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4 MARKUP OF H.R. 2745, THE STANDARD MERGER AND ACQUISITION
5 REVIEWS THROUGH EQUAL RULES (SMARTER) ACT OF 2015; AND
6 H.R. 3490, THE STRENGTHENING STATE AND LOCAL CYBER CRIME
7 FIGHTING ACT.

8 Wednesday, September 30, 2015

9 House of Representatives

10 Committee on the Judiciary

11 Washington, D.C.

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

15 Present: Representatives Goodlatte, Sensenbrenner,
16 Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe,
17 Chaffetz, Marino, Gowdy, Labrador, Farenthold, Collins,

18 DeSantis, Walters, Buck, Ratcliffe, Trott, Bishop, Conyers,
19 Lofgren, Jackson Lee, Cohen, Johnson, Chu, Gutierrez,
20 DelBene, Jeffries, Cicilline, and Peters.

21 Staff present: Shelley Husband, Majority Staff
22 Director; Branden Ritchie, Deputy Majority Staff Director and
23 Chief Counsel; Allison Halataei, Majority Parliamentarian and
24 General Counsel; Chris Grieco, Majority Counsel, Subcommittee
25 on Crime, Terrorism, Homeland Security, and Investigations;
26 Anthony Grossi, Majority General Counsel, Subcommittee on
27 Regulatory Reform, Commercial and Antitrust Law; Kelsey
28 Williams, Majority Clerk; Perry Apelbaum, Minority Chief
29 Counsel and Chief of Staff; Danielle Brown, Minority Chief
30 Legislative Counsel and Parliamentarian; James Park, Minority
31 Chief Antitrust Counsel; Joe Graupensperger, Minority Chief
32 Counsel, Subcommittee on Crime; Tiffany Joslyn, Minority
33 Deputy Chief Counsel, Subcommittee on Crime; Slade Bond,
34 Minority Counsel, Subcommittee on Regulatory Reform,
35 Commercial and Antitrust Law; and Eric Williams, Minority
36 Counsel, Subcommittee on Crime.

37

38 Chairman Goodlatte. Good morning. The Judiciary
39 Committee will come to order, and without objection, the
40 chair is authorized to declare a recess of the committee at
41 any time.

42 Pursuant to notice, I now call up H.R. 3490 for purposes
43 of markup, and move that the committee report the bill
44 favorably to the House.

45 The clerk will report the bill.

46 Ms. Williams. H.R. 3490, to amend the Homeland Security
47 Act of 2002 to authorize the National Computer Forensics
48 Institute and for other purposes.

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

51 [The bill follows:]

52

53 Chairman Goodlatte. I will begin by recognizing myself
54 for an opening statement.

55 The National Computer Forensics Institute serves a vital
56 purpose in preparing State and local law enforcement to
57 combat computer and cybercrime, and I am proud to support
58 this legislation. The United States Department of Justice
59 has declared that cybercrime is one of the greatest threats
60 facing our country, and that cybercrime has enormous
61 implications for our national security, economic prosperity,
62 and public safety.

63 The Justice Department has also stated that, "The range
64 of threats and the challenges they present for law
65 enforcement expand just as rapidly as technology evolves."
66 With this in mind, the National Computer Forensics Institute
67 serves the vital purpose of providing legal and judicial
68 professionals a free comprehensive education on current
69 cybercrime trends, investigative methods, and prosecutorial
70 and judicial challenges.

71 The National Computer Forensics Institute is a 32,000
72 square foot facility located in Hoover, Alabama. This
73 institute boasts three multipurpose classrooms, two network
74 investigations classrooms, a mock courtroom, and a forensics

75 lab. Special agents of the United States Secret Service
76 staff the Institute and work diligently training attendees in
77 modern counter-cybercrime procedures and evidence collection.
78 When the attendees leave, they take with them the critical
79 knowledge and equipment required to conduct autonomous and
80 thorough cybercrime investigations at their home agencies.

81 Since its creation, the Institute has earned praise for
82 its work in preparing America's law enforcement in how to
83 deal with these important technology issues. Since its
84 creation in 2008, the Institute has instructed law
85 enforcement professionals from every State in the country and
86 from over 500 different law enforcement agencies. Each
87 professional educated at the Institute is a force multiplier
88 for the Secret Service, and after successful completion of
89 the program, the students can bring their new knowledge back
90 to their local agency to inform their colleague how to
91 properly conduct computer forensic investigations.

92 I firmly believe that for our Nation to successfully
93 combat the cybercrime threat, we must support legislation
94 such as H.R. 3490. And I want to thank the gentleman from
95 Texas, Mr. Ratcliffe, for sponsoring this important
96 legislation. Authorizing the existing National Computer

97 Forensics Institute in Federal law will cement its position
98 as our Nation's premiere high-tech cybercrime training
99 facility, and will help law enforcement professionals
100 nationwide in their efforts to combat cyber and computer
101 crimes.

102 At this time, it is now my pleasure to recognize the
103 ranking member of the committee, Mr. Conyers, for his opening
104 statement.

105 Mr. Conyers. Thank you, Chairman Goodlatte. Members of
106 the committee, H.R. 3490, the Strengthening State and Local
107 Cyber Crime Fighting Act, establishes the National Computer
108 Forensics Institute, NCFI, as an official Federal program
109 which will be managed by the Department of Homeland Security
110 and operated by the United States Secret Service. I, along
111 with the chairman, support this bill because it addresses a
112 topic that is critically important to our country and this
113 committee.

114 First, cybercrime poses an enormous threat to national
115 security, economic prosperity, and to public safety. The
116 range of threats and the challenges they present for law
117 enforcement expand just as rapidly as technology evolves. In
118 fact, during the past decade, our Federal law enforcement

119 community has observed a significant increase in the quality,
120 quantity, and complexity of cybercrimes targeting private
121 industry, including our financial services sector. These
122 crimes include intrusions, hacking attacks, the installation
123 of malicious software, and data breaches that have exposed
124 the personal information of millions of American citizens, as
125 well as members of our law enforcement and intelligence
126 services.

127 To date, the National Computer Forensics Institute has
128 trained more than 800 State and local law enforcement
129 officers and approximately 238 prosecutors. With this
130 legislation, the Institute will continue to educate State and
131 local law enforcement officers, prosecutors, and judges on
132 current trends in cyber and electronic crimes investigations.
133 And the Institute will train them on the proper procedures to
134 conduct these important investigations.

135 Now, in addition, the National Computer Forensics
136 Institute will continue to work to protect our citizens'
137 personal information from unwarranted government intrusion.
138 By establishing national standards for conducting cybercrime
139 investigations, the Institute will promote these important
140 privacy interests. And finally, it is important to highlight

141 the successful efforts that have already taken place to
142 combat the ever-growing threat of cybercrime. As the
143 operator of the National Cyber Forensics Institute, the
144 Secret Service has demonstrated its prowess in pursuing
145 cybercrime investigations.

146 The Secret Service's investigations have resulted in
147 over 4,900 arrests associated with more than \$1.4 billion in
148 fraud losses, and the prevention of over \$11 billion in
149 potential fraud losses during the last five years.
150 Cybercrime poses a significant threat to national security,
151 economic prosperity, and public safety. And so, I support
152 this legislation because it will assist law enforcement in
153 continuing to combat cyber and electronic crimes.

154 I thank the chairman for this time, and yield back the
155 balance.

156 Chairman Goodlatte. Thank you, Mr. Chairman. Before I
157 turn to the gentlewoman from Texas, I would like to take a
158 moment to welcome and recognize my representative in the
159 Virginia House of Delegates who is here from Roanoke,
160 Virginia, Chris Head, and his wife, Betsy. Thank you for
161 joining us today.

162 [Applause.]

163 Chairman Goodlatte. And now, I would like to recognize
164 the gentlewoman from Texas, Ms. Jackson Lee, who is the
165 ranking member of the Subcommittee on Crime, Terrorism, and
166 Homeland Security, for her opening statement.

167 Ms. Jackson Lee. Mr. Chairman, thank you so very much,
168 and I am excited about this bill. First, to thank my fellow
169 colleague from the Homeland Security Committee. So I have
170 three reasons for thanking him. The second reason is to be
171 able to thank the Secret Service for their stunning work of
172 last week. Of course, they will say that they were doing
173 their job, and that they will, and that they were. But I do
174 think they are owed, along with law enforcement, a debt of
175 appreciation and gratitude for the extensive security
176 coverage that Pope Francis received from coming into the
177 United States both in Washington, D.C., New York, and
178 Philadelphia. So I wanted to add my appreciation to them for
179 their service.

180 And then secondly, I am excited about this new
181 opportunity to ensure our concern and oversight dealing with
182 cybercrime fighting. This Strengthening State and Local
183 Cyber Crime Fighting Act will facilitate the training of
184 State and local law enforcement, prosecutors, and judges on

185 cutting-edge issues in the fight to combat cyber and
186 electronic crime by formally establishing the National Cyber
187 Forensics Institute within the Department of Homeland
188 Security.

189 And every time I am at home or engaged with individuals
190 and businesses, the discussion of cybercrime comes up.
191 Cybercrime is an epidemic that impacts individuals and
192 institutions, both the public and private sphere, at all
193 levels -- local, State, and Federal. Cybercrime poses a
194 threat to our national economic and homeland security, but
195 individual cyber threats may not always fit within the
196 priorities of our Federal law.

197 For those of us who have served on the Homeland Security
198 Committee for a number of years, since, in fact, 9/11, we
199 know that we have discussed the over 85 percent of the
200 cyberworld in the private sector, and, therefore, they are
201 certainly impacted. Often the task of investigating and
202 prosecuting cyber offenses falls with our State and local
203 enforcement prosecutors because it deals with the private
204 sector, the private landscape.

205 The efforts of these dedicated public servants are
206 frequently limited or impeded by lack of funding and

207 resources, training, particularly inadequate training,
208 antiquated equipment, and technology. Since 2008, the NCFI
209 has stepped up to fill in this gap, and, as a result, made
210 our communities much safer. NCFI provides State and local
211 law enforcement agencies tuition free comprehensive education
212 on current cybercrime trends, investigative methods, and
213 prosecutorial and judicial challenges.

214 I hope this legislation will be able to get to the
215 President's desk so that it can build on what it has already
216 done, trained over 500 State and local police, officers,
217 prosecutors, and judges from all 50 States. And in some
218 advanced forensics and network intrusion courses, NCFI has
219 provided students at no cost all hardware, software, and
220 licenses necessary to conduct such investigations.

221 I believe that by providing students the same equipment
222 as the U.S. Secret Services, NCFI facilitates increased
223 collaboration and communications between local officers and
224 Federal agents. If not for the work of the NCFI, many
225 forensic investigations would not have been conducted, and
226 many complaints would have been forwarded to overburdened
227 Federal agencies unable to pursue them.

228 Congratulations to the Secret Service again. They have

229 an excellent track record, and, therefore, this legislation
230 covers a number of aspects of that, providing that resource
231 to local and State authorities. And I believe that the
232 NCIF's training and education programs have made America
233 safer, and as well, the idea of the threat of cybersecurity
234 taken very seriously now is in the eye of the storm. And we
235 are engaged in that storm looking to be victorious over this
236 dastardly epidemic that is plaguing this Nation.

237 Let me conclude, Mr. Chairman, by indicating that you
238 may be aware that a task force on terrorism has just finished
239 its report indicating the number of foreign fighters and
240 those that have left the United States and potentially coming
241 back to the United States.

242 As I conclude my remarks, I would like to introduce into
243 the record H.R. 48, which is my legislation on the No Fly for
244 Foreign Fighters Act. And I would look forward to this
245 committee, my colleagues, the ranking member, Mr. Conyers,
246 the chairman, Mr. Goodlatte, working together to be able to
247 address this legislation that was referred to Judiciary.
248 With that --

249 Chairman Goodlatte. If the gentlewoman would yield --
250 Ms. Jackson Lee. I would be happy to yield.

251 Chairman Goodlatte. -- we certainly share your interest
252 in this subject matter, and we will be looking forward to
253 having further discussions with you about that.

254 Ms. Jackson Lee. Thank you very much. With that, Mr.
255 Chairman, Mr. Ranking Member, I yield back my time.

256 Chairman Goodlatte. The chair thanks the gentlewoman.
257 I now recognize the gentleman from Texas, Mr. Ratcliffe, for
258 the purposes of offering an amendment in the nature of a
259 substitute.

260 The clerk will report the amendment.

261 Ms. Williams. Amendment in the nature of a substitute
262 to H.R. 3490, offered by Mr. Ratcliffe of Texas.

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

265 [The amendment of Mr. Ratcliffe follows:]

266

267 Chairman Goodlatte. And Mr. Ratcliffe is recognized to
268 explain the amendment.

269 Mr. Ratcliffe. Thank you, Chairman Goodlatte, Ranking
270 Member Conyers, and I thank my colleague, the gentlelady from
271 Texas, Ms. Jackson Lee, for your comments. It is very clear
272 to all of us that today's cybercriminals present a new
273 challenge to our law enforcement to our prosecutors, and to
274 our judges. It no longer takes a sophisticated cybercriminal
275 to compromise personal and sensitive information from U.S.
276 companies and from everyday Americans.

277 To the contrary, criminals can easily obtain cyber-
278 exploit tools to create this havoc on the dark Web. And with
279 the increasing number of cyberattacks, it is vital that our
280 State and local law enforcement, prosecutors, and judges be
281 properly trained to protect the American people. For those
282 reasons, I am grateful for the opportunity today to introduce
283 the Strengthening State and Local Cyber Crime Fighting Act of
284 2015 to bolster State and local law enforcement efforts to
285 fight to cybercrime in this country.

286 This bill will authorize the National Computer Forensics
287 Institute, or NCFI, which was created in 2007 by the State of
288 Alabama, and which is currently operated by the United States

289 Secret Service. Located in Hoover, Alabama, the NCFI is
290 comprised of a 32,000 square foot facility, which consists of
291 classrooms, mock courtrooms, and an operational forensics
292 laboratory.

293 The NCFI has already garnered a reputation as the
294 premiere cybercrime training center in this Nation, one that
295 supports our State and local law enforcement investigators,
296 prosecutors, and judicial officials. To date, as has been
297 mentioned, the NCFI has already trained and equipped more
298 than 4,500 local officials from all 50 States and from U.S.
299 territories. These NCFI graduates represent more than 1,500
300 agencies nationwide, including agencies from my congressional
301 district, the 4th District of Texas, and law enforcement from
302 Collin County, and Hunt County, and from the Greenville
303 Police Department. Mr. Chairman, this bill gives men and
304 women across this country the necessary tools and training
305 that are needed to fight cybercriminals in the 21st century.

306 So I thank you, Mr. Chairman, for brining up this
307 important legislation before us today, and with that I yield
308 back.

309 Mr. Conyers. Mr. Chairman?

310 Chairman Goodlatte. For what purpose does the gentleman

311 from Michigan seek recognition?

312 Mr. Conyers. To strike the last word.

313 Chairman Goodlatte. The gentleman is recognized for 5
314 minutes.

315 Mr. Conyers. Thank you, Mr. Chairman, and, members of
316 the committee, this substitute offered by our colleague from
317 Texas removes references to "assistance" regarding terrorism
318 in order to clarify that the National Computer Forensics
319 Institute would not interfere with the traditional role of
320 the FBI, which has jurisdiction over terrorism investigations
321 and related training. And so, I support the substitute
322 amendment, which retains the important functions of NCFI in
323 providing assistance to State and local enforcement with
324 respect to cybercrime.

325 The amendment does clarify an important jurisdiction
326 matter between the Secret Service and the FBI. This will
327 ensure that these agencies continue to provide the excellent
328 services to State and local law enforcement consistent with
329 their respective areas of expertise and jurisdiction.

330 I support the substitute. I thank the chairman, and
331 yield back my time.

332 Chairman Goodlatte. The chair thanks the gentleman, and

333 recognizes himself in support of the amendment in the nature
334 of a substitute. I want to thank, again, the gentleman from
335 Texas for his work on this bill and for these important
336 technical changes. The amendment makes slight changes to the
337 legislative text, and I support the amendment.

338 The United States Secret Service, who will be
339 implementing this bill, had a number of small technical
340 corrections to the language, and I thank them for their help.
341 I also applaud the gentleman from Texas for highlighting ways
342 in which State and local law enforcement and Federal agencies
343 can work together on cybercrime issues.

344 As I said, I support the amendment, and I urge my
345 colleagues to do so as well.

346 Are there amendments to the amendment in the nature of a
347 substitute?

348 Ms. Jackson Lee. Mr. Chairman?

349 Chairman Goodlatte. For what purpose does the
350 gentlewoman from Texas seek recognition?

351 Ms. Jackson Lee. I would like to strike the last word.

352 Chairman Goodlatte. The gentlewoman is recognized for 5
353 minutes.

354 Ms. Jackson Lee. Let me join my colleagues, first of

355 all, to indicate the importance of the FBI and U.S. Secret
356 Service collaboration, but also the change that the gentleman
357 from Texas made that helps clarify the issue dealing with
358 references to threats or acts of terrorism. The amendment in
359 the nature of a substitute removes these references.

360 State and local enforcement training related to threats
361 or acts of terrorism is absolutely critical, and it is
362 something that I know we all seriously value. However,
363 because it is the FBI that has primary investigative
364 responsibility on matters concerning terrorism, training in
365 this area should and does funnel through the FBI.

366 I am always a believer in making sure that we
367 distinctively in this committee work with agencies and
368 provide the best guidance to these agencies as evidenced by
369 my introducing H.R. 48 that will assist the FBI and
370 collaborate with agencies dealing with the issue of
371 terrorism.

372 And so, I support the amendment in the nature of a
373 substitute, and ask my colleagues to support it. And I yield
374 back.

375 Chairman Goodlatte. Are there any amendments to the
376 amendment?

377 [No response.]

378 Chairman Goodlatte. The question is on the amendment to
379 the amendment in the nature of a substitute.

380 Those in favor will say aye.

381 Those opposed, no.

382 In the opinion of the chair, the ayes have it, and the
383 amendment is agreed to.

384 A reporting quorum being present, the question is on the
385 motion to report the bill, H.R. 3490, as amended, favorably
386 to the House.

387 Those in favor will say aye.

388 Those opposed, no.

389 The ayes have it. The bill, as amended, is ordered
390 reported favorably.

391 Members will have 2 days to submit views.

392 [The information follows:]

393

394 Chairman Goodlatte. And without objection, the bill
395 will be reported as a single amendment in the nature of a
396 substitute, incorporating all adopted amendments. And staff
397 is authorized to make technical and conforming changes.

398 Pursuant to notice, I now call up H.R. 2745 for purposes
399 of markup, and move that the committee report the bill
400 favorably to the House.

401 The clerk will report the bill.

402 Ms. Williams. H.R. 2745, to amend the Clayton Act and
403 the Federal Trade Commission Act to provide that the Federal
404 Trade Commission shall exercise authority with respect to
405 mergers only under the Clayton Act, and only in the same
406 procedural manner as the Attorney General exercises such
407 authority.

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

410 [The bill follows:]

411

412 Chairman Goodlatte. I will begin by recognizing myself
413 for an opening statement.

414 In 1914, Congress passed the Federal Trade Commission
415 Act, marking the beginning of a dual antitrust enforcement
416 regime in the United States. Because both the Department of
417 Justice and the FTC enforce our Nation's antitrust laws,
418 companies may and often do have different experiences when
419 interacting with one agency relative to the other.

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

424 The DOJ and the FTC then determine which agency will be
425 responsible for reviewing the transaction. As there are no
426 fixed rules for making this determination, it can appear that
427 the decision is made on the basis of a flip of a coin. There
428 are two potential differences that companies can face based
429 on the identity of the antitrust enforcement agency that
430 reviews the company's proposed transaction.

431 The first potential difference arises if the Agency
432 seeks to prevent the transaction by pursuing a preliminary
433 injunction in Federal court. There is a disparate legal

434 standard applied to each antitrust enforcement agency when it
435 requests a preliminary injunction. The second potential
436 difference lies in the process available to each antitrust
437 enforcement agency to prevent a transaction from proceeding.
438 The FTC may pursue administrative litigation against a
439 proposed transaction even after a court denies its
440 preliminary injunction request. In contrast, the Department
441 of Justice cannot pursue administrative litigation.

442 There is justification for these disparities in the
443 merger review processes and standards. The bipartisan
444 Antitrust Modernization Commission recommended that Congress
445 remove the disparities in the bill before us today, and the
446 Standard Merger and Acquisition Reviews Through Equal Rules
447 Act of 2015, or the SMARTER Act, does just that.

448 I applaud Mr. Farenthold for introducing this important
449 legislation that will enhance the transparency,
450 predictability, and credibility of the antitrust merger
451 review process. By enacting the SMARTER Act into law,
452 Congress will assure that companies no longer will be
453 subjected to fundamentally different processes and standards
454 based on the flip of a coin.

455 Notably, the legislation has garnered the support of

456 former and current FTC commissioners, including former
457 chairman, David Clanton, former commissioner, Josh Wright,
458 and sitting commissioner, Maureen Ohlhausen. The SMARTER Act
459 is an important step toward achieving this committee's goal
460 of assuring that our Nation's antitrust laws are enforced in
461 a manner that is fair, consistent, and predictable, and I
462 urge my colleagues to support this good government bill, and
463 yield back the balance of my time.

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

466 Mr. Conyers. Thank you, Mr. Chairman and members of the
467 committee. We have got a slight problem here. The SMARTER
468 Act would require the Federal Trade Commission to use the
469 same merger enforcement procedures as the Justice
470 Department's Antitrust Division for proposed mergers,
471 acquisitions, joint ventures, and other similar transactions.
472 But I think there may be some flaws in this if we check it
473 out carefully.

474 By weakening the Commission's independence, this bill
475 undermines Congress' original intent in creating the Federal
476 Trade Commission in the first place. For good reasons that
477 are still relevant today, Congress established the Commission

478 to be an independent administrative agency, and we must be
479 mindful of these reasons as we consider the arguments in
480 favor of the SMARTER Act.

481 Even though the Justice Department's antitrust
482 enforcement authority already existed at the time Congress
483 created the Commission in 1914, Congress established this
484 agency in direct response to the perceived inadequacy of
485 existing mechanisms to stop the wave of mergers and corporate
486 abuses that continue to occur 24 years after the Sherman's
487 Act's enactment.

488 The Commission is an independent body of experts tasked
489 with developing antitrust law and policy free from political
490 influence, and particularly executive branch interference.
491 Congress specifically gave the Commission broad
492 administrative powers to investigate and enforce laws to stop
493 unfair methods of competition, as well as the authority to
494 use an administrative adjudication process to help develop
495 policy expertise rather than requiring the Commission to try
496 cases before a generalist Federal judge.

497 Rather than strengthening the Commission's authority,
498 the SMARTER Act unfortunately does just the opposite. Of
499 greatest concern is that act's elimination of the

500 administrative adjudication process for merger cases under
501 Section 5(b) of the Federal Trade Commission Act. By doing
502 so, the bill effectively transforms the Commission from an
503 independent administrative agency into another competition
504 enforcement agency, indistinguishable from the Justice
505 Department. The Commission's administrative authority is
506 designed to serve its role as an independent administrative
507 agency. Eliminating it, therefore, threatens the
508 Commission's distinctive role and independence.

509 Now, make no mistake: eliminating the Commission's
510 administrative authority opens the door for the ultimate
511 elimination of the Commission's role in competition and
512 antitrust enforcement and policy development. And you do not
513 have to just take my word for it. While supporting the
514 bill's harmonization of preliminary injunction standards
515 applicable to two antitrust enforcement agencies, former
516 Republican Commission chairman, William Kovacic, has already
517 publicly said that, and I quote, "the rest of the SMARTER Act
518 is rubbish."

519 Former chairman Kovacic recognized the ultimate effect
520 of the SMARTER Act when he commented, "Let me put it this
521 way. Behind the rest of the SMARTER Act is the fundamental

522 question of whether you want the Federal Trade Commission
523 involved in competition law." Similarly, current Commission
524 chairwoman, Edith Ramirez, observed last year that the bill
525 would have far-reaching immediate effects and fundamentally
526 alter the nature and function of the Commission, as well as
527 the potential for significant unintended consequences.

528 Consumers Union, the 79-year-old policy and advocacy
529 arms of *Consumer Reports*, also opposes the SMARTER Act. In
530 its letter to the committee, Consumers Union said that that
531 the SMARTER Act is not only completely unnecessary, but could
532 create unintended hurdles to effective and sound enforcement,
533 and set the stage for further tinkering, both of which risk
534 undermining what is now a coherent, consistent, well-
535 established familiar enforcement procedure within the
536 Commission.

537 Finally, the SMARTER Act is problematic because it may
538 apply to conduct well beyond larger mergers, which could
539 further curtail the Commission's effectiveness. In
540 particular, the SMARTER Act would eliminate the Commission's
541 authority to use administrative adjudications, not just for
542 the larger mergers, but for any proposed mergers. It also
543 removes such authority to review non-merger activity, like a

544 joint venture or similar transaction.

545 Now, I recognize that the bill's authors have tried in
546 good faith to respond to some of the concerns expressed by me
547 and by the Commission last year in response to an early draft
548 of the SMARTER Act, and I appreciate these efforts.
549 Moreover, I recognize that the Commission itself earlier this
550 year changed its procedural rules to make it easier to end
551 the use of administrative litigation where it loses a
552 preliminary injunction proceeding in court.

553 My disagreement, however, is more fundamental, at least
554 regarding whether the Commission should retain its
555 administrative litigation at all in merger cases. This
556 disagreement unfortunately leads me to oppose the SMARTER
557 Act, even in its rewritten form. And so accordingly, I urge
558 my colleagues to carefully consider these arguments, and
559 opposed H.R. 2745.

560 I thank the chairman, and return any unused time.

561 Chairman Goodlatte. The chair thanks the gentleman, and
562 without objection would ask that a letter from the United
563 States Chamber of Commerce, dated September 29, 2015, in
564 support of this legislation, and a letter from 15 antitrust
565 law professors be made a part of the record.

566 [The information follows:]

567

568 Mr. Conyers. Mr. Chairman?

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

571 Mr. Conyers. Might I ask unanimous consent to enter
572 into the record behind my statement three items, a letter
573 from the Consumers Union, a letter from the Federal Trade
574 Commissioner, Edith Ramirez, and an article entitled,
575 "Kovacic: SMARTER Act is Trash," for the record, please?

576 Chairman Goodlatte. Notwithstanding the impolite
577 phraseology used in the last title of that article, they will
578 all be made a part of the record.

579 [The information follows:]

580

581 Mr. Conyers. Thank you very much. That was not my
582 comment. It was a part of the title. Thank you.

583 Chairman Goodlatte. And the chair is now pleased to
584 recognize the gentleman from Pennsylvania, Mr. Marino,
585 chairman of the Subcommittee on Regulatory Reform, Commercial
586 and Antitrust Law, for his opening statement.

587 Mr. Marino. Thank you, Mr. Chairman. Merging companies
588 must have certainty for how our antitrust agencies will
589 review a proposed merger. It is only common sense that
590 parties to a merger under review should not be subject to
591 different standards of review and procedures solely because a
592 particular merger is referred to one agency rather than
593 another. Our antitrust review process should be subject to
594 regular order in this fashion without respect to the merits
595 of any underlying transaction.

596 I am pleased that we are moving an important
597 recommendation of the Antitrust Modernization Committee
598 forward. I thank Chairman Goodlatte for bringing forward
599 this bill, and I thank my colleague from Texas, Congressman
600 Farenthold, the vice chairman of the Regulatory Reform,
601 Commercial and Antitrust Law Subcommittee, for proposing it
602 earlier this year. I have proudly co-sponsored it, and I

603 urge my colleagues to support it as well.

604 And I yield back the remainder of my time.

605 Chairman Goodlatte. Thank you, Mr. Marino. I would now
606 like to recognize the gentleman from Georgia, Mr. Johnson,
607 the ranking member of the Subcommittee on Regulatory Reform,
608 Commercial, and Antitrust Law, for his opening statement.

609 Mr. Johnson. Thank you, Mr. Chairman. Congress first
610 established the Federal Trade Commission in 1914 to safeguard
611 consumers against anti-competitive behavior by specifically
612 empowering the Commission with the authority to enforce,
613 clarify, and develop antitrust law.

614 Under the process of administrative litigation, also
615 known as Part 3 litigation, the Commission may seek permanent
616 injunctions in its own administrative court in addition to
617 its ability to seek preliminary injunctions in Federal
618 district court. This additional authority is a unique
619 mechanism that takes advantage of the Commission's
620 longstanding expertise to develop some of the most complex
621 issues in our antitrust law.

622 The Standard Merger and Acquisition Reviews Through
623 Equal Rules, or the SMARTER Act, would create a uniform
624 standard for preliminary injunctions in cases involving

625 mergers, acquisitions, joint ventures, or similar
626 transactions, and, alarmingly, eliminate the Commission's
627 century old authority to administratively litigate these
628 cases. Proponents of the SMARTER Act argue that divergent
629 standards for enjoining mergers may undermine the public's
630 trust in the efficient and fair outcome of merger cases. But
631 it is unclear that these differences are material, let alone
632 have led to divergent outcomes in merger cases.

633 Indeed, for the 3 percent of transactions requiring
634 second requests for information from the antitrust agencies,
635 only about 1.5 percent of cases were stopped or modified. An
636 even smaller percentage of these cases go to trial or an
637 administrative hearing. We should hesitate before making
638 wholesale changes to the law based on theoretical concerns
639 involving about 1 percent of mergers, which also happen to be
640 some of the largest and most consequential.

641 In the absence of any evidence, it is difficult to
642 support wholesale changes to longstanding antitrust practices
643 at the FTC for consistency sake only based on speculative
644 harms. But even assuming that there are material differences
645 in cases brought under these standards, we should strike a
646 balance in favor of competition by lowering the burden of

647 proof in cases brought by the Justice Department, not by
648 raising the Commission's burden for obtaining preliminary
649 injunctions.

650 Courts already require a lower burden of proof in cases
651 brought by the Commission and Justice Department, precisely
652 because both are expert agencies equipped with large staffs
653 of economists that analyze numerous mergers on a regular
654 basis, and may only bring cases that are in the public
655 interest. To the extent that we should address perceived
656 differences in the standard for preliminary injunctions in
657 merger cases, legislation should favor increased competition,
658 not the interest of the merging parties.

659 The SMARTER Act would also eliminate the FTC's authority
660 to administratively litigate mergers and other transactions
661 under Section 5(b) of the FTC Act. Leading authorities in
662 antitrust across party lines have expressed serious
663 reservations with eliminating the Commission's administrative
664 litigation authority. For instance, Bob Kovacic, a former
665 Republican chair of the Commission, has referred to this
666 aspect of the bill as "rubbish," noting that the Commission
667 has used administrative litigation to win a string of novel
668 antitrust cases that courts have ultimately upheld where the

669 "Commission has had to fight for every single foot along the
670 way." Edith Ramirez, the chairwoman of the FTC, likewise
671 wrote last Congress that, "Eliminating the FTC's
672 administrative litigation authority would fundamentally alter
673 the nature and function of the FTC." And I suppose that is
674 what the true intent of this legislation is.

675 I urge my colleagues to oppose this legislation, and I
676 yield back.

677 Chairman Goodlatte. The chair thanks the gentleman, and
678 recognizes the gentleman from Texas, the chief sponsor of the
679 bill, Mr. Farenthold, for his opening statement.

680 Mr. Farenthold. Thank you very much, Mr. Chairman. In
681 2003, the bipartisan group of leading antitrust experts,
682 called the Antitrust Modernization Commission, or the AMC,
683 took a look at how we can bring antitrust laws and
684 enforcement practices into the 21st century. After an
685 exhaustive 4-year review, the AMC issued a number of
686 recommendations for congressional action.

687 Two of the recommendations dealt with how our Nation's
688 two different antitrust enforcement agencies, the Department
689 of Justice, the DOJ, and the Federal Trade Commission, the
690 FTC, review proposed merger transactions. The report

691 concluded that, "The standards and processes used by the DOJ
692 and the FTC to prevent the consummation of a proposed merger
693 inadvertently create an uneven playing field. Common sense
694 states that there should be the same standard, or at least
695 substantially similar standards, and the AMC agreed.

696 These disparities should be removed because in its
697 words, parties to a proposed merger should have to receive
698 comparable treatment and face similar burdens regardless of
699 whether the FTC or DOJ reviews their merger. A divergence
700 undermines the public trust that the antitrust agencies will
701 review the transactions efficiently and fairly. More
702 importantly, it creates the impression that the ultimate
703 decision as to whether a merger may proceed depends in
704 substantial part on which agency reviews the transaction."
705 And that is the end of the quotation.

706 To address this problem, I introduced the Standard
707 Merger and Acquisition Reviews Through Equal Rules Act of
708 2016, or the SMARTER Act, which incorporates the independent
709 AMC's recommendation. This bill is nearly identical to the
710 SMARTER Act of 2014, which was approved by this committee on
711 a voice vote last Congress. It is simple, straightforward
712 legislation that has two components.

713 The first brings together the preliminary injunction
714 standards that the DOJ and FTC must meet in court when they
715 seek to block a merger. The second removes the FTC's ability
716 to administratively litigate after a court denies the
717 preliminary injunction request. Because the DOJ cannot
718 conduct administrative litigation, it is unfair to some
719 parties to face administrative litigation while others avoid
720 it simply because they are not in front of the FTC, but are
721 in front of the DOJ.

722 On two occasions, the Subcommittee on Regulatory Reform,
723 Commercial and Antitrust Law held hearings on the SMARTER
724 Act. These hearings left a clear congressional record.
725 Antitrust experts broadly support making the preliminary
726 injunction standard the same for both agencies and removing
727 the FTC's ability to pursue administrative litigation with
728 respect to proposed mergers.

729 When businesses have to deal with the Federal
730 government, it is imperative that we ensure their treatment
731 is predictable, fair, and transparent. The SMARTER Act
732 accomplishes these goals by ensuring that companies will
733 receive the same treatment regardless of which antitrust
734 enforcement agency reviews its proposed transaction.

735 To be clear, this bill is not intended to make it easier
736 or harder for a merger to be approved. As stated by the
737 former chairman of the AMC, Deborah Garza, during the
738 subcommittee hearing on the SMARTER Act, the idea here is not
739 to change the merits or to change the number of transactions
740 that on the merits get through or not. The whole idea is to
741 simply make the process more transparent and clear and
742 perceived as being fair.

743 The SMARTER Act is common sense, straightforward, and
744 developed through a robust bipartisan process. I urge my
745 colleagues to support this bill, and yield back the balance
746 of my time.

747 Chairman Goodlatte. Are there any amendments to H.R.
748 2745?

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

751 Chairman Goodlatte. The clerk will report the amendment
752 offered by the gentlewoman from Texas.

753 Ms. Williams. Amendment to H.R. 2745, offered by Ms.
754 Jackson Lee of Texas, strike all after the enacting clause.

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

756

757 Chairman Goodlatte. The gentlewoman is recognized for 5
758 minutes to explain her interesting amendment.

759 Ms. Jackson Lee. Thank you very much, Mr. Chairman. I
760 would certainly assume that everyone that presents
761 legislation here is well intended. But I would offer my
762 concern for legislation that, in essence, even implodes the
763 congressional intent for the Federal Trade Commission.

764 This bill seeks to strip the FTC of its power by
765 eliminating the Agency's authority to enforce antitrust laws
766 in larger merger cases, and by blocking its ability to use
767 its administrative proceedings to block a deal, even though
768 it has not used this avenue since 2008. This change would
769 require the FTC to use the same enforcement process as the
770 Antitrust Division of the Department of Justice, thereby
771 reducing the FTC's independence, and undermining Congress'
772 intent in creating an antitrust enforcement agency and
773 policymaking body that will be shielded from political and,
774 particularly, executive branch interference.

775 Let me be very clear. When we talk of mergers and
776 acquisitions, we are talking of consumers. That is the
777 ultimate participant, or benefactor, or individuals that are
778 impacted by the ultimate outcome of a merger acquisition. So

779 we take away the consumer's hand, the consumer's armor by
780 eliminating the FTC.

781 In a letter by the chairwoman, she indicated, "The
782 quasi-judicial role of the FTC is critical to our ability to
783 fulfill our mission to promote competition and advance
784 consumer welfare. It allows the Commission to conduct
785 through hearings, to develop both the facts and the law in a
786 broad variety of antitrust matters. Our adjudicative
787 function has been particularly valuable in complex areas,
788 such as hospital mergers where the Commission has used the
789 combination of the information gathering power and case
790 specific."

791 Again, who are we representing here? The consumers.
792 Yes, we want a balanced and even approach that deals with our
793 businesses. We want the idea of the capitalistic system to
794 work, but we know that in mergers and acquisitions, the
795 little buy is lost in the crowd. "In nearly 100 years,"
796 Chairwoman Ramirez says, "the Commission has performed this
797 role." For almost 100 years. "And it has fully realized the
798 benefits Congress originally foresaw in 1914 when it created
799 the FTC." And so, as she indicated, she is proud of the work
800 that this Agency has done, but so are many others.

801 We have two Republican chairpersons of the FTC that are
802 opposing this legislation. And let me just indicate to my
803 colleagues, my amendment indicates that we should start all
804 over from this particular bill. For instance, in the past
805 year the FTC has challenged over 28 mergers, although in most
806 it was able to negotiate a remedy to allow the merger to
807 proceed.

808 Just this past week, the consumer level in Texas, the
809 FTC secured an \$82,000 settlement in an automobile dealer
810 situation in violation of the Fair Credit Reporting Act,
811 different from a merger, but showing the work. Earlier this
812 year, FTC ordered the largest divestiture ever in a
813 supermarket merger dealing with a number of supermarkets.

814 Again, the FTC has also taken an aggressive stance on
815 stopping anti-competitive mergers and conduct in the
816 healthcare market by halting such practices. I am holding in
817 my hand an article that deals with, "The FTC Returns Money to
818 Consumers Tricked into Buying Phony Health Insurance." Then
819 we have the idea of separate investigations by the DOJ
820 dealing with airlines. "DOJ Girds for Strict Review of any
821 Healthcare Mergers," which indicates that there is some
822 distinctive prospects for the DOJ and the FTC.

823 Finally, the Cephalon Generics case with the FTC was
824 settled for \$1.2 billion. The little guy. And in this
825 legislation that is called "SMARTER," all I can see is a
826 gaping hole of, if you will, protection for our consumers.
827 Why would we want to take away the armor or the additional
828 protection for consumers who mostly likely do not have the
829 individual capacity to appear before a Federal court and deal
830 with a grievance that is impacting thousands and millions?

831 This is a big country. The FTC has done an excellent
832 job, and the chairwoman has recounted a long list of
833 successes. You are literally putting us in a trap door.
834 Walk in the house. The consumer falls in the trap door, and
835 the businesses stand on the outside looking in. We need
836 fairness, and this bill does not give the consumer fairness.

837 I ask my colleagues to support the Jackson Lee
838 amendment.

839 Chairman Goodlatte. The chair recognizes himself in
840 opposition to the amendment. The bill introduced by the
841 gentleman from Texas, Mr. Farenthold, does not eliminate the
842 FTC as was suggested by the gentlewoman from Texas. The bill
843 does not eliminate the FTC's authority to proceed
844 administratively on the type of consumer claims that the

845 gentlewoman described in her statement.

846 However, her amendment does eliminate the gentleman from
847 Texas' bill. And as I have stated previously, I think this
848 is a very good bill for all the reasons that I and others
849 have outlined already, and I urge my colleagues to oppose
850 this amendment.

851 For what purpose does the gentleman from --

852 Mr. Issa. Would the gentleman yield? Would the
853 chairman yield?

854 Chairman Goodlatte. I would be happy to yield to the
855 gentleman.

856 Mr. Issa. Thank you. I will not use much time. Thank
857 you, Mr. Chairman. I join you in opposition to stripping the
858 bill for an important reason. Mergers are by definition a
859 limited time opportunity, and the use of administrative law
860 judges and the multiple bites at the apple that the FTC has
861 the power to do denies the stockholders, the employees, and
862 others a speedy adjudication in an Article 3 court if
863 appropriate.

864 So it is clear that Mr. Farenthold's legislation seeks
865 what should be extremely bipartisan, and this committee
866 should be totally in support of it. There is nothing wrong

867 with saying the government has unlimited money to go into an
868 Article 3 court and object to a merger. There is something
869 wrong with using another bite at the apple by the FTC to, in
870 fact, use an administrative law judge, not a constitutional
871 judge per se, to thwart and delay mergers as a part of their
872 strategy.

873 So I join with the chairman and thank him for his
874 leadership in opposing this amendment.

875 Chairman Goodlatte. For what purpose does the gentleman
876 Tennessee seek recognition?

877 Mr. Cohen. Strike the last word.

878 Chairman Goodlatte. The gentleman is recognized for 5
879 minutes.

880 Mr. Cohen. Thank you, Mr. Chairman. The concern I have
881 got with this is basically coming to Washington and going
882 home. And those of you who drive do not have that problem,
883 but those of us who do know what the airline merger did to
884 us.

885 Now, my friend to my left, he likes it because I have to
886 eat in the Atlanta airport on occasion, and run through
887 there, and try to do my best O.J. Simpson impression and make
888 the airplane. They do a terrible job of getting you a cart

889 to get help you get there if you have got a difficulty in
890 walking. You got to walk.

891 The airlines came before our committees, and they said
892 this will not affect the hubs in Memphis and Cincinnati.
893 Well, it not only affected them, it decimated them. Instead
894 of having 320 flights a day by Delta in Memphis, we have got
895 28. And the airline industry merger has hurt the general
896 public. Consumers were not considered, and I guarantee you
897 Steven Anderson has never sat in those seats that are not in
898 the front cabin. They are miserable. And all the airlines
899 have gotten that way.

900 I do not want to take away any possibility of any agency
901 doing right. Mr. Issa says something about getting another
902 bite at the apple. They do not have enough vegans over
903 there. They do not like biting apples. I think they are
904 just munching on steak. Nobody is biting at the apple. They
905 let these mergers go through, and the consumer be damned.

906 If you look at the committee that recommended this, it
907 looks like a great committee if you are the Bar Association
908 doing some type of special procedural rule on something real
909 boring, like the committee that Mr. Franks has that I am
910 ranking member on the Democrat side. Real boring procedural

911 stuff.

912 Not a single person on there with consumer in their
913 background. All lawyers. All work for some firm
914 representing some business. All smart, but nobody with a
915 consumer interest. Most of them flying in and out of
916 Washington where you got air service. They are not flying in
917 and out of Memphis, or Shreveport, or Huntsville, or the Boot
918 Hill of Missouri. It does not take them forever to get here.

919 So I am against taking away anything that gives somebody
920 a bite at the apple to protect the consumer.

921 Mr. Issa. Would the gentleman yield?

922 Mr. Cohen. The gentleman yields.

923 Mr. Issa. Thank you, and I thank my colleague. I
924 certainly share your frustration because I am part of a
925 merger that was done under the Bush Administration, but
926 overseen by DOJ, just as your frustration does seem to come
927 from the US Air merger done under the Department of Justice
928 and the Obama Administration. I think we can have a serious
929 talk about what the basis in antitrust is for them.

930 The question here, though, in Mr. Farenthold's
931 legislation deals with an administrative question and a
932 second bite at the apple. Oddly enough, these airlines would

933 have and did go through DOJ, and were approved, and maybe
934 they have not served the consumer well. I do not want to
935 upset the airline I have to fly with as much as you seem to
936 be willing to.

937 [Laughter.]

938 Mr. Issa. So I will not go quite as far on the service.
939 But I do share with the gentleman that we should not rubber
940 stamp these. At the same time, is this not a committee who
941 believes that a process that includes a Federal judge
942 ultimately should be the fairest process? The question is,
943 is DOJ arguing hard enough, and is the Federal Trade
944 Commission being listened to, not is the Federal Trade
945 Commission allowed to run it through an administrative law
946 judge that ultimately then gets appealed back to that Federal
947 judge.

948 I think that is where we agree on the concerns. I think
949 we disagree on the administrative part that Mr. Farenthold
950 seeks to fix. And I thank the gentleman for yielding.

951 Chairman Goodlatte. Would the gentleman from Tennessee
952 yield?

953 Mr. Cohen. Yes, I will.

954 Chairman Goodlatte. I thank the gentleman for yielding.

955 Just for a point of clarification, virtually all airline
956 mergers go through the Department of Justice because of
957 jurisdictional limitations on what the FTC can do in that
958 area. So the gentleman's concern may be well taken, but it
959 is not well taken with regard to this bill.

960 Mr. Cohen. Yes, sir. My concern is weakening antitrust
961 enforcement law. I would like to see something. This
962 committee has had the proposal that all rules and regulations
963 go through this committee, and if this committee and the
964 Congress do not approve them, they do not go into effect. I
965 think all mergers ought to go through this committee, and if
966 the Congress does not approve them, they should not go into
967 effect.

968 The consumer needs a voice, and the consumer does not
969 have a voice, and it certainly does not have an ear. Thank
970 you.

971 Chairman Goodlatte. The gentleman is free to introduce
972 just such legislation.

973 Mr. Cohen. Will I get a hearing and a vote?

974 Chairman Goodlatte. We will look at the legislation
975 first.

976 Mr. Cohen. Thank you.

977 Ms. Jackson Lee. Mr. Chairman?

978 Chairman Goodlatte. The gentlewoman from Texas has
979 already been recognized on her amendment. Does the
980 gentlewoman wish to withdraw her amendment?

981 Ms. Jackson Lee. If I could get some time, Mr.
982 Chairman.

983 Ms. Lofgren. Mr. Chairman?

984 Chairman Goodlatte. Well, another member could. For
985 what purpose does the gentlewoman from California --

986 Ms. Lofgren. Strike the last word, and I would be happy
987 to yield to my colleague from Texas.

988 Chairman Goodlatte. The gentlewoman from California is
989 recognized for 5 minutes.

990 Ms. Jackson Lee. I will join Mr. Cohen, Mr. Johnson,
991 and others on that legislation that he has offered. And, Mr.
992 Chairman, I know that we will get a final vote on this bill.
993 But let me, as I intend to act on my amendment, emphasize
994 that the FTC exists to ensure fair competition and prevent
995 enormous concentration in economic power that hurts customers
996 and small businesses. I remind my colleagues that it is the
997 consumer that is lost in the crowd, and the two bites at the
998 apple with the FTC being the discoverer is the way the system

999 has worked. This bill is a wrong direction. I hope that we
1000 will be able to do something on the way to the floor. And I
1001 ask my colleagues, I thank them for their indulgence.

1002 At this time, I will ask unanimous consent to withdraw
1003 my amendment.

1004 Chairman Goodlatte. Without objection, the
1005 gentlewoman's amendment is withdrawn. Are there any other
1006 amendments to H.R. 2745?

1007 [No response.]

1008 Chairman Goodlatte. Being none, a reporting quorum
1009 being present, the question is on the motion to report the
1010 bill, H.R. 2745, favorably to the House.

1011 Those in favor will say aye.

1012 Those opposed, no.

1013 The ayes have it, and the bill is ordered reported
1014 favorably.

1015 Mr. Conyers. Recorded vote, sir.

1016 Chairman Goodlatte. A recorded vote has been requested,
1017 and the clerk will call the roll.

1018 Ms. Williams. Mr. Goodlatte?

1019 Chairman Goodlatte. Aye.

1020 Ms. Williams. Mr. Goodlatte votes aye.

1021 Mr. Sensenbrenner?
1022 [No response.]
1023 Ms. Williams. Mr. Smith?
1024 [No response.]
1025 Ms. Williams. Mr. Chabot?
1026 Mr. Chabot. Aye.
1027 Ms. Williams. Mr. Chabot votes aye.
1028 Mr. Issa?
1029 Mr. Issa. Yes.
1030 Ms. Williams. Mr. Issa votes yes.
1031 Mr. Forbes?
1032 [No response.]
1033 Ms. Williams. Mr. King?
1034 Mr. King. Aye.
1035 Ms. Williams. Mr. King votes aye.
1036 Mr. Franks?
1037 Mr. Franks. Aye.
1038 Ms. Williams. Mr. Franks votes aye.
1039 Mr. Gohmert?
1040 Mr. Gohmert. Aye.
1041 Ms. Williams. Mr. Gohmert votes aye.
1042 Mr. Jordan?

1043 [No response.]

1044 Ms. Williams. Mr. Poe?

1045 Mr. Poe. Yes.

1046 Ms. Williams. Mr. Poe votes yes.

1047 Mr. Chaffetz?

1048 Mr. Chaffetz. Aye.

1049 Ms. Williams. Mr. Chaffetz votes aye.

1050 Mr. Marino?

1051 Mr. Marino. Yes.

1052 Ms. Williams. Mr. Marino votes yes.

1053 Mr. Gowdy?

1054 [No response.]

1055 Ms. Williams. Mr. Labrador?

1056 [No response.]

1057 Ms. Williams. Mr. Farenthold?

1058 Mr. Farenthold. Aye.

1059 Ms. Williams. Mr. Farenthold votes aye.

1060 Mr. Collins?

1061 Mr. Collins. Aye.

1062 Ms. Williams. Mr. Collins votes aye.

1063 Mr. DeSantis?

1064 [No response.]

1065 Ms. Williams. Ms. Walters?
1066 Ms. Walters. Aye.
1067 Ms. Williams. Ms. Walters votes aye.
1068 Mr. Buck?
1069 Mr. Buck. Aye.
1070 Ms. Williams. Mr. Buck votes aye.
1071 Mr. Ratcliffe?
1072 Mr. Ratcliffe. Yes.
1073 Ms. Williams. Mr. Ratcliffe votes yes.
1074 Mr. Trott?
1075 Mr. Trott. Yes.
1076 Ms. Williams. Mr. Trott votes yes.
1077 Mr. Bishop?
1078 Mr. Bishop. Yes.
1079 Ms. Williams. Mr. Bishop votes yes.
1080 Mr. Conyers?
1081 Mr. Conyers. No.
1082 Ms. Williams. Mr. Conyers votes no.
1083 Mr. Nadler?
1084 [No response.]
1085 Ms. Williams. Ms. Lofgren?
1086 Ms. Lofgren. No.

1087 Ms. Williams. Ms. Lofgren votes no.
1088 Ms. Jackson Lee?
1089 Ms. Jackson Lee. No.
1090 Ms. Williams. Ms. Jackson Lee votes no.
1091 Mr. Cohen?
1092 Mr. Cohen. No.
1093 Ms. Williams. Mr. Cohen votes no.
1094 Mr. Johnson?
1095 Mr. Johnson. No.
1096 Ms. Williams. Mr. Johnson votes no.
1097 Mr. Pierluisi?
1098 [No response.]
1099 Ms. Williams. Ms. Chu?
1100 Ms. Chu. No.
1101 Ms. Williams. Ms. Chu votes no.
1102 Mr. Deutch?
1103 [No response.]
1104 Ms. Williams. Mr. Gutierrez?
1105 Mr. Gutierrez. No.
1106 Ms. Williams. Mr. Gutierrez votes no.
1107 Ms. Bass?
1108 [No response.]

1109 Ms. Williams. Mr. Richmond?

1110 [No response.]

1111 Ms. Williams. Ms. DelBene?

1112 Ms. DelBene. No.

1113 Ms. Williams. Ms. DelBene votes no.

1114 Mr. Jeffries?

1115 Mr. Jeffries. No.

1116 Ms. Williams. Mr. Jeffries votes no.

1117 Mr. Cicilline?

1118 [No response.]

1119 Ms. Williams. Mr. Peters?

1120 Mr. Peters. Aye.

1121 Ms. Williams. Mr. Peters votes aye.

1122 Chairman Goodlatte. Has very member voted who wishes to

1123 vote?

1124 [No response.]

1125 Ms. Jackson Lee. Mr. Chairman, how am I recorded?

1126 Chairman Goodlatte. The gentlewoman is recorded as

1127 "no." Does the gentlewoman have a unanimous consent request?

1128 Ms. Jackson Lee. Thank you, Mr. Chairman. I ask

1129 unanimous consent to place in the record an article, "FTC

1130 Returns Money to Consumers Tricked Into Buying Phony Health

1131 Insurance," and the Cephalon Generics case where the FTC
1132 settled for \$1.2 billion.

1133 Chairman Goodlatte. Without objection, they will be
1134 made a part of the record.

1135 [The information follows:]

1136

1137 Chairman Goodlatte. The gentleman from Virginia?

1138 Mr. Forbes. Yes.

1139 Ms. Williams. Mr. Forbes votes yes.

1140 Chairman Goodlatte. Has every member voted who wishes

1141 to vote?

1142 Mr. Johnson. Mr. Chairman, how am I recorded --

1143 Chairman Goodlatte. For what purpose does the gentleman

1144 from Georgia seek recognition? The gentleman from Georgia is

1145 recorded as "no."

1146 Mr. Johnson. Okay. Mr. Chairman, I got to the hearing

1147 just a bit late.

1148 Chairman Goodlatte. The gentleman might suspend so we

1149 can take the vote from the gentleman from Rhode Island.

1150 Mr. Cicilline. No.

1151 Ms. Williams. Mr. Cicilline votes no.

1152 Mr. Johnson. Mr. Chairman, I would yield back.

1153 Chairman Goodlatte. The chair thanks the gentleman, and

1154 the clerk will report.

1155 Ms. Williams. Mr. Chairman, 18 members voted aye, 10

1156 members voted no.

1157 Chairman Goodlatte. The ayes have it. The bill is

1158 ordered reported favorably to the House.

1159 Members will have 2 days to submit views.

1160 [The information follows:]

1161

1162 Chairman Goodlatte. This concludes our business for
1163 today. Thanks to all of our members for attending, and the
1164 markup is adjourned.

1165 Mr. Conyers. Thank you, sir.

1166 [Whereupon, at 11:23 a.m., the committee was adjourned.]