

1 ALDERSON COURT REPORTING

2 CHRISTINE ALLEN

3 HJU253000

4 MARKUP OF H.R. 1423, THE "FORCED ARBITRATION INJUSTICE REPEAL
5 ACT" OR "FAIR ACT;"

6 H.R. 1236, THE "EXTREME RISK PROTECTION ORDER ACT OF 2019;"

7 H.R. 1186, THE "KEEP AMERICANS SAFE ACT;"

8 H.R. 2708, THE "DISARM HATE ACT;"

9 H.R. 4018, "TO PROVIDE THAT THE AMOUNT OF TIME THAT AN
10 ELDERLY OFFENDER MUST SERVE BEFORE BEING ELIGIBLE FOR
11 PLACEMENT IN HOME DETENTION IS TO BE REDUCED BY THE AMOUNT OF
12 GOOD TIME CREDITS EARNED BY THE PRISONER, AND FOR OTHER
13 PURPOSES;" AND

14 H.R. 2426, THE "COPYRIGHT ALTERNATIVE IN SMALL-CLAIMS
15 ENFORCEMENT OF 2019" OR THE "CASE ACT OF 2019."

16 Tuesday, September 10, 2019

17 House of Representatives

18 Committee on the Judiciary

19 Washington, D.C.

20 The committee met, pursuant to call, at 2:10 p.m., in

21 Room 2141, Rayburn Office Building, Hon. Jerrold Nadler
22 [chairman of the committee] presiding.

23 Present: Representatives Nadler, Lofgren, Jackson Lee,
24 Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries,
25 Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa,
26 Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Murcarse-
27 Powell, Escobar, Collins, Sensenbrenner, Chabot, Gohmert,
28 Jordan, Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana,
29 Biggs, McClintock, Lesko, Reschenthaler, Cline, Armstrong,
30 and Steube.

31 Staff present: David Greengrass, Senior Counsel; John
32 Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Moh
33 Sharma, Member Services and Outreach Director; Susan Jensen,
34 Parliamentarian/Senior Counsel; Julian Gerson, Staff
35 Assistant; Joseph Van Wye, Professional Staff Member, ACAL
36 Subcommittee; Slade Bond, Chief Counsel, ACAL Subcommittee;
37 Ben Hernandez, Counsel, Crime Subcommittee; Joe
38 Graupensperger, Chief Counsel, Crime Subcommittee, Keenan
39 Keller, Senior Counsel, Crime Subcommittee; Milagros
40 Cisneros, Detailee, Crime Subcommittee; Monalisa Dugue,
41 Deputy Chief Counsel, Crime Subcommittee; Rachel Rossi,
42 Counsel, Crime Subcommittee; Veronica Eligan, Professional
43 Staff Member, Crime Subcommittee; Brendan Blair, Minority
44 Staff Director; Bobby Parmiter, Minority Deputy Staff
45 Director/Chief Counsel; Jon Ferro, Minority

46 Parliamentarian/General Counsel; Jason Cervenak, Minority
47 Chief Counsel, Crime Subcommittee; Danny Johnson, Minority
48 Oversight Counsel; Ryan Breitenbach, Minority Chief Counsel,
49 National Security; Tom Stoll, Minority Chief Counsel,
50 Intellectual Property Subcommittee; Daniel Flores, Minority
51 Chief Counsel, Antitrust Subcommittee; Erica Barker, Minority
52 Chief Legislative Clerk; and Andrea Woodward, Minority
53 Professional Staff Member
54

55 Chairman Nadler. [Presiding.] The Judiciary Committee
56 will please come to order, a quorum being present.

57 Mr. Jordan. I would be happy to.

58 Chairman Nadler. Without objection, the chair is
59 authorized to declare a recess at any time.

60 Pursuant to Committee Rule 2 and House Rule 11, Clause
61 2, the chair may postpone further proceedings today on the
62 question of approving any matter or measure or adopting an
63 amendment for which a recorded vote for the yeas and nays are
64 ordered.

65 I want to thank everyone for coming. I know some people
66 are here for the arbitration bill, others for bills about
67 preventing gun violence, and still others about intellectual
68 property. We are going to start with the arbitration bill,
69 so it may be some time before we get to the gun violence
70 prevention bills. That said, I do want to recognize the
71 gentleman from California, Congressman Carbajal, whose bill
72 we will be marking up today, and I want to thank him for
73 joining us.

74 Mr. Jordan. Mr. Chairman? Mr. Chairman, could I just
75 raise, you mentioned the schedule for today's hearing. I
76 just had a question on the schedule going forward.

77 Chairman Nadler. Sure.

78 Mr. Jordan. Not so much about today. When will the
79 committee get a chance to question Mr. Horowitz on his report

80 that was released 2 weeks ago?

81 Chairman Nadler. I am not sure which report you are
82 referring to, but --

83 Mr. Jordan. I am referring to the scathing report on
84 the former FBI director, James Comey.

85 Chairman Nadler. Oh, the OIG report. The answer is I
86 don't know.

87 Mr. Jordan. Do you anticipate us having an opportunity
88 to question the inspector --

89 Chairman Nadler. I don't know that either.

90 Mr. Jordan. You don't know?

91 Chairman Nadler. I don't know. We haven't discussed
92 that.

93 Mr. Jordan. You don't know that --

94 Chairman Nadler. Sir --

95 Mr. Jordan. -- the Judiciary Committee is going to get
96 an opportunity to question the inspector of the Justice
97 Department, who issued a scathing report on the former
98 director?

99 Chairman Nadler. We will do that do that at an
100 appropriate time. Pursuant to notice, I now --

101 Mr. Jordan. And I am asking when that appropriate time
102 is.

103 Chairman Nadler. Pursuant to notice, I now call up H.R.
104 1423.

105 Mr. Jordan. Mr. Chairman, just one last point.

106 Chairman Nadler. No. Pursuant to notice --

107 Mr. Jordan. It would seem to me --

108 Chairman Nadler. I recognized the gentleman out of
109 order, and he asked his question. That is it. Pursuant to
110 notice --

111 Mr. Jordan. But the chairman of the Judiciary Committee
112 is not going to schedule the inspector general to answer our
113 questions --

114 Chairman Nadler. Pursuant to notice, I now call up H.R.
115 1423, the Forced Arbitration Injustice Repeal Act --

116 Mr. Jordan. This is unbelievable.

117 Chairman Nadler. -- the FAIR Act, for purposes of
118 markup, and move that the committee report the bill favorably
119 to the House.

120 The clerk will report the bill.

121 Ms. Strasser. H.R. 1423, to amend Title 9 of the United
122 States Code with respect to arbitration.

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

125 [The bill follows:]

126

127 Chairman Nadler. I will begin by recognizing myself for
128 an opening statement.

129 H.R. 1423, the Forced Arbitration Injustice Repeal Act,
130 or the FAIR Act, would restore access to justice for millions
131 of Americans who are currently locked out of the court system
132 and are forced to settle their disputes against companies in
133 a private system of arbitration that often favors the company
134 over the individual.

135 Nearly a century ago, Congress enacted the Federal
136 Arbitration Act to allow merchants to resolve run-of-the-mill
137 contract disputes in a system of private arbitration that
138 would be legally enforceable. The system that Congress
139 envisioned was to be used voluntarily and only between
140 merchants of equal bargaining power. However, over the past
141 40 years, the Supreme Court has issued a series of decisions
142 that have expanded the use of arbitration far beyond
143 Congress' original intent, creating the very unjust system we
144 see today.

145 Private arbitration has been transformed from a
146 voluntary forum for companies to resolve commercial disputes
147 into a legal nightmare for millions of consumers, employees,
148 and others who are forced into arbitration and are unable to
149 enforce certain fundamental rights in court.

150 Many companies use forced arbitration as a tool to
151 protect themselves from consumers and workers who seek to

152 hold them accountable for alleged wrongdoing. By burying a
153 forced arbitration clause deep in the fine print of a take-
154 it-or-leave-it consumer and employment contract, companies
155 can evade the court system where plaintiffs have far greater
156 legal protections and hide the one-sided process that is
157 tilted in their favor.

158 For example, arbitration generally limits discovery,
159 does not adhere to the Federal Rules of Civil Procedure, can
160 prohibit class actions, which it almost always does, and deny
161 the right of appeal. Worse yet, arbitration allows the
162 proceedings, and often even the results, to stay secret,
163 thereby permitting companies to avoid public scrutiny of
164 potential misconduct.

165 For millions of consumers and employees, the
166 precondition, whether they know it or not, of obtaining a
167 basic service or product, such a bank account, a cell phone,
168 a credit card, or even a job, is that they must agree to
169 resolve any disputes in private arbitration. We used to
170 refer to contracts like these as contracts of adhesion in
171 which one party with all the power dictates the terms to the
172 other party in a take-it-or-leave-it contract. The next time
173 you apply for a credit card, try crossing out the term in the
174 fine print requiring you to agree to arbitration and see if
175 you still get the credit card. You will be denied without a
176 moment's hesitation. These are classic contracts of adhesion

177 which were once thought to be disfavored under the law, but
178 which now seem to be standard operating procedure in the
179 corporate world.

180 For individuals who have no choice but to agree to these
181 contracts, that means that their ability to enforce civil
182 rights, consumer, labor, and antitrust laws, are subject to
183 the whims of a private arbitrator, selected often by the
184 companies themselves. These private arbitrators are not
185 required to provide plaintiffs any of the fundamental
186 protections guaranteed in the courts, and their further
187 employment can depend on building a good reputation with the
188 companies that hire them. And for many companies,
189 arbitration has become a virtual get-out-of-free-jail card to
190 circumvent the basic rights of consumers and workers.

191 We have a bedrock principle in this country, and that is
192 that all Americans deserve their day in court. We make a
193 mockery of this principle, however, when individuals can be
194 stripped of this fundamental right and be forced into private
195 arbitration proceedings without the safeguards our judicial
196 system affords. That is where we found ourselves today.
197 During an oversight hearing on arbitration in the Antitrust,
198 Commercial, and Administrative Law Subcommittee, a panel of
199 leading academic experts, and practitioners, and people
200 affected by forced arbitration testified in support of ending
201 this shameful practice.

202 For example, Deepak Gupta, a prominent public interest
203 attorney, testified that forced arbitration has eroded
204 countless fundamental rights established by Congress by
205 rendering them virtually unenforceable. As he explained
206 during the hearing, "The presence of a forced arbitration
207 clause often means that Americans will have no effective
208 method of asserting their rights or getting justice under
209 Federal laws that could otherwise have been enforced in
210 court, consumer protection or antitrust laws, for example, or
211 prohibitions on sex or race discrimination. If Congress
212 passes laws that cannot be enforced in the real world, what
213 good are those laws?"

214 H.R. 1423, the Forced Arbitration Injustice Repeal Act,
215 or the FAIR Act, reverses this disastrous trend by
216 prohibiting the enforcement of forced arbitration clauses in
217 consumer, labor, antitrust, and civil rights disputes.
218 Importantly, the legislation does not preclude parties from
219 agreeing to arbitrate a claim after the dispute arises, which
220 will ensure that arbitration agreements are truly voluntary
221 and transparent.

222 I applaud the gentleman from Georgia, Mr. Johnson, for
223 his leadership on this legislation, which currently has 216
224 co-sponsors. This measure is also supported by a broad
225 coalition of more than 70 public interest, labor, and
226 advocacy organizations, including Public Citizen, *Consumer*

227 *Reports*, the Communications Workers of America, the
228 Leadership Conference of Civil Rights, and the American
229 Association of Justice. In addition, 84 percent of Americans
230 across the political spectrum support ending forced
231 arbitration in employment and consumer disputes, according to
232 recent polling data. It is up to Congress to end this
233 secretive and unfair practice. I urge my colleagues to
234 support the FAIR Act and to restore access to justice for
235 millions of Americans.

236 I now recognize the ranking member of the Judiciary
237 Committee, the gentleman from Georgia, Mr. Collins, for his
238 opening statement.

239 Mr. Collins. Thank you, Mr. Chairman, and welcome back
240 to September. Arbitration gives consumers a simpler,
241 cheaper, and faster path to justice than does the judicial
242 system. That is what the evidence showed the last time the
243 Judiciary Committee performed oversights of the arbitration
244 system during the 11th Congress. That is what the evidence
245 showed earlier this term when we renewed that oversight in
246 the Subcommittee on Antitrust, Commercial Law, and
247 Administrative Law.

248 In fact, the evidence in favor of preserving access to
249 arbitration has only increased over time. Companies are
250 continuing to improve the fairness of arbitration agreements,
251 and have long been following improved arbitration protocols

252 to help ensure due process is given to claimants against
253 them. The market has resolved problems in the consumer
254 arbitration considered in the 111th Congress, and a string of
255 new Supreme Court decisions has demonstrated the Court's
256 confidence in the arbitration system.

257 Even the Consumer Financial Protection Bureau's 2015
258 arbitration study highlighted problems consumers would face
259 if they had no access to arbitration, but instead had to only
260 rely on flawed judicial class actions. The study emphasized
261 the rise of pre-dispute, mandatory binding arbitration
262 agreements in the consumer setting did not come out of
263 nowhere. It stems directly from the repeated abuses of class
264 actions that have plagued the judicial system in recent
265 decades. That is not to say the arbitration system is
266 perfect, but the arbitration system is generally good and
267 should be preserved.

268 Unfortunately, that is not what the Forced Arbitration
269 Injustice Repeal Act would do. Rather than preserve and
270 strengthen arbitration, it would wipe it out for enormous
271 numbers of consumers in employment disputes, as well as many
272 civil rights and antitrust disputes. What that would do is
273 not end injustice, but it actually would promote injustice.
274 In far too many cases where everyday consumers and employees
275 are denied rights to arbitrate, rights that their contract
276 guarantees them to, it means that they will be shut out of

277 the judicial system entirely. If their claims are small
278 enough, they can go to small claims court. That may be an
279 option. But in 46 States and the District of Columbia, small
280 claims courts only take claims worth \$10,000 or less. Thirty
281 of those jurisdictions' limits are set at \$5,000 or less.

282 Millions of claimants with cases worth amounts not much
283 higher than those ceilings will never be able to pay
284 courtroom lawyers enough to take care of their cases. Maybe
285 of the claimants could qualify as plaintiffs in a class
286 action lawsuit. They could join in those cases. Millions of
287 people, however, will not be able to do so. Even those who
288 join a class action lawsuit often expect to get nothing in
289 return but a postcard telling them they won a few dollars and
290 cents on a coupon. Meanwhile, the class action plaintiff
291 trial lawyers will reap multimillion shares and fees from the
292 recoveries they dole to plaintiff case members at mere
293 pennies on the dollar.

294 If you ask me, we ought to call this bill the forced
295 class action injustice guarantee. Rather than wipe out
296 arbitration, we should be considering ways to make it better.
297 And while we do that, we should do everything we can to
298 reform all of the abuses out of the class action system.
299 Senate Judiciary Committee Chairman Graham suggested that we
300 do just that at the Senate Judiciary Committee's hearing on
301 arbitration earlier this year. He was exactly right.

302 The worst result Congress could deliver for the American
303 people would be to wipe out their access to arbitration while
304 leaving them no alternative but an unreformed judicial
305 system. It is an amazing to me, again, coming forth with a
306 bill on something that we could probably find some common
307 ground, that instead of going to those grounds, we go to
308 something that really is, again, an overreach that does not
309 happen and will actually penalize many people in the process.

310 Before I close, Mr. Chairman, I would like the letters
311 from the National Association of Homebuilders, the Institute
312 for Legal Reform, National Retail Federation, and the
313 Consumer Banking Association be entered into the record.

314 Chairman Nadler. Without objection.

315 [The information follows:]

316

317 Mr. Collins. And with that, I yield back.

318 Chairman Nadler. Thank you, Mr. Collins. Without
319 objection, all other opening statements will be included in
320 the record.

321 [The information follows:]

322

323 Chairman Nadler. I now recognize myself for purposes of
324 offering an amendment in the nature of a substitute. The
325 clerk will report the amendment.

326 Ms. Strasser. Amendment in the nature of a substitute
327 to H.R. 1423, offered by Mr. Nadler of New York. Strike all
328 after the enacting clause and insert the following.

329 Chairman Nadler. Without objection, it will be
330 considered as read and shall be considered as base text for
331 purposes of amendment.

332 [The amendment in the nature of a substitute of Chairman
333 Nadler follows:]

334

335 Chairman Nadler. I will recognize myself to explain the
336 amendment.

337 This amendment makes no substantive changes to the bill.
338 It simply makes a technical correction to the bill's short
339 title. Therefore, I urge all members to support it. I yield
340 back the balance of my time. I now recognize the ranking
341 member of the full committee, Mr. Collins, for any comments
342 he may have on the amendment.

343 Mr. Collins. And I appreciate the chairman and I accept
344 his amendment in the nature of a substitute. The only
345 question I still go back to as we continue in this, and there
346 will be some discussion and amendments as we go forward,
347 again is it worth throwing out everything when we could fix
348 what needs to be fixed simply to seemingly to force folks,
349 you know, out of the judicial system or actually into where
350 they can't get the help that they need? It is a balance that
351 needs to be struck. There is going to be a good debate on
352 it. Hopefully we can find that and move forward on something
353 that would actually work. With that, I yield back.

354 Chairman Nadler. I thank the gentleman. For what
355 purpose does the gentleman from Georgia, the sponsor of this
356 legislation, seek recognition?

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

358 Chairman Nadler. The gentleman is recognized.

359 Mr. Johnson of Georgia. Thank you, Mr. Chairman, for

360 holding this important markup. My bill would restore
361 fairness to American justice system by reasserting
362 individuals' rights to access the court system and a jury
363 trial. The FAIR Act would ensure that men and women
364 contracting with more powerful entities aren't forced into
365 private arbitration where the bigger party often has the
366 advantage of choosing the arbitrator in an unappealable
367 decision.

368 Arbitration clauses have permeated American life in
369 recent decades. They have seeped into our cell phone
370 contracts, our medical paperwork, our employee handbooks.
371 Their opaque language, written by well-paid corporate
372 lawyers, is often not understood by people who aren't trained
373 attorneys. These clauses are hidden in updated terms and
374 conditions, incorporated into midyear employee reviews, and
375 implicit in purchase contracts, and they all prevent us from
376 having our day in court.

377 Pre-dispute forced arbitration is a private process that
378 subverts the purpose of the Seventh Amendment by preventing
379 contracting parties from using the American court system when
380 a dispute arises. It was created as an option for
381 contracting business-to-business relations. Unfortunately,
382 the United States Supreme Court has allowed big business to
383 impose forced arbitration clauses on consumers and others of
384 unequal bargaining position in take-it-or-leave-it

385 circumstances.

386 In these cases where the more powerful contracting party
387 can choose the judge, the jury, and the law applied,
388 consumers and employees are put at a distinct disadvantage.
389 There is no requirement in an arbitration proceeding that
390 testimony be under oath and under penalty of perjury, and
391 even worse, the private nature of the proceedings means that
392 it does not create a public record and is not appealable.
393 Repeated anti-consumer activity by companies never sees the
394 light of day, and individuals remain incapable of holding
395 more powerful entities accountable. This needs to change.

396 When a loyal employee who happens to be a Reservist or
397 National Guardsperson gets deployed and thereafter fired for
398 getting deployed, they can't take their former employer to
399 court, and something is wrong with that. When a sexually-
400 harassed employee is forced into a private proceeding where
401 her harasser gets to pick the judge, something is wrong with
402 the American system, and the entire process is private. And
403 when America consumers need a legal education to understand
404 what they are signing, something is wrong with our judicial
405 system.

406 The deck has been stacked against everyday Americans in
407 favor of big business for far too long, and the pressure on
408 the meek and powerless has only become greater as powerful
409 corporate interests have realized that they can avoid

410 accountability, too, by incorporating arbitration clauses
411 into every interaction they have with consumers. The FAIR
412 Act would make the system work for everyone the way that our
413 Constitution intended.

414 Finally, I would like to take this moment to recognize
415 the victims of forced arbitration who are in the audience
416 today, men and women who have been deprived of their rights
417 because of arbitration clauses. Thank you for being here and
418 for your bravery in telling your stories. It has resulted in
419 us getting to this point where we are marking up this bill,
420 and it has 222 co-sponsors as of today. I am very proud of
421 that. And we are here to ensure that what happened to you
422 cannot happen to other people in similar situations, and,
423 thus, we are restoring justice to the American judicial
424 system. And with that, I yield back.

425 Chairman Nadler. The gentleman yields back. For what
426 purpose does the gentleman from Florida seek recognition?

427 Mr. Gaetz. I move to strike the last word.

428 Chairman Nadler. The gentleman is recognized.

429 Mr. Gaetz. Thank you, Mr. Chairman. And on this issue,
430 I am with the Democrats. Matter of fact, I think I am the
431 only Republican in the Congress who is a co-sponsor of this
432 bill along with my Democratic colleagues, and I don't say
433 that to bring discomfort to my colleagues in the majority.

434 [Laughter.]

435 Mr. Gaetz. I say it to perhaps bring more comfort to my
436 colleagues in the minority that this is an issue where we
437 ought to have broader agreement. It is my belief that the
438 number one threat to our liberty is big government. It is
439 also my belief that the number two threat to our liberty is
440 big business when big business is able to use the apparatus
441 of government to wrap around its objectives. And in this
442 case, I am convinced that big business' overutilization of
443 mandatory arbitration clauses impairs people's access to
444 something that is fundamentally American, and that is having
445 a judge and jury make a decision regarding your dispute.

446 As a matter of fact, I think this may be the most
447 America-first bill to have been brought forward in the House
448 Judiciary Committee this Congress because the ability to go
449 before a jury of your peers, to go before a judge is so
450 important to us thematically as a country that it has been
451 baked into our Bill of Rights. And I am well aware of the
452 Supreme Court precedent that has created space for mandatory
453 arbitration, but that doesn't mean it is consistent with our
454 values.

455 Why I think this is so unfair really relates to the
456 frequency with which the various litigants will be before
457 arbitration panels, and I have litigated before arbitration
458 panels. I have litigated before judges and juries, and here
459 is kind of the deal. Before a jury, for most of the juries,

460 they are unbiased, right? So they are going to see the
461 plaintiff and the defendant one time, and they are going to
462 make a decision on the facts. But when you go before an
463 arbitration panel, that arbitration panel is going to see
464 that Fortune 100 company multiple times that month, dozens of
465 times that year, and they are going to see the complainant,
466 the plaintiff, the person that is aggrieved, once. So that
467 creates a fundamental inequity in the resolution of these
468 disputes that is not consistent with our American beliefs and
469 principles. And that alone is a reason to disfavor these
470 things.

471 Now, I hear the arguments that my Republican colleagues
472 make, and they make them absolutely in good faith, that in a
473 number of cases arbitration can be cheaper, it can be faster.
474 There can be less discovery, and even, in many cases,
475 plaintiffs can do better with ultimate awards in arbitration
476 than in court. Now, I don't think that data takes into
477 account all the settlements that occur in court that are
478 likely higher because of the equity of that venue, but
479 irregardless, if people want to choose arbitration, they
480 still have that right.

481 It is not accurate to say that this bill cuts off access
482 to voluntary arbitration where both litigants, where the
483 group of litigants, all want to go before an arbitration
484 panel to resolve a matter that might have a lower amount in

485 controversy. But it is just unfair to continue to allow
486 business to become so large in some circumstances, and then
487 to use the power they have with government officials to be
488 able to undercut the claims that people make, that they
489 legitimately make.

490 My friend, Mr. Johnson of Georgia, correctly stated that
491 the ickiest environment in which these forced arbitration
492 provisions come to bear deal with sexual harassment. One of
493 the ways we have been able to beat down the scourge of sexual
494 harassment is to out it, and talk about it, and de-stigmatize
495 the victims that step forward. But in these arbitration
496 panels, oftentimes there is mandatory secrecy. There is
497 constrained discovery. And so the very antidote to the
498 challenges we face are cut off by the people who create the
499 grievance in the first place, and so I appreciate the
500 gentleman for highlighting that.

501 I have met with constituents from my district who had
502 valid sexual harassment allegations that they deserved to
503 have resolved, and when they were forced into these
504 arbitration panels, they did not feel as though there was
505 fairness and equity. And, look, not everybody likes the
506 outcome they get, right? But at least before a judge and a
507 jury, we have a tried and true method to have greater
508 confidence in that.

509 Mr. Chairman, I thank you for bringing this bill up. I

510 thank the sponsors of it.

511 Mr. Jordan. Would the gentleman yield?

512 Mr. Gaetz. I would yield.

513 Mr. Johnson of Georgia. I just want to say that it
514 takes a lot of courage to step away from the herd, to
515 separate yourself from the pack, and do something that you
516 know is in the best interest of society. And it is in
517 keeping with our Constitution, our Seventh Amendment, which
518 guarantees a right to a jury trial in cases where the amount
519 in controversy exceeds \$20 or more. So I appreciate the
520 gentleman's work on this bill. I appreciate your co-
521 sponsorship, and I look forward to working with you on other
522 matters.

523 Mr. Gaetz. And it is my hope, Mr. Chairman and Mr.
524 Johnson, that the Senate will take this bill up. And I make
525 you the commitment that I will personally endeavor to
526 encourage the President to sign it if it makes it to his
527 desk. And I yield back.

528 Chairman Nadler. The gentleman yields back. For what
529 reason does the gentleman from Rhode Island wish to speak?

530 Mr. Cicilline. I move to strike the last word. I move
531 to strike the last word.

532 Chairman Nadler. You are recognized.

533 Mr. Cicilline. Thank you, Mr. Chairman. I would like
534 to say something I have never said publicly before. Mr.

535 Gaetz is right.

536 [Laughter.]

537 Mr. Cicilline. And I thank him for his eloquent words.

538 Mr. Chairman, buried deep within the fine print of everyday
539 contracts, forced arbitration deprives American consumers and
540 workers of their day in court when they attempt to hold
541 corporations accountable for breaking the law or violating
542 the rights of workers or consumers. This private system
543 lacks the procedural safeguards of our justice system, is not
544 subject to oversight, has no judge or jury, and is not bound
545 by laws passed by Congress or the States.

546 But it has become a requirement of everyday life.
547 Consumers and workers must surrender their rights to
548 corporations through forced arbitration clauses, which are
549 unilaterally imposed by companies before disputes arise. And
550 when forced arbitration is combined with a nondisclosure
551 agreement, it effectively silences the victims of rampant
552 corporate misconduct. Few instances of this silencing effect
553 are as stark and disturbing as the experiences of victims of
554 sexual harassment and assault who are routinely exploited by
555 forced arbitration.

556 During the subcommittee's hearing on forced arbitration,
557 Gretchen Carlson, an advocate and former Fox News
558 commentator, characterized forced arbitration as a tool used
559 to, and I quote, "to cover up systemic sexual harassment."

560 And while she, along with many others across the country,
561 have come forward to tell their stories, there are still
562 countless others who are left behind. As Ms. Carlson
563 explained, "Because of the secrecy that surrounds forced
564 arbitration, it is impossible to know exactly how many women
565 were sexually assaulted or harassed and came forward. What
566 we also don't know is how many women chose not to come
567 forward, but to stay quiet or quit because they knew they
568 would be forced into arbitration where their voices would be
569 silenced."

570 This shameful, humiliating, and corrupt system has
571 isolated and silenced people who were ultimately deprived of
572 their right to hold wrongdoers accountable through their day
573 in court. Forced arbitration has eroded the fundamental
574 rights of our Nation's men and women in uniform, veterans and
575 their families. These brave Americans have sacrificed much
576 in service to our country. They have fought to protect the
577 fundamental idea that we are a Nation of laws, and
578 institutions have guaranteed the rights and prosperity of
579 every American. Since the Second World War, Congress has
580 strengthened the rights and protections of service members
581 and veterans through laws like the Uniformed Services
582 Employment and Reemployment Rights Act, or USERRA, which
583 guarantees that service members can take military leave
584 without fear that they will lose their job when they return

585 home.

586 These laws are essential protections that guarantee
587 every veteran and active duty service member, including the
588 Reserves and National Guard, the right to be free from
589 workplace discrimination on the basis of their military
590 service and the right to their day in court to enforce these
591 protections. But for too long, arbitration has eroded these
592 fundamental protections by forcing service members' claims
593 into private systems set up by corporations.

594 A coalition of military service organizations
595 representing more than 5-and-a-half million current and
596 former service members notes that "Countless employers have
597 used forced arbitration clauses in contracts as a barrier to
598 justice by funneling wrongful termination and discrimination
599 claims into private, costly arbitration systems set up by the
600 same employers." For example, Lieutenant Commander Kevin
601 Ziober, who testified in support of the FAIR Act earlier this
602 year, has served in the U.S. Navy Reserves since 2008. But
603 in the fall of 2012, he was called into active duty for a
604 deployment to Afghanistan. Kevin notified his employer and
605 conveyed his desire to resume work upon his return, but on
606 his last day of work before his deployment to Afghanistan,
607 following his farewell party, he was fired by his employer
608 for serving his country. When he tried to hold his employer
609 accountable for violating his rights under USERRA, his

610 company forced his claim into arbitration, citing an
611 arbitration clause in Kevin's employment contract that he was
612 required to sign at the beginning of his employment, waiving
613 his constitutional right to a jury trial.

614 As Kevin testified during the hearing, and I quote, "No
615 service member who is asked to leave his family and friends
616 to fight for our country should ever have to worry about
617 fighting for his job when he returns home." But protections
618 for service members, Kevin states, and I quote, "are
619 routinely undermined by arbitration agreements that require
620 service members to pursue arbitration in the specific
621 location that the employer chooses, even if the service
622 member is deployed or lives across the country, or that
623 impose significant fees or costs to service members."

624 This outrageous practice is nothing short of a corporate
625 takeover of our Nation's system of laws, and the American
626 people have had enough. The overwhelming majority of voters,
627 including 83 percent of Democrats and 87 percent of
628 Republicans, support ending forced arbitration. It is time
629 to act. H.R. 1423, the FAIR Act, does just that. This
630 important legislation ends the use of forced arbitration in
631 everyday consumer, employment, antitrust, and civil rights
632 disputes. It is supported by a broad coalition of groups
633 dedicated to advancing the rights of women, service members,
634 veterans, consumers, and hardworking Americans.

635 I thank Chairman Nadler for holding today's markup of
636 the bill along with my colleague, Congressman Johnson, for
637 his leadership over the past decade. I urge my colleagues to
638 support this bipartisan measure, and I yield back the balance
639 of my time.

640 Chairman Nadler. The gentleman yields back. Are there
641 any amendments to the amendment in the nature of a
642 substitute?

643 Mr. Jordan. Mr. Chairman?

644 Chairman Nadler. The gentleman from Ohio. For what
645 purpose do you seek recognition?

646 Mr. Jordan. I have an amendment at the desk.

647 Chairman Nadler. The clerk will report the amendment.

648 Voice. Reserve a point of order.

649 Chairman Nadler. The gentlelady reserves a point of
650 order.

651 Mr. Cicilline. Reserve a point of order, Mr. Chairman.

652 Chairman Nadler. The point of order is reserved.

653 Ms. Strasser. Amendment offered by Mr. Jordan of Ohio
654 to the amendment in the nature of a substitute. Page 6,
655 strike lines 16 through 25, and make such technical and
656 conforming changes as may be appropriate.

657 [The amendment of Mr. Jordan follows:]

658

659 Chairman Nadler. The gentleman will explain his
660 amendment.

661 Mr. Jordan. Thank you, Mr. Chairman. The legislation
662 doesn't really get rid of all forced arbitration because it
663 keeps the safe harbor for union contracts. Current
664 constituents force employers into arbitration over employment
665 disputes, opening a faster, cheaper path to justice for
666 employees. Research has even shown, as Mr. Gaetz mentioned
667 in his comments, that employees obtain more favorable
668 judgments in arbitration than they do in the court. And in
669 court, of course, the average employee stands to be seriously
670 outgunned by an employer who has far more resources to hire
671 more costly courtroom counsel.

672 The bill mysteriously yanks those benefits out of the
673 hands of non-union employees. Meanwhile, what happens for
674 union employees? Well, pre-dispute mandatory binding
675 arbitration contracts negotiated by the unions with employers
676 or other unions are left untouched by the bill. Mr.
677 Chairman, this is a bill entitled the "Forced Arbitration
678 Injustice Repeal Act," but it really should be titled the
679 forced injustice guarantee act, because the bill enacts
680 injustice between union and non-union employees.

681 Non-union employees get handed over to the plaintiff's
682 bar and may never be able to afford their day in court that
683 we all want to see happen, as Mr. Gaetz and others have

684 talked about. Union employees get all the benefits of
685 forcing arbitration with their employers and don't have to
686 make the same kind of sacrifice. My amendment can cleanse
687 the hypocritical treatment that is contained in the bill. I
688 urge my colleagues to support the amendment --

689 Mr. Collins. Will the gentleman yield?

690 Mr. Jordan. -- and reserve the balance of my time. I
691 will actually yield to the ranking member of the committee.

692 Mr. Collins. Thank you. I appreciate that you yielded.
693 Look, I think all we are doing is cleaning up this. I mean,
694 I know there is going to be discussion here to say that
695 collective bargaining is fair and open and everybody gets a
696 part. Well, tell that to the line worker who has no choice
697 except to trust that his leadership is taking care of him in
698 these positions.

699 And, look, you can make the argument how you want it and
700 say it is clean, it is neat, and it is right, and this has
701 all been fair and above board. For those of us who have
702 been, you know, a part of a union -- I was when I was younger
703 in a grocery store chain -- when it comes down to choices,
704 the unions will have to pick. And so those are arguments
705 here that we need to look at, and I think your amendment
706 strikes that balance. Let's make everybody play by the same
707 rules. You know, we have heard this a lot up here that we
708 should make it even. Well, let's make this even. You know,

709 if you are just depending on collective bargaining to be
710 clear and transparent here, I think we have got a long hurdle
711 to climb on that one. So with that, I yield back to the
712 gentleman.

713 Mr. Jordan. I thank the gentleman for his comments, and
714 they are right on target. And I think about my --

715 Mr. Gaetz. Will the gentleman yield?

716 Mr. Jordan. Yes, I will yield to the gentleman from
717 Florida.

718 Mr. Gaetz. I thank the gentleman for yielding, and it
719 would seem to me that what is good for the goose should be
720 good for the gander. If forced arbitration is infirm as a
721 requirement upon litigants, you know, with big business, it
722 just would seem that it would be similarly as it relates to
723 big labor. So I would just hope for some intellectual and
724 consistency and honesty from my colleagues in the majority,
725 and I think we could take Mr. Jordan's amendment and make a
726 really good bill even stronger. And I yield back to the
727 gentleman from Ohio.

728 Mr. Jordan. I yield back.

729 Chairman Nadler. The gentleman yields back. Does the
730 gentleman from Rhode Island --

731 Voice. Mr. Chairman?

732 Chairman Nadler. Does the gentleman from Rhode Island
733 insist on his point of order?

734 Mr. Cicilline. I do not, Mr. Chairman.

735 Chairman Nadler. The gentleman does not insist on his
736 point of order. I recognize myself for the purpose of
737 opposing the amendment. This amendment is a distraction from
738 the true issue here. There are a little over 60 million
739 workers who make up a majority of non-union private-sector
740 employees who are subject to forced arbitration clauses.
741 Those employees are told that if they want to get a job or
742 keep their current job, they must sign away their right to
743 their day in court and submit to a forced arbitration
744 agreement. In most cases, they do not have a choice.

745 In contrast, the collective bargaining process provides
746 protections that are unavailable to many non-union workers,
747 such as rejecting unfair employment terms. Additionally, in
748 collective bargaining, both the company and the union are
749 represented by counsel and can agree to arbitration before
750 the dispute arises on an informed basis, and the two parties
751 in arbitration are two institutions, a large corporation and
752 the union, not a large corporation and an individual who has
753 comparatively little power.

754 The collective bargaining process can also get agreement
755 over other important protections, such as truly neutral
756 arbitrators, better procedures, and transparent decision-
757 making. This is completely different from forced arbitration
758 for non-union employment disputes where a single employee is

759 forced to accept an arbitration clause buried inside the fine
760 print of a stack of confusing paperwork on a take-it-or-
761 leave-it basis. There is no agreement. There is an
762 agreement between the union and the employer in a collective
763 bargaining agreement which may involve arbitration, but that
764 is a voluntary agreement between two parties, not a take-it-
765 or-leave-it agreement between one party and one helpless
766 individual.

767 Even when workers are aware that the clause is buried in
768 the fine print, it is not possible for them to know that they
769 may be victims of sexual harassment, wage discrimination, or
770 other illegal behavior later before they begin their
771 employment. The FAIR Act will help to fix the unjust system
772 and protect American workers, and it reaches against forced
773 arbitration where it is necessary to reach. And, therefore,
774 I oppose the amendment.

775 Mr. Johnson of Georgia. Would the gentleman yield?

776 Chairman Nadler. I will yield to the gentleman from
777 Georgia.

778 Mr. Johnson of Georgia. Yes, thank you. Collective
779 bargaining by unions on behalf of employees levels the
780 playing field against an employer who is rich and powerful,
781 and so collective bargaining comes to an agreement between
782 two parties of equal bargaining position. And when those
783 equal bargaining positions agree to arbitration as the means

784 to settle collective bargaining disputes, that is entirely in
785 keeping with the premises of the original arbitration act,
786 which the U.S. Supreme Court has contorted out of its natural
787 boundaries so that it applies to parties of unequal
788 bargaining strength.

789 So that is the difference between the collective
790 bargaining of employees versus individuals who have no
791 ability to bargain with the employer. It is just a take-it-
792 or-leave-it employment situation. So for that reason, I
793 oppose the amendment, and I would ask my colleagues to do the
794 same.

795 Chairman Nadler. I yield back.

796 Mr. Johnson of Georgia. And with that, I yield back.

797 Chairman Nadler. And I yield back. Does anyone seek
798 recognition?

799 Mr. Swalwell. Mr. Chairman?

800 Mr. Collins. Mr. Chairman?

801 Chairman Nadler. The gentleman from Georgia, the
802 ranking member, Mr. Collins.

803 Mr. Collins. Thank you, Mr. Chairman. I move to strike
804 the last word.

805 Chairman Nadler. The gentleman is recognized.

806 Mr. Collins. You know, it is really interesting what
807 was just said by my friend from Georgia. And, again, this is
808 why this argument sometimes devolves into this discussion.

809 We go to the rich and powerful businesses, and we don't think
810 anything about the powerful and very successful union
811 organizations who have collective bargaining. Let's discuss
812 this. Let's don't just all of a sudden go to the bad that
813 the big bad business is the problem here while at the same
814 point saying there is not at least an inequity inside the
815 union side here.

816 I mean, we can't keep going down this path because in
817 some areas, if you think about this, for the new employee
818 coming in, they have no choice but to join the union to get
819 the job. So before they ever get there, that has been
820 decided for them in their way. So to get the job, they have
821 to agree to join the union. They are being, you know, placed
822 into that format.

823 So I think we have got to just be careful here. It is
824 okay. And I made this comment to the chairman just a few
825 minutes ago. This is a bill, and I think is reflective from
826 Mr. Gaetz's point of view, from others, that there is a
827 workable solution for this bill. But for those in the
828 audience who believe, anybody that would actually believe
829 that, you know, this is not holding the unions accountable
830 for this is anything but just a carve-out because we don't
831 want to deal with their collective bargaining agreement is a
832 problem here.

833 And to say that you are just simply attacking and rich

834 and powerful businesses when they have collective bargaining
835 that has been negotiated through, you know, force and through
836 the agreements and laws in those States, that is an issue
837 that needs to be done as well, especially in areas where
838 there is no choice but that for certain jobs, you must join
839 the union. So to say that this is simply a setup between,
840 you know, two, you know, diametrically opposed, one being the
841 weaker. I mean, it is interesting to hear my Democratic
842 colleague basically say that the unions are weak. That is
843 what was actually just said here in a sense that they were
844 weak because they had to go up against businesses.

845 Chairman Nadler. Would the gentleman yield?

846 Mr. Collins. Not yet. I will in just a second. I
847 think what we got to understand here, though, the concern
848 that I have is if you are going at this, let's make the
849 playing field equal. If we are going to take a bill that is
850 problematic that we could have -- and, again, I state this --
851 could have sat down and possibly found some very honest shots
852 that would be put into this bill that could fix the
853 arbitration system in ways that have been the egregious
854 examples that was mentioned by my friend from Rhode Island
855 and others, then let's do that. But let's at least also have
856 a discussion here about what is a balance or inequity balance
857 of this as we go forward.

858 And I think that is why I agree with the gentleman's

859 amendment. You know, we will have a vote on it in a minute,
860 but I think this discussion is at least something that needs
861 to be had. And I will be happy to yield to the chairman for
862 a moment.

863 Chairman Nadler. Thank you. I think you misunderstood
864 what I said. I said the exact opposite. I said that the
865 union and the company are both institutions. They both have
866 power, and they are, therefore, in a position to make a
867 reasonable agreement on an arbitration, whereas an individual
868 faced with a company has a severe imbalance of power, and,
869 therefore, the bill ought to apply to that individual, but
870 not necessarily to a union where they can voluntarily and on
871 an equal basis enter it. I yield back.

872 Mr. Collins. And in reclaiming my time, I know this may
873 come as a shock to many watching here, I will actually agree
874 with the chairman. I wasn't disagreeing with the chairman.
875 I was disagreeing with the gentleman from Georgia and his
876 characterization of business and his characterization of --

877 Mr. Johnson of Georgia. Would the gentleman yield?

878 Mr. Collins. I yield to the gentleman from Arizona.

879 Mr. Biggs. Thank you. Thank you for yielding. I will
880 just take a brief moment. When the chairman says that these
881 are both institutions, he is correct. You are talking big
882 business or institutions. The unions are institutions. But
883 this bill only seeks to adjust inequities between the

884 institution of a big business versus the individual.

885 This is amendment, however, seeks to address the
886 inequities of an individual trying to work within the system
887 of the big institution union. And the ranking member is
888 exactly correct when you said individuals who want employment
889 through a union must accept the results of the collective
890 bargaining agreement, or they must walk away. They are done,
891 and that is the point I think that we are losing here. And I
892 think it is the point that we need to correct, and I think
893 that is why this amendment was offered. And I support the
894 amendment, and I yield back to the ranking member.

895 Mr. Collins. I yield back.

896 Chairman Nadler. The gentleman from California.

897 Mr. Swalwell. I move to strike the last word.

898 Chairman Nadler. The gentleman is recognized.

899 Mr. Swalwell. Thank you, Mr. Chairman, and thank you to
900 the gentleman from Georgia for bringing forth this
901 legislation. It is pro-consumer. It is pro-Seventh
902 Amendment. But just to put into perspective who I think is
903 hurt most by forced arbitration agreements, it is rural
904 Americans because if you think about it, in rural America,
905 oftentimes there is a big company, town employer, and there
906 are not many other employers. There is one big hospital
907 healthcare system where you can go to. There is one bank
908 that you can go to.

909 So there is not a lot of choice in rural America. And
910 when there is not a lot of choice and you have forced
911 arbitration, you can't make the argument that you are in a
912 populated area where you can go to another bank, another
913 hospital, another employer. You are really locked in. And
914 that puts this sense of helplessness and powerlessness across
915 America, and this seeks to lift that. It also gets rid of a
916 one-sided system that, more times than not, it is the
917 corporations who are drafting the terms of what would put
918 somebody into forced arbitration.

919 As a former prosecutor, someone who has tried dozens of
920 jury trials in front of jurors, I trust everyday Americans to
921 sort out these issues more than I would trust the arbitrator
922 of choice from a corporation. But I also trust everyday
923 Americans who 83 percent have said in a recent February 2019
924 poll that they want to get rid of forced arbitration. So I
925 thank the gentleman, and I also thank the gentleman from
926 Florida who has made this a bipartisan piece of legislation
927 for this committee today. And I yield back.

928 Mr. Raskin. Would the gentleman yield? Would the
929 gentleman --

930 Mr. Swalwell. Yes, I would.

931 Mr. Raskin. Thank you. Let's see. Mr. Chairman,
932 first, I wanted to recognize two young heroes who are with us
933 today. They are law students from Harvard Law School, 3rd-

934 year students, Molly Coleman and Vail Kohnert-Yount, who have
935 organized students at Harvard Law School to put pressure on
936 law firms to drop policies of compulsory arbitration against
937 their own employees so that if someone has a sexual
938 harassment complaint or some other complaint, it would not be
939 forced into one of these secretive, off-limits entities where
940 real justice is not done. And several law firms, including
941 Kirkland & Ellis, Sidley Austin, and Paul Hastings, have
942 dropped their compulsory arbitration policies because they
943 are there. I also wanted to salute Mr. Johnson for his
944 excellent leadership and Mr. Gaetz for his insightful remarks
945 about this legislation.

946 Let's see. I am not averse to this amendment if I had
947 heard any complaints from union members about this process.
948 I have not heard a single complaint from a union member, and
949 if what we are talking about is duty of fair representation,
950 I don't know that they would want to get out of an
951 alternative mediation or arbitration process. But in any
952 event, we don't really know anything about that.

953 But what we do have tons of evidence of is cases like
954 the one I learned of from New York with Karen Ward, who sued
955 Ernst & Young -- she worked at Ernst & Young -- for sexual
956 harassment after a series of insulting and degrading remarks
957 about her body, her breasts, other parts of her body after
958 she was propositioned on a trip. She tried to bring a sexual

959 harassment lawsuit and was forced into compulsory arbitration
960 where she was charged \$185,000 in order to bring the case.

961 And how many cases are being chilled, deterred, and just
962 squelched by virtue of the fact that people are being charged
963 for the right to even enter into their claims? If she had
964 gone to court, it would have been \$500 in order to file her
965 case, and here they were charging here more than \$180,000 to
966 pay for the arbitrators under the terms of the contract. So
967 this is an insult to the Constitution. It is an insult to
968 everything that we believe in as Americans.

969 I just want to close with a quote from John Adams who
970 said, "Representative government and trial by jury are the
971 heart and lungs of liberty. Without them, we have no other
972 fortification against being ridden like horses, fleeced like
973 sheep, worked like cattle, and fed and clothed like swine and
974 hounds." So let's stick with John Adams and the founders of
975 the Constitution and the right to trial by jury. I yield
976 back. Thank you.

977 Mr. Swalwell. Thank you, and I yield back, Mr.
978 Chairman.

979 Chairman Nadler. I thank the gentleman for yielding
980 back. We have 7-and-a-half minutes left on three votes on
981 the floor. The committee, therefore, will stand in recess
982 now until immediately after the third vote, and I urge the
983 members to come back as soon as they finish voting on the

984 third vote. The committee is hereby in recess.

985 [Recess.]

986 Chairman Nadler. The committee will come to order.

987 Before we begin, I want to briefly note that our
988 chairman emeritus, the gentleman from Wisconsin, Mr.
989 Sensenbrenner, has announced that he will be retiring at the
990 end of the term. He has always been a strong defender of
991 this committee and its jurisdiction. We have worked together
992 on many important issues, such as surveillance reform and
993 reauthorization of the Voting Rights Act.

994 As the former chairman of the Crime Subcommittee he
995 helped lead this committee's recent criminal justice reform
996 efforts. As the current ranking member of the Antitrust
997 Subcommittee he is a strong partner in this committee's
998 bipartisan investigation into competition and digital
999 markets.

1000 He has also been a passionate advocate for the rights of
1001 individuals with disabilities. He sponsored the ADA
1002 Amendments Act of 2008, which President George Bush signed
1003 into law, which strengthened the landmark Americans with
1004 Disabilities Act.

1005 He has served this committee and this House with
1006 distinction and he will be sorely missed. But I look forward
1007 to continuing to work with him over the next year and a half
1008 as he completes his service in Congress.

1009 I would now recognize the ranking member for any
1010 comments he may have.

1011 Mr. Collins. Thank you, Mr. Chairman. I appreciate you
1012 doing this. You know, for all the accomplishments that you
1013 just stated, on my side it is not only accomplishments of
1014 someone that I can look over to the left and see on the wall
1015 of this committee. For me to be able to sit next to Jim
1016 Sensenbrenner is one of the highlights of my career, and
1017 serving with him.

1018 It is often said that when you have people that you look
1019 up to and they have played an impact on your life you are
1020 truly just standing on their shoulders of their work that
1021 they have already went before, that most of us on this dais,
1022 especially on the Republican side, would not have the --
1023 frankly, the standing that we have from what he has done over
1024 time, and it is something to be said when he has put that
1025 much time, and for all of the time in his district, and all
1026 of the time talking to his constituents.

1027 But the one thing, Mr. Chairman, and I will say that I
1028 got to know, you know, my chairman over here from emeritus,
1029 is his love for his family, and for his precious bride and
1030 his kid, and that is, to me, what makes this place special.
1031 We are going to have all kinds of disagreements up here, and
1032 that is what we do. But at the end of the day we all have
1033 got families, and we can all put aside our discussions to

1034 know, at the end of the day, it is about that. And for what
1035 you have done, and for the stuff that you went through, you
1036 mean the world to me, and I am just happy that I was able to
1037 make it through this without doing what I thought I might do.

1038 But I just want to thank you. We are going to have a
1039 lot more for you in the next to come. You are not out of
1040 here yet, and I yield back.

1041 Mr. Sensenbrenner. Will the chairman yield?

1042 Chairman Nadler. I will be happy to yield.

1043 Mr. Sensenbrenner. Well, you know, I have already
1044 threatened that I will be more unhinged and more tart during
1045 the next 16 months, since there is nobody who will ever be
1046 able to say, "I am never going to vote for you again because
1047 you did this or said that." I do appreciate the comments,
1048 both by the chairman and the ranking member. You know, it
1049 has been a great 42-year run. During this period of time I
1050 think we have accomplished an awful lot for the American
1051 people, making them safer, particularly making children
1052 safer, with the Adam Walsh Act and the PROTECT Act. That was
1053 all done on a bipartisan basis.

1054 You know, it kind of strikes me and disappoints me that
1055 when we do things on a bipartisan basis it is not newsworthy.
1056 When we are screaming at each other and shaking our fists at
1057 each other it gets to be very newsworthy. Well, the latter
1058 type of legislative action usually doesn't make it into law.

1059 The former type does. And I think that this committee, with
1060 its vast jurisdiction, which, as the chairman mentioned, when
1061 I became chairman we lost a lot during my two predecessors'
1062 terms. But, you know, I grabbed it back and we were able to
1063 do, you know, an awful lot, you know, rather than getting it
1064 stuck in perhaps the tar pits of the Energy and Commerce
1065 Committee, and some of the other committees that think they
1066 should have it all.

1067 We have a vast jurisdiction. We have done a lot of it.
1068 I have made a lot of friends on both sides of the aisle. I
1069 am not going very far, because my wife is in a nursing home,
1070 and I don't have to come in during the rush hour, so I can
1071 make it in 20 minutes rather than riding the brake across the
1072 14th Street bridge. You know, this is something that I will
1073 look back to, and my children and my grandchildren, you know,
1074 will look back to, and say, "Dad, Grandpa made a difference."

1075 So thank you all from the bottom of my heart.

1076 [Applause.]

1077 Chairman Nadler. I thank the gentleman.

1078 At this time I ask unanimous consent to enter into the
1079 record letters from Andowah Newton and Karen Ward, describing
1080 their experiences with forced arbitration clauses, after
1081 having been the victims of sexual harassment. Without
1082 objection, their letters will be entered into the record.

1083 [The information follows:]

1084

1085 Chairman Nadler. When the committee recessed, the
1086 pending business was the Jordan amendment to the amendment in
1087 the nature of a substitute. Does anyone seek recognition?

1088 The gentlelady from -- I am sorry -- the gentleman from
1089 Texas, Mr. Gohmert.

1090 Mr. Gohmert. Thank you, Mr. Chairman. I think Matt
1091 Gaetz made some good points, as a friend across the aisle. I
1092 have heard from union members who have expressed concerns
1093 about some of the things that union leaders do in secret,
1094 and, you know, they have concerns that some of the union
1095 leaders may, for more political reasons, be embracing more
1096 people coming in illegally, more people coming in that may
1097 take their jobs, and they just have very significant
1098 concerns.

1099 So when I looked at what Mr. Jordan's amendment does, as
1100 the expression was used earlier, what is good for the good
1101 could be good for the gander, this would help eliminate
1102 unions doing things that union members may not know about in
1103 the process of arbitration.

1104 And so I have decided if the majority will accept this
1105 amendment, I will vote for the overall bill, because it will
1106 make it fair across the board. So I would encourage everyone
1107 to support this amendment so that it makes it apply across
1108 the board fairly to everyone, and then we can have one of
1109 those bipartisan -- truly bipartisan bills, and not just one

1110 or two people, like Mr. Sensenbrenner was referring to. So I
1111 hope you will support the Jordan amendment.

1112 I yield back.

1113 Chairman Nadler. Who else seeks recognition? The
1114 gentlelady from Washington.

1115 Ms. Jayapal. Thank you, Mr. Chairman. I wanted to
1116 speak to this amendment. I think it is important that we
1117 remember that the FAIR Act is about taking on power
1118 disparities, power disparities that exist between an
1119 individual or a small business and those large corporations.
1120 And I think that that is very, very important, because when
1121 you look at collective bargaining agreements, collective
1122 bargaining agreements reflect a negotiated agreement between
1123 a group of workers and an employer, and those workers are
1124 voluntarily agreeing to all of the things that are
1125 negotiated.

1126 So we call it third-partying the union to say that the
1127 union is doing something and the members don't want it. It
1128 doesn't really make sense because the union is the
1129 membership, and that is what collective bargaining agreements
1130 do. They are well balanced, they are carefully negotiated,
1131 and they are a tool also for equalizing power.

1132 So I think we really need to think about those power
1133 disparities, and that is why I do not support the amendment.

1134 I did want to just take a minute to recognize a few

1135 others that are in the audience. I wanted to recognize
1136 Tanuja Gupta, who is here, and is with Google and organized
1137 -- really took a brave risk of organizing her fellow Google
1138 employees to speak out and protest forced arbitration in
1139 their employment contracts. And together with other leaders
1140 she organized a walkout of thousands of employees, pressuring
1141 Google to amend their policies. And I just want to
1142 congratulate that work.

1143 I also wanted to recognize Lilly Silbert, who is in the
1144 audience -- where is Lilly? Is that you? -- Lilly Silbert,
1145 who was sexually assaulted by a Massage Envy therapist, and
1146 after the assault she downloaded the Massage Envy app on her
1147 phone to cancel her membership and, of course, hidden right
1148 there in the fine print of that app was a forced arbitration
1149 clause. And like thousands of other women who were
1150 assaulted, Lilly filed a lawsuit and now Massage Envy is
1151 using forced arbitration to prevent Lilly from holding them
1152 accountable, attempting to force her and the other women into
1153 arbitration to keep it secret.

1154 And so I think that we would not be at the place that we
1155 are today without the work of these incredibly brave women
1156 and others who are taking up this issue, and I just want to
1157 give you my thanks.

1158 Thank you, Mr. Chairman. I yield back.

1159 Chairman Nadler. The gentlelady yields back. Does

1160 anyone else wish to speak on this amendment?

1161 The gentleman from Rhode Island.

1162 Mr. Cicilline. Thank you, Mr. Chairman. I wish to
1163 strike the last word.

1164 I oppose this amendment for all the reasons articulated
1165 by my colleagues on this side of the aisle. But I just
1166 wanted to take a moment to recognize several forced
1167 arbitration survivors and advocates who have traveled here
1168 from all over the country to attend today's hearing, and I
1169 know some of them are going to go upstairs for the special
1170 order hour.

1171 But I think these stories really underscore the impact
1172 of forced arbitration clauses on the lives of real people.
1173 Akeala Edwards, who comes here from Arizonan to be with us
1174 today. While struggling to make ends meet she took out a
1175 number of payday loans. Her lenders charged exorbitant and
1176 illegal interest rates, some as high as 1000 percent.
1177 However, because of forced arbitration clauses in the loan
1178 contracts Akeala was unable to fight these lenders and their
1179 illegal interest rates in court.

1180 We are also joined by Glenda and Peter Perez, who were
1181 both formerly employed by Cigna. Glenda was fired after
1182 making her supervisor aware of the racial discrimination she
1183 faced at work. Her case was forced into arbitration and her
1184 company escaped any accountability for her firing. Later,

1185 Peter saw a photograph of Glenda's former employer cozying
1186 with the arbitrator, and when he complained he too was fired.

1187 We are also joined by Kelly Stein from Kentucky, who
1188 sought to hold a nursing home that mistreated her mother
1189 accountable for failing to provide necessary care. However,
1190 her case was forced out of court and into arbitration.

1191 We are also joined by Danielle Murdoch, who was a former
1192 Chipotle management trainee, and she is with us today. She
1193 was forced to work off the clock without pay by her employer.
1194 Danielle was also told to make her employees work without
1195 pay, and along with several thousand other Chipotle employees
1196 Danielle's attempt to hold her employer accountable for wage
1197 theft has been forced into individual arbitration.

1198 And Karen Ward is here. She is the former head of the
1199 real estate investment banking at Ernst and Young accounting
1200 firm. She was paid hundreds of thousands of dollars less
1201 than her male counterparts and was subjected to routine
1202 sexual harassment at work. And her firm, Ernst and Young,
1203 used forced arbitration to keep Karen's gender discrimination
1204 claims out of court. She has been billed more than \$185,000
1205 by her arbitrators, with the case still only in the discovery
1206 phase.

1207 And finally Andowah Newton, who was vice president of
1208 legal affairs at Louis Vuitton, was sexually harassed by a
1209 colleague for years. After reporting him she was reprimanded

1210 for filing a report. Her employer demanded that she
1211 apologize, and her harasser was promoted. Andowah filed her
1212 sexual harassment claims in New York State Court, but her
1213 employer is attempting to compel arbitration because of a
1214 forced arbitration clause included as a required part of her
1215 employment agreement.

1216 And the last person I want to recognize is Tara Zoumer,
1217 who is a former employee of WeWork. She was fired after
1218 refusing to sign an arbitration agreement that would have
1219 stripped employees of their right to class action claims and
1220 a trial by jury. Since then she has been a staunch advocate
1221 for workers' rights, testifying in California for legislation
1222 that was signed into law by Governor Jerry Brown, preventing
1223 the enforcement of mandatory arbitration clauses in
1224 employment contracts.

1225 I want to thank all the advocates for their advocacy,
1226 for being here, for giving us examples of the terrible
1227 unfairness and sometimes cruelty of these forced arbitration
1228 clauses, and again, I want to compliment Mr. Johnson for his
1229 lead on this piece of legislation, which will correct this
1230 injustice once and for all.

1231 And thank you for being with us today, and with that I
1232 applaud all of you and yield back.

1233 [Applause.]

1234 Chairman Nadler. The gentleman yields back. Who else

1235 seeks recognition on this amendment?

1236 In that case -- oh, the gentlelady from Texas -- the
1237 gentlelady from Arizona.

1238 Mrs. Lesko. Thank you, Mr. Chairman, and I just wanted
1239 to speak to the last speaker's speech, and say I, too, have
1240 talked to different women that actually have been sexually
1241 assaulted and part of an arbitration agreement. So I do have
1242 concern about arbitration agreements when it comes to actual
1243 sexual assault, and I would like to work with my Democratic
1244 colleagues on that particular issue. But this bill is way
1245 too broad and I do support Mr. Jordan's amendment.

1246 Thank you.

1247 Chairman Nadler. The gentlelady from Texas, for what
1248 purpose does she seek recognition?

1249 Ms. Jackson Lee. To strike the last word.

1250 Chairman Nadler. The gentlelady is recognized.

1251 Ms. Jackson Lee. Thank you. Let me begin, first of
1252 all, by saluting my friend, Congressman Sensenbrenner. We
1253 sat next to each other for a number of years as the chairman
1254 and ranking member of the Criminal Justice Committee, and
1255 during that time frame there was certainly very constructive
1256 work being done, even though we were on different sides of
1257 the aisle. So I thank him, and I got to know his lovely wife
1258 and know of his family, and I think Congressman Collins is
1259 correct. It is all about family. So we are delighted that

1260 you will not be far away from us, but you will be able to
1261 have some good time with your family. It is my pleasure to
1262 have served with you.

1263 I appreciate the gentleman from Ohio's amendment but
1264 have to vigorously oppose it, and, as well, thank Congressman
1265 Johnson and co-sponsors for the leadership on responding to
1266 the needs of the American people.

1267 The question has to be asked, and then answered, when
1268 over 80 percent of the American people say that this is a
1269 devastating attack on justice and we want relief, and the
1270 Judiciary Committee, now being described as one of the most
1271 powerful committees in this Congress, does not respond, then
1272 who are we? And that is what we are grappling with.

1273 One of the issues of the forced arbitration is the idea
1274 that those agreements would be immune to judicial challenge.
1275 That leaves the victims with nothing. So they are forced
1276 into arbitration, and then all of a sudden you are making the
1277 agreement the king of the heap.

1278 I believe that the answer to Mr. Jordan's concern is I
1279 know he engages with his unions, to really find out whether
1280 membership has a concern that people in large corporations
1281 have. Usually unions are engaged in a give-and-take with
1282 their membership. There are meetings. They ask what their
1283 membership wants. They have membership meetings. They have
1284 voting.

1285 Employees do not vote in corporations. They are not in
1286 a give-and-take situation. What do you want? Would you like
1287 this particular structure to be utilized when you have been
1288 brutalized in the office, you are frightened, you are alone?
1289 Is that the proper way to do? Are they asking their
1290 employees for that give-and-take? No, they are not. These
1291 are incorporated in employee manuals, big, fat manuals. They
1292 are embedded in some page 492. Many people are hired without
1293 any knowledge of what an arbitration agreement is or what
1294 would happen with a forced arbitration agreement.

1295 So I would say that this amendment can be handled by the
1296 give-and-take of collective bargaining and the interaction
1297 that unions have with their members, and I would certainly
1298 welcome any facts, as has been suggested before, that
1299 indicates that this committee needs to address the question.

1300 But in the instance of making any agreements above the
1301 law, above the courts, I think that this is a bill that is
1302 long needed, and I support the underlying legislation, and I
1303 oppose the amendment, and look forward to H.R. 1423 being
1304 passed.

1305 I yield back, Mr. Chairman.

1306 Chairman Nadler. The gentlelady yields back. The
1307 question is on the amendment.

1308 Mr. Buck. Mr. Chairman? Move to strike the last word.

1309 Chairman Nadler. The gentleman is recognized.

1310 Mr. Buck. Thank you, Mr. Chairman. Mr. Chairman, I
1311 believe this is an opportunity lost. While we were walking
1312 to votes a few minutes ago many of us on this side of the
1313 aisle were talking about how we would support parts of this
1314 bill. In particular, the idea that a victim of sexual
1315 harassment would be forced into arbitration is offensive to a
1316 lot of us. And I think that if this bill had been discussed
1317 more we would find parts that we could agree to and try to
1318 move something, and I think the Senate would find common
1319 ground with us also on some of those areas. And I think it
1320 is unfortunate that we are moving forward on a broad bill
1321 like this.

1322 The plaintiff's bar, a very large donor to the
1323 Democratic Party and Democratic candidates, has strongly
1324 supported a bill like this because it enhances, frankly,
1325 their bottom line. And when we pit two different
1326 constituencies of the Democratic Party against each other
1327 with an amendment like this, where we talk about the
1328 plaintiff's bar at the same time as the unions, my colleagues
1329 on the other side of the aisle decide they want their cake
1330 and eat it too. The only thing that they are inconsistent
1331 with is when their rhetoric on the campaign trail about
1332 taking money out of politics is undermined by this bill and
1333 undermined by actions which speak louder than words, frankly.

1334 I hope that at some point -- this bill will go nowhere

1335 in the Senate, and I hope that at some point we can come
1336 together and we can reach an agreement on the important parts
1337 of this bill that will become law someday. And I, for that
1338 reason, support the gentleman from Ohio's amendment.

1339 I yield back.

1340 Chairman Nadler. The gentleman yields back.

1341 Now I think the question occurs on the amendment.

1342 Those in favor, say aye?

1343 Those opposed, no?

1344 In the opinion of the chair the nays have it, and the
1345 motion is agreed to.

1346 Slow roll call is requested. The clerk will call the
1347 roll.

1348 Ms. Strasser. Mr. Nadler?

1349 Chairman Nadler. Did I say -- I am sorry. Let me
1350 repeat that.

1351 The amendment is not agreed to. Slow roll call has been
1352 requested. The clerk will call the roll.

1353 Ms. Strasser. Mr. Nadler?

1354 Chairman Nadler. No.

1355 Ms. Strasser. Mr. Nadler votes no.

1356 Ms. Lofgren?

1357 Ms. Lofgren. No.

1358 Ms. Strasser. Ms. Lofgren votes no.

1359 Ms. Jackson Lee?

1360 Ms. Jackson Lee. No.

1361 Ms. Strasser. Ms. Jackson Lee votes no.

1362 Mr. Cohen?

1363 Mr. Johnson of Georgia?

1364 Mr. Johnson of Georgia. No.

1365 Ms. Strasser. Mr. Johnson of Georgia votes no.

1366 Mr. Deutch?

1367 Mr. Deutch. No.

1368 Ms. Strasser. Mr. Deutch votes no.

1369 Ms. Bass?

1370 Ms. Bass. No.

1371 Ms. Strasser. Ms. Bass votes no.

1372 Mr. Richmond?

1373 Mr. Jeffries?

1374 Mr. Cicilline?

1375 Mr. Cicilline. No.

1376 Ms. Strasser. Mr. Cicilline votes no.

1377 Mr. Swalwell?

1378 Mr. Swalwell. No.

1379 Ms. Strasser. Mr. Swalwell votes no.

1380 Mr. Lieu?

1381 Mr. Raskin?

1382 Mr. Raskin. No.

1383 Ms. Strasser. Mr. Raskin votes no.

1384 Ms. Jayapal?

1385 Ms. Jayapal. No.

1386 Ms. Strasser. Ms. Jayapal votes no.

1387 Mrs. Demings?

1388 Mr. Correa?

1389 Ms. Scanlon?

1390 Ms. Scanlon. No.

1391 Ms. Strasser. Ms. Scanlon votes no.

1392 Ms. Garcia?

1393 Ms. Garcia. No.

1394 Ms. Strasser. Ms. Garcia votes no.

1395 Mr. Neguse?

1396 Mr. Neguse. No.

1397 Ms. Strasser. Mr. Neguse votes no.

1398 Mrs. McBath?

1399 Mrs. McBath. no.

1400 Ms. Strasser. Mrs. McBath votes no.

1401 Mr. Stanton?

1402 Mr. Stanton. No.

1403 Ms. Strasser. Mr. Stanton votes no.

1404 Ms. Dean?

1405 Ms. Dean. No.

1406 Ms. Strasser. Ms. Dean votes no.

1407 Ms. Mucarsel-Powell?

1408 Ms. Mucarsel-Powell. No.

1409 Ms. Strasser. Ms. Mucarsel-Powell votes no.

1410 Ms. Escobar?

1411 Ms. Escobar. No.

1412 Ms. Strasser. Ms. Escobar votes no.

1413 Mr. Collins?

1414 Mr. Collins. Aye.

1415 Ms. Strasser. Mr. Collins votes aye.

1416 Mr. Sensenbrenner?

1417 Mr. Sensenbrenner. Aye.

1418 Ms. Strasser. Mr. Sensenbrenner votes aye.

1419 Mr. Chabot?

1420 Mr. Gohmert?

1421 Mr. Gohmert. Aye.

1422 Ms. Strasser. Mr. Gohmert votes aye.

1423 Mr. Jordan?

1424 Mr. Jordan. Yes.

1425 Ms. Strasser. Mr. Jordan votes yes.

1426 Mr. Buck?

1427 Mr. Buck. Aye.

1428 Ms. Strasser. Mr. Buck votes aye.

1429 Mr. Ratcliffe?

1430 Mr. Ratcliffe. Yes.

1431 Ms. Strasser. Mr. Ratcliffe votes yes.

1432 Mrs. Roby?

1433 Mrs. Roby. Aye.

1434 Ms. Strasser. Mrs. Roby votes aye.

1435 Mr. Gaetz?

1436 Mr. Gaetz. Aye.

1437 Ms. Strasser. Mr. Gates votes aye.

1438 Mr. Johnson of Louisiana?

1439 Mr. Johnson of Louisiana. Aye.

1440 Ms. Strasser. Mr. Johnson of Louisiana votes aye.

1441 Mr. Biggs?

1442 Mr. Biggs. Aye.

1443 Ms. Strasser. Mr. Biggs votes aye.

1444 Mr. McClintock?

1445 Mr. McClintock. Aye.

1446 Ms. Strasser. Mr. McClintock votes aye.

1447 Mrs. Lesko?

1448 Mrs. Lesko. Aye.

1449 Ms. Strasser. Mrs. Lesko votes aye.

1450 Mr. Reschenthaler?

1451 Mr. Cline?

1452 Mr. Cline. Aye.

1453 Ms. Strasser. Mr. Cline votes aye.

1454 Mr. Armstrong?

1455 Mr. Armstrong. Yes.

1456 Ms. Strasser. Mr. Armstrong votes yes.

1457 Mr. Steube?

1458 Mr. Steube. Yes.

1459 Ms. Strasser. Mr. Steube votes yes.

1460 Mr. Cohen. How am I recorded?

1461 Ms. Strasser. Mr. Cohen, you are not recorded.

1462 Mr. Cohen. No.

1463 Ms. Strasser. Mr. Cohen votes no.

1464 Mr. Lieu. How am I recorded?

1465 Ms. Strasser. Mr. Lieu, you are not recorded.

1466 Mr. Lieu. No.

1467 Ms. Strasser. Mr. Lieu votes no.

1468 Chairman Nadler. Are there any members who haven't

1469 voted that wish to vote?

1470 The clerk will report.

1471 Ms. Strasser. Mr. Chairman, there are 15 ayes and 20

1472 noes.

1473 Chairman Nadler. The amendment is not agreed to. Are

1474 there any other amendments?

1475 Mr. Sensenbrenner. Mr. Chairman?

1476 Chairman Nadler. For what purpose does the gentleman

1477 from Wisconsin --

1478 Mr. Sensenbrenner. I have an amendment at the desk.

1479 Chairman Nadler. The clerk will report the amendment.

1480 Ms. Strasser. Amendment offered by Mr. Sensenbrenner

1481 was --

1482 Chairman Nadler. Point of order is reserved.

1483 Ms. Strasser. Amendment offered by Mr. Sensenbrenner of

1484 Wisconsin to the amendment in the nature of a substitute.

1485 Page 6 --

1486 Mr. Sensenbrenner. Mr. Chairman, I am going to ask
1487 unanimous consent the amendment be considered as read.

1488 Chairman Nadler. Without objection, and the gentleman
1489 is recognized to explain his amendment.

1490 Chairman Nadler. Mr. Chairman, let's be plain about
1491 what this bill does. At its core, it does one thing and only
1492 one thing. It steers millions of consumer and employment
1493 disputes into the hands of fat cat plaintiffs, class action
1494 trial lawyers, enabling them to make millions upon millions
1495 of dollars. And while members of their plaintiff's class
1496 receive what? Minuscule recoveries, informed by a postcard
1497 that they have gained a few dollars or maybe a coupon, and
1498 while millions don't qualify for class actions get left out
1499 in the cold, unable to afford high-priced courtroom lawyers
1500 to represent them in their individual cases.

1501 My amendment targets this injustice by at least assuring
1502 that before a court determines that this bill renders an
1503 arbitration contract unenforceable it will ensure that a
1504 consumer or an employee will only have to pay a reasonable
1505 fee for its courtroom or class action lawyers. How? By
1506 making the plaintiff's lawyers in the cast file an affidavit
1507 showing that their fees in fact will be reasonable.

1508 If the purpose of this bill is to prevent injustice,
1509 please support this amendment, because it is immensely unjust

1510 to take a person's contractual right to arbitration only to
1511 leave them facing exorbitant fees to bring their case to
1512 court or just not being able to afford to bring their case at
1513 all.

1514 I urge all my colleagues to support this amendment and
1515 yield back the balance of my time.

1516 Mr. Raskin. Will the gentleman yield?

1517 Ms. Lofgren. Mr. Chairman?

1518 Mr. Raskin. Will the gentleman yield for a question?

1519 Mr. Sensenbrenner. Certainly.

1520 Mr. Raskin. Is the premise that an employee cannot
1521 enter into arbitration if he or she wants to? Because you
1522 said you don't want to deny them the right to arbitration
1523 without other specifications in place. But wouldn't, even
1524 under the legislation, they have the right to enter into
1525 arbitration, but they couldn't be bound by it?

1526 Mr. Sensenbrenner. It depends upon whether it is pre-
1527 dispute or post-dispute, and I think that, you know, what
1528 needs to be done is to make sure that the attorneys' fees are
1529 reasonable. Now, you know, I know that most individual cases
1530 can be taken on a contingency fee basis, but the class
1531 action, usually what happens is that the lawyers get paid
1532 first and the members of the class get what is left over, and
1533 that is unacceptable.

1534 Mr. Raskin. Right.

1535 Mr. Sensenbrenner. You know, it seems to me -- you
1536 know, I remember, you know, getting a postcard that I got 50
1537 cents off a product of the corporation that allegedly
1538 defrauded me. You know, that is kind of an insult to people
1539 who a court has determined have been injured in a class
1540 action lawsuit.

1541 Mr. Raskin. I mean, the interesting thing about your
1542 proposal is that there are a number of people sitting in the
1543 room today, including Ms. Ward from New York, who has been
1544 charged \$180,000 for the privilege of going through a
1545 compelled arbitration. They are trying to escape these
1546 compulsory high attorney fees by having the right to go to
1547 court, and if we have high fees to file in court we should
1548 deal with that separately. In terms of attorney's fees,
1549 there are already lots of court rules that impose
1550 reasonableness caps on what attorneys charge. So --

1551 Mr. Sensenbrenner. Reclaiming my time. Try getting a
1552 judge to enforce those rules. You know, I have gotten lots
1553 of class action settlements, you know, in my time, and, you
1554 know, it says "please read the fine print," so I have done
1555 it. And, you know, you look at how much the fees are and how
1556 much the total pot to be distributed is, if attorney's fees
1557 come off the top and the allegedly victims of the class
1558 action violation end up getting what is left over, you know,
1559 which frequently can be a 50-cent coupon that is attached to

1560 the postcard.

1561 Mr. Raskin. Right. And that goes to the question of
1562 what plaintiffs get and what plaintiffs' attorneys get. It
1563 doesn't go to the question of the underlying liability of the
1564 company that has been sued.

1565 Thank you for the clarification. I appreciate that.

1566 Mr. Sensenbrenner. Okay. I yield back.

1567 Chairman Nadler. I recognize myself in opposition to
1568 the amendment. Point of order is still being reserved -- it
1569 is still reserved and is being researched at the moment. But
1570 pending that I will recognize myself for five minutes in
1571 opposition to the amendment.

1572 The amendment says, in effect, as I understand it, that
1573 the prohibition in the bill on enforcing these mandatory
1574 arbitrations or forced arbitration agreements shall not apply
1575 if attorneys for the plaintiff's fees are too high, or higher
1576 than the recovery for an attorney. Well, drastically
1577 limiting the fees for only one side of litigation, in this
1578 side representing consumers and workers, as this amendment
1579 would do, is an unfair handout to corporations that may have
1580 broken the law. Limiting attorneys' fees for only one side
1581 makes it certain that finding an attorney to help a worker or
1582 a consumer file her case will be next to impossible, because
1583 it takes a lot of money to take on a corporation, money that
1584 attorneys spend to bring the case. Limiting what they can

1585 recover puts an arbitrary and artificial cap on that,
1586 limiting access to justice for workers and consumers.

1587 We have all had experience, or many of us have, in which
1588 there is an injury, let's say, and you go to an attorney and
1589 the attorney will make a calculation. Well, that is the
1590 possible recovery and in that case it is \$50,000. It will
1591 cost me \$75,000 to litigate it. I am not going to take 100
1592 percent of your recovery, and that is negative anyway, so I
1593 am not going to take the case, and you are not going to find
1594 an attorney.

1595 Attorneys' fee caps will close the courthouse doors for
1596 countless consumers and workers, while corporations will be
1597 free to pay their attorneys as much as they want. Under
1598 current law, attorneys' fees of class counsel must be
1599 approved by the court after various parties are given the
1600 chance to object, including the defendants, class members of
1601 State attorneys general. It would be inappropriate and
1602 unnecessary for Congress to second-guess the judgment of the
1603 courts who preside over the case.

1604 In contrast, there is no regulation or oversight by any
1605 court of the fees of the attorneys who represent corporate
1606 defendants in class action cases. Yet this amendment would
1607 cap only the plaintiffs' lawyers' fees and not the defense
1608 lawyers' fees.

1609 Attorneys in class cases represent a large number of

1610 people who have been harmed by corporate misconduct. These
1611 attorneys routinely take cases that are highly complex or
1612 novel on a contingency basis. In these cases, the attorneys
1613 pay the entirety of costs associated with litigation,
1614 including discovery, payments for expert witnesses, and
1615 travel costs, which are only reimbursed if they win the case.
1616 But if you have put a limit on their fee they cannot recover
1617 that.

1618 We should note that the contingency fee contract, which
1619 is often derided, is the greatest leveling device our justice
1620 system has ever produced. It allows working-class workers
1621 and consumers to afford the best lawyers in the country, who
1622 can go toe-to-toe with giant corporations that have stolen
1623 their paychecks or hurt them with a defective product, or in
1624 some other way.

1625 Attorneys that do not use contingent fees generally use
1626 a per-hour rate for cases, which is determined by the
1627 difficulty and complexity of the case. Attorneys' fees are
1628 already regulated on a state-by-state basis and under the
1629 professional responsibility rules which require that attorney
1630 fees be reasonable. This amendment will discourage attorneys
1631 from representing victims of corporate misconduct in the
1632 first place, undermining their access to justice.

1633 The purpose of this bill, contrary to what was said, is
1634 not to enrich plaintiffs' attorneys. The purpose of this

1635 bill is to repeal provisions that are inserted in one way, in
1636 contracts and adhesions, by large corporations, limiting the
1637 rights of little guys and gals. And that is what we are
1638 trying to do. We are trying to afford access to the courts
1639 for people who access to the courts.

1640 This amendment goes in exactly the wrong direction and
1641 is almost like an exclamation point saying we want to turn
1642 the courts into collection agencies for big corporations and,
1643 damn it, that is exactly what we are going to do, and I
1644 oppose the amendment for that reason.

1645 Who else seeks recognition?

1646 Mr. Collins. Mr. Chairman.

1647 Chairman Nadler. The gentleman from Georgia, the
1648 ranking member, is recognized.

1649 Mr. Collins. Yeah. I am not claiming time at this
1650 moment. I do not believe we need to go farther until we have
1651 an actual ruling on this point of order, and if it means to
1652 skip to the next amendment, we need to skip to the next
1653 amendment.

1654 Chairman Nadler. Okay. That is a reasonable
1655 suggestion. I will -- we will suspend discussion of this
1656 amendment. We will go on to the next amendment, pending some
1657 advice from the parliamentarians about the germaneness of
1658 this amendment, which will determine on how I rule on whether
1659 the amendment is germane or not.

1660 Who seeks recognition?

1661 Mr. Sensenbrenner. Mr. Chairman, I have another
1662 amendment at the desk.

1663 Chairman Nadler. The gentleman from Wisconsin has an
1664 amendment at the desk. The clerk will -- no?

1665 Mr. Sensenbrenner. Where is it?

1666 Chairman Nadler. Do you have the gentleman's amendment?

1667 Mr. Sensenbrenner. Where is it?

1668 Chairman Nadler. Well, does anybody have a different
1669 amendment?

1670 Mr. Sensenbrenner. This is number two, yes.

1671 Chairman Nadler. Okay. We will suspend while we wait
1672 for the ruling of the -- for the advice of the
1673 parliamentarian and for finding a copy of Mr. Sensenbrenner's
1674 second amendment.

1675 [Pause.]

1676 Chairman Nadler. The gentleman from Wisconsin -- hold
1677 on one second. The gentleman from Wisconsin -- do you have
1678 the amendment.

1679 Mr. Sensenbrenner. All right. I would suggest the
1680 chair rule on the point of order on the first amendment.

1681 Ms. Lofgren. Mr. Chairman? On the point of order.

1682 Chairman Nadler. The gentlelady from California.

1683 Ms. Lofgren. It appears to me that the amendment is not
1684 germane, because it attempts to deal with the regulation of

1685 attorneys' fee, which is not within the purview of the bill
1686 itself. However, an argument has been made by the minority
1687 that this is just a precursor, and I think getting the
1688 guidance from the parliamentarian on this matter would be an
1689 appropriate effort, rather than just winging it.

1690 Chairman Nadler. Well, that is what -- if the
1691 gentlelady will yield to me, that is what we are doing. My
1692 own personal opinion at the moment is that it is not germane,
1693 but we want to be fair, and we have asked for some ruling
1694 from the -- advice, not a ruling; I make the ruling -- advice
1695 from the parliamentarian. We are waiting for that.

1696 Mr. Buck. Mr. Chairman, over on this side. I have got
1697 a point of order.

1698 Chairman Nadler. Point of order. The gentleman will
1699 state his point of order.

1700 Mr. Buck. I just counted and you have more votes than
1701 we do, so if you wanted to proceed I think the result would
1702 end up being the same.

1703 [Laughter.]

1704 Chairman Nadler. That is not a point of order, but we
1705 will wait a couple more minutes. If not we will go to the
1706 next amendment.

1707 Ms. Lofgren. Mr. Chairman. I withdraw my point of
1708 order.

1709 Chairman Nadler. The gentlelady withdraws her point of

1710 order. Are we prepared -- the amendment is germane. Who
1711 seeks recognition? Oh, the gentleman will explain his
1712 amendment. Wait a minute.

1713 Ms. Lofgren. We have done that.

1714 Chairman Nadler. We have done that, and I have opposed
1715 the amendment. Who else seeks recognition on this amendment?

1716 The gentlelady from Pennsylvania.

1717 Ms. Scanlon. Just as we are having this discussion
1718 about the costs of arbitration, the availability of
1719 arbitration versus proceeding to the courts, what is top of
1720 mind for me is an issue that has bubbled up in my district.
1721 Pennsylvania has higher student debt load than any other
1722 state in the country, so we are hearing a lot from students
1723 who are forced to enter into compulsory arbitration
1724 agreements in order to get the student loans they need. And
1725 of course, these folks are, you know, at a point when they
1726 don't have a lot of resources, they are just starting out in
1727 their careers, often they are entering into these agreements,
1728 you know, when they are just in their teens. So it is
1729 particularly onerous for them.

1730 We know that the CFPB found that 86 percent of the
1731 largest lenders in the private student loan market include
1732 arbitration clauses in their contracts, and these pre-dispute
1733 arbitration clauses offered as a prerequisite for borrowing
1734 money, strip away the student's right to a jury trial if

1735 there is a legal dispute, and often the easiest way for them,
1736 or the only way that they are going to be able to get relief
1737 is if they join into some kind of class action.

1738 So one way to protect student rights is to abolish the
1739 arbitration clauses in these student loan contracts, and for
1740 that reason I will be supporting the FAIR Act. Thank you.

1741 Mr. Neguse. Will the gentlewoman yield?

1742 Ms. Scanlon. Yes, I yield.

1743 Chairman Nadler. For what purpose does the gentleman
1744 wish to speak?

1745 Mr. Collins. Thank you, Mr. Chairman. I move to strike
1746 the last word.

1747 Chairman Nadler. The gentleman from Georgia is
1748 recognized.

1749 Mr. Collins. One of the things that we are discussing
1750 here is also a discussion of cost and those things, and the
1751 mandatory binding in these arbitration agreements
1752 increasingly are crafted to include what is called strong,
1753 fair clauses. This has been an issue that we look at from a
1754 cost perspective.

1755 For over a decade, companies increasingly have been
1756 incorporating these fair clauses into arbitration contracts
1757 with consumers. These clauses improve arbitration's efficacy
1758 for consumers in many ways, such as by assuring compliance
1759 would be processed, procedures of major arbitrating services,

1760 allowing either party to invoke arbitration, providing for
1761 payment of differences between the court and arbitration
1762 fees, allowing for fee shifting to a losing company,
1763 permitting requests from indigent consumers that companies
1764 pay the cost of arbitration, win or lose, and furnishing off-
1765 ramps to small claims courts for claims that would qualify in
1766 those forums.

1767 Consumer contracts increasingly include opt-out clauses
1768 that allow consumers, for a time, entering into a contract,
1769 45 days to opt out of mandatory binding arbitration clauses
1770 while preserving the rest of the bargaining represented in
1771 their contract.

1772 I think what is interesting here is every discussion
1773 that we have on these amendments -- and that is fine -- comes
1774 back to what I will call the list of horrors. And I agree
1775 with many of these lists of horrors we could have fixed.
1776 Why don't we have a bill that fixes the list of horrors,
1777 but don't -- this takes a mandatory approach on that.

1778 So again, we are going to get through this. We will
1779 vote these. But I think lists -- I think we are missing an
1780 opportunity to find a bill that more on both sides could
1781 agree with, instead of a bill that we have issues with.

1782 I yield back.

1783 Chairman Nadler. The gentleman yields back. Who seeks
1784 recognition? The gentlelady from Pennsylvania.

1785 Ms. Dean. Thank you, Mr. Chairman. I wanted to join my
1786 voice to thank those of you in the audience who have come
1787 here, taken the time out of your lives, to reveal your
1788 authentic stories. I am a real big believer that authentic
1789 stories inspire. I believe your stories have inspired the
1790 underlying legislation. You have suffered serious harm and
1791 you are the face of many, many, many, many, many other
1792 people.

1793 And so that is why I want to make sure I raise my voice
1794 in objection to this amendment. The very thing that this
1795 underlying bill seeks to do is to give plaintiffs their
1796 voice, to give plaintiffs a fair shot at their day in court,
1797 and unfortunately, what this amendment seeks to do is
1798 completely undo that. If we are talking about power
1799 disparities, this is actually reimposing that power
1800 disparity. If you read, as I read it, if you read the
1801 opening gambit of this amendment it says notwithstanding
1802 subsection A, "a predispute arbitration agreement," meaning
1803 forced arbitration, "and a predispute joint action waiver
1804 shall be valid." Shall be valid. It just completely undoes
1805 this bill, unless the plaintiff goes through all of these
1806 affidavits, jumps through these hoops, makes presentations,
1807 and proves to the court as to their representation and their
1808 choice of counsel.

1809 This is tying plaintiffs' hands, it is absolutely

1810 against the very spirit of this bill, and it is against the
1811 rights that you plaintiffs, we plaintiffs, seek. I oppose
1812 this amendment and I very much speak in favor of H.R. 1423.

1813 Thanks, Mr. Chairman.

1814 Mr. Neguse. Would the gentlelady --

1815 Ms. Dean. I will. I would be happy to.

1816 Mr. Neguse. Mr. Chairman --

1817 Chairman Nadler. The gentleman from Colorado.

1818 Mr. Neguse. -- I would just say I would associate
1819 myself with the remarks of my distinguished colleague from
1820 Pennsylvania. I also think -- I am a bit confused by some of
1821 what the amendment purports to accomplish. One, it is
1822 duplicative in some respects. Attorney regulation and
1823 licensure is done by the states, and the rules of
1824 professional conduct in, I believe, I suspect every
1825 jurisdiction in this country, require written engagement
1826 letters and retention agreements and so forth. And, of
1827 course, the states regulate a fair amount with respect to
1828 contingency fee agreements. And the gentleman from
1829 Wisconsin, I know that he hails from that state, in
1830 particular, has passed a number of statutes regulating
1831 contingency fee agreements and caps on fees for a variety of
1832 different cases, medical malpractice cases being an example.

1833 So it is unclear to me why, particularly when I know
1834 that some folks on the other side of the aisle, my

1835 colleagues, believe in federalism and the notion of letting
1836 the states regulate in their domains, why we would try to
1837 impose these kinds of conditions at the Federal level.

1838 But again, we should not lose sight, fundamentally, at
1839 what is at debate today, which is a piece of legislation that
1840 will do a lot in dramatically impacting countless lives for
1841 the better. I serve on the Antitrust Subcommittee and had
1842 the opportunity to hear from a number of the witnesses who
1843 are here today in the audience, recount their stories of ways
1844 in which forced arbitration had extinguished the pursuit of
1845 justice for so many consumers and employees across the
1846 country.

1847 So this bill, I think, is a prudent path forward in
1848 ensuring that every person in our country has access to
1849 justice, which is why I will be supporting the bill and why I
1850 oppose the amendment. And with that I would yield back to
1851 the distinguished gentlewoman from Pennsylvania.

1852 Ms. Dean. And, Mr. Chair, I yield my time.

1853 Chairman Nadler. The gentlelady yields her time. For
1854 what purpose does the gentleman from California seek
1855 recognition?

1856 Mr. McClintock. Mr. Chairman, just -- I am going back
1857 and forth on this myself, but it does seem to me that --
1858 isn't it true that binding arbitration binds both of the
1859 parties, both the employer and the employee, both the

1860 consumer as well as the company? You know, if I have a
1861 grievance against my employer, or a company I am doing
1862 business with, but I can't afford a lawyer, I can't afford to
1863 take it to court, doesn't binding arbitration protect me by
1864 giving me an inexpensive path to resolve that grievance?

1865 Now I was very disturbed to hear the case of an
1866 aggrieved party that has paid \$185,000 so far and yet to have
1867 a decision. That is outrageous and I would like to know the
1868 details of that, because it is my understanding that under
1869 the American Arbitration Association Best Practices
1870 businesses pay for the arbitration, and 76 percent of the
1871 cases adhere to these practices. And in cases between
1872 \$10,000 and \$75,000, which would have no recourse to small
1873 claims court, a claimant's fees averaged \$219.

1874 And I also wonder if I shouldn't have the right myself
1875 to decide whether such a clause in a contract is in my best
1876 interest or whether it is a deal-breaker. And it has been
1877 argued that binding arbitration clauses produce a take-it-or-
1878 leave-it proposition in a contract between, for example, a
1879 major credit card company and an individual. But isn't every
1880 other provision in that agreement also a take-it-or-leave-it
1881 proposition? Isn't it my responsibility and my prerogative
1882 and right to decide if the totality of the agreement is in my
1883 interest or not. Otherwise --

1884 Chairman Nadler. Would the gentleman yield?

1885 Mr. McClintock. Just a second. Otherwise, I am afraid
1886 we end up dictating provisions to both the company and the
1887 employee or their customer.

1888 One more point and then I will be happy to yield. It
1889 has also been argued that unions are different than companies
1890 because unions are governed by the employees, but for the
1891 individual employee who dissents from those decisions, a
1892 union agreement is just as much a take-it-or-leave-it
1893 proposition, perhaps more so, because in the case of a
1894 dissenting employee, that employee cannot go directly to the
1895 employer and negotiate different terms more in their
1896 interest.

1897 So with that I will be happy to yield and look forward
1898 to the chairman's guidance on these questions.

1899 Chairman Nadler. Thank you. I simply reserve a couple
1900 of things. Number one, when I was in law school they taught
1901 us about contracts of adhesion. Contracts of adhesion were
1902 basically invalid when one party had all the power and could
1903 force the other party, in effect, to sign the contract. We
1904 seem to have gotten away with this, and in order to get a
1905 credit card or a mortgage or car loan or anything, or a cable
1906 TV contract, you have sign the contract, and in that contract
1907 is a clause saying mandatory arbitration.

1908 Mr. McClintock. If I could just pause for a second and
1909 ask, who is forcing me to do that?

1910 Chairman Nadler. You are being forced to do that by the
1911 fact that if you don't --

1912 Mr. McClintock. As a consumer, don't I have the
1913 absolute protection of saying no, the terms of the agreement
1914 are unacceptable? No, the terms of the employment are
1915 unacceptable? I will take my business elsewhere and take it
1916 to a competitor that is offering terms more to my liking.

1917 Chairman Nadler. Well, in most places there are only a
1918 few -- all the banks have the same provision in it. If you
1919 want to get a cable TV, you have got, you know, the satellite
1920 TV company or the franchise company. They both have it in.
1921 You don't have any real choice, and that is the point. There
1922 is no real choice because -- yes, you have the absolute
1923 freedom to say, "I am not going to have a television." "I am
1924 not going to buy a car." "I am not going to get the loan."

1925 Mr. McClintock. In the case of the cable company, that
1926 is a choice that is restricted by an act of government, not
1927 the marketplace.

1928 Chairman Nadler. True, except that you are not going to
1929 have -- even where that is not restricted, because you have
1930 the satellite companies, et cetera, all the big companies,
1931 essentially now, have the same provisions.

1932 Mr. McClintock. But if I have a grievance against that
1933 company, do I -- and I can't afford to hire an attorney and
1934 take them to court -- doesn't arbitration protect me --

1935 Chairman Nadler. No, because --

1936 Mr. McClintock. -- forcing that company to go into a
1937 process that I can actually afford to participate in?

1938 Chairman Nadler. Most times if you have a grievance
1939 with your cable company it is going to be maybe \$20, maybe a
1940 couple hundred dollars, whatever it may be -- the service
1941 didn't work or something.

1942 Mr. McClintock. Right. So --

1943 Chairman Nadler. And the only way, frankly, that you
1944 can have that properly adjudicated is with a class action,
1945 where you get together with a lot of people with rather small
1946 claims and you can pay a lawyer reasonably and force
1947 litigation.

1948 Mr. McClintock. Yeah, but I don't have the time or
1949 ability to do that, and I might not find anybody else --

1950 Chairman Nadler. You might not.

1951 Mr. McClintock. How else do I get this matter resolved
1952 but by the company being bound by binding arbitration?

1953 Chairman Nadler. Well --

1954 Mr. McClintock. And again, if the judgment is that it
1955 is a deal-breaker, then it is a deal-breaker. But I have the
1956 right to make that decision for myself as a consumer, do I
1957 not?

1958 Chairman Nadler. Yeah, except that if it is a deal-
1959 breaker, you don't have other places to go, given the fact

1960 that essentially all the major corporations do this. You
1961 can't get a cable TV contract. You can't get a mortgage.
1962 You can't get almost anything you need to get.

1963 The gentleman -- well --

1964 Mr. McClintock. Thank you.

1965 Chairman Nadler. My time has expired. The gentleman's
1966 time has expired. Is there any other discussion on the
1967 amendment?

1968 The gentleman from Georgia?

1969 Mr. Johnson of Georgia. Thank you. I rise in
1970 opposition to the amendment. What the amendment would do
1971 would be to force all of these provisions in the motion to be
1972 included in the engagement letter or the contract between the
1973 plaintiff and the lawyers, and then it would subject the
1974 claim of attorneys' fees to judicial interpretation as to
1975 whether or not it is reasonable or not, and we already have
1976 rules in place in certain circumstances where judges make
1977 determinations as to the fairness of attorneys' fees. And so
1978 we don't need to duplicate what is already on record and
1979 required of courts.

1980 And secondly, while imposing these obligations on
1981 plaintiffs' counsel it does nothing to impose any obligations
1982 on defense counsel. Defense counsel generally works hourly,
1983 and fees of up to \$1,000 an hour are being charged by big
1984 corporate entities to enforce these arbitration clauses

1985 against consumers and employees and people of unequal
1986 bargaining position. But they are still getting \$1,000 an
1987 hour, and the corporations that are paying the fees get a
1988 chance to write the fees off from their income taxes. And so
1989 it is not fair to the consumers.

1990 This amendment really wants to get at class action
1991 lawsuits. That is really what it wants to do, but it
1992 incorporates smaller lawsuits along with what they really
1993 want to get at, which are class action lawsuits. And for
1994 that reason I oppose this amendment.

1995 And as far as arbitration goes, it is fine when parties,
1996 after a dispute has arisen, make a decision that we are going
1997 to divert from the civil justice process, we are going to go
1998 into mediation, or we will go into arbitration. That is
1999 something that the parties have the ability to decide. But
2000 they can't decide it if the plaintiff has already signed an
2001 agreement that binds them to arbitration.

2002 Mr. Raskin. Will the gentleman yield.

2003 Mr. Johnson of Georgia. I will yield to the gentleman.

2004 Mr. Raskin. Thank you, Mr. Johnson. I think you make
2005 the essential point there, which I think goes right to the
2006 heart of your legislation. What we are trying to do is
2007 protect people's constitutional right of due process and jury
2008 trial. That is what really this is all about. We are trying
2009 to say that we are not going to allow market imbalances of

2010 power to override the constitutional rights of the people.

2011 This reminds me a lot of the debate, which I thought had
2012 been settled back in the 1960s, in cases like the Heart of
2013 Atlanta Motel case and Molly's BBQ case, where restaurants
2014 and motels and hotels and bake shops and so on are saying,
2015 "We don't want to serve gay couples," or "We don't want to
2016 serve interracial couples," or "We don't want to serve
2017 interfaith couples." And we said, no, we are going to
2018 override that private contractual determination with the
2019 constitutional rights of the people, as interpreted by
2020 Congress. And we are doing the exact same thing here. We
2021 are saying we are not going to allow private contracting
2022 parties to override and destroy people's 7th amendment rights
2023 and due process rights to get into court.

2024 Mr. Johnson of Georgia. And reclaiming my time, the
2025 gentleman is correct. And what this amendment would do would
2026 be to render the arbitration clause enforceable if these
2027 certain provisions were not included in the attorney's fee
2028 contract. And so it gets right to the heart of is intended
2029 by the legislation. And I certainly oppose it and I will
2030 yield to the gentleman.

2031 Mr. Buck. Thank you for yielding. I appreciate that.
2032 I just wanted to make sure that Professor Raskin's concern
2033 for the Constitution is just as fervent in the next couple of
2034 bills that we are addressing as this one, and I yield back.

2035 Chairman Nadler. The gentleman yields back.

2036 The question occurs on the amendment. Those in favor,

2037 say aye.

2038 Opposed, no.

2039 In the opinion of the chair, the noes have it. The

2040 amendment is not agreed to.

2041 Mr. Sensenbrenner. Roll call.

2042 Chairman Nadler. A roll call is requested. The clerk

2043 will call the roll.

2044 Ms. Strasser. Mr. Nadler?

2045 Chairman Nadler. No.

2046 Ms. Strasser. Mr. Nadler votes no.

2047 Ms. Lofgren?

2048 Ms. Lofgren. No.

2049 Ms. Strasser. Ms. Lofgren votes no.

2050 Ms. Jackson Lee?

2051 Ms. Jackson Lee. No.

2052 Ms. Strasser. Ms. Jackson Lee votes no.

2053 Mr. Cohen?

2054 Mr. Johnson of Georgia?

2055 Mr. Johnson of Georgia. No.

2056 Ms. Strasser. Mr. Johnson of Georgia votes no.

2057 Mr. Deutch?

2058 Mr. Deutch. No.

2059 Ms. Strasser. Mr. Deutch votes no.

2060 Ms. Bass?
2061 Mr. Richmond?
2062 Mr. Jeffries?
2063 Mr. Cicilline?
2064 Mr. Cicilline. No.
2065 Ms. Strasser. Mr. Cicilline votes no.
2066 Mr. Swalwell?
2067 Mr. Swalwell. No.
2068 Ms. Strasser. Mr. Swalwell votes no.
2069 Mr. Lieu?
2070 Mr. Raskin?
2071 Mr. Raskin. No.
2072 Ms. Strasser. Mr. Raskin votes no.
2073 Ms. Jayapal?
2074 Ms. Jayapal. No.
2075 Ms. Strasser. Ms. Jayapal votes no.
2076 Mrs. Demings?
2077 Mrs. Demings. No.
2078 Ms. Strasser. Mrs. Demings votes no.
2079 Mr. Correa?
2080 Ms. Scanlon?
2081 Ms. Scanlon. No.
2082 Ms. Strasser. Ms. Scanlon votes no.
2083 Ms. Garcia?
2084 Ms. Garcia. No.

2085 Ms. Strasser. Ms. Garcia votes no.
2086 Mr. Neguse?
2087 Mr. Neguse. No.
2088 Ms. Strasser. Mr. Neguse votes no.
2089 Mrs. McBath?
2090 Mrs. McBath. No.
2091 Ms. Strasser. Mrs. McBath votes no.
2092 Mr. Stanton?
2093 Mr. Stanton. No.
2094 Ms. Strasser. Mr. Stanton votes no.
2095 Ms. Dean?
2096 Ms. Dean. No.
2097 Ms. Strasser. Ms. Dean votes no.
2098 Ms. Escobar?
2099 Ms. Escobar. No.
2100 Ms. Strasser. Ms. Escobar votes no.
2101 Mr. Collins?
2102 Mr. Sensenbrenner?
2103 Mr. Sensenbrenner. Aye.
2104 Ms. Strasser. Mr. Sensenbrenner votes aye.
2105 Mr. Chabot?
2106 Mr. Gohmert?
2107 Mr. Gohmert. Aye.
2108 Ms. Strasser. Mr. Gohmert votes aye.
2109 Mr. Jordan?

2110 Mr. Jordan. Yes.

2111 Ms. Strasser. Mr. Jordan votes yes.

2112 Mr. Buck?

2113 Mr. Buck. Aye.

2114 Ms. Strasser. Mr. Buck votes aye.

2115 Mr. Ratcliffe?

2116 Mr. Ratcliffe. Yes.

2117 Ms. Strasser. Mr. Ratcliffe votes yes.

2118 Mrs. Roby?

2119 Mrs. Roby. Aye.

2120 Ms. Strasser. Mrs. Roby votes aye.

2121 Mr. Gaetz?

2122 Mr. Gaetz. Aye.

2123 Ms. Strasser. Mr. Gates votes aye.

2124 Mr. Johnson of Louisiana?

2125 Mr. Biggs?

2126 Mr. Biggs. Aye.

2127 Ms. Strasser. Mr. Biggs votes aye.

2128 Mr. McClintock?

2129 Mr. McClintock. Aye.

2130 Ms. Strasser. Mr. McClintock votes aye.

2131 Mrs. Lesko?

2132 Mrs. Lesko. Aye.

2133 Ms. Strasser. Mrs. Lesko votes aye.

2134 Mr. Reschenthaler?

2135 Mr. Reschenthaler. Aye.

2136 Ms. Strasser. Mr. Reschenthaler votes aye.

2137 Mr. Cline?

2138 Mr. Cline. Aye.

2139 Ms. Strasser. Mr. Cline votes aye.

2140 Mr. Armstrong?

2141 Mr. Steube?

2142 Chairman Nadler. Has everyone voted who wished to vote?

2143 The gentleman from Rhode Island.

2144 Mr. Collins. Aye.

2145 Ms. Strasser. Mr. Collins votes aye.

2146 Chairman Nadler. Chairman Nadler. The gentleman from

2147 Tennessee.

2148 Mr. Cohen. No.

2149 Ms. Strasser. Mr. Cohen votes no.

2150 Chairman Nadler. The gentleman from California.

2151 Mr. Lieu. No.

2152 Ms. Strasser. Mr. Lieu votes no.

2153 Chairman Nadler. The gentlelady from Florida?

2154 Ms. Mucarsel-Powell. No.

2155 Ms. Strasser. Ms. Mucarsel-Powell votes no.

2156 Chairman Nadler. Has everyone voted?

2157 The clerk will report.

2158 The gentleman from Florida?

2159 Mr. Steube. Yes. I am a yes.

2160 Ms. Strasser. Mr. Steube votes yes.

2161 [Pause.]

2162 Ms. Strasser. Mr. Chairman, there are 14 ayes and 20
2163 noes.

2164 Chairman Nadler. The amendment is not agreed to.

2165 Are there any other amendments?

2166 Mr. Sensenbrenner. Mr. Chairman?

2167 Chairman Nadler. The gentleman from Wisconsin. For
2168 what purpose does the gentleman seek recognition?

2169 Mr. Sensenbrenner. I have an amendment at the desk,
2170 finally.

2171 Chairman Nadler. The clerk will report the amendment.

2172 Ms. Strasser. Amendment offered by Mr. Sensenbrenner of
2173 Wisconsin, to the amendment in the nature of a substitute.
2174 Page 9, Line 2, insert the following before the period at the
2175 end.

2176 Mr. Sensenbrenner. Mr. Chairman, I ask unanimous
2177 consent that the amendment be considered as read.

2178 Chairman Nadler. Without objection. The gentleman is
2179 recognized for five minutes to explain his amendment.

2180 Mr. Sensenbrenner. Mr. Chairman, my amendment ensures
2181 that this bill will only be applied to contracts made after
2182 the bill's enactment. Why? Because freedom of contract and
2183 the rule of law that ensures the enforcement that freely made
2184 contracts are an integral process and pieces of the bedrock

2185 that has supported America's rise to the freest, strongest,
2186 and most prosperous economy the world has ever known.

2187 Will this bill honor freedom of contract and preserve
2188 the rule of law? The answer is no. Its entire purpose is to
2189 abrogate the provisions of millions upon millions of
2190 consumer, employee, and other contracts, running them all
2191 through the shredder.

2192 Will this decrease the cost of consumer goods and
2193 services? No. Honoring these contracts will help to keep
2194 down those costs.

2195 Will this improve the protection of employees? No.
2196 Research shows that employees get better results from
2197 arbitration than from courtroom trials.

2198 Will this improve the confidence of freedom of contract
2199 and the rule of law and making American economy great? No.
2200 Exactly the opposite.

2201 I can tell you very clearly what this bill will do --
2202 line the pockets of the class action trial lawyers, leave out
2203 in the cold anybody who doesn't qualify for a class action
2204 suit and can't afford the high price of a courtroom lawyer
2205 for their individual case, and undermine the rule of law and
2206 freedom of contract.

2207 My amendment seeks to protect as much of that as
2208 possible by ensuring that the bill will not apply to
2209 contracts already made, and I yield back.

2210 Chairman Nadler. The gentleman yields back. I
2211 recognize myself for 5 minutes to oppose the amendment. I am
2212 opposed to the amendment, and I yield the balance of the time
2213 to the gentleman from Rhode Island, Mr. Cicilline.

2214 Mr. Cicilline. Thank you, Mr. Chairman.

2215 Mr. Chairman, I rise in opposition to the amendment.

2216 First of all, this amendment, if enacted, would leave
2217 millions of Americans unprotected from the dangers and
2218 unfairness of mandatory arbitration provisions. Consumers
2219 and workers rarely win in forced arbitration.

2220 According to a 2017 study by the Economic Policy
2221 Institute, consumers won only 9 percent of the claims
2222 brought. On stark contrast, companies won 93 percent of the
2223 claims they brought.

2224 Heidi Shierholz, an economist at the Economic Policy
2225 Institute, notes that -- and I quote -- "Not only do
2226 companies win the overwhelming majority of claims when
2227 consumers are forced into arbitration, they win big."

2228 For example, in arbitration cases involving financial
2229 institutions, she notes that because consumers rarely win,
2230 they end up paying financial institutions a whopping \$7,725
2231 in arbitration on average. The Consumer Financial Protection
2232 Bureau concluded in 2015, and I quote, "There is no evidence
2233 of arbitration clauses leading to lower prices for
2234 consumers."

2235 Consumers and workers rarely receive any benefit of
2236 reduced cost with forced arbitration. In a letter urging
2237 passage of the FAIR Act, the National Association of Consumer
2238 Advocates wrote that forced arbitration results, and I quote,
2239 "in financially harmed consumers and workers left without any
2240 remedies at all."

2241 According to data from the two biggest arbitration
2242 providers, the American Arbitration Association and JAMS,
2243 only 1,909 consumers won a monetary arbitration award over a
2244 5-year period. In all nursing home arbitration cases, only
2245 four won a monetary award over this period. Of the 11,114
2246 employment claims that were filed, only 282 won a monetary
2247 award. That is 2.5 percent. And of the 6,012 arbitration
2248 cases involving credit cards and banks, only 131 won monetary
2249 damages. That is barely more than 2 percent.

2250 These numbers make it clear that you are more likely to
2251 be struck by lightning than win a monetary award in forced
2252 arbitration. And in fact, only today the American
2253 Association for Justice released a report, "The Truth about
2254 Forced Arbitration." "Americans are more likely to be struck
2255 by lightning than win in forced arbitration." I ask that
2256 this report be made part of the record.

2257 Chairman Nadler. Without objection.

2258 [The information follows:]

2259

2260 Mr. Cicilline. Furthermore, forced arbitration
2261 discourages consumers and workers from adjudicating disputes
2262 altogether, while the lower probability of victory and meager
2263 legal fees associated with forced arbitration discourages
2264 attorneys from representing individuals in arbitration
2265 proceedings.

2266 Even when workers do go to arbitration, the system can
2267 wreak havoc on their lives. It is bad for victims of sexual
2268 assault and sexual harassment. We heard during the ACAL
2269 Subcommittee hearing from Gretchen Carlson about her
2270 experience and from Kevin Ziober about his experience as a
2271 member of the Armed Forces.

2272 Finally, if arbitration was truly beneficial for working
2273 people, it would be popular with the American people.
2274 Instead, more than 84 percent of Americans across the
2275 political spectrum support ending forced arbitration in
2276 employment and consumer disputes because they know it harms
2277 their interests.

2278 So I urge my colleagues to oppose this amendment, which
2279 would mean millions and millions of Americans would continue
2280 to suffer at the hands of forced arbitration provisions,
2281 which deny them the right to have their claims heard and will
2282 continue to allow big corporations in this country to not be
2283 held accountable for their misconduct.

2284 Mr. Johnson of Georgia. Would the gentleman yield?

2285 Mr. Cicilline. With that, I will yield certainly to the
2286 gentleman.

2287 Mr. Johnson of Georgia. Thank you. I thank the
2288 gentleman for yielding.

2289 This motion would allow current contracts that force
2290 arbitration on unwitting and unknowing victims to remain in
2291 place, and that is the problem. These provisions were
2292 without knowledge of the victims, and now you are going to
2293 force them to be bound by the arbitration clause? That is
2294 the purpose of the legislation is to render these clauses
2295 unenforceable.

2296 And for that reason, I would ask my colleagues to oppose
2297 this amendment, and I yield back.

2298 Chairman Nadler. The gentleman yields back.

2299 Mr. Cicilline. I yield back, Mr. Chairman.

2300 Chairman Nadler. And I yield back. Is there any
2301 further discussion of this amendment?

2302 Mr. Buck. Mr. Chairman? Move to strike the last word.

2303 Chairman Nadler. Who is that? Oh, the gentleman from
2304 Arizona?

2305 Mr. Buck. I have a question for the gentleman from
2306 Rhode Island. I am wondering how this is fair to -- when two
2307 parties enter into a contract and Congress changes the law,
2308 to enforce that against a contract that has already been
2309 entered into. I didn't hear that in your remarks, and I am

2310 just wondering.

2311 Mr. Cicilline. Sure. I mean, I think the reality is
2312 for millions of Americans, they aren't agreeing to these
2313 terms. These are provisions that are included in the fine
2314 print that most Americans don't even know are there. In
2315 fact, most people in this hearing room don't realize that
2316 they are subject to forced arbitration provisions in the care
2317 of their parents in a nursing home, on their mobile cells
2318 phones, on a number of consumer contracts.

2319 So those are not knowing, voluntary agreements to
2320 participate in arbitration. They are unwittingly being
2321 forced to, as a condition of their contract services. And in
2322 fact, if, after that, parties want to voluntarily decide to
2323 participate in arbitration, they obviously can. But this
2324 legislation is designed to eliminate forced pre-dispute
2325 arbitration that compels people to give up their rights to
2326 litigate their grievances in a court of law in exchange for
2327 getting service for their phone or their cable or keeping
2328 their parents in a nursing home.

2329 Mr. Buck. Reclaiming my time, I am wondering -- and I
2330 guess I direct this to the gentleman from Georgia who is
2331 sponsoring this bill. But I am wondering if we shouldn't
2332 give both parties 30 days to renegotiate in that situation.
2333 I just don't think it is equitable to suggest that a contract
2334 that is entered into, whether someone reads the fine print or

2335 not, can be unilaterally changed by Congress and require the
2336 parties to participate in a new contract drawn by Congress
2337 without giving the parties time to renegotiate.

2338 Mr. Deutch. Will the gentleman yield for a question?

2339 Mr. Cicilline. Yes, of course.

2340 Mr. Deutch. I would just ask -- yes, I am really
2341 curious to know what that --

2342 Mr. Buck. I would yield.

2343 Mr. Deutch. I appreciate it. I am really curious to
2344 know what that renegotiation would look like. Would that
2345 mean -- would that mean some additional fine print forced
2346 upon the consumer, who has no ability, or would that actually
2347 be a provision that would leave it up to the consumer?
2348 Because right now, as we have been discussing this entire
2349 afternoon, that is just simply not the case. The consumer
2350 has no ability in the provision.

2351 Mr. Buck. Well, you have taken away the fine print,
2352 right? You have already said that we will not allow a
2353 certain kind of contract to be entered into.

2354 Mr. Deutch. I am just asking, though, what you have in
2355 mind. Because the point that has been made by so many of my
2356 colleagues so eloquently is that the consumer, consumers all
2357 across America, millions of them right now are living by
2358 provisions that say if they are wronged -- and we have spent
2359 the day laying out all the cases where that has happened. If

2360 they are wronged, their only option is forced arbitration.

2361 They have no say over whether they go to arbitration.

2362 They have no say over who the arbitrator is because that is

2363 going to be picked by the corporation. And they have no

2364 ability to determine whether or not that is the path they

2365 choose to go down.

2366 So I just -- I want to understand what you are

2367 suggesting because the history that we have dealt with that

2368 brought us to this moment shows that there is -- there is no

2369 ability to negotiate. That is the whole purpose of this

2370 legislation. That is what we have spent the whole day

2371 working on, and that is what still seems to be missing by so

2372 many of my colleagues.

2373 Mr. Buck. Reclaiming my time, what the new contract

2374 would involve is an actual freedom, the freedom of the

2375 consumer and the freedom of the big, bad corporation is what

2376 I think the term is over on that side. And they would have

2377 the opportunity to negotiate.

2378 Any claim over \$15,000 couldn't be arbitrated. Any

2379 claim involving this type of claim couldn't be arbitrated.

2380 Whatever it is that you --

2381 Mr. Cicilline. Will the gentleman yield? I think the

2382 problem is you imagine a world in which I, as a consumer of a

2383 mobile phone company, Verizon, I have the ability to

2384 negotiate that kind of agreement. Right now, they say here

2385 are the terms of service. If you accept it, you are agreeing
2386 to mandatory arbitration. I don't have a choice right now to
2387 say, look, I would like to have your service, but I am going
2388 to cross out the forced arbitration because, guess what, I
2389 won't get the service.

2390 So we don't have the ability as an individual consumer
2391 to negotiate because there is no bargaining power, and that
2392 is why precluding these from being included in consumer
2393 contracts is really the only way to protect the consumer.

2394 Mr. Buck. I will yield to the chair.

2395 Chairman Nadler. Thank you.

2396 This argument of freedom of contract reminds me exactly
2397 of the 1905 Supreme Court case of *Lochner v. New York*, in
2398 which a New York law limiting bakers to working 60 hours a
2399 week was held unconstitutional because it violated the
2400 baker's freedom of contract. Who was the State to tell the
2401 baker he couldn't contract to work 190 hours a week?

2402 It is the same. It is the same one-sided thing here,
2403 and we have the right, and freedom of contract is not supreme
2404 over when you have no real freedom when it is one-sided.

2405 I yield back.

2406 Mr. Buck. I yield back.

2407 Chairman Nadler. The gentleman yields back.

2408 The question is on -- the gentl lady from Washington?

2409 Ms. Jayapal. Thank you, Mr. Chairman.

2410 I just wanted to -- I oppose this amendment as well, and
2411 I wanted to draw our attention back to the urgency of what we
2412 are talking about and, you know, the incredible number, a
2413 staggering 60 million workers who are locked into mandatory
2414 arbitration contracts that they had to accept as conditions
2415 of their jobs that would not be eligible if this amendment
2416 were to pass because this would limit it to this current
2417 date.

2418 And I wanted to specifically draw attention to the issue
2419 of sexual harassment because it has been spoken about a lot
2420 on this committee. But we are talking about, depending on
2421 the industry, anywhere from 25 to 85 percent of women
2422 reporting having experienced sexual harassment in the
2423 workplace. And because of that forced arbitration, many of
2424 those then experience the additional insult on top of injury
2425 of having their access to the courts stripped away.

2426 And not all workplaces are created equal. Industries
2427 that employ large numbers of women are much more likely to
2428 have forced arbitration requirements. So we have to be very
2429 clear that women are losing and have been losing in forced
2430 arbitration. Their choice is taken away. Then they are
2431 forced into these secretive proceedings, and then they lose
2432 because they are forced into arbitration proceedings that are
2433 rigged against them.

2434 I wanted to raise a couple of examples. In my State and

2435 across the country, Darden Restaurants owns popular chains,
2436 including Olive Garden and Longhorn Steakhouse. Darden has
2437 imposed a forced arbitration rule on the workers in these
2438 restaurants. Workers in those chains don't get their day in
2439 court, and they have to go to arbitration. And Darden
2440 workers have won in forced arbitration only eight times,
2441 eight times.

2442 Or take the thousands of women who are working for
2443 Sterling Jewelers, who were harassed, assaulted, and ignored
2444 for promotion while less-qualified men were interviewed,
2445 promoted, and allowed to perpetuate a culture of assault.
2446 Declarations submitted by over 250 women and men described
2447 pervasive inappropriate conduct where women were groped,
2448 demeaned, and urged to sexually cater to their bosses just to
2449 stay employed.

2450 But because Sterling forced all employees to sign
2451 arbitration agreements, the class of 69,000 women affected by
2452 these conditions were forced to go it alone in arbitration.
2453 That means that women like hard-working Washington resident
2454 Linelle Goledge are being held back from seeking justice,
2455 even though she was repeatedly passed over for promotion in
2456 favor of less-qualified men and subjected to sexually
2457 inappropriate tirades from a male coworker.

2458 I know there are many on the other side of the aisle
2459 that have said that they would have been supportive if this

2460 were just limited to sexual assault, and I just wanted to
2461 remind this committee that last Congress, we introduced --
2462 Cheri Bustos and I, along with the late Walter Jones and
2463 Elise Stefanik on the House side, and on the Senate side,
2464 with Lindsey Graham and Kirsten Gillibrand, we introduced the
2465 Ending Forced Arbitration of Sexual Harassment Act. We have
2466 introduced that again, 2019, which would invalidate forced
2467 arbitration clauses in cases of sex discrimination and
2468 harassment.

2469 But that is not sufficient. I would love to have all of
2470 you that have said that this is an important priority for you
2471 sign on to that bill. But that is not sufficient. And I
2472 think we need to make it clear that this, the FAIR Act goes
2473 beyond that in ensuring that we are restoring all consumers',
2474 workers', and small business rights.

2475 And starting this is, I think, a very historic first
2476 act, and I thank my colleague Mr. Johnson for this bill. We
2477 do need even more legislation that restores choice to
2478 millions of workers, consumers, veterans, and small business
2479 owners who have been robbed of their voices. So I urge the
2480 committee to reject this amendment and to pass --

2481 Ms. Lofgren. Would the gentlelady yield?

2482 Ms. Jayapal. I would. Yes.

2483 Ms. Lofgren. I thank the gentlelady for her comments.

2484 You know, I just can't help but observe, as a cosponsor

2485 of this bill, that when it came to our own workplace, we had
2486 a broad bipartisan effort to eliminate mandatory arbitration
2487 not only for sexual harassment, but for other forms of
2488 discrimination. That was bipartisan because we recognize
2489 that the mandatory arbitration provisions that were utilized
2490 in the House of Representatives were leading to
2491 unconscionable results.

2492 It is no different out in the other parts of the
2493 workplace. It is not just making sure that congressional
2494 employees' rights are protected, but the rights of others,
2495 women who are being harassed, people who are being
2496 discriminated against, are protected. And I just thought it
2497 would be worth having us recall how we treated our own
2498 employees.

2499 And I thank the gentlelady for yielding.

2500 Ms. Jayapal. I thank the gentlelady from California.

2501 That is absolutely an excellent point, and I think that
2502 this act is really trying to make sure that we bring justice
2503 and access to due process to all of the millions of workers
2504 who deserve it who currently are being stripped of that
2505 without even knowing that they are.

2506 Thank you, Mr. Chairman. I yield back.

2507 Chairman Nadler. The question, I think, now occurs on
2508 the amendment.

2509 Those in favor, say aye.

2510 Opposed, no.

2511 In the opinion of the chair, the nays have it, and the
2512 amendment is not agreed to.

2513 Mr. Sensenbrenner. Roll call. Roll call.

2514 Chairman Nadler. A roll call is requested. The clerk
2515 will call the roll.

2516 Ms. Strasser. Mr. Nadler?

2517 Chairman Nadler. No.

2518 Ms. Strasser. Mr. Nadler votes no.

2519 Ms. Lofgren?

2520 Ms. Lofgren. No.

2521 Ms. Strasser. Ms. Lofgren votes no.

2522 Ms. Jackson Lee?

2523 Mr. Cohen?

2524 Mr. Johnson of Georgia?

2525 Mr. Johnson of Georgia. No.

2526 Ms. Strasser. Mr. Johnson of Georgia votes no.

2527 Mr. Deutch?

2528 Mr. Deutch. No.

2529 Ms. Strasser. Mr. Deutch votes no.

2530 Ms. Bass?

2531 Mr. Richmond?

2532 Mr. Jeffries?

2533 Mr. Cicilline?

2534 Mr. Cicilline. No.

2535 Ms. Strasser. Mr. Cicilline votes no.
2536 Mr. Swalwell?
2537 Mr. Swalwell. No.
2538 Ms. Strasser. Mr. Swalwell votes no.
2539 Mr. Lieu?
2540 Mr. Lieu. No.
2541 Ms. Strasser. Mr. Lieu votes no.
2542 Mr. Raskin?
2543 Ms. Jayapal?
2544 Ms. Jayapal. No.
2545 Ms. Strasser. Ms. Jayapal votes no.
2546 Mrs. Demings?
2547 Mrs. Demings. No.
2548 Ms. Strasser. Mrs. Demings votes no.
2549 Mr. Correa?
2550 Ms. Scanlon?
2551 Ms. Scanlon. No.
2552 Ms. Strasser. Ms. Scanlon votes no.
2553 Ms. Garcia?
2554 Ms. Garcia. No.
2555 Ms. Strasser. Ms. Garcia votes no.
2556 Mr. Neguse?
2557 Mr. Neguse. No.
2558 Ms. Strasser. Mr. Neguse votes no.
2559 Mrs. McBath?

2560 Mrs. McBath. No.

2561 Ms. Strasser. Mrs. McBath votes no.

2562 Mr. Stanton?

2563 Mr. Stanton. No.

2564 Ms. Strasser. Mr. Stanton votes no.

2565 Ms. Dean?

2566 Ms. Dean. No.

2567 Ms. Strasser. Ms. Dean votes no.

2568 Ms. Mucarsel-Powell?

2569 Ms. Escobar?

2570 Ms. Escobar. No.

2571 Ms. Strasser. Ms. Escobar votes no.

2572 Mr. Collins?

2573 Mr. Collins. Aye.

2574 Ms. Strasser. Mr. Collins votes aye.

2575 Mr. Sensenbrenner?

2576 Mr. Sensenbrenner. Aye.

2577 Ms. Strasser. Mr. Sensenbrenner votes aye.

2578 Mr. Chabot?

2579 Mr. Gohmert?

2580 Mr. Gohmert. Aye.

2581 Ms. Strasser. Mr. Gohmert votes aye.

2582 Mr. Jordan?

2583 Mr. Jordan. Yes.

2584 Ms. Strasser. Mr. Jordan votes yes.

2585 Mr. Buck?

2586 Mr. Buck. Aye.

2587 Ms. Strasser. Mr. Buck votes aye.

2588 Mr. Ratcliffe?

2589 Mr. Ratcliffe. Yes.

2590 Ms. Strasser. Mr. Ratcliffe votes yes.

2591 Mrs. Roby?

2592 Mrs. Roby. Aye.

2593 Ms. Strasser. Mrs. Roby votes aye.

2594 Mr. Gaetz?

2595 Mr. Gaetz. No.

2596 Ms. Strasser. Mr. Gaetz votes no.

2597 Mr. Johnson of Louisiana?

2598 Mr. Biggs?

2599 Mr. Biggs. Aye.

2600 Ms. Strasser. Mr. Biggs votes aye.

2601 Mr. McClintock?

2602 Mr. McClintock. Aye.

2603 Ms. Strasser. Mr. McClintock votes aye.

2604 Mrs. Lesko?

2605 Mrs. Lesko. Aye.

2606 Ms. Strasser. Mrs. Lesko votes aye.

2607 Mr. Resenthaler?

2608 Mr. Resenthaler. Aye.

2609 Ms. Strasser. Mr. Resenthaler votes aye.

2610 Mr. Cline?

2611 Mr. Cline. Aye.

2612 Ms. Strasser. Mr. Cline votes aye.

2613 Mr. Armstrong?

2614 Mr. Armstrong. Yes.

2615 Ms. Strasser. Mr. Armstrong votes yes.

2616 Mr. Steube?

2617 Mr. Steube. Yes.

2618 Ms. Strasser. Mr. Steube votes yes.

2619 Chairman Nadler. The gentlewoman from Texas?

2620 Ms. Jackson Lee. How am I recorded?

2621 Ms. Strasser. Ms. Jackson Lee, you are not recorded.

2622 Ms. Jackson Lee. I vote no.

2623 Ms. Strasser. Ms. Jackson Lee votes no.

2624 Chairman Nadler. The gentleman from Maryland?

2625 Mr. Raskin. How am I recorded?

2626 Ms. Strasser. You are not recorded.

2627 Mr. Raskin. No.

2628 Ms. Strasser. Mr. Raskin votes no.

2629 Chairman Nadler. The gentleman from Louisiana?

2630 Mr. Richmond. How am I recorded?

2631 Ms. Strasser. Mr. Richmond, you are not recorded.

2632 Mr. Richmond. I vote no.

2633 Ms. Strasser. Mr. Richmond votes no.

2634 Chairman Nadler. The gentlewoman from Florida?

2635 Ms. Mucarsel-Powell. No.

2636 Ms. Strasser. Ms. Mucarsel-Powell votes no.

2637 Chairman Nadler. Has everyone voted who wished to vote?

2638 [No response.]

2639 Chairman Nadler. The clerk will report.

2640 Ms. Strasser. Mr. Chairman, there are 14 ayes and 21

2641 noes.

2642 Chairman Nadler. The amendment is not agreed to.

2643 Are there any further amendments to the amendment in the

2644 nature of a substitute?

2645 [No response.]

2646 Chairman Nadler. The question then occurs on the

2647 amendment in the nature of a substitute. This bill will be

2648 followed immediately -- I am sorry. This will be followed

2649 immediately by a vote on final passage of the bill.

2650 All those in favor of the amendment in the nature of a

2651 substitute, respond by saying aye.

2652 Opposed?

2653 In the opinion of the chair, the ayes have it, and the

2654 amendment in the nature of a substitute is agreed to.

2655 A reporting quorum being present, the question is on the

2656 motion to report the bill H.R. 1423, as amended, favorably to

2657 the House.

2658 Those in favor, respond by saying aye.

2659 Opposed, no.

2660 The ayes have it, and the bill is ordered reported
2661 favorably.

2662 Mr. Collins. Call the roll.

2663 Chairman Nadler. A recorded vote has been requested,
2664 and the clerk will call the roll.

2665 Ms. Strasser. Mr. Nadler?

2666 Chairman Nadler. Aye.

2667 Ms. Strasser. Mr. Nadler votes aye.

2668 Ms. Lofgren?

2669 Ms. Lofgren. Aye.

2670 Ms. Strasser. Ms. Lofgren votes aye.

2671 Ms. Jackson Lee?

2672 Ms. Jackson Lee. Aye.

2673 Ms. Strasser. Ms. Jackson Lee votes aye.

2674 Mr. Cohen?

2675 Mr. Johnson of Georgia?

2676 Mr. Johnson of Georgia. Aye.

2677 Ms. Strasser. Mr. Johnson of Georgia votes aye.

2678 Mr. Deutch?

2679 Mr. Deutch. Aye.

2680 Ms. Strasser. Mr. Deutch votes aye.

2681 Ms. Bass?

2682 Mr. Richmond?

2683 Mr. Richmond. Aye.

2684 Ms. Strasser. Mr. Richmond votes aye.

2685 Mr. Jeffries?
2686 Mr. Cicilline?
2687 Mr. Cicilline. Aye.
2688 Ms. Strasser. Mr. Cicilline votes aye.
2689 Mr. Swalwell?
2690 Mr. Swalwell. Aye.
2691 Ms. Strasser. Mr. Swalwell votes aye.
2692 Mr. Lieu?
2693 Mr. Lieu. Aye.
2694 Ms. Strasser. Mr. Lieu votes aye.
2695 Mr. Raskin?
2696 Mr. Raskin. Aye.
2697 Ms. Strasser. Mr. Raskin votes aye.
2698 Ms. Jayapal?
2699 Ms. Jayapal. Aye.
2700 Ms. Strasser. Ms. Jayapal votes aye.
2701 Mrs. Demings?
2702 Mrs. Demings. Aye.
2703 Ms. Strasser. Mrs. Demings votes aye.
2704 Mr. Correa?
2705 Ms. Scanlon?
2706 Ms. Scanlon. Aye.
2707 Ms. Strasser. Ms. Scanlon votes aye.
2708 Ms. Garcia?
2709 Ms. Garcia. Aye.

2710 Ms. Strasser. Ms. Garcia votes aye.
2711 Mr. Neguse?
2712 Mr. Neguse. Aye.
2713 Ms. Strasser. Mr. Neguse votes aye.
2714 Mrs. McBath?
2715 Mrs. McBath. Aye.
2716 Ms. Strasser. Mrs. McBath votes aye.
2717 Mr. Stanton?
2718 Mr. Stanton. Aye.
2719 Ms. Strasser. Mr. Stanton votes aye.
2720 Ms. Dean?
2721 Ms. Dean. Aye.
2722 Ms. Strasser. Ms. Dean votes aye.
2723 Ms. Mucarsel-Powell?
2724 Ms. Mucarsel-Powell. Aye.
2725 Ms. Strasser. Ms. Mucarsel-Powell votes aye.
2726 Ms. Escobar?
2727 Ms. Escobar. Aye.
2728 Ms. Strasser. Ms. Escobar votes aye.
2729 Mr. Collins?
2730 Mr. Collins. No.
2731 Ms. Strasser. Mr. Collins votes no.
2732 Mr. Sensenbrenner?
2733 Mr. Sensenbrenner. No.
2734 Ms. Strasser. Mr. Sensenbrenner votes no.

2735 Mr. Chabot?

2736 Mr. Gohmert?

2737 Mr. Gohmert. No.

2738 Ms. Strasser. Mr. Gohmert votes no.

2739 Mr. Jordan?

2740 Mr. Jordan. No.

2741 Ms. Strasser. Mr. Jordan votes no.

2742 Mr. Buck?

2743 Mr. Buck. No.

2744 Ms. Strasser. Mr. Buck votes no.

2745 Mr. Ratcliffe?

2746 Mr. Ratcliffe. No.

2747 Ms. Strasser. Mr. Ratcliffe votes no.

2748 Mrs. Roby?

2749 Mrs. Roby. No.

2750 Ms. Strasser. Mrs. Roby votes no.

2751 Mr. Gaetz?

2752 Mr. Gaetz. Aye.

2753 Ms. Strasser. Mr. Gaetz votes aye.

2754 Mr. Johnson of Louisiana?

2755 Mr. Biggs?

2756 Mr. Biggs. No.

2757 Ms. Strasser. Mr. Biggs votes no.

2758 Mr. McClintock?

2759 Mr. McClintock. No.

2760 Ms. Strasser. Mr. McClintock votes no.

2761 Mrs. Lesko?

2762 Mrs. Lesko. No.

2763 Ms. Strasser. Mrs. Lesko votes no.

2764 Mr. Reschenthaler?

2765 Mr. Reschenthaler. No.

2766 Ms. Strasser. Mr. Reschenthaler votes no.

2767 Mr. Cline?

2768 Mr. Cline. No.

2769 Ms. Strasser. Mr. Cline votes no.

2770 Mr. Armstrong?

2771 Mr. Armstrong. No.

2772 Ms. Strasser. Mr. Armstrong votes no.

2773 Mr. Steube?

2774 Mr. Steube. No.

2775 Ms. Strasser. Mr. Steube votes no.

2776 Chairman Nadler. Has everyone voted who wishes to vote?

2777 [No response.]

2778 [Pause.]

2779 Chairman Nadler. The clerk will report. Are we waiting

2780 for one more? Suspend that.

2781 [Pause.]

2782 Chairman Nadler. The gentleman from Tennessee?

2783 Mr. Cohen. Aye.

2784 Ms. Strasser. Mr. Cohen votes aye.

2785 Chairman Nadler. The clerk will report.

2786 Ms. Strasser. Mr. Chairman, there are 22 ayes and 14
2787 noes.

2788 Chairman Nadler. Then the bill is adopted.

2789 [Applause.]

2790 Chairman Nadler. The ayes have it. The bill, as
2791 amended, is ordered reported favorably to the House. Members
2792 will have 2 days to submit views. The bill will be reported
2793 as a single amendment in the nature of a substitute
2794 incorporating all adopted amendments, of which there were
2795 none, I think.

2796 And without objection, staff is authorized to make
2797 technical and conforming changes.

2798 Pursuant to notice, I now call up H.R. 1236, the Extreme
2799 Risk Protection Order Act of 2019, for purposes of markup and
2800 move that the committee report the bill favorably to the
2801 House.

2802 The clerk -- all right. We will suspend for a moment
2803 while the house thins out.

2804 [Pause.]

2805 Chairman Nadler. As I said, we would like to move on to
2806 the next bill, so people who are leaving, please do so
2807 quickly and quietly. People who are coming in, the same.

2808 Pursuant to notice, I now call up H.R. 1236, the Extreme
2809 Risk Protection Order Act of 2019, for purposes of markup and

2810 move that the committee report the bill favorably to the
2811 House.

2812 The clerk will report the bill.

2813 Ms. Strasser. H.R. 1236, to support State, tribal, and
2814 local efforts to remove access to firearms from individuals
2815 who are a danger to themselves or others, pursuant to court
2816 orders for this purpose.

2817 Chairman Nadler. Without objection, the bill is
2818 considered as read and open for amendment at any time.

2819 [The bill follows:]

2820

2821 Chairman Nadler. I will begin by recognizing myself for
2822 an opening statement.

2823 Last month, the country was rocked by news of mass
2824 shootings on two successive days -- in El Paso, Texas, where
2825 22 people were killed and 26 were wounded, and in Dayton,
2826 Ohio, where 9 people were killed and 27 others were injured.
2827 Just a few weeks later, a gunman in Odessa, Texas, took the
2828 lives of seven more people. In total, 53 people were killed
2829 in mass shootings in August alone.

2830 At a vigil to commemorate the victims in Dayton, the
2831 Governor's speech was drowned out by calls to do something.
2832 Today, we will.

2833 This committee has already passed two important gun
2834 safety measures, the Bipartisan Background Checks Act and the
2835 Enhanced Background Checks Act, both of which passed the
2836 House in February and are currently being blocked in the
2837 Senate by the Republican majority. But that will not stop
2838 this committee.

2839 Today, we consider three more measures that would help
2840 prevent the tragic gun violence that has engulfed this Nation
2841 in recent years. I want to emphasize, however, that we are
2842 not taking these additional actions simply to respond to mass
2843 shootings. As has been our motivation with respect to the
2844 gun safety bills the committee has already considered, we are
2845 acting because of the urgent need to respond to the daily

2846 toll of gun violence in our communities, whether they are
2847 mass shootings or not and whether or not they make national
2848 headlines.

2849 There is no single bill that will address all of these
2850 issues. That is why we are considering three additional
2851 bills today.

2852 More than 35,000 Americans lose their lives because of
2853 guns every year. Every day in America, on average 34 people
2854 are murdered with a firearm. Gun violence of this magnitude
2855 is a distinctly American problem. A country-to-country
2856 comparison is shocking.

2857 For example, in 2011, the United Kingdom had 146 deaths
2858 due to gun violence; Denmark, 71; Portugal, 142; Japan, just
2859 30. But the United States, more than 35,000. Even when you
2860 adjust for population differences, Americans are
2861 disproportionately killed by gun violence.

2862 A recent study in the American Journal of Medicine found
2863 that compared to 22 other high-income countries, the gun-
2864 related murder rate in the United States is 25 times higher.
2865 The President and others try to pin blame for gun violence on
2866 mental illness, but we know that the United States does not
2867 have a rate of mental illness that is 25 times higher than
2868 the rest of the world. That is clearly not the source of our
2869 gun violence crisis.

2870 We must approach this issue with a range of solutions

2871 and with a sense of urgency, and we cannot use the
2872 incantation of mental illness as an excuse to do nothing
2873 real. That is why we are taking action today.

2874 The first gun safety bill we will consider, H.R. 1236,
2875 the Extreme Risk Protection Order Act of 2019, provides
2876 funding to States to enact extreme risk protection statutes
2877 that empower law enforcement and families to petition courts
2878 to intervene when individuals in crisis pose a danger to
2879 themselves and to others.

2880 This bill encourages States and localities to take
2881 meaningful steps to prevent gun violence tragedies at home
2882 and in their communities while at the same time protecting
2883 the due process rights of those individuals in crisis. Under
2884 this bill, States and localities are encouraged through
2885 funding assistance to pass laws that ensure a court may issue
2886 an extreme risk protection order removing firearms from a
2887 person in crisis and preventing them from purchasing firearms
2888 only after making a finding that there is evidence
2889 demonstrating that the person poses a significant danger of
2890 injuring himself, herself, or others.

2891 The judge considering the petition from law enforcement
2892 or family members would authorize temporary firearms
2893 restrictions for up to 30 days. To extend the length of the
2894 firearms restriction for up to a year, the court must afford
2895 the firearm owner a full hearing, ensuring the person's due

2896 process rights to contest the petition.

2897 H.R. 1236 strikes an appropriate balance between
2898 protecting the rights of the gun owner and ensuring community
2899 safety. The amendment in the nature of a substitute that I
2900 will offer shortly will include provisions based on
2901 H.R. 3076, introduced by our colleague the gentlewoman from
2902 Georgia, Mrs. McBath, that authorizes the issuance of an
2903 extreme risk protection order by a Federal court when law
2904 enforcement, family members, or household members seek one.

2905 The inclusion of this Federal mechanism is an explicit
2906 acknowledgment that gun violence and mass shootings
2907 unfortunately have no bounds. Every jurisdiction in this
2908 country has been touched by gun violence. The Federal
2909 provision ensures consistent access to courts and enables
2910 continuity of enforcement across State lines.

2911 Federal courts have long been bastions of due process,
2912 and the protections included in the Federal ERPO provisions
2913 protect respondents' due process rights. It is important to
2914 note that the duration of an order issued pursuant to an ex
2915 parte proceeding contemplated in this bill, during which a
2916 neutral Federal judge must weigh whether a threat is
2917 imminent, is limited to 14 days, during which the court will
2918 determine after a hearing including participation by the
2919 respondent if a long-term order is appropriate.

2920 Taken together, the grant provisions in H.R. 1236 and

2921 the Federal petition provisions incorporated from H.R. 3076
2922 provide a sensible means by which an individual who exhibits
2923 dangerous behavior can be prevented from possessing or
2924 purchasing firearms.

2925 According to one study, over 50 percent of mass shooters
2926 exhibited some warning signs before the shooting. The
2927 combined bill before us authorizes that individuals who have
2928 serious concerns that someone they know possesses an extreme
2929 risk to take the action needed to save lives and prevent
2930 suicides. Seventeen States and the District of Columbia have
2931 passed extreme risk protection laws, which have proven to be
2932 effective.

2933 In California, one study found that extreme risk
2934 protection orders were issued under that State's law in 21
2935 instances where there was concern of a mass casualty event.
2936 After Connecticut enacted an extreme risk protection order
2937 law, the State experienced a 14 percent reduction in its
2938 firearm suicide rate. In Indiana, the number of suicides
2939 declined 7.5 percent in the 10 years after Indiana enacted
2940 its extreme risk protection order law.

2941 The bottom line is that we know that extreme risk laws
2942 saves lives. We have witnessed their effectiveness in State
2943 after State. So let us continue to take the reasonable and
2944 measured steps that the American people demand.

2945 This week, it was reported that nearly 90 percent of

2946 Americans support extreme risk protection laws. Today, this
2947 committee has the opportunity to build on measures the House
2948 has already passed, including H.R. 8, the Bipartisan
2949 Background Checks Act of 2019, which also enjoyed similar
2950 overwhelming support, over 90 percent.

2951 I thank Representatives Carbajal and McBath for
2952 championing this effort and for introducing the critical
2953 provisions that constitute this important bill, and I urge
2954 all of my colleagues to support H.R. 1236, as it will be
2955 amended by the amendment in the nature of a substitute.

2956 I now recognize the ranking member of the Judiciary
2957 Committee, the gentleman from Georgia, Mr. Collins, for his
2958 opening statement.

2959 Mr. Collins. Mr. Chairman, thank you for holding again
2960 this markup today.

2961 And like you, I am concerned about addressing this
2962 important issue, from addressing the incidents of mass
2963 shootings to combatting the scourge of firearm violence
2964 plaguing our urban communities. I stand ready to work with
2965 you on sensible solutions that actually could prevent these
2966 atrocities.

2967 What I am not willing to do is support legislation that
2968 will not do anything to make us safer and simultaneously
2969 infringes on the rights and liberties guaranteed by our
2970 Constitution. Unfortunately, all three of the bills that we

2971 are considering today do just that.

2972 First, we will be considering H.R. 1236, the Extreme
2973 Risk Protection Order Act of 2019. While this bill may seem
2974 like a common sense measure, it is flawed in far too many
2975 ways to be worthy of this committee's support.

2976 Five months ago, in an interview, one of the statements
2977 that was given by the chairman, and you said this to one of
2978 your hometown papers. "My original motive in politics from
2979 the time I probably was 12 years old was civil rights, civil
2980 liberties, and due process, and I always concentrated on
2981 them, and that has never changed."

2982 Well, I am not sure what has changed, but the bill
2983 before us today has serious due process problems. Namely,
2984 the bill allows for confiscation of individuals' firearms
2985 without notice or an opportunity to be heard. Even more
2986 egregious is the fact that the ex parte determination can be
2987 made when a judge finds there is a reasonable cause to
2988 believe the individual possesses a danger to himself or
2989 others having access to a firearm.

2990 Reasonable cause is not even probable cause. It is
2991 certainly less than clear and convincing evidence. Do we
2992 really want to surrender Americans' constitutional rights to
2993 such a low standard without giving those citizens notice or
2994 an opportunity to be heard? What other rights are we willing
2995 to sacrifice in this manner?

2996 The ex parte proceeding standards are not the only flaws
2997 in this bill. For a permanent order, the court must find a
2998 preponderance of evidence that the individual possesses a
2999 danger to himself or others by having access to a firearm.
3000 We don't convict people of petty crimes by a preponderance of
3001 evidence, but my colleagues are willing to take away a
3002 constitutional right with merely a finding of preponderance
3003 of the evidence.

3004 Ours is the committee charged with protecting due
3005 process and every constitutional right, not eviscerating
3006 them. Yet the defects in this bill continue to emerge. Once
3007 the court finds a person too dangerous to possess a firearm,
3008 what does the bill indicate the court should do? Does it
3009 provide for some sort of incapacitation, detention,
3010 evaluation, or provision of mental health services? No.

3011 In fact, the bill is silent. It does nothing to address
3012 the person's possible illnesses or instabilities, even though
3013 the court has just determined him or her dangerous enough to
3014 be stripped of a fundamental constitutional right.

3015 I suppose we should all just hope and pray such
3016 dangerous individuals don't have access to any other things
3017 that would allow them to harm themselves. If they do, then
3018 this is sort of a waste of time.

3019 H.R. 1236 allows a person to petition to take away any
3020 other person's Second Amendment rights with a court order.

3021 There is no required nexus between the parties. They don't
3022 even have to know each other.

3023 In light of that, it is unthinkable that this bill
3024 doesn't require a law enforcement officer to independently
3025 substantiate the claims, and there are no penalties for
3026 making a false claim against anyone. These are just a few of
3027 the myriad of problems that is found in this bill.

3028 I have seen and heard statements from some of my
3029 Republican colleagues indicating that we would be willing to
3030 consider red flag legislation. Unfortunately, the proposal
3031 today is so flawed that not anyone committed to looking at
3032 the errors that we have just laid out would be supportive of
3033 that.

3034 I have said this before, there are ways that we have
3035 worked together in the past. This is not one of those. This
3036 is another issue in which I think the harm that is found
3037 here, not discussed probably as much today as will be, is
3038 something that will again work to, as the chairman sort of
3039 alluded to, make us feel better about what we are doing. But
3040 in the end, not actually help in those situations in a real
3041 way and, in many ways, could actually add to the problem.

3042 And with that, I yield back.

3043 Chairman Nadler. Thank you, Mr. Collins.

3044 Without objection, all other opening statements will be
3045 included in the record.

3046 [The statements follow:]

3047

3048 Chairman Nadler. I now recognize myself for purposes of
3049 offering an amendment in the nature of a substitute. The
3050 clerk will report the amendment.

3051 Ms. Strasser. Amendment in the nature of a substitute
3052 to H.R. 1236, offered by Mr. Nadler. Strike all after the
3053 enacting clause and insert the following.

3054 Chairman Nadler. Without objection, the amendment in
3055 the nature of a substitute will be considered as read and
3056 shall be considered as base text for purposes of amendment.

3057 [The amendment of Chairman Nadler follows:]

3058

3059 Chairman Nadler. I will recognize myself to explain the
3060 amendment.

3061 As discussed in my opening statement, the amendment in
3062 the nature of a substitute largely adds provisions from
3063 H.R. 3076, introduced by the gentlewoman from Georgia,
3064 Mrs. McBath. These provisions authorize the issuance of an
3065 extreme risk protection order by a Federal court when law
3066 enforcement, family members, or household members seek one.

3067 In addition to a few other modest changes to the
3068 underlying bill, these provisions strengthen significantly
3069 the underlying legislation, and I urge all Members to support
3070 it.

3071 I now recognize the ranking member of the full
3072 committee, Mr. Collins, for any comments he may have on the
3073 amendment in the nature of a substitute.

3074 Mr. Collins. Thank you, Mr. Chairman.

3075 Look, I suppose the amendment in the nature of a
3076 substitute actually maybe addresses some of the due process
3077 issues that I raised just a moment ago with the underlying
3078 bill, but I am sort of left scratching my head over some of
3079 the -- at the amazement of what was just offered as a nature
3080 of a substitute.

3081 H.R. 1236, as introduced, allows for a judge to order
3082 someone's firearms to be taken away without notice to that
3083 person if the judge finds there is reasonable cause to

3084 believe that the individual possesses a danger of causing
3085 harm to himself, herself, or to others by having access to a
3086 firearm. The amendment now allows for such other higher
3087 evidentiary standard.

3088 Is the majority saying that the States can receive
3089 grants if they implement an extreme risk protection order
3090 that requires the judge to make this finding based on
3091 probable cause? I am not sure, and maybe we will hear about
3092 that later.

3093 But this will lead to a patchwork of laws that vary from
3094 State to State, creating an incentive for those seeking
3095 extreme risk protection orders against others to go forum
3096 shopping. If they can't find a State to grant them an
3097 extreme risk protection order, this amendment allows them to
3098 ask a Federal court to issue one.

3099 When we look at the process to seek and obtain a Federal
3100 extreme risk protection order, we can see why the bizarre
3101 amendments were made to -- we can't see why this was made to
3102 a State grant program.

3103 The Federal extreme risk order section, while far from
3104 perfect, at least makes a better attempt at trying to secure
3105 due process rights, including under the grant program, States
3106 would be allowed to -- permitted to allow anyone to petition
3107 for an order against anyone. Under the proposed Federal
3108 processes, only family or household members or law

3109 enforcement officers may petition the court.

3110 Under the grant program, an ex parte order can be in
3111 effect for 30 days and be ordered based on the finding of
3112 reasonable belief by a judge. Under the Federal process, it
3113 can only be for 14 days and can be ordered based upon the
3114 finding of probable cause by a judge. However, the amendment
3115 requires that the court hold a long-term order hearing within
3116 72 hours of issuing the ex parte order.

3117 The Federal process would also require counsel to be
3118 provided for the responded free of charge if he or she is
3119 financially unable to afford counsel.

3120 Under the grant program, the long-term orders can be
3121 granted if the court finds a preponderance of evidence that
3122 the individual possesses a danger of causing harm to himself
3123 or others by having access to a firearm. Under the Federal
3124 process, a court must find by clear and convincing evidence
3125 that the individual possess a risk of imminent personal
3126 injury to himself or another by purchasing, possessing, or
3127 receiving a firearm or ammunition that the order is necessary
3128 to prevent injury.

3129 Under the grant program, the order can be in effect for
3130 an unspecified timeframe. Under the Federal process, it
3131 would expire after 180 days.

3132 It really does amaze me that we have set out one set of
3133 due process standards for one forum and different sets in

3134 another. And I would simply suggest that we go back to the
3135 drawing board and come up with at least a consistent proposal
3136 that doesn't cause really confusion or, as we have said,
3137 forum shopping.

3138 And I understand we are under immense pressure from
3139 folks to do something, but this especially now looks even
3140 more rushed, disjointed, and creates bad policy, and I would
3141 urge my colleagues to vote against this amendment in the
3142 nature of a substitute.

3143 And with that, I yield back.

3144 Chairman Nadler. The gentleman yields back. Are there
3145 any amendments to the amendment in the nature of a
3146 substitute?

3147 Ms. Lofgren. Mr. Chairman?

3148 Chairman Nadler. For what purpose does the gentlelady
3149 from California seek recognition?

3150 Ms. Lofgren. I would like to strike the last word.

3151 Chairman Nadler. The gentlelady is recognized.

3152 Ms. Lofgren. First, I support Mr. Carbajal's bill and
3153 the substitute that you have just introduced. As the chair
3154 of the California Democratic delegation, we are all acutely
3155 aware in the State of California that California has taken
3156 the lead in so many gun violence measures, one of which is
3157 the so-called red flag bills. And we know, just from the
3158 statistics from law enforcement, that there are people who

3159 really were, you know, in a bad place who shouldn't have been
3160 armed, and the State procedures were used, and the public
3161 safety was protected.

3162 So that is really an important thing. I don't -- we
3163 have got a number of bills up. We passed bills already and
3164 sent them to the Senate. No one measure is going to solve
3165 every problem. But if we take a number of sensible steps, it
3166 will make people safer, and I think that is very important.

3167 I note -- I wanted to say just a word about Mr. Carbajal
3168 because he took the lead to author this bill, and I want to
3169 give him -- he was here earlier in the proceedings and had
3170 another obligation. Obviously, he is not a member of the
3171 committee.

3172 But he took the lead to introduce this bill, and I want
3173 to give him credit for doing that. Too many of us have had
3174 situations where people in our districts were the victim of
3175 gun violence. Recently, my district in Gilroy, California,
3176 was added to the list, a long, sad list of communities that
3177 experienced gun violence.

3178 And I think that is one of the issues, and we will get
3179 to the other bill later in the evening or perhaps tomorrow.
3180 But you can't do it State by State. You know, California in
3181 that case prohibited the purchase of assault weapons and
3182 magazines and also restricts sales to people under 21. And
3183 so what happened, the perpetrator of this violence went to

3184 the neighboring State of Nevada, and he bought in Nevada what
3185 he couldn't buy in California.

3186 And so we really do think that we have got to have a
3187 broader approach, which is what these bills do today on the
3188 red flag law. It is not good enough when you can buy a gun
3189 on the Internet just by clicking a little box saying "I am
3190 fine." It is not good enough just to have State-only laws,
3191 much as I credit those States who have stepped up to the bat
3192 to make a difference.

3193 So I support the bill and the underlying bill, but I
3194 particularly wanted to thank, obviously, our colleague
3195 Mrs. McBath, who is a leader and is responsible for the
3196 substitute, but also Mr. Carbajal, who is not a member of
3197 this committee, for the effort that he has put in and the
3198 credit that he deserves for it.

3199 And with that, Mr. Chairman --

3200 Mr. Raskin. Actually, would the gentlelady yield?

3201 Ms. Lofgren. I would be happy to yield to my fellow
3202 Californian first, Mr. Swalwell, and then to Mr. Raskin.

3203 Mr. Swalwell. I thank the gentlelady.

3204 And just to follow up on the point that I think you so
3205 astutely made about California's gun safety laws. It is
3206 often used against us, well, you know, California has some of
3207 the toughest laws. And New York, I know you hear the same
3208 argument. And Illinois, the same thing.

3209 And then people will cite the gun deaths in Oakland or
3210 Richmond or Chicago. And the truth is we are only as safe as
3211 the States around us, the lowest common denominator.

3212 And a recent study by Alameda County District Attorney
3213 Nancy O'Malley found that in the last year, in 2018, over
3214 half of the weapons used in the homicides where a weapon was
3215 recovered, the firearm came from outside the State, primarily
3216 Arizona and Nevada, where there are much looser gun laws. So
3217 I think this seeks to -- many of the bills today seek to
3218 recognize that, that we need to be safe everywhere.

3219 And I would yield back.

3220 Ms. Lofgren. Thank you. And I would yield to the
3221 gentleman from Maryland.

3222 Mr. Raskin. And I thank the gentlelady from California.

3223 I just wanted to respond to my friend from Colorado, who
3224 in the last round of statements sort of lobbed a kind of
3225 provocative question in my direction, saying that he hoped
3226 that I would by the Constitution on these bills as I did in
3227 the bill about compelled arbitration.

3228 And I gladly accept that challenge. You know, I take my
3229 lead from the Supreme Court's decision in the *Heller v.*
3230 *District of Columbia* case, where the Supreme Court said that
3231 we can protect the core of the Second Amendment, which is the
3232 right of self-defense for the handgun and the right to have a
3233 rifle for hunting and recreation, but it does not give you

3234 the right to carry dangerous weapons. It does not give
3235 unstable people, dangerous people, felons and fugitives the
3236 right to carry guns, and it certainly does not negate the
3237 power of the State to create reasonable time, place, manner,
3238 and use restrictions on the Second Amendment.

3239 Every constitutional right is conditioned by a set of
3240 regulatory restrictions that can be at legitimate exercise of
3241 the police power of the States or the constitutional powers
3242 given to Congress. So I accept that challenge --

3243 Ms. Lofgren. Reclaiming my time.

3244 Mr. Raskin. -- gladly. And if anybody believes any of
3245 these bills are actually unconstitutional, they should say so
3246 and explain why based on the *Heller* decision. Otherwise, all
3247 of the Second Amendment rhetoric is quite off point.

3248 I yield back.

3249 Ms. Lofgren. I yield back, Mr. Chairman.

3250 Mr. Buck. Mr. Chairman, I have an amendment at the
3251 desk.

3252 [Applause.]

3253 Chairman Nadler. The spectators in the audience please
3254 refrain from showing approval or disapproval of remarks from
3255 here.

3256 Mrs. Lesko. Mr. Chairman?

3257 Chairman Nadler. Those are our rules. Although we
3258 appreciate the sentiment, but those are our rules.

3259 Mrs. Lesko. Mr. Chair?

3260 Mr. Buck. I have an amendment at the desk.

3261 Chairman Nadler. The gentleman, for what purpose --

3262 Mrs. Lesko. Before that, Mr. Chair --

3263 Chairman Nadler. Mrs. Lesko wanted to strike the last
3264 word first.

3265 Mrs. Lesko. Thank you, Mr. Chair. If I could move to
3266 strike the last word?

3267 Chairman Nadler. The gentlelady is recognized.

3268 Mrs. Lesko. Thank you.

3269 Mr. Chair and members, I really understand people that
3270 want us to do something after mass shootings. The thing is,
3271 is we need to work in a bipartisan fashion so we actually get
3272 it passed into law and do things that will actually make a
3273 difference, and we have done things in a bipartisan fashion
3274 in the past to actually help, like the Fix NICS Act and those
3275 type of things.

3276 And we also want to make sure that we are not taking
3277 away people's constitutional right without due process. And
3278 so that is why I oppose this legislation, and I oppose it
3279 because, one, it lacks the due process protections I want to
3280 see before someone loses their Second Amendment rights.

3281 Two, it doesn't address mental health concerns. There
3282 is no requirement in this bill for an individual to be
3283 detained, evaluated, or provide mental health services.

3284 Three, it allows people's Second Amendment
3285 constitutional rights to be taken away through ex parte
3286 orders, meaning they might not even know that this is
3287 happening to them or given a chance to defend themselves.

3288 And D, once people are stripped of their rights, there
3289 is no way to earn them back in this bill. But I do believe
3290 we can work together on bipartisan legislation. I am from
3291 Arizona, and our Republican Arizona Governor had put forward
3292 through the Senate a bill last year, red flag legislation
3293 that was also supported by the NRA. But it had really strong
3294 due process protections.

3295 It also addressed mental health concerns, and it did not
3296 allow for ex parte orders. It only allowed for emergency
3297 orders with notice to the individual, and it allows people
3298 that did have their Second Amendment rights taken away a way
3299 to earn them back.

3300 And with that, I yield back.

3301 Chairman Nadler. The gentlelady yields back. For what
3302 purpose does the gentlelady from Texas seek recognition?

3303 Ms. Jackson Lee. To strike the last word, Mr. Chairman.

3304 Chairman Nadler. The gentlelady is recognized.

3305 Ms. Jackson Lee. Mr. Chairman, there has been a number
3306 of things said here that doesn't allow me enough time to
3307 respond to. But let me first go and express my appreciation
3308 to Congressman Carbajal and certainly to Congresswoman

3309 McBath. Whenever I see her -- I hope she allows me to
3310 acknowledge Jordan because that is how I first met her, and
3311 she was not a Member of the Congress, she was a grieving
3312 mother, which she remains today.

3313 And that is the mountain that I stand on. 1999 was
3314 Columbine, and I came to Congress a few years before that,
3315 and we were in the same position after the heinous acts of
3316 Columbine that we are today. I heard the same arguments. I
3317 heard let us wait. We don't have the proper procedure.

3318 I heard people talk about mental health, and it was
3319 clear -- as I recollect, I was even put on a Columbine task
3320 force. It was clear that those young men, if you go back to
3321 that history, had mental health concerns.

3322 Every Governor that does not want to move on any aspect
3323 of gun safety regulation raises the question of mental
3324 health. And what I say to my friends, write a bill. We will
3325 be happy to move on that legislation. I have legislation
3326 dealing with mental health concerns.

3327 But in this substitute that is part of the chairman's
3328 mark, there is an array of issues dealing with evidence
3329 presented. On the long-term orders, there is a hearing where
3330 due process can be rendered to the individual that you are
3331 seeking the extreme risk order against. Family members can
3332 be in the court.

3333 There is no doubt that as long as we languish in the sea

3334 of inaction and talk about what we can do, what we can do, we
3335 will do nothing. We need a Federal scheme, construct
3336 because, as has been indicated, the mockery that is made of
3337 Chicago is because surrounding States have no laws that deal
3338 with gun trafficking and gun regulation and gun safety, and
3339 they all pile into the States that do have laws. The same
3340 thing with Washington, D.C., California.

3341 So I think what we are trying to do today is to
3342 acknowledge that the Federal Government has been derelict,
3343 the Senate has been derelict in not passing the Federal
3344 construct to save lives. I know you will hear from my
3345 colleagues, but the pain that we are experiencing in States
3346 that have just experienced the devastation of gun violence
3347 from El Paso to Odessa, and I can assure you, State officials
3348 in my State, mental health. Mental health, red flag laws,
3349 all of that has been rejected.

3350 And yet this is an AR-15. It is a lightweight. I have
3351 held it in my hands. And so while we pitter-patter around,
3352 someone can get this in their hands. Law enforcement will be
3353 at the other end of that barrel while they are trying to
3354 protect the community.

3355 The AR-15, the weapon of war, was the choice of the
3356 killer in El Paso. It has been the choice of the killer in
3357 Las Vegas. The rounds that that individual had was just
3358 unbelievable.

3359 So if you would read the bill, you would see that there
3360 are due process provisions in this bill. And I thank the
3361 gentlelady from Georgia for enhancing it through the Federal
3362 construct that she needs.

3363 In the hearing that I had last week, the summit that I
3364 had last week, and all through this time I will take note of
3365 the witnesses that came, to a one, none of them I asked their
3366 political perspective, what card they are carrying in their
3367 pocket. From chief medical examiners to a chief doctor out
3368 of the Texas Children's Hospital said \$300 billion is being
3369 used to deal with gun violence and the death and pillage that
3370 comes after it. Nobody raised what voter registration card
3371 or who they are voting for, but they talked about the pain.

3372 So I am here today in the name of Aaliyah Stewart, who
3373 flew from Indiana to be with me in the summit, who organized
3374 the I Am Foundation, whose mother had three children -- a
3375 girl and two boys. At 7 years old, Aaliyah had to run to her
3376 room because they came and said your brother, who left out
3377 just a few minutes ago with his Jordan shoes on, has been
3378 shot dead in the street.

3379 Then she went on with life, continued with her mother
3380 and a single parent, and at 13, they came to get her out of
3381 the class. She thought it had to do with her studies, but
3382 her other brother had been shot dead.

3383 Guns kill. People who have conditions contribute to

3384 that. We have to do something, and it has to be Federal law
3385 that does something.

3386 Mr. Jordan. Mr. Chairman?

3387 Chairman Nadler. The gentlelady yields back.

3388 Mr. Jordan. Mr. Chairman?

3389 Chairman Nadler. The gentleman from Ohio, for what
3390 purpose do you seek recognition?

3391 Mr. Jordan. To strike the last word.

3392 Chairman Nadler. I am sorry. I think the gentleman
3393 from Colorado was first.

3394 Mr. Jordan. He has got an amendment.

3395 Chairman Nadler. Oh, then the gentleman from Ohio.

3396 Mr. Jordan. I thank the chairman.

3397 If the House Judiciary passes this bill today, we will
3398 have changed a fundamental and sacred principle in this
3399 country. In America, you are innocent until proven guilty
3400 until today.

3401 If we pass this bill today, we are going to invert the
3402 standard and say you are guilty until proven innocent. And
3403 you will be guilty without doing anything wrong.

3404 Under this bill, you are guilty without doing anything
3405 wrong simply because someone thinks you might do something
3406 wrong. And who is the someone under this bill who can
3407 petition the court to take away your Second Amendment
3408 liberties? Who is the someone defined under this bill?

3409 Page 13, amendment in the nature of a substitute, the
3410 chairman just introduced it. Top of page 13, it says family
3411 or household member. Go down to subsection (D), who is a
3412 household member? An individual who resides or who has
3413 resided with the respondent during the past year.

3414 A roommate who hung out with you for 1 month last year
3415 can go petition a court to take away your Second Amendment
3416 liberties. Some roommate maybe didn't like you. Some
3417 thought you were a slob, whatever, can go petition the court
3418 to take away your fundamental right without you doing
3419 anything wrong.

3420 And oh, guess what? Guess what? When they go into
3421 court to take away your fundamental liberty, even though you
3422 haven't done anything, committed no crime, guess what? You
3423 don't even get to be there. You don't even get to defend
3424 yourself. That is exactly what this bill does.

3425 And Mr. Raskin has talked about the Constitution and the
3426 Bill of Rights. I heard him on TV talk about it. I heard
3427 him twice now in this committee hearing today talk about it,
3428 and that is how we are going to take away someone's Second
3429 Amendment liberties?

3430 This is the House Judiciary Committee, for goodness
3431 sake. What other constitutional right can you lose without
3432 doing anything wrong and without your knowledge, and then
3433 have to go petition a court to get it back? Tell me what

3434 that is.

3435 Mr. Cicilline. I am happy to answer that.

3436 Mr. Jordan. Tell me when that happens. Tell me when
3437 that happens. This thing is -- this bill is so wrong on so
3438 many levels. It violates fundamental Second Amendment
3439 rights. It violates property rights. It violates due
3440 process rights. And yet, today, the House Judiciary
3441 Committee with the storied history this committee has in
3442 defending, defending the Bill of Rights is going to pass this
3443 legislation?

3444 I mean, this is scary. This is a scary road to start
3445 heading down. We all want to stop gun violence. We all know
3446 these terrible, evil things that happen are just that,
3447 terrible and evil. But doing it, trying to do something that
3448 this bill seeks to do in this manner is so fundamentally
3449 wrong.

3450 And again, for the Judiciary Committee in the United
3451 States House of Representatives, who is charged more than any
3452 other committee in this body with defending the Constitution
3453 and the Bill of Rights, to pass this is just wrong.

3454 With that, Mr. Chairman, I yield back.

3455 Mr. Cicilline. Would the gentleman yield?

3456 Chairman Nadler. The gentleman yields back.

3457 Mr. Cicilline. Would the gentleman yield for a
3458 question?

3459 Chairman Nadler. Are there any amendments --

3460 Mr. Cicilline. Mr. Chairman? Mr. Chairman?

3461 Chairman Nadler. The gentlelady from Georgia?

3462 Mrs. McBath. Thank you, Mr. Chairman. I move to strike
3463 the last word.

3464 Chairman Nadler. The gentlelady is recognized.

3465 Mrs. McBath. Thank you. Thank you, Chairman Nadler,
3466 for calling this markup so that we can take these lifesaving
3467 measures.

3468 I am proud that we are holding an historic markup today
3469 on extreme risk protection orders, including my bill, the
3470 Federal Extreme Risk Protection Order Act of 2019. And I am
3471 also proud to be cosponsor of H.R. 1236, led by Congressman
3472 Carbajal, to which we are adding my legislation.

3473 Extreme risk protection orders are a lifesaving tool to
3474 keep firearms out of the hands of those that pose a danger to
3475 themselves or to others. The bill we are marking up today
3476 will guarantee nationwide access to this critical tool.

3477 With extreme risk laws at the State and Federal level,
3478 we can prevent gun violence, including mass shootings,
3479 suicides, and all horrific events that do not make the
3480 everyday headlines. Too often, we are told that we must
3481 accept gun violence. We are told that no single piece of
3482 legislation can prevent every incident. We are told that
3483 instead of changing our laws, we must have more lockdown

3484 drills, more security guards, and more bulletproof glass,
3485 more vigils for those that we have lost.

3486 But we also see time and time again that someone knew
3487 that a shooter was dangerous, someone knew the shooter had
3488 weapons, someone knew the shooter was filled with violent
3489 thoughts, or even that a person was thinking of taking his
3490 own life. Too often, someone knew, but no one had a tool to
3491 do anything about it.

3492 Some States decided their law enforcement officers,
3493 their communities, and their families deserved that tool.
3494 That is why 17 States, as it was expressed earlier, and the
3495 District of Columbia passed extreme risk laws. These laws
3496 have had bipartisan support.

3497 They have been passed by State legislatures controlled
3498 by Republicans and Democrats. They have been signed into law
3499 by Governors from across the political spectrum, and they are
3500 saving lives.

3501 Today, we take the next step in preventing gun violence
3502 with extreme risk laws. This package provides an incentive
3503 for more States to pass these laws, support States that
3504 already have them, and creates a Federal extreme risk law so
3505 that every community in every corner of this country has
3506 access to this lifesaving tool.

3507 Our brave law enforcement officers put their lives on
3508 the line every single day to keep our families safe. They

3509 deserve every tool that we can give them to help keep our
3510 communities safe. And instead of fighting the war on mass
3511 shooting with more bullets, we can empower our law
3512 enforcement officers to disarm threats before a shot is
3513 fired, before another life is lost.

3514 This legislation also empowers family and household
3515 members, those who are most likely to see the signs that a
3516 person is in crisis. My legislation gives law enforcement
3517 and family members a way to take action, a way to protect
3518 themselves to prevent mass shootings, or to save the life of
3519 a loved one considering suicide.

3520 Nearly 100 people every single day die in this country
3521 as a result of gun violence, and yes, I will never let you
3522 forget that my son Jordan was one of them.

3523 I know the pain of losing a child to gun violence, and
3524 that anyone in this room, anyone in this country should ever
3525 be faced with that pain. And for every single day that we
3526 fall into not taking action, mothers and fathers across this
3527 country will live through same nightmare that I did, and many
3528 survivors that I have worked with over the country. And for
3529 every single day that we fail to take action, siblings and
3530 spouses will feel the same agony, the same grief that comes
3531 with losing a loved one.

3532 It is our responsibility to prevent this suffering, to
3533 bring an end to this constant heartbreak. Inaction is

3534 AFTER 6:00 P.M.

3535 unacceptable, and today we are acting to help those in
3536 crisis. We act to empower law enforcement. We act to
3537 prevent the vigil for the loved ones that we will keep losing
3538 if we don't do something about this. And I thank my
3539 colleagues who have co-sponsored this legislation and the
3540 many advocates and survivors who continue to fight to end gun
3541 violence, because I promise you, no one is immune to this.
3542 Don't ever believe that you are immune to this.

3543 I ask my colleagues on this committee, both Republicans
3544 and Democrats, to stand up with me in supporting this
3545 legislation. We have to save lives. And I yield back the
3546 balance of my time.

3547 Mr. Raskin. Will the gentlelady yield?

3548 [Applause.]

3549 Chairman Nadler. The gentlelady has yielded back the
3550 balance of her time. Who seeks recognition? The gentleman
3551 from Arizona.

3552 Mr. Biggs. I move to strike the last word.

3553 Chairman Nadler. The gentleman is recognized.

3554 Mr. Biggs. Thank you, Mr. Chairman. I appreciate the
3555 dialogue that is taking place today. I am grateful for it.
3556 This is a serious issue. I echo the comments made by the
3557 representative from Arizona, Representative Lesko, and the
3558 gentleman from Ohio, Mr. Jordan. And I appreciate the

3559 gentlelady from California, Ms. Lofgren, mentioning
3560 statistics and data because I think that is important. She
3561 mentions the use of those.

3562 So the Department of Justice, Bureau of Justice
3563 Statistics, put out a study earlier this year, just in
3564 January of this year. And this is important to realize
3565 because they found that only 1.3 percent of prisoners who had
3566 committed a violent crime in this country obtained their gun
3567 from a retail source. Only 1.3 percent. That means that it
3568 has an impact on whether the NICS background check program is
3569 going to even work or be effective at all. But what they
3570 found that I think is really interesting and really
3571 problematic is that 43 percent obtained their weapon off the
3572 street or from the underground market. There are no
3573 background checks off the street and in an underground
3574 market. It just isn't happening.

3575 The point is, and this is what I think we miss, is a lot
3576 of times we think that we are going to correct something,
3577 correct a problem, and we create legislation, and it leaves
3578 massive gaps because there are massive gaps in how these
3579 things take place.

3580 An additional study was conducted on the behest of
3581 President Barack Obama in 2013. He ordered the Centers for
3582 Disease Control and Prevention to assess existing research on
3583 gun violence. And that report, compiled by the Institute of

3584 Medicine and the National Research Council, found, among
3585 other things, that firearms are used defensively hundreds of
3586 thousands of times a year. According to the CDC, self-
3587 defense can be an important crime deterrent, and indeed it
3588 can be.

3589 Recent CDC reports acknowledged that studies directly
3590 assessing the effect of actual defensive use of guns have
3591 found consistently lower injury rates among gun-using crime
3592 victims compared with victims who used other self-protective
3593 strategies, in particular the AR-15, which the gentlelady
3594 from Texas mentioned.

3595 Let me tell you sometimes that has been used in self-
3596 defense. Oswego, Illinois, 2018, a man with an AR-15
3597 intervened to stop a neighbor's knife attack and cited a
3598 large weapons intimidation factor as the reason why the
3599 attacker dropped the knife and stopped the attack. Catawba
3600 County, North Carolina, 2018, a 17-year-old successfully
3601 fought off three armed attackers with his AR-15. Houston,
3602 Texas, 2017, a homeowner survived a drive-by shooting by
3603 defending himself with his AR-15. Broken Arrow, Oklahoma,
3604 2017, a homeowner's son killed three would-be burglars with
3605 an AR-15. The man was later deemed to have acted in
3606 justifiable self-defense. Ferguson, Missouri, African
3607 Americans protected a white man's store from rioters by
3608 standing outside with AR-15s. Texas, 2013, a 15-year-old boy

3609 used an AR-15 during a home invasion to save both his life
3610 and that of his 12-year-old sister. Rochester, New York,
3611 2013, home intruders fled after facing an AR-15.

3612 I think sometimes in our zeal to try to protect people,
3613 we sometimes forget the other side of the story, that there
3614 are lawful uses of these weapons, used to defend themselves
3615 against people who are evil, with malevolent intentions. No
3616 one sanctions or approves of the type of mass shooting and
3617 violence that we have seen periodically in this country.
3618 Similarly, I don't think we can tolerate turning what is a
3619 constitutional right on its head, turning the burden of proof
3620 on someone who has not committed a crime and telling them you
3621 will be found responsible or not responsible based on an *ex*
3622 *parte* proceeding with or without your awareness of that *ex*
3623 *parte* proceeding, and you will have the pleasure of trying to
3624 set that aside at some future date if you will.

3625 That is not the American way. And with that, I oppose
3626 the amendment, and I thank the Chairman and yield the balance
3627 of my time.

3628 Chairman Nadler. The gentleman yields back. Are there
3629 any amendments to the bill?

3630 Mr. Buck. Mr. Chairman?

3631 Chairman Nadler. The gentleman from Colorado. For what
3632 purpose does the gentleman seek recognition?

3633 Mr. Buck. I have an amendment at the desk.

3634 Chairman Nadler. The gentleman has an amendment at the
3635 desk. The Clerk will report the amendment.

3636 Ms. Strasser. An amendment to the amendment in the
3637 nature of a substitute to H.R. 1236, offered by Mr. Buck of
3638 Colorado. On page 22, lines 5 and 10, strike "and" and enter
3639 the following between Lines 10 and 11.

3640 Chairman Nadler. The gentlelady from California
3641 reserves a point of order.

3642 Without objection, the amendment is considered as read.

3643 [The amendment of Mr. Buck follows:]

3644

3645 Chairman Nadler. And the gentleman is recognized in
3646 support of the amendment.

3647 Mr. Buck. Thank you, Mr. Chairman. Mr. Chairman, the
3648 evidence linking gangs and violent crime, including gun
3649 violence, is overwhelming. According to estimates, gangs and
3650 gang members are responsible for upwards of 90 percent of all
3651 violent crimes in our country. Nationwide, 80 percent of all
3652 gun-related homicides in the U.S. in a typical year are gang
3653 related. In Chicago, there are over a 100,000 gang members
3654 compared to 12,000 police officers. In the Windy City, a few
3655 years ago, gang members were responsible for 61 percent of
3656 all homicides. The homicide clearance rate for gun-related
3657 deaths, meaning an arrest was made, is incredibly low. Only
3658 17.5 percent of these cases in Chicago result in an arrest.
3659 In Chicago, criminals know they will get away with it. No
3660 wonder gun violence is so high.

3661 Chicago isn't alone. In Baltimore, 88 percent of all
3662 killings last year were the result of gunfire. Eighty-four
3663 percent of those killed had a criminal record with nearly
3664 half having themselves committed a violent crime.
3665 Baltimore's homicide rate is on par with El Salvador, nearly
3666 56 murders per 100,000 people, which is higher than many of
3667 the world's most violent countries. Baltimore's homicide
3668 rate is 10 times the U.S. rate. In 2015, the homicide
3669 clearance rate in Baltimore was only 27 percent.

3670 It is clear that this kind of gang and gun violence is
3671 common in many major cities. Despite the clear link of gangs
3672 to gun violence, Democrats continue to support sanctuary city
3673 policies that protect gang members who are in our country
3674 illegally, like members of MS-13, who are terrorizing our
3675 cities. On July 21st, Daniel Alejandro Alvarado Cuellar was
3676 brutally murdered in Maryland by seven people in a gang-
3677 related murder. While Cuellar's murder was not gun related,
3678 it is believed that he was killed because of a gang war. Six
3679 of the seven people charged in his murder are members of MS-
3680 13.

3681 The majority of violent crime, including gun violence,
3682 in the United States is linked to gangs. My amendment is
3683 quite simple. It would allow the issuance of a red flag
3684 order against anyone whose name appears in a gang database if
3685 there was probable cause to include that individual in the
3686 database. We need to get guns out of the hands of violent
3687 criminals. That starts with giving law enforcement another
3688 tool to disarm gang members. We should target red flags
3689 against known criminals, especially gang members. This
3690 approach will have the most meaningful impact in reducing gun
3691 violence, and I yield back.

3692 Mr. Collins. Would the gentleman yield?

3693 Mr. Buck. I would yield to the gentleman from Georgia.

3694 Mr. Collins. Thank you. I appreciate, you know, what

3695 is here, and I think the standard that you set for probable
3696 cause and all is again, there has been concerns before about
3697 the gang list, and this raises it to the level of probable
3698 cause. But there is actually, you know, a standard here that
3699 is set. I appreciate the gentleman, you know, at least is
3700 offering it and making the standard of due process and also
3701 the standard of evidence here, which we have pointed out
3702 before, is contradictory in this bill. At least this is a
3703 clear standard that provides something that somebody could
3704 do, and I appreciate you offering that in that standard. I
3705 yield back to the gentleman.

3706 Mr. Buck. And I yield to the gentleman from Arizona.

3707 Mr. Biggs. I thank the gentleman for yielding. I
3708 appreciate his amendment and his efforts to improve this
3709 bill. I want to bring in some more data. This is done with
3710 regard to someone mentioned police officers on the other end.
3711 And so just a few years ago, 2013, 16,000 police officers,
3712 from the level of officer all the way up to commander chief,
3713 responded to this survey. One of the questions was "What
3714 effect do you think a Federal ban on manufacture and sale of
3715 some semi-automatic firearms, termed by some as assault
3716 weapons, would have on reducing crime?" Seventy-one percent
3717 said they would have no effect. They didn't believe it would
3718 have any effect. "Do you think a Federal ban on the
3719 manufacture and sale of ammunition magazines that hold more

3720 than 10 rounds would reduce violent crime?" Ninety-six
3721 percent said no.

3722 "Do you think that a Federal law prohibiting private
3723 non-dealer transfers of firearms between individuals would
3724 reduce violent crime?" Eighty percent said no. "Do you
3725 think increasing the severity of punishment for gun
3726 trafficking, particularly by unlicensed dealer or straw
3727 purchasers who buy arms for persons ineligible to own them,
3728 would reduce instances of gun crime?" Sixty percent said
3729 yes. That, I think, is something we need to be looking at.
3730 That is something we need to be looking at.

3731 There is another survey. Next time I talk, I will be
3732 talking about a GAO report about how few, how few, people who
3733 falsely try to get their firearms are prosecuted. That is
3734 part of our problem. I yield back.

3735 Chairman Nadler. The gentleman yields back. I will
3736 recognize myself for 5 minutes in opposition to the
3737 amendment. The factors in the bill that are to be considered
3738 by the court in considering these applications are all
3739 behaviorally based. That is to say, they are based on
3740 whether the person has engaged in recent threats or acts of
3741 violence toward other people, toward himself, recent acts of
3742 cruelty to animals, evidence of ongoing abuse of controlled
3743 substances by the person. May consider other factors,
3744 reckless use, display, or brandishing of a firearm, history

3745 of violence, evidence of explicit or implicit threats.

3746 The amendment proposes a new ground which is not
3747 behaviorally based. It is associationally based. It says
3748 that the factor to be considered is whether the respondent's
3749 name appears on a list of dangerous people, of gang members,
3750 for instance, maintained by any Federal, State, local, or
3751 tribal government law enforcement agency, corrections
3752 department, juvenile rehabilitation. Number one, we know
3753 that these lists are often put together with no due process
3754 considerations. They are often inaccurate. They are not
3755 kept up to date. Now, that is not true of all departments,
3756 but many lists that would be used here. And we do not have
3757 any indication of the reliability of any such list with
3758 respect to any individual.

3759 All the other factors that are in the bill are basically
3760 recent observations that the respondent committed threats or
3761 acts of violence, threats or acts toward himself, toward
3762 others, acts of cruelty. In other words, things that would
3763 indicate that this person is unstable or dangerous and that
3764 should be considered. Just the fact that someone's name is
3765 on a database maintained by some department, a database of
3766 unknown accuracy and based on we do not know what, that is
3767 really a due process problem, and some of these others are
3768 certainly. So I would oppose the amendment.

3769 Ms. Escobar. Would the gentleman yield? Mr. Chairman?

3770 Chairman Nadler. I will oppose the amendment. The
3771 gentlelady from Texas. For what purpose?

3772 Ms. Escobar. Thank you, Mr. Speaker. Would the
3773 gentleman yield?

3774 Chairman Nadler. I yield to the gentlelady from Texas.

3775 Ms. Escobar. Thank you. I would like to actually say a
3776 couple of things about these databases. An experience that
3777 we have had in my district in El Paso as CBP has continued to
3778 separate families, they have used these databases as a
3779 resource and the information found in them as a reason to
3780 separate children from parents. We have had casework that
3781 has demonstrated the flaws some of these databases where a
3782 father has been accused of being a gang member, and we have
3783 discovered after much time spent with lawyers, actually the
3784 lawyer, their lawyers have discovered problems with identity,
3785 confusion, similar names, people who have been denied their
3786 children as a result of this.

3787 And so I would just urge the committee, I know that
3788 members of the committee like to use these databases as a
3789 resource. I am telling you, based on experience in my
3790 district, they should not be held up as a reliable resource.
3791 And I would urge vote against this amendment. Thank you, Mr.
3792 Chairman.

3793 Ms. Lofgren. Would the gentleman yield?

3794 Chairman Nadler. Reclaiming my time, I would simply

3795 add, in addition to what Ms. Escobar said, in addition to the
3796 experience we have had, the *New York Times* carried a story a
3797 few months ago about a 15-year-old Central American immigrant
3798 who had been here for a number of years, who was doodling in
3799 high school and was observed doodling designs that some
3800 police officer thought was gang insignia. And consequently,
3801 his name was put on a gang list, and he was subsequently
3802 deported with total lack of due process. So I would observe
3803 that in addition to everything that I said and that Ms.
3804 Escobar said about the lists, they are frequently -- I should
3805 not say "frequently." They are often enough, maybe
3806 frequently, racially discriminatory because there are no real
3807 enforceable standards in how they are put together. And,
3808 therefore, they should not be used as a predicate in this
3809 kind of proceeding. I yield to the gentlelady --

3810 Ms. Jayapal. Thank you, Mr. Chairman. I wanted to
3811 add --

3812 Ms. Lofgren. Thank you. No, actually, he yielded to
3813 me. And I just wanted to make a statement and ask a
3814 question. You know, California had these databases, and they
3815 finally stopped when they discovered that they had 3-year-
3816 olds on the databases, gang members. I mean, so some of
3817 these are reliable, a lot of them are not. And so I think
3818 the comments that have been made in opposition to the
3819 amendment are correct.

3820 On the other hand, if the author of the amendment, Mr.
3821 Buck, if you are willing to vote in favor of this bill if we
3822 adopt your amendment, I would support the amendment because
3823 there is some due process involved. This would be a factor
3824 to be considered. So the question is if this amendment is
3825 adopted, will you support this bill?

3826 Mr. Buck. This bill is so fatally flawed that I think
3827 there is a lot of amendments that need to be adopted before
3828 this bill rises to the level where I think it guarantees
3829 basic constitutional rights in this country. But I will
3830 certainly consider that if you vote for this bill. I would
3831 actually consider that a step in the right direction.
3832 California is --

3833 Ms. Lofgren. All right. I appreciate that. My time
3834 has expired. I yield back.

3835 Chairman Nadler. My time has expired.

3836 Mr. Collins. I move to strike the last word.

3837 Chairman Nadler. The gentleman from Georgia is striking
3838 the last.

3839 Mr. Collins. I think we have just brought into account
3840 a very interesting discussion that just a couple of summers
3841 ago was brought to light and led by the chairman on a No Fly,
3842 No Buy, which we have shown to have multiple problems with
3843 the exact very same thing we just talked about, that there
3844 was the list had inaccuracies, had Senators, had members of

3845 Congress, had others who were on this list. But yet it was
3846 taken then. We have got to take this list and we have got to
3847 accept this list because if we do that, then we are making a
3848 statement for it with no, you know, real inaccuracies or
3849 discussion.

3850 It is also interesting to me that however in this
3851 amendment offered by Mr. Buck that the department, agency, or
3852 administration had to have probable cause to identify the
3853 respondent or the member that is on the list, another step
3854 further than just simply being on the list. The agency had
3855 to show probable cause that the person is supposed to be on
3856 the list. Now, you know, the discussion here is also, the
3857 Chairman made the comment that this is a behavioral list and
3858 not an association list. We actually, you know, want to
3859 consider what it takes to become a gang member in many of
3860 these. This is not only associational, but behavioral.

3861 And this is the sad part. This is not a joke. This is
3862 the problems that we have here that needs serious answers,
3863 and serious solutions, and serious discussions without saying
3864 simply because we do not like lists, we are not going to
3865 include it in this bill. And, no, before the question ever
3866 comes up, I will not vote for this because of the many
3867 problems that I listed beforehand in this bill. This is a
3868 legitimate attempt. I make no bones about the attempt. It
3869 is just the wrong attempt.

3870 As we look at this, though, to bar this amendment from
3871 not going forward is it is not a behavioral list and it is
3872 associational takes to the very heart of what gang members
3873 do, and gang members deciding how you even get into the gang
3874 to start with is typically violence. It is typically
3875 behavioral, and it is typically shown to be the very thing
3876 that this bill is actually purporting to do.

3877 If we really wanted to get at some of these lists that
3878 we just talked about as being so bad, then why don't put this
3879 standard in every one of these lists for probable cause? Why
3880 don't we actually raise the standard to actually put the list
3881 into a certain area that we actually can determine that
3882 somebody should actually be there instead of getting on there
3883 as we have seen by mistake?

3884 It is amazing to me. We had a large blow-up on the
3885 floor of this House just a couple years ago about the No Fly,
3886 No Buy list, which was shown to have issues, but at that
3887 point, nobody from the other side brought this is as a
3888 concern, and now we are bringing it as a concern. So this
3889 is, just, again, when this amendment actually puts probable
3890 cause to identify the respondent as a member of a gang, it is
3891 a little bit concerning to me that we are blowing this into a
3892 different proportion to say that it is not behavioral, so we
3893 do not want it as associational. I think there are a lot of
3894 problem. With that, I yield to the gentleman from Colorado.

3895 Mr. Cohen. Would the gentleman yield?

3896 Chairman Nadler. No, the gentleman from Colorado.

3897 Mr. Buck. Thank you. I appreciate my friend from
3898 Georgia, and I want to respond to the Chairman's comments.

3899 Mr. Chairman, being jumped into a gang is a behavior. It is
3900 an action. Wearing a red hat is an action. Wearing blue
3901 shoelaces is an action. You choose to put certain things on
3902 to display. When you wear a tattoo or you go and get a
3903 tattoo that says "13," you are making a statement to the
3904 world, and it is an action when you are getting that tattoo
3905 and when you display that tattoo. When you show gang signs
3906 to other people, that is an action and that is what --

3907 Chairman Nadler. Would the gentleman yield on that
3908 point?

3909 Mr. Buck. I will.

3910 Chairman Nadler. Very briefly. When you write "13" on
3911 a piece of paper, maybe it is a sign, that thing. Maybe you
3912 are just doodling because it is the 13th of June.

3913 Mr. Collins. Reclaiming my time.

3914 Chairman Nadler. Maybe --

3915 Mr. Collins. Reclaiming my time on this one.

3916 Reclaiming my time. Probable cause, if taken properly, is
3917 not "13" on a doodle pad, Mr. Chairman. That is not an
3918 argument that actually frankly makes sense here because this
3919 amendment actually says probable cause. So to say that I am

3920 writing here "13," I may be writing circles here because I
3921 think we are wasting time, but that does not mean that I have
3922 a problem. It means that I am bored. Now that is what
3923 probable cause would do. They have to come in and have to
3924 look and say should I be on that list or should I not be on
3925 that list.

3926 I think that is the concern I have here. I understand
3927 what you are trying to say, but you are splitting a hair that
3928 just does not exist. I yield to the gentleman from Colorado.

3929 Mr. Cohen. Would the gentleman yield? Would the
3930 gentleman yield?

3931 Mr. Collins. -- from Colorado.

3932 Mr. Buck. I believe I have the time now.

3933 Mr. Collins. You do.

3934 Mr. Buck. Thank you. Mr. Chairman, this goes beyond
3935 *West Side Story* and the Jets and the Sharks. This is a
3936 situation where the police officers are trained, and there
3937 are very identifiable signs, and it isn't just one sign. It
3938 is not just someone writing the number 13 in school. This is
3939 a threshold that has to be met. And whether you agree with
3940 it or not, a court is going to decide with a probable cause
3941 standard in order to make the decision that someone is in a
3942 gang. And if we are serious about combating violent acts, we
3943 should start with that kind of probable cause --

3944 Chairman Nadler. Would the gentleman yield for a

3945 question?

3946 Mr. Buck. I will.

3947 Chairman Nadler. Under this amendment, if this
3948 amendment were adopted and a court were considering an
3949 application for one of these orders, and it had various
3950 pieces of evidence in front of it, one of which was the
3951 inclusion of his name on a list, on a gang list maintained by
3952 some department, would it have to conduct a collateral
3953 inquiry as to whether that department had probable cause to
3954 put that person's name on the list?

3955 Mr. Buck. So what would happen in this situation is the
3956 officer involved would present to the court an affidavit, and
3957 the affidavit would say this individual is dangerous for
3958 these reasons. And then that affidavit would say this
3959 individual has a gang membership as evidenced by a
3960 confession, a color, a tattoo, an association, a on and on.
3961 And that evidence would be the probable cause for this
3962 particular element of violence. If we are trying to stop
3963 violent crime, let's go after those that commit the violent
3964 crime.

3965 Chairman Nadler. The gentleman's time has expired. The
3966 gentl lady from Texas. No, I am sorry. The gentleman from
3967 Georgia.

3968 Mr. Johnson of Georgia. Thank you, Mr. Chairman, and I
3969 move to strike the last word.

3970 Chairman Nadler. The last word is duly stricken. The
3971 gentleman is recognized.

3972 Mr. Johnson of Georgia. I rise in opposition to this
3973 amendment. This is commonsense legislation that goes to
3974 protect society and protect those who would be a danger to
3975 themselves. And I want to commend Representative McBath for
3976 her diligence and her work in crafting this legislation along
3977 with Representative Carbajal.

3978 This is meaningful legislation. It would mark a crucial
3979 step towards addressing our country's tragic suicide
3980 epidemic. In 2017, over 47,000 Americans died by suicide,
3981 and more than half of these included the use of a firearm.
3982 This marks a 31 percent increase in suicides since 2001.
3983 When loved ones are a danger to themselves and others, many
3984 people do not know where to turn for their loved ones.

3985 H.R. 1236 could change that by providing Federal funding
3986 to increase public awareness of the extreme risk laws and
3987 establishing a Federal extreme risk law. The family and
3988 friends of those considering suicide could be educated on an
3989 effective life-saving resource. However, if we are to
3990 require our Federal court system to implement extreme risk
3991 protection orders and place the onus on them to enforce
3992 these, we must ensure the Federal court system has the
3993 resources to do so.

3994 The Judicial Conference currently believes district

3995 court systems are understaffed, burdening judges and impeding
3996 their ability to seek justice in their own courtrooms. In
3997 fact, in 2019, the Judicial Conference recommended that the
3998 Northern District of Georgia hire at least one additional
3999 permanent judge to alleviate the burden on current judges.
4000 Additionally, the workload of magistrate judges has increased
4001 since 2014 with an 8 percent increase of total matters
4002 disposed of by these judges.

4003 In fact, the last government shutdown severely
4004 restricted Federal court operations, allowing President Trump
4005 to not only hold Federal employees hostage, but our judicial
4006 system as well. Had the President not finally agreed to work
4007 with Congress, paid operations would have shut down after
4008 January the 18th. Now H.R. 1236 is vitally important and
4009 would take crucial steps to save the lives of people who are
4010 suffering and might be a danger to themselves. However, we
4011 cannot expect it to be as effective as it could be if we
4012 don't ensure our Federal court system is fully funded and has
4013 all of the resources necessary to enforce this bill.

4014 So once again, we are between a rock and a hard place.
4015 We need this bill, and we also will need to ramp up our
4016 funding for the Federal courts. So let's pass this bill.
4017 Let's do what we need to do to protect the public and to
4018 protect those who would resort to suicide with no other
4019 options. Let's help our relatives and friends of these

4020 people, help them and pass this legislation. And with that,
4021 I will yield back.

4022 Chairman Nadler. Who seeks recognition? The gentleman
4023 from Texas, Mr. Gohmert.

4024 Mr. Gohmert. I will rise in support of the amendment.
4025 I think it is well thought out. Any time we can add probable
4026 cause finding to determinations by a court when they are
4027 considering constitutional rights, then it certainly makes a
4028 proposed bill better. I know sometimes here in Congress
4029 people get to be playing games, but I greatly appreciate the
4030 sincerity of my colleague, Mrs. McBath. It brings to mind so
4031 many times sitting there as a judge on felony cases and
4032 listening to the horrendous effects of crime.

4033 My friend from Texas had mentioned that since the events
4034 of 1999 in Colorado that nothing has changed, but actually in
4035 1999, the assault weapons ban was in place. And I know that
4036 some like to say, oh, it was so effective and that is one of
4037 the directions folks here may want to go, apparently do. But
4038 the study that was done and often cited by people like
4039 Senator Feinstein, by Chris Koper and Jeff Roth, National
4040 Institute for Justice, they actually noted, "The evidence is
4041 not strong enough for us to conclude that there was any
4042 meaningful effect, i.e., that the effect was different from
4043 zero." Seven years later, the NIJ published a follow up and
4044 said, "We cannot clearly credit the assault weapons ban with

4045 any of the Nation's recent drop in gun violence. And indeed,
4046 there's been no discernible reduction in the lethality and
4047 injuriousness of gun violence."

4048 John Adams in 1797 as our second President said, "This
4049 Constitution is intended for a moral and religious people.
4050 It is wholly inadequate for the government of any other." As
4051 we hear about victimization, as we hear my friend from
4052 Georgia talk about the suicides, I can guarantee you crimes,
4053 suicides will increase as morality and spirituality continue
4054 to decrease in America.

4055 The polls show very clearly, as the Supreme Court said
4056 at the turn of the 19th Century in the *Trinity Church* case,
4057 that, you know, it cited pages of evidence and said this is a
4058 Christian Nation. Obviously everybody wasn't a Christian.
4059 But as David Horowitz, former Communist and avowed atheist
4060 Jew, currently says in his current newest book what we are
4061 seeing is really an attack on Christianity, and that is going
4062 on around this Nation. And I know some can scoff, but the
4063 more we get away from being moral and religious Nation, the
4064 more need there will be to get rid of the Second Amendment,
4065 to get rid of freedom of assembly. Oh, before that, you
4066 can't continue to have a right against unreasonable search
4067 and seizure, due process, freedom of assembly, freedom of
4068 speech, freedom of religion. Those will have to go away
4069 because we are no longer a moral and religious Nation.

4070 Mr. Raskin. Would the gentleman yield?

4071 Mr. Gohmert. No, I won't. I don't have enough time to
4072 do that. So I would just submit to you that we can use these
4073 words and try to craft laws, but people will continue to kill
4074 themselves at a higher and higher alarming rate, and there
4075 will be continuing these mass shootings we didn't used to
4076 deal with. But perhaps there was something good when children
4077 in school were taught that you shouldn't covet, you shouldn't
4078 not be jealous, you shouldn't kill, that those are things you
4079 should not do. And today we have more politicians
4080 encouraging jealousy, covetousness, and we have divided the
4081 country, and it needs to stop. That will do more than any of
4082 these bills in taking away constitutional rights. I yield
4083 back.

4084 Chairman Nadler. The gentleman yields back. The
4085 gentlelady from Pennsylvania, Ms. Dean.

4086 Ms. Dean. Thank you, Mr. Chairman, and I rise in
4087 opposition to this amendment for all of the reasons and the
4088 flaws that have been pointed out by my colleagues. But I
4089 want to speak to the underlying bill, to compliment Mrs.
4090 McBath, our colleague and friend, for her courage,
4091 Representative Carbajal, the Chairman. I just thank you for
4092 doing this. I wanted to serve on the Judiciary Committee,
4093 and one of the reasons I wanted to serve on the Judiciary
4094 Committee was to make a difference around gun violence. We

4095 can. We are going to. And because of your strength, I
4096 believe we will get there.

4097 I have long believed in this measure, and I am going to
4098 tell you a very personal story why. It was literally 30
4099 years ago today. I just texted my husband to say you okay I
4100 tell this story? It was 30 years ago today that my then 26-
4101 year-old sister-in-law in Columbia, South Carolina, was
4102 riding her scooter to work when a drunk driver hit her,
4103 killed her, and left the scene. She was 26. She was
4104 beautiful. She had her whole life ahead of her. Hit and run
4105 driver.

4106 My husband had the sad task of going down to Columbia to
4107 collect her body, and a couple of days later he and I went
4108 down to collect her things. She was engaged and living with
4109 her fiance, and when we packed up her things, we found a gun
4110 in the house. We also by then recognized and knew who the
4111 killer was. The drunk driver literally was the back-door
4112 neighbor, within shooting distance of my sister-in-law's
4113 home.

4114 My husband and I were enraged at the killing, but we
4115 didn't think twice. We looked at each other. We saw the
4116 gun. We put it in our trunk and locked the trunk. There was
4117 a gun in that house. I didn't think twice. Of course, I was
4118 not going to leave it lying around for my sister-in-law's
4119 fiance who was enraged. He was out of his mind with grief

4120 and anger and loss. I wasn't going to risk leaving it
4121 around. It is a rational thing to do, and people need the
4122 ability to do that legally.

4123 We need to give people the chance to save lives. Not
4124 all death is gun violence or gang violence. Much of it is
4125 suicide, as Mr. Johnson so eloquently pointed out. We have a
4126 serious crisis of suicide. We have people who fall into
4127 grave crises. They are not otherwise mentally ill, but like
4128 my brother-in-law, he was in a grave crisis. I did not want
4129 to risk anybody else getting hurt. We need to give people
4130 these tools. They are legal. They offer due process. They
4131 will save lives. Red flags laws makes sense. They made
4132 sense years ago. They make sense now, and I hope we will
4133 pass this and save lives. I yield the remainder of my time.

4134 Chairman Nadler. The gentlelady yields back. Does
4135 anyone else seek recognition on this amendment? The
4136 gentlelady from Georgia.

4137 Mrs. McBath. Thank you, Mr. Chairman. I would like to
4138 just make a response in reference to my Republican colleague,
4139 Mr. Gohmert. You know, I cannot agree with him more in terms
4140 of the country being in a moral crisis and guns have a lot to
4141 do with it. But I just have to say this one thing, that I
4142 truly believe that the moral crisis is that the guns have
4143 become our god. Guns have become our god. Guns have become
4144 the means by which we solve all of our problems, have become

4145 our authority.

4146 Guns are the problem because we no longer reverence God.
4147 I agree with you 100 percent. But immorally using guns as
4148 the mean to solve our problems and our differences, then
4149 definitely we are in moral decay. And for anyone that
4150 considers themselves a person of faith to continue to watch
4151 this carnage and not be able or willing to act, that is
4152 immoral. And I yield back the balance of my time.

4153 Chairman Nadler. The gentlelady yields back. The
4154 gentlelady from Pennsylvania.

4155 Ms. Scanlon. I just was looking at the amendment that
4156 was offered, and I have to say I am a little confused about
4157 the amendment because our colleagues across the aisle have
4158 said that they oppose this bill because it does not provide
4159 enough due process, but this amendment fails that test. It
4160 only requires probable cause when the bill itself would
4161 require clear and convincing evidence which is a higher
4162 standard. So, you know, if our colleagues think that we
4163 should have a weaker standard, then that would be great and
4164 we can just all vote on the bill as is.

4165 Also, the bill as written also would allow them to
4166 provide that evidence if we have a gang member who is a
4167 current danger, so it doesn't not exclude offering evidence
4168 if, in fact, it can be provided. So I do not think the
4169 amendment offers anything. I think it actually is contrary

4170 to the arguments that our colleagues are making, and I would
4171 oppose it on that basis.

4172 Chairman Nadler. The gentlelady yields back. The
4173 gentlelady from Texas.

4174 Ms. Jackson Lee. I want to respect the gentleman from
4175 Colorado. We work together on some matters, and I appreciate
4176 his offering. I want to keep communities safe, and certainly
4177 it is a trigger, if you will, when communities hear about
4178 gangs. I would be inclined to support the gentleman from
4179 Colorado's amendment, but I think we have written a very
4180 strong bill dealing with these risk orders.

4181 As I said, since 1999, Columbine, in the United States
4182 Congress, we have not moved much of an inch on trying to
4183 secure communities. You would utilize the term "gang," and
4184 most of our constituents would say put them on the list. I
4185 would be open to considering this after the fact to give it
4186 more thought. But right now as it is written, and knowing
4187 the protections that are in this bill that deals with ex
4188 parte orders and deals with long-term orders with hearings, I
4189 couldn't undermine that with this provision that is vague,
4190 with dangerous consequences.

4191 What is a juvenile, 12, 11, 8, 14, 15, 16? A juvenile
4192 is someone who runs awry of the school officer, named many
4193 different names in our schools throughout the Nation. A
4194 juvenile is someone inside a car who shouldn't be in the car

4195 where the older, more experienced young men mostly, or young
4196 girls, are driving it. A juvenile is a child whose brain is
4197 not fully formed. And my concern would be it is with a
4198 database and list that could not be vetted, could not be
4199 assured that it is used and updated where that juvenile in
4200 college now is still on the list for something they did when
4201 they were 14.

4202 And then I think the last point that plagues the
4203 criminal justice system, it is inherently biased, where the
4204 predominant population incarcerated across America are
4205 African-American men, and increasingly Latinos, and
4206 increasing African-American women. So I could not cede to
4207 this language knowing that the dominant members on that list
4208 who could be judged not dangerous, but have had a run-in with
4209 the law in the early period of their life -- 8, 9, 10, 11,
4210 12, 13, 14, 15 -- and they're on a list, and they're
4211 predominantly young men of color.

4212 I think the four corners of this legislation allows
4213 indicia to be able to utilize the present list to cull those
4214 who may be engaged in detrimental activity that may be
4215 juveniles. The definitions does not say what age the persons
4216 are who are engage in potential detrimental activity. So I
4217 would make the argument that this is not an adult bill. It
4218 says if you are engage in certain conduct that you would, in
4219 fact, be subject to such an order. A parent could indicate

4220 that that teenager is subject to certain behavior, and we
4221 realize that Columbine teenagers, Sandy Hook teenagers, a
4222 Santa Fe teenager, that parent, that teacher, could have
4223 taken note of that behavior. And I would recognize that, and
4224 it is recognized in this legislation.

4225 But for living in my life, and living in my
4226 neighborhoods, and living with juvenile detention centers
4227 that have 200-plus youngsters predominantly of color, I have
4228 to oppose this amendment. I yield back.

4229 Mr. Swalwell. Mr. Chairman?

4230 Chairman Nadler. The gentleman from California is
4231 recognized.

4232 Mr. Swalwell. Thank you, Mr. Chairman. And I want to
4233 ask the gentleman from Colorado, who has offered the
4234 amendment, if he would consider by agreement an amendment to
4235 his amendment on line 8 where it says, "otherwise tracking
4236 gangs, gang members," and to add, "any individual affiliated
4237 with white nationalism." And I would yield to the gentleman.

4238 Mr. Buck. I consider that a gang. Let's go for it.

4239 Mr. Swalwell. So you would add that language?

4240 Mr. Buck. Absolutely. White nationalism, black
4241 nationalism. I think any type of supremacy and someone in a
4242 gang organization, absolutely. Add it to it. If they are
4243 being tracked by a police department for that and it is a
4244 dangerous organization, you know, if you want to do that,

4245 let's add La Cosa Nostra to this.

4246 Mr. Swalwell. I am just asking on my amendment to --

4247 Mr. Buck. Sure, sure.

4248 Mr. Swalwell. Okay. I will yield back. Thank you.

4249 Chairman Nadler. The gentleman yields back.

4250 Mr. Swalwell. As amended, right?

4251 Chairman Nadler. Doesn't the amendment to amend the
4252 amendment require unanimous consent? Suspend for a moment.

4253 Mr. Swalwell. So, yes, Mr. Chairman, I am asking for
4254 unanimous consent to amend the amendment with the language
4255 agreed upon by Mr. Buck and myself.

4256 Chairman Nadler. Do we need unanimous consent for that?
4257 Unanimous consent is required for a second degree amendment.
4258 Suspend for a moment.

4259 [Pause.]

4260 Chairman Nadler. Without objection, the amendment is
4261 amended.

4262 I would still urge a no vote on the amendment as
4263 amended.

4264 Mr. Collins. Mr. Chairman, I am withholding objection.
4265 We have gotten real agreeable here, but I would like to at
4266 least see the language that was said. There was a discussion
4267 held on white nationalism. There was a discussion on black
4268 nationalism here. I need to see the language that we just
4269 agreed upon.

4270 Chairman Nadler. It is entirely unreasonable to ask to
4271 see the language.

4272 [Laughter.]

4273 Mr. Collins. That is a terrible thing. Not to get in
4274 front of the parade.

4275 Mr. Swalwell. If the gentleman will yield?

4276 Mr. Collins. Let's at least make sure what we are
4277 doing.

4278 Mr. Swalwell. If the gentleman will yield, I will --

4279 Chairman Nadler. Yeah, would the gentleman put the
4280 amendment in writing?

4281 Mr. Collins. I don't have time. I mean, I was asking a
4282 question. I was reserving the right to object.

4283 Mr. Swalwell. It was simply, Mr. Chairman, line 8,
4284 "including individuals affiliated with white nationalism."
4285 Hard stop.

4286 Mr. Buck. Mr. Chairman?

4287 Chairman Nadler. The gentleman is recognized.

4288 Mr. Buck. Mr. Chairman, I would accept an amendment
4289 that said that one of the risk factors would be any form of
4290 supremacy indicating a tendency to violence. That would
4291 include your white supremacy or white nationalism.

4292 Chairman Nadler. "Any?" What does that mean?

4293 [Laughter.]

4294 Mr. Swalwell. So, Mr. Chairman --

4295 Chairman Nadler. I would object to that.

4296 Mr. Swalwell. Yeah.

4297 Chairman Nadler. I don't know what that means.

4298 Mr. Swalwell. Mr. Chairman, with respect to Mr. Buck, I
4299 am offering that. And to move this along, if he doesn't want
4300 to accept that, I will withdraw it if Mr. Buck does not want
4301 to accept the language I offered.

4302 Chairman Nadler. The second degree amendment is
4303 withdrawn. The gentlelady from Washington.

4304 Ms. Jayapal. Thank you, Mr. Chairman. I just wanted to
4305 go back to this amendment and the question of gang databases.
4306 And I wanted to highlight a report that was just released by
4307 the inspector general for the City of Chicago. And in that
4308 report, they talk about how immigration officials, education
4309 agencies, and the FBI accessed the database more than 1
4310 million times over the last decade. And in the report, it
4311 noted the police in the last 20 years identified more than a
4312 134,200 people as gang members, but 15,000 of those entries
4313 did not list gang membership or explain why they were listed
4314 as gang members. Nearly 1 thousand people were listed with
4315 multiple genders, 80 people were entered as zero years old,
4316 90 people had a birth date before 1901, and thousands were
4317 identified as gang members despite not being arrested or
4318 accused of a crime.

4319 And so I think that this amendment is problematic on so

4320 many levels, and I want to take us back to the underlying
4321 bill and Extreme Risk Order Protection Act, which would
4322 incentivize states and localities to implement extreme risk
4323 laws, which is simply common sense. And I wanted to bring
4324 forward our experience in my home State of Washington, which
4325 became the fourth State in the nation to pass an extreme risk
4326 law in 2016.

4327 Since we have implemented that law in Washington State,
4328 and we have supported it with county resources to help
4329 enforce the law by also recovering firearms from people
4330 ordered to surrender them by a judge, a number of people at
4331 risk of suicide have been referred. According to Kimberly
4332 Wyatt, who runs the King County program, she has "seen folks
4333 who were in the midst of a behavioral health crisis come into
4334 court and thank law enforcement for saving their lives."
4335 Late last year, law enforcement in Washington State prevented
4336 a possible mass shooting after someone flagged a potential
4337 threat, and that was a man who posted images on Facebook of
4338 himself holding an AR-style rifle and posted repeated threats
4339 to "kill 30 Jews and commit a school shooting."

4340 So evidence shows that these extreme risk laws are
4341 effective. For every 10 to 20 firearm removals under extreme
4342 risk laws in Connecticut and Indiana, about one life was
4343 saved through a suicide preventive. A case study in
4344 California's extreme risk law found at least 21 cases in

4345 which extreme risk protection orders were used to disarm
4346 people who threatened mass shootings. And the support for
4347 these laws cut across demographics and party. A recent NPR
4348 poll showed that Americans, including Republicans and gun
4349 owners, broadly support red flag laws like this.

4350 And so I just want us to come back to the incredibly
4351 passionate and moving testimony of my colleague,
4352 Representative McBath, and thank goodness we have you here in
4353 Congress. We are talking about saving lives. We are talking
4354 about reasonable things that can and have been done in States
4355 across the country that have been shown to be working, that
4356 do not continue to need amendments like this one that we
4357 have, with tremendous respect to my colleague, Mr. Buck. We
4358 have data that shows that these laws work. We should just
4359 pass this law here in Congress, and we should move on to the
4360 other bills that we have that also are necessary, and a
4361 tapestry of laws that we need to pass here in Congress
4362 because the reality is that as we sit here debating and
4363 debating, more lives are being lost.

4364 In the 200 days since the Senate failed to act on the
4365 commonsense legislation that we passed in the House of
4366 Representatives, we have had incredible numbers of mass
4367 shootings in El Paso, Texas, and Dayton, Ohio. We went with
4368 my colleague, Representative Escobar. Congressman Neguse and
4369 I went to the vigil and the memorial in El Paso. Deeply

4370 moving.

4371 We need to take action, and I just hope that my
4372 colleagues will get to the core of what this bill does, which
4373 has been proven again and again, State after State, to be an
4374 effective way of ensuring that we do not put guns in the
4375 hands of those who are at extreme risk, red flag laws. So I
4376 thank you, Mr. Chairman, and I yield back the balance of my
4377 time.

4378 Chairman Nadler. The gentlelady yields back.

4379 The question is on the amendment.

4380 Mr. Reschenthaler. Mr. Chairman?

4381 Chairman Nadler. Those in favor, say aye.

4382 Mr. Collins. We got a request.

4383 Chairman Nadler. The gentleman from Pennsylvania, who I
4384 hope will be the last speaker on this amendment. Florida.

4385 Mr. Reschenthaler. Mr. Chair. Mr. Chair, I am good.

4386 Thanks.

4387 Mr. Gaetz. Thank you, Mr. Chairman. If the gentlelady
4388 is correct that these red flag laws are working State by
4389 State, then I don't understand why we would not allow them to
4390 continue to work State by State. It seems notable to me that
4391 my State of Florida has a strong sheriff-based system. Other
4392 States have State police, which is not a regime we are
4393 familiar with. And so to institute a national red flag law
4394 seems to be unfaithful to the very debate that we hear from

4395 my Democratic colleagues.

4396 I am rather proud of Florida's red flag law. I think
4397 that it gives sufficient due process. I think a lot of the
4398 concerns my Republican colleagues have addressed wouldn't
4399 apply to the Florida law, but I also recognize that different
4400 States are different, and it would be my hope that we allow
4401 the federalist system that we are all proud to serve within
4402 to function correctly. It is my expectation that best
4403 practices will emerge, that they will be copied among the
4404 States, and we can get on to the stuff that only the Federal
4405 government could do, like reforming our asylum laws, so that
4406 we don't continue to have a mounting crisis on our southern
4407 border. But I know the ranking member has more to offer, and
4408 so I yield to him the remainder of my time.

4409 Mr. Collins. Thank you, and I agree with the Chairman,
4410 and we are just finishing up. But I think one of the things
4411 that was just brought up by the gentleman from Florida is
4412 these conflicting standards that we found in this bill.
4413 There is a conflicting, you know, process standard in the
4414 bill between States and also between the Federal, and I think
4415 that is a problem would invite reform shopping and invite
4416 others.

4417 There are also many laws, those that have red flag laws,
4418 that already have issues if someone is having an issue, you
4419 could be brought before a judge. You could be, you know,

4420 found incompetent. You could find these, and every State has
4421 those. But also going back to the last point, and this is
4422 actually something that the gentlelady from Washington and I
4423 said. We actually agree on this, just in different ways. If
4424 can't bring this list up, even with due process put in, an
4425 extra step of due process, then don't ever bring the No Fly,
4426 No Buy list up again. Don't ever bring it up again because
4427 there is no due process on that list. You can be on the list
4428 and not even know it, and similar names are a problem.

4429 So I guess in having this conversation. I can
4430 understand if you want to vote against it or not like it. I
4431 can get that. But let's don't have another discussion. In
4432 fact, I would maybe put forth let's do away with the No Fly,
4433 No Buy list, but everybody would go, really upset about that.
4434 But this brings out a problem. This one actually makes the
4435 list better in the sense that it is still problematic, which
4436 I think we would agree upon, but at least there is a probable
4437 cause outside of even being put on a list.

4438 Ms. Jayapal. Would the gentleman yield?

4439 Mr. Collins. I will yield for a second.

4440 Ms. Jayapal. I was not in Congress when the No Fly, No
4441 Buy list was passed, but I will just tell you that on the
4442 outside, we were not in favor of it for exactly the same
4443 reasons. There is a serious problem with who ends up on
4444 these lists and how you get off of these lists. And I don't

4445 think that my entire caucus agrees with me on that, so I am
4446 not speaking for anybody else, but I am saying that there is
4447 a consistency here at least to the thinking that these
4448 databases have tremendous problems.

4449 And the reality is that on the No Fly, No Buy list, that
4450 No Fly list, that list targets a lot of Muslims, a lot of
4451 Sikh Americans, a lot of individuals that are deemed as
4452 terrorists. Here, we are targeting black and brown
4453 communities, as my colleague from Texas talked about, and I
4454 just think we have to be very clear that there are a lot of
4455 problems with these databases. We talked about this during
4456 the DREAM Act. We had extensive discussion on this. So I am
4457 consistent, Mr. Collins. I am with you on that.

4458 Mr. Collins. And I agree, and I think, reclaiming the
4459 time, and I think the gentlelady is right because I was here
4460 and lived through this and was talked very badly, you know,
4461 about whenever we say this is a problem, we were the worst in
4462 the world because you are saying, well, you are letting
4463 terrorists get a gun. No, that was not the issue on this.

4464 So I think, you know, we have had this discussion. I
4465 appreciate the gentleman from Colorado, you know, bringing
4466 this up. I mean, there is sufficient protection. I will
4467 vote for this amendment. But at least it has brought out a
4468 large discussion sometimes, but in late nights in the
4469 Judiciary Committee, as I have found over my 6-and-a-half

4470 years here, it is amazing who comes around to actually having
4471 similar points of view. I would have never started the day
4472 thinking Ms. Jayapal and I would have a similar point of view
4473 on something. But we can handle that, and the world is still
4474 going to be here processing tomorrow. I yield back.

4475 Chairman Nadler. The gentleman yields back.

4476 The question finally occurs on the amendment.

4477 Those in favor, say aye.

4478 Opposed, no.

4479 In the opinion of the chair, the nays have it, and the
4480 amendment is not agreed to.

4481 Mr. Collins. Roll call.

4482 Chairman Nadler. A roll call is requested. The Clerk
4483 will call the roll.

4484 Ms. Strasser. Mr. Nadler?

4485 Chairman Nadler. No.

4486 Ms. Strasser. Mr. Nadler votes no.

4487 Ms. Lofgren?

4488 Ms.. Jackson Lee?

4489 Ms. Jackson Lee. No.

4490 Ms. Strasser. Ms. Jackson Lee votes no.

4491 Mr. Cohen?

4492 Mr. Johnson of Georgia?

4493 Mr. Johnson of Georgia. No.

4494 Ms. Strasser. Mr. Johnson of Georgia votes no.

4495 Mr. Deutch?

4496 Mr. Deutch. No.

4497 Ms. Strasser. Mr. Deutch votes no.

4498 Ms. Bass?

4499 Mr. Richmond?

4500 Mr. Richmond. No.

4501 Ms. Strasser. Mr. Richmond votes no.

4502 Mr. Jeffries?

4503 Mr. Cicilline?

4504 Mr. Swalwell?

4505 Mr. Swalwell. No.

4506 Ms. Strasser. Mr. Swalwell votes no.

4507 Mr. Lieu?

4508 Mr. Lieu. No.

4509 Ms. Strasser. Mr. Lieu votes no.

4510 Mr. Raskin?

4511 Mr. Raskin. No.

4512 Ms. Strasser. Mr. Raskin votes no.

4513 Ms. Jayapal?

4514 Ms. Jayapal. No.

4515 Ms. Strasser. Ms. Jayapal votes no.

4516 Mrs. Demings?

4517 Mrs. Demings. No.

4518 Ms. Strasser. Mrs. Demings votes no.

4519 Mr. Correa?

4520 Mr. Correa. No.

4521 Ms. Strasser. Mr. Correa votes no.

4522 Ms. Scanlon?

4523 Ms. Scanlon. No.

4524 Ms. Strasser. Ms. Scanlon votes no.

4525 Ms. Garcia?

4526 Ms. Garcia. No.

4527 Ms. Strasser. Ms. Garcia votes no.

4528 Mr. Neguse?

4529 Mr. Neguse. No.

4530 Ms. Strasser. Mr. Neguse votes no.

4531 Mrs. McBath?

4532 Mrs. McBath. No.

4533 Ms. Strasser. Mrs. McBath votes no.

4534 Mr. Stanton?

4535 Mr. Stanton. No.

4536 Ms. Strasser. Mr. Stanton votes no.

4537 Ms. Dean. No.

4538 Ms. Strasser. Ms. Dean votes no.

4539 Ms. Mucarsel-Powell?

4540 Ms. Mucarsel-Powell. No.

4541 Ms. Strasser. Ms. Mucarsel-Powell votes no.

4542 Ms. Escobar?

4543 Ms. Escobar. No.

4544 Ms. Strasser. Ms. Escobar votes no.

4545 Mr. Collins?

4546 Mr. Collins. Aye.

4547 Ms. Strasser. Mr. Collins votes aye.

4548 Mr. Sensenbrenner?

4549 Mr. Chabot?

4550 Mr. Gohmert?

4551 Mr. Gohmert. Aye.

4552 Ms. Strasser. Mr. Gohmert votes aye.

4553 Mr. Jordan?

4554 Mr. Buck?

4555 Mr. Buck. Aye.

4556 Ms. Strasser. Mr. Buck votes aye.

4557 Mr. Ratcliffe?

4558 Mrs. Roby?

4559 Mrs. Roby. Aye.

4560 Ms. Strasser. Mrs. Roby votes aye.

4561 Mr. Gaetz?

4562 Mr. Gaetz. Aye.

4563 Ms. Strasser. Mr. Gaetz votes aye.

4564 Mr. Johnson of Louisiana?

4565 Mr. Johnson of Louisiana. Aye.

4566 Ms. Strasser. Mr. Johnson of Louisiana votes aye.

4567 Mr. Biggs?

4568 Mr. Biggs. Aye.

4569 Ms. Strasser. Mr. Biggs votes aye.

4570 Mr. McClintock?

4571 Mr. McClintock. No.

4572 Ms. Strasser. Mr. McClintock votes no.

4573 Mrs. Lesko?

4574 Mrs. Lesko. Aye.

4575 Ms. Strasser. Mrs. Lesko votes aye.

4576 Mr. Reschenthaler?

4577 Mr. Reschenthaler. Aye.

4578 Ms. Strasser. Mr. Reschenthaler votes aye.

4579 Mr. Cline?

4580 Mr. Cline. Aye.

4581 Ms. Strasser. Mr. Cline votes aye.

4582 Mr. Armstrong?

4583 Mr. Steube?

4584 Chairman Nadler. The gentlelady from California?

4585 Ms. Lofgren. No.

4586 Ms. Strasser. Ms. Lofgren votes no.

4587 Chairman Nadler. Are there any other members who wish

4588 to vote and have not voted?

4589 [No response.]

4590 Chairman Nadler. The Clerk will report. Wait. We are

4591 waiting on the gentleman from Florida?

4592 Ms. Strasser. Mr. Steube, you are not recorded.

4593 Mr. Steube. I vote yes.

4594 Ms. Strasser. Mr. Steube votes yes.

4595 Chairman Nadler. The clerk will report.

4596 Ms. Strasser. Mr. Chairman, there are 11 ayes and 21
4597 noes.

4598 Chairman Nadler. The amendment is not agreed to. Are
4599 there any further amendments to the amendment in the nature
4600 of a substitute?

4601 Mr. Johnson of Louisiana. Mr. Chairman?

4602 Chairman Nadler. The gentleman from Louisiana.

4603 Mr. Johnson of Louisiana. I have an amendment at the
4604 desk.

4605 Chairman Nadler. The clerk will report the amendment.

4606 Ms. Strasser. Amendment to the amendment in the nature
4607 of a substitute to H.R. 1236, offered by Mr. Johnson of
4608 Louisiana. Page 29, line 6, strike "shall be," and all that
4609 follows through line 9.

4610 Chairman Nadler. Without objection, the amendment will
4611 be considered as read.

4612 [The amendment of Mr. Johnson of Louisiana follows:]

4613

4614 Chairman Nadler. The gentleman is recognized to explain
4615 his amendment.

4616 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. I
4617 offer this amendment to further --

4618 Chairman Nadler. The gentlelady from California
4619 reserves a point of order.

4620 Mr. Johnson of Louisiana. Thank you. I offer this
4621 amendment to further deter an applicant from knowingly
4622 providing materially-false information or intentionally
4623 harassing an individual named on an extreme risk protection
4624 application. We have to do all within our power to prevent
4625 falsely depriving any American of their constitutional
4626 rights, and I think we can help do this by increasing the
4627 level of punishment here.

4628 In the underlying legislation, H.R. 1236 did not include
4629 any penalties for false reporting or frivolous petitions.
4630 While the amendment in the nature of a substitute now
4631 includes such a provision, it does not go far enough to deter
4632 false claims. My amendment would add that an applicant
4633 abusing this process can be fined up to \$5,000, imprisoned
4634 for not more than 5 years, or both, to make it crystal clear
4635 that no American with a malicious intent to falsely strip a
4636 citizen of their constitutional rights will be permitted at
4637 any time. The right to bear arms is a critically-important
4638 part of our constitutional history and traditions. It is

4639 rooted in our inalienable right to self-defense, to ensure
4640 personal security, liberty, and private property, and we have
4641 a duty here in the House Judiciary Committee to guard that
4642 very carefully.

4643 I just want to say this to my dear colleague, Mrs.
4644 McBath, whose story is compelling. I know that we agree on
4645 the moral crisis in our country, and I am glad you said that
4646 tonight. I just take issue with one thing you said. You
4647 said our concern is that guns have become our god. Those are
4648 your words. That is not our concern. Our concern is that
4649 there is a very real risk today the State is taking the place
4650 of god, that the State is becoming our god. And that was the
4651 founders' great fear. That is the reason we have the Bill of
4652 Rights. It is the reason it was passed. It is the reason we
4653 have to protect these individual rights because it so
4654 important to who we are as Americans and as human beings.

4655 So I urge my colleagues to support what I think is a
4656 very reasonable amendment, and I yield back my time.

4657 Mr. Swalwell. Would the gentleman yield?

4658 Mr. Johnson of Louisiana. I am happy to yield.

4659 Mr. Swalwell. I thank the gentleman for yielding, and I
4660 would just ask if the gentleman is familiar with any
4661 jurisdiction in the United States, a territory or a State,
4662 where perjury is not a crime, meaning where if someone was to
4663 go to a court and give a false statement, where they could

4664 not be charged with a crime. And I would yield back.

4665 Mr. Johnson of Louisiana. No, I think that is a crime
4666 in every jurisdiction, unless you are talking about the FBI,
4667 Representative Gohmert says. No, but what we need to do is
4668 build into this bill, and it has been acknowledged because
4669 the amendment in the nature of a substitute does have these
4670 penalties. It has been acknowledged, I think, on both sides
4671 of the aisle that we need to have a deterrent here because
4672 this is so serious. This step that is being taken is so
4673 serious. All I am saying is let's enhance the penalty
4674 because if you are going to have a real deterrent, you need
4675 to make it serious. I yield back the remainder --

4676 Ms. Lofgren. I withdraw my point of order.

4677 Mr. Johnson of Louisiana. I yield back, Mr. Chairman.

4678 Mr. Lieu. Mr. Chair?

4679 Chairman Nadler. The gentlelady has withdrawn the point
4680 of order. For what purpose does the gentleman from
4681 California seek recognition?

4682 Mr. Lieu. I move to strike the last word.

4683 Chairman Nadler. The gentleman is recognized for 5
4684 minutes.

4685 Mr. Lieu. Let me first thank Representative Carbajal
4686 and Representative McBath for this legislation. I want to
4687 say that everyone on this committee wants to reduce gun
4688 violence, so I don't doubt the motivations or sincerity of my

4689 colleagues across the aisle. I do note that their arguments
4690 and policies have not made us safer. So over the years, in
4691 fact, based on recent studies, we have increased mass
4692 shootings, not only in frequency, but also in lethality. We
4693 have heard numbers and arguments from my colleague across the
4694 aisle, and both their policies and those advanced by the
4695 President have not worked. And I think we should look at
4696 different ways to solve this problem.

4697 With respect to this specific legislation, the Extreme
4698 Risk Protection Order, what we are doing actually is not that
4699 new because under domestic violence restraining orders, you
4700 can take away the guns of the perpetrator in an *ex parte*
4701 hearing. We have 5150 mentally ill kinds of determinations
4702 where, again, the person can get the guns taken away without
4703 having to be at a hearing. So this has been done before in
4704 other jurisdictions. Courts have upheld it.

4705 So this amendment is particularly odd because it doesn't
4706 seem that in these other instances with domestic violence
4707 restraining orders and with 5150 proceedings that we have
4708 this massive increased penalty. There is no reason for it to
4709 apply to this bill. Much of this bill is simply funding
4710 existing laws in existing States that have extreme risk
4711 protection laws that have been upheld by the courts. And so
4712 nothing here is unconstitutional because the courts have
4713 already upheld existing laws that do this.

4714 I note that I was in the California state legislature
4715 when a young man went on a rampage in Isla Vista near UC
4716 Santa Barbara and killed six students and injured several
4717 others. It was a tragic day, and it spurred us to pass
4718 California's Gun Violence Restraining Order law, the first
4719 extreme risk protection order State law in the country. Now,
4720 I believe that this legislation will be very helpful for
4721 States to continue doing these laws.

4722 I also have two marksmanship awards from the U.S.
4723 military. I have fired guns. I have taken them apart. I
4724 have cleaned them. I know how lethal they are. So in terms
4725 of suicide, they are extremely lethal, more lethal than any
4726 other means of suicide. We know that, based on the latest
4727 statistics from the Centers for Disease Control, in 2017
4728 there were 39,773 gun deaths, just over 100 a day. So today
4729 in America, over 100 people will die from gun violence.
4730 Thirty-five will be killed by someone else. Over 60 will be
4731 by suicide.

4732 These extreme risk protection orders will help mitigate
4733 that problem, and we know it works because studies have shown
4734 that it works and States have adopted these extreme risk
4735 protection laws. So we can try doing the same thing over and
4736 over again and expect a different result, but that doesn't
4737 seem to be working. We should try something new, and I
4738 request my colleagues to think about this as simply trying to

4739 pass legislation because the old ways have not worked, have
4740 not kept us safer. And with that, I yield back.

4741 Chairman Nadler. I recognize myself for a moment. I
4742 recognize myself for a moment on the amendment. I am not
4743 prepared to support this amendment at this point. I don't
4744 know that we should oppose the amendment. The difference is
4745 the bill says "shall be fined not less than \$1,000." The
4746 amendment says "not more than \$5,000," but that could be
4747 \$1,000 also. The amendment adds an imprisonment up to 5
4748 years. Presumably someone who did it so egregiously that a
4749 judge would do that probably committed perjury in doing that.
4750 My hesitation at this point is that I think before we would
4751 accept this amendment, we would have to talk to some other
4752 people, look at what various State laws say to make sure that
4753 we are not completely out of line with the practice and see
4754 what the experience is. So I will oppose this amendment for
4755 the moment, but it may be that we will go toward it by the
4756 time we get to the floor.

4757 Mr. Collins. Mr. Chairman, may I be recognized?

4758 Chairman Nadler. Yes, I will yield.

4759 Mr. Collins. I appreciate that, and I know with Mr.
4760 Johnson as well, I mean, I think we opened this. So just to
4761 clarify because I know a lot of us will be interested in it.
4762 If it could be worked together, would it be an acceptable
4763 amendment at Rules Committee, that you would --

4764 Chairman Nadler. I am not going to commit that we will
4765 accept it. I am saying we might.

4766 Mr. Collins. Okay. But, I mean, that is what you are
4767 intending.

4768 Chairman Nadler. I suppose, yes. Yes, Rules Committee.
4769 Now, I want to make clear. I am not committing that we will
4770 accept this amendment, but I do think that it is worthy
4771 enough to study it and to discuss it, and either to accept it
4772 later or to accept it in part or not. But I am not prepared
4773 to support it now. I would oppose it now if it comes to a
4774 vote, but if we don't do that, we will take a very careful
4775 look at this.

4776 Mr. Johnson of Louisiana. Would the gentleman yield?

4777 Mr. Collins. Yeah.

4778 Mr. Johnson of Louisiana. I am willing. I take the
4779 chairman at his word in good faith. I do think it is a
4780 reasonable and thoughtful amendment, and I think it is one
4781 that should be bipartisan. I do take you at your word and
4782 the others, the sponsors of this legislation, that we do not
4783 want people to abuse this. We don't want anyone to be
4784 unjustly deprived of their constitutional rights. And
4785 because of that, in the spirit of bipartisanship, which is
4786 all too rare these days, I will withdraw the amendment in the
4787 hope that we can work on that together.

4788 Chairman Nadler. Well, I appreciate the gentleman's

4789 action, and we will look at it carefully. We will be talking
4790 to you and to the ranking minority member before we go to the
4791 Rules Committee.

4792 Mr. Collins. Mr. Chairman, can I bring up a point?

4793 Chairman Nadler. I will yield.

4794 Mr. Collins. Because I know there is another amendment
4795 waiting on this one. Why don't we withdraw pending work
4796 right now and we will work on it right now because this is
4797 something we could get done. As we both have known, this
4798 is --

4799 Chairman Nadler. Well, we have to talk to other people.
4800 We can't make a decision right now.

4801 Mr. Collins. Well, we have got plenty of staff to do
4802 that. We can sit right here and do that.

4803 Chairman Nadler. No, I can't do that right now.

4804 Mr. Collins. Okay.

4805 Mr. Johnson of Louisiana. I would say, Mr. Chairman, I
4806 mean, the penalty provision is in the amendment in the nature
4807 of a substitute, so it is not that we have to determine
4808 whether or not it is appropriate.

4809 Chairman Nadler. The question is the degree of the
4810 penalty. I agree with that.

4811 Mr. Johnson of Louisiana. Right, and I am not sure that
4812 there is any research on any State level that is going to
4813 change the outcome of that.

4814 Chairman Nadler. I don't know. I am just not prepared
4815 to accept it at this point. It may be. It may be that we
4816 will accept it a week now, but, you know.

4817 Mr. Johnson of Louisiana. All right. I will withdraw
4818 it because we have been here for umpteen hours anyway, and
4819 hopefully we can work on it.

4820 Chairman Nadler. I appreciate the gentleman's action,
4821 and we will be working on this.

4822 Mr. Johnson of Louisiana. Thank you, Mr. Chair.

4823 Chairman Nadler. Are there any other amendments to the
4824 amendment in the nature of a substitute? The gentleman from
4825 California.

4826 Mr. McClintock. Yeah, I would move to amend by striking
4827 the last word.

4828 Chairman Nadler. Sorry?

4829 Mr. McClintock. I would move to amend by striking the
4830 last word.

4831 Chairman Nadler. I couldn't hear him.

4832 Mr. McClintock. Move to strike the last word.

4833 Chairman Nadler. The gentleman moves to strike the last
4834 word. The gentleman is recognized.

4835 Mr. McClintock. Thank you, Mr. Chairman. I think it is
4836 rather ironic that the previous bill on binding arbitration,
4837 it was argued that trial by jury is so important that it
4838 should be provided even when both parties waive that right in

4839 a contract, but then we immediately turn around and consider
4840 this bill which argues that we should deny a person's Second
4841 Amendment rights without a jury.

4842 I do believe the underlying premise of this bill is
4843 sound. If somebody goes out of their way to warn us they
4844 want to kill a bunch of people, we ought to take them at
4845 their word, and that is what we used to do. When we
4846 identified someone who is a danger to themselves or others,
4847 we could judicially commit them to mental hospitals where we
4848 could confine them, treat them, care for them, and protect
4849 the rest of society from the. In fact, in my State of
4850 California, in 1958, we had 37,000 mentally ill in State
4851 mental hospitals. Many of them were dangerous when the
4852 State's population was barely a third of what it is today.
4853 Proportionally, that would be about 100,000 population in
4854 mental hospitals today. We emptied out those hospitals.
4855 Only about 7,000 are now confined for treatment, and the rest
4856 are out on our streets, and many among our burgeoning
4857 homeless population.

4858 And I would ask the proponents a few questions. First,
4859 what makes you think such a law will keep firearms from
4860 violent people? Most firearms used in crimes are illegally
4861 obtained in the first place. I mean, is it the effectiveness
4862 with which our drug laws have kept drugs out of the hands of
4863 drug addicts? And second, and more importantly, if someone

4864 is too dangerous to have legal access to a gun, aren't they
4865 too dangerous to be out on our streets at all? If they are
4866 violent criminals, why aren't they incarcerated? And if they
4867 are dangerously mentally ill, why aren't they confined so
4868 that they can't do harm with illegally-obtained firearms or
4869 any number of other lethal forms of mayhem?

4870 Mr. Lieu was absolutely right in one respect. He said
4871 we do need to look closely at what policies work and what
4872 policies don't work. We did not have this crisis 50 years
4873 ago, and we have to ask what policies have changed in those
4874 50 years. Well, 50 years ago we executed murderers. Fifty
4875 years ago, we put violent criminals behind bars until they
4876 are too old and feeble to be dangerous. Fifty years ago,
4877 when we identified a dangerously mentally ill person, we
4878 confined them so that we could treat them, and we did these
4879 things fully within the provision of our Bill of Rights and
4880 trial by jury.

4881 Fifty years ago, we had virtually no gun control laws,
4882 and the question I would raise after 50 years of enacting
4883 such laws, if they were a solution to this problem, wouldn't
4884 things be getting better and not worse? You know, Mexico has
4885 the most stringent gun control laws in the Western
4886 Hemisphere, and yet their murder rate is 4 times what it is
4887 in the United States. In 50 years, we have dramatically
4888 constrained the death penalty. We release dangerous

4889 criminals back onto our streets through early release
4890 programs as well as sanctuary laws, and we have emptied our
4891 State mental hospitals. And at the same time, we have
4892 enacted a wide range of gun control laws, and things are
4893 getting worse. Fifty years of practical experience, we have
4894 discovered that gun control laws are extremely effective as
4895 disarming law-abiding citizens. They are extremely
4896 ineffective at disarming criminals, and madmen, and
4897 terrorists.

4898 Now, if we are serious about confronting this crisis, we
4899 should set aside ideology, and instead take a clear look at
4900 the public policies that actually worked to control this
4901 violence in the past and to protect all of our citizens from
4902 it. And until we are willing to do so, I believe things are
4903 going to continue to get worse. I yield back.

4904 Chairman Nadler. Are there any further amendments?

4905 Mr. Buck. Mr. Chairman?

4906 Chairman Nadler. The gentleman from Colorado --

4907 Mr. Buck. I have an amendment at the desk.

4908 Chairman Nadler. The gentleman from Colorado has an
4909 amendment at the desk, and the clerk will report the
4910 amendment.

4911 Ms. Strasser. Amendment to the amendment in the nature
4912 of a substitute to H.R. 1236, offered by Mr. Buck of
4913 Colorado. On page 22, line 20, strike --

4914 Ms. Lofgren. I reserve a point of order.

4915 Chairman Nadler. The gentlelady reserves a point of
4916 order.

4917 Without objection, the amendment will be considered as
4918 read.

4919 [The amendment of Mr. Buck follows:]

4920

4921 Chairman Nadler. The gentleman is recognized to explain
4922 his amendment.

4923 Mr. Buck. Thank you, Mr. Chairman. Mr. Chairman, I
4924 want to focus on one area of deep concern that affects active
4925 duty military personnel as well as millions of our Nation's
4926 veterans. Sadly, this bill turns a deaf ear to the concerns
4927 that our service members and veterans have been raising for
4928 years. For many years now, the VA has used a patient flag
4929 system to identify veterans who the VA bureaucrats deem
4930 unsafe or a threat. These flags are then used against the
4931 veteran to delay or deny routine medical treatment.

4932 The VA allows a veteran to be flagged as a danger even
4933 in cases where the veteran expresses "frustration about VA
4934 services and/or wait times." We all know VA wait times are
4935 unacceptable. To flag a veteran as a danger for expressing
4936 frustration with the system is simply not fair. The VA's
4937 patient flag system is also ripe for abuse. More than 6
4938 years ago, the VA inspector general concluded the bureaucracy
4939 lacked "comprehensive definition of what constitutes
4940 disruptive behavior."

4941 The system is also not uniform, allowing VA facilities
4942 to adopt their own system without proper oversight. In
4943 January 2018, the VA inspector general expressed concern that
4944 the VA flag system was arbitrary. It was secretive in that
4945 veterans were unaware that they had been flagged, and it

4946 denied the veteran due process as it lacked any recourse to
4947 remove a phony flag or file an appeal in any meaningful way.
4948 The IG also found that medical records for a full 49 percent
4949 of all flagged veterans lacked any evidence that the veteran
4950 had been notified they had been flagged.

4951 One veteran was flagged out of retribution because he
4952 registered a complaint of elder abuse after a VA nurse openly
4953 mocked and laughed at a deaf veteran of World War II in the
4954 waiting room. Flags like this are all too common. They are
4955 used to punish veterans who speak out, including on behalf of
4956 their fellow veterans. I am concerned that the VA patient
4957 flag system, which lacks proper civil liberty protections,
4958 such as notice and a right to appeal, will somehow result in
4959 and influence extreme risk protection orders. We cannot
4960 allow that to happen.

4961 Another concern that I have is that the potential for a
4962 red flag under the current bill will deter veterans from
4963 seeking appropriate medical attention for service-related
4964 disabilities. This red flag bill has the potential to
4965 stigmatize veterans who might suffer from PTSD. Congress has
4966 done so much to encourage veterans to seek needed help. Will
4967 this red flag bill now use a veteran's medical records
4968 against the veteran? We can't allow that to happen.

4969 In addition, I am concerned with the impact a red flag
4970 regime would have on active duty military personnel. Imagine

4971 a Marine who is about deploy. She recently got divorced, and
4972 her ex-husband files a petition for an extreme risk
4973 protection order against her, not because she is truly a
4974 danger to anyone, but because he is using this process, which
4975 lacks commonsense safeguards, to target his ex-wife. The
4976 kind of stress that a made-up petition would have will affect
4977 command readiness for our military. For this reason, I think
4978 red flag petitions involving active duty military personnel
4979 should be referred to DOD so they can be handled within the
4980 command authority.

4981 So here is what my amendment would do. First, it would
4982 require Federal courts to refer extreme risk protection order
4983 petitions involving active duty personnel to DOD. Second, it
4984 makes sure that past military service, which naturally
4985 involves a history of using a firearm, cannot be considered
4986 as a risk factor to deprive a veteran of their Second
4987 Amendment rights. Third, it clarifies existing Federal law
4988 to ensure that accessing VA benefits will not trigger a loss
4989 of Second Amendment rights. This approach is based on a
4990 bipartisan bill to protect veterans' rights. Fourth, it
4991 ensures that no veteran will lose their gun rights based on
4992 the fact that the veteran needs help in managing their
4993 affairs, such as VA benefits, or was flagged under the VA's
4994 patient system that fails to include proper protections and
4995 safeguards.

4996 I believe that this amendment is common sense, it
4997 contains many bipartisan provisions, and I urge the committee
4998 to adopt the amendment. I yield back.

4999 Ms. Lofgren. Mr. Chairman?

5000 Chairman Nadler. The gentleman yields back. Does the
5001 gentlelady insist on her point of order?

5002 Ms. Lofgren. I do. The amendment is outside the
5003 jurisdiction of the Judiciary Committee. It devises
5004 procedures that are within the jurisdiction of the Veterans
5005 Affairs Committee, not this one, and, therefore, it is beyond
5006 the scope of our committee authority, and is not germane.

5007 Chairman Nadler. Does the sponsor wish to reply to
5008 that?

5009 Mr. Buck. Yes. Thank you, Mr. Chairman. Mr. Chairman,
5010 this bill -- my amendment -- I am sorry -- specifically
5011 amends the bill in front of us. It doesn't ask another
5012 committee to take it up, number one. Number two, it talks
5013 about risk factors that are included in our bill,
5014 specifically page 22 of our bill, and make sure that a
5015 veteran's use of a firearm previously is not considered a
5016 risk factor because that veteran was serving his country and
5017 had authority to use that weapon. So I want to make sure
5018 that we are protecting veterans, and it is, I believe,
5019 germane to the underlying bill that we are considering.

5020 Chairman Nadler. The chair is prepared on the point of

5021 order. The chair rules the point of order is well taken.
5022 The bill is not -- I am sorry -- the amendment is not within
5023 the jurisdiction of the committee, although it amends this
5024 bill -- any amendment obviously would amend this bill -- it
5025 requires actions to be taken by the Department of Veterans
5026 Affairs under Title 38, and we have no jurisdiction over
5027 Title 38, and we have no jurisdiction over the Department of
5028 Veterans Affairs. So we cannot adopt an amendment to a bill
5029 which requires various actions by the Department of Veterans
5030 Affairs. Consequently, the amendment is out of order,
5031 period.

5032 Are there any further amendments?

5033 [No response.]

5034 Chairman Nadler. Are there any further amendments?

5035 Mr. Chabot. Mr. Chairman?

5036 Chairman Nadler. The gentleman from Ohio.

5037 Mr. Chabot. Mr. Chairman, I have an amendment at the
5038 desk.

5039 Chairman Nadler. The gentleman from Ohio has an
5040 amendment at the desk. The clerk will report the amendment.

5041 Ms. Strasser. Amendment to the amendment in the nature
5042 of a substitute to H.R. 1236 --

5043 Mr. Chabot. Mr. Chairman, I ask that the amendment be
5044 considered as read.

5045 Ms. Lofgren. I reserve a point of order.

5046 Chairman Nadler. The gentlelady reserves a point of
5047 order.

5048 Without objection, the amendment will be considered as
5049 read.

5050 [The amendment of Mr. Chabot follows:]

5051

5052 Chairman Nadler. The gentleman is recognized for 5
5053 minutes.

5054 Mr. Chabot. Thank you, Mr. Chairman. On August 4th, we
5055 yet again experienced tragedy at the hands of evil or
5056 mentally-unstable individuals. One of those massacres
5057 happened in El Paso, Texas, and the other, of course,
5058 happened in Dayton, Ohio, which is less than 30 miles from my
5059 congressional district. First and foremost, we should
5060 recognize these tragedies and pray for all the families in
5061 Dayton and El Paso and throughout the Nation who have had a
5062 loved one killed at the hands of senseless murders.

5063 Although I am a firm advocate of Second Amendment
5064 rights, I also believe that firearms should not be in the
5065 hands of criminals or those with mental illnesses, like those
5066 who took the lives of so many this past August. One way we
5067 can accomplish this is to ensure that the NICS system is
5068 accurate, up to date and is properly checked to make sure
5069 that individuals who are in the database cannot obtain a
5070 firearm. In my home State of Ohio, they are working to
5071 accomplish just that.

5072 On the face of this legislation, it seems as if the
5073 majority is attempting to also make sure that individuals who
5074 shouldn't have a gun can't obtain one with their red flag
5075 law. However, it is not without its flaws. I was an
5076 attorney in southwest Ohio, and I have served on this

5077 committee since I was elected to Congress 23 years ago. So
5078 I, like so many other colleagues sitting on both ends of this
5079 dais, understand the importance of due process.
5080 Unfortunately, this legislation, as drafted, fails to protect
5081 the due process of everyday, hardworking, law-abiding gun
5082 owners.

5083 This legislation is flawed because it provides Federal
5084 grants to States to enact red flag laws that could deprive a
5085 person of a right to possess firearms before a hearing where
5086 the gun owner has notice and is given an opportunity to
5087 participate. As you all know, due process is fundamental to
5088 the very existence of our Nation, and for this red flag law
5089 to have such a low evidentiary standard illustrates that
5090 Democrats don't seem to care much about the constitutional
5091 rights of American citizens.

5092 This bill, as written, only requires that State courts
5093 find by a preponderance of the evidence that an individual
5094 poses a danger to him or herself or others before taking
5095 their guns away. Their legislation also states that the
5096 order of protection can exist in perpetuity as ordered by one
5097 judge. And even then it appears it can be done *ex parte* or
5098 without the knowledge or participation of the individual
5099 subject to that order.

5100 My amendment is simple. It protects the due process
5101 rights of law-abiding citizens who want to exercise their

5102 Second Amendment rights. It ensures that the applicant must
5103 show, with clear and convincing evidence, that the respondent
5104 poses an imminent, particularized, and substantial risk of
5105 unlawfully using a firearm to cause death to him or herself
5106 or others. And if a State court should that the respondent
5107 does, that it cannot issue an order for more than 21 days,
5108 during which time the respondent is evaluated to determine if
5109 he or she has a mental illness. Additionally, before an *ex*
5110 *parte* order can be obtained, the applicant must swear under
5111 oath under penalty of perjury that the respondent should not
5112 be in possession of a firearm. And should a court so find
5113 that the respondent should be prohibited from possessing a
5114 firearm, the order must be reviewed and renewed annually.

5115 My amendment goes a long way to ensure that the rights
5116 of Americans are protected, while at the same time helping to
5117 keep guns out of the hands of criminals and mentally-unstable
5118 individuals. I urge my colleagues to adopt this commonsense
5119 amendment to help make our communities safer, while at the
5120 same time allowing law-abiding Americans to continue to
5121 exercise their Second Amendment rights and without
5122 jeopardizing their due process rights. And with that, I
5123 yield back.

5124 Chairman Nadler. The gentleman yields back. I will
5125 yield myself 5 minutes.

5126 Ms. Lofgren. I withdraw my point of order.

5127 Chairman Nadler. Oh, I am sorry. The gentlelady from
5128 California withdraws her point of order. I will yield myself
5129 5 minutes in opposition to the amendment.

5130 The bill discusses behavior. We are here today to
5131 discuss behavior, not to stigmatize mental health disability.
5132 Specific behavioral indicators of dangerousness are far more
5133 reliable predictors of future violence than is mental
5134 illness, which is why extreme risk laws prevent access to
5135 firearms by persons exhibiting dangerous behavior, regardless
5136 of diagnosis. Most people with serious mental illness, such
5137 as schizophrenia or bipolar disorder, are never violent
5138 toward others. Past violent behavior is the best predictor
5139 of future violence regardless of a diagnosis of mental
5140 illness.

5141 Other risk factors include threats of violence, alcohol
5142 or substance associated with dangerous behavior, and reckless
5143 firearm behavior, which is why ERPOs are issued based on
5144 these factors. While mental illness, such as depression,
5145 does increase the risk of suicide, not all individuals with a
5146 mental health diagnosis will become suicidal. The following
5147 are risk factors for suicide and are included in the ERPO
5148 legislation: prior suicide attempts, threats of suicide,
5149 risky alcohol or substance abuse, and recent acquisition of
5150 firearms. These are the behaviors that must underlie any
5151 ERPO issued, and to substitute mental illness criteria for

5152 behavioral criteria is simply the wrong direction. It is not
5153 borne out by experience or by evidence. It would stigmatize
5154 mental illness generally, but it would also greatly lessen
5155 the effectiveness in preventing firearms violence in the
5156 bill. Accordingly, I urge defeat of this amendment.

5157 Who seeks recognition?

5158 Mr. Cicilline. Mr. Chairman?

5159 Chairman Nadler. The gentleman from Colorado, Mr.
5160 Neguse.

5161 Mr. Neguse. Thank you, Mr. Chair. I agree with the
5162 chairman. I certainly oppose this amendment. I believe the
5163 amendment undermines and ultimately weakens the underlying
5164 bill. But I, again, want to go back to the core of why we
5165 are here and why we ought to work together to pass this
5166 important proposal.

5167 There is a gentleman in my State of Colorado by the name
5168 of Tom Sullivan. Tom Sullivan is a State representative who
5169 represents his district honorably in Colorado. He also
5170 happens to be someone whose family has been directly impacted
5171 by gun violence. In 2012, on July 20th, Tom lost his son,
5172 Alex, in the Aurora Theater shooting. Alex turned 27 that
5173 evening, and Tom and his wife lost him forever.

5174 I know that I can't begin to fathom, to describe the
5175 agony that they have experienced as a family at the loss of
5176 Alex. But they, like our colleague, Representative McBath,

5177 who continues to inspire so many of us, they turned that
5178 sorrow and that anguish into action. And Tom, over the
5179 course of the last 7 years, has become a champion for gun
5180 violence prevention. He was elected, as I said, to the State
5181 legislature, and earlier this year in Colorado, he succeeded,
5182 thanks to his leadership, working with our governor and the
5183 State legislature, in enacting a red flag law that is very
5184 similar to the law that we are debating tonight.

5185 As a country, as a people, and as a Congress, I believe
5186 we have to take action, for Tom's family and for the families
5187 of countless others who have been so tragically impacted by
5188 gun violence. And I know that my colleagues on the other
5189 side of the aisle earlier throughout this debate have
5190 referenced this notion that we need to pursue bipartisan
5191 solutions. It bears mentioning that there are two Republican
5192 co-sponsors on this bill. It bears mentioning that in
5193 Colorado, in a poll that was conducted this summer, 60
5194 percent of Republicans support red flag laws.

5195 So if my colleagues are serious about addressing gun
5196 violence, about addressing suicide, Colorado happens to have
5197 the 10th highest rate of suicides in the United States.
5198 Fifty percent of those involve a firearm. If my colleagues
5199 are serious about that, I would hope that they would join us
5200 tonight in supporting this bill so that we can finally do
5201 something about the pervasive gun violence that is ravaging

5202 communities across our country.

5203 And with that, I yield back the balance of my time.

5204 Ms. Scanlon. [Presiding.] Who seeks recognition?

5205 Mrs. McBath. I do.

5206 Ms. Scanlon. Okay. The gentlelady from Georgia is -- I

5207 am sorry. For what purpose does the gentlelady from Georgia

5208 seek recognition?

5209 Mrs. McBath. Thank you, Madam Chair. I move to strike

5210 the last word.

5211 Ms. Scanlon. You are recognized for 5 minutes.

5212 Mrs. McBath. Thank you very much. I would like to

5213 address amendments that add mental health as a factor to

5214 consider when determining whether to issue an ERPO. You

5215 know, I understand the desire to address mental health. That

5216 is the reason I sit on the Mental Health Caucus. And as a

5217 member of the Mental Health Caucus, it is very important to

5218 me that extreme risk laws continue to be a vital tool in

5219 helping people that are in crisis, including, but not limited

5220 to, those that are subject to having a mental illness.

5221 However, adding mental health as a factor could actually

5222 do more harm than it will do good. It could stigmatize

5223 mental health. It could even prevent people from getting the

5224 treatment that they need for fear that it could affect their

5225 own ability to own a gun. The truth is that most people with

5226 mental illness are never violent towards others.

5227 In fact, they are more likely to be victims of violence
5228 themselves. According to a 2015 study in the *Annals of*
5229 *Epidemiology*, only 4 percent of violent acts in the United
5230 States are attributable to mental illness. Rather than
5231 stigmatizing mental illness, we need to focus on evidence-
5232 based risk factors for violence, and those are the factors
5233 already included in this bill for a judge to consider when
5234 issuing an extreme risk protection order. And these include
5235 recent threats, recent violent acts, reckless use of a
5236 firearm, and substance abuse.

5237 When the Senate Judiciary Committee had their hearing on
5238 extreme risk laws earlier this year, Chairman Graham invited
5239 Ron Honberg of the National Alliance on Mental Illness. And
5240 Mr. Honberg testified that extreme risk laws should be based
5241 on individualized assessments rather than stereotypical
5242 assumptions about specific groups of people that are not
5243 grounded in evidence. And I really couldn't agree more. I
5244 urge my Republican colleagues to listen to the witness
5245 invited to testify by Senator Graham and reject these efforts
5246 to stigmatize those with mental illness.

5247 We must take an evidence-based approach to keeping
5248 people safe and look at genuine indications of violence. For
5249 that reason, I oppose this amendment. I yield back the
5250 balance of my time.

5251 Ms. Scanlon. For what purpose does the gentleman from

5252 Rhode Island seek recognition?

5253 Mr. Cicilline. I move to strike the last word, Madam

5254 Chair.

5255 Ms. Scanlon. The gentleman is recognized for 5 minutes.

5256 Mr. Cicilline. Thank you, Madam Chair, and I rise in
5257 opposition to the amendment, and I want to just make a couple
5258 of points. Number one, there has been a lot of discussion
5259 this afternoon and this evening about the absence of due
5260 process and the fact that there is a constitutional right at
5261 issue here, the Second Amendment, being somehow infringed
5262 upon. And I want to associate myself with the distinguished
5263 gentleman from Maryland, who reminds us in the *Heller*
5264 decision, the United States Supreme Court acknowledged the
5265 right of the government, both the State and Federal
5266 governments, to impose reasonable restrictions, that this
5267 isn't a limitless right to possess firearms of any kind, any
5268 time, any place you want.

5269 And, in fact, the legislation that is before us includes
5270 important due process protections. On page 7 is a notice and
5271 due process section which says, "The individual named in an
5272 application for an extreme risk protection order, as
5273 described in Subparagraph A shall be given written notice of
5274 the application and an opportunity to be heard on the matter
5275 in accordance with this section." That is classic due
5276 process: notice and an opportunity to be heard. The second

5277 point I want to make is that with respect to the *ex parte*
5278 order, the standard of proof in that is probable cause. This
5279 is at page 16. "A court may issue an *ex parte* order only
5280 upon a finding of probable cause to believe."

5281 And so what this legislation is designed to do is when
5282 an individual, a family member finds out or discovers that
5283 someone is about have access to a firearm that is somehow
5284 reflecting some danger to themselves or the community. I'll
5285 give you an example, hearing that someone is going to take a
5286 gun and go shoot up a school. Right now there is no
5287 mechanism to stop that from happening. There is no mechanism
5288 to go to a court and say this person is a danger to
5289 themselves and others, is going to do something that is going
5290 to result in a terrible loss of life. That is exactly what
5291 this bill provides is a vehicle to do that in a really
5292 responsible way with notice, with an opportunity to be heard,
5293 with a higher standard of probable cause in an *ex parte*
5294 proceeding.

5295 And while there is a lot of discussion about the Second
5296 Amendment and constitutional rights, let me remind my friends
5297 on the other side of the aisle there is a constitutional
5298 right to life, liberty, and the pursuit of happiness. My
5299 constituents have the constitutional right to take a walk in
5300 the park with their grandchildren and be protected from gun
5301 violence. They have a constitutional right to worship in a

5302 synagogue or a church and be free from being gunned down.
5303 Those are also important liberties and freedoms that we have
5304 a responsibility to protect. And I think on balance, this
5305 bill does exactly the right thing. It protects those
5306 freedoms and those liberties with reasonable procedures to
5307 protect people from someone who has exhibited an intention to
5308 hurt themselves or others by use of a firearm.

5309 We have got to do something. The American people are
5310 sick and tired of seeing news accounts and seeing people in
5311 their own communities that have been ravaged by gun violence.
5312 And by the way, we should remember that the magnitude of gun
5313 violence in America is staggering. On average, 136,000
5314 Americans are shot each year, totaling more than 1 million in
5315 the last decade. Over the last few years, our country has
5316 lived through the deadliest mass shootings in modern American
5317 history. And as the chairman said, Americans are 25 times
5318 more likely to be killed in a gun homicide than residents of
5319 other high-income countries. Twenty-five times more likely.

5320 We have a responsibility to do something about that. We
5321 ought to look at the example of New Zealand. It took one
5322 mass shooting fueled by hate before action was taken, and yet
5323 we have more than 293 mass shootings this year alone, more
5324 shootings than there have been days in the year, and we can't
5325 just say never again, but tragic and preventable shootings
5326 have become the new normal. We have a responsibility to do

5327 something. We are not going to pass legislation that is
5328 going to eliminate gun violence in its entirety, but we can
5329 pass a series of bills when taken together can significantly
5330 reduce gun violence in this country and protect our
5331 constituents from the violence and the horror and the loss of
5332 what occurs during these kinds of gun massacres. And so I
5333 urge my colleagues to support this legislation.

5334 Mr. Collins. Will the gentleman yield?

5335 Mr. Cicilline. I am happy to.

5336 Mr. Collins. Thank you. Look, I get your passion for
5337 this. You are going to vote it. We are not. And I am not
5338 going to take up the fact that we believe in a constitutional
5339 right to life on a lot of different subjects, but we are not
5340 going to go there. But I do have a point to make about your
5341 discussion of standards. The standard you stated is not the
5342 standard for the entire bill. The standard is found in the
5343 Federal standard, not the State grant program. The State
5344 grant program is still, it says on page 9, line 3, "The court
5345 finds there is reasonable cause to believe or make the
5346 finding under a higher standard."

5347 So it is not all protected under a probable cause
5348 standard. I understand the gentleman's passion. I
5349 understand what he wants. But it needs to be at least
5350 pointed out that --

5351 Mr. Cicilline. Just reclaiming my time, the *ex parte*

5352 provision is the provision that has the probable cause
5353 standard, which make sense because if someone does have a
5354 right to be heard and it is done *ex parte*, it makes sense
5355 that you heighten the standard to probable cause, which is --

5356 Mr. Collins. It is part of it.

5357 Mr. Cicilline. Okay.

5358 Mr. Collins. I yield back.

5359 Mr. Cicilline. I yield back, Madam Chair.

5360 Ms. Scanlon. The gentleman's time has expired.

5361 The question is on the amendment.

5362 Those in favor, say aye.

5363 Those opposed, no.

5364 In the opinion of the chair, the nays have it, and the
5365 amendment is not agreed to.

5366 Mr. Biggs. Roll call.

5367 Ms. Scanlon. A roll call is requested. No roll call?

5368 Thank you. Are there any further amendments to the
5369 amendment?

5370 Mr. Deutch. Madam Chair.

5371 Ms. Scanlon. Yes?

5372 Mr. Deutch. I move to strike the last word.

5373 Ms. Scanlon. The gentleman is recognized for 5 minutes.

5374 Mr. Deutch. Thank you, Madam Chairman. I want to thank
5375 Congressman Carbajal for his tireless work on this issue. I
5376 especially want to thank Congresswoman McBath for her

5377 leadership, for her passion, for being a role model for all
5378 of us in how to approach this issue. And I want to
5379 acknowledge my friend, Congresswoman Brooks, Upton, and
5380 Congressman Dingell for their help on the Jake Laird Act.

5381 After February 14th, it is important to remember that
5382 the Florida legislature, in fact, did pass bills both to
5383 increase the minimum age for rifle purchases to 21 and passed
5384 an extreme risk protection order law. And in the 2 months
5385 after that law passed -- Mr. Gaetz acknowledges -- guns were
5386 removed from roughly 50 dangerous situations, including 34
5387 times in Broward County. And those laws include robust due
5388 process protections, and they truly save lives. There is
5389 evidence. We have seen it. We know that it works.

5390 This should be the law all around the country. Tragic
5391 violence shootings continue to happen all across our Nation,
5392 and data at the Federal level shows that active shooter
5393 incidents are on the rise with many shooters showing signs of
5394 mental illness in nearly a quarter of the incidents occurring
5395 at schools. We are continuing to grapple with how to combat
5396 these incidents. Local law enforcement remains on the front
5397 lines every day of this fight and is often responsible for
5398 halting the actions of these dangerous individuals. It is
5399 critical that they have the tools to do that. That is all we
5400 are trying to do. I don't understand why this is so
5401 complicated.

5402 Contrary to conventional wisdom, gun violence is rarely
5403 random. It is rarely random. If we recognize warning signs
5404 and police have the tools to take action, we can save lives.
5405 According to Sandy Hook Promise, most mass shootings are
5406 planned for 6 months to a year. In each, they examined,
5407 there were warning signs that were ignored. In Florida,
5408 police have long the authority to detain people who are a
5409 danger to themselves or others for mental health evaluations,
5410 but no authority to take weapons out of dangerous hands until
5411 they passed the extreme risk protection order law after
5412 Parkland.

5413 It is time for the Federal government to step up and
5414 help give every jurisdiction the tools needed to intervene
5415 and save lives. Congress, we have had this discussion over
5416 and over again. Congress has shamefully failed to respond to
5417 gun violence, not only in schools, and churches, and
5418 nightclubs, and concert venues, but in response to the loss
5419 of brave law enforcement officers, those who put on their
5420 badges, run toward danger, ignore the risk that they won't
5421 return home after their shift. Now is the time for the
5422 Federal government to help States implement red flag laws
5423 around the country.

5424 And I just want to finish with a reference to a
5425 conversation that we had earlier today when we heard from Vic
5426 Bencomo, a 22-year Navy veteran, gun owner, member of

5427 Colorado Gun Owners for safety, who testified about the
5428 number of times that as a veteran he has come to come to the
5429 aid of other veterans who considered suicide. We shouldn't
5430 leave it up to other veterans to be there to help save the
5431 lives of those who served our country. If we know a veteran
5432 is considering taking his own life, if we know anyone is
5433 considering taking his or her own life, then let's make sure
5434 that the tools exist to help save that life. That is all
5435 we're talking about.

5436 And, again, we are not going to stop. Yeah, it is true.
5437 It is true. Criminals are going to get their hands on guns.
5438 There are lots of arguments that we can make against this and
5439 every effort to address gun violence by saying this isn't
5440 going to stop all gun violence. There is still going to be
5441 gun violence, and that is 100 percent right. But if we can
5442 take this action tonight and move this bill forward and it
5443 saves one life and that is a life of someone that you know
5444 and love, then everyone on this committee knows that it is
5445 the right thing to do. And I urge my colleagues to support
5446 this bill.

5447 Chairman Nadler. [Presiding.] The gentleman yields. Are
5448 there any further amendments? The gentleman from Maryland.

5449 Mr. Raskin. I move to strike the last word.

5450 Chairman Nadler. The gentleman is recognized.

5451 Mr. Raskin. Mr. Chairman, I also want to just add a

5452 word of praise for our colleague, Lucy McBath, who has
5453 channeled an unthinkable, unspeakable anguish and pain in her
5454 life into active citizenship and leadership. And I am not
5455 sure how many people could actually accomplish that
5456 miraculous recovery and transformation. And I want to praise
5457 her for what she is doing for us in Congress and for all of
5458 the people of America.

5459 I also want to salute 300 of my constituents who are
5460 assembled tonight in downtown Silver Spring in support of
5461 this package of gun safety legislation and standing strong
5462 for the views held by the vast majority of the American
5463 people that we can make a effective, positive changes in our
5464 gun laws. And I also want to associate myself with the
5465 recent statements of Mr. Deutch and Mr. Cicilline, which I
5466 found very powerful and very eloquent.

5467 I support this legislation strongly, Mr. Chairman,
5468 because something happened a few weeks ago in Maryland where
5469 a man was muttering threats about killing people and how mad
5470 he was, and we have got a red flag law in Maryland. His name
5471 is Mark Edward Rutkowski, 54 years old. The provisions of
5472 the red flag law were activated. The police went to his home
5473 with an extreme risk protection order, and they found 146
5474 firearms, an arsenal of handguns, rifles, shotguns, and
5475 assault-style weapons belonging to him and his father. And
5476 he was charged with 1 count of making a threat of mass

5477 violence and could serve up to 10 years.

5478 Now, who knows where that one would have led? It could
5479 have led to the kind of massacre that we saw at the *Annapolis*
5480 *Gazette*. And one of my constituents tonight is at the rally.
5481 She lost her husband in the *Annapolis Gazette* massacre. So
5482 from El Paso, to Dayton, to Newtown, Connecticut, to the
5483 Pulse Nightclub shooting, all over America now, millions and
5484 millions of lives are affected and touched by this reign of
5485 gun terror.

5486 And we see a political pattern in the wake of these
5487 events. The President immediately says, seeing the
5488 convulsions in public opinion, well, we are going to have to
5489 a universal background check. And then as each day goes by,
5490 he is lobbied by the National Rifle Association. He is moved
5491 by, I suppose, some of our colleagues across the aisle, and
5492 he begins to back away and say, well, I don't know, maybe
5493 everything is okay. Maybe there is really nothing that can
5494 be done. Maybe we should just denounce evil. Let's just
5495 denounce evil. Let's denounce immorality. There is a
5496 solution for you in the world's oldest, greatest modern
5497 democracy. Let's denounce evil. There is a good solution.

5498 Mr. Chairman, let's go back to the Constitution. The
5499 Constitution was written for the people. It was written to
5500 protect our rights and our freedoms, and, yes, including the
5501 right to keep and bear arms, by which the Supreme Court has

5502 interpreted to mean the right to a handgun to defend
5503 yourself, the right to a rifle in order to engage in
5504 recreational activity and hunting. Not a right to have
5505 weapons of war. Not a right to obtain any of this without a
5506 background check. Not the right, Justice Scalia tells us, to
5507 go into a courtroom with guns, or go into a public school
5508 with guns, or go into any public place with a gun where the
5509 community has decided you shouldn't go. That is Justice
5510 Scalia talking. That is the conservatives on the Court, the
5511 five-justice majority. The four liberals, of course, they
5512 read the Second Amendment to believe that gun possession
5513 should be tethered to service in the militia, in the National
5514 Guard. That was not the reading the majority gave it, but
5515 the majority still said ample room for regulation. Just like
5516 in the First Amendment you got a right to speak. You don't
5517 have a right to pick up a microphone or a megaphone at 2:00
5518 in the morning in front of White House and keep the
5519 President's family up and make a ruckus. In fact, when you
5520 support reasonable time, place, and manner regulations of the
5521 First Amendment, you enhance freedom of speech so that
5522 everybody can speak and we can make speech harmonious with
5523 everything else.

5524 And that is the same thing with the Second Amendment.
5525 And yet we get this absurd rhetoric that when you have
5526 reasonable commonsense gun safety regulation to keep people

5527 from getting guns who shouldn't have them, like felons, and
5528 fugitives, and unstable people, that somehow we are violating
5529 the Second Amendment. Let's get together across party lines.
5530 This is for the American people. The reason we have a social
5531 contract in the Constitution is because the people should be
5532 safer within the Constitution, within the rule of law, than
5533 they are in the state of nature. I yield back.

5534 Chairman Nadler. The gentleman yields back. For what
5535 purpose does the gentleman from Florida seek recognition?

5536 Mr. Gaetz. To strike the last word.

5537 Chairman Nadler. The gentleman is recognized.

5538 Mr. Gaetz. Thank you, Mr. Chairman. During my
5539 colleague from California's presidential campaign, he and I
5540 didn't agree on too many issues, but there was a sentiment
5541 expressed that is generational in nature, and that is ours is
5542 the first generation that has lived with these mass shootings
5543 throughout our time in school, and then now as young people
5544 are having to endure yet another generation of school
5545 shootings. And regardless of which solution set you adopt,
5546 it is a fact that younger Americans have these mass shootings
5547 as a part of their psychological and American experience, and
5548 it is just deeply sad. So I still think there is plenty of
5549 room to denounce evil. I still think there is plenty of room
5550 for our States to enact red flag laws.

5551 And I have some caution based on the comments of my good

5552 friend from Florida, Mr. Deutch. You know, the bill from
5553 Florida that he references is one I helped write, and my
5554 colleague from Florida, Mr. Deutch, can ask his own
5555 constituent, a Democrat, former State representative, Jared
5556 Moskowitz. I helped write those red flag provisions because
5557 I believe strongly that our State could do better.

5558 But when my colleague talks about veterans and their
5559 firearms and their access to firearms, I can assure you that
5560 if laws like this were in place in the absence of due
5561 process, and I think we should probably do a lot more there,
5562 then veterans might be less willing to share their trauma,
5563 share their mental health frailties out of fear that it would
5564 divorce them from their firearms. And it is just a
5565 population I care a lot about because I represent, I think,
5566 more veterans than any member of the committee and most other
5567 members of Congress. And we would never want to live in a
5568 world where people are less likely to seek the mental
5569 healthcare that they need and that we would all want them to
5570 seek out of fear that it might deprive them of their rights.

5571 So none of these are easy issues. I think that there is
5572 definitely room here for legislation that would accommodate
5573 the concerns of Republicans and Democrats. Sadly, this isn't
5574 that bill. I continue to be encouraged by the work of
5575 Senator Graham, and his approach seems to be more closely
5576 aligned with legislation that had been previously introduced

5577 in a bipartisan fashion by Senator Nelson and Senator Rubio
5578 following the tragic events in the State of Florida. And so
5579 I hope that is ultimately the work product we end up with.
5580 If we get a work product like that, I would be inclined to
5581 support it. But the legislation that is before the committee
5582 seems to go further. I will yield to my friend from Florida.

5583 Mr. Deutch. Thank you. I thank my friend. I just want
5584 to use the opportunity not talk about this legislation. I
5585 want to use the opportunity to talk about veterans and anyone
5586 else in mental distress. It is Suicide Prevention Month.
5587 Today is World Suicide Prevention Day, I believe. And I want
5588 to just reiterate the importance of having difficult
5589 conversations about mental health. Asking someone that you
5590 care about if they are thinking about suicide will not hurt
5591 them, but it could save their life. I would encourage anyone
5592 listening today to reach out if they need help. The Suicide
5593 Prevention Lifeline is 1 (800) 273-TALK.

5594 There is great agreement among every member on this
5595 committee that we need to do what we can to ensure that
5596 people have access to help. That is one thing that there is
5597 no doubt on, and I wanted to take the opportunity just do
5598 that. I thank my friend from Florida, and, Mrs. McBath.

5599 Mr. Gaetz. Yeah, reclaiming my time, and I appreciate
5600 the gentleman's recognition that these are not binary issues,
5601 that there is a point at which if you create barriers to

5602 people seeking mental health, that that could limit the
5603 ultimate success that they could have in their treatment. I
5604 think about colleague, the gentleman from Massachusetts, Seth
5605 Moulton, who bravely, courageously during his presidential
5606 campaign stepped forward and said that he himself
5607 acknowledged traumas a consequence from his service. I don't
5608 think anyone here would want to go red flag Congressman
5609 Moulton, you know, for having made those admissions. I think
5610 that you would want people that would have those challenges
5611 to show the same bravery and the same positive action that he
5612 showed, and we wouldn't want to create a deterrent to that.
5613 I appreciate my colleague --

5614 Mr. Swalwell. Would the gentleman yield?

5615 Mr. Gaetz. I will.

5616 Mr. Swalwell. Can we all agree that there are just too
5617 many members of Congress running for President?

5618 [Laughter.]

5619 Mr. Gaetz. Hey, wait until 2024. I yield back.

5620 Chairman Nadler. The gentleman yields back.

5621 The question is on the amendment. The gentlelady from
5622 Pennsylvania.

5623 Ms. Scanlon. I move to strike the last word.

5624 Chairman Nadler. The gentleman from Pennsylvania.

5625 Ms. Scanlon. I did just want to note that we lose 20
5626 veterans to suicide every day, and that one of the big

5627 purposes of this law is to address the issues of folks who
5628 are using guns to commit suicide, that that is 60 percent of
5629 the gun violence in this country. And that this is a healthy
5630 step towards trying to address those issues. And with that,
5631 I would yield to the gentlewoman from Texas.

5632 Ms. Jackson Lee. I thank the gentlewoman from
5633 Pennsylvania, and I want to associate myself with your words,
5634 and, Congressman Deutch, and I want to associate myself with
5635 your words about suicide. And I think it is important to
5636 note in an earlier hearing that we had today, a veteran
5637 himself acknowledged the fact that he would want to take away
5638 guns from a veteran who was contemplating suicide. So
5639 veterans themselves understand to save veterans' lives, they
5640 would want to have the construct to be able to do that.

5641 I indicated a gun violence prevention summit that we
5642 held in Houston. In that hearing of individuals'
5643 presentations without respect to party, the issue that they
5644 raised was the issue of dealing with the displaying of
5645 warning signs, the very crux of this bill. In 51 percent of
5646 mass shootings from 2009 to 2017, the attacker exhibited
5647 warning signs before the shooting. For example, before
5648 killing six people in Isla Vista, California in May 2014, the
5649 shooter made homicidal and suicidal threats, and his parents
5650 alerted law enforcement, but there was nothing they could
5651 legally do to remove the firearms before California changed

5652 its law.

5653 The U.S. Secret Service and the U.S. Department of
5654 Education studied targeted school violence incidents and
5655 found behavior warnings signs that caused others to be
5656 concerned in 93 percent of the cases. They also found that
5657 in 81 percent of incidences, other people, most often peers,
5658 had some type of knowledge about the shooter's plans. In
5659 Parkland, where 17 people were killed, it was noted that this
5660 student had been expelled from school, and students and
5661 teachers reported he displayed threatening behavior. His
5662 mother had repeatedly contacted law enforcement. In domestic
5663 violence cases, before there is a conviction, family members
5664 are without any structure to, in fact, talk about the
5665 behavior of that loved one that is in the household that is
5666 threatening the family members and the children.

5667 And so this legislation is long overdue federally. And
5668 I want to acknowledge the individuals who came to this
5669 conclusion last week, Dr. Joan Shook with the Texas
5670 Children's Hospital; Dr. Dwayne Wolf, deputy chief medical
5671 examiner in Harris County; Sergeant Jeffrey McGowan, Harris
5672 County Sheriff's Department; Chief Troy Finner, who is the
5673 executive chief of the Houston Police Department; Umair Shah,
5674 executive director of the Harris County Public Health; Kim
5675 Ogg, district attorney for Harris County; Dr. Howard
5676 Henderson, who is a professor administration of justice at

5677 Texas Southern University; Professor Ronald Turner, AA White
5678 professor of law, University of Houston; Matthew Simpson,
5679 deputy political director, ACLU; Sonia Corrales, chief
5680 program officer, Houston Area Women's Center, which confirms
5681 the need for this kind of law as it relates to domestic
5682 violence; and Sonia Aaliyah Stewart, who lost her two
5683 brothers, the founder of I Am Foundation; Rhonda Hart, who
5684 lost a daughter at Santa Fe; and Ariel Hobbs, who we heard
5685 from today, who said that many of her friends, she has them
5686 now because of death. She represents March For Our Lives;
5687 and Elizabeth Hanks, Moms Demand Action.

5688 They conceded to the point that this legislation of
5689 extreme risk orders was important to save lives, and I
5690 believe this is what we need to do on the Federal level, not
5691 just State by State. With that, I yield back my time.

5692 Chairman Nadler. The gentlelady yields back.

5693 The question occurs on the amendment.

5694 Those in favor, say aye.

5695 Mr. Armstrong. North Dakota.

5696 Chairman Nadler. The gentleman is recognized.

5697 Mr. Armstrong. Mr. Chairman, thanks. I move to strike
5698 the last word. And we have heard it all. Anybody who knows
5699 me, we voted on a red flag law in the North Dakota
5700 legislature. We voted it down summarily. We are now putting
5701 a Federal system in place that will be, in fact, in North

5702 Dakota the same as it is elsewhere. And we are also setting
5703 up a situation where we incentivize States to do it. So I
5704 think we know all this is going. I am hopeful that there is
5705 more common sense across the chamber than there is here, but
5706 that is not necessarily the case.

5707 So here is what I am actually imploring my friends on
5708 the other side to do, and this is important because there are
5709 two completely different standards in this bill depending on
5710 where you are at. In the *ex parte* motion for the State grant
5711 program, it is reasonable cause. We call that reasonable
5712 suspicion in North Dakota. In the *ex parte* version in the
5713 Federal one, there is probable cause. In the State one, it
5714 is until a hearing is scheduled or 30 days. I am not sure.
5715 I am having a difficult time reading it. In the Federal one,
5716 it is 14 days. In the State one, it is preponderance of the
5717 evidence. In the Federal one, it is clear and convincing
5718 evidence.

5719 The duration in the State one can be indefinite. The
5720 duration in the Federal one is 180 days and must actively
5721 seek an extension. Most importantly, in the Federal one, you
5722 are requiring court-appointed counsel, but we don't require
5723 that in any State court. And, in fact, in the States that do
5724 have red flag laws, court-appointed counsel is the exception
5725 and not the rule.

5726 So we are setting a system, one, where you are forcing

5727 the citizens in North Dakota to have this law in Federal
5728 court when they have summarily rejected it in the State
5729 legislature, which happened in the last legislative session.
5730 Secondly, you are incentivizing States to put their own
5731 policy in place. And thirdly, in States that already have
5732 it, you are going to have two completely different
5733 evidentiary standards in hearings depending on when you are
5734 in Federal court or in State court. And if you don't think
5735 that is going to cause a significant amount of problems when
5736 you are actually on the ground practicing criminal or civil
5737 work in these jurisdictions, you are nuts. It is going to be
5738 a problem. You have competing interests.

5739 This is before we get into whether the Federal
5740 government should actively be engaged in this. By the
5741 rationale in which we allow the Federal government to do
5742 that, any crime involving a gun should rise to the Federal
5743 level as opposed to having State-level assaults, murder,
5744 domestic violence, all of the things which we ask our States
5745 to do. So as you continue to move forward with this, you are
5746 going to have another opportunity, and I implore my friends
5747 on the other side, the Federal one, as bad as it is, is
5748 significantly better and offers more protections to people
5749 than we are allowing States to implement on their own. So if
5750 this is good enough for this body to say we should do it, at
5751 the very least, give somebody court-appointed counsel, and

5752 require States that already have red flag laws then to
5753 require court-appointed at the State level.

5754 The due process protections on the Federal side of this
5755 are better than the State side. That does not mean I think
5756 they are good. But, more importantly, this kind of
5757 inconsistency when you are applying it in the criminal
5758 justice, as it works on the ground with lawyers, and
5759 prosecutors, and cops, and judges, and all of the people who
5760 are involved in this is incredibly problematic. It is
5761 inconsistent. And outside of the issue of guns and how
5762 politically polarizing it is, this is not good policy. And
5763 with that, I yield back.

5764 Chairman Nadler. The gentleman yields back. The
5765 gentleman from Texas.

5766 Mr. Gohmert. Thank you, Mr. Chairman. I felt a need to
5767 respond. Earlier in debates, my friend, Congressman Raskin,
5768 had espoused basically making fun of my position that
5769 generations have been punished for the sins of their
5770 predecessors, and he couldn't conceive of any type of
5771 punishment other than prison. He couldn't conceive that
5772 people could be punished by paying tremendous amounts of
5773 money, and then yet just now I let that go. The comment
5774 basically that, you know, we are not going to do any good by
5775 just declaring against immorality.

5776 There is nothing this committee can do in the way of

5777 declarations that can change the status of the immorality in
5778 this country by declaring to an act, but it would help if
5779 people in Congress, including this committee, would not just
5780 to conclusions too soon and condemn law enforcement before
5781 they find out the law enforcement officer was acting in self-
5782 defense, and further dividing the country. We had a
5783 President that kept choosing before the evidence was in to go
5784 against law enforcement.

5785 And, you know, Natan Sharansky spent 12 years in a
5786 Soviet gulag for promoting freedom of speech. He said, and
5787 this was basically echoed in a way by Oprah Winfrey when she
5788 said, you know, we have lost our moral center that used to be
5789 provided by churches. Sharansky said, "Lack of moral clarity
5790 is why people living in free societies cannot distinguish
5791 between religious fundamentalists in a democratic state and
5792 religious terrorists in a fundamentalist state. In this new
5793 Orwellian world, the arsonists and the firefighter are deemed
5794 morally equivalent."

5795 What we can push, we can't effectuate what needs to be
5796 done tonight, but we can resolve that we are going to
5797 encourage the teaching of right and wrong, and we are not
5798 going to use politics to promote jealousy. And you didn't
5799 build that. It belongs to all of us. But we are going to
5800 promote, as Sharansky talks about, this idea that it is
5801 important to protect a free society, and we have not done a

5802 good job of that. It is all relative. If it feels right for
5803 you, okay. Maybe if it doesn't feel right for somebody else,
5804 it is not. This relativity has encouraged people to wonder
5805 would it feel good to kill people, and then they go out and
5806 kill people.

5807 We need to be promoting a morality among ourselves and
5808 among this body, and encouraging schools. There is nothing
5809 wrong with speaking and teaching against jealousy and against
5810 killing instead of just ignoring those and teaching
5811 relativity instead. Oprah Winfrey is right. We have lost
5812 our moral center. We can't fix that tonight, but until that
5813 is fixed, we are going to keep having to take away more and
5814 more and more constitutional rights. Why? Because we need
5815 to be safe. And it was attributed to Franklin, some question
5816 whether he said it or not, those who would give up their
5817 liberty for safety deserve neither.

5818 But it is important to understand before we start giving
5819 up these liberties, these things that are in the
5820 Constitution, continue to give them up and continue to have
5821 to have the Supreme Court say, you know what? We are going
5822 to have to cut back on the rights that this constitutional
5823 provision allows because people want to be safe. We have
5824 seen it for decades now, and the point is Oprah Winfrey was
5825 right. We have lost our moral center, and we ought to be
5826 promoting that or we are going to be spending many, many

5827 hours debating the taking away of what used to be American
5828 rights. I yield back.

5829 Chairman Nadler. The gentleman yields back. The
5830 question finally occurs on the amendment.

5831 There are no further pending amendments. So the
5832 question occurs on the amendment in the nature of a
5833 substitute. This will be followed immediately by a vote on
5834 final passage of the bill. I understand there will be a roll
5835 call on each of them.

5836 So all those in favor of the amendment in the nature of
5837 a substitute, say aye.

5838 Opposed, no.

5839 The ayes have it. The amendment in the nature of a
5840 substitute is adopted.

5841 Oh, they are not calling a roll call.

5842 A reporting quorum being present, the question is on the
5843 motion to report the bill, H.R. 1236, as amended, favorably
5844 to the House.

5845 Those in favor will respond by saying aye.

5846 Those opposed, no.

5847 And the ayes have it, and the bill is ordered reported
5848 favorably.

5849 Mr. Biggs. Roll call.

5850 Chairman Nadler. A recorded vote has been requested.

5851 The clerk will call the roll.

5852 Ms. Strasser. Mr. Nadler?

5853 Chairman Nadler. Aye.

5854 Ms. Strasser. Mr. Nadler votes aye.

5855 Ms. Lofgren?

5856 Ms. Lofgren. Aye.

5857 Ms. Strasser. Ms. Lofgren votes aye.

5858 Ms. Jackson Lee?

5859 Ms. Jackson Lee. Aye.

5860 Ms. Strasser. Ms. Jackson Lee votes aye.

5861 Mr. Cohen?

5862 Mr. Johnson of Georgia?

5863 Mr. Deutch?

5864 Mr. Deutch. Aye.

5865 Ms. Strasser. Mr. Deutch votes aye.

5866 Ms. Bass?

5867 Ms. Bass. Aye.

5868 Ms. Strasser. Ms. Bass votes aye.

5869 Mr. Richmond?

5870 Mr. Jeffries?

5871 Mr. Jeffries. Aye.

5872 Ms. Strasser. Mr. Jeffries votes aye.

5873 Mr. Cicilline?

5874 Mr. Cicilline. Aye.

5875 Ms. Strasser. Mr. Cicilline votes aye.

5876 Mr. Swalwell?

5877 Mr. Swalwell. Aye.

5878 Ms. Strasser. Mr. Swalwell votes aye.

5879 Mr. Lieu?

5880 Mr. Lieu. Aye.

5881 Ms. Strasser. Mr. Lieu votes aye.

5882 Mr. Raskin?

5883 Mr. Raskin. Aye.

5884 Ms. Strasser. Mr. Raskin votes aye.

5885 Ms. Jayapal?

5886 Ms. Jayapal. Aye.

5887 Ms. Strasser. Ms. Jayapal votes aye.

5888 Mrs. Demings?

5889 Mrs. Demings. Aye.

5890 Ms. Strasser. Mrs. Demings votes aye.

5891 Mr. Correa?

5892 Mr. Correa. Aye.

5893 Ms. Strasser. Mr. Correa votes aye.

5894 Ms. Scanlon?

5895 Ms. Scanlon. Aye.

5896 Ms. Strasser. Ms. Scanlon votes aye.

5897 Ms. Garcia?

5898 Ms. Garcia. Aye.

5899 Ms. Strasser. Ms. Garcia votes aye.

5900 Mr. Neguse?

5901 Mr. Neguse. Aye.

5902 Ms. Strasser. Mr. Neguse votes aye.
5903 Mrs. McBath?
5904 Mrs. McBath. Aye.
5905 Ms. Strasser. Mrs. McBath votes aye.
5906 Mr. Stanton?
5907 Mr. Stanton. Aye.
5908 Ms. Strasser. Mr. Stanton votes aye.
5909 Ms. Dean?
5910 Ms. Dean. Aye.
5911 Ms. Strasser. Ms. Dean votes aye.
5912 Ms. Mucarsel-Powell?
5913 Ms. Mucarsel-Powell. Aye.
5914 Ms. Strasser. Ms. Mucarsel-Powell votes aye.
5915 Ms. Escobar?
5916 Ms. Escobar. Aye.
5917 Ms. Strasser. Ms. Escobar votes aye.
5918 Mr. Collins?
5919 Mr. Collins. No.
5920 Ms. Strasser. Mr. Collins votes no.
5921 Mr. Sensenbrenner?
5922 Mr. Chabot?
5923 Mr. Chabot. No.
5924 Ms. Strasser. Mr. Chabot votes no.
5925 Mr. Gohmert?
5926 Mr. Gohmert. No.

5927 Ms. Strasser. Mr. Gohmert votes no.
5928 Mr. Jordan?
5929 Mr. Jordan. No.
5930 Ms. Strasser. Mr. Jordan votes no.
5931 Mr. Buck?
5932 Mr. Buck. No.
5933 Ms. Strasser. Mr. Buck votes no.
5934 Mr. Ratcliffe?
5935 Mr. Ratcliffe. No.
5936 Ms. Strasser. Mr. Ratcliffe votes no.
5937 Mrs. Roby?
5938 Mrs. Roby. No.
5939 Ms. Strasser. Mrs. Roby votes no.
5940 Mr. Gaetz?
5941 Mr. Gaetz. No.
5942 Ms. Strasser. Mr. Gaetz votes no.
5943 Mr. Johnson of Louisiana?
5944 Mr. Johnson of Louisiana. No.
5945 Ms. Strasser. Mr. Johnson of Louisiana votes no.
5946 Mr. Biggs?
5947 Mr. Biggs. No.
5948 Ms. Strasser. Mr. Biggs votes no.
5949 Mr. McClintock?
5950 Mr. McClintock. No.
5951 Ms. Strasser. Mr. McClintock votes no.

5952 Mrs. Lesko?

5953 Mrs. Lesko. No.

5954 Ms. Strasser. Mrs. Lesko votes no.

5955 Mr. Reschenthaler?

5956 Mr. Reschenthaler. No.

5957 Ms. Strasser. Mr. Reschenthaler votes no.

5958 Mr. Cline?

5959 Mr. Cline. No.

5960 Ms. Strasser. Mr. Cline votes no.

5961 Mr. Armstrong?

5962 Mr. Armstrong. No.

5963 Ms. Strasser. Mr. Armstrong votes no.

5964 Mr. Steube?

5965 Mr. Steube. No.

5966 Ms. Strasser. Mr. Steube votes no.

5967 Chairman Nadler. The gentleman from Tennessee?

5968 Mr. Cohen. Aye.

5969 Ms. Strasser. Mr. Cohen votes aye.

5970 Chairman Nadler. Are there any members who wish to vote

5971 who haven't voted yet?

5972 [No response.]

5973 Chairman Nadler. The clerk will report.

5974 Ms. Strasser. Mr. Chairman, there are 22 ayes and 15

5975 noes.

5976 Chairman Nadler. The ayes have it. The bill, as

5977 amended, is ordered reported favorably to the House.

5978 Members will have 2 days to submit views.

5979 The bill will be reported as a single amendment in the
5980 nature of a substitute incorporating all adopted amendments.

5981 Without objection, staff is authorized to make technical
5982 and conforming changes.

5983 Now, we have three more bills to do in this markup, two
5984 more gun bills and two less controversial bills. I hope to
5985 do at least one of the gun bills tonight, and I hope that
5986 everyone doesn't feel it necessary to speak on every single
5987 amendment so we can finish it at a relatively reasonable
5988 hour.

5989 Pursuant to notice, I now call up H.R. 1186, the Keep
5990 Americans Safe Act, for purposes of markup, and move that the
5991 committee report the bill favorably to the House.

5992 The clerk will report the bill.

5993 Ms. Strasser. H.R. 1186, to regulate large-capacity
5994 ammunition feeding devices.

5995 Chairman Nadler. Without objection, the bill is
5996 considered as read and open for amendment at any point.

5997 [The bill follows:]

5998

5999 Chairman Nadler. I will begin by recognizing myself for
6000 an opening statement.

6001 H.R. 1186, the Keep America Safe Act, introduced by our
6002 colleague, the gentleman from Florida, Mr. Deutch, would
6003 prohibit importing, selling, manufacturing, transferring, or
6004 possessing large-capacity magazines that could hold more than
6005 10 rounds of ammunition. Time and time again, over the last
6006 decade, we have seen large-capacity magazines used in
6007 horrible mass shootings.

6008 [Gavel sounds.]

6009 Chairman Nadler. These tragedies have been magnified in
6010 their destructiveness because of the use of large-capacity
6011 magazines. A review of the record is sobering. For example,
6012 screen depicts a 100-round, dual-drum rifle magazine, similar
6013 to the one used seven years ago by the Aurora movie theater
6014 shooter, with an AR-15 assault rifle.

6015 Last month, the shooter in Dayton, on August 4th, used a
6016 100-round drum magazine to kill 9 people and injure 27 others
6017 in just 30 seconds. And days before that attack, the shooter
6018 who killed 4 people and injured 13 others at the Garlic
6019 Festival in Gilroy, California, used a 75-roundn drum
6020 magazine, in addition to 40-round magazines.

6021 The next screen show shows the type of 30-round magazine
6022 used to kill 20 children and 6 adults, in 2012, at Sandy Hook
6023 Elementary School in Newton, Connecticut. Many of the 6- and

6024 7-year-old victims were from the first-grade classrooms near
6025 the front of the school. All but two of the victims were
6026 shot multiple times.

6027 Before turning the weapon on himself, the shoot at the
6028 Pulse Nightclub in Orlando, Florida, used the same type of
6029 magazine, in addition to a pistol with a 17-round magazine,
6030 to kill 49 people three years ago. A shooter on November 5,
6031 2017, fatally shot 26 people and wounded 20 others at the
6032 First Baptist Church in Sutherland Springs, Texas, using a
6033 nearly identical magazine.

6034 This photo shows a device similar to the 33-round
6035 magazine used by the gunman in Tucson, Arizona, who seriously
6036 wounded and almost killed Representative Gabrielle Giffords
6037 in a supermarket parking lot in 2011. The gunman used a
6038 handgun equipped with a 33-round magazine that enabled him to
6039 kill 6 people, including Chief Judge John Roll of the U.S.
6040 District Court of Arizona, and to injure 13 others. The
6041 shooting spree was only interrupted when he was tackled by a
6042 bystander as he temporarily stopped shooting to remove the
6043 magazine and attach a new one to his weapon when the first
6044 magazine finally ran out of ammunition.

6045 Studies have shown what is plainly obvious to the vast
6046 majority of the American people -- large-capacity magazines
6047 make it easier to kill more people and they serve virtually
6048 no other function. One analysis of mass casualty shootings

6049 between 1982 and 2012, found that large-capacity ammunition
6050 magazines were recovered in over half of these incidents, and
6051 on average, they cause twice as many fatalities and 14 times
6052 as many injuries. Without question, it is long overdue to
6053 ban these instruments of death.

6054 Congress has considered and enacted similar legislation
6055 before. In 1994, Congress banned the possession and transfer
6056 of magazines capable of holding more than 10 rounds of
6057 ammunition. Just as the bill before us today does, those who
6058 possess magazines on or before the date of enactment that
6059 exceeded 10 rounds were grandfathered in, and they could
6060 continue to possess the banned magazines.

6061 The 1994 prohibition was extremely successful, but it
6062 had a deadly flaw. It contained a sunset provision, and in
6063 2004, the Federal ban expired. Since the expiration of this
6064 law in 2004, the use of high-capacity magazines and crime
6065 guns has risen substantially, with tragic results. For
6066 example, in Virginia, when the Federal ban was in effect,
6067 there was a significant reduction in the share of crime guns
6068 equipped with high-capacity magazines, down to an all-time
6069 low of 10 percent, before the law expired in 2004. But by
6070 2010, the share of Virginia crime guns equipped with high-
6071 capacity magazines had more than doubled to 22 percent.

6072 Nine states and the District of Columbia regulate high-
6073 capacity magazines. States with these laws experienced mass

6074 shootings at less than half the rate of states without
6075 restrictions. And according to Boston University researcher,
6076 whether a state has a large-capacity ammunition magazine ban
6077 is the single best predictor of the mass shooting rates in
6078 that state.

6079 The evidence is clear that it is time that we finally
6080 re-establish a ban on these deadly devices, and the American
6081 people strongly agree. One recent poll shows 70 percent of
6082 Americans support a ban on large-capacity magazines, which
6083 underscores the obvious -- we must reasonably limit the tool
6084 favored by mass casualty shooters.

6085 The memory of their innocent victims and the critical
6086 need to prevent further mass shootings is what brings us here
6087 today. Today we take an important step to limit future
6088 carnage by passing a 10-round magazine limit. I thank Mr.
6089 Deutch for championing this effort and for introducing this
6090 very significant bill, and I urge all my colleagues to
6091 support it.

6092 I now recognize the ranking member of the Judiciary
6093 Committee, the gentleman from Georgia, Mr. Collins, for his
6094 opening statement.

6095 Mr. Collins. Thank you, Mr. Chairman. We are now on to
6096 our second bill of the night. We are considering a bill
6097 that, despite its name, will do nothing to make Americans
6098 safe. You don't have to take my word for it. Instead, let's

6099 consider some published studies that examine the issue.

6100 We all know that in 1994 a 10-year Federal ban on
6101 commonly owned semi-automatic firearms and magazines capable
6102 of holding more than 10 rounds of ammunition was enacted as
6103 part of the Violent Crime Control and Law Enforcement Act of
6104 1994. While that ban was in place, in 1997, a Department of
6105 Justice-funded study of the ban determined that, at best, the
6106 assault rifle ban can only have a limited effect on total gun
6107 murders because the ban weapons and magazines were never
6108 involved in more than a modest fraction of all gun murders.

6109 A confidential study by the Centers for Disease Control,
6110 CDC, in 2003, looked at 51 studies covering a full array of
6111 gun control measures, including the assault weapons ban
6112 magazine capacity limitation, and was unable to show that the
6113 limitation had reduced crime.

6114 The following year, in 2004, U.S. Department of Justice-
6115 funded follow-up study of the 1994 assault weapon ban
6116 determined that should it be renewed, the ban's effects on
6117 gun violence are likely to be small, at best, and perhaps too
6118 small for reliable measurement.

6119 Following the 2007 shooting at Virginia Tech, Governor
6120 Tim Kaine convened a panel to study the atrocity. The
6121 shooter used several magazines that had capacities greater
6122 than 10 rounds. The report stated that the panel considered
6123 whether the previous Federal Assault Weapons Act of 1994 that

6124 banned 15-round magazines would have made a difference in the
6125 April 16th incident. The law lapsed after 10 years, and in
6126 October of 2004, the ban had then banned clips or magazines
6127 with over 10 rounds.

6128 The reported that the 10-roundn magazines that were
6129 legal would have not made much of a difference in each of
6130 these incidents. Even pistols with rapid loaders could have
6131 been about as deadly in this situation. If you want to
6132 disagree with the CDC, the DOJ, the Virginia Tech findings, I
6133 can point you to a 2018 RAND Corporation comprehensive study,
6134 which surveyed the available research on several gun
6135 policies. RAND sought to determine how bans on the sale of
6136 assault weapons and high-capacity magazines affect gun
6137 outcomes. The study concluded, "We found non-qualifying
6138 study showing that the bans on the sale of assault weapons
6139 and high-capacity magazines decreased any of the eight
6140 outcomes we investigated."

6141 The magazines that this bill would prohibit are common
6142 with most semi-automatic rifles and pistols. Law-abiding
6143 Americans own and use millions of these magazines safely and
6144 responsibly. They are already roughly 130 million detachable
6145 magazines. More than 30 million of these can accommodate
6146 more than 30 rounds. Many of them are not after-market items
6147 because manufacturers often provide magazines that will hold
6148 15 to 30 rounds of ammunition as standard equipment for

6149 handguns and rifles. The data simply does not support
6150 enacting this measure if the goal is to save lives. H.R.
6151 1186 is not a reasonable limit on magazine capacity. It is
6152 an arbitrary limit on America's right to self-defense that
6153 will only ensure criminals possess these items and will use
6154 them to victimize law-abiding citizens.

6155 One of the things to realize, and if you take mass
6156 shootings into account, studies have also shown -- and this
6157 was a *Mother Jones* article and database -- that of mass
6158 shootings involving, from 1982 to 2019, 4-plus fatalities,
6159 the weapons used were handguns, 62 percent, obtained legally,
6160 83 percent. When you look at this -- the rifles were 25,
6161 shotguns were 13. When you look at this, this shows what the
6162 studies actually show. What we have before us tonight is
6163 another attempt to make people feel good without helping a
6164 thing.

6165 You may think this is helping, it may make you feel
6166 good, but as I have said before, this will not heal you and
6167 it will not solve your problem. As we move forward, please
6168 keep that in mind.

6169 With that, I yield back.

6170 Chairman Nadler. Thank you, Mr. Collins. Without
6171 objection, all other opening statements will be included in
6172 the record.

6173 I now recognize myself for purposes of offering an

6174 amendment in the nature of a substitute. The clerk will
6175 report the amendment.

6176 Ms. Strasser. Amendment in the nature of a substitute
6177 to H.R. 1186, offered by Mr. Nadler. Strike all that follows
6178 after the enacting clause and insert the following.

6179 Chairman Nadler. Without objection, the amendment in
6180 the nature of a substitute will be considered as read and
6181 shall be considered as base text for purposes of amendment.
6182 I will recognize myself to explain the amendment.

6183 This amendment makes several minor clarifications to the
6184 bill, but it makes no significant substantive changes. I
6185 urge all members to support the amendment, and I yield back
6186 the balance of my time.

6187 I now recognize the ranking member of the full
6188 committee, Mr. Collins, for any comments he may have on the
6189 amendment.

6190 Mr. Collins. No comments on that. I yield back.

6191 Chairman Nadler. I now recognize the sponsor of the
6192 bill, Mr. Deutch, from Florida.

6193 Mr. Deutch. Thank you, Chairman Nadler. Thanks for
6194 recognizing me. Thanks for including this bill to ban high-
6195 capacity magazines in the markup, and for your support
6196 through the years on this important issue.

6197 I would like to thank our colleague in the Senate,
6198 Senator Menendez, for championing this bill for so many years

6199 on the other side of the Capitol. I also want to acknowledge
6200 the leadership of Congresswoman DeGette, who represents the
6201 Columbine community, and Congressman Titus, who represents
6202 the Las Vegas community, for all that they have done to help
6203 bring this bill to this markup.

6204 We all know -- we all know too many victims and too many
6205 surviving family members and loved ones of mass shootings and
6206 other acts of gun violence. Today we stand together to
6207 demand that this Congress do something to stop it, and that
6208 is what this is. What is the Keep America Safe Act all
6209 about? Seconds. Just seconds, because seconds matter. The
6210 few seconds that it takes to reload a weapon matter. Those
6211 seconds can mean all the difference. Those seconds can save
6212 a life. Seconds matter.

6213 Yesterday, President Trump honored the first responders
6214 in the shootings last month in El Paso and Dayton. They did
6215 everything they could to save lives. In Dayton, Ohio, on a
6216 busy evening of nightlife, first responders stopped the
6217 shooter in a remarkable 30 seconds. That is fast. It is
6218 shockingly fast. We are so grateful that they were there to
6219 take action. In those 30 seconds, the shooter killed 9
6220 people and injured 27 others. A night of joy was cut short in
6221 30 seconds.

6222 The people running out of bars and clubs that night
6223 felt the terror that those in Orlando felt in 2016, at Pulse.

6224 Celebrations and lives cut shot in just moments. After the
6225 Pulse shooting in Orlando, I said to my colleagues, "You
6226 shouldn't need a mass shooting in your district to care about
6227 gun violence." Gun violence happens in every district, every
6228 day in America.

6229 And then on the tragic day almost 19 months ago, a mass
6230 shooting happened in my district in Parkland. In Stoneman
6231 Douglas High School, a gunman killed 17 and injured 17
6232 others. He fired more than 150 rounds in 6 minutes -- 150
6233 rounds in 6 minutes. We know that seconds mattered in those
6234 hallways. Students ran down those hallways desperate for
6235 safety, and we know that seconds could have made a
6236 difference. If this gunman was limited to 10-round
6237 magazines, some of those students may have survived that
6238 horrible day.

6239 High-capacity magazines were meant for the battlefield,
6240 not for our communities. Together with assault weapons,
6241 high-capacity magazines make mass shootings more deadly.
6242 They injure more people faster than gun violence without
6243 them.

6244 Analysis of mass shootings from 2009 to 2017 found that
6245 58 percent involved firearms with high-capacity magazines,
6246 and in those shootings there were twice as many fatalities
6247 and 14 times as many injuries per incident, on average,
6248 compared to those that did not include the use of high-

6249 capacity magazines.

6250 We need to act today so that we don't keep breaking the
6251 record for the next worst mass shooting in American history.
6252 We need to act now so that the students, or concert-goers, or
6253 church-goers, or young people at a nightclub, or back-to-
6254 school shoppers have those precious few seconds to escape.

6255 The time to act is right now. I urge my colleagues, I
6256 implore my colleagues to support this legislation to take
6257 action here, tonight, to help save lives.

6258 And I yield back the balance of my time.

6259 Ms. Scanlon. [Presiding.] For what purpose does the
6260 gentlelady seek recognition?

6261 Ms. Lofgren. To strike the last word.

6262 Ms. Scanlon. The gentlelady is recognized for five
6263 minutes.

6264 Ms. Lofgren. At the beginning of this summer's district
6265 work period I was faced with, really, the heartbreaking and
6266 infuriating news that Gilroy -- the town of Gilroy, in my
6267 congressional district, had joined the too-long-list of
6268 communities experiencing the tragedy of a mass shooting, at
6269 the Garlic Festival, a family-friendly festival that happens
6270 every year. And like the perpetrators of so many gun deaths
6271 that preceded the Garlic Festival shooting, as well as the
6272 ones that followed, as well as everyday gun violence, the
6273 Gilroy shooter used an AK-47-style weapon. He had a 75-round

6274 drum magazine and five 40-round magazines with him at the
6275 time of the incident.

6276 Now California, along with being the first state to ban
6277 assault weapons, is also one of nine states that bans the
6278 sale or import of large-capacity magazines or those that
6279 accept more than 10 rounds. Why didn't that forward-thinking
6280 law protect us? Because it is a state law and the shooter
6281 went to Nevada, right next door, and bought what he couldn't
6282 buy in California, and that makes so clear why we need a
6283 nationwide law to protect people.

6284 As we know, these lethal weapons unleash a large volume
6285 of bullets in a hurry, and they tumble. They do tremendous
6286 damage. I would like to say a word for the first responders
6287 at Gilroy. They were facing a shooter with an assault
6288 weapon, with multiple rounds of bullets, and they didn't have
6289 assault weapons. They ran at him, and in under one minute
6290 they shot him, and they put an end to that.

6291 But before, because of the nature of his weapon, he was
6292 able to kill three people and injure 17 others. It really
6293 bothers me when I hear people say, "Well, it wouldn't solve
6294 the problem." Yes, it would.

6295 Steven Romero, who was killed that day, was six years
6296 old. Keyla Salazar was 13 years old. They would still be
6297 alive if that shooter had not had access to those weapons.
6298 They matter. And if this doesn't solve every problem in

6299 every community, it would have saved their lives, and that is
6300 a reason why we should act.

6301 I just want to say a word of disappointment, that when
6302 the President recognized the first responders in Dayton and
6303 El Paso, as he should, that he neglected to take note of the
6304 tremendous bravery of the first responders in Gilroy, who I
6305 am so proud of. What they did was so terrifying, and yet
6306 they saved so many lives. And not just the police officers.
6307 While the event was going on the firefighters, who were told
6308 to stand back until an event is over, they violated those
6309 protocols. They weren't roaring in anyhow, and because they
6310 did they were able to save some of the 17 who had been so
6311 severely injured, because they were right on the spot. Of
6312 those who were injured, some will never fully recover. That
6313 is now damaging these weapons are.

6314 So at the vigil we had in Gilroy, it was really just to
6315 support the families and the people who were traumatized by
6316 that whole experience. And I said then, now is not the time
6317 to talk about remedies to gun violence, because we need to
6318 just support each other. That was right for them, but now is
6319 the time to talk about taking steps to prevent massacres as
6320 happened in Gilroy, California.

6321 I hope that we are successful in bringing this into law,
6322 and when we do I will be remembering all the victims, but
6323 especially a 6-year-old boy and a 13-year-old girl who should

6324 still be alive today.

6325 I yield back.

6326 Ms. Scanlon. For what purpose does the gentleman from
6327 Florida seek recognition?

6328 Mr. Steube. I move to strike the last word.

6329 Ms. Scanlon. The gentleman is recognized for five
6330 minutes.

6331 Mr. Steube. First, I would like to submit for the
6332 record "Losing Count: The Empty Case for High-Capacity
6333 Magazine Restrictions," by Matthew Larosiere, July 17, 2018,
6334 from the Cato Institute.

6335 [The information follows:]

6336

6337 Mr. Steube. There is a number of different issues with
6338 this bill, but first I am just going to start with the
6339 definition, on Lines 12 through 14, on the first page,
6340 defining what a magazine is under this 10-round magazine ban.
6341 "Or that can be readily restored, changed, or converted to
6342 accept more than 10 rounds of ammunition." I know there are
6343 many on this committee that either served in the military or
6344 that are familiar with firearms. Just about every firearm,
6345 whether it be a handgun or a rifle, that accepts a magazine,
6346 there is a little metal piece at the bottom of the magazine.
6347 Just about every one of those could be readily restored,
6348 changed, or converted to accept more than 10 rounds of
6349 ammunition. So this bill would actually ban just about the
6350 use of every semi-automatic firearm, rifle, and handgun.

6351 Most handguns -- I would say most of the handguns that I
6352 carry on a regular basis, using my concealed carry permit in
6353 the State of Florida, carry more than 10 rounds. So you are
6354 banning just about every handgun and firearm and rifle that
6355 would accept a magazine, because of the way that this
6356 definition is worded, because any of those could be
6357 converted. There is simply a little metal piece at the
6358 bottom of the magazine for any rifle that accepts a magazine.
6359 That is the first issue.

6360 The second issue is this would solve absolutely nothing.
6361 My colleague from Florida talked about Parkland. The

6362 Parkland shooter fired 150 rounds over the course of about
6363 seven minutes, which I don't know where the other gentleman
6364 from Florida got his information from, but this news report
6365 says using a 10-round magazine. So this bill would do
6366 absolutely nothing to have addressed -- if this bill was law
6367 prior to the Parkland shooter -- would have done nothing to
6368 address that incident because he used 10-round magazines.

6369 And the Virginia Tech shooting, for several years the
6370 deadliest mass shooting in American history, the shooter
6371 changed magazines a total of 17 times in the course of his
6372 rampage, rapidly and frequently exchanging 10-round magazines
6373 that would be compliant with most magazine bans, including
6374 this bill.

6375 So what you are trying to accomplish, you are not going
6376 to accomplish. And any of those of us that served in the
6377 military -- I was an infantry officer. We frequently did
6378 magazine exchanges as a training exercise. You can exchange
6379 magazines in a very quick manner of time. On average it is
6380 three seconds, but most guys that practice it could probably
6381 do it in one or two seconds. So you are really not
6382 accomplishing anything there as well.

6383 Then, further, in the language of the bill, on page 2,
6384 paragraphs 12 through 15, "this paragraph shall not apply to
6385 the possession of any large-capacity ammunition feeding
6386 devices otherwise lawfully possessed on or before the date of

6387 enactment of the Keep America Safe Act." So the shooter in
6388 Parkland, the shoot at Virginia Tech, any person that
6389 currently possesses the 100-round magazines, the 200-round
6390 magazines, the 30-round magazines can still keep their
6391 magazines because you are not banning anything that people
6392 lawfully possess at the time that this bill is passed into
6393 law.

6394 So you are accomplishing absolutely nothing if you are
6395 purporting to say that if only people that are shooting and
6396 acting in violence, and have evil in their hearts, that want
6397 to shoot and kill a lot of people, if they only had 10-round
6398 magazines then they are not going to kill as many people as
6399 they would if they had, say, a 30-roundn magazine, which the
6400 facts don't support that at all. And this bill wouldn't
6401 affect that at all because it doesn't ban current use or
6402 possession of anything over a 10-round magazine.

6403 So I don't quite understand. If the left is trying not
6404 say and purport that nobody in the United States should have
6405 a 10-round magazine, because if they decide to use it for a
6406 nefarious purpose and they tried to kill as many people as
6407 possible in the shortest amount of time, then why wouldn't
6408 you ban possession of the article that you are complaining is
6409 purporting to cause all of the violence that you are
6410 purporting it is going to cause? But it doesn't, because
6411 even the gentleman from Florida, whose district is in

6412 Parkland, the shooter in Parkland used a 10-round magazine.

6413 The bill that the left and this Congress passed with
6414 universal background checks, the Parkland shooter passed a
6415 background check at a licensed firearm dealer. That would
6416 have done nothing to stop the shooter at Parkland. So what
6417 you purport to stop violence -- universal background checks -
6418 - wouldn't have stopped the shooter in Parkland. This 10-
6419 round magazine ban wouldn't have stopped the shooter in
6420 Parkland. Even if he hadn't done it now and he wanted to do
6421 it later, even if this bill was passed, he still could have
6422 his 30-round magazines, if that is what he used, but he
6423 didn't. He used 10-round magazines.

6424 So I don't understand what, other than taking those
6425 steps to slowly make it illegal to possess firearms that are
6426 semi-automatic, or any way, shape, or form in America this is
6427 protecting, other than inflicting against law-abiding
6428 citizens' Second Amendment rights and infringing upon their
6429 rights to carry lawfully.

6430 I yield back.

6431 Ms. Lofgren. Madam Chairman?

6432 Ms. Scanlon. Yes. The gentleman from California is
6433 recognized.

6434 Ms. Lofgren. I forgot to ask unanimous consent to put
6435 into the record a communication from the County of Santa
6436 Clara in favor of these bills, as well as an article about

6437 Gilroy, and I ask unanimous consent.

6438 Ms. Scanlon. Without objection.

6439 [The information follows:]

6440

6441 Ms. Scanlon. The other gentlewoman from California?

6442 Ms. Bass. Thank you. Thank you very much, Madam Chair.

6443 I haven't spoken tonight so let me just thank the chair
6444 for his leadership in putting forward all of these bills.
6445 All of us who are just coming off of a six-week recess where
6446 we just saw bloodshed from one end of our country to the
6447 next.

6448 I was listening to my colleague over there and it
6449 sounded like he might even have some interest in banning
6450 assault weapons. I was listening to him saying why ban the
6451 magazine, why not go after the guns? So if he would have any
6452 interest in doing that I would love to join him in that
6453 effort.

6454 When we are considering these bills, just as we consider
6455 bills expanding and improving firearm background checks
6456 earlier this year, those are definitive steps that we have
6457 made in this House. My colleague refers to the left. I am
6458 not exactly sure who he is referring to because, as I look at
6459 my colleagues on this side of the aisle I see people who are
6460 in the Democratic Party. I am not sure what left he is
6461 referring to.

6462 But if I think about less than two weeks ago, what
6463 happened over our break, a 54 -- in addition to the mass
6464 shootings that we all very tragically witnessed -- a 54-year-
6465 old Saint Louis man was arrested in connection with the fatal

6466 shooting of a 15-year-old child. Over the weekend, at least
6467 34 people were shot, 6 of them fatally, in gun violence in
6468 Chicago, and there were 131 murders in only the first six
6469 months of 2019 in Los Angeles. And I know many of my
6470 California colleagues already mentioned that in California we
6471 have tough gun laws that we are very proud of, but the
6472 problem we have in California is the guns that are coming
6473 from outside of California.

6474 So we know that gun violence is a problem that reaches
6475 far and wide in this country, not only with mass shootings
6476 but in many communities, where homicide rates can often reach
6477 10 times the national average. So I know that the committee
6478 will, and soon, in the next few weeks, examine other types of
6479 gun violence issues.

6480 But I just have to say that one thing that is just so
6481 confusing to me about my colleagues on the other side of the
6482 aisle is that they are very clear in their critiques, or any
6483 holes in legislation that we might propose, but I never hear
6484 a solution. And I know that you have to be as concerned
6485 about the violence in this country as we are, so what on
6486 earth is the solution?

6487 When I do hear you put something forward it is often
6488 mental health that is mentioned. You know what? I am fine
6489 with that. Let's deal with mental health. But there is
6490 never a concern about putting any resources toward mental

6491 health. Mental health is an issue, but it is interesting
6492 that mental health comes up when it is a particular type of
6493 gunman, not the type of gun violence that many communities
6494 see on a daily basis.

6495 So I just would really like to hear my colleagues
6496 propose some definitive solutions. The ranking member
6497 mentioned various studies, and so the studies don't
6498 definitively prove that this is a solution, or that is a
6499 solution. I am not even sure what studies have been allowed,
6500 since I know that the Centers for Disease Control were not
6501 even really allowed to look at gun violence. I believe it is
6502 a public health issue, but they weren't really even allowed
6503 to look at it.

6504 So I don't know what studies he is talking about, but
6505 for God's sake, even if the study is not definitive, if it is
6506 possible to save some lives -- and you know the thing that
6507 happened in Dayton, Ohio, to me, blows up one of the myths
6508 that my colleagues make a lot of times, which is we need to
6509 make sure that the good guys have guns so that the good guys
6510 can go after the bad guys. Well, in Dayton, Ohio, the good
6511 guys did have guns. It didn't matter, because those people
6512 were slaughtered within a few seconds. The good guys got
6513 there, they took out the bad guy, but how many people were
6514 killed and how many people were injured?

6515 So it makes no sense. When it comes to assault weapons

6516 we know what assault weapons are for. One of these days I
6517 would like to hear some solution from my colleagues, and I am
6518 willing to support you on the mental health tip, but you
6519 should come to the table with resources, with resources to
6520 address mental health, not just the rhetoric.

6521 I ask unanimous consent to enter into the record a
6522 statement from Representative Robin Kelly from Illinois and
6523 also Lacy Clay from Missouri.

6524 Ms. Scanlon. Without objection.

6525 [The information follows:]

6526

6527 Mr. Cicilline. Will the gentlelady yield?

6528 Ms. Bass. One study that I want to make reference to is
6529 if an assault weapon is used with a high-capacity magazine,
6530 the number of people that are killed in a mass shooting
6531 increases by 62 percent, because of the lethality of the
6532 weapon with those high-capacity magazines. So we know for
6533 sure because they are more deadly. They kill more people.
6534 And so there is no doubt that passing a ban on these high-
6535 capacity magazines will result in saving lives.

6536 And with that I yield back.

6537 Ms. Scanlon. Who seeks recognition? For what purpose
6538 does the gentlelady from Florida seek recognition?

6539 Ms. Mucarsel-Powell. Thank you, Madam Chair. I would
6540 like to strike the last word.

6541 Ms. Scanlon. Yes. The gentlelady is recognized for
6542 five minutes.

6543 Ms. Mucarsel-Powell. Thank you. I want to first say
6544 thank you to my colleagues who have had the courage to
6545 continue to work on gun reform bills, even though we get
6546 obstacle and obstacle and obstacle. Thank you to my friend,
6547 Lucy, and also Representative Ted Deutch for bringing this
6548 important piece of legislation.

6549 We know that the use of high-capacity magazines causes
6550 twice as many fatalities as those massacres where they were
6551 not being used. We have seen Gilroy, which used a 75-round,

6552 where three people were killed and 13 were wounded in less
6553 than one minute. Sandy Hook Elementary, an assault weapon
6554 was used with a 30-round magazine, that took the lives of 20
6555 children. Pulse in Orlando, in 2016, the perpetrator used a
6556 30-round magazine, taking the lives of 49 individuals.

6557 One of lives that was taken at Pulse was Jerry Wright,
6558 and when I hear Representative Collins saying that this bill
6559 is not going to do anything to save any lives, I would like
6560 to ask my colleague, Representative Collins, to say that to
6561 Fred and M.J. Wright, who continue to fight for common-sense
6562 gun reform. I would like for him to look into the eyes of
6563 the parents of Sandy Hook who have not stopped advocating for
6564 common-sense gun reform. And we have not seen the will or
6565 the courage by my colleagues. When you had the majority for
6566 decades, not one gun reform bill was brought in the committee
6567 or passed in the House of Representatives.

6568 I have to agree with also my colleague Karen Bass. You
6569 continue to bring up mental health. Fine. You think it is
6570 mental health? Fine. Let's invest in mental health
6571 programs. But then let's also take action on other forms of
6572 gun reform and gun safety legislation that will save the
6573 lives of the people that we continue to see lose their lives
6574 on senseless gun violence.

6575 It is a very -- this is a very difficult subject for me,
6576 and I have been waiting to speak, because every single time I

6577 sit in this committee and I hear my Republican colleagues
6578 obstruct any sort of action. It is disheartening, because I
6579 know that most Americans are watching, and they see that you
6580 have no will, no courage. I also lost my father to gun
6581 violence. No, it wasn't through a massacre. They didn't use
6582 high-capacity magazines. It was a criminal. But there are
6583 many things that we can do to avoid another family member
6584 from getting a call that they have lost a loved one.

6585 So I implore you. Please have courage and work with us,
6586 in good faith, to take action. Please.

6587 I yield back.

6588 Ms. Scanlon. Who seeks recognition?

6589 Mr. Reschenthaler. Yes. I move to strike the last
6590 word.

6591 Ms. Scanlon. Yes. The gentleman from Pennsylvania is
6592 recognized for five minutes.

6593 Mr. Reschenthaler. Thanks. I have just got to clarify
6594 the record because a lot has been said about the people on my
6595 side of the aisle. A lot of us were in the State Senate. A
6596 lot of us were in the State House. Many of us worked on
6597 these issues. We had bill on these issues in the State
6598 House. The difference is we respect due process, and we want
6599 to make sure we are protecting people's rights as we are
6600 protecting individuals.

6601 Not just talking about this term, Ranking Members

6602 Collins has proposed legislation. He has a bill that would
6603 make it easy for law enforcement to coordinate and share
6604 information to prevent mass violence, to reduce illegal
6605 street sales of firearms, and actually persecute perpetrators
6606 of gun violence. None of these are partisan. They all
6607 protect due process. Yet not a single Democrat has co-
6608 sponsored this bill.

6609 There is talk about Republicans not doing anything.
6610 Previously, I wasn't here. I just got elected. But last
6611 year, when Republicans controlled the House, we actually did
6612 pass legislation to prevent mass shootings, that was signed
6613 by the President. The Fix NICS Act updated our nation's
6614 background check system, which to date has blocked more than
6615 1.3 million gun sales to individuals prohibited from owning
6616 firearms.

6617 So before you say Republicans haven't done anything on
6618 this issue, I want you to investigate what we have done
6619 before we got here, I want you to look back just a year at
6620 legislation we actually passed, and I want you to think about
6621 how we take a very balanced approach that protects due
6622 process, protects people's properties, but still makes it
6623 hard for bad guys to get guns.

6624 I yield back my time.

6625 Ms. Scanlon. For what purpose does the gentleman from
6626 Colorado seek recognition?

6627 Mr. Neguse. I move to strike the last word.

6628 Ms. Scanlon. You are recognized for five minutes.

6629 Mr. Neguse. Thank you, Madam Chair, and I appreciate
6630 the comments from my colleague from Pennsylvania. I would
6631 just say this. I, too, take umbrage, as my colleague from
6632 Florida did, with the characterizations of this bill, and
6633 those were not characterizations that you made, but that were
6634 made earlier with respect to this notion that the bill would
6635 save no lives and that it would simply make us feel good.
6636 And I think I would assume you would take the same umbrage if
6637 we were to characterize a bill that you had proposed to
6638 address this pandemic of gun violence in the United States,
6639 if we characterized it in the same way.

6640 This bill has nothing to do with making any of us feel
6641 good, and in the view of folks on this side of the aisle, it
6642 has everything to do with saving lives, and that is why each
6643 and every one of us are so passionate about it.

6644 Now I also will say I did not intend to quote Oprah
6645 tonight, but Mr. Gohmert made a comment earlier, that Oprah
6646 was right. And so I just want to make sure he is aware, an
6647 article from 2016, in which she said, quote, "What will be
6648 the number? What will be the number? What number is high
6649 enough to get our attention so that we will say enough? I
6650 thought the number was 26 in Newtown," she continued,
6651 referring to the 2012 shootings where 20 children and 6

6652 adults were slain at Sandy Hook.

6653 "You know, are we, as a country, do we really believe
6654 that assault weapons should be made available to anybody?
6655 Are assault weapons necessary? I just say enough. When are
6656 we going to be conscious enough to say that doesn't make any
6657 sense. We have the right to bear arm, but do we have the
6658 right to bear assault weapons? That's what I ask."

6659 So those are Oprah's words, not mine, but you and I
6660 certainly agree. And Mr. Gohmert agree that Oprah is
6661 certainly right.

6662 So I want to say this. In Colorado, we are no strangers
6663 to gun violence. Columbine was mentioned earlier -- 20 years
6664 ago, when two shooters entered Columbine High School in
6665 Littleton, Colorado. I lived just 10 miles away. I was in
6666 ninth grade in my high school when it was shut down, and we
6667 learned later that evening that students the same age as me
6668 had lost their lives in a tragic and terrible shooting. And
6669 that murder, you know, it was one of the first of its kind in
6670 the United States, and it has become all too commonplace in
6671 America today.

6672 As one of the first places to experience that tragedy,
6673 this devastation, this violence, it really is an epidemic of
6674 gun violence that has taken far too many lives and wrecked
6675 countless communities, and yet nothing has been done.

6676 I have many constituents who are waiting for this

6677 Congress to act. Folks like Jane Dougherty, a Coloradan, who
6678 lost her sister in the Sandy Hook shooting in December 2012,
6679 Mary, who was the school psychologist that gave her life
6680 trying to protect her students. She went to work at Sandy
6681 Hook on December 14th and was never seen again, and as we all
6682 know, 26 individuals were murdered in five minutes, and 156
6683 rounds were found at the scene.

6684 You heard me earlier talk about the leadership of Tom
6685 Sullivan, his courage, someone who lost his son in the Aurora
6686 shooting, where 12 people were killed and 58 others injured,
6687 again, a military-style weapon and a 100-round capacity
6688 magazine used.

6689 So I will just say this. I recognize that some of my
6690 colleagues have some objections to these bills, but I would
6691 implore my colleagues on the other side of the aisle to be
6692 intellectually honest. Just because a bill doesn't solve all
6693 problems doesn't mean it is not a bill worth pursuing.

6694 Ms. Scanlon. The gentleman's time has expired.

6695 Mr. Neguse. And with that I would encourage my
6696 colleagues to vote in favor of the bill before us today.

6697 I yield back the balance of my time.

6698 Ms. Scanlon. Okay. The critical issues we are
6699 addressing today obviously go to the core of our
6700 constitutional democracy and understandably, given the
6701 carnage we have seen in recent months, bring out strong

6702 passions in us, as they do in the American people.
6703 Nevertheless, I must remind everyone on our committee that
6704 House rules and precedents require us to refrain from
6705 impugning the personal motives of another member. These
6706 admonitions apply as well to remarks characterizing the
6707 motives behind legislation. Members are certainly permitted
6708 to voice critical opinions of Congress, of the House, and of
6709 political parties, so I hope that what should be a spirited
6710 discussion of these issues today will stay focused on those
6711 issues and take care to keep our comments in compliance with
6712 House rules for decorum.

6713 Mr. Collins. Move to strike the last word.

6714 Ms. Scanlon. The gentleman from Georgia is recognized.

6715 Mr. Collins. I appreciate the chairman and chairlady
6716 recognizing that back. I wish that it had been followed. We
6717 were having, at least, a decent discussion up until a few
6718 minutes ago.

6719 There are many solutions to what we are dealing with,
6720 and as someone who now has been said to look at someone and
6721 explain to them why I don't think this will work, I have. I
6722 have been, not only as a pastor, as a chaplain in the
6723 military, I have had the unfortunate, and fortunate,
6724 pretending because of the blessing received in making and
6725 helping people through times of trouble, whether their loved
6726 one was killed with a firearm, whether their loved one was

6727 killed by a drunk driver, whether their loved one was killed
6728 by a member of their own family's hand.

6729 I have looked at them, and I would tell them right now
6730 that this bill, although would help possibly, in some ways,
6731 would not bring their loved one back, would not do everything
6732 that many times these are supposed to help with.

6733 Now I appreciate the fact -- and we can do this. We
6734 have differences of opinion. If we really wanted to take
6735 every step out and put forth solutions, then have the
6736 chairman bring my bill up, the MVP Act. It has not been
6737 brought up. It has not even been actually marked for a
6738 markup. But we actually put resources with U.S. attorneys to
6739 actually prosecute gun crimes, to actually do things that can
6740 actually get at straw purchases, ghost purchases, these other
6741 things that actually make this a difference.

6742 I have no problem standing for what I believe, and we
6743 can disagree all day long. And I will say it, and that is
6744 what this committee is about, about policy, about what we
6745 believe works and what we believe does not work. It is also
6746 the reason we have majority and minority. It is the reason
6747 that you have a substantial majority over a minority to vote
6748 whatever you want in. And that is fine.

6749 But to simply talk about issues that work, I go back to
6750 my bill. Gun prosecutions are now up. We are seeing some of
6751 that under the new administration. But we have not seen it

6752 as it should be. There are plenty of gun laws on the block
6753 that are not ever enforced. We see gun prosecutions and
6754 prosecutors declining to prosecute gun crimes which would
6755 have took people off the No Buy List, would have took guns
6756 away from them, and not done. But we don't want to talk
6757 about that. We talk about other things.

6758 I think the problem here is simply the need to do
6759 something sometimes outweighs the need to do something that
6760 would effectively -- as my friend from Florida talked about,
6761 the magazines in the Parkland issue. The other issues. We
6762 can go down to this line, and I am not yielding on this any
6763 time, for a second.

6764 I think we can get through the rest of this evening and
6765 disagree inherently on what actually and how much of an
6766 effect this would actually have. We have stated studies,
6767 really, on both sides. Most of the studies respecting the
6768 '94 ban have shown not to have worked.

6769 But simply to go back and talk about this from a
6770 perspective of those who may or may not have walked in my
6771 shoes, and what I would do, or what I would not do -- again,
6772 let's cloud the point. Let's throw it up. Let's say Doug is
6773 wrong, or the ranking member is wrong, simply because he has
6774 a different opinion than the majority, and have put forward
6775 solutions that do go at the heart of gun violence.

6776 But I can't get a hearing. As the chairman why not

6777 that. Your bills are good. Why can't I get a hearing on
6778 mine? I tell you why -- because he don't want to deal with
6779 it. We could have put it on the markup for today. Was I
6780 given a courtesy call that said, "Hey, Mr. Ranking Member.
6781 You have got a bill that we would love to -- we are going to
6782 vote it down but we are going to give you a hearing." I
6783 don't get that, and that's part of majority-minority. I get
6784 that.

6785 But what I am not going to get -- I will state my
6786 reasons for why I vote, and I am stating my reasons for why I
6787 disagree, and will look anyone in the eye and tell them. My
6788 friend from Georgia, my heart breaks for her tragedy. But I
6789 will still tell her I disagree with this bill. And that is
6790 just the way that we go. But when we can't make our point,
6791 we try to make other things. If that is what makes us feel
6792 better, so be it.

6793 I yield back.

6794 Chairman Nadler. [Presiding.] The gentleman yields
6795 back.

6796 Mr. Raskin. Mr. Chairman.

6797 Chairman Nadler. The gentlelady from Texas.

6798 Ms. Jackson Lee. Let me -- I just want to say to the
6799 ranking member that I think, knowing the chairman, all
6800 courtesies are certainly in the possibility about leadership.
6801 And I don't think anyone is disregarding any member's

6802 legislative work.

6803 We have three bills now here today. Some of us are
6804 optimistic that we will have another opportunity for markup
6805 of additional bills. Some of us have bills that we believe
6806 will contribute to a new schematic on gun safety in this
6807 nation. So the fact that his bill is not presently on the
6808 markup is not a final word that I might imagine might occur.

6809 Mr. Collins. Would you join me in calling for a markup
6810 on it?

6811 Ms. Jackson Lee. I would join us in increasing the
6812 number of opportunities for bills to be marked up.

6813 Mr. Collins. How about mine?

6814 Ms. Jackson Lee. And we all will be advocating for our
6815 bills. I see Congressman Raskin smiling.

6816 But let me say this. Congressman Raskin gave a
6817 constitutional recounting with the famous *Heller* bill that is
6818 used, I think, wrongly. No one read the fine print that
6819 indicated that regulation was not ruled unconstitutional as
6820 it relates to the Second Amendment. And a Seventh Circuit
6821 case was just ruled on, which may make its way to the Supreme
6822 Court, that indicated that Chicago had the right to pass
6823 strong gun safety laws. So we are not in a purer sense right
6824 here.

6825 The gentleman's bill from Georgia is a good intent but
6826 it is after the fact. Prosecution goes after the fact. What

6827 we are trying to do now, and what the parents that
6828 Congressman Deutch represents, and the families that
6829 Congresswoman Escobar represents, are trying to --

6830 Mr. Collins. Ms. Jackson Lee. Ms. Jackson Lee. Can I
6831 --

6832 Chairman Nadler. The gentlelady --

6833 Mr. Collins. Just -- but you are misrepresenting my
6834 bill. And I would be happy to explain my bill to the
6835 gentlelady, but just don't misrepresent it.

6836 Ms. Jackson Lee. Let me finish and I would be happy to
6837 have the gentleman clarify if I have time.

6838 But bills that deal with prosecution are after the fact.
6839 And I think the gentleman is talking about enforcement of the
6840 law, and I certainly support that.

6841 We are talking about getting to the point where those of
6842 ill intent, hatred, whatever their mode is, do not get 10
6843 rounds. We are trying to say that civilians don't have those
6844 rounds to go against law enforcement officers who are rushing
6845 to the scene, and who are trying to protect the innocent.

6846 We are trying to suggest that when you have 10 rounds,
6847 as the doctor who testified in our hearing just this
6848 afternoon, indicated a trauma surgeon, that when you see
6849 those kinds of bullets and rounds in a human body, you hold a
6850 child's heart in your hands who is bleeding to death on the
6851 operating room table. We are trying to suggest that Japan,

6852 yes, a smaller country than ours, has no gun violence and no
6853 guns. We are not that country. But we realize we want to be
6854 in the preventive mode to save lives.

6855 We want to ensure that the young man at Sandy Hook could
6856 not go into the closet of stored guns because they were not
6857 stored properly. They had a storage unit but it was not
6858 locked, without him having access to it, and had 30 rounds in
6859 Sandy Hook.

6860 So this issue of magazines is getting to the point where
6861 we don't have civilians walking around with weapons that are
6862 war-like or for law enforcement in case that they are in an
6863 issue or a situation where they are under siege. And I am --
6864 not often have I seen that having to be used, but just
6865 imagine if it is used again them or the community that they
6866 are trying to protect. These are weapons of war. The
6867 magazines are used in war. They are not used. And as a
6868 congressman said, Deutch, who explained to me, he said the
6869 young man in Florida only was stopped because his gun jammed,
6870 and he had 10 rounds.

6871 So I am interested in saving lives, and frankly, that is
6872 why we are going to go all the way through the night -- we
6873 hope not -- to get these bills passed to ensure that we have
6874 a Federal statement and law about saving lives.

6875 I yield back.

6876 Chairman Nadler. The gentlelady yields back.

6877 Mr. Swalwell. Mr. Chairman.

6878 Chairman Nadler. Who seeks recognition? The gentleman
6879 from California.

6880 Mr. Swalwell. Thank you, Mr. Chairman. I think the
6881 question is not to speak to motives but to ask for what
6882 purpose does any person in our country need a 100-round
6883 magazine? Is it to hunt? Is it to shoot for sport? Is it
6884 to protect yourself in your home? Or is to carry out mass
6885 killings, as we see time after time?

6886 And I think there have been some fair criticisms of the
6887 different pieces of legislation tonight, but what I see kind
6888 of reminds me of like a 100-piece puzzle. And if each piece
6889 represented a different gun safety reform, what my colleagues
6890 do is they pull out a piece and they say, "Well, this piece
6891 doesn't make sense. We don't know what this piece would do."
6892 And that may be true. There may be imperfections in each
6893 piece of legislation that we offer. But ultimately, when you
6894 put background checks, Red Flag laws, magazine capacity
6895 limitations together, and other reforms that I sense will be
6896 coming, what you have is a safer America.

6897 But if you are going to take each piece and say, "Well,
6898 this would not have prevented XYZ shooting," there is no
6899 reason for us ever to show up here and do anything, on
6900 anything that affects our lives. But if we can just reduce
6901 one shooting, 1,000 shootings. It was predicted today by a

6902 doctor, based on science, that testified to a gun safety task
6903 force, that over the next 10 years in America there will be 1
6904 million gun violence victims. What if we could protect just
6905 half of those people?

6906 The gentleman from Florida also made a fair criticism
6907 that this bill does not ban assault weapons. I think we
6908 should ban assault weapons. He also said it grandfathers in
6909 approximately 250 million magazines that are out there that
6910 go beyond the capacity in this bill. That is true, and I
6911 think we should all seek to fund buy-back programs through
6912 other initiatives in Congress to reduce the availability of
6913 those magazines on the streets today.

6914 But what this piece of legislation does is it gives us
6915 all, our constituents, a chance, a chance if someone comes
6916 into our church, to have a few extra seconds because they
6917 don't have 100 rounds. They only have 10. It gives us a
6918 chance, if someone comes into a theater, to run for the
6919 exits. It gives us a chance, if someone shoots up a concert,
6920 to duck for cover. And it gives our children a chance when
6921 they are in school, if someone walks, God forbid, through
6922 their halls, just a few more seconds to spare their lives.

6923 It is not perfect. Upstream legislation, like
6924 prohibiting what can even be made, holding manufacturers
6925 liable, having licensing requirements and insurance
6926 requirements and background checks, are a much better way to

6927 prevent shootings in the first place. But if somebody is
6928 going to do harm, this just gives us time. It gives us a
6929 chance. And it could happen to any one of us, any of our
6930 constituents, any of our children.

6931 And with that I believe the gentleman from Maryland
6932 would like to seek time.

6933 Mr. Raskin. Thank you very much, the gentleman from
6934 Florida, for yielding.

6935 The other gentleman from Florida made the argument that
6936 the mass killer in Mr. Deutch's district used a 10-round
6937 capacity magazine. That may be right, but what I am reading
6938 from is page 262 of the report done by the Marjory Stoneman
6939 Douglas High School Public Safety Commission, which was given
6940 to the governor on January 2, 2019. And on page 262 it says,
6941 "On September 30, 2016, Nicholas Cruz was issued a Florida ID
6942 that was needed to purchase firearms. Cruz used a single
6943 firearm during the shooting. It was the only firearm he had
6944 in his possession on February 14, 2017. The firearm was a
6945 Smith and Wesson model MP-15 semi-automatic. A sling and
6946 bipod were attached to the rifle. The firearm was lawfully
6947 purchased on February 11, 2017, at Sunrise Tactical Supply in
6948 Coral Springs, Florida. Eight 30- and 40-round capacity
6949 magazines were recovered from the scene."

6950 So I don't know what we are missing but this seems to
6951 completely contradict the suggestion made by the gentleman

6952 from Florida that it was 10-round capacity.

6953 In any event -- I mean, I would gladly yield to him if
6954 he were here, to see whether he would change his mind about
6955 the legislation, given that fact, but I am afraid, along with
6956 Mr. Swalwell, that it is kind of a game of three-card Monte.
6957 You know, if there is a mass murder that takes place and we
6958 say it was a weapon of war, they say it was mental health.
6959 We say let's have Red Flag laws to deal with that, then they
6960 oppose the Red Flag laws and say it violates the Second
6961 Amendment, although it doesn't.

6962 So we are looking for real solutions and this will move
6963 us forward, and I stand in favor.

6964 I yield back.

6965 Mr. Swalwell. And I yield back. Thank you.

6966 Chairman Nadler. The gentleman from Tennessee.

6967 Mr. Cohen. Thank you, Mr. Chair. The people in my
6968 district want this bill passed. Most of the people in
6969 America want this bill passed. Certainly the mothers, Moms
6970 Demand Action want this bill passed, and I want to commend
6971 them for what they have done to rally support throughout this
6972 country in rallies. The rallies we had in Memphis were
6973 strong against guns, and they were strong all over this
6974 country. And this is the time that we need to act.

6975 There is no real good reason to have high-capacity
6976 magazines except for support. If you want to have sport, let

6977 the gun folks that rent out opportunities to go shoot and go
6978 play Rambo, but do it when you don't take it home with you,
6979 where you can take it to the movie theater or the school or
6980 the concert or wherever.

6981 So I am going to vote for this bill. I was proud to
6982 vote for the last bill. I am going to vote to ban the AK-
6983 47s, AR-15s, whatever. If you want to be Rambo, be Rambo,
6984 but not in the streets. Do it at a gun range, or join the
6985 Army. Get on a boat. Go away.

6986 So thank you, and I look forward to voting for this
6987 bill.

6988 Chairman Nadler. The question occurs on the amendment
6989 in the nature of a substitute.

6990 For what purpose does the gentleman from Texas wish to
6991 speak?

6992 Mr. Gohmert. To strike the last word.

6993 Chairman Nadler. The gentleman is recognized.

6994 Mr. Gohmert. One of the things, like I mentioned,
6995 Sharansky said is when you lose moral clarity you fail to
6996 realize who your friends are and who your enemies are. There
6997 is nobody here, on either side of the aisle, that is my
6998 enemy, and I hope at some point you realize I am not your
6999 enemy.

7000 And for anybody on this committee to think -- I mean,
7001 you need to understand, growing up I was very, very small. I

7002 got picked on. I had my nose bloodied more times than I care
7003 to think about. For six years, 7th through 12th, I was
7004 usually the smallest guy on the football team. You have no
7005 idea the things that I have done in my life with regard to a
7006 display or lack of display of courage.

7007 So for anybody on this committee to think you are going
7008 to intimidate some of us by basically saying what we heard in
7009 junior high -- "nyah, nyah, nyah, you are a scaredy cat" --
7010 that is not going to accomplish anything.

7011 The issue here is so serious. Saying that we have a
7012 lack of courage and we need to get some courage. And with
7013 regard to Oprah Winfrey, one of the things people love about
7014 Oprah Winfrey, probably the biggest thing, she has an
7015 incredibly big heart. She loves people. She loves doing
7016 things for people. She loves helping people. But on the
7017 Judiciary Committee, we have to be about using our heads.
7018 That is the only way you are going to preserve this little
7019 experiment in self-government.

7020 So to say it is courageous, you know, I never got a
7021 thought for being the Republican leader on this committee
7022 because of the stands I have taken in my own party. That was
7023 not even a possibility.

7024 There were times, during the second Bush administration,
7025 I wished some of my Democratic friends would have joined me
7026 in condemning the Justice Department in their abuses, but too

7027 often I was alone in doing that, from either side of the
7028 aisle. But we have got to be about using our heads here.
7029 And I know, and it plays on the heart well to say if we can
7030 just save one life, when if you study the history of this
7031 country there have been millions of lives laid down so that
7032 people would have freedom. And they would say if you keep
7033 the freedom that we bought for you with our lives then it was
7034 worth us giving the lives.

7035 So let's look in terms of how we preserve this
7036 experiment in self-government, and try to preserve as much
7037 freedom as we can for as long as we can, without belittling
7038 each other.

7039 I understand we are all here wanting to do something
7040 good and noble. I just can't imagine saying, you know, the
7041 Democrats are all cowards, because I don't believe that. So
7042 let's try to work together and not condemn people because we
7043 don't see things the same way in trying to keep this
7044 republic.

7045 I yield back.

7046 Chairman Nadler. The gentleman yields back.

7047 The question now occurs on the amendment in the nature
7048 of a substitute. This will be followed immediately by a vote
7049 on final passage of the bill.

7050 All those in favor, respond by saying aye.

7051 Opposed, no.

7052 In the opinion of the chair, the ayes have it, and the
7053 amendment in the nature of a substitute is agreed to.

7054 A reporting quorum being present, the question is on the
7055 motion to report the bill, H.R. 1186, as amended, favorably
7056 to the House.

7057 Those in favor, respond by saying aye.

7058 Those opposed, no.

7059 The ayes have it, and the bill is ordered reported
7060 favorably.

7061 A roll call is requested, and the clerk will call the
7062 roll.

7063 Ms. Strasser. Mr. Nadler?

7064 Chairman Nadler. Aye.

7065 Ms. Strasser. Mr. Nadler votes aye.

7066 Ms. Lofgren?

7067 Ms. Jackson Lee?

7068 Ms. Jackson Lee. Aye.

7069 Ms. Strasser. Ms. Jackson Lee votes aye.

7070 Mr. Cohen?

7071 Mr. Cohen. Aye.

7072 Ms. Strasser. Mr. Cohen votes aye.

7073 Mr. Johnson of Georgia?

7074 Mr. Johnson of Georgia. Aye.

7075 Ms. Strasser. Mr. Johnson of Georgia votes aye.

7076 Mr. Deutch?

7077 Mr. Deutch. Aye.

7078 Ms. Strasser. Mr. Deutch votes aye.

7079 Ms. Bass?

7080 Ms. Bass. Aye.

7081 Ms. Strasser. Ms. Bass votes aye.

7082 Mr. Richmond?

7083 Mr. Jeffries?

7084 Mr. Jeffries. Aye.

7085 Ms. Strasser. Mr. Jeffries votes aye.

7086 Mr. Cicilline?

7087 Mr. Cicilline. Aye.

7088 Ms. Strasser. Mr. Cicilline votes aye.

7089 Mr. Swalwell?

7090 Mr. Swalwell. Aye.

7091 Ms. Strasser. Mr. Swalwell votes aye.

7092 Mr. Lieu?

7093 Mr. Lieu. Aye.

7094 Ms. Strasser. Mr. Lieu votes aye.

7095 Mr. Raskin?

7096 Mr. Raskin. Aye.

7097 Ms. Strasser. Mr. Raskin votes aye.

7098 Ms. Jayapal?

7099 Ms. Jayapal. Aye.

7100 Ms. Strasser. Ms. Jayapal votes aye.

7101 Mrs. Demings?

7102 Mrs. Demings. Aye.

7103 Ms. Strasser. Mrs. Demings votes aye.

7104 Mr. Correa?

7105 Mr. Correa. Aye.

7106 Ms. Strasser. Mr. Correa votes aye.

7107 Ms. Scanlon?

7108 Ms. Scanlon. Aye.

7109 Ms. Strasser. Ms. Scanlon votes aye.

7110 Ms. Garcia?

7111 Ms. Garcia. Aye.

7112 Ms. Strasser. Ms. Garcia votes aye.

7113 Mr. Neguse?

7114 Mr. Neguse. Aye.

7115 Ms. Strasser. Mr. Neguse votes aye.

7116 Mrs. McBath?

7117 Mrs. McBath. Aye.

7118 Ms. Strasser. Mrs. McBath votes aye.

7119 Mr. Stanton?

7120 Mr. Stanton. Aye.

7121 Ms. Strasser. Mr. Stanton votes aye.

7122 Ms. Dean?

7123 Ms. Dean. Aye.

7124 Ms. Strasser. Ms. Dean votes aye.

7125 Ms. Mucarsel-Powell?

7126 Ms. Mucarsel-Powell. Aye.

7127 Ms. Strasser. Ms. Mucarsel-Powell votes aye.

7128 Ms. Escobar?

7129 Ms. Escobar. Aye.

7130 Ms. Strasser. Ms. Escobar votes aye.

7131 Mr. Collins?

7132 Mr. Collins. No.

7133 Ms. Strasser. Mr. Collins votes no.

7134 Mr. Sensenbrenner?

7135 Mr. Chabot?

7136 Mr. Chabot. No.

7137 Ms. Strasser. Mr. Chabot votes no.

7138 Mr. Gohmert?

7139 Mr. Gohmert. No.

7140 Ms. Strasser. Mr. Gohmert votes no.

7141 Mr. Jordan?

7142 Mr. Jordan. No.

7143 Ms. Strasser. Mr. Jordan votes no.

7144 Mr. Buck?

7145 Mr. Buck. No.

7146 Ms. Strasser. Mr. Buck votes no.

7147 Mr. Ratcliffe?

7148 Mr. Ratcliffe. No.

7149 Ms. Strasser. Mr. Ratcliffe votes no.

7150 Mrs. Roby?

7151 Mrs. Roby. No.

7152 Ms. Strasser. Mrs. Roby votes no.
7153 Mr. Gaetz?
7154 Mr. Gaetz. No.
7155 Ms. Strasser. Mr. Gaetz votes no.
7156 Mr. Johnson of Louisiana?
7157 Mr. Johnson of Louisiana. No.
7158 Ms. Strasser. Mr. Johnson of Louisiana votes no.
7159 Mr. Biggs?
7160 Mr. Biggs. No.
7161 Ms. Strasser. Mr. Biggs votes no.
7162 Mr. McClintock?
7163 Mr. McClintock. No.
7164 Ms. Strasser. Mr. McClintock votes no.
7165 Mrs. Lesko?
7166 Mrs. Lesko. No.
7167 Ms. Strasser. Mrs. Lesko votes no.
7168 Mr. Reschenthaler?
7169 Mr. Reschenthaler. No.
7170 Ms. Strasser. Mr. Reschenthaler votes no.
7171 Mr. Cline?
7172 Mr. Cline. No.
7173 Ms. Strasser. Mr. Cline votes no.
7174 Mr. Armstrong?
7175 Mr. Armstrong. No.
7176 Ms. Strasser. Mr. Armstrong votes no.

7177 Mr. Steube?

7178 Mr. Steube. No.

7179 Ms. Strasser. Mr. Steube votes no.

7180 Ms. Lofgren. How am I recorded?

7181 Ms. Strasser. Ms. Lofgren, you are not recorded.

7182 Ms. Lofgren. Aye.

7183 Ms. Strasser. Ms. Lofgren votes aye.

7184 Chairman Nadler. Are there any members who wish to vote

7185 who haven't voted?

7186 [No response.]

7187 Chairman Nadler. The clerk will report.

7188 Ms. Strasser. Mr. Chairman, there are 23 ayes and 16

7189 noes.

7190 Chairman Nadler. The ayes have it, and the bill, as

7191 amended, is ordered reported favorably to the House.

7192 Members will have 2 days to submit views.

7193 The bill will be reported as a single amendment in the

7194 nature of a substitute incorporating all adopted amendments.

7195 Without objection, staff is authorized to make technical

7196 and conforming changes.

7197 Pursuant to notice, I now call up H.R. 2708, the Disarm

7198 Hate Act, for purposes of markup and move that the committee

7199 report the bill favorably to the House.

7200 The clerk will report the bill.

7201 Ms. Strasser. H.R. 2708, to prevent a person who has

7202 been convicted of a misdemeanor hate crime or received
7203 enhanced sentence for a misdemeanor because of hate or --

7204 Chairman Nadler. Without objection, the bill is
7205 considered as read and open for amendment at any point.

7206 [The bill follows:]

7207

7208 Chairman Nadler. I will begin by recognizing myself for
7209 an opening statement.

7210 With the sharp increase in hate crimes in this country,
7211 it is sadly important that the committee today adopt H.R.
7212 2708, the Disarm Hate Act. This bill, introduced by our
7213 colleague, the gentleman from Rhode Island, Mr. Cicilline,
7214 would prohibit the purchase or possession of firearms by
7215 individuals who have been convicted of a misdemeanor-level
7216 hate crimes, or who have received an enhanced sentence on
7217 account of unlawful bias for certain misdemeanor convictions.

7218 The FBI reports that there has been a significant
7219 increase in hate crimes over the past 3 years with more than
7220 7,100 hate crimes reported in 2017 alone. This count is
7221 likely a substantial undercount of the total number of hate-
7222 motivated crimes that occur in communities throughout the
7223 country as reporting of these incidents to law enforcement
7224 remains sporadic. According to the National Crime
7225 Victimization Survey, approximately 204,000 hate crimes
7226 targeting victims based on their actual or perceived racial
7227 ethnicity, gender, sexual orientation, disability, or
7228 religion are committed in the U.S. every year.

7229 Our country has been particularly devastated by a series
7230 of horrific mass murders motivated by hate in recent years.
7231 In 2012, a white supremacist attacked worshipers in a Sikh
7232 temple in Oak Creek, Wisconsin, killing six people and

7233 injuring four others. In 2015, a white supremacist murdered
7234 nine worshipers during a bible study at the Emanuel African
7235 Methodist Episcopal Church in Charleston, South Carolina, a
7236 historic African-American church. In 2015, a nightclub in
7237 Orlando, Florida was attacked, leaving 49 people dead and 53
7238 others injured, most of whom were LGBTQ and Latino. A total
7239 of 12 people were killed and 10 wounded during attacks in
7240 synagogues in Pittsburg, Pennsylvania and Poway, California
7241 in recent incidents just 6 months apart. And just last
7242 month, a shooter in El Paso targeted Mexican-Americans who
7243 were shopping in a Walmart store, killing 22.

7244 These horrible attacks have two things in common: they
7245 were all hate crimes, and they were all committed with a gun.
7246 As these tragedies and tens of thousands of other examples
7247 show, guns are a frequent tool of hate-motivated violence and
7248 intimidation. From 2010 through 2015, 46,500 hate crimes
7249 committed in the U.S. involved a gun. Despite these grim
7250 statistics, our Nation's weak gun laws give easy access to
7251 guns for individuals seeking to do harm.

7252 Under current law, many of those who have been convicted
7253 of misdemeanor-level hate crimes remain free to buy and
7254 possess guns. These misdemeanor hate crimes include many
7255 types of threatening and dangerous conduct, including assault
7256 and threats or harassment of members of a protected class.
7257 Roughly half the States have misdemeanor hate crime or

7258 sentencing enhancements for which a conviction would not
7259 currently prohibit firearms possession or purchase.

7260 The Disarm hate Act would address this dangerous gap in
7261 the law by prohibiting individuals who have been convicted of
7262 a misdemeanor-level hate crime or who have received a hate
7263 crime sentencing enhancement from buying or possessing guns.
7264 The bill's prohibition extends only to those convicted of a
7265 misdemeanor hate crime or those who have had an enhancement
7266 imposed on them because of the use or attempted use of
7267 physical force, the threatened use of a deadly weapon, or
7268 other credible threat to the physical safety of a person.

7269 This qualifying language ensures that this added
7270 prohibition applies only to those convicted of underlying
7271 crimes that pose a public safety risk. This is a modest
7272 commonsense measure that will help ensure that people with a
7273 demonstrated history of hate-motivated violence do not
7274 continue to have easy access to firearms. Each person who
7275 would be prohibited from purchasing or possessing a gun under
7276 this bill has been found beyond a reasonable doubt to have
7277 committed a crime of violence or criminal physical threats
7278 based on the race or sex of the victim. This bill sends a
7279 strong message that hate violence is dangerous and
7280 unacceptable, and that we will do everything in our power to
7281 help prevent hate-fueled attacks perpetrated by armed
7282 assailants. Therefore, I support this important legislation,

7283 and I urge its quick adoption today.

7284 I now recognize the ranking member of the Judiciary
7285 Committee, the gentleman from Georgia, Mr. Collins, for his
7286 opening statement.

7287 Mr. Collins. Thank you, Mr. Chairman. It has been a
7288 long day. I mean, this is another piece of legislation that
7289 really attacks at a different angle. It is a concern. I
7290 have not decided that there was ever a non-hate-filled
7291 violent crime. I am not just sure where you find that.
7292 Somebody who attacks somebody else has a hate motivation.
7293 There is a malice motivation there. And just by calling it
7294 something based on who they are attacking or not attacking
7295 does not make it worse. Crime is not somehow worse just
7296 because of the identity and characteristics of the victim.
7297 Justice must be swift. It must be also blind. Murder is
7298 murder. Assault is assault.

7299 Now, Mr. Chairman, we must remain faithful to our
7300 Democratic principles as Nation. We are committed to free
7301 expression, free press, and blind justice. As I stated
7302 earlier this year, governments that attempt to restrain
7303 people's hearts and minds for whatever reason pave the way to
7304 oppression and political violence. The First Amendment is
7305 not there for speech we like. It is there to protect speech
7306 that we abhor. It is not there for speech we like, and
7307 murder is murder, assault is assault. You don't make the

7308 crimes worse or less. It is just simply one human attacking
7309 another, and that is wrong and should be condemned at all
7310 costs.

7311 H.R. 2708 is an attempt by the Democratic majority to do
7312 just that. It would allow future Administrations to use
7313 vaguely-defined hate crime against individuals with whom they
7314 disagree by permanently depriving them of a fundamental
7315 constitutional right. We know that this is true because,
7316 among other things, the legislation would apply retroactively
7317 to misdemeanor convictions to meet the bill's vague
7318 definition and may have occurred years or even decades in the
7319 past. Moreover, this legislation is unnecessary. Current
7320 law already contains robust protections to ensure dangerous
7321 felons are prohibited from possessing firearms, whatever the
7322 motivation for those crimes. And applying those now to a
7323 certain level because of a definition, again, is problematic.

7324 We are on an interesting slope here with this bill. It
7325 is the chairman's and majority's prerogative to pass this
7326 bill, which I am sure they will, probably expeditiously. But
7327 please hear the warning of the minority, which is many times
7328 the one that is listened to later in life. Be careful what
7329 you are doing here as you go forward, keeping this vague,
7330 keeping this in a certain way of going back and retroactively
7331 applying. Hate is hate. Free speech, was once other things
7332 once that we may disagree with, we may want to suppress, but

7333 I respect the right of my colleagues to express views that I
7334 disagree with. That is the First Amendment. We don't need
7335 the First Amendment if we all agreed. We need the First
7336 Amendment to protect.

7337 And when somebody attacks somebody, when somebody
7338 murders somebody, when somebody assaults somebody, when they
7339 go after somebody, whether they bully them or anything else,
7340 that is wrong and comes from a matter of hate. You don't
7341 have to call it what it is. It is already shown in the
7342 action. And this is just another misguided attempt on this
7343 legislation, but this is the decision of the majority. I say
7344 it is not good, but that is why the votes take place. And
7345 with that, I yield back.

7346 Chairman Nadler. I now recognize myself for purposes of
7347 offering an amendment in the nature of a substitute.

7348 The clerk will report the amendment.

7349 Ms. Strasser. Amendment in the nature of a substitute
7350 to H.R. 2708, offered by Mr. Nadler. Strike all that follows
7351 after the enacting clause and insert the following.

7352 Chairman Nadler. Without objection, the amendment in
7353 the nature of a substitute will be considered as read and
7354 shall be considered as base text for purposes of amendment.

7355 [The amendment in the nature of a substitute of Chairman
7356 Nadler follows:]

7357

7358 Chairman Nadler. I will recognize myself to explain the
7359 amendment.

7360 This amendment adds a severability clause to the bill,
7361 providing that should any portion of the bill be found
7362 invalid, the remainder of the bill will stay intact. It
7363 makes no other changes to the bill, and I urge all members to
7364 support it. I yield back the balance of my time, and I now
7365 recognize the ranking member of the full committee, Mr.
7366 Collins, for any comments he may have on the amendment.

7367 Mr. Collins. I have already made all the comments. I
7368 yield back.

7369 Chairman Nadler. The gentleman yields back. Are there
7370 any amendments to the amendment in the nature of a
7371 substitute?

7372 Mr. Cicilline. Mr. Chairman?

7373 Chairman Nadler. The gentleman from Rhode Island.

7374 Mr. Cicilline. Thank you. Mr. Chair, I move to strike
7375 the last word.

7376 Chairman Nadler. The gentleman is recognized.

7377 Mr. Cicilline. Thank you, Mr. Chairman. Thank you. I
7378 want to begin by thanking my colleagues whom have
7379 participated in today's hearing, and particularly acknowledge
7380 the leadership of Ted Deutch, Lucy McBath, and Debbie
7381 Murcasel-Powell, who have taken very painful personal
7382 experiences, both in their lives and in their communities,

7383 and used it really to focus in a very determined effort to
7384 reduce gun violence in this country. And really, you have
7385 been an inspiration to all of us, and we admire you so much
7386 for all of your work.

7387 I want to respond briefly to Mr. Collins' concern that
7388 crime is a crime, and hate crimes are, I guess, no different,
7389 and I couldn't disagree more. The reason that we have, in
7390 fact, adopted provisions both in Federal and State law to
7391 make hate crimes more severely punished is because they are,
7392 of course, a crime committed against an individual because of
7393 their race, their ethnic origin, their religious affiliation,
7394 or their sexual orientation, or gender identity. And it is
7395 intended to instill fear in an entire community, and so that
7396 is why we tend to treat it more severely rather than an
7397 example of someone who commits an offense that doesn't have
7398 that as a basis.

7399 And so what we know from the Southern Poverty Law Center
7400 is that they estimate there are 892 hate groups currently
7401 operating in the United States, a number that has increased
7402 by 14 percent since last year. And they also found that 59
7403 percent of domestic terrorist attacks were carried out
7404 between 2009 and 2015 with a gun. So there is a real
7405 connection between guns and hate. That National Crime
7406 Victimization Survey revealed that between 2010 and 2016,
7407 there were over 56,000 hate crimes that involved a crime.

7408 And I would ask unanimous consent for this report entitled
7409 "Hate and Guns: A Terrifying Combination," prepared by the
7410 Center for American Progress, be made a part of this record.
7411 Chairman Nadler. Without objection.
7412 [The information follows:]
7413

7414 Mr. Cicilline. What we know is on August 3rd, 2019, a
7415 gunman shot and killed 22 people and injured 24 others in a
7416 mass shooting that occurred in Walmart in El Paso, Texas.
7417 The white nationalist gunman wrote in a manifesto that he
7418 drove nearly 10 hours with the intention of targeting
7419 Mexicans. What happened in El Paso is not unique. Jerry
7420 Wright was killed, along with 49 others, in the Pulse
7421 Nightclub shooting in Orlando, Florida. Inspired by hate, a
7422 gunman opened fire on a Bible study group killing nine people
7423 at Emanuel African Methodist Episcopal Church in Charleston,
7424 South Carolina. And in Pittsburgh, a gunman killed 11 people
7425 and injured seven more people in a shooting at a synagogue.

7426 We have a responsibility to keep guns out of the hands
7427 of people who shouldn't have them, and this connection
7428 between hate crime convictions and subsequent additional
7429 violence is clear. Researchers have found, and I am quoting
7430 from this report. Researchers have found that individuals
7431 who commit hate crimes tend to escalate their conduct in
7432 order to ensure their message is received by the targeted
7433 individual or community. Jack Levin and Jack McDevitt,
7434 researchers from Northeastern University, who specialize in
7435 hate crimes, explained the phenomenon this way. "Defensive
7436 hate crimes are intended to send a message, for example, that
7437 blacks are not welcome on this block, or Latinos should not
7438 apply for that promotion. As such, their intended effect,

7439 very much like acts of terrorism, are meant to send a signal
7440 by means of fear and horror. If the original criminal
7441 response fails to elicit the desired retreat on the part of
7442 the victim, then the offender frequently escalates to the
7443 level of property or violence. A black family moving into an
7444 all-white is first warned. If they don't heed the warning,
7445 then their windows are broken. If they still refuse to move
7446 out, their house may be firebombed or worse."

7447 There is pattern of escalation that has demonstrated the
7448 importance for preventing people who have a conviction of
7449 hate crimes, even a misdemeanor hate crime, from buying a
7450 gun, but many States do not have prohibitions against this.
7451 In fact, there are 23 States and the District of Columbia
7452 that prohibit individuals convicted of specific misdemeanor
7453 offenses from buying and possessing guns, but the vast
7454 majority of States have not enacted laws. And so this would
7455 prevent people who are convicted of a hate crime with
7456 research that shows there is a substantial likelihood of
7457 subsequent violence with an increased likelihood of the use
7458 of a gun.

7459 This is a commonsense proposal to keep guns out of the
7460 people who commit hate crimes that are likely or have a
7461 propensity to violence that will help protect our communities
7462 from the some of the worst gun violence that we have seen. I
7463 urge my colleagues to support this legislation. And with

7464 that, I yield back.

7465 Chairman Nadler. The gentleman yields back. Are there
7466 any amendments to the amendment in the nature of a
7467 substitute? For what purpose does the gentleman from Texas
7468 seek recognition?

7469 Mr. Gohmert. I move to strike the last word.

7470 Chairman Nadler. The gentleman is recognized.

7471 Mr. Gohmert. Thank you. Again, the emphasis on hate.
7472 The Federal hate crime laws that were pushed through here,
7473 heralding James Byrd in Jasper, Texas as the poster case,
7474 were misdirected because James Byrd was horribly killed. And
7475 as I have said before, I wouldn't have had a problem if Texas
7476 adopted a sentencing where the victim's family in such a case
7477 could choose the way that he were to lose his life. And the
7478 death penalty would be invoked, including dragging the
7479 perpetrators behind a truck until dead.

7480 But under our Federal hate crime law that was adopted
7481 heralding the James Byrd, see, this is why we need a hate
7482 crime law. The two most culpable of the three got the death
7483 penalty. That is why I want the El Paso shooter tried under
7484 Texas law and not under any Federal hate law because he can't
7485 get the death penalty under Federal hate crime. And it is an
7486 absolute defense under the Federal hate crime law if you come
7487 in and raise a reasonable doubt that, oh, I didn't actually
7488 hate any of those people. I chose them at random. That is a

7489 complete defense.

7490 You are acquitted under our Federal hate crime law. And
7491 I know, as my colleague said, it is terrifying to think of
7492 somebody with hate and a gun. But from what I saw as a
7493 judge, most people are more terrified when there was somebody
7494 that was what used to be called psychopaths, sociopath, now
7495 antisocial personality. They don't care. They want to hurt
7496 somebody, and they don't care who it is. Those people are
7497 far more difficult to ever rehabilitate. There is plenty of
7498 evidence. If you study sentencing and rehabilitation, there
7499 is plenty of evidence out there of people who have hated,
7500 committed a crime with hate in their heart. They got a shot
7501 at being rehabilitated because they are not necessarily an
7502 antisocial personality. The people that choose victims at
7503 random, you are going to have a tough time ever
7504 rehabilitating them.

7505 And this is how misguided this whole emphasis on hate
7506 has gotten. If you look here at page 1, you know, "convicted
7507 in any court of a," not felony, "misdemeanor hate crime."
7508 And that is defined as a misdemeanor under Federal, State,
7509 tribal law. But it has to have as a element that the
7510 offender was motivated by hate or bias because, and we use
7511 the term here, "because of sexual orientation," for example,
7512 or "gender identity." And it involves the use or attempted
7513 use of physical force.

7514 We are not talking that somebody has used a gun or a
7515 deadly weapon -- a knife, a machete like the 800,000 or so
7516 that were killed with machetes in Rwanda. This is just any
7517 use of physical force, whether it's a noogie. The example
7518 that really got me back when the hate crime laws were passed,
7519 and it is still is applicable in this scenario, and that is a
7520 woman and her little daughter walk up to a street corner.
7521 There is a guy there in a raincoat. He flashes himself
7522 because that is how he is oriented sexually. That is how he
7523 gets pleasure. The woman reacts by hitting him with her
7524 purse. She has just committed a Federal hate crime.

7525 If a mom has taught her little girl that you be careful.
7526 Beware of strangers, strange men, and she is in a restroom
7527 and a guy comes in, and the little girl reacts or her mom is
7528 in in there and feels like she is defending her daughter who
7529 is freaking out, they have committed a hate crime. And in
7530 the case of the flasher, he is the victim. She is the hater.
7531 This is how strained this kind of law has become. We should
7532 not be taking away somebody's right to keep and bear arms,
7533 should not be infringing on that simply because somebody
7534 reacted to what used to be called pervert and now is being
7535 called a victim. I yield back.

7536 Chairman Nadler. The gentleman yields back. The
7537 gentl lady from Texas, Ms. Escobar.

7538 Ms. Escobar. Thank you, Mr. Chairman. I move to strike

7539 the last word.

7540 Chairman Nadler. The gentlelady is recognized.

7541 Ms. Escobar. I cannot tell you how distressing it is
7542 for me to hear a dismissive account of hate crimes. Five-
7543 and-a-half weeks ago, a killer drove to my community, one of
7544 the safest communities in the Nation, for decades one of the
7545 safest communities in the Nation. He drove to my community
7546 in order to slaughter Mexicans and immigrants, and he walked
7547 into a store deliberately targeting us. I have two kids, one
7548 of whom is in the audience, my daughter, and I have to worry
7549 about the color of my kids' skin. Those who don't have to
7550 worry about hate crimes don't have to fear things like that.

7551 You know, there are two things that we are talking about
7552 today, and it is so right that we are talking about both of
7553 them on the same day. I was afraid that this bill was going
7554 to get kicked into tomorrow, and I was hoping it wouldn't
7555 because we don't just have a gun violence epidemic in this
7556 country, we have a hate epidemic in this country. And it has
7557 been fueled over and over and over again with language that
7558 is racist and bigoted; language that is intended to divide
7559 the good people of this country; language that is intended to
7560 make us fear those who look differently, love differently,
7561 come from different places; language that has made us forget
7562 exactly what we have been taught.

7563 One of my colleagues mentioned a quote about losing our

7564 moral center. We have lost our moral center when we no
7565 longer see human beings with dignity and grace, the dignity
7566 and grace that they were born with, when instead we call them
7567 illegal, or we look for ways to separate them, or we look for
7568 ways to target them. Well, my people, my community has been
7569 targeted. We have had a target placed on our back because of
7570 the color of our skin. The day that your folks are
7571 massacred, then I can be lectured about hate crimes and how
7572 we should dismiss them and how they are meaningless.

7573 Hate crimes are not meaningless, or the designation of
7574 them is not meaningless. This is about accountability. This
7575 is about holding people accountable for the words that they
7576 say and the actions that they take. And I thank my
7577 colleague, Representative Cicilline, for bringing this
7578 legislation forward. I thank my colleagues here today on
7579 Judiciary who are standing with people who have been
7580 targeted. The best way for us to regain our moral high
7581 ground in this country is to begin reconnecting with our
7582 compassion and our humanity, and I support your bill, Mr.
7583 Cicilline. Thank you. I yield back my time.

7584 [Applause.]

7585 Chairman Nadler. The gentlelady yields back. Are there
7586 any further amendments? For what purpose does the gentleman
7587 from Florida seek recognition?

7588 Mr. Gaetz. Move to strike the last word.

7589 Chairman Nadler. The gentleman is recognized.

7590 Mr. Gaetz. I yield to Mr. Gohmert of Texas.

7591 Mr. Gohmert. Yeah. I want to make sure that there is
7592 no more mischaracterization of what I had to say. For me to
7593 advocate for the death penalty for the guy that went to El
7594 Paso and killed all those innocent victims is hardly
7595 dismissive. That is unfair, and you weren't listening. And
7596 to say anything further would probably violate the rules of
7597 decorum, and I am not going to do that.

7598 The people that commit violent crimes need to be
7599 punished, and I am someone who has punished them, and
7600 especially when victims were women, and that may shock some
7601 people. But to say that we are dismissive of people who
7602 commit violent crimes is just not accurate. They need to be
7603 punished. That is why I want the El Paso shooter that killed
7604 those innocent to be punished under Texas law, and not
7605 because I am dismissive, but because the hate crime law
7606 passed here doesn't do as much as the Texas State law does to
7607 punish such evil perpetrators. So I needed to set the record
7608 straight. I thank my friend from Florida, and yield back to
7609 my friend from Florida.

7610 Chairman Nadler. Does the gentleman yield back?

7611 Mr. Gaetz. Not quite yet, Mr. Chairman, if that is all
7612 right. I just have to reject the notion that the thoughts in
7613 the mind of anyone that would commit these heinous acts would

7614 be graded any less by consequence of who they were shooting.
7615 I mean, I think about, you know, those kids in Parkland, and
7616 I don't think that they were targeted by virtue of their
7617 identity. But the person who killed them was no less evil
7618 than the person who committed those murders in Texas that we
7619 are all so sad about. I yield back.

7620 Chairman Nadler. Does anyone else seek recognition?

7621 The gentleman from Arizona. Colorado. Sorry.

7622 Mr. Buck. Thank you, Mr. Chairman. Mr. Chairman, I
7623 believe this legislation is flawed. As a former prosecutor,
7624 I am very concerned about the effects this legislation would
7625 have on the judicial system. My first concern is that this
7626 legislation is unconstitutional. This bill is not simply
7627 forward looking, but rather looks backwards to long-past
7628 convictions in order to impose additional legal consequences
7629 on misdemeanor offenders who have already paid their debt to
7630 society, and, in many cases, rejected hateful ideology. This
7631 is the very definition of an *ex post facto* law prohibited by
7632 the Constitution.

7633 The fact that this bill applies retroactively to past
7634 misdemeanor convictions raises serious constitutional
7635 concerns. Had this bill applied only prospectively to future
7636 convictions, it would be on much firmer constitutional
7637 ground. I am also concerned that this bill is
7638 unconstitutionally vague in terms of identifying which

7639 misdemeanor hate crimes would trigger a loss of gun rights.

7640 In the context of hate crimes, this bill does not offer
7641 police, prosecutors, or judges clarity. These officials will
7642 have difficulty understanding which hate crimes affect gun
7643 rights. Due to a lack of hearings on this bill, I don't
7644 think we have any idea of the magnitude or scope of what this
7645 bill might be asking law enforcement or prosecutors to take
7646 on. This will make it difficult to enforce the law and
7647 likely impossible to ensure equal application of the law.

7648 The third concern I have with this bill is a practical
7649 consideration. NICS does not currently contain information
7650 about past misdemeanor convictions such as hate crimes.
7651 State, local, and tribal governments do not report this kind
7652 of information, so this information simply does not exist in
7653 any meaningful way to guide Federal firearms licensees or
7654 prospective purchasers. Does law enforcement have the
7655 resources to go back and review past cases to determine
7656 whether a conviction qualifies and whether it should be
7657 reported? Probably not. Even if a jurisdiction is inclined
7658 to go back and look at past cases, are the case files
7659 sufficiently detailed to make a fair and just determination
7660 so long after the case was originally adjudicated? What
7661 protections or redress does someone have if someone
7662 unfamiliar with their case incorrectly determines their prior
7663 conviction should bar them from possessing a firearm?

7664 There is already a long criminal justice backlog. For
7665 example, in DNA testing, applying this law to past cases will
7666 slow down the judicial process and further burden already
7667 overburdened law enforcement and prosecutors. We don't have
7668 many of the answers because we have not held hearings on this
7669 legislation. Until this committee engages in legitimate
7670 inquiry and genuine fact finding rather than posturing and
7671 grandstanding, we won't know the answers to these questions.
7672 And until we have answers and understand exactly what this
7673 bill would do, we shouldn't pass it. I yield back.

7674 Chairman Nadler. The gentleman yields back.

7675 The question now occurs on the amendment in the nature
7676 of a substitute. This will be followed immediately by a vote
7677 and final passage of the bill.

7678 All those in favor, respond by saying aye.

7679 Those opposed, no.

7680 In the opinion of the chair, the ayes have it, and the
7681 amendment in the nature of a substitute is agreed to.

7682 A reporting quorum being present, the question is on the
7683 motion to report the bill, H.R. 2708, as amended, favorably
7684 to the House.

7685 Those in favor, respond by saying aye.

7686 Opposed, no.

7687 The ayes have it, and the bill is ordered reported
7688 favorably.

7689 A recorded vote has been required. The clerk will call
7690 the roll.

7691 Ms. Strasser. Mr. Nadler?

7692 Chairman Nadler. Aye.

7693 Ms. Strasser. Mr. Nadler votes aye.

7694 Ms. Lofgren?

7695 Ms. Lofgren. Aye.

7696 Ms. Strasser. Ms. Lofgren votes aye.

7697 Ms. Jackson Lee?

7698 Ms. Jackson Lee. Aye.

7699 Ms. Strasser. Ms. Jackson Lee votes aye.

7700 Mr. Cohen?

7701 Mr. Cohen. Aye.

7702 Ms. Strasser. Mr. Cohen votes aye.

7703 Mr. Johnson of Georgia?

7704 Mr. Johnson of Georgia. Aye.

7705 Ms. Strasser. Mr. Johnson of Georgia votes aye.

7706 Mr. Deutch?

7707 Mr. Deutch. Aye.

7708 Ms. Strasser. Mr. Deutch votes aye.

7709 Ms. Bass?

7710 Ms. Bass. Aye.

7711 Ms. Strasser. Ms. Bass votes aye.

7712 Mr. Richmond?

7713 Mr. Jeffries?

7714 Mr. Jeffries. Aye.

7715 Ms. Strasser. Mr. Jeffries votes aye.

7716 Mr. Cicilline?

7717 Mr. Cicilline. Aye.

7718 Ms. Strasser. Mr. Cicilline votes aye.

7719 Mr. Swalwell?

7720 Mr. Swalwell. Aye.

7721 Ms. Strasser. Mr. Swalwell votes aye.

7722 Mr. Lieu?

7723 Mr. Lieu. Aye.

7724 Ms. Strasser. Mr. Lieu votes aye.

7725 Mr. Raskin?

7726 Mr. Raskin. Aye.

7727 Ms. Strasser. Mr. Raskin votes aye.

7728 Ms. Jayapal?

7729 Ms. Jayapal. Aye.

7730 Ms. Strasser. Ms. Jayapal votes aye.

7731 Mrs. Demings?

7732 Mrs. Demings. Aye.

7733 Ms. Strasser. Mrs. Demings votes aye.

7734 Mr. Correa?

7735 Mr. Correa. Aye.

7736 Ms. Strasser. Mr. Correa votes aye.

7737 Ms. Scanlon?

7738 Ms. Scanlon. Aye.

7739 Ms. Strasser. Ms. Scanlon votes aye.
7740 Ms. Garcia?
7741 Ms. Garcia. Aye.
7742 Ms. Strasser. Ms. Garcia votes aye.
7743 Mr. Neguse?
7744 Mr. Neguse. Aye.
7745 Ms. Strasser. Mr. Neguse votes aye.
7746 Mrs. McBath?
7747 Mrs. McBath. Aye.
7748 Ms. Strasser. Mrs. McBath votes aye.
7749 Mr. Stanton?
7750 Mr. Stanton. Aye.
7751 Ms. Strasser. Mr. Stanton votes aye.
7752 Ms. Dean?
7753 Ms. Dean. Aye.
7754 Ms. Strasser. Ms. Dean votes aye.
7755 Ms. Mucarsel-Powell?
7756 Ms. Mucarsel-Powell. Aye.
7757 Ms. Strasser. Ms. Mucarsel-Powell votes aye.
7758 Ms. Escobar?
7759 Ms. Escobar. Aye.
7760 Ms. Strasser. Ms. Escobar votes aye.
7761 Mr. Collins?
7762 Mr. Collins. No.
7763 Ms. Strasser. Mr. Collins votes no.

7764 Mr. Sensenbrenner?
7765 Mr. Chabot?
7766 Mr. Chabot. No.
7767 Ms. Strasser. Mr. Chabot votes no.
7768 Mr. Gohmert?
7769 Mr. Gohmert. No.
7770 Ms. Strasser. Mr. Gohmert votes no.
7771 Mr. Jordan?
7772 Mr. Jordan. No.
7773 Ms. Strasser. Mr. Jordan votes no.
7774 Mr. Buck?
7775 Mr. Buck. No.
7776 Ms. Strasser. Mr. Buck votes no.
7777 Mr. Ratcliffe?
7778 Mrs. Roby?
7779 Mrs. Roby. No.
7780 Ms. Strasser. Mrs. Roby votes no.
7781 Mr. Gaetz?
7782 Mr. Gaetz. No.
7783 Ms. Strasser. Mr. Gaetz votes no.
7784 Mr. Johnson of Louisiana?
7785 Mr. Johnson of Louisiana. No.
7786 Ms. Strasser. Mr. Johnson of Louisiana votes no.
7787 Mr. Biggs?
7788 Mr. Biggs. No.

7789 Ms. Strasser. Mr. Biggs votes no.
7790 Mr. McClintock?
7791 Mr. McClintock. No.
7792 Ms. Strasser. Mr. McClintock votes no.
7793 Mrs. Lesko?
7794 Mrs. Lesko. No.
7795 Ms. Strasser. Mrs. Lesko votes no.
7796 Mr. Reschenthaler?
7797 Mr. Reschenthaler. No.
7798 Ms. Strasser. Mr. Reschenthaler votes no.
7799 Mr. Cline?
7800 Mr. Cline. No.
7801 Ms. Strasser. Mr. Cline votes no.
7802 Mr. Armstrong?
7803 Mr. Armstrong. No.
7804 Ms. Strasser. Mr. Armstrong votes no.
7805 Mr. Steube?
7806 Mr. Steube. No.
7807 Ms. Strasser. Mr. Steube votes no.
7808 Chairman Nadler. Has everyone who wishes to vote voted?
7809 [No response.]
7810 Chairman Nadler. The clerk will report.
7811 Ms. Strasser. Mr. Chairman, there are 23 ayes and 15
7812 noes.
7813 Chairman Nadler. The ayes have it. The bill, as

7814 amended, is ordered reported favorably to the House.

7815 [Applause.]

7816 Chairman Nadler. Members will have 2 days to submit
7817 views.

7818 The bill will be reported as a single amendment in the
7819 nature of a substitute incorporating all adopted amendments.

7820 Without objection, staff is authorized to make technical
7821 and conforming changes.

7822 We now have two remaining bills, which are both
7823 uncontroversial and bipartisan, and I hope we can do them
7824 with dispatch.

7825 Pursuant to notice, I now call up H.R. 4018, to provide
7826 that the amount of time that an elderly offender must serve
7827 before being eligible for placement in home detention is to
7828 be reduced by the amount of good time credits earned by the
7829 prisoner, and for other purposes, for purposes of markup, and
7830 move that the committee report the bill favorably to the
7831 House.

7832 The clerk will report the bill.

7833 Ms. Strasser. H.R. 4018, to provide that the amount of
7834 time --

7835 Chairman Nadler. Without objection, the bill is
7836 considered as read and opening for amendment at any point.

7837 [The bill follows:]

7838

7839 Chairman Nadler. I will begin by recognizing myself for
7840 an opening statement, and in view of the lateness of the
7841 hour, I will insert my statement in the record. And I will
7842 simply say that H.R. 4018 is a bipartisan bill that would
7843 permit elderly and terminally ill offenders, who qualify for
7844 early release under a second chance act pilot program, the
7845 ability to receive good conduct time credits.

7846 [The information follows:]

7847

7848 Chairman Nadler. I now recognize the ranking member of
7849 the Judiciary Committee, the gentleman from Georgia, Mr.
7850 Collins, for his opening statement.

7851 Mr. Collins. Thank you, Mr. Chairman. My friend,
7852 Hakeem Jeffries, and I worked tirelessly along with all on
7853 this committee last year to hold criminal justice reform
7854 legislation. This is part of that. I firmly support this
7855 implementation of this good time act. And I do ask, Mr.
7856 Chairman, this is my moment to do this, please, please,
7857 please. I have asked since January for us to have a BOP
7858 oversight hearing in which we could discuss it. I know we
7859 have been crammed with a lot of stuff, but this is something
7860 that is important that we should have an oversight hearing on
7861 the Bureau of Prisons and the First Step Act. I yield back.

7862 Chairman Nadler. Thank you, Mr. Collins. Without
7863 objection, all other opening statements will be included in
7864 the record.

7865 [The information follows:]

7866

7867 Chairman Nadler. I now recognize myself for purposes of
7868 offering an amendment in the nature of a substitute.

7869 The clerk will report the amendment.

7870 Ms. Strasser. Amendment in the nature of a substitute
7871 to H.R. 4018, offered by Mr. Nadler. Strike all after the
7872 enacting clause and insert the following.

7873 Chairman Nadler. Without objection, the amendment in
7874 the nature of a substitute will be considered as read and
7875 shall be considered as base text for purposes of amendment.

7876 [The amendment in the nature of a substitute of Chairman
7877 Nadler follows:]

7878

7879 Chairman Nadler. I will recognize myself to explain the
7880 amendment.

7881 This amendment simply changes the caption to Section 1
7882 of the bill to more clearly specify that the changes made by
7883 the bill apply to the application of good conduct time
7884 accrued by the relevant prisoners. I urge all members to
7885 support it. I yield back the balance of my time.

7886 Mr. Collins. I yield back.

7887 Chairman Nadler. I will now recognize the ranking
7888 member of the full committee, Mr. Collins, for any comments
7889 he may have.

7890 Mr. Collins. I yield back.

7891 Chairman Nadler. The ranking member yields back. Are
7892 there any amendments to the amendment in the nature of a
7893 substitute? The gentleman from Florida is recognized.

7894 Mr. Deutch. Thank you, Mr. Chairman. I want to thank
7895 you. I want to thank the ranking member and Mr. Jeffries for
7896 all of your good work. Elderly prisoners are among the most
7897 vulnerable in the Nation's prison system. As people age in
7898 prison, they become more susceptible to mistreatment by
7899 younger predators. By clarifying good time credits are
7900 included, prisoners can participate in the Home Confinement
7901 Pilot Program. It will enable additional elderly prisoners
7902 to participate in the program. I am grateful that we are
7903 having a chance on this vote, and I yield back.

7904 Chairman Nadler. The gentleman yields back. Are there
7905 any amendments to the amendment in the nature of a
7906 substitute?

7907 [No response.]

7908 Chairman Nadler. Seeing none, the question occurs on
7909 the --

7910 Mr. Biggs. I move to strike. I move to strike.

7911 Chairman Nadler. Who seeks recognition? The gentleman
7912 from Arizona is recognized.

7913 Mr. Biggs. Thank you, Mr. Chairman. I move to strike
7914 the last word.

7915 Chairman Nadler. The gentleman is recognized.

7916 Mr. Biggs. Thank you. Mr. Chairman, I ask that an
7917 article from *The Hill*, dated July 19th, 2019, be admitted
7918 without objection.

7919 Chairman Nadler. Without objection.

7920 [The information follows:]

7921

7922 Mr. Biggs. Thank you. The article features a 77-year-
7923 old murderer who had been released, and he was deemed to be
7924 too old to kill. He was later convicted of killing someone
7925 yet again. And this is the concern that we have, and I think
7926 it is noble what you are trying to do. I think the bill is
7927 trying to address this issue, but there are some people that
7928 ought not to be released back into society. And with that, I
7929 can't support this. Thank you.

7930 Chairman Nadler. Without objection, we will admit that.
7931 I will recognize myself. This bill does not affect violent
7932 criminals. We are talking about people eligible for good
7933 time. Are there any other amendments?

7934 [No response.]

7935 Chairman Nadler. If not, the question occurs on the
7936 amendment in the nature of a substitute. This bill will be
7937 followed immediately by a vote on final passage of the bill.

7938 All those in favor of the amendment in a nature of a
7939 substitute respond by saying aye.

7940 Opposed, no.

7941 In the opinion of the chair, the ayes have it, and the
7942 amendment in the nature of a substitute is agreed to.

7943 Mr. Gohmert. Roll call.

7944 Chairman Nadler. A roll call? No. A reporting quorum
7945 being present, the question is on the motion to report the
7946 bill, H.R. 4018, as amended, favorably to the House.

7947 Those in favor, respond by saying aye.

7948 Opposed, no.

7949 And the ayes have it, and the bill is ordered reported
7950 favorably.

7951 A roll call is requested. The clerk will call the roll.

7952 Ms. Strasser. Mr. Nadler?

7953 Chairman Nadler. Aye.

7954 Ms. Strasser. Mr. Nadler votes aye.

7955 Ms. Lofgren?

7956 Ms. Lofgren. Aye.

7957 Ms. Strasser. Ms. Lofgren votes aye.

7958 Ms. Jackson Lee?

7959 Ms. Jackson Lee. Aye.

7960 Ms. Strasser. Ms. Jackson Lee votes aye.

7961 Mr. Cohen?

7962 Mr. Johnson of Georgia?

7963 Mr. Johnson of Georgia. Aye.

7964 Ms. Strasser. Mr. Johnson of Georgia votes aye.

7965 Mr. Deutch?

7966 Mr. Deutch. Aye.

7967 Ms. Strasser. Mr. Deutch votes aye.

7968 Ms. Bass?

7969 Mr. Richmond?

7970 Mr. Jeffries?

7971 Mr. Jeffries. Aye.

7972 Ms. Strasser. Mr. Jeffries votes aye.
7973 Mr. Cicilline?
7974 Mr. Cicilline. Aye.
7975 Ms. Strasser. Mr. Cicilline votes aye.
7976 Mr. Swalwell?
7977 Mr. Swalwell. Aye.
7978 Ms. Strasser. Mr. Swalwell votes aye.
7979 Mr. Lieu?
7980 Mr. Lieu. Aye.
7981 Ms. Strasser. Mr. Lieu votes aye.
7982 Mr. Raskin?
7983 Mr. Raskin. Aye.
7984 Ms. Strasser. Mr. Raskin votes aye.
7985 Ms. Jayapal?
7986 Ms. Jayapal. Aye.
7987 Ms. Strasser. Ms. Jayapal votes aye.
7988 Mrs. Demings?
7989 Mrs. Demings. Aye.
7990 Ms. Strasser. Mrs. Demings votes aye.
7991 Mr. Correa?
7992 Mr. Correa. Aye.
7993 Ms. Strasser. Mr. Correa votes aye.
7994 Ms. Scanlon?
7995 Ms. Scanlon. Aye.
7996 Ms. Strasser. Ms. Scanlon votes aye.

7997 Ms. Garcia?

7998 Ms. Garcia. Aye.

7999 Ms. Strasser. Ms. Garcia votes aye.

8000 Mr. Neguse?

8001 Mr. Neguse. Aye.

8002 Ms. Strasser. Mr. Neguse votes aye.

8003 Mrs. McBath?

8004 Mrs. McBath. Aye.

8005 Ms. Strasser. Mrs. McBath votes aye.

8006 Mr. Stanton?

8007 Mr. Stanton. Aye.

8008 Ms. Strasser. Mr. Stanton votes aye.

8009 Ms. Dean?

8010 Ms. Dean. Aye.

8011 Ms. Strasser. Ms. Dean votes aye.

8012 Ms. Mucarsel-Powell?

8013 Ms. Mucarsel-Powell. Aye.

8014 Ms. Strasser. Ms. Mucarsel-Powell votes aye.

8015 Ms. Escobar?

8016 Ms. Escobar. Aye.

8017 Ms. Strasser. Ms. Escobar votes aye.

8018 Mr. Collins?

8019 Mr. Collins. Aye.

8020 Ms. Strasser. Mr. Collins votes aye.

8021 Mr. Sensenbrenner?

8022 Mr. Chabot?

8023 Mr. Chabot. Aye.

8024 Ms. Strasser. Mr. Chabot votes aye.

8025 Mr. Gohmert?

8026 Mr. Gohmert. No.

8027 Ms. Strasser. Mr. Gohmert votes no.

8028 Mr. Jordan?

8029 Mr. Jordan. No.

8030 Ms. Strasser. Mr. Jordan votes no.

8031 Mr. Buck?

8032 Mr. Buck. No.

8033 Ms. Strasser. Mr. Buck votes no.

8034 Mr. Ratcliffe?

8035 Mrs. Roby?

8036 Mrs. Roby. Aye.

8037 Ms. Strasser. Mrs. Roby votes aye.

8038 Mr. Gaetz?

8039 Mr. Johnson of Louisiana?

8040 Mr. Johnson of Louisiana. No.

8041 Ms. Strasser. Mr. Johnson of Louisiana votes no.

8042 Mr. Biggs?

8043 Mr. Biggs. No.

8044 Ms. Strasser. Mr. Biggs votes no.

8045 Mr. McClintock?

8046 Mr. McClintock. No.

8047 Ms. Strasser. Mr. McClintock votes no.

8048 Mrs. Lesko?

8049 Mrs. Lesko. Aye.

8050 Ms. Strasser. Mrs. Lesko votes aye.

8051 Mr. Reschenthaler?

8052 Mr. Reschenthaler. Aye.

8053 Ms. Strasser. Mr. Reschenthaler votes aye.

8054 Mr. Cline?

8055 Mr. Cline. No.

8056 Ms. Strasser. Mr. Cline votes no.

8057 Mr. Armstrong?

8058 Mr. Armstrong. Yes.

8059 Ms. Strasser. Mr. Armstrong votes yes.

8060 Mr. Steube?

8061 Mr. Steube. Yes.

8062 Ms. Strasser. Mr. Steube votes yes.

8063 Chairman Nadler. Has everyone voted who wishes to vote?

8064 [No response.]

8065 Chairman Nadler. The clerk will report.

8066 Ms. Strasser. Mr. Chairman, there are 28 ayes and 7

8067 noes.

8068 Chairman Nadler. Oh, you haven't voted yet? The

8069 gentleman from Florida.

8070 Mr. Gaetz. No.

8071 Ms. Strasser. Mr. Gaetz votes no. Mr. Chairman, there

8072 are 28 ayes and 8 noes.

8073 Chairman Nadler. The ayes have it. The bill, as
8074 amended, is ordered reported favorably to the House.

8075 Members will have 2 days to submit views.

8076 The bill will be reported as a single amendment in the
8077 nature of a substitute incorporating all adopted amendments.

8078 And without objection, staff is authorized to make
8079 technical and conforming changes.

8080 Pursuant to notice, I now call up the final bill of the
8081 evening, H.R. 2426, the Copyright Alternative in Small Claims
8082 Enforcement Act of 2019, or the CASE Act, for purposes of
8083 markup, and move that the committee report the bill favorably
8084 to the House.

8085 The clerk will report the bill.

8086 Ms. Strasser. H.R. 2426, to amend --

8087 Chairman Nadler. The committee will come to order,
8088 please. The clerk will report the bill.

8089 Ms. Strasser. H.R. 2426, to amend Title 17, United
8090 States Code, to establish an alternative dispute resolution
8091 program for copyright of small claims --

8092 Chairman Nadler. Without objection, the bill is
8093 considered as read and open for amendment at any point.

8094 [The bill follows:]

8095

8096 Chairman Nadler. I will begin by recognizing myself for
8097 an opening statement.

8098 In view of the lateness of the hour, I will submit my
8099 statement for the record. I will simply say that this bill,
8100 H.R. 2426, the Copyright Alternative in Small Claims
8101 Enforcement Act of 2019, or the CASE Act, would establish a
8102 voluntary small claims court within the Copyright Office to
8103 hear copyright suits seeking \$30,000 or less in total
8104 damages. I support this bipartisan legislation introduced by
8105 our colleagues, the gentleman from New York, Mr. Jeffries,
8106 and Ranking Member Collins, and I commend them for their hard
8107 work in getting the bill to where it is, and hopefully we
8108 will approve this bill and report it to the floor today.

8109 [The information follows:]

8110

8111 Chairman Nadler. I now recognize the ranking member of
8112 the Judiciary Committee, the gentleman from Georgia, Mr.
8113 Collins, for his opening statement.

8114 Mr. Collins. Thank you, Mr. Chairman, and I will be
8115 submitting my statement for the record as well. I appreciate
8116 the work that Mr. Jeffries and I have done. It was not at
8117 the late hour because we could have talked a lot more about
8118 this. This is the one bill tonight, especially in other
8119 things we have done. But for affecting the creative
8120 community, this is a major step forward. I appreciate the
8121 partnership. With that, I yield back.

8122 [The information follows:]

8123

8124 Chairman Nadler. Thank you, Mr. Collins. Without
8125 objection, all other opening statement will be included in
8126 the record.

8127 [The information follows:]

8128

8129 Chairman Nadler. I now recognize myself for purposes of
8130 offering an amendment in the nature of a substitute. The
8131 clerk will report the amendment.

8132 Ms. Strasser. Amendment in the nature of a substitute
8133 to H.R. 2426, offered by Mr. Nadler of New York. Strike all
8134 after the enacting clause and insert the following.

8135 Chairman Nadler. Without objection, the amendment in
8136 the nature of a substitute will be considered as read and
8137 shall be considered as base text for purposes of amendment.

8138 [The amendment in the nature of a substitute of Chairman
8139 Nadler follows:]

8140

8141 Chairman Nadler. I now recognize myself to explain the
8142 amendment.

8143 This amendment makes certain technical revisions to the
8144 bill and includes provisions that freeze caps on fees and
8145 monetary damages for 3 years, preclude waiver of petitions to
8146 respondents' rights under the act, including the right not to
8147 use the small claims process, and makes clear that the
8148 petitioner's right to collect damages at any time before the
8149 Board issues a decision cannot be altered by a scheduling
8150 order. Each of these provisions strengthen the underlying
8151 legislation, and I urge all members to support it. I yield
8152 back the balance of my time.

8153 I will now recognize the ranking member of the full
8154 committee, Mr. Collins, for any comments he may have on the
8155 amendment in the nature of a substitute.

8156 Mr. Collins. I agree with the changes in the nature of
8157 substitute, and agree with that, and I yield back.

8158 Chairman Nadler. Thank you. Are there any amendments
8159 to the amendment in the nature of a substitute? For what
8160 purpose does the gentleman from New York seek recognition?

8161 Mr. Jeffries. Move to strike the last word.

8162 Chairman Nadler. The gentleman is recognized. The
8163 gentleman, the sponsor of the bill, is recognized.

8164 Mr. Jeffries. Let me first just thank the chairman, Mr.
8165 Nadler, for your leadership, and the ranking member, Mr.

8166 Collins, for your tremendous leadership, as well as Hank
8167 Johnson, the chair of the subcommittee, all of the other
8168 distinguished members on both sides of the aisle who support
8169 this legislation.

8170 In light of the late hour, I will just abbreviate my
8171 remarks, but I want to note that copyright infringement, of
8172 course, is not a victimless crime. Photographers,
8173 illustrators, visual artists, authors, songwriters, and
8174 musicians all rely upon their protected work to put food on
8175 the table and support their families. When that copyrighted
8176 work is used unlawfully, that is the functional equivalent of
8177 a burglary.

8178 Unfortunately, many small creators, victimized by
8179 infringement, often find themselves in a tough spot. They
8180 have a right to enforce their work under the law, but are
8181 unable to do so in a practical sense. On the one hand, there
8182 is the notice and takedown process that is often inefficient,
8183 cumbersome, and, as any creator will tell you, pointless. On
8184 the other, there is the Article 3 Federal court system that
8185 can be expensive, time consuming, and out of reach for many.

8186 The average cost of litigating an infringement case in
8187 Federal court can be approximately \$350,000, but the total
8188 amount of damages that can be awarded in a matter
8189 contemplated by the CASE Act cannot exceed \$30,000. In that
8190 instance, the cost of litigating a case in Federal court

8191 could be more than 10 times that of the damages at issue. As
8192 a result, many petitioners are functionally unable to
8193 vindicate their rights under law. These creators are given a
8194 right without a remedy.

8195 Article I, Section 8, Clause 8 of the United States
8196 Constitution gives Congress the power to create a robust
8197 intellectual property system in order to, in the words of the
8198 founders, promote the progress of science and useful arts.
8199 The founders of this great country understood that society
8200 would benefit if we incentivize creativity and innovation.
8201 In doing so, the creative community will continue to share
8202 their brilliance with the world and experience some benefit
8203 from the fruits of their labor. That is what the CASE Act is
8204 all about. I yield back the balance of my time.

8205 Chairman Nadler. The gentleman yields back. Does
8206 anyone else seek recognition?

8207 Ms. Lofgren. Mr. Chair?

8208 Chairman Nadler. The gentlelady from California. The
8209 gentleman from Texas. I am sorry. I didn't see you.

8210 Mr. Gohmert. Thank you. This looks like a great
8211 simplification. Appreciate the work on it.

8212 Ms. Lofgren. Mr. Chair?

8213 Chairman Nadler. The gentleman yields back. The
8214 gentlelady from California.

8215 Ms. Lofgren. Mr. Chairman, I move to strike the last

8216 word.

8217 Chairman Nadler. The gentlelady is recognized.

8218 Ms. Lofgren. I want to say that I fully support the
8219 goal of this bill. For many small artists and creators,
8220 there is effectively no remedy for the infringement of their
8221 work. As Mr. Jeffries has mentioned, the Federal courts are
8222 too expensive for the small, but vital, claims these artists
8223 have against infringers. And so I think the creation of the
8224 small claims tribunal to adjudicate these claims is very
8225 important to these artists and their creative livelihood.
8226 And I understand that the artists, the vast majority of whom
8227 just want to have an effective remedy they can use in good
8228 faith, support this bill.

8229 The gentleman from New York mentioned the notice and
8230 takedown provision in the DMCA, and I was on the committee
8231 when we enacted the DMCA. And I remember at the time
8232 expressing the concern that if the DMCA were used not for its
8233 intended purpose, but by people who wanted to suppress free
8234 speech, it would be a problem because there would be no
8235 incentive for the platforms to actually fight back in such an
8236 instance. So I think they do have a legitimate concern about
8237 the DMCA takedown notices. What they aren't seeing is the
8238 misuse of the takedown notices, and there is no effective
8239 remedy for that.

8240 So the point I am making is we have received today, and

8241 I would ask unanimous consent to enter into the record, a
8242 letter from the ACLU, statement from Mozilla, a statement
8243 from the Internet Association, and the Computer and
8244 Communications Industry Association, expressing concerns
8245 about potential implications for free speech that are not
8246 intended by this legislation.

8247 This bill creates a wholly new and really novel
8248 tribunal. We have never had anything like it in the
8249 copyright arena. Only one other nation has it, Great
8250 Britain, and from all I can tell, it has worked very well in
8251 Great Britain. But I do think we need to have some further
8252 discussion and work on the issues raised by the ACLU and
8253 others. I had prepared an amendment to create a sunset for
8254 the bill that would give the committee a date certain to
8255 review how it has worked, but I was going to offer it and
8256 then withdraw it. I will just say I was going to offer and
8257 withdraw it so we don't have to take the time to do that.

8258 I just wanted to create this issue and to say I want to
8259 work very closely with the authors of this bill because
8260 unless these issues are resolved, this bill is not going to
8261 make it in the United States Senate. And I think that would
8262 be a shame because I do think this is an important element
8263 for the creative community so that they can get justice and
8264 protect their work. So I would be happy to yield to the --

8265 Chairman Nadler. Without objection, the letters will be

8266 entered into the record.

8267 [The information follows:]

8268

8269 Mr. Jeffries. I appreciate the distinguished
8270 gentlelady's thoughtfulness in terms of and expressions of
8271 support as it relates to moving forward to try to find common
8272 ground. The bill has moved out of the Senate Judiciary
8273 Committee passed on a unanimous basis, but of course we look
8274 forward to working together to making sure that we can reach
8275 a point where we know that this effort will result in a bill
8276 being signed into law.

8277 If you wouldn't mind, I also ask unanimous consent, Mr.
8278 Chair, that letters of support be entered into the record
8279 from the American Bar Association, AFL-CIO, the NAACP, the
8280 Copyright Alliance, the Chamber of Commerce, the Association
8281 of American Publishers, the Authors Guild, Creative Future,
8282 Nashville Songwriters, as well as the Recording Academy and
8283 the Songwriters Guild.

8284 Chairman Nadler. Without objection.

8285 [The information follows:]

8286

8287 Ms. Lofgren. Reclaiming my time, I will support this
8288 bill today understanding that we will continue to work to
8289 address these issues that have been outlined to us, and
8290 understanding that there is tremendous interest in the
8291 country to provide for this remedy. But the Senate is a
8292 place where a single senator can bring something to a halt,
8293 and I think we have some work to do. And I am hopeful that I
8294 can play a productive role in making this whole thing happen.

8295 Mr. Collins. Will the gentlelady yield?

8296 Ms. Lofgren. I would be happy to yield.

8297 Mr. Collins. And that is a sad state of affairs that a
8298 bill like this would have, you know, the threat of a single
8299 senator because of an interesting letter from some of these
8300 who have claimed not to be part of this process. This is,
8301 you know, really not even a process that has been out there.
8302 This bill has been out there for a long time, and I really
8303 would have liked to have seen the ACLU actually weigh in a
8304 little bit heavier on due process that seemingly just run
8305 today, but they chose not to. They chose to get into the
8306 pocketbooks of creators, and I yield back.

8307 Ms. Lofgren. Reclaiming my time, you know, for a group
8308 that insisted that we could only have a trial and never have
8309 -- well, I am not going to get into it. I want to see this
8310 completed successfully, and I am hoping that working with the
8311 authors that we can make that happen.

8312 Chairman Nadler. Yield back?

8313 Ms. Lofgren. I yield back.

8314 Chairman Nadler. The gentleman from Colorado.

8315 Mr. Buck. Thank you, Mr. Chairman. Mr. Chairman, I
8316 just have a quick question for you or someone who knows more
8317 about this bill than I do. But this seems to be a markup of
8318 contradictions. Eight hours ago we started with a situation
8319 where the majority moved a bill because forced arbitration
8320 was wrong. We argued that it would cost too much to go to
8321 trial. Now we are saying that it costs too much to go to
8322 trial, and so we want to look at an alternative. Why is this
8323 better than going to trial and it is not --

8324 Ms. Lofgren. Would the gentleman yield?

8325 Mr. Buck. Sure.

8326 Ms. Lofgren. -- because this is not mandatory. The
8327 defendant has the opportunity to opt out of the system. The
8328 concern that has been expressed is that for small persons,
8329 \$30,000 is a lot of money, and for an unsophisticated
8330 defendant, that they might be subject to an extorted smaller
8331 amount because of concern about the dollar amount. I am not
8332 sure I have that same concern, which was why I thought the
8333 remedy of a sunset and see what will happen might be the best
8334 approach. But this is not mandatory arbitration, and I thank
8335 the gentleman for yielding.

8336 Mr. Buck. I yield to the gentleman from Georgia.

8337 Mr. Collins. I think you bring up an interesting point
8338 because it is capped at \$30,000. These are truly small
8339 claims that we are looking at here and providing an
8340 alternative, which we all believe there should be an access,
8341 of course, and do it in a way that has both parties' interest
8342 in mind. It is really an interesting proposal here, but I
8343 think you bring up an interesting point that there was, you
8344 know, silence on other things here. But with this, which you
8345 could find remedies for both parties to actually move through
8346 systems quicker, I think we find an interesting
8347 contradiction. But we will get this bill passed, and I do
8348 appreciate it.

8349 Mr. Buck. Thank you, and I yield back, Mr. Chair.

8350 Chairman Nadler. The gentleman yields back.

8351 The question occurs on the amendment in the nature of a
8352 substitute.

8353 All in favor?

8354 Opposed?

8355 The ayes have it. The ayes have it.

8356 A reporting being present, the question is on the motion
8357 to report the bill, H.R. 2426, as amended, favorably to the
8358 House.

8359 Those in favor, respond by saying aye.

8360 Those opposed, no.

8361 The ayes have it, and the bill is ordered reported

8362 favorably.

8363 The ayes have it, and the bill is reported favorably to
8364 the House.

8365 Members will have 2 days to submit views.

8366 The bill will be reported as a single amendment in the
8367 nature of a substitute incorporating all adopted amendments.

8368 And without objection, staff is authorized to make
8369 technical and conforming changes.

8370 I want to thank all the members and the few people in
8371 the audience who stuck it out for their patience and their
8372 fortitude in this lengthy markup. This concludes our
8373 business for today. Thanks to all our members.

8374 The markup is adjourned.

8375 [Whereupon, at 10:13 p.m., the committee was adjourned.]