changes.

2815 Mr. Cicilline.

2816 Mr. Cicilline. Thank you, Mr. Chairman. I was just asking  
2817 unanimous consent for Mr. Buck and I to have 30 seconds to address  
2818 the Committee.

2819 Chairman Nadler. Without objection.

2820 Mr. Cicilline. Mr. Chairman, I just want to thank you,  
2821 Ranking Member Jordan for the markup. But I particularly want  
2822 to acknowledge the extraordinary leadership of my ranking member  
2823 of the Subcommittee, Ken Buck, and all the members of the Judiciary  
2824 Committee, who I think deliberated and had really productive,  
2825 important conversations that need to happen.

2826 I think it produced better results in terms of the final  
2827 markup, and I'm confident it's going to produce even better  
2828 results before we take these bills to the floor.

2829 But I think this is the kind of deliberation and serious  
2830 work that our constituents have come to expect. It's going to

2831 make a real difference in the lives of small businesses,  
2832 entrepreneurs, our economy broadly. And I couldn't be prouder  
2833 to be a member of this committee, and I want to yield now to my  
2834 ranking member.

2835 Chairman Nadler. Mr. Buck.

2836 Mr. Buck. I thank the ranking member of the Subcommittee.  
2837 I want to thank you, Mr. Chairman, and Mr. Cicilline. I  
2838 especially want to thank Mr. Jordan, and I want to thank the other  
2839 members who had problems with these bills, brought their  
2840 amendments forward.

2841 I think it is so important, frankly, that Congress works  
2842 this way, that we fight a little bit but we don't get personal.  
2843 And I think that's what we accomplished today, and I am proud.

2844

2845 And I can tell everybody that's listening, these bills won't  
2846 look the same when the President signs them, they will be much  
2847 better. But this process helped make them better right now.  
2848 So thank you very much. I yield back.

2849 Mr. Cicilline. And finally, Mr. Chairman, I have a  
2850 unanimous consent request. I ask unanimous consent to enter into  
2851 the record a list of documents, letters in support of the package.

2852 Chairman Nadler. Without objection. Mr. Roy.

2853 Mr. Roy. Mr. Chairman, as a former staffer I just want to  
2854 thank the staff, the Clerk. I'm not sure I ever saw them get

2855 up from the table through 28 hours, 29 hours, however long, so  
2856 just thank you all very much.

2857 (Applause.)

2858 Chairman Nadler. And I want to thank all the members for  
2859 their fortitude in this rather lengthy process, and the staff,  
2860 especially the reporters.

2861 This concludes our business for today. Thanks to all our  
2862 members for attending. Without objection, the markup is finally  
2863 adjourned.

2864 (Whereupon, the above-entitled matter went off the record  
2865 at 3:00 p.m.)