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MARKUP TO AUTHORIZE THE ISSUANCE OF SUBPOENAS; AND
H.R. 2850, THE EPA HYDRAULIC FRACTURING STUDY IMPROVEMENT ACT
Thursday, August 1, 2013
House of Representatives,
Committee on Science, Space, and Technology,
Washington, D.C.

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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8 | Committee on Science, Space, and Technology,

9 | Washington, D.C.

10 | The Committee met, pursuant to call, at 10:03 a.m., in
11 | Room 2318 of the Rayburn House Office Building, Hon. Lamar
12 | Smith [Chairman of the Committee] presiding.

13 Chairman SMITH. The Committee on Science, Space, and
14 Technology will come to order. Without objection, the Chair
15 is authorized to declare recesses of the Committee at any
16 time. Pursuant to Committee Rule II(f) and House Rule
17 XI(2)(H)(4), the Chair announces that he may postpone roll
18 call votes on matters in which the yeas and nays are ordered
19 until the end of the markup.

20 Welcome to today's full committee business meeting. We
21 meet today for two purposes: to authorize the issuance of
22 subpoenas and to mark up H.R. 2850, "The EPA Hydraulic
23 Fracturing Study Improvement Act."

24 Pursuant to notice, I now call up the Resolution
25 authorizing the issuance of subpoenas to the Environmental
26 Protection Agency to obtain data from certain studies. And
27 the clerk will report the Resolution.

28 The CLERK. Resolution offered by Mr. Smith. Be it
29 resolved that the Committee on Science, Space, and Technology
30 that upon adoption of this Resolution, the Chairman of the
31 Committee is authorized to issue subpoenas duces tecum for
32 any and all research data, information, documents, and other
33 records which may be de-identified relating to the Harvard
34 Six Cities Study.

35 [The information follows:]

36 ***** INSERT 1 *****

37 Chairman SMITH. Without objection, the Resolution will
38 be considered as read and open for amendment at any point.

39 And I will recognize myself for 5 minutes for an opening
40 statement.

41 Today, we consider the Committee's first subpoena in 21
42 years. Unfortunately, we have been put in this position by
43 an agency that willfully disregards Congressional requests
44 and makes its rules using undisclosed data. This subpoena
45 could have been avoided.

46 For almost 2 years, this Committee has been waiting for
47 the Environmental Protection Agency to release the
48 taxpayer-funded research data it uses to justify its Clean
49 Air Act regulations. At a hearing 20 months ago,
50 then-Assistant Administrator Gina McCarthy committed to make
51 the data underlying EPA's claims publically available.

52 Despite multiple requests since that time, the EPA has
53 failed to produce the promised information. In the meantime,
54 the Agency has continued to propose and finalize regulations
55 based on this undisclosed data. If the EPA has nothing to
56 hide, why not make the information public as they promised?

57 The EPA should not base its regulations on secret data.
58 By denying the Committee's request, the agency prevents
59 Congress from fulfilling its oversight responsibilities and
60 denies the American people the ability to verify EPA's
61 claims. And the EPA's lack of cooperation contributes to the

62 | suspicion that the data don't support the Agency's actions.
63 | The American people deserve all of the facts and have a right
64 | to know whether the EPA is using good science.

65 | Nearly all of this Administration's air quality
66 | regulations are justified on the basis of this hidden data.
67 | These regulations impose billions of dollars in compliance
68 | costs that harm businesses and working families. We need to
69 | determine whether those regulations are justified or not.

70 | There is another reason to question the EPA: some of the
71 | data may be decades old--in fact, 30 years old or older--and
72 | has not been updated or independently verified. Even the
73 | President's own Office of Management and Budget has
74 | acknowledged that ``significant uncertainty remains'' about
75 | EPA's claims, and argued that they ``may be misleading.''
76 | The American people need to know if the EPA is being honest
77 | with them or using the data in a dishonest way.

78 | The Committee has been more than patient in its request
79 | for information. Gina McCarthy committed to providing the
80 | data during a September 15, 2011, hearing. When the Agency
81 | failed to abide by that commitment, the Committee again
82 | requested the information in letters dated November 15, 2011;
83 | December 12, 2011; December 13, 2012; March 4, 2013; and June
84 | 12, 2013; and June 29, 2013.

85 | After 2 years of failing to respond, it is clear that
86 | the EPA is not going to give the American people what they

87 | deserve: the truth about these regulations. The EPA should
88 | be held accountable for its actions, and the validity of its
89 | regulations should be verified by independent scientists.

90 | Because the EPA is not adhering to the very principles
91 | of transparency and open government that the President so
92 | often proclaims, the Committee will need to approve this
93 | subpoena.

94 | And that concludes my opening statement.

95 | [The statement of Mr. Smith follows:]

96 | ***** INSERT 2 *****

97 Chairman SMITH. And the gentlewoman from Texas, the
98 Ranking Member Ms. Johnson, is recognized for her opening
99 statement.

100 Ms. JOHNSON. Thank you very much, Mr. Chairman. Today,
101 we are meeting to authorize the issuance of a subpoena and
102 also to markup H.R. 2850 to require certain procedures in the
103 conduct by the Environmental Protection Agency of its study
104 of the potential impacts of hydraulic fracturing on drinking
105 water resources.

106 Let me start off by saying that this is truly a sad day
107 in the storied history of this committee. At the start of
108 this Congress, I had high hopes that we would lead us into a
109 bipartisan fashion as befits the history of the Committee. I
110 have been sorely disappointed. This Subpoena Resolution is a
111 culmination of a year of hyper-partisan activity, which is
112 unprecedented for our committee. In that regard, the
113 partisan vote to report out the majority's mass authorization
114 2 weeks ago was an unfortunate milestone. Mr. Chairman, I am
115 unaware in the entire history of this committee of a NASA
116 authorization ever being reported out of committee on a party
117 line vote, never.

118 Somehow, we are managing to top that unprecedented level
119 of partisanship today with this dreadful Subpoena Resolution.

120 There are so many problems with both this Resolution and
121 with the process you have used to get here that it is

122 | difficult to know where to start. Perhaps I should start
123 | with the numerous mischaracterizations contained in your July
124 | 22 letter to EPA, as well as in the majority's markup memo.
125 | In both of these documents it is insinuated that both the
126 | Harvard Six Cities study and the American Cancer Society's
127 | study are bad science or secret science. However, you
128 | provide no evidence to support those claims.

129 | Of course, neither of these claims are true. In fact,
130 | these studies are similar works which are widely respected in
131 | the scientific community. Moreover, there has been extensive
132 | peer review, real analysis, and validation work on the
133 | studies. And these facts should come as no shock to you as
134 | the EPA has pointed this out repeatedly.

135 | I would ask at this point to insert EPA's July 30
136 | response letter to the Committee in the record.

137 | Chairman SMITH. Without objection, so ordered.

138 | [The information follows:]

139 | ***** COMMITTEE INSERT *****

140 Ms. JOHNSON. Okay. The notion that the studies are EPA
141 secret science is also false. First of all, neither of these
142 studies were conducted by EPA. Second, none of the data
143 cohort used in these studies are secret. They are, however,
144 confidential and for good reason. These cohorts contain the
145 personal health information of over a million American
146 citizens. This information should not--should be highly
147 protected.

148 However, legitimate scientific researchers do have
149 access to this data and scores of research teams from around
150 the country have accessed this data to conduct scientific
151 research. You should know this, Mr. Chairman. You are Chair
152 of the Committee on Science. Science, and yet so many times
153 this Congress you have exhibited a baffling disregard for the
154 scientific process and the academic and government scientific
155 community in our country--

156 Chairman SMITH. Let me interrupt the gentlewoman for a
157 second. At no point in my Congressional career have I ever
158 attacked anybody personally, and I would appreciate it if she
159 would refrain from imputing my motives as well.

160 Ms. JOHNSON. Well, thank you very much. I will just
161 read what is a fact here. And I repeat the last paragraph.
162 You should know, Mr. Chairman, you are the Chair of the
163 Science Committee. Science, and yet so many times in this
164 Congress you have existed--exhibited a baffling disregard for

165 | the scientific process and the academic and government
166 | scientific community in our country. This is another
167 | example.

168 | And what you seek in this data? Just yesterday, you
169 | readily admitted that you intend to pass this confidential
170 | data to third parties. Who, Mr. Chairman? What legitimate
171 | scientific researcher can't already access this data? I have
172 | to assume you will be passing this data to, excuse my
173 | language, industry hacks. To so blatantly be doing the
174 | bidding of these polluting industries is simply
175 | mind-boggling.

176 | Mr. SENSENBRENNER. Mr. Chairman, I demand the
177 | gentlewoman's words be taken down.

178 | Chairman SMITH. The gentlewoman from Texas will
179 | suspend.

180 | Ms. JOHNSON. I have.

181 | Chairman SMITH. Before we proceed, would the
182 | gentlewoman want to reconsider the words that she has been
183 | using and perhaps either withdraw them or rephrase them?

184 | Ms. JOHNSON. Mr. Chairman, I stand by my words.

185 | Chairman SMITH. The clerk will need to read the words
186 | that have been spoken, and in that regard, we will need to
187 | get a transcript of the statement.

188 | Mr. MAFFEI. Mr. Chairman, I move to strike the last
189 | word.

190 Chairman SMITH. The gentleman from New York, Mr.
191 Maffei, is recognized.

192 Mr. SENSENBRENNER. Mr. Chairman, regular order.

193 Chairman SMITH. Yes, that is--

194 Mr. SENSENBRENNER. Nothing can go on until--

195 Chairman SMITH. That is correct.

196 Mr. SENSENBRENNER. --we hear a ruling on the objection.

197 Chairman SMITH. The gentleman from Wisconsin is
198 correct. I sorry, Mr. Maffei, I will have to wait to
199 recognize you--

200 Mr. MAFFEI. I withdraw the motion.

201 Mr. GRAYSON. Mr. Chairman, I move for a 10-minute
202 recess. I think that is in order.

203 Chairman SMITH. Was that the gentleman from Florida I
204 heard?

205 Mr. GRAYSON. Yes, Mr. Chairman.

206 Chairman SMITH. Would the gentleman repeat the motion
207 or the request that he just made?

208 Mr. GRAYSON. I move for a 10-minute recess. I think
209 that actually is in order.

210 Chairman SMITH. Okay. That is non-debatable and is in
211 order. And if there is no objection, we will have a
212 10-minute recess.

213 [Recess.]

214 Chairman SMITH. The Committee will reconvene and the

215 | gentlewoman from Texas, Ms. Johnson, is recognized.

216 | Ms. JOHNSON. Thank you, Mr. Chairman. I ask that my
217 | offending words be stricken and allow to be restated.

218 | Chairman SMITH. I thank the gentlewoman for making that
219 | offer. It is much appreciated. And without objection, the
220 | words will be stricken. And does the gentlewoman continue to
221 | be recognized or shall we proceed with the--

222 | Ms. JOHNSON. Yes, I have some--what words will be
223 | stricken? What part will be stricken?

224 | Chairman SMITH. The clerk will read the words.

225 | The CLERK. ``And for what do you seek this data? Just
226 | yesterday, you readily admitted that you intend to pass this
227 | confidential data on to third parties. Who, Mr. Chairman?
228 | What legitimate scientific researcher can't already access
229 | this data? I have to assume you will be passing this data
230 | to, excuse my language, industry hacks. To so blatantly be
231 | doing the bidding of the polluting industries is simply
232 | mind-boggling. If the data is not going to be provided to
233 | industry, either directly or indirectly, Members need to know
234 | to whom you will be sending it.''

235 | Chairman SMITH. Okay. Thank you for reading the words.
236 | And the gentlewoman from Texas continues to be recognized.

237 | Ms. JOHNSON. Thank you very much, Mr. Chairman.

238 | I am appalled that this committee seems to be doing the
239 | bidding of polluting industries. If the data is not going to

240 | be provided to industry either directly or indirectly,
241 | Members need to know to whom you will be sending it.

242 | You know for years the tobacco industry tried every
243 | trick in the book to gain access to the American Cancer
244 | Society's data so that their own salaried hacks could
245 | catch--cast doubt on the link between smoking and cancer.
246 | Thankfully, they were largely unsuccessful. And I hope
247 | today's efforts will also fail.

248 | I want to be clear. This is not legitimate oversight.
249 | This is not an appropriate role for this committee. My job
250 | is not to undermine public health at the explicit behest of
251 | polluting industries. Like the Subpoena Resolution, H.R.
252 | 2850 is a continuation of the same theme of political
253 | mismanagement of the scientific process.

254 | I will have more specific comments in my statement on
255 | the bill, but for now, I am simply going to say that it
256 | doesn't seem very well thought out. Mr. Chairman, we can and
257 | should do better than this. I sincerely hope that as we move
258 | forward, the majority will cease their senseless attacks on
259 | the scientific process and the scientific research community.

260 | I thank you and yield back.

261 | [The statement of Ms. Johnson follows:]

262 | ***** INSERT 3 *****

263 Chairman SMITH. Thank you, Ms. Johnson.

264 Are there other Members who wish to be heard on this
265 Resolution?

266 The gentleman from Utah, Mr. Stewart, is recognized.

267 Mr. STEWART. Thank you, Mr. Chairman. Thank you for
268 holding this hearing and thank you for the gracious and, I
269 believe, nonpartisan leadership you have shown on these
270 important matters. I know that you have conducted this
271 committee with integrity and fairness and frankly the display
272 of partisanship and personal attacks that we have witnessed
273 this morning is an example of the challenge that you have.

274 Mr. Chairman, I support this Resolution and I look
275 forward to you promptly issuing a subpoena to obtain this
276 data. In fact, I would say that I plead with you to issue
277 this subpoena. For far too long, the EPA has kept Congress
278 and the American people in the dark concerning claimed
279 benefits of its rules. But I want to reiterate that very
280 simple message that the committee has been repeating for 2
281 years. We should not base regulations on nontransparent
282 information. Is that an unreasonable request? Is that a
283 partisan request? The answer is no and no. And as we all
284 know too well, it is working families that will ultimately
285 foot the bill for the Agency's assault on affordable energy.
286 They have a right to see the underlying data.

287 And by the way, the American people get it. In a poll

288 | earlier this year, 90 percent of Americans agreed that
289 | studies and data used to make Federal Government decisions
290 | should be made public. If we were only to judge by their
291 | words, the Administration also appears to support this simple
292 | idea.

293 | For example, in December 2010 White House memo states
294 | that agencies should expand and promote access to scientific
295 | information by making it available. This should include data
296 | and models underlying regulatory proposals and policy
297 | decisions. That apparently doesn't apply to this data or the
298 | EPA's clean air rules.

299 | Similarly, President Obama's March 2009 Scientific
300 | Integrity memo states, "there should be transparency in the
301 | preparation, identification, and use of scientific and
302 | technological information and policymaking." By the
303 | Administration's behavior, that apparently doesn't apply to
304 | this data or EPA clean air rules. The President's Executive
305 | Order 13563 requires that regulations be based on the best
306 | available science.

307 | This Administration's top science advisor appeared to
308 | have agreed as well. Dr. John Holdren, the President's
309 | Science Advisor, testified in this room in June 2012 that
310 | absolutely the data on which regulatory decisions and other
311 | decisions are based should be made available to the Committee
312 | and should be made to the public.

313 This sentiment has been endorsed by other respected
314 parts of the federal scientific enterprise. The National
315 Academy of Sciences states that when the government-funded
316 research is used for decision-making, data-sharing allows for
317 analysis of problems by investigators with diverse
318 perspectives. The Administrative Conference of the United
319 States is an independent federal agency that includes EPA as
320 its member.

321 In an amazing case of what I believe is sheer hypocrisy,
322 even the EPA's own scientific integrity policy states that
323 scientific research and analysis compromise the foundation of
324 all major EPA policy decision. Therefore, the Agency should
325 maintain vigilance toward ensuring that science, research,
326 and results are presented openly and with integrity,
327 accuracy, timeliness, and a full public scrutiny demanded
328 when developing sound, high-quality environmental science.

329 At this point, we have no way of knowing if these
330 datasets support the claims made by the Agency. This issue
331 is too important simply to trust the EPA. This committee, as
332 you stated, Mr. Chairman, has been asking the Agency for this
333 information for 2 years. Instead of integrity, accuracy, and
334 timeliness as the Agency's policy requires, we get excuses,
335 inaccuracies, and delay, as we saw in their most recent
336 letter just a few days ago. I believe that this must come to
337 an end and I support the subpoena effort. And, Mr. Chairman,

338 I yield back my time.

339 Chairman SMITH. Thank you, Mr. Stewart.

340 The gentleman from New York, Mr. Maffei, is not--I
341 thought he wanted to be recognized. If not, are there other
342 Members that--the gentleman from Florida, Mr. Grayson, is
343 recognized.

344 Mr. GRAYSON. Thank you, Mr. Chairman. I have some
345 questions about the Resolution itself and I will yield to you
346 or anyone else involved in the drafting of the Resolution who
347 can try to clarify these points for me.

348 With regard to the wording of the Resolution, it refers
349 to the Environmental Protection Agency and a subpoena to
350 other custodians of research data from such studies. Who are
351 the other custodians?

352 Chairman SMITH. The gentleman--who are the other--what
353 was the last word the gentleman said?

354 Mr. GRAYSON. Who are the other custodians referred to
355 in the Resolution?

356 Chairman SMITH. It might be one of two, perhaps both,
357 both Harvard and the Cancer Institute.

358 Mr. GRAYSON. Well--

359 Chairman SMITH. And let me say I don't expect to issue
360 subpoenas to them because I don't think it will be necessary.

361 I believe the EPA either has the data or can get access to
362 the data. So I am hoping that that would be sufficient, just

363 the EPA subpoena.

364 Mr. GRAYSON. Well, I think the Chairman can understand
365 the concern that one might have with regard to the phrase
366 ``other custodians of research data`` without identifying who
367 that might be. It could be literally thousands of different
368 people. Is there some way that we can modify this Resolution
369 to be specific to the intended recipients and not be what
370 amounts to a legal blank check? I yield.

371 Chairman SMITH. If the gentleman will yield, it is my
372 understanding that the reason for a somewhat broad subpoena
373 is because we don't know who the EPA will point to if they
374 deny having the data themselves, which would be a surprise
375 because if they don't have the data, how could they issue
376 regulations based upon that data? But in any case, should
377 they say they don't have the data, we would want to follow
378 the trail where it might take us and find those who do have
379 the data. Again, I don't think it is going to be necessary
380 but this is a standard procedure when you write a subpoena.

381 Mr. GRAYSON. I will reclaim my time. I am concerned
382 again that this in theory would allow a subpoena to virtually
383 anybody who might conceivably have such data and allow a
384 fishing expedition. If the Chairman were, for instance, to
385 consider an amendment that would say the custodian's research
386 data identified by the EPA and limit it to EPA-identified
387 entities that have data that the EPA itself does not have,

388 | then I think that the claim that this is a fishing expedition
389 | would be somewhat neutralized.

390 | Chairman SMITH. I would respond to the gentleman by
391 | asking him this question. That has a certain appeal to me
392 | except that what if the EPA refuses to identify the
393 | custodians of the data?

394 | Mr. GRAYSON. Well, in that case, I would suggest that
395 | there is no way to go forward. If the EPA won't tell you who
396 | has the data, then how would you ever know?

397 | Chairman SMITH. Yes. But that is exactly the point for
398 | having the subpoena written in the way it is now is to be
399 | able to try to find out who those individuals might be and
400 | who the custodians of the data are so that we could try to
401 | access that information.

402 | Mr. GRAYSON. Well, this has the force of law. You are
403 | asking for a subpoena duces tecum to the EPA to identify the
404 | people who have the data--

405 | Chairman SMITH. Right.

406 | Mr. GRAYSON. --so they would be required by law to do
407 | so.

408 | My time is a little limited. I wanted to raise another
409 | point with regard to this and see if it is possible to make
410 | this more specific. The Chair will note that the Resolution
411 | that the Chair has offered refers to the data that is being
412 | provided being de-identified. Can the Chairman please be

413 specific about what is the intention of that term?

414 Chairman SMITH. I would be happy to. Initially, the
415 EPA said that we might be wrongfully identifying individuals
416 and when we talk about health information that might involve
417 the names of particular individuals. We did not want those
418 names to be made public for obvious reasons, and by
419 de-identifying, which is a term of art, I am told, that will
420 protect the identity of those individuals whose health
421 information we might have. So we want to, again, protect
422 privacy and de-identify is a term of art that allows us to do
423 that.

424 Mr. GRAYSON. Well, I think to be fair under these
425 circumstances that that should be mandatory. Would the Chair
426 entertain an amendment that changes the word ``may'' to the
427 word ``shall?''

428 Chairman SMITH. While we are considering that, Mr.
429 Grayson, I also think I can read you if you are interested in
430 knowing more specifically about how individuals are
431 de-identified, I will be happy to give you more information
432 on that or are you satisfied with the de-identification
433 process?

434 Mr. GRAYSON. No, I would like to learn more about that.
435 I think that we have raised serious concerns on the side of
436 the aisle concerning the release of personal, private health
437 information to not only individual staff here on the

438 | Committee but also to apparently people outside this
439 | committee. And I think it is a legitimate concern.

440 | Chairman SMITH. Okay. If the gentleman will further
441 | yield, let me go into a little bit more details on the
442 | de-identification. The Resolution explicitly allows for
443 | de-identification of all information being provided. That
444 | means that no individual names will be made public. Our
445 | request, therefore, I believe is reasonable. Why should
446 | taxpayers be denied access to the data that is provided to
447 | the EPA grantees? Now, let me see if I can get more on the
448 | de-identification.

449 | Mr. GRAYSON. Well, based on what the Chairman has
450 | said--

451 | Chairman SMITH. Here it is.

452 | Mr. GRAYSON. --I would be concerned about the word
453 | public.

454 | Chairman SMITH. Okay. If I may continue just briefly
455 | and then I will yield back. But in 2005 the National Academy
456 | of Sciences described ``relatively simple data-masking
457 | techniques and de-identification as an approach that has
458 | worked more than 40 years.'' They stated that ``nothing in
459 | the past suggests that increasing access to research data
460 | without damage to privacy and confidentiality rights is
461 | beyond scientific reach'' and so forth. I can get you more
462 | information, but the idea there is that the National

463 Institute says that it is almost always possible to
464 de-identify data so individual identity is protected and
465 analysis is possible.

466 As far as your second question whether we should make it
467 mandatory ``shall'' rather than permissive ``may,'' let me
468 check on that for a minute.

469 Mr. GRAYSON. Thank you. I see I am out of time. Thank
470 you, Mr. Chairman.

471 Chairman SMITH. Without objection, the gentleman is
472 recognized for an additional minute.

473 Mr. GRAYSON. Thank you very much. The
474 de-identification that you are talking about seems to me to
475 be essential here not only in terms of releasing information
476 to the public but also, frankly, protecting it from
477 our--anyone here who receives it and anyone who may be given
478 the information. Whether or not that would be considered to
479 be a member of the public, there are unspecified plans at
480 this point, at least unspecified to the minority, concerning
481 who will be receiving this information. And perhaps the
482 Chairman can shed some light on that?

483 Chairman SMITH. As far as individuals who will be
484 receiving information, there are any number of scientists and
485 scientific organizations who are interested in looking at the
486 data and engaging in their own independent analysis. And I
487 think it wouldn't be fair to identify individuals or

488 organizations. That will be abundantly clear if we do get
489 the data.

490 And, Mr. Grayson, I would like to ask this, but I would
491 like to go on and recognize some other individuals to speak
492 on the Resolution while we check on the question that you
493 raised about whether it should be mandatory or permissive if
494 that is all right?

495 Mr. GRAYSON. Yes, thank you, Mr. Chairman.

496 Chairman SMITH. Okay, thank you.

497 Now, the gentleman from California--let me see if there
498 is a gentleman on the side first.

499 The gentleman from Indiana, Mr. Bucshon, is recognized.

500 Mr. BUCSHON. Thank you, Mr. Chairman. I would like to
501 speak in support of the Resolution.

502 Since my election to Congress and particularly during my
503 current role as Chairman of the Research and Technology
504 Subcommittee, I have had the opportunity to look closely at
505 this Administration's track record on scientific integrity
506 and the lack of transparency of federally funded research.

507 As a cardiothoracic surgeon, I am both interested and
508 experienced in the intersection of the environment and
509 health. It is irresponsible that a federal agency supported
510 by taxpayer dollars has refused to hand over this data. With
511 large coal and agriculture industries in my district, I have
512 seen firsthand the detrimental effects of EPA regulation have

513 | on these industries when they are based on ideology instead
514 | of sound science.

515 | At a hearing in my subcommittee heard--held earlier this
516 | year, we heard a consensus view that only with open access to
517 | data can we ensure integrity and credibility in the
518 | scientific process. This is especially important when it
519 | comes to government regulations and decisions that affect all
520 | Americans' health and financial well-being. Witnesses
521 | testified that many published research findings may be false
522 | and access to this data is necessary to validate and
523 | understand scientific claims. They also pointed out that the
524 | types of observational epidemiological studies that underlie
525 | EPA's claims are particularly problematic.

526 | A few of my colleagues have raised concerns about
527 | sensitive health information within these data sets. I have
528 | no such concerns. Aggregate scientific data is published
529 | daily in medical journals such as the New England Journal of
530 | Medicine, the Annals of Thoracic Surgery, amongst many
531 | others. Hiding behind HIPAA regulations is a tactic to
532 | stonewall Congress in its ability to obtain data.

533 | The committee rules allow that the Chairman, in
534 | addition, can deem documents resulting from a subpoena to be
535 | received in Executive Session in order to further prevent the
536 | release of any sensitive information. This Resolution is
537 | entirely reasonable and the American people should have

538 | access to the same information that is provided to
539 | taxpayer-funded EPA grantees.

540 | Mr. Chairman, thank you for holding this meeting and for
541 | holding the agency's feet to the fire. We have seen the
542 | agency--this agency and this Administration conducting a
543 | calculated war on coal and other fossil fuels with the risk
544 | of skyrocketing electrical prices and European-style energy
545 | markets. The EPA should release the data that underlies this
546 | campaign in order for independent experts to objectively
547 | examine their claims.

548 | I yield back.

549 | Chairman SMITH. Thank you, Mr. Bucshon.

550 | The gentleman from California, Mr. Peters, is
551 | recognized.

552 | Mr. PETERS. Chairman, thank you. I move to strike the
553 | last word.

554 | Chairman SMITH. The gentleman is recognized for 5
555 | minutes.

556 | Mr. PETERS. I would just express the concern--obviously
557 | I have not been through this process before but just in terms
558 | of transparency the notion that people are concerned about
559 | the validity of the data. We don't know who they are and
560 | obviously the Committee itself does not have the expertise to
561 | review this. So I am a little--feel like I am a little bit
562 | in the dark ironically on an issue about transparency where

563 | this concern is coming from. And with that, on the issue
564 | of--raised by Mr. Grayson, I would like to yield to the
565 | Ranking Member Ms. Johnson for additional comment.

566 | Ms. JOHNSON. Thank you very much.

567 | As I mentioned in my opening statement, I am strongly
568 | opposed to this Subpoena Resolution. To put it simply, there
569 | is no basis for this action. There is no legitimate action
570 | for this committee to take. The majority has indicated that
571 | EPA has been--has not been forthcoming with information. I
572 | intend to demonstrate just how ridiculous this assertion is.

573 | If my staff can assist me, I want to first have the
574 | staff put out the EPA's regulatory impact analysis for the
575 | rules cited by the majority in their markup memo. Found in
576 | these thousands of pages of documents are detailed
577 | explanations of the methodologies used to arrive at EPA's
578 | cost-and-benefit analysis which the Chairman is presumably
579 | questioning.

580 | Second, could the staff these put out the integrated
581 | science assessment for particulate matter and integrated
582 | science assessment for ozone? Here is over 3,000 pages of
583 | peer-reviewed science. One would think this would be enough
584 | for anyone.

585 | Third, could the staff please put out the report on the
586 | National Research Council entitled ``Estimating Public Health

587 Benefits for Proposed Air Pollution Regulations?'' In this
588 report, the most prestigious scientific society in our
589 country largely endorses the methods and results of these two
590 research studies that we claim to be sloppy EPA science.

591 Fourth, could the staff these put out the Health Effects
592 Institute reanalysis of two studies in question? This
593 independent peer-reviewed study by HEI, which is partially
594 funded by the auto industry, confirmed the methods and
595 results of the two studies in question. It is precisely the
596 kind of research--reanalysis you are claiming to need this
597 data for and obviously it has already been conducted.

598 Finally, could the staff please put out the
599 de-identified data that EPA provided to the Committee from
600 Harvard Six Cities study? Here is all 900 pages of it.
601 Please note that this is precisely the information we are
602 authorizing a subpoena for today. It was seen that EPA has
603 already provided you with what we seek since it is sitting
604 right in front of us.

605 Mr. Chairman, since the majority has claimed that they
606 don't have enough science to review, I think it would be good
607 for all of these materials to be inserted into the record of
608 these proceedings so that we would--it would be accessible to
609 all the majority. And I move that the Committee do so.

610 Chairman SMITH. Does the gentleman from California--

611 Ms. JOHNSON. No, I just offered a motion.

612 Mr. SENSENBRENNER. Mr. Chairman?

613 Ms. JOHNSON. I move that the materials be inserted into
614 the record so they will be--

615 Chairman SMITH. Without objection, so ordered.

616 [The information follows:]

617 ***** COMMITTEE INSERT *****

618 Ms. JOHNSON. Okay. Thank you. I--

619 Chairman SMITH. Wait a minute. Okay, without
620 objection, so ordered.

621 Ms. WILSON. Mr. Chairman, I move to strike the last
622 word. No?

623 Ms. JOHNSON. I am trying--

624 Chairman SMITH. The gentleman from California, Mr.
625 Peters, still has the time and I believe Ms. Johnson has more
626 comments to make.

627 Ms. JOHNSON. No, I really think that I made my point.
628 There is no secret science here. In contrast, what we have
629 is literally mountains of peer-reviewed research which
630 supports these studies, and I just simply wanted to make sure
631 that the record reflected that it is available.

632 Chairman SMITH. Okay. The gentleman yields back his
633 time.

634 The gentleman from Wisconsin, Mr. Sensenbrenner, seeks
635 to be recognized.

636 Okay. The gentleman from Texas, Mr. Neugebauer, is
637 recognized.

638 Mr. NEUGEBAUER. Thank you, Mr. Chairman. And I would
639 like to speak in support of the Resolution.

640 I am disappointed that we have to issue a subpoena in
641 order to get EPA to live up to its obligations to Congress
642 and the American taxpayers. But for the last 2 years, our

643 requests for information have gone unanswered. The data we
644 are requesting is used to justify major decisions by EPA,
645 decisions that cost American businesses billions of dollars
646 in compliance costs. What is more, the data is paid for by
647 hardworking American taxpayers, so why don't we have access
648 to it? The Administration is paying lip service to
649 transparent government but their actions speak louder than
650 words. All they--although they claim that independent
651 validation of their science is important, they don't share
652 the data that would allow for outside scientists to verify
653 their claims.

654 Unfortunately, the only information EPA has provided is
655 air quality data that is already public information, but EPA
656 has admitted that this isn't sufficient to validate their
657 claims. The Texas Commission for Environmental Quality said
658 that the limited data released the files provided lacked
659 critical information making it impossible to replicate their
660 findings.

661 There are real consequences from EPA's regulations that
662 cost the American businesses money and time and they--that
663 they could be investing in creating more jobs for American
664 families. The Administration has a responsibility to the
665 American people to be open about how these decisions are made
666 and that includes releasing data so that it can be held up
667 for public scrutiny. Americans deserve transparent,

668 | accountable government, and I hope our vote today helps
669 | achieve that.

670 | And with that, Mr. Chairman, I would yield to the
671 | Chairman the balance of my time if he would like.

672 | Chairman SMITH. All set. Thank you, Mr. Neugebauer.
673 | The gentleman yields back his time.

674 | The gentlewoman from Florida, Ms. Wilson, is recognized.

675 | Ms. WILSON. Thank you, Mr. Chair.

676 | The data being sought by the majority was collected from
677 | American citizens. These people volunteered their health
678 | information to help further the cause of improving the health
679 | of our country through scientific research. They did not
680 | volunteer this information for the purposes of furthering a
681 | partisan political divide.

682 | When cohort participants enroll in ACS cohorts, they are
683 | given explicit assurances that their volunteered information
684 | will be securely stored, accessed only by approved
685 | researchers who have received training in the handling of
686 | human subject data and never shared with unapproved third
687 | parties like insurance companies. They are also assured that
688 | the information being volunteered will only be used for
689 | research purposes of the American Cancer Society. By
690 | commandeering this information from these organizations or
691 | from EPA, the majority is breaking the trust that these
692 | volunteers relied upon when they enrolled. This will have a

693 | chilling effect on the enrollment of future cohorts.

694 | As noted above, the American Cancer Society is currently
695 | enrolling a new cohort, CPS-3, for use in further studies.
696 | ACS and other research organizations must have broad and
697 | diverse--and I mean diverse--representation in their cohorts
698 | to achieve the most accurate results in their research. This
699 | will be difficult to do if potential volunteers think that
700 | their personal information will be subpoenaed for political
701 | purposes.

702 | Mr. Chairman, the so-called secret science is science
703 | for the sake of cancer patients, sick children, and
704 | communities struggling with pollution and environmental
705 | crisis. It is the people's science. There are brownfields
706 | in the core of the inner cities of our Nation. In my
707 | district, there are many brownfields. This subpoena will
708 | undermine this science for the sake of corporate polluters.

709 | Mr. Speaker, when I was principle of an elementary
710 | school, they built a composting plant across from the school
711 | called Agripost. It was alien technology experimenting with
712 | schoolchildren. If it were not for the EPA, all of us would
713 | probably be dead.

714 | So how do we define scientific organization? Some
715 | experiment with alien technology like Agripost. I need to
716 | know how do we define scientific organization, and whose side
717 | are we on as a Congress?

718 Mr. BUCSHON. Will the gentlelady yield for a question?

719 Chairman SMITH. Would the gentlelady yield?

720 Ms. WILSON. I asked a question.

721 Mr. BUCSHON. Oh.

722 Ms. WILSON. I asked a question. How do we define
723 scientific organizations that this information will be
724 released to? If some experiment with alien technology, I
725 have had that experience. My county allowed a \$27 million
726 plant to be built across the street from my elementary school
727 that turned garbage into fertilizer that would have killed
728 every child in the school had it not been for the EPA to shut
729 it down with my help. So I need an answer.

730 Chairman SMITH. Okay. Does the gentlewoman yield back
731 her time or was that last statement--

732 Ms. WILSON. I yield back the time for the answer of the
733 question.

734 Chairman SMITH. Okay. Well, I think the answer has
735 already been given but I will be brief in giving it again.

736 There are any number of independent organizations and
737 scientists as well who would be interested in looking at this
738 data. By making it public without identifying the
739 individuals, we are going to be able to proceed as we have
740 with any other number of agencies that make that kind of data
741 public and then it is scrutinized by various reputable
742 entities and organizations. That is the standard process.

743 | That is the standard scientific review process.

744 | Ms. WILSON. Mr. Chair?

745 | Chairman SMITH. Yes?

746 | Ms. WILSON. Has anyone thought about how we are going
747 | to compromise the personal information of individuals who
748 | have volunteered? It is very difficult to get people to
749 | volunteer their information if they know it is going to be
750 | shared with a third party.

751 | Chairman SMITH. If the gentlewoman will yield, let me
752 | repeat again that this information will be de-identified. No
753 | individual's identity will be revealed, and therefore, the
754 | privacy will--their privacy will be protected.

755 | Mr. BUCSHON. Will the gentlelady yield for a question?

756 | Chairman SMITH. The gentlewoman's time has expired.

757 | The gentleman from Arizona, Mr. Schweikert, is
758 | recognized.

759 | Mr. SCHWEIKERT. Thank you, Mr. Chairman.

760 | This is one of those moments--and I think we have all
761 | had these where you have the beautiful written script in
762 | front of you and you would love to go through it but I think
763 | actually we are missing the point and the conversation has
764 | almost reached a portion of the absurdity. And maybe I look
765 | at this slightly different. As a sick young man I wanted to
766 | be an actuary, so statistics, modeling was much of what I
767 | really cared about.

768 And you point to a stack like that and that is great.
769 It is someone else's modeling and we can look at how they
770 modeled it. But I thought we were all actually--we--both
771 right and left had agreed to this concept of open government,
772 egalitarian access to information. That is why we love the
773 internet. And the fact of the matter is you want datasets
774 that are paid for by taxpayer money to be open and
775 egalitarian. It is easy to strip off private information.
776 We do that constantly. We do that every single day. But
777 with that data out there, yes, there is going to be industry
778 groups that use it, that yes, there will be environmental
779 groups that will use it. There will be a university. Hell,
780 someone sick like me may be sitting in their basement with
781 their computers trying to model it and understand how it
782 works.

783 We are there--is there something--is there equal
784 weighting, weighting it, building the model? Is--what is
785 happening in the weighting in the tails of the data? But if
786 we are going to be making decisions, if the EPA is going to
787 be making decisions that cost trillions of dollars to the
788 economy but may have multiple trillions of dollars in
789 benefits or may not, we as a community, right, left, just
790 academic need to have access to that information and work it
791 and work it and work it and work it because if we are going
792 to do this to all of us, it needs to be a communal sort of

793 | decision-making of they got this right, they got this wrong,
794 | you screwed up on the way you weighted this, no, you did
795 | this, but that is how this type of decision-making that is
796 | going to affect our lives and our kids' lives and our
797 | grandkids' lives and the economy within that, we need to do
798 | this collectively.

799 | And I find it absurd that what was going to be an
800 | incredibly open society because of access to data, because of
801 | the access to information, because of the access to the
802 | internet, we are actually engaging in this conversation. And
803 | in some ways it breaks my heart.

804 | Mr. Chairman, I yield back.

805 | Chairman SMITH. Thank you, Mr. Schweikert.

806 | Are there other Members who wish to be recognized?

807 | The gentlewoman from Maryland, Ms.--

808 | Ms. JOHNSON. I just want to say very quickly the EPA
809 | has offered and has submitted all of their research. The
810 | research that is not here was not done by EPA, nor a
811 | contractor from EPA. The American Cancer Society finances
812 | their own research, and EPA cannot furnish us with that
813 | research. Thank you.

814 | Chairman SMITH. Okay.

815 | Ms. EDWARDS. Mr. Chairman?

816 | Chairman SMITH. We will consider that to have been
817 | yielded to you, Ms. Johnson.

818 And the gentlewoman from Maryland, Ms. Edwards, is
819 recognized.

820 Ms. EDWARDS. Thank you, Mr. Chairman.

821 I am concerned about the majority's clear overreach and
822 grab to subpoena the EPA and potentially nongovernmental
823 entities, the American Cancer Society and Harvard University.

824 In this case, the data the majority are looking for is not
825 owned or created by the EPA. It is data that came out of two
826 studies done by two nongovernmental organizations. The EPA
827 has no more right to give this data away then--and I am going
828 to make this really easy for the majority to understand--an
829 auto mechanic has the right to sell your car when he has it
830 in the shop. That is how much control the EPA has over that
831 data.

832 And the two entities that were created--that created the
833 data based on their long-term studies are the American Cancer
834 Society and Harvard University. It is really disturbing to
835 me that the majority, which has shown in this committee that
836 it holds the industry in the highest regard, is attempting to
837 subpoena these two august institutions for documents they
838 have already--they already state on their website are
839 publicly available. And I have a slide to show exactly that.

840 [Slide.]

841 Ms. EDWARDS. In the highlighted--yellow highlighted

842 | area it says that ``the American Cancer Society Epidemiology
843 | Research Program investigators recognize the value and
844 | welcome externally proposed studies judged to be of general
845 | interest and high scientific merit.'' And here, the
846 | important part. ``Investigators who are not employed by
847 | ACS's Epidemiology Research Program may request access to CPS
848 | data and/or bio specimens to conduct a study.'' It is
849 | available by the entity.

850 | The slide from the American Cancer Society and its
851 | website clearly indicate that access to the data the majority
852 | intends to subpoena for researchers is already available to
853 | all legitimate researchers who apply. So it really begs the
854 | question whether the majority really intends to subpoena the
855 | American Cancer Society to provide data access to scientists
856 | who already have it.

857 | Maybe the problem the researchers--the majority
858 | claims--and I quote from Chairman Smith's July 31 letter,
859 | ``have come forward to the Committee to express their
860 | concerns that they have been denied access to review the
861 | data'' are really not legitimate researchers at all. And I
862 | would yield just for a moment if anyone, anyone in the
863 | majority can identify to me, to this committee, to the public
864 | on the record the names of researchers and the institutions
865 | they belong to who have been denied this data.

866 | Chairman SMITH. Would the gentlewoman yield?

867 Ms. EDWARDS. Just for a minute means--

868 Chairman SMITH. I would be happy to identify such
869 individuals. Despite the assertions by the EPA that they are
870 making this data public, that is clearly not the case and a
871 number of individuals have repeatedly been denied--

872 Ms. EDWARDS. Who are the individuals, Mr. Chairman?

873 Chairman SMITH. For example, Dr. Stan Young, Assistant
874 Director of the National Institute of Statistical Sciences
875 has been denied access to the Harvard Six Studies data.
876 Similarly, Dr. Jim Enstrom, Epidemiologist and Research
877 Professor at the UCLA School of Public Health has been denied
878 access to the Cancer Prevention Study II data. That is an
879 example of one for each.

880 Ms. EDWARDS. Okay. So let's hear--so according to
881 Harvard, Dr. Young is acting on his own. He is seeking
882 datasets he believes would be interesting to analyze. It is
883 not a traditional request from the institution that he works
884 from. It is from an individual and that can be accessed by
885 the individual from the website. So I don't really
886 understand what is the complaint here. The NISS is not
887 promising to do anything. Dr. Young has no authority to
888 commit the institution to do anything, and there aren't any
889 resources available to undertake the analysis.

890 So I am just curious as to how the majority feels that
891 the EPA hasn't given them the data they requested, actually

892 | data they don't own or have control over? It is the ACS and
893 | it is Harvard University. It is not the EPA. And we have
894 | documentation in fact showing that EPA's responses and the
895 | reams of papers that have been brought in are just a part of
896 | all the data the EPA has made available. And given all the
897 | data that EPA has already provided, what, I just ask, more
898 | would the majority suggest the EPA has to give for them to
899 | comply with the subpoena and therefore avoid what I am sure
900 | would be a contempt citation? Again, I yield to anyone in
901 | the majority who can answer that for me but I don't think
902 | there is anybody who can.

903 | It is really clear to me Gina McCarthy, who has only
904 | been an EPA Administrator for 2 weeks, the majority is
905 | already trying to attack her. They did it under the previous
906 | Administrator Lisa Jackson, who was attacked equally by
907 | members of this committee and Republicans in Congress.
908 | Instead of supporting science, the Committee is obstructing,
909 | it is taking hostage legitimate scientific endeavors of the
910 | EPA, it is endangering the lives of the American public, and
911 | I have to tell you, to me, it just sounds like getting ready
912 | for August, going out so you have something to talk about but
913 | it is not legitimate and we should stop doing it on this
914 | committee. And with that, I yield.

915 | Chairman SMITH. Would the gentlewoman yield one more
916 | time?

917 Ms. EDWARDS. I don't have any time. Thank you, Mr.
918 Chairman.

919 Chairman SMITH. Without objection, I will yield the
920 gentlewoman another 15 seconds to yield to me.

921 In an April 10 letter, EPA admitted that the limited
922 information that has been provided is ``not sufficient'' to
923 analyze or validate the results of these studies.

924 Now, the gentlewoman's time is expired and the gentleman
925 from California, Mr. Rohrabacher, is recognized.

926 Mr. ROHRABACHER. Mr. Chairman, it is difficult to
927 understand how anyone who is serving on this committee would
928 want to limit the amount of information that is available to
929 us on this committee, especially if it deals with why certain
930 scientific decisions are being made. Clearly, the EPA is
931 making decisions that are significant for the lives of the
932 American people and significant for the policies not only
933 their own policies but the other policies that we will vote
934 on as the Representatives of the American people.

935 If the EPA is making decisions and coming to conclusions
936 in terms of their own policy and it is based on information,
937 whatever information that their decisions are based on, that
938 information should be made available to us upon our request.
939 I mean there is just--I--it is mind-boggling that that
940 is--that there is even any argument about that. If indeed a
941 decision by the EPA is made on certain information, we have

942 | the obligation to see if that information is accurate, to
943 | look at it.

944 | And so, I mean, let me just note this is--it seems to me
945 | this is consistent with what--I am also on the Foreign
946 | Affairs Committee. This is consistent with some of the other
947 | things that we have been dealing with in dealing with this
948 | Administration which came in to power claiming they were
949 | going to be the most transparent Administration ever, and
950 | instead, you know, we just had people time and again refuse
951 | to provide the Congress with information about the issues at
952 | hand and how decisions were made, who is involved, and we
953 | have people in this Administration taking the 5th Amendment
954 | to try to suggest that they are not going to even tell
955 | Congress much less we have had an Attorney General refusing
956 | to give us information. This is a consistent pattern and I
957 | would think that this committee should be--a Science
958 | Committee--if any committee should be above and beyond that
959 | type of stonewalling or roadblocks to tracking down
960 | information, it should be the Science Committee. So if
961 | indeed decisions are being made by the EPA based on
962 | information, I repeat that information should be made
963 | available to all of us.

964 | And I thank you very much for your leadership, Mr.
965 | Chairman, and standing up for yes, accountability and
966 | transparency, which supposedly this Administration was going

967 | to be all about but sadly is not anywhere near reaching that
968 | goal.

969 | I yield back the balance of my time.

970 | Chairman SMITH. Thank you, Mr. Rohrabacher.

971 | The gentlewoman from Illinois, Ms. Kelly, is recognized.

972 | And then after that, I think we will have a couple other
973 | Members be recognized. And I think Mr. Grayson has an
974 | amendment as well.

975 | The gentlewoman from Illinois, Ms. Kelly, is recognized.

976 | Ms. KELLY. Thank you, Mr. Speaker. I actually was
977 | interested in hearing more about what Mr. Grayson was
978 | referring to earlier, so I yield my time to him.

979 | Mr. GRAYSON. Mr. Chairman, we are dealing with really
980 | weighty issues of public policy and I don't want to sound
981 | like I am in any way distracting or derogating from that
982 | debate, but nevertheless, we are talking about a legal
983 | procedure here, a subpoena, and I think that it is important
984 | that we recognize that there are rules that apply to this
985 | sort of thing. And if we are going to do something like this
986 | at all, then it is important to do it right.

987 | The Constitution requires in the 4th Amendment
988 | particularity, meaning that we have to specifically identify
989 | the person, place, or thing that is being sought. And this
990 | is a standard who, what, where, when, and how type of test.
991 | I believe that the phrase that is in this Resolution that has

992 | been offered by the Chair inadvertently steps over the
993 | boundary established by the 4th Amendment with the phrase
994 | ``and other custodians of research data from such studies''
995 | because it doesn't identify specifically who that might be.
996 | I think that there are two possible ways to solve this
997 | problem. I don't want to be taken in any way as endorsing
998 | this Resolution because I don't, but again, I think if we are
999 | going to do this, we need to do it in a way that respects the
1000 | Constitution.

1001 | One way to solve the problem would be to say, as I
1002 | indicated earlier, that we can enumerate the specific
1003 | recipients. It could be the Environmental Protection Agency,
1004 | the American Cancer Society, and Harvard University. I
1005 | believe constitutionally that is the preferred manner to do
1006 | this, and in fact, I think an argument can be made that it is
1007 | the only way to do it that comports with the Constitution.

1008 | Alternatively, as I mentioned earlier, one could try to
1009 | do it by saying that the subpoena applies to the EPA and
1010 | those parties identified by the EPA as being custodians of
1011 | the research data. I think that that is sort of sketchy. I
1012 | think it still could be held to be unconstitutional, but in
1013 | any case it would have a shot at being held to be
1014 | Constitutional.

1015 | I think this is important. We are talking about private
1016 | entities like the American Cancer Society, the Harvard

1017 University researchers. These are entities that have both
1018 the motivation and the means to challenge a subpoena like
1019 this in court.

1020 So I would suggest--and I will be offering an amendment
1021 to this effect, that we limit the subpoena and amend the
1022 subpoena in one way or the other in the manner that I just
1023 described in order to make it at least facially,
1024 superficially Constitutional.

1025 I yield back to the gentlelady, Ms. Kelly.

1026 Ms. KELLY. And I yield the remainder of my time.

1027 Chairman SMITH. The gentlewoman yields back.

1028 Were there any other Members who wish to be heard on the
1029 Resolution? And if not, we will go to Mr. Grayson to offer
1030 his amendment.

1031 Ms. BONAMICI. Mr. Chairman?

1032 Chairman SMITH. I am sorry. The gentlewoman from
1033 Oregon, Ms. Bonamici.

1034 Ms. BONAMICI. Thank you, Mr. Chairman. Mr. Chairman, I
1035 have a wording question about the Resolution and I will
1036 address it to you as the Chairman. Mr. Chairman, this
1037 Resolution calls for the issuance of subpoenas duces tecum
1038 relating to the Harvard Six Study, the Cancer Prevention
1039 Study II, which I trust is the American Cancer Society's
1040 Cancer Prevention Study II, and all analysis and reanalysis
1041 of either study.

1042 Mr. Chairman, those original Harvard Six Study and
1043 American Cancer Society's Cancer Prevention Study II, it is
1044 my understanding those are from the '90s. So can you please
1045 explain what this Resolution is seeking by asking for "and
1046 all analysis and reanalysis of either study?" And I yield
1047 for a response.

1048 Chairman SMITH. Okay. I will be happy to try to
1049 respond. And the phrase "all analyses and re-analyses of"
1050 means any subsequent analysis of the Harvard Six Studies or
1051 Cancer Prevention Study II data including, but not limited
1052 to--and I can go through a long list. So it is just to make
1053 sure that we get all the data, all the information that we
1054 want.

1055 Ms. BONAMICI. Thank you, Mr. Chairman, and I reclaim my
1056 time and I would like to speak in opposition to the proposed
1057 broadly drafted authorization of subpoenas. And as you
1058 explained earlier this morning, Mr. Chairman, it has been 21
1059 years since this action--type of action has been taken and
1060 this is and should be quite rare here in Congress and
1061 especially in this committee. And has already been
1062 emphasized, the EPA has turned over voluminous data relevant
1063 to the Subpoena Resolution. They have turned over what they
1064 possess or have the legal authority to demand, and we can see
1065 that in front of us. All of the information is in the
1066 possession of the Committee and there just doesn't appear to

1067 | be any reason to proceed with this Resolution.

1068 | I also want to note that the wording of the Resolution
1069 | could be read in a way that appears as if the Committee may
1070 | be planning to subpoena the American Cancer Society and
1071 | Harvard University. Now, there was a comment made earlier
1072 | about how we are looking for datasets paid for by taxpayer
1073 | money. This--the American Cancer Society and Harvard
1074 | University are not paid for by taxpayer money. This appears
1075 | to be an attempt to get data that may be then disclosed to
1076 | yet unidentified third parties. I am very concerned about
1077 | the chilling effect that such a move would have on the
1078 | ability to get citizen participation in future studies even
1079 | though this information may be de-identified. I hope we do
1080 | adopt the amendment that changes that to ``shall.'' But,
1081 | however, I do not see that this type of action is within the
1082 | oversight powers of Congress.

1083 | Mr. Chairman, the basic threshold of credibility has not
1084 | been made for this Subpoena Authorization Resolution and I
1085 | urge the committee members to oppose it. Thank you. I
1086 | yield--

1087 | Mr. GRAYSON. Will the gentlelady yield for one moment?

1088 | Ms. BONAMICI. And I do yield some time--

1089 | Mr. GRAYSON. Okay.

1090 | Ms. BONAMICI. --30 seconds to the--Ms. Edwards from
1091 | Maryland.

1092 Ms. EDWARDS. Thank you, Ms. Bonamici.

1093 I just want to note for the record that the two
1094 individuals cited by the Chairman as having been denied this
1095 research, one I indicated was acting on his own and not for
1096 his institution, and the other, James Enstrom, it turns out
1097 was let go from UCLA and its research department as of June
1098 30, 2010. And I would like to enter for the record the
1099 notice of the termination of Dr. Enstrom. So I am not sure
1100 with whose authority he was acting--and then with respect to
1101 Dr. Young.

1102 Chairman SMITH. Okay.

1103 Ms. EDWARDS. And I would yield back to the gentlelady.

1104 Chairman SMITH. Without objection, that will be made a
1105 part of the record, as will my statement, which is that
1106 individual was actually hired back after that brief
1107 termination.

1108 [The information follows:]

1109 ***** COMMITTEE INSERT *****

1110 Ms. BONAMICI. Mr. Chairman, I reclaim my time. And I
1111 would like to yield a minute to Mr. Grayson from Florida.

1112 Chairman SMITH. Okay.

1113 Mr. GRAYSON. Mr. Chairman, I would like some
1114 clarification regarding what happens if the Committee goes
1115 ahead with this and then gets the information. The Chairman
1116 seems to be contemplating some kind of procedure by which
1117 this information will then be disseminated to people who are
1118 outside the Committee and outside the staff of the Committee.
1119 How will that occur? Will there be notice to the committee
1120 members that it is occurring? Will there be sort of a paper
1121 trail involved? Will there be a selection process? Can the
1122 Chairman please clarify all these questions?

1123 Chairman SMITH. Okay. Let me try to clarify for the
1124 gentleman from Florida. Basically this information will be
1125 made public and that--as again, it will not be identifying
1126 any individuals so privacy will be protected, but those
1127 scientists and those scientific institutions who have an
1128 interest in the data will be able to analyze it.

1129 Mr. GRAYSON. So the Chairman is in essence
1130 contemplating something equivalent to posting it on the
1131 internet, is that correct?

1132 Chairman SMITH. It would be made public, that is
1133 correct.

1134 Mr. GRAYSON. Thank you, Mr. Chairman.

1135 Chairman SMITH. Does the gentleman from Florida have an
1136 amendment he would like to offer now?

1137 Mr. GRAYSON. Yes, I have an amendment at the desk.

1138 Chairman SMITH. Okay. The clerk will report the
1139 amendment.

1140 The CLERK. Amendment to the Resolution offered by Mr.
1141 Smith offered by Mr. Grayson of Florida, Amendment #1. On
1142 line 5, change ``may`` to ``shall.``

1143 [The amendment of Mr. Grayson follows:]

1144 ***** INSERT 7 *****

1145 Chairman SMITH. Without objection, the amendment is
1146 considered as read. And the gentleman from Florida is
1147 recognized to explain his amendment.

1148 Mr. GRAYSON. Well, currently, based upon what I have
1149 heard from the Chair today, the contemplation is that this
1150 information will be received by the Committee and posted in a
1151 public manner. If that information contains any sort of
1152 identifying information for any individual, that is a scandal
1153 and a travesty. People join these studies in some cases
1154 because they have cancer, in some cases because they have
1155 some other disease that requires treatment. It would be
1156 appalling, absolutely appalling to even allow the possibility
1157 that personally identifiable information would be released to
1158 the public, and I would hesitate to think what would be the,
1159 oh, God, public reaction if such a thing were to occur.

1160 However it may have been intended, the Resolution as
1161 currently offered has the word "may" in it. "May" does
1162 not mean "shall." "May" means that the recipient of the
1163 subpoena has the option of de-identifying the data but is not
1164 required to do so. I think that it is extraordinarily
1165 important that we make sure with belts and suspenders here
1166 that this information does not lead to the release of any
1167 publicly identifiable information about any individual's
1168 health condition. I don't see any way to accomplish that
1169 other than to change the word "may" to "shall" and I

1170 offer this amendment for that purpose.

1171 Chairman SMITH. Okay. And the gentleman yields back
1172 here and I will recognize myself in opposition.

1173 I certainly agree with the gentleman from Florida that
1174 it would be a travesty if individuals' names were made public
1175 or if they were identified in any way whatsoever. The
1176 problem with mandating that the agency shall de-identify
1177 individuals is that it gives them an out. If the EPA says we
1178 can't de-identify individuals even though, as I quoted a
1179 while ago, we have all types of scientific organizations that
1180 say they can be de-identified, but the agency says we cannot,
1181 then that stymies our efforts to try to get that data. And I
1182 am just simply not willing to allow the EPA to take that out.

1183 I am confident that the information will be de-identified.
1184 And let me assure the individual right now that we will not
1185 release any information that cannot be de-identified.

1186 Mr. GRAYSON. Will the Chairman yield for a response to
1187 that?

1188 Chairman SMITH. Yes, I would be happy to yield to the
1189 gentleman from Florida.

1190 Mr. GRAYSON. Mr. Chairman, the procedure that we are
1191 going to be following here is that if this Resolution is
1192 adopted by the Committee, there will be a subpoena or
1193 subpoenas issued to the recipients of the subpoena, including
1194 the Agency and conceivably other parties as well, and that

1195 subpoena either will say de-identify or won't say
1196 de-identify. If we say shall, then the scenario that the
1197 Chairman is describing, I believe, is not one that would
1198 actually occur. The recipient that is subpoenaed would be
1199 legally required--legally required--to provide the
1200 information and to do its best to de-identify, which is
1201 exactly what we need and what we expect at that point.

1202 It is not the case legally that the de-identification
1203 process or the supposed impossibility of that--I am not even
1204 sure how that could be impossible--but the supposed
1205 impossibility of that would in any way relieve the recipient
1206 of the duty to actually provide the information. A subpoena
1207 is legally binding. It is under force of law. It is under
1208 force of contempt of court potentially if the Committee were
1209 to adopt that Resolution to hold someone in contempt of
1210 court. There is no reason to think that this would become
1211 some sort of excuse for noncompliance.

1212 It is extremely important in my view that the
1213 information be de-identified before it even gets to the
1214 Committee. I don't want the Committee to see individual
1215 names of people who have cancer. I don't want committee
1216 staff to be seeing individual names of people who have
1217 cancer. It has to be done before it gets to us and the only
1218 way to do that is to say that that is in a subpoena and
1219 therefore it has to have the words ``shall be

1220 de-identified.'' Thank you very much.

1221 Chairman SMITH. Let me reclaim my time.

1222 I would say to the gentleman from Florida he trusts the
1223 EPA more than I do based upon our experience, and I think
1224 that they very much would be tempted to take it out and say
1225 they cannot de-identify the information. But I hope they
1226 will. If they do not de-identify the information themselves,
1227 then we will make sure that it is de-identified. So the
1228 purpose of the amendment to protect individuals from having
1229 that information--personal information disclosed will be
1230 satisfied in my judgment. But I appreciate the individual's
1231 intent in offering that amendment.

1232 Are there any other Members who wish to be heard on the
1233 amendment?

1234 The gentlewoman from Maryland, Ms. Edwards, is
1235 recognized.

1236 Ms. EDWARDS. Thank you, Mr. Chairman.

1237 I want to speak in favor of the amendment and I will
1238 tell you an additional concern that I have heard and I would
1239 yield to the gentleman from Florida to respond if he could is
1240 that, you know, we are dealing with also two private entities
1241 who have made commitments of privacy to the patients or
1242 persons who have undertaken these studies, and we haven't
1243 dealt at all with the legal liability of those two entities
1244 should information that is private be released to the public,

1245 | whether the public is this committee or its staff or it is
1246 | the general public. And so I am wondering what provisions
1247 | have been made either in the Resolution or in some other
1248 | instance both for EPA, Harvard, and the ACS with respect to
1249 | their prospective liability in the event that private
1250 | information is released?

1251 | Mr. GRAYSON. Well, I think that the gentlelady is
1252 | correct. At that point, I think that Harvard and the
1253 | American Cancer Society would be facing conflicting legal
1254 | obligations if they received a subpoena and they were under a
1255 | contractual obligation not to release the information. I
1256 | fully expect that under those circumstances the American
1257 | Cancer Society and Harvard University may go to court to
1258 | quash the Committee's subpoena. I think that would be an
1259 | embarrassment for the Committee, but apparently, there may be
1260 | no way to avoid that embarrassment for the Committee. I do
1261 | think that if Harvard and the American Cancer Society were to
1262 | release the information and violate their own contractual
1263 | obligations, they would be subject to a major lawsuit for
1264 | invasion of privacy.

1265 | I yield back.

1266 | Ms. EDWARDS. Thank you. And I would imagine that, in
1267 | addition, if they sought to comply with the subpoena and
1268 | tried to, as the Chairman has said, de-identify, which I
1269 | think is very difficult given volumes of documentation and

1270 | they were not able to do that successfully, the liability
1271 | would be extreme. And I suppose the Chairman is prepared to
1272 | come back to the Congress to provide the resources to make
1273 | payment to the individuals whose privacy has been violated.

1274 | And with that, I would yield my time in support of the
1275 | amendment.

1276 | Chairman SMITH. Thank you, Ms. Edwards.

1277 | If there is no further discussion, the vote is on the
1278 | Grayson amendment.

1279 | The gentleman from California, Mr. Takano, is
1280 | recognized.

1281 | Mr. TAKANO. Mr. Chairman, if it is--my recollection of
1282 | the CISPA debate was over whether the government could compel
1283 | private internet companies such as Verizon to turn over
1284 | private information to the government, and it specifically
1285 | absolved those corporations of liability. My understanding
1286 | of what this committee is doing is to compel private entities
1287 | to turn over information with personally identifiable
1288 | information, but yet we are not contemplating any measure to
1289 | absolve those entities of liability. I just want to point
1290 | that out.

1291 | Chairman SMITH. Okay. The gentleman yields back his
1292 | time. The question is on--

1293 | Mr. BUCSHON. Mr. Chairman?

1294 | Chairman SMITH. There are other Members who wish to--

1295 Mr. BUCSHON. Can I--

1296 Chairman SMITH. The gentleman from Indiana, Mr.
1297 Bucshon, is recognized.

1298 Mr. BUCSHON. I just want to pose a question to the
1299 minority. Do we know if the data that we are talking about
1300 was de-identified before it was submitted to the EPA and the
1301 EPA used that information to base their regulations on these
1302 studies, or not? And if they--if it was--

1303 Ms. EDWARDS. The gentleman would yield--

1304 Mr. BUCSHON. Give me a second and then I will. Because
1305 if it wasn't, what we are saying here today, I think, is that
1306 we trust a bureaucratic federal agency more than we do
1307 Congress to protect people's privacy, and I would argue that
1308 the elected representatives at least of the people in my
1309 district have a vested interest in protecting the privacy of
1310 my--the people that I represent. So I would like to know
1311 whether the information was de-identified before it was
1312 submitted to the EPA.

1313 Ms. EDWARDS. Well, if the gentleman would join me--

1314 Mr. BUCSHON. I will yield.

1315 Ms. EDWARDS. Thank you, Mr. Bucshon. If the gentleman
1316 would join me right up here at the front, I understand that
1317 that is all the Harvard data sitting up there, stacks and
1318 stacks of it, that in fact is a de-identified. So I am
1319 actually not even sure what it is that we are asking for.

1320 Mr. BUCSHON. I take back my time. Which means if it
1321 has already been de-identified before it was submitted to the
1322 EPA, then the argument that private data will be released if
1323 the EPA gives us more information from their studies is not a
1324 fair argument.

1325 Ms. EDWARDS. If the gentleman would yield, why do we
1326 need it when we have it sitting in front of us? Why are we
1327 subpoenaing--

1328 Mr. BUCSHON. Reclaiming my time.

1329 Ms. EDWARDS. Why are we issuing a subpoena if it is
1330 right in front of us?

1331 Mr. BUCSHON. Reclaiming my time. Mr. Chairman, I yield
1332 back.

1333 Chairman SMITH. Okay. The gentleman yields back.

1334 The question is on the Grayson amendment.

1335 All in favor, say aye.

1336 All opposed, say nay.

1337 In the opinion of the Chair, the nays have it and the
1338 amendment is not agreed to.

1339 Mr. GRAYSON. I ask for a recorded vote.

1340 Chairman SMITH. Roll call vote has been requested.

1341 Pursuant to Committee Rule II(f) and House Rule XI(2)(H)(4),
1342 proceedings on the vote will be postponed.

1343 Are there any other amendments?

1344 Mr. GRAYSON. I have an amendment at the desk.

1345 Chairman SMITH. Who--is that Mr. Grayson? Okay. The
1346 clerk will report the amendment.

1347 The CLERK. Amendment to the Resolution offered by Mr.
1348 Smith--offered by Mr. Grayson of Florida, Amendment #2. On
1349 line 7 after ``either study`` insert ``in the identity of who
1350 possesses such information.`` On line 8 after ``from such
1351 studies`` insert ``identified by the EPA.``

1352 [The amendment of Mr. Grayson follows:]

1353 ***** INSERT 8 *****

1354 Chairman SMITH. The gentleman from Florida is
1355 recognized to explain his amendment.

1356 Mr. GRAYSON. Thank you, Mr. Chairman.

1357 As I indicated earlier, as this Resolution has been
1358 drafted, it is unconstitutional. It does not identify with
1359 specificity the person, place, or thing to be produced. It
1360 does not identify who, what, when, where, and how because of
1361 the phrase--the offensive phrase ``and other custodians of
1362 research data from such studies.'' I understand the purpose
1363 of this. I understand that the committee majority intends to
1364 use this to potentially get information directly from the
1365 American Cancer Society and Harvard University. I would
1366 point out to Mr. Bucshon that there is no reason to think
1367 that a subpoena to the American Cancer Society and Harvard
1368 University would yield the identified data. There is no
1369 reason to think that the Harvard University and American
1370 Cancer Society datasets have been de-identified. The only
1371 way to make that happen is to order it.

1372 But regardless of that, there needs to be some
1373 specificity regarding what is meant in this Resolution by
1374 ``other custodians of research data.'' Otherwise, the
1375 Resolution is flatly unconstitutional under the 4th Amendment
1376 to the Constitution. I am offering this not in order to
1377 defeat what appears to be the apparent purpose of the
1378 majority but rather to effectuate that purpose in a manner

1379 | that is consistent with the Constitution. I believe that the
1380 | same people will be getting the subpoena regardless but the
1381 | Resolution itself will no longer affect the Constitution.

1382 | I yield back.

1383 | Chairman SMITH. Okay. Thank you, Mr. Grayson. I will
1384 | recognize myself in opposition.

1385 | And I know the gentleman is well intended here, but
1386 | again, I am afraid the gentleman trusts the EPA more than I
1387 | do. By allowing the EPA to be the one to designate those
1388 | individuals who might be coerced into giving us the
1389 | information, that really ultimately puts the authority into
1390 | their hands as to whether they are going to produce the data
1391 | or not. They are the decision-makers and that is not a power
1392 | I am willing to give them.

1393 | Also, let me add in response to what the gentleman said
1394 | a few minutes ago and what the gentlewoman from Oregon, Ms.
1395 | Bonamici, mentioned a while ago and point out the distinction
1396 | between the authorization of subpoenas that we are actually
1397 | voting on and the subpoena itself. The authorization is a
1398 | broad as all types of subpoenas are because you sometimes
1399 | don't know who has the information. The subpoena that will
1400 | actually be executed will be very specific and will be
1401 | directed towards the EPA and no other institutions at this
1402 | point.

1403 | Mr. GRAYSON. Will the gentleman yield for a question?

1404 Chairman SMITH. And I will be happy to yield to the
1405 gentleman from Florida.

1406 Mr. GRAYSON. Is the Chairman willing to represent at
1407 this point that the current intention is that such a subpoena
1408 go only to the EPA, the American Cancer Society, and Harvard
1409 University? And will the Chair represent that if the
1410 subpoena goes to anyone else, the Chair will come back to the
1411 Committee, advise the Committee, and allow further
1412 proceedings?

1413 Chairman SMITH. If the gentleman will yield, the
1414 subpoena is actually going to be more narrow than the three
1415 entities that the gentleman mentioned. It is only going to
1416 be going to the EPA. I hope that it is not necessary to go
1417 to Harvard or the American Cancer Society. Okay.

1418 Mr. GRAYSON. I yield back.

1419 Chairman SMITH. Okay. I thank the gentleman.

1420 The vote is on the Grayson amendment.

1421 All in favor, say aye.

1422 Opposed, nay?

1423 In the opinion of the Chair, the nays have it and the
1424 amendment is not agreed to.

1425 Are there any other amendments? If not, we will--if
1426 there is no further discussion, the question is on adoption
1427 of the Resolution.

1428 Those in favor, say aye.

1429 Ms. JOHNSON. Mr. Chairman, I would like to request a
1430 recorded vote.

1431 Chairman SMITH. Okay. Well--okay. Let's just assume I
1432 am calling the vote for the ayes then. And a roll call vote
1433 is been requested. Pursuant to Committee Rule II(f) and
1434 House Rule XI(2)(H)(4) --

1435 Mr. NEUGEBAUER. Mr. Chairman?

1436 Chairman SMITH. --proceedings on this vote will be
1437 postponed.

1438 Mr. NEUGEBAUER. I was just going to say we hadn't had a
1439 roll call vote on the amendment so we can't vote on final
1440 passage.

1441 Chairman SMITH. That is correct as well. We have two
1442 votes outstanding on the first Grayson amendment and then on
1443 final passage of the Resolution. I know what Members want to
1444 know and that is when are the votes going to be ruled, too,
1445 and what I propose we do now--let me--we are going to proceed
1446 to the second bill, the second item on the agenda today and
1447 finish that and hopefully we will be able to have votes
1448 shortly after that. And hopefully, this will be more
1449 bipartisan, too.

1450 H.R. 2850

1451 11:19 a.m.

1452 Chairman SMITH. Pursuant to notice, I now call up H.R.
1453 2850, introduced by me along with Subcommittee Chairman
1454 Stewart and Subcommittee Chairman Lummis. And the clerk will
1455 report the bill.

1456 The CLERK. H.R. 2850, to require certain procedures in
1457 the conduct by the Environmental Protection Agency of its
1458 study of the potential impacts of hydraulic fracturing on
1459 drinking water resources.

1460 [H.R. 2850 follows:]

1461 ***** INSERT 4 *****

1462 Chairman SMITH. Without objection, the bill will be
1463 considered as read, and I will recognize myself for 5 minutes
1464 for an opening statement.

1465 This item that we consider, the ``EPA Hydraulic
1466 Fracturing Study Improvement Act,`` is a simple, 4-page bill
1467 that addresses the Environmental Protection Agency's ongoing
1468 study of the potential impacts of hydraulic fracturing on
1469 drinking water.

1470 The bill does two things. First, it requires the EPA to
1471 follow basic scientific principles in carrying out the study,
1472 which has been designated a Highly Influential Scientific
1473 Assessment.

1474 Second, the bill requires that the EPA's study go beyond
1475 simply identifying ``possible impacts`` of hydraulic
1476 fracturing on drinking water. The study must provide
1477 objective estimates of the probability, uncertainty, and
1478 consequence of any such impacts.

1479 This addresses a concern identified on multiple
1480 occasions by stakeholders and independent experts since the
1481 EPA first proposed its study design in 2011. Requiring the
1482 EPA to provide context to any identified risk will maximize
1483 the study's utility to both scientists and decision-makers.
1484 And it will limit the possibility that findings will be
1485 misinterpreted or misused.

1486 This basic principle has been emphasized repeatedly in

1487 | Committee hearings and correspondence over the last 2 years.
1488 | And its inclusion will enhance not only the credibility of
1489 | the EPA's work on hydraulic fracturing but also our ability
1490 | to ensure continued safe and responsible production of
1491 | America's vast oil and gas resources.

1492 | And that concludes my opening statement.

1493 | [The statement of Mr. Smith follows:]

1494 | ***** INSERT 5 *****

1495 Chairman SMITH. The gentlewoman from Texas, Ms.
1496 Johnson, is recognized for hers.

1497 Ms. JOHNSON. Thank you, Mr. Chairman. I will be
1498 relatively brief in my remarks on H.R. 2850 because there is
1499 really not much to say about it.

1500 Unfortunately, it is another example of this committee's
1501 majority doing political messaging instead of legislating.
1502 If the majority were really interested in legislating on the
1503 issue ostensibly being addressed by this bill, they would
1504 have had meaningful subcommittee hearings to examine the
1505 potential impact of the congressionally mandated study that
1506 this bill could have. They would have given EPA time to
1507 assess that impact and provide input to the subcommittee
1508 jurisdiction. They would not have skipped subcommittee and
1509 instead rushed this bill to the full committee markup one day
1510 before the August recess.

1511 I have to conclude that this bill is not a serious bill.
1512 It, coupled with the ill-advised move at today's business
1513 meeting to push for subpoenas against EPA, as well as
1514 potentially any nongovernmental custodians of the data that
1515 the Chairman is seeking, is consistent with the majority's
1516 ongoing attempt across the House of Representatives to
1517 discredit EPA's scientific work and to undermine the ability
1518 of the new EPA Administrator to do her job.

1519 I understand that Representative Bera may offer an

1520 amendment today to this bill, and I will support that
1521 amendment, but I wanted to be clear. I do not intend to
1522 support this bill and will not vote for it. We all need to
1523 remember that the study that this bill will impact has been
1524 well underway and the study's planned review by EPA's
1525 Scientific Advisory Board. Members of Congress want the
1526 study to proceed unimpeded so that we can get its results in
1527 a timely fashion.

1528 This bill is at best a piece of political messaging, at
1529 worst, something that can seriously delay and undercut the
1530 congressionally mandated study. This bill will go nowhere in
1531 the Senate but it should not even be coming out of this
1532 committee.

1533 I yield back the balance of my time.

1534 [The statement of Ms. Johnson follows:]

1535 ***** INSERT 9 *****

1536 Chairman SMITH. Thank you, Ms. Johnson. I will
1537 recognize myself for a unanimous consent request, which is to
1538 enter into the record a letter from the Chamber of Commerce
1539 supporting H.R. 2850. That letter was sent to both myself
1540 and the Ranking Number.

1541 [The information follows:]

1542 ***** COMMITTEE INSERT *****

1543 Chairman SMITH. The gentleman from California, Dr.
1544 Bera, is recognized for the purpose of offering an amendment.

1545 Mr. BERA. Mr. Chairman, I have got an amendment at the
1546 desk.

1547 Chairman SMITH. And the clerk will report the
1548 amendment.

1549 The CLERK. Amendment to H.R. 2850 offered by Mr. Bera
1550 of California.

1551 [The amendment of Mr. Bera follows:]

1552 ***** INSERT 6 *****

1553 Mr. BERA. I ask unanimous consent that the amendment be
1554 considered as read.

1555 Chairman SMITH. Without objection, the amendment will
1556 be considered as read and the gentleman is recognized to
1557 explain his amendment.

1558 Mr. BERA. Thank you, Chairman Smith.

1559 I understand the desire of the majority to provide
1560 context to the ultimate findings of the study. And, you
1561 know, as a doctor, I certainly would not want to tell a
1562 patient that they have a risk of a particular illness without
1563 qualifying that risk as much as I can, and that is the intent
1564 of this study.

1565 However, I also have concerns that the current language
1566 of the bill perhaps inadvertently could lead to a significant
1567 delay in the release of an in-depth, critically important
1568 study that the EPA is currently carrying out to determine
1569 whether there is a relationship between hydraulic fracturing
1570 and groundwater contamination. This study is an important
1571 component to informing science-based national and state
1572 policies in this area going forward. I am told that such a
1573 delay is not the majority's intent and any delay in the study
1574 and a delay in the EPA reporting or findings will continue to
1575 hinder both the scientific community and industry. So let's
1576 hold to the original intent of the study and, you know, put
1577 those findings forward.

1578 Therefore, I am offering this amendment to ensure that
1579 this is the case. The amendment simply states that
1580 this--that the final report will be released no later than
1581 September 30, 2016, which is consistent with the study's
1582 current timeline. I urge my colleagues on both sides of the
1583 aisle to support the amendment as it in no way would
1584 undermine the majority's intent while also ensuring that the
1585 report's schedule will not intentionally or otherwise be
1586 further delayed by the language of the underlying bill.

1587 And I yield back.

1588 Chairman SMITH. Thank you, Mr. Bera, and I will
1589 recognize myself in support of the amendment.

1590 This amendment--and, by the way, let me say at the
1591 outset this amendment very much improves the bill and I
1592 appreciate the gentleman's offering it.

1593 The amendment requires the EPA to release its final
1594 report of its ongoing study of the potential impact of
1595 hydraulic fracturing on drinking water resources by September
1596 30, 2016. The EPA has continuously insisted that the final
1597 draft report of results should be expected late next year,
1598 2014, with peer review to continue into 2015. So it appears
1599 that, according to the Agency's own projections, they should
1600 be able to meet this deadline of 2016.

1601 Additionally, this study has been ongoing for 3 years
1602 and the 2016 deadline is another 3 years away. While we

1603 | support the EPA taking a deliberate approach to get the
1604 | science right, we also should ensure that this study is
1605 | completed in a timely fashion and not unduly prolonged or
1606 | otherwise delayed. Given that the Agency testified last week
1607 | that the study is being conducted within a risk framework,
1608 | inclusion of estimates of probability, uncertainty, and
1609 | consequent should not lengthen the study beyond the deadline
1610 | that this amendment proposes.

1611 | This amendment gives the EPA ample time frame in which
1612 | to complete the study while also ensuring that the study is
1613 | completed without further delay or expansion of its scope.
1614 | For these reasons, I support the amendment and urge my
1615 | colleagues to support the amendment as well.

1616 | Are there any other Members who wish to be heard on the
1617 | amendment? If not, the vote is on the Bera amendment.

1618 | All in favor, say aye.

1619 | Opposed, nay.

1620 | The amendment is agreed to.

1621 | Are there any other amendments? If there are no
1622 | further--the gentleman from New York, Mr. Maffei.

1623 | Mr. MAFFEI. Mr. Chairman, I move to strike the last
1624 | word.

1625 | Chairman SMITH. The gentleman is recognized for 5
1626 | minutes.

1627 | Mr. MAFFEI. Thank you very much, Mr. Chairman.

1628 This is an important issue to me and my district. My
1629 district is in upstate central New York and relies on a clean
1630 water economy. Lake Ontario, the Finger Lakes, Onondaga
1631 Lake, all of these natural resources support tourism,
1632 agriculture, and wineries, clean water-dependent industries,
1633 and thousands of jobs.

1634 We fight a constant battle to preserve our clean waters.
1635 We fight against pollution and invasive species. Our
1636 communities rely on water resources and, as such, New York
1637 has a State moratorium on hydrofracking. But we face a new
1638 threat, the uncertainty created by even the possibility that
1639 hydrofracking may have a disaster that would threaten our
1640 clean water economy. That reputation even is a threat. So
1641 our watershed and clean water know no state boundaries, and
1642 the Federal Government shouldn't turn a blind eye to this
1643 issue. So that is why I am pleased that the EPA is looking
1644 at it. It is also why I am a cosponsor of the bipartisan
1645 FRAC Act, which would put fracking under the Safe Drinking
1646 Water Act, making the practice subject to federal regulation.

1647 Now, the EPA is studying the effects of hydrofracking on
1648 drinking water and the bill we are considering today may
1649 postpone the publication of some of those findings. If, as
1650 supporters say, fracking is safe, we should be happily
1651 anticipating the EPA's findings and not working to postpone
1652 them or even a piece of them. If, as supporters say,

1653 | fracking is safe, then they also should have no issue
1654 | creating a level playing field and applying the safe drinking
1655 | water standards.

1656 | Therefore, I will respectfully oppose this bill today
1657 | and I encourage my colleagues on the committee to also oppose
1658 | the bill. I thank the Chairman and I yield back.

1659 | Chairman SMITH. Okay. Thank you, Mr. Maffei. Are
1660 | there others?

1661 | The gentlewoman from Oregon, Ms. Bonamici, is
1662 | recognized.

1663 | Ms. BONAMICI. Thank you very much, Mr. Chairman.

1664 | I want to thank the Chairman for his interest in this
1665 | issue. I know that we are all interested in getting the best
1666 | results from the EPA on this important study.

1667 | Just a week ago yesterday, the Chair mentioned to me
1668 | this concept that we are marking up today and asked me to
1669 | keep an open mind. I did. I reviewed the Chair's memo and
1670 | the language of the bill multiple times. I just received
1671 | that language on July 29, 3 days ago. I also reviewed the
1672 | Committee memo and the EPA's progress report.

1673 | I concluded that Section 1 of the bill isn't necessary.
1674 | The EPA's own progress report from December of 2012 on page 4
1675 | states ``the EPA has designated the report of results as
1676 | highly influential scientific assessment, which will undergo
1677 | peer-review by the EPA's Science Advisory Board, an

1678 independent and external federal advisory committee that
1679 conducts peer-reviews of significant EPA research products
1680 and activities.' ' So the designation is in place already and
1681 that has already triggered the strictest peer-reviewed
1682 requirements.

1683 With regard to Section 2, this section appears to impose
1684 new and ostensibly different research requirements on the
1685 EPA. Unfortunately, because there was no hearing on this
1686 bill, we do not have information from the EPA regarding
1687 whether these requirements will take additional time, and if
1688 so, how much time. And importantly, we don't have
1689 information about what additional resources, if any, the EPA
1690 might require to comply with this language.

1691 And I do want to note what has happened in the meantime.
1692 The majority has proposed cutting the EPA's budget by 34
1693 percent. So without more information about what would be
1694 required to comply with the provisions in this bill, I will
1695 be opposing it at this time.

1696 Thank you, Mr. Chairman, and I yield back.

1697 Chairman SMITH. Okay. Thank you, Ms. Bonamici.

1698 Are there other Members who wish to be heard? If not,
1699 the question is on the bill, H.R. 2850, as amended. The
1700 question is not on the bill. The question is on the--it is
1701 on the bill.

1702 On the 2850 as amended, those in favor, say aye.

1703 Opposed, nay.

1704 In the opinion of the Chair, the ayes have it and the
1705 bill is ordered reported favorably.

1706 Pursuant--

1707 Mr. MAFFEI. Mr. Chairman, on that I request a roll call
1708 vote. For the bill to be reported favorably, I request a
1709 roll call vote.

1710 Chairman SMITH. Would the gentleman approach the Chair
1711 for a minute? Okay.

1712 A roll call vote has been requested. Pursuant to
1713 Committee Rule II(f) and House Rule XI(2)(H)(4), proceedings
1714 on this vote will be postponed.

1715 Mr. MAFFEI. I thank the Chair.

1716 Chairman SMITH. Okay. Let me announce to the Members
1717 that there are a couple of classified briefings still ongoing
1718 and Members may be attending those classified briefings. So
1719 we are going to postpone proceedings on the three pending
1720 votes and we will give Members 30 minutes advanced notice of
1721 the specific time to which we will roll those votes.

1722 So, once again, everyone will have 30 minutes' notice.
1723 It will be this afternoon and we will stand in recess until
1724 that time.

1725 [Recess.]

1726 Chairman SMITH. The Science, Space, and Technology
1727 Committee will reconvene.

1728 And before we get to the scheduled and postponed votes,
1729 I want to take a minute to recognize Ellen Scholl. Ellen,
1730 stand up just for a second so everybody can say hello and
1731 goodbye. I want to recognize Ellen for her hard work and
1732 dedication to the full committee and the Energy and
1733 Environment Subcommittees over the past 2-1/2 years. After
1734 this markup, Ellen will be packing up for a long drive back
1735 to the great State of Texas where she will return to UT
1736 Austin to pursue a graduate degree at the LBJ School of
1737 Public Affairs. Ellen, we thank you for your outstanding
1738 service to this committee and we certainly wish you well in
1739 your next adventure.

1740 First item of unfinished business of the Committee is
1741 the postponed roll call on the amendment offered by Mr.
1742 Grayson, Amendment #1 to the Resolution. And the clerk will
1743 call the roll.

1744 The CLERK. Mr. Smith?

1745 Chairman SMITH. No.

1746 The CLERK. Mr. Smith votes no.

1747 Mr. Rohrabacher?

1748 Mr. ROHRABACHER. No.

1749 The CLERK. Mr. Rohrabacher votes no.

1750 Mr. Hall?

1751 Mr. HALL. No.

1752 The CLERK. Mr. Hall votes no.

1753 Mr. Sensenbrenner?
1754 [No response.]
1755 The CLERK. Mr. Lucas?
1756 [No response.]
1757 The CLERK. Mr. Neugebauer?
1758 Mr. NEUGEBAUER. No.
1759 The CLERK. Mr. Neugebauer votes no.
1760 Mr. McCaul?
1761 Mr. MCCAUL. No.
1762 The CLERK. Mr. McCaul votes no.
1763 Mr. Broun?
1764 Mr. BROUN. No.
1765 The CLERK. Mr. Broun votes no.
1766 Mr. Palazzo?
1767 Mr. PALAZZO. No.
1768 The CLERK. Mr. Palazzo votes no.
1769 Mr. Brooks?
1770 Mr. BROOKS. No.
1771 The CLERK. Mr. Brooks votes no.
1772 Mr. Hultgren?
1773 Mr. HULTGREN. No.
1774 The CLERK. Mr. Hultgren votes no.
1775 Mr. Bucshon?
1776 Mr. BUCSHON. No.
1777 The CLERK. Mr. Bucshon votes no.

1778 Mr. Stockman?
1779 Mr. STOCKMAN. No.
1780 The CLERK. Mr. Stockman votes no.
1781 Mr. Posey?
1782 Mr. POSEY. No.
1783 The CLERK. Mr. Posey votes no.
1784 Mrs. Lummis?
1785 Mrs. LUMMIS. No.
1786 The CLERK. Mrs. Lummis votes no.
1787 Mr. Schweikert?
1788 Mr. SCHWEIKERT. No.
1789 The CLERK. Mr. Schweikert votes no.
1790 Mr. Massie?
1791 Mr. MASSIE. No.
1792 The CLERK. Mr. Massie votes no.
1793 Mr. Cramer?
1794 Mr. CRAMER. No.
1795 The CLERK. Mr. Cramer votes no.
1796 Mr. Bridenstine?
1797 Mr. BRIDENSTINE. No.
1798 The CLERK. Mr. Bridenstine votes no.
1799 Mr. Weber?
1800 Mr. WEBER. Negative.
1801 The CLERK. Mr. Weber votes no.
1802 Mr. Stewart?

1803 Mr. STEWART. No.

1804 The CLERK. Mr. Stewart votes no.

1805 Mr. Collins?

1806 Mr. COLLINS. No.

1807 The CLERK. Mr. Collins votes no.

1808 Ms. Johnson?

1809 Ms. JOHNSON. Aye.

1810 The CLERK. Ms. Johnson votes aye.

1811 Ms. Lofgren?

1812 Ms. LOFGREN. Aye.

1813 The CLERK. Ms. Lofgren votes aye.

1814 Mr. Lipinski?

1815 Mr. LIPINSKI. Aye.

1816 The CLERK. Mr. Lipinski votes aye.

1817 Ms. Edwards?

1818 Ms. EDWARDS. Aye.

1819 The CLERK. Ms. Edwards votes aye.

1820 Ms. Wilson?

1821 Ms. WILSON. Aye.

1822 The CLERK. Ms. Wilson votes aye.

1823 Ms. Bonamici?

1824 Ms. BONAMICI. Aye.

1825 The CLERK. Ms. Bonamici votes aye.

1826 Mr. Swalwell?

1827 Mr. SWALWELL. Aye.

1828 | The CLERK. Mr. Swalwell votes aye.
1829 | Mr. Maffei?
1830 | Mr. MAFFEI. Aye.
1831 | The CLERK. Mr. Maffei votes aye.
1832 | Mr. Grayson?
1833 | Mr. GRAYSON. Aye.
1834 | The CLERK. Mr. Grayson votes aye.
1835 | Mr. Kennedy?
1836 | Mr. KENNEDY. Aye.
1837 | The CLERK. Mr. Kennedy votes aye.
1838 | Mr. Peters?
1839 | Mr. PETERS. Aye.
1840 | The CLERK. Mr. Peters votes aye.
1841 | Mr. Kilmer?
1842 | Mr. KILMER. Aye.
1843 | The CLERK. Mr. Kilmer votes aye.
1844 | Mr. Bera?
1845 | Mr. BERA. Aye.
1846 | The CLERK. Mr. Bera votes aye.
1847 | Ms. Esty?
1848 | Ms. ESTY. Aye.
1849 | The CLERK. Ms. Esty votes aye.
1850 | Mr. Veasey?
1851 | Mr. VEASEY. Aye.
1852 | The CLERK. Mr. Veasey votes aye.

1853 Ms. Brownley?

1854 Ms. BROWNLEY. Aye.

1855 The CLERK. Ms. Brownley votes aye.

1856 Mr. Takano?

1857 Mr. TAKANO. Aye.

1858 The CLERK. Mr. Takano votes aye.

1859 Ms. Kelly?

1860 Ms. KELLY. Aye.

1861 The CLERK. Ms. Kelly votes aye.

1862 Chairman SMITH. Any other Members who wish to vote or
1863 change their vote? If not, the clerk will report.

1864 The CLERK. Mr. Chairman, 18 Members voted aye and 20
1865 Members voted nay.

1866 Chairman SMITH. Okay. 20--18 ayes and 20 nays and the
1867 amendment is not agreed to.

1868 The next item of unfinished business is the postponed
1869 roll call on the Resolution. And the clerk will call the
1870 roll.

1871 The CLERK. Mr. Smith?

1872 Chairman SMITH. Aye.

1873 The CLERK. Mr. Smith votes aye.

1874 Mr. Rohrabacher?

1875 Mr. ROHRABACHER. Yes.

1876 The CLERK. Mr. Rohrabacher votes aye.

1877 Mr. Hall?

1878 | Mr. HALL. Aye.
1879 | The CLERK. Mr. Hall votes aye.
1880 | Mr. Sensenbrenner?
1881 | [No response.]
1882 | The CLERK. Mr. Lucas?
1883 | [No response.]
1884 | The CLERK. Mr. Neugebauer?
1885 | Mr. NEUGEBAUER. Aye.
1886 | The CLERK. Mr. Neugebauer votes aye.
1887 | Mr. McCaul?
1888 | Mr. MCCAUL. Aye.
1889 | The CLERK. Mr. McCaul votes aye.
1890 | Mr. Broun?
1891 | Mr. BROUN. Aye.
1892 | The CLERK. Mr. Broun votes aye.
1893 | Mr. Palazzo?
1894 | Mr. PALAZZO. Aye.
1895 | The CLERK. Mr. Palazzo votes aye.
1896 | Mr. Brooks?
1897 | Mr. BROOKS. Aye.
1898 | The CLERK. Mr. Brooks votes aye.
1899 | Mr. Hultgren?
1900 | Mr. HULTGREN. Aye.
1901 | The CLERK. Mr. Hultgren votes aye.
1902 | Mr. Bucshon?

1903 Mr. BUCSHON. Aye.
1904 The CLERK. Mr. Bucshon votes aye.
1905 Mr. Stockman?
1906 Mr. STOCKMAN. Aye.
1907 The CLERK. Mr. Stockman votes aye.
1908 Mr. Posey?
1909 Mr. POSEY. Aye.
1910 The CLERK. Mr. Posey votes aye.
1911 Mrs. Lummis?
1912 Mrs. LUMMIS. Aye.
1913 The CLERK. Mrs. Lummis votes aye.
1914 Mr. Schweikert?
1915 Mr. SCHWEIKERT. Yes.
1916 The CLERK. Mr. Schweikert votes aye.
1917 Mr. Massie?
1918 Mr. MASSIE. Aye.
1919 The CLERK. Mr. Massie votes aye.
1920 Mr. Cramer?
1921 Mr. CRAMER. Aye.
1922 The CLERK. Mr. Cramer votes aye.
1923 Mr. Bridenstine?
1924 Mr. BRIDENSTINE. Aye.
1925 The CLERK. Mr. Bridenstine votes aye.
1926 Mr. Weber?
1927 Mr. WEBER. Aye.

1928 The CLERK. Mr. Weber votes aye.
1929 Mr. Stewart?
1930 Mr. STEWART. Aye.
1931 The CLERK. Mr. Stewart votes aye.
1932 Mr. Collins?
1933 Mr. COLLINS. Aye.
1934 The CLERK. Mr. Collins votes aye.
1935 Ms. Johnson?
1936 Ms. JOHNSON. No.
1937 The CLERK. Ms. Johnson votes no.
1938 Ms. Lofgren?
1939 Ms. LOFGREN. No.
1940 The CLERK. Ms. Lofgren votes no.
1941 Mr. Lipinski?
1942 Mr. LIPINSKI. No.
1943 The CLERK. Mr. Lipinski votes no.
1944 Ms. Edwards?
1945 Ms. EDWARDS. No.
1946 The CLERK. Ms. Edwards votes no.
1947 Ms. Wilson?
1948 Ms. WILSON. No.
1949 The CLERK. Ms. Wilson votes no.
1950 Ms. Bonamici?
1951 Ms. BONAMICI. No.
1952 The CLERK. Ms. Bonamici votes no.

1953 Mr. Swalwell?
1954 Mr. SWALWELL. No.
1955 The CLERK. Mr. Swalwell votes no.
1956 Mr. Maffei?
1957 Mr. MAFFEI. No.
1958 The CLERK. Mr. Maffei votes no.
1959 Mr. Grayson?
1960 Mr. GRAYSON. No.
1961 The CLERK. Mr. Grayson votes no.
1962 Mr. Kennedy?
1963 Mr. KENNEDY. No.
1964 The CLERK. Mr. Kennedy votes no.
1965 Mr. Peters?
1966 Mr. PETERS. No.
1967 The CLERK. Mr. Peters votes no.
1968 Mr. Kilmer?
1969 Mr. KILMER. No.
1970 The CLERK. Mr. Kilmer votes no.
1971 Mr. Bera?
1972 Mr. BERA. No.
1973 The CLERK. Mr. Bera votes no.
1974 Ms. Esty?
1975 Ms. ESTY. No.
1976 The CLERK. Ms. Esty votes no.
1977 Mr. Veasey?

1978 Mr. VEASEY. No.

1979 The CLERK. Mr. Veasey votes no.

1980 Ms. Brownley?

1981 Ms. BROWNLEY. No.

1982 The CLERK. Ms. Brownley votes no.

1983 Mr. Takano?

1984 Mr. TAKANO. No.

1985 The CLERK. Mr. Takano votes no.

1986 Ms. Kelly?

1987 Ms. KELLY. No.

1988 The CLERK. Ms. Kelly votes no.

1989 Chairman SMITH. The clerk will report the vote.

1990 The CLERK. Mr. Chairman, there are 20 Members who voted

1991 aye and 18 Members voted nay.

1992 Chairman SMITH. You misspoke. There were 20 ayes and

1993 18 noes and the Resolution is agreed to.

1994 Without objection, the Motion to Reconsider is laid upon

1995 the table. And the gentleman from New York, Mr. Maffei, is

1996 recognized.

1997 Mr. MAFFEI. Yes, Mr. Chairman, thank you. I ask

1998 unanimous consent that I be allowed to withdraw my request

1999 for a roll call vote on the pending matter.

2000 Chairman SMITH. Okay. Without objection, I thank the

2001 gentleman. The question is on the bill H.R. 2850 as amended.

2002 Those in favor, say aye.

2003 | Opposed, nay.

2004 | The ayes have it and the bill, as amended, is agreed to.

2005 | Now, without objection, the Motion to Reconsider is laid

2006 | upon the table, and I move that the bill H.R. 2850, as

2007 | amended, be favorably reported to the House and that staff be

2008 | authorized to make any necessary technical and conforming

2009 | changes. And without objection, so ordered.

2010 | If there is no further discussion, that completes our

2011 | business and this concludes the full committee markup.

2012 | Without objection, the Committee stands adjourned.

2013 | [Whereupon, at 4:32 p.m., the Committee was adjourned.]

 SPEAKER LISTING

BERA.	69	70	81	86			
BONAMICI.	44	45	46	48	74	80	85
BRIDENSTINE.	79	84					
BROOKS.	78	83					
BROUN.	78	83					
BROWNLEY.	82	87					
BUCSHON.	22	32	33	55	56	57	78
	84						
CLERK.	2	11	49	58	63	69	77
	78	79	80	81	82	83	84
	85	86	87				
COLLINS.	80	85					
CRAMER.	79	84					
EDWARDS.	35	36	38	40	47	53	54
	56	57	80	85			
ESTY.	81	86					
GRAYSON.	10	16	17	18	19	20	21
	22	42	46	48	49	50	51
	54	57	59	60	61	81	86
HALL.	77	83					
HULTGREN.	78	83					
JOHNSON.	6	8	9	11	25	26	27

	28	35	62	66	80	85	
KELLY.	42	44	82	87			
KENNEDY.	81	86					
KILMER.	81	86					
LIPINSKI.	80	85					
LOFGREN.	80	85					
LUMMIS.	79	84					
MAFFEI.	9	10	72	76	81	86	87
MASSIE.	79	84					
MCCAUL.	78	83					
NEUGEBAUER.	28	62	78	83			
PALAZZO.	78	83					
PETERS.	24	81	86				
POSEY.	79	84					
ROHRBACHER.	40	77	82				
SCHWEIKERT.	33	79	84				
SENSENBRENNER.		9	10	27			
SMITH.	2	3	6	7	8	9	10
	11	13	16	17	18	19	20
	21	22	24	26	27	28	30
	32	33	35	37	38	39	40
	42	44	45	47	48	49	50
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	77	82	87				

STEWART.	13	80	85			
STOCKMAN.	79	84				
SWALWELL.	80	86				
TAKANO.	55	82	87			
VEASEY.	81	87				
WEBER.	79	84				
WILSON.	28	30	32	33	80	85
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INDEX OF INSERTS

***** INSERT 1 *****	PAGE	2
***** INSERT 2 *****	PAGE	5
***** COMMITTEE INSERT *****	PAGE	7
***** INSERT 3 *****	PAGE	12
***** COMMITTEE INSERT *****	PAGE	27
***** COMMITTEE INSERT *****	PAGE	47
***** INSERT 7 *****	PAGE	49
***** INSERT 8 *****	PAGE	58
***** INSERT 4 *****	PAGE	63
***** INSERT 5 *****	PAGE	65
***** INSERT 9 *****	PAGE	67

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

PAGE 68

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

PAGE 69

