

1 NATIONAL CAPITOL CONTRACTING
2 RPTS CATALA
3 HJU164000

4 MARKUP OF H.R. 4423, H.R. 5954,
5 H.R. 5904
6 Wednesday, June 13, 2018
7 House of Representatives,
8 Committee on the Judiciary,
9 Washington, D.C.

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

13 Present: Representatives Goodlatte, Sensenbrenner,
14 Chabot, Issa, King, Gohmert, Jordan, Poe, Marino, DeSantis,
15 Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs,
16 Rutherford, Handel, Rothfus, Nadler, Jackson Lee, Johnson of
17 Georgia, Bass, Richmond, Jeffries, Cicilline, Lieu, Raskin,
18 Jayapal, Schneider, and Demings.

19 Staff Present: Shelley Husband, Staff Director; Branden
20 Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian

21 and General Counsel; Daniel Flores, Chief Counsel,
22 Subcommittee on Regulatory Reform, Commercial and Antitrust
23 Law; Dan Huff, Counsel, Subcommittee on Regulatory Reform,
24 Commercial and Antitrust Law; Alley Adcock, Clerk; James
25 Park; Matt Morgan, Danielle Brown; Slade Bond; Susan Jensen;
26 David Greengrass; Rachel Calanni; and Perry Apelbaum.

27 Mr. Chabot. [Presiding.] The Judiciary Committee will
28 come to order. Without objection, the chair is authorized
29 to call a recess at any time. Pursuant to notice, I now
30 call up H.R. 5904 for purposes of markup and move that the
31 committee report the bill favorably to the House. The clerk
32 will report the bill.

33 Ms. Adcock. H.R. 5904 to amend the Sherman Act to make
34 oil producing --

35 [The bill follows:]

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

37 Mr. Chabot. Without objection, the bill is considered
38 as read and open for amendment at any time. I will begin by
39 recognizing myself for an opening statement.

40 The No Oil Producing and Exporting Cartels Act, NOPEC,
41 is a bipartisan bill whose enactment is long overdue. The
42 fact that the Organization of Petroleum Exporting Countries,
43 OPEC, is not being held accountable for its anticompetitive
44 behavior makes a mockery of U.S. antitrust law.

45 Consider that the Justice Department has been opposing
46 a high-profile merger over consumers potentially paying 50
47 cents more a month. Meanwhile, academics call for greater
48 regulation to protect consumer welfare based on increasingly
49 exotic antitrust theories. Yet nothing is done about OPEC's
50 collusive activity, even though it appears illegal per se
51 and it is behind a rise in gas prices of over 50 cents a
52 gallon since 2016.

53 The lack of action is not a function of gaps in the
54 underlying antitrust statutes. As the Supreme Court has
55 explained, "Under the Sherman Act, the combination formed
56 for the purpose and with the effect of stabilizing the price
57 of a commodity in interstate or foreign commerce is illegal
58 per se."

59 OPEC's organizational document under the headline
60 "Objectives" states that "the organization shall devise ways
61 and means of ensuring the stabilization of prices in

62 international oil markets." Federal law specifically
63 provides that the Sherman Act applies to foreign conduct
64 that has a direct, substantial, and reasonably foreseeable
65 effect on U.S. domestic commerce. That is certainly true of
66 oil prices.

67 Unfortunately, the courts have blocked efforts to hold
68 OPEC accountable under these provisions. In 1979, a Federal
69 district court dismissed on the ground of sovereign immunity
70 a lawsuit against OPEC brought by a labor union, but the
71 same Federal law that creates that immunity contains an
72 exception for commercial activity.

73 Nevertheless, the judge read that exception narrowly to
74 avoid having to decide the case. On appeal, the Ninth
75 Circuit did reach the sovereign immunity question. Instead,
76 it held that the suit was barred by the Act of State
77 Doctrine, which is a judge-made doctrine designed to avoid
78 judicial action in sensitive areas.

79 H.R. 5904 removes the hurdles to hold OPEC accountable.
80 It prohibits foreign state actors from cooperating to limit
81 oil production. As explained, existing law already appears
82 to do that, but the new language removes any doubt. The
83 bill also makes clear that anticompetitive activities
84 relating to oil production fall within the commercial
85 activity exception to the Foreign Sovereign Immunities Act.
86 Similarly, the bill provides that courts may not decline to

87 hear an antitrust case relating to oil production under the
88 Act of State Doctrine.

89 Finally, NOPEC authorizes the Department of Justice,
90 but not private parties, to bring suit against oil cartel
91 members in Federal court. This last provision is important
92 because it ensures that courts would only be hearing cases
93 that the executive branch affirmatively elected to bring
94 after considering the foreign policy and national security
95 implications.

96 Despite strong support in Congress over a period of
97 years, NOPEC is not yet become law. However, recently
98 President Trump signaled that he may be more receptive than
99 prior Presidents to measures that would counteract OPEC's
100 adverse impact. Further, while a private citizen, President
101 Trump specifically endorsed a prior iteration of NOPEC.
102 This creates a real opportunity to enact this long overdue
103 legislation.

104 Accordingly, on May 18th, 2018, the Subcommittee on
105 Regulatory Reform, Commercial, and Antitrust Law held a
106 hearing on NOPEC legislation featuring experts in antitrust,
107 foreign policy, and energy issues. Following the hearing, I
108 introduced H.R. 5904 with strong bipartisan support. This
109 markup is timely. OPEC's next meeting is scheduled for June
110 22nd, 2018. The time for action is now.

111 This legislation is the right thing to do as a matter

112 of antitrust law and to help consumers as we head toward the
113 summer driving season. I am proud to be the sponsor of this
114 legislation. I want to thank the ranking member, Mr.
115 Nadler, for his leadership on this as well as Mr. Cicilline,
116 Chairman Goodlatte, Mr. Marino, and Mrs. Handel as well, and
117 other members who have cosponsored it.

118 And with that I yield back my time. And it is my
119 pleasure to recognize the ranking member, Mr. Nadler of the
120 Judiciary Committee for his opening statement.

121 [The prepared statement of Mr. Chabot follows:]

122 ***** COMMITTEE INSERT *****

123 Mr. Nadler. Thank you, Mr. Chairman. The Organization
124 of Petroleum Exporting Countries -- or OPEC -- is an
125 international cartel whose members deliberately collude to
126 limit crude oil production as a means of fixing prices,
127 unfairly driving up the price of crude oil to satisfy the
128 greed of oil producers. Such behavior done by private
129 companies would be illegal per se under U.S. antitrust law.

130 Because of a series of court decisions, however, U.S.
131 antitrust enforcers are unable to protect American consumers
132 and businesses from the direct harm caused by OPEC's
133 blatantly anticompetitive conduct. H.R. 5904, the No Oil
134 Producing and Exporting Cartels Act, or NOPEC, addresses
135 these decision by amending procedural law in a variety of
136 ways and by expressly authorizing the Department of Justice
137 to pursue antitrust litigation against OPEC members, should
138 it choose to do so.

139 I am pleased to join my colleague, Congressman Chabot,
140 as an original cosponsor of this legislation, along with
141 Chairman Goodlatte, Mr. Marino, and Mr. Cicilline. The
142 NOPEC Act would amend the Sherman Antitrust Act to add a new
143 section 7(a) that explicitly makes it illegal for any
144 foreign state to act collectively with others to limit
145 production, fix prices, or otherwise restrain trade with
146 respect to oil, natural gas, or other petroleum products.
147 This provision could be enforced only by the Justice

148 Department.

149 The bill also creates an exemption under the Foreign
150 Sovereign Immunities Act to allow litigation against foreign
151 countries to the extent that they are engaged in price
152 fixing and other anticompetitive activities in violation of
153 this new section 7(a). Finally, the bill clarifies that the
154 Act of State Doctrine does not prevent courts from deciding
155 antitrust cases brought against foreign governments under
156 section 7(a).

157 The NOPEC Act strikes an appropriate balance between
158 allowing aggressive enforcement of U.S. antitrust law
159 against OPEC to keep oil prices in check and respecting the
160 separation of powers by deferring to the executive branch as
161 to whether litigation is appropriate in any given case in
162 light of foreign policy and national security concerns.

163 In 2007, I voted for legislation virtually identical to
164 this measure which passed the House with overwhelming
165 bipartisan support. Although 11 years have passed since
166 then, many of the reasons for supporting that legislation in
167 2007 remain valid today. OPEC controls more than 80 percent
168 of global oil reserves, 40 percent of the world's oil
169 production, and more than 60 percent of the petroleum that
170 is traded internationally.

171 When acting collectively, OPEC countries can greatly
172 influence crude oil prices. Why should the average American

173 care about this? Because the price of crude oil is the
174 largest single determinant of retail gas prices.

175 According to one estimate, crude oil prices accounted
176 for 57 percent of the cost of retail gasoline as of February
177 2018. And the retail price of gasoline touches almost every
178 aspect of American's daily lives, from the cost of commuting
179 to the price of food and almost every consumer good to the
180 extent that such prices reflect transportation expenses.
181 High gasoline prices, in addition to raising these costs and
182 cutting into Americans' income can also cause a vicious
183 cycle of negative economic effects, such as causing
184 consumers to cut back on purchases and limit their travel,
185 which in turn hurts businesses and their employees.

186 For a bill we last considered in 2007, one might be
187 tempted to say that the concerns motivating an OPEC act are
188 yesterday's news. In a somewhat literal sense, I agree.
189 According to a CNBC report from last month, oil prices rose
190 to \$80 a barrel for the first time since November 2014.

191 Recently, the U.S. Energy Information estimated that
192 U.S. regular gasoline retail prices over the period of April
193 to September will rise to an average of \$2.90 per gallon,
194 which is 17 cents per gallon higher than it was in April,
195 and up from an average of \$2.41 last summer. That agency
196 also reported that gasoline prices will reach a summer peak
197 of \$2.97 per gallon by June, and that this projected

198 increase is primarily the result of higher forecast crude
199 oil prices.

200 I support the NOPEC Act because it would provide the
201 Federal Government with one tool to address unfair retail
202 gas prices. Nevertheless, I caution that it would be a
203 mistake to think that enacting this legislation alone will
204 fix the problem. Congress and the Trump administration
205 should explore the other factors that also drive high
206 gasoline prices, including an anticompetitive level of
207 concentration among oil refiners, our excessive petroleum
208 consumption as a society, and a heightened risk of war and
209 instability in the Middle East.

210 Passing the NOPEC Act, however, would be a helpful
211 step. I thank the chairman and the sponsor of this
212 legislation, urge my colleagues to support this measure, and
213 I yield back the balance of my time.

214 [The prepared statement of Mr. Nadler follows:]

215 ***** COMMITTEE INSERT *****

216 Mr. Chabot. Thank you very much. The gentleman yields
217 back. The gentleman from Pennsylvania, Mr. Marino, who is
218 the chairman of the Subcommittee on Regulatory Reform,
219 Commercial, and Antitrust Law is recognized for 5 minutes.

220 Mr. Marino. Thank you, Chairman. Last month my
221 subcommittee held a hearing on H.R. 5904, the NOPEC Act, of
222 which I am an original cosponsor. NOPEC is a longstanding
223 bipartisan, bicameral bill that would expose the
224 Organization of the Petroleum Exporting Countries, also
225 known as OPEC, to U.S. antitrust law for its cartel behavior
226 by removing the State immunity shield available to enter
227 judicial precedent.

228 In previous Congresses, NOPEC has passed both the House
229 and the Senate by overwhelming majorities. The bill has yet
230 to be enacted into law, however, and the need for enactment
231 remains.

232 The average U.S. household spends over \$2,000 a year
233 just on gasoline. That would be one of the things, if fuel
234 prices were set by the free market, but they are not. Sixty
235 percent of the total petroleum traded internationally is
236 controlled by OPEC, and OPEC was founded in 1960. It has 14
237 members countries, including Iran and Libya.

238 According to the U.S. Energy Information
239 Administration, "Production by OPEC countries is an
240 important factor that affects oil prices. This organization

241 seeks to actively manage oil production in its member
242 countries by setting production targets." This collusion
243 translates directly to consumers' wallets, since oil prices
244 are by far the most important factor in determining gas
245 prices at the pump.

246 From 2008 to 2017, crude oil cost accounted for 61
247 percent of the average retail price of gasoline. In April
248 2018, OPEC and non-OPEC producers led by Russia agreed to
249 continue an agreement they struck in 2016 limiting
250 production. At the time, oil was at \$43 a barrel. It is
251 now at \$63 a barrel.

252 Given all of this, the American people would be right
253 to wonder why OPEC has not been held accountable for its
254 anticompetitive behavior in oil markets. The fact is that
255 over the years, consumers have tried to hold it accountable
256 but have failed because of essential judge-made barriers.

257 The No Oil Producing and Exporting Cartel Act removes
258 these barriers. Although existing antitrust law already
259 appears to prohibit foreign state actors from cooperating to
260 limit oil production, NOPEC makes that explicit in the
261 Sherman Antitrust Act to remove any doubt. It also removes
262 the immunity shields currently available under the judicial
263 precedent.

264 Specifically, NOPEC makes clear that anticompetitive
265 activities relating to oil production fall within the

266 commercial exception to the Foreign Sovereign Immunities
267 Act. No wonder that NOPEC has enjoyed robust bipartisan
268 support since it was first introduced in the 106th Congress,
269 and it is identical to the version offered in both chambers
270 of the 110th Congress.

271 I want to thank my colleague, Steve Chabot, for
272 allowing this legislation to move forward and leading on the
273 issue. Helping bring down gas prices for my constituents is
274 a priority of mine, and this bill takes a significant step
275 in lowering the price at the pump. With summer driving soon
276 approaching, I hope we can act swiftly in a bipartisan way
277 to pass this important legislation that protects American
278 consumers, and I yield back. Thank you.

279 [The prepared statement of Mr. Marino follows:]

280 ***** COMMITTEE INSERT *****

281 Mr. Chabot. Thank you very much. The gentleman yields
282 back. The gentleman from Rhode Island, Mr. Cicilline, who
283 is the ranking member of the subcommittee is recognized 5
284 minutes.

285 Mr. Cicilline. Thank you, Mr. Chairman. Since 1960,
286 the Organization of the Petroleum Exporting Countries or
287 OPEC has colluded to manipulate the supply and price of
288 crude oil with total impunity under our laws. Most
289 recently, OPEC members have announced a new agreement with
290 11 non-OPEC countries, including Russia, to manipulate oil
291 prices by reducing production, which means that working
292 people in our country end up paying more for gas for their
293 car or heat for their homes.

294 Cartel behavior like this is considered a hardcore
295 criminal violation of the antitrust laws because it is an
296 explicit agreement to collude in order to fix prices, reduce
297 output, or allocate markets. The Supreme Court has referred
298 to this anticompetitive conduct, which has no procompetitive
299 justification, as the supreme evil of antitrust.

300 Unlike other cartels, foreign oil cartels are free to
301 engage in anticompetitive conduct to fix the price of oil
302 due to legal doctrines of sovereign immunity and Act of
303 State, which place firm limitations of the judicial process
304 when it comes to resolving legal disputes with foreign
305 governments. It is time for this practice to end. I am

306 proud to join my colleagues as the lead Democratic cosponsor
307 of the NOPEC Act, which will give Americans relief from the
308 high cost of OPEC that OPEC has forced on them for decades.

309 This bill, which passed the House and the Senate with
310 overwhelming support in prior Congresses, would allow the
311 Justice Department to investigate and prosecute foreign oil
312 cartels. It would do so by clarifying that commercial
313 activity by other countries to limit the production or set
314 the price of oil and other petroleum products is not exempt
315 under the Foreign Sovereign Immunities Act or other judicial
316 doctrines.

317 While I strongly support the goals of the NOPEC Act, it
318 is important to keep several caveats in mind as we moved
319 forward with this legislation. First, merely removing
320 barriers to antitrust enforcement against foreign oil
321 cartels by the Justice Department, as this bill would do,
322 does not compel law enforcement in this area or constrain
323 the Department's enforcement strategies.

324 Instead, the NOPEC Act authorizes the Department to
325 investigate and potentially bring these types of cases,
326 which alone may be enough to discourage collusion by foreign
327 oil cartels. Put another way, this bill gives the executive
328 branch a tool to speak softly and carry a big stick.

329 Second, this legislation is designed to serve as a
330 complement, not a substitute, to diplomacy and thoughtful

331 engagement with OPEC members and other countries that
332 collude to withhold oil supply. As I am sure my colleagues
333 will agree, the NOPEC Act is not an invitation for any
334 administration to politicize antitrust enforcement or pick
335 geopolitical winners and losers. With this concern in mind,
336 I look forward to including language in the committee report
337 to make this point clear.

338 And finally, the use of antitrust enforcement in this
339 area, if used at all, should be part of a broader strategy
340 toward energy independence. Antitrust enforcement alone is
341 not a silver bullet to lowering oil prices. It must be a
342 national priority to deploy and expand our capacity for
343 clean energy production.

344 I firmly believe that addressing oil consumption rather
345 than oil production is critical to ensuring America's energy
346 independent. Developing alternatives to oil consumption is
347 not just about combating climate change, lowering energy
348 prices, or decreasing the market power of oil cartels. It
349 is also about creating economic opportunity.

350 And my home State, Rhode Island, is already hard at
351 work to deploy innovative, clean, efficient energy solutions
352 to deliver clean energy and address climate change. And in
353 fact just a couple of weeks ago it announced the siting of a
354 second wind farm in Rhode Island that when fully operational
355 will provide electricity to half the households in our

356 State. Furthermore, as one of our witnesses at our
357 subcommittee hearing on this legislation testified, the
358 Trump administration's flip flop on fuel efficiency
359 standards and other policies is a major step in the wrong
360 direction that should be rejected by the courts.

361 In closing, I want to thank Congressman Chabot,
362 Chairman Goodlatte, Ranking Member Nadler, and Subcommittee
363 Chairman Marino for their commitment to taking on foreign
364 oil cartels for consideration of the NOPEC Act. This
365 legislation is a testament to the committee's longstanding
366 bipartisan tradition of investigating and addressing
367 anticompetitive conduct that harms working families.

368 I look forward to continuing this work with my
369 colleagues to ensure that our economy is working for
370 everyone and yield back the balance of my time.

371 And I would just like to ask the chairman if he would
372 engage in a brief colloquy so that we can be sure that the
373 record is clear that it is not the intention of the NOPEC
374 Act to interfere or to be used in a way to pick political
375 winners and losers, but rather to be used as a supplement to
376 the diplomatic engagement of our country and to the work
377 that the State Department does in working with OPEC
378 countries, but to be a resource to really end
379 anticompetitive and collusive behavior, but not in a way to
380 politicize or pick winners and losers on the geopolitical

381 stage.

382 [The prepared statement of Mr. Cicilline follows:]

383 ***** COMMITTEE INSERT *****

384 Mr. Chabot. If the gentleman would yield?

385 Mr. Cicilline. Of course.

386 Mr. Chabot. I agree with the sentiment and the
387 statement that the gentleman from Rhode Island just made.
388 The purpose of this is ensure fair competition in the oil
389 markets so that we can keep prices down for the American
390 people, and it is good to see that we are doing this in a
391 bipartisan manner.

392 I would just add that I have offered this amendment a
393 number of times over the years, oftentimes with our former
394 colleague, Mr. Conyers, so it was bipartisan then, and this
395 was under both Democratic and Republican Presidents. So, I
396 thank the gentleman for raising that.

397 Mr. Cicilline. Thank you, Mr. Chairman. I yield back.

398 Mr. Chabot. And as I said, I appreciate the sentiment.
399 Thank you. At this time, I would ask unanimous consent to
400 enter the following letters of support for H.R. 5904 into
401 the record.

402 First, a letter of support from Securing America's
403 Future Energy. Next, a letter of support from George
404 Berman, a professor at the Columbia Law School, and an
405 expert in sovereign immunity and international trade, and
406 thirdly, a letter of support from former Senator from
407 Wisconsin and Chairman of the Senate Judiciary Subcommittee
408 on Antitrust, Competition Policy, and Consumer Rights, Herb

409 Kohl. Without objection, so ordered.

410 [The information follows:]

411 ***** COMMITTEE INSERT *****

412 Mr. Chabot. And I now have an amendment at the desk,
413 and I would ask the clerk to read the amendment.

414 Ms. Adcock. Amendment to H.R. 5904 offered by Mr.
415 Chabot. Page 2, strike line 19 and all that follows --

416 Mr. Chabot. Unanimous consent that the amendment be
417 considered as read.

418 [The amendment of Mr. Chabot follows:]

419 ***** COMMITTEE INSERT *****

420 Mr. Chabot. And I will speak very briefly as the
421 amendment is passed out. This amendment makes several
422 primarily technical changes to the underlying bill. In
423 particular, this amendment further clarifies that there is
424 no private right of action under the bill. It also makes
425 technical changes to eliminate duplicative language on
426 sovereign immunity, rephrasing the sentence to conform to
427 existing statutory styles and rewording a section heading
428 title to make it more informative. And finally, subsections
429 are renumbered accordingly.

430 As I mentioned at the Regulatory Reform, Commercial,
431 and Antitrust Law Subcommittee hearing last month, this is
432 the fifth time that I have introduced this legislation since
433 the fall of 2000. So we are going back 18 years here. So
434 again, it is under both Republic and Democratic
435 administrations each time when OPEC's price controls cause
436 gas prices to skyrocket in my district and throughout the
437 Nation.

438 Back in my home district in Cincinnati and Warren
439 County, the price of a gallon of gasoline is nearing \$3.
440 This upward trend is devastating to middle-class Americans
441 all over the country who rely on reasonable gas prices to
442 reliably fill up their cars and trucks to be able to get to
443 work and take their kids to school or go to church on
444 Sunday.

445 Additionally, as chairman of the House Small Business
446 Community, which I actually have to chair the meeting at
447 11:00, so I am hoping we can wrap this up in 17 minutes, I
448 also recognize the impact that rising gas prices will have
449 on small businesses. As the price of gas increases, so does
450 the price of shipping goods throughout the United States,
451 putting pressure on an already razor-thin bottom line for
452 many small business owners, and ultimately having a negative
453 impact on our overall economy.

454 We successfully passed similar legislation in the House
455 nearly a decade ago, but it stalled when the Senate
456 considered it. I want to again thank Mr. Nadler for his
457 leadership on this issue over the years as well. Now we
458 again have an opportunity to pass this important legislation
459 and the law.

460 It is high time that we do more to fight the production
461 controls that continue to keep the price of crude oil and
462 gasoline arbitrarily high in the United States. Ultimately,
463 NOPEC accomplishes that goal, holding foreign countries and
464 entities accountable for violating U.S. antitrust law.

465 I urge my colleagues to support this amendment and
466 support final passage of this bill, and I yield back. The
467 gentleman from New York, ranking member is recognized.

468 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, in
469 service of your desire to wrap this up in 16 minutes now, I

470 will be brief. I support this amendment, which makes
471 several technical clarifications to this bill. These
472 include eliminating duplicative language regarding the
473 bill's treatment of foreign sovereign immunity and language
474 to clarify that the Justice Department has the sole
475 authority to file cases under the Sherman Act against
476 foreign oil cartels.

477 I support this amendment. I urge my colleagues to do
478 the same. I support the bill. I urge my colleagues to do
479 the same. I yield back.

480 Mr. Chabot. Thank you very much. The gentleman from
481 Rhode Island.

482 Mr. Cicilline. I, too, Mr. Chairman, will be very
483 brief. I just want to underscore the point you just made
484 that our small businesses and families that we represent are
485 struggling with the high cost of fuel. It is something I
486 hear about all the time from my constituents.

487 One of the reasons that happens is because we have
488 allowed OPEC countries, and now with this new agreement it
489 is OPEC countries plus 11 nonmember OPEC countries that have
490 the ability to, frankly, just decide that they are going to
491 increase the price of gasoline by lowering the production.
492 We do not let that happen in any other area.

493 They are allowed to freely manipulate the market, and
494 frankly Americans have lived with this for far too long.

495 This legislation will finally give us the ability to prevent
496 that collusive behavior, drive down gas prices for our
497 constituents. Your amendment is important, and the
498 clarifying language it provides. I urge passage of your
499 amendment and the underlying bill. I thank the gentleman.

500 Mr. Chabot. Thank you very much. The gentleman yields
501 back. Are there any other members who wish to speak on this
502 amendment? If not, the question is on the amendment.

503 Those in favor, say aye.

504 Those opposed, no.

505 In the opinion of the chair, the ayes have it. The
506 ayes have it, and the amendment is agreed to.

507 Are there any other amendments? Okay. All right. If
508 not, a reporting quorum being present, the question is on
509 the motion to report the bill, H.R. 5904, as amended,
510 favorably to the House.

511 Those in favor, say aye.

512 Those opposed, no.

513 The ayes have it. In the opinion of the chair, the
514 ayes have it. The ayes have it, and the bill is ordered
515 reported favorably.

516 All right. Okay, members will have 2 days to submit
517 views. Without objection, the bill will be reported as a
518 single amendment in the nature of a substitute incorporating
519 all adopted amendments, and the staff is authorized to make

520 technical and conforming changes.

521 Pursuant to notice, I now call up H.R. 4423 for
522 purposes of markup and move that the committee report the
523 bill favorably to the House. The clerk will report the
524 bill.

525 Ms. Adcock. H.R. 4423; to limit claims under Federal
526 law seeking judicial review of any environmental impact
527 statement, environmental review, or authorization for the
528 Lower Bois d'Arc Creek Reservoir Project in Fannin County,
529 Texas, and for other purposes.

530 [The bill follows:]

531 ***** INSERT 2 *****

532 Mr. Chabot. Okay. Without objection, the bill is
533 considered as read and open for amendment at any time. I
534 will begin by recognizing myself for purposes of an opening
535 statement.

536 Recent economic news tells us that things have taken a
537 strong turn for the better. Thanks to measures undertaken
538 by Congress and President Trump, unemployment is down and
539 wages, economic growth, and small business confidence are
540 up, up, and up. Part of the good news stems from the Trump
541 administration's implementation of Congress' major down
542 payment on permit streamlining during the last Congress;
543 Title 41 of the Fixing America's Surface Transportation Act
544 or FAST.

545 FAST 41 contained the biggest permit streamlining
546 reforms in recent years. It has already begun to clear the
547 logjams that have stood in the way of permitting decisions
548 for many of the Nation's largest proposed construction
549 projects, but there remains much work to be done. The bill
550 before us today, the North Texas Water Supply Security Act,
551 highlights why that help is needed.

552 Following over a decade of work by the North Texas
553 Municipal Water District and environmental review in which
554 the U.S. Army Corps of Engineers, the U.S. Environmental
555 Protection Agency, and several other agencies participated,
556 the Corps issued on February 2nd, 2018, with the EPA's

557 consent, a Clean Water Act section 404 permit authorizing
558 the Lower Bois d'Arc Creek Reservoir Project's construction.
559 This \$1.2 billion project will be owned, operated, and paid
560 for by NTMWD, a State agency.

561 The project is needed to assure that Texans served by
562 the NTMWD can have online a new, working water reservoir no
563 later than 2025, and perhaps earlier, to stave off a looming
564 water crisis related to rapid population growth in the area.
565 Construction of the project is expected to take 3 years,
566 followed by another estimated 2 years at a minimum to fill
567 the reservoir. Once operational, the reservoir is projected
568 to help the NTMWD service water needs in its area until
569 approximately 2060.

570 The problem is that after North Texans already had to
571 wait over a decade under old law for project to be approved,
572 the existing statute of limitations allowed litigants to
573 challenge the permit in court as late as 6 years from the
574 permit's issuance. To make matters worse, existing law
575 allows such a lawsuit to be based on matters that were not
576 even presented to the Corps for its review during the Corps'
577 painstaking, decades-plus process.

578 As a result, without further legislation, even the
579 commencement of an action challenging the permit and any
580 motion for a preliminary injunction against the project
581 pending the litigation's resolution could be delayed until

582 the eve of 2025 date by which the reservoir, at the latest,
583 would actually need to be online servicing North Texans and
584 preventing a water crisis.

585 The North Texas Water Supply Security Act solves that
586 problem in a straightforward, commonsense way. It allows
587 litigation to be filed, but within a prompt statute of
588 limitation. Further, it requires litigation challenging the
589 permit to be brought in the U.S. district court for the
590 Eastern District of Texas. This means that all affected
591 stakeholders can easily be present and heard in the
592 litigation.

593 The bill also requires litigation to be based on issues
594 presented to the permitting authority during administrative
595 review. Finally, it requires a judge entertaining motions
596 for injunctive relief against the project not to presume
597 that the adverse consequences of adjoining the project will
598 be reparable.

599 I urge my colleagues to support this legislation, and
600 it is now my pleasure to recognize the ranking member of the
601 Judiciary Committee, Mr. Nadler, for his opening statement.

602 [The prepared statement of Mr. Chabot follows:]

603 ***** COMMITTEE INSERT *****

604 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, I
605 strongly oppose H.R. 4423, which takes aim at legal
606 challenges to a single construction project; namely, the
607 Lower Bois d'Arc Creek Reservoir Project built by the North
608 Texas Municipal Water District in Fannin County, Texas.
609 Rather than allowing for the fair consideration in court of
610 the merits of any environmental challenges to this project,
611 this bill seeks to stack the process so that its supporters
612 can ensure their desired outcome; facts or law
613 notwithstanding.

614 The bill includes several damaging provisions intended
615 to restrict judicial review and to limit public
616 participation for claims challenging the Bois d'Arc project.

617 First, it would drastically reduce the statute of
618 limitations governing petitions for judicial review. Under
619 the Administrative Procedure Act this period is currently 6
620 years. The bill, however, would reduce this period to just
621 60 days following approval of the project by the U.S. Army
622 Corps of Engineers -- which, by the way, occurred on
623 February 2nd of this year.

624 Since 60 days have already elapsed, the substitute
625 amendment that we will consider shortly will set the review
626 period at 105 days from the date of the project's approval.
627 But this is just window dressing and it will not improve the
628 bill at all. And notice that this sets up these very hasty

629 requirements only for this project. It does not say that
630 Federal time periods and other requirements for litigation
631 in projects generally should be changed. Only for this
632 project so we get the desired result.

633 This legislation would also unduly restrict who may
634 seek judicial review of this project by limiting it to only
635 those entities that filed comments during the applicable
636 public comment periods. Further, the bill establishes new
637 standards for this project only that a court must consider
638 in determining whether to grant injunctive relief. Among
639 the most novel and telling of these factors is the
640 requirement that the court considers such reliefs "potential
641 for significant negative economic effects."

642 While regulators routinely engage in such cost-benefit
643 analysis, this requirement is far outside the expertise of
644 the courts and is designed to lead to a negative conclusion.
645 Cost-benefit analysis should be left to the regulators and
646 not to the court. Finally, the bill imposes a variety of
647 additional requirements related to the general obligation of
648 parties seeking injunctive relief to secure a bond in case
649 of a wrongful injunction.

650 The cumulative effect of these additional requirements
651 is to deter parties from seeking injunctive relief
652 altogether by making it more expensive and possibly cost
653 prohibitive, particularly for economically disadvantaged

654 plaintiffs.

655 For example, nine landowners who filed a lawsuit
656 challenging the project last month claim that this
657 undertaking will cause them to "suffer significant adverse
658 consequences," because each of them will lose his or her
659 property as a result of the project's construction. Given
660 that the estimated cost of this project is well in excess of
661 \$1 billion, the potential bonding requirements under this
662 bill would be debilitating for such landowners and would
663 prevent them from seeking injunctive relief.

664 The plaintiffs allege that the project, which is
665 expected to cover more than 16,000 acres, presents serious
666 environmental concerns and violates the Clean Water Act
667 among other laws. But rather than allowing for full and
668 fair review of these claims and the claims of other injured
669 parties, the bill stacks the deck against them. Aside from
670 the obvious substantive concerns with this bill, there is a
671 larger question that must be asked.

672 Why is this bill even in front of the Judiciary
673 Committee at all? What expertise do we have over
674 environmental laws? And what do we know about a specific
675 project in North Texas, pro or con? There is already a
676 perfectly good law in place, the National Environmental
677 Protection Act, or NEPA, which sets forth guidelines and
678 procedures for approval in consideration of such projects.

679 NEPA, which was signed into law by President Richard
680 Nixon in 1970, requires Federal agencies to consider the
681 environmental impact of certain projects and to ensure the
682 involvement of the public and other appropriate agencies.

683 For the most part, NEPA has worked well and the sources
684 of any delay in the Federal permitting approval process are
685 not generally attributable to that act. These delays result
686 from such disparate sources as insufficient project funding,
687 concerns raised by State, local, or tribal communities,
688 project complexity, and other factors unrelated to judicial
689 review of the project's environmental impacts.

690 Rather than having the committee with jurisdiction over
691 NEPA consider any necessary amendments to that act, the
692 supporters of this legislation instead seek to invoke our
693 committee's jurisdiction under the guise of amending the
694 Administrative Procedure Act, a law that applies generally
695 to administrative law. And it does so with respect to one
696 project only, which is a waste and an abuse of this
697 committee's resources.

698 In other words, instead of going to the committee which
699 has jurisdiction over environmental law, which has expertise
700 which may actually look at the merits of this project, which
701 may look at whether the requirements of NEPA should be
702 changed or not, they come to this committee under the
703 Administrative Procedure Act, a committee that has no

704 expertise in environmental law and knows nothing about the
705 pros and cons of this project.

706 Although the bill pertains solely to one construction
707 project, I am also concerned that it may set a dangerous
708 precedent for legislative copycat bills targeting other
709 specific projects. In other words, when you have a project
710 and it has questionable environmental or other impacts, so
711 you do not want it examined in the normal way that the
712 environmental laws require, you come to this committee by
713 seeking to amend the Administrative Procedure Act for the
714 one bill.

715 This is an end run, which is highly improper, gets
716 around our environmental laws, around the committees with
717 expertise and jurisdiction, and serves nobody's interest
718 except the interest of the sponsors of the project who feel
719 that they cannot or do not want to answer on the merits in
720 the normal process.

721 On the other hand, the limited applicability of the
722 bill does provide some comfort. At least its damaging
723 effects would be restricted to just one construction
724 project. But that is no excuse. Accordingly, I oppose the
725 bill, I urge my colleagues to do the same, and I yield back
726 the balance of my time.

727 [The prepared statement of Mr. Nadler follows:]

728

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

729 Mr. Ratcliffe. [Presiding.] Thanks, ranking member. I
730 now recognize myself for the purpose of offering amendment
731 in the nature of a substitute. The clerk will report the
732 amendment.

733 Ms. Adcock. Amendment in the nature of a substitute to
734 H.R. 4423 offered by Mr. Ratcliffe of Texas. Strike all
735 that follows --

736 [The amendment of Mr. Ratcliffe follows:]

737 ***** INSERT 3 *****

738 Mr. Ratcliffe. Without objection, it will be
739 considered as read. This amendment includes many of the
740 provisions for the bill as it was originally introduced, as
741 well as changes to account for the Army Corps' issuance of
742 its record of decision, and permit approval for the Lower
743 Bois d'Arc Creek Reservoir earlier this year, and the filing
744 in Eastern District of Texas on May 11, 2018 of actual
745 litigation challenging the Corps' permit approval.
746 Specifically, this amendment extends the legislation's
747 statute of limitations to 105 days from the date of the
748 Corps' approval of the permit.

749 The amendment also adds a grandfathering provision to
750 allow any additional litigation filed after the
751 legislation's specified statute of limitations but before
752 the bill's enactment to have complied with that statute of
753 limitations.

754 And finally, the amendment redesignates the bill as the
755 North Texas Water Supply Security Act of 2018 and ties the
756 legislation's separate 60-day statute of limitation for
757 actions challenging any supplemental environmental impact
758 statement, or SEIS, required for the project to the date of
759 the final agency action on that SEIS rather than on the
760 publication of that action in the Federal Register.

761 This legislation is the culmination of all of the hard
762 work by the bill's sponsor, Congressman Sam Johnson.

763 Without objection, I would ask unanimous consent to submit a
764 statement for the record from Congressman Johnson in support
765 of this bill.

766 [The information follows:]

767 ***** COMMITTEE INSERT *****

768 Mr. Ratcliffe. The Lower Bois d'Arc Creek Reservoir
769 Project is an extremely important potential water resource
770 that will supply 1.7 million North Texans. Without this
771 reservoir, it is projected that the project's local sponsor,
772 the North Texas Municipal Water District, will not be able
773 to meet the water needs of its customers by 2021 or 2022.

774 The permitting process for the Lower Bois d'Arc has
775 taken nearly 15 years, more than enough time for interested
776 parties to raise issues with the relevant permitting
777 agencies. Yet under current law, despite those 15 years
778 those parties had to raise concerns, they would have an
779 additional 6 years to interrupt the project with an
780 injunction or a temporary restraining order.

781 Without this bill, North Texas could complete 95
782 percent of the reservoir and under current law, despite
783 having 15 years prior to raise issues regarding the project,
784 an outside group could stop construction and the ability of
785 the North Texas Municipal Water District to serve 1.7
786 million Texans relying on that water supply. I, therefore,
787 urge my colleagues to support this commonsense measure. And
788 I yield back the balance of my time and recognize the
789 ranking member.

790 Mr. Nadler. Thank you, Mr. Chairman. I oppose this
791 amendment because it makes a bad bill worse. As I have
792 already stated, the bill establishes a series of draconian

793 requirements for claims challenging the Bois d'Arc project
794 in North Texas. These severe limitations and judicial
795 review are clearly designed to limit public participation
796 and to shield potentially dangerous or environmentally
797 harmful aspects of this project from public scrutiny and
798 legal accountability.

799 Because the U.S. Army Corps of Engineers approved this
800 project back in February, however, the bill's 60-day statute
801 of limitations for challenging this project in court -- the
802 bill, not the existing law -- has already lapsed. The
803 substitute amendment, therefore, establishes a new statute
804 of limitations to litigation relating to the environmental
805 review of the project of 105 days from the date of the
806 project's approval.

807 As a coalition of public interest groups opposing the
808 bill, including Earthjustice, American Access to Justice,
809 and the Center for Biological Diversity have noted, this new
810 period established by the substitute amendment has itself
811 already closed last month.

812 Although this extension will enable the lone existing
813 lawsuit that has been filed to continue, it forecloses any
814 further litigation from being filed. It is, therefore,
815 nothing more than a fig leaf. In other words, we are
816 foreclosing litigation in a process which we are shortening,
817 where still the substitute amendment would retroactively

818 apply to the bill's owner security requirements any existing
819 legal challenges to this project.

820 To date, we are aware of a single lawsuit which was
821 filed by a group of local landowners and rural farmers who
822 have raised significant environmental concerns. Yet this
823 amendment would further stack the legal process against
824 them. As the Center for Progressive Reform notes, it is
825 manifestly unfair to retroactively change the rules for
826 those who have exercised their right to judicial review.

827 And let me just state the following: This project may
828 be a very necessary project, or not. I have no idea. On
829 this committee, we do not know anything about this project,
830 about its pros and cons. All we know is that proponents say
831 it is a very important project, which it may be, and that it
832 has been under review for a long time, which may be the
833 case.

834 Opponents, I assume, say the project has deleterious
835 effects outweighing its salutary effects and violates the
836 National Environmental Protection Act in various ways. They
837 should get their proper hearing in court. They should get
838 their proper hearing.

839 The effect of this bill is to say, "We are stacking the
840 deck. We do not want them to get their hearing. And we are
841 not saying that the process is unfair, that the process
842 ought to be changed generally. No. We are saying it ought

843 to be changed only for this project because we want to stack
844 the deck for this project. Because we are making the
845 judgment that the local people in Texas who oppose this
846 project are wrong."

847 Well, maybe they are, and maybe they are not. I have
848 no idea. But they ought to get their day in court. And
849 now, we are saying just in case -- just in case -- this one
850 lawsuit which was filed on time under the time limits we are
851 establishing now just to make sure that they cannot proceed,
852 we are retroactively increasing the bonding requirements so
853 that they may have to put up I do not know how many millions
854 or billions of dollars in order to seek injunctive relief in
855 court. We are saying, in effect, they cannot get a review.

856 Now, I must say that in my district we had an
857 experience like this many years ago. We had a big project
858 that the governor supported, the mayor supported, the New
859 York Times supported. Everybody supported it except some
860 local people. And it was under review for a number of
861 years. And it kept being under review because the
862 administrative agencies kept lying in court. And every time
863 they lied in court, we proved it, and they had to start the
864 project over again.

865 And they complained, "Oh, my God, the project is taking
866 so long. The approval is taking so long." Had they been
867 honest, it would not have taken so long. Eventually, we

868 killed the project because they could not support it on the
869 merits when they honest. And I do not know if the same
870 thing is going on here. But there ought to be the fair
871 review. And the import of this bill and this amendment is
872 to deny the local opponents a fair review.

873 And again, if we think the review process is too
874 lengthy, too onerous, too burdensome, then let the
875 appropriate committees of the House review the general
876 process, maybe amend NEPA or whatever, and change the
877 process and let the House consider that. But this project -
878 - and no particular project -- should be excluded.

879 The local opponents of no project should be excluded
880 from the normal opportunities of review just because someone
881 has friends in Congress. And especially, it should not be
882 done by a committee such as ours coming in through left
883 field for the Administrative Procedure Act instead of the
884 environmental acts which this is really amending, which has
885 no expertise, no knowledge, et cetera.

886 This bill is the worst kind of special-interest
887 legislation for one special interest, a special interest I
888 might approve of if I knew the facts. I do not know. But
889 we should not be doing this. We should let the process play
890 out, let the local people have their proper opportunities to
891 support it and oppose it. If the process is wrong, we
892 should deal with that.

893 But we should not be saying the process goes on except
894 for this project because they have got the political clout
895 in this House to overwhelm the local opponents. It is
896 wrong. I hope everyone will vote against the amendment and
897 the bill. I yield back.

898 Mr. Ratcliffe. The ranking member's time has expired.
899 Are there any amendments to the amendment? For what purpose
900 does the gentlelady from Texas seek recognition?

901 Ms. Jackson Lee. I thank you, Mr. Chairman. I have an
902 amendment at the desk.

903 Mr. Ratcliffe. I recognize the gentlelady on her --

904 Ms. Jackson Lee. Zero, zero, one.

905 Mr. Ratcliffe. I recognize the gentlelady on her
906 amendment. The clerk will report the amendment.

907 Ms. Adcock. Amendment to the amendment in the nature
908 of a substitute to H.R. --

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

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

911 Mr. Ratcliffe. Without objection, the amendment is
912 considered as read and the gentlelady is recognized.

913 Ms. Jackson Lee. Frankly, Mr. Chairman, I am quite
914 aware of the challenges of water in the state of Texas. My
915 amendment, I believe, is simply an act of faith of fairness.
916 It strikes the section of the bill that limits whom they
917 bring in action pertaining to an environmental impact
918 statement, environmental review of or authorization for the
919 reservoir project to parties who submitted a comment during
920 the public comment period on that environmental impact
921 statement for the reservoir.

922 My concern is that we are talking about the average
923 citizen, the everyday working man or woman, who may not even
924 understand the process of comment on a regulatory process.
925 And so, I think it is unreasonable and unfair to expect any
926 given citizen who may be harmed by a government project to
927 participate in the notice and comment period, given most
928 Americans probably are not even aware of such a period. It
929 takes a big stretch to be able to find out where that notice
930 and comment is.

931 And so, we all are supportive of water needs. All of
932 our colleagues are. But in the process of the
933 responsibilities of the Judiciary Committee, I think it is
934 important to realize an actual fact. A regular citizen is
935 just not going to be aware that a comment period went

936 forward. I ask my colleagues to support the Jackson Lee
937 amendment.

938 Chairman Goodlatte. The chair recognized himself in
939 opposition to the amendment. H.R. 4423 includes a venue
940 restriction to the Eastern District of Texas for a simple,
941 commonsense reason. That is, make sure that those who are
942 directly affected by the relevant reservoir project,
943 including those in need of the water it is needed to
944 provide, will have full and ready access to be heard in
945 litigation of a project.

946 Ms. Jackson Lee. Let me explain it again, Mr.
947 Chairman.

948 Chairman Goodlatte. Go ahead.

949 Ms. Jackson Lee. The provisions in the bill indicate
950 that only those who made a comment on the comment period
951 would be allowed to further pursue any issue. And my point
952 is that all of us understand the regular citizen who may not
953 be even aware a comment period is in process. And I am
954 suggesting that we not bar that person, who did not make a
955 comment originally, from having the opportunity to express
956 their views.

957 It is unreasonable and unfair to expect any given
958 citizen who may be harmed by a government project, wherever
959 it is, to participate in the notice and comment period,
960 given most Americans probably are not even aware of such a

961 period exists. With that, I ask my colleagues to support
962 the amendment.

963 Chairman Goodlatte. All right. Now, I think I can
964 talk about this amendment. As with its venue restriction,
965 H.R. 4423 for a simple, commonsense reason, includes a
966 requirement that a litigant challenging the relevant permit
967 have actually submitted comments during the administrative
968 review of the permit application. That is to make sure that
969 litigation is not brought based on arguments the agency
970 never had a chance to consider.

971 Such sandbagging litigation, if allowed to proceed,
972 unnecessarily threatens to prolong even further the day on
973 which it will be ultimately settled, whether the project at
974 issue can be completed.

975 In the case of this project, that could mean an
976 unnecessary water crisis would be thrust on North Texas by
977 someone who sandbagged the reviewing agency and everyone
978 else with a stake in the project. So, for that reason, I
979 cannot support the gentlewoman's amendment. For what
980 purpose does the gentleman from New York seek recognition?

981 Mr. Nadler. Mr. Chairman, I move to strike the last
982 word.

983 Chairman Goodlatte. The gentleman is recognized.

984 Mr. Nadler. Thank you, Mr. Chairman. I support Ms.
985 Jackson Lee's amendment which strikes the bills onerous

986 requirement that parties seeking judicial review of this
987 project must have filed comments in the project's underlying
988 permitting process.

989 As I have already stated, among the bill's damaging
990 provisions to limit judicial review and public participation
991 in environmental permitting decisions, H.R. 4423 also
992 forecloses review for any party who does not file comments
993 during the applicable comment period.

994 These severe limitations on judicial review are clearly
995 designed to limit public participation and to shield
996 potentially dangerous or environmentally harmful aspects of
997 the project from public scrutiny and legal accountability.
998 We are aware of one single lawsuit which was filed by a
999 group of local landowners and rural farmers who have very
1000 significant environmental concerns of this project. It is
1001 unclear whether they filed comments in the underlying
1002 permitting decision.

1003 But why should that matter? Why is the majority less
1004 interested in the concerns of local farm owners and
1005 communities than they are in stacking the deck against any
1006 review of this project, no matter how meritorious the claim
1007 may be or how dangerous the potential harms may be? I
1008 strongly support this amendment and I urge my colleagues to
1009 do the same.

1010 Before closing, I ask unanimous consent that letters

1011 from the Center for Progressive Reform and the coalition of
1012 access to justice groups, including Earthjustice and the
1013 American Association of Justice, in opportunity to this bill
1014 be made part of the record.

1015 Mr. Raskin. Would the gentleman yield?

1016 Mr. Nadler. Yes.

1017 Chairman Goodlatte. Without objection, it will made
1018 part of the record.

1019 [The information follows:]

1020 ***** COMMITTEE INSERT *****

1021 Mr. Nadler. Thank you. I yield.

1022 Mr. Raskin. Would the ranking member yield? Would you
1023 yield for a question or two on this?

1024 Mr. Nadler. Sure. Yes.

1025 Mr. Raskin. So, the full import of this has just kind
1026 of weighing in on my mind here. What we are doing with the
1027 underlying bill is taking a basic administrative law
1028 structure and then nullifying it for one category of people
1029 who have a complaint. Is that right?

1030 Mr. Nadler. One project, yes.

1031 Mr. Raskin. For one project. Okay.

1032 Mr. Nadler. Well, not only that: using a change in the
1033 Administrative Procedure Act in effect to aggregate the
1034 National Environmental Protection Act for one project.

1035 Mr. Raskin. Okay. And so, as I understand Ms. Jackson
1036 Lee's amendment, she is saying at least let's chop off the
1037 second part of this, which says that you do not have the
1038 right to sue unless you actually submitted a comment during
1039 the comment period. Now, let me get this right. Is that
1040 like saying you would not have a right to challenge a law
1041 passed by Congress unless you had testified against the law
1042 first? Or you had objected to the law before it was
1043 enacted?

1044 Mr. Nadler. In one sense. And bear in mind that the
1045 comment period is past tense. We are not saying that if you

1046 want to protect your right to sue against this project, be
1047 sure to file a comment. The comment period is over.

1048 Mr. Raskin. Yeah. Is it right that we have had no
1049 hearing on this legalization? Has there been a hearing on
1050 this legislation? Or there was a hearing?

1051 Mr. Nadler. There was a hearing last month.

1052 Mr. Raskin. There was a hearing? Okay. Was there any
1053 consideration of the constitutionality of what the
1054 underlying bill is doing? In other words, have we looked at
1055 the due process and equal protection implications of saying
1056 we are going to revoke the entire administrative law
1057 protective structure for one category of cases and doing it
1058 retroactively?

1059 Mr. Nadler. My understanding is that the hearing was
1060 in the Administrative Law Subcommittee and questions of
1061 constitutionality were not considered.

1062 Mr. Raskin. Okay. Well, I mean, I am just
1063 flabbergasted and startled this legislation is before us. I
1064 think at the very least we have got to adopt this amendment
1065 by Ms. Jackson Lee, which says that, no, you cannot nullify
1066 someone's rights to sue if they have a valid, actionable
1067 cause simply because they did not file an administrative
1068 comment.

1069 The chairman said, "Well, this protects the government
1070 against the possibility that a new argument would be

1071 raised." Well, if that is the rationale for it, then we
1072 should say you do not have a right to bring a suit if the
1073 argument was not raised before. But this amendment would
1074 operate even if the argument would raised by a million
1075 people, as long as the plaintiff in the particular case had
1076 not raised it himself or herself. That just does not make
1077 any sense. So, I want to speak in very strong favor of the
1078 Sheila Jackson Lee amendment.

1079 And I want to go on record as saying I think that this
1080 whole enterprise is unconstitutional. I have never seen
1081 anything like it. Essentially, we are trying to strip
1082 people's administrative law but in one particular case in
1083 order to gerrymander the outcome of one piece of litigation.
1084 I yield back.

1085 Mr. Nadler. I thank the gentleman. And I agree with
1086 his comments. And again, it is highly problematic to try to
1087 prevent the procedure or short-circuit a procedure under the
1088 National Environmental Protection Act by amending the
1089 Administrative Procedure Act. And in any event, to do it
1090 only for one project and in many respects, ex post facto
1091 because the comment period has already expired and you are
1092 saying to people who may have been expecting to sue next
1093 week, "No, you cannot." Ex post facto. I yield back.

1094 Chairman Goodlatte. The question occurs on the
1095 amendment offered by the gentlewoman from Texas.

1096 All those in favor respond by saying aye.
1097 Those opposed, no.
1098 Being the chair, the noes have it and the amendment is
1099 not agreed to.
1100 Mr. Nadler. Can I have a roll call on that, Mr.
1101 Chairman?
1102 Chairman Goodlatte. A recorded vote is requested and
1103 the clerk will call the roll.
1104 Ms. Adcock. Mr. Goodlatte?
1105 Chairman Goodlatte. No.
1106 Ms. Adcock. Mr. Goodlatte votes no.
1107 Mr. Sensenbrenner?
1108 Mr. Sensenbrenner. No.
1109 Ms. Adcock. Mr. Sensenbrenner votes no.
1110 Mr. Smith?
1111 [No response.]
1112 Mr. Chabot?
1113 [No response.]
1114 Mr. Issa?
1115 [No response.]
1116 Mr. King?
1117 [No response.]
1118 Mr. Gohmert?
1119 Mr. Gohmert. No.
1120 Ms. Adcock. Mr. Gohmert votes no.

1121 Mr. Jordan?

1122 Mr. Jordan. No.

1123 Ms. Adcock. Mr. Jordan votes no.

1124 Mr. Poe?

1125 [No response.]

1126 Mr. Marino?

1127 Mr. Marino. No.

1128 Ms. Adcock. Mr. Marino votes no.

1129 Mr. Gowdy?

1130 [No response.]

1131 Mr. Labrador?

1132 [No response.]

1133 Mr. Collins?

1134 [No response.]

1135 Mr. DeSantis?

1136 Mr. DeSantis. No.

1137 Ms. Adcock. Mr. DeSantis votes no.

1138 Mr. Buck?

1139 Mr. Buck. No.

1140 Ms. Adcock. Mr. Buck votes no.

1141 Mr. Ratcliffe?

1142 Mr. Ratcliffe. No.

1143 Ms. Adcock. Mr. Ratcliffe votes no.

1144 Mrs. Roby?

1145 [No response.]

1146 Mr. Gaetz?

1147 Mr. Gaetz. No.

1148 Ms. Adcock. Mr. Gaetz votes no.

1149 Mr. Johnson of Louisiana?

1150 Mr. Johnson of Louisiana. No.

1151 Ms. Adcock. Mr. Johnson votes no.

1152 Mr. Biggs?

1153 Mr. Biggs. No.

1154 Ms. Adcock. Mr. Biggs votes no.

1155 Mr. Rutherford?

1156 [No response.]

1157 Mrs. Handel?

1158 Mrs. Handel. No.

1159 Ms. Adcock. Mrs. Handel votes no.

1160 Mr. Rothfus?

1161 Mr. Rothfus. No.

1162 Ms. Adcock. Mr. Rothfus votes no.

1163 Mr. Nadler?

1164 Mr. Nadler. Aye.

1165 Ms. Adcock. Mr. Nadler votes aye.

1166 Ms. Lofgren?

1167 [No response.]

1168 Ms. Jackson Lee?

1169 Ms. Jackson Lee. Aye.

1170 Ms. Adcock. Ms. Jackson Lee votes aye.

1171 Mr. Cohen?
1172 [No response.]
1173 Mr. Johnson of Georgia?
1174 Mr. Johnson of Georgia. Aye.
1175 Ms. Adcock. Mr. Johnson of Georgia votes aye.
1176 Mr. Deutch?
1177 [No response.]
1178 Mr. Gutierrez?
1179 [No response.]
1180 Ms. Bass?
1181 Ms. Bass. Aye.
1182 Ms. Adcock. Ms. Bass votes aye.
1183 Mr. Richmond?
1184 Mr. Richmond. Aye.
1185 Ms. Adcock. Mr. Richmond votes aye.
1186 Mr. Jeffries?
1187 Mr. Jeffries. Aye.
1188 Ms. Adcock. Mr. Jeffries votes aye.
1189 Mr. Cicilline?
1190 [No response.]
1191 Mr. Swalwell?
1192 [No response.]
1193 Mr. Lieu?
1194 Mr. Lieu. Aye.
1195 Ms. Adcock. Mr. Lieu votes aye.

1196 Mr. Raskin?

1197 Mr. Raskin. Aye.

1198 Ms. Adcock. Mr. Raskin votes aye.

1199 Ms. Jayapal?

1200 Ms. Jayapal. Aye.

1201 Ms. Adcock. Ms. Jayapal votes aye.

1202 Mr. Schneider?

1203 Mr. Schneider. Aye.

1204 Ms. Adcock. Mr. Schneider votes aye.

1205 Ms. Demings?

1206 Ms. Demings. Aye.

1207 Ms. Adcock. Ms. Demings votes aye.

1208 Chairman Goodlatte. The gentleman from Iowa, Mr. King?

1209 Mr. King. No.

1210 Ms. Adcock. Mr. King votes no.

1211 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1212 Mr. Poe. No.

1213 Ms. Adcock. Mr. Poe votes no.

1214 Chairman Goodlatte. Has every member voted who wishes

1215 to vote? The clerk will report.

1216 Ms. Adcock. Mr. Chairman, 11 members voted aye; 15

1217 members voted no.

1218 Chairman Goodlatte. And the amendment is not agreed

1219 to. Are there further amendments to H.R. 4423?

1220 Ms. Jayapal. Mr. Chairman?

1221 Chairman Goodlatte. For what purpose does the
1222 gentlewoman from Washington seek recognition?

1223 Ms. Jayapal. I move to strike the last word.

1224 Chairman Goodlatte. The gentlewoman is recognized for
1225 5 minutes.

1226 Ms. Jayapal. Thank you, Mr. Chairman. I am going to
1227 oppose this bill when it comes to a vote. And I want to
1228 thank our ranking member for his excellent statements. I
1229 want to thank the gentlewoman from Texas for her amendment
1230 which would have made a bad bill slightly better.

1231 I want to make clear that this bill does not protect
1232 public drinking water supplies and rather endangers
1233 protections provided by the National Environmental
1234 Protection Act. And it is an attack on people's right to
1235 have their day in court.

1236 But Mr. Chairman, I would like to use my time to say
1237 that I am stunned that we are not having any hearings in
1238 Judiciary Committee on the travesty that is happening across
1239 the country as asylum seekers are being denied their legal
1240 rights to have a credible fear hearing along the border when
1241 they come to the border. I, this last weekend, went to the
1242 Federal prison where 206 individuals were transferred from
1243 primarily the Texas border, to a Federal prison because all
1244 of our ICE facilities are full because of the mass
1245 detentions and deportations of people across this country

1246 that this administration and some of my colleagues on the
1247 other side of the aisle are allowing to happen.

1248 These individuals that I met with, 206 people who were
1249 transferred to a Federal prison, I met with all the women
1250 who are part of that group, 174 women who were part of the
1251 group held in three separate pods. They were women who came
1252 from 16 countries: From Cuba, from El Salvador, from
1253 Guatemala, as far away as Eritrea. And Mr. Chairman, it was
1254 horrific what I heard.

1255 In spite of the fact that this was a Federal prison --
1256 at least, I will say, it is a government-owned and -operated
1257 facility with some accountability and some standards --
1258 these women said this was the first place they were treated
1259 like human beings. A large majority of them had children
1260 who had been forcibly removed from them at the border when
1261 they should have had a credible fear hearing for asylum, but
1262 instead they were prosecuted in mass courts with 75 to 100
1263 people being prosecuted at one time.

1264 They were taken away from their children; not a single
1265 one had had the opportunity to say goodbye to their
1266 children, to explain to them what was happening. In some
1267 cases, they were deceived, told they were going to be taken
1268 to take a photograph, came back, and found that their
1269 children were no longer there and were in rooms right next
1270 door to their children, where they could hear their children

1271 screaming for them.

1272 Mr. Chairman, the children were as young as 1 year old.
1273 One year old. And then, these mothers were put into
1274 facilities that they call the ice box and dog pound. You
1275 know why they call them the ice box, Mr. Chairman? Because
1276 the temperatures are so frigid that it is freezing cold.

1277 They crossed the Rio Grande; they turned themselves in
1278 wet, and they are put into an ice box and denied access to
1279 clean water for 5 days in some cases. A sink with dirty,
1280 chlorinated, filthy water, and on top of that, they were
1281 called filthy, disgusting. They were told that families do
1282 not exist in this country when they asked to be reunited
1283 with their children.

1284 They were told that they would never see their children
1285 again, and in fact over 50 percent of these individuals had
1286 been held for longer than 2 weeks; many of them, about 35 to
1287 40 percent, had been held for more than a month; had not
1288 even seen their children; did not even know where their
1289 children were.

1290 What parent in this United States of America could say
1291 that this is the way we should treat people? I am outraged,
1292 Mr. Chairman, absolutely outraged at what we are doing. And
1293 I want to read to you, because this all comes from the Trump
1294 administration's zero tolerance policy, some of the stories
1295 of the women we are talking about.

1296 One woman from El Salvador has three children -- had
1297 three children. The first child was murdered by gangs; the
1298 second child was shot and paralyzed by gangs; the third
1299 child was the only child that was safe, and she tried to do
1300 what every mother would do and bring that child to safety.
1301 She has not seen her child for over a month. She does not
1302 know where that child is. She has not been given a credible
1303 fear hearing.

1304 Mr. Chairman, this last policy from the Attorney
1305 General that is taking away a lifeline for survivors of
1306 domestic and gang violence is outrageous. Here is the story
1307 of the woman that the attorney general just weighed in on
1308 her case.

1309 For over 10 years, Aminta Cifuentes's husband beat,
1310 raped, and tormented her. He poured turpentine on her and
1311 tried to set her on fire, resulting in permanent hearing
1312 loss. He once hit her in the stomach so hard that she gave
1313 birth prematurely and punched her with such force that she
1314 still has difficulty breathing and speaking.

1315 She tried to get protection from Guatemalan law
1316 enforcement multiple times, but the police dismissed her
1317 complaints as marital problems and told her to go back home.
1318 When she tried to leave her husband, he hunted her down.
1319 She finally fled to the United States, where even there her
1320 husband's threats followed her. This is the case that the

1321 Attorney General has said the United States of America has
1322 no grounds to hear this case.

1323 What are we coming to? And why are my good colleagues
1324 on the other side -- I know there are mothers and fathers on
1325 the other side who must be tormented by this. If you plan
1326 to not say anything, you have to go home to your children
1327 that night and tell them why you would allow this to happen
1328 to children in the United States of America.

1329 We should be having a hearing on this, and Mr.
1330 Chairman, I request respectfully --

1331 Chairman Goodlatte. The time of the gentlewoman has
1332 expired.

1333 Ms. Jayapal. I request respectfully that we have a
1334 hearing in this committee where we bring the Attorney
1335 General before us to tell us what we are doing with these
1336 camps on the southern border and in these prisons with women
1337 who are seeking asylum and who we are violating --

1338 Chairman Goodlatte. The time of the gentlewoman has
1339 expired.

1340 Ms. Jayapal. -- international human rights law.

1341 Chairman Goodlatte. A reporting quorum being present,
1342 the question is on the motion to report the bill --

1343 Mr. Jeffries. Mr. Chairman?

1344 Mr. Cicilline. Mr. Chairman? Mr. Chairman?

1345 Mr. Jeffries. Mr. Chairman?

1346 Mr. Sensenbrenner. Mr. Chairman?

1347 Mr. Cicilline. Mr. Chairman, I seek recognition.

1348 Chairman Goodlatte. For what purpose does the

1349 gentleman from Wisconsin seek recognition?

1350 Mr. Sensenbrenner. Mr. Chairman, I move the previous

1351 question on the bill and all amendments thereto.

1352 Chairman Goodlatte. The question is on the motion to

1353 move the previous question.

1354 All those in favor, respond by saying aye.

1355 Mr. Jeffries. Mr. Chairman, I object to the motion.

1356 Chairman Goodlatte. Those opposed --

1357 Mr. Cicilline. Point of order, Mr. Chairman.

1358 Chairman Goodlatte. In the opinion of the chair, the
1359 ayes have it, and the previous question is ordered.

1360 Mr. Jeffries. Roll call vote.

1361 Chairman Goodlatte. A recorded vote is requested, and
1362 the clerk will call the roll.

1363 Ms. Adcock. Mr. Goodlatte?

1364 Chairman Goodlatte. Aye.

1365 Ms. Adcock. Mr. Goodlatte votes aye.

1366 Mr. Sensenbrenner?

1367 Mr. Sensenbrenner. Aye.

1368 Ms. Adcock. Mr. Sensenbrenner votes aye.

1369 Mr. Smith?

1370 [No response.]

1371 Mr. Chabot?
1372 [No response.]
1373 Mr. Issa?
1374 Mr. Issa. Aye.
1375 Ms. Adcock. Mr. Issa vote aye.
1376 Mr. King?
1377 Mr. King. Aye.
1378 Ms. Adcock. Mr. King votes aye.
1379 Mr. Gohmert?
1380 Mr. Gohmert. Aye.
1381 Ms. Adcock. Mr. Gohmert votes aye.
1382 Mr. Jordan?
1383 [No response.]
1384 Mr. Poe?
1385 [No response.]
1386 Mr. Marino?
1387 Mr. Marino. Yes.
1388 Ms. Adcock. Mr. Marino votes yes.
1389 Mr. Gowdy?
1390 [No response.]
1391 Mr. Labrador?
1392 [No response.]
1393 Mr. Collins?
1394 [No response.]
1395 Mr. DeSantis?

1396 [No response.]

1397 Mr. Buck?

1398 Mr. Buck. Yes.

1399 Ms. Adcock. Mr. Buck votes yes.

1400 Mr. Ratcliffe?

1401 Mr. Ratcliffe. Yes.

1402 Ms. Adcock. Mr. Ratcliffe votes yes.

1403 Mrs. Roby?

1404 Mrs. Roby. Aye.

1405 Ms. Adcock. Mrs. Roby votes aye.

1406 Mr. Gaetz?

1407 Mr. Gaetz. Aye.

1408 Ms. Adcock. Mr. Gaetz votes aye.

1409 Mr. Johnson of Louisiana?

1410 [No response.]

1411 Mr. Biggs?

1412 Mr. Biggs. Aye.

1413 Ms. Adcock. Mr. Biggs votes aye.

1414 Mr. Rutherford?

1415 Mrs. Handel?

1416 Mrs. Handel: Yes.

1417 Ms. Adcock. Mrs. Handel votes yes.

1418 Mr. Rothfus?

1419 [No response.]

1420 Mr. Nadler?

1421 Mr. Nadler. No.

1422 Ms. Adcock. Mr. Nadler votes no.

1423 Ms. Lofgren?

1424 [No response.]

1425 Ms. Jackson Lee?

1426 Ms. Jackson Lee. No.

1427 Ms. Adcock. Ms. Jackson Lee votes no.

1428 Mr. Cohen?

1429 [No response.]

1430 Mr. Johnson of Georgia?

1431 Mr. Johnson of Georgia. No.

1432 Ms. Adcock. Mr. Johnson votes no.

1433 Mr. Deutch?

1434 [No response.]

1435 Mr. Gutierrez?

1436 [No response.]

1437 Ms. Bass?

1438 Ms. Bass. No.

1439 Ms. Adcock. Ms. Bass votes no.

1440 Mr. Richmond?

1441 Mr. Richmond. No.

1442 Ms. Adcock. Mr. Richmond votes no.

1443 Mr. Jeffries?

1444 Mr. Jeffries. No.

1445 Ms. Adcock. Mr. Jeffries votes no.

1446 Mr. Cicilline?

1447 Mr. Cicilline. No.

1448 Ms. Adcock. Mr. Cicilline votes no.

1449 Mr. Swalwell?

1450 [No response.]

1451 Mr. Lieu?

1452 Mr. Lieu. No.

1453 Ms. Adcock. Mr. Lieu votes no.

1454 Mr. Raskin?

1455 Mr. Raskin. No.

1456 Ms. Adcock. Mr. Raskin votes no.

1457 Ms. Jayapal?

1458 Ms. Jayapal. No.

1459 Ms. Adcock. Ms. Jayapal votes no.

1460 Mr. Schneider?

1461 Mr. Schneider. No.

1462 Ms. Adcock. Mr. Schneider votes no.

1463 Ms. Demings?

1464 Ms. Demings. No.

1465 Ms. Adcock. Ms. Demings votes no.

1466 Chairman Goodlatte. The gentleman from Florida, Mr.

1467 Gaetz? The gentleman from Florida, Mr. DeSantis?

1468 Mr. DeSantis. Yes.

1469 Ms. Adcock. Mr. DeSantis votes yes.

1470 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1471 Mr. Poe. Yes.

1472 Ms. Adcock. Mr. Poe votes yes.

1473 Chairman Goodlatte. The gentleman from Louisiana, Mr.

1474 Johnson?

1475 Mr. Johnson of Louisiana. Yes.

1476 Ms. Adcock. Mr. Johnson votes yes.

1477 Chairman Goodlatte. The gentleman from Pennsylvania,

1478 Mr. Rothfus?

1479 Mr. Rothfus. Yes.

1480 Ms. Adcock. Mr. Rothfus votes yes.

1481 Chairman Goodlatte. Has every member voted who wishes

1482 to vote?

1483 The clerk will report.

1484 Ms. Adcock. Mr. Chairman, 16 members voted aye; 12

1485 members voted no.

1486 Chairman Goodlatte. And the previous question is

1487 ordered.

1488 The question occurs on the amendment in the nature of a

1489 substitute.

1490 All those in favor respond by saying aye.

1491 Those opposed, no.

1492 In the opinion of the chair, the ayes have it, and the

1493 amendment in the nature of a substitute is agreed to.

1494 A reporting quorum being present --

1495 Mr. Cicilline. Mr. Chairman, point of order.

1496 Chairman Goodlatte. There is no point of order in the
1497 middle of a vote.

1498 Mr. Cicilline. We are not in the middle of anything.
1499 Point of order, Mr. Chairman.

1500 Chairman Goodlatte. A reporting quorum being present,
1501 the question is on the motion to report the bill H.R. 4423
1502 as amended favorably to the House.

1503 Those in favor, respond by saying aye.

1504 Those opposed, no.

1505 The ayes have it, and the bill is ordered reported
1506 favorably.

1507 Mr. Nadler. Roll call vote.

1508 Chairman Goodlatte. A recorded vote has been
1509 requested, and the clerk will call the roll.

1510 Ms. Adcock. Mr. Goodlatte?

1511 Chairman Goodlatte. Aye.

1512 Ms. Adcock. Mr. Goodlatte votes aye.

1513 Mr. Sensenbrenner?

1514 Mr. Sensenbrenner. Aye.

1515 Ms. Adcock. Mr. Sensenbrenner votes aye.

1516 Mr. Smith?

1517 [No response.]

1518 Mr. Chabot?

1519 [No response.]

1520 Mr. Issa?

1521 Mr. Issa. Aye.

1522 Ms. Adcock. Mr. Issa votes aye.

1523 Mr. King?

1524 Mr. King. Aye.

1525 Ms. Adcock. Mr. King votes aye.

1526 Mr. Gohmert?

1527 Mr. Gohmert. Aye.

1528 Ms. Adcock. Mr. Gohmert votes aye.

1529 Mr. Jordan?

1530 [No response.]

1531 Mr. Poe?

1532 [No response.]

1533 Mr. Marino?

1534 Mr. Marino. Yes.

1535 Ms. Adcock. Mr. Marino votes yes.

1536 Mr. Gowdy?

1537 [No response.]

1538 Mr. Labrador?

1539 [No response.]

1540 Mr. Collins?

1541 [No response.]

1542 Mr. DeSantis?

1543 Mr. DeSantis. Yes.

1544 Ms. Adcock. Mr. DeSantis votes yes.

1545 Mr. Buck?

1546 Mr. Buck. Aye.

1547 Ms. Adcock. Mr. Buck votes aye.

1548 Mr. Ratcliffe?

1549 Mr. Ratcliffe. Yes.

1550 Ms. Adcock. Mr. Ratcliffe votes yes.

1551 Mrs. Roby?

1552 Mrs. Roby. Aye.

1553 Ms. Adcock. Mrs. Roby votes aye.

1554 Mr. Gaetz?

1555 Mr. Gaetz. Aye.

1556 Ms. Adcock. Mr. Gaetz votes aye.

1557 Mr. Johnson of Louisiana?

1558 Mr. Johnson of Louisiana. Aye.

1559 Ms. Adcock. Mr. Johnson votes aye.

1560 Mr. Biggs?

1561 Mr. Biggs. Aye.

1562 Ms. Adcock. Mr. Biggs votes aye.

1563 Mr. Rutherford?

1564 [No response.]

1565 Mrs. Handel?

1566 Mrs. Handel. Yes.

1567 Ms. Adcock. Mrs. Handel votes yes.

1568 Mr. Rothfus?

1569 Mr. Rothfus: Yes.

1570 Ms. Adcock. Mr. Rothfus votes yes.

1571 Mr. Nadler?
1572 Mr. Nadler. No.
1573 Ms. Adcock. Mr. Nadler votes no.
1574 Ms. Lofgren?
1575 [No response.]
1576 Ms. Jackson Lee?
1577 Ms. Jackson Lee. No.
1578 Ms. Adcock. Ms. Jackson Lee votes no.
1579 Mr. Cohen?
1580 [No response.]
1581 Mr. Johnson of Georgia?
1582 Mr. Johnson of Georgia. No.
1583 Ms. Adcock. Mr. Johnson votes no.
1584 Mr. Deutch?
1585 [No response.]
1586 Mr. Gutierrez?
1587 [No response.]
1588 Ms. Bass?
1589 [No response.]
1590 Mr. Richmond?
1591 Mr. Richmond. No.
1592 Ms. Adcock. Mr. Richmond votes no.
1593 Mr. Jeffries?
1594 Mr. Jeffries. No.
1595 Ms. Adcock. Mr. Jeffries votes no.

1596 Mr. Cicilline?
1597 Mr. Cicilline. No.
1598 Ms. Adcock. Mr. Cicilline votes no.
1599 Mr. Swalwell?
1600 [No response.]
1601 Mr. Lieu?
1602 Mr. Lieu. No.
1603 Ms. Adcock. Mr. Lieu votes no.
1604 Mr. Raskin?
1605 Mr. Raskin. No.
1606 Ms. Adcock. Mr. Raskin votes no.
1607 Ms. Jayapal?
1608 Ms. Jayapal. No.
1609 Ms. Adcock. Ms. Jayapal votes no.
1610 Mr. Schneider?
1611 Mr. Schneider. No.
1612 Ms. Adcock. Mr. Schneider votes no.
1613 Ms. Demings?
1614 Ms. Demings. No.
1615 Ms. Adcock. Ms. Demings votes no.
1616 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?
1617 Mr. Poe. Yes.
1618 Ms. Adcock. Mr. Poe votes yes.
1619 Chairman Goodlatte. Has every member who wishes to
1620 vote? The clerk will report.

1621 Ms. Adcock. Mr. Chairman, 16 members voted aye; 11
1622 members voted no.

1623 Chairman Goodlatte. The ayes have it, and the bill is
1624 ordered reported favorably to the House. Members will have
1625 2 days to submit views, and without objection, the bill will
1626 be reported as a single amendment in the nature of a
1627 substitute incorporating all adopted amendments, and staff
1628 is authorized to make technical and conforming changes.

1629 Pursuant to notice, I now call up H.R. 5954 for
1630 purposes of markup and move that the committee report the
1631 bill favorably to the House. The clerk will report the
1632 bill.

1633 Ms. Adcock. H.R. 5954, to amend title XVIII United
1634 States Code to clarify the meaning of the terms "act of war"
1635 and "blocked asset" and for other purposes.

1636 [The bill follows:]

1637 ***** INSERT 4 *****

1638 Chairman Goodlatte. Without objection, the bill is
1639 considered as read in open for amendment at any time. I
1640 will begin by recognizing myself for an opening statement.

1641 Congress enacted the Anti-Terrorism Act of 1992 in
1642 order to help combat international terrorism and to revive
1643 some level of financial justice to American victims of
1644 terrorism. The 1992 Act added a civil remedy to the ATA's
1645 existing criminal regime, removing jurisdictional hurdles
1646 that often confounded terrorism victims' ability to get
1647 their day in court, and the act has been largely successful.
1648 However, from time to time the 1992 Act has also needed
1649 modifications to ensure that is fully serving its purposes.

1650 For instance, just last Congress, in the Justice
1651 Against Sponsors of Terrorism Act, I helped lead the charge
1652 in the House in the civil liability provision to make sure
1653 that those who aid and abet or conspire with foreign
1654 terrorist organizations are liable under the ATA. In
1655 addition, in 2012 the Judiciary Committee worked to lengthen
1656 the statute of limitations on civil ATA claims and provide
1657 victims with the time they need to file these often-complex
1658 lawsuits.

1659 The bill we are considering today, the Anti-Terrorism
1660 Clarification Act, builds on these previous technical
1661 amendments to the ATA. It makes three needed improvements
1662 in order to better ensure that victims of international

1663 terrorism can obtain justice in the U.S. courts against
1664 terrorists and their supporters.

1665 First, the bill clarifies the ATA's act of war
1666 exception. Defendants accused of aiding and abetting acts
1667 of international terrorism have been attempting to use this
1668 exception as a means of avoiding civil liability, even in
1669 cases in which the plaintiff's injuries were caused by the
1670 actions of designated terrorist groups.

1671 For example, in *Kaplan v. Central Bank of Iran*, the
1672 defendant financial institutions successfully argued that
1673 rocket attacks against civilians carried out by Hezbollah, a
1674 designated foreign terrorist organization, were acts of war
1675 and thus outside the scope of the ATA's civil liability
1676 provisions.

1677 The act of war exception should not be a liability
1678 shield for those who aid or abet attacks carried out by
1679 designated terrorist organizations. This legislation amends
1680 the definition of act of war in the ATA to clarify that the
1681 exception does not apply to U.S. government-designated
1682 foreign terrorist organizations or specially designated
1683 global terrorists.

1684 Second, at the urging of Representative Posey, the
1685 author of the CAPTIVE Act, we included language in the bill
1686 to strengthen the ATA's civil enforcement regime by
1687 permitting victims of narco-terrorism to satisfy their

1688 court-awarded judgments with the assets of foreign narcotics
1689 drug kingpins. Assets blocked by the Federal Government
1690 under the Kingpin Designation Act are not currently
1691 available to victims, leaving victims of the FARC and other
1692 narco-terrorists without a meaningful method of getting
1693 compensation for their injuries.

1694 Finally, this legislation addresses recent Federal
1695 court decisions that have called into question the continued
1696 ability of victims to bring terrorists and their supporters
1697 to justice under the ATA's civil liability regime. The ATA
1698 was specifically designed to provide extraterritorial
1699 jurisdiction over terrorists who attack U.S. nationals
1700 overseas. However, these recent cases have severely limited
1701 the extraterritorial scope of the ATA.

1702 The Anti-Terrorism Clarification Act amends the
1703 jurisdiction and venue section of the ATA to make clear that
1704 defendants who take advantage of certain benefits provided
1705 by the U.S. government shall be deemed to have consented to
1706 personal jurisdiction in the U.S. courts in ATA civil
1707 actions. No defendant should be able to accept U.S. foreign
1708 assistance while simultaneously dodging responsibility in
1709 U.S. courts for aiding or carrying out terrorist attacks
1710 that harm Americans.

1711 I want to thank Ranking Member Nadler along with Senate
1712 Judiciary Chairman Grassley and Senate Commerce Committee

1713 Ranking Member Nelson for joining me in introducing this
1714 bicameral and bipartisan bill. I urge my colleagues to
1715 support us in passing this legislation to clarify
1716 ambiguities in the ATA that terror sponsors have exploited
1717 to evade liability so that we can help ensure that Americans
1718 are able to hold terrorists and their supporters
1719 accountable.

1720 It is now my pleasure to recognize the ranking member
1721 of the committee, the gentleman from New York, Mr. Nadler
1722 for his opening statement.

1723 [The prepared statement of Chairman Goodlatte follows:]

1724 ***** COMMITTEE INSERT *****

1725 Mr. Nadler. Thank you, Mr. Chairman. I am proud to be
1726 the lead Democratic cosponsor of H.R. 5954, the Anti-
1727 Terrorism Verification Act of 2018. I support the bill; I
1728 support the comments made by the chairman; I support the
1729 amendment in the nature of a substitute that is going to be
1730 offer. And I want to offer my eloquent and lengthy
1731 statement of support of the bill into the record.

1732 Chairman Goodlatte. Without objection, it will be made
1733 a part of the record.

1734 [The prepared statement of Mr. Nadler follows:]

1735 ***** COMMITTEE INSERT *****

1736 Mr. Nadler. Thank you. But I want to take a moment
1737 now to object to what I believe to be the majority's abuse
1738 of power that we have just seen in this committee to silence
1739 debate on an issue that is squarely within our jurisdiction
1740 and is of pressing importance.

1741 The shutting down of debate to silence members by use
1742 of the previous question is inconsistent with this
1743 committee's history as a place of full and collegial debate
1744 of some of our Nation's most important issues.

1745 I want to associate myself with the remarks of Ms.
1746 Jayapal and want to further say that we are overcome with
1747 examples of the conduct of an administration that appears to
1748 lack a moral compass and stands in defiance to our Nation's
1749 history as a beacon of freedom and a refuge for the
1750 oppressed and that shames our country by the actions it is
1751 taking.

1752 From the ripping of thousands of children from the arms
1753 of their parents as a deliberate means -- the administration
1754 has said so -- "We are going to rip the children away from
1755 their parents in order to deter people who are fleeing
1756 violence from seeking political asylum." Forget the motive;
1757 we are going to rip thousands of children from the arms of
1758 their parents. That is inhuman. It is inhuman, and it is
1759 degrading to our country

1760 We can debate immigration policy, but it is hard to

1761 debate deliberate infliction of cruelty and torture on
1762 victims of violence, of people who are seeking asylum? I
1763 always thought that when someone comes with a claim of
1764 asylum, you first say, "Okay, is there a credible fear?"
1765 You have a credible fear hearing; you have adjudication as
1766 to whether the asylum claim is justified.

1767 You do not first arrest the person and take the kids
1768 away, hoping to deter other people from fleeing to this
1769 country. That is inhuman. It is almost beyond description.
1770 I want to say "disgusting," but I hate to use the word
1771 "disgusting" about the action of United States officials.
1772 But it is the only way we can characterize it.

1773 And for the Attorney General suddenly to decide that
1774 victims fleeing violence -- domestic violence or other
1775 violence -- cannot get political asylum as a class. That
1776 violence, that the inflection of murder and mayhem should
1777 not be subject to consideration for asylum, is also beyond
1778 the traditions of this country.

1779 This is the committee with jurisdiction, and we ought
1780 to be holding hearings to see what we are doing. What is
1781 the administration doing? Do we approve of what they are
1782 doing? Should we say, "Okay, go ahead?" Should we say,
1783 "No, stop?" That is the job of this committee. And instead
1784 we are sitting here debating worthy bills and some not-so-
1785 worthy bills, but nothing of such crucial and human

1786 immediacy.

1787 And it is shameful that we not debate this; it is
1788 shameful that we not act on this, that we not consider this
1789 when we are faced with an administration doing these
1790 terrible things in our name. And it is shameful that we use
1791 the previous question to shut down debate in this committee,
1792 to shut down so that people cannot raise it, as if perhaps
1793 the people who move the previous question are afraid of the
1794 debate, are afraid of what may come out, are afraid that
1795 they have no responses, or that they have no responses that
1796 will stand the light of day.

1797 So, I certainly hope that we will have a hearing very
1798 shortly, that we will call the DHS Secretary to testify, and
1799 then we can look into this question. That is our job.
1800 Whether we end up approving -- I will never approve this
1801 policy -- that is not the point. Whether we as a committee
1802 end up approving this policy or modifying or suggesting
1803 changing it or approving it, it is our job to look into it;
1804 it is our job to hold any administration accountable. And I
1805 certainly hope we will have such a hearing very quickly. I
1806 yield back.

1807 Chairman Goodlatte. Will the gentleman yield?

1808 Mr. Nadler. Sure.

1809 Chairman Goodlatte. I just want to point out to the
1810 gentlemen that we are working diligently. We had scheduled,

1811 and we had to reschedule, but we are going to schedule an
1812 oversight hearing of the Department, and the secretary will
1813 appear, and questions of the nature the gentleman has raised
1814 will be available to be asked.

1815 Mr. Nadler. I appreciate that. I might suggest that
1816 we ought to have a hearing not overall on the DHS but
1817 specifically on these policies, which are very new policies
1818 which are very stridently different from any we have pursued
1819 in the past, without congressional considerations certainly,
1820 and they are deserving of their own hearing by themselves.
1821 I yield back.

1822 Chairman Goodlatte. I now recognize myself for
1823 purposes of offering an amendment. The clerk will report
1824 the amendment.

1825 Ms. Adcock. Amendment to H.R. 5954, offered by Mr.
1826 Goodlatte. Page three, strike line 24 --

1827 [The amendment of Mr. Goodlatte follows:]

1828 ***** COMMITTEE INSERT *****

1829 Chairman Goodlatte. Without objection, the amendment
1830 will be considered as read, and I will recognize myself to
1831 explain the amendment.

1832 My amendment finetunes section 4 of the bill in order
1833 to ensure that the provision applies in a fair and balanced
1834 way to both victims and defendants in ATA civil cases.
1835 section 4 is the section of the bill that provides for
1836 consent to personal jurisdiction for defendants who accept
1837 certain foreign assistance from the United States or benefit
1838 from a waiver or suspension of the anti-terror laws so that
1839 they can locate an office or headquarters in the United
1840 States.

1841 First, this amendment enhances the fairness of the
1842 application of this provision to defendants by making clear
1843 that the section does not begin to apply until 120 days
1844 after date of enactment. This will ensure that defendants
1845 have knowledge that their acceptance of certain benefits
1846 extended by the United States will constitute consent to
1847 personal jurisdiction in civil ATA cases.

1848 Second, the amendment provides that consent to suit
1849 does not have to continue in perpetuity. Rather, section 4,
1850 as amended, will now cease to apply to any defendant who
1851 stops receiving U.S. assistance for a period of 5 years. As
1852 with the previously described change, this will enhance
1853 meaningfulness of a defendant's consent to personal

1854 jurisdiction.

1855 Third, the amendment balances the interest of the
1856 victims of terrorism by changing the applicability of the
1857 section so that it applies to existing ATA cases. The bill,
1858 as introduced, only applies to cases filed after the date of
1859 enactment. This is a fair balance to strike, because the
1860 amendment is pushing back the application of section 4 until
1861 120 days after the date of enactment.

1862 I hope my colleagues will join me in supporting this
1863 amendment, which I think makes section 4 of the bill strike
1864 a better balance of interest between potential defendants in
1865 these lawsuits and victims of terrorism.

1866 Ms. Jackson Lee. Mr. Chairman?

1867 Chairman Goodlatte. For what purpose does the
1868 gentlewoman from Texas seek recognition?

1869 Ms. Jackson Lee. I rise to strike the last word and I
1870 ask for unanimous consent --

1871 Chairman Goodlatte. The gentlewoman is recognized for
1872 5 minutes.

1873 Ms. Jackson Lee. Mr. Chairman, I rise to support the
1874 amendment for the additional due process provisions that it
1875 gives, and I believe, under the circumstances, when we hear
1876 the word "terrorism," which this bill deals with, we should
1877 also be mindful of the principles of the United States,
1878 which do include principles of due process.

1879 Mr. Chairman, might I also make the point that I
1880 associate myself and desire to associate myself with first
1881 the words of Congresswoman Jayapal and as well to associate
1882 myself with Mr. Nadler. As you well know, we have served
1883 together on this committee for the period of time that we
1884 are well aware that this committee has jurisdiction over the
1885 internal actions of ICE.

1886 You are also aware that we proposed the policy under
1887 the Immigration Committee dealing specifically with
1888 unaccompanied children, meaning those who specifically came
1889 to the United States unaccompanied. In addition, many of us
1890 during that crisis -- myself; Ms. Lofgren -- went to the
1891 border, and I personally witnessed and handled or took into
1892 my arms unaccompanied children that were fleeing the
1893 persecution of massive gang violence; it was so fearful that
1894 parents, in the tradition of Moses, were sending their
1895 children to a safe refuge.

1896 To take and abuse that policy as this administration
1897 has done with no premise in law, no jurisdictional basis to
1898 de-unify, to separate, to rip, to demean, to jeopardize the
1899 lives of children, to ruin them for life, to alter their
1900 psyche, to maybe never find the children again.

1901 My God, if we have all these children in places taken
1902 from parents without their permission, and in family state
1903 law -- family law in states -- the highest priority is that

1904 parent. You have to go to court to separate that parent's
1905 rights from that child, and here we are ripping them away.

1906 Let me just say, this past weekend I was with a
1907 Guatemalan community. That volcano is worse than we might
1908 have thought. A million people are displaced. Guatemala is
1909 not a large country; we expect massive numbers of people
1910 that will possibly flee because of a natural disaster. And
1911 then, I think my colleagues should know, and I think the
1912 congresswoman made it clear -- she alluded to it, and this
1913 is where we should have the hearing -- is that there is a
1914 massive -- the process of any form of due process is
1915 completely alleviated.

1916 The person seeking any relief is hauled in the court
1917 50, 60, 75 at a time. The Southern District, which this
1918 area is in, is so short of immigration judges; we have a
1919 50,000-case backlog, and I am led to believe that there is
1920 no relief down at the border. There is no increase in
1921 immigration judges at the border. And so, you are hauling
1922 in massive numbers of people who do not speak English, who
1923 are asking for asylum, as the ranking member said, have a
1924 right to the establishment of credible fear.

1925 The other point is that Hondurans who are coming are
1926 speaking in their indigenous language. Many of them are
1927 speaking in their indigenous language; there are no
1928 translators for the indigenous language, so they do not even

1929 know what is going on, and they certainly do not know where
1930 their children are. So, Mr. Chairman, I would associate
1931 myself for a hearing, but an overview hearing is not the
1932 emergency that we have now.

1933 And really, this committee should be the committee,
1934 regardless of what side of the aisle you are on immigration,
1935 to loudly tell, as I have asked for the Secretary of
1936 Homeland Security and this administration, to cease and
1937 desist immediately from ripping children away from parents.
1938 There are legitimate facilities -- not the best, as has been
1939 evidenced -- that children and family can stay together.

1940 And if they lose these children this will be an
1941 international humanitarian crisis which the United States
1942 will be a long time overcoming, because the world is
1943 watching, and they are appalled. They cannot even imagine
1944 that people are ripping away -- as bad as the migration
1945 system is in Europe, meaning those who are fleeing, and the
1946 tragedy of drowning, they are not as they land, if they land
1947 on the shore, separating families.

1948 So, this is a violent act, and I know that none of us,
1949 no matter what side of the aisle, parents and grandparents
1950 who sit on this particular panel, or those who love children
1951 on this panel, cannot imagine, Mr. Chairman, this continuing
1952 to go on.

1953 And I do not know why the Trump administration is

1954 turning a blind eye when just 2 months ago, in Child Abuse
1955 Month, he got up to speak about the value of the child and
1956 the parent. This is gross and violent child abuse, Mr.
1957 Chairman. I would ask that our hearing be on this question,
1958 separately on this question, and with that I yield back.

1959 Chairman Goodlatte. The time of the gentlewoman has
1960 expired.

1961 Mr. Johnson of Georgia. Mr. Chairman?

1962 Chairman Goodlatte. For what purpose does the
1963 gentleman from Georgia seek recognition?

1964 Mr. Johnson of Georgia. I move to strike the last
1965 word.

1966 Chairman Goodlatte. The gentleman is recognized for 5
1967 minutes.

1968 Mr. Johnson of Georgia. Thank you, Mr. Chairman. I
1969 rise in support of the amendment and also in support of my
1970 dear colleague, Congresswoman Jayapal, who with eloquence
1971 and controlled emotion spoke on an issue of prime concern to
1972 many of us in this room today; unfortunately, not enough of
1973 us, not the majority of us.

1974 Some of us care about children; some of us care about
1975 people. Some of us agree with Donald Trump when he
1976 describes certain folks as animals, and certain ones of us
1977 have adopted that view, obviously and clearly. Some of us
1978 believe that people coming across our southern border are

1979 animals. And so, Representative Jayapal expressed her view
1980 on this and, as a result, ran everybody out of the room on
1981 the other side. I guess the truth hurts, Mr. Chairman.

1982 The truth hurts, and when the truth is being told, it
1983 is unavoidable to us here on this side of the aisle. So, we
1984 understand that, even in cases of divorce where children are
1985 deprived of one of their parents, it has a profound impact
1986 on the child. Studies show that. That is why so many
1987 parents wait until their children are able to accept the
1988 trauma of separation and divorce before they actually take
1989 that step.

1990 Some parents really care about their children, and the
1991 majority of those people coming up through our southern
1992 borders, they are just like us; they care about their
1993 children, too. And their children are just like children
1994 here in America. They hurt when they are separated from
1995 their parents. When children are separated from their
1996 parents they struggle emotionally for the rest of their
1997 lives.

1998 They suffer an extreme sense of loss when they are
1999 pried from the arms of their parents at the border and taken
2000 away by strangers and housed like animals, like we treat
2001 cattle. We put the parents through one chute and put the
2002 children through another chute, treating them like animals.
2003 We separate the children, put them in a place where nobody

2004 loves them, where they basically have no parental guidance
2005 whatsoever. They are housed in prisons, in detention, in
2006 cages like animals, and those children hurt just like
2007 American children.

2008 They suffer the sadness of not being with their parent.
2009 They suffer the isolation and loneliness that comes with
2010 separation. It will result in societal difficulties as they
2011 age, because they will be the ones with the behavioral
2012 problems. They will be the ones with -- who will use drugs
2013 and alcohol to try to numb the pain that they have never
2014 been able to deal with; they will become pregnant; they will
2015 be the ones that are committing the delinquencies as
2016 juveniles, and as adults they will become hardened
2017 criminals.

2018 What are we doing to ourselves? Because we know that
2019 we live in a global economy; when this administration leaves
2020 office, we will not be able to keep our borders closed.
2021 People, as they do overseas, take actions that impact
2022 Americans here in this country. You will not be able to
2023 escape the results of what we are doing to these children.
2024 We are taking innocent children and turning them into
2025 monsters that will one day come back to haunt us.

2026 We should not be doing this to these children, and I am
2027 glad that you brought it up, Congresswoman Jayapal. It is a
2028 tough subject; nobody wants to hear it on the other side of

2029 the aisle. But we care about people, we care about
2030 children, and it is wrong what is going on in America. And
2031 with that, I yield back.

2032 Mr. Cicilline. Mr. Chairman?

2033 Chairman Goodlatte. For what purpose does the
2034 gentleman from Rhode Island seek recognition?

2035 Mr. Cicilline. I move to strike the last word.

2036 Chairman Goodlatte. The gentleman is recognized for 5
2037 minutes.

2038 Mr. Cicilline. Thank you, Mr. Chairman. I support the
2039 amendment. I too want to spend a moment to address the
2040 really important issue raised by the gentlelady from
2041 Washington and associate myself with her remarks and the
2042 remarks that strongly criticized the shutting down a debate
2043 by the committee chairman on this important issue.

2044 I know these are hard stories to hear, and I know
2045 nobody wants to hear them, because they are devastating to
2046 listen to. But imagine how devastating they are to experience
2047 them, to be a mother sitting in a room and hear her child
2048 crying, and there is nothing you can do to soothe those
2049 cries. This is not who we are. This is unspeakable
2050 violence against children.

2051 In fact, it is so bad that the United Nations condemned
2052 the United States, that this practice of ripping children
2053 from their parents violates international law and basic

2054 human rights. It also violates our own law. You know, we
2055 hear from this committee, "This is the Judiciary Committee."
2056 We have laws that we have enacted about asylum; when you are
2057 eligible for it; how that determination is made. None of
2058 that is happening.

2059 And instead, we hear stories of detention, arrest,
2060 separation, the most horrific examples of violence against
2061 children in the history of our country maybe. And our
2062 committee has responsibly to do something about it, to do
2063 bring the Attorney General, bring the Department of Homeland
2064 Security Director here to answer questions about this
2065 practice.

2066 These are violations of laws duly enacted by Congress.
2067 Asylum seekers have rights; they are fleeing the most
2068 horrific violence: rape, threats of murder, child
2069 trafficking, unspeakable violence. They come to America
2070 because they know if they come here, and they can make a
2071 claim for asylum, that they are really in fear that
2072 something really awful is happening in their lives, that
2073 they have a process, a lawful process, they can go through.

2074 What happens? They get here, and they get arrested and
2075 put in a cage, and then they are separated from their
2076 children. And agents tell them, "Make sure everyone knows
2077 this is what happened," so people will stop coming. Those
2078 agents do not get to make the laws in this country. That is

2079 our responsibility.

2080 And the examples that Ms. Jayapal heard about should
2081 alarm and disturb every single one of us. And we have not
2082 had a single hearing to examine this policy, which is a
2083 significant departure from all that is decent and right and
2084 the tradition of this country.

2085 We have not had a single oversight hearing to examine
2086 this, to hear the cries of these children and these
2087 families. But we did have a hearing today on the North
2088 Texas water supply, some project in Texas. I am sure to the
2089 people in that area it is important, but it seems to me the
2090 American people are demanding answers about what the impact
2091 is of this is zero tolerance proposal.

2092 We have a long tradition in this country of
2093 understanding our responsibilities to be a refuge of people
2094 that are fleeing violence and seeking a new way of life. We
2095 set up a whole structure, a whole set of laws to govern how
2096 we can do that in an orderly way.

2097 The American people expect us to comply with those laws
2098 we have enacted, and what we are hearing and seeing and
2099 reporting in the media is evidence of a gross violation of
2100 basic human rights, a violation of well-established law and
2101 tradition in this country, and we cannot seem to get our
2102 Republican colleagues to do anything about it.

2103 We have to fight to get our voices heard in this

2104 committee, to, you know, squeeze in between the gavel,
2105 because they do not want to hear about this. Well, guess
2106 what? The American people expect something to be done.
2107 This is intolerable; it is disgraceful; we should all be
2108 ashamed it is happening; and we have a responsibility to fix
2109 it.

2110 And this committee has jurisdiction, and I am asking
2111 you, Mr. Chairman, to bring before the committee those
2112 responsible for developing this policy, executing this
2113 policy, and people who have been victims of this policy, so
2114 we can understand the gravity of this and fashion a solution
2115 to it.

2116 But no longer should we expect that the Democrats on
2117 this committee are just going to sit there and talk about
2118 the North Texas water supply or some other bill to fill the
2119 time when real problems persist in this country. And we are
2120 undermining and undoing the basic rule of law; our
2121 longstanding tradition of being a beacon and a light to the
2122 world as a place you come for the protection against
2123 violence and discrimination and harm. And most importantly,
2124 a country that values families and values the importance of
2125 keeping families together.

2126 America can never be known as a country that
2127 facilitates the ripping apart of families, sending children
2128 into detention away from their parents. That is not who we

2129 are. And so, I ask you, Mr. Chairman, to adjourn this
2130 hearing and convene a hearing immediately with the Attorney
2131 General, the Secretary the Department of Homeland Security,
2132 ICE officials, so that we can have a real discussion, and
2133 the American people can see what this policy is doing and
2134 that the individuals responsible can be held accountable.
2135 And with that, I yield back.

2136 Chairman Goodlatte. The chair thanks the gentleman.
2137 We have an important piece of legislation, bipartisan
2138 legislation, before the committee.

2139 Mr. Raskin. Mr. Chairman?

2140 Chairman Goodlatte. The question occurs on the
2141 amendment offered by the chair.

2142 All those in favor of this respond by saying aye.

2143 Those opposed, no.

2144 The ayes have it, and the amendment is agreed to.

2145 Mr. Cicilline. Point of order, Mr. Chairman.

2146 Chairman Goodlatte. For what purpose does the
2147 gentleman from Maryland seek recognition?

2148 Mr. Raskin. I move to strike the last word.

2149 Chairman Goodlatte. The gentleman is recognized for 5
2150 minutes.

2151 Mr. Raskin. Thank you very much. I favor the
2152 amendment, and I want to add my --

2153 Chairman Goodlatte. The amendment has passed.

2154 Mr. Raskin. Well, I tried to speak beforehand, but --
2155 okay, I favored the amendment. I want to add my voice to
2156 the chorus of opposition to this outrageous --

2157 Chairman Goodlatte. That is not relevant to the
2158 business before the committee today.

2159 Mr. Raskin. Was I not recognized for 5 minutes, Mr.
2160 Chairman?

2161 Chairman Goodlatte. The gentleman was recognized.

2162 Mr. Raskin. Okay, well, I am going to use my time.

2163 Chairman Goodlatte. But I would point out to him
2164 that that is the case.

2165 Mr. Raskin. Excuse me?

2166 Chairman Goodlatte. And if it continues we will have
2167 to use the same procedure we used in the last matter. I do
2168 not think this is a wise thing to do when we have important
2169 business for the committee --

2170 Mr. Raskin. Mr. Chairman, has not it always been the
2171 practice of this committee that people can be recognized,
2172 and they can speak to matters that they think are important
2173 to the Judiciary Committee and to the people of the United
2174 States and their constituents?

2175 Chairman Goodlatte. Actually, it is not, and that is
2176 why, on occasion, the previous question has been used when
2177 the minority party filibusters an issue.

2178 Mr. Raskin. Okay.

2179 Chairman Goodlatte. So, the gentleman can proceed. He
2180 is recognized for 5 minutes.

2181 Mr. Raskin. Look, I understand the impulse not to talk
2182 about what is taking place in the name of the American
2183 people, but Ms. Jayapal has properly brought to the
2184 attention of this committee something which is of urgent
2185 importance to justice in United States of America.

2186 What we have going on under the guise of the zero-
2187 tolerance policy is the forcible separation of children from
2188 their parents. And many of the people being separated from
2189 their children are here with valid asylum claims. As Mr.
2190 Cicilline says, this is not who we are. This is not what
2191 the United States of America is.

2192 Thomas Paine said America was founded as a haven of
2193 refuge for people fleeing from religious and political
2194 oppression and violence from all over the world. That is
2195 why we have got the Statue of Liberty, which says, "Give me
2196 your tired, your poor, your huddled masses yearning to
2197 breathe free." That is who we are as America. We are all
2198 the descendants of immigrants except for the descendants of
2199 slaves and the descendants of the Native Americans.

2200 Now, we have got people arriving in America, fleeing
2201 domestic violence, gang violence, government oppression.
2202 Many of them are coming in lawful ports of entry and are
2203 still being separated from their children. Ms. Jayapal

2204 tells us -- because we have not had a hearing on this, so
2205 what we are getting is direct firsthand testimony from
2206 members of Congress who are trying to go to the scene of
2207 this crime against human rights -- and she tells us that
2208 there are mothers who cannot stop crying, and they can hear
2209 their children crying in neighboring rooms as they are being
2210 taken to God knows where.

2211 Mr. Chairman, if we can have a hearing on this singular
2212 exception to the environmental laws of the United States for
2213 North Texas water district that does not want to give people
2214 the right to sue to vindicate their environmental rights
2215 under NEPA, certainly we can have a hearing about what is
2216 taking place in the name of the American people at the
2217 border and now all over the country as these children
2218 relocated, and we read that the White House is looking to
2219 erect tent cities to house unaccompanied children. More
2220 than a thousand children are going to be put in makeshift
2221 tents as they are separated from their parents and families.

2222 This rang a bell with me from 1984. It was a totally
2223 Orwellian policy, and sure enough, you go back and check
2224 Orwell. O'Brian says, "We have cut the links between child
2225 and parent; children will be taken away from their mothers."
2226 This is an Orwellian policy. It is a policy that is
2227 reflective of an authoritarian cast of mind, not the cast of
2228 mind of the greatest liberal democracy that ever existed.

2229 Who are we becoming?

2230 I want to ask, if she would yield for a question, Ms.
2231 Jayapal a question. Is it really the case that people are
2232 arriving with asylum claims and causes of action in lawful
2233 ports of entry --

2234 Chairman Goodlatte. Would the gentleman yield?

2235 Mr. Raskin. By all means.

2236 Chairman Goodlatte. So, I would just ask the gentleman
2237 was it not under a Democratic Congress and a Democratic
2238 administration that this policy that does not allow children
2239 to be held with their parents in detention was passed into
2240 law? That is the crux of this problem, and that is what
2241 needs to be addressed. And in fact, we are going to have
2242 two bills on the floor next week that will address it. As I
2243 said before, we are going to have the Secretary of Homeland
2244 Security here soon. You will be able to ask her these
2245 questions.

2246 Mr. Raskin. Okay.

2247 Chairman Goodlatte. But it needs to be addressed
2248 legislatively, and that is the crux of the matter. So, you
2249 are welcome to debate it here, but there is a better time
2250 and place to do that than when the committee has other
2251 important business --

2252 Mr. Raskin. Reclaiming my time --

2253 Chairman Goodlatte. -- including protecting people who

2254 are the victims of terrorism by passing legislation to
2255 enable them to have --

2256 Mr. Raskin. Reclaiming my time --

2257 Chairman Goodlatte. -- fair status.

2258 Mr. Raskin. Thank you very much, Mr. Chairman, and I
2259 would love to hear a full elaboration of that position at a
2260 hearing that you call this week for a hearing to examine
2261 this policy that is taking place in the name of the American
2262 people. Proceeding with my question for Ms. Jayapal, is it
2263 true that people are arriving at lawful ports of entry and
2264 still being separated from their children?

2265 Ms. Jayapal. That is correct. These are individuals
2266 who are coming to the United States seeking asylum. The
2267 process should be that they get a credible fear hearing.
2268 Not a single one of them that I met with; 174 women who were
2269 held in a Federal prison because we do not have enough space
2270 in detention centers, because we have mass-deported and
2271 detained immigrants across this country.

2272 These are all individuals seeking asylum; they have not
2273 been given that credible fear hearing. And I just want to
2274 point out that the U.N. Human Rights Office has said that
2275 the practice of separating children from families violates
2276 their rights and international law, and the U.N. High
2277 Commissioner for Human Rights said, "It amounts to arbitrary
2278 and unlawful interference in family life and is a serious

2279 violation of the rights of the child."

2280 And this all -- let us be clear -- comes from the Trump
2281 administration/Jeff Sessions zero-tolerance policy at the
2282 border that has facilitated and encouraged border agents to
2283 be absolutely outrageously cruel to people and to hold them
2284 in conditions that, no matter what your policies are, nobody
2285 should be held in those conditions.

2286 Chairman Goodlatte. The time of the gentleman has
2287 expired. A reporting quorum being present, the question is
2288 on the motion to report the bill H.R. 5954, as amended,
2289 favorably to the House.

2290 Those in favor, respond by saying.

2291 Those opposed, no.

2292 The ayes have it, and the bill is ordered reported
2293 favorably.

2294 Members will have 2 days to submit views. Without
2295 objection, the bill be reported as a single amendment in the
2296 nature of a substitute incorporating all adopted amendments,
2297 and staff is authorized to make technical and conforming
2298 changes.

2299 This concludes our business for today. Thanks to all
2300 members for attending. The markup is adjourned.

2301 [Whereupon, at 12:09 p.m., the committee was
2302 adjourned.]