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MARKUP OF:

H.R. 3843, THE "MERGER FILING FEE MODERNIZATION ACT OF 2021";

H.R. 3460, THE "STATE ANTITRUST ENFORCEMENT VENUE ACT OF 2021";

H.R. 3849, THE "AUGMENTING COMPATIBILITY AND COMPETITION BY ENABLING SERVICE SWITCHING ACT OF 2021" OR THE "ACCESS ACT OF 2021";

H.R. 3826, THE "PLATFORM COMPETITION AND OPPORTUNITY ACT OF 2021";

H.R. 3816, THE "AMERICAN CHOICE AND INNOVATION ONLINE ACT";

AND H.R. 3825, THE "ENDING PLATFORM MONOPOLIES ACT"

Wednesday, June 23, 2021

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

25

26 The committee met, pursuant to call, at 10:13 a.m., in Room
27 2141, Rayburn House Office Building, Hon. Jerrold Nadler
28 [chairman of the committee] presiding.
29 Members present: Representatives Nadler, Lofgren, Jackson
30 Lee, Cohen, Johnson of Georgia, Deutch, Bass, Jeffries,
31 Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa,
32 Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Escobar, Jones,
33 Ross, Bush, Jordan, Chabot, Gohmert, Issa, Buck, Gaetz, Johnson
34 of Louisiana, Biggs, McClintock, Steube, Tiffany, Massie, Roy,
35 Bishop, Fischbach, Spartz, Fitzgerald, Bentz, and Owens.
36 Staff present: Perry Apelbaum, Staff Director and Chief
37 Counsel; Aaron Hiller, Deputy Chief Counsel; Amy Rutkin, Chief
38 of Staff; David Greengrass, Senior Counsel; John Doty, Senior
39 Advisor; Moh Sharma, Member Services and Outreach & Policy
40 Advisor; Priyanka Mara, Professional Staff Member/Legislative
41 Aide; Jordan Dashow, Professional Staff Member; Cierra Fontenot,
42 Chief Clerk; John Williams, Parliamentarian; Merrick Nelson,
43 Digital Director; Kayla Hamedi, Deputy Press Secretary; Amanda
44 Lewis, Counsel for ACAL; Joseph Van Wye, Professional Staff
45 Member/Legislative Aide for ACAL; Slade Bond, Chief Counsel for
46 ACAL; Philip Berenbroick, Counsel for ACAL; Will Emmons,
47 Professional Staff Member/Legislative Aide for Constitution;
48 Chris Hixon, Minority Staff Director; David Brewer, Minority

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

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

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

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

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

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

79 those appearing remotely, to mute your microphones when you are
80 not speaking. This will help prevent feedback and other
81 technical issues. You may unmute yourself any time you seek
82 recognition.
83 Pursuant to notice, I now call up H.R. 3843, the Merger Filing
84 for Fee Modernization Act of 2021 for purposes of markup and move
85 that the committee report the bill favorably to the House. The
86 clerk will report the bill.
87 [The Bill H.R. 3843 follows:]
88
89 **********COMMITTEE INSERT**********

90 Ms. Fontenot. H.R. 3843 to promote anti-trust enforcement
91 and protect competition for adjusting --
92 Chairman Nadler. Without objection, the bill is considered
93 as read and open for amendment at any point. I will begin my
94 recognizing myself for an opening statement.
95 Nearly two years ago to the day, the Judiciary Committee
96 launched a bipartisan investigation into the state of competition
97 in digital markets. The investigation spent 16 months
98 culminating in a majority staff report that documented a range
99 of problems affecting competition in the digital economy and it
100 made a series of recommendations to address those problems.
101 The New York Times referred to this as the most significant
102 government effort to check the world's largest tech companies
103 since the government sued Microsoft for antitrust violations in
104 the 1990s.
105 In a farewell address earlier this year, the former Deputy
106 Attorney General for the Antitrust Division described it as a
107 landmark report on market ower in digital markets. More
108 critically, the committee's extensive documentation of these
109 problems was a clarion call to action.
110 Today, we will answer that call through the consideration
111 of a historic package of bipartisan legislation to restore
112 competition online. The bills that the committee will consider
113 at today's markup will pave the way for a stronger economy and

114 a stronger democracy for the American people by reigning in
115 anti-competitive abuses of the most dominant firms online.
116 Each bill is an essential part of a bipartisan plan to level
117 the playing field for innovative entrepreneurs and startups and
118 to bring the benefits of increased innovation and choice to
119 American consumers. Our goal should be to ensure that there is
120 a space for opportunity, innovation, and choice to thrive online.
121 For consumers and businesses, that is exactly what these bills
122 accomplish.
123 I have long believed that the unchecked concentration of
124 economic power in any industry poses a danger to our democracy.
125 Our country and our political institutions will be stronger as
126 a result of the important reforms to open markets, to new
127 competition that are set forth in the legislation we are
128 considering today.
129 The package of bills before the committee echoes prior
130 legislative efforts to confront abuses of market power that stifle
131 competition and innovation in emerging technology markets.
132 These efforts include the 1992 Cable Television Consumer
133 Protection and Competition Act, and the Telecommunications Act
134 of 1996.
135 As President Bill Clinton remarked during the signing of
136 the landmark '96 Act, it was designed to promote competition as
137 the key to opening new markets and new opportunities. That

138 legislation helped serve as a catalyst for the digital revolution
139 of the past 25 years.
140 Similar to the legislation we are considering today, the
141 Telecommunications Act established nondiscrimination
142 requirements, line of business restrictions, and
143 interoperability and data portability mandates for the dominant
144 firms of the day. These prohibitions are well grounded in long
145 standing and well understood antitrust principles that are
146 important complements to robust antitrust enforcement.
147 One critical failing of the Telecommunications Act, however,
148 was that it did not prevent the waves of consolidation in the
149 telecommunications market that stymied the pro-competitive goals
150 of the Act. As a result of this consolidation, Americans pay
151 higher prices for critical services by broadband internet, while
152 millions remain on the wrong side of the digital divide because
153 services are unavailable or unaffordable. That is why one
154 critical piece of legislation that we are considering today,
155 Congressman Jeffries' Platform Competition and Opportunity Act,
156 will tighten merger review for coveted platforms to help ensure
157 that we do not repeat this mistake.
158 Importantly, we are not alone in taking steps to reigning
159 in abuses by dominant online platforms. The United Kingdom,
160 Australia, and the European Union are each considering
161 significant updates to their competition laws governing the

162 digital economy, motivated by the same concerns that give rise
163 to the legislation we will consider today. For example,
164 following a landmark report by the United Kingdom's Competition
165 and Market Authority, Great Britain has begun work on a new
166 pro-competitive regime that is tailored to the most powerful
167 companies in the digital economy.
168 Today is the start of an opportunity for the United States
169 to reassert its leadership role on this issue internationally.
170 With this package of historic legislation, we have the
171 opportunity to take control of our own destiny, to be a global
172 leader in developing rules of the road to the digital economy.
173 We cannot be complacent and we cannot delay.
174 I want to thank Chairman Cicilline for his work leading the
175 investigation and the Antitrust Subcommittee on a bipartisan
176 basis. I also want to thank Ranking Member Ken Buck and all the
177 members of the subcommittee on both sides of the aisle for their
178 dedication to this work, as well as the members of the committee
179 who have contributed to the legislation we will consider today.
180 The first bill we will consider is H.R. 3843, the Merger
181 Filing Modernization Act of 2021. This legislation will ensure
182 that the Department of Justice and the Federal Trade Commission
183 have the resources they need to aggressively enforce the antitrust
184 laws and to protect consumers and competition.
185 We have not updated the merger filing fees in more than two

186 decades. The budgets for the antitrust enforcement agencies have
187 not kept pace with the demands placed on them. Officials from
188 both parties agree that these agencies need additional resources
189 to perform their critical work. Antitrust enforcement and
190 litigation is hugely expensive and time consuming. For example,
191 in monopolization cases the Department of Justice and the Federal
192 Trade Commission filed last year against Google and Facebook,
193 respectively, may take years to litigate.
194 This bipartisan legislation, which passed the Senate earlier
195 this month, will provide more funding for antitrust enforcement
196 by increasing filing fees on the largest transactions, by reducing
197 filing fees on smaller transactions. The bill ensures that the
198 mergers that are most likely to consume agencies' time and
199 resources pay more than those that place less of the burden on
200 the agencies.
201 Providing the antitrust agencies with sufficient funding
202 will ensure that they can effectively investigate and litigate
203 cases to stop illegal mergers, to hold monopolists accountable
204 for anti-competitive conduct, and to protect consumers.
205 I want to thank Mr. Neguse and Mrs. Spartz for sponsoring
206 this important bipartisan legislation and I urge all members to
207 support it.
208 I now recognize the Ranking Member of the Judiciary
209 Committee, the gentleman from Ohio, Mr. Jordan, for his opening

210 statement.

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

212 Do we think House Democrats want to stop big tech censorship

213 of Republicans, big tech censorship of conservators?

214 Remember, three months, two Democrats wrote a letter to big

215 carriers encouraging them to take Fox News, Newsmax, One America

216 News off their platform.

217 Chairman Nadler, Subcommittee Chairman Cicilline, Democrat

218 Conference Chair Jeffries, Democrat Policy Chair Neguse, all

219 impeachment managers, do we really think they want Facebook to

220 put President Trump back on their platform? Actually, we know

221 the answer to that question. They don't. Chairman Nadler said

222 I think Facebook was right. They have a right to ban the

223 President, even though these big tech platforms allow the

224 Ayatollah to put tweets on there, they have a right to ban the

225 President.

226 The chairman said it is a right wing conspiracy theory and

227 a fantasy dreamed up by some conservative. Maybe that is because

228 he hasn't been shadow banned like Congressman Gaetz has or

229 Congressman Nunez.

230 Subcommittee Chairman Cicilline said we don't need to

231 develop a solution for a problem that doesn't exist. Big tech

232 censors conservatives. These bills don't fix that problem.

233 They make it worse. They don't break up big tech. They don't

234 stop censorship.

235 Let's look at the ACCESS bill. This is the one that is
236 supposed to be the least problematic. Let's just run through
237 the ACCESS bill, what this does, the power that it gives to the
238 Federal Trade Commission. Page 15 of that legislation, the FTC
239 shall issue standards specific to each covered platform. Covered
240 platform is defined online presence, 50 million users a month,
241 100,000 business users a month, and a $600 billion market cap.
242 That currently includes Amazon, Apple, Facebook, Google, but
243 I think it is soon to include Microsoft, Walmart, Visa, and who
244 knows where it ends.

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

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

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

258 of the legislation tells us. Three categories, competitors,
259 people from advocacy groups, and independent academics, and then
260 someone from the National Institutes of Standards and Technology.
261 Which sort of raises the obvious question who runs the FTC?
262 Until last week, the acting chair was Ms. Slaughter, Ms.
263 Slaughter who said it is "Perfectly appropriate for us to use
264 antitrust enforcement tools to right the wrong of systemic
265 racism." Wow.
266 The new chair last week, Ms. Lina Khan, previously worked
267 for Chairman Nadler, Subcommittee Chair Cicilline, and House
268 Democrats on the Judiciary Committee. So the person who helped
269 write the bill, they give all the power to the FTC, now is going
270 to run the FTC. Such a deal.
271 The Federal Trade Commission, run by Biden Democrats who
272 want to fix systemic racism, set up special government committees
273 of whatever size they want, technical committees made up of your
274 competitors, advocacy groups, and academics. Or in other words,
275 people who want your business to fail, so let's back individuals
276 and someone like Senator Warren.
277 Now if you don't like the fact that you are a covered
278 platform, you can petition the FTC, page four and five of the
279 legislation. And if the FTC doesn't like your petition, you can
280 go to court. But your chances of winning in court aren't too
281 good because on page 20 of the legislation is says in a proceeding

282 for judicial review, the findings of the Commission shall be
283 conclusion. I don't think your chances are going to be too well.
284 Oh, and I forgot this. One more thing. Page 20 of the
285 legislation, the Federal Advisory Committee Act shall not apply
286 with respect to these technical committees. In other words, it
287 is all done in secret. The Federal Advisory Review Act doesn't
288 even apply. So secret technical committees for each business
289 made up of left-wing individuals, advocacy groups, someone from
290 academic, independent academic, that is who is going to decide.
291 Now do you really think the individuals running the FTC
292 again, as I said before, want Facebook to let President Trump
293 back on? Do they want Twitter to stop shadow banning Matt Gaetz?
294
295 A few months ago, Democrats brought in front of the committee
296 a newspaper bill in front of this committee. The bill that would
297 have allowed big tech and big media to collude. We had a great
298 hearing on that. They have dropped that bill. I thought the
299 witnesses put it out, the concerns, with that legislation.
300 Today, we have bills that aren't big tech and big media
301 working together, but big tech and big government now marrying
302 up and working together. And frankly, we have already seen this.
303 We have already seen this. We saw it with recently released emails
304 between Mr. Zuckerberg and Mr. Fauci where we saw big tech and
305 big government work together to frankly keep information from

306 the American people, information that turns out may have been
307 accurate. So that is our concern overall with the package.
308 There are some bills that okay, may be all right, but overall
309 the power this gives to the FTC, big tech working together with
310 big government doesn't address the issue of breaking these
311 companies up, doesn't address the issue of censorship which so
312 many Americans are concerned about. That is our concern.
313 We are going to have a number of amendments, Mr. Chairman.
314 I know you guys have several amendments on your side as well.
315 I look forward to a robust debate as we move forward. With that,
316 I yield back.
317 Chairman Nadler. Thank you. I now recognize the chair of
318 the Subcommittee on Antitrust, Commercial, and Administrative
319 Law, the gentleman from Rhode Island, Mr. Cicilline for his
320 opening statement.
321 Mr. Cicilline. Thank you, Mr. Chairman. Before I turn to
322 the historic bipartisan legislation the committee will consider
323 today, I want to take a moment to reflect on the comprehensive
324 and painstaking investigative and oversight work that the
325 subcommittee completed over the past two years.
326 By every measure, the committee's digital markets'
327 investigation stands as one of the most extensive and in-depth
328 antitrust investigation in the history of Congress. We launched
329 our bipartisan investigation in June 2019. Since then, we held

330 a total of ten legislative and oversight hearings and 17-member
331 round tables and briefings. We heard direct testimony from the
332 CEOs of Google, Amazon, Apple, and Facebook for nearly six hours.
333 All tolled, 56 witnesses testified before the subcommittee or
334 committee.
335 We interviewed more than 240 market participants and
336 received written submissions from 60 leading antitrust experts
337 and scholars. We collected nearly 1.3 million documents from
338 the investigated companies, third parties, and antitrust
339 enforcement agencies.
340 In October of 2020, the subcommittee issued a 450 page
341 investigative report, setting forth specific and concrete
342 recommendations for a path forward. The digital markets report
343 was approved by the full committee on April 15th and since then,
344 we have continued to move forward in a serious, thoughtful, and
345 deliberate manner.
346 And just to respond briefly to the Ranking Member's
347 suggestion, the bills were written by subcommittee members and
348 the staff in a bipartisan way, not by Lina Khan.
349 On June 11th, we introduced each of the six pieces of
350 legislation that we will consider today both on process and
351 substance. From June of 19th through today, I am immensely proud
352 of the Antitrust Subcommittee's effort.
353 The legislation the committee will consider at today's

354 market is essential to build a better online economy with
355 opportunity, innovation for consumers, workers, and small
356 businesses. These bills are a direct and measured response to
357 the competition problems we identified in our investigation and
358 documented in our comprehensive report.
359 The digital marketplace suffers from a lack of competition.
360 Many digital markets are defined by monopoly or duopoly control.
361 Amazon, Apple, Facebook, and Google are gatekeepers to the online
362 economy. They bury or buy rivals and abuse their monopoly power,
363 conduct that is harmful to consumers, competition, innovation,
364 and our democracy.
365 In testimony, submissions, and numerous interviews with
366 subcommittee staff, businesses of all types and sizes described
367 how dominant platforms exploit their gatekeeper power to charge
368 exorbitant fees, advantage their own products and services,
369 impose oppressive contract terms, and extract valuable data from
370 the people and businesses that rely on them.
371 Over and over words like fear, bullying, and hardship came
372 up in interviews. App developers, third party sellers, and even
373 large publishers reported being victims of predatory behavior.
374 According to these businesses, they are dependent on platform
375 gatekeepers to connect with their users or customers because they
376 have few, if any, other options. They feel trapped. They are,
377 in fact, trapped.

378 By maintaining control of the infrastructure of the digital
379 age, Facebook, Google, Amazon, and Apple can conduct surveillance
380 to identify potential rivals and ultimately bury or buy any
381 competitive threats. For example, during the investigation, the
382 subcommittee uncovered emails from Mark Zuckerberg to Facebook's
383 Chief Financial Officer describing the purpose of purchasing
384 Instagram as an opportunity to neutralize a competitive threat.
385 Before its company was acquired, the cofounder of Instagram told
386 an investor that he was worried Mr. Zuckerberg would go into
387 "destroy mode" if he refused to sell the company.
388 Facebook later required the surveillance company Onavo to
389 identify other competitive threats and then neutralize them
390 through acquisition, cloning their features or blocking them from
391 Facebook's platform.
392 During our legislative hearing in February on proposals to
393 address online gatekeeper power, we received written testimony
394 from Cliff Pemble, the CEO of Garmin, about this exact topic.
395 He noted that as gatekeepers of the ecosystem for virtually all
396 app developers, Apple and Google and I quote "have the ability
397 and incentive to harm competition and that these super dominant
398 companies should not be allowed to use their ability to control
399 key inputs and distribution as a sword to eliminate or impede
400 competition."
401 Due to high barriers to entering these markets such as strong

402 network effect and high switching costs, new entrants are unable
403 to enter the market with better products or services to contest
404 the dominance of these firms. In other words, businesses and
405 consumers are stuck with few or no alternatives.
406 I want to be very clear about two things. This problem is
407 not just about market failure. At its core, this issue is
408 fundamentally about whether or not we have an economy where a
409 business is fighting for economic survival can actually succeed.
410 It is about whether our economy future is going to be defined
411 by the success of the best businesses with the best ideas or simply
412 the biggest companies with the biggest lobbying budgets.
413 Second, this problem is fundamentally about what kind of
414 country we want to live in, a country where Congress actually
415 works for the people to tackle the major problems of our time
416 or a country where Congress does nothing in the face of the
417 confusion, doubt, and delay caused by the same unregulated tech
418 monopolies that want to see absolutely nothing change.
419 America has had enough. According to multiple surveys over
420 the past year, Republicans and Democrats agree on an overwhelming
421 basis that these companies have too much power and that Congress
422 must curb their dominance. As Chairman Nadler has said, we must
423 answer that call. Today's legislative package is the start of
424 that effort.
425 And I want to just particularly acknowledge the members of

426 the subcommittee on both sides of the aisle for the seriousness
427 in which they have conducted this work and the report that was
428 generated and the legislation that we are considering today.
429 The first bill we will consider is H.R. 3843, the Merger
430 Filing Fee Modernization Act of 2021. This is a common sense
431 bipartisan legislation that will provide a much needed update
432 to the fee schedule for mergers that require review by the Federal
433 Trade Commission or the Department of Justice. This bill updates
434 merger filing fees for the first time in more than two decades
435 to ensure there are antitrust agencies have the resources they
436 need to enforce the law against the wealthiest companies the world
437 has ever known.
438 The updated fee structures ensures that companies proposing
439 the largest transactions will pay more because these transactions
440 are likely to consume more agency resources. On the other hand,
441 companies with transactions under $500 million will pay less under
442 this bill than they currently do.
443 Earlier this month, this legislation was adopted by the
444 Senate. It was previously approved by a voice vote in the
445 Senate's Judiciary Committee. And I want to thank Mr. Neguse
446 for his leadership on this legislation and I encourage my
447 colleagues to support this bill and I yield back.
448 Chairman Nadler. The gentleman yields back. I now
449 recognize the Ranking Member of the Antitrust Subcommittee, the

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

451 Mr. Buck. Thank you, Mr. Chairman. And I want to thank

452 Mr. Cicilline, the chairman of the subcommittee for his work on

453 this and the bipartisan investigation that occurred.

454 The bills we introduced over a week ago are the culmination

455 of an 18 month long bipartisan investigation into the monopoly

456 power of big tech. Throughout the investigation, we heard first

457 hand the gross abuses of Amazon, Apple, Facebook, and Google,

458 and how they engaged in using their market-dominant positions.

459 These monopolists routinely use their gatekeeper power to crush

460 competitors, harm innovation, distort, and destroy the free

461 market and silence conservatives.

462 This legislation represents a scalpel, not a chain saw, to

463 deal with the most important aspects of antitrust reform. We

464 are giving the Department of Justice and the Federal Trade

465 Commission the tools they need to restore the free market,

466 incentivize innovation, and give small businesses a fair share

467 against oligarchs like Jeff Bezos and Mark Zuckerberg.

468 Amazon, Apple, Facebook, and Google are already spending

469 millions of dollars on lobbyists in the D.C. swamp to fight us.

470 They have spread lies about these bills calling them communist

471 in one breath and argue that they won't actually break up big

472 tech in the other.

473 These bills are conservative. One of them has been

474 introduced by Senator Mike Lee. Several of these bills are
475 supported by Senators Cotton, Grassley, and Cruz. And these
476 bills include co-sponsors like Representatives Cawthorn, Good,
477 Gosar, and Donalds.
478 Tucker Carlson recently voiced his support for these bills
479 on multiple Fox News segments. Big government created big tech
480 monopolists through antitrust amnesty. The conservative thing
481 to do is to hold big tech accountable. These bills do just that.
482 It is time to do what we said and reign in big tech and I yield
483 back.
484 Chairman Nadler. The gentleman yields back. Without
485 objection, all other opening statements will be included in the
486 record.
487 I now recognize myself for purposes of offering an amendment
488 in the nature of a substitute. The clerk will report the
489 amendment.
490 [The Amendment offered by Mr. Nadler follows:]
491
492 **********COMMITTEE INSERT**********

493 Ms. Fontenot. Amendment in the nature of a substitute to
494 H.R. 3843 offered by Mr. Nadler of New York. Strike all after
495 the enacting clause --
496 Chairman Nadler. Without objection, the amendment in the
497 nature of a substitute will be considered as read and shall be
498 considered as base text for purposes of amendment. I will
499 recognize myself to explain the amendment.
500 This amendment changes the title to better reflect the goals
501 of the bill. It makes no substantive changes and I urge all
502 members to support the amendment. I yield back the balance of
503 my time.
504 Are there any amendments to the amendment in the nature of
505 a substitute?
506 For what purpose does Mr. Neguse response to the bill seek
507 recognition?
508 Mr. Neguse. Move to strike the last word.
509 Chairman Nadler. The gentleman is recognized.
510 Mr. Neguse. Thank you, Mr. Chairman, for your leadership
511 and I want to, in particular, thank the Chairman of the
512 Subcommittee, Representative Cicilline, and the Ranking Member,
513 Mr. Buck, for their leadership as we embarked on a very thorough
514 and comprehensive 18-month investigation into the concentration
515 of power within the digital marketplace.
516 I think the bills we are considering today are important

517 and I know we are going to have robust debate and I certainly
518 look forward to that debate today.
519 I would like to take a moment to talk about my bill, in
520 particular, the bill that we are considering first this morning.
521 This bill, in my view, is a clarion call to our regulators, to
522 our enforcement agencies, namely, the FTC, to step up and do what
523 is necessary to protect our small businesses, to protect
524 innovation, to protect consumers, and ultimately to protect our
525 economy.
526 Before I was elected to the United States Congress, I served
527 as a regulator in my home state of Colorado, leading our state's
528 Consumer Protection Agency, a counterpart to the SEC and CFPB.
529 And that experience certainly gave me the underpinning in terms
530 of the knowledge of knowing just how important it is for our
531 regulators and our enforcement agencies to have the resources
532 that they need to do the job that they are charged to do under
533 the law. And this bill would accomplish precisely that. It
534 would modernize a filing fee structure that has not been changed
535 in any substantive way in 20 years. Literally, these fees have
536 not been adjusted in 20 years.
537 And what is interesting about the approach that we have taken
538 and I thank my colleague, Representative Spartz from the State
539 of Indiana, for her leadership in this regard, is that this bill
540 is not a one size all approach. It increases the fees on

541 substantial mergers of transactions that total over $160 million,
542 but lowers the filing fees for small businesses. That, to me,
543 is a common sense, reasonable, prudent approach that ultimately
544 will ensure that the FTC has additional resources to be able to
545 do the job, as I said, that they are charged to do under the law.
546
547 This is a bipartisan bill. It passed the United States
548 Senate unanimously. Senator Klobuchar and Senator Grassley led
549 the charge in the Senate.
550 I would hope that every member of this committee, Republican
551 and Democrat, would agree that lowering fees for small businesses
552 is a good step forward. And with that, Mr. Chairman, I would
553 implore my colleagues to vote in favor of both this amendment
554 and ultimately final passage of the bill. And with that, I would
555 yield back.
556 Chairman Nadler. The gentleman yields back. What purpose
557 does Mrs. Spartz, lead sponsor of this legislation, seek
558 recognition.
559 Ms. Spartz. Strike the last word.
560 Chairman Nadler. The gentlelady is recognized.
561 Mrs. Spartz. Well, it's a very difficult and challenging
562 topic, and I'm glad to see the conversation because we have to
563 acknowledge we do have monopoly oligopoly in a lot of sectors
564 of our businesses, and we are task FTC, Department of Justice,

565 to be enforcers to promote competition.

566 So what this does is we're going to have a lot of debate,
567 and I know we're talking about the package, but I want us to be
568 on -- look on a stand-alone basis. Is it a good legislation?
569 Can we agree on it or not?

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

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

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

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

589

590 You know, we also know that, you know, in the last 40 years,
591 you know, FTC has -- actually has 30 percent less employees but
592 economy increased three times. So, definitely, we have to look
593 how we can make this agency more effective.
594 You know, but we're talking about the promoted competition
595 functions. I look at their financial statements. I'm an
596 accountant, so I'll just share some numbers with you.
597 So on that function, FTC spend $167 million last year --
598 billion last year, and they were -- kind of two of them were
599 actually -- were financed with this user fee, and $65 billion
600 were financed through general appropriation.
601 So what this bill, hopefully, will do will adjust more user
602 fee finances of the function they have to do. You know, also,
603 if we look at that the bill actually reduces the filing -- the
604 fee for most of -- you know, for any company under $1 billion.
605

606 So as of right now, it's about -- it's about -- by 25 to
607 50 percent. So it's about from 0.05 percent to 0.13 percent,
608 you know, where now it will be from 0.02 percent to 00.5 percent.
609 The only difference it does it's created new brackets. So now
610 everything above billion is treated the same.
611 So it doesn't matter if you have billion-dollar merger, a
612 $100 billion merger, you still pay the same fee and that creates

613 two new brackets where they're going to be difference for $2
614 billion mergers and $5 billion and above transactions.
615 So I think this just create new brackets because, ultimately,
616 there is much more resources. Larger transaction require and
617 right now smaller piece pay more of this effort. So it reduces
618 this for the smaller companies' merger transaction and creates
619 brackets for some larger one.
620 You still don't have -- there's still a big gap between $5
621 billion and $100 billion, but at least it create a couple more
622 brackets. So, hopefully, that will be sufficient that we don't
623 have to actually finance this through general appropriations.
624
625 I'm also going to be talking a little bit later about
626 potential guardrails. I know some people have concerns, you
627 know, how the money is spent and we can put some particular
628 guardrails to make sure to have transparency and accountability
629 because I truly believe FTC and Department of Justice have to
630 be accountable to this branch and they need to do more on that,
631 and we can discuss it further.
632 But I also want to kind of explain that this is not related
633 to any particular company or industry. It applies equally to
634 everyone and it also deal in not just FTC but Department of Justice
635 because both of this entity are responsible for this function.
636 Maybe it's a different discussion how it should be handled, but

637 that's what this is doing.

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

641 I yield back.

642 Chairman Nadler. The gentlelady yields back.

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

645 Ms. Lofgren. To strike the last word.

646 Chairman Nadler. The gentlelady is recognized.

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

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

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

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

661 the antitrust agencies will collect an additional $135 million
662 in merger filing fee revenue in the first year of this bill.
663 That's an increase of 50 percent of the total filing fees
664 collected in 2020.
665 Now, it's important that we have adequate resources to
666 enforce antitrust laws. I recently received a report analyzing
667 the impact of technology on the -- on jobs and the economy in
668 the state of California.
669 It's worth note noting that Amazon alone employs more workers
670 in California, more than 153,000 employees than it does in
671 Washington, more than 80,000 employees. That's a lot of people
672 to be reviewed by an FTC staff of 1,131.
673 So, you know, as we do in the patent arena, it's absolutely
674 appropriate that these companies should pay. The antitrust laws
675 are part of the environment that allows our economy to flourish
676 and they should be charged an increased fee.
677 And I want to thank the committee for taking this bill up.
678 I have a number of concerns about the details of some of the
679 other bills, which I will raise in the appropriate forum. But
680 all of us believe that we ought to have a vigorous competition
681 and economy that serves the American public and this filing fee
682 bill is part of that effort.
683 And with that, Mr. Chairman, I'd be happy to yield back.
684 Chairman Nadler. The gentlelady yields back.

For what purpose does Mr. Roy seek recognition?

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

Chairman Nadler. The gentleman is recognized.

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

Chairman Nadler. Clerk will report the amendment.

Ms. Fontenot. Amendment to the amendment --

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

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

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

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

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

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

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

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

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

Chairman Nadler. The clerk will report the amendment.

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

[The Amendment offered by Mr. Roy follows:]

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

722 Chairman Nadler. The gentleman is recognized to speak on
723 the amendment.
724 Mr. Roy. Just kind of warming up here. Appreciate that,
725 Mr. Chairman.
726 I'd, first, want to just take a moment to say that I
727 appreciate the work of the chairman and the ranking member on
728 the subcommittee, Mr. Cicilline and Mr. Buck.
729 I appreciate that we're here and that there's a bipartisan
730 recognition of the concerns we have with the power of large
731 corporations, particularly with respect to privacy, with respect
732 to competition, and making sure that we have a robust free market.
733
734 I think that the balance here that -- I mean, I'll in full
735 candor acknowledge that I'm trying to strike is how much power
736 are we giving the government or how much power do we entrust in
737 government to deal with the concerns that we're seeing with
738 respect to the size of these companies.
739 So with respect to this particular measure, this bill that
740 I appreciate my friend, Mrs. Spartz and Mr. Neguse from Colorado,
741 for their effort.
742 As a former federal prosecutor in the Department of Justice,
743 I know we need resources. When I was there, we needed resources
744 to be able to go carry out our job, to go carry out our function,
745 and it's important.

746 I think one of the concerns that I know a number, at least
747 of my colleagues, at least on this side of the aisle, have is
748 when we empower those in the FTC, the Department of Justice, or
749 any other agency, what are they doing with that power? And I
750 think that's a core question here.
751 So I'm conflicted. I will acknowledge being conflicted
752 here. I co-sponsored this because I do recognize that we haven't
753 adjusted fees since 1985. I like the fact that this equalizes
754 a little bit and puts more of the fees into bigger companies and
755 reduces the fees for smaller companies and acquisitions.
756 And it's self-funding. We have talked about the Patent
757 Office model and others. I think those are good steps forward.
758
759 I think the question becomes is, if we were in a world in
760 which I thought this was a pure objective use of that power to
761 root out anti-competitive behavior and ensure a robust free market
762 under the rules that antitrust law were originally anticipated
763 and created, then I think there would be -- I think there would
764 be more general agreement and interest in making sure they've
765 got the right powers and tools to carry out that endeavor.
766 But I think some of the concern here is when you see the
767 former acting commissioner of the FTC putting out very specific
768 kind of politically-charged statements about how the power of
769 the FTC would be used with respect to targeting systemic racism.

770 And all of us oppose racism and want to make sure that we're
771 rooting that out of society appropriately. But when you talk
772 about the power of the FTC or the power of the Department of
773 Justice, and then targeting companies based on those ideas, and
774 then when you see what those ideas end up looking like in practice
775 in our education system, in corporate America, and then you say,
776 well, what is the FTC going to use their power to do? Who are
777 they going to go after and for what reason?
778 And I think that's -- I think that is at the core of some
779 of the discontent with some on at least our side of the aisle.
780 Maybe there's some bipartisan concerns about that.
781 And so some might say this is a political poison pill kind
782 of thing to start with. I would say this is a very sincere issue
783 about an issue that I have grave concern about, when we look at
784 the language with -- at least for the acting FTC commissioner,
785 obviously now, no longer in that role, saying that they're
786 prioritizing investigations that address systemic racism, as
787 opposed to looking through the lens of are these businesses
788 engaged in anti-competitive behavior?
789 Are these businesses, you know, restricting free enterprise
790 in the free market, which is what we're supposed to be have --
791 have with respect to antitrust laws.
792 So with that, I offer this amendment to just simply say that
793 we want to make sure that these dollars are being used clearly

794 for antitrust enforcement and not to advance any agenda outside
795 of that lane, in particular, in this instance, an agenda tied
796 to Critical Race Theory or systemic racism.
797 And with that, I would yield back.
798 Chairman Nadler. Does the gentlelady withdraw her --
799 gentlelady withdraw her reservation?
800 Ms. Lofgren. I believe the amendment is not germane, Mr.
801 Chairman, for two reasons. First, it relates to what the FTC
802 may do, which is under the jurisdiction of the Energy and Commerce
803 Committee, not the Judiciary Committee.
804 And secondly, it relates to the substance of what
805 enforcements can be taken, which is nowhere in the base text of
806 H.R. 3843. So I believe the amendment is not germane.
807 Mr. Roy. Will the gentlelady yield?
808 Chairman Nadler. Does Ms. --
809 Ms. Lofgren. Sure.
810 Mr. Roy. Well, we're addressing an important issue of fees
811 in this committee and how those fees are collected and then,
812 therefore, how those fees are used, right. We're suggesting
813 changing those fees, so how can it not be germane to say, hey,
814 hold on a second?
815 Some of us would support increasing the fees under certain
816 conditions and then condition those fees. That seems by --
817 facially germane?

818 Ms. Lofgren. Reclaiming my time. If you will -- directing
819 your attention to the actual bill, nowhere in the bill does it
820 relate to the nature of the enforcement. It has only to do with
821 the fees that will then be directed to the enforcement agencies.
822
823 That's why the amendment is not germane.
824 Mr. Roy. Would the gentlelady yield?
825 Ms. Lofgren. Certainly.
826 Mr. Roy. We're offering in this bill a fee increase, and
827 now we're amending to say these fees should be limited to the
828 appropriate use.
829 Ms. Lofgren. Reclaiming my time. It may be possible that
830 this amendment would be germane to one of the other bills before
831 us. I just don't believe it's germane to this bill. Maybe that's
832 what makes horse races a difference of opinion.
833 I yield --
834 Mr. Jordan. Would the gentlelady --
835 Ms. Lofgren. I would back to the -- I would yield to --
836 Mr. Jordan. I thank the gentlelady for yielding. I think
837 there's kind of two questions. The funds in this legislation
838 aren't limited to dealing with -- the fee increases in the funds
839 aren't limited to dealing with the covered platforms. It can
840 be used for anything and everything, as the gentleman from Texas
841 has pointed out.

842 And then second, he's pointed out that the former acting
843 chairman -- current commissioner and former chairman of the FTC
844 has said it's perfectly appropriate to use antitrust law to deal
845 with systemic racism.
846 So you have -- you have two sort of fundamental questions.
847 Nothing in the bill limits where the funds can go. Doesn't talk
848 about just the covered platforms, which is defined in all the
849 other legislation.
850 And the fact that the current commissioner -- excuse me,
851 current member of the FTC and former acting commissioner has said
852 he specifically wants to use the legislation for the very item
853 he points out in his amendment.
854 Ms. Lofgren. Reclaiming -- reclaiming my time. Reclaiming
855 my time.
856 I think it's important to understand that germaneness rules
857 have to do with the technical issue, not -- and the gentleman
858 speaks, obviously, passionately about his views on the
859 substantive issue.
860 This is a technical issue, and I would defer to the chairman
861 and the parliamentarian whether my objection is sound or not.
862 They will decide, and I yield back.
863 Chairman Nadler. The gentlelady yields back.
864 The parliamentarian informs me that it's partially germane
865 and partially not germane. So I'll allow it.

866 Mr. Cicilline. Mr. Chairman?

867 Chairman Nadler. Who seeks --

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

869 Chairman Nadler. Who's that?

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

871 Chairman Nadler. The gentleman is recognized.

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

873 I'm very happy that that's partially germane. I'm also very
874 happy that's the first time I've heard a parliamentarian give
875 that ruling. Hopefully, there'll be many more to come.

876 First of all, a question was asked that's very good. What
877 part is germane, if I can inquire? So I'll speak on the germane
878 part.

879 Chairman Nadler. The portion of the amendment that has to
880 do with the antitrust matters at the FTC.

881 Mr. Issa. Excellent. Thank you.

882 Mr. Chairman, I could offer a lot of amendments to this bill,
883 but it's clear that it has a lot of momentum. I'd like to take
884 my few moments to opine on two points.

885 One is that I do believe that, like will be brought up by
886 others, that we have not truly thought about the fee creation
887 structure consistent with the need, and I'll just give you two
888 examples.

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

890 fees for acquisitions in companies over the years, all of them
891 post-1985, I'm sensitive to the fact that they were not indexed
892 for inflation.
893 But what is not indexed for the inflation is a company does
894 an $80 or $90 million acquisition who are now going to lower a
895 1985 fee, and I would opine that if we were to -- regardless of
896 what happens to this bill today, if we were to study it and the
897 cost at the FTC and have a rulemaking process that says each
898 category should pay its own way, I don't believe we would
899 necessarily be lowering fees for a $90 million acquisition.
900 I think that's one of the challenges that we're facing is
901 in our rush to raise on the fat cats and lower on others, the
902 question is if people that were here, actually, quite frankly,
903 before almost anyone in the room, in 1985 thought a price was
904 reasonable, why is it reasonable it will be less in today's
905 dollars?
906 If I'm, roughly, right, since 1985 probably you've had about
907 100 percent inflation. So the fact is that people have already
908 received a reduction in constant dollars over these decades.
909 So one of my challenges is --
910 Chairman Nadler. Would the gentleman yield?
911 Mr. Issa. Of course, Mr. Chairman.
912 Chairman Nadler. I simply don't understand one thing.
913 While your comments are relevant to the merits of the bill, I

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

915 Mr. Issa. Mr. Chairman, I tried to strike the last word

916 before this amendment got put in. I didn't get an opportunity.

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

918 So, Mr. Chairman, I do not expect to offer the amendment

919 on that. But I do believe that in the days, weeks, months, and

920 years to come that this committee should look at how the PTO does

921 its fees arrangement with the idea that a full funding mechanism

922 for the effort but one that is more flexible as to large and small

923 acts, rather than us picking arbitrary numbers.

924 And in this case, I think, as much as I would always have

925 been one of those small businesses for purposes of this bill,

926 I don't believe that my companies would need a reduction from

927 a 1985 amount if, in fact, what we believe is we need more money

928 total.

929 So sometimes you have amendments. Sometimes you have

930 comments, Mr. Chairman. My comment as a businessman of many years

931 and one who has done dozens of acquisitions, at least as a board

932 member, I think that we didn't quite get this right.

933 And in closing, with my last 50 seconds, we don't have the

934 jurisdiction to do this. But, quite frankly, the Federal Trade

935 Commission should be a three/three commission and no longer a

936 polarized commission that keeps changing between presidents.

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

938 Committee. But I strongly recommend that in the days to come
939 that members here think about when the next president comes in
940 do we want to have made the Federal Trade Commission less of a
941 tool of each administration and more of a sustaining tool against
942 antitrust?
943 And with that, I yield back.
944 Mr. Cicilline. Mr. Chairman?
945 Chairman Nadler. The gentleman yields back.
946 For what purpose does Mrs. McBath seek recognition?
947 Mrs. McBath. Thank you, Chairman Nadler, and thank you,
948 Subcommittee Chair Cicilline, Congressman Neguse and
949 Congresswoman Spartz.
950 My remarks are very simple and very, very easy. And I just
951 want to thank you all so much for bringing this bipartisan
952 legislation to get more resources to the FTC and the antitrust
953 division of the Department of Justice.
954 And as Commissioner Rebecca Kelly Slaughter told us in the
955 past -- told the Antitrust Subcommittee in March that the FTC
956 is always looking to use resources as efficiently as possible.
957
958 But it needs more resources to be able to keep up with the
959 demands of the work. And so we can't cut corners here, and when
960 it comes to protecting consumers and promoting a competitive
961 economy, that is our responsibility to do so.

962 So I just wanted to say that I'm a really proud co-sponsor
963 of this bipartisan legislation today, and I know that it makes
964 sure that our agencies really have the resources that they need
965 to examine the large and costly mergers that we see coming forth
966 and making sure that we're examining these mergers by just
967 increasing their fees for these -- for these types of really huge
968 conglomerates that we're going to have.
969 And this bill also just really decreases, you know, the
970 merger fee for our small less costly mergers, which are often
971 kind of more straightforward and more likely to involve our small
972 businesses, which we're just as responsible for protecting.
973 So these adjustment I truly believe are going to enable our
974 agencies to have what they need to do the important work and as
975 we continue to kind of carefully monitor and manage and review
976 what we know is going to be happening in the future.
977 So we also want to make sure that we're not burdening our
978 taxpayers or the small business community as we do so.
979 I just urge all of my colleagues to support this legislation,
980 and I yield back the balance of my time.
981 Chairman Nadler. The gentlelady yields back.
982 For what purpose does Ms. Jackson Lee seek recognition?
983 Ms. Jackson Lee. To strike the last word.
984 Chairman Nadler. The gentlelady is recognized.
985 Ms. Jackson Lee. Thank you very much, Mr. Chairman. And

986 we certainly thank Mr. Roy for contributing. And certainly we
987 thank him for his support of the other initiatives as we move
988 forward. I may have some different opinion as to the virtual
989 germaneness of his particular amendment.
990 But I do want to speak to the underlying bill and to thank
991 the sponsor, Mr. Neguse of Colorado, in this Merger Filing Fee
992 Modernization Act of 2021, and indicate to him that it is
993 enormously astute and long-overdue.
994 For those of us who spent some time in the administrative
995 law world in Washington, DC, in my early practice for a number
996 of federal agencies, overall we understand filing fees can be
997 helpful to keep the operations of the agency going forward. But
998 in many instances they can be a denial of access to the rights
999 and the privileges of that agency, depending on the level of the
1000 individual or entity.
1001 In this instance of merger filing, I think this is common
1002 sense, one, for budgets that have not been able to keep up with
1003 the demand for the antitrust enforcement agency's work that
1004 continues to grow. We are in a new world. It is a 21st world
1005 of big tech, and big tech is very large.
1006 We understand that some of the companies that we are dealing
1007 with are larger than the economies of many nations in the world.
1008 And the demands on agencies have gone -- grown, due to a
1009 significant increase in merger activity, filing fees for these

1010 transactions have not increased.

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

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

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

1024 I like the idea of the moderated rates, which I'm always
1025 concerned about, small, minority, and women-owned businesses.
1026 And in this instance, these might not be very small, but the
1027 decrease that is required based upon the deal, under $500,000,
1028 I think opens up a lot of opportunities. And also the capping
1029 of what the ultimate fee would be.

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

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

1034 a rainy day. That means that the American people look to the
1035 federal government when they don't even know that they do.
1036 We certainly know in disasters that we immediately seek help
1037 from the federal government. But in our normal, day-to-day
1038 functioning, the American people realize that someone is in the
1039 gap. Some lawyer is standing there to watch what is going on
1040 to protect their resources, the ability to be impacted negatively
1041 by anti-competitive forces. They have a lawyer that will provide
1042 the representation for them.
1043 That's what the Filing Fee Modernization Act will contribute
1044 to. And I thank my colleagues for this legislation, and I rise
1045 to support it.
1046 With that, I yield back to the Committee, with the last
1047 sentence of my challenging understanding of the present
1048 amendment. But I thank the gentleman for offering it. With
1049 that, I yield back.
1050 Chairman Nadler. The gentlelady yields back. For what
1051 purpose does Mr. Jordan seek recognition?
1052 Mr. Jordan. Thank you, Mr. Chairman, I'll be quick. I
1053 think the amendment raises the basic question, maybe the
1054 fundamental question: how is the FTC going to use the money?
1055 Are they going to use it for what we're all, you know, hoping
1056 they use it for, dealing with making sure there's competition,
1057 making sure they deal with big tech?

1058 Or are they going to use it for other things? Other things
1059 like the gentleman points out in his amendment, Critical Race
1060 Theory?
1061 It's a fair question because we know the statements made
1062 by the former Commissioner, current member of the FTC. So it's
1063 a basic question. Vote yes on this amendment and we all send
1064 a message we want the FTC, with this increased money that they're
1065 going to get from this merger fee change, we want them to deal
1066 with big tech, to promote competition, to do what they're supposed
1067 to do.
1068 Simple. That's the basic question. With that, Mr.
1069 Chairman, I yield back.
1070 Mr. Cicilline. Mr. Chairman
1071 Chairman Nadler. The gentleman yields back. For what
1072 purpose does Mr. Cicilline seek recognition?
1073 Mr. Cicilline. Mr. Chairman, seek recognition in
1074 opposition to the amendment.
1075 Chairman Nadler. The gentleman is recognized.
1076 Mr. Cicilline. I want to first thank Mr. Roy for his
1077 remarks. And I know he's not making them just in this committee,
1078 he made them last night on the floor of the House. And I know
1079 Mr. Buck and I both appreciate the seriousness with which you're
1080 approaching this work.
1081 I just want to say that the amendment, I was startled a little

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

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

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

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

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

1106 whether and how aggressively to enforce the laws.

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

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

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

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

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

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

1130 And for those who wonder who serves on the Senate Judiciary
1131 Committee, it includes Senators such as Ted Cruz, Mike Lee, Josh
1132 Hawley, Lindsey Graham. All of them unanimously approved the
1133 legislation that we are considering right now.
1134 So again, I would hope that my colleagues would support this
1135 important bill, which I think is certainly a prudent step forward.
1136 And with that, I would back the balance --
1137 I yield to the gentleman from -- well, I will yield back
1138 to the Subcommittee Chairman.
1139 Mr. Cicilline. I yield to Mr. Raskin.
1140 Mr. Raskin. Thank you, Mr. Cicilline. And I want to salute
1141 you and Mr. Neguse for your great leadership on this. And thank
1142 you, Mr. Neguse, for pointing out that this is all passed on the
1143 Senate side on a strong bipartisan basis.
1144 And I just wanted to mention to my friend, Mr. Roy, that
1145 this is indeed unnecessary because there's nothing in the bill
1146 that is designed to promote any theory, any academic theory, any
1147 political philosophy in the world.
1148 And there's something strange and perhaps unconstitutional
1149 about pulling one theory out and saying that this will not be
1150 the subject of any of the funding when there's no theory that's
1151 being funded by it, whether it's free market theory, anarcho
1152 syndicalism, Critical Race Theory, Darwinism, neo-Darwinism,
1153 anti-Darwinism, paleo-conservatism, progressive liberalism,

1154 classical liberalism, none of it.

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

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

1165 I yield back.

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

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

1170 Chairman Nadler. The gentleman is recognized.

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

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

1178 other than just trying to divide the country on the grounds of
1179 race.
1180 So I'm not going to spend any more time on that because it's
1181 not worthy of it. What is worthy of discussing is that Chairman
1182 Cicilline for that last two years has exhaustively tried to
1183 undergo a study, a report on antitrust needs in this country.
1184 And I want to commend him for doing that at the Subcommittee
1185 level and working with his colleagues on the Committee.
1186 And I think that this piece of legislation from Mr. Neguse
1187 goes a long way toward ensuring that there is adequate
1188 enforcement. It was passed in a bipartisan fashion in the Senate.
1189 It's estimated that this would increase by more than $154
1190 million, or 30%, the ability of the Federal Trade Commission and
1191 the Antitrust Division at DOJ to provide enforcement
1192 And it would adjust the merger filing fee so that fees would
1193 be -- more equitably fall on larger deals. Whereas right now,
1194 it's pretty clear that smaller deals are paying a
1195 disproportionately higher amount of fees.
1196 I look at this the same way as I look at IRS enforcement.
1197 If you bludgeon the IRS and reduce their ability to do audits,
1198 that really allows the largest and wealthiest Americans and
1199 companies in America to skirt tax laws.
1200 And it's really the middle class, working class Americans
1201 who are going to get audited because it's cheaper to do an audit

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

1203 So a robust IRS would probably make sure that there are fewer

1204 tax cheats. And a robust Antitrust Division with a filing fee

1205 system that reflects inflation will make sure that we can better

1206 go after deals that are not good for consumers.

1207 So again, I just want to thank Mr. Cicilline for his two-plus

1208 year study, and Mr. Neguse. And I will be supporting this bill,

1209 and I yield back.

1210 Chairman Nadler. The gentleman yields back. The question

1211 occurs on the Roy amendment. All in favor?

1212 (Chorus of aye.)

1213 Chairman Nadler. Opposed?

1214 (Chorus of no.)

1215 Chairman Nadler. The noes have it.

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

1217 Chairman Nadler. The yays and nays are requested. The

1218 Clerk will call the roll.

1219 Ms. Fontenot. Mr. Nadler.

1220 Chairman Nadler. No.

1221 Ms. Fontenot. Mr. Nadler votes no.

1222 Ms. Lofgren.

1223 Ms. Lofgren. No.

1224 Ms. Fontenot. Ms. Lofgren votes no.

1225 Ms. Jackson Lee.

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen.

Mr. Cohen. No.

Ms. Fontenot. Mr. Cohen votes no.

Mr. Johnson of Georgia.

Mr. Johnson of Georgia. No.

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

Mr. Deutch.

Ms. Bass.

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries.

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline.

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell.

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu.

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin.

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal.

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Ms. Demings.

Ms. Demings. No.

Ms. Fontenot. Ms. Demings votes no.

Mr. Correa.

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon.

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia.

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse.

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Ms. McBath.

Ms. McBath. No.

Ms. Fontenot. Ms. McBath votes no.

Mr. Stanton.

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean.

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar.

Mr. Jones.

Mr. Jones. Jones votes no.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross.

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush.

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan.

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot.

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa.

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck.

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz.

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana.

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs.

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock.

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube.

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany.

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie.

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy.

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop.

Mr. Bishop. Yes.

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

Ms. Fischbach. Aye.

Ms. Fontenot. Ms. Fischbach votes aye.

Ms. Spartz.

Mrs. Spartz. Yes.

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

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz.

Mr. Bentz. Yes.

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

Mr. Owens. Aye.

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

Mr. Deutch.

Mr. Deutch. No.

1346 Ms. Fontenot. Mr. Deutch votes no.

1347 Chairman Nadler. Ms. Escobar.

1348 Ms. Escobar. No.

1349 Ms. Fontenot. Ms. Escobar votes no.

1350 Chairman Nadler. Are there any other members who wish to

1351 vote who haven't voted yet? The Clerk will report.

1352 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 25 noes.

1353 Chairman Nadler. The amendment is not agreed to.

1354 For what purpose does Mr. Bishop seek recognition?

1355 Mr. Bishop. Move to strike the last word.

1356 Chairman Nadler. The gentleman is recognized.

1357 Mr. Bishop. Thank you, Mr. Chairman.

1358 As I have listened to the debate on that amendment, I was

1359 struck again with something, an overall sense I've had about these

1360 bills as they've come up for this hasty markup.

1361 The motto of North Carolina, from which I hail, is esse quam

1362 videri, to be rather than to seem. Now, I think there is a

1363 widespread view that big tech is abusive. There ought to be

1364 widespread agreement on the desirability of legislation to

1365 respond to that.

1366 But that only begs the question of how, and the devil is

1367 in the details. That's never truer than here. This package of

1368 bills seems at first glance to strike a blow against the dangers

1369 of big tech power, but they likely constitute in fact something

1370 different.

1371 Taken as a whole, the package of legislation being hastily
1372 marked up provides no comfort at all once it is examined closely.
1373 To sum it up, the bills grant a great deal of new power, regulatory
1374 as well as enforcement power, to agencies, without much definition
1375 of policy at all, certainly not clear and specific policy.

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

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

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

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

1394 into the detail of these bills, every one of them gives serious
1395 cause for concern and not nearly enough definition of policy to
1396 be confident that administrative agencies will do something
1397 that's helpful to American -- the American people,
1398 appropriately remediates big tech, and doesn't cause great and
1399 new harms or make the regulatory state that much more powerful
1400 without serving the American people.
1401 I yield back.
1402 Chairman Nadler. The gentleman yields back. For what
1403 purpose does Mr. Chabot seek recognition?
1404 Mr. Chabot. Move to strike the last word, Mr. Chairman.
1405 Chairman Nadler. The gentleman is recognized.
1406 Mr. Chabot. Thank you, and I'll be relatively brief. At
1407 first light, as the gentleman just mentioned, I think there's
1408 some reason to think that there's some good things in some of
1409 these bills and there are. But overall, I think they're bad for
1410 the country, they're bad for the economy.
1411 The bill that we're -- the current bill, 3843, that's
1412 under discussion would significantly increase the fees for all
1413 types of businesses. And that's an important point, I think,
1414 to be made, that this is not limited just to the technology sector,
1415 which has gotten most the attention. This could spread to other
1416 businesses, obviously larger at first, but you know, one questions
1417 how far it actually would go.

1418 Congress ought to be doing what we can to reduce the costs
1419 rather than increase them, which is what this first bill does
1420 in particular. You know, especially after just having gone
1421 through this pandemic, with the business community, many of them
1422 through government action having been shut down. A lot of workers
1423 being laid off.
1424 We need to get this economy moving again. There are a lot
1425 of indications that this could hurt the economy and move in the
1426 opposite direction.
1427 You know, there is another reason I think to be opposed to
1428 this particular bill, as it inappropriately delegates
1429 congressional power to agencies by significantly increasing fees
1430 that exist outside the appropriations process, which is what we're
1431 supposed to have actual influence, control over, and it's our
1432 responsibility there.
1433 And overall with all of the bills for the most part, I think
1434 there are a whole range of reason for people to object to them
1435 and be opposed to them. And the reason I oppose the vast majority
1436 of these bills, they give unelected bureaucrats new power to
1437 regulate businesses, and therefore to regulate the overall
1438 American economy.
1439 They do nothing about some of the major problems that many
1440 people see out there today, such as the censorship and the shadow
1441 banning that's been going on. These bills really don't address

1442 that at all.

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

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

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

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

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

1466 So I think -- I think in general that people of good faith
1467 came together and tried to do something good. Unfortunately,
1468 I think what they've done is bad, bad for the country, bad for
1469 the economy, bad for job creation. And therefore, oppose most
1470 of these legislation, pieces of legislation. I would urge my
1471 colleagues to do so as well.
1472 I yield back.
1473 Chairman Nadler. The gentleman yields back. Are there any
1474 further amendments?
1475 Mr. Fitzgerald. Mr. Chair?
1476 Chairman Nadler. Who seeks recognition?
1477 Mr. Fitzgerald. Mr. Chair, I have an amendment at the desk.
1478 Chairman Nadler. For what purpose does Mr. -- for what
1479 purpose does Mr. Fitzgerald seek recognition?
1480 Mr. Fitzgerald. Mr. Chair, I have an amendment at the desk.
1481 Chairman Nadler. The Clerk will report the amendment.
1482 Ms. Fontenot. Amendment to the amendment in the nature of
1483 a substitute to HR 3843 offered by Mr. Fitzgerald of Wisconsin.
1484 After Section 3, insert the following --
1485 Mr. Cicilline. Mr. Chairman, I reserve a point of order.
1486 Chairman Nadler. The gentleman reserves a point of order.
1487 The Clerk will -- the gentleman is recognized.
1488 Mr. Fitzgerald. Mr. Chairman, thank you. And this might
1489 be just what the doctor ordered, I think, after the discussion

1490 we just had on the first amendment.

1491 I fully support giving antitrust regulators the resources
1492 they need to enforce the laws against the big tech companies,
1493 especially when it's discovered that they're abusing their power.
1494 You know, the companies that use their market power to increase
1495 prices, reduce output, and otherwise harm innovation should be
1496 held accountable. It can have an effect on quality, it can have
1497 an effect on consumer choice.

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

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

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

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

1514 amendment, this may be the answers to the questions that were
1515 being asked just earlier. And I would urge my colleagues to
1516 support the amendment. And I yield back.
1517 Chairman Nadler. The gentleman yields back. Does the
1518 gentleman insist on his point of order?
1519 Mr. Cicilline. Mr. Chairman, I'll withdraw my point of
1520 order because I think it's partially germane. But if I might
1521 be just heard briefly on the amendment.
1522 Chairman Nadler. The gentleman is recognized.
1523 Mr. Cicilline. You know, again, as I stated in response
1524 to the last amendment, the enforcement agencies have a very
1525 specific mission for antitrust enforcement to promote a
1526 competition policy and are already stretched well beyond the
1527 resources they currently have.
1528 I think this rider would invite some potential problems when
1529 you think about, you know, keeping the lights on in the building
1530 or doing their enforcement to protect children online, would those
1531 be part of enforcements?
1532 I just think it's unnecessary, that it would create potential
1533 problems about just the agency operating. And I urge my
1534 colleagues to vote against the amendment. I yield back.
1535 Chairman Nadler. The gentleman yields back.
1536 Mr. Bishop. Mr. Chairman.
1537 Chairman Nadler. Who seeks recognition?

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

1539 Chairman Nadler. For what purpose does Mr. Bishop seek

1540 recognition?

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

1542 Chairman Nadler. The gentleman is recognized.

1543 Mr. Bishop. I think this illustrates -- this amendments

1544 illustrates what I was just speaking of in more general terms.

1545 The cart is before the horse. So I commend the sponsor of the

1546 amendment for raising the question what the money is to be used

1547 for, at least implicitly.

1548 Is it to be -- are we just offering additional resources

1549 to the FTC and DOJ for their existing mission, as defined by prior

1550 legislation over the years in this congress? Or, are we

1551 anticipating that they're going to do something else with it?

1552

1553 I think it's implicit in the fact that this entire markup

1554 on all the several panoply of bills is about something new and

1555 different. That these resources seem to be tied to that, but

1556 how?

1557 And is it for, I mean, as I say, there's regulatory and

1558 enforcement policy, although not very well defined, in the several

1559 bills. So what are we doing? And I think that is the problem.

1560 We have the cart before the horse.

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

1562 Chairman Nadler. The gentleman yields back. Who else
1563 seeks recognition? The Clerk -- in that case -- in that
1564 case the question occurs on the amendment. All in favor, say
1565 aye.
1566 (Chorus of aye.)
1567 Chairman Nadler. Opposed, no.
1568 (Chorus of no.)
1569 Chairman Nadler. In the opinion of the Chair, the noes have
1570 it.
1571 Mr. Fitzgerald. Mr. Chair, can I get the yays and nays,
1572 please.
1573 Chairman Nadler. The yays and nays are requested. The
1574 Clerk will call the roll.
1575 PARTICIPANT: I have to do a vote in just a second.
1576 Chairman Nadler. What? The Clerk will call the roll.
1577 Ms. Fontenot. Mr. Nadler.
1578 Chairman Nadler. No.
1579 Ms. Fontenot. Mr. Nadler votes no.
1580 Ms. Lofgren.
1581 Ms. Lofgren. No.
1582 Ms. Fontenot. Ms. Lofgren votes no.
1583 Ms. Jackson Lee.
1584 Ms. Jackson Lee. No.
1585 Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen.

Mr. Cohen. No.

Ms. Fontenot. Mr. Cohen votes no.

Mr. Johnson of Georgia.

Mr. Johnson of Georgia. No.

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

Mr. Deutch.

Ms. Bass.

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Chairman Nadler. Mr. Deutch? Okay.

Ms. Fontenot. Mr. Jeffries.

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline.

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell.

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu.

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin.

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal.

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Ms. Demings.

Ms. Demings. No.

Ms. Fontenot. Ms. Demings votes no.

Mr. Correa.

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon.

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia.

Mr. Neguse.

Ms. McBath.

Ms. McBath. No.

Ms. Fontenot. Ms. McBath votes no.

Mr. Stanton.

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean.

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar.

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones.

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross.

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush.

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan.

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Ms. Chabot -- Mr. Chabot.

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa.

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck.

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz.

Mr. Johnson of Louisiana.

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs.

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock.

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube.

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany.

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie.

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy.

1682 Mr. Roy. Aye.

1683 Ms. Fontenot. Mr. Roy votes aye.

1684 Mr. Bishop.

1685 Mr. Bishop. Yes.

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

1687 Ms. Fischbach. Yes

1688 Ms. Fontenot. Ms. Fischbach votes yes.

1689 Ms. Spartz.

1690 Mrs. Spartz. Yes.

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

1692 Mr. Fitzgerald. Aye.

1693 Ms. Fontenot. Mr. Fitzgerald votes aye.

1694 Mr. Bentz.

1695 Mr. Bentz. Yes.

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

1697 Mr. Owens. Yes.

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

1699 Mr. Deutch.

1700 Mr. Deutch. No.

1701 Ms. Fontenot. Mr. Deutch votes no.

1702 Chairman Nadler. Ms. Garcia.

1703 Ms. Garcia. No.

1704 Ms. Fontenot. Ms. Garcia votes no.

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

1706 voted who wish to vote?

1707 Mr. Gaetz.

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

1709 Gaetz. Yes.

1710 Ms. Fontenot. Mr. Gaetz votes yes.

1711 Chairman Nadler. The Clerk will report.

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

1713 Chairman Nadler. The amendment is not agreed to.

1714 Are there any further amendments to the amendment in the

1715 nature of a substitute?

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

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

1718 purpose does Ms. Spartz seek?

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

1720 Chairman Nadler. The Clerk will report the amendment.

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

1722 Committee --

1723 Chairman Nadler. The Clerk will report the amendment.

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

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

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

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

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

1729 include in its joint annual report pursuant to the

1730 Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 US Code
1731 18A, et cetera sequence, the following --
1732 Chairman Nadler. The amendment is considered as read. The
1733 gentlelady is recognized.
1734 Mrs. Spartz. Thank you, Mr. Chairman, member of the
1735 Committee.
1736 As a lot of my colleagues, I do share the concern over big
1737 government and lack of transparency in check and balances. But
1738 we also have to acknowledge that, you know, we have a significant
1739 issues with monopolic, oligopolic powers in a lot of sectors in
1740 a lot of markets, hospital monopolies, PBM monopolies, big tech
1741 monopolies.
1742 And we can debate the reasons. I truly believe there are
1743 a lot of government-created barriers of entry or ineffective legal
1744 framework to protect people's rights. But what we need to also
1745 think what about the solutions.
1746 And I not believe in something like being all or nothing
1747 or not looking at positive incremental changes, or look at
1748 something be perfect that be the enemy of the good. So I wanted
1749 to work with my colleagues and see if we can improve things what
1750 we have right now.
1751 And I think what is this amendment will do, it actually will
1752 provide these guardrails. But I wanted to kind of clarify a few
1753 things. You know, when we talk about this, the bill, that just

1754 want to make sure that people understand that this bill does not
1755 increase funding for this, you know, appropriate funding for this,
1756 for FTC and Department of Justice.
1757 Because it's only Appropriations Committee can increase
1758 funding. We don't even know what these fees are going to do,
1759 you know. What this bill does is look at how we can more evenly
1760 allocate the burden, you know, of paying for this mergers, you
1761 know. And then for enforcements actions.
1762 So it's shifting the burden, you know, from some smaller
1763 entities to even the more evenly allocated. So if before we have
1764 the allocation from 0.05% up to 0.13%, now everybody is going
1765 to be not more from 0.02 to 0.05%. And then we actually also
1766 exempt the little bit larger company not paying for that, which
1767 just seems reasonable.
1768 You know, I agree with Congressman Issa and a lot of issues
1769 he brought up. But ultimately our economy grew three times.
1770 So why don't we let smaller stakeholders pay less? Nothing wrong
1771 with actually reducing the fees, you know.
1772 But I also want to talk about the guardrails in this
1773 amendment, you know. I know that, you know, a lack of
1774 transparency brings a lot of distrust between our branches. But
1775 we have to be effective, effective check and balance to the other
1776 branch.
1777 So what this is going to do, that effective after the next

1778 fiscal year, we'll actually have Federal Trade Commission,
1779 Department of Justice to report us on the numbers, you know, on
1780 the actions they're doing. Ask them what are you going to --
1781 what is your increase of funds by different type of -- by
1782 different tiers, which maybe will allow us to rethink and readjust
1783 these fees.
1784 It also say what is the total revenue derived from this
1785 pre-emergent notification filing fees. What is the cost of
1786 operation and what are you doing with these revenues?
1787 And this actually specifically asks them to come and to this
1788 and the Senate committee in front of us and present it and justify
1789 actions or answer the question why they doing something, not doing
1790 it.
1791 Also, specifically it asks them to report on any actions
1792 that were taken or not taken on three-to-two vote and what a
1793 percentage of this action. Because we want to make sure that
1794 the Committee actually is doing a good job and not being too
1795 political, the Commission.
1796 And the last thing, I understand that spending money without
1797 congressional authorization was always a concern of our Founding
1798 Fathers. It's always been a concern in Congress, I think, with
1799 our convoluted budget process creating opportunity for back-door
1800 spending.
1801 And even though these fees, I just want to kind of say that

1802 these fees in the total appropriation is set in Appropriation
1803 Committee. It actually might not even increase the total amount,
1804 it just allocation the burden between different stakeholders.
1805 But I wanted to make sure and be clear and specifically say
1806 that none of the funds collected by the FTC that are used by FTC
1807 and DOJ could be spent without specifically be appropriated by
1808 Congress. I think it's very important, even though it's already
1809 is in the law, I wanted to add it to this bill to address some
1810 of the concerns since our budget process is too convoluted.
1811 So I would really appreciate the support this amendments.
1812 It would put good guardrails and bring more transparency to this
1813 legislation and make it better the processes what we have. Thank
1814 you so much, and I yield back.
1815 Chairman Nadler. The gentlelady yields back. I now
1816 recognize myself to strike the last word.
1817 I'm not sure that the reports -- I'm not sure that the
1818 reports required by this amendment are not already required, but
1819 if they aren't, they ought to be. And so I support the amendment.
1820 I urge everybody to support the amendment. And I yield to Mr.
1821 Cicilline.
1822 Mr. Cicilline. Thank you, Mr. Chairman. I just want to
1823 thank Congresswoman Spartz for her sponsorship of the underlying
1824 bill and for this excellent amendment, which I think will bring
1825 more transparency, build confidence in the work of the Agency.

1826 I thank her for offering it, and I urge my colleagues to support
1827 the amendment.
1828 Mr. Raskin. Will the gentleman yield?
1829 Mr. Cicilline. Happy to yield to Mr. -- actually, it's
1830 Mr. Chairman's time. I'll yield back to Mr. --
1831 Chairman Nadler. Yes, I will yield.
1832 Mr. Raskin. Thank you, Mr. Chairman. I also want to just
1833 speak in strong support of the Spartz amendment and thank her
1834 for raising this point. A lot of the debate today has been based
1835 on the false notion that this somehow an appropriation, and of
1836 course we have a separate appropriations process.
1837 And as she shrewdly points out, this is just about the
1838 allocation of the burden of money raised under the statute. So
1839 I want to thank her for her substantive and refreshing leadership,
1840 and I yield back to Mr. Chairman.
1841 Chairman Nadler. The gentleman yields back. I will yield
1842 -- and I yield back. Does anyone else seek recognition on this
1843 amendment?
1844 In that case, the question occurs on the amendment. The
1845 Clerk will call -- all those in favor?
1846 (Chorus of aye.)
1847 Chairman Nadler. Opposed? In the opinion of the Chairs
1848 the ayes obviously have it. The amendment is agreed to.
1849 Are there any other amendments to the amendment in the nature

1850 of a substitute?

1851 Mr. Johnson of Louisiana. Mr. Chairman?

1852 Chairman Nadler. Mr. Johnson. For what purpose does Mr.

1853 Johnson seek recognition?

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

1855 Chairman Nadler. The Clerk will report the amendment.

1856 Ms. Fontenot. Amendment to the amendment in the nature of

1857 a substitute to HR 3843 offered by Mr. Johnson of Louisiana.

1858 Strike Section 3 --

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

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

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

1862 recognized.

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

1864 The American people are deeply concerned about the

1865 anti-competitive actions and censorship abuses of big tech.

1866 That's what's brought us here. And infamously, the big platforms

1867 have suppressed and silenced conservatives in particular and

1868 conservative viewpoints. We all know it, objectively that's

1869 true.

1870 They have brazenly weaponized their biases. And it concerns

1871 everybody, not just those on our side of the aisle, because it's

1872 ultimately a threat to free speech everywhere and to all

1873 viewpoints. And in many cases, they've also eroded the free

1874 market and ultimately closed down the operations of many small
1875 businesses, job creators, and entrepreneurs.
1876 Many of us believe our focus should be on how to enforce
1877 the current antitrust laws and how we use those to address the
1878 anti-competitive behavior.
1879 So my amendment is pretty simple. It would insert the text
1880 of my bill, the One Agency Act, into HR 3843. For more than 100
1881 years, enforcement of our country's antitrust laws has been split
1882 between the Department of Justice and the Federal Trade
1883 Commission. In light of today's markup, I think it's fair to
1884 ask what the American people have gotten for their tax dollars.
1885 The split jurisdiction in executing our antitrust laws has
1886 created an untenable bureaucratic process with poor communication
1887 among the enforcement bodies, unreasonable delays, and an
1888 unacceptable level of inconsistency in administering the current
1889 law.
1890 Take one example. In a recent antitrust case brought
1891 against a company by the FTC, the DOJ filed a motion in support
1892 of the company, both at the trial level and on appeal. In other
1893 words, the DOJ and the FTC were arguing the opposite sides. The
1894 DOJ said the FTC was wrong.
1895 We had two federal agencies tasked with enforcing antitrust
1896 law openly arguing against one another in federal court. On top
1897 of that, the FTC's case was so problematic that the Department

1898 of Defense and the Department of Energy also weighed in at the
1899 appellate level in support of the defendant company.
1900 This is the very definition of a broken system, and it's
1901 what the taxpayers get when there's an utter lack of consistency.
1902 Considering the subject matter of today's markup, I think the
1903 majority would agree with me that the process has just not worked
1904 as it was intended.
1905 Again, Mr. Chairman, my amendment is simple. It would
1906 consolidate antitrust enforcement within the Department of
1907 Justice. The FTC would still be able to carry out its consumer
1908 protection functions, which are important, but competition
1909 enforcement would fall squarely within the DOJ's Antitrust
1910 Division.
1911 This would improve our ability to police anti-competitive
1912 behavior by streamlining our efforts at the federal level. For
1913 that reason, I urge a yes vote on my amendment, and I yield back.
1914 Chairman Nadler. Does Mr. Cicilline insist on his point
1915 of order?
1916 Mr. Cicilline. I do, Mr. Chairman.
1917 Chairman Nadler. The gentleman will be heard.
1918 Mr. Cicilline. Thank you, Mr. Chairman. Mr. Chairman,
1919 this piece of legislation before us is a very narrow piece of
1920 legislation with respect to fees for proposed mergers. The
1921 amendment is a gigantic, substantively different piece of

1922 legislation, in fact, that abolishes the FTC. That is not germane
1923 to the narrow purpose of the underlying bill, and I ask you to
1924 --
1925 Mr. Johnson of Louisiana. Would the gentleman yield?
1926 Would you yield for a moment?
1927 Mr. Cicilline. Sure. I don't typically yield to someone
1928 who is going to argue against me, but for you, Mr. Johnson, I'll
1929 do it.
1930 Mr. Johnson of Louisiana. You're a good friend. If you
1931 read the text of the amendment, it doesn't abolish the FTC. As
1932 I acknowledged in my opening, there's an important function that
1933 the FTC is involved in, that's consumer protection, that was its
1934 intent.
1935 Mr. Cicilline. I'm sorry, I'll -- correct that you are
1936 absolutely right. It abolishes the antitrust enforcement of the
1937 FTC, which is a huge policy -- it's a broad policy proposal
1938 which is well beyond the very narrow purpose of an increase in
1939 filing fees. And therefore I think it's not germane.
1940 Mr. Johnson of Louisiana. Could I ask if you think that's
1941 running efficiently and effectively as designed?
1942 Mr. Cicilline. Look, I think the -- I think the
1943 Subcommittee, the Antitrust Subcommittee, spent two years
1944 studying this issue of antitrust. And I think we generated
1945 reports, both a majority report and a minority report, that I

1946 think bring very needed reforms to this work.

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

1953 Mr. Buck. Would the gentleman?

1954 Mr. Cicilline. Of course.

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

1958 Mr. Johnson of Louisiana. I think so.

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

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

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

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

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

1970 The subject of the bill we are currently considering is the levels
1971 of Hart-Scott-Rodino fees.
1972 The gentleman's amendment proposes to restructure bureaus
1973 in DOJ and FTC, a much broader proposition, which is a subject
1974 that is different from what we are considering in this bill.
1975 The amendment therefore is not germane and violates Clause 7 of
1976 Rule 16.
1977 Are there any further amendments?
1978 Mrs. Spartz. Mr. Chairman, I have an amendment at the desk.
1979 Chairman Nadler. For what purpose does Ms. Spartz seek
1980 recognition?
1981 Mrs. Spartz. I have an amendment at the desk.
1982 Chairman Nadler. The Clerk will report the amendment.
1983 Mr. Cicilline. Mr. Chairman, I preserve a point of order.
1984 Chairman Nadler. The gentleman reserves a point of order.
1985 The Clerk will report the amendment.
1986 Ms. Fontenot. Amendment to the amendment in the nature of
1987 a substitute to HR 3843 offered by Rep. Spartz. On page 4 at
1988 line 4, strike $252 million and replace with $201 million. On
1989 page 4, line 6, strike $418 million and replace with $390 million.
1990 Chairman Nadler. The gentlelady is recognized for the
1991 purposes of explaining her amendment.
1992 Mrs. Spartz. Thank you, Mr. Chairman, member of the
1993 Committee. I just kind of wanted to have a discussion, because

1994 I think one of the questions, you know, as I mentioned, we don't
1995 do appropriations. In general, appropriation will significantly
1996 increase for many years.
1997 But we do that, set up the authorized ceiling, you know.
1998 And what I just thought, you know, maybe we should just keep that
1999 ceiling in line what actually the Agency asked for in their budgets
2000 requests.
2001 So I think Department of Justice asked for 201 million and
2002 FTC asked for 390 million. They still will be able to do it since
2003 actually 390 million is 11% increase from prior year. And 201,
2004 it's a nine percent increase, you know, from prior year.
2005 So they still get the increase, but it also will allow us,
2006 you know, when we do these reviews and at least for next five
2007 years to assess do we need to do more, do we need do less to
2008 authorize the top level. As I said, it's only set up the ceiling,
2009 but I just wanted to see we should discuss why do we need to set
2010 up a ceiling with much higher than what they asked.
2011 We can just align it because maybe it's a fair statement
2012 to align it at the level they actually requested for their budget
2013 request. So I would appreciate your support for this amendment.
2014 Chairman Nadler. The gentlelady yields back. I'm going
2015 to rule this amendment -- does the gentleman insist on his point
2016 of order?
2017 Mr. Cicilline. About to rule, yes.

2018 Chairman Nadler. The gentleman does insist on his point
2019 of order. And I agree, the amendment is not germane because it
2020 -- is not in order, I should say, because it deals with subject
2021 matter the subject -- that is subject to the jurisdiction of
2022 the Committee on Energy and Commerce, not of this committee.
2023 Therefore, the amendment is not germane.
2024 Is there any other amendment? Are there any further
2025 amendments?
2026 Mr. Roy. Amendment at the desk, sorry.
2027 Chairman Nadler. The Clerk will report the amendment.
2028 Ms. Fontenot. Amendment to the amendment in the nature of
2029 a substitute to HR 3843 offered by Mr. Roy of Texas.
2030 Mr. Cicilline. Mr. Chairman, I reserve a point of order.
2031 Chairman Nadler. Gentleman reserves a point of order. The
2032 Clerk will continue to report.
2033 Ms. Fontenot. Page 3, after line 23, insert the following:
2034 and make such technical and --
2035 Chairman Nadler. The amendment will be considered as read.
2036 The gentleman is recognized for the purposes of explaining his
2037 amendment.
2038 Mr. Roy. Mr. Chairman, this is a continuation, I think,
2039 of a theme on at least our side of the aisle about ensuring how
2040 these fees will be used and ensuring the focus of these fees,
2041 and, you know, the revenues from those fees be targeted on the

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

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

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

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

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

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

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

2079 Mr. Buck. Would the gentleman yield?

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

2081 Mr. Buck. I appreciate my friend yielding.

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

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

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

2091 Mr. Roy. Sure.

2092 Mr. Cicilline. Thank you.

2093 Mr. Chairman, I'll withdraw my point of order. I do think

2094 it's germane.

2095 But, Mr. Roy, I would just offer to you the same concerns

2096 I have about limiting the way the phrase, "shall be used to enforce

2097 antitrust laws," does that include keeping the lights on and other

2098 issues like that? I can assure you that the Antitrust

2099 Subcommittee is going to continue to do very vigorous oversight.

2100 We can provide briefings to members of the subcommittee and

2101 members of the full committee on what they intend to do with these

2102 additional resources. So, I am committed to working with you

2103 to make certain that robust antitrust enforcement is being done

2104 with the additional resources that might be available to the

2105 agency, if that's helpful.

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

2107 Mr. Roy. I yield back.

2108 Chairman Nadler. The gentleman yields back.

2109 Does anyone else seek to speak on this amendment?

2110 [No response.]

2111 In that case, the question occurs on the amendment. All

2112 in favor, say aye.

2113 Opposed, no.

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

2115 Mr. Roy. The yeas and nays.

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

2117 call the roll, rather.

2118 Ms. Fontenot. Mr. Nadler?

2119 Chairman Nadler. No.

2120 Ms. Fontenot. Mr. Nadler votes no.

2121 Ms. Lofgren?

2122 Ms. Lofgren. No.

2123 Ms. Fontenot. Ms. Lofgren votes no.

2124 Ms. Jackson Lee?

2125 Ms. Jackson Lee. No.

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

2127 Mr. Cohen?

2128 Mr. Cohen. No.

2129 Ms. Fontenot. Mr. Cohen votes no.

2130 Mr. Johnson of Georgia?

2131 [No response.]

2132 Mr. Deutch?

2133 Mr. Deutch. No.

2134 Ms. Fontenot. Mr. Deutch votes no.

2135 Ms. Bass?

2136 Ms. Bass. No.

2137 Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

[No response.]

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

[No response.]

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

[No response.]

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

[No response.]

Mr. Tiffany?

[No response.]

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

2234 Ms. Fontenot. Mrs. Spartz votes yes.

2235 Mr. Fitzgerald?

2236 [No response.]

2237 Mr. Bentz?

2238 Mr. Bentz. Yes.

2239 Ms. Fontenot. Mr. Bentz votes yes.

2240 Mr. Owens?

2241 Mr. Owens. Yes.

2242 Ms. Fontenot. Mr. Owens votes yes.

2243 Chairman Nadler. Mr. Johnson?

2244 Mr. Johnson?

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

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

2247 Chairman Nadler. Mr. Fitzgerald?

2248 Mr. Fitzgerald. Aye.

2249 Ms. Fontenot. Mr. Fitzgerald votes aye.

2250 Chairman Nadler. Mr. Gohmert?

2251 [No response.]

2252 Ms. Scanlon?

2253 Ms. Scanlon. No.

2254 Ms. Fontenot. Ms. Scanlon votes no.

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

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

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

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

2259 Mr. Johnson of Georgia. Thank you.

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

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

2262 Ms. Bush. Thank you.

2263 Chairman Nadler. The clerk will report.

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

2265 Chairman Nadler. The amendment is not agreed to.

2266 For what purpose does Mr. Massie seek recognition?

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

2268 Chairman Nadler. The gentleman is recognized.

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

2270 about several things.

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

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

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

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

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

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

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

2278 analogies of charging these fees to businesses who are asking

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

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

2281 inaccurate in my opinion.

2282 The other uncomfortableness or uneasiness I have about this
2283 bill is a fee is a tax. Okay? It's a user fee. It's a targeted
2284 tax. It's probably the fairest tax that you could levy, but it's
2285 still a tax. And it's a tax on business transactions.
2286 If you're a small company, or if you're an entrepreneur and
2287 you're thinking about starting a company, assuming your company
2288 is successful, you've got several exit strategies. How are you
2289 going to succeed from this company? It's not by dying with the
2290 stock in your possession. It's by getting some kind of
2291 liquidation event. And for small companies, you could go public;
2292 you could go on the public market. That rarely occurs. You could
2293 create an ongoing concern which creates a profit. But what
2294 happens to actually most small successful companies is they are
2295 acquired. This is not something that's out of the ordinary.
2296 This is the ordinary circumstances; you get acquired.
2297 And so, whether you're taxing the small company or the big
2298 company on that event, the acquirer is going to diminish the value
2299 of the smaller company, the successful entrepreneur who's finally
2300 receiving their paycheck for all of their hard work. They're
2301 just going to mark down the price based on the tax, because that's
2302 how much less it's worth to them when they have to go about it.
2303 And then, finally, the thing that I'm most uncomfortable
2304 about with this amendment is we really think we're going to give
2305 more money to a federal agency in a less accountable manner.

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

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

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

2319 Ms. Lofgren. Would the gentleman yield?

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

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

2324 Mr. Massie. Okay.

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

2329 Mr. Massie. No criticism --

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

2331 Mr. Massie. Thank you.

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

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

2343 And I yield back the balance of my time.

2344 Chairman Nadler. The gentleman yields back.

2345 Mr. Jordan. Mr. Chairman?

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

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

2350 Chairman Nadler. Move to strike the last word?

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

2353 Chairman Nadler. The gentleman is recognized.

2354 Mr. Jordan. The gentleman from Kentucky is right on. A
2355 government agency getting more money with no limits placed on
2356 what they can do with the money, that's usually a bad thing,
2357 usually a dangerous thing.
2358 We offered three simple amendments, and the Democrats said
2359 no to them. They said, no, we're not going to prohibit you from
2360 using for CRT, critical race theory; we're not going to limit
2361 it to just enforcement actions; we're not going to focus on big
2362 tech and promoting competition. They can use the money however
2363 they darn well want.
2364 So, that's the fundamental question in front of us: do you
2365 want to give more money with no limitations on that money? That's
2366 what this bill does, and I share the concerns the gentleman from
2367 Kentucky raised and would urge a no vote on the legislation.
2368 With that, I yield back.
2369 Mr. Bishop. Mr. Chairman?
2370 Chairman Nadler. The gentleman yields back.
2371 Who seeks recognition?
2372 Mr. Bishop. Bishop. Bishop.
2373 Chairman Nadler. Mr. Owens is recognized.
2374 Mr. Owens. I'd like to strike the last word.
2375 Chairman Nadler. The gentleman is recognized.
2376 Mr. Owens. I'd like to yield my time over to the gentlelady
2377 from Indiana.

2378 Mrs. Spartz. Again, I'd like to thank you. I'd like to
2379 strike the last word.
2380 I just wanted to clarify a few things because I have similar
2381 concerns with Congressman Massie. But I just wanted to clarify
2382 again we are not debating here restriction of an agency, what
2383 we're going to do. We're actually not changing anything
2384 structurally or in the appropriation process. We are actually
2385 adding more transparency, where the agency will have to report
2386 to us more specifically what they're doing with this money, where
2387 we specifically say that they cannot do any -- even though they
2388 already have that, they have to come to the Appropriations
2389 Committee, and the Appropriations Committee sets the limit on
2390 total appropriation, how much goes from the General Fund and how
2391 much goes from offsetting collection. Anything about that
2392 actually goes to the General Fund, to the Treasury.
2393 So, what it does, it allows us to look at how we can have
2394 more user fee funding and shift it from the taxpayer and smaller
2395 company, more allocated in large and smaller companies; the
2396 percentage stays about the same. Still, very large companies
2397 still pretty much pay very, very little percentage, almost
2398 nothing. If it's $100 billion merger, it doesn't change. And
2399 it's also, for under $160 million, it's not -- $160 million, it's
2400 not even -- no fees there.
2401 So, it's a question about it: are we going to be taxpayer

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

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

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

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

2426 So, I wanted to make sure that we don't go further. It also
2427 allows more transparency. I have the same concern that our
2428 government is getting too big, too powerful, and controlling the
2429 businesses, and really deciding, picking losers and winners, and
2430 not protecting people's rights to life, liberty, and property.
2431 And this is the function of this antitrust, to make sure people's
2432 rights are protected and we have healthy competition. And if
2433 we don't believe they're doing a good job, with the amendment
2434 we did, it allows an aggression to the entity and we decide what
2435 should we do. Are they doing it or not doing it? And what is
2436 their function? How are they using this money?
2437 They actually have to come and tell us what exactly are they
2438 doing with this money, based on this amendment, and actually how
2439 much it costs them, this function; how much is financed through
2440 taxpayers; how much finances by user fees; how they're allocated;
2441 what they get from each category, and what exactly they're doing
2442 with this money. And you cannot do more than is proper.
2443 So, I think it puts more guardrails than has actually existed
2444 right now. So, it's actually moving in a better direction, and
2445 it doesn't give anyone more money, because, as I said, we cannot
2446 even here appropriate more money. Our committee cannot even do
2447 this function.
2448 So, I wanted to clarify because I think we have concerns,
2449 but this is not what's in this bill. This bill actually makes

2450 movement incrementally in the right direction, and we can do more.
2451 You know, I agree with you. But I just wanted to clarify that.
2452 Thank you. I yield back.
2453 Mr. Issa. Could the gentlelady yield?
2454 Mr. Raskin. Would the gentleman yield?
2455 Mrs. Spartz. I yield. I think my time expired.
2456 Chairman Nadler. It's Mr. Owens' time.
2457 Mr. Raskin. Would Mr. Owens yield to Mr. Raskin?
2458 Chairman Nadler. The gentleman yielded back.
2459 Mr. Owens. Yes, I do. Yes, I yield.
2460 Chairman Nadler. You yield to --
2461 Mr. Owens. Yes, I yield to --
2462 Chairman Nadler. -- yield to Mr. Issa?
2463 Mr. Owens. Mr. Issa, yes, I do.
2464 Mr. Issa. Thank you. I thank the gentleman. I'll be very
2465 brief.
2466 One thing that I hope everyone, before they make this final
2467 vote, will understand is that, if we went into court today and
2468 we had an agreement that we just wanted two companies to file
2469 a common piece of paperwork, the bailiff wouldn't say that it
2470 costs you more based on how big you are. And then, if we went
2471 in and we had a six-week trial, they wouldn't expect the fees
2472 to be the same as if you just went in and said, "We just need
2473 this thing agreed to."

2474 And yet, this legislation is going to assume that, based
2475 on how big you are, not how complex an acquisition is, or even
2476 if it's a related field. So, I just hope everyone will understand
2477 that what we're doing is based on size, not actually based on
2478 complexity, even though sometimes size is complex; sometimes it
2479 isn't.
2480 I yield back. I thank the gentleman.
2481 Mr. Raskin. Would the gentleman yield?
2482 Chairman Nadler. The gentleman yields back.
2483 Does Mr. Raskin seek recognition?
2484 Mr. Raskin. Thank you, Mr. Chairman.
2485 I just wanted to underscore the point made by Mrs. Spartz,
2486 which I thought was excellent. Nothing here is appropriating
2487 any money. So, it's a misnomer when members are saying we're
2488 giving them all this money. That's not what this is about. This
2489 is about creating a fee which goes into the Treasury, and the
2490 appropriation is a completely separate process.
2491 And if you agree with the gentleman from Kentucky that this
2492 fee is the fairest form of tax, then you would support the
2493 legislation because it is putting the tax on the people who are
2494 being regulated within this business.
2495 And I guess I would try to resurrect the analogy which had
2496 been rejected by our friend from Kentucy because I think all
2497 businesses profit from and benefit from antitrust legislation

2498 and regulatory enforcement. The whole purpose of an antitrust
2499 system is to keep businesses from being unfairly crushed by
2500 monopolists and people who come in, and then, use their monopoly
2501 power to drive out the smaller businesses.
2502 And the fee here also is a fee that is being reduced for
2503 the smaller businesses and it's being increased for the largest
2504 businesses, for whom it's barely even an accounting error to pay
2505 this money, when you're talking about multibillion conglomerates
2506 in the country.
2507 So, I wanted to thank Mrs. Spartz for, again, a very
2508 illuminating description of what's actually taking place with
2509 this legislation.
2510 Mr. Massie. Would the gentleman yield for a quick question?
2511 Mr. Raskin. Yes, by all means.
2512 Mr. Massie. I don't want the bigger picture to get lost
2513 in the debate here. Does the bill generate more money for
2514 antitrust enforcement or less money than the status quo?
2515 Mr. Raskin. Well, I think that, first of all, it depends
2516 on the number of mergers and acquisitions that are taking place.
2517 So, it depends on the number of people who are going to end up
2518 paying the fee, right? So, I don't know whether there's some
2519 kind of fiscal projection that's been made about it.
2520 But, in an event, the gentlelady's point remains, which is
2521 that we're not appropriating money here. We're changing the fee

2522 structure to make it more fair.

2523 Mr. Buck. Would the gentleman yield?

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

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

2526 Chairman Nadler. It is your time to yield.

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

2528 Mr. Buck. I thank the gentleman.

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

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

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

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

2546 bill, this very language. To suggest that somehow this bill is
2547 giving a rogue agency more money -- we can debate what happened
2548 with the IRS and Lois Lerner; we can debate what happened with
2549 the FBI and Jim Comey. This agency is tasked with something that
2550 is essential, something that President Trump and others have
2551 talked about the need to do, and that is to rein in big tech.
2552 That is to create competition in the marketplace.
2553 And I thank the gentlelady for her leadership on this issue,
2554 and I yield back to Mr. Raskin.
2555 Mrs. Spartz. Would the gentleman yield?
2556 Mr. Raskin. I just wanted to thank Mr. Buck for his
2557 important leadership on this legislation. And this has been a
2558 point of great bipartisan progress and pride in American history
2559 that the parties can agree about the importance of antitrust
2560 enforcement and making sure that we have a truly free market,
2561 and not a market that is distorted and crushed by anticompetitive
2562 activity.
2563 Did somebody else --
2564 Mrs. Spartz. Would the gentleman yield?
2565 Mr. Raskin. Yes, I would.
2566 Mrs. Spartz. Thank you.
2567 I just wanted to clarify, actually, there is 30 percent less
2568 resources than 40 years ago. But I also wanted to say that we
2569 can have a discussion about the size of company, but there is

2570 no easy, objective way to adjust the fees. In general, larger
2571 transactions take more resources, and that's what FTC is arguing,
2572 that 70 percent of resources are actually dedicated to larger
2573 companies and they're paid by smaller companies. So, the burden
2574 isn't even. So, it's not changing; it's just reallocating the
2575 burden from taxpayers and smaller companies, and then, a bigger
2576 discussion is going to be happening. But the FTC does have 30
2577 percent less resources than 40 years ago.
2578 And I think under the Trump administration everyone
2579 complained and the current administration. But this bill
2580 provides much experience where they actually have to tell us how
2581 much fees are going to be generated by this category, because
2582 we cannot even tell right now.
2583 So, the amendment, I appreciate that the amendment was
2584 accepted because it allows more transparency to actually see how
2585 much is being generated, because we don't even know, and ask them,
2586 hold the agency more accountable. So, I appreciate it and would
2587 appreciate your support.
2588 Chairman Nadler. The gentleman's time has expired.
2589 Does anyone else seek recognition?
2590 Mr. McClintock. Mr. Chairman?
2591 Chairman Nadler. For what purpose does Mr. McClintock seek
2592 recognition?
2593 Mr. McClintock. Mr. Chairman, to strike the last word.

2594 Chairman Nadler. The gentleman is recognized.

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

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

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

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

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

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

2607 The gentleman from Maryland, Mr. Raskin, indicated that we
2608 don't know how much money the DOJ and the FTC are going to get
2609 because it depends on how many mergers and acquisitions happen.
2610 But the bill actually specifies an authorized amount. Of
2611 course, we can't appropriate. We're the Judiciary Committee;
2612 we're not the Appropriations Committee. But the bill specifies
2613 DOJ gets $252 million and the FTC gets $418 million, which sort
2614 of raises the question, what if there aren't that many -- what
2615 if there's not as many mergers and acquisitions to generate that
2616 money?

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

2618 right? We don't know how that's going to play out. So, that's
2619 one of the concerns we have about the legislation, not to mention
2620 everything else we've talked about, not to mention everything
2621 about the limits, as the gentleman from North Carolina just
2622 mentioned, the limits. We would like this focused on actually
2623 addressing the problem the committee is focused on.
2624 Chairman Nadler. Would the gentleman yield? Would the
2625 gentleman yield briefly?
2626 Mr. Jordan. It's Mr. McClintock's time. I'll yield back
2627 to him, and he can yield to you, if he wants to.
2628 Chairman Nadler. Yes, I would just point out that the
2629 gentleman's comments are inapropos because this is an
2630 authorization, not an appropriation.
2631 Mr. Jordan. That's my point. We're authorizing a certain
2632 amount of money. We can't appropriate, I know, but we're putting
2633 a number in the bill -- actually, two numbers, 252 and 418, for
2634 the respective agencies. Who knows if it's going to generate
2635 that amount? We don't know. That's my point.
2636 I yield back to the gentleman from California. Appreciate
2637 it.
2638 Mr. McClintock. Thank you.
2639 And I'd also just like to point out on my own time that markets
2640 are fundamentally regulated by consumer choices. Consumers vote
2641 every day with every dollar that they spend what the market will

2642 provide and at what prices. The consumers in a market decide
2643 who is best providing them with services.
2644 A monopoly can't survive in a market for very long unless
2645 consumer choice is restricted by governmental intervention.
2646 Chairman Nadler. Would the gentleman yield?
2647 Mr. McClintock. No, I will not.
2648 That substitutes their judgment for the government's
2649 judgment, and the government simply cannot know what every
2650 consumer in the marketplace chooses to serve their best interests.
2651 Amazon is gargantuan because consumers have voted with their
2652 dollars every day that the services provided by Amazon are better
2653 than the other alternatives that they have in the marketplace.
2654 The moment they decide otherwise, Amazon will shrink and
2655 competitors will begin to emerge to fill those gaps.
2656 No business can survive by displeasing its consumers.
2657 Substituting our judgment for theirs is wrong and, ultimately,
2658 undermines the consumers' right to decide for themselves who's
2659 best at providing for their own needs.
2660 And with that, I yield.
2661 Mr. Massie. Would the gentleman yield?
2662 Chairman Nadler. Would the gentleman yield?
2663 Mr. McClintock. Yes, I'll yield.
2664 Chairman Nadler. Let me just say that what the gentleman
2665 just said is exactly, in my opinion, wrong. If the marketplace

2666 regulated, was sufficient to regulate this, we wouldn't need
2667 antitrust laws at all. Ever since the Sherman Act of 1890, we've
2668 recognized that the marketplace by itself is not sufficient to
2669 prevent monopolies.
2670 Mr. McClintock. Reclaiming my time, that is correct, but
2671 monopolies can only exist with the support of government. They
2672 cannot exist on their own if they're displeasing their consumers.
2673 That's the point --
2674 Mr. Massie. Would the gentleman yield?
2675 Mr. McClintock. And I'll be happy to yield to Mr. Massie.
2676 Mr. Massie. Thank you.
2677 I think the impression is being given that this bill doesn't
2678 increase money for these activities at the DOJ or the FTC, but
2679 it seems to me like the $252 million that's authorized -- and
2680 we all know the difference between authorization and
2681 appropriation; we don't need a lecture on that -- that it's greater
2682 than $184 million that was authorized last year.
2683 And I yield back.
2684 Chairman Nadler. And the gentleman yields back.
2685 Mr. McClintock. I yield to Mr. Issa --
2686 Chairman Nadler. The gentleman's time has expired.
2687 Mr. Issa. I'll grab my own time.
2688 Chairman Nadler. The gentleman's time has expired.
2689 For what purpose does Mr. Issa -- Mr. Issa. Move to

2690 strike the last word.

2691 Chairman Nadler. -- seek recognition?

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

2693 Chairman Nadler. The gentleman is recognized.

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

2695 I think, as we close, I'd like to echo what Mr. McClintock

2696 said. And he was accurate and I understood him, but it appears

2697 as though some did not.

2698 Using the example of Apple, the first $2 trillion market

2699 cap company, or Amazon, somewhat behind that, or even Microsoft,

2700 who today or yesterday broke $2 trillion in market cap, these

2701 companies, we can debate and we can talk about their being

2702 monopolies. Microsoft was once found to be a monopoly. It was

2703 under a consent decree for many years, corrected, and was let

2704 out of that consent decree. We can talk about it all we want,

2705 but I think the point that Mr. McClintock made is today the

2706 American consumer -- and I'll use Amazon for a moment -- is

2707 delighted with a product and a service, looking at the Consumer

2708 Product Division, that is doing something better than anyone has

2709 ever done before.

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

2711 I realized it at about four o'clock. They were in my door this

2712 morning before I came to work, and I didn't even pay a special

2713 fee. It was a service that did not exist a decade ago -- at any

2714 price.

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

2722 But when you have products and services which are becoming
2723 less expensive, more pervasive, without government intervention,
2724 the market at least is working. We often talk about competition
2725 as though competition is inherently good. The consumer getting
2726 a better product and a better service and a better deal is the
2727 reason that we promote competition, because it often leads to
2728 that. But let's make no mistake, the companies we are talking
2729 about, many of them, in fact, have delivered better, faster, less
2730 expensive, and more desirable product year over year over year.
2731 So, as we begin attacking in these later bills companies as though
2732 big is bad, I hope we understand that the consumer doesn't think
2733 that, or you wouldn't see the exponential growth, particularly
2734 during the pandemic, of these products and services.

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

2738 first least controversial bill, we're spending a lot of time
2739 talking about raising more money to go after companies. Quite
2740 frankly, there's a real question of whether the Federal Trade
2741 Commission has chosen to go after companies that they should have
2742 gone after; many of them are small, but unfair.
2743 And I'll close with this, Mr. Cicilline. You and the FTC
2744 have a problem. Every day, you and everyone else on this dais
2745 gets a couple of phone calls from somebody wanting to extend your
2746 warranty on your car, or some other service that you didn't ask
2747 for and you don't have. And yet, the Federal Trade Commission
2748 has been impotent to stop it, and they've told us how difficult
2749 it is for more than a decade of our oversight and complaining.
2750 So, yes, I want to see the Federal Trade Commission have
2751 enough funds to do their job, but I think there's a real question
2752 about whether simply giving them enough money to harass companies,
2753 and particularly giving special powers to determine that there's
2754 a different standard -- which will come in the later bill -- a
2755 different standard for large companies who want to acquire perhaps
2756 unrelated.
2757 And I'd yield to the gentlelady from San Jose.
2758 Ms. Lofgren. I would just ask if the gentleman would be
2759 happy if we could identify/go harass the car warranty extension
2760 --
2761 Mr. Issa. You're darn right I would.

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

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

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

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

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

2772 Mr. Cicilline. The gentleman is recognized.

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

2774 Mr. Cicilline. The gentleman is recognized.

2775 Mr. Roy. I want to clarify a handful of things here. First
2776 of all, my understanding -- and the record can please correct
2777 me if I'm wrong -- but my understanding of the record is that
2778 in the United States Senate this bill did, in fact, pass
2779 unanimously out of the Senate Judiciary Committee. However,
2780 Senator Mike Lee, obviously, a key person on this, was not present
2781 and has expressed some reservations about this bill moving as
2782 a standalone. Those reservations being that he wanted more
2783 reforms tied to this, if the fees were going to be increased.
2784 I believe that is his position. Obviously, he can speak for
2785 himself.

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

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

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

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

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

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

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

2834 in that conflict, honoring my word to the chairman and ranking
2835 member, I'm going to vote for this bill because I do believe that,
2836 when you're talking about having an authorization, I think this
2837 bill simply restructures it a bit, makes it fall, the burden,
2838 on larger corporations acquiring more than on smaller, because,
2839 generally, it's probably pretty good.
2840 I do so with great trepidation because we haven't clarified,
2841 I think, some of the direction of where the FTC is going,
2842 particularly under the current administration. But, at some
2843 point, you either have enforcement or you don't, right? We either
2844 have the Department of Justice and FTC engaging in antitrust
2845 activity or we don't. And if we do, then we should certainly
2846 have the tools there necessary to do in an expanded field where
2847 you've got big tech making massive acquisitions, which has serious
2848 competition implications, which all of the reports that were laid
2849 bare last year on a bipartisan basis indicate.
2850 So, I'm going to honor my commitment to do that. I will
2851 reserve the right to review that on the Floor because I think
2852 we need to have a continued conversation. And I would agree with
2853 Senator Lee, my good friend from the Senate, that we should have
2854 a robust conversation still about where this all goes, and none
2855 of this should be viewed in isolation.
2856 And I would yield to the ranking member.
2857 Mr. Jordan. I just wanted to thank the gentleman for

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

2859 Mr. Roy. Yes, sir.

2860 I yield back.

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

2862 Does anyone else seek recognition?

2863 For what purpose does Mr. Gohmert seek recognition?

2864 Mr. Gohmert. To strike the last word.

2865 Chairman Nadler. The gentleman is recognized.

2866 Mr. Gohmert. And I appreciate Mr. Roy's point. I didn't

2867 know about Senator Lee not being present.

2868 But we've heard a number of times, gee, it was unanimous

2869 in the Senate. And I've got to tell you, just based on my years

2870 here in Congress, when I hear that something was unanimous in

2871 the Senate, my immediate reaction is, wow, we'd better take a

2872 look at this because a bunch of people down there weren't looking

2873 close enough.

2874 [Laughter.]

2875 It's often attributed to Johnson, but my parents heard it

2876 years before he was around, and that is, if everybody agrees on

2877 everything, all but one is unnecessary.

2878 But I think I appreciate the robust discussion here. I

2879 really do think there have been some great points made on the

2880 amendments.

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

2882 enterprise; we like competition. And the only time the
2883 government should step in is when there is a monopoly. The only
2884 time that we allow monopolies is with a patent or a copyright.
2885 And even then, it's only for a limited time.
2886 But I recall having a field hearing out in California over
2887 Comcast buying NBC, and there were very few of us that had great
2888 concerns. I had trouble seeing how Comcast, as a cable provider,
2889 was going to own a network with a duty toward that network, and
2890 yet, still treat all other networks the same way. But that went
2891 through.
2892 So, we do, I agree, need an FTC. They need to be
2893 appropriately funded, but I've just seen a lot of mega-opolies
2894 that DOJ never went after that sure seemed like they were engaged
2895 in unfair business.
2896 So, I'm thrilled we're having this discussion, but I do think
2897 one of the least persuasive things I've heard is that the Senate
2898 agreed unanimously.
2899 Mrs. Spartz. Would the gentlemen yield?
2900 Mr. Gohmert. Yes, to my friend, Mrs. Spartz.
2901 Mrs. Spartz. I just wanted to clarify a few things.
2902 Actually, you know, the bill, as amended, is actually an
2903 incremental step in a better direction from what we have from
2904 the Senate. And I notice that Senator Lee has his own bill that's
2905 very similar to this one. And if this bill passes, it would go

2906 to conference, and we can talk with the Senate how we can make
2907 this bill even better, and maybe make some other adjustment.
2908 And Senator Lee, since he wasn't present, but he has a bill in
2909 the Senate, and Grassley. But with other Senators that were
2910 present, we still can deliberate how to make it better.
2911 But I just don't want us to be looking at everything, you
2912 know, be, as I said, all or nothing. The perfect is the enemy
2913 of the good. If we can make an incremental step in the right
2914 direction and see how we can have more accountability, more
2915 transparency, and know what the FTC and the Department of Justice
2916 are doing, we're looking at what is the fee structure, we will
2917 actually know and they have to report to us on those fees. What
2918 are their total fees and what are they doing? They don't even
2919 have to tell us now.
2920 So, I just wanted to kind of clarify that, from the status
2921 quo, it's incrementally moving -- incrementally. You know, I
2922 could do it probably much more. I would like to do much more.
2923 Hopefully, we can do it, right, with the Senate to make it even
2924 better. But I think it's an incremental step in the right
2925 direction.
2926 And for all of the people who grappling with a totalitarian
2927 government, I think government should be very limited, and it's
2928 maybe the debate for us to have. How can we do better to actually
2929 protect people's rights and not harass businesses, not infringe

2930 on businesses, and have a functioning market. But, ultimately,
2931 we are also a country of law and rule of law, and we need to have
2932 a legal framework and a mechanism how to enforce it. And maybe
2933 we have to reassess it, and that bill actually allows us to do
2934 that, too, because we have a conversation with the Commission
2935 and DOJ how we can have maybe a better way to enforce it than
2936 we decided a hundred years ago.
2937 And I appreciate your discussion and yielding the time.
2938 Mr. Gohmert. Certainly, and I appreciate those comments,
2939 and yield back.
2940 Chairman Nadler. The gentleman yields back.
2941 Does anyone else seek recognition?
2942 Ms. Jackson Lee. Mr. Chairman?
2943 Chairman Nadler. For what purpose does the gentlelady seek
2944 recognition?
2945 Ms. Jackson Lee. To strike the last word, Mr. Chairman.
2946 Chairman Nadler. The gentlelady is recognized.
2947 Ms. Jackson Lee. If I recall correctly, I think we are
2948 dealing with -- maybe I need to speak louder. It is on [referring
2949 to the microphone]. I'm sorry, Mr. Chairman.
2950 If I recall correctly, I think we are still discussing the
2951 legislation dealing with, the appropriate legislation dealing
2952 with fees. And I am very grateful that the intense work of Mr.
2953 Cicilline's committee over a period of at least two years, I

2954 believe, in a number of committees. A lot of us have been in
2955 those kinds of hearings. We are doing that, obviously, with the
2956 voting rights reauthorization.
2957 And in that, a number of issues came to the forefront. And
2958 as I understand, I think it's important, because we are being
2959 recorded, that this particular bill has to do with the fees to
2960 ensure the appropriate enforcement on behalf of the American
2961 people by the DOJ Antitrust Division and, of course, the FTC.
2962 As I indicated, they are the lawyers for the consumers.
2963 They are the lawyers for those who have no lawyers. They're the
2964 lawyers to prevent an anticompetitive approach that typically
2965 happens in a capitalistic structure, that cannot be defended
2966 and/or protected necessarily by the individual consumer.
2967 The good news is that -- and forgive me because these are
2968 my good friends on the other side of the aisle -- I had no clue
2969 of any antitrust work that's being done the last four years by
2970 the Department of Justice -- none. A series of Attorney Generals,
2971 most of them in the quagmire of Russia and a variety of other
2972 issues, and I couldn't find any efforts dealing with this very
2973 finite and precise issue.
2974 So, as I welcome the debate, because many of us do engagement
2975 in it, I do want us to focus that what we will do with these fees
2976 is to ensure staffing, to ensure that the cases that are
2977 appropriate for the FTC to be involved in -- the Commission, rather

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

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

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

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

2993 Chairman Nadler. The gentlelady yields back.

2994 Does anyone else seek recognition?

2995 [No response.]

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

2999 All those in favor, respond by saying aye.

3000 Opposed, no.

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

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

3003 A reporting quorum being present, the question is on the

3004 motion to report the bill H.R. 3843, as amended, favorably to

3005 the House.

3006 Those in favor, respond by saying aye.

3007 Opposed, no.

3008 The ayes have it, and the bill is ordered to be reported

3009 -- a roll call is requested. The clerk will call the roll.

3010 Ms. Fontenot. Mr. Nadler?

3011 Chairman Nadler. Aye.

3012 Ms. Fontenot. Mr. Nadler votes aye.

3013 Ms. Lofgren?

3014 Ms. Lofgren. Yes.

3015 Ms. Fontenot. Ms. Lofgren votes yes.

3016 Ms. Jackson Lee?

3017 Ms. Jackson Lee. Aye.

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

3019 Mr. Cohen?

3020 Mr. Cohen. Aye.

3021 Ms. Fontenot. Mr. Cohen votes aye.

3022 Mr. Johnson of Georgia?

3023 Mr. Johnson of Georgia. Aye.

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

3025 Mr. Deutch?

Mr. Deutch. Aye.

Ms. Fontenot. Mr. Deutch votes aye.

Ms. Bass?

Ms. Bass?

Ms. Bass. Aye.

Ms. Fontenot. Ms. Bass votes aye.

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Fontenot. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Fontenot. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Fontenot. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Fontenot. Ms. Jayapal votes aye.

Mrs. Demings?

Mrs. Demings. Aye.

Ms. Fontenot. Mrs. Demings votes aye.

Mr. Correa?

Mr. Correa. Aye.

Ms. Fontenot. Mr. Correa votes aye.

Ms. Scanlon?

Ms. Scanlon. Aye.

Ms. Fontenot. Ms. Scanlon votes aye.

Ms. Garcia?

Ms. Garcia. Aye.

Ms. Fontenot. Ms. Garcia votes aye.

Mr. Neguse?

Mr. Neguse. Aye.

Ms. Fontenot. Mr. Neguse votes aye.

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. Aye.

Ms. Fontenot. Ms. Dean votes aye.

Ms. Escobar?

Ms. Escobar. Aye.

Ms. Fontenot. Ms. Escobar votes aye.

Mr. Jones?

Mr. Jones. Aye.

Ms. Fontenot. Mr. Jones votes aye.

Ms. Ross?

Ms. Ross. Ross votes aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. Bush votes aye.

Ms. Fontenot. Ms. Bush votes aye.

Mr. Jordan?

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

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Fontenot. Mr. Chabot votes no.

Mr. Gohmert?

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa?

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

[No response.]

Mr. Johnson of Louisiana?

[No response.]

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. No.

Ms. Fontenot. Mr. Tiffany votes no.

Mr. Massie?

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. No.

Ms. Fontenot. Mr. Bishop votes no.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. No.

Ms. Fontenot. Mr. Fitzgerald votes no.

Mr. Bentz?

[No response.]

Ms. Fontenot. Mr. Owens?

Mr. Owens. Aye.

Ms. Fontenot. Mr. Owens votes aye.

Chairman Nadler. Mr. Gaetz?

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

Ms. Fontenot. Mr. Gaetz votes aye.

Chairman Nadler. Are there any other members who wish to be recorded who haven't been recorded?

[No response.]

3146 Chairman Nadler. The clerk will report.

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

3148

3149 Chairman Nadler. The bill is reported favorably -- the bill

3150 -- the ayes have it. The bill is amended is reported -- is ordered

3151 reported favorably to the House. Members will have two days to

3152 submit views.

3153 Without objection, the bill will be reported as a single

3154 amendment in the nature of a substitute incorporating all adopted

3155 amendments, and staff is authorized to make technical and

3156 conforming changes.

3157 Pursuant to notice, I now call up H.R. 3460, the State

3158 Antitrust Enforcement Venue Act of 2021 for purposes of markup

3159 and move that the committee report the bill favorably to the House.

3160 The clerk will report the bill.

3161 Ms. Fontenot. H.R. 3460, to amend Title 28 of the United

3162 States Code to prevent the transfer --

3163 Chairman Nadler. Without objection, the bill is considered

3164 as read and open for amendment at any point.

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

3166

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

3168 Chairman Nadler. I will begin by recognizing myself in an
3169 opening statement.
3170 H.R. 3460, the State Antitrust Enforcement Venue Act of 2021,
3171 ensures that state attorneys general who bring antitrust cases
3172 in federal court do not face delays or higher costs due to the
3173 transfer of such cases to a different venue.
3174 Congress has long recognized the essential role that states
3175 playing in enforcing the antitrust laws. State attorneys general
3176 are often a crucial partner for federal antitrust enforcers.
3177 They also playing an important role in independently
3178 enforcing the antitrust laws to protect consumers and competition
3179 in their states.
3180 Under current law, the judicial panel on multi-district
3181 litigation, or JPML, which plays an important coordinating role
3182 in litigation filed across multiple districts, cannot transfer
3183 an antitrust case brought by the United States from one federal
3184 district court to another.
3185 Additionally, antitrust cases brought by the United States
3186 cannot be combined with similar litigation brought by private
3187 plaintiffs.
3188 That means that, in general, when the United States files
3189 an antitrust case, its choice of venue is final and the case cannot
3190 be slowed down by having to coordinate or consolidate cases with
3191 private litigants.

3192 States do not enjoy these benefits. As a result, states
3193 may be forced to litigate in an inconvenient venue, even when
3194 the original venue they chose is appropriate.
3195 Additionally, states' ability to bring timely action to
3196 protect their citizens can be delayed.
3197 H.R. 3460 updates this law to prevent state antitrust
3198 litigation from being transferred to another venue or
3199 consolidated with private antitrust claims by the judicial panel
3200 on multi-district legislation litigation.
3201 This change ensures that states can effectively litigate
3202 antitrust cases without unnecessary delays, inefficiencies, and
3203 higher costs that occur when state antitrust cases are transferred
3204 or combined.
3205 Importantly, this legislation applies only to the JPML
3206 process and it does not affect the rights of defendants to seek
3207 to transfer a case to a more convenient or appropriate forum under
3208 the federal change of venue statute.
3209 In testimony before the Antitrust Subcommittee earlier this
3210 year, one witness explained that cost and time are the biggest
3211 obstacles to antitrust enforcement, explained that every extra
3212 year it takes an antitrust case to get to trial is an extra year
3213 of monopoly.
3214 Earlier this month, the National Association of Attorneys
3215 General wrote to the committee to express its strong support for

3216 H.R. 3460. In a letter signed by every state attorney general
3217 in the country, they urged Congress to pass this urgent
3218 legislation, quote, "as soon as possible so that our citizens
3219 can benefit from more efficient, effective, and timely
3220 adjudication of antitrust actions," closed quote.
3221 I agree with the state attorneys general, including my
3222 friend, Letitia James, the attorney general of New York, that
3223 H.R. 3460 will promote better and more timely enforcement of the
3224 antitrust laws.
3225 I thank Subcommittee Ranking Member Buck and Subcommittee
3226 Chairman Cicilline for their leadership on this issue and I urge
3227 all members to support this important bipartisan legislation.
3228
3229 I now recognize the ranking member of the Judiciary
3230 Committee, the gentleman from Ohio, Mr. Jordan, for his opening
3231 statement.
3232 Mr. Jordan. Thank you, Mr. Chairman.
3233 The bill seeks to empower state attorney generals to fight
3234 to enforce our antitrust laws. States play an important role
3235 in this space, as we well know. The recent lawsuit against Google
3236 brought by several states is of the utmost importance in holding
3237 big tech accountable.
3238 We hope those states are, ultimately, successful in that
3239 action. Under current law, the U.S. Judicial Panel, as the

3240 chairman mentioned, on multi-district litigation, also known as
3241 the MDL Panel, can consolidate and centralize similar civil
3242 actions that may involve overlapping questions of fact for
3243 pretrial proceedings.
3244 When the United States brings an antitrust action, the case
3245 is exempt from being transferred by the MDL Panel to ensure the
3246 United States does not experience delays. However, under current
3247 law, the MDL Panel can transfer cases where a state has sued a
3248 defendant under federal antitrust laws.
3249 This bill, as the chairman indicated, would amend current
3250 law, prohibit the MDL Panel from transferring states' federal
3251 antitrust cases under federal laws to other jurisdictions.
3252 While this seems like a prudent way to embolden the states,
3253 there are some concerns, I think, that need to be raised for the
3254 record.
3255 First, our staff reached out to the Judicial Conference,
3256 the internal policymaking body for our court system, to get
3257 feedback on the effect of this bill on federal courts.
3258 While we are awaiting feedback, and the conference has not
3259 taken a position on the legislation, the initial informal reaction
3260 we got was that there are concerns about the legislation and its
3261 effect on efficiencies in the judicial branch of our government.
3262
3263 Additionally, while we may see this bill as prudent right

3264 now in the fight against Google, as said, what we will -- what
3265 will the effect be for other companies? Remember, this bill is
3266 not just limited to big tech. We had that debate for a couple
3267 hours on the fees and trying to limit them.
3268 This bill is not limited to big tech. What if the Democrat
3269 state attorney generals begin bringing suits against oil and gas
3270 companies, for example, that they don't like, or if they come
3271 after companies simply because they're owned by conservatives?
3272 We need to think through those issues and, hopefully, find
3273 some solutions here today in the form of amendments before we
3274 pass this legislation.
3275 With that, Mr. Chairman, I yield back.
3276 Chairman Nadler. I now recognize -- the gentleman yields
3277 back.
3278 I now recognize the chair of the Subcommittee on Antitrust,
3279 Commercial and Administrative Law, the gentleman from Rhode
3280 Island, Mr. Cicilline, for his opening statement.
3281 Mr. Cicilline. Thank you, Mr. Chairman.
3282 H.R. 3460, the State Antitrust Enforcement Venue Act of 2021,
3283 is a common sense solution that will enable state attorneys
3284 general to better enforce the antitrust laws and protect consumers
3285 and competition.
3286 It makes state antitrust enforcement more efficient and more
3287 cost effective. States play a key role in enforcing the antitrust

3288 laws. In many cases, they are crucial allies of the Federal Trade
3289 Commission and the Department of Justice.
3290 In others, states attorney generals step in and protect their
3291 citizens where federal enforcers have not done their jobs.
3292 Earlier this year, Phil Weiser, the attorney general of
3293 Colorado, and Doug Peterson, the attorney general of Nebraska,
3294 each testified about the important role the states play in the
3295 work they are doing to protect and promote competition.
3296 We see clear evidence of the leadership of state attorney
3297 Generals in protecting their citizens from anti-competitive
3298 conduct by dominant online platforms. In December, General
3299 Weiser led a bipartisan coalition of state attorneys general in
3300 filing a monopolization case against Google. In another case,
3301 15 states are taking action against Google.
3302 New York Attorney General Letitia James is leading a
3303 coalition of 48 states in a monopolization case against Facebook,
3304 and most recently, Washington, D.C. Attorney General Karl Racine
3305 filed an antitrust case against Amazon.
3306 State attorneys general do critical work to protect their
3307 citizens and promote competition. Often, they do so with
3308 extremely limited budgets and staff.
3309 This bill ensures that states are not forced to waste
3310 precious time and resources that come with consolidating state
3311 actions with private actions or by unnecessarily relocating to

3312 an inconvenient venue.

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

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

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

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

3334 Chairman Nadler. Without objection.

3335 [The information follows:]

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

3338 Chairman Nadler. Does the gentleman yield back?

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

3340 Chairman Nadler. The gentleman yields back.

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

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

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

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

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

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

3362 antitrust cases.

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

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

3370 This also respects our federalist system of government.
3371 When Congress authorized MDL transfers it carved out United States
3372 antitrust enforcement at the behest of the Department of Justice.
3373

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

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

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

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

3390 This bill enjoys universal popularity among state antitrust
3391 enforcers with 52 attorney generals from the states and
3392 territories having signed a letter to this committee urging its
3393 passage and explaining how it represents a vital tool in their
3394 future oversight of big tech.

3395 This reflects the considered view of those at the front line
3396 of recent antitrust enforcement efforts representing states as
3397 diverse as Ohio, California, Florida, Minnesota, Indiana, Oregon,
3398 Texas, Louisiana, and Wisconsin.

3399 Therefore, Mr. Chair, at this point, I would like to ask
3400 to enter this letter. I guess it already has been entered into
3401 the record, and I thank the gentleman.

3402 In sum, this bill strengthens our federalist system of
3403 government by respecting the sovereignty of the states and,
3404 practically speaking, it would tackle the unfair gamesmanship
3405 and forum shopping which the big tech monopolies engage in to
3406 avoid justice.

3407 The companion bill has been introduced by Senator Mike Lee
3408 and Senator Klobuchar in the -- in the Senate, and I am thankful
3409 to have the support of my fellow Republicans Representatives

3410 Bishop, Gosar, Norman, Herrell, Owens, Roy, Bilirakis, and
3411 support from two Democrat members, Representative Neguse and
3412 Cicilline.
3413 Mr. Chairman, I do want to mention that of the 52 attorney
3414 generals who have signed this letter of support, 24 are
3415 Republican, 24 are Democrat, two -- state attorney generals, two
3416 Democrat territory attorney generals and two independent
3417 territory attorney generals.
3418 So there is, again, broad bipartisan support among the
3419 attorney generals to get this bill done, and I yield back.
3420 Chairman Nadler. The gentleman yields back.
3421 Without objection, all other opening statements will be
3422 included in the record.
3423 I now recognize myself for purposes of offering an amendment
3424 in the nature of a substitute.
3425 The clerk will report the amendment.
3426 Ms. Fontenot. Amendment in the nature of a substitute to
3427 H.R. 3460 offered by Mr. Nadler of New York. Strike all after
3428 the enacting clause --
3429 Chairman Nadler. Without objection, the amendment in the
3430 nature of a substitute will be considered as read and shall be
3431 considered as base text for purposes of amendment.
3432 [The Amendment of Chairman Nadler follows:]
3433

3434 **********COMMITTEE INSERT**********

3435 Chairman Nadler. I will recognize myself to explain the
3436 amendment.
3437 This amendment changes the title to better reflect the goals
3438 of the bill. It makes no substantive changes to the bill, and
3439 I urge all members to support the amendment.
3440 I yield back the balance of my time.
3441 Are there any amendments to the amendment in the nature of
3442 a substitute?
3443 Ms. Lofgren. Mr. Chairman?
3444 Chairman Nadler. For what purpose does Ms. Lofgren seek
3445 recognition?
3446 Ms. Lofgren. To strike the last word.
3447 Chairman Nadler. The gentlelady is recognized.
3448 Ms. Lofgren. I have very serious concerns about this bill,
3449 and I realize that this is a moment where there's been an effort
3450 to have bipartisan support. But I really do think there are
3451 serious problems with this proposal.
3452 There are policy reasons for not adopting the change to the
3453 multi-district litigation process. The ability to centralize
3454 cases that arise from a central common set of facts is so important
3455 to ensuring a system that promotes judicial efficiency and
3456 eliminates contradictory pretrial rulings.
3457 The policy priority to centralize is nowhere more important
3458 than antitrust litigation, which frequently involves multi-state

3459 or national businesses that face claims spanning multiple states
3460 and alleging widespread economic injury and trebled damages.
3461 These cases shouldn't be litigated piecemeal. Now, the
3462 potential through the MDL process for transfer of these related
3463 cases to a single federal district court judge enhances
3464 coordination and the manager provides an avenue for significant
3465 efficiencies for the parties, for the conveniences of witnesses,
3466 for judicial economy, and the avoidance of risk of inconsistent
3467 decisions.
3468 Moreover, in antitrust actions, the state AGs are primarily
3469 enforcing federal antitrust laws as opposed to their own state
3470 laws. Were that not so, the AGs' claims would not even be in
3471 the federal court system. That should substantially reduce
3472 deference to their desire to bring a case in their home field.
3473
3474 I think the overlap is even more evident in cases brought
3475 by state AGs under the Clayton Act. There are also benefits for
3476 a single judge to oversee multiple competing cases where state
3477 AGs hire law firms -- plaintiffs' law firms as outside counsel,
3478 whose fee incentives are similar to those of plaintiffs' counsel
3479 in related private actions, and this happens very often.
3480 The court has a statutory duty to review fee applications
3481 in these cases.
3482 Now, if this legislation passes, multiple different states

3483 could simultaneously pursue their own separate actions against
3484 the same antitrust defendant in numerous different federal
3485 courts. Businesses, inevitably, would find themselves facing
3486 multiple costly lawsuits in countless courts across the country.
3487
3488 Unlike cases brought by private plaintiffs, these businesses
3489 would have no way of consolidating those cases into a single fair
3490 proceeding, and that's the outcome that Congress has tried to
3491 avoid over the years.
3492 The legislation also increases the risk of conflicting
3493 judgments in cases brought on behalf of the same set of defendants.
3494 For instance, class action plaintiffs and state AGs may bring
3495 identical claims based on identical facts on behalf of an
3496 identical set of consumers but in different district courts.
3497 The judicial system has sought to avoid these scenarios
3498 because of the risk of divergent judgments including damage awards
3499 and restitution. And by not -- we have avoided that by allowing
3500 such cases to be consolidated where appropriate.
3501 Importantly, this risk does not arise in antitrust cases
3502 brought by the Department of Justice, which only seeks injunctive
3503 relief, and so keeping such cases separate doesn't raise the same
3504 risk.
3505 This was the scenario that Congress tried to prevent when
3506 it passed the legislation permitting defendants to ask the

3507 judicial panel on multi-district legislation to consolidate
3508 antitrust lawsuits brought by the state.
3509 The multi-district litigation proceeding system has worked.
3510 It's a process that has benefitted from more than 50 years of
3511 development. It entrusts senior federal judges, not companies
3512 and not politicians, elected AGs, to determine which cases are
3513 most efficiently and justly resolved through centralized
3514 litigation.
3515 I think we should think twice before enacting drastic changes
3516 that disrupt the system, that is efficient, and has worked well
3517 for all parties for decades.
3518 And I would just note this. There is a lot of animosity
3519 towards big companies. But this is not limited to big companies,
3520 and if a medium-sized company is forced to respond across the
3521 United States to a multiplicity of AGs in various states, you're
3522 going to be hearing from them, as you should.
3523 Changing this venue rule at this point, even without the
3524 input from the Judicial Council, I think is a serious mistake,
3525 and I oppose this measure at this time.
3526 And I yield back, Mr. Chairman.
3527 Chairman Nadler. The gentlelady yields back.
3528 For what purpose does Mr. Gaetz seek recognition?
3529 Mr. Gaetz. Strike the last word.
3530 Chairman Nadler. The gentleman is recognized.

3531 Mr. Gaetz. Thank you, Mr. Chairman.

3532 I am enthusiastically in support of this legislation from
3533 Chairman Cicilline and Ranking Member Buck, and I must confess
3534 it is a bit awkward to be defending a Cicilline bill against a
3535 critique from the gentlelady from California, Ms. Lofgren, but
3536 perhaps speaks to the bipartisan nature of this entire process.
3537

3538 And it is worth noting that in the hearings and meetings
3539 the Chairman Cicilline described the conduct of these technology
3540 platforms was brazen and egregious and harmful to our country.
3541

3542 I only wish that we had not had so much turnover on the
3543 Antitrust Subcommittee that we would not be evaluating the
3544 legislation in a Congress that is somewhat detached from the
3545 Congress where we conducted the investigation.

3546 But, nonetheless, the report documents that evidence well.

3547 Washington is at its best when we are empowering our states
3548 to do more. There's a reason now why more state attorney generals
3549 are not successful in their litigation against big tech.

3550 It is this home venue provision. The home venue provision
3551 creates an extreme strain on resources and it gives the very
3552 platforms that have acted unfavorably toward the market this
3553 tremendous home court advantage.

3554 One of the major -- one of the major critiques that the

3555 ranking member of the full committee offered of this package of
3556 bills is that it empowers the FTC, and I think that's a fair
3557 criticism to debate.
3558 But if what you're most concerned about is an FTC or a
3559 Department of Justice co-mingling with big tech, then you should
3560 be most enthusiastically for this venue bill because it will
3561 empower the litigation process to be liberated from the corrupt
3562 influences of this town.
3563 And I have a number of pieces of evidence that I think back
3564 that point up, Mr. Chairman. I ask unanimous consent to enter
3565 into the record a Politico piece that was written on March 16th,
3566 2021, entitled "How Washington Fumbled the Future."
3567 Chairman Nadler. Without objection.
3568 [The information follows:]
3569
3570 **********COMMITTEE INSERT**********

3571 Mr. Gaetz. I would also seek to enter into the record a

3572 Politico piece of entitled "Google Files: Power Players."

3573 Chairman Nadler. Also without objection.

3574 [The information follows:]

3575

3576 **********COMMITTEE INSERT**********

3577 Mr. Gaetz. I would also like to seek unanimous consent to
3578 enter in the record a piece from Protocol.com titled, "We Counted
3579 FTC Staffers Who Moved to Tech. Is Reform Needed?"
3580 Chairman Nadler. Without objection.
3581 [The information follows:]
3582
3583 **********COMMITTEE INSERT**********

3584 Mr. Gaetz. What all of these pieces of evidence demonstrate
3585 is that there is a revolving door that exists between the DOJ,
3586 the FTC, and big tech.
3587 And so if you want out of that revolving door, if you don't
3588 want the regulators then cashing in on their regulation, then
3589 we should empower our state attorneys general to go and do this
3590 work and to hold big tech to account.
3591 There is a final piece of evidence here, Mr. Chairman, and
3592 I did not expect to obtain this when we had our transcribed
3593 interview of the former U.S. Attorney for the Southern District
3594 of New York, Mr. Berman.
3595 But in the inquiry of Mr. Berman, the majority asked a number
3596 of questions about why Attorney General Barr was asking him to
3597 leave the Southern District of New York and take over as head
3598 of the Civil Division.
3599 And Mr. Berman explicitly says that the reason that the
3600 attorney general is trying to coax him into the acceptance of
3601 that assignment is that it would be, and I'm quoting direct from
3602 the transcript here, "A good resume builder."
3603 Mr. Berman testifies, "He said that I should want to create
3604 a book of business once I returned to the private sector, which
3605 that role would help to achieve."
3606 How improper for Attorney General Barr to be attempting to
3607 lure the U.S. Attorney for the Southern District of New York to

3608 the Civil Division of the Department of Justice for the explicit
3609 purpose of building a business and then engaging in the revolving
3610 door back to the private sector to be able to leverage those
3611 contacts.
3612 I was struck by Attorney General Barr's conduct as reflected
3613 in Mr. Berman's testimony, and I would seek to enter Mr. Berman
3614 -- a transcript of Mr. Berman's testimony into the record as well,
3615 Mr. Chairman.
3616 Chairman Nadler. Without objection.
3617 [The information follows:]
3618
3619 **********COMMITTEE INSERT**********

3620 Mr. Gaetz. So we can, I think, sift through a lot of the
3621 --
3622 Chairman Nadler. Would the gentleman yield for a moment?
3623 Would the gentleman yield for a moment?
3624 Mr. Gaetz. Yes, sir.
3625 Chairman Nadler. I'll just observe that a lot of us were
3626 very upset by a lot of things that Attorney General Barr did.
3627
3628 Mr. Gaetz. Yeah. Well, a lot of us are growing more upset
3629 by the day.
3630 But I would -- I would say that in this particular case,
3631 the most noteworthy objection from the ranking member is that
3632 these bills constitute a growth in the power of Washington, and
3633 this bill is the antidote to that.
3634 It is what balances and tempers the package to ensure that
3635 we invigorate and animate the 10th Amendment principles that would
3636 allow our state attorneys general to at least have a fair fight
3637 when engaging with these platforms that have participated in such
3638 searing conduct.
3639 I thank the chairman for his indulgence, and I yield back.
3640
3641 Chairman Nadler. The gentleman yields back.
3642 Does anyone else seek recognition?
3643 Chairman Nadler. For what purpose does Mr. Issa seek

3644 recognition?

3645 Mr. Issa. I move to strike the last word.

3646 Chairman Nadler. The gentleman is recognized.

3647 Mr. Issa. Well, I'd like to associate myself with my good
3648 friend from San Jose. Ms. Lofgren said it very well, and she
3649 covered a great many points. I just want to piggyback on that.
3650

3651 This bill would cause a company that happens to have a large
3652 market share or in some way infuriate some hometown company in
3653 Alabama or Georgia or you name the state to find itself being
3654 sued.

3655 Now, that's bad enough. But then when it's backed by a
3656 plaintiff's lawyer who's going to share in the proceeds, and then
3657 when it ends up having not one state, but two states, three states,
3658 four states, five states.

3659 Earlier, the terms efficient and effective were used.
3660 There's nothing efficient, and I've been sued away from my home
3661 little business, a little -- comparatively small business
3662 compared to what we're talking about in California.

3663 I've been sued on the other end of the country where
3664 somebody's got a convenient venue. I was actually once sued by
3665 Chrysler in Detroit.

3666 And I've got to tell you, they had a hell of a hometown
3667 advantage suing an auto company from California, and they did

3668 it. Now, it was bad enough, but it was only one.

3669 Can you imagine if you're a small company and you get sued
3670 five, 10, 15, 20 times? It's the same basic suit. It alleges
3671 the same conduct. The same officers, directors, and individuals
3672 in the company are being deposed.

3673 And yet, you're being hauled hither and yon on behalf of
3674 a dozen or maybe 48 states. There's no efficiency or
3675 effectiveness there.

3676 Yes, Google, for example, is saying the people you want to
3677 depose, the information you want, happens to all be in the Northern
3678 District of California. And yes, it might be a favorable -- I
3679 object to the Ninth Circuit ever being called favorable, by the
3680 way. But it might be favorable in some ways.

3681 But you know what? Those attorneys general are, in self
3682 interest, very clearly looking to favor their benefit and their
3683 political affiliations, in some cases, with plaintiffs' trial
3684 lawyers who will participate in the revenue.

3685 So the idea that we're going to throw away the consolidation
3686 for companies large or small, and I understand there's an
3687 amendment that's going to limit this only to the very largest
3688 companies, which would at least eliminate the idea that a company
3689 of $10 million or $100 million or $200 million could find itself
3690 in a dozen or more venues chosen by the plaintiffs to, in fact,
3691 drain you into finding a need to settle.

3692 And you can imagine, an antitrust case costs the defendant
3693 millions of dollars. If you have the ability to have 10 cases
3694 consolidated into one when they have substantially the same
3695 factors, it saves both sides those tens of millions of dollars.
3696 If you allow this proliferation to continue then it doesn't.
3697 I would contend that if we were only talking about one state
3698 filing in its own venue for itself, then we could have a discussion
3699 that there's no need -- there's no justification for consolidation
3700 or maybe even venue change.
3701 But we're not. We are talking about cases in which there
3702 will be multiple -- and Google's a good example -- there will
3703 be multiple cases filed by multiple different attorneys general
3704 and they will each piggyback each other, they will coordinate,
3705 and the like.
3706 So let's be honest. This is a bad change, as Ms. Lofgren
3707 said, of 50 years of effective historic consolidation, which is
3708 to the benefit, particularly, of our limited federal judges.
3709 And I'd yield to the gentlelady.
3710 Ms. Lofgren. I thank the gentleman for yielding.
3711 I just remember the years we put in to avoid the forum
3712 shopping provision that we had in terms of patent litigation.
3713 Mr. Issa. And Mr. Gohmert is getting up, as we mention that.
3714 Ms. Lofgren. That's right, because it is the Eastern
3715 District of Texas.

3716 But, really, it is a shakedown on the local bar because the
3717 lawyers from the headquarters, wherever that company is, have
3718 to affiliate with the lawyers who are in the district.
3719 So there's that aspect to it. It is very abusive. If
3720 there's a problem in terms of bringing these cases quickly without
3721 this, then let's look at adding some resources so those cases
3722 can be properly brought.
3723 Let's not blow up a system that's worked for 50 years,
3724 especially without getting input from the Judicial Council.
3725 And I thank the gentlemen for yielding.
3726 Mr. Issa. I thank the gentlelady, and I would just close
3727 by saying if you want to mend the system, let's work with the
3728 Judicial Conference to find ways to increase the efficiency, not
3729 end it in hopes that 50 cases will be more efficient than one.
3730 I yield back.
3731 Chairman Nadler. The gentleman yields back.
3732 For what purpose does Mr. Lieu seek recognition?
3733 Mr. Lieu. I move to strike the last word.
3734 Chairman Nadler. The gentleman is recognized.
3735 Mr. Lieu. Thank you, Chairman Nadler.
3736 On this specific bill, I, frankly, just don't understand
3737 the consequences of what would happen if it became law. Many
3738 of us on this committee have had no hearings on this specific
3739 bill related to venue for antitrust.

3740 I don't really understand the complexities of this bill.
3741 What Representatives Issa and Lofgren said seem to make a lot
3742 of sense to me. I'm going to vote yes on this bill and allow
3743 the legislating process to continue.
3744 But I may not vote for this bill on the House floor. I'm
3745 simply going to have to learn more about it. This bill was kind
3746 of put in at the last minute, and it just seems to me that without
3747 a lot of notice, there's not a lot for me to go on.
3748 I don't actually know who to trust on this bill. I've heard
3749 no expert witnesses about it, and it makes some pretty drastic
3750 changes.
3751 So I will vote yes, but reserve the right to vote no on the
3752 House floor.
3753 With that, I yield back.
3754 Chairman Nadler. The gentleman yields back.
3755 For what purpose does Mr. Bishop seek recognition?
3756 Mr. Bishop. Thank you, Mr. Chairman. I have an amendment
3757 at the desk.
3758 Chairman Nadler. The clerk will report the amendment.
3759 Mr. Cicilline. Mr. Chairman, I'll reserve a point of order.
3760 Chairman Nadler. A point of order is reserved.
3761 Ms. Fontenot. Amendment to the amendment in the nature of
3762 a substitute to H.R. 3460, offered by Mr. Bishop of North Carolina.
3763 Page 1, strike lines 7 and 8 and insert the following. One,

3764 in subsection (g) by inserting before the period at the end of
3765 the first sentence, or any action in which a state is a complainant
3766 arising under the antitrust --
3767 Chairman Nadler. The amendment is considered as read.
3768 [The Amendment of Mr. Bishop follows:]
3769
3770 **********COMMITTEE INSERT**********

3771 Chairman Nadler. The gentleman will explain his amendment.

3772

3773 Mr. Bishop. Thank you, Mr. Chairman. Did you say I'm
3774 recognized?

3775 Chairman Nadler. Yes. Yes. Yes.

3776 Mr. Bishop. Thank you.

3777 You know, we have been here several hours. We're talking
3778 about big tech abuses. Let's do something about big tech.

3779 So the bill as originally offered would amend current law
3780 to prohibit the Judicial Panel on Multi-District Litigation from
3781 transferring antitrust cases brought by state attorney generals
3782 under federal law to other jurisdictions.

3783 So that would apply generally to state antitrust cases and
3784 would cover any type of antitrust case, not just cases against
3785 big tech.

3786 Consider the prospect of antitrust cases in some matter that
3787 arises by state attorney generals in, I don't know, 30 or 40 states
3788 against any kind of big business, big businesses having nothing
3789 to do with big tech. Maybe airlines or drug companies or some
3790 high-profile target for other reasons.

3791 I think Mr. Jordan suggested oil and gas companies, or
3792 whatever. You know, you'd have the prospect of not being able
3793 to have those cases coordinated before a single judge for
3794 handling, transferred to a single district for handling.

3795 You'd have the procedural jockeying of each case, the state
3796 attorney general in each case trying to get ahead of the others
3797 and rush things so that it -- so they'd be at the front of the
3798 line for the determinations to come.
3799 And I'm prepared to see some change to that system in an
3800 appropriate circumstance, but I'm not sure I see a reason to do
3801 it for all antitrust law across the board.
3802 Again, what I understand we're here for is to do something
3803 about big tech. So my amendment would limit the scope of H.R.
3804 3460 to only allow big tech antitrust actions brought by state
3805 attorneys general to be exempt from consolidation by the Judicial
3806 Panel on Multi-District Litigation.
3807 That will ensure that -- as a general proposition, the
3808 Judicial Panel -- the MDL Panel will be able to achieve its goal
3809 of reducing judicial efficiencies during pretrial proceedings,
3810 and yet, it will also have the effect of amplifying the
3811 availability of other enforcement resources from state attorneys
3812 general in big tech cases.
3813 And so let's see if I got anything else to say. I think
3814 that's it, and I urge the amendment to your consideration.
3815 Thank you. Yield back.
3816 Chairman Nadler. The gentleman yields back.
3817 For what purpose does the gentleman from Rhode Island seek
3818 recognition?

3819 Mr. Cicilline. Mr. Chairman, I withdraw my point of order,
3820 and I -- if I might just be heard briefly.
3821 Again, I just would remind my colleagues that this is a piece
3822 of legislation that's supported by every attorney general in the
3823 United States.
3824 We have not heard any concerns from the Judicial Conference.
3825 They're never shy about sharing their concerns, and I'd yield
3826 the balance of my time to Mr. Buck if he'd like to respond to
3827 the amendment.
3828 No? I yield back.
3829 Chairman Nadler. The gentleman yields back. Does anyone
3830 else seek recognition on this amendment?
3831 Does Mr. Correa -- for what purpose does Mr. Correa seek
3832 recognition?
3833 Mr. Correa. Mr. Chairman, I move to strike the last word,
3834 but on underlying bill and not the amendment.
3835 Chairman Nadler. The gentleman is recognized.
3836 Mr. Correa. Thank you very much. I just wanted to also
3837 concur with some of my colleagues from California, the Bay Area
3838 that this is a very important piece of legislation complicated
3839 in terms of its legislative -- excuse me, litigation and public
3840 policy implications.
3841 Big tech -- back in 2010, 4 percent of all Californians worked
3842 in big tech today. Today, that number is about 12 percent or

3843 about 2 million Californians work directly in big tech, high tech,
3844 and that number is even greater when you take into account the
3845 multiplier effect where others, millions of others, work or
3846 support these industries as well as communities around them.
3847 At our state level, the state of California, these firms,
3848 high tech, are the reason California has a budget surplus as
3849 opposed to a deficit, enabling the state of California to invest
3850 in public education, to help those that have been affected by
3851 COVID, the middle class, and those that are trying to get to the
3852 middle class. It is because of these budget surplus dollars that
3853 we're able to take care of our friends and neighbors in California.
3854
3855 Of course, as we speak about -- at the national levels we
3856 speak about the challenges this country has in investing in
3857 research and development, fighting cyber crimes, competing with
3858 China and others around the world. This is exactly what these
3859 firms are doing on a day-to-day basis.
3860 So for us today to vote on legislation whose implications
3861 may not be totally comprehended is, I think, irresponsible.
3862 That's why I'll be voting no on this legislation.
3863 Thank you.
3864 Chairman Nadler. The gentleman yields back.
3865 For what -- the gentleman yields back. For what purpose
3866 does Mr. Jordan seek recognition?

3867 Mr. Jordan. Strike the last word.

3868 Chairman Nadler. The gentleman is recognized.

3869 Mr. Jordan. Thank you, Mr. Chairman.

3870 I just -- I support the gentleman's amendment, and it's as
3871 basic as it gets. If this is about big tech then let's make this
3872 amendment or let's adopt this amendment and let's make this
3873 legislation about big tech.

3874 If I -- if I get this right, all it says is the covered
3875 platform definition is his amendment. So we define covered
3876 platforms and in the next four bills we're going to deal with
3877 a defined covered platform.

3878 Six hundred billion market cap, 50 million users per month,
3879 online presence. If that's what we're focused on, then why not
3880 apply it to this bill?

3881 My guess is all 48 or 52 attorney generals from states and
3882 territories -- my guess is they would agree with that. If their
3883 focus, too, is on addressing big tech, my guess is -- we have
3884 heard several times now all the attorney generals support this.
3885

3886 My guess is they support this amendment, because if their
3887 focus is on Google, if their focus is on big tech, this doesn't
3888 change anything. In fact, this just clarifies it. It says,
3889 look, if we're going to go after big tech and deal with that,
3890 let's do it.

3891 So it is as basic amendment as you could have. If we really
3892 want to focus on what we're supposed to be doing all day long,
3893 and I'm sure we'll go into this evening, then let's do it.
3894 It's that simple. The covered platform definition is in
3895 every other bill. Why not have it here if that's what we're going
3896 to do? That's all this amendment says. So this should be simple.
3897 We should just say, okay, we're all for it. Let's move on.
3898 But we'll see what the Democrats do.
3899 I yield back.
3900 Chairman Nadler. The gentleman yields back. The gentleman
3901 yields back.
3902 For what purpose does the gentlelady from California see
3903 --
3904 Ms. Lofgren. To strike the last word on the amendment.
3905 Chairman Nadler. The gentlelady is recognized.
3906 Ms. Lofgren. I understand what the intent of the amendment
3907 is. However, the definitions of covered platforms in the other
3908 bills include a market cap definition as well, and I'm just trying
3909 to find out who this would include, and going on the fly searching
3910 Dr. Google, it looks like this would include Reddit, Twitter,
3911 Zoom, Skype, LinkedIn. I don't know what the impact would be.
3912 Mr. Bishop. Would the gentlelady yield?
3913 Ms. Lofgren. I would be happy to yield.
3914 Mr. Bishop. I thank the gentlelady.

3915 I think it is -- you're correct. Here's the language. It
3916 says that there would be -- you could -- the state attorney
3917 generals would be able to have the venue in their home states
3918 in any case arising under the antitrust laws as the antitrust
3919 laws pertain to any company that owns or operates an online
3920 platform with at least 50 million United States-based monthly
3921 active users.
3922 I'll confess to the lady -- the gentlewoman -- that I also
3923 do not know precisely who is in that category. But I know that
3924 it is limited to companies that are at least in the big tech
3925 vicinity.
3926 So the covered platform definition as it appears in all of
3927 its complexity and all the details about having to be designated
3928 by the FTC and other things we'll talk about in due course, the
3929 full definition is not replicated, but certainly the essence of
3930 it here -- a company that has 50 million United States-based
3931 monthly active users in an online platform. That narrows it very
3932 significantly.
3933 And I yield.
3934 Ms. Lofgren. Reclaiming my time. I'm not sure that it
3935 does. And, for example, listed as with more than 50 million users
3936 is Viber, owned by Rakuten, which has got a big headquarters.
3937 Not in my district, just up 101.
3938 What's the impact on them? I mean, they're not, you know,

3939 who you think, this gigantic big company. And yet, they could
3940 be hauled all over the United States. Reddit has a very large
3941 number of users, and yet they don't have this enormous footprint
3942 in terms of market cap or in terms of employees.
3943 So I understand what you're trying to do. I'm just -- I
3944 don't think we know what the impact of this would be. Zoom also
3945 would be included. That is in my district, headquartered in my
3946 district, and they have a lot of users. We have all been using
3947 it.
3948 I think we're using it today to broadcast this hearing.
3949 And yet, it is not -- in terms of market cap and in terms of number
3950 of employees, it's more on the modest side.
3951 So I am --
3952 Mr. Bishop. Would the gentlelady yield one more time?
3953 Ms. Lofgren. I'd be happy to yield.
3954 Mr. Bishop. Thank you. Thank you, ma'am.
3955 I would say one thing we do know is that it will be much
3956 more limited than the bill as originally drafted by virtue of
3957 the amendment.
3958 I yield back.
3959 Ms. Lofgren. I just -- you know, I appreciate that the
3960 gentleman is trying to fix something that, honestly, I think we
3961 should postpone until we can study more.
3962 We didn't have -- I realize this is the Antitrust

3963 Subcommittee, but I served on the Courts Subcommittee and we
3964 didn't have any review of this either. I just think it's a pretty
3965 big change to do on the fly. I was not aware we were going to
3966 be doing this until just recently, and I don't -- I think it's
3967 a big mistake to leap ahead of where we know we're going.
3968 And with that, Mr. Chairman, I yield back.
3969 Chairman Nadler. The gentlelady yields back.
3970 There are votes on the floor. There are three votes on the
3971 floor. The committee will stand in recess until immediately
3972 after the votes.
3973 [Recess.]
3974 Chairman Nadler. The committee will come to order.
3975 The pending question is the amendment offered by Mr. Bishop
3976 of North Carolina. I recognize myself to speak in opposition
3977 to the amendment and to address some of the process concerns that
3978 have been raised about this legislation and the record that has
3979 been developed in support of it.
3980 Earlier this year, the Antitrust Subcommittee held a hearing
3981 on reviving competition where it examined recommendations to
3982 address gatekeeper power and lower barriers to entry online.
3983 Longtime antitrust attorney John Thorne testified that
3984 Congress should enact legislation to clarify that antitrust cases
3985 brought by states cannot be transferred by the Judicial Panel
3986 on Multi-District Litigation.

3987 Mr. Thorne expressed concern that the transfer of state
3988 antitrust litigation slows down enforcement by state attorneys
3989 general. These delays impede the ability of state attorneys
3990 general to protect their citizens from monopoly power.
3991 In May, Senators Amy Klobuchar and Mike Lee introduced the
3992 companion to this legislation. Senator Klobuchar explained that
3993 this bipartisan legislation will allow for more efficient and
3994 more effective antitrust enforcement by state attorneys general,
3995 which is good for competition and consumers.
3996 Senator Lee explained that the federal antitrust enforcement
3997 -- enforcers already benefit from protection against the delays
3998 or threats from private antitrust suits and there is no reason
3999 that state attorneys general should not receive the same
4000 protection.
4001 He concluded that this bill will strengthen federalism by
4002 putting state antitrust enforcers on an equal footing.
4003 As was noted previously, earlier this month, 52 state and
4004 territorial attorneys general wrote to the committee to urge us
4005 to enact this bill. This legislation enjoys significant
4006 bipartisan bicameral support, and I encourage my colleagues to
4007 support it.
4008 I yield back.
4009 And who seeks recognition?
4010 And if no one seeks recognition --

4011 Mr. Buck. Mr. Chairman?

4012 Chairman Nadler. Who --

4013 Mr. Buck. I move to strike last word.

4014 Chairman Nadler. The gentleman is recognized.

4015 Mr. Buck. Thank you, Mr. Chairman. I would urge my
4016 colleagues to vote no on this amendment. This bill is a
4017 procedural bill to promote antitrust enforcement, not -- and this
4018 is not a substantive bill.

4019 In every antitrust case, there's a trade off between limiting
4020 the burden on the accused defendant versus expediting
4021 enforcement. Congress discussed that trade off in preventing
4022 JPML interference with DOJ antitrust cases.

4023 Deputy Attorney General Ramsey Clark explained inclusion
4024 of United States enforcement actions in complex multi-district
4025 proceedings would almost certainly cause substantial delay for
4026 the government's enforcement.

4027 In passing Section 1407(g), Congress was aware that keeping
4028 United States antitrust actions separate from multi-district
4029 proceedings might occasionally burden defendants by requiring
4030 them to answer similar questions posed by both the government
4031 and by private parties.

4032 But permitting United States antitrust actions to remain
4033 independent was justified by the importance to the public of
4034 securing relief in antitrust cases as quickly as possible.

4035 That exact same principle applies here. The importance to
4036 the public of securing relief in antitrust cases as quickly as
4037 possible is equally true for state cases as it is for the cases
4038 brought by the United States.
4039 The state should get the same procedural ability to file
4040 in a faster court without the drag of being joined with private
4041 cases that have, one, different incentives and, two, lack the
4042 precomplaint investigation that makes state cases faster.
4043 Before I yield back, I would remind everyone here that your
4044 state AG signed a letter supporting this bill in its current form.
4045 They are the ones on the front lines and know what they need.
4046 They think this is a good bill as drafted.
4047 Additionally, Senator Mike Lee and Senator Klobuchar
4048 introduced an identical bill in the Senate. Senator Lee is,
4049 obviously, supportive of the bill as is because we decided to
4050 introduce this bill as is.
4051 This is a simple procedural bill that is good policy.
4052 Mr. Chairman, I yield back.
4053 Chairman Nadler. The gentleman yields back. Does any --
4054 who else seeks recognition? For what purpose does Mr. Roy seek
4055 recognition?
4056 Mr. Roy. Move to strike the last word.
4057 Chairman Nadler. The gentleman is recognized.
4058 Mr. Roy. It is rare that I come to a different conclusion

4059 than my friend from North Carolina. So it gave me pause, which
4060 I've, you know, discussed and called some of my friends back in
4061 the Office of the Attorney General where the chairman will
4062 remember I was the first assistant attorney general.
4063 So I talked to the antitrust division, trying to understand
4064 how this would play out and how it work in my conversation with
4065 them, and ultimately, why -- and I'll talk about the bill, the
4066 underlying bill in a minute off of this amendment.
4067 But on this in particular, I was reminded -- he reminded
4068 me and I was thinking through this, the federal enforcers here
4069 don't get a carve out for big tech. And so in this case, I just
4070 think all this does by adding in "or states" it aligns that
4071 incentive and give states the ability and the power to do what
4072 the feds are doing.
4073 And for that reason, I will oppose my friend's amendment.
4074 Chairman Nadler. Gentleman yield back? Does the gentleman
4075 yield back?
4076 Mr. Roy. Yield back. Yield back.
4077 Chairman Nadler. The gentleman yields back.
4078 Does anyone else seek recognition?
4079 [No response.]
4080 Chairman Nadler. In that case, the question occurs on the
4081 amendment.
4082 All in favor say aye.

4083 Opposed, no.

4084 In the opinion of the chair the noes have it.

4085 Mr. Bishop. Mr. Chairman, I'd ask for the yeas and nays.

4086 Chairman Nadler. The yeas and nays are requested. The

4087 clerk will call the roll.

4088 Ms. Fontenot. Mr. Nadler?

4089 Chairman Nadler. No.

4090 Ms. Fontenot. Mr. Nadler votes no.

4091 Ms. Lofgren?

4092 Ms. Lofgren. No.

4093 Ms. Fontenot. Ms. Lofgren votes no.

4094 Ms. Jackson Lee?

4095 Ms. Jackson Lee. No.

4096 Ms. Fontenot. Ms. Jackson Lee votes no.

4097 Mr. Cohen?

4098 Mr. Cohen?

4099 Mr. Cohen. No. No.

4100 Ms. Fontenot. Mr. Cohen votes no.

4101 Mr. Johnson of Georgia?

4102 Mr. Johnson of Georgia. No.

4103 Ms. Fontenot. Mr. Johnson of Georgia votes no.

4104 Mr. Deutch?

4105 Ms. Bass? Ms. Bass?

4106 Chairman Nadler. You need to unmute.

Ms. Bass. No. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mrs. McBath?

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Mr. Jones?

Ms. Ross?

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jones. Mr. Chairman, how am I recorded?

Ms. Fontenot. Mr. Jones, you are not recorded.

Mr. Jones. Jones votes no.

Mr. Neguse. Mr. Chair, how am I recorded?

Ms. Fontenot. Mr. Neguse, you are not recorded.

Mr. Neguse. Neguse votes no.

Ms. Fontenot. Mr. Neguse votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Issa?

Mr. Issa. Yes.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. No.

Ms. Fontenot. Mr. Roy votes no.

Mr. Bishop?

Mr. Bishop. Aye.

Ms. Fontenot. Mr. Bishop votes aye.

Mrs. Fischbach?

Mrs. Fischbach. Aye.

Ms. Fontenot. Mrs. Fischbach votes aye.

Mrs. Spartz?

Mrs. Spartz. No.

4203 Ms. Fontenot. Mrs. Spartz votes no.

4204 Mr. Fitzgerald?

4205 Mr. Bentz?

4206 Mr. Bentz. Aye.

4207 Ms. Fontenot. Mr. Bentz votes aye.

4208 Mr. Owens?

4209 Mr. Owens. No.

4210 Ms. Fontenot. Mr. Owens votes no.

4211 Mr. Raskin. Mr. Chairman, am I recorded?

4212 Ms. Fontenot. Mr. Raskin, you are not recorded.

4213 Mr. Raskin. I vote no.

4214 Ms. Fontenot. Mr. Raskin votes no.

4215 Mrs. McBath. Mr. Chairman, how am I recorded? This is Rep.

4216 McBath.

4217 Ms. Fontenot. Mrs. McBath, you are not recorded.

4218 Mrs. McBath. I vote no.

4219 Ms. Fontenot. Mrs. McBath votes no.

4220 Chairman Nadler. Mr. Correa?

4221 Mr. Correa. Mr. Chairman, how am I recorded?

4222 Ms. Fontenot. Mr. Correa, you are not recorded.

4223 Mr. Correa. Correa is no.

4224 Ms. Fontenot. Mr. Correa votes no.

4225 Ms. Escobar. Mr. Chairman?

4226 Chairman Nadler. Ms. Escobar?

4227 Ms. Escobar. I vote no.

4228 Ms. Fontenot. Ms. Escobar votes no.

4229 Chairman Nadler. Mr. Deutch?

4230 Mr. Deutch. No.

4231 Ms. Fontenot. Mr. Deutch votes no.

4232 Chairman Nadler. Has every member who wishes to be recorded

4233 recorded?

4234 [No response.]

4235 Chairman Nadler. The clerk will report.

4236 Ms. Fontenot. Mr. Chairman, there are 11 ayes and 31 noes.

4237 Chairman Nadler. The amendment is not agreed to.

4238 Are there any further amendments?

4239 In that case --

4240 Mr. Roy. Mr. Chairman?

4241 Chairman Nadler. Who -- Mr. Roy?

4242 Mr. Roy. Yeah. Move to strike the last word.

4243 Chairman Nadler. The gentleman is recognized.

4244 Mr. Roy. I want to only add to what I was saying before,

4245 and after talking with the folks that I worked with in the

4246 antitrust division AG's offices, and, obviously, we have got 52

4247 AGs in support of this, that for those who have concerns about

4248 it that it very simply adds "or state" into the text to draw parity

4249 and empower state AGs to be able to engage in this, and I think

4250 that is an improvement across all areas of -- and in industries

4251 and, therefore, I support the -- support the underlying bill.

4252 I thank the chairman. Yield back.

4253 Chairman Nadler. The gentleman yields back.

4254 Are there any further amendments?

4255 [No response.]

4256 Chairman Nadler. In that case, a question occurs on the

4257 amendment in the nature of a substitute.

4258 All those in -- this will be followed immediately by a vote

4259 on final passage of the bill.

4260 All those in favor respond by saying aye.

4261 Opposed, no.

4262 In the opinion of the chair, the ayes have it and the

4263 amendment in the nature of a substitute is agreed to.

4264 A reporting quorum being present, the question is on the

4265 motion to report the bill H.R. 3460 as amended favorably to the

4266 House.

4267 Those in favor respond by saying aye.

4268 Opposed, no.

4269 The ayes have it and the bill is ordered reported favorably.

4270 Ms. Lofgren. Mr. Chairman, I request a recorded vote.

4271 Chairman Nadler. A recorded vote is requested. The clerk

4272 will call the roll.

4273 Ms. Fontenot. Mr. Nadler?

4274 Chairman Nadler. Aye.

Ms. Fontenot. Mr. Nadler votes aye.

Ms. Lofgren?

Ms. Lofgren. No.

Ms. Fontenot. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Fontenot. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

Ms. Fontenot. Mr. Cohen votes aye.

Mr. Johnson of Georgia?

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. Aye.

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

Mr. Deutch?

Mr. Deutch. Aye.

Ms. Fontenot. Mr. Deutch votes aye.

Ms. Fontenot. Ms. Bass?

Ms. Bass. Aye.

Ms. Fontenot. Ms. Bass votes aye.

Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Fontenot. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Fontenot. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Fontenot. Ms. Jayapal votes aye.

Mrs. Demings?

Mrs. Demings. Aye.

Ms. Fontenot. Mrs. Demings votes aye.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Mr. Neguse?

Mrs. McBath?

Mrs. McBath. McBath votes aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. Aye.

Ms. Fontenot. Ms. Dean votes aye.

Ms. Escobar?

Mr. Jones?

Mr. Jones. Jones votes aye.

Ms. Fontenot. Mr. Jones votes aye.

Ms. Ross?

Ms. Ross. Ross is aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. Bush votes aye.

Ms. Fontenot. Ms. Bush votes aye.

Mr. Raskin. Mr. Chairman, how am I recorded? Raskin.

Ms. Fontenot. Mr. Raskin, you are not recorded.

Mr. Raskin. I vote aye. Thank you.

Mr. Neguse. Mr. Chairman, how am I recorded? Neguse.

Ms. Fontenot. Mr. Neguse, you are not recorded.

Mr. Neguse. Neguse votes aye.

Ms. Fontenot. Mr. Neguse votes aye.

Ms. Scanlon. And how am I recorded?

Ms. Fontenot. Ms. Scanlon, you are recorded as no.

Ms. Scanlon. That was supposed to be aye. Thank you.

Ms. Fontenot. Ms. Scanlon votes aye.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. Yes.

Ms. Fontenot. Mr. Owens votes yes.

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

Ms. Fontenot. Mr. Issa, you're not recorded.

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Chairman Nadler. Anybody else?

The clerk will report.

Ms. Fontenot. Mr. Chairman, there are 34 ayes, and 7 noes.

Chairman Nadler. The ayes have it. The bill is amended, and is ordered reported favorably to the House.

Members will have two days to submit views.

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

4419 Pursuant to notice, I now call up H.R. 3849, the "Augmenting
4420 Compatibility and Competition by Enabling Service Switching Act
4421 of 2021" or the "ACCESS Act of 2021," for purposes of markup.
4422 I move that the committee report the bill favorably to the House.
4423 [The Bill H.R. 3849 follows:]
4424
4425 **********COMMITTEE INSERT**********

4426 Chairman Nadler. The clerk will report the bill.

4427 Ms. Fontenot. H.R. 3949, to promote competition, lower
4428 entry barriers, and reduce --

4429 Chairman Nadler. Without objection, the bill is considered
4430 as read and open for amendment at any point. I will begin by
4431 recognizing myself for an opening statement.

4432 H.R. 3949, the Augmenting Compatibility and Competition By
4433 Enabling Service Act, or ACCESS Act, requires dominant online
4434 platforms to provide competing platforms the ability to connect
4435 and communicate with their systems, a concept known as
4436 interoperability, and requires these dominant platforms to allow
4437 users to transfer their data to another competing platform, which
4438 is known as data portability.

4439 Too often the segments of the digital economy that are
4440 dominated by the largest platforms are closed off to competition.
4441 These markets often have high barriers to entry, switching costs,
4442 and other characteristics that lock in consumers and businesses
4443 to using one company in that industry. These market
4444 characteristics also reinforce the dominance of powerful firms,
4445 while blocking new entries into the market, and depriving
4446 consumers and small businesses of choice.

4447 The ACCESS Act of 2021 addresses these concerns by giving
4448 the Federal Trade Commission new authority and the enforcement
4449 tools to establish pro-competitive rules for interoperability

4450 and data portability online. To do so, the bill creates a
4451 technical committee inside the FTC comprised of relevant
4452 businesses, agencies, and experts to develop these standards for
4453 adoption by the FTC.

4454 The ACCESS Act also gives the FTC new authority to swiftly
4455 challenge abusive conduct that violates these interoperability
4456 and portability requirements.

4457 Importantly, the ACCESS Act also protects user privacy and
4458 data security. The bill empowers users to determine how and with
4459 whom their data is shared. It also requires data minimization
4460 for firms interoperating under the bill so that companies do not
4461 monetize, collect, or use more data than is necessary.

4462 Throughout its investigation, the Antitrust Subcommittee
4463 heard testimony from several witnesses about the benefits of
4464 interoperability and data portability, which are well-proven
4465 tools to promote competition and break down barriers in highly
4466 concentrated markets. Congress relied on these same tools in
4467 the Telecommunications Act of 1996, which required the regional
4468 Bell operating companies to interconnect with rivals, and
4469 required them to allow consumers to take their phone numbers with
4470 them if they switched to another phone company.

4471 This bill strikes the right balance to encourage
4472 competition, give consumers more choices, and protect user
4473 privacy.

4474 I thank my colleagues, Congresswoman Scanlon and Congressman
4475 Owens, for their leadership on this important bipartisan measure,
4476 and I urge its adoption.
4477 I now recognize the ranking member of the Judiciary
4478 Committee, the gentleman from Ohio, Mr. Jordan, for his opening
4479 statement.
4480 Mr. Jordan. I thank you, Mr. Chairman.
4481 This bill creates secret advisory committees. I want to
4482 stress that. Page 18 of the amendment in the nature of a
4483 substitute, bottom, line 21, "Non-applicability of the Federal
4484 Advisory Committee Act. The Federal Advisory Committee Act shall
4485 not apply with respect to the technical committees."
4486 Each of these technical committees for every single one of
4487 the covered platforms, covered companies, we don't know what goes
4488 on there, we are not allowed to know what goes on there because
4489 the law that normally applies to any advisory committee has been
4490 waived for this legislation.
4491 If that is not bad enough, this structure could jeopardize
4492 those companies' data security, making them more vulnerable to
4493 hacking and illegal surveillance. The idea of data being
4494 portable and interoperable is something sounds great and,
4495 frankly, something I think most of us would like to get to, figure
4496 out how to do this right. It is something that has broad support.
4497 This bill's issue, however, is absolutely unworkable. For

4498 starters, there is ambiguity about the definition of data that
4499 will give broad discretion to the regulators. In other words,
4500 a bill about data never directly defines that. Instead, the bill
4501 tells the FTC to do it.

4502 We should do that. We write the laws; they regulate. We
4503 shouldn't give that authority to them. Talk about a blank check
4504 for big government regulators, the so-called advisory committee
4505 that this bill sets up would include "representatives of
4506 competition or privacy advocacy organizations" and "independent
4507 academics."

4508 Under the bill the committee size, as I said in my opening
4509 statement, and its membership are also within the sole discretion
4510 of the FTC.

4511 So, what does that all mean? There is nothing in this bill
4512 to prevent any number of left-leaning groups from getting a seat
4513 at the table to direct how data practices work or, frankly, any
4514 right-leaning group, they might be concerned about that. We
4515 don't know, and we never get to see who, how they operate, what
4516 these technical committees do. That is a lot of power.

4517 And what happens if the companies run afoul of this act or
4518 the regulation or, excuse me, or its regulations? The government
4519 can take up to 15 percent of their total revenue and all their
4520 CEOs' pay, or the pay of any other corporate officer. And we
4521 may think that is great. We want to get these guys. If they

4522 do something wrong, we want to get them.

4523 But what that, I think, means in practice, no one is going

4524 to, the CEO is not going to lose his whole pay, her whole pay.

4525 They are not going to want to give up 15 percent of total revenue.

4526 They are just going to say, What do you want us to do, Government?

4527 Government-run companies is what we are talking about. And

4528 I talked about this in the opening statement when we started at

4529 10:30 this morning, but my other big concern about this is privacy,

4530 what this means to -- and it is something we all should care about

4531 as members of the Judiciary Committee, members should care about

4532 privacy rights, the competition bill of rights. I am very nervous

4533 about that as this bill is currently drafted.

4534 With that, Mr. Chairman, I yield back.

4535 Chairman Nadler. The gentleman yields back.

4536 I now recognize the chair of the Subcommittee on Antitrust,

4537 Commercial, and Administrative Law, the gentleman from Rhode

4538 Island, Mr. Cicilline, for his opening statement.

4539 Mr. Cicilline. Thank you, Mr. Chairman.

4540 H.R. 3849, the ACCESS Act of 2021, creates interoperability

4541 and data portability requirements for the largest online

4542 platforms. Interoperability and data portability will encourage

4543 new competition in digital markets by lowering barriers to entry

4544 for new firms, and lowering switching costs for consumers.

4545 The high levels of concentration in segments of the digital

4546 marketplace can be attributed in part to network effects, data
4547 advantages, and economies of scale and scope that advantage the
4548 largest platforms. New competitors often face daunting barriers
4549 to entry. Consumers face high switching costs. Some markets
4550 become winner-take-all, locking in the dominance of a few firms
4551 and blocking new entries from meaningfully competing.

4552 The ACCESS Act introduced by Congresswoman Scanlon and
4553 Congressman Owens, helps address high levels of concentration
4554 online and creates new opportunities for competition. The ACCESS
4555 Act requires dominant platforms be interoperable with other
4556 businesses. It also empowers users of dominant platforms to take
4557 relevant data to another service.

4558 Data portability will empower consumers to switch to other
4559 services more easily. They will not have to start over. They
4560 will not lose access to their list of friends, photos,
4561 communications, or cell arrays when they switch from one social
4562 network, e-commerce platform, or mobile operating system to
4563 another.

4564 For example, a small business selling on Amazon will be able
4565 to take its customer reviews and other information to use it on
4566 its own retail website on a rival e-commerce platform. An iPhone
4567 user will not use access to her prior communications simply
4568 because she switched to an Android phone.

4569 New competitors in these markets will have a better chance

4570 to convince users to switch. They will be able to compete by
4571 offering better prices, higher quality, or more privacy, the very
4572 essence of competition. Interoperability will ensure consumers
4573 do not have to choose between communicating with users of the
4574 dominant platform when migrating to a platform that better serves
4575 their needs.

4576 Interoperability opens new opportunities for competition.
4577 As a result, we will have more and more dynamic digital economy,
4578 and consumers will have more choices.

4579 Interoperability and data portability are not without
4580 challenges. And that is why the ACCESS Act directs the Federal
4581 Trade Commission to establish technical committees bringing
4582 together industry, government, academic, and other experts to
4583 help design interoperability that works. The key is to get it
4584 right. The interoperability requirements under this bill
4585 effectively promote competition and reduce the need for
4586 government oversight and intervention.

4587 This bill also includes enforcement mechanisms to deter
4588 dominant platforms from undermining the interoperability and data
4589 portability requirements.

4590 Additionally, the ACCESS Act includes strong safeguards to
4591 protect privacy and security. Any transfers of data from one
4592 business to another under this bill may only occur at the express
4593 direction of the user. Online firms are required to minimize

4594 the data they use, and share to make services interoperable.

4595 By opening up new opportunities for competition, the ACCESS
4596 Act promotes new investment and innovation. Small businesses
4597 and start-ups will have more opportunity to attract users.
4598 Rather than resting on their laurels and relying on their ability
4599 to lock consumers in, the dominant platforms will have to
4600 rededicate themselves to improving their product and keeping
4601 their users happy. They will have to compete in a more dynamic
4602 marketplace, bring more investment and more innovation.

4603 Consumer and public interest advocates like Consumer
4604 Reports, Public Knowledge, the Electronic Frontier Foundation,
4605 and New America's Open Technology Institute have all called for
4606 interoperability requirements as a way to promote more
4607 competition online. I agree with them. This is important and
4608 common sense legislation. Consumers will benefit. They will
4609 have more choices. They will have more access to more products
4610 and services that compete on metrics such as privacy, quality,
4611 and security.

4612 I want to thank Congresswoman Scanlon and Congressman Owens
4613 for their leadership on this issue. I encourage my colleagues
4614 to support the ACCESS Act.

4615 And I yield back.

4616 Chairman Nadler. The gentleman yields back.

4617 I now recognize the ranking member of the Antitrust

4618 Subcommittee, the gentleman from Colorado, Mr. Buck, for his
4619 opening statement.
4620 Mr. Buck. Thank you, Mr. Chair.
4621 The ACCESS Act will create consumer-oriented data
4622 portability and interoperability policies to further facilitate
4623 competition in the marketplace. Perhaps one of the most popular
4624 and pro-competitive acts Congress ever took was mandating mobile
4625 phone portability in the Telecommunications Act of 1996 authored
4626 by Newt Gingrich. Consumers were empowered to shop between
4627 carriers without having to worry about changing numbers. The
4628 result was a competitive and pro-consumer marketplace that
4629 Americans take for granted today.
4630 Unfortunately, pro-monopoly lobbyists have embarked on a
4631 massive disinformation campaign against this legislation. For
4632 this reason, I want to spend my time debunking their
4633 misinformation campaign.
4634 First, this bill will not create additional data security
4635 and private concerns for covered platforms. In an attempt to
4636 keep precious user data firmly in the hands of big tech, their
4637 lobbyists have conjured the spectre of data theft and privacy
4638 breaches, even though sections 3(b) and 4(b) clearly mandate those
4639 other businesses have security and private measures in place to
4640 protect consumer data.
4641 Section 4(b)(3) also allows for terminating a business' data

4642 access in the event of security or privacy violations.

4643 It is interesting that big tech now cares about data security
4644 and privacy. Just this year it was reported that the personal
4645 information of over 533 million -- million -- Facebook users from
4646 106 countries, including over 32 million records on users in the
4647 U.S., 11 million on users in the U.K., and 6 million on users
4648 in India was stolen.

4649 The data in this tranche of stolen information included
4650 users' phone numbers, Facebook I.D.s, full names, locations,
4651 birth dates, bios, and in some cases email addresses.

4652 In 2019, Facebook was fined $5 billion for privacy
4653 violations.

4654 It seems like data privacy and security were not much of
4655 a concern for big tech until their monopoly was on the line.

4656 Second, this is not a big government bill. Big tech and
4657 their lobbyists claim that this legislation will give more power
4658 to the Federal Government to pick winners and losers. It does
4659 the exact opposite. It changes the law so that big tech, who
4660 became monopolies solely because of favorable government
4661 policies, no longer have a vice grip on Americans' data.
4662 Consumers get to choose who has their data, and that has Google
4663 and Facebook very worried.

4664 We are kicking their 300 mill -- 300 billion dollar wasps'
4665 nest. It is no surprise they are fighting to keep their status

4666 quo in place.

4667 Section 3(a) requires big tech work with any business user
4668 who wants to compete, so that consumers can move their data around
4669 when they want to. No data moves until a consumer makes an
4670 affirmative choice. Additionally, the bill doesn't list who the
4671 competing businesses are that big tech must work with. It leaves
4672 that to the market.

4673 Third, it does not create new opportunities for companies
4674 controlled by China or other foreign actors. Apple and Google
4675 have already let the fox in the proverbial hen house because they
4676 have Tik Tok and Alibaba available on their respective app stores
4677 and interfacing with their operating systems. If these companies
4678 actually cared about not letting Chinese companies into our
4679 digital marketplaces, those two apps wouldn't be available to
4680 U.S. consumers.

4681 Fourth, another argument against this bill is it is somehow
4682 Chinese or European in origin or inspiration. Our K Street
4683 friends point to the GDPR data portability requirement as proof
4684 that this is somehow importing European competition law and policy
4685 into the U.S.

4686 The Europeans got their ideas from us, not the other way
4687 around. Data portability and interoperability are American
4688 ideas. Both concepts were in the 1996 Telecommunications Act
4689 that was passed under Speaker Newt Gingrich and Senate Majority

4690 Leader Bob Dole, and signed into law by President Clinton.

4691 On the China front I can't make much sense of how someone
4692 acting in good faith could say this bill imports a Chinese model
4693 into our laws. The national champion model that big tech backs
4694 where regulators single out favored firms for special treatment
4695 is the Chinese model. In China there is one giant company for
4696 every sector, like Alibaba for e-commerce, or Huawei for
4697 telecommunications. That is a model Facebook and Google want
4698 because it cements their monopolies.

4699 Next we have the argument that liberals like Madison
4700 Cawthorn, Burgess Owens, Lance Gooden, and I say "liberals"
4701 tongue-in-cheek, and me, are unwittingly turning over the keys
4702 to regulate the entire U.S. economy to Lina Khan in the Biden
4703 administration. Supposedly, there is text in this bill that has
4704 yet to be identified or cited for that matter, where we are turning
4705 over sweeping rulemaking authority to the bureaucrats at the FTC
4706 and, therefore, turning over the reins of the American economy
4707 to the progressives in the Biden administration. This one is
4708 deserving of a 5 out of 5 Pinocchio rating.

4709 First, the rulemaking authority granted in section 6(c) is
4710 limited by the very text of the bill, rulemaking only for the
4711 purposes of implementing sections 3 and 4 of this bill. By the
4712 words of the bill we are not granting general rulemaking
4713 authority. The text is very narrowly tailored.

4714 And, lastly, we have the secret committees spectre. The
4715 general gist of this argument is that we are authorizing secret
4716 technical committees that will help the FTC come up with secret
4717 standards that no one knows about until they spring forth from
4718 Lina Khan's FTC to haunt all American businesses forevermore.
4719 This is obviously not happening. Under section 6(c) the
4720 Commission must issue the standards recommended by the technical
4721 committee. The secret technical committee doesn't get to set
4722 the terms big tech will have to live by. The Commission, the
4723 Federal Trade Commission, whose votes are on the record and who
4724 are accountable to us here in Congress, must ultimately choose
4725 what the standards are.
4726 In summary, when you look at the bill, at what the bill
4727 actually says instead of listening to the hysterics of well-paid
4728 obfuscaters you will see that this bill is very thoughtful in
4729 its approach and is narrowly tailored to address just the concerns
4730 the bill seeks to address.
4731 Mr. Chair, I request unanimous consent to enter into the
4732 record the following documents:
4733 A September 2019 White Paper by -- I apologize. I won't.
4734 I won't offer those.
4735 I yield back.
4736 Chairman Nadler. The gentleman yields back.
4737 Without objection, all other opening statements will be

included in the record.

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

[The Amendment of Mr. Nadler follows:]

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

4745 Ms. Fontenot. Amendment in the nature of a substitute to
4746 H.R. 3849 offered by Mr. Nadler of New York. Strike all after
4747 the enacting clause --
4748 Chairman Nadler. Without objection, the amendment in the
4749 nature of a substitute will be considered as read, and shall be
4750 considered as base text for purposes of amendment.
4751 I recognize myself to explain the amendment.
4752 The amendment in the nature of a substitute makes several
4753 revisions to improve the bill. To better effect the goals of
4754 the bill, the amendment replaces the term "competing business
4755 or potential competing business" with the term "business user."
4756 In section 5 of the bill, the amendment defines the required
4757 affirmative consent in terms of users, rather than consumers,
4758 to provide additional clarity.
4759 The amendment also makes technical changes to section 6 of
4760 the bill to clarify when and how the agencies may remove a covered
4761 platform designation.
4762 In section 7, the amendment provides additional clarity
4763 about the role that a representative of the covered platform may
4764 have on a technical committee.
4765 Finally, the amendment makes additional technical and
4766 conforming changes in section 8 to clarify the scope of judicial
4767 review.
4768 All of these provisions improve an already good bill, and

4769 I urge all members to support the bill -- to support the amendment.

4770 I yield back the balance of my time.

4771 Are there any amendments to the amendment in the nature of

4772 a substitute.

4773 Ms. Scanlon. I move to strike the last word.

4774 Chairman Nadler. The gentlelady is recognized.

4775 Ms. Scanlon. Mr. Chairman, thank you. And thank you,

4776 Ranking Member Buck, for your remarks debunking some of the myths

4777 that have been promoted about this bill.

4778 During our seven hearings, the extensive briefings, and

4779 document review that the Intel Subcommittee conducted over the

4780 last year-and-a-half, we developed a record to reflect what most

4781 Americans know from personal experience. For too long, the

4782 largest online platforms have dominated key parts of the digital

4783 economy, acting as gatekeepers to stifle competition while

4784 compromising online user privacy and quality of service.

4785 We have seen the tech giants take advantage of a phenomenon

4786 known as network effect, which occurs in which the increase in

4787 the number of users of a service increases its value. This strong

4788 network effect of firms such as Facebook and Google have made

4789 it all but impossible for users to switch to competing platforms

4790 if they are unhappy with their service. Regardless of the quality

4791 of service, a user whose entire network is on Facebook can't simply

4792 switch to another social media platform that none of their friends

4793 use, and a new social media platform will struggle to attract
4794 new users for this very reason.
4795 While theoretically a consumer could simply leave a covered
4796 platform if they are unhappy, the services these firms provide
4797 have often become too ingrained in everyday life for that to be
4798 a real option. In other words, these huge platforms have
4799 monopolized the conversation.
4800 Facebook and Google, for instance, offer space for minority
4801 groups to organize as nets, for parents to get information about
4802 school closures or COVID-19 updates, and for small businesses
4803 to bring in customers. But the growing dominance of these firms
4804 in the digital marketplace has come with serious downsides, and
4805 it doesn't mean that they are the only or the best possible
4806 platforms for users to access vital services.
4807 In a truly competitive landscape we might expect the best
4808 companies to rise to the top. The strong network effect of the
4809 dominant platforms, however, have perverted this expectation in
4810 the digital marketplace. We know this because many users are
4811 unhappy with the costs associated with using these platforms,
4812 often being forced to compromise their privacy, their data, or
4813 their assets to participate online.
4814 A mom and dad organizing a bake sale or soccer practice online
4815 may prefer to do so on a platform that doesn't expose them or
4816 their children to misleading advertising. But doing so is near

4817 impossible because of a notable lack of competition in the digital
4818 ecosystem. Without meaningful competition there is little
4819 incentive for firms like Facebook and Google to respond to users'
4820 privacy and platform quality concerns, and there are few, if any,
4821 competing firms for Americans to turn to when these companies
4822 drop the ball.

4823 That is why I, along with my colleague Congressman Owen,
4824 introduced the ACCESS Act. This bipartisan, bicameral bill
4825 promotes competition online by disrupting network effect and
4826 lowering switching costs for consumers and businesses. The bill
4827 establishes data interoperability and portability requirements
4828 for dominant firms, thereby allowing new entrants to compete more
4829 effectively online, and giving users meaningful choice by
4830 ensuring that they can easily move their data to competing
4831 services.

4832 Much like texting allows iPhone owners to communicate with
4833 Android owners, so, too, would this bill allow individuals
4834 switching to new social media platforms to be able to communicate
4835 and interact with their friends and family on Facebook. For
4836 start-ups and small businesses, this would be a game changer.
4837 Small businesses could capture and store important data, such
4838 as their Google reviews or Amazon sales numbers, and take this
4839 information with them if they are unhappy with platform quality.

4840 Consumers would also find themselves emboldened and better

4841 served by increased competition. The mom or dad organizing the
4842 bake sale or soccer team could do so on a platform that relies
4843 on a business model free of ad revenue, or one that works harder
4844 to prevent the spread of misinformation.

4845 The bill also provides meaningful protection for user
4846 privacy, a priority for me and my colleagues on the committee.
4847 Businesses that choose to interoperate with covered platforms
4848 would have to meet the same security and privacy standards as
4849 the platforms themselves. And the FTC would oversee the creation
4850 of a strong privacy standard to protect user data.

4851 No longer would these companies be the only kids on the block.
4852 Instead of squeezing out competitors, they would have to compete
4853 for users, and consumers would have more choices if they found
4854 platforms coming up short.

4855 Big tech companies have convinced us that anticompetitive
4856 tactics and degradations in user privacy are just the costs of
4857 doing business; that to have access to great products we just
4858 have to settle. But this bill rejects that premise. This bill
4859 says let's do away with some of those barriers to entry and allow
4860 online competition to flourish. If better platforms arise from
4861 this legislation, then great. If Facebook or Google step up their
4862 service in response to competition, that is also great. Because
4863 in the end, consumers and small businesses will benefit from the
4864 additional choice. And that is what this bill is about: to give

4865 Americans the freedom to have a real say in the online platforms
4866 that work best for them and their family.
4867 I urge my colleagues to consider this legislation and to
4868 vote yes to advance it through today's markup.
4869 With that, I yield back.
4870 Chairman Nadler. The gentlelady yields back.
4871 Who else seeks recognition?
4872 Mr. Jordan, for what purpose do you seek recognition?
4873 Mr. Jordan. Strike the last word, Mr. Chairman.
4874 Chairman Nadler. The gentleman is recognized.
4875 Mr. Jordan. Thank you, Mr. Chairman.
4876 I just wanted to say that my good friend from Colorado said
4877 that, earlier, that there are no secret committees in this
4878 legislation. I just beg to differ.
4879 If the technical committees, if the technical committees
4880 in this bill aren't really secret, why do they operate in secrecy?
4881 Again, I will read from the legislation.
4882 Page 18 in the amendment in the nature of a substitute,
4883 "non-applicability of the Federal Advisory Committee Act. The
4884 Federal Advisory Committee Act shall not apply with respect to
4885 the technical committees."
4886 So, what does that mean? Normally when you have the Federal
4887 Advisory Committee Act apply there is notice of meetings, there
4888 is a notice of who is on the committee, the meetings are open,

4889 records are subject to inspection. But that doesn't apply. So,
4890 somehow you can all say that is not secret committees, but that
4891 sure sounds like a secret committee.
4892 Normally when there is an advisory committee created by the
4893 Congress they have to notice the meeting, tell you who is the
4894 member -- who are the members of the committee, when they are
4895 going to meet, you can go to those meetings and the records are
4896 subject to inspection. Obviously, the trade secret information,
4897 that wouldn't go public. I get that. But to say that there are
4898 no secret committee when in fact it specifically says there are
4899 secret committees in the legislation itself.
4900 So, first we are giving the FTC more money. We offered
4901 several amendments to limit the amount of money, where the money
4902 could be used, how it could be used. And, no, can't do that.
4903 They are going to get more money. We can't limit how it is spent.
4904 And, oh, they get to use that money to operate in secret.
4905 Such a deal. Such a deal for the taxpayers.
4906 And nowhere in there do we address the concern that I think
4907 most of the folks I get the privilege of representing in the 4th
4908 District of Ohio care about, which is censorship by big tech of
4909 their First Amendment liberties of their speech. So, that is
4910 my concern with this legislation, that is why I referenced it
4911 in my opening statement, as I said several hours ago, there are
4912 secret committees in here because the legislation says so, and

4913 it specifically says the law that we put, that Congress has passed
4914 at some point which says that you shouldn't have advisory
4915 committees that aren't subject to some kind of open transparency
4916 specifically doesn't apply.
4917 Mr. Buck. Will the gentleman yield?
4918 Mr. Jordan. I would be happy to yield to my friend.
4919 Mr. Buck. I would ask the gentleman why don't we just move
4920 or have an amendment to strike the language on page 18, lines
4921 21 to 24, and take care of that issue? There won't be secret
4922 committees if we do that.
4923 Mr. Jordan. I will certainly support that amendment. But
4924 reclaiming my time, I was responding to what you said. You said
4925 there are no secret committees. And I am, like, it is right there.
4926 Now you want to take, get rid of the language and get rid
4927 of the secret committees. So, it can't be both. That is what
4928 I was responding to. If you want to offer that amendment, I would
4929 be happy to support it for my good friend from Colorado.
4930 With that, Mr. Chairman, I yield back.
4931 Chairman Nadler. The gentleman yields back.
4932 For what purpose does the gentlelady from California seek
4933 recognition?
4934 Ms. Lofgren. To strike the last word.
4935 Chairman Nadler. The gentlelady is recognized.
4936 Ms. Lofgren. I want to thank Congresswoman Scanlon and Mr.

4937 Cicilline for identifying interoperability and portability as
4938 a very important item. That can give users fundamental control
4939 over their personal data when otherwise it would be locked away,
4940 and de facto owned by private companies.

4941 Ultimately, this gets to a central privacy right that each
4942 of us would have meaningful control over how our personal
4943 information is stored, used, and shared. Here, privacy rights
4944 aren't just about keeping information out of public view, they
4945 are also about users being free to share and use their data with
4946 others as they choose.

4947 For these reasons, portability and interoperability are
4948 policy goals I have long supported, although portability and
4949 interoperability are not the same.

4950 For example, in the Online Privacy Act, which I introduced
4951 with Representative Eshoo last year, we included extensive
4952 authority for a new data agency to require different online
4953 services to give users the power to make their data portable and
4954 interoperable at least when merited by the nature of the data
4955 service. And, thus, I strongly support the overall goal of this
4956 act.

4957 However, I must note that I do have substantial concerns
4958 with some of the provisions of the bill as drafted. Importantly,
4959 we need to make sure that bill contains the necessary safeguards
4960 to privacy and security risks from interoperability and

4961 portability. In order to achieve these goals, platforms must
4962 open up their systems and user data to third parties. And while
4963 this can be beneficial to both users and the competition, the
4964 risk from abuse or neglect of the technical details are quite
4965 obvious.

4966 Some of the biggest privacy scandals of the last decade,
4967 including Cambridge Analytica's debacle of the mass scraping of
4968 Facebook data without users' consent, were essentially the result
4969 of insecure schemes of portability and interoperability. Any
4970 time one app or device communicates with another, especially when
4971 it involves the transfer of sensitive information, there can be
4972 privacy security risks.

4973 I acknowledge this bill does contain some provisions
4974 obligating the FTC to write standards to address these issues,
4975 however, I believe these mandates need to be clear and more
4976 detailed in several respects in terms of what the FTC must do
4977 to ensure the interoperability required under the bill does not
4978 harm users or platform security. The underlying issue most past
4979 proposals of platform portability and interoperability have been
4980 just one part of a larger piece of privacy legislation. That's
4981 the approach we took in the Online Privacy Act. Setting forth
4982 a larger framework of privacy guarantees and enforcement is
4983 probably the only way to fully address this issue.

4984 That said, if we are going to make and mandate platform

4985 interoperability and standalone legislation through the FTC, we
4986 must at least include a minimum set of robust privacy protections.
4987 Unfortunately, given the speedy nature of this process, and both
4988 the legal and technical complexities of these challenges, it has
4989 not been possible to fix this concern prior to today.
4990 However, one of the amendments I intend to offer to the ACCESS
4991 Act would at least address a core problem in the bill, as drafted,
4992 involving interoperability and user consent. And regardless of
4993 the outcome in either these or the other amendments I intend to
4994 offer, work on privacy and security issues in the bill will, I
4995 am sure, continue.
4996 Ms. Scanlon is right, the big platforms have all your
4997 information. And if you can't move it, then you are really a
4998 prisoner of that platform. Who wants to leave a platform if they
4999 have all your baby pictures and all of your videos of your
5000 grandchildren locked up?
5001 So, although the big platforms now provide for portability,
5002 the principle of it is sound but the privacy interoperability
5003 needs to be enhanced.
5004 I look forward to working with Congresswoman Scanlon and
5005 Chairman Cicilline and any other members to address these
5006 concerns. And I am hopeful that we can ultimately craft a
5007 solution that gives users more control over their personal data
5008 that will boost competition, which I believe in, and will also

5009 protect privacy, security, and the legitimate business and
5010 technical interests of the platform.
5011 And I see that my time has expired. So, I will yield back,
5012 Mr. Chairman.
5013 Chairman Nadler. The gentlelady yields back.
5014 For what purpose does Mr. Biggs seek recognition?
5015 Mr. Biggs. Move to strike the last word.
5016 Chairman Nadler. The gentleman is recognized.
5017 Mr. Biggs. Thank you, Mr. Chairman.
5018 It was said this morning that a monopoly will fail if it
5019 doesn't satisfy its customers. And that is true. But a monopoly
5020 may also enhance its staying power by engaging in unfair business
5021 practices. Even the great Austrian economist Friedrich Hayek
5022 suggested that markets work when the players are engaged in fair
5023 competition.
5024 For instance, we provide enforcement institutions and
5025 regimes to deal with issues such as fraud or tortious conduct
5026 to keep our markets fair.
5027 Almost 130 years ago a movement was undertaken to cure
5028 inequities in the market. Remedies were undertaken to
5029 particularly address barriers to entry and unfair competitive
5030 practices. Yes, a monopoly may develop because of environmental
5031 conditions: first out of the box, development of increasingly
5032 recurring factors, et cetera. But if a business rises to a

5033 position not just as a dominant player, but in a monopolistic
5034 position of unfair practices designed to crush competition and
5035 inhibit barriers to entry, then there is a limited role for
5036 government to intervene on behalf of society, consumers,
5037 competitors, entrepreneurs.

5038 We have reached the point where big tech companies regularly
5039 have obtained and maintained a monopolistic practice or, excuse
5040 me, position. These companies have crushed competitors,
5041 prevented entrepreneurs from entering the field, used their power
5042 positions to stifle voices of individuals, exceeding the scope
5043 of a normal platform. They have undertaken demonstrably to
5044 censure certain viewpoints, particularly conservative
5045 viewpoints.

5046 Judicial proceedings concerning unjust treatment of
5047 business and individuals will not obtain due process because these
5048 big tech companies can crush a plaintiff in discovery proceedings.
5049 Normal market forces will not bring this back into balance.
5050 These companies need to be reined in and, frankly, should be
5051 dismantled.

5052 Each of the four substantive bills that we are considering
5053 are rooted in strong soil, but each is also in danger of succumbing
5054 to a sort of weeds and brambles. In this particular bill that
5055 we are considering, on page 17 one of my concerns is the -- it
5056 says that "A failure by the covered platform to participate in

5057 good faith in development of standards by the Technical Committee
5058 shall be a violation of this statute." I would suggest to you
5059 that a covered platform required to participate as large as these
5060 are may actually try to take over that technical committee. That
5061 is a concern I have.
5062 What makes that a concern particularly is on page 18, line
5063 15 through 20, when it says the role of a technical committee
5064 established under this act "is advisory in nature" -- that seems
5065 appropriate -- "and such committee shall have no implementation
5066 or enforcement authority." I agree with that position.
5067 "However, the Commission shall give strong consideration to the
5068 recommendations of such committees in implementing this Act."
5069 What does "strong consideration" mean? How is it visible?
5070 How is it interpreted? Particularly in light of the fact that
5071 I agree with my friends Mr. Jordan and Mr. Buck that maybe lines
5072 21 through 24 should be modified. But how does that, how does
5073 that deal with it should you get the situation where it is closed
5074 door, you can't see what is going on, and one of these, one of
5075 these big bad actors -- and I do believe they are bad actors --
5076 tries to manipulate that system? I am concerned about that.
5077 I thank the folks who participated in putting this together.
5078 I do believe that to solve these issues, including the issue
5079 that the ranking member mentioned which is paramount in the minds
5080 of my constituency, and that is the unfair censorship of

5081 conservative voices by these tech oligarchs, I do believe that
5082 the best way we are going to find to resolve that issue is to
5083 attack them through the antitrust laws.
5084 So, I appreciate the effort to try to craft laws that work.
5085 I just want to make sure they do work and if we are going to
5086 engage in this.
5087 And with that, Mr. Chairman, I will yield back.
5088 Chairman Nadler. The gentleman yields back.
5089 For what purpose does the gentlelady from Texas seek
5090 recognition?
5091 Ms. Jackson Lee. Move to strike the last word.
5092 Chairman Nadler. The gentlelady is recognized.
5093 Ms. Jackson Lee. If I place myself in the shoes of an
5094 ordinary consumer, and certainly one that has been either both
5095 plagued and benefitted from the amazing tech revolution, I can
5096 assure you that one of the elements of their concern is the ability
5097 to protect their data and to have flexibility in the device service
5098 that they use.
5099 So, I want to thank Congresswoman Scanlon and Congressman
5100 Cicilline and the committee for a very utilitarian legislation,
5101 and Republican co-sponsor as well, Mr. Owens. Because the idea
5102 of being able to augment compatibility in competition, for
5103 enabling service switching access is an idea long overdue.
5104 I do think it is important as well to ensure your protected

5105 privacy. But there is social networking going on with consumers
5106 as young as probably four years old, e-commerce, app stores.
5107 Wasn't their Prime Day just Monday or Tuesday of this week? Maybe
5108 it is still going on.

5109 One of the things that I think is noteworthy that all of
5110 the use that our devices are subjected to, they are inescapably
5111 put into the public sphere with susceptibility to cyber hacking.
5112 And so, as we look at this legislation, want to be concerned
5113 about and ensure that we continue to focus on that as we are able
5114 to move our data from one place to the next.

5115 The digital economy, strong network effects, and high
5116 switching costs often result in a winner-take-all market, locking
5117 in the dominance of some firms while blocking new entrants from
5118 contesting these markets. In the middle of this, of course, are
5119 the consumers.

5120 The ACCESS Act is a catalyst for competition requiring that
5121 dominant online platforms are interoperable with other services
5122 and gives users more choice online by allowing them to move their
5123 data to a competing service.

5124 H.R. 3849 promotes competition online by lowering barriers
5125 to entry and switching costs for businesses and consumers through
5126 interoperability and data portability requirements. H.R. 3849
5127 is similar to the interconnection and phone number portability
5128 requirements under the Telecommunications Act of 1996, pretty

5129 long time ago. But, under H.R. 3849, coveted platforms are
5130 required to maintain interfaces to facilitate portability of user
5131 data and interoperability with competing businesses.
5132 I am always reminded of the importance of protecting the
5133 data of consumers who don't have their own infrastructure to do
5134 so.
5135 I think it is important to comment on these various tech
5136 committees because the legislation charges the FTC to oversee
5137 the process, including establishing platform-specific standards,
5138 and setting up technical advisory committees to assist in the
5139 standards-making process. I want my good friends to know that
5140 I don't believe these are Pfizer courts. These are committees
5141 that have a logistical and mechanical responsibility. And that
5142 is that they help with the standards to ensure that the bill or
5143 the legislation works, that data can be switched, that the
5144 consumer is protected, and to review when there is a need to
5145 improve that.
5146 They assist in the standards-making process. I don't think
5147 you can say they do any more or do any less. And to suggest that
5148 there might be some hidden agenda, I think we can only assume
5149 that they are simply working to make sure that the consumer is
5150 protected with the right kind of standards.
5151 Finally, the legislation also includes privacy safeguards,
5152 user consent, data minimization, and requires the FTC to include

5153 privacy and security guardrails in the interoperability and
5154 portability standards it develops and issues. These are ongoing
5155 efforts. Privacy always requires enhanced review. It always
5156 requires responding to new technology and, of course, the
5157 capability of those who are intent on criminal activities, use
5158 ransomware, and to undermine either Colonial Pipeline or any other
5159 entity, including consumers.
5160 So, I support this legislation, look forward to its passage
5161 and our continuing work in this committee on these efforts.
5162 With that, I yield back.
5163 Chairman Nadler. The gentlelady yields back.
5164 For what purpose does Mr. Buck seek recognition?
5165 Mr. Buck. I have an amendment at the desk.
5166 [The Amendment of Mr. Buck follows:]
5167
5168 **********COMMITTEE INSERT**********

5169 Chairman Nadler. The clerk will report the amendment.

5170 Ms. Lofgren. Reserve a point of order.

5171 Chairman Nadler. Point of order is reserved.

5172 Ms. Fontenot. Amendment to the amendment in the nature of
5173 a substitute to H.R. 3849 offered by Mr. Buck of Colorado. Page
5174 18, strike lines --

5175 Chairman Nadler. The amendment will be considered as read.

5176 The gentleman is recognized.

5177 Mr. Buck. I thank the Chair.

5178 So, this is the amendment that I mentioned a moment ago with
5179 Mr. Jordan. It moves, on page 18 it moves to strike lines 21
5180 through 24. And in that, in their place adds a reporting
5181 requirements, which is something that I heard from a number of
5182 members that they felt strongly about that we should have a
5183 reporting requirement.

5184 So, I don't, I don't believe that the lines make this a secret
5185 committee any more than to say that our bills, for example, in
5186 Congress are drafted in secret. The fact that a --

5187 [Alarm sounds.]

5188 Ms. Lofgren. It is a traffic emergency light.

5189 I withdraw my point of order, by the way.

5190 Mr. Buck. So, as I was saying, this amendment moves to
5191 strike this language and add a reporting requirement. It is very
5192 simple and straightforward, and I would ask for member support

5193 on it.

5194 Mr. Jordan. Will the gentleman yield?

5195 Mr. Buck. I will yield, yes.

5196 Mr. Jordan. So, I just want to be clear. In the draft of
5197 the bill prior to this amendment, prior to this amendment, the
5198 current draft of the bill are there secret committees?

5199 Mr. Buck. In my view they are not secret because any action
5200 that the committee takes needs to be approved by the Commission.

5201 Mr. Jordan. Well, then why do we need your amendment?

5202 I mean, a little bit ago, 15 minutes ago, if the gentleman
5203 will yield, 15 minutes ago you said you wanted to debunk certain
5204 false statements made earlier. Fifteen minutes ago you said
5205 that. Now all of a sudden you need an amendment. Even though
5206 you said there are no secret committees there, now you need an
5207 amendment to take out the language that actually says there are
5208 secret committees because it says the Federal Advisory Committee
5209 Act does not apply, which means no notice, no open meetings, no
5210 records subject to inspection, and no notice of who the members
5211 are of the secret committee.

5212 So, which is it? Is there a secret committee or is there
5213 not a secret committee?

5214 Mr. Buck. There is not a secret committee. But to address
5215 your concerns, Mr. Jordan, I am offering this amendment to strike
5216 the language so that this, this won't be an issue in gaining

5217 support for this bill.

5218 And I yield back.

5219 Ms. Scanlon. Mr. Chairman, I would move to strike the last

5220 word.

5221 Chairman Nadler. The gentleman yields back.

5222 For what purpose does --

5223 Ms. Scanlon. I would move to strike the last word.

5224 Chairman Nadler. Well, the gentlelady is recognized.

5225 Ms. Scanlon. Thank you.

5226 As I understood Mr. Jordan's objection, it was to language

5227 indicating that the, sorry, that a certain act did not apply.

5228 Mr. Jordan. Federal Advisory Committee Act.

5229 Ms. Scanlon. Yes, Federal Advisory Committee Act. And,

5230 in fact, that only applies to fully government committees. And

5231 this is a partially government committee, and also partially

5232 private actors.

5233 So, I thank Representative Buck for this amendment. I

5234 completely agree that transparency should be a pillar of any

5235 comprehensive legislation. And I think this amendment will help

5236 Congress to understand the positive impacts of the ACCESS Act.

5237 It allows us to better oversee implementation of its provisions.

5238 So, I plan to vote in favor of this amendment, and would

5239 encourage my colleagues to do the same.

5240 With that, I would yield back.

5241 Chairman Nadler. Does anyone else want to speak on this
5242 amendment?
5243 Mr. Massie. Mr. Chairman.
5244 Chairman Nadler. Mr. Massie.
5245 Mr. Massie. Yes. Move to strike the last word.
5246 Chairman Nadler. The gentleman is recognized.
5247 Mr. Massie. I'm glad we're talking about transparency here
5248 because I'm trying to figure out why one of the biggest offenders
5249 of big tech has mysteriously evaded the scrutiny of this committee
5250 and this broad swath of bills that seek to radically rewrite our
5251 antitrust law.
5252 I'm talking about Microsoft. Is anybody here concerned that
5253 on behalf of the Communist Party, Microsoft censored Bing, search
5254 engine results of Tank Man on the anniversary of the Tiananmen
5255 Square protests, including results for users in the United States,
5256 and has muzzled the voices of China critics on LinkedIn?
5257 We need transparency. LinkedIn also has restricted
5258 accounts for posts related to COVID-19, citing its misinformation
5259 policy. LinkedIn censored posts that the coronavirus originated
5260 from a dangerous laboratory in Wuhan, China.
5261 Finally -- there are lots of examples -- for one of the
5262 biggest tech companies in the world it is not covered by this
5263 bill, it seems.
5264 They've got -- they've got a function in their software in

5265 Microsoft Word called Ideas in Word. It's a tool that urges users
5266 to avoid language that Microsoft dislikes, and instead to adopt
5267 language Microsoft considers to be appropriate -- appropriate
5268 and politically correct.
5269 So how did -- how is it that one of these billion-dollar
5270 tech companies seemingly -- trillion -- sorry, $2 trillion --
5271 is not covered by this bill?
5272 I mean, we're supposed to believe that we are here rewriting
5273 antitrust laws to protect the little guy from these dangerous
5274 big companies, and I just came into possession of a document that
5275 everybody needs to know about. It's marked confidential
5276 Microsoft. A whistleblower provided this.
5277 It's the first draft of one of these bills that would have
5278 covered Microsoft. This begs the question. Did Microsoft have
5279 this bill and the other bills that we are voting on today before
5280 I had this bill?
5281 Why would you have to mark it confidential Microsoft if they
5282 found it on the website for Congress? Why would it have to be
5283 marked this way?
5284 And so, you know, okay, they're going to be affected. Maybe
5285 they need to know this is coming. I don't know why they would
5286 need to know it before me.
5287 But isn't it strange that one of the biggest changes in this
5288 bill, and it's particular not just to one of the bills, but several

5289 of the bills today, it was -- the bills were going to cover anybody
5290 that has at least 500,000 United States-based monthly active
5291 users.
5292 But now the threshold -- maybe the author of this bill can
5293 explain to me why the threshold was moved from 500,000 to 50
5294 million. Is there a single tech company that meets every other
5295 definition of this bill that would have been covered that is no
5296 longer covered because of this change except for Microsoft? And
5297 were they given an advanced copy of this bill?
5298 Why do -- why am I holding one, the first copy of this bill
5299 that says confidential Microsoft, and it came from Microsoft?
5300 Can somebody answer that question?
5301 Chairman Nadler. The gentleman yields back?
5302 Mr. Massie. Well, I would like to yield time to anybody.
5303 Maybe the author of the bill could explain, or the broad swath
5304 of bills, why this change was made and why it seemingly only
5305 affects Microsoft, none of the other big tech companies, and did
5306 Microsoft have an -- did Microsoft have a copy of this bill before
5307 I had a copy.
5308 I'd gladly yield.
5309 Mr. Cicilline. I'd like my own time because there's only
5310 54 seconds left. So --
5311 Mr. Massie. All right. Well, I'll be interested to hear
5312 that. I would like to respond to it. Maybe we'll get some more

5313 time later.

5314 Mr. Issa. Would the gentleman make a copy of that available

5315 to the rest of us?

5316 Mr. Massie. It will be -- the staff, I hope, can distribute

5317 a copy of this.

5318 Mr. Issa. I thank the gentleman.

5319 Mr. Massie. Thank you. And if nobody wants to answer that

5320 question, I'll yield -- I'll yield back.

5321 Chairman Nadler. The gentleman yields -- the gentleman

5322 yields back.

5323 Mr. Swalwell?

5324 Mr. Swalwell. Thank you, Chairman, and thank you to my

5325 colleague, Ms. Scanlon of Pennsylvania.

5326 Allowing users to carry data between applications and

5327 platforms, which is known as portability, and ensuring that

5328 applications and platforms work with each other, known as

5329 interoperability, are good principles.

5330 But I think what we are seeing is that interoperability

5331 especially can be a hornet's nest, and so it having thousands

5332 of companies in my districts and five-digit number of employees,

5333 thousands of employees who work at these companies, from one to

5334 two employees up to companies that have thousands of their

5335 workforce, I have sought to understand what each of these bills

5336 would mean for them.

5337 And so I've got just a couple of concerns, and I hope that
5338 my colleagues could sort out some of these, and I think Ms. Lofgren
5339 seeks to address some of them in her amendments.
5340 First, with scope, again, I'm for interoperability and
5341 portability. But why would we not want any tech company to be
5342 required to have interoperability and portability? And I think
5343 Ms. Lofgren made the point earlier about Zoom and some other
5344 smaller companies that are widely used but may not meet the tech
5345 giant criteria that are here.
5346 And so I do think, if we are really looking out for consumers,
5347 we would want to make sure that interoperability and portability
5348 was required everywhere.
5349 As it relates to consent, I do have concerns that under the
5350 bill it would involve third party access to data, as Ms. Lofgren
5351 pointed out. I do think we need to protect privacy and user data
5352 control and give the user an ability to consent to the use of
5353 third party access to data.
5354 I'm really concerned about China, and if this bill would
5355 require a U.S. company to be interoperable with a Chinese company,
5356 and we all can imagine the dangers if the Chinese government has
5357 access to U.S. person data, particularly, you know, people who
5358 work in the government or work at companies that have valuable
5359 trade secrets.
5360 I am wondering about GDPR and if any of this would violate

5361 GDPR, considering that most of the companies contemplated here
5362 are international companies and, you know, we would hate to set
5363 American companies up to not be competitive overseas.
5364 On the issue of security, there are security and privacy
5365 standards for interoperability but not for portability, and I
5366 think Ms. Lofgren is going to address this, but I have a concern
5367 about that.
5368 And then as it relates to API platforms, this would allow
5369 the FTC -- this would require the FTC to be involved in API
5370 platforms and approving API platforms before any anti-competitive
5371 allegation is made.
5372 And again, it just concerns me that you would have to go
5373 through the government if you are creating an application and
5374 get approval from the government rather than commit a violation
5375 and then have the government say that it is a violation.
5376 Again, I think that would slow innovation and make us less
5377 competitive, particularly to China.
5378 So those are my questions and concerns. I think we're going
5379 to sort some of this out with Ms. Lofgren's amendments.
5380 Again, I thank the gentlelady from Pennsylvania for wanting
5381 to take this on. As I said, this is a very challenging area and
5382 she has worked very hard to try and take it on, and I hope we
5383 can find a way to sort out some of these issues.
5384 And I yield back.

5385 Mr. Cicilline. Mr. Chairman?

5386 Chairman Nadler. The gentleman yields back. Who seeks
5387 recognition?

5388 Mr. Jordan. Mr. Chairman? Mr. Chairman?

5389 Chairman Nadler. The gentleman from Ohio.

5390 Mr. Jordan. Thank you, Mr. Chairman. Move to strike the
5391 last word.

5392 Chairman Nadler. The gentleman is recognized.

5393 Mr. Jordan. If what the gentleman from Kentucky just told
5394 us is accurate, think about this. We got bills that are supposed
5395 to go after big tech being written by big tech.

5396 Oh, and remember this. The secret committees, Microsoft
5397 will get to sit on those secret committees because you have to
5398 have a competitor on those committees. So they get to weigh in
5399 on the front end on how the bill is written.

5400 They get to sit in on the secret committees that aren't
5401 subject to the Federal Advisory Committee Act and weigh in with
5402 what the technical committee will then advise the FTC to do.

5403 And the FTC is supposed to do what under this legislation?
5404 Strongly take into consideration what the technical committee
5405 tells them. Wow. This is amazing. This is amazing.

5406 Now, again, we don't know if this is a whistleblower --
5407 this information but somehow Mr. Massie got it. But that is
5408 amazing. That's what we have here.

5409 Bills that supposedly go after big tech being written by
5410 big tech, the same big tech who can sit on the secret technical
5411 committees advising the FTC, the FTC who says we should use
5412 antitrust law for all kinds of things. Wow. We're going to pass
5413 this stuff.
5414 What we want to deal with is the censorship of conservatives.
5415 That's what we want to focus -- that's what our constituents
5416 care about. It's amazing. This is amazing.
5417 I'll yield to anyone who to wants to talk on our side, but
5418 I'll yield to Mr. Issa.
5419 Mr. Issa. You know, Ranking Member Jordan, I share your
5420 concern that we really cannot answer the question except that
5421 there's no reason, and I don't believe anyone at Microsoft would
5422 believe that a $2 trillion company that is one of only two in
5423 existence with more customers worldwide than virtually any
5424 company in the history of our planet would be exempt from this.
5425
5426 So I do agree with you that if -- that there is a concern
5427 that all of us need to ask, and I know Ms. Lofgren is going to
5428 be dealing with some of this later.
5429 This committee needs to seriously consider whether this is
5430 a bill of attainder, whether or not we have narrowed it
5431 artificially to four companies when, in fact, there should be
5432 four or 400 or 4,000 companies that potentially, in the case of

5433 this particular bill, okay, if interoperability needs to go from
5434 Facebook, Amazon, Apple, and Google, then doesn't it need to go
5435 from Alibaba back?
5436 On what basis would we have the dominant player in China
5437 and all over the rest of the world able to take from all four
5438 of these companies but have no requirement to be interoperable
5439 back?
5440 You know, Mr. Owens has studied a lot of this and we talk
5441 about it, because he's supportive of the bill, but he talks about
5442 phones. But phones are interoperative both directions every
5443 single phone.
5444 That's the way the system was designed. We are looking at
5445 four companies, not Microsoft, but only for companies that would
5446 have to give up their jewels, give up information to make their
5447 product send but not receive back.
5448 So I wouldn't say that this is ill conceived with Microsoft
5449 out of it. I think Microsoft knows that and I think that all
5450 of us need to ask the question of are we looking at too few
5451 companies, particularly when it comes to interoperability and
5452 portability.
5453 I don't think that any of us think that if we're on a different
5454 platform -- if instead of Gmail I'm on Hotmail that somehow there
5455 shouldn't be any interoperability, because Hotmail, which might
5456 have almost as many users, or Microsoft Outlook, but there's no

5457 interoperability requirement because they're not covered.

5458 I think that's a valid point, and I think that what the

5459 gentleman from Kentucky showed us should cause us all to pause,

5460 maybe even pause on this markup until we know more.

5461 And I yield back.

5462 Chairman Nadler. The gentleman yields back.

5463 Mr. Jordan. I yield to the gentleman the last 40 seconds.

5464 The gentleman from North Carolina.

5465 Mr. Bishop. Thank you. Thank you, Mr. Jordan.

5466 Chairman Nadler. The gentleman's time --

5467 Mr. Jordan. I yield to the gentleman from North Carolina,

5468 Mr. Bishop.

5469 Mr. Bishop. Thank you to the gentleman from Ohio.

5470 You know, one of the things that's interesting about where

5471 we are is we're marking up these bills within a week or so after

5472 they've emerged, and I understood the reason for that -- and I

5473 don't know if I got it explicitly or implicitly or read it

5474 somewhere -- was because the concern that once they're out there,

5475 the big tech companies will be shooting at them and trying to

5476 shoot them down.

5477 But this development that Mr. Massie revealed would suggest

5478 they've had the bills or at least one of them had the bills in

5479 advance anyway.

5480 So why not take the time to have hearings on the bills and

5481 develop them fully and solve some of these problems about what
5482 interoperability means and the like, rather than do this on the
5483 fly?
5484 I yield back.
5485 Chairman Nadler. The gentleman yields back. For what
5486 purpose does the gentleman from Rhode Island seek recognition?
5487 Mr. Cicilline. I move to strike the last word.
5488 Chairman Nadler. The gentleman is recognized.
5489 Mr. Cicilline. I want to begin, Mr. Chairman, by thanking
5490 the gentlelady from California for working with me and our staffs
5491 have been working together on this privacy issue, and someone
5492 who has been such a champion of privacy and I am confident that
5493 we're going to get to a good place on that and really appreciate
5494 her suggestions to make some amendments that I think will improve
5495 the bill.
5496 But I want to say, first, very clearly, throughout this
5497 process, and this was an investigation that was conducted for
5498 16 months, there are no exemptions in these bills. Zero. No
5499 company is exempted, period. Each of these bills is broadly
5500 applicable to firms that meet a definition for covered platform.
5501
5502 That's a determination made by the enforcement agencies.
5503 So no one on this committee can make that determination. We
5504 had an investigation which focused on four companies in

5505 particular, but there are -- there's a criteria that's not company
5506 specific.
5507 The three things are is the online platform owned or
5508 controlled by a parent company that has a market capitalization
5509 in excess of $600 billion; two, does the online platform have
5510 at least 50 million U.S.-based monthly active users or 100,000
5511 monthly active business users; and three, is the only -- is the
5512 platform a critical trading partner, meaning an online platform
5513 that has gatekeeper power or the ability to restrict or impede
5514 access to users or a tool that businesses need to effectively
5515 serve their users or consumers.
5516 That's the definition. There are no exemptions.
5517 Mr. Massie. Would the gentleman yield?
5518 Mr. Cicilline. No, I'm not done.
5519 And whether or not a particular company is covered or not
5520 is determined by whether or not they meet that standard, period.
5521
5522 And so I want to thank Ms. Scanlon again because this
5523 legislation acknowledges these competition problems online,
5524 develops a competition base solution that's narrow and targeted
5525 so there aren't unintended consequences.
5526 And we have had three hearings on remedies specifically after
5527 the committee approved the report that all provided testimony
5528 with respect to each of these bills that are before us.

5529 So this is a two and a half year process, and while there
5530 will be more opportunities to continue to think about these
5531 issues, this is a bill that, by the way, was introduced in the
5532 last Congress. So you don't have to be a detective to have found
5533 a copy of it. It was introduced by national security hawk Mark
5534 Warner.
5535 And so this idea of portability and interoperability is not
5536 a new one. It's been out there for two years. And so this is
5537 a very specific definition. There are no exemptions. There's
5538 no mystery here.
5539 This is a bill that was previously introduced and I urge
5540 my colleagues to support it. And with that, I yield back.
5541 Chairman Nadler. The gentleman yields back.
5542 There are a series of -- there are a series of votes on the
5543 floor. The committee will be in -- the committee will stand in
5544 recess until the end of those votes.
5545 [Recess.]
5546 Chairman Nadler. The committee will come to order. The
5547 pending question is the amendment offered by Mr. Buck of Colorado.
5548 Who seeks recognition?
5549 Mr. Issa. Chairman?
5550 Chairman Nadler. For what purpose does the gentleman --
5551 Mr. Issa. To move to strike the last word.
5552 Chairman Nadler. The gentleman is recognized.

5553 Mr. Issa. Mr. Chairman, you can fix some things and some
5554 things will be better. But let me just go through a couple of
5555 quick questions of what won't be fixed while still having a
5556 committee to decide things whether it's public or private, as
5557 it currently is.
5558 They will be asked, for example, with Amazon what will be
5559 -- what did you buy, how much did you pay, how much were you willing
5560 to pay, and all the things that were sold to you, and that will
5561 be interoperable under this bill with Alibaba.
5562 And the committee that will decide it, whether public or
5563 private, will be a subentity created by the Federal Trade
5564 Commission that'll decide what Alibaba gets to know about what
5565 you bought from Amazon, potentially allowing for better
5566 competition, Alibaba, to in fact interoperatively bid on the same
5567 product or a similar product, probably made in China, that, in
5568 fact, they will offer you at a lower price in competition with
5569 Amazon because they're interoperable.
5570 They're simultaneously able to see the data. That's the
5571 interoperability, Mr. Chairman, and that's what the secret or
5572 not secret committee will decide.
5573 In Facebook, of course, where you are, what you're doing,
5574 and what you've posted, in fact, could be -- could go not just
5575 to a competitor of Facebook but to hundreds or thousands or tens
5576 of thousands of other apps that will be developed that will want

5577 to scrape that data. Scraping data sounds pretty coarse, but
5578 interoperability and scraping data are the same thing, Mr.
5579 Chairman.
5580 So under this bill, hundreds or thousands of companies will
5581 be able to scrape data from Facebook and we'll have that available,
5582 and the only thing stopping it will be some subcommittee of the
5583 Federal Trade Commission, whether it's public or secret, that,
5584 in fact, will decide that.
5585 Now, then we go to Apple. Now, you know, I remember having
5586 Microsoft-compatible Intel clones, and as a result, there was
5587 a clone to the Intel IBM AT.
5588 But the reality is an Apple clone is, essentially, guaranteed
5589 in this bill. Somebody can make something. Since all the apps
5590 have to be interoperable, since Apple has to open up its system
5591 to be interoperable, that means that, in fact, there can be a
5592 competing app store selling products that Apple has nothing to
5593 do with but they all work with Apple, but they also work with
5594 an Apple clone that could easily be developed.
5595 And, of course, we go to Google. Now, Google has to make
5596 all of its platforms interoperable because it's, clearly,
5597 covered. That means that all the work on geolocation, Google
5598 Maps, and all of that is available to hundreds or thousands of
5599 would-be competitors.
5600 Now, we like competition. But at what point is this bill

5601 in its mandate -- not for privacy and portability, but with the
5602 term interoperability going to, clearly, make it possible for
5603 companies to come in and compete using one direction the data
5604 of Amazon, Facebook, Apple, and Google?
5605 It might seem fair to some on the dais that since these
5606 companies are worth a trillion-plus dollars, some of them two-plus
5607 trillion, that it's okay to take their data but not be
5608 interoperable back.
5609 But the current legislation not only mandates that they make
5610 their data available to any and all competitors, quote,
5611 "interoperable" but that, in fact, they do so based currently
5612 on the secret committee.
5613 And I want to thank the gentleman from Colorado. In
5614 fairness, I think he's making a good faith effort to try to get
5615 rid of the secret nature of this committee.
5616 But we still have the question, and I would try to -- I don't
5617 want to say shame but ask all of you, if I've got a form here
5618 and I'm going to ask that it be placed at all of your desks that
5619 simply says, defining intellectual property what would you
5620 consider to be your property on the following platforms, and it
5621 says Amazon, Facebook, Apple, Google, and I threw in Twitter,
5622 because I will bet you that when you get done filling out what
5623 you think is yours and you pass it to the person to your left
5624 or right, it will not match.

5625 If it will not match with your feelings, then we, as a body,
5626 have an obligation go a lot further before we hand it off to a
5627 bureaucracy that hands it off to a secret committee.
5628 And if it's not a secret committee, because if the gentleman
5629 has fixed it with this amendment, he will, in fact still be handing
5630 it to a committee, including competitors, that is created to allow
5631 data to go one direction and not another under this bill.
5632 And with that, I thank the gentleman and yield back.
5633 Chairman Nadler. Okay. The gentleman yields back.
5634 Mr. Tiffany. Mr. Chair? Mr. Chair?
5635 Chairman Nadler. Who seeks recognition?
5636 Mr. Cicilline. Mr. Chairman?
5637 Chairman Nadler. For what purpose does gentleman from Rhode
5638 Island seek recognition?
5639 Mr. Cicilline. Move to strike last word. Oh, I'm sorry.
5640
5641 Chairman Nadler. The gentleman is recognized.
5642 Mr. Cicilline. Sorry.
5643 Ms. Lofgren. I'll ask to be recognized and yield to the
5644 gentleman to strike the last word.
5645 Chairman Nadler. The gentlelady from California is
5646 recognized to strike the last word.
5647 Ms. Lofgren. I yield to Mr. Cicilline.
5648 Mr. Cicilline. I thank the gentlelady for yielding.

5649 It's important to note that this legislation in its very
5650 text requires the secure transfer of data, and I know that Ms.
5651 Lofgren is going to offer some amendments and I think that will
5652 strengthen that.
5653 But the ACCESS Act already includes robust safeguards to
5654 protect user privacy and data security.
5655 First, the bill directs the FTC to establish baseline privacy
5656 rules that makes certain that user data sent through
5657 interoperability interfaces is protected. This creates clear
5658 privacy guardrails for interoperability.
5659 The ACCESS Act also directs the FTC to establish technical
5660 committees to develop interoperability standards for individual
5661 covered platforms. The FTC is expressly directed to protect data
5662 security and privacy in the development of these technical
5663 standards.
5664 The ACCESS Act empowers a covered platform to make changes
5665 necessary to address security vulnerabilities without running
5666 afoul of the Act's interoperability requirements without having
5667 to get prior approval from the FTC.
5668 Additionally, the bill includes data minimization
5669 requirements that ensure companies that are interoperating are
5670 not unnecessarily sharing or using data.
5671 Companies that receive shared data from the covered
5672 platforms under the Act and fail to take steps to protect user

5673 privacy or protect the security of the covered platform will be
5674 in violation of the Act, subject to penalties, and the FTC may
5675 require the covered platform to cut off interoperability with
5676 that business user
5677 The Electronic Frontier Foundation wrote to the committee
5678 yesterday urging us to approve the ACCESS Act and the other bills.
5679 EFF explained that privacy and security protections are already
5680 addressed by the ACCESS Act, and as they noted, and I quote, "Under
5681 no circumstance does the ACCESS Act prevent a big tech platform
5682 from taking steps that are genuinely necessary to secure their
5683 product or service," end quote.
5684 In response to criticism from the largest platforms about
5685 the ACCESS Act, EFF explained, and I quote, "It would be
5686 categorically false to assert that user privacy would worsen under
5687 the legislation, given the requirements to safeguard privacy and
5688 the remedies included for lack of compliance," end quote.
5689 Public Knowledge also wrote to the committee in support these
5690 bills and explained that the privacy safeguards are built into
5691 the ACCESS Act so that data is shared only at the behest of the
5692 user and unscrupulous competitors are cut off.
5693 And so I thank the gentlelady for yielding and yield back.
5694
5695 Ms. Lofgren. The gentleman yields back.
5696 I would just note, since we're on the Buck Amendment, that

5697 I will have an amendment that, I think, tightens up the provisions
5698 that the chairman says he favors and, hopefully, we'll all be
5699 able to be in agreement on that.
5700 But that is for the next amendment, and I would yield back,
5701 Mr. Chairman.
5702 Chairman Nadler. The gentlelady yields back. For what
5703 purpose does Mr. Bentz seek recognition?
5704 Mr. Bentz. Strike the last word, Mr. Chair.
5705 Chairman Nadler. The gentleman is recognized.
5706 Mr. Bentz. Thank you.
5707 Mr. Chair, I had an amendment prepared, actually, and brought
5708 it with me this morning to indeed strike out the language that
5709 exempted these so-called secret committees from the Federal
5710 Advisory Committee Act. Here it is. And I replaced it with the
5711 applicability of the Federal Advisory Committee Act.
5712 I find that under Mr. Buck's amendment, and I had to ask
5713 -- I was going to ask him to explain if we needed my amendment
5714 to supplement his. I was told, however, by staff that we don't,
5715 that should the Buck Amendment be adopted then the FACA, the
5716 Federal Advisory Committee Act, applies.
5717 And so with that, Mr. Chair, I yield back.
5718 Chairman Nadler. The gentleman yields back.
5719 For what purpose does Mr. Lieu seek recognition?
5720 Mr. Lieu. I move to strike the last word.

5721 Chairman Nadler. The gentleman is recognized.

5722 Mr. Lieu. Thank you, Chairman Nadler.

5723 I want to thank again Antitrust Subcommittee Chairman David
5724 Cicilline and members who authored this package of antitrust bills
5725 and staff for their hard work. They have put in approximately
5726 two years of effort on very complicated issues.

5727 At the same time, this highlights that for everybody else
5728 on the Judiciary Committee we have not had a single hearing on
5729 this package of bills.

5730 Many members of this committee are now grappling for the
5731 first time with the complex field of antitrust law as applied
5732 to the complicated area of computer technology.

5733 The proposed legislation has enormous consequences and
5734 Judicial Committee members who are not on the subcommittee have
5735 not heard from a single expert witness, software engineer, or
5736 third party seller to understand how this recently-introduced
5737 bill text would actually operate in real life.

5738 I reiterate again my request that the Judiciary Committee
5739 still schedule at least one hearing on these bills so we can better
5740 understand how the legislation would impact consumers and our
5741 economy.

5742 I support the intent of these bills. However, I have a
5743 number of concerns with the way the bill language is drafted.
5744 I'm voting to advance all these antitrust bills out of the

5745 committee to allow the legislative process to continue.

5746 But depending on whether these concerns are fixed, I may
5747 or may not vote for these bills on the House floor. And as
5748 Representative Massie, Swalwell, and Issa pointed out with
5749 respect to this particular bill and some of the other bills, why
5750 are we only applying it to a very small handful of companies that
5751 I can count on one hand?

5752 Representative Issa analogized this to a bill of attainder.
5753 We are writing what looks like special legislation directed at
5754 very specific companies. Why is Microsoft not included?

5755 Why, for example, is Walmart.com not included? Walmart has
5756 more retail sales than Amazon. It's got a market cap over $380
5757 billion. Why are we excluding Walmart.com from this legislation?

5758 And when we're talking about interoperability, we don't just
5759 want four companies to have interoperability. We want the
5760 thousands of companies that are in the technology field dealing
5761 with software and hardware to have interoperability.

5762 So I agree with what some of the other members have raised.
5763 We should not just be applying this to only a very small number
5764 of companies. If we believe that either a practice is
5765 anti-competitive and it should be banned, then no company should
5766 be able to engage in it.

5767 If we think interoperability is good, then let's make every
5768 company engage in it. We should not be doing special legislation,

5769 and I hope that this can resolve prior to the floor. And for
5770 the other bills, I also have specific concerns as they come up.
5771
5772 And with that I yield back.
5773 Chairman Nadler. The gentleman yields back.
5774 For what purpose does Mr. McClintock seek recognition?
5775 Mr. McClintock. To strike the last word.
5776 Chairman Nadler. The gentleman is recognized.
5777 Mr. McClintock. Thank you.
5778 Mr. Chairman, Mr. Buck's amendments really don't do anything
5779 to alleviate the number of concerns that I have over this bill.
5780 Let me mention three of them.
5781 As I understand it, this imposes a technical standard for
5782 the transfer of data based presumably on today's technology.
5783 But if that standard is to be imposed by the federal bureaucracy
5784 it's going to stifle innovation on new ways to share and
5785 communicate and manage data.
5786 I mean, think of telecommunications technology 50 years ago
5787 and ask if consumers would be better off or worse off today if
5788 we'd imposed standards for interoperability on a technology based
5789 on phone books and punch cards.
5790 Any innovations even contemplated by a company would first
5791 have to be approved by the government for permission to proceed.
5792 Government is not renowned for technological innovation.

5793 By requiring a government sign off on any innovations to improve
5794 data communication and management, I think, effectively answers
5795 that there's just not going to be much.
5796 The second concern that I have Mr. Massie raised, these big
5797 tech companies comprising a committee to write standards for the
5798 handling of this data.
5799 You know, Milton Friedman warned that regulatory agencies
5800 are formed ostensibly to protect the consumer, as in this case,
5801 but they're always ultimately captured and controlled by the very
5802 interests that they're supposed to be policing.
5803 That's because those interests have the most to gain and
5804 the most to lose, and they always use those powers to protect
5805 themselves from competitors at the expense of consumers.
5806 You know, Adam Smith made that point when he said people
5807 of the same trade seldom meet together, even for merriment and
5808 diversion, but the conversation ends in a conspiracy against the
5809 public or in some contrivance to raise prices, and I'm afraid
5810 you're setting in motion exactly that sad experience that we
5811 failed learn from.
5812 One other concern, we've recently witnessed the enthusiastic
5813 leaking of strictly private, strictly confidential, tax data by
5814 the IRS.
5815 Imagine the potential for abuse made possible by the mandated
5816 government interface that companies will be required to trust

5817 with all of the data in their -- in their possession. Data, in
5818 many ways, is the foundation of all human experience.
5819 Centralizing its management under the authority of
5820 government, I think, is an extraordinary expression of trust and
5821 faith that we are and will forever be governed by angels. And
5822 I don't think we are and I don't think we will be.
5823 I think it's far better that that data be held and managed
5824 and used according to the voluntary agreements made between many
5825 providers and their customers, those voluntary agreements
5826 protected by a consumer's right to say yes or no to the terms
5827 of those agreements.
5828 I think that's a far safer repository of the information
5829 that defines our lives and our society.
5830 I yield back.
5831 Chairman Nadler. The gentleman yields back.
5832 Who else seeks --
5833 Mr. Bishop. Mr. Chairman?
5834 Chairman Nadler. For what purpose does Mr. Bishop seek
5835 recognition?
5836 Mr. Bishop. To strike the last word.
5837 Chairman Nadler. The gentleman is recognized.
5838 Mr. Bishop. Thank you, Mr. Chairman.
5839 I want to revisit for a moment a point about the definition
5840 of covered platform raised by Mr. Massie on the revelation about

5841 the Microsoft document and the possibility that Microsoft may
5842 perhaps -- or speculation, maybe, that Microsoft had some input
5843 into its draftsmanship and then Mr. Cicilline's response to that,
5844 and Mr. Cicilline offered two arguments about the definition of
5845 covered platform.
5846 And I submit that they conflict with each other and they
5847 get at something that's been bothering me about this definition
5848 of covered platform that is repeated in all of the substantive
5849 bills.
5850 On the one hand, the gentleman from Rhode Island said that,
5851 first of all, no one's been cut out because there are criteria
5852 that decide who's been -- who is a covered platform, and those
5853 criteria appear on page 9 and 10 of the bill. Fifty million
5854 monthly active users or 100,000 users of a -- business=based users
5855 -- business users, a $600 billion market cap for revenues, and
5856 then if it's a critical trading partner, which is a whole separate
5857 problem.
5858 Those are the criteria except the section doesn't end there.
5859 It says you can be a covered platform either by meeting those
5860 criteria or by being designated by the FTC. And if you go over
5861 to the designation program, the FTC is to designate based on
5862 whether or not they meet those criteria. It's circular and it
5863 begs the question, why.
5864 So Mr. Cicilline says, well, there are criteria and

5865 everybody's saying, well, they're four companies. If it's that
5866 clear that four companies are identified, why do we need the FTC
5867 to designate someone?
5868 And so, on the one hand, Mr. Cicilline said the criteria
5869 establish who is there. No one's cut out. Well, I submit that
5870 you could draft the criteria to cut somebody out, first, and then
5871 the second point is the fact that you can have this disjunctive
5872 way -- you can have the FTC designate someone.
5873 What is the purpose of that if the criteria are clear and
5874 pick understandable companies, particularly if, as Mr. Lieu just
5875 said, we're talking about a number of companies you can count
5876 on one hand?
5877 It just doesn't make sense and it's another indication that,
5878 to me, goes back to my trouble about all the substantive bills.
5879 What if we had a hearing on these and had that kind of development,
5880 and then you could -- someone could either explain why it has
5881 to be that way or change it. But instead --
5882 Mr. Cicilline. Mr. Bishop, if you'll yield I'm happy to
5883 answer your question.
5884 Mr. Bishop. I'd be glad to yield.
5885 Mr. Cicilline. Great. Thank you.
5886 So two things I would say. First of all, the FTC is the
5887 authority that can make a designation. However, state AGs also
5888 have antitrust authority, and so if someone meets the definition

5889 of a covered platform -- so, for example, Ken Paxton, the attorney
5890 general of Texas, wanted to sue Google and determine that they
5891 were a covered platform under this definition, the state AG
5892 doesn't have the authority to designate them.
5893 So we had to provide a definition, which is the definition
5894 that's provided with those three components. This definition
5895 was used because it came out of the investigation, the evidence
5896 that was uncovered during that 16 months that these were markets
5897 that were particularly concentrated, and we determined that this
5898 was the appropriate way to be sure that we were capturing the
5899 conduct that resulted in the findings that there was significant
5900 market power, that they were gatekeepers to commerce, that they
5901 were crushing innovation, disadvantaging consumers, and small
5902 businesses.
5903 So it grew out of the factual record that was generated in
5904 that 500-page report. It wasn't sort of just pulled out of the
5905 air. It was that was the scope of the investigation, and this
5906 recommendation or language is consistent with our findings in
5907 the investigation.
5908 Thank you. I yield back.
5909 Mr. Bishop. I thank the gentleman, and reclaiming my time.
5910 I submit that that makes it even clearer that the idea of the
5911 FTC designating is superfluous.
5912 The FTC could proceed with an action in the very same way

5913 you just posited a state attorney general could proceed with an
5914 action if a company meets the definition, meets the criteria.
5915
5916 The only reason I can think of to have the FTC designate
5917 is so that the FTC, rather than an Article 3 judge or jury, becomes
5918 the determiner of fact and the decision -- the fact-based decision
5919 whether they're covered they're bound on appeal -- on the
5920 administrative appeal.
5921 And to me that is -- reinforces the notion that you're
5922 delivering power to the administrative agency far beyond what
5923 there's a need for. You only need to do that when you can't define
5924 something in the legislation, and if these criteria are
5925 sufficiently clear and they derive from the investigation, which
5926 has gone on for years, then we ought to be able to stop at that.
5927
5928 I yield back my time.
5929 Chairman Nadler. Who else seeks recognition? For what
5930 purpose does the gentleman from Kentucky seek recognition?
5931 Mr. Massie. Thank you, Mr. Chairman. I move to strike the
5932 last word on this amendment.
5933 Chairman Nadler. The gentleman is recognized.
5934 Mr. Massie. You know, portability and interoperability,
5935 this -- if you're a user of software, that sounds like a great
5936 thing. But we need to understand how technologically difficult

5937 interoperability is and also how dangerous it is.

5938 If you look at the biggest hacks that have occurred, they
5939 rely on aspects of interoperability -- what is the piece of code
5940 that all these pieces of software have in common that we can
5941 exploit?

5942 Because the more interoperability there is, the more
5943 vulnerability there is, and so imposing interoperability, I
5944 think, is a dangerous thing.

5945 Portability sounds good. It's going to be hard to achieve.
5946 Maybe you're talking about export ability, because to require
5947 a company to comply with the standards of another company, you
5948 may be violating their intellectual property.

5949 But to export the data that might be an okay thing. But
5950 understand this. Natural monopolies -- companies love to have
5951 their standard as the standard that everybody has to comply with
5952 in order to compete with them.

5953 This is what they do. They want interoperability. They
5954 use interoperability to maintain their market dominance. If you
5955 can have the standard for how the videos are stored or if you
5956 can have the standard for how documents are shared, then you can
5957 dominate a market.

5958 And so what we're doing is saying let's get the government
5959 in there and impose this aspect of market dominance. Let's help
5960 these companies establish these standards that they use to keep

5961 their monopolies.

5962 What am I talking about? For instance, let me give you an
5963 example. If you want to do business with the federal government,
5964 the federal -- and you've invented a new operating system or a
5965 new computer and it's better than anything that ever existed,
5966 guess what the government is going to tell you today?

5967 Oh, you're going to have to interoperate with the Intel
5968 management engine and you're gonna have to interoperate with the
5969 Microsoft operating system if you want to do business with the
5970 government.

5971 Who got that in the purchasing agreements. Those companies
5972 that have the monopolies. They love to enforce interoperability
5973 because the smaller company cannot dedicate millions of dollars
5974 to develop swaths of code that have already been developed by
5975 Microsoft or Intel. They can't create a foundry.

5976 So what do they have to do to interoperate? They're going
5977 to have to license. They're going to have to buy a license from
5978 the monopoly to compete with the monopoly if interoperability
5979 is a requirement.

5980 That's the way it works today. If you want to do business
5981 with the government and you got a better computer or a better
5982 operating system, well, go talk to Intel and go talk to Microsoft
5983 because they've got market dominance and if you want to sell to
5984 the government you got to interoperate.

5985 Mr. Cicilline. Mr. Massie, will you yield?

5986 Mr. Massie. I will yield.

5987 Mr. Cicilline. Yeah. So I think, again -- sorry.

5988 Mr. Massie. If you'll -- and then you -- I've got a question

5989 for you, too.

5990 Mr. Cicilline. Yeah. So this interoperability and

5991 portability only applies to covered platforms. So the little

5992 guy that you just described would have the ability to opt in but

5993 would not be required to provide interoperability and data

5994 portability.

5995 So it's exactly the little guy that would not be obligated

5996 to do that, only those firms that meet the covered platform

5997 definition because of their market dominance, because of the size

5998 of the market that they control, the number of users, their market

5999 caps, that they would be required to --

6000 Mr. Massie. But what if -- reclaiming my time.

6001 What if the little guy wants to be a big guy? What if --

6002 what if --

6003 Mr. Cicilline. You may -- however, you're not required to

6004 is my point under legislation.

6005 Mr. Massie. So you don't have to interoperate? We're not

6006 going to require that from these companies?

6007 Mr. Cicilline. Correct. It is not required other than for

6008 the covered platforms.

6009 Mr. Massie. Well, that's a problem. What if you want to
6010 grow up and --
6011 Mr. Cicilline. Then you're allowed to. You may volunteer
6012 this standard. You're not required to.
6013 [Cross talk.]
6014 Mr. Massie. -- interoperate with -- I mean, I've developed
6015 software, CAD software and, boy, that was the Holy Grail to
6016 interoperate with the big guys. It was just not achievable
6017 without buying a license --
6018 Mr. Cicilline. And you would be permitted to do that.
6019 Nothing in this legislation would prevent you from doing that.
6020 It's a requirement for the covered platforms --
6021 [Cross talk.]
6022 Mr. Massie. Reclaiming -- reclaiming -- reclaiming my time.
6023 I've got a question for you. Did -- was this -- was your
6024 bill or any of the bills that we're debating today changed to
6025 exclude Microsoft, the standard?
6026 Mr. Cicilline. Absolutely not.
6027 Mr. Massie. Did Microsoft get an early copy of the bill?
6028 Mr. Cicilline. Absolutely not. We share drafts of bills
6029 throughout the investigation with people who participated in the
6030 investigation to get their feedback.
6031 That happened all throughout the investigation and the
6032 drafting. So they were -- they were -- all of the people who

6033 participated in the investigation. That included advocates,
6034 think tanks --
6035 Mr. Massie. Yeah. I would -- reclaiming my time. I wasn't
6036 -- reclaiming my time. I wasn't here for the investigation.
6037 I thought we were debating a bill, not an investigation.
6038 And it just feels a little swampy to me that we find this
6039 document that says Microsoft confidential and it's a copy of the
6040 bill, and they probably had a copy of the bill before I did, and
6041 then -- I'm talking about your bill, not the particular bill we
6042 have here.
6043 And then it got changed so that it miraculously doesn't apply
6044 to Microsoft anymore. That just feels a little bit swampy to
6045 me.
6046 My time is expired and I yield back.
6047 Mr. Johnson of Louisiana. Mr. Chairman?
6048 Chairman Nadler. For what purpose does -- for what purpose
6049 does Mr. Johnson seek recognition?
6050 Mr. Johnson of Louisiana. To strike the last word.
6051 Chairman Nadler. The gentlemen is recognized.
6052 Mr. Johnson of Louisiana. Thank you, Mr. Chairman.
6053 A lot has been said today and we have a lot longer to go.
6054 But, on the general idea that this is a rush to the full committee,
6055 I just want to point out it's not just members here in the room,
6056 and not just conservatives, that are concerned about this.

6057 I wanted to seek consent to enter into the record a letter
6058 from some of our colleagues on the chairman's side of the aisle,
6059 the New Democrat Coalition. This is a letter dated June 18,
6060 signed by a number of Members on the Democrat side in the House,
6061 and they address it to Speaker Pelosi and Majority Leader Hoyer,
6062 yourself, and Subcommittee Chair Cicilline.
6063 And they note -- and I'm just going to read from the letter
6064 -- quote, "The scope and impact of these bills" -- meaning all
6065 of them, the five antitrust bills -- "could have a tremendous
6066 impact on the products and services many American consumers
6067 currently enjoy and the competitiveness of our innovation
6068 economy. Notably, stakeholders and policy experts are raising
6069 concerns these proposals may weaken personal privacy protections,
6070 cybersecurity, and increase the spread of dangerous conspiracy
6071 theories and misinformation. On behalf of the New Democrat
6072 Coalition, instead of proceeding directly to markup, we
6073 respectfully request you hold full legislative hearings on these
6074 specific bills to better understand their impacts and the intended
6075 and unintended consequences of legislation."
6076 And the letter goes on to say that these are just complex
6077 and far-reaching issues, that there seems to be a rush to judgment,
6078 as you heard from Mr. Lieu, Mr. Bishop, and many others here today.
6079 And there's a lot of us that have that pause and that concern.
6080 I just want to note it's signed by the following Members

6081 of Congress: Suzan DelBene, Scott Peters, Sharize Davids, Ann
6082 McLane Kuster, Chrissy Houlahan, Kathy Manning, Brad Schneider,
6083 Stacey Plaskett.
6084 I'd like to seek consent to enter this into the record and
6085 just want to make note here --
6086 Chairman Nadler. Without objection.
6087 Mr. Johnson of Louisiana. Thank you.
6088 [The information follows:]
6089
6090 ********** COMMITTEE INSERT **********

6091 Mr. Johnson of Louisiana. I make the note here that there's
6092 a lot of good faith, I think, I mean I would acknowledge, on both
6093 sides. I think there is broad bipartisan agreement with the top
6094 lines and what we need to accomplish here, what we're trying to
6095 accomplish. But, as we know, with all legislation, the devil
6096 is in the details, and many of us are having grave concern about
6097 some of the details.
6098 So, with that, I yield --
6099 Mr. Gaetz. Would the gentleman yield for a question?
6100 Mr. Johnson of Louisiana. I yield.
6101 Mr. Gaetz. I'm a bit curious because at the beginning of
6102 the hearing I heard the ranking member suggest that one of the
6103 reasons to oppose the legislation is because someone who had
6104 worked for Chairman Nadler supported it. And now, I'm hearing
6105 from my friend from Louisiana that we should oppose the
6106 legislation because there's some Democrats who also oppose it.
6107 Does the gentleman from Louisiana have a guess as to whether
6108 or not the individuals who signed the New Democrat Coalition
6109 letter might be extensively financially supported by the
6110 Political Action Committees that are funded by the employees of
6111 the four major platforms?
6112 Mr. Johnson of Louisiana. Reclaiming my time, I don't have
6113 any information about these individuals, but I'll say that we
6114 don't impugn the motives of any of our colleagues. And I do

6115 believe -- I do believe -- that most of the people on this
6116 committee, and elsewhere in Congress, have similar concerns that
6117 we're in a "Brave New World"; we need to address what big tech
6118 is doing and how it's done. But to come into committee with these
6119 five hugely important, encompassing bills is difficult.
6120 Mr. Jordan. Will the gentleman yield?
6121 Mr. Johnson of Louisiana. I'm happy to yield. I yield to
6122 the ranking member.
6123 Mr. Gaetz. It might be something other than bravery.
6124 Mr. Jordan. I thank the gentleman for yielding.
6125 I just want to go back to the point Mr. Bishop raised in
6126 conjunction with what Mr. Massie raised. Mr. Massie raised the
6127 idea that Microsoft got a copy of the bill, the Cicilline bill,
6128 before any of us did. And Mr. Bishop was talking about how this
6129 definition of covered platform was determined.
6130 The response I thought I heard from the gentleman from Rhode
6131 Island was a 16-month investigation -- I think this is a direct
6132 quote -- "The 16-month investigation determined the definition
6133 we use for covered platform," which sort of begs the obvious
6134 question: well, then, why did it change in the last week and
6135 a half? If it was a 16-month investigation, talking with all
6136 these big tech companies that determined the definition of what
6137 a covered platform is, why did, a week and a half ago, it say
6138 500,000 users a month, and then, it went to 50,000 -- or excuse

6139 me -- 50 million users a month? Why did that change? That's
6140 the fundamental question.
6141 Something happened in the week and a half, not in the 16
6142 months, something happened in a week and a half, because the
6143 definition we were under a week and a half ago when the Democrats
6144 first talked about these bills was 500,000 users per month, and
6145 that changed to 50 million. Something changed. And we do, under
6146 that change, Microsoft would have been covered under the 500,000
6147 definition, not covered under the 50 million. I don't know.
6148 I don't know. That's the question.
6149 Mr. Johnson of Louisiana. Reclaiming my time, it's not a
6150 rhetorical question. I think we need an answer. I'm wondering
6151 if Chairman Cicilline or the subcommittee, or anyone else, might
6152 have an answer. I'm happy to yield to Mr. Cicilline if he's got
6153 --
6154 Mr. Gaetz. I thank the gentleman for yielding.
6155 I was on the subcommittee with Mr. Cicilline. And when the
6156 investigation began, the four companies that we invited to
6157 participate, these four CEOs that we examined were Mr. Pichai,
6158 Mr. Zuckerberg, Mr. Bezos, and Mr. Cook. So, it's certainly not
6159 surprising to me that those are the four companies that we arrive
6160 at with legislation, because that's where the investigation
6161 originated.
6162 Mr. Johnson of Louisiana. I'm out of time.

6163 Chairman Nadler. The gentleman's time has expired.

6164 For what purpose does Mr. Tiffany seek recognition?

6165 Mr. Tiffany. To strike the last word.

6166 Chairman Nadler. The gentleman is recognized.

6167 Mr. Tiffany. Thank you, Mr. Chairman.

6168 So, what I heard, I think it was just before the break, from
6169 the gentleman from Rhode Island -- and I know he's brought this
6170 before us in good faith, as others have -- but I what heard was
6171 that there was not -- we can count on the FTC that there's not
6172 going to be a release of information; that we're not going to
6173 see unauthorized releases of information; that there will be some
6174 privacy that will be respected, and things like that.

6175 And I just think about the point that Mr. McClintock made
6176 in regards to the IRS, and it really concerns me. All of the
6177 bills that we're seeing today, what we heard earlier today was
6178 that the IRS needs more money; the FTC needs more money, and that
6179 the FTC is not going to release information that they shouldn't,
6180 when we've got a record of the IRS that they're doing that. And
6181 they've been doing it for a long time.

6182 And, in fact, this goes back, we saw it very personally in
6183 Wisconsin a decade ago by Lois Lerner, when Lois Lerner conspired
6184 with an election official, the top election official in Wisconsin,
6185 and it ended up where they raided people's homes. They raided
6186 people's homes in the early morning hours in something that,

6187 ultimately, was struck down by the courts. But this enormous
6188 power is being sent to our federal government.
6189 I want to piggyback, also, on the comments that Mr. Lieu
6190 made, because I think he really hit the nail on the head. So,
6191 I'm hearing today that there's this two-and-a-half-year process,
6192 and this is a classic argument I've seen so many times in
6193 legislative proceedings, is "We've worked so hard at this."
6194 Well, you've got to make sure that these bills are ready for
6195 primetime.
6196 And I think what we're seeing right now is that there are
6197 some real concerns, and Mr. Lieu brought that up today, that,
6198 boy, I don't know if I can vote on this because I just don't have
6199 enough information. And I think there's quite a few people that
6200 are sitting both on this committee and in this legislative body
6201 that they're not prepared to be able to vote on this.
6202 So, I would just close by saying this: big tech is a big
6203 problem. They are a big problem for this country. From what
6204 I've been seeing, they are not loyal to the United States of
6205 America at times, the country that has had the laws in place,
6206 the framework in place, to be able to establish what they did,
6207 to be as successful as they have. And you really wonder sometimes
6208 why they, I think, actively diss the United States of America,
6209 which the framework of our government is the reason why they were
6210 so successful.

6211 And the censorship that they've exercised is just
6212 unconscionable in a country like this that believes in freedom
6213 of speech. I mean they are virtually at times the book-burners
6214 of decades ago. And so, that's really of great concern. Big
6215 tech is a big problem.
6216 But you know what a bigger problem is? There's one other
6217 thing that's a bigger problem, and that is big government. And
6218 that is when government does not stay in its lane to make sure
6219 that it's serving the people, in this instance, of the United
6220 States of America.
6221 And what we saw with the IRS -- and we just saw recently,
6222 as Mr. McClintock alluded to -- they took the liberty of violating
6223 people's privacy. And I think we have to be deeply concerned
6224 about that, as we go through all of these bills. And I know most
6225 of people here, if not all, that they are concerned about that.
6226 But I would just go back to Mr. Lieu's point. I don't know
6227 if this stuff is ready with all the questions that are arising.
6228 Mr. Bishop. Would the gentleman yield?
6229 Mr. Tiffany. I yield back.
6230 Mr. Bishop. Would the gentleman yield.
6231 Mr. Jordan. Will the gentleman yield?
6232 Mr. Tiffany. I would yield the balance of my time to Mr.
6233 Jordan.
6234 Mr. Jordan. I just want to ask the question for the fourth

6235 time. Mr. Massie has asked it twice. I've asked it once; I want
6236 to ask it again. Why did the definition change?
6237 I mean, we've heard now since 10 o'clock this morning that
6238 this was the greatest investigation in history, the most
6239 bipartisan investigation; everyone was onboard. The 16-month
6240 investigation determined the definition of what a covered
6241 platform is, and then, the last week and a half the definition
6242 changed. And no one will answer the question, why? Why did it
6243 change? Now we have one piece of evidence that Mr. Massie put
6244 in front of the committee, which is a confidential copy of the
6245 Cicilline bill given to Microsoft. Why did the definition
6246 change?
6247 I mean, we've heard it from everyone: everyone worked
6248 together; we all were in this. Sixteen months, that determined
6249 the definition. But, then, it changed. Someone answer that
6250 question. No one will answer. I think the American people, when
6251 we're getting now to see big tech marry up with big government,
6252 the American people deserve an answer to that simple question.
6253 I thank the gentleman for yielding.
6254 Mr. Tiffany. I yield back, Mr. Chairman.
6255 Chairman Nadler. The gentleman yields back.
6256 I'll recognize myself and I'll yield to Mr. Cicilline.
6257 Mr. Cicilline. Thank you, Mr. Chairman.
6258 I'm going to try to answer this again for my colleagues.

6259 I think what they might be referring to is an early draft of
6260 the bill which had a bracketed figure around it. This bill was
6261 introduced in the Senate with a $100 million cap, and I think
6262 that was a month ago. And I think the final bills that were
6263 introduced in all of these bills that are before us today have
6264 the same covered platform definition, which went lower to 50
6265 million. So, it's different than the Senate version.
6266 I think maybe what you're holding, although I've not seen
6267 it, was an earlier version which had bracketed numbers while these
6268 determinations were being made. But all the bills that were
6269 introduced settled on this same definition. It's a lower
6270 threshold than the Senate introduced in the ACCESS Act of 100
6271 million. It's 50 million. And again, I think it was the sense
6272 of the sponsors of the bill that this reflected the record that
6273 was developed in the investigation, as Mr. Gaetz said, of four
6274 companies.
6275 Mr. Massie. Would the gentleman yield for a quick question?
6276 The document -- and I'm sorry you don't have a copy; we'll
6277 run it over to you right now -- it says, "H.R." It doesn't say
6278 Senate. It's says, "H.R."
6279 Mr. Cicilline. No, no, that's what I said. It's probably
6280 an early draft of the House version of it.
6281 Mr. Massie. But it's not the ACCESS Act. It's your bill.
6282 It's the nondiscrimination -- it's the bill you're sponsoring.

6283 That's the one we're bringing up.

6284 Mr. Cicilline. We used the same covered platform definition

6285 in all five bills.

6286 Mr. Massie. No, I know that, but we're talking about the

6287 Cicilline bill, not the ACCESS bill. That's what we have that

6288 says, "Confidential Microsoft". Not that was introduced by the

6289 Senate; we're talking about your bill.

6290 Chairman Nadler. It's my time. Okay. Let me just say

6291 that, in general, I want to thank Ranking Member Buck for offering

6292 this amendment. The amendment eliminates the bill's exemption

6293 to the Federal Advisory Committee Act, to the FTC technical

6294 committees established under the Act. The Federal Advisory

6295 Committee Act is, arguably, inapplicable to the technical

6296 committees, since they are private public advisory commissions.

6297 There will be opportunity for public oversight and input

6298 in the standard-setting process. Regardless of this amendment,

6299 any standards issued by the FTC under the Act, under this Act,

6300 will be subject to notice and comment requirements. These

6301 requirements will increase transparency. They reflect best

6302 practices for these types of private public technical committees.

6303 And therefore, I support the amendment and I urge my colleagues

6304 to do the same.

6305 I yield back.

6306 Who seeks recognition?

6307 Mr. Gaetz, for what purpose does Mr. Gaetz --

6308 Mr. Gaetz. To strike the last word.

6309 Chairman Nadler. The gentleman is recognized.

6310 Mr. Gaetz. I thank the chairman.

6311 I support the Buck amendment. I think that the improvements
6312 we can make to these bills to enhance transparency will build
6313 confidence in the ultimate legislative outcome.

6314 I wanted to address a couple of points that my friends have
6315 made on the right side of the aisle. When one of my colleagues
6316 says the government just needs to stay in its lane, it really,
6317 I think, sharpens the digital interface and the consumer
6318 interaction with it, the importance of it, and the inability to
6319 be able to rein in these platforms in any other way.

6320 And I'm glad that we've taken a measured approach in this
6321 package to not only give the FTC additional tools, but also to
6322 allow state attorneys general to do that, so that people can have
6323 multiple lanes with which to approach the abuses of big tech.

6324 And when my friend from California says that people can
6325 choose to enter into these relationships or not, based on the
6326 terms of service, I just have to wonder whether any of our fellow
6327 Americans have ever found a moment where they've said, "Thank
6328 goodness for the Twitter terms of service." Or the Google or
6329 YouTube or Facebook terms of service. That typically is there
6330 to protect the company, and they are contracts of adhesion. They

6331 are explicitly contracts of adhesion, and I think that that
6332 recognition would be helpful.
6333 Hearing all the concern about the Microsoft exclusion raises
6334 a question in my mind. If the legislation were to reflect the
6335 original thresholds, would my colleagues from Kentucky and Ohio
6336 be more amenable to the legislation? I understand it's a fair
6337 question to ask why someone's perspective on a bill changed, but
6338 it seems like a strawman if that's not something substantive
6339 relevant to your ultimate determination on whether to support
6340 the bill.
6341 So, I would ask my friend from Ohio, if the draft which Mr.
6342 Massie has uncovered for us were an amendment, would he vote for
6343 it? No?
6344 Mr. Massie. Would the gentleman yield?
6345 Mr. Gaetz. Yes, certainly. Certainly. I would yield to
6346 Mr. Massie.
6347 Mr. Massie. To me, it's more of a red flag. Who wrote these
6348 bills? Like if Microsoft got a crack at rewriting it, did the
6349 other four companies get a crack at rewriting it? And to Ken
6350 Buck's amendment, which would improve the bill, will they get
6351 another crack at writing the details in this committee?
6352 Mr. Gaetz. Well, I wonder that myself.
6353 Mr. Massie. Yes, good point. Good point.
6354 Mr. Gaetz. I'm going to reclaim my time.

6355 I wondered that myself. And one piece of evidence that's
6356 very persuasive to me is that these four companies that are covered
6357 are doing everything possible to oppose these bills. That's what
6358 The New York Times has reported. That's what, even today,
6359 Politico is reporting that they are lobbying up; that they are
6360 spending money; that they are squeezing and threatening Members
6361 of Congress. They are threatening to withhold Political Action
6362 Committee dollars. And we all know that big tech is one of the
6363 major industries that funds political campaigns and that motivate
6364 Members of Congress to do things for those reasons.
6365 I want to explicitly say I don't think that's the case for
6366 anyone on this committee. I think all of the debate we've heard
6367 has been thoughtful and based on people's view of how the
6368 legislation would impact our fellow Americans. But I can't help
6369 but notice that the big tech companies seem to think that they
6370 have the ability to motivate people with their lobbyists and with
6371 their donations, and that's where they're trying to kill the
6372 bills.
6373 Mr. Bishop. Would the gentleman yield?
6374 Mr. Gaetz. And I don't think they would be doing that if
6375 -- look, if Google and Facebook thought that they could go to
6376 these committees in the FTC and wrap the apparatus of big
6377 government around their businesses, they would be for it. But
6378 they're not because they know it would limit their power.

6379 I'll yield to the gentleman from North Carolina.

6380 Mr. Bishop. And Mr. Massie said it's a red flag. It's what
6381 we'd call biased evidence, right? In other words, what is the
6382 source of the legislation? And to the extent it's been authored
6383 by or passed by or improved or edited by the targets of the
6384 regulation, it begs the question whether there are things lurking
6385 there that we haven't recognized, especially when we get today
6386 --

6387 Mr. Gaetz. Right, Mr. Bishop, but reclaiming my time, all
6388 of that comes to the point of whether they're for it or against
6389 it, right? At the end of the day, these companies have a binary
6390 decision for them: do they believe this is going to helpful to
6391 them or are they going to believe it's harmful?

6392 And, of course, Mr. Cicilline has socialized the legislation
6393 to stakeholders. One would expect in almost any bill that that
6394 would happen. We all do that with the bills that we sponsor.

6395 Chairman Nadler. Would the gentleman yield?

6396 Mr. Gaetz. I would be willing to accept the lower threshold
6397 because I think Mr. Massie makes a point for how Microsoft should
6398 be included.

6399 I yield to the chairman.

6400 Chairman Nadler. I simply want to say I find myself in rare
6401 agreement with the gentleman.

6402 Mr. Gaetz. Let's not make it too common, Mr. Chairman.

6403 [Laughter.]

6404 Chairman Nadler. That was all I wanted to say, actually.

6405 Mr. Gaetz. Thank you. I yield back.

6406 Chairman Nadler. The gentleman yields back.

6407 Okay.

6408 Mr. Roy. Mr. Chairman?

6409 Chairman Nadler. Who else seeks recognition on the

6410 amendment?

6411 Mr. Roy. Roy.

6412 Chairman Nadler. Mr. Roy?

6413 Mr. Roy. Move to strike the last word.

6414 Chairman Nadler. The gentleman is recognized.

6415 Mr. Roy. So, at the current moment, we're debating the Buck

6416 amendment that changes the provision, right, with respect to the

6417 committees or the secret committees, and so forth? So, on that

6418 point, I certainly think that amendment is an improvement and

6419 I think a good-faith effort to improve it.

6420 I am currently not inclined to support the underlying bill.

6421 I'm going to look at all the amendments here as it unfolds in

6422 this debate.

6423 I think that the gentleman from North Carolina has said it;

6424 I think the ranking member has said it, and others, about the

6425 need for legislative hearings and further debate on this important

6426 matter.

6427 The only thing that I think, though, that I worry is getting
6428 kind of lost here, or jumbled here a little bit, is I just want
6429 to know what our actual goal here and our approach on what we
6430 want to do about the size and scope of these companies and their
6431 influence on competitive behavior. And I don't know the answer.
6432 I don't. I don't know the answer.
6433 We've got legislation in front of us. We're debating it,
6434 and right now I can't support the bill because it goes too far
6435 with respect to interoperability, some of the issues that have
6436 been raised, what I think that might do with respect to some of
6437 the stuff that my friend from Kentucky raised in terms of pressures
6438 on small companies, and so forth.
6439 But, at the end of the day, the Microsoft provision, I mean
6440 we all -- like I haven't seen a bill in this town that the lobbyists
6441 down on K Street didn't have before me ever.
6442 [Laughter.]
6443 I literally never have seen that. I've never seen that in
6444 any appropriations context, anything. I am always getting
6445 information from K Street, not from inside this building. That's
6446 how this place works, America.
6447 And so, I usually vote no on almost everything because I
6448 think most of the things that happen here are making things worse.
6449 And so, I'm starting from that premise here. It takes me a lot
6450 to move off of no. So, I'm on no. People want to go down the

6451 Floor? I wear that little red button out because I start on no.
6452 But I do think in this context we're having a debate; the
6453 American people are watching -- some. Lord help you, it's
6454 beautiful out; don't watch this. But we're watching this, and
6455 what are we going to do? Are we going to do anything?
6456 I think the gentleman from Kentucky raised an important
6457 point. The gentleman from Florida asked the question, "Would
6458 you support this bill without the Microsoft?" I think the answer
6459 is probably no. I think because of a lot of the sensibilities
6460 that I have about not really wanting to empower government to
6461 interfere and jump in and start mandating what companies can and
6462 can't do, and who they can acquire and who they can't acquire.
6463 But I'm troubled, and we should all be troubled, I think
6464 we're all troubled by the size and scope of these companies.
6465 They're massive. So, I think if you take this legislation as
6466 a starting place or not, I'm troubled by the fact that it just
6467 focuses on the four companies. That's something I've shared with
6468 the ranking member, that it just zeroes in on a definition that
6469 kind of outlines those four companies, although I've heard that
6470 Microsoft might actually get swept into the definition, depending
6471 on -- but I don't know. I'll take a look at it.
6472 But my point is, if we zero in, you're picking winners and
6473 losers if we define a class and we say it's these four versus
6474 some other company or not. And I don't like being in that

6475 business.

6476 But I think we ought to be having a further debate, whether
6477 it's in the context of a markup, where we're effectively having
6478 a debate that's, more or less, like a legislative hearing, but
6479 it would be great if we had witnesses and we're having a
6480 legislative hearing about where we actually go with respect to
6481 what Congress does with respect to antitrust law inserting itself
6482 into the market. And that's where I would hope that we would
6483 go in having a conversation about this.

6484 And as we offer more amendments and we continue to debate
6485 this particular measure, I hope we will go down the road of
6486 figuring that out and figuring out what's going to be in the best
6487 interest of providing a competitive landscape and knowing how
6488 much power should actually be invested in any federal agency,
6489 when it inserts its fingers, or Congress inserts its fingers,
6490 into what private enterprise can or can't do.

6491 With that, I'll yield back.

6492 Chairman Nadler. The gentleman yields back.

6493 For what purpose does Mr. Correa seek recognition?

6494 Mr. Correa. Thank you, Mr. Chairman. Move to strike the
6495 last word.

6496 Chairman Nadler. The gentleman is recognized.

6497 Mr. Correa. I also want to join my colleagues in thanking
6498 Mr. Cicilline and the other members of the committee for a

6499 tremendous job in addressing this very important issue of
6500 antitrust, high tech, mega-firms, so to speak.
6501 And as I think, and I was listening to the debate here, I'm
6502 struck by the fact that this is a big job. We've spent almost
6503 to years working on this issue. Yet, I think, as I listen to
6504 some possible unintentional drafting errors of one firm being
6505 benefitted over another, that's not our job.
6506 I have in front of me this article, "California Tech,
6507 Commerce, Jobs, and Tax Revenues" by Michael Mandel. And I would
6508 ask that it be submitted for the record, without objection.
6509 Chairman Nadler. Without objection.
6510 [The information follows:]
6511
6512 ********** COMMITTEE INSERT **********

6513 Mr. Correa. And this article really sums it up. The
6514 ecosystem dominance, good or bad for our country? Invested a
6515 stunning $65 billion in the United States alone in the year 2020,
6516 playing a crucial role, thriving ecosystem benefitting workers.
6517 From 2015 to 2020, e-commerce generated 1.7 million net new jobs
6518 -- 1.7 net new jobs, a million in the U.S. -- and added over almost
6519 $300 billion in labor income.
6520 I think antitrust is an important goal. It's a tradition
6521 of this country. Yet, at the same time, as we look at these areas,
6522 these industries that compete not in the United States, but
6523 compete internationally, we want to make sure that we don't kill
6524 the goose that lays the golden eggs. We want to make sure that
6525 we do not kill future job creation, future wealth creation for
6526 our nation.
6527 So, I would ask that we slow down. And as my colleague from
6528 California, Mr. Lieu, said, we need to look at this issue, address
6529 it with a much, much finer introspection.
6530 With that, I yield.
6531 Chairman Nadler. The gentleman yields back.
6532 Does anyone else seek recognition?
6533 [No response.]
6534 If not, the question occurs on the amendment. All in favor,
6535 say aye.
6536 Opposed, no.

6537 The ayes have it. The amendment is agreed to.

6538 Are there any further amendments to the amendment in the
6539 nature of a substitute?

6540 Ms. Lofgren. Mr. Chairman?

6541 Chairman Nadler. For what purpose does the gentlelady from
6542 California seek recognition?

6543 Oh, for what purpose does Ross seek recognition?

6544 Ms. Ross. I move to strike the last word, Mr. Chairman.

6545 Chairman Nadler. The gentlelady is recognized.

6546 Ms. Ross. Thank you.

6547 And hopefully, this will be a nice lead-in to some
6548 amendments.

6549 So, we've been talking a lot about the bill, and we've been
6550 talking about minor amendments. But I think we're going to see
6551 some bigger amendments.

6552 And I want to, first, thank our colleague, Ms. Scanlon, for
6553 bringing this bill forward, along with her Republican cosponsor,
6554 and say that I do believe that consumers should have the right
6555 to have their personal data, to know when it's collected, how
6556 it's used, who it's shared with, and the right to data portability.

6557 This bill is a step in the right direction toward giving
6558 consumers that control, but, as we've heard, it does raise some
6559 concerns. And there's currently no comprehensive federal data
6560 privacy law. There's a patchwork of state laws, but they hardly

6561 offer consumers the robust protections that they deserve. And
6562 in the absence of comprehensive data privacy protections, we need
6563 to make sure that this bill does not inadvertently make it easier
6564 for bad actors to get a hold of personal information.
6565 We also need to make sure that intellectual property remains
6566 protected. It's that intellectual property that we want to keep
6567 in this country and not in other countries.
6568 I'm glad that we're about to hear some amendments that will
6569 help to address some of these concerns. I think these amendments
6570 will strengthen the bill and make it easier for more of us to
6571 support it.
6572 And with that, Mr. Chairman, I yield back.
6573 Chairman Nadler. The gentlelady yields back.
6574 For what purpose does the gentlelady from California seek
6575 recognition?
6576 Ms. Lofgren. I have an amendment at the desk. It's the
6577 amendment amending page 10 and page 12.
6578 Chairman Nadler. The clerk will report the amendment.
6579 Ms. Fontenot. "Amendment to the amendment in the nature
6580 of a substitute to H.R. 3849 offered by Ms. Lofgren of California.
6581 "Page 10, line 14, strike `$600 billion"' --
6582 Chairman Nadler. Without objection, the amendment to the
6583 amendment is considered as read.
6584 [The amendment of Ms. Lofgren follows:]

6585 ********** COMMITTEE INSERT **********

6586 Chairman Nadler. The gentlelady is recognized.

6587 Ms. Lofgren. Thank you, Mr. Chairman.

6588 There's been a lot of discussion here on the Buck amendment
6589 about, actually, my amendment, which would be to address the issue
6590 of covered platforms. What this amendment would do would alter
6591 the definitions. As drafted, the bill requires minimum revenues
6592 or market capitalization of $600 billion in order to qualify as
6593 a covered platform, among other requirements. This amendment
6594 would lower that threshold amount to $250 billion.

6595 In addition, the bill strikes an addition that the manager's
6596 amendment made to the definition of online platforms. In the
6597 bill as introduced, operating systems were included among the
6598 services that qualified as online platforms. The manager's
6599 amendment limited this to only, quote, "mobile online platforms".
6600 That had the effect of, for the most part, exempting Microsoft
6601 from coverage of the bill. This amendment would restore the
6602 original term, including operating restrictions without
6603 restriction.

6604 Here's why I believe this amendment deserves support. The
6605 market capitalization, as drafted, is really an arbitrary amount.
6606 It's plainly designed, as members have said, to target just a
6607 few of the largest platform companies. This amendment was
6608 designed based on the approximate market capitalization of the
6609 25 largest U.S. companies. With this change, covered platforms

6610 may also be applied to other companies with enormous potential

6611 market power in online markets.

6612 And I'd ask unanimous consent to put two articles in the

6613 record from Techtured, one June 11th and one June 16th. Techtured

6614 is one of the most incisive analysts of the tech scene.

6615 Chairman Nadler. Without objection.

6616 [The information follows:]

6617

6618 ********** COMMITTEE INSERT **********

6619 Ms. Lofgren. But here's what they said, looking at the
6620 valuation. "It looks like it only applies to the covered
6621 platforms. That's it. It seems notable that companies which
6622 are also kind of powerful and dominant would happen to fall just
6623 somewhat beneath the threshold, including Visa, Mastercard,
6624 JPMorgan Chase, Bank of America, Walmart, Disney, Comcast, AT&T,
6625 and Verizon" would not be included.
6626 Now to be clear, covered platforms would not automatically
6627 include all companies above the $250 billion threshold. For
6628 example, they would still have to be offering an online platform
6629 and meet the user thresholds in the bill. Most importantly, a
6630 company would also have to be a critical trading partner under
6631 the bill. But if a company has such power, there's no good reason
6632 for not subjecting it to the same regulations as other powerful
6633 platforms.
6634 Now operating systems, as an online platform, there's no
6635 good reason to limit the bill's coverage to only smartphone and
6636 mobile service device operating systems, as opposed to other
6637 computing devices like laptops and desktop operating systems.
6638 This amendment would also better future-proof the definition
6639 of covered platforms, which otherwise would require further
6640 legislation before they apply to operating systems for other
6641 platform technologies, such as virtual reality, where future
6642 corporate dominance is certainly possible.

6643 Now, while it's unclear, it appears that the elimination,
6644 as I mentioned, of the mobile operating system may have had the
6645 effect of excluding Microsoft Windows from the covered platform.
6646 That happened between the bill and the manager's amendment.
6647 I don't think there's any good reason for that distinction.
6648 Microsoft services qualify as a critical trading partner and meet
6649 the other requirements. If they do, they should be covered.
6650 And I'll just say this: you know, in my district I have
6651 tens of thousands of constituents who work in the technology
6652 industry. Every one of these companies has a footprint in my
6653 district. I do think that there is a lot that needs to be
6654 corrected in terms of problems in the tech sector, but it's
6655 important that the remedy be fitting the problem. And I'm hoping
6656 that these amendments will help improve this bill and get us closer
6657 to what we all want to achieve, which is a vigorous market that
6658 well serves the American people.
6659 So, with that, Mr. Chairman, I yield back.
6660 Mr. Cicilline. Mr. Chairman?
6661 Chairman Nadler. The gentlelady yields back.
6662 For what purpose does the gentleman from Rhode Island seek
6663 recognition?
6664 Mr. Cicilline. I move to strike the last word.
6665 Chairman Nadler. The gentleman is recognized.
6666 Mr. Cicilline. Thank you.

6667 I thank the gentlelady and I appreciate her concerns. And
6668 I would just say at the outset, of course, Microsoft nor any other
6669 company is not exempt from the provisions of the statute. But
6670 I understand the issue that she proposes or the solution, but
6671 her amendment would significantly alter the covered platform
6672 definition in the bill. And I think, for example, lowering the
6673 threshold in the way that the amendment suggests may have, in
6674 fact, unintended consequences. One thing that comes to mind
6675 immediately is payment processors.
6676 So, I think the second part of the amendment, striking the
6677 word "mobile," I think is something that I could certainly
6678 support. And so, what I would ask the gentlelady is to agree
6679 to continue to work with us. This is the definition sets used
6680 throughout all the pieces of legislation; that is, the definition
6681 of covered platforms and sort of understanding what the
6682 implications are.
6683 Chairman Nadler. Would the gentleman yield?
6684 Mr. Cicilline. Certainly.
6685 Chairman Nadler. I would simply ask if the gentlelady would
6686 consider separating her amendment, so we could take -- so, people
6687 could vote on the two different things.
6688 Ms. Lofgren. I would be happy to divide the question between
6689 the page 10 amendment and the page 12 amendment.
6690 Mr. Cicilline. In which case, I would certainly support

6691 striking the word "mobile," and I would just offer to the
6692 gentlelady if she would continue to work with me and my staff
6693 about examining that threshold amount between now and the time
6694 these bills go to the Floor.
6695 Chairman Nadler. So, I'm not sure, parliamentarily, how
6696 we do this, but I would ask that there be a --
6697 Mr. Cicilline. Yes, I mean, it would have to apply to all
6698 the bills, Mr. Chairman. That's why I'm suggesting we would have
6699 an opportunity to work on it between now and --
6700 Ms. Lofgren. Well, let's do it for this bill, and we can
6701 do the same thing for the other bills.
6702 Mr. Cicilline. I mean, yes, I don't think -- I'm suggesting
6703 that changing the covered platform definition, which, again, is
6704 supported by the record that was generated in the investigation
6705 -- I think before anyone at least should agree to changing that
6706 definition, we have to have a much better understanding of what
6707 the implications are. We built and developed a factual record
6708 to support the covered platform definition, and all I'm suggesting
6709 is, if we could vote on striking the word "mobile," and then,
6710 agree to continue to work on a threshold, because we'd have to
6711 work -- it would have to be a modification to all the bills, not
6712 just this one.
6713 Chairman Nadler. As I started saying, I'm not sure how to
6714 do this parliamentarily, but I'd like --

6715 Mr. Cicilline. Well, if the gentlelady would proceed --

6716 Chairman Nadler. I'd like to get a vote on the "mobile".

6717 Mr. Cicilline. Okay.

6718 Ms. Lofgren. Well, I would ask unanimous consent that the

6719 amendment be divided and that we vote on each of page 10 and page

6720 12 separately. I'd just divide the question.

6721 Chairman Nadler. All right. I am told that we don't need

6722 unanimous consent. The sponsor can divide the question. All

6723 right.

6724 So, we're now considering -- we'll do it one at a time --

6725 we're now considering the amendment on page 12.

6726 Ms. Lofgren. Parliamentary inquiry, Mr. Chairman.

6727 Chairman Nadler. Yes.

6728 Ms. Lofgren. Just for expedition's sake, I think that if

6729 we could discuss both at the same time, so we don't get 5 minutes

6730 for each --

6731 Chairman Nadler. Sure, we can discuss both at the same time.

6732 Ms. Lofgren. -- we'll get to the end of the evening and

6733 finish the markup.

6734 Chairman Nadler. Yes, but I'd like a separate vote on each.

6735 Ms. Lofgren. Correct.

6736 Chairman Nadler. For what purpose does Mr. Lieu seek

6737 recognition?

6738 Mr. Lieu. I move to strike the last word.

6739 Chairman Nadler. The gentleman is recognized.

6740 Mr. Lieu. Okay. I support both parts of Congresswoman
6741 Lofgren's amendment because, again, I think we should not be doing
6742 special legislation directed only at four companies. And my
6743 understanding, based on the subcommittee chair's responses, is
6744 that, well, this is based on investigation. So, I read just the
6745 very first paragraph of the report, and it says, "As part of a
6746 top-to-bottom review of the market, the subcommittee examined
6747 the dominance of Amazon, Apple, Facebook, and Google." So, if
6748 you're only going to pick four companies to investigate, then,
6749 of course, your criteria is going to apply to those four companies,
6750 and that's the problem. Because why are we excluding Microsoft?
6751 Or for that matter, Ebay, or Twitter, or Uber, or a whole range
6752 of tech companies?

6753 And if we think that we should have interoperability, the
6754 whole point of interoperability is to be interoperable, which
6755 means you need a lot of buy-in, not just four companies. So,
6756 it would make sense to expand this to as many possible companies
6757 as you can. You want as many companies to be involved in having
6758 software and hardware that is interoperable. And that's why the
6759 whole covered definition is very problematic, because it's based
6760 on an investigation that hand-selected four companies to go after.
6761 And especially with interoperability, you want more than four
6762 companies to be able to participate in this.

6763 So, I will be voting yes on both parts of Congresswoman
6764 Lofgren's amendment.
6765 Chairman Nadler. Does the gentleman yield back?
6766 Mr. Lieu. Actually, one more point. I also know that it
6767 is, also, sort of arbitrary, right? Without the benefit of a
6768 hearing, I don't really know what $250 billion means in terms
6769 of market cap; I don't really know what companies are affected,
6770 because, again, approximately half this committee has had zero
6771 hearings on this very complicated area of law applied to a very
6772 complicated computer area.
6773 And with that, I yield back.
6774 Chairman Nadler. The gentleman yields.
6775 For what purpose does Mrs. Fischbach seek recognition?
6776 Mrs. Fischbach. Mr. Chair, I have a parliamentary inquiry.
6777 Mr. Chair, I am just wondering if you can clearly explain exactly
6778 we are doing. We are dividing the amendment. The amendment has
6779 been divided, and where is it divided and what we are discussing
6780 now?
6781 Chairman Nadler. All right. The amendment has two parts.
6782 It's very simple. One is the amendment to page 10; the other
6783 is the amendment to page 12. We've divided them and we're going
6784 to vote on them separately.
6785 Does the gentlelady yield back?
6786 Mrs. Fischbach. It was just a parliamentary --

6787 Chairman Nadler. It was a parliamentary inquiry, that's
6788 right.
6789 Who else seeks recognition? Does anyone else seek
6790 recognition on this amendment?
6791 Okay. For what purpose does the gentlelady seek
6792 recognition?
6793 Ms. Scanlon. I move to strike the last word.
6794 Chairman Nadler. The gentlelady is recognized.
6795 Ms. Scanlon. I would agree with Mr. Cicilline and agree
6796 to the page 12 amendment to strike "mobile" because I think that
6797 does make sense in this context.
6798 But I would oppose the amendment that reduces the coverage
6799 definition of 250. I mean, the four mega, big tech companies
6800 that were the subject of the investigation were at the higher
6801 level. We don't have sufficient information to ay what would
6802 happen at the other levels. I mean, someone has asked why
6803 Microsoft wasn't covered. Microsoft was the subject of a large,
6804 longstanding antitrust investigation and lawsuit, and for that
6805 reason, has been dealt with in some contexts.
6806 But I think the existing definition is tailored to address
6807 the concerns that were identified during our rigorous
6808 investigation, which was the subject of the report that this
6809 committee reviewed and adopted in April of this year. So, while
6810 I appreciate the gentlelady's concerns, I think it does

6811 dramatically expand the scope of the interoperability and data
6812 portability requirements far beyond the record that we have.
6813 So, I would urge my colleagues to adopt the striking of
6814 "mobile" on page 12, but, then, reject the change to the definition
6815 of the platform.
6816 I yield back.
6817 Chairman Nadler. The gentlelady yields back.
6818 Does anyone else seek recognition on these now two separate
6819 amendments, or either one of them?
6820 For what purpose does the gentleman from Texas seek
6821 recognition?
6822 Mr. Gohmert. To strike the last word.
6823 Chairman Nadler. The gentleman is recognized.
6824 Mr. Gohmert. There's a saying I heard when I first got to
6825 Congress that seems to have application here: that no matter
6826 how cynical you get, it's never enough to catch up.
6827 [Laughter.]
6828 So, I came in here and I had read the material, looked at
6829 the bills, and I wasn't sure how I was going to vote on things.
6830 We need to rein in high tech, which could someday be controlling
6831 the government instead of the other way around.
6832 And then, one other troubling aspect is seeing over the last
6833 few years some of the high tech companies, noticing that China
6834 has four-five times more people than we have, whatever it is,

6835 a lot more money to be made over there in that country, and even
6836 seeing high tech companies censor things said here that China
6837 may find offensive.
6838 So, there is some sensitivity to -- and I know it's
6839 conservatives that have been censored in the last year or so,
6840 but that could easily end up going the other way. So, we really
6841 should be working together on this.
6842 When you see that the Act grants the FTC authority to penalize
6843 a business that -- well, the offending platform -- for up to 15
6844 percent of its total U.S. revenue from the previous calendar year,
6845 or 30 percent of its U.S. revenue in any line of business affected
6846 by the unlawful conduct, I mean that could really be a sufficient
6847 penalty to put a business out of business. So, we could be giving
6848 the U.S. Government enough power to intimate high tech companies
6849 even more than China is intimidating them.
6850 So, there needs to be some control to keep U.S. privacy
6851 private, because that has been a concern. Okay, what if China
6852 says, "We'll let you into our market, but here's the data we need
6853 about your folks in the United States."? You know, at what point
6854 is the money so much that a high tech company worth hundreds of
6855 billions of dollars cannot afford to turn it down?
6856 So, what we're doing, I'm so pleased that there's the
6857 bipartisan discussion, and we've had that on issues and votes
6858 throughout this day. And I'm gratified for that, because this

6859 is really serious, and it affected conservatives in the last year
6860 or so, but that worm could sure turn in the next few years.
6861 Ms. Lofgren. Would the gentleman yield?
6862 Mr. Gohmert. Yes, certainly.
6863 Ms. Lofgren. Because there's good evidence that there are
6864 technology companies that have, in fact, turned over data about
6865 their users to China right now, and there's nothing in this bill
6866 that would stop that. That's why we really need a very strong,
6867 mandatory privacy bill, and I'm hoping that we will get to that
6868 in this Congress and that we'll be able to do that in a bipartisan
6869 way.
6870 And I thank the gentleman for yielding.
6871 Mr. Gohmert. That's exactly what I am concerned, one of
6872 the big concerns I have. And, I mean, we've seen the intrusion
6873 of the federal executive branch. I mean, when the FBI, under
6874 Mueller, raided William Jefferson's office, I mean it went way
6875 beyond anything they should have been allowed to do. And I think
6876 both sides of the aisle were concerned about the intrusion of
6877 the executive branch manipulating the legislative branch, and
6878 we shared some of those concerns.
6879 So, I would like to see that same shared concern put together
6880 a bill that would address these things, that is more clear what
6881 platforms we're talking about; is more inclusive of the platforms
6882 that we're talking about.

6883 Chairman Nadler. Will the gentleman yield?

6884 Let me simply say that I agree with the gentleman and with
6885 Ms. Lofgren. We have to put together a strong privacy bill, and
6886 we'll working on that, hopefully, on a bipartisan basis. But
6887 a strong privacy bill is, I think, essential.

6888 Mr. Gohmert. But there are too many questions still here,
6889 and I wish we could restart with this. And I know you're invested
6890 in this a great deal, but I would like to see some fresh work
6891 on this.

6892 I yield back.

6893 Chairman Nadler. The gentleman yields back. The gentleman
6894 yields back.

6895 For what purpose does the gentlelady from Washington seek
6896 recognition?

6897 Ms. Jayapal. Move to strike the last word, Mr. Chairman.

6898 Chairman Nadler. The lady is recognized.

6899 Ms. Jayapal. Thank you, Mr. Chairman.

6900 I'm confused about the assumptions that are being made in
6901 this hearing, and specifically, the assumption that Microsoft
6902 would not be covered by this definition. They meet the market
6903 cap definition. The big question is whether or not they meet
6904 the critical trading partner definition. And their online
6905 platform, their cloud platform, I think does meet that definition.
6906 So, I'm confused about why everyone is assuming that Microsoft

6907 is not covered.

6908 We actually talked about this quite a bit. I think as
6909 committee members may know, Amazon is headquartered in my
6910 district; Microsoft is right next to my district, but many of
6911 the Microsoft employees live in Seattle. So, I have looked at
6912 these bills extremely carefully, and it's, frankly, a big deal
6913 for me to be taking this step. But because of our 20-month
6914 investigation, 16-month investigation plus four months leading
6915 up to it, after it the continued discussion that we have had,
6916 the whole reason we took on the investigation was because of the
6917 big tech platforms.

6918 And so, the assumption that Microsoft is not covered is
6919 incorrect. That is just not correct.

6920 Ms. Lofgren. Would the gentlelady yield?

6921 Ms. Jayapal. I will in a minute.

6922 Ms. Lofgren. Sure.

6923 Ms. Jayapal. And the other piece I think that we really
6924 have to understand is, to make such a big change in the threshold
6925 amount I think would take a lot of discussion. And I would just
6926 ask -- I'm supportive of striking "mobile". I think that's fine.
6927 But I think in terms of the actual number for the threshold
6928 amount, that would require a lot of discussion.

6929 And I would ask the gentlewoman from California to withdraw
6930 that piece of the amendment, so that we can work on it and figure

6931 out what is right. But let's not undermine the work, bipartisan
6932 work, of the subcommittee that met for 20, for 16 months an
6933 investigation, has been working very closely to understand this
6934 issue, particularly for people who have -- I mean, we're talking
6935 about how many constituents we have that work for the big four.
6936 I'm thinking that I probably have about 60 percent of my
6937 constituents who work for one of these big four companies. If
6938 you add in Microsoft, maybe it's more.
6939 So, this is not something that we do lightly. This is
6940 something that has taken a tremendous amount of work. And the
6941 arguments around process, while I respect my colleagues, of
6942 course, for their views on this, I would just say that this is
6943 not different than other committees that have the expertise and
6944 the jurisdiction over the issue, that go through and make the
6945 decisions on those subcommittees, and then, move the bills
6946 forward.
6947 And this is unusual in that it is so bipartisan. There is
6948 bipartisan support for these bills.
6949 And so, Ms. Lofgren, I'm happy to yield to you.
6950 Ms. Lofgren. Just by way of some thoughts -- and I'm
6951 certainly not opposed to Microsoft. I mean, they have a research
6952 center right in Santa Clara County. But the exemption of Windows
6953 is a major exclusion from the bill, and the lack of a cloud provider
6954 being a part of the online platform definition really protects

6955 Microsoft's integration of Windows and Office 365 and other cloud
6956 services.
6957 I would note, also, that the change in the threshold
6958 protected their growing effort on XBox, which will be protected
6959 because of the change in valuation. And although there's been
6960 criticism of Apple for their app store -- and I've actually made
6961 that criticism of the percentage -- Microsoft does the exact same
6962 percentage on their XBox sales.
6963 So, those are some of the reasons why it's clear that they
6964 had managed to get carved out of here. I'm not suggesting
6965 skulduggery, or anything like that, but the way the manager's
6966 amendment was put together and the change in the threshold did,
6967 in fact, have the effect of protecting them.
6968 I'm of the view -- I'm not on the subcommittee, and I want
6969 to thank the members of the subcommittee who spent so much time.
6970 I mean, the fact that I'm trying to make this better in a way
6971 I think is productive for America does not diminish in any way
6972 the thoughtfulness that was put in and the work, and the like.
6973 Ms. Jayapal. Well, thank you. I appreciate that because,
6974 just reclaiming my time, I appreciate that because I know that
6975 you, as an expert on immigration, would not want other people
6976 to undermine, if you had undertook a 16-month investigation into
6977 an immigration issue, you would hope that the members of the
6978 committee would respect that. I think we have done that in a

6979 bipartisan way.

6980 I would just say that I would support striking "mobile".

6981 I would not support the change in the threshold until we had

6982 had an opportunity to do real research into what that meant and

6983 why -- what is the right level, if it's not the level we put in

6984 here, which I firmly believe is, based on our investigation.

6985 Thank you, Mr. Chairman. I yield back.

6986 Chairman Nadler. The gentlelady yields back.

6987 For what purpose does the gentleman from California seek

6988 recognition?

6989 Mr. Issa. Mr. Chairman, I move to strike the last word.

6990 Chairman Nadler. The gentleman is recognized.

6991 Mr. Issa. Mr. Chairman, I'm going to support the gentlelady

6992 from San Jose's very well-thought-out movement and disagree with

6993 some others.

6994 And let me just give you some references. First of all,

6995 I'd ask unanimous consent that Barron's from December 7th, 2020,

6996 be put in the record, in which it says, "Tesla becomes only the

6997 sixth company to top $600 billion in value."

6998 And then, from the Fortune magazine, April 24th, 2017,

6999 "Google passes $600 billion for the first time."

7000 Chairman Nadler. Without objection.

7001 Mr. Issa. Thank you, Mr. Chairman.

7002 [The information follows:]

7003

7004 ********** COMMITTEE INSERT **********

7005 Mr. Issa. This investigation apparently began in 2019, when
7006 I as on my sabbatical. Well, Google just barely qualified for
7007 this thing back then, and Tesla hadn't crossed it until after
7008 they had reached the conclusion. And today, we still have less
7009 than a dozen companies that have crossed $600 billion.
7010 This bill currently has a static number of $600 billion.
7011 It doesn't index for somebody who comes up. Actually, I'm not
7012 sure if it affects if you go down, if you get out from underneath
7013 it.
7014 The fact is, though, that if we go back to Microsoft, in
7015 1998, when they were adjudicated to be a monopoly, and they entered
7016 into a consent decree, what do you think they were worth? Two
7017 hundred fifty-six billion dollars. The fact is the number is
7018 an arbitrary number. And in the light of day, with all due respect
7019 to those who picked the number, the number is not only arbitrary,
7020 but it is too high.
7021 Chairman Nadler. Would the gentleman yield for a second?
7022 Mr. Issa. Of course, Mr. Chairman.
7023 Chairman Nadler. Isn't any number arbitrary?
7024 Mr. Issa. Absolutely, except that those who disagree with
7025 changing the number are saying that we shouldn't meddle with the
7026 years of research. Well, a fairly quick look at where markets
7027 have been, what things are valued, if in 1998 -- which is, Mr.
7028 Chairman, with all due respect to the younger folks here, for

7029 you and me, that ain't that long ago -- the fact is when they
7030 were adjudicated to be a monopoly, they were $256 a billion market
7031 cap. Yes, they're $2 trillion today, but you have to look and
7032 say you can easily be a $250 billion monopoly if you get the
7033 relevant market. If Twitter's market is not worth $600 billion,
7034 but Twitter has the power to shut down the President of the United
7035 States with impunity, trust me, they have the kind of power that
7036 they should be covered by antitrust laws. And that's what we're
7037 saying today, and that's what the gentlelady is saying, and she
7038 is right.
7039 Mr. Cicilline. Mr. Issa, will you just yield, just so I
7040 can clarify?
7041 Mr. Issa. Of course, I'd yield to the --
7042 Mr. Cicilline. So, just to be clear, the legislation
7043 includes an indexing to inflation. So, your concern that, as
7044 time progresses and companies grow, it will not be contemplated
7045 by the statute, it's actually indexed. You mentioned it's not
7046 indexed. It actually is.
7047 Mr. Issa. Reclaiming my time, if we look, for example, at
7048 Google, in 2017 at $600 billion, or Tesla just a couple of years
7049 ago, these companies have doubled in value in about two years.
7050 You're not indexing for what's really happening in the
7051 marketplace with tech. Yes, you can add 3 percent a year to a
7052 statutory; that's not going to cover the likely monopolies, and

7053 it certainly doesn't anticipate that you can easily have a $90
7054 billion entity that has the market power that these companies
7055 have in their space.
7056 Let's remember that, for all of us who have looked at
7057 antitrust for 2 years or 22 years, antitrust starts off, normally,
7058 with what is the market, and then, it looks at the market share.
7059 The fact is we're throwing all of that, a hundred years of history
7060 of market share and market size and market power and tie-ins,
7061 we're throwing all of that out and we're saying $600 billion,
7062 that's the number. I'm sorry, but the worse thing in the world
7063 to do is throw out a hundred years of experience and throw an
7064 arbitrary number in that I believe can be easily demonstrated
7065 to be far too high.
7066 I think the gentlelady's number, if I were to pick it, I
7067 would have made it lower, because I'm not sure what Alibaba is
7068 worth, but I know this: if I'm going to demand that a company
7069 like Amazon be interoperable, I'm sure as heck going to see that
7070 Alibaba is reciprocally interoperable. And right now, they're
7071 not. Right now, it's a one-way street. They can take and don't
7072 have to give back. And that's the current law. They can take
7073 -- they can tell everyone, "Go ahead and scrape the data. We'll
7074 even create a tool to do it for you automatically. We'll scrape
7075 the data and give you competitive pricing at Alibaba, but we don't
7076 have to share that back with Amazon because they're big and we're

7077 small." That's where we are.

7078 And I thank the --

7079 Ms. Lofgren. Will the gentleman yield?

7080 Mr. Issa. I'm afraid my time has expired. The chairman

7081 has been very understanding, and I yield back.

7082 Ms. Lofgren. I was just going to say the market cap of

7083 Alibaba appears to be $582 million.

7084 Mr. Issa. It sounds like under 600, and I appreciate the

7085 gentlelady.

7086 Chairman Nadler. The gentleman's time has expired,

7087 obviously.

7088 Does anyone else seek recognition?

7089 [No response.]

7090 Okay. So, no one else seeks recognition, we will vote

7091 separately -- the gentleman from Colorado.

7092 Mr. Buck. Thank you, Mr. Chairman.

7093 I have to tell you, I strongly disagree with the amendment

7094 at page 10, line 14. The investigation involved a very specific

7095 problem that we identified. It overlapped with a -- and the

7096 problem was the monopoly, anticompetitive behavior of four

7097 corporations -- it overlapped to a certain extent, not completely,

7098 because I recognize the gentleman's argument about Twitter, and

7099 it's absolutely right. Twitter acts like a monopoly, especially

7100 when the monopoly platforms took down Parler, one of the prime

7101 competitors, even though it wasn't market-share-wise very much
7102 of a competitor, but one of the prime competitors of Twitter.
7103 But these companies have acted in a way that makes them
7104 unique. I don't have a problem in the future talking about
7105 whether payment processors should fall under antitrust laws.
7106 I personally now believe they should, but it's a fair point.
7107 But by putting them under, in this amendment, putting payment
7108 processors and Walmart and other companies into this category,
7109 what we end up doing is applying these statutes to sectors of
7110 the economy that we have not studied. And in that situation,
7111 I would absolutely be in favor of more investigation or hearings
7112 to determine what the side effects would be.
7113 If there's one thing that I heard from my constituents, and
7114 if there's one thing I heard from business people that I talk
7115 to, and if there's one thing that I heard, frankly, from experts
7116 in this area, it is that we should be overly careful not to include
7117 other sectors of the economy, because during this COVID relief
7118 or this COVID recovery point, we would be ill-served to apply
7119 antitrust law in too broad a way.
7120 And that's what we do with this amendment. If we move away
7121 from the definition that's set, we move away from four, five,
7122 six corporations and we move into 25-30 corporations, we are going
7123 to turn this economy on its head.
7124 This amendment will kill the idea that American consumers

7125 own their data. And that's an idea that I think we should be
7126 embracing right now, and we should move forward with. This
7127 portability idea, it comes from the 1996 Telecommunications Act.
7128 It comes from something that is very popular with American
7129 consumers.

7130 There is a digital file that Google has on every American.
7131 To be able to move that digital file to competitors is a way
7132 of creating competition. We don't have a government top-down
7133 system where we're breaking up a company arbitrarily through the
7134 FTC or the Department of Justice, or through a court. We will
7135 create a system with this of allowing competitors to grow from
7136 the bottom up. That is a conservative answer to the problem that
7137 we face with Google.

7138 Google changed its algorithms six months before the election
7139 to specifically disadvantage Mr. Trump and to specifically
7140 advantage Mr. Biden. Now we may disagree on the other side of
7141 the aisle on that. I believe it's true, and I believe that what
7142 we do here today in creating competition for Google is absolutely
7143 essential. And to adopt this amendment is to gut this bill and
7144 to make sure that American consumers don't own their data. And
7145 that, I think is a very serious mistake.

7146 Ms. Lofgren. Would the gentleman yield?

7147 Mr. Buck. I will yield to the gentleman from -- where are
7148 you from?

7149 Mr. Gaetz. Florida.

7150 Mr. Buck. Florida.

7151 Mr. Gaetz. A Florida man.

7152 I thank the gentleman for yielding.

7153 There is nothing that does more to empower people than to
7154 give them portability. There's been so much concern over the
7155 growth of big government. But, at its core, the gentleman from
7156 Colorado is right; this legislation empowers our fellow Americans
7157 probably more than any other bill in the entire package.

7158 And for my colleagues to say, well, this is all such a rush;
7159 this has all been in such haste, and then, to try to expand the
7160 definition -- it would include a number of additional companies
7161 that were not part of the investigation -- would be the ultimate
7162 haste. The reason the definitions are the way they are is because
7163 it coincides with the investigative work that we did.

7164 Now, if other Congresses in the future want to take a swing
7165 at Walmart or American Express, sign me up; I'm here for it.
7166 But I don't think that that ought to subsume the work that we've
7167 done on the Antitrust Subcommittee.

7168 And in my final moments, I seek unanimous consent to enter
7169 into the record a publication from roughly 40 minutes ago in The
7170 Hill entitled, "Tim Cook Called Pelosi to say Tech Antitrust Bills
7171 Were Rushed". So, if big tech really wants these bills, it is
7172 one hell of a head fake.

And I yield back.

Chairman Nadler. Without objection. Without objection.

[The information follows:]

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

7178 Mr. Swalwell. Mr. Chairman?

7179 Chairman Nadler. For what purpose does Mr. Swalwell seek
7180 recognition?

7181 Mr. Swalwell. Thank you, Mr. Chairman. I move to strike
7182 the last word.

7183 Chairman Nadler. To strike the last word. The gentleman
7184 is recognized.

7185 Mr. Swalwell. Mr. Chairman, I will be supporting the
7186 gentlelady's amendments as divided.

7187 But I do just want to note that Mr. Issa stated that these
7188 numbers are arbitrary. I would argue that they are intended and
7189 aimed at these four companies. And I understand that's justified
7190 by the investigation the subcommittee has conducted, but my fear
7191 is, if you want true interoperability, why would we only want
7192 four companies to have that interoperability? Why would we not
7193 want consumers to benefit from interoperability across any
7194 platform where their data is?

7195 And so, that's my concern. That's why I'm voting for the
7196 gentlelady's bills, or amendments. But I just want to make it
7197 clear, there's nothing arbitrary about the numbers that were
7198 chosen. They were chosen to encompass just four companies.

7199 And I yield back.

7200 Chairman Nadler. The gentleman yields back.

7201 For what purpose does the gentleman from Kentucky seek

7202 recognition?

7203 Mr. Massie. I move to strike the last word.

7204 Chairman Nadler. The gentleman is recognized.

7205 Mr. Massie. If folks are concerned that we shouldn't

7206 capture companies that are between 250 and 600, then please

7207 realize that those companies in that range are going to be above

7208 600. A lot of them are going to go above 600, even if this is

7209 indexed for inflation. I mean, the NASDAQ grows faster than the

7210 rate of inflation. The Dow grows faster than the rate of

7211 inflation.

7212 So, the odds are a lot of those companies, if we are worried

7213 that we're going to capture companies that weren't part of the

7214 investigation if we lower this to 250 from 600, folks, that's

7215 going to happen anyway pretty darn soon for a lot of these

7216 companies.

7217 And I yield back.

7218 Chairman Nadler. The gentleman yields back.

7219 Does anyone else seek recognition?

7220 For what purpose does Mr. Roy seek recognition?

7221 Mr. Roy. I move to strike the last word.

7222 Chairman Nadler. Without objection. I mean the gentleman

7223 is recognized.

7224 [Laughter.]

7225 Mr. Roy. Thank you, sir.

7226 I mean, don't we all often?

7227 [Laughter.]

7228 I find myself in a strange position here in the Twilight
7229 Zone in this moment. I actually think this is a great
7230 conversation about an important issue. It's forced because now
7231 we're having to deal with whether we're going to vote for these
7232 bills. If this were a broad legislative hearing, many of us
7233 probably wouldn't be here because we would have other things we
7234 have to do, and so forth. So, to some degree, it's forcing us
7235 to have an important conversation.

7236 I'm still in the position of not being able to support the
7237 underlying measure. So now, I'm sitting here, and am I going
7238 to support this amendment? And I'm not sure. I'm debating as
7239 I speak.

7240 Because I do think it's designed to kill the underlying
7241 measure. I think that is what it's designed to do. Because $250
7242 billion is just as arbitrary, as we've established, as $600
7243 billion. As the chairman noted and as Mr. Issa noted, these are
7244 arbitrary numbers. And you say, well, they're not arbitrary;
7245 $250 billion is a certain threshold. Whatever. It's not like
7246 we're having a hearing here with an expert here telling us why
7247 it should be $100 billion or $250 billion or $600 billion. So,
7248 we're expanding the zone and making it, just picking a number.

7249 My whole problem with it is I'm not sure why market cap has

7250 anything to do with your actual monopoly power.

7251 Ms. Lofgren. Would the gentleman yield?

7252 Mr. Roy. Yes, I'll yield to the gentlelady.

7253 Ms. Lofgren. I appreciate that.

7254 I just want to clarify this amendment is not intended to
7255 kill the underlying bill. It's intended to improve the
7256 underlying bill to a point where I could support it. So, I just
7257 wanted to make that clear.

7258 In terms of the coverage, it is an arbitrary number and I
7259 believe Mr. Swalwell made a point it was actually designed to
7260 capture four companies. But, as I said in my opening statement,
7261 it is a somewhat arbitrary number, but it's the top 25 companies.
7262 They're not mom-and-pop stores. They have people's data. And
7263 I think it's not unreasonable to have Comcast and Verizon that
7264 has your data to also be transparent and to cough it up, when
7265 you want to recover.

7266 Mr. Roy. But would the gentlelady --

7267 Ms. Lofgren. And I thank the gentleman for yielding.

7268 Mr. Roy. Of course, and I'll yield back if she has another
7269 point.

7270 But reclaiming, you know, Verizon is actually $232 million,
7271 the current market cap. I just pulled it up.

7272 My point is, you're just kind of making this up. And we're
7273 making it up based on a number that -- and I'm not sure why, except

7274 that I know that my friend from Colorado and the chairman, in
7275 terms of studying last year and going through all of the -- $600
7276 billion was a magic number with respect to those particular
7277 companies. Well, the idea is we're just zeroing in on those four
7278 companies. But, yet, it's not a bill of attainder.
7279 Like what I'm trying to figure out is, I think the goals
7280 are laudable. I think data privacy is exceptionally laudable.
7281 I think we should start with the right of each American to his
7282 or her data and work from there out. I think we should start
7283 with I have a right to that data, and then, the power of the
7284 individual American to be able to go after and empower them with
7285 the right of a cause of action to go after corporations that use
7286 your data, and have the power to protect your data. I'd start
7287 there and work from that, and then, figure out, all right, what
7288 do I do and what's my right to, then, have portable information,
7289 and so forth?
7290 We're focused on these big companies because of the amount
7291 of power they have and the influence they have, and we're all
7292 concerned. But I can't figure out exactly why we're defining
7293 what we're defining. I mean, again --
7294 Mr. Raskin. Would the gentleman yield?
7295 Mr. Roy. Who was that? Was that --
7296 Mr. Raskin. It's Raskin.
7297 Mr. Roy. Sure. Yes, sir.

7298 Mr. Raskin. Mr. Roy, thank you so much.

7299 But I think your underlying point seems to have a lot of
7300 merit to it. I just want to make one narrow constitutional point.
7301 It's definitely not a bill of attainder, which is an act of
7302 Congress declaring someone guilty of a crime. And no one is being
7303 declared guilty of a crime. I think the whole purpose here is
7304 to try to wrestle with these dramatic transformations in the
7305 American economy and to deal with them with civil law, which is
7306 antitrust law.

7307 Mr. Roy. Yes, reclaiming my time, I don't disagree with
7308 the gentleman on that. I don't think it's a bill of attainder.
7309 But my point was just the debate here is, are we focusing in
7310 and writing a bill directed specifically to these four companies?
7311 And that always gives us a little pause and heartburn. As
7312 opposed to, are we defining something for good policy to say we've
7313 got a structure here that applies equally, with the least amount
7314 of choosing winners and losers, to figure out good policy and
7315 to protect privacy, protect data, protect the market, which is
7316 our goal. And that's what I keep hanging up on.

7317 So, that's why I'm stuck here thinking I don't think I support
7318 the amendment, even though I don't fully support where we are
7319 in the construct of the bill, but I think we ought to keep having
7320 this debate. That's why what I would hope the chairman does at
7321 the end of this is we shelve it and we have a legislative hearing,

7322 and we call people in, and we debate it and we come back and we
7323 address this later.
7324 Anyway, I yield back.
7325 Chairman Nadler. The gentleman yields back.
7326 Does anyone else seek recognition?
7327 Mr. Chabot. Very, very briefly, Mr. Chairman.
7328 Chairman Nadler. What?
7329 Mr. Chabot. Move to strike the last word.
7330 Chairman Nadler. The gentleman is recognized.
7331 Mr. Chabot. Yes, I'll be brief.
7332 Just following up with the gentleman from Texas, his comment.
7333 He's absolutely right, we should have had hearings on this.
7334 In essence, we had an investigation going on for 20 months or
7335 so, which a lot of us didn't know about at all. And so, there
7336 was, essentially, a secret investigation, and we're setting up
7337 secret committees here that are going to investigate this stuff.
7338 So, there's a hell of a lot going on in secret here, other than
7339 the private information of the American people which isn't being
7340 protected in this process at all.
7341 So, I would strongly urge go back to the drawing board here,
7342 and let's have some hearings on this because this is significant
7343 legislation.
7344 Chairman Nadler. Would the gentleman yield?
7345 Mr. Chabot. I'd be happy to yield.

7346 Chairman Nadler. I simply want to say, what everyone thinks
7347 of the amendment or the bill is whatever. One certainly cannot
7348 say it was in secret. There were months of hearings. There were
7349 public hearings. It was all over the press. No attempt at
7350 secrecy was made.
7351 Mr. Issa. Would the gentleman further yield?
7352 Mr. Chabot. I'd be happy to yield, yes.
7353 Mr. Issa. I thank the gentleman.
7354 You know, I'll let the Supreme Court decide what a bill of
7355 attainder is. But what I do see when I read the simple Wikipedia
7356 definition and take out the word "person" for a moment because
7357 it says, "or group," "A bill of attainder is an act or writ of
7358 attainder or bill of penalties, an act by the legislature
7359 declaring a group or a person is guilty of some crime and punishing
7360 them without a trial."
7361 Clearly, we are choosing to order companies to do certain
7362 things without a trial, unless you include those hearings. And
7363 clearly, we've decided to pick just four companies, which is
7364 certainly a small group. Henry VIII would have thought it was
7365 about the right number, although he did more when he executed
7366 royals that he didn't like. So, I think we certainly have picked
7367 a narrow group.
7368 The reason that some of the other bills that we will consider
7369 later tonight might be different than this one is this one is

7370 about your personal property and your right to have it and to
7371 have it interact. And the standard should not be our antitrust
7372 authority. It should be, essentially, the ability comply. If
7373 the ability to comply exists in a $50 million or $20 million market
7374 cap company doing business, then, quite frankly, they should be
7375 just as covered.

7376 Now I know that we have limited jurisdiction, but I think
7377 it's important that we have very powerful companies, and I would
7378 use Alibaba that is just under $600 billion, they're not going
7379 to be covered by this. And yet, they're not going to be said
7380 to be interoperability or portable, while another company will.
7381 Picking winners and losers, and penalizing four companies versus
7382 one that is a few billion dollars less market cap, is certainly
7383 not the test of antitrust.

7384 And I think that's the important thing, is we have a stick
7385 of antitrust which we're using, but if we're going to use it to
7386 open up interoperability and portability, let's use it as broadly
7387 as we can. And that's what the gentlelady is doing. I've got
7388 to tell you, $250 billion, it's not a big burden to make your
7389 software portable and interoperable. But, certainly, to tell
7390 four companies to send it one way and everyone else not is simply
7391 saying we're going to punish them and we're going to make them
7392 not be able to compete against companies that do not have to
7393 comply.

7394 I thank the gentleman.

7395 Mr. Chabot. Reclaiming my time, there's one other point
7396 I'd like to make. I happen to be the ranking member of the Foreign
7397 Affairs Subcommittee on Asia and the Pacific, and something that
7398 Mr. Gohmert said before is absolutely important, and critical,
7399 too. And that's that you've got a couple of countries,
7400 particularly the PRC, China; Russia; North Korea, and Iran, who
7401 have been trying consistently to screw up the works here in the
7402 U.S. They've been hacking, the ransomware most recently. I
7403 mean, they're after all this private information, and this
7404 committee ought to be delving into that and work hard to actually
7405 come up with something that's going to protect the American
7406 people's privacy.

7407 And I yield back.

7408 Chairman Nadler. The gentleman yields back.

7409 Does anyone else seek recognition on this amendment?

7410 [No response.]

7411 This amendment contains two questions that are divisible.
7412 We will have separate votes on each proposition.

7413 The first question is on striking "$600 billion" and
7414 inserting, instead, "$250 billion".

7415 All in favor, say aye.

7416 Opposed, no.

7417 I believe the ayes have it.

7418 Mr. Issa. It's close. I'd ask for a recorded vote on that.

7419 Chairman Nadler. A recorded vote is requested. The clerk

7420 will call the role.

7421

7422 Ms. Fontenot. Mr. Nadler?

7423 Chairman Nadler. No.

7424 Ms. Fontenot. Mr. Nadler votes no.

7425 Ms. Lofgren?

7426 Ms. Lofgren. Aye.

7427 Ms. Fontenot. Ms. Lofgren votes aye.

7428 Ms. Jackson Lee?

7429 [No response.]

7430 Mr. Cohen?

7431 Mr. Cohen?

7432 Mr. Cohen. Aye. Yes.

7433 Ms. Fontenot. Mr. Cohen votes aye.

7434 Mr. Johnson of Georgia?

7435 Mr. Johnson of Georgia. Johnson of Georgia votes aye.

7436 Ms. Fontenot. Mr. Johnson of Georgia votes aye.

7437 Mr. Deutch?

7438 Mr. Deutch. No.

7439 Ms. Fontenot. Mr. Deutch votes no.

7440 Ms. Bass?

7441 [No response.]

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Fontenot. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. Aye.

Ms. Fontenot. Mr. Correa votes aye.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Mr. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

[No response.]

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Johnson of Georgia. Madam Clerk, this is Hank Johnson. How am I recorded?

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

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

Ms. Fontenot. Mr. Johnson votes no.

Mr. Johnson of Georgia. Thank you.

Ms. Fontenot. Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. No.

Ms. Fontenot. Mr. Roy votes no.

Mr. Bishop?

Mr. Bishop. Aye.

Ms. Fontenot. Mr. Bishop votes aye.

Mrs. Fischbach?

Mrs. Fischbach. Aye.

Ms. Fontenot. Mrs. Fischbach votes aye.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

[No response.]

Ms. Jackson Lee. How am I recorded? Jackson Lee.

Ms. Fontenot. Ms. Jackson Lee, you are not recorded.

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

7562 Chairman Nadler. Are there any other members who wish to
7563 be recorded who haven't been recorded?
7564 Ms. Bass. How am I recorded?
7565 Ms. Fontenot. Ms. Bass, you are not recorded.
7566 Ms. Bass. No. Vote no.
7567 Ms. Fontenot. Ms. Bass votes no.
7568 Mr. Owens. How am I recorded?
7569 Ms. Fontenot. Mr. Owens, you are not recorded.
7570 Mr. Owens. No.
7571 Ms. Fontenot. Mr. Owens votes no.
7572 Chairman Nadler. Do any other members wish to be recorded
7573 who haven't been recorded?
7574 [No response.]
7575 The clerk will report.
7576 Ms. Fontenot. Mr. Chairman, there are 18 ayes and 25 noes.
7577 Chairman Nadler. The amendment is not agreed to.
7578 The second question is on striking the word "mobile".
7579 All in favor, say aye.
7580 Opposed, no.
7581 The ayes have it. The ayes have it.
7582 Without objection, the staff is authorized to amend the
7583 definitions of "online platform" in the bills H.R. 3826, H.R.
7584 3816, and H.R. 3825, if they are reported by the committee, to
7585 make them conform with our amendment to this bill, H.R. 3894.

7586 That is, to strike the word "mobile" that immediately precedes
7587 the term "operating system".
7588 Are there any other amendments to the amendment in the nature
7589 of a substitute?
7590 Ms. Lofgren. I have an amendment at the desk, unless there's
7591 --
7592 Chairman Nadler. Okay.
7593 Ms. Lofgren. It's the amendment on page 3, line 15.
7594 Chairman Nadler. The clerk will report the amendment.
7595 Ms. Fontenot. "Amendment to the amendment in the nature
7596 of a substitute to H.R. 3849 offered by Ms. Lofgren of California.
7597 Page 3, after line 15, insert the following and make such
7598 technical and conforming changes as may be appropriate.
7599 C. User Consent. Interoperability with the business user"
7600 --
7601 Chairman Nadler. Without objection, the amendment is
7602 considered as read.
7603 [The amendment of Ms. Lofgren follows:]
7604
7605 ********** INSERT **********

7606 Chairman Nadler. The gentlelady is recognized.

7607 Ms. Lofgren. Thank you, Mr. Chairman.

7608 As I mentioned -- well, it wasn't a short while ago -- when
7609 we first started talking about this, I strongly believe that the
7610 data that you generate should belong to you. And I don't know
7611 whether you want to call it portability or exportability, as Mr.
7612 Massie, but you shouldn't be a prisoner of a platform because
7613 they have your data and you can't go someplace else with it because
7614 you can't take it with you. That is addressed.

7615 What is not addressed adequately, in my judgment, is the
7616 need for user consent when it comes to the transfer of data for
7617 interoperability. What this amendment would is, the
7618 interoperability, as currently written under the bill, if it
7619 involves any transfer or third-party access to user data, the
7620 associated user has to give their consent. In other words,
7621 interoperability involving using data can only happen with the
7622 consent or at the direction of the user.

7623 Now I think this is very important. As the bill is currently
7624 drafted, the bill could effectively require platforms to give
7625 third-party users access to user data on the platform, even when
7626 those users have not requested such interoperability or otherwise
7627 given their consent. It raises a broad range of fundamental
7628 privacy concerns. At a basic level, I doubt that anyone on this
7629 committee would want their Google, Facebook, or Amazon data shared

7630 with a third party without their consent.

7631 Third-party recipients could also -- and this has been
7632 discussed by some of us on both sides of the aisle -- could also,
7633 conceivably, be based in foreign countries, perhaps raising even
7634 bigger concerns about user data escaping beyond the control of
7635 U.S. privacy and consumer protection laws.

7636 I think this amendment is necessary to prevent future abuses.
7637 We all can recall the debacle of Cambridge Analytica, which
7638 fundamentally was about data-sharing between platforms and third
7639 parties without user consent. They vacuumed up the data out of
7640 Facebook and used it for their own purposes.

7641 I think that this amendment makes this bill stronger by
7642 increasing protection for users of platforms and their data when
7643 it comes to interoperability. And I think, to some extent, when
7644 we look at this whole issue of antitrust, there are times when
7645 the interests of competing businesses may actually conflict with
7646 the interests of consumers. And in that case, the consumer should
7647 always win, not the competing businesses.

7648 So, I think when it comes to interoperability, which I favor,
7649 but favoring it broadly is difficult, but because you get into
7650 weeds, it's not so easy when you come into encrypted data and
7651 other things that deserve protection. I do think, at a minimum,
7652 we should allow users to prevent their data from being utilized
7653 by other businesses with out their consent. That is, in essence,

7654 this amendment. I hope it will be adopted. I think it will
7655 strengthen the bill.
7656 And with that, I would yield to the gentleman from
7657 California.
7658 Mr. Issa. And I can say, just breaking the word myself by
7659 joining the gentlelady and saying, this is one of those that
7660 shouldn't be controversial. It's not intended to be. Clearly,
7661 we all look at the practical reality the gentlelady is talking
7662 about, that we really don't want, let's just say, Facebook and
7663 Google to decide that they're going to be interoperable and share
7664 this vast amount of information they both have, if you choose
7665 not to. Some of these platforms already give you a limited
7666 ability to not provide certain data, not be followed, but, right
7667 now, they're not bound to do so and they might under the
7668 legislation, if not for the gentlelady's amendment, they might,
7669 in fact, not give you that ability.
7670 So, I think it's extremely important that we simply say,
7671 if we're going to order interoperability, it's interoperability
7672 by individual customer, that customer having choice. And I thank
7673 the gentlelady for her thoughtful amendment.
7674 Chairman Nadler. Would the gentlelady yield?
7675 Ms. Lofgren. I would be happy to yield my remaining 12
7676 seconds.
7677 Chairman Nadler. And I shouldn't take much more than that.

7678 I simply want to say that the logic of the gentlelady and the
7679 logic of the gentleman are very persuasive to me, and I urge people
7680 to support this for that reason.
7681 Mr. Cicilline. Mr. Chairman?
7682 Chairman Nadler. The gentlelady's time has expired.
7683 For what purpose does Ms. Scanlon seek recognition?
7684 Ms. Scanlon. I move to strike the last word.
7685 Chairman Nadler. The gentlelady is recognized.
7686 Ms. Scanlon. Thank you.
7687 I support this amendment to the ACCESS Act. A priority
7688 throughout the drafting process has been to include robust privacy
7689 and data security safeguards to protect users and their data.
7690 For example, the existing data portability provisions under the
7691 bill already require affirmative consent of users, but this
7692 amendment will improve the privacy safeguards in the bill by
7693 requiring users to provide consent when interoperability will
7694 result in a business user acquiring, processing, transmitting,
7695 or otherwise gaining access to user data.
7696 So, I appreciate the gentlelady's amendment and I urge my
7697 colleagues to support it.
7698 Chairman Nadler. For what purpose does the gentleman from
7699 Rhode Island seek recognition?
7700 Mr. Cicilline. To move to strike the last word.
7701 Chairman Nadler. The gentleman is recognized.

7702 Mr. Cicilline. I just wanted to thank the gentlelady from
7703 California. I think she is absolutely right. This strengthens
7704 the bill. I thank her for her engagement on this. I urge my
7705 colleagues to support the amendment. And I hope between
7706 prevailing on this amendment and prevailing on the one that
7707 preceded it, it will earn the gentlelady from California's
7708 support.
7709 And I yield back.
7710 Chairman Nadler. The gentleman yields back.
7711 Does anyone else seek recognition on this amendment?
7712 [No response.]
7713 Then, the question occurs on the amendment.
7714 All in favor, say aye.
7715 Opposed, no.
7716 The ayes, obviously, have it. The amendment is adopted.
7717 Are there any other amendments to the amendment in the nature
7718 of a substitute?
7719 Mr. Issa. Mr. Chairman, I have an amendment at the desk.
7720 Chairman Nadler. The clerk will report the amendment.
7721 Mr. Cicilline. Reserve a point of order, Mr. Chairman.
7722 Ms. Fontenot. "Amendment to the amendment in the nature
7723 of a substitute to H.R. 3849 offered by Mr. Issa of California.
7724 Page 5, strike lines 9 through 14 and insert the following"
7725 --

7726 Chairman Nadler. Without objection, the amendment is

7727 considered as read.

7728 [The amendment of Mr. Issa follows:]

7729

7730 ********** INSERT **********

7731 Chairman Nadler. The gentleman is recognized.

7732 Mr. Issa. Thank you, Mr. Chairman.

7733 We're on a roll. We're getting things done by voice. I
7734 think this one will be similar. We narrowed this considerably
7735 in that what this amendment does is simply say that there needs
7736 to be transparency if there's censorship. And so, very simple,
7737 you take somebody's material down; you shadow ban them; you do
7738 whatever. You are required to post it. You are required to
7739 notify. Nothing more than that, but it does give the transparency
7740 that somebody doesn't have to find out long after the fact that
7741 they've been taken down. And, of course, the public has to know
7742 that something is taken down.

7743 We understand say what they've taken down without reposting,
7744 it effectively, but they would have to post that they've taken
7745 something down and the characteristic of it. Some of the covered
7746 platforms do a form of this now. We simply believe, for
7747 transparency, it should be mandated. If we're going to mandate
7748 these companies, these four companies, do certain things, this
7749 certainly seems to be one, and it's consistent, I believe, with
7750 the Republican position of transparency, but it's also the
7751 Democrat position of transparency.

7752 Chairman Nadler. Would the gentleman yield?

7753 Mr. Issa. I, of course, would yield.

7754 Chairman Nadler. I just have a question about the meaning

7755 of the amendment. The first part of the amendment's meaning is
7756 obvious, but why does the amendment strike lines 7 through 16
7757 on page 10?
7758 Mr. Cicilline. We just debated this. I believe that
7759 changes the market cap definition.
7760 Chairman Nadler. Yes, it's a totally different matter.
7761 Mr. Issa. Right. Right. Basically, it says that, if you
7762 take somebody's words down, if you're Twitter, which isn't
7763 covered, you still have to.
7764 Mr. Cicilline. Would the gentleman yield?
7765 Mr. Issa. Of course.
7766 Mr. Cicilline. I think you're mistaken. It says, "Page
7767 10, strike lines 7 through 16." That's the market cap definition,
7768 which we just heard that amendment and it was defeated.
7769 Mr. Issa. That's because for this particular subsection
7770 you would need to include Twitter, is the way we viewed it, that
7771 you would be including a greater amount of those.
7772 Are you offering a secondary amendment to my amendment?
7773 Mr. Cicilline. I still don't understand what this amendment
7774 is attempting to do. I just know it would change the definition
7775 of covered platform, which, again, we've had a pretty lengthy
7776 debate about that. So, I'm happy to work with you on a bill that
7777 relates to Twitter, if you want to do that. This is a different
7778 subject.

7779 Mr. Issa. Well, the intent of this was to include Twitter.

7780 Mr. Cicilline. I got you.

7781 Ms. Lofgren. Would the gentleman yield for a question?

7782 Mr. Issa. Of course, I'd yield.

7783 Ms. Lofgren. Because you and I agreed on the market cap

7784 issue. But it looks like what you're intending to do is to remove

7785 the market cap only for the purposes of line 8, but it doesn't

7786 say that. It strikes entirely from the bill.

7787 Mr. Issa. Well, we had intended for this narrow one to

7788 include greater than those four companies. If we've lost that

7789 issue, Mr. Cicilline, I am not opposed to at least getting some

7790 transparency on the covered platform, which would mean that we

7791 would strike, below 11, we would strike -- we would strike page

7792 10, strike 7 and 16, and make such technical corrections --

7793 Chairman Nadler. Would the gentleman yield?

7794 Mr. Issa. Yes.

7795 Chairman Nadler. If the gentleman would do that, I would

7796 support the -- I don't see why we shouldn't require reasonable

7797 advance notice, unless someone can give me a good reason.

7798 Mr. Issa. I think there's a second part --

7799 Mr. Biggs. Would the gentleman yield?

7800 Mr. Issa. There's nothing on the back of the page.

7801 Of course, I would yield.

7802 Mr. Biggs. Thank you, and I hope this will help. Because

7803 my question is, how are we defining "reasonable advance notice"?
7804 I mean, what would that look like?
7805 Mr. Issa. They would simply post it before they take you
7806 down.
7807 The bill already has reasonable advance notice. We didn't
7808 invent that term.
7809 Mr. Biggs. Okay.
7810 Mr. Issa. It's already in the bill.
7811 Mr. Biggs. Thank you.
7812 Mr. Cicilline. Yield, Mr. Issa? I don't know if you have
7813 the time.
7814 With respect to line 3, A, you're talking about notice to
7815 a business owner of changes to interoperability interface. I
7816 don't think that presents any problem. I think the B section
7817 is a content moderation question which I think is very different.
7818 And so, if you'd accept a friendly amendment to get rid of lines
7819 8 to 11, I'd support the balance of your amendment to provide
7820 notice.
7821 Mr. Issa. No, I would take the friendly amendment of the
7822 chairman very happily and strike -- page 10, strike 7 through
7823 16 out of it.
7824 But the idea of notice and takedown, notice and takedown
7825 is a term that we know very well in this committee, and I think
7826 that that's all I'm really asking for.

7827 Mr. Cicilline. Yes, Mr. Issa, I would just ask you, because
7828 I think there are several problems with this, if you would consider
7829 withdrawing the amendment, and we'll work with you on some
7830 language that makes sense.
7831 Mr. Issa. Later tonight?
7832 Mr. Cicilline. Later tonight or whenever it's appropriate.
7833 Mr. Issa. Tonight?
7834 Mr. Cicilline. Or certainly before Floor action.
7835 Mr. Issa. Well, before Floor action, I --
7836 Mr. Cicilline. It's just like I think --
7837 Mr. Issa. With all due respect -- and I know my time has
7838 expired -- but, with all due respect, I know one thing. We don't
7839 get open rules around here anymore.
7840 Mr. Cicilline. No, I understand.
7841 Mr. Issa. So, that's why I'd like to get it done in
7842 committee.
7843 Mr. Cicilline. It's just we did just have a lot of
7844 conversation about why we were focusing on four companies. And
7845 now, you're trying to craft an amendment that focused on one
7846 company.
7847 Mr. Issa. No. No, I've already agreed to scrap any
7848 expansion past the four companies. But, for these four
7849 companies, notice and takedown and notice of changes, that's all
7850 we're asking for.

7851 Yes, Mr. Chairman?

7852 Chairman Nadler. The gentleman's time has expired.

7853 I'll seek my own time. I recognize myself.

7854 I think I agree with Mr. Cicilline; there are some problems
7855 with the entire amendment. I could not support it in its current
7856 form, or even with -- unless you did what Mr. Cicilline suggested.

7857 Mr. Issa. Well, we'll work the rest tonight, and I'd ask
7858 to withdraw the amendment at this time and at least give it a
7859 little time before we come back.

7860 Chairman Nadler. Sure.

7861 Mr. Issa. The gentlelady had --

7862 Ms. Lofgren. Would the gentleman yield for a further
7863 question? Mr. Chairman?

7864 Chairman Nadler. Yes, I'll yield.

7865 Ms. Lofgren. If there's going to be further work done on
7866 this, I actually think it might have a positive impact if the
7867 public knew what kind of content is impermissible; like if it's
7868 hate speech, it's going to be taken down. If it's virulent
7869 antisemitism, if it's X or Y, you know, letting people know that
7870 is a good thing. How you do that without republication is a
7871 question I have, and I don't know how that would be done. So,
7872 as you're working on it, I'm interested in how you would address
7873 that.

7874 Thank you. Thank you for yielding.

7875 Chairman Nadler. The amendment is withdrawn.

7876 Are there any other amendments to the amendment in the nature

7877 of a substitute?

7878 Mr. Bishop. Mr. Chairman? Well, I would be glad to defer

7879 to Ms. Lofgren.

7880 Chairman Nadler. The gentlelady from California is

7881 recognized.

7882 Ms. Lofgren. It's amendment to page 4.

7883 Chairman Nadler. The clerk will report the amendment, I

7884 should say.

7885 Ms. Lofgren. If I may recall that, let me do the other.

7886 I have two amendments. One is on page 2 and page 3. Let me

7887 take that up first, if I could, please.

7888 Chairman Nadler. The clerk will --

7889 Ms. Lofgren. I think that's at the desk.

7890 Chairman Nadler. The clerk will report the amendment.

7891 Ms. Lofgren. I don't think the clerk has the amendments.

7892 Would you please distribute them?

7893 Ms. Fontenot. "Amendment to the amendment in the nature

7894 of a substitute to H.R. 3849 offered by Ms. Lofgren of California.

7895 Page 2, after" --

7896 Chairman Nadler. Without objection, the amendment is

7897 considered as read.

7898 [The amendment of Ms. Lofgren follows:]

7899

7900 ********** INSERT **********

7901 Chairman Nadler. The gentlelady is recognized.

7902 Ms. Lofgren. Thank you, Mr. Chairman.

7903 This allows platforms to take action, when necessary, when
7904 there is a risk to user privacy or security. Currently, the bill
7905 gives only the FTC, not the platforms, the power to order that
7906 third parties be cut off from interoperability and portability.
7907 Given the risk to third-party abuse -- and I'm thinking Cambridge
7908 Analytica -- I think it's not prudent to always wait for the FTC
7909 to act. This amendment would give platforms the direct power
7910 to terminate portability and interoperability with business users
7911 -- this isn't dealing with individuals for getting their own data,
7912 but business users -- when it's reasonably necessary to address
7913 the privacy and security risk or to enforce the other standards
7914 the FTC has put in place under the Act.

7915 It seems to me that platforms should be empowered to take
7916 immediate action, when necessary, to stop a third party who is
7917 abusing the interfaces under this bill; for example, to steal
7918 mass amounts of user data or to hack into platforms or other
7919 systems. This amendment would still leave plenty of safeguards
7920 against platforms abusing this termination power. The
7921 termination would only be allowed when done in good faith and
7922 reasonably necessary to prevent the harm at issue.

7923 More generally, the FTC would still have broad regulatory
7924 authority to set any necessary standards in this area, including

7925 further restrictions on platform termination powers, when
7926 warranted in specific cases.
7927 I'll just note that you can grab or scrape data from a
7928 platform in an instant. And to allow that kind of data transfer
7929 while waiting for a government agency to take action and stop
7930 it is not prudent. There is plenty of authority for the FTC to
7931 intervene if this safeguard isn't properly used. But I do think
7932 it's important that platforms have this opportunity to protect
7933 the user data of their own customers who they have forged a
7934 relationship with.
7935 I think this amendment improves the bill. Again, I think
7936 that it addresses a privacy or security issue that was not fully
7937 dealt with, and I hope that we can adopt the amendment and improve
7938 the bill.
7939 And with that, Mr. Chairman, I would yield back.
7940 Mr. Cicilline. Mr. Chairman?
7941 Chairman Nadler. The gentlelady yields back.
7942 For what purpose does the gentleman from Rhode Island seek
7943 recognition?
7944 Mr. Cicilline. I move to strike the last word.
7945 Chairman Nadler. The gentleman is recognized.
7946 Mr. Cicilline. I thank the gentlelady for her amendment,
7947 and I appreciate the concerns that she's expressed. I am,
7948 however, concerned that the amendment would expand the ability

7949 of covered platforms to terminate interoperability and data
7950 portability for business users. And at least in the way that
7951 it's currently drafted, it would give, in my view, too much
7952 discretion to the covered platform on the decision to cease
7953 interoperability with a business user. And that could have the
7954 potential, at least, of really upending the pro-competitive goals
7955 of the bill. And I know a number of public interests and advocacy
7956 organizations strongly oppose the amendment in its current form.
7957 And so, I would like to continue to work on this issue with
7958 the gentlelady, and just ask her if she would consider withdrawing
7959 this amendment, so that we can do that before the bill comes to
7960 the Floor.
7961 Ms. Lofgren. Well, let's hear some further discussion, if
7962 the gentleman would yield --
7963 Mr. Cicilline. Sure. Of course.
7964 Ms. Lofgren. -- because this is, the FTC maintains their
7965 control, if there is a lack of good faith. This is just an
7966 opportunity to take immediate action. The FTC, I mean it could
7967 be a weekend. They may not be meeting. They may not be
7968 available, and you may want to keep your users data from being
7969 vacuumed to Russia, or some other country.
7970 Mr. Cicilline. Yes, but I guess one of the things that
7971 immediately comes to mind is the ability of a covered platform
7972 to kill a competitor by this decision. And so, it seems to me

7973 that's one of the things that would be of real concern and would
7974 really undermine the pro-competitive purpose of the bill.
7975 Ms. Lofgren. Well, if the gentleman would further yield
7976 --
7977 Mr. Cicilline. Yes.
7978 Ms. Lofgren. -- that would not be in good faith. Here's
7979 what it says, "A covered platform may cease to transfer data to
7980 a business when such an action is a good-faith, reasonably
7981 necessary means of enforcing the standards issued under 6C or
7982 addressing a risk to user privacy or security." And then, the
7983 platform has to report the termination to the Commission. So
7984 that, if it hasn't been in good faith, the roof comes down on
7985 them.
7986 I yield back.
7987 Mr. Cicilline. Yes, thank you.
7988 I think, again, that's a role the FTC could play as part
7989 of their enforcement responsibility. I just think the danger
7990 of giving that ability to the covered platform that already, by
7991 definition, has enormous market power -- there's a tremendous
7992 imbalance in terms of their power as gatekeepers -- just presents
7993 such a great risk that they would use that in a way that would
7994 crush a competitor, further entrench their dominance. And I just
7995 think conveying that ability to a cover platform is fraught with
7996 significant problems and could really make this, what is intended

7997 to be a pro-competitive piece of legislation, be used as a cudgel
7998 to actually crush competitors.
7999 So, again, I appreciate the concern you're raising and would
8000 welcome the opportunity to work with you on it, but I would oppose
8001 the amendment in its current form.
8002 I yield back.
8003 Chairman Nadler. The gentleman yields back.
8004 Does anyone else seek recognition on this amendment?
8005 [No response.]
8006 In that case, the question occurs on the amendment.
8007 All in favor, say aye.
8008 All opposed, no.
8009 In the opinion of the chair, the noes have it.
8010 Ms. Lofgren. Mr. Chairman, I'd like a recorded vote.
8011 Chairman Nadler. A recorded vote is requested. The clerk
8012 will call the roll.
8013 Ms. Fontenot. Mr. Nadler?
8014 Chairman Nadler. No.
8015 Ms. Fontenot. Mr. Nadler votes no.
8016 Ms. Lofgren?
8017 Ms. Lofgren. Yes.
8018 Ms. Fontenot. Ms. Lofgren votes yes.
8019 Ms. Jackson Lee?
8020 Ms. Jackson Lee. No.

8021 Ms. Fontenot. Ms. Jackson Lee votes no.

8022 Mr. Cohen?

8023 Mr. Cohen. Pass.

8024 Ms. Fontenot. Mr. Cohen passes.

8025 Mr. Johnson of Georgia?

8026 Mr. Johnson of Georgia. No.

8027 Ms. Fontenot. Mr. Johnson of Georgia votes no.

8028 Mr. Deutch?

8029 Mr. Deutch. No.

8030 Ms. Fontenot. Mr. Deutch votes no.

8031 Ms. Bass?

8032 Ms. Bass. No.

8033 Ms. Fontenot. Ms. Bass votes no.

8034 Mr. Jeffries?

8035 Mr. Jeffries. No.

8036 Ms. Fontenot. Mr. Jeffries votes no.

8037 Mr. Cicilline?

8038 Mr. Cicilline. No.

8039 Ms. Fontenot. Mr. Cicilline votes no.

8040 Mr. Swalwell?

8041 Mr. Swalwell. Aye.

8042 Ms. Fontenot. Mr. Swalwell votes aye.

8043 Mr. Lieu?

8044 [No response.]

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. Aye.

Ms. Fontenot. Mr. Correa votes aye.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Mr. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no. Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. Pass.

Ms. Fontenot. Ms. Bush passes.

Mr. Jordan?

Mr. Jordan. No.

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot?

Mr. Chabot. Pass.

Ms. Fontenot. Mr. Chabot passes.

Mr. Gohmert?

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa?

Mr. Issa. Yes.

Ms. Fontenot. Mr. Issa votes yes.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana?

[No response.]

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

[No response.]

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. No.

Ms. Fontenot. Mr. Bishop votes no.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. No.

8141 Ms. Fontenot. Mr. Owens vote no.

8142 Chairman Nadler. Does anyone --

8143 Mr. Lieu. Mr. Chair, how am I recorded?

8144 Ms. Fontenot. Mr. Lieu, you are not recorded.

8145 Mr. Lieu. I vote no.

8146 Ms. Fontenot. Mr. Lieu votes no.

8147 Chairman Nadler. Mr. Chabot?

8148 Mr. Chabot?

8149 Mr. Chabot. No.

8150 Ms. Fontenot. Mr. Chabot votes no.

8151 Chairman Nadler. Mr. Johnson of Louisiana?

8152 Mr. Johnson of Louisiana. How am I recorded?

8153 Ms. Fontenot. Mr. Johnson of Louisiana, you are not

8154 recorded.

8155 Mr. Johnson of Louisiana. No.

8156 Ms. Fontenot. Mr. Johnson of Louisiana vote no.

8157 Mr. McClintock?

8158 Mr. McClintock. No.

8159 Ms. Fontenot. Mr. McClintock votes no.

8160 Mr. Cohen. Mr. Cohen votes no.

8161 Ms. Fontenot. Mr. Cohen votes no.

8162 Chairman Nadler. Has everyone voted who wishes to vote?

8163 [No response.]

8164 The clerk will report.

Ms. Bush. I'm sorry, Mr. Chairman, I would like to change my vote to a no. This is Ms. Bush.

Ms. Fontenot. Ms. Bush votes no.

Mr. Chairman, there are 13 ayes and 31 noes.

Chairman Nadler. The amendment is not agreed to.

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

Mr. Bentz. Mr. Chair?

Ms. Lofgren. I've got one more. I'll be happy to wait. I mean, we should go back and forth.

Mr. Cicilline. [Presiding.] Mr. Benz, for what purpose do you seek recognition?

Mr. Bentz. I have an amendment at the desk.

Mr. Cicilline. The clerk will report the amendment.

Ms. Fontenot. "Amendment to the amendment in the nature of a substitute to H.R. 3849 offered by Mr. Benz of Oregon.

Beginning page 2, strike line 18 and all that follows through page 6, line 3, and redesignate the following sections accordingly."

[The amendment of Mr. Benz follows:]

********** INSERT **********

8187 Mr. Cicilline. The gentleman is recognized to explain his
8188 amendment.
8189 Mr. Bentz. Thank you, Mr. Chair.
8190 Before I begin, I want it clear that big tech is not perfect,
8191 is guilty of bad acts, is evolving, has a long way to go, and
8192 there are aspects of big tech that need congressional attention.
8193 Having said that, the interoperability provisions in this
8194 bill are a huge step backwards. Although I agree
8195 interoperability is a good thing in many places, but antitrust
8196 law is not the proper means of bringing this function forward.
8197 Let me also be clear that I do not object to the part of
8198 the bill that concerns portability. Although complex, this is
8199 a necessary element of the internet universe and I think will
8200 be occurring one way or the other.
8201 But I do object to that portion of the bill which requires
8202 interoperability. Here's why: the purpose of the bill is to
8203 establish the fact that, without interoperability, a platform
8204 is competing illegally. In other words, a platform that fails
8205 to provide interoperability to others or fails to offer an
8206 interface is, of itself, anticompetitive and is, thus, illegal.
8207 This is clearly stated in the Section 2 where the bill provides
8208 that a failure to comply with this Act is a violation of Section
8209 5 of the Federal Trade Commission Act.
8210 The question that must be asked: is this bill consistent

8211 with antitrust law, as it has evolved over the past 40 or 50 years?
8212 The answer is no. The bill is a huge step backwards away from
8213 the understood and refined consumer welfare standard and back
8214 toward a simplistic and arbitrary focus on market structure and
8215 concentration. Big is bad, according to this bill, ignoring the
8216 need to analyze actual competitive effects.
8217 This bill is a clear example of government-engineered
8218 industrial policy and nothing makes it more clear than a quick
8219 look at page 15, lines 11-12, which read, quote, "The Commission
8220 shall issue standards of interoperability specific to the
8221 platform." That is, the Commission, the government will issue
8222 those standards. This is absolutely government engineering and
8223 government-designed industrial policy. The government is taking
8224 control under the guise of improving competition.
8225 This bill presumes that all will be more competitive by
8226 forcing successful companies to give all of that that they have
8227 created to others. This is what the bill does. The
8228 interoperability portions of this bill are not good for innovation
8229 and not good for the American consumer.
8230 This is a step back to the days when small was celebrated.
8231 A discussion of this can be found in the United States v.
8232 Trans-Missouri Freight Association, a rather elderly case issued
8233 in 1897 which held that the antitrust law was to protect "small
8234 dealers and worthy men". The Court concluded that "small dealers

8235 and worthy men" should be protected, even if doing so came at
8236 the expense of mere reduction in the price of commodity.
8237 That is what the interoperability provisions do in this bill.
8238 They force large companies who have been successful in business
8239 to protect less successful firms from more efficient competitors.
8240 The result: the consumer is the worse for it.
8241 This bill reflects a shift of control to the government.
8242 It reflects a chilling of innovation. It reflects a means of
8243 damaging privacy. The bill throws open the door to our
8244 competitors -- China being the most obvious -- putting not only
8245 consumer privacy at risk, but also the nation's security. Let
8246 me say again: big tech is certainly not perfect, but this bill
8247 is not the way to fix the problem. I urge the support of my
8248 amendment.
8249 I yield back.
8250 Mr. Cicilline. The gentleman yields back.
8251 I now recognize myself in opposition to the amendment.
8252 I understand the gentleman's amendment is, essentially, to
8253 remove the interoperability provisions of the legislation, which
8254 essentially guts the bill and only leaves portability in place,
8255 which I thank him for his support of half of the bill, but this,
8256 again, is a competition-based solution to ensure actually more
8257 innovation and more ability to compete.
8258 And I reference a letter from the Electronic Frontier

8259 Foundation that says, "Requiring interoperability, as envisioned
8260 by the ACCESS Act, will fix the core problem users have with
8261 today's dominant platforms -- the ability to leave a platform
8262 while remaining in contact with their personal networks."
8263 The difficulty of leaving today's dominant platforms means
8264 that those platforms have inadequate incentives to safeguard
8265 consumer privacy and freedom of expression. By breaking down
8266 the power of network effects, Congress will enable new markets,
8267 products, and services to emerge within the ecosystem where a
8268 super-majority of internet users currently reside. The ACCESS
8269 Act gives consumers meaningful ways to vote with their feet,
8270 should they disagree with big tech's platform decision on how
8271 to deliver their service.
8272 So, I would respectfully say that the interoperability will
8273 lead to more innovation, a better quality of products, better
8274 service to consumers, and the ability for people to vote with
8275 their feet.
8276 And with that, I'll yield the balance of my time to
8277 Congresswoman Scanlon.
8278 Ms. Scanlon. Thank you, Representative Cicilline.
8279 Yes, I do appreciate the gentleman's support for the
8280 portability portions of the bill, but, as the gentleman from Rhode
8281 Island noted, this would gut the interoperability portions of
8282 the bill, and that is required for successful implementation of

8283 this competition-based solution.

8284 We need to lower barriers to entry and growth for competing

8285 companies and enable effective consumer and business choice among

8286 alternatives, and that's what this bill would do.

8287 So, I would urge a no vote on this amendment, and I yield

8288 back.

8289 Mr. Cicilline. The gentlelady yields back.

8290 Anyone else seek recognition?

8291 Ms. Lofgren. Mr. Chairman?

8292 Mr. Cicilline. Yes, the gentlelady from California.

8293 Ms. Lofgren. I move to strike the last word.

8294 Mr. Cicilline. The gentlelady is recognized.

8295 Ms. Lofgren. Unlike the author, I actually believe

8296 interoperability is an important means of promoting competition.

8297 I do worry, however, about the structure of the bill. Now we

8298 solve a big problem by making sure that users' data can only be

8299 transferred with their request. I do have continuing concerns

8300 about the other security issues, not just the privacy issues,

8301 but the security issues. I'm struggling with whether you would

8302 support an interoperability provision with adequate security

8303 provisions, or whether you're just opposed to interoperability

8304 per se, if I could yield.

8305 Mr. Cicilline. The gentleman's recognized.

8306 Mr. Bentz. Thank you for the yield and thank you for the

8307 time.

8308 I think it unlikely. I think the interoperability space

8309 is incredibly complex and those who I have spoken to that are

8310 aware of how it works are wondering how many years and how many

8311 billions will be spent trying to achieve the goal suggested in

8312 this bill.

8313 I will also point out that I have had a modest amount of

8314 experience in this space in the healthcare arena and I will just

8315 share with you this is going to be extraordinarily difficult at

8316 every level. So the short answer is no, but thank you. Thank

8317 you for the--

8318 Ms. Lofgren. I thank the gentleman and I yield back.

8319 Mr. Cicilline. The gentlelady yields back. If there are

8320 no further requests for recognition, the question now occurs on

8321 the amendment.

8322 All those in favor, say aye.

8323 Voice. Aye.

8324 Opposed, say nay.

8325 In the opinion of the Chair--

8326 Voice. Nay.

8327 Mr. Cicilline --the noes have it.

8328 Anyone else have an additional--

8329 Voice. Yeas and nays.

8330 Mr. Cicilline. --amendment? I am sorry?

8331 Mr. Bishop. I do.

8332 Mr. Cicilline. The yeas and nays. Yeas and nays have been

8333 requested. The clerk will please call the roll.

8334 Ms. Fontenot. Mr. Nadler?

8335 Ms. Fontenot. Ms. Lofgren?

8336 Ms. Lofgren. [inaudible].

8337 Ms. Fontenot. Ms. Lofgren passes.

8338 Ms. Jackson Lee?

8339 Ms. Jackson Lee?

8340 Ms. Jackson Lee. Passing.

8341 Ms. Fontenot. Ms. Jackson Lee passes.

8342 Mr. Cohen?

8343 Mr. Cohen. No.

8344 Ms. Fontenot. Mr. Cohen votes no.

8345 Mr. Johnson of Georgia?

8346 Mr. Johnson of Georgia. No.

8347 Ms. Fontenot. Mr. Johnson of Georgia votes no.

8348 Mr. Deutch?

8349 Mr. Deutch. No.

8350 Ms. Fontenot. Mr. Deutch votes no.

8351 Ms. Bass?

8352 Ms. Bass. No.

8353 Ms. Fontenot. Ms. Bass votes no.

8354 Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes not.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Ms. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Ms. Jackson Lee. How am I recorded?

Ms. Fontenot. Ms. Jackson Lee, you are recorded as present.

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. No.

Ms. Fontenot. Mr. Owens votes no.

Chairman Nadler. Nadler votes no.

Ms. Fontenot. Mr. Nadler votes no.

Ms. Lofgren. Lofgren votes no.

Ms. Fontenot. Ms. Lofgren votes no.

Mr. Cicilline. Has everyone recorded their vote who desires to vote?

The clerk will report?

Ms. Fontenot. Mr. Chair, there are 14 ayes and 29 noes.

8475 Mr. Cicilline. The amendment is not adopted.

8476 For what reason does the gentlelady from California seek
8477 recognition?

8478 Ms. Lofgren. I have an amendment at the desk.

8479 Mr. Cicilline. The clerk will report the amendment.

8480 Ms. Fontenot. Amendment to the amendment in the nature of
8481 a substitute.

8482 Ms. Lofgren. Could you hold for a minute and see are there
8483 further Republican amendments? Let me hold off on this and let
8484 another amendment-

8485 Mr. Bishop. Then I have an amendment.

8486 Mr. Issa. I have another one, too.

8487 Mr. Bishop. Or he has one. Go ahead.

8488 Mr. Cicilline. You haven't had a chance. Mr. Issa has gone
8489 a lot.

8490 Mr. Issa. Go right ahead.

8491 Mr. Bishop. All right. Thank you, Mr. Chairman. I have
8492 an--

8493 Mr. Cicilline. We need a break from Mr. Issa.

8494 Mr. Bishop. I have an amendment at the desk.

8495 Mr. Cicilline. The clerk will please report the amendment.

8496 Reserve a point of order.

8497 Ms. Fontenot. Amendment to the amendment in the nature of
8498 a substitute to H.R. 3849 offered by Mr. Bishop of North Carolina.

8499 Page 14, line 22, enter the following and redesignate the
8500 subsequent subsection accordingly: Interoperability standards
8501 issued by the Commission shall not require a business user to
8502 alter the content moderation policies and practices on their own
8503 online platform.
8504 Page 18, line 4, enter quote, "provided that the standard
8505 shall not regulate any user content moderation policies or
8506 practices of the business user," end quote, before the semicolon.
8507 Page 18, line 4, strike, quote, "and," quote.
8508 Page 18, line 14, strike the period. Insert quote, "and,"
8509 quote.
8510 Page 18, line 14, enter the following: Five, prevent a
8511 covered platform from conditioning by limiting access to their
8512 online platform on the basis of a business user's content
8513 moderation practices or policies.
8514 Mr. Bishop. Mr. Chairman?
8515 Mr. Cicilline. The gentleman is recognized to explain his
8516 amendment.
8517 Mr. Bishop. Thank you, sir.
8518 You know, we have had a lengthy debate tonight and about
8519 10 hours ago approximately I said that the thing about this package
8520 of bills substantively is that it seems to turn over a lot of
8521 power for the regulatory agency to decide a lot of stuff that
8522 we should decide.

8523 When the concepts in these bills were first shared, I
8524 actually thought that this bill, the affordability and
8525 interoperability concepts were inviting. I still think that that
8526 is true about portability and I could live with some versions
8527 of interoperability, but one of the things that is very
8528 interesting about the bill, and many of these bills, is a lot
8529 of terms are not defined.
8530 If you start off on page 1 of this bill, Section 3,
8531 Portability, if you go down to line 14, it is defined as something:
8532 to enable the secure transfer of data to a user.
8533 You go over to Interoperability on the next page, Section
8534 4; look at line 22, it says covered platforms shall maintain a
8535 set of transparent third-party accessible interfaces to
8536 facilitate and maintain interoperability. It doesn't define
8537 what that is.
8538 I have had some conversations with a member or two in which
8539 member says, well, all that is is instead of data being--your
8540 portable data being delivered to you, it--interoperability would
8541 allow it to be delivered to another platform. Well, I am not
8542 so sure.
8543 So as I was digging into this; and to Mr. Cicilline, you've
8544 pointed out a couple times, it has been a long investigation.
8545 There is a really big majority staff committee report, and I
8546 have read a lot of it. And I went back to that to try to understand

8547 what it would be, what interoperability might mean and I came
8548 upon in particular an article or a paper written by Michael Kades,
8549 who I understand is going to be legislative counsel and antitrust
8550 to Senator Klobuchar called Interoperability as a Competition
8551 Remedy for Digital Networks. And he contemplates there that
8552 interoperability would be like--would be like Twitter
8553 users being able to friend or get access to users on Facebook.
8554 Facebook was a place he really seemed to focus.
8555 And I thought about--well, so what would happen if somebody
8556 on Parler wanted to friend somebody on Facebook? And whose rules
8557 would govern if Facebook said, for example, you are forbidden
8558 to mention the origin of COVID-19 coming from a lab in Wuhan,
8559 China? Can't say that. That is against our rules, our community
8560 rules. Or you can't say anything about the Hunter Biden laptop.
8561 It is against our community rules. Or maybe something a little
8562 bit more--you can't mis-gender somebody. That is one that--you
8563 know, so whose rules are going to govern?
8564 And in fact, if that--that not being too farfetched, there
8565 is a paragraph herein where he says in the social network context
8566 there will likely be ample disputes. For example, a defendant
8567 platform rejects interoperability with an entrant because it
8568 claims the entrant traffics in hateful and deceptive information
8569 which the defendant's platform forbids. The entrant responds
8570 that it does not allow such information to be posted and reports

8571 that defendant discriminates against posts of the entrant.

8572 So the concern is that; particularly if you go over to page
8573 18 of the bill, one of the things that the Technical Committee
8574 is told to do is to prevent fraudulent, malicious, or abusive
8575 activity by a business user interoperating with the covered
8576 platform. I am not in favor of fraud; no in favor of malice.
8577 I don't really know what abusive means. And it is yet another
8578 area for the FTC to decide. And it seems like what is likely
8579 to happen is the FTC is probably going to follow the practices
8580 of a Facebook in many circumstances and say you can't talk about
8581 the origins of the--and if you are on Parler, instead of having
8582 a unique platform, you are going to be stuck with the same kind
8583 of oppressive rules that say you can't talk about the origin of
8584 the COVID-19 virus.

8585 Now, I think this has been helped today by Ms. Lofgren's
8586 amendment that says nobody is going to get--interoperate except
8587 on a user-by-user consent basis. But if a user grants consent
8588 to interoperate with Parler, then there is no reason that Parler's
8589 rules or its community need to be overridden by Facebook. And
8590 that is what this amendment would do. I yield back.

8591 Mr. Cicilline. The gentleman yields back.

8592 I now recognize myself in opposition to the amendment.

8593 Again--I withdraw the point of order. This legislation that
8594 is before us is narrowly crafted to build a more competitive and

8595 dynamic digital marketplace. The legislation does not involve
8596 content moderation. It is targeted at anticompetitive conduct
8597 in the digital economy. There are a number of proposals; I know
8598 one from the ranking member, related to this issue and it has
8599 been referred to the Committee on Energy and Commerce, which
8600 has--is the appropriate venue for addressing this.

8601 But one thing that I am particularly concerned about is if
8602 you look at the bottom, lines 5 through 8, your amendment would
8603 prevent a covered platform from conditioning or limiting access
8604 to their online platform on the basis of a business user's content
8605 moderation practices or policies. So if you had a platform that
8606 allowed pornography, child pornography, that would not be a basis
8607 if this amendment passes to prevent the platform from limiting
8608 access to the online platform.

8609 And so that would essentially say there is nothing you could
8610 do, FTC. You can not in fact rely upon a business user's content
8611 moderation practices or policies and we would be forced, or
8612 consumers would be forced to live with whatever decisions, however
8613 outrageous those practices or policies might be. It could not
8614 form a basis for preventing a covered platform from conditioning
8615 or limiting access.

8616 I think that is very dangerous. And I am certain that's
8617 not what you intend to do, but I think that is the practical effect
8618 of the amendment. And so I urge my colleagues to vote no on the

8619 amendment.

8620 Mr. Jordan. Mr. Chairman?

8621 Mr. Cicilline. Yes, Ranking Member, Jordan?

8622 Mr. Jordan. I yield time to the gentleman from North

8623 Carolina who sponsored--

8624 Mr. Cicilline. The gentleman from North Carolina is

8625 recognized.

8626 Mr. Bishop. I thank the gentleman from Ohio.

8627 So the big question for conservatives in this entire process

8628 here needs to be are we making progress for the interests of

8629 conservatives in this package of bills or not? And now the answer

8630 has been laid bare.

8631 Mr. Cicilline. Will the gentleman yield?

8632 Mr. Bishop. Let me finish for a minute and I will be glad

8633 to if I have got any of Mr. Jordan's time left to yield, or actually

8634 I am not sure it would even be mine to yield.

8635 But let me just say this: So what we see--and consider that

8636 situation. So Parler interoperating with Facebook. In all of

8637 the circumstances I gave maybe one that just really is the most

8638 outrageous that for a year people on Facebook have been prohibited

8639 from mentioning the fact that it--and what now seems to be the

8640 likeliest of theories about the origin of COVID and that it came

8641 from a lab in Wuhan. It has been forbidden by their censorship.

8642 And so if Parler is interoperating with Facebook, even if

8643 a Facebook user has to consent one-off in order for that to happen,
8644 now we can see what this language, this vague language means
8645 vis-a-vis the FTC. They are going to be the police of what can
8646 be said on Parler and any other network.

8647 How are you going to have unique and dynamic competitive
8648 environments popping up where--if Facebook can decide across the
8649 social network universe that you can't say what the origin of
8650 the Wuhan virus is?

8651 And of course I am using that as an example, but to any
8652 conservative who would say this is the way to embark on a solution
8653 to big tech's censorship of conservatives and that particular
8654 abuse, this--that response, that opposition to this amendment
8655 gives the lie to that. And I yield back to Mr. Jordan.

8656 Mr. Jordan. I yield back. Thanks.

8657 Mr. Cicilline. Does anyone else seek recognition?

8658 Ms. Jackson Lee?

8659 Ms. Jackson Lee. Mr. Chairman, I strike the last word and
8660 yield to you.

8661 Mr. Cicilline. Thank you. I thank the gentlelady for
8662 yielding.

8663 I just want to quickly respond. The question of and the
8664 purpose of these bills is to promote competition, to promote
8665 innovation, to ensure that there are more choices for consumers
8666 and more opportunities for entrepreneurs and innovators. The

8667 purpose of these bills is not to curate content. There is a bill,
8668 as I mentioned, introduced by the ranking member of this committee
8669 on this very issue that was referred to the Energy and Commerce
8670 Committee that has exclusive jurisdiction over it.

8671 So I think one of the challenges is trying to solve a problem
8672 that is the subject matter of the jurisdiction of another
8673 committee which is not the subject of the antitrust bills. But
8674 as I mentioned--

8675 Mr. Bishop. Would the gentleman yield?

8676 Mr. Cicilline. Let me just finish and then I am happy to,
8677 even though you didn't.

8678 2018 Tumblr--

8679 Mr. Bishop. I am running out of time.

8680 Mr. Cicilline. No, I am trying to model good behavior.
8681 2018 Tumblr was delisted for harboring child pornography. And
8682 if your amendment is adopted, it would prevent a covered platform
8683 from conditioning or limiting access to the online platform on
8684 the basis of a user's content moderation practices or policies.
8685 There would be nothing you could do; we would have to live with
8686 that.

8687 I know you don't intend that to be the result, but I think
8688 that is the problem if you say it prevents a covered platform
8689 from conditioning or limiting access to their online platform
8690 on the basis of a business user's content moderation practices

8691 or policies.

8692 So set aside the criminal aspect of that. Suppose you had
8693 a platform that said we don't have any content moderation
8694 policies. We let everyone--no matter how violent, no matter what
8695 they say, invite that. You would not have the ability in any
8696 way to limit access to that online platform or the business user
8697 wouldn't have an opportunity to do that if this amendment passes.
8698

8699 So I get the purpose, but I think what ends up happening
8700 is this blows a hole that will make it virtually impossible to
8701 prevent people from maintaining--or forcing people to be
8702 interoperable and portable with platforms that pose real dangers
8703 to the community, and I just don't know if that language achieves
8704 what you intend to achieve.

8705 Mr. Bishop. Mr. Chairman--

8706 Mr. Cicilline. I am happy to yield. Of course.

8707 Ms. Jackson Lee. It is my time. I am happy to yield--

8708 Mr. Cicilline. Oh, I am sorry. Yield back to Ms. Jackson
8709 Lee.

8710 Ms. Jackson Lee. I am happy to yield to the gentleman.

8711 Mr. Bishop. I thank the gentlelady from Texas.

8712 I understand that this poses a complexity for the issue of
8713 interoperability. And you say, Mr. Chairman, that there is
8714 no--that this is outside the jurisdiction of the Committee, but

8715 the language here imparts power to the FTC to deal with this issue.
8716 It allows the FTC to pass rules to protect against, quote,
8717 "abusive activity." And one person's pornography, if that--that
8718 would be abusive as far as I am concerned, but I don't think it
8719 is abusive to say that the Wuhan virus--my theory is the Wuhan
8720 virus came out of the lab. But Facebook said that was abusive.
8721
8722 So your bill, the language of your bill empowers the FTC
8723 to do that. And you are saying you want to have an environment
8724 in which interoperability occurs and yet you have all these
8725 different flavors springing up and competitors that do things
8726 differently and yet you are going to have--you are empowering
8727 the FTC to impose content moderation policies on every business
8728 user that wants to interoperate--
8729 Ms. Jackson Lee. Reclaim my time.
8730 Mr. Bishop. --for the sakes of its customers.
8731 Ms. Jackson Lee. Reclaim my time. I just want to make one
8732 quick point. Laymen will have to understand this and this is
8733 going to go through a lot of machinations before these bills become
8734 law, but I do think in all of the discussion on interoperability
8735 and the content truth is a factor. And what has been happening
8736 is there has been a question of whether or not the issues around
8737 COVID and other matters have been truthful, and I think the covered
8738 entity has a right to make that determination as the bill would

8739 do. I yield back. I mean I yield to the gentleman--

8740 Mr. Cicilline. I thank the gentlelady for yielding. And

8741 again I think this issue with respect to content moderation is

8742 an important one, but I think it requires a discussion within

8743 the committee of jurisdiction. I think the attempt to insert

8744 that into this competition-based solution on data portability

8745 and interoperability poses real danger and I urge my colleagues

8746 to vote no on the amendment.

8747 Mr. Tiffany. Mr. Chairman?

8748 Mr. Cicilline. For what purpose do you seek recognition?

8749 Mr. Tiffany. Move to strike the last word.

8750 Chairman Nadler. The gentleman is recognized.

8751 Mr. Tiffany. Thank you very much. I speak in support of

8752 the gentleman from North Carolina's amendment, and one of the

8753 key issues here for us is censorship. And he mentioned this in

8754 his comments in regards to--conservatives are very concerned

8755 about this and we are not seeing anything in these bills in regards

8756 to censorship and--but I would give a little different take than

8757 the gentleman from North Carolina and some others--is that

8758 ultimately this is not just about conservatives.

8759 All we have to do is witness the cancel culture over the

8760 last couple years. They are coming for us now. They are coming

8761 for people like me, certainly the ranking member. They have come

8762 after him hard here over the last year and we have seen the results

8763 of that. I mean, I just look at in the State of Wisconsin when
8764 we had the riots in Madison, they went--the rioters, they went
8765 and tore down the statue of a guy who died at Chickamauga to save
8766 the Union and end slavery. And they were tearing him down. I
8767 mean, that is the kind of stuff that goes on with cancel culture
8768 and it extends to speech also.
8769 They are coming for us now, but they don't stop there. They
8770 will come for you ultimately also, and that is why it is so
8771 important to have something like this amendment where you have
8772 platforms that can share their speech even if some people disagree
8773 with it. I yield back. I will yield the balance of my time--
8774 Mr. Jordan. Yes, I thank the gentleman for yielding, and
8775 I support the gentleman from North Carolina's amendment. The
8776 gentlelady from Texas said truth is a factor. That's the point.
8777 All kinds of content was taken down off of these platforms.
8778 The gentleman's example is the best, about the origins of the
8779 virus. And at the time people said that was not truthful.
8780 Shazam, it looks like it is now. That's the whole point. That's
8781 why we need this amendment. Truth does matter, but sometimes
8782 if people have a disagreement on it, if only one side is allowed
8783 to talk, that's not going to get us to the answer. That's not
8784 going to get us to the truth, as the gentlelady from Texas pointed
8785 out. That is what this amendment is about and that is why it
8786 is a good amendment. I urge its adoption. Yield back to the

8787 gentleman from Wisconsin.

8788 Mr. Tiffany. And I will yield some time to the gentleman

8789 from North Carolina.

8790 Mr. Bishop. I thank the gentleman. I thought he was going

8791 to ask for more time.

8792 Yes, I thank the gentlewoman from Texas for her candid

8793 statement. What she just described is the Ministry of Truth.

8794 The Ministry of Truth. So it is not going to be that we have

8795 to put up with Facebook at the cost of not being on that platform

8796 and going to Parler, which they trampled on one time and sort

8797 of is trying to build itself back up.

8798 No, the Facebook regime will be picked up by Ms. Khan at

8799 the FTC. And with the academics on the Technical Committee it

8800 will--you will take these rules of--that are about truth according

8801 to the gentlewoman from Texas and it will be imposed as a matter

8802 of government power across social media. You can compete in

8803 different ways. We can have a lot of competition in terms of

8804 flavors of social media, but they will all be under the Ministry

8805 of Truth. That is what this bill--these bills do. And I yield

8806 back to Mr. Tiffany.

8807 Mr. Jordan. Will the gentleman will yield again?

8808 Mr. Tiffany. I will yield to the gentleman from Ohio.

8809 Mr. Jordan. We saw this--

8810 Mr. Cicilline. The gentleman from Ohio is recognized.

8811 Mr. Jordan. We saw this last year. I got the email where
8812 Mr. Zuckerberg emailed Dr. Fauci. Tony, he says, I wanted to
8813 send a note of thanks for your leadership. Everything you are
8814 doing to make the country's response as effective as possible.
8815 I also wanted to share a few ideas with you. Then the next
8816 paragraph he says this: This isn't public yet, but we are
8817 building a coronavirus information hub that we are going to put
8818 at the top of Facebook for everyone with two goals: make sure
8819 people get authoritative information from reliable sources.
8820 Authoritative information from reliable sources. They were 0
8821 for 2. Right?
8822 The information Dr. Fauci was giving him on the origin of
8823 the virus wasn't true; at least it sure appears that way. So
8824 this is exactly the scenario that we need to deal with. It is
8825 already happened. Now we are going to codify it. That is the
8826 concern. That is why this amendment is so darn important. I
8827 yield back to the gentleman from Wisconsin.
8828 Mr. TIffany. So I would just conclude by saying for those
8829 of you that are Harry Potter fans and are not familiar with the
8830 Ministry of Truth, think of the Ministry of Magic. It is much
8831 similar. I yield back.
8832 Mr. Cicilline. The gentleman yields back.
8833 Mr. Roy is recognized. For what purpose does the gentleman
8834 seek recognition?

8835 Mr. Roy. Strike the last word.

8836 Chairman Nadler. The gentleman is recognized.

8837 Mr. Roy. I believe that the gentleman from North Carolina's
8838 amendment is offered in good faith with respect to ensuring that
8839 what we are doing in this bill to empower the FTC, which it clearly
8840 in the abusive language and generally does, to make these
8841 determinations that we would take off the table these issues of
8842 content moderation policies. And what the gentlelady from Texas
8843 referred to and which my friend from Ohio and others have now
8844 talked about in terms of truth, this is the whole thing. This
8845 is the whole issue. Who decides? Who decides?

8846 I mean, for the better part now of, what is this June--for
8847 the better part of 15 months--I mean an entire campaign last year
8848 I had $16 million worth of ads run against me saying I was saying
8849 the virus was a hoax because I dared to talk about where I thought
8850 the virus came from; turns out to be true, because I dared to
8851 talk about the nature of the virus, that I dared to talk about
8852 what might happen if we shut down our schools, shut down our
8853 economy, talk about the cancer that would not be detected, the
8854 mental illness that would flow, the masks and the damage to our
8855 children.

8856 And yet technology companies with all of the power that we
8857 are agreeing on a bipartisan basis they have, with all of their
8858 power they were shutting down our voice in the name of truth.

8859 That is what was happening. I mean, it is clear as day. I mean,
8860 and I would be happy to engage in a discussion about that matter,
8861 but I experienced it. I saw it. And here we sit.
8862 And we talk about truth. When we talk about truth of a virus
8863 that a great deal of evidence suggests came out of Wuhan--allow
8864 me to insert the funny rant by John Stewart the other night on
8865 late night TV about that chocolate and Hershey came from
8866 somewhere. I think it came from the factory. I mean, here we
8867 sit. If you are Wuhan, where did the virus come from? e know.
8868
8869 And so we talk about that for a year and you have got these
8870 people using a $600 billion corporation that--I mean, I don't
8871 use Facebook. My wife shows me pictures from friends and family
8872 every once in a while. I don't use it. I try not to use Twitter
8873 too much anymore. But if you want to go out there and talk to
8874 people, we kind of have to use Facebook. Right? That is our
8875 monopoly problem that we are addressing.
8876 And I have said and I agree that I think there is bipartisan
8877 good faith efforts to try to address the monopoly problem, but
8878 here the gentleman from North Carolina is just trying to say wait
8879 a minute, if we are going to have interoperability standards,
8880 the FTC is going to be inserted into that, how about we just say
8881 you know what, we should make sure that we are not requiring these
8882 users to alter the content moderation policies and practices on

8883 their online platform.

8884 I think that is a reasonable thing the gentleman from North
8885 Carolina is doing and I would suggest that if we are going to
8886 figure out the monopoly power of these high-tech companies, we
8887 should actually talk about the truth. That is the truth. What
8888 we have been seeing and experiencing in the shutdown of free speech
8889 and thought.

8890 If anything should send chills down the spines of members
8891 of the People's House, it is the power of corporate entities
8892 shutting down speech and thought in the name of what they declare
8893 is truth and then insert the Government into that in the wisdom
8894 of the FTC with these corporations to determine what the truth
8895 is.

8896 Mr. Jordan. Does the gentleman yield?

8897 Mr. Roy. Yes, I yield to the ranking member.

8898 Mr. Jordan. I just want to keep reading from Mr.
8899 Zuckerberg's communication with Dr. Fauci. People want to hear
8900 from experts than political leaders. Turned out Mr. Roy was
8901 right, Dr. Fauci, the expert, was wrong last year. But no, Mr.
8902 Roy's comments, they got censored. They got taken down. And
8903 I could read you more from their email back and forth, but the
8904 Government redacted a bunch of what Mr. Zuckerberg said to Mr.
8905 Fauci. So we didn't even know part of what they had going with
8906 this coordination.

8907 Mr. Cicilline. The time of the gentleman has expired.

8908 For what reason does the gentlelady from Texas seek

8909 recognition?

8910 Ms. Garcia. Mr. Chairman, I move to strike the last word.

8911 Mr. Cicilline. The gentlelady is recognized.

8912 Ms. Garcia. Mr. Chairman, I yield my time to my colleague

8913 from Texas, Sheila Jackson Lee.

8914 Mr. Cicilline. The gentlelady from Texas is recognized.

8915 Ms. Jackson Lee. I thank the gentlelady from Texas for her

8916 generosity and kindness. I am certainly most moved by the fact

8917 that my words have now been cited by so many of my good friends

8918 on the other side of the aisle. This place is a place for truth,

8919 equality, and justice, so I am glad that we are discussing truth.

8920 I would make the simple point before I make my larger point

8921 that I am looking at some of what Google says where scientists

8922 battle over the ultimate origin story, where did coronavirus come

8923 from? So I don't think we have found the truth yet, but there

8924 are many different scientific perspectives, but I do want to go

8925 back to the point Mr. Cicilline has made and I want to in particular

8926 look at Congresswoman Scanlon's bill, if I might.

8927 The bill reads to promote competition, lower entry barriers,

8928 and reduce switching costs for consumers and business online.

8929 Obviously the short title is Augmenting Compatibility and

8930 Competition by Enabling Service Switching Act Access. It also

8931 says a violation of this act or standards issued pursuant to this
8932 act by a person, partnership, or corporation operating a covered
8933 platform in or affecting commerce shall be an unfair method of
8934 competition in violation of Section 5(a)(1) of the Federal Trade
8935 Commission.

8936 To bring the argument back to where we should be, I just
8937 want to say to my friends on the amendment that Mr. Bishop has
8938 offered this is a bill about competition. I think content is
8939 a very important discussion. It might be apropos for us to have
8940 a separate legislation that overlaps the Energy and Commerce
8941 jurisdiction on content. Content is very important and truth
8942 in that content is very important. And frankly, to my friends
8943 we--those of us who may not be in the conservative alignment but
8944 we respect it have been battered untruth ourselves.

8945 So to my good friend from Texas, he might want to encourage
8946 his colleagues, Republican colleagues in the Senate to vote for
8947 H.R. 1, Mr. Roy, so you won't have all that dark money coming
8948 after you in the next campaign. But that is another story. I
8949 simply want to remind us that the bill is about competition and
8950 I think this amendment does not fit within the four corners as
8951 it relates to content. We can discuss truth and content, but
8952 I don't think that it fits within this particular bill. And with
8953 that I will yield back to the gentlelady. Thank you.

8954 Chairman Nadler. The gentlelady yields back.

8955 For what purpose does the gentleman from Kentucky seek
8956 recognition?
8957 Mr. Massie. Move to strike the last word.
8958 Chairman Nadler. The gentleman is recognized.
8959 Mr. Massie. My friend Mr. Bishop offers this amendment in
8960 good faith with the concern that millions of people, if they were
8961 watching this hearing, would have, that they have generally, which
8962 is if they get mistreated on one platform, can they go to the
8963 other platform? And that is what seduced many folks on this side
8964 of the aisle into supporting some of this legislation, but the
8965 amendment possibly more so than any other amendment that has been
8966 offered to any of these bills tonight exposes a problem with this
8967 whole interoperability pipedream.
8968 Are you going to homogenize the terms of service? Do all
8969 four companies have to have the same terms of service?
8970 If somebody gets banned on one platform, are they banned on the
8971 others? Does the FTC decide that? If one platform has a security
8972 issue, are all the other platforms going to have to be that?
8973 I mean, there have been amendments offered to try and deal with
8974 the security of the user and the security of the platform. What
8975 about the privacy of the user? The ownership issue? Who owns
8976 this stuff? Proprietary algorithms. I mean some of these
8977 companies spent millions of dollars and got intellectual
8978 property. Is there compulsory licensing required for

8979 somebody--for one company? Do they have to take their
8980 intellectual property and give it to other companies in order
8981 to facilitate interoperability?
8982 But you don't need any of those complicated questions. Just
8983 the simplest question that Mr. Bishop's amendment asks, which
8984 is does the content moderation policy of one platform extend to
8985 the other? And the content moderation policies, they don't
8986 invite content; they exclude content.
8987 So what if we have got four platforms and one is conservative
8988 and it doesn't let liberal viewpoints on there? And one if is
8989 liberal and doesn't let conservative viewpoints on there? And
8990 then you merge the two terms of service, which--does the FTC choose
8991 either one or do they pick them both so that you can't say anything
8992 political on any of the four platforms? Because that is what
8993 terms of--that is what the user agreement does, it excludes
8994 certain speech.
8995 Okay. You can't say it might have come from Wuhan. All
8996 right. Well, our terms of service are you can't say it came
8997 naturally. Well, our terms of service say, well, the vaccine
8998 might be hurtful. Well, our terms of service say, no, you can't
8999 speak ill of the vaccine. You merge all of those and what you
9000 end up with is nobody can say anything.
9001 And it was offered in good faith. It is not meant to blow
9002 this bill up. It is not meant to blow it up at all. But it has

9003 the unintended side effect, this amendment does, of exposing that
9004 this interoperability thing is a pipedream. It fails even the
9005 simplest test. Even the sponsor of a bunch of the bills here
9006 tonight admitted it blows it up. It jsut blows it up to even
9007 try and think about, oh, what if--what does interoperability-how
9008 does it handle content moderation policies? I can't think about
9009 it. It just blows the bill up. So we can't vote for your
9010 amendment.

9011 Well, this bill is not ready to prime time and the
9012 interoperability part of it, which people have tried to fix
9013 tonight, it is unfixable. It is just not fixable. And as I said
9014 before, interoperability--your standards are what--when one
9015 company becomes dominant in a market, they use interoperability
9016 to exclude their customers. They say if you want to
9017 interoperate--

9018 Chairman Nadler. Does the gentleman yield?

9019 Mr. Massie. Let me continue this thought and then I will
9020 yield. If you want to interoperate with this, you got a license
9021 from us. You got to pay to compete with us because you don't
9022 have the resources to recreate million of lines of code that we
9023 did. I would yield to Ms. Jackson Lee.

9024 Ms. Jackson Lee. I think this discussion is very worth,
9025 but I was beginning to think about what could happen under this
9026 amendment: ISIS, Chinese propaganda, and who knows what else?

9027 I think there is a great concern here and whether or not it fits
9028 into this legislation is a question and I would just argue that
9029 it does not because the basis is competition and the content could
9030 be open to anything. I yield back to the gentleman.
9031 Mr. Massie. I thank the gentlelady for yielding and just
9032 the questions that she poses I believed also exposed this. If
9033 you can't make his amendment work, then this interoperability
9034 thing is not ready for prime time. And that sums up my thoughts
9035 and I will yield back the last 10 seconds.
9036 Chairman Nadler. The gentleman yields back.
9037 For what purpose does the gentlelady from California seek
9038 recognition?
9039 Ms. Bass. Thank you, Mr. Chairman. I move to strike the
9040 last word.
9041 Chairman Nadler. The gentlelady is recognized.
9042 Ms. Bass. Well first of all, let me just recognize the hard
9043 and long work of the subcommittee, the subcommittee chairman and
9044 the ranking member and all the members and especially the staff
9045 of the subcommittee in both the 116th Congress and now in this
9046 Congress.
9047 I know that the Committee spent almost two months working
9048 on their investigation; actually it was much, much longer than
9049 two months, through numerous hearings, briefings, drafting of
9050 the 450-page report and a package of six bills, and I know that

9051 they are subject area specialists.

9052 As some of our colleagues have mentioned, many of us on this
9053 Committee haven't participated though in one hearing on the
9054 markets, the monopolistic markets, or even the package of
9055 antitrust bills we have before us today. And obviously we all
9056 want to foster competition, promote innovation, and provide both
9057 benefits and protections to our constituents.

9058 However, as our economy rebounds from a global pandemic we
9059 do have to understand both the intended and unintended
9060 consequences the bills will have on these companies, their
9061 competitors, and consumers. So that is why holding at least one
9062 hearing even after the fact for all the members of the full
9063 Judiciary Committee definitely will be my preference, and would
9064 have been my preference.

9065 So I do strongly support providing a dedicated and consistent
9066 funding source for both the FTC and the Department of Justice
9067 Antitrust Division. As enforcement demands rise with
9068 increasingly complex mergers and major monopolization cases at
9069 both the FTC and the Justice Department we can't continue to hold
9070 agency funding flat. So these additional funds will help the
9071 agencies to adequately promote competition.

9072 The bill we are considering is important. Incorporating
9073 data, interoperability, and to privacy legislation is essential
9074 to empowering consumer data rights and fostering a competitive

9075 marketplace.

9076 I am going to vote to move these bills out of committee and
9077 to continue to move this process forward, but I want to be clear
9078 that I believe that more work will need to be done between passage
9079 later tonight and the consideration of these bills on the floor
9080 of the House of Representatives. So before I agree to move to
9081 vote on the floor I want to state that for the record, that I
9082 believe that much more work needs to be done. And I will vote
9083 in committee, but will not commit to what my vote will be on the
9084 floor. And with that I yield back.

9085 Chairman Nadler. The gentlelady yields back.

9086 For what purpose does Mrs. Fischbach seek recognition?

9087 Mrs. Fischbach. Mr. Chair, I move to strike the last word.

9088 Chairman Nadler. The gentlelady is recognized.

9089 Mrs. Fischbach. And, Mr. Chair and members, it has been
9090 I think very frustrating for many of us. I have heard the
9091 frustration, I have heard the amendments, I have heard the
9092 questions regarding the bills, and this bill in particular, and
9093 I think it is very, very obvious we need more time on these bills.
9094 And we owe it to the people we all represent that we do this
9095 right and that we take our time. And it is important. It is
9096 important that we get all of the input we should.

9097 And with that being said, Mr. Chairman, pursuant to Clause
9098 4, Rule 16, I have a privileged motion. I therefore, respectfully

9099 make a motion to adjourn.

9100 Chairman Nadler. The motion to adjourn is a privileged

9101 motion.

9102 All those in favor, say aye?

9103 Opposed, no?

9104 In the opinion of the chair, the noes have it.

9105 Mrs. Fischbach. Recorded vote.

9106 Chairman Nadler. A recorded vote is requested. The clerk

9107 will call the roll.

9108 Ms. Fontenot. Mr. Nadler?

9109 Chairman Nadler. No.

9110 Ms. Fontenot. Mr. Nadler votes no.

9111 Mr. Lofgren?

9112 Ms. Lofgren Aye.

9113 Ms. Fontenot. Ms. Lofgren votes aye.

9114 Ms. Jackson Lee?

9115 Mr. Cohen?

9116 Mr. Cohen. No.

9117 Ms. Fontenot. Mr. Cohen votes no.

9118 Mr. Johnson of Georgia?

9119 Mr. Johnson of Georgia. No.

9120 Ms. Fontenot. Mr. Johnson of Georgia votes no.

9121 Mr. Deutch?

9122 Ms. Fontenot. Ms. Bass?

Ms. Fontenot. Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Mr. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Ms. Jackson Lee, you are not recorded.

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Issa?

Mr. Issa?

Mr. Issa. Yes.

Ms. Fontenot. Mr. Issa votes yes.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. Yes.

Ms. Fontenot. Mr. Owens votes yes.

Mr. Swalwell. Mr. Chairman, how am I recorded?

Ms. Fontenot. Mr. Swalwell, you are not recorded.

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Deutch. Mr. Chairman, how am I recorded?

Ms. Fontenot. Mr. Deutch, you are not recorded.

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Lofgren. How am I recorded?

Ms. Fontenot. Ms. Lofgren, you are recorded as yes.

Ms. Lofgren. No.

9243 Ms. Fontenot. Ms. Lofgren votes no.

9244 Mr. Gaetz. Mr. Chairman, how am I recorded?

9245 Ms. Fontenot. Mr. Gaetz, you are not recorded.

9246 Mr. Gaetz. No.

9247 Mr. Issa. Mr. Chairman, now am I recorded? How am I

9248 recorded?

9249 Ms. Fontenot. Mr. Issa, you are recorded as aye.

9250 Mr. Issa. Can I vote twice? Just once? Just once? Oh,

9251 well. Thank you.

9252 Chairman Nadler. Are there any members who wish to be

9253 recorded who have not been recorded?

9254 The clerk will report.

9255 Ms. Fontenot. Mr. Chairman, there are 17 ayes and 25 noes.

9256 Chairman Nadler. The motion to adjourn is defeated.

9257 Does anybody else to be recognized on the bill?

9258 Mr. Owens, for what purpose --

9259 Mr. Owens. I would like to strike the last word.

9260 Chairman Nadler. For what purpose does the gentleman seek

9261 recognition?

9262 Mr. Owens. I would like to strike the last word.

9263 Chairman Nadler. The gentleman is recognized.

9264 Mr. Owens. I just want to kind of give a perspective. I

9265 am very excited about this opportunity to work with everyone to

9266 find a way that we can give control back to consumer and--the

9267 control of these monopolies. I would have to say though that
9268 the gentlelady from Texas gave all of us a very easy lay-up who
9269 have concerns about the truth control. And we have seen this
9270 this last year and I think it strikes to the point that we do
9271 need to have an amendment like this to give us safeguards, that
9272 we should all feel comfortable that not one or two people can
9273 tell us what the truth is, not their truth, but what we all know
9274 the truth really comes from.

9275 But anyway, that being said, I just would like to again hope
9276 that we can all agree this amendment would be good for this process
9277 to get us moving forward so we can really come together and say
9278 that--the American people, we are looking out for their interest.
9279 I would like to yield the rest of my time over to Mr. Roy.

9280 Mr. Roy. Well, I appreciate my friend from Utah for making
9281 that point and doing so eloquently as someone who obviously is
9282 invested in this piece of legislation as an original sponsor,
9283 if I am correct, or the underlying bill because he, like myself
9284 and others, want to ensure data privacy, data portability.

9285 These are important issues, trying to work in good faith
9286 to do it, but again what we saw right here to--pretty much kind
9287 of give up the ghost in terms of what the objectives are, at least
9288 for I think some of our colleagues.

9289 And my friend from Texas, who unfortunately is not here at
9290 the moment, referred to jumping aboard H.R. 1 to allegedly

9291 eliminate all the dark money that came after me. It wasn't the
9292 dark money; it was my opponent. My opponent, her own remarks
9293 and speeches, and hard dollars and making the point. She was
9294 just saying, oh, Roy is saying it is a hoax. Roy saying--oh,
9295 he talked about herd immunity.
9296 Well heaven forbid I talk about science and herd immunity,
9297 right? But if you dare mention something like herd immunity or
9298 science, you are banned, right? You are saying, no, you can't
9299 talk about that. You can't talk about the virus coming from
9300 Wuhan. And that is exactly what we are seeing occur when we are
9301 talking about truth. And that is what is so concerning to me.
9302
9303 And the stories that we see right now even just recently
9304 about--the stories about Google funding some of this research
9305 in Wuhan, the stories that we have seen. If you go through
9306 Facebook and everything that Facebook did in quashing reports,
9307 questioning that the virus leaked from the Chinese lab. There
9308 is story after story. Just Google it. Really. Pull it up.
9309 And then you have got a Chinese virologist talking about
9310 Fauci's emails, backing up the Chinese virologist who is getting
9311 banned by China.
9312 And let's talk about Dr. Li Wenliang, who was silent when
9313 Dr. Li Wenliang blew the whistle. We were all talking about that
9314 and then suddenly these massive big tech companies are silencing

9315 our voice. And I am just--I am literally stunned and blown away
9316 that we are talking about it in those terms when we are here talking
9317 about the power of these big tech companies and it is proving
9318 the very point.
9319 So I very much agree with my friend from Utah about the
9320 importance of this amendment and I certainly support the
9321 amendment, and I yield back to my friend from Utah.
9322 Mr. Owens. I give back my time.
9323 Chairman Nadler. The gentleman yields back.
9324 For what purpose does Ms. Escobar seek recognition?
9325 Ms. Escobar. Move to strike the last word.
9326 Chairman Nadler. The gentlelady is recognized.
9327 Ms. Escobar. Thank you so much, Mr. Chairman. And I want
9328 to thank--I am really speaking to all of these pieces of
9329 legislation, not necessarily one particular. I want to thank
9330 my colleagues for their incredible work, both in their
9331 subcommittee as well as working across party lines to make sure
9332 that we do everything possible to tackle these very challenging
9333 issues that have unfortunately gone unaddressed for so long.
9334 And but I also at the same time do want to say that I have
9335 heard the concerns expressed by colleagues who have asked for
9336 additional hearings and colleagues who believe that there are
9337 still steps left to go in the process going forward.
9338 And I am supportive of going forward on our committee and

9339 again I echo what I have heard from other members through this
9340 process. I look forward to continuing the work ahead before these
9341 bills get to the floor because it is clear that there is still
9342 more work to do going forward.

9343 Just wanted to put that on the record and thank everyone
9344 who has worked so hard to get us to this point. I know that it
9345 has taken an awful lot of intellectual work and a lot of dedication
9346 and I am grateful for it. I yield back, Mr. Chairman.

9347 Chairman Nadler. The gentlelady yields back.

9348 Mr. Johnson of Louisiana. Mr. Chairman?

9349 Chairman Nadler. For what purpose does the Mr. Johnson seek
9350 recognition?

9351 Mr. Johnson of Louisiana. Move to strike the last word.

9352 Chairman Nadler. The gentleman is recognized.

9353 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. Since
9354 we are having all of this illuminating discussion and everyone
9355 is pointing out the epiphanies that we have had as we have gone
9356 through the last whatever, 11 hours, I will just point something
9357 out as well.

9358 What we are doing here is adding to Government, the bills
9359 are, and there is no other way to summarize and assess this.
9360 Each of the bills has a provision that will empower more FTC
9361 rulemaking. These bills say a violation of the act also
9362 constitutes, quote, "an unfair method of competition," unquote,

9363 under Section 5 of the FTC Act.

9364 And the Access Act, the bill that we are still on now,
9365 specifically says on page 1, quote, "A violation of this act or
9366 standards issued under this act shall be an unfair method of
9367 competition," unquote. That text will empower FTC rulemaking,
9368 because under current case law the FTC has authority to issue
9369 new rules about unfair methods of competition under Section 5.

9370 Now not everybody agrees with that precedent, but you know
9371 who does? All three of President Biden's Democrat FTC
9372 commissioners. That is Chairwoman Khan, Commissioner Chopra,
9373 Commissioner Slaughter. In fact, in March 2020, before moving
9374 to her current role as chairwoman of the FTC, Lina Khan and current
9375 Commissioner Chopra published an article entitled, The Case for,
9376 quote, "Unfair Methods of Competition Rulemaking," unquote.

9377 And this March acting Chairwoman Slaughter started a new
9378 rulemaking group at the FTC. Just coincidence I guess. By
9379 making violations of these bills, quote, "unfair methods of
9380 competition," unquote, each bill opens the door for future
9381 rulemaking, not just interpretive rules, but substantive rules
9382 that this administration will argue should get chevron deference
9383 from the court.

9384 So I mean, just while we are doing full disclosure let's
9385 acknowledge that that is going to happen, and some of us are a
9386 little uncomfortable about giving the FTC all of this new

9387 discretion and empowerment. And I think that is worthy of note.
9388 I yield back.
9389 Chairman Nadler. The gentleman yields back.
9390 Does anyone else seek recognition?
9391 Mr. Gaetz?
9392 Mr. Gaetz. Move to strike the last word.
9393 Chairman Nadler. The gentleman is recognized.
9394 Mr. Gaetz. I just think it is going to be hard to tell people
9395 that you can't own your own data; big tech owns your own data
9396 because we are afraid Government is going to grow too much. If
9397 that is the argument here, you have to look at the final outcome
9398 of the legislation, which is that people have greater control
9399 over the information that they create that large companies
9400 exploit. And if it is not the FTC that is going to do it, it
9401 is hard to wonder who is.
9402 Right now it is a unipolar system where all of the power
9403 in these relationships emanate from the terms of service that
9404 are solely drafted by the big technology companies. And they
9405 want to maintain that unipolarity. They want to maintain it so
9406 much that Tim Cook was calling Speaker Pelosi today begging to
9407 slow these bills down. They want it so much the New York Times
9408 is reporting that they have an army of lobbyists. They want it
9409 so much that Politico is reporting that some of those very
9410 lobbyists have been threatening members for signing onto the

9411 legislation.

9412 So it is very clear that the outcome we face in passing these
9413 bills are not is whether or not at the end of the day we want
9414 to empower the human beings who create the data to own it or whether
9415 we simply want to surrender to the big tech oligarchy, the big
9416 tech rule. And that to me feels a lot more like life in China
9417 that is pretty dangerous than perhaps creating some multipolar
9418 force at the FTC, creating some opportunity for consumer
9419 protection, and to create a new paradigm over data that will allow
9420 people to be able to utilize it and so that when people are on
9421 these platforms they are the consumer and not the product. I
9422 yield back.

9423 Chairman Nadler. The gentleman yields back.

9424 Does anyone else seek recognition?

9425 If not the question occurs on the amendment.

9426 All in favor, say aye?

9427 Oppose, nay?

9428 In the opinion of the Chair, the noes have it.

9429 Mr. Roy. Yeas and nays, please, Mr. Chairman.

9430 Chairman Nadler. Yeas and nays are requested. The clerk
9431 will call the roll.

9432 Ms. Fontenot. Mr. Nadler?

9433 Chairman Nadler. No.

9434 Ms. Fontenot. Mr. Nadler votes no.

Ms. Lofgren?

Ms. Lofgren. No.

Ms. Fontenot. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen?

Mr. Cohen. No.

Ms. Fontenot. Mr. Cohen votes no.

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. No.

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

Mr. Deutch?

Ms. Bass?

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia.

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Pass.

Ms. Fontenot. Mr. Biggs passes.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

9555 Mr. Owens. Yes.

9556 Ms. Fontenot. Mr. Owens votes yes.

9557 Chairman Nadler. Mr. Deutch?

9558 Mr. Deutch. No.

9559 Ms. Fontenot. Mr. Deutch votes no.

9560 Mr. Biggs. Mr. Chairman, how am I recorded?

9561 Ms. Fontenot. Mr. Biggs, you're recorded as present.

9562 Mr. Biggs. Yes.

9563 Ms. Fontenot. Mr. Biggs votes yes.

9564 Mr. Gaetz. Mr. Chairman, how am I recorded?

9565 Ms. Fontenot. Mr. Gaetz, you are recorded as no.

9566 Mr. Gaetz. Aye.

9567 Ms. Fontenot. Mr. Gaetz votes aye.

9568 Chairman Nadler. Are there any members who wish to vote

9569 who haven't voted?

9570 Clerk will report.

9571 Ms. Fontenot. Mr. Chairman, there are 18 ayes and 24 noes.

9572 Chairman Nadler. The amendment is not agreed to.

9573 Are there any further amendments to the amendment in the

9574 nature of a substitute?

9575 Ms. Lofgren. Mr. Chairman?

9576 Chairman Nadler. For what purpose does the gentlelady from

9577 California seek recognition?

9578 Ms. Lofgren. I have an amendment at the desk on page 4.

9579 Chairman Nadler. The clerk will report the amendment.

9580 Ms. Fontenot. Amendment to the amendment in the nature of
9581 a substitute to H.R. 3849 offered by Ms. Lofgren of California.

9582 Page 4, strike lines 1 through 20 and insert the following:

9583 Chairman Nadler. Without objection the amendment is
9584 considered as read. The gentlelady is recognized.

9585 Ms. Lofgren. Mr. Chairman, as currently written I think
9586 the bill is--really micromanages technical changes unless there
9587 is some urgent circumstance involving security and privacy, and
9588 I think that that is a mistake. As drafted the bill would require
9589 prior FTC approval really for all the technical changes except
9590 in some kind of an emergent situation.

9591 Most of the changes that are done are technical in nature,
9592 security issues, and/or a platform to have to apply to the
9593 Government before using technology I think is just--it will unduly
9594 burden the commission and will unduly burden companies. This
9595 amendment would allow the commission, to the extent that it is
9596 necessary, to ensure that changes are not being made with a purpose
9597 or effect of unreasonably denying access or undermining
9598 interoperability for users. In that case the commission can
9599 require the platform to obtain permission.

9600 I think that is the right balance. I mean, if there is
9601 conduct that is to defeat the purpose, then the commission should
9602 go in and require approval and go through it, but every technical

9603 change that you seek to make go to the FTC, I just think that
9604 is unreasonable and the--it will--it could even delay platforms
9605 from executing basic security updates and other technical
9606 updates. I think platforms shouldn't have to consult their legal
9607 department every time they perform a good-faith interface update
9608 or even to determine if a security risk is imminent.
9609 So this amendment is plenty of safeguards. The FTC has the
9610 power to require prior approval when it is necessary, but it
9611 wouldn't require the Government to grant permission to every
9612 single change ever made to a technical system. And I hope that
9613 this amendment will be adopted. I think it improves the bill,
9614 and I yield back.
9615 Chairman Nadler. The gentlelady yields back.
9616 Will the gentlelady yield for a question?
9617 Ms. Lofgren. I would be happy to yield, but I yielded back.
9618 Chairman Nadler. Oh.
9619 Ms. Lofgren. So if the Chairman will give it back to me,
9620 I will yield.
9621 Chairman Nadler. I will give it back to you.
9622 Mr. Cicilline. I thank the gentlelady for the amendment
9623 and I know you have worked in good faith with us all throughout
9624 this process. And in terms of voting for this amendment, this
9625 would be the third amendment, the third improvement you have made.
9626 And my question is having acted in good faith will passage of

9627 this amendment, support by members of the subcommittee earn your
9628 support for the underlying bill?
9629 Ms. Lofgren. I continue to have concerns about the security
9630 aspects of the bill and the coverages of the bill, as I said at
9631 some great length. So I am trying to balance that.
9632 Mr. Cicilline. No, I appreciate that. And as I said, I
9633 obviously would continue and will continue to work with you to
9634 address those, but I just hope--we are acting in good faith as
9635 well and I hope if this third amendment is adopted, you will
9636 support the underlying bill as a kind of step in this process.
9637 And I yield back.
9638 Chairman Nadler. The gentleman yields back.
9639 Does anyone else seek recognition on the amendment?
9640 The then the question occurs on the amendment to the
9641 amendment in the nature of a substitute.
9642 All in favor, say aye?
9643 Opposed, no?
9644 In the opinion of the Chair, the ayes have it. The ayes
9645 have it.
9646 Are there any other amendments to the amendment in the nature
9647 of a substitute?
9648 Mr. Jordan. Mr. Chairman?
9649 Chairman Nadler. For what purpose does the gentleman from
9650 Ohio seek recognition?

9651 Mr. Jordan. Strike the last word. I have an amendment at
9652 the desk.
9653 Chairman Nadler. The gentleman has an amendment. The
9654 clerk will report the amendment.
9655 Mr. Jordan. It's the Protect Speech Act.
9656 Ms. Fontenot. Amendment to the amendment in the nature of
9657 a substitute to H.R. 3849 offered by Mr. Jordan of Ohio.
9658 Chairman Nadler. Without objection the amendment will be
9659 considered as read. The gentleman will explain his amendment.
9660 Mr. Cicilline. Reserve a point of order, Mr. Chairman?
9661 Chairman Nadler. Point of order is reserved.
9662 Mr. Jordan. Thank you, Mr. Chairman. A couple hours ago
9663 the gentleman from Texas, Mr. Roy, asked sort of the fundamental
9664 question. He said what is our goal here? What is the overall
9665 objective.
9666 I know what mine is. My goal in dealing with subject is
9667 to stop the censorship. Frankly, that is what the folks in the
9668 4th District of Ohio that I talk to care about. They don't like
9669 the fact that certain content is censored, many times done for
9670 political reasons. So I mean, we have a--we just had a big
9671 discussion on the gentleman's amendment from North Carolina,
9672 which I thought was great.
9673 My good friend, and I mean that--my good friend from Florida,
9674 he said, well, but your data is going to be portable. Great.

9675 We are all for that. It is going to be portable, but it is still
9676 going to be censored. that was the point of the amendment, to
9677 stop the censorship.
9678 So we have introduced legislation a week-and-a-half ago,
9679 I think sponsored by almost every Republican, which says let's
9680 overall Section 230. Let's take away the liability protection
9681 that these big tech companies have. Let's get rid of the
9682 language, the catchall language otherwise objectionable. That
9683 is where they throw all this stuff and keep you from learning
9684 about the things Mr. Roy was talking about relative to the origin
9685 of the virus last fall that Facebook was censoring. So that is
9686 our legislation, overhaul Section 230, something I thought that
9687 we were all for.
9688 And if we are going to get to the truth, you know how you
9689 get to the truth? It is called the First Amendment. That is
9690 why we have the First Amendment. More speech, more argument,
9691 more debate is how you arrive at the truth. That is why the
9692 Founders put it first. And this Committee should understand that
9693 more than any other committee in Congress. But think about
9694 what we have seen over the last few years. Every liberty we enjoy
9695 under the First Amendment has been assaulted. Every single one.
9696
9697 There are still places--you think about it. You have got
9698 five liberties: right to practice your faith, right to assemble,

9699 right to petition your Government, freedom of the press, freedom
9700 of speech. Every one. There are still places today on a Sunday
9701 morning the full congregation can't meet. Still places today
9702 in this country.

9703 Five weeks ago I spoke to the New Mexico Republican Party
9704 in Amarillo, Texas, because they had to go to Texas to get freedom
9705 because in Amarillo they weren't allowed to--or excuse, because
9706 in New Mexico they weren't allowed to assemble.

9707 And you can go right down the list, but speech is the most
9708 fundamental one. So let's focus on that. Let's add this to the
9709 bill and let's deal with the censorship issue. We tried it with
9710 the great amendment I thought the gentleman from Mr. Chairman
9711 brought, but that got voted down.

9712 So we will try again with an overhaul of Section 230. That
9713 is what this does. If you want the truth, truth is a factor,
9714 as the gentlelady from the Texas said. If you want the truth,
9715 embrace the First Amendment, allow more speech, don't censor.
9716 And one way to do that--a key way to do that is take away the
9717 liability protection, overhaul this section of the law that was
9718 passed 20-some years ago. That will help us.

9719 Other things need to be done as well. I am not saying this
9720 is the end-all-be-all. We are willing to work with our colleagues
9721 on more things that need to happen relative to speech, but this
9722 is a good first step.

9723 Mr. Gaetz. Will the gentleman yield?

9724 Mr. Jordan. I would be happy to yield to my friend.

9725 Mr. Gaetz. Has the gentleman ever been censored?

9726 Mr. Jordan. Yes. Yes, so have you.

9727 Mr. Gaetz. And how did the gentleman come to learn that
9728 he had been censored?

9729 Mr. Jordan. Yes, I know this story. Got a call from the
9730 gentleman from Florida telling me I was shadow banned. My first
9731 response was, Mr. Gaetz, what is shadow banning? So that is--but
9732 you are making my point. Reclaiming my time, you are making my
9733 point. And it wasn't just you and it wasn't just I. It was two
9734 of our Republican colleagues. Four hundred thirty-five members
9735 of the House. Only four were shadow banned by Twitter, which
9736 by the way none of this legislation covers.

9737 That is why we should have adopted some of the earlier
9738 amendments we had. That is why there needs to be more work in
9739 this area to deal with the fundamental issue, censorship of the
9740 folks we represent, attacks on speech. And again, I have said
9741 it many times, this Committee should be more concerned about that
9742 than any other thing when we are attacked--when we see limits
9743 on First Amendment liberties. So I would urge adoption of the
9744 amendment.

9745 Mr. Chairman, I yield back.

9746 Mr. Cicilline. Mr. Chairman.

9747 Chairman Nadler. Does the gentleman insist on his point
9748 of order?
9749 Mr. Cicilline. Yes, Mr. Chairman. This amendment is not
9750 germane. It is outside the jurisdiction of the bill. It is
9751 another provision of law over which this Committee has no
9752 jurisdiction, Section 230.
9753 Mr. Swalwell. Will you yield before the ruling?
9754 Mr. Cicilline. Yes.
9755 Mr. Swalwell. Mr. Chairman, with all due respect, Mr.
9756 Jordan, you are not being censored. The Government can censor,
9757 the Government can put restrictions on the public--
9758 Chairman Nadler. Mr. Swalwell, that is an argument on the
9759 amendment we are talking about.
9760 Mr. Swalwell. I know, but we have to listen to him all night.
9761 He is not being censored.
9762 Chairman Nadler. We have to rule on the point of order.
9763 Mr. Jordan. Can I respond?
9764 Chairman Nadler. To the point of order, not to the argument.
9765
9766 Mr. Jordan. Well, you let him make his--
9767 Chairman Nadler. I just stopped him.
9768 Mr. Jordan. I appreciate that. I appreciate you stopping
9769 him.
9770 Mr. Swalwell. Now you are being censored.

9771 Mr. Jordan. Now you should have stopped him--

9772 Chairman Nadler. As a proponent of the amendment you can
9773 defend it.

9774 Mr. Jordan. I have defended that. That is fine. Thank
9775 you. I yield.

9776 Chairman Nadler. Okay. Back to Mr. Cicilline. The
9777 gentleman insisting on his point order.

9778 Mr. Cicilline. Yes, Mr. Chairman.

9779 Chairman Nadler. I will rule that the amendment is out of
9780 order for two reasons: Clause 7 of House Rule 16 prohibits
9781 amendments that are on a different subject matter than the
9782 proposal that is under consideration. The subject of the bill
9783 we are currently considering is portability and interoperability
9784 requirements for covered platform.

9785 The gentleman's amendment proposes to amend a law that is
9786 not addressed in the bill, which is a subject that is different
9787 from what we are considering in this bill. The amendment is
9788 therefore not germane and violates Clause 7 of Rule 16, in addition
9789 to which it is out of order because it proposes to amend matters
9790 not within the jurisdiction of the Committee. So the amendment
9791 is not in order.

9792 Are there any other amendments to the amendment in the nature
9793 of a substitute?

9794 If there are no other amendments--

9795 Mr. Bentz. Mr. Chair? Mr. Chair?

9796 Chairman Nadler. Who seeks recognition?

9797 Mr. Bentz. Down here, Mr. Chair, down here in the--

9798 Chairman Nadler. Mr. Bentz?

9799 Mr. Bentz. -- low-rent space. Yes.

9800 Chairman Nadler. For what purpose does the gentleman seek

9801 recognition?

9802 Mr. Bentz. I have an amendment on the desk.

9803 Chairman Nadler. The clerk will report the amendment.

9804 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

9805 Chairman Nadler. The gentleman reserves a point of order.

9806 The clerk will report the amendment.

9807 Ms. Fontenot. Amendment to the amendment in the nature of

9808 a substitute to H.R. 3849 offered by Mr. Bentz of Oregon.

9809 Page 20, strike beginning --

9810 Chairman Nadler. Without objection the amendment is

9811 considered as read. The gentleman will explain his amendment.

9812 Mr. Bentz. Thank you, Mr. Chair. The proposal is to strike

9813 the emergency relief paragraph in the bill. It is found on page

9814 20, begins at line 4. Actually ends on the next page. It

9815 inadvertently included the statute of limitations, which I didn't

9816 like either because it was too long. So it is fine with me if

9817 they both go. But my main focus is on the emergency relief

9818 paragraph.

9819 This is what we would call in our law practice back in Oregon
9820 a provisional process provision. In the normal course
9821 provisional process is frowned upon by the law because it is
9822 granted before a hearing on the merits. This is probably one
9823 of the most overreaching and egregious emergency relief
9824 provisions I have ever seen because if you will note in line 10,
9825 11, it says that you--the commission, the Government may seek
9826 a temporary injunction requiring the covered platform operator
9827 to take or stop taking any action; it doesn't say which action,
9828 for not more than 120 days and the court shall grant such relief
9829 if the commission approves that there is a plausible claim.
9830 What is plausible? In the normal course of an injunction
9831 you have to show irreparable harm, and yet you don't see that
9832 here. What you see here is a quote, "plausible" claim that the
9833 platform operator took an action that could violate this act,
9834 not that it did, but that it might. It goes onto say the word
9835 and that action impairs significantly the ability of at least
9836 one business user to compete with the covered platform operator.
9837 Probably the lowest standard I have ever seen in any temporary
9838 injunction provision.
9839 The emergency relief shall not last more than 120 days after
9840 filing the complaint and then the court shall terminate the
9841 emergency at any time the covered platform operator proves the
9842 commission has not taken unreasonable steps. This reflects a

9843 grant of power to the Government of--that is really astounding
9844 if you note that they don't define any action. So what they could
9845 do is say stop doing business. Stop doing business. Because
9846 one business user might say that that action impaired their
9847 ability to compete.
9848 This is an incorrectly inappropriately crafted provision.
9849 It should be removed from the statute. At the very least it
9850 should be amended to impose an obligation of a showing of
9851 irreparable harm and should also show that there has been a
9852 significant impairment of ability to compete.
9853 With that, Mr. Chair, I yield back. I urge--before I yield
9854 back I urge your support of my amendment. Now I yield back.
9855 Thank you.
9856 Chairman Nadler. The gentleman yields back.
9857 Does the gentleman insist on his point of order?
9858 Ms. Fontenot. No, I withdraw my point of order. I do seek
9859 recognition to speak in opposition to the amendment.
9860 Chairman Nadler. The gentleman is recognized.
9861 Mr. Cicilline. Thank you, Mr. Chairman. This provision
9862 for emergency relief is really an essential part of this
9863 legislation. It is necessary to ensure that the economic harm
9864 can be responded to quickly before a competitor is destroyed.
9865 And it is not emergency relief which is available for any action,
9866 but only an action that a covered platform takes that would violate

9867 the provisions of this act and impair the ability of at least
9868 one business competitor to compete.
9869 So this is a tool that is available to ensure that the
9870 economic harm can be responded to swiftly and is really a central
9871 part of the relief in the bill and I urge my colleagues to oppose
9872 the amendment.
9873 Mr. Bishop. Mr. Chairman?
9874 Mr. Cicilline. --back.
9875 Chairman Nadler. The gentleman yields back.
9876 Mr. Bishop. Mr. Chairman?
9877 Chairman Nadler. Who seeks recognition?
9878 Mr. Bishop. I do. Bishop.
9879 Chairman Nadler. For what purpose does the gentleman seek
9880 recognition?
9881 Mr. Bishop. To move to stroke the last word.
9882 Chairman Nadler. The gentleman is recognized.
9883 Mr. Bishop. Thank you, sir. I appreciate the gentleman
9884 pointing this out. I have tried to focus on those things that
9885 I thought were most critical in this bill and the ones most
9886 substantive, but as a--like Mr. Bentz, a lawyer who has practiced
9887 civil litigation, commercial, complex litigation for 29 years,
9888 this is an unbelievable departure from the rules that govern
9889 litigation. It is clear to me that this is a violation of due
9890 process of anyone who falls under its sway.

9891 If, as Mr. Cicilline suggested, an act by a covered platform
9892 threatened to destroy a business user, then irreparable injury
9893 would have--would be threatened and that one of the standards
9894 of a preliminary injunction under existing law would be met.
9895 Mr. Bentz, you didn't focus on this point, but Rule 65 also
9896 requires the showing of a reasonable likelihood of success on
9897 the merits, not a plausible claim that a covered platform operator
9898 took an action that could violate this act. That is extraordinary
9899 and it is--unfortunately it typifies these bills. They are a
9900 disaster of not being ready for prime time. This is a goat rodeo
9901 and it just goes on and on.
9902 We are on the first of the four substantive bills, I believe
9903 it is. And I have heard repeatedly tonight from members of the
9904 majority party, who know better, that there should have been
9905 hearings on these bills, that we leapt from the two-year or what,
9906 a three-year investigation and the massive report, which by the
9907 way if you read the report, it says these things should be
9908 evaluated.
9909 Interoperability and portability and all thee things should
9910 be evaluated by the Committee. It doesn't say we ought to jump
9911 into a markup on some half-baked draft that until days ago, by
9912 the way, had errors in references to sections of the bills. It
9913 is egregious. And the way you fix that is by no means to approve
9914 these, vote for them and pass them out of the purview of the

9915 Committee. That is not how you deal with the situation.

9916 But, Mr. Bentz, I appreciate your raising this because I
9917 have never seen anything like this proposed in any bill that would
9918 say you are going to have a court impose a court's order on you
9919 with the lowest kind of threshold. I am not even sure--I don't
9920 think it rises to the level of notice and opportunity to be heard
9921 because there is no meaningful opportunity to be heard if the
9922 other side doesn't even have to raise the showing of an irreparable
9923 injury and the reasonable likelihood of success on the merits.
9924 Just never heard of such a thing. And I yield back.

9925 Ms. Lofgren. Would the gentleman yield?

9926 Mr. Bishop. I have yielded back.

9927 Chairman Nadler. The gentleman yields. The gentleman
9928 yielded back.

9929 Who seeks recognition?

9930 Mr. Tiffany. Tiffany. Wisconsin.

9931 Chairman Nadler. For what purpose does the gentleman from
9932 Wisconsin--

9933 Mr. Tiffany. Move to strike the last word.

9934 Chairman Nadler. The gentleman is recognized.

9935 Mr. Tiffany. Thank you, Mr. Chairman. So I heard the
9936 terms quickly and swiftly from the author, or the rebuttal in
9937 regards to this amendment and it causes me some concern here.
9938 And just hearing some of the debate on our side here from Mr.

9939 Bentz and Mr. Bishop, I would like to address a question to Mr.
9940 Bentz.
9941 Do you have any concerns here at all about the
9942 constitutionality of this provision?
9943 Mr. Bentz. Well, you're yielding me some of your time, I
9944 hope.
9945 Mr. Tiffany. I yield time to you.
9946 Mr. Bentz. Thank you. Well, of course. Failure of due
9947 process would of course raise constitutional issues.
9948 I do what to take this opportunity though to mention that
9949 this emergency relief provision applies to any time a platform
9950 operator takes an action that could violate this act.
9951 And I need to remind everybody what this act is about.
9952 Perhaps we have been here too long and everyone has forgotten,
9953 but we have that interoperability piece, which is probably more
9954 complex than anything else one could dream up, running across
9955 the entire world, frankly. And what could possibly happen that
9956 one of these platforms might violate the terms of this act? All
9957 kinds of things could happen.
9958 And so why we would grace the Government with this type of
9959 power is unclear to me. Why would we do this to ourselves? That
9960 is one of the reasons I moved earlier to take interoperability
9961 out because it opened the gate, the door to so many unknowns.
9962 And this makes it even worse giving this kind of unfettered power

9963 to the commission. Thanks for your question.

9964 Ms. Lofgren. Would the gentleman yield?

9965 Mr. Bentz. I yield back.

9966 Mr. Tiffany. Just a second, ma'am.

9967 And I want to address it. At a minimum it goes to what we
9968 have been talking about here tonight, that this stuff is not
9969 ready--these bills are not ready for prime time and to go to the
9970 floor of the House of Representatives.

9971 But I want to address the same question to the gentleman
9972 from North Carolina; I yield the time to you, in regards to may
9973 there be constitutional concerns here?

9974 Mr. Bishop. I thank the gentleman for yielding. And that
9975 was what I meant by saying this appears--it appears to me to be
9976 a violation of due process. The reason Rule 65 in the Rules of
9977 Civil Procedure exists to govern the imposition of temporary
9978 injunctive relief is because of a recognition that parties are
9979 entitled to process. You can't just start ordering parties to
9980 do things because somebody want to. There has to be grounds for
9981 that.

9982 In fact, if you go down Part 3 under this emergency relief
9983 provision, it is the most--it is the funniest of all. The court
9984 shall terminate the emergency relief at any time that the covered
9985 platform operator proves that the commission has not taken
9986 reasonable steps to investigate whether a violation has occurred.

9987 I am sorry. That is ridiculous.

9988 So the party who has been subjected to injunctive relief
9989 can come in and get a dissolution of such relief if you show that
9990 the proponent of the relief hasn't even investigated whether there
9991 is any kind of a predicate for it. Who wrote this?

9992 Anyway, I am sorry. I yield back.

9993 Ms. Lofgren. Would the gentleman yield?

9994 Mr. Massie. I yield time to--

9995 Ms. Lofgren. I just want to--I think you have
9996 raised--actually I even thought about doing an amendment at this
9997 section because I think there are serious problems here that you
9998 have identified.

9999 One of the things I was trying to figure out was how to fix
10000 it, whether we could put some standards in that would be in keeping
10001 with American jurisprudence, and I got stuck on that. But I am
10002 wondering have you thought of how we might change this section
10003 so it would--I mean, if you have a serious violation that is
10004 imminent, I mean, that meets the standards for ordinary relief
10005 on an injunctive basis, but I actually couldn't come up with it.
10006 So I am wondering have you looked at that, the author of the
10007 amendment?

10008 Mr. Massie. I yield time to Mr. Bentz.

10009 Mr. Bentz. Thank you. I won't take much. The short answer
10010 is I tried to draft some of the changes exactly as you just

10011 suggested in some of the time we have had this evening, and I
10012 realize it was going to take a lot more time than even we are
10013 going to spend here. And so the short answer is maybe you could
10014 do it, but it would take a lot of work and that is because of
10015 the scope of the activity it purports to apply to.
10016 Ms. Lofgren. Thanks to the gentleman for yielding.
10017 Mr. Bentz. I yield back.
10018 Chairman Nadler. Mr. Bentz, will you yield for a question?
10019 Mr. Bentz. Yes.
10020 Mr. Tiffany. Thank you very much for the comments there.
10021 I mean, this once again shows that this really needs some serious
10022 review to make sure that we get this right because if we don't
10023 get it right--I mean, think about the description we just had
10024 from Mr. Bishop, and it sounds like people are going to be twisted
10025 in knots here in America in figuring this out. I yield back.
10026 Chairman Nadler. The gentleman yields back.
10027 I strike the last word myself and I yield to Mr. Cicilline.
10028 Mr. Cicilline. Thank you, Mr. Chairman. I'm just asking
10029 the sponsor of the amendment, I think one thing that might address
10030 the concern is, and if you would accept a friendly amendment,
10031 is on line 8, to change the court shall grant to the court may
10032 grant.
10033 Because I think what the legislation is trying to do is strike
10034 that balance, as Ms. Lofgren said, maybe in those instances where

10035 immediate action is necessary to prevent a competitor from being
10036 put out of business, that won't come back. The example of Vine
10037 on Facebook is one example. There's no recovery after they've
10038 been excluded.
10039 So I think if you change that to may, then you no longer
10040 require the court to do it, but it's a tool available in those
10041 circumstances in which a competitor may be extinguished as a
10042 result of the conduct.
10043 So I don't if that works. If it does, I'd offer that as
10044 a friendly amendment.
10045 Mr. Bentz. You're yielding me some time?
10046 Mr. Cicilline. Yes.
10047 Mr. Bentz. So thank you. Well, that would be one very small
10048 step in the proper direction. But there is a great more that
10049 would have to be done to make this come anywhere close. And one
10050 has to understand that I'd moved earlier to get rid of the
10051 interoperability standard, which --
10052 Mr. Cicilline. No, I remember.
10053 Mr. Bentz. So I'm not enthusiastic about trying to fix
10054 something I don't agree with. But I'll just -- thank you for
10055 your attempt, but it's a little bit, and we need a lot. Thank
10056 you.
10057 Chairman Nadler. So the gentleman from Rhode Island would
10058 continue to oppose this amendment.

10059 Mr. Cicilline. Yes, I'm -- yes. I don't know if there's
10060 a mechanism for me to propose changing shall to may separately.
10061 Maybe unanimous consent -- yeah, if I just ask unanimous
10062 consent, I don't think the sponsor minds that modification. I
10063 can offer another amendment, but this might be easier just to
10064 do it by unanimous consent if no one objects.
10065 Chairman Nadler. Is there unanimous consent? Is there
10066 objection to unanimous consent? Hearing none, the -- it is
10067 agreed to.
10068 Mr. Cicilline. Thank you, Mr. Chairman. I yield back.
10069 Chairman Nadler. The gentleman yields back. Does anyone
10070 else -- what? Yeah. Are there any further speakers on this
10071 amendment? There are no further speakers on this amendment.
10072 The question occurs on the amendment.
10073 Mr. Owens. I have an amendment at the desk. I have an
10074 amendment -- oh, okay, I'm sorry.
10075 Mr. Roy. We haven't --
10076 Chairman Nadler. Is there? So we're going to vote on Mr.
10077 Bentz's amendment. All in favor say aye.
10078 (Chorus of aye.)
10079 Chairman Nadler. Opposed, no.
10080 (Chorus of no.)
10081 Chairman Nadler. In the opinion of the Chair, the noes have
10082 it. The noes have it.

10083 Are there any further of the amendments to the amendment
10084 in the nature of a substitute? For what purpose does Mr. Owens
10085 seek recognition?
10086 Mr. Owens. I have an amendment at the desk.
10087 Chairman Nadler. The Clerk will report the amendment.
10088 Mr. Cicilline. Mr. Chairman, I reserve a poitn of order.
10089 Chairman Nadler. A point of order is reserved.
10090 Ms. Fontenot. Amendment to the amendment in the nature of
10091 a substitute to HR 3849 offered by Mr. Owens of Utah. Page 18,
10092 strike lines 1 and 2 and insert --
10093 Chairman Nadler. Without objection the amendment is
10094 considered as read. The sponsor is recognized -- Mr. Owens
10095 is recognized to explain his amendment.
10096 Mr. Owens. Thank you, Mr. Chairman.
10097 I'd first of all like to thank my colleague, Representative
10098 Scanlon and Buck for their leadership and their remarks earlier
10099 this afternoon on HR 3849, the ACCESS Act.
10100 I'm encouraged to see the good faith efforts on both sides
10101 of the aisle and to grant the American consumer a gift, a great
10102 gift, to control their data. And I'm hoping we can continue to
10103 -- continue that process and reach some common ground as we
10104 go through this.
10105 Twenty years ago I was a telecommunication rep who helped
10106 customers transition their data from one platform to the other.

10107 Although it was a very specific area of cellphone data, it was
10108 eye-opening to see the access and power companies had over the
10109 consumer personal's data. It was also encouraging and empowering
10110 to understand and realize the control I had of my own data.
10111 This process we're going through is an important one as we
10112 work to address each other's concerns. As we do so in a bipartisan
10113 way we can protect the American consumer and begin the process
10114 of breaking up the monopolies where these Big Tech resides.
10115 I'm a conservative who happens to represent a very purple
10116 district. It is refreshing when I can support a piece of
10117 bipartisan legislation that upholds my principles. I believe
10118 the ACCESS Act has potential to be that type of legislation.
10119 I see the data portability and interoperability as a concept
10120 that American consumer can readily embrace. I firmly believe
10121 that we're doing the right thing today as we take up this
10122 legislation. America has recognized that communication and
10123 personal online data we use every day should be ours. It is our
10124 data that gives power to Big Tech. It is our data that this bill
10125 will give back to the consumer.
10126 We need to have a conversation today so we can move forward
10127 and give Americans more control over the data based on their
10128 personal decisions, not on the form that's used by Google, Apple,
10129 and Facebook.
10130 The majority has accepted amendment that would ensure the

10131 portability status of this legislation opt in -- as an opt-in,
10132 further protecting consumer data. In response to concerns from
10133 my side of the aisle, I would like to offer another amendment
10134 that would strengthen the privacy provisions of this bill.
10135 Simply put, this amendment would apply to privacy standards
10136 of the National Institute of Standards and Technology, NIST,
10137 privacy framework. The NIST privacy framework is a voluntary
10138 tool developed in collaboration with stakeholders and is intended
10139 to help organizations identify and manage privacy risk --
10140 privacy risk to build innovative products and services while
10141 protecting individuals' privacy.
10142 Work on the framework began under the direction of the Trump
10143 White House and continues to do so today so that the standards
10144 and the framework can be updated to reflect changes in a
10145 fast-moving technology. The framework is scalable, meaning it
10146 can be adapted to fit the needs of small businesses.
10147 I urge my colleagues to vote in favor of this amendment,
10148 and I yield back the remainder --
10149 Mr. Buck. Would the gentleman yield?
10150 Mr. Owens. I'm sorry, I will yield my time over to Mr. Buck.
10151 Mr. Buck. I thank the gentleman for yielding, and I thank
10152 the gentleman for this thoughtful amendment. I think it's clear
10153 that there are a number of privacy concerns that members have
10154 expressed, and I think you have given great thought to that and

10155 have come up with a solution that strengthens this bill.

10156 And I thank you very much for your leadership, and I intend

10157 to vote for this and I appreciate it. And I yield back.

10158 Mr. Cicilline. Would the gentleman yield for a question?

10159 Mr. Owens. Yes, please.

10160 Mr. Cicilline. Thank you, Mr. Owens. I'm just trying to

10161 understand. So it may be just a drafting error in the amendment,

10162 but it seems like this is language you intend to add to page 18

10163 of the bill, is that right? I don't know if this pursuant is

10164 supposed to be after interoperability pursuant to 15 USC?

10165 Mr. Owens. Pursuant is consistent?

10166 Mr. Cicilline. Pursuant or consistent.

10167 Mr. Owens. Pursuant or consistent to comply with the

10168 National Institute of Standards and Technology privacy.

10169 Mr. Cicilline. Got it. So added to the end of number 2

10170 at the top of page 18.

10171 Mr. Owens. Yes.

10172 Mr. Cicilline. Okay, I just think that just might be a

10173 drafting -- thank you, I yield back.

10174 Mr. Owens. I yield back my time.

10175 Chairman Nadler. The gentleman yields back. Are there any

10176 further?

10177 Mr. Cicilline. Mr. Chairman, I'd just ask that that

10178 amendment reflect Mr. Owens's intention, that it go at the top

10179 of page 18, I think after interoperability.

10180 Chairman Nadler. Instead of strike it should be add.

10181 Mr. Cicilline. Correct.

10182 Chairman Nadler. Is the gentleman agreeable to that?

10183 Mr. Owens. Yes, yes.

10184 Chairman Nadler. Mr. Issa. We will -- we will make

10185 those technical and conforming changes in the amendment. Are

10186 there any further -- is there -- is there any further

10187 speakers on this amendment? If not, the question occurs on the

10188 amendment. All in favor, say aye.

10189 (Chorus of aye.)

10190 Chairman Nadler. Opposed, no. The ayes have it. Are

10191 there any -- the amendment is agreed to.

10192 Are there any further amendments to the amendment in the

10193 nature of a substitute?

10194 Mr. Issa. Mr. Chairman, I have a familiar amendment at the

10195 desk.

10196 Chairman Nadler. The Clerk will report the amendment. The

10197 Clerk will report the amendment.

10198 Ms. Fontenot. Amendment to --

10199 Mr. Cicilline. Chairman, I reserve a point of order.

10200 Chairman Nadler. The gentleman reserves a point of order.

10201 Ms. Fontenot. Amendment to the amendment in the nature of

10202 a substitute to HR 3849.

10203 Chairman Nadler. Without objection the amendment is
10204 considered as read. The gentleman will explain his amendment.
10205 Mr. Issa. Thank you, Mr. Chairman.
10206 Having struck the parts that would have changed the platforms
10207 that would be affected by this bill so that we're down to the
10208 four companies, and recognizing that only the portion at the
10209 bottom, which is B, the public-facing website, what we seek to
10210 do here is to recognize that this bill is in fact a trial and
10211 a decision that four platforms are infringing antitrust entities.
10212 We basically tried them over 20 months and found them guilty.
10213 That's why we're picking four companies and choosing to have
10214 them do things. Some of the later bills will try to break them
10215 up and so on.
10216 In this case, I'm doing a lot less. I'm recognizing, as
10217 the ranking member has recognized, that when you're a monopoly
10218 and you can do a lot of things, one of the things you can do is
10219 you can mishandle the striking of information. As we know, under
10220 Section 230, you do so with impunity.
10221 This amendment simply recognizes that these monopolies
10222 should have to, in addition to what the legislation says in Part
10223 A, should simply have to post without identity essentially the
10224 total number of times they do it and the reason they do it.
10225 Many of the reasons they'll take down information or take
10226 down postings will be profanity. It will be obscenity. It might

10227 even be terrorist information and the like. But it may not always
10228 be. And it certainly has been at times interpretation of what
10229 the medicine is that is usable or not usable for COVID-19. What
10230 is or isn't an appropriate answer to climate change. Whatever
10231 it happens to be.

10232 All this is saying is because these are monopolies, because
10233 we are essentially giving them a consent decree, these four
10234 companies, and only four companies, will simply have to post this
10235 so that they can be reviewed. In a typical consent decree,
10236 somebody would be getting all kinds of information, typically
10237 DOJ would get it.

10238 In this case, it seems most appropriate for the public to
10239 get it so that, like any antitrust, not only can state or can
10240 individuals, but states, like the attorneys general, could look
10241 and say, hey, this is -- the way they're doing this appears
10242 to be further proof of antitrust behavior.

10243 So for that reason, this simple amendment that does not
10244 infringe on anyone else's jurisdiction is clearly something that
10245 could be anticipated and could be ordered under or agreed to under
10246 a consent decree. I think it's appropriate to do.

10247 It is not burdensome since these companies already imply
10248 that they're giving notice before -- when they do this they
10249 imply that they have reasons for everything they do.

10250 As a matter of fact, they imply that they do it by an automated

10251 system, artificial intelligence. But if artificial intelligence
10252 knows why it's taking it down, it ought to be able to post to
10253 a list that it's done so. And we would then know how many times.
10254 So it's a short, simple amendment, and I think it at least
10255 is an olive branch to those of us who would like to know about
10256 what we think the antitrust behavior relative to the First
10257 Amendment is, and that's why we're offering it.
10258 And with that, I yield back. I would yield to the gentlelady
10259 from San Jose.
10260 Ms. Lofgren. A question. When you asked me about this
10261 during the break, one concern I had was whether the reasonable
10262 notice provision applied to the capacity of a platform to actually
10263 remove content that they -- that didn't comply with their --
10264 their requirements. And you indicated that no, it was only
10265 intended to -- for the notification of the action. Is that
10266 correct?
10267 Mr. Issa. Right, the Part A, four in Part A are already
10268 in the bill, so they're already going to have to do the advance
10269 notice. All we're saying is after the fact, you post, in a
10270 reasonable period of time, you post why you did it.
10271 Now, we all know that the way computer systems and artificial
10272 intelligence works, this will be done probably in seconds in the
10273 ordinary course. I would yield to the gentleman from Ohio.
10274 Mr. Jordan. I thank the gentleman for his amendment. I

10275 think this makes a lot of sense. My understanding is is,
10276 basically if, it says if you're going to limit speech, tell us
10277 why. That's what --
10278 Mr. Issa. Tell us why you did it, that's all.
10279 Mr. Jordan. That is -- that's great. If you're going
10280 to limit what people say on your platform, tell us why you're
10281 doing it. Pretty simple.
10282 Mr. Issa. And by the way, in some cases it'll be copyrighted
10283 material that they think belongs to somebody else. There's lots
10284 of good reasons to take down content. I yield to the Chairman.
10285 Chairman Nadler. I didn't request the yield.
10286 Mr. Issa. I yield back.
10287 Mr. Cicilline. Mr. Chairman,
10288 Chairman Nadler. The gentleman yields back. For what
10289 purpose does the gentleman from Rhode Island seek recognition?
10290 Mr. Cicilline. Move to strike the last word.
10291 Chairman Nadler. The gentleman is recognized.
10292 Mr. Cicilline. Thank you. I rise in opposition to this
10293 amendment. Again, this is outside the purpose of the legislation,
10294 which is about interoperability and portability to create more
10295 competition to give consumers and users a control over their
10296 information so they can easily move from one platform to another.
10297 This is a content moderation proposal.
10298 There's another piece of legislation called Shop Safe that

10299 the IP Subcommittee currently has before them. But I think one
10300 of the things that concerns me is it seems as if it would make
10301 if difficult, if not prohibit, Amazon, as an example, from taking
10302 down counterfeit goods.
10303 And so again, I think this is the problem of trying to jam
10304 into a competition-based proposal that is to provide for
10305 interoperability and portability other objectives that get to
10306 content moderation. And for all the reasons that I've repeated
10307 throughout this hearing, I urge my colleagues to vote no on this
10308 amendment.
10309 Chairman Nadler. Does the gentleman yield back?
10310 Mr. Cicilline. Yield back, Mr. Chairman.
10311 Chairman Nadler. The gentleman yields back. Who else --
10312 who seeks recognition? Oh, Mr. Raskin. For what purpose does
10313 --
10314 Mr. Raskin. Thank you, Mr. Chairman. I suppose would the
10315 author of amendment just yield for a question?
10316 Mr. Issa. Of course.
10317 Mr. Raskin. I just want to make sure I'm reading it
10318 correctly. Is the purpose of the amendment to say that before
10319 a cover platform could exercise any content review and decisions,
10320 it would have to post -- it would have to post a notice on the
10321 website explaining it in the particular case of the person? Or,
10322 I mean -- let me see if I can clarify my question.

10323 Would a content provider, or rather a cover platform has
10324 to just publish once we do not accept Holocaust revisionism on
10325 our site, and they do that once and then they can exercise
10326 according to that principle in the future? Or do they have to
10327 post it every single time that they would remove content for that
10328 reason?
10329 Mr. Issa. Would the gentleman yield?
10330 Mr. Raskin. Yes, by all means.
10331 Mr. Issa. That's a great question. In this case, it would
10332 be the tracking of the numbers. They don't have to do it
10333 beforehand, they do it afterwards. But it would -- they would
10334 effectively say we have taken down 330,000 times Holocaust denial.
10335
10336 But, and they wouldn't have to say who they took it down.
10337 But they would accumulate a list of how many times so that you
10338 would know that their systems took down tens of thousands of things
10339 a day. Then you would have a breakdown of what they took down.
10340 Remember the gentleman that -- this is about the power
10341 of these platforms and holding them accountable. And it allows
10342 the public to have transparency as to their exert of power and
10343 whether it's reasonable, which is consistent with the bill.
10344 Mr. Raskin. So again, just to pursue this line of
10345 questioning, Mr. Issa. So if a cover platform basically listed
10346 the kinds of speech they don't accept, like incitement to violent

10347 insurrection, racist speech, harassing speech, whatever, you're
10348 saying that if you -- they publish that in advance, that would
10349 be sufficient. They don't have to then record on each occasion
10350 when someone's speech is being removed from their platform. Is
10351 that right?
10352 Mr. Issa. Maybe, if the gentleman would yield.
10353 Mr. Raskin. Yeah.
10354 Mr. Issa. Basically they wouldn't -- they don't have to
10355 repeat the words, they have to simply describe that it fits, let's
10356 say we'll call that -- we'll call that item number 12 of a list
10357 of reasons for takedown. And they would say we took down another
10358 one of that description.
10359 You're absolutely right that you would create takedown
10360 reasons, and then you would total the number of those takedown
10361 reasons. But you'd still be reporting that it occurred 1200 more
10362 times, which of course allows people to know the scope.
10363 But it's the, as you said, it's the reason that they're taking
10364 down and then it's cumulatively. And let's just say that somebody
10365 decided to say that masks for COVID-19 were not necessary and
10366 that they chose to take that down. Then they would say we took
10367 that down because it was inconsistent with our view of medicine,
10368 and we took it down 300,000 times. So there would be an
10369 accumulation and a recognition of the type of item.
10370 The type of item, as the gentleman is alluding to, is the

10371 most important part, but the total number of times is also
10372 important. In a perfect world --
10373 Mr. Raskin. Okay, well, Mr. Issa, just reclaim my time for
10374 a second. But I'm not seeing where your amendment covers the
10375 idea of reporting the number of times it's happened within a
10376 particular category. And I guess I'm just concerned because
10377 [inaudible]. But so that's one question.
10378 The other question is does -- what's throwing me off is
10379 the use of reasonable advance notice in this context, because
10380 it does make it seem as if -- I mean, say somebody, say they
10381 say you can't deny, you know, you can't deny, or you can't lie
10382 about the results of a public election that's been certified,
10383 okay.
10384 And they say that's a principle and we're not going to publish
10385 speech that we view as false propaganda. Does that have to be
10386 done in advance with each case, or is it sufficient to create
10387 the category and then exercise it? Where is the thing about
10388 --
10389 Mr. Issa. If the gentleman will quickly yield.
10390 Mr. Raskin. Yes.
10391 Mr. Issa. The advance notice is already in the bill. We're
10392 simply saying essentially the public-facing website would have
10393 to have it. By definition, there's no advance notice to posting
10394 of a website. That occurs afterwards.

10395 Mr. Raskin. All right --

10396 Chairman Nadler. The gentleman's time has expired.

10397 Mr. Raskin. Okay, I will yield back. Let me just say I'm
10398 not going to support this amendment for the reason that Mr.
10399 Cicilline says, which is it deals with a different subject, which
10400 is content regulation, which I think is a really important subject
10401 that the Judiciary Committee or the House should get to at some
10402 point.

10403 And you know, and I just don't think that we need to obscure
10404 what we're really working on here with the antitrust principles.
10405 But thank you, Mr. Issa, for your answers.

10406 Chairman Nadler. The gentleman yields back. For what
10407 purpose does the gentlelady from California seek recognition?

10408 Ms. Lofgren. To strike the last word.

10409 Chairman Nadler. The gentlelady is recognized.

10410 Ms. Lofgren. In talking to -- you're right, Mr. Raskin,
10411 this is not the core part of the bill. But you know, we seek
10412 comity, we seek to, you know, where we can. So I think it's
10413 reasonable on that basis at least to see where we go with it.

10414 As I look at it further, though, I'm becoming more concerned
10415 because even though the posting is subsequent to the action, the
10416 remedy provision, I'm not sure how it works with the remedy
10417 provision beginning on page 21 and the recovery in the amounts.

10418

10419 I'm just not sure how this works together, Mr. Issa. And
10420 I'm concerned that it's been -- I know you worked in good faith
10421 to make this work, but I -- it's a little too uncertain for
10422 me, unless you could answer that. Because what is the --
10423 theoretically, the person who feels that they're aggrieved, what
10424 is the reasonable modus, and do they get to recover some unknown
10425 amount?
10426 Mr. Issa. If the gentlelady would yield.
10427 Ms. Lofgren. Sure.
10428 Mr. Issa. The, in this case, you know, you have an agency
10429 that is making decisions about whether they comply with the act.
10430 There's non-individual right here at all. As a matter of fact,
10431 we took out, on Mr. Buck's request, we took out personally
10432 identifiable information.
10433 So the posting to this website so that the public knows how
10434 many times it has occurred is completely different from any notice
10435 the individual that might lead to some sort of complaint. So
10436 we really are simply giving the transparency of the conduct of
10437 these four platforms and nothing more.
10438 And so the only remedy would be if the Federal Trade
10439 Commission or the Department of Justice or somebody else decided
10440 that they would look at this conduct and object to it. But it's
10441 -- they would then probably ask for the individual information,
10442 the details, all the things that are not going to be posted to

10443 the website.

10444 Ms. Lofgren. Recovering my time. I understand -- I

10445 can't support this today, but maybe we can work on this some more

10446 between now and the floor. I yield back, Mr. Chair.

10447 Chairman Nadler. The gentlelady yields back. For what

10448 purpose does the gentleman from Louisiana seek recognition?

10449 Mr. Johnson of Louisiana. Sorry, Mr. Chairman, move to

10450 strike the last word.

10451 Chairman Nadler. The gentleman is recognized.

10452 Mr. Johnson of Louisiana. Yield to Mr. Issa.

10453 Mr. Issa. I thank you. And I guess the -- a remote user

10454 did mute.

10455 I recognize that many people would like to say that the

10456 egregious acts of these companies, which have been noted by the

10457 ranking member time and time again, not just today but for months,

10458 is not germane to this bill. But it is germane to whether or

10459 not, if you feel that these companies have wielded this excess

10460 strength because they're monopolies, it's appropriate to know

10461 how much.

10462 And you know, sometimes, and Ms. Lofgren, I take you at your

10463 word that we may -- we may not succeed tonight, but we may

10464 continue to work. Transparency is one of the things that gives

10465 the opportunity for people who may not currently agree that

10466 there's wrongdoing to see the wrongdoing.

10467 And I think if we can't tonight add this to the bill, then
10468 to a certain extent what we're saying is we only want what we
10469 want, and we only want to do to these four companies what we want
10470 to do to them.
10471 And since later tonight we anticipate bills that actually
10472 break up the companies, order them to break up and we're going
10473 to limit their ability to make acquisitions in the ordinary
10474 course, the same as other companies do, we are clearly doing things
10475 much more radical but not as transparent or possibly as much able
10476 to change the conduct of these companies.
10477 The fact is that shadow banning is something that goes on
10478 and they get away with it because they don't have to explain it.
10479 The mysterious disappearance of hundreds of thousands or tens
10480 of thousands of accounts with no explanation. These kinds of
10481 things occur, and they would not occur if these companies had
10482 real competition.
10483 So I understand why in their fields they have so much market
10484 power, and I've seen the effects of it, Mr. Jordan's seen the
10485 effects of it. So I understand that people can always say, well,
10486 I don't understand this or I'm not comfortable with that.
10487 But I think for Mr. Cicilline, if you had taken the
10488 recommendation of the new Democrats and held hearings on the
10489 actual bills, we probably would have worked through a lot of these
10490 through that process.

10491 The reality is the suggestion that was made by many of your
10492 colleagues to the Speaker was the appropriate one, which is many
10493 of these bills should have had weeks of hearings, the way we did
10494 on patent reform, where we put out draft and then we looked at
10495 those draft bills.

10496 And yes, we knew that some people would attack them, but
10497 over time they became robust and sustained. And ultimately the,
10498 particularly the Leahy bill, became law. And so I think if these
10499 are going to become law, they're going to have to go through that
10500 test.

10501 I would rather it go through the test in committee than go
10502 through the test somewhere between here and the Senate or maybe
10503 die in the Senate, as so often these bills do. I believe many
10504 of these bills are going to die in the Senate, if they even get
10505 out of the House, and that would be a shame for portability, for
10506 Mr. Owens's bill, and so on.

10507 So I thank the gentleman for yielding. I've exhausted my
10508 ability to say I believe this is the minimum that anyone should
10509 want to have in transparency. And I yield back.

10510 Chairman Nadler. The gentleman yields back.

10511 Mr. Massie. I yield back my remaining time

10512 Chairman Nadler. The gentleman yields back. Who seeks
10513 recognition? For what purpose does Mr. McClintock seek
10514 recognition?

10515 Mr. McClintock. To strike the last word.

10516 Chairman Nadler. The gentleman is recognized.

10517 Mr. McClintock. Mr. Chairman, I'm deeply concerned with
10518 sentiments I keep hearing that only the truth as certain people
10519 see it should be permitted in the public forum that these internet
10520 platforms are supposed to be. It reminds me of the law professor
10521 who always began his class on First Amendment rights with
10522 Soviet-era joke.

10523 An American and a Russian are comparing their two countries.
10524 The American says, well, in America we can say whatever we feel
10525 without fear. And the Russian replies, well, our government lets
10526 people do that too. They just don't allow people to lie. He
10527 said that always got a laugh until the last few years. It doesn't
10528 get a laugh anymore, and that should scare the hell out of all
10529 us.

10530 There are only two ways to resolve disputes among human
10531 beings. There's reason, and there's force. I don't know of any
10532 other way that human disputes are resolved. America has always
10533 prided itself on being an empire of reason. That's made possible
10534 by our First Amendment, and what until recently was a deeply held
10535 belief that united all of us as Americans.

10536 When we resolve our disputes with reason there are facts
10537 and there are opinions. Facts may be accurate, they may be
10538 inaccurate. Often, they're contradictory. One study finds that

10539 masks and lockdowns are effective, another finds they're not.

10540 The only way to tease out the truth from these facts is to

10541 put them all on the table, test them, challenge them, and correct

10542 them when necessary. Opinions may be sound or unsound. The only

10543 way to determine which are which is to put them on the table,

10544 test them, challenge them, and when necessary revise them.

10545 Even after this process, not all of us will agree on them.

10546 But enough of us will to resolve these disputes and wisely guide

10547 our path forward. That's what this process is all about. That's

10548 what makes these statements from the left so frightening. They'd

10549 stop this process cold. The truth, as the left sees it, is

10550 proclaimed ex cathedra, as it were.

10551 Under that process the truth cannot be determined, sound

10552 opinions cannot be allowed to rise from it, and reason can no

10553 longer guide our discussions and resolve our disputes.

10554 In the 1950s and 60s, the ACLU made a point to defend the

10555 most hateful conceivable speech on this planet, neo-Nazi

10556 propaganda. This was just years after the Holocaust. Now, the

10557 ACLU had many Jewish members, but they took that stand because

10558 they knew that the death of free speech means the death of freedom.

10559 And the death of free speech doesn't start with the most popular

10560 speech, but rather the most unpopular speech.

10561 You know, speaking of the European dictatorships, Winston

10562 Churchill said this, he said, You see these dictators on their

10563 pedestals surrounded by the bayonets of their soldiers and the
10564 truncheons of their police, but in their hearts there's unspoken
10565 fear.

10566 They're afraid of words and thoughts, words spoken abroad,
10567 thoughts stirring home all the more powerful because forbidden,
10568 terrified them. Little mouse of thought enters the room and even
10569 the mightiest potentates are thrown into panic and make frantic
10570 efforts to bar out words and thoughts.

10571 They are afraid of the workings of the human mind, a state
10572 of society where men may not speak their minds, where children
10573 denounce their parents to the police, where a businessman or a
10574 small shopkeeper ruins his competitor by telling tales about his
10575 private opinions. Such a state of society cannot long endure
10576 if brought into contact with the healthy outside world.

10577 I hope my colleagues will consider that before they take
10578 us any farther down the road that we're on. These tech platforms
10579 gained a competitive advantage because of government protections
10580 that were predicated on the promise that they would serve as public
10581 forums where all could express their opinions and submit facts
10582 to be challenged by others.

10583 It if can be said on a street corner, it can be said in these
10584 forums. That was the promise. It turns out that promise was
10585 a lie told by people who shared the sentiment that only those
10586 who agree with them have a moral or legal right to express

10587 themselves.

10588 The answer to that is to remove the government advantages
10589 that were based on this broken promise, let these companies and
10590 their competitors and their customers make their own choices and
10591 express their own opinions.

10592 What these bills do, I am afraid, is to place the tech
10593 platforms under tighter control of a government. Far from
10594 fostering a healthy and open forum, I'm afraid they
10595 institutionalize exactly the behavior that my Republican
10596 colleagues fear and that many of our leftist colleagues applaud.

10597 I yield back.

10598 Chairman Nadler. The gentleman yields back. Who else
10599 seeks recognition? Mr. Roy, for what purpose does Mr. Roy seek
10600 recognition?

10601 Mr. Roy. Move to strike the last word.

10602 Chairman Nadler. The gentleman is recognized.

10603 Mr. Roy. Won't take long. I'd like to associate myself
10604 with the remarks of the gentleman from California in broad terms,
10605 and only add that, and very specifically, I mean, earlier I brought
10606 up and we talked about and I won't repeat the examples about the
10607 Wuhan virus and so forth from last spring.

10608 But there were a number of folks last year that I was relying
10609 upon to try to get information about what was happening with the
10610 virus in real time, people out there, smart data folks analyzing

10611 it. And I'd see people on Twitter.

10612 And there were several folks that I interacted with, never

10613 met, I DMed them, looked in their background to what they were

10614 doing. They were posting data and analyzing information to try

10615 to get to the truth.

10616 And a number of them were removed from Twitter, were removed

10617 from Facebook. And I tried DMing one, I couldn't get a hold,

10618 I finally got a hold of one of them. And I asked, well, why were

10619 you removed, and they said we don't know. And they never got

10620 an answer and they never could get an answer.

10621 So I reached out to the government relations teams for these

10622 guys. Never got an answer. Member of Congress asking to figure

10623 out well, why did this person get removed. And the person was

10624 literally a financial, you know, expert, in whatever industry

10625 in finance he was working, who was poring over data looking to

10626 analyze where COVID was spreading and then opine about it

10627 publically.

10628 That was it. That's all he was doing. He was opining on

10629 his beliefs about what the deal was, and he gets pulled down.

10630 Now, if we don't find that to be problematic, I mean, that's

10631 what I'm saying. On a bipartisan basis, I mean, that's what I

10632 would be asking my colleagues about this being an enormous

10633 problem.

10634 When that truth that we're seeking, that my friend from

10635 California just outlined, seeking the truth through reason when
10636 you do not necessarily know the answers but you're being told
10637 to follow whatever a particular individual who happens to have
10638 the last name Fauci says about whatever we're supposed to believe.
10639 And yet, that's what we were told.
10640 And I see the snickering of my colleagues on the other side
10641 of the aisle, but that's exactly what happened. It is literally
10642 the truth of what happened. That's -- we saw it. Whatever
10643 that guy said, that's what goes.
10644 And now you got the former Director of CDC comes out and
10645 says hey, maybe there's some more going on. And yet right now
10646 as we speak, again, shaking heads on the other side of the aisle,
10647 we reject that. But that's exactly what my friend from California
10648 is talking about when you just want to seek the truth.
10649 And why am I bringing it up here in this context? Because
10650 I want to know why the fella that I've never met before and who
10651 I was looking at the background who was putting information out
10652 on Twitter that was interesting, tracking the data, got canned
10653 from Twitter. And I never found out and he never found out.
10654 But literally was just out there posting good data to go
10655 analyze. Is that not troubling? Is that not concerning? And
10656 if it's not, I just really, I don't, I do not understand. That's
10657 a break. It's just a gap that I don't understand why that's not
10658 concerning.

10659 Mr. Massie. Does the gentleman yield?

10660 Mr. Roy. I'd yield to my friend from Kentucky.

10661 Mr. Massie. I had the same experience on Twitter back in
10662 December, seeking to know whether you should get the vaccine if
10663 you've already had the virus. People on Twitter were -- they
10664 directed me to the CDC's own information. I called up the --
10665 and by the way, their information was wrong.

10666 I called up the CDC, we said we can't believe how you found
10667 this. How did you find this error in our reporting of the data?
10668 We're going to -- they said we're going to call you Eagle Eye
10669 Massie. We've been all over this.

10670 But it was people on Twitter that found the mistakes, the
10671 misstatements, the incredible claim that the vaccine was 92%
10672 efficacious if you'd already had the virus. Totally false, not
10673 proven out by the Pfizer data. CDC admitted I was wrong. By
10674 the way, they -- or they were wrong. They never changed the
10675 website.

10676 So I went back to find those Twitter people that had directed
10677 me to that information that the CDC was providing. Their accounts
10678 are gone, deleted, de-platformed. Have no way of contacting
10679 them, don't know who they are. But they were just erased, they
10680 were deleted, they were cancelled.

10681 And this is a scary world that we live in if that can go
10682 on. I yield back to the gentleman from Texas.

10683 Mr. Roy. I appreciate that, and I would just -- I would
10684 just reiterate I have seen that happen time and time again now.
10685 You know, and those of us trying to seek the truth and getting
10686 -- the technology company standing in the way of seeking the
10687 truth.
10688 And I again associate myself with the remarks of the
10689 gentleman from California. I yield back.
10690 Chairman Nadler. The gentleman yields back.
10691 Mr. Swalwell. Mr. Chairman, I move to strike the last word.
10692 Chairman Nadler. For what purpose does Mr. Swalwell seek
10693 recognition?
10694 Mr. Swalwell. I move to strike the last word.
10695 Chairman Nadler. The gentleman is recognized.
10696 Mr. Swalwell. Mr. Chairman, I hope the same arguments that
10697 were -- that are being made now -- I wish the arguments that
10698 are being made now would have been made back in 2012 in the
10699 Masterpiece Cakeshop c. Colorado Civil Rights Commission case,
10700 where a gay couple went to a cakeshop and asked to have their
10701 wedding cake made. And they were turned down, they were shadow
10702 banned, they were censored, to use the parlance of the other side.
10703 And the Supreme Court in that decision upheld the cakeshop
10704 and their ability to do that. And I never heard a single person
10705 over there say, you know what, they shouldn't be canceled, they
10706 shouldn't be shadow banned. No, they supported that decision.

10707 The right supported that Supreme Court decision.

10708 This is about a private company. If you don't like what

10709 the private company's doing, go to Parler, which you all did.

10710 So Mr. Chairman, the issue -- the issue here is this side,

10711 they oppose regulation on anything. Oil and gas, airlines, don't

10712 touch the free market, don't touch the free market. But when

10713 their guy tries to start an insurrection and he gets banned from

10714 Twitter, now it's called shadow banning or censoring.

10715 So I'm really convinced, Mr. Chairman, that they don't

10716 understand the difference between the public square and

10717 government censorship and free market decisions that they defend

10718 when it's for oil and gas, when it's for airlines, when it's for

10719 any industry that they're for, they can make their own decisions

10720 and if Democrats want to regulate, we're touching the free market.

10721 But when they say something about an insurrection or they

10722 lead to a bad healthcare outcome and they have a tweet taken down,

10723 they have been censored. So that's what's really at stake here.

10724 And I yield back to the Chair.

10725 Mr. Johnson of Louisiana. Will the gentleman yield?

10726 Chairman Nadler. The -- for what purpose does Mr. Biggs

10727 seek recognition?

10728 Mr. Biggs. Move to strike the last word.

10729 Chairman Nadler. The gentleman is recognized.

10730 Mr. Biggs. Before I yield time to some of my colleagues,

10731 I just want to reiterate what I said I think five hours ago when
10732 we were talking about the same bill. About sometimes monopolies
10733 rise and it's just natural and they could fail with bad service
10734 or bad product. Other times they engage in misbehavior. And
10735 we do regulate that. Fraud, tortious conduct.
10736 And similarly, we file antitrust laws. We have antitrust
10737 laws, we can bring antitrust lawsuits. And that's been about
10738 130 years of tradition in the United States of America. And so
10739 with that, I think that's important to realize that the market
10740 cannot solve all problems in a monopoly situation.
10741 But with that, I'm going to yield to my friend from Louisiana.
10742 Mr. Johnson of Louisiana. Thank the gentleman for yielding.
10743 I just want to point out to Mr. Swalwell, you know, the facts
10744 of the Masterpiece Cakeshop case have nothing whatsoever to do
10745 with what we're talking about here.
10746 And if you knew the facts of that case, you would understand
10747 that, that you know, just parenthetical note that it was the state
10748 of Colorado's commission that was discriminating against the cake
10749 baker. And the persons who wanted to get the cake had multiple
10750 other options in the same town within just a few blocks and all
10751 that.
10752 So the facts are important, and let's not -- this is
10753 already confusing enough, let's not -- let's not bring in cases
10754 that are a complete non sequitur. Yield back.

10755 Mr. Biggs. And I will yield some time to Mr. Roy.

10756 Mr. Roy. I would just say in response, I mean, my friend
10757 from Louisiana just explained the absurdity of comparing what
10758 we're talking about right here to the man, who by the way is back
10759 in the news being forced to have to ignore his deeply held
10760 religious beliefs protected in First Amendment of the United
10761 States Constitution, being forced again to do, despite the fact
10762 -- there is literally no comparison whatsoever to what the
10763 gentleman just raised and what we're talking about here.

10764 With corporations with the power, by the way, that we're
10765 here on a bipartisan basis. And that's the thing that I think
10766 is so critically important. And why did I think it was important?
10767 We're having these conversations.

10768 I understand that there's disagreements on where we're going
10769 to go with this, but we're here because of the power of massive
10770 corporations. That's why we're here. On a bipartisan basis,
10771 we agree on that.

10772 The point being made, and my friend from California Mr. Issa
10773 that's talking about with respect to making sure this
10774 information's available and suggesting that we should have these
10775 massive corporations post this information and make it available
10776 is precisely this point about we're looking at this and seeing
10777 what they're doing.

10778 And I can accept the idea, the difference in what the

10779 gentleman is saying with respect to censorship, right, government
10780 censorship. What we're trying to talk about is when you've got
10781 these massive corporations who because of their size, scope, and
10782 power, but also because, as the gentleman from California alluded
10783 to, power that they've also got in part because of government
10784 and what government's involvement with those corporations have
10785 been.

10786 And now they're exercising that power in a way that's
10787 blocking people, pulling people, removing people from the public
10788 domain in conversation. That's happening as we speak, and it's
10789 happening, and it tends to be very one-sided, it would appear.

10790 But even if we accept it's not one-sided, it should trouble
10791 us all that anyone be silenced with these corporations at the
10792 size and scope they're doing it. No one here is saying that a
10793 corporation doesn't have the right to determine how they want
10794 to set up their corporations and make decisions about who can
10795 use their platforms. We're not saying that.

10796 What we're saying is that a lot of this stuff is being done,
10797 the shadow banning, the decisions that are being made without
10798 regard to any public-facing, to use the words of the gentleman
10799 from California's amendment, available information to know what
10800 they're doing.

10801 And by the way, they're doing that with liability
10802 protections, they're doing with government-protected power. And

10803 we should be concerned that $600 billion corporations are doing
10804 that. I mean, that should trouble us.
10805 I mean, I'm not saying that -- I'm not trying to say that
10806 that's the same, necessarily, as the government coming in and
10807 saying what speech can look like. But when you have a private
10808 user that goes on and all of a sudden they say whup, you're removed.
10809 And you don't know how, you don't know why. And that's your
10810 avenue for communicating and going and sharing your thoughts and
10811 information.
10812 That should be troubling to us and we should want to know
10813 more about what those corporations are doing, and we should want
10814 to try to address it. And I think the gentleman from California's
10815 amendment is a step in that direction.
10816 Mr. Biggs. I will reclaim and yield.
10817 Chairman Nadler. The gentleman's time has expired. Ms.
10818 Escobar, for what purpose does the gentlelady seek recognition?
10819 Ms. Escobar. Strike the last word.
10820 Chairman Nadler. The gentlelady is recognized.
10821 Ms. Escobar. I'd like to yield to my colleague Mr. Raskin.
10822 Mr. Raskin. Oh, that's very kind. Thank you, Ms. Escobar.
10823 I suppose I want to just make two points. One was in response
10824 to the gentleman from Texas. I think people are raising
10825 legitimate concerns. I think it's a little bit jarring and
10826 surprising for a lot of people across the aisle who've been talking

10827 about the dangers of runaway corporate power for many, many years
10828 if not decades.
10829 And I'm sorry, you know, the putative censorship of Donald
10830 Trump lying about the election is one that really doesn't tug
10831 at my heartstrings compared to the thousands and thousands of
10832 workers at large corporations who've been fired for supporting
10833 a union, or because of their political views.
10834 But if what you're saying is that we need to look at the
10835 question of corporate power and the speech of people who are
10836 consumers and workers who deal with corporations, let's deal with
10837 it systematically.
10838 Let's not pretend as if large corporations are principally
10839 a threat to right-wing conservatives in America, because they're
10840 not. And as you know, you know, right-wing conservatives have
10841 been aligned with large corporate power for a long time.
10842 But in any event, that doesn't de-legitimize whatever your
10843 concerns are, and we should look at it in a principled way. It's
10844 just not what we're doing here. What we're talking about now
10845 is a regulation of commerce in order to prevent antitrust
10846 violations, monopolization concerns. And so I think it doesn't
10847 help us to conflate the two issues.
10848 As for cancel culture, I think that the gentleman from
10849 California, Mr. Swalwell, makes a very powerful point. Cancel
10850 culture is in the eye of beholder. I know Donald Trump thinks

10851 that he's the victim of cancel culture.

10852 Others would think that he launched cancel culture with his
10853 attack on Colin Kaepernick, and has continued it all the way up
10854 through the vilification and demonization and overthrow of Liz
10855 Cheney simply for voting her conscience and her understanding
10856 of what happened on January 6.

10857 There's been a vicious attack to try to cancel out every
10858 Republican who voted to impeach or convict Donald Trump. They've
10859 tried to censure them, they've tried to admonish them, they've
10860 tried to get party resolutions against them. I mean, what's that
10861 if not cancel culture? And it runs throughout what's going on
10862 in the right wing today.

10863 Tom Cotton wrote a whole bill aimed at purging and censoring
10864 the teaching of the 1619 Project. I know you guys don't like
10865 the 1619 Project, but it is intellectual thought. So to try to
10866 ban it and censor it is an exercise of precisely the kind of
10867 censorship that you claim to be deploring.

10868 So you know, we could stay here all night, perhaps that's
10869 the idea, offering counter-examples and examples to each other
10870 of the cancel culture that's going on. Now, I've gotten awards
10871 from the American Civil Liberties Union for standing up for
10872 everybody's freedom of speech, and I would love to bring you,
10873 Mr. Roy, to an ACLU meeting, because it's all about defending
10874 everybody's right to speak.

10875 Mr. Roy. Will the gentleman yield?

10876 Mr. Raskin. And the right of free press across the board,
10877 not just the right of my party to speak, or my favorite candidate
10878 to speak --

10879 Mr. Roy. Would the gentleman yield?

10880 Mr. Raskin. But for everybody to speak. I'm sorry?

10881 Mr. Roy. Would the gentleman yield?

10882 Mr. Raskin. Yes, by all means, yes.

10883 Mr. Roy. Just a hypothetical question. If --

10884 Chairman Nadler. It's Ms. Escobar's time.

10885 Mr. Roy. Oh, I'm sorry.

10886 Ms. Escobar. Yeah, so no. I'll -- Jamie.

10887 Mr. Raskin. Well, in the interest of freedom of speech,
10888 look, let me just say this. I think that, you know, it's late
10889 at night and I don't want to be impolite or impolitic with my
10890 friends here.

10891 But really, I think that there's something that's a --
10892 it's a little bit much sometimes to have everybody posing as a
10893 victim of censorship when you turn around and would easily censor
10894 people in a lot of different contexts, and we have a lot of examples
10895 of that. So cancel culture is in the eye of the beholder.

10896 But if we want to look at it systematically and seriously,
10897 as I think that we should, then let's talk about the threat that
10898 large corporations present to the free speech of the people.

10899 I mean, let's do that and let's analyze that seriously.

10900 And not in terms of this or that case or what have you, but

10901 right now these are First Amendment entities and they have a right

10902 to decide if they don't want hate speech or they don't want, you

10903 know, climate denialism on their platform or what have you.

10904 They've got a right to do that.

10905 If we want to change that around in some way, we should look

10906 at it separately. But I don't think we should conflate it with

10907 the regulation of commerce that's taking place here and the

10908 promotion of antitrust policy. That's what we're doing.

10909 Chairman Nadler. The gentlelady's --

10910 Mr. Raskin. I yield back and I thank Ms. Escobar for her

10911 kindness.

10912 Chairman Nadler. The gentlelady's time has expired.

10913 Ms. Escobar. Yield back.

10914 Chairman Nadler. For what purpose does Ms. Spartz seek

10915 recognition?

10916 Mrs. Spartz. Move to strike the last word.

10917 Chairman Nadler. The gentlelady is recognized.

10918 Mrs. Spartz. Thank you, Mr. Chairman.

10919 It's a good discussion, but I wanted, you know, just to kind

10920 of enliven something that the congressman from California

10921 mentioned. You know, I think there are a lot of different

10922 protections that provided by our constitution, and including

10923 First Amendment rights, Second Amendment right, and other rights.

10924

10925 And also, I believe, you know, a top-down approach is
10926 usually not the best way, you know, to deal with this issue.
10927 But unfortunately what's happened, and in this case we can talk
10928 about the markets and here and there, but ultimately when the
10929 government provide blanket immunities in return some
10930 unenforceable regulations, we create an environment where the
10931 issues that should be resolved in tort, you know, through tort
10932 and all around should be done through that now cannot be resolved
10933 through that.

10934 And this is a discussion we should have. You know, I, when
10935 I was in state senate I was joking with my colleagues, I said
10936 if we create more immunities, all these trial lawyers will be
10937 out of business. But when government create -- that's --
10938 our system was set up that the tort should be the one who deal
10939 -- which deals with wrongful acts and someone infringing on
10940 their rights.

10941 But we have created an environment with this monopoly powers
10942 of information which can have enormous amount of information about
10943 individual and can really manipulate in the way how they want.
10944 And if I want to go and sue them, they have so much broad
10945 protection that this body gave them for reason to protect First
10946 Amendment.

10947 But it seems like it's not working. So maybe we should
10948 reassess if that immunity should be adjusted, because I personally
10949 would prefer not to deal with these issues through FTC or
10950 Department of Justice, but actually deal through tort. And I
10951 think that's a better approach, and I think this is a very valid
10952 approach to do that and we should reevaluate.
10953 And I think, you know, the intent was different and the
10954 application of the law is different. And I think, you know, this
10955 is a valid discussion as part of this process. We cannot just
10956 look at one side, and it's because a lot times it's monopoly powers
10957 created by the government allowed the behaviors that wouldn't
10958 happen in arm's length transactions in free markets.
10959 You know, the free markets would not use broad protections,
10960 you know, that was given at the government. We would not create
10961 barriers of entry and have a healthcare monopoly, hospital
10962 monopolies, PBM monopolies.
10963 We have oligopoly markets everywhere that created because
10964 we as a government allow some of the players not to follow the
10965 laws and legal framework of have equal rights to pursue happiness
10966 in whichever want.
10967 The rights are not equal. And that's the government that
10968 functions for us to provide the framework for equal rights for
10969 any citizens, regardless if you're large and small. You know,
10970 I hope we continue this discussion because it's very important

10971 discussion. And I think bottom-up approach generally works
10972 better than top-down, you know.
10973 And I just kind of want to follow up because there is a big
10974 difference. You know, they are private entity was given very
10975 large immunities by this body. And I think that should be also
10976 discussed.
10977 Thank you, I yield.
10978 Mr. McClintock. Would the gentlelady yield for a moment?
10979 Mrs. Spartz. I yield to Mr. McClintock.
10980 Mr. McClintock. I just want to make one point. We seem
10981 to be confusing criticism with censorship. Criticism's central
10982 to vigorous speech, and the more vigorous speech the more
10983 withering the criticism. That's part and parcel to the process.
10984 But that is fundamentally different from denying a person the
10985 right to express their opinions at all.
10986 And that seems to be what the left is confusing. You have
10987 a right to express your opinions and other people have a right
10988 to subject those opinions to withering criticism. But no one
10989 has the right to silence you, and that is the problem that we
10990 are facing today.
10991 Yield back.
10992 Mr. Raskin. Would the gentleman yield?
10993 Mrs. Spartz. I yield.
10994 Mr. Raskin. Thank you, Ms. Spartz. I just wanted to ask

10995 Mr. McClintock whether he thinks Fox News has an obligation to
10996 put on views that it disagrees with. They once invited me to
10997 come on, and my local Fox News is actually very kind and open.
10998
10999 But I went on national Fox News and I was treated very rudely.
11000 They kept interrupting me and they didn't let me speak and get
11001 my message out. But there was nothing really I could about it
11002 because they were exercising their First Amendment rights. Could
11003 I sue them for that?
11004 Mr. McClintock. So they gave you a forum and then they
11005 criticized you. That reminds me of something Mayor Daly once
11006 said -- it's my time. I believe the gentlelady just gave it
11007 back to me. Reminds me of something Mayor Daly once said. He
11008 said they have criticized me -- or pardon me, they have vilified
11009 me, they have crucified me, yes, they have even criticized me.
11010 There is a difference between criticism and censorship.
11011 Mr. Raskin. Yes, would the gentleman --
11012 Mr. McClintock. You were criticized, you were not censored.
11013 Chairman Nadler. The gentlelady's time --
11014 Mr. Raskin. A private entity cannot censor you.
11015 Chairman Nadler. The gentlelady's time has expired. For
11016 what purpose does Mr. Cohen seek recognition?
11017 Mr. Cohen. Well, I was going to get into some extraneous
11018 conversation to counter some of the extraneous stuff I've heard

11019 today, but that's not worth anybody's time. Nor is much of what
11020 I've heard been worth anybody's time, and I would hope we just
11021 kind of get back to the subject matter.
11022 We know this bill's going to pass. There probably won't
11023 be any more amendments and get it over with and get it done.
11024 The fat lady sung. And I yield my time.
11025 Chairman Nadler. The gentleman yields back. For what
11026 purpose does the gentleman?
11027 Mr. Issa. I have a unanimous consent.
11028 Chairman Nadler. Oh, the gentleman from California is
11029 recognized for a unanimous consent request.
11030 Mr. Issa. Chairman, I ask unanimous consent that the
11031 Heritage Foundation article of June 22 entitled Weaponizing
11032 Antitrust to Achieve Radical Ideological Goals be put into the
11033 record. I also ask that the May 4, 2021 Heritage bill -- or
11034 press release, which says that they pledge not to take Big Tech
11035 money, be placed into the record.
11036 Chairman Nadler. Without objection.
11037 Mr. Issa. I thank the gentleman.
11038 Chairman Nadler. For what purpose does Mr. Gohmert seek
11039 recognition?
11040 Mr. Gohmert. Strike the last word.
11041 Chairman Nadler. The gentleman is recognized.
11042 Mr. Gohmert. Thank you. Following up on what Ms. Spartz

11043 was saying, I know that our side of the aisle has had proposals
11044 on how to reform Section -- I know, I do too. So but we've
11045 had proposed reforms to Section 230. I'm one of those I think
11046 we're better off just repealing Section 230 immunity.
11047 You know, Mr. Raskin brought up the issue of Fox News. We
11048 had a hearing here, and I can't remember if it was Google or
11049 Twitter's representative, one of them said kind of smugly to me,
11050 we just want to be treated like your Fox News. And I said exactly,
11051 that's what I want you treated like.
11052 Fox News can be sued for their improprieties. But we have
11053 given blanket immunity to these entities that said they were going
11054 to be a market -- just a open town square when anybody could
11055 come speak.
11056 So we give them this immunities because anybody can come
11057 speak and they decide they don't like conservatives, they're going
11058 to cut them off. They don't like people like Donald Trump and
11059 others, but lots of others. So they do the shadow banning. They
11060 do all kinds of restrictions on speech.
11061 If they want to be like Fox News, then they should be sued
11062 like Fox News or capable of being sued. And that's one of the
11063 problems here. We gave them the ability to grow into monopolies
11064 because we protected them.
11065 You give any entity the authority that they're exempt, nobody
11066 can sue them, they can't be held accountable for what they do,

11067 and they're going to end up growing to be a monopoly because they
11068 can do all kinds of things that people without immunity cannot
11069 do.
11070 And so here we are today, we're trying to figure out, gee,
11071 how do we deal with high tech that's become so big that they can
11072 tell the government what to do. They can say, whoops,
11073 hypothetically, you've got me included in those companies that
11074 you're coming after and so I'm giving enough money to all these
11075 campaigns. I don't want to be part of that.
11076 So, hypothetically, they could get people to exempt them
11077 from having the bill apply to them. I mean, you give enough
11078 exemptions and companies will grow to be monopolies. So here
11079 we are dealing with the results of that Section 230 immunity.
11080 If it weren't there, I don't think we'd been here all day because
11081 they wouldn't be the monopolies they've grown into.
11082 And there would be more competition. But they've got
11083 immunity and people that try to take them on don't necessarily
11084 have immunity, and so they're able to shut them down and not be
11085 sued for shutting them down.
11086 So maybe we could simplify everything if we just said, you
11087 know what, instead of trying to figure out who's a monopoly, how
11088 big you have to be before you fall under these antitrust
11089 violations, why not just eliminate Section 230. People would
11090 start suing them.

11091 And I tell you, I have known some incredible plaintiff's
11092 lawyers in my time. I've watched -- I've worked with some,
11093 I have watched them try cases in my court, extraordinary lawyers
11094 from all over the country. They're amazing. And you know, they
11095 were lawyers I didn't like, but I could see myself warming up
11096 to them because they were that good in court.
11097 So I think if we pull back the immunity and let the
11098 plaintiff's lawyers do their thing, that we could have this all
11099 taken care of in no time. I got a minute --
11100 Mr. Issa. Would the gentleman yield?
11101 Mr. Gohmert. Yes, absolutely.
11102 Mr. Issa. I think the gentleman's absolutely right.
11103 Although I will note that, you know, we're trying to very little
11104 and within our jurisdiction here what we're really trying to do
11105 is have transparency and accountability as to some of the activity
11106 that may in fact be antitrust and heavy-handed. I thank the
11107 gentleman for yielding.
11108 Mr. Gohmert. And I yield back.
11109 Chairman Nadler. The gentleman yields back. Does any --
11110 who seeks recognition? The question then occurs on the
11111 amendment. All in favor, say aye.
11112 (Chorus of aye.)
11113 Chairman Nadler. Opposed, no.
11114 (Chorus of no.)

11115 Chairman Nadler. In the opinion of the Chair the noes have
11116 it. The yeas and nays are requested, the Clerk will call the
11117 roll.
11118 Ms. Fontenot. Mr. Nadler.
11119 Chairman Nadler. No.
11120 Ms. Fontenot. Mr. Nadler votes no.
11121 Ms. Lofgren.
11122 Ms. Lofgren. Pass.
11123 Ms. Fontenot. Ms. Lofgren passes.
11124 Ms. Jackson Lee.
11125 Ms. Jackson Lee. No.
11126 Ms. Fontenot. Ms. Jackson Lee votes no.
11127 Mr. Cohen. Mr. Cohen.
11128 Mr. Johnson of Georgia.
11129 Mr. Johnson of Georgia. No.
11130 Mr. Johnson of Georgia.
11131 Mr. Johnson of Georgia. No.
11132 Ms. Fontenot. Mr. Johnson of Georgia votes no.
11133 Mr. Deutch.
11134 Mr. Deutch. No.
11135 Ms. Fontenot. Mr. Deutch votes no.
11136 Ms. Bass.
11137 Ms. Bass. Bass votes no.
11138 Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries.

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline.

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell.

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu.

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin.

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal.

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Ms. Demings.

Ms. Demings. No.

Ms. Fontenot. Ms. Demings votes no.

Mr. Correa.

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon.

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia.

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse.

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Ms. McBath.

Ms. McBath. No.

Ms. Fontenot. Ms. McBath votes no.

Mr. Stanton.

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean.

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar.

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones.

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross.

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush.

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan.

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot.

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa.

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck.

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz.

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana.

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs.

Mr. Biggs. Yes.

Ms. Fontenot. Mr. Biggs votes yes.

Mr. McClintock.

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube.

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany.

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie.

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy.

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop.

Mr. Bishop. Yes.

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

11235 Ms. Fischbach. Yes.

11236 Ms. Fontenot. Ms. Fischbach votes yes.

11237 Ms. Spartz.

11238 Mrs. Spartz. Yes.

11239 Ms. Fontenot. Ms. Spartz votes yes. Mr. Fitzgerald.

11240 Mr. Fitzgerald. Aye.

11241 Ms. Fontenot. Mr. Fitzgerald votes aye.

11242 Mr. Bentz.

11243 Mr. Bentz. Yes.

11244 Ms. Fontenot. Mr. Bentz votes yes. Mr. Owens.

11245 Mr. Owens. Yes.

11246 Ms. Fontenot. Mr. Owens votes Yes.

11247 Mr. Cohen. How is Mr. Cohen reported?

11248 Ms. Fontenot. Mr. Cohen, you are not recorded.

11249 Mr. Cohen. Not surprising. I vote no.

11250 Ms. Fontenot. Mr. Cohen votes no.

11251 Chairman Nadler. Are there any other members who have not

11252 been recorded who wish to be recorded? The Clerk will report.

11253 Ms. Fontenot. Mr. Chairman, there are 19 ayes, 24 noes,

11254 and one present.

11255 Chairman Nadler. The amendment is not agreed to.

11256 Are there any further amendments to the amendment in the

11257 nature of a substitute?

11258 Mr. Bishop. Yes, Mr. Chairman, I have one.

11259 Chairman Nadler. For what purpose does the -- does Mr.
11260 Bishop seek recognition?
11261 Mr. Bishop. I have an amendment at the desk.
11262 Chairman Nadler. The Clerk will report the amendment.
11263 Ms. Fontenot. Amendment to the amendment in the nature of
11264 a substitute to HR 3849 offered by Mr. Bishop --
11265 Mr. Cicilline. Reserve a point of order, Mr. Chairman.
11266 Chairman Nadler. Point of order reserved.
11267 Ms. Fontenot. Offered by Mr. Bishop of North Carolina.
11268 Page 16 --
11269 Chairman Nadler. Without objection the amendment is
11270 considered as read. The gentleman is recognized to explain his
11271 amendment.
11272 Mr. Bishop. Thank you, Mr. Chairman.
11273 This concerns the composition of the technical committee
11274 that will advise the FTC as to the establishment of standards.
11275 On page 17, paragraph 2 says representatives of competition or
11276 privacy advocacy organizations and independent academics that
11277 possess technical, legal, economic, financial, or other knowledge
11278 that the Commission may deem useful.
11279 The amendment will replace all of that with just the word
11280 -- tech, the words technical experts. So we're seeking
11281 technical standards, advice, let's just make it technical
11282 experts.

11283 The -- one thing in particular, the notion of independent
11284 -- why they need to be academics has never been clear to me
11285 as I've reviewed this bill. And given the particularly broad
11286 range of knowledge, it can be technical, legal, economic,
11287 financial, or other knowledge, meaning it can be any kind of
11288 knowledge at all.
11289 So the only academics who would be omitted would be those
11290 of you have who have no knowledge. And there are a lot of those.
11291 I think of one particular law professor that writes a lot of
11292 op-eds.
11293 But since it's so broad and says only academics, I don't
11294 know why academics are what the FTC needs. It seems to me they
11295 need technical experts and that's what this bill -- this
11296 amendment proposes to substitute. I yield back.
11297 Chairman Nadler. The gentleman yields back. For what
11298 purpose does Mr. Cicilline seek recognition?
11299 Mr. Cicilline. I move to -- move to strike the last word,
11300 and I'm not pressing my point of order anymore. I withdraw my
11301 point of order.
11302 Chairman Nadler. Point of order is withdrawn, the gentleman
11303 is recognized.
11304 Mr. Cicilline. Thank you, Mr. Chairman. I would urge my
11305 colleagues to reject this amendment. It's important that the
11306 relevant expertise be available to this committee so that the

11307 interoperability and portability standards work. And that's why
11308 a technical committee needs to have representation from
11309 individuals who have relevant and important expertise. That's
11310 what the legislation provides.

11311 Stripping out the expertise I think would be a terrible
11312 mistake and I think it would undermine the effectiveness of the
11313 bill. I urge my colleagues to defeat this amendment. I yield
11314 back.

11315 Chairman Nadler. The gentleman yields back. Does anyone
11316 else seek recognition on this amendment? For what purpose does
11317 Mr. Roy seek recognition?

11318 Mr. Roy. I move to strike the last word.

11319 Chairman Nadler. The gentleman is recognized.

11320 Mr. Roy. I think this amendment is important. I think the
11321 gentleman from North Carolina's finger on I think part of the
11322 problem.

11323 We addressed some of this earlier in amendments that
11324 unfortunately were rejected when we were talking about ensuring
11325 that we weren't going to have issues such as systemic racism and
11326 critical race theory a part of the issue when we were debating
11327 the FTC fees earlier and trying to limit and narrow that scope
11328 of how those fees could be used.

11329 And I think here the gentleman I think is simply trying to
11330 ensure that we're not going to try to inject things that aren't

11331 within the very pure scope of what's allegedly trying to be done
11332 here. And I think it's a fairly straightforward amendment by
11333 focusing on technical so that we don't end up with political
11334 organizations, left or right.

11335 But you know, I think that they're, given a lot of the things
11336 we've talked about today and given the extent to which we've talked
11337 about truth being the goal of what, you know, is being attempted
11338 here and who the purveyors of truth are, if we've got left, you
11339 know, and from the perspective of those of us on this side of
11340 the aisle, we've got left-leaning or left-wing organizations that
11341 are putting in the so-called experts.

11342 When you've got a vague criteria such as academics, you know,
11343 under the sort of broad description with other knowledge, I'm
11344 not sure what this is, pretty much whoever they want. They can
11345 just pick, pick and choose. And this is one of those things that
11346 Congress, we punt so often down to the bureaucrats in this fourth
11347 branch, the power to make these determinations.

11348 I think that's one of the concerns being laid out. And you
11349 know, certainly there would some on our side of the aisle that
11350 would be bothered if determinations were being made by the FTC
11351 about what was, you know, violative of the act, which of course
11352 there's some fairly broad ways to violate the act, whether it
11353 be something, it could be Black Lives Matter or Planned Parenthood
11354 or some leftist organizations.

11355 And I assume some on the other side of the aisle might now
11356 want, you know, some political organizations representing our
11357 views on our side of the aisle to have influence. I think this
11358 would be a good amendment to force this to be a technical-based
11359 expertise that's provided. And I yield back.
11360 Chairman Nadler. The gentleman yields back. Does anyone
11361 else seek recognition on this amendment? If not, the question
11362 occurs on the amendment. All in favor say aye.
11363 (Chorus of aye.)
11364 Chairman Nadler. Opposed, no.
11365 (Chorus of no.)
11366 Chairman Nadler. In the opinion of the Chair the noes have
11367 it.
11368 Mr. Bishop. Yeas and nays requested, Mr. Chair.
11369 Chairman Nadler. Yeas and nays are requested. The Clerk
11370 will call the roll.
11371 Ms. Fontenot. Mr. Nadler.
11372 Chairman Nadler. No.
11373 Ms. Fontenot. Mr. Nadler votes no.
11374 Ms. Lofgren.
11375 Ms. Lofgren. No.
11376 Ms. Fontenot. Ms. Lofgren votes no.
11377 Ms. Jackson Lee.
11378 Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen.

Mr. Cohen. No.

Ms. Fontenot. Mr. Cohen votes no.

Mr. Johnson of Georgia.

Mr. Deutch.

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass.

Mr. Jeffries.

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline.

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell.

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu.

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin.

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal.

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Ms. Demings.

Ms. Demings. No.

Ms. Fontenot. Ms. Demings votes no.

Mr. Correa.

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon.

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia.

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse.

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Ms. McBath.

Ms. McBath. No.

Ms. Fontenot. Ms. McBath votes no.

Mr. Stanton.

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean.

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar.

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones.

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross.

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush.

Ms. Bush. Bush votes no.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan.

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot.

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa.

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck.

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz.

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana.

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs.

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock.

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube.

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany.

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie.

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy.

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop.

Mr. Bishop. Yes.

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

Ms. Fischbach. Yes.

Ms. Fontenot. Ms. Fischbach votes yes.

Ms. Spartz.

Mrs. Spartz. Yes.

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

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz.

Mr. Bentz. Yes.

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

Mr. Owens. Yes.

Ms. Fontenot. Mr. Owens votes yes.

Chairman Nadler. Ms. Bass?

Ms. Bass. Bass votes no.

Ms. Fontenot. Ms. Bass votes no.

11499 Chairman Nadler. Are there any members who haven't been
11500 recorded who wish to vote? The Clerk will report.
11501 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 24 noes.
11502 Chairman Nadler. The amendment is not agreed to.
11503 Are there any further amendments to the amendment in the
11504 nature of a substitute?
11505 In that case, the question occurs on the amendment in the
11506 nature of a substitute. This will be followed immediately by
11507 a vote on the final passage of the bill.
11508 All those in favor, respond by saying aye.
11509 (Chorus of aye.)
11510 Chairman Nadler. Opposed, no.
11511 (Chorus of no.)
11512 Chairman Nadler. In the opinion of the -- in the opinion
11513 of the Chair, the ayes have it and the amendment in the nature
11514 of a substitute is agreed to.
11515 Mr. Issa. No, I'd like a recorded vote.
11516 Chairman Nadler. A recording quorum being present, the
11517 question is on the motion to report the bill HR 3849 as amended
11518 favorably to the House. Those in favor, respond by saying aye.
11519 (Chorus of aye.)
11520 Chairman Nadler. Opposed, no.
11521 (Chorus of no.)
11522 Chairman Nadler. The ayes have it, and the bill is ordered

11523 reported favorably.

11524 Mr. Issa. Recorded vote.

11525 Chairman Nadler. Recorded vote has been requested, the

11526 Clerk will call the roll.

11527 Ms. Fontenot. Mr. Nadler.

11528 Chairman Nadler. Yes.

11529 Ms. Fontenot. Mr. Nadler votes yes.

11530 Ms. Lofgren.

11531 Ms. Lofgren. No.

11532 Ms. Fontenot. Ms. Lofgren votes no.

11533 Ms. Jackson Lee.

11534 Ms. Jackson Lee. Aye.

11535 Ms. Fontenot. Ms. Jackson Lee votes aye.

11536 Mr. Cohen.

11537 Mr. Cohen. Aye.

11538 Ms. Fontenot. Mr. Cohen votes aye.

11539 Mr. Johnson of Georgia.

11540 Mr. Deutch.

11541 Mr. Deutch. Aye.

11542 Ms. Fontenot. Mr. Deutch votes aye.

11543 Ms. Bass.

11544 Ms. Bass. Aye.

11545 Ms. Fontenot. Ms. Bass votes aye.

11546 Mr. Jeffries.

Mr. Jeffries. Aye.

Ms. Fontenot. Mr. Jeffries votes aye.

Mr. Cicilline.

Mr. Cicilline. Aye.

Ms. Fontenot. Mr. Cicilline votes aye.

Mr. Swalwell.

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu.

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin.

Mr. Raskin. Aye.

Ms. Fontenot. Mr. Raskin votes aye.

Ms. Jayapal.

Ms. Jayapal. Aye.

Ms. Fontenot. Ms. Jayapal votes aye.

Ms. Demings.

Ms. Demings. Aye.

Ms. Fontenot. Ms. Demings votes aye.

Mr. Correa.

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon.

Ms. Scanlon. Aye.

Ms. Fontenot. Ms. Scanlon votes aye.

Ms. Garcia.

Ms. Garcia. Aye.

Ms. Fontenot. Ms. Garcia votes aye.

Mr. Neguse.

Mr. Neguse. Aye.

Ms. Fontenot. Mr. Neguse votes aye.

Ms. McBath.

Ms. McBath. Aye.

Ms. Fontenot. Ms. McBath votes aye.

Mr. Stanton.

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean.

Ms. Dean. Aye.

Ms. Fontenot. Ms. Dean votes aye.

Ms. Escobar.

Ms. Escobar. Aye.

Ms. Fontenot. Ms. Escobar votes aye.

Mr. Jones.

Mr. Jones. Aye.

Ms. Fontenot. Mr. Jones votes aye.

Ms. Ross.

Ms. Ross. Aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush.

Ms. Bush. Bush votes aye.

Ms. Fontenot. Ms. Bush votes aye.

Mr. Jordan.

Mr. Johnson of Georgia. Madam Clerk, Madame Clerk, this is Congressman Hank Johnson, how am I recorded?

Ms. Fontenot. Mr. Johnson, you are not recorded.

Mr. Johnson of Georgia. I vote aye.

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

Mr. Jordan.

Mr. Jordan. No.

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot.

Mr. Chabot. No.

Ms. Fontenot. Mr. Chabot votes no.

Mr. Gohmert.

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa.

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Mr. Buck.

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz.

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana.

Mr. Johnson of Louisiana. No.

Ms. Fontenot. Mr. Johnson of Louisiana votes no.

Mr. Biggs.

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock.

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube.

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany.

Mr. Tiffany. No.

Ms. Fontenot. Mr. Tiffany votes no.

Mr. Massie.

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy.

11643 Mr. Roy. No.

11644 Ms. Fontenot. Mr. Roy votes no.

11645 Mr. Bishop.

11646 Mr. Bishop. No.

11647 Ms. Fontenot. Mr. Bishop votes no. Ms. Fischbach.

11648 Ms. Fischbach. No.

11649 Ms. Fontenot. Ms. Fischbach votes no.

11650 Ms. Spartz.

11651 Mrs. Spartz. No.

11652 Ms. Fontenot. Ms. Spartz votes no. Mr. Fitzgerald.

11653 Mr. Fitzgerald. No.

11654 Ms. Fontenot. Mr. Fitzgerald votes no.

11655 Mr. Bentz.

11656 Mr. Bentz. No.

11657 Ms. Fontenot. Mr. Bentz votes no. Mr. Owens.

11658 Mr. Owens. Yes.

11659 Ms. Fontenot. Mr. Owens votes yes.

11660 Chairman Nadler. How is Mr. Deutch recorded?

11661 Ms. Fontenot. Mr. Deutch is recorded as aye.

11662 Chairman Nadler. Are there any members who wish to vote

11663 who haven't voted? The Clerk will report.

11664 Ms. Fontenot. Mr. Chairman, there are 25 ayes and 19 noes.

11665 Chairman Nadler. The ayes have it and the bill as amendment

11666 is ordered reported favorably to the House. Members will have

11667 two days to submit views. Without objection the bill will be
11668 reported as a single amendment in the nature of a substitute
11669 incorporating all adopted amendments, and staff is authorized
11670 to make technical and conforming changes.
11671 Pursuant to notice, I now call up HR 3826, the Platform
11672 Competition and Opportunity Act of 2021 for purposes of markup
11673 and move that the Committee report the bill favorably to the House.
11674 [The Bill H.R. 3826 follows:]
11675
11676 ********COMMITTEE INSERT********

11677 The Clerk will report the bill.

11678 Ms. Fontenot. HR 3826 to promote competition and economic
11679 opportunity --

11680 Chairman Nadler. Without objection the bill is considered
11681 as read and open for amendment at any point. I will begin by
11682 recognizing myself for an opening statement.

11683 HR 3826, the Platform Competition and Opportunity Act of
11684 2021, improves merger enforcement in the digital economy by
11685 shifting the burden of proof for transactions involving a dominant
11686 platform that are most likely to harm competition, eliminate
11687 consumer choice, and prevent new competition from entering the
11688 market.

11689 During the past decade, the platforms investigated by the
11690 Committee were able to reinforce their market power and eliminate
11691 competition by acquiring hundreds of smaller firms that in several
11692 critical examples were competitors or nascent rivals.

11693 In May, the Washington Post noted that these firms dominate
11694 many facets of our lives precisely because they, quote, Acquired
11695 hundreds of companies over decades to propel them to become some
11696 of the most powerful tech behemoths in the world, unquote.

11697 Importantly, antitrust enforcers closely reviewed only a
11698 handful of these transactions and none were challenged. In other
11699 words, antitrust enforcers across both Democratic and Republican
11700 administrations stood idly by while what was once a dynamic and

11701 fast-growing market became concentrated and monopolized.

11702 This problem has only been exacerbated by decades of
11703 disastrous legal precedents that have imposed near-impossible
11704 standards for antitrust agencies to satisfy in order to stop
11705 harmful mergers.

11706 The Platform Competition and Opportunity Act of 2021 targets
11707 this problem by prohibiting the largest online platforms from
11708 engaging in mergers that would eliminate competitors or potential
11709 competitors or that would serve to enhance or reinforce monopoly
11710 power.

11711 This legislation strikes the right balance by shifting the
11712 burden to these firms, which are extremely well-capitalized and
11713 employ thousands of attorneys, to show that these types of
11714 acquisition will not harm competition.

11715 Earlier this year, then-Acting FTC Chairwoman Rebecca Kelly
11716 Slaughter testified before the Antitrust Subcommittee that this
11717 form of burden shifting would substantially help deter unlawful
11718 mergers. Not only will this legislation give antitrust enforcers
11719 the tools they need to block anti-competitive mergers, it will
11720 also deter companies from entering into these harmful
11721 transactions in the first place.

11722 All too often, antitrust enforcers are forced to spend time
11723 and resources on transactions that should have never made it out
11724 of the boardroom. Importantly, this legislation includes

11725 reasonable exceptions for the types of routine transactions that
11726 should not require enhanced review.
11727 HR 3826 is limited in scope and successfully remedies a
11728 problem that prevents our antitrust enforcers from stopping
11729 anti-competitive acquisitions in the digital marketplace. This
11730 bipartisan legislation would help promote greater competition,
11731 more choices, and increase innovation in the marketplace.
11732 I thank Congressman Jeffries and Ranking Member Buck for
11733 their leadership on this vital legislation, and I urge all members
11734 to support it.
11735 I now recognizes the ranking member of the Judiciary
11736 Committee, the gentleman from Ohio, Mr. Jordan, for his opening
11737 statement.
11738 Mr. Jordan. Thank you, Mr. Chairman.
11739 This bill doesn't break up Big Tech, this bill doesn't even
11740 frankly stop mergers, it just shifts the burden. Under current
11741 law, the Department of Justice and the Federal Trade Commission
11742 can challenger mergers despite the fact that the Obama Federal
11743 Trade Commission failed to do so.
11744 What this bill does is allow Big Tech companies to continue
11745 to engage in acquisitions mergers so long as they effectively
11746 have the permission of the FTC and DOJ to proceed. Changing this
11747 standard in this way radically empowers the government's ability
11748 to apply pressure to the Big Tech firms in or outside the context

11749 of any given merger or acquisition. Cases would turn in no small
11750 part on the government's enforcement discretion, which means
11751 companies acting ways that please their regulators.
11752 You can bet that those changes in behavior will not be in
11753 ways that give conservatives a better deal. These new and vague
11754 standards will be unchartered territory, resulting in significant
11755 incentive for companies to preview behavior with regulators and
11756 seek their blessing before acting.
11757 This bill doesn't break up Big Tech, as I said, the bill
11758 does not even prevent Big Tech from getting bigger. It does tell
11759 Big Tech that it can only grow if it does so in the ways that
11760 please the regulators, please the big government, please Ms. Khan,
11761 Ms. Slaughter that the Chairman cited.
11762 The merger activity of these companies is definitely
11763 something we should take a look at, but not in the way that is
11764 laid out in this legislation. I would urge a -- that we oppose
11765 this vote, oppose this bill and vote no.
11766 I yield back, Mr. Chair.
11767 Chairman Nadler. The gentleman yields back. I now
11768 recognize the Chair of the Subcommittee on Antitrust, Commercial,
11769 and Administrative Law, the gentleman from Rhode Island, Mr.
11770 Cicilline, for his opening statement.
11771 Mr. Cicilline. Thank you, Mr. Chairman.
11772 HR 3826, the Platform Competition and Opportunity Act of

11773 2021, is an important piece of legislation that will prevent
11774 dominant online platforms from using mergers to increase their
11775 gatekeeper power and destroy competition. Dominant platforms
11776 have used acquisitions to neutralize competitor threats,
11777 reinforce their monopoly power, and expand their dominance into
11778 new markets.

11779 HR 3826 addresses this problem by requiring dominant firms
11780 to show an acquisition will not eliminate a potential competitive
11781 threat. Today, these firms are focused on transactions that
11782 allow them to control the technologies of tomorrow, like
11783 artificial intelligence and augmented reality.

11784 HR 3826 promotes a more competitive digital marketplace by
11785 giving antitrust enforcers stronger tools to stop
11786 anti-competitive mergers that snuff out competition online.
11787 This legislation takes clear aim at a problem plaguing digital
11788 markets.

11789 Over the past decade, antitrust enforcers have been too timid
11790 challenging mergers, even in highly concentrated markets. When
11791 they have, courts have helped monopolists by moving the goalposts.

11792 As a result, our antitrust agencies are forced to waste
11793 limited time and resources reviewing mergers that clearly violate
11794 our antitrust laws. All too often, these transactions go
11795 unchallenged or are approved with toothless conditions.

11796 Contrary to the claims made by the largest tech companies,

11797 this legislation is not a merger ban. Far from it. This bill
11798 acknowledges the obvious, that digital markets are dominated by
11799 a handful of gatekeeper platforms that use mergers to kill
11800 competition and protect their monopolies.
11801 This legislation merely requires that these companies show
11802 that their mergers will not expand or reinforce their monopoly
11803 power or kill off competitors or potential competitors.
11804 Transactions that do not trigger those concerns are not
11805 restricted.
11806 Earlier this year, the Antitrust Subcommittee received a
11807 letter from Consumer Reports advising that legislation is needed
11808 to, quote, Reaffirm and clarify the longstanding presumption that
11809 acquisitions by the largest corporations that already have
11810 significant market power are anti-competitive and unlawful,
11811 subject to a clear showing they are not, end quote.
11812 I could not agree more, and that's exactly what this
11813 legislation does. I want to thank my friend, Congressman
11814 Jeffries and Congressman Buck, for introducing this important
11815 legislation. I encourage my colleagues to support it, and I yield
11816 back.
11817 Chairman Nadler. The gentleman yields back. I now
11818 recognize the ranking member of the Antitrust Subcommittee, the
11819 gentleman from Colorado, Mr. Buck, for his opening statement.
11820 Mr. Buck. Thank you, Mr. Chair.

11821 Google, Amazon, Facebook, and Apple were great American
11822 corporate success stories. Their stories of scrappy founders
11823 starting a business in garages and college dorm rooms, working
11824 tirelessly to build their companies and fend off competitors and
11825 acquirers, and ultimately overcoming tremendous odds to reach
11826 meteoric success had immense emotional resonance with the
11827 American people, and they were rightly celebrated.
11828 I wish that was where the story stopped, but unfortunately
11829 it didn't. We now have just a handful of tech titans that dominate
11830 our digital sector. They did not reach this status through
11831 investments in brilliant engineers or scientists and well-funded
11832 R&D programs. They achieved their monopolies through an
11833 aggressive merge-to-monopoly strategy.
11834 The strategy has meant Big Tech buys any potential
11835 competitive threat and then mothballs their technology. This
11836 is not good for our markets, our nation's future competitiveness,
11837 or the American consumer. So how have they been able to get away
11838 with this? It has all been made possible by a dithering Congress
11839 and judges who are all too willing to legislate from the bench.
11840 Judge-made doctrines made it possible for Facebook to
11841 acquire Instagram and WhatsApp, even though they were identified
11842 as competitors by Facebook.
11843 Mr. Chair, I yield back.
11844 Chairman Nadler. The gentleman yields back. Without

11845 objection, all other opening statements will be included in the
11846 record.
11847 I now recognize myself for purposes of offering an amendment
11848 in the nature of a substitute.
11849 [The Amendment offered by Mr. Smith follows:]
11850
11851 **********COMMITTEE INSERT**********

11852 Chairman Nadler. The clerk will report the amendment.

11853 Ms. Fontenot. Amendment in the nature of a substitute to
11854 H.R. 3826 offered by Mr. Nadler of New York. Strike all after
11855 the enactment clause --

11856 Chairman Nadler. Without objection, the amendment in the
11857 nature of a substitute will be considered as read and shall be
11858 considered as base text for purposes of the amendment.

11859 I will recognize myself to explain the amendment. In
11860 addition to certain technical and conforming revisions, the
11861 amendment in the nature of a substitute makes three important
11862 changes in the bill.

11863 First, the amendment makes clear that to establish the
11864 affirmative defense, a defendant must show by clear and convincing
11865 evidence that the proposed acquisition does not fall within any
11866 of the specific types of mergers described in paragraphs A through
11867 D of Section 2(b).

11868 Second, the amendment clarifies that except as otherwise
11869 provided, the Department of Justice, Federal Trade Commission,
11870 and the Attorney General of the State, have the same enforcement
11871 powers, duties, and other authorities under this act, as do
11872 certain other relevant antitrust and procedural statutes.

11873 Third, to eliminate any doubt, the amendment to Section 5
11874 explicitly provides for the availability of injunctive relief
11875 for cases brought by the Department of Justice, the Commission,

11876 and the Attorney General of the State. These are brief, but
11877 important updates to this bill and I ask my colleagues to support
11878 the amendment in the nature of a substitute. I yield back the
11879 balance of my time.
11880 Are there any amendments to the amendment in the nature of
11881 a substitute?
11882 Mr. Jeffries. Mr. Chairman?
11883 Chairman Nadler. For what purpose does Mr. Jeffries seek
11884 recognition?
11885 Mr. Jeffries. Move to strike the last word?
11886 Chairman Nadler. The gentleman is recognized.
11887 Mr. Jeffries. Thank you, Mr. Chairman. Our antitrust laws
11888 are rooted in the fundamental principle that fairness and
11889 competition are good for American business and good for American
11890 workers. Over the years, antitrust guard rails have provided
11891 the path for millions of small businesses and everyday Americans
11892 to achieve the middle class dream and beyond. When companies
11893 must compete for consumers, it pushes them to innovate and also
11894 allows for new ventures to emerge filling needs left unmet by
11895 dominant legacy platforms.
11896 Over the past decades things have changed, however. A
11897 handful of companies have worked to undermine competition by often
11898 engaging in the strategy of buying or burying smaller businesses
11899 and startups that pose a threat to their dominance in the market.

11900 They have built monopolies and eliminated competition through
11901 hundreds of mergers and acquisitions. This concentration of
11902 market power weakens innovation and entrepreneurship, weakens
11903 privacy protections for consumers, and weakens working conditions
11904 for employees. If predatory monopoly behavior continues
11905 unchecked, and competition remains suppressed, economic
11906 consequences will be severe.

11907 In the past ten years, the rate of new startups has declined
11908 dramatically. So has the number of people working for such
11909 companies. Furthermore, the evidence reveals that a lack of
11910 competition goes hand-in-hand with a decline in privacy and data
11911 protection for consumers. The fact is that dominance of firms
11912 with weak consumer protections has created a kill zone around
11913 the market for products that give people tools to protect their
11914 privacy online.

11915 We need 21st century antitrust laws to keep up with the 21st
11916 century innovation economy that is increasingly dominated by
11917 companies willing to do whatever is necessary to suffocate
11918 competition.

11919 H.R. 3826, the Platform Competition and Opportunity Act,
11920 would restore competition and entrepreneurship to the innovation
11921 economy. The bill requires certain platforms that have engaged
11922 in a pattern of buying or burying, for instance, to demonstrate
11923 that a proposed acquisition will not eliminate competition or

11924 further intensify their concentration of market power. The bill
11925 will not prohibit, as the ranking member acknowledged, all mergers
11926 and acquisitions.

11927 Currently, antitrust law requires the American people,
11928 through the FTC, to prove that a proposed acquisition would be
11929 unlawful. That places the burden in the wrong place. Instead,
11930 the burden should be on dominant platforms who have a market
11931 capitalization. Over 600 billion show that the proposed
11932 acquisition will not further enhance their concentration of
11933 market power and violate the law.

11934 H.R. 3826 will allow the FTC and other enforcement agencies
11935 to identify and address the most problematic types of transactions
11936 and to prevent tech giants from detonating competition in the
11937 market and undermining the American consumer.

11938 I would like to thank the Republican co-lead of this
11939 legislation, Ranking Member Ken Buck, for his partnership and
11940 tremendous leadership on this effort, as well as the chairs of
11941 the full committee and of course, my good friend, the chair of
11942 the Antritrust Subcommittee, David Cicilline.

11943 It is time to modernize our antitrust laws. Time to lift
11944 up tech entrepreneurs, innovators, and startups. Time to restore
11945 competitive balance in the marketplace, and stand up for the
11946 American consumer. And I respectfully ask you to support H.R.
11947 3826 and I yield back.

11948 Chairman Nadler. The gentleman yields back. Who seeks
11949 recognition?
11950 Mr. Issa. Mr. Issa.
11951 Chairman Nadler. For what purposes does the gentleman from
11952 California seek recognition?
11953 Mr. Issa. I move to strike the last word.
11954 Chairman Nadler. The gentleman is recognized.
11955 Mr. Issa. You know, there is going to be a series of
11956 amendments tonight and I am sure they will all be well thought
11957 out. But I think when we are on the underlying bill, the easiest
11958 way to put into perspective what the authors misunderstood here
11959 is the fact is that when you start a small company, these companies
11960 that are claimed to have been bought and buried, when you start
11961 a company like that, and anyone who had ever watched Shark Tank
11962 has seen this. You don't have to do anything more than watch
11963 NBC. That time of the evening it is a good thing to watch. And
11964 what you discover is that when you start a tech company, you
11965 generally, you and your investors, have an exit plan. And that
11966 exit plan often is you know exactly who the ideal bidder is for
11967 the technology, or at least you know a group of them.
11968 This bill will, among other things, likely take these four
11969 large companies completely out of bidding for these companies
11970 which might mean that there is no one to bid for them or, in fact,
11971 that they get less for their exit. It also means that to a great

11972 extent these companies which often provide seed capital,
11973 substantial seed capital, for these companies, will choose not
11974 to do it because they won't be able to buy them if they succeed.
11975 So when you are taking a look and you are saying, oh, okay,
11976 we want to take these four multi-trillion dollar companies out
11977 of the process of buying and let somebody else buy them or invest
11978 in them, what you are really saying is we want to slow the rate
11979 of innovation by taking that amount of dollars in investment and
11980 assistance out.
11981 The reason that we have always had a standard for a hundred
11982 years for when and how you can buy or invest in a company is that
11983 we don't want to have a purchase reduce competition, reduce the
11984 consumer's benefit. This bill seeks to change it to where you
11985 have to prove your innocence, you have to prove essentially that
11986 you are going to make something more competitive in order to have
11987 these four companies be at the table bidding for good ideas and
11988 innovation.
11989 I understand the idea of buy and bury, but I will tell you
11990 something. In my decades of looking at technology, it is a rare
11991 exception that you buy and bury. We all heard about the 100 miles
11992 or the 500 mile gasoline engine that got bought and buried multiple
11993 times. It is a great old wive's tale. The fact is that great
11994 ideas do not stay buried. They almost always get put into
11995 production as quickly as possible.

11996 Apple has a market cap of over $2 trillion. But Samsung
11997 just one of the Android platform producers is about a half a
11998 trillion dollars and doing everything it can to produce more
11999 phones faster. It actually produces more phones than Apple, even
12000 though its sales are lower.
12001 The reality is there is no guarantee of monopoly in any of
12002 these companies and certainly not in one of the companies here
12003 which is Apple. And so when you look at this, I hope you will
12004 take a good look and say do you really want to take them out of
12005 the bidding. And any and all of you that have a tech company,
12006 if you don't figure it out tonight because it may be a little
12007 to call unless you have got a tech company in Alaska, the fact
12008 is that if you call any of these small businesses and say were
12009 you thinking of your exit strategy including Apple or Microsoft
12010 or Google? And they would say absolutely because I have seen
12011 them pay billions of dollars for companies that are in some cases
12012 not yet profitable, but have great opportunity.
12013 That is all I have to say. I thank the gentleman. I yield
12014 back.
12015 Chairman Nadler. The gentleman yields back. For what
12016 purpose does Ms. Ross seek recognition?
12017 Ms. Ross. Mr. Chairman, I have an amendment.
12018 Chairman Nadler. The clerk will report the amendment.
12019 Ms. Ross. We will suspend for a moment.

12020 Chairman Nadler. We will come back to Ms. Ross. For what
12021 purpose does Mr. Gaetz seek recognition?
12022 Mr. Gaetz. Move to strike the last word.
12023 Chairman Nadler. The gentleman is recognized.
12024 Mr. Gaetz. Thank you, Mr. Chairman. I am proud to join
12025 many of my colleagues from the subcommittee in introducing this
12026 legislation.
12027 And many of the things my friend from California said are
12028 true regarding taking the four major platforms out of the bidding
12029 for some startups. But innovation is not a value just for the
12030 sake of innovation. It has to be able to be utilized and deployed.
12031 And the value proposition on innovation is that it can make
12032 people's lives better.
12033 And the investigation that we conducted showed time and again
12034 that oftentimes, the very first thing that the four major
12035 platforms would contemplate in order to deal with a competitor
12036 was acquisition. They would say so brazenly, not with no
12037 disregard for the impact of the marketplace, but with a keen
12038 understanding that they would harm the marketplace with such
12039 an acquisition.
12040 The legislation does not require someone to prove their
12041 innocence. It does require them to prove by clear and convincing
12042 evidence that they are not harming the marketplace. They don't
12043 have to enhance the marketplace, they just have to prove by that

12044 standard that they aren't harming it.

12045 Much of the critique of this legislative package has been
12046 that the legislative efforts require this excessive entanglement
12047 of the government in day in, day out decisions, whether it is
12048 the design of some sort of a la carte system to deal with
12049 portability or interoperability. And those objections would
12050 fall flat relative to this bill because it has a prophylactic
12051 effect.

12052 If the four major platforms understand that they are facing
12053 a different standard and that they are going to have to come up
12054 with a different amount of proof, then they are less likely to
12055 engage in that conduct in the first place, and so there is less
12056 of it to police and less concern that we are wrapping government
12057 around the axle of this particular industry.

12058 I want to encourage my colleagues to support the legislation.
12059 I yield back.

12060 Chairman Nadler. The gentleman yields back. For what
12061 purpose does Mr. Lieu seek recognition?

12062 Mr. Lieu. I move to strike the last word.

12063 Chairman Nadler. The gentleman is recognized.

12064 Mr. Lieu. Thank you, Chairman Nadler. Let me, first of
12065 all, thank Congressman Jeffries for your hard work on this issue.
12066 I agree with you that large companies buying up small companies
12067 to stifle competition is a bad thing and need to address this

12068 issue. It is a nuanced complicated issue. I commend you for
12069 taking it on.
12070 I do have two concerns. Because of the way that this
12071 subcommittee investigation happened, the subcommittee picked
12072 four companies to investigate. But because the subcommittee did
12073 not investigate Microsoft, which is competing against Apple and
12074 competing against Google, it is not now covered by this
12075 legislation. So if we think it is bad for Apple to buy up
12076 companies to help its own operating system, we are letting
12077 Microsoft do this, even though Microsoft's operating system is
12078 twice the size of Apple's iOS operating system.
12079 So before these bills get to the floor, I just would urge
12080 you again to look at the definition of covered platform because
12081 you can't just exclude other companies in exact same space
12082 competing with these same companies where they actually have more
12083 dominant products. The Microsoft operating system is just more
12084 dominant than the iOS operating system and yet we are treating
12085 these two companies disparately.
12086 And the second concern before this bill hits the floor for
12087 you to look at, is I met with a lot of entrepreneurs and know
12088 entrepreneurs, as well as startup employees and investors, and
12089 all of them would love to the next Google or Apple. But it is
12090 also clear that they understand that they might not become the
12091 next Google or Apple and they will be thrilled to be bought out.

12092

12093 The way that this legislation works, it could have the
12094 unintended consequence of basically trapping these companies with
12095 sort of their stark reality either they have got to make it big,
12096 or due to events, you are going to get stuck and fail because
12097 they have no exit strategy. They can't be purchased. And I think
12098 that could stifle innovation in our tech sector.

12099 And if you would look at maybe having some sort of floor
12100 that says okay, for certain size companies we would not apply
12101 this bill to. Because I think there would be a difference, for
12102 example, between Apple buying a small startup of 15 people versus
12103 let's say Google buying Twitter. And I think you should look
12104 at making that kind of distinction before this bill gets to the
12105 floor.

12106 Thank you for taking this very big challenge on and I yield
12107 back.

12108 Mr. Cicilline. [presiding] The gentleman yields back.
12109 Ms. Spartz is recognized. For what purpose do you seek
12110 recognition?

12111 Ms. Spartz. I move to strike the last word.

12112 Mr. Cicilline. The gentlelady is recognized.

12113 Mrs. Spartz. Thank you, Mr. Chairman. I am not a legal
12114 scholar, but sometimes I think it is probably good to have not
12115 just attorneys from this committee, but common sense people

12116 because the lawyers are not rooting for ordinary people to be
12117 able to understand. Otherwise, things get so complicated unless
12118 you a very wealthy and can afford very expensive attorneys. The
12119 system is stacked against you.
12120 But what really what has surprised me, being a state
12121 legislator and I was kind of joking if we can waive the law school,
12122 I probably could pass the bar and I said to the state senator,
12123 I said after the committee I definitely could do it which actually
12124 is a big protection is all this licensing from all of the very
12125 expensive academia making a lot of money on that and most of them
12126 now going to create more barriers to a lot of professions.
12127 So I look at things very simply. You know, I always believe
12128 American system is built on the presumption of innocence and
12129 burden of proof all of us have to be on the side who is accusing
12130 or the government? You know, it never should be something someone
12131 should prove that I am not causing harm. You have to prove that
12132 I caused this harm.
12133 So I think it was very surprising and appalling to me in
12134 so many cases we have become this society you are guilty until
12135 you prove you are innocent. And it is a very dangerous precedent
12136 we're setting up with all of these laws like that. So I think
12137 it is a very serious discussion. And I don't really care if it
12138 is a small or big company. Instead of actually providing
12139 preferential treatment to some of the larger companies, we a lot

12140 of times do with a lot of loopholes, but also shouldn't pick losers
12141 and winners and come after some of them. I think that is the
12142 wrong way to do it. It should apply equally to all of the
12143 stakeholders and all of the markets.
12144 But I think it is a very dangerous precedent to actually
12145 move the burden of proof from the government to actually to these
12146 companies to prove that they are innocent and they are not causing
12147 any harm. And I do not think we as the legislators should be
12148 legislating laws like that because our system is based -- this
12149 is where Americans' freedom and the beauty of the American system
12150 that you actually have a protection from the government.
12151 And we have a different standard with government who accusing
12152 you have to prove, but ultimately whoever is accusing you of
12153 something, they have to do their work to prove that you did
12154 something wrong. If they cannot prove it, too bad. Then you are
12155 innocent.
12156 And I am really concerned with moving the standard and the
12157 whole system is moving in that direction. It is very disturbing
12158 for me to see that. And I hope maybe we can fix it with some
12159 amendments, look at other details, but this thing sets a very
12160 dangerous precedent and I would not be able to --
12161 Mr. Cicilline. Would the gentlelady yield?
12162 Ms. Spartz. Yes, I yield.
12163 Mr. Cicilline. I just would mention that this burden

12164 shifting is well-established practice in antitrust law and
12165 particularly concentrated markets. And it has been very
12166 effective, so it has worked, in part, because the moving party
12167 has most information with respect to the transaction. So it has
12168 been an effective tool in terms of preventing deeper and deeper
12169 concentration in very concentrated --
12170 Ms. Spartz. If you believe that if it is already there,
12171 so why do you need this legislation?
12172 Mr. Cicilline. No, I said that practice of burden shifting
12173 has been used in antitrust --
12174 Ms. Spartz. But you tried to put it in the code, in this.
12175 I mean you codified it. You believe that practice already exists.
12176 Because this is a codified -- specific in the law, what I have
12177 to do to be able to prove that. It seems to me it is really a
12178 standard that I haven't seen it. It seems like it exists in our
12179 current environment, but to actually put it into law the burden
12180 of proof would be on this company.
12181 Mr. Cicilline. For these covered platforms in these kind
12182 of concentrated markets that we --
12183 Ms. Spartz. But don't you believe it is set up as kind of
12184 a precedent, dangerous precedent in the law to see who actually
12185 has to prove that?
12186 Mr. Cicilline. I mean I don't actually think it is a
12187 dangerous precedent. I think it is an effective tool to ensure

12188 that these markets which are highly concentrated don't become
12189 more highly concentrated, don't become stronger gatekeepers,
12190 don't have higher market concentration, and can exclude and crush
12191 competitors and undermine competition.
12192 Ms. Spartz. Well, I agree with you, but actually government
12193 has to prove that the harm is created. They created a lot of
12194 harm in things, but the government should actually make that
12195 determination and create that you are guilty. And until the
12196 government proves that you are guilty, you have to be innocent
12197 and I think that is an important part of our system. And I yield
12198 back.
12199 Mr. Cicilline. The gentlelady yields back. For what
12200 reason does the gentlelady from North Carolina seek recognition?
12201 Ms. Ross. Thank you, Mr. Chairman. I know have an
12202 amendment.
12203 Mr. Cicilline. The clerk will please report the amendment.
12204 [The Amendment offered by Ms. Ross follows:]
12205
12206 **********COMMITTEE INSERT**********

12207 Ms. Fontenot. Amendment to the amendment in the nature of
12208 a substitute to H.R. 3826 offered by Ms. Ross of North Carolina.
12209 Mr. Cicilline. The gentlelady is recognized to explain her
12210 amendment.
12211 Ms. Ross. Thank you, Mr. Chairman. And this amendment
12212 addresses some of the concerns that have been raised about tech
12213 companies that are startups that really don't intend to get fully
12214 fleshed out.
12215 My district is part of the Research Triangle in North
12216 Carolina and has a proud history of innovation and is part of
12217 the innovation economy. We are home to top tier research
12218 institutions, a high-skilled work force, and cutting-edge
12219 companies.
12220 We also have a large population of innovators and
12221 entrepreneurs and many of these people start small businesses
12222 they have no desire to operate in the long time. Instead, their
12223 ultimate goal, as we have heard, is to sell their businesses so
12224 they can move on to the next product, the next innovation.
12225 My amendment allows these small business owners to continue
12226 to do what they do best, innovate. It adds a floor so that
12227 transactions below $50 million are exempt from the bill. With
12228 this amendment, innovators may be -- without the amendment,
12229 innovators could be disincentivized from starting their own
12230 businesses and small businesses might not be able to attract the

12231 financing they need to bring an idea to fruition. For this
12232 reason, I urge my colleagues to support our small businesses,
12233 our innovators, our serial entrepreneurs, and vote yes for this
12234 amendment. And I yield back.
12235 Mr. Cicilline. Will the gentlelady yield?
12236 Ms. Ross. Yes, I yield.
12237 Mr. Cicilline. I think the gentlelady. I thank you for
12238 this excellent amendment and for working with the staff of the
12239 subcommittee and with the lead sponsor, Mr. Jeffries. I think
12240 it is very important to protect the innovators as you described.
12241 I urge everyone to support this amendment. And with that I yield
12242 back.
12243 Ms. Ross. Thank you, Mr. Chairman. I yield back.
12244 Mr. Cicilline. The gentlelady yields back. Mr. Gaetz, for
12245 what purpose do you seek recognition?
12246 Mr. Gaetz. To strike the last word of the amendment.
12247 Mr. Cicilline. The gentleman is recognized.
12248 Mr. Gaetz. I would ask the chair to indulge me in a colloquy.
12249
12250 Would the effect of the amendment in the opinion of the chair
12251 allow these four major tech platforms to catch and kill anything
12252 under $50 million?
12253 Mr. Cicilline. I think the investigation really showed that
12254 the transactions that were of great concern are transactions above

12255 that amount. These are typically in the billions of dollars.

12256 Mr. Gaetz. Mr. Chairman, I recall observing some evidence
12257 I can't cite at the moment, but that oftentimes it was just when
12258 the new technology or new business was showing promise and maybe
12259 hadn't reached the $50 million threshold that they would be most
12260 susceptible to the anti-competitive practice.

12261 Mr. Cicilline. Yes, I would say to the gentleman, the
12262 Clayton Act remains in effect and so those standards still must
12263 be applied with respect to merger transactions.

12264 Mr. Gaetz. But isn't the whole premise of this legislation
12265 that the Clayton Act is insufficient when dealing with these four
12266 behemoths?

12267 Mr. Cicilline. I think the amendment strikes the right
12268 balance. It protects some of these early-stage innovators that
12269 I think Ms. Ross spoke about in offering the amendment. And
12270 again, I think the bulk of the harm comes in much larger
12271 transactions.

12272 Mr. Gaetz. And my concern is that now we have -- if this
12273 amendment were to be adopted to the bill, we will have created
12274 a system where if you are big enough, you can't be caught and
12275 killed, but if you are smaller, you can. And it would seemingly
12276 create this massive loophole in the legislation. I don't know,
12277 I am a big caught off guard by the amendment and am somewhat
12278 surprised the chair supports it.

12279 Mr. Cicilline. I would just say that we did look at all
12280 the transactions of the parties that were the subject of the
12281 investigation and none that fell below that amount were of any
12282 concern to anyone who would nee back.
12283 Mr. Cicilline. I thank the gentleman for yielding.
12284 Mr. Gaetz. I yield back.
12285 Mr. Cicilline. The gentleman yields back. Mrs. McBath,
12286 for what reason does the gentlelady from Georgia seek recognition?
12287 Mrs. McBath. Thank you, Mr. Chairman, and I am really
12288 pleased to be able to support Congresswoman Ross' amendment and
12289 Congressman Jeffries' legislation.
12290 I think this amendment, as you have stated, really kind of
12291 strengthens the ultimate goal of this legislation, and definitely
12292 promotes competition and innovation and throughout our discussion
12293 today, we have been listening all day. There has been definitely
12294 some disagreement about some of the aspects of these bills, but
12295 I think that we can all agree that competition and innovation
12296 definitely go hand in hand.
12297 And you know, when one company has all the power, even the
12298 most creative new approach can have a hard time kind of breaking
12299 through to new customers and consumers end up being just saddled
12300 with limited kinds of choices. But when there is healthy
12301 competition, this is what we have been doing all day long.
12302 You know, companies win over their customers by giving them

12303 the best products and services and improving consumer choices
12304 for them. So they respond to competitors by constantly seeking
12305 to improve those products and those services and not simply just
12306 buying out the competition. And at the same time, innovators
12307 and consumers alike, they all benefit from some of these
12308 acquisitions.

12309 So I am pleased to support this amendment and making sure
12310 that small innovators have options to be able to reap the rewards
12311 of all the work that they have put in and whether by licensing
12312 their software or selling their businesses, whatever they choose
12313 do, selling their businesses to another company in a way that
12314 does not harm overall competition, I am really excited to support
12315 this legislation through this amendment.

12316 And I urge all my colleagues to support this amendment and
12317 I yield back the balance of my time.

12318 Mr. Cicilline. The gentlelady yields back. For what
12319 purpose does the gentleman seek recognition.

12320 Mr. Jordan. To strike the last word, Mr. Chairman.

12321 Mr. Cicilline. The gentleman is recognized.

12322 Mr. Jordan. I am just trying to understand. So do we have
12323 three standards now? If you are not a covered platform and you
12324 want to some kind of merge or some kind of acquisition, the burden
12325 is on the government to show that that would be anti-competitive
12326 or it proceeds. If you are a covered platform, the burden is

12327 on you, as Ms. Sparks pointed out with her comments, to show that
12328 the merger would not harm competition. And then we have a third
12329 category, if you are a covered platform, but you are acquiring
12330 someone below $50 million in market capital, market value,
12331 whatever, then it is back to the original standard. Well, that
12332 is going to work well, right, three standards? That is going
12333 to work great I think.
12334 I will yield to the gentleman from -- I just want to make
12335 sure I understand. I will yield to the gentleman from Arizona.
12336 Mr. Biggs. I thank the gentleman for yielding. As I read
12337 the amendment, I think it is interesting, but if I was counsel
12338 to an innovator, I would be telling them that we are going to
12339 be looking to split this company. We are going to be splitting
12340 this company which we can do under most state laws that I am
12341 familiar with. And we would never be hitting the $50 million
12342 mark. We are going to be sitting somewhere between $25 and $45
12343 million dollars every time as -- and I do know innovators. And
12344 this is what they do. They build up the company. While they
12345 are building their company, they are already in negotiations to
12346 sell, to be acquired.
12347 And what I would be doing advising my client is let's split,
12348 make sure that we don't have to go through this onerous FTC
12349 requirement and away we go.
12350 I yield back to the gentleman from Ohio.

12351 Mr. Issa. Would the gentleman further yield?

12352 Mr. Cicilline. The gentleman from California is

12353 recognized.

12354 Mr. Issa. Thank you. And not only is the gentleman

12355 accurate that you can slice and dice this, but as I much as I

12356 agree with the gentlelady that the more companies we carve out

12357 of this, the less bad this idea is.

12358 But let's go through a couple other simple examples. You

12359 had dollars. How about it is $1 billion, but it is simply a patent

12360 portfolio of a university, would that be allowed? How about if

12361 it is a whole new area not currently held by that company?

12362 Berkshire Hathaway can bid for it, but Apple can't.

12363 So as much as I -- and I will be voting for your amendment.

12364 As much as I agree with the amendment, the amendment shows the

12365 vulnerability of the bill because we can go through example after

12366 example and each one will say well, wait a second, in that case,

12367 you ought to allow it. In this case, you out to allow it. Pretty

12368 soon what you realize is there is an awful lot of situations in

12369 which this new standard just doesn't make any sense. And it

12370 doesn't make any sense because for so long we have always asked.

12371 Is it anti-competitive? We can prohibit it. If, in fact, it

12372 is not anti-competitive, why not let them do it? It might be a

12373 good idea.

12374 I know you held hearings and I appreciate that, but I think

12375 the gentlelady's amendment which you have endorsed, which does
12376 make sense, is the beginning of half a dozen equally good ideas
12377 that you should be accepting. I yield back.
12378 Mr. Cicilline. And the point is where does it end? What
12379 is next? Do we go from three to four, five standards, six
12380 standards? Where does it end?
12381 And we know that the folks making the decision at the FTC,
12382 certainly the majority there now, the chairman, the former acting
12383 chairman, have this left for dead, big time, they want to do all
12384 kinds of things with antitrust law. They have told that. They
12385 have said that.
12386 I don't know. I just think this adds that much more concern
12387 to what is happening here.
12388 With that, I will yield back, Mr. Chairman.
12389 Mr. Cicilline. The gentleman yields back.
12390 Mr. Jones, for what purpose do you seek recognition?
12391 Mr. Jones. I move to strike the last word.
12392 Mr. Cicilline. The gentleman is recognized.
12393 Mr. Jones. Let me begin by thanking you, Mr. Chairman, and
12394 your staff. For over two years, you have presided with courage
12395 and conviction over one of the most thorough and bipartisan, as
12396 we have seen today, legislative investigations and a generation
12397 and now along side the ranking member, you have led a legislative
12398 agenda that would truly take on big tech.

12399 I want to thank also Representative Jeffries and Ranking
12400 Member Buck for introducing the courageous legislation that is
12401 this bill to prevent big tech from buying its way to even more
12402 power over the American people.
12403 I am proud to co-sponsor this bill with you. And of course,
12404 thanks to all of my colleagues and their staffs for sticking with
12405 this for so long today and I do hope that we can complete this
12406 at a godly hour, so to speak.
12407 The Platform Competition and Opportunity Act strikes at the
12408 heart of how the big tech companies have become so powerful, buying
12409 up and often killing off their potential competitors or locking
12410 down the assets that they need to entrench their dominance.
12411 Google captured the online advertising market by acquiring
12412 Doubleclick and a host of other advertising technology firms.
12413 Amazon bought over 100 companies in the last two decades,
12414 including rivals like Zappo's, Diapers.com, and Whole Foods,
12415 consolidating its dominance as the quote everything store.
12416 Facebook's purchases of Instagram and Whatsapp left us with
12417 three major social networking options, Facebook, Facebook, and
12418 Facebook. All tolled in the last decade, the dominant platforms
12419 made over $400 acquisitions. Yet, antitrust enforcers did not
12420 block even one of them for being anti-competitive, not a single
12421 one.
12422 And why not? In part, because the tech companies assured

12423 the Commission and the courts that bigger was somehow better,
12424 that letting the biggest corporations kill their competitors and
12425 consolidate their power would work out for the best. By now,
12426 we know the truth. It has not.

12427 Of course, bigger is better if you are a big tech billionaire,
12428 like Jeff Bezos or Mark Zuckerberg, and all you care about are
12429 your corporate profits. But for the rest of us and I hope every
12430 member of this committee, though I have been disappointed by much
12431 of today's discussion on these bills, this unchecked dominance
12432 is much worse. Corporate consolidation drives down worker pay,
12433 increases layoffs, reduces opportunity for small businesses, and
12434 denies all of us meaningful choices online.

12435 This bill calls big tech's bluff. If bigger is really
12436 better, they should have to prove it before they can buy their
12437 way to more market power. And if they can't by clear and
12438 convincing evidence prove that their acquisitions will harm
12439 competition, then maybe, just maybe, some of the riches, most
12440 powerful companies in human history don't need to get any bigger.

12441 So it is time to take on these anti-competitive acquisitions
12442 that have created this crisis of consolidation and to ensure that
12443 once we break up big tech, these companies can't just consolidate
12444 all over again. I sincerely hope that all of us will support this
12445 essential legislation.

12446 Thank you and I yield back the balance of my time.

12447 Mr. Cicilline. The gentleman yields back. Who seeks
12448 recognition? Mr. Neguse. Oh, sorry, Ms. Jackson Lee, I
12449 apologize.
12450 For what purpose do you seek recognition?
12451 Ms. Jackson Lee. Mr. Chairman, I ask to strike the last
12452 word.
12453 Mr. Cicilline. The gentlelady is recognized.
12454 Ms. Jackson Lee. As my colleagues, it is interesting that
12455 we would go down memory lane in this high-tech moment of
12456 innovation, but I ask to do so as I thank Mr. Jeffries for his
12457 thoughtful legislation, based upon the long years of
12458 investigation and of course, with the committee, Mr. Cicilline
12459 and other members who are on this subcommittee.
12460 I am glad that we in the full committee have an opportunity
12461 to begin the journey. This is only the beginning. This bill,
12462 these bills have to go to the floor. There will be much intensity
12463 and of course, the Senate, where they are worthy of our
12464 consideration because this has been going on for a very long time.
12465 Memory lane will have us looking at the banking industry
12466 and what we banked 20 or 30 years ago and where we are banking
12467 today. Industry has been depleted by bigger and bigger, buying
12468 smaller, and the competition and opportunity for the consumer
12469 have gotten worse.
12470 Or maybe we should take a memory lane journey down the

12471 aviation industry and watch as what was many years ago a multitude
12472 of aviation opportunities now where airlines are shutting off
12473 a thousand flights and telling consumers do the best you can,
12474 maybe take your own flight, take your wings.
12475 And then of course, the auto industry that again bigger is
12476 better and we saw the diversity and the choices of autos going
12477 down, down, down.
12478 So I think this is vital in this new tech industry with giants
12479 that certainly have made an enormous impact economically on this
12480 capitalistic society. But these dominant platforms again have
12481 acquired hundreds of companies and as well, the fact of this bill
12482 prohibiting acquisitions of competitive threats by dominant
12483 platforms, as well as acquisitions that expand or entrench the
12484 market, the power of online platforms, is important.
12485 And I think it is important that there is some framework
12486 that includes the DOJ and State Attorney Generals. Many of these
12487 incidences occur with state entities. And in many notable cases,
12488 these firms acquired actual or potential rivals to neutralize
12489 competitive threats or further expand their dominance.
12490 Innovation is extremely important and I think Ms. Ross has
12491 a very important contribution to this particular legislation
12492 because in the midst of those companies under $50 million are
12493 many minorities and women. And young people really did want to
12494 have a startup, be innovative, and then go on to the next. That

12495 is okay, but in the instance of this legislation there are
12496 firewalls. This doesn't stop large companies from achieving or
12497 obtaining a willing purchased entity. It provides a firewall
12498 of determining whether this does not compete with the covered
12499 platform, represents potential competition, enhances the covered
12500 platform's market position, enhances the covered platform's
12501 ability to maintain its market position.

12502 I think innovation is extremely important. I think the
12503 growth of the interest of women and minorities in this business
12504 is extremely important. But as has been noted, name brands have
12505 gone. Maybe they could have survived. Not that this is completely
12506 parallel, but it saddens me to hear that a paper down the road
12507 in Maryland that suffered major tragedy of shootings on site are
12508 being consumed by private equity and guess what, that little paper
12509 that saw so many of their employees killed are getting employees
12510 laid off as the private equity purchased them. Same parallel
12511 with these big dominant platforms that would go after some
12512 important names and all of a sudden you see the shutdown of the
12513 entity and the loss of jobs.

12514 So I think this is long overdue and the killer acquisitions
12515 should stop. Innovation should go up. And these dominant
12516 platforms need to make their case, that these are not threats
12517 and that they are not there to decrease employment, but actually
12518 to improve and enhance the American economy.

12519 So I support the gentleman's legislation underlying
12520 amendment. Thank you for his leadership, as to my colleagues as
12521 well, to support this legislation. I yield back.
12522 Mr. Cicilline. The gentlelady yields back. Who seeks
12523 recognition? Ms. Lofgren.
12524 Ms. Lofgren. Thank you, Mr. Chairman. I seek to strike
12525 the last word.
12526 Mr. Cicilline. The gentlelady is recognized.
12527 Ms. Lofgren. First, I want to thank Mr. Jeffries because
12528 he has identified what I think is a serious problem, which looking
12529 at some of the mergers and acquisitions that have happened in
12530 the space -- of course, hindsight is 20/20 -- but clearly there
12531 were some mergers and some acquisitions that should not have been
12532 approved. And I do agree that we need a change in the standards
12533 moving forward to prevent that kind of situation in the future.
12534 Having said that, I think while the problem has been
12535 identified, the proposed solution is a bit overbroad. I heard
12536 with interest Congresswoman Spartz talking about proving that
12537 you are going to not compete. Actually, that is not what the
12538 standard in the bill is.
12539 I think, really, an honest reading of this is it would prevent
12540 any merger or acquisition on the tech companies that are the
12541 object, because if you look at page 2, line 3, the acquired stock
12542 do not compete with the covered platform operator for the

12543 provision of any product of service.

12544 Well, if you look at the broad range of what is being offered,
12545 that is almost everything. And it is not just actual competition.
12546 It is potential competition to the covered platform, and that
12547 includes something. Potential competition for the sale or
12548 provision of any product or services, which includes competition
12549 for a user's attention.

12550 So I think, really, this is a prohibition -- would result
12551 in a prohibition of mergers and acquisitions. Well, that could
12552 be problematic at some -- in some cases. We have talked about
12553 the model of entrepreneurs starting a company with the hopes --
12554 I mean, there is really three things that can happen. You can
12555 go bankrupt, you can get acquired, or you can go public. And
12556 it is very hard to go public because you need a certain kind of
12557 market capitalization and some "umph."

12558 And so it is not always wrong that there is an acquisition,
12559 although it can be wrong. And so I think the idea that the remedy
12560 is to prohibit acquisitions entirely by these platforms is not
12561 the right remedy.

12562 I would note that there are reasons why a company can acquire
12563 another company that had nothing to do with competition. For
12564 example, Apple acquired a voice recognition company, but the
12565 reason why they acquired it was to get the technology and the
12566 hotshot employees who they -- who helped them build the Siri app

12567 on the iPhone -- that wasn't to get market power; that was to
12568 create a new technology, and yet the acquisition for talent and
12569 technology would also be precluded.
12570 I will note that Senator Klobuchar has introduced a bill
12571 on the other side of the building that would change the language
12572 in the Clayton Act to make it easier to sustain challenges against
12573 anti-competitive mergers. And I am not an expert on her bill,
12574 but the standards she would set would put the burden on the
12575 acquiring company to establish, by a preponderance of the
12576 evidence, that the transaction will not create an appreciable
12577 risk of materially lessening competition.
12578 I think that that is something that we ought to be looking
12579 at, because it is not just harm to consumer. We do want to foster
12580 competition.
12581 Finally, I will say that, once again, we have limited this
12582 to just a few of the tech platforms who could not merge or acquire
12583 at all. But that doesn't preclude foreign competitors from
12584 coming into the United States and buying up these very same
12585 companies. And I think the potential detriment to our national
12586 competitiveness is something that may have been overlooked in
12587 this case.
12588 So I am hoping that we can do some refinements on this bill.
12589 I agree that this is very much a legitimate issue for us to pursue,
12590 and I am hopeful that we can refine the approach, as I think the

12591 measure before us is overbroad.

12592 And with that, I see my time has expired, and I yield back,

12593 Mr. Chairman.

12594 Chairman Nadler. [Presiding] The gentlelady yields back.

12595 For what purpose does Ms. Jayapal seek recognition?

12596 Ms. Jayapal. Move to strike the last word, Mr. Chairman.

12597 Chairman Nadler. The gentlelady is recognized.

12598 Ms. Jayapal. Thank you, Mr. Chairman. I want to thank you

12599 for holding this important markup, and I want to thank Chairman

12600 Cicilline and Ranking Member Buck for all of the work that they

12601 have done in our subcommittee to get us to this point.

12602 We have gone through a 16-month investigation, reviewed

12603 nearly 1.3 million documents collected as part of that

12604 investigation, consulted with 60 experts, and held 10 hearings,

12605 including 4 hearings on proposals to restore competition online

12606 and strengthen our Nation's antitrust laws.

12607 The bills that we are marking up today are a direct result

12608 of that work and the 450-page report that this committee approved

12609 in April of this year. What we uncovered was clear and damning.

12610 These unregulated tech monopolies have grown too big and too

12611 powerful to care, yet they are the gatekeepers controlling access

12612 to markets for sellers and buyers.

12613 These giants have the power to pick winners and losers, the

12614 power to set the rules for everyone else, while they break them

12615 to benefit their own self-interest.

12616 So the bills that we are marking up today restore fairness
12617 in competition for consumers and small businesses, ensure our
12618 democracy and innovation continue to thrive. And I am grateful
12619 to my colleague, Congressman Jeffries, for proposing this bill,
12620 the Platform Competition and Opportunity Act, which would prevent
12621 dominant online platforms from buying competitors or potential
12622 competitors in order to expand their market power.

12623 Last July, I asked Mark Zuckerberg about this very issue.
12624 Through our investigation, we looked at Facebook's emails and
12625 interviewed its competitors and found a clear record of Facebook's
12626 attempts to copy, buy, or kill its competitors.

12627 In one instance, we looked at emails from March of 2012 in
12628 which Mr. Zuckerberg suggested by email to his management team
12629 that moving faster and copier other apps could, quote, "prevent
12630 our competitors from getting footholds."

12631 Sheryl Sandberg responded that, quote, "It is better to do
12632 more and move faster, especially if that means you don't have
12633 competitors build products that take some of our users."

12634 Facebook's product manager director -- management director
12635 added, quote, "I would love to be far more aggressive and nimble
12636 and copying competitors."

12637 One key example is Instagram and Facebook Camera. In this
12638 instance, Mr. Zuckerberg threatened Instagram's founder, Kevin

12639 Systrom, telling Mr. Systrom that Facebook was, quote,
12640 "developing our own photo strategy. So how we engage now will
12641 also determine how much we are partners versus competitors down
12642 the line."
12643 Instagram's founder seemed to think it was a threat. He
12644 confided in an investor at the time that he feared Mr. Zuckerberg
12645 would go into, quote, "destroy mode" if he didn't sell Instagram
12646 to Facebook. Bottom line: Facebook copied a successful
12647 product, went to the company it identified as a threat, and told
12648 them that if Facebook couldn't buy it, there would be
12649 consequences.
12650 In the nearly 2 decades since Facebook's founding, it has
12651 grown into a corporate giant that isn't simply trying to help
12652 people connect with friends and family; it has morphed into a
12653 monopoly power that harvests and monetizes our data for its own
12654 profit, for the purposes of spying on and destroying its rivals.
12655 Facebook's practices have stifled competition and made it
12656 impossible for new companies to prosper. Under Mr. Jeffries'
12657 bill, Facebook's predatory practices would be prohibited. This
12658 is a necessary step to protect our democracy and ensure that small
12659 businesses and startups can thrive.
12660 I urge my colleagues to support this bill, and I yield back.
12661 Chairman Nadler. The gentlelady yields back.
12662 For what purpose does Mr. Neguse seek recognition?

12663 Mr. Neguse. Move to strike the last word, Mr. Chairman.

12664 Chairman Nadler. The gentleman is recognized.

12665 Mr. Neguse. Thank you, Mr. Chairman. First and foremost,
12666 I again want to thank Chairman Cicilline, the chairman of the
12667 subcommittee, and of course the ranking member for their
12668 leadership, and to Chairman Jeffries for bringing forward this
12669 very important bill for the various reasons that my colleague
12670 from Washington, Representative Jayapal, so eloquently stated
12671 the rationale and the reasoning for this particular piece of
12672 legislation. And I am grateful again to Chairman Jeffries and
12673 to Ranking Member Buck for leading the effort.

12674 I wonder, and I assume that Chairman Cicilline would be
12675 available for a brief colloquy with respect to this particular
12676 amendment, I have some trepidation about the amendment, and so
12677 would benefit from perhaps a deeper explanation as to the
12678 rationale for the number that is purportedly to be used in terms
12679 of the limitation and the $50 million number.

12680 And I guess just by way of background, first, I would say
12681 it is unclear to me as to whether or not this language would
12682 preclude a company from structuring a transaction in a way that
12683 ultimately escapes the scrutiny that this bill attempts to impose,
12684 along the lines of what Representative Biggs I believe was
12685 referencing. You can envision a scenario in which an asset
12686 purchase agreement is structured so that the $50 million number

12687 is -- you know, that threshold isn't crossed.

12688 And then, more broadly, I guess I would just say it was my
12689 understanding that while the most problematic transactions that
12690 our committee examined and I think found significant evidence
12691 to indicate were, you know, deeply problematic and warranted the
12692 scrutiny of regulators, in particular the transactions with
12693 respect to Facebook that Representative Jayapal mentioned, I
12694 think there are other transactions that would certainly fall
12695 within the $50 million range.

12696 And so it just -- it is unclear to me why that number, which
12697 appears to be somewhat arbitrary, would have the impact that folks
12698 are suggested.

12699 I am certainly opening -- open, rather, to tightening the
12700 competition language. And, you know, I think Representative
12701 Lofgren made an important point in that regard, and so that would
12702 be a discussion that I am open to having. But I have, as I said,
12703 some trepidation about imposing a financial condition in this
12704 particular context.

12705 And if the chairman would like to respond to any of that,
12706 I would welcome his input.

12707 Ms. Ross. Mr. Chairman, I am happy to answer Mr. Neguse's
12708 questions, if that is okay. Mr. Neguse?

12709

12710 Mr. Neguse. Yes, of course. I will yield to Ms. Ross.

12711 Ms. Ross. Yes. So in negotiating the amount, we looked
12712 at the amounts of a lot of the transactions that had gone through
12713 and had learned that the FTC doesn't give that much scrutiny to
12714 transactions that are under about 30, $35 million, and that there
12715 aren't that many more transactions that go up to $50 million.
12716 But, you know, we are going to have this -- hopefully, this
12717 bill will be in -- or the law will be in effect for a period of
12718 time, so that $15 million margin seemed to be appropriate, so
12719 that we wouldn't get into the problematic ones and we would be
12720 closer to the ones that didn't receive as much scrutiny or concern
12721 from the FTC. And that was the rationale for the amount.
12722 Mr. Neguse. Thank you. And that is helpful context. And
12723 I should say I appreciate your efforts, Ms. Ross, and of course
12724 the efforts of other members, to provide the kind of robust debate
12725 that we are having in terms of how to improve these bills.
12726 So with that, I don't know if my time is expired, but I will
12727 yield back the balance of my time, Mr. Chairman.
12728 Chairman Nadler. The gentleman yields back.
12729 For what purpose does Mr. Issa seek recognition?
12730 Mr. Issa. Move to strike the last word on this amendment.
12731 Chairman Nadler. The gentleman is recognized.
12732 Mr. Issa. Thank you. I am going to point out a couple of
12733 things that trouble me on this bill that -- I know we are working
12734 on the underlying amendment, but there are some requirements here

12735 that boggle the mind, and I wondered how they got in here.

12736 These prohibitions on the companies -- for example, the role

12737 of data on page 3 covered platform -- or platform or covered

12738 platform operator is not allowed to make an acquisition to

12739 maintain a market position. And presumably we would -- this 50

12740 million would strike that.

12741 So, you know, one of the challenges is, and also the role

12742 of data, you know, you can't do this if you are acquiring data.

12743 Now, I have made a couple dozen acquisitions over my years, and

12744 there was always data that came with every acquisition. So by

12745 definition nobody could meet that, and I am presuming that if

12746 it is under 50 million, then we don't mind.

12747 But that is one of the real questions here. The gentlelady

12748 from Seattle was nicely talking about Facebook, and she described

12749 an evil, rotten, terrible company headed by a person who was

12750 inherently evil who had to be stopped. And that may or may not

12751 be true, but what I found was that exactly what King Henry VIII

12752 did that we prohibit in our Constitution is what I think we are

12753 doing here tonight.

12754 And I just want to make it -- this point one more time.

12755 We have tried. Mr. Cicilline has apparently for 2 years held

12756 court, and he has tried and convicted four companies of being

12757 monopolies, of being trusts, of being appropriate to put a consent

12758 decree on.

12759 And these bills, one after another, fashioned with the help
12760 of the Federal Trade Commission detailees and others, in fact
12761 are nothing but bills that in fact would do much -- maybe more
12762 than what a normal consent decree would do.
12763 And I have to question, and I will question it now, and I
12764 will question it on the floor, and I suspect we will question
12765 it in the courts, whether or not this is in fact a trial by the
12766 House, sent to the Senate, to convict four companies without a
12767 trial that they get to defend themselves at, and give them what
12768 would be effectively an antitrust decision by us.
12769 And I can't find -- when I find there are limitations in
12770 this bill -- and I could go through them for another half hour
12771 and find more of them -- I can't find that we won't do that.
12772 And so although I will be voting for the gentlelady's
12773 amendment because it makes it less bad, I must admit that whether
12774 they circumvent it or not, we are still going to have to ask:
12775 on what basis did we try people -- companies -- without their
12776 ability to offer a defense, without the ability to go through?
12777 Why are we making accusations about -- basically criminal
12778 accusations, or certainly accusations that would be unfair
12779 competition, but they are not here to defend themselves.
12780 We are only hearing one side of somebody's story, and we
12781 are making a decision to -- when they can do what in the future
12782 because we have written a consent decree, except of course there

12783 is no consent, there is no trial, there is no defense. And we
12784 are figuring that we know them better, but we are going to send
12785 it to the Federal Trade Commission and they can continue to execute
12786 the consent decree.

12787 That is really where we are here tonight, and I know we are
12788 not going to resolve this before 4:00 or 5:00 or 6:00 in the morning
12789 when we get through all of the bills, but I cannot find that we
12790 have gotten past that fundamental question that we in fact are
12791 violating the constitutional prohibition on penalizing people
12792 without a trial. Penalizing people by passing a law that finds
12793 them guilty without due process. They have not been given due
12794 process. They certainly have not been given their day in court.

12795 And I will vote for this amendment, but I will be voting
12796 against the underlying bill, and I yield back.

12797 Chairman Nadler. The gentleman yields back.

12798 Who seeks recognition? Mr. Jeffries? For what purpose
12799 does Mr. Jeffries seek recognition?

12800 Mr. Jeffries. Move to strike the last word.

12801 Chairman Nadler. The gentleman is recognized.

12802 Mr. Jeffries. I just wanted to thank the distinguished
12803 gentlelady from North Carolina for this amendment, which I think
12804 is a step in the right direction, trying to address the concern
12805 that many of my colleagues have articulated related to the
12806 potential inability of tech entrepreneurs and small startup

12807 innovators to be able to realize their dream of being able to
12808 grow a modest company and then sell it.
12809 And I certainly don't think it is the intent of the authors
12810 of this legislation to squelch that dream, although I do ask the
12811 question in the broader context of this country and the framers
12812 of the Constitution, who of course gave this Congress the power
12813 to create a robust intellectual property system, in the words
12814 of the framers, in Article 1, Section 8, clause 8, to promote
12815 the progress of science and useful arts.
12816 Those are the words of the framers, and I don't think that
12817 the framers were intending to incentivize people -- incentivize
12818 investors and entrepreneurs to dream big so they can sell a modest
12819 company. I think they were incentivizing investors and
12820 entrepreneurs and innovators perhaps to dream big, so they could
12821 change the world, dream big so that they could create an innovative
12822 product, build companies that would lead the world in a wide
12823 variety of things.
12824 I think that is the fundamental problem that we are trying
12825 to address, that because of these tech giants that ability for
12826 entrepreneurs and innovators to dream big and grow companies that
12827 would change the world -- and that has been the American journey.
12828 That has been crushed in many instances because of these dominant
12829 tech giants, who have a clear strategy of copy, acquire, or kill.
12830 And I don't want to compare them to organized crime figures,

12831 but there was a famous saying in the Godfather, "I am going to
12832 give you an offer that you can't refuse." And a 2-year
12833 investigation revealed that that in fact was the case.
12834 And I have heard a lot about due process concerns. I wasn't
12835 on the antitrust subcommittee. Chairman Cicilline did a
12836 tremendous job. I think the four CEOs testified before this very
12837 Congress, and they were very clear about the terms of their
12838 appearance and they weren't going to appear in person, and this
12839 is how long it was going to last, and we are going to provide
12840 these documents. That kind of sounds like due process to me.
12841 And they have got an army of lawyers at their disposal.
12842 And so this particular piece of legislation -- and I think Ken
12843 Buck, who has been extraordinary as a leader in this area -- it
12844 is not cutting off the ability for a merger or acquisition to
12845 take place. It is addressing the burden question.
12846 And I think the fundamental question here is, when you have
12847 got tech giants, when you have got big tech, many of whom have
12848 engaged in predatory behavior, hundreds of acquisitions, a small
12849 handful of them have ever been scrutinized. Not a single one
12850 was challenged in court by the FTC. Why? Because they did not
12851 have the vehicle to do it statutorily. Not a single one.
12852 Hundreds of mergers and acquisitions, many of which have been
12853 discussed -- Instagram, WhatsApp, others -- not a single one
12854 challenged, because the legal landscape didn't exist.

12855 And it is the prerogative of this Congress to perhaps say,
12856 if we have got a choice, should the American people bear the burden
12857 of proof? Or should a multi-trillion-dollar company that has
12858 engaged in anti-competitive behavior, predatory behavior, bear
12859 the burden of proof?
12860 Mr. Gaetz. Will the gentleman yield for a question?
12861 Mr. Jeffries. Yes, sir.
12862 Mr. Gaetz. Is the gentleman concerned that if this
12863 amendment were to pass that companies might break up and it
12864 undermine the intent of the bill?
12865 Mr. Jeffries. I am not. And I am not because I think that
12866 there will always be entities that endeavor to engage in behavior
12867 to evade laws that are being put into place by the Congress.
12868 But I think this strikes a reasonable balance, because the
12869 overwhelming majority of concern, as uncovered by the
12870 investigation from David Cicilline and Representative Buck, is
12871 that the transactions that are problematic are much higher in
12872 volume in terms of the scope and scale of the acquisition.
12873 Chairman Nadler. The gentleman's time has expired.
12874 For what purpose does Mr. Roy seek recognition?
12875 Mr. Roy. Move to strike the last word.
12876 Chairman Nadler. The gentleman is recognized.
12877 Mr. Roy. I will talk a little bit more about the bill in
12878 a minute, and I have an amendment to offer. But with respect

12879 to the amendment offered by the gentlelady from North Carolina,
12880 I, too, represent an area with a lot of high-tech interest in
12881 Austin, Texas; San Antonio, Texas.
12882 And I understand the desire to carve out small startups,
12883 but I am troubled by the fact that -- I am troubled by the fact
12884 that we have to carve out any one in the first place, right?
12885 I mean, there is a reason for seeking the carveout, and it is
12886 because of a significant burden shift.
12887 And 51 million, 55 million, 100 million, I understand. We
12888 set these -- we set an arbitrary number to just sort of basically
12889 represent a smaller business in this case. And I understand there
12890 is a record, and that I think this is an attempt to reflect the
12891 record with respect to trying to preserve small businesses in
12892 this case.
12893 But this gets to the heart for me of when we had the debate
12894 earlier this morning with the gentlelady from California, you
12895 know, lowering it to $250 billion, but then that doesn't really
12896 include everybody. And this whole framework is built on the
12897 notion of the 600 billion and the 500 million. I mean, we are
12898 -- it seems like to me we are grasping at straws to try to define
12899 something that is going to be shifting sand, because we are not
12900 defining the behavior and we are not focusing on the behavior,
12901 the monopolistic behavior.
12902 We are focusing on trying to define entities that fit within

12903 what we are currently defining as the behavior. And that to me
12904 is the problem. So we are going to come back on the back end
12905 of this, and we are going to go, well, we are going to have to
12906 amend this because 50 million isn't right. And we are going to
12907 have to amend the 600 billion or amend the 250 billion.

12908 We are going to have to keep tweaking this to try to chase
12909 the market, and that I think is not getting to what we want to
12910 get at. And I will have more in a minute with an amendment that
12911 I am going to offer that is trying to get at the actual monopolistic
12912 behavior, maybe not perfectly. And we will talk about that in
12913 a little bit.

12914 But my concern about the amendment offered by the gentlelady
12915 is that we are carving out something because it needs to be carved
12916 out, because we have set the standard by reversing the burden
12917 in a way that I think is really concerning. And having companies
12918 having to come say, "Mother, may I?" I mean, do I care that, you
12919 know, currently Google, Facebook, and these large companies have
12920 to come say, "Mother, may I?"

12921 I am not particularly bothered by that personally at the
12922 moment, but that is going to change. Those sands are going to
12923 shift. There is going to be more companies that is going to fall
12924 into that. We are going to go down that road. That is my concern.
12925 That is my unease with this is why I will likely oppose the
12926 amendment.

12927 Chairman Nadler. Does the gentleman yield back?

12928 Mr. Roy. Yes, I yield back, Mr. Chairman.

12929 Chairman Nadler. The gentleman yields back.

12930 For what purpose does Mrs. Spartz week recognition?

12931 Mrs. Spartz. I move to strike the last word.

12932 Chairman Nadler. The gentlelady is recognized.

12933 Mrs. Spartz. Thank you. I want to -- as I mentioned before,
12934 I don't like this bill, but I think this amendment actually even
12935 makes it worse, and I will tell you why.

12936 As the gentleman from New York talking about the dream, it
12937 is actually -- a smaller company, it actually limits my dream,
12938 because now it puts me in a position I am thinking, okay, should
12939 I try to bail out and sell, or maybe I should grow company?

12940 And I am like, okay, if I grow more than 50 million, I am
12941 going to be in a position that the choice of who wants to buy
12942 me are going to be much smaller. You also put me in the position
12943 of a negotiation power. I will get the large big companies to
12944 say, "Hey, I am not going to pay you 55 or 65 because I will pay
12945 you 49.9. I don't -- I am going to be in all this jurisdiction
12946 that I -- I will not want you."

12947 So that puts me in a real tough position, too, and actually
12948 maybe otherwise I would be grown and become 100 million company
12949 or 100 billion company and actually create a competition to these
12950 large big tech companies.

12951 But I am now thinking, no, that might be actually much worse
12952 for me. So I think this actually puts a lot of entrepreneurs
12953 in smaller company in much worse situation and create the
12954 environment right now where you limit -- create a limit at what
12955 -- how much I can grow and how competitive, because ultimately
12956 we want to have an environment that anyone can decide either to
12957 sell the company, either to grow it and become a
12958 multi-billion-dollar company.
12959 And I should have the choice and not to be limited because
12960 there are some subjective rules that set up and limited my choice.
12961 So I think it actually will hurt some entrepreneurs in smaller
12962 companies to create wealth and become more competitive in this
12963 market, and allow that bigger companies have more negotiation
12964 power on the market.
12965 And I truly believe this amendment makes the bill that I
12966 do not like already -- make it even worse, and I think my colleagues
12967 should not support this bill.
12968 I yield back.
12969 Mr. Jones. Would the gentlelady yield?
12970 Chairman Nadler. The gentlelady yields back. Was --
12971 Mrs. Spartz. I already yield back.
12972 Chairman Nadler. Is someone trying to --
12973 Mr. Jones. Yes. Mr. Chairman, I just -- I move to strike
12974 the last word on the amendment.

12975 Chairman Nadler. Okay. The gentleman -- for what purpose
12976 does the gentleman --
12977 Mr. Jones. This would be on the --
12978 Chairman Nadler. The gentleman has already spoken on this
12979 amendment.
12980 Mr. Jones. Point of order, Mr. Chairman.
12981 Chairman Nadler. I recognize myself and yield to the
12982 gentleman.
12983 Mr. Jones. Thank you, Mr. Chairman. I just -- something
12984 was said that I thought just greatly exaggerated the impact of
12985 this legislation, that the number of potential acquiring
12986 companies would be dramatically reduced. I mean, this is a bill
12987 that would literally only impact four big tech companies.
12988 And so I just think it is important to clarify for those
12989 who may be confused about, you know, the opportunity that would
12990 still exist for the smaller companies as proposed by my colleague
12991 from North Carolina. And I say this as someone who is not going
12992 to vote for this amendment, that I think that once we acknowledge
12993 that these companies are monopolies, we should be opposed to their
12994 growth.
12995 And so -- but I just think it is important to clarify that,
12996 and I yield back.
12997 Chairman Nadler. The gentleman yields back.
12998 Mr. Issa. Would the gentleman yield for a question?

12999 Chairman Nadler. I will.

13000 Mr. Issa. The gentleman just said this would only affect
13001 four companies, and maybe they are hearing my point. But, you
13002 know, we have had this debate. If it only represents four
13003 companies, are we in fact clearly doing four companies? Not
13004 covered platforms; it might be more.

13005 You know, we have never settled the question of Microsoft
13006 here, which would make it five. Certainly, we haven't gotten
13007 into Twitter and lots of other companies that enjoy tremendous
13008 market power. You know, it does seem like they are saying that,
13009 but on one hand they are saying that they have done all of these
13010 acquisitions, and that is a lot of acquisitions.

13011 Now I just heard, well, there aren't very many acquisitions.
13012 But if you were -- you know, if you were any of these companies
13013 that were acquired by those four or five companies, you certainly
13014 I think wanted them to be bidders, because in every case they
13015 were the high bidder.

13016 Chairman Nadler. I thank the gentleman for -- if you could
13017 at least tell me how many -- how many companies do you think these
13018 bills cover?

13019 Mr. Jeffries. Mr. Chairman? Mr. Chairman?

13020 Chairman Nadler. Who seeks recognition?

13021 Mr. Jeffries. Would you yield?

13022 Chairman Nadler. I yield to Mr. Cicilline. To

13023 Mr. Jeffries, rather.

13024 Mr. Jeffries. Yeah. I think that the legislation is clear,
13025 as with the other bills, that ultimately that is a determination
13026 that will be made by the FTC.

13027 I would also add that I think entrepreneurs have at least
13028 three options consistent with what is available in America's
13029 market-based economy that, yes, there will be some entrepreneurs
13030 presumably who are developing a company with the objective to
13031 sell it, and they will still be able to sell it in this environment,
13032 if this legislation is offered.

13033 It is just that the burden in terms of demonstrating that
13034 that sale won't have an anti-competitive effect on consumers has
13035 shifted from the FTC to these multi-trillion-dollar companies
13036 that meet the definition of a covered platform.

13037 But beyond sale, you can still grow a company and then take
13038 it public, into the stock market, or you can grow the company
13039 and maintain it as a successful privately-held business.
13040 Multiple options that are available to allow innovation and
13041 entrepreneurship in America to flourish.

13042 I yield back.

13043 Chairman Nadler. The gentleman yields back. I yield back.

13044 The question occurs on the amendment.

13045 All in favor of the amendment will say aye.

13046 Opposed, no.

13047 In the opinion of the chair, the ayes have it, and the
13048 amendment is agreed to.
13049 Are there any further amendments to the amendment in the
13050 nature of a substitute? For what purpose does Mr. Roy seek
13051 recognition?
13052 Mr. Roy. I have an amendment at the desk.
13053 Chairman Nadler. The clerk will report the amendment.
13054 Mr. Cicilline. I reserve a point of order, Mr. Chairman.
13055 Chairman Nadler. A point of order is reserved.
13056 Ms. Fontenot. Amendment to the amendment in the nature of
13057 a substitute to H.R. 3826 offered by Mr. Roy of Texas, page 1,
13058 strike line 4 and all that follows to the amendment to the title
13059 on page 15.
13060 [The amendment offered by Mr. Roy follows:]
13061
13062 **********COMMITTEE INSERT**********

13063 Chairman Nadler. Without objection, the amendment is
13064 considered as read, and the gentleman is recognized to explain
13065 his amendment.
13066 Mr. Roy. I thank the chairman. As we have been discussing,
13067 I do believe the goal of the underlying bill that we need to make
13068 it easier to challenge mergers of these very large companies --
13069 as I have already established, I have some concern about how we
13070 define those -- is a reasonable goal and important.
13071 You know, acquisitions, as we discussed, like Facebook,
13072 Instagram, et cetera, obviously deserve scrutiny. But my concern
13073 is that the underlying bill will have the effect of -- its starting
13074 place is outlawing, you know, all mergers by these covered
13075 platforms. I have already described my concerns about the
13076 definition of the platforms and that that is overall bad for the
13077 market.
13078 And that doesn't necessarily consider consumer value. It
13079 does not consider the monopoly power in a given market. It makes
13080 the burden clear and convincing evidence to allow any merger for
13081 these covered platforms to go through in some ways almost
13082 insurmountable, which may be viewed as a feature, not a bug.
13083 You know, nearly 60 percent of all startups have as their
13084 expressed business strategy to be acquired. We have been talking
13085 about that. These E-backed startups disproportionately
13086 positively impact innovation. You know, M&A is an option. Frees

13087 capital for innovative investments instead of locking capital
13088 into a long horizon, so that is obviously, you know, what drives
13089 a lot of the investments.

13090 Ninety percent of U.S. startup exits happened through
13091 acquisition between 2008 and 2019. You know, this bill, the best
13092 I can understand it, would have stopped at least 100 acquisitions
13093 over the last 5 years.

13094 And that sort of thing, you know, I have already mentioned
13095 from the gentlelady from North Carolina's amendment, it would
13096 disproportionately in many ways impact the district I represent
13097 in Austin, Texas; San Antonio; in many ways to some degree versus
13098 Silicon Valley. Startups, often on the coast, often grow large
13099 enough to go onto public markets.

13100 My amendment that I am offering here is the result of
13101 conversations I have had with Senator Lee and Senator Lee's
13102 efforts in moving legislation in the Senate. I think it is a
13103 different approach that I think is a, in my view, better approach
13104 at trying to target and tackle a problem. And my amendment is
13105 designed to protect the startup ecosystem, protect innovation,
13106 and achieving the goal of making it easier to challenge mergers
13107 when the resulting firm is dominant in a given market.

13108 It creates a presumption against mergers where the combined
13109 firm would have the market power to meaningfully increase prices
13110 or reduce output innovation or quality; and, two, the combined

13111 firm's market share is more than one-third of a given market.

13112 It allows companies to rebut the presumption when the weight

13113 of the evidence, a preponderance, shows no anti-competitive

13114 effects or that pre-competitive effects outweigh them. We

13115 shouldn't demand more proof than that, in my view. We should

13116 err on the side of letting the market sort it out.

13117 But I do believe that we should put instructions and

13118 standards in place to be able to deal with the obvious concerns

13119 we all share. I believe my amendment furthers the goal of the

13120 underlying bill without the harm that I think some of us, or at

13121 least speaking for myself, believes could result from the way

13122 that we are going about it in the current form.

13123 And, again, I want to reiterate my, you know, belief that

13124 there is a good faith effort here to try to address this problem.

13125 And I have had many conversations with colleagues on my side

13126 of the aisle generally about the goal to try to address this

13127 problem of the anti-competitive behavior that we are seeing from

13128 certain companies.

13129 But without repeating myself, I have strong reservations

13130 about the way we have defined these, and I would like to focus

13131 more on the behavior than these arbitrary ways in terms of how

13132 we define this. So this is an attempt to do that, and I think

13133 it is in keeping with the purpose and spirit of what we are trying

13134 to accomplish.

13135 With that, I will yield back.

13136 Chairman Nadler. Does the gentleman insist on his point
13137 of order?

13138 Mr. Cicilline. I do, Mr. Chairman. The proposed amendment
13139 expands the bill beyond the confines of the underlying bill and
13140 amends an entirely different section, and, therefore, is not
13141 germane.

13142 Chairman Nadler. Does the gentleman wish to --

13143 Mr. Roy. Yeah. I mean, I would like to address that.

13144 Chairman Nadler. -- be heard on the ruling?

13145 Mr. Roy. Move to strike the last word. Is that what I --
13146 or what -- understanding the point being made, I still think it
13147 is worthy of debate in this committee when we are talking about
13148 something as fundamental as restructuring and changing the burden
13149 that these companies face.

13150 And here trying to address it in a different way, in my view
13151 in good faith, to say, "Hey, let's focus on the fact that these
13152 guys are reaching a certain dominant portion of the market,"
13153 rather than saying, "Hey, we are defining a class of companies
13154 that will then change over time" and say -- we are just going
13155 to say, "you can't acquire, oh, unless you can come forward and
13156 prove X."

13157 I think the Government should still have to be able to come
13158 in and say, "Hey, you guys" -- all the market, by the way, this

13159 amendment that I am offering is trying to -- it broadens it,
13160 changing to if you have got --
13161 Mr. Cicilline. That is the whole point, Mr. Roy. That is
13162 what makes it not germane, that it broadens it to the entire
13163 market. And it is an interesting debate, but for purposes of
13164 this hearing, it is not germane to the bill before us.
13165 Mr. Roy. Mr. Chairman, who has the time? Do I have --
13166 Chairman Nadler. You have the time.
13167 Mr. Roy. So, right, I understand that -- look, I mean, I
13168 understand the technicalities of germaneness. I mean, I was a
13169 lawyer on the Senate Judiciary Committee. I get it. The point
13170 here is it is germane to the debate. It is definitively germane
13171 to the debate, because the whole point of the debate is about
13172 what we are going to do about how certain companies can acquire
13173 other companies.
13174 And the whole point here is to try to have a debate about
13175 antitrust, and the size and scope of these companies, whom they
13176 can acquire, and all I am trying to say is I think we ought to
13177 go about it a different way. So I think that is --
13178 Chairman Nadler. Mr. Roy, if you will yield to --
13179 Mr. Cicilline. I look forward to working with you on this.
13180 Chairman Nadler. The gentleman's --
13181 Mr. Roy. I would yield to --
13182 Chairman Nadler. The gentleman's --

13183 Mr. Roy. I would yield to the gentleman if I can, if I am
13184 allowed.
13185 Mr. Cicilline. Thank you.
13186 Chairman Nadler. No, no, no. The chairman is prepared to
13187 -- the chair is prepared to rule. Clause 7 of House Rule 16
13188 prohibits amendments that are on a different subject matter than
13189 the proposal that is under consideration. The subject of the
13190 bill we are currently considering is anti-competitive
13191 acquisitions by covered platforms.
13192 The gentleman's amendment proposes to amend Section 7 of
13193 the Clayton Act, which the bill does not amend, and applies to
13194 the entire economy, not just to covered platforms. This is a
13195 subject that is different from what we are considering in this
13196 bill.
13197 The amendment is, therefore, not germane and violates Clause
13198 7 of Rule 16.
13199 Mr. Roy. Appeal the ruling of the chair.
13200 Mr. Cicilline. Move to table.
13201 Chairman Nadler. The motion to table is not debatable.
13202 All in favor, say aye.
13203 Opposed, nay.
13204 The motion -- in the opinion of the chair, the ayes have
13205 it.
13206 Mr. Roy. Ask for the yeas and nays.

13207 Chairman Nadler. The yeas and nays are requested. The

13208 clerk will call the roll.

13209 Ms. Fontenot. Mr. Nadler?

13210 Chairman Nadler. Aye.

13211 Ms. Fontenot. Mr. Nadler votes aye.

13212 Ms. Lofgren?

13213 Ms. Lofgren. Aye.

13214 Ms. Fontenot. Ms. Lofgren votes aye.

13215 Ms. Jackson Lee?

13216 Ms. Jackson Lee. Aye.

13217 Ms. Fontenot. Ms. Jackson Lee votes aye.

13218 Mr. Cohen?

13219 [No response.]

13220 Mr. Johnson of Georgia?

13221 [No response.]

13222 Mr. Deutch?

13223 [No response.]

13224 Ms. Bass?

13225 Ms. Bass. Aye.

13226 Ms. Fontenot. Ms. Bass votes aye.

13227 Mr. Jeffries?

13228 Mr. Jeffries. Aye.

13229 Ms. Fontenot. Mr. Jeffries votes aye.

13230 Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Fontenot. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Fontenot. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Fontenot. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Fontenot. Ms. Jayapal votes aye.

Mrs. Demings?

Mrs. Demings. Aye.

Ms. Fontenot. Mrs. Demings votes aye.

Mr. Correa?

Mr. Correa. Aye.

Ms. Fontenot. Mr. Correa votes aye.

Ms. Scanlon?

Ms. Scanlon. Aye.

Ms. Fontenot. Ms. Scanlon votes aye.

Ms. Garcia?

Ms. Garcia. Aye.

Ms. Fontenot. Ms. Garcia votes aye.

Mr. Neguse?

Mr. Neguse. Aye.

Ms. Fontenot. Mr. Neguse votes aye.

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. Aye.

Ms. Fontenot. Ms. Dean votes aye.

Ms. Escobar?

Ms. Escobar. Aye.

Ms. Fontenot. Ms. Escobar votes aye.

Mr. Jones?

[No response.]

Ms. Ross?

Ms. Ross. Ross votes aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. Bush votes aye.

Ms. Fontenot. Ms. Bush votes aye.

Mr. Johnson of Georgia. Madam Chair, how am I recorded? Madam Clerk? Hank Johnson.

Ms. Fontenot. Mr. Johnson, you are not recorded.

Mr. Johnson of Georgia. Vote aye.

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

Mr. Jordan?

Mr. Jordan. No.

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Fontenot. Mr. Chabot votes no.

Mr. Gohmert?

[No response.]

Mr. Issa?

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. No.

Ms. Fontenot. Mr. Johnson of Louisiana votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. No.

Ms. Fontenot. Mr. Tiffany votes no.

Mr. Massie?

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy?

Mr. Roy. No.

Ms. Fontenot. Mr. Roy votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Fontenot. Mr. Bishop votes no.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. No.

Ms. Fontenot. Mrs. Spartz votes no.

Mr. Fitzgerald?

Mr. Fitzgerald. No.

Ms. Fontenot. Mr. Fitzgerald votes no.

Mr. Bentz?

Mr. Bentz. No.

Ms. Fontenot. Mr. Bentz votes no.

Mr. Owens?

Mr. Owens. No.

Ms. Fontenot. Mr. Owens votes no.

Mr. Gohmert. Mr. Gohmert votes no.

Chairman Nadler. Mr. Deutch?

Ms. Fontenot. Mr. Gohmert votes no.

Chairman Nadler. Mr. Deutch?

Mr. Deutch. Aye.

Ms. Fontenot. Mr. Deutch votes aye.

Chairman Nadler. Are there any other members who wish to vote who haven't voted?

The clerk will report.

Ms. Fontenot. Mr. Chairman, there are 23 ayes and 19 noes.

13351 Chairman Nadler. The gentleman's appeal of the chair's
13352 ruling on the germaneness of the Roy amendment is laid on the
13353 table.
13354 Are there any further amendments to the amendment in the
13355 nature of a substitute?
13356 Mr. Tiffany. Mr. Chairman, I have an amendment at the desk.
13357 Chairman Nadler. The clerk will report the amendment.
13358 Mr. Cicilline. Mr. Chairman, I reserve a point of order.
13359 Chairman Nadler. A point of order is reserved.
13360 Ms. Fontenot. Amendment to the amendment in the nature of
13361 a substitute to H.R. 3826 offered by Mr. Tiffany of Wisconsin.
13362 Beginning on page 4, strike --
13363 [The amendment offered by Mr. Tiffany follows:]
13364
13365 **********COMMITTEE INSERT**********

13366 Chairman Nadler. Without objection, the amendment -- the
13367 reading of the amendment is waived, and the gentleman is
13368 recognized.
13369 Mr. Tiffany. Thank you, Mr. Chairman. What this amendment
13370 does is a server in China will be required as a covered platform.
13371 Without this amendment, this bill could present a serious threat
13372 to Americans' privacy and our national security, and we have been
13373 seeing those threats here, especially over the past decade.
13374 I mean, I think about what happened in Houston last year
13375 where we had to clear out the Chinese Assembly -- or, excuse me,
13376 Embassy. And I think about companies like Google and NBC and
13377 others. I mean, they have given up their info, huge companies
13378 that have felt so threatened by the Chinese Communist government
13379 that they just give up their -- some of their information.
13380 We have to prevent Chinese companies, in particular those
13381 with ties to the Chinese military and intelligence apparatus,
13382 from acquiring companies that hold Americans' sensitive data.
13383 We should be very concerned with members of the CCP and its
13384 aggressive military and intelligence services having access to
13385 Americans' data. More about that in a second. The CCP has
13386 conducted cyber attacks against the American Government and U.S.
13387 companies to steal sensitive personal information about
13388 Americans.
13389 The CCP has breached a large American health insurance

13390 company, a consumer credit reporting agency, the Office of
13391 Personnel Management, and the list goes on. The CCP has further
13392 used social media platforms and mobile applications to collect
13393 information on Americans. Allowing the CCP to acquire American
13394 companies, and almost certainly Americans' data, would be
13395 disastrous.

13396 I am going to read something to you that I just received
13397 tonight, just a couple hours ago. I suspect many of you are
13398 familiar with Apple Daily, which has been shut down. Here is
13399 the message that they sent out. Thank you for being a subscriber
13400 and loyal reader. Tonight at 11:59 p.m. Hong Kong time -- that
13401 is tonight -- we will cease publication. Good luck, and goodbye.

13402 I mean, think about that. I mean, they just wiped out the
13403 Apple Daily, one of the best publications that talked about the
13404 news coming out of Hong Kong, China, Southeast Asia. They are
13405 gone. That is the kind of threat that the Chinese Communist
13406 government holds over all of the world, including the United
13407 States.

13408 So I urge all of you to vote for this amendment. If you
13409 want to make sure and protect Americans' data, America's security,
13410 we need to adopt this amendment, and I sure hope that you will
13411 do that.

13412 I have got a couple of minutes here yet, Mr. Chairman. I
13413 want to comment on one thing that I heard a little bit earlier

13414 from the gentlewoman from Texas. And she was talking about
13415 consolidation, and she specifically mentioned the banking
13416 industry.
13417 And she was also quoted during her remarks, which she is
13418 absolutely correct, innovation is important. But she commented
13419 about the integration of the banking company or the banking
13420 industry where we are seeing fewer banks as a result of
13421 acquisitions.
13422 And I have got to tell you, the point that she was making
13423 actually is a point in regards to the bills that we are hearing
13424 tonight, that you probably shouldn't support them, because do
13425 you know what precipitated this? It was Dodd-Frank. It was
13426 Dodd-Frank over a decade ago.
13427 All you have to do, and I have done it in our State of
13428 Wisconsin, is look at when the Dodd-Frank law was passed, we
13429 stopped having new community banks that were formed. I wish I
13430 had the data before me, but I would be happy to get it for anybody
13431 that is interested in it. New entrants into the banking industry
13432 virtually stopped with Dodd-Frank.
13433 And I understand it was a well-intentioned piece of
13434 legislation, but let's look at the results that happened. Is
13435 the same thing going to happen here? If this stuff passes, it
13436 is very possible. I mean, that to me was really a warning sign
13437 by citing the banking industry. And even the oil industry is

13438 true of that, where we have seen real integration of the oil
13439 industry and not having as many new startups. And a lot of that
13440 is because of so much regulation.
13441 I believe in regulation, but it needs to be done in an
13442 appropriate sense. This is really giving me even more pause about
13443 what we are hearing tonight.
13444 But, anyhow, to the amendment, in regards to servers in
13445 China, I believe there should be a covered platform, and I hope
13446 you will support this amendment.
13447 I yield back.
13448 Chairman Nadler. The gentleman yields back.
13449 Mr. Cicilline. Mr. Chairman?
13450 Chairman Nadler. Who seeks recognition?
13451 Ms. Lofgren. Mr. Chairman?
13452 Chairman Nadler. The gentlelady from -- for what purpose
13453 does the gentlelady from California --
13454 Ms. Lofgren. To strike the last word.
13455 Chairman Nadler. The gentlelady is recognized.
13456 Mr. Cicilline. Mr. Chairman, point of order. I believe
13457 I have reserved a point of order.
13458 Ms. Lofgren. I am sorry.
13459 Chairman Nadler. Oh, yes.
13460 Mr. Cicilline. Mr. Chairman, I would like to press my point
13461 of order. I think the amendment clearly expands the scope of

13462 the bill. Currently, we have a very well-crafted definition.
13463 It has to meet three requirements -- market capitalization,
13464 monthly users, and be a critical trading partner. This
13465 eliminates two of those, simply has the $600 million market cap
13466 and then expands it to service in China.
13467 So you have expanded it essentially outside the borders of
13468 the United States, and you have removed the other two requirements
13469 for all businesses over $600 million. So it is significantly
13470 expanding the reach of the covered platforms and actually doing
13471 it outside the United States. So I don't think it is germane.
13472 Chairman Nadler. Does the gentleman wish to be heard on
13473 the point of order?
13474 Mr. Tiffany. Yes. May I comment, Mr. Chairman? So, as
13475 I am looking at the bill in regards to implementation, covered
13476 platform designation, Federal Trade Commission, or Department
13477 of Justice shall designate whether an entity is a covered
13478 platform. I mean, isn't this similar to what we did with the
13479 $50 million? Isn't that similar to that amendment?
13480 So I think that there is a place within this bill to be able
13481 to insert this. And even more importantly, in regards to -- I
13482 think our national security is always important, regardless of
13483 what we are doing. So I think we have the place to insert that
13484 here in this bill, especially in light of the amendment that we
13485 just heard.

13486 Mr. Cicilline. Mr. Tiffany, will you yield?

13487 Mr. Tiffany. Yes, I will yield.

13488 Mr. Cicilline. I think the difference in the Ross

13489 amendment, that narrowed the scope of the bill. This expands

13490 it, so it is exactly the opposite.

13491 Mr. Issa. Would the gentleman yield?

13492 Mr. Tiffany. Yes.

13493 Mr. Issa. Briefly.

13494 Mr. Tiffany. I will yield to the gentleman.

13495 Mr. Issa. I have never heard that expanding the scope within

13496 our jurisdiction, within a section, is a germaneness question.

13497 The fact is that defining "covered," you are simply adding

13498 additional -- define "covered," there is nothing inconsistent

13499 with that under our jurisdiction.

13500 It can't possibly fall outside of our jurisdiction or the

13501 intent of the bill, which is to define a covered platform. And

13502 as the gentleman said, we are adding and subtracting covered

13503 platform all the time.

13504 Chairman Nadler. The chair is prepared to rule on the point

13505 of order. Under House precedents, an amendment to a definition

13506 is generally in order. And, therefore, the appeal of the

13507 amendment is in order.

13508 Mr. Issa. Thank you, Mr. Chairman.

13509 Mr. Tiffany. I mean, I think we have stated the case here,

13510 whether an entity is a covered platform. I mean, that is what
13511 -- that is where this fits in is it is under a covered platform.
13512 And it is just so important. It is so important to put this
13513 in with what we have seen from the Communist Chinese government.
13514
13515 With what they are doing in our country, whether it is in
13516 our universities, whether it is in -- like in Houston, Texas,
13517 with our Embassy, we have to make sure that we protect Americans'
13518 information. We have been talking about that all tonight, is
13519 that we want to make sure we protect Americans' data, and this
13520 will accomplish that.
13521 Ms. Lofgren. Would the gentleman yield?
13522 Mr. Tiffany. I will yield to you, yes.
13523 Ms. Lofgren. First, a concern. I don't want to reaffirm
13524 the market capitalization amount that I object to, number 1.
13525 But, number 2, a question on the servers located in China to host
13526 the platforms. There are platforms where the data travels
13527 through servers in China, even though they are not hosted in China.
13528 And I am aware of some companies who have managed to do that
13529 successfully through encryption, so that the Chinese government
13530 is unaware of the data flow or the content of the data flow.
13531 What you are trying to accomplish I agree with, but I am
13532 wondering as to the scope and whether it would include data flows
13533 that are encrypted through networks that are really not hosted.

13534 Mr. Tiffany. Yeah. Ma'am, if it is traveling through
13535 China, then I believe it should be regulated under what is being
13536 proposed in this bill.
13537 Ms. Lofgren. Okay. Thank you for answering that question.
13538 Mr. Tiffany. And, Mr. Chairman, I yield back.
13539 Chairman Nadler. The gentleman yields back.
13540 Who seeks recognition? For what purpose does Mr. Chabot
13541 seek recognition?
13542 Mr. Chabot. Move to strike the last word.
13543 Chairman Nadler. The gentleman is recognized.
13544 Mr. Chabot. Thank you. I will be brief. I would comment
13545 I think it is an excellent amendment. I appreciate the gentleman
13546 offering it. I would hope that this would get bipartisan support.
13547 We all know that the Chinese Communist Party is trying to
13548 obtain as much personal information on all of us, as well as every
13549 citizen of this Nation. This is a national security issue. I
13550 would hope, if you care about national security on either side,
13551 I think you would support this amendment. It is a great
13552 amendment, and you certainly have my support, and I yield back.
13553 Chairman Nadler. The gentleman yields back.
13554 For what purpose does the gentleman from Rhode Island seek
13555 recognition?
13556 Mr. Cicilline. I move to strike the last word, Mr. Chairman.
13557 Chairman Nadler. The gentleman is recognized.

13558 Mr. Cicilline. Mr. Chairman, again, I rise to urge my
13559 colleagues to vote against this amendment. The legislation
13560 before us has provided a definition for covered platforms that
13561 identifies three factors. That is, the market capitalization;
13562 does the online platform have at least 50 million U.S.-based
13563 monthly active users? And is the platform a critical trading
13564 partner as defined in the statute?
13565 This takes away two of those, and this definition was
13566 developed as a result of the market dominance, the extraordinary
13567 market dominance of the largest technology platforms in the United
13568 States, for a reason -- because of the market power they had and
13569 to shift the burden as to acquisitions by designated platforms
13570 that have that kind of dominance.
13571 So it has removed two of the tests to determine whether or
13572 not it is a covered platform, and then says either $600 million
13573 or has servers in China. The purpose of the underlying bill is
13574 to promote competition in the United States, to create jobs, to
13575 foster innovation. That is why the definition was developed that
13576 was included in the bill and amended by Ms. Ross' amendment.
13577 This does not achieve that objective by taking away two
13578 factors and expanding it to all platforms with a value over $600
13579 million or that have servers in China. It just -- it doesn't
13580 achieve the objective of the underlying bill. This was a
13581 definition that is aligned in all of the legislation that we are

13582 considering tonight.

13583 And, again, I urge the committee to reject this amendment

13584 and stick with the covered platform definition as that is the

13585 one that is really going to promote American innovation, job

13586 creation, competition, all of the things that we know are

13587 important for a strong economy.

13588 And with that, I yield back.

13589 Chairman Nadler. The gentleman yields back.

13590 For what purpose does Mr. Gohmert seek recognition.

13591 Mr. Gohmert. Move to strike the last word.

13592 Chairman Nadler. The gentleman is recognized.

13593 Mr. Gohmert. And I would like to yield at this early time

13594 of the hearing to my good friend from Wisconsin, Mr. Tiffany.

13595 Chairman Nadler. I hope the gentleman is being sarcastic

13596 when he says "early time."

13597 A Participant. It is early in the morning.

13598 Mr. Gohmert. Perhaps I was. Oh, yeah, it is early, 1:00

13599 a.m.

13600 Mr. Tiffany?

13601 Mr. Tiffany. Thank you, Mr. Gohmert, and I know you are

13602 not sarcastic in situations like this.

13603 So I think the point was made by the gentleman from Rhode

13604 Island in regards to market dominance. I mean, think about it.

13605 The Chinese Community Party versus Google? Google has knuckled

13606 under. Google has knuckled under in the past. Who do you think
13607 is more powerful?
13608 I mean, we have seen it. It is the Chinese Communist Party,
13609 and they have done it in a whole variety of ways, including to
13610 the biggest of the big tech companies to Google. And what can
13611 be more important, though, than American security, than our
13612 national security? Nothing is more important than that when we
13613 are discussing this.
13614 I think this is clearly germane, and I think this is one
13615 of the -- there has been many good amendments here tonight, but
13616 I think this is so important to adopt this amendment. If you
13617 believe that Americans' security of their data is important, if
13618 you think America's national security is important, you have got
13619 to vote for this amendment.
13620 Thank you for the time, Mr. Gohmert.
13621 Mr. Gohmert. The point is very well made. The actual
13622 language or that uses servers located in China to host the
13623 platform, that is just common sense, and I hope that we can have
13624 a bipartisan vote to affirm that. That ought to be in there.
13625 It ought to be there to protect the United States and our --
13626 as my friend from California across the aisle had pointed out
13627 earlier, we know that high-tech companies have already provided
13628 private information to China.
13629 So I applaud the gentleman for bringing this amendment, and

13630 I would encourage everyone to support it.

13631 Thank you. I yield back.

13632 Chairman Nadler. The gentleman yields back.

13633 Does Mr. Issa -- for what purpose does Mr. Issa seek

13634 recognition?

13635 Mr. Issa. Mr. Chairman, I want to strike the last word.

13636 Chairman Nadler. The gentleman is recognized.

13637 Mr. Issa. Thank you, Mr. Chairman. I appreciate the

13638 gentleman from Rhode Island wanting to maintain the four companies

13639 that he has tried and convicted and now wants to have this bill

13640 go after.

13641 And I say it at this early hour because it is becoming more

13642 and more obvious that any amendment that would possibly include

13643 even one more company would break up this perfect Henry VIII sort

13644 of a system where we found four companies, and only four companies,

13645 and we are going to hang those four companies with these rules.

13646 And I find it more and more transparent that the idea that

13647 you would have let's just say Ali Baba or somebody like that get

13648 covered by this just is unacceptable. And I find it amazing that

13649 we can't find any possibility that some other company might have

13650 to meet this test. Just four companies -- four companies, and

13651 four companies that each came to market dominance in a different

13652 way.

13653 And I am old enough to remember that Apple had to get a bailout

13654 from Microsoft because it was on the skids and just about out
13655 of business, you know, having stammered and stuttered a little
13656 bit. They had been a good leader early on, and they fell apart.
13657 Yes, they are back on the top today, but they are still
13658 actually quite a narrow company, and I find it amazing that we
13659 are going after Apple, which does have about half the world's
13660 smartphones, but of course it also did invent the smartphone,
13661 innovate it.
13662 The late Steve Jobs bet the company, first on the Mac --
13663 well, first on the Apple, but then on the Mac, having failed with
13664 the Lisa and his other earlier ones. He bet the company. Then,
13665 when his successor screwed it up, he came back and he fixed it,
13666 but he reinvented whole new categories. He didn't buy somebody's
13667 company and bury some technology nearly as much as he hit home
13668 runs by creating some amazing products.
13669 And for the most part, today that $2 trillion company is
13670 for the most part those exact products that the late Steve Jobs
13671 left the company. I don't know whether Tim Cook is going to build
13672 successfully or not. What I do know is that as we are vilifying
13673 Facebook and Amazon and Google, we have also thrown a company
13674 in that doesn't even fit the rest of the model.
13675 And I guess we are upset because of something, because if
13676 we held up the phones, there is probably four people in this room
13677 that have a phone other than an Apple. So we are going to be

13678 upset that we have got this product because somehow the product
13679 that has reinvented how we do business must have ruined our lives
13680 and ruined everything else.
13681 Well, I, for one, think that including and expanding is the
13682 only way to save any legitimacy to what we are doing. And if
13683 we don't, and I caution, if you don't, I suspect that the court
13684 will strike down this legislation if it ever becomes law, because
13685 it is transparently this evening become nothing but an attack
13686 on four companies that have been tried and convicted by a
13687 subcommittee.
13688 And I know that there is a lot of good merit, and a lot of
13689 things that were done wrong, and we have all seen things that
13690 we would like to see changed, but I don't believe for a moment
13691 that when you resist any expansion to any other company that it
13692 is anything but trying and convicting four companies.
13693 I am not prepared to do that tonight, and I don't think I
13694 will be prepared to do it in the weeks to come. And I thank the
13695 chairman, and I yield back.
13696 Chairman Nadler. The gentleman yields back.
13697 Who seeks recognition? Mr. Roy? For what purpose does Mr.
13698 Roy seek recognition?
13699 Mr. Roy. To strike the last word.
13700 Chairman Nadler. The gentleman is recognized.
13701 Mr. Roy. I just want to thank the gentleman from Wisconsin

13702 for offering this amendment. I think it is a good amendment.
13703 I think if the purpose of these bills is to target and reduce
13704 the power of certain bad actors, why not the Chi-coms? I mean,
13705 that is -- I just don't get it.
13706 We all get that the harm that they are perpetrating and the
13707 danger that they pose to the United States, not just from a
13708 national security standpoint, but generally speaking with respect
13709 to impact on our markets and what they do in terms of their own
13710 anti-competitive behavior, in terms of what they do with respect
13711 to stealing intellectual property, with respect to espionage.
13712 It sure seems like this is a well-thought-out and good
13713 amendment, and I support it.
13714 I yield back.
13715 Chairman Nadler. The gentleman yields back. The question
13716 occurs on the amendment.
13717 All in favor, say aye.
13718 Opposed, nay.
13719 In the opinion of the chair, the nays have it.
13720 A recorded vote is requested. The clerk will call the roll.
13721 Ms. Fontenot. Mr. Nadler?
13722 Chairman Nadler. No.
13723 Ms. Fontenot. Mr. Nadler votes no.
13724 Ms. Lofgren?
13725 Ms. Lofgren. No.

Ms. Fontenot. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen? Mr. Cohen?

Mr. Cohen. Aye. Or no. Better yet, no. No.

Ms. Fontenot. Mr. Cohen votes no.

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. Johnson votes no.

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

Mr. Deutch?

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. Nyet. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

[No response.]

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Yes.

Ms. Fontenot. Mr. Issa votes yes.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

13846 Mr. Bentz?

13847 Mr. Bentz. Yes.

13848 Ms. Fontenot. Mr. Bentz votes yes.

13849 Mr. Owens?

13850 Mr. Owens. Yes.

13851 Ms. Fontenot. Mr. Owens votes yes.

13852 Chairman Nadler. Are there any other members who wish to
13853 be recorded who have not been recorded?

13854 The clerk will report.

13855 Ms. Fontenot. Mr. Chairman, there are 19 ayes and 24 noes.

13856 Chairman Nadler. The amendment is not agreed to. Are there
13857 any other amendments to the amendment in the nature of a
13858 substitute?

13859 Mr. Issa. Mr. Chairman, I have an amendment.

13860 Chairman Nadler. For what purpose does Mr. Issa seek
13861 recognition?

13862 Mr. Issa. I have an amendment at the desk.

13863 Chairman Nadler. The clerk will report the amendment.

13864 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

13865 Chairman Nadler. A point of order is reserved.

13866 Ms. Fontenot. Amendment to the amendment in the nature of
13867 a substitute to H.R. 3826 offered by Mr. Issa of California.
13868 Page 3, line 8, insert intellectual property, nothing in this
13869 Act shall be constructed to limit a covered platform from

13870 acquiring or licensing patents, trademarks, or other intellectual

13871 property.

13872 [The amendment offered by Mr. Issa follows:]

13873

13874 **********COMMITTEE INSERT**********

13875 Chairman Nadler. The gentleman is recognized to explain
13876 his amendment.
13877 Mr. Issa. Thank you, Mr. Chairman. As you can imagine,
13878 companies are constantly being threatened with a violation or
13879 infringement of intellectual property, particularly patents, but
13880 patents, trademarks, and copyrights, and the like.
13881 Companies often have no choice but to take licenses. Those
13882 licenses can be very expensive. They are not mergers in the sense
13883 of an acquisition of a business, but they may represent a
13884 substantial amount of money. Clearly, like the $50 million
13885 carveout, this is a carveout of a type of purchase.
13886 Having been in the world of technology, I have both licensed
13887 others and taken licenses. They are not something that you
13888 necessarily do. They are not anti-competitive. And yet they
13889 could not meet the test for these covered platforms.
13890 So for these covered platforms, it is clear that this sort
13891 of a carveout would at least make it clear that these kinds of
13892 acquisitions do not have to stand a test that might be impossible
13893 to test. Giving, let's just say, Microsoft a license versus a
13894 company that they couldn't meet the test of buying could well
13895 be the only way for Microsoft to continue doing existing business
13896 or to follow a normal train of development.
13897 These companies often -- I will give you the example, if
13898 you wanted to produce -- we all remember the DVD -- there was

13899 a packet of literally dozens and dozens of various optical and
13900 other technologies owned by multiple companies. The only way
13901 you could produce a DVD was to buy or license the entire packet.
13902 It wasn't cheap. It happened to be sold on a per piece basis,
13903 but some are sold in lump and some are sold per piece. So can't
13904 predict what those would cost. It might be a few million dollars,
13905 but it might be a few billion dollars.
13906 As we know, for example, I believe it was Intel just lost
13907 a patent suit against a non-practicing patent holder. And I
13908 believe the award was more than $1.2 billion. If one of these
13909 covered companies finds itself in that situation, they could find
13910 themselves between a rock and a hard spot.
13911 So that is why this very narrow carveout, similar to the
13912 50 million, was designed to recognize that we are talking about
13913 acquisitions of full companies and not the often-necessary
13914 acquisition of intellectual property.
13915 And with that, I would yield to my friend, Ms. Lofgren.
13916 Ms. Lofgren. Thank you for yielding. I will be honest,
13917 I hadn't actually thought of this before --
13918 Mr. Issa. And neither had I.
13919 Ms. Lofgren. -- your amendment, and I think it is a good
13920 amendment, but it also shows the problem with the underlying bill,
13921 which is you don't have to engage or even be alleging to engage
13922 in anti-competitive practice. And that is the whole point of

13923 what we are trying to do here.

13924 I think, unfortunately, because of the underlying bill, your

13925 amendment is likely necessary, and I would support it. I mean,

13926 if you can't do this, you are going to end up with other problems.

13927 But I think this is just another example of why going back to

13928 standards of competitiveness would be -- we would be on much firmer

13929 ground.

13930 And I do think that the standard in law today is too low

13931 and needs to be adjusted and needs to be -- and the burden needs

13932 to shift. I don't disagree with that, but it should be about

13933 competition.

13934 And I thank the gentleman for yielding.

13935 Mr. Issa. I thank the gentlelady.

13936 And with that, do you want your own time, or do you want

13937 to use mine?

13938 Mr. Cicilline. I would like my own.

13939 Mr. Issa. Then I would yield back.

13940 Mr. Cicilline. Thank you.

13941 Chairman Nadler. The gentleman yields back.

13942 Does the gentleman from Rhode Island insist on his point

13943 of order?

13944 Mr. Cicilline. No.

13945 Chairman Nadler. The point of order is withdrawn.

13946 Mr. Cicilline. Thank you. Mr. Chairman, I seek

13947 recognition in opposition to the amendment.

13948 Chairman Nadler. For what purpose does the gentleman from

13949 Rhode Island seek --

13950 Mr. Cicilline. I move to strike the last word.

13951 Chairman Nadler. The gentleman is recognized.

13952 Mr. Cicilline. I would just say very briefly that I believe

13953 this is an inappropriate carveout. Just as an example, Google

13954 acquired Motorola for billions of dollars solely for its patents.

13955 And the test should be if it expands their market power, there

13956 is no reason to treat this kind of acquisition differently from

13957 any other kind of acquisition.

13958 And so I urge you to vote no on this amendment. It is an

13959 inappropriate carveout. And I yield back.

13960 Chairman Nadler. The gentleman yields back.

13961 Does anyone else seek recognition on this amendment? If

13962 not, the question occurs on the amendment.

13963 All those in favor, say aye.

13964 Opposed, no.

13965 In the opinion of the chair, the noes have it.

13966 Mr. Issa. Mr. Chairman, could we possibly verify that with

13967 a recorded vote?

13968 Chairman Nadler. You certainly can. The clerk will call

13969 the roll.

13970 Ms. Fontenot. Mr. Nadler?

13971 Chairman Nadler. No.

13972 Ms. Fontenot. Mr. Nadler votes no.

13973 Ms. Lofgren?

13974 Ms. Lofgren. Yes.

13975 Ms. Fontenot. Ms. Lofgren votes yes.

13976 Ms. Jackson Lee?

13977 [No response.]

13978 Mr. Cohen?

13979 [No response.]

13980 Mr. Johnson of Georgia?

13981 Mr. Johnson of Georgia. No.

13982 Ms. Fontenot. Mr. Johnson of Georgia votes no.

13983 Mr. Deutch?

13984 Mr. Deutch. No.

13985 Ms. Fontenot. Mr. Deutch votes no.

13986 Ms. Bass?

13987 Ms. Bass. No.

13988 Ms. Fontenot. Ms. Bass votes no.

13989 Mr. Jeffries?

13990 Mr. Jeffries. No.

13991 Ms. Fontenot. Mr. Jeffries votes no.

13992 Mr. Cicilline?

13993 Mr. Cicilline. No.

13994 Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

14019 Mr. Neguse?

14020 [No response.]

14021 Mrs. McBath?

14022 Mrs. McBath. No.

14023 Ms. Fontenot. Mrs. McBath votes no.

14024 Mr. Stanton?

14025 Mr. Stanton. Aye.

14026 Ms. Fontenot. Mr. Stanton, you will have to turn your camera

14027 on to be recorded.

14028 Mr. Stanton. Aye.

14029 Ms. Fontenot. Mr. Stanton votes aye.

14030 Ms. Dean?

14031 Ms. Dean. No.

14032 Ms. Fontenot. Ms. Dean votes no.

14033 Ms. Escobar?

14034 Ms. Escobar. No.

14035 Ms. Fontenot. Ms. Escobar votes no.

14036 Mr. Jones?

14037 Mr. Jones. No.

14038 Ms. Fontenot. Mr. Jones votes no.

14039 Ms. Ross?

14040 Ms. Ross. Ross votes no.

14041 Ms. Fontenot. Ms. Ross votes no.

14042 Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

14091 Mrs. Spartz. No.

14092 Ms. Fontenot. Mrs. Spartz votes no.

14093 Mr. Fitzgerald?

14094 Mr. Fitzgerald. Aye.

14095 Ms. Fontenot. Mr. Fitzgerald votes aye.

14096 Mr. Bentz?

14097 Mr. Bentz. Yes.

14098 Ms. Fontenot. Mr. Bentz votes yes.

14099 Mr. Owens?

14100 Mr. Owens. No.

14101 Ms. Fontenot. Mr. Owens votes no.

14102 Ms. Jackson Lee. How am I recorded?

14103 Ms. Fontenot. Ms. Jackson Lee, you are not recorded.

14104 Ms. Jackson Lee. No.

14105 Ms. Fontenot. Ms. Jackson Lee votes no.

14106 Chairman Nadler. Has everyone who wishes to vote -- wishes

14107 to be recorded been recorded?

14108 The clerk will report.

14109 Ms. Fontenot. Mr. Chairman, there are 17 ayes and 25 noes.

14110 Chairman Nadler. The amendment is not agreed to. Are there

14111 any other amendments to the amendment in the nature of a

14112 substitute?

14113 Mr. Issa. As a matter of fact, Mr. Chairman, I have one

14114 at the desk.

14115 Chairman Nadler. The clerk will report the amendment.

14116 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

14117 Chairman Nadler. A point of order is reserved.

14118 Ms. Fontenot. Amendment to the amendment in the nature of

14119 a substitute to H.R. 3826 offered by Mr. Issa of California.

14120 Page 3, line 8, insert bankruptcy proceedings. Nothing in this

14121 Act shall be construed --

14122 [The amendment offered by Mr. Issa follows:]

14123

14124 **********COMMITTEE INSERT**********

14125 Chairman Nadler. Without objection, the amendment is
14126 considered as read, and the gentleman is recognized to explain
14127 his amendment.
14128 Mr. Issa. Thank you, Mr. Chairman. And I will finish the
14129 reading for clarity. Bankruptcy proceedings. Nothing in the
14130 Act shall be construed to prevent a covered platform from
14131 acquiring assets or businesses from a bankruptcy proceeding.
14132 And it means just what it says, Mr. Chairman.
14133 Bankruptcy is a shifting of a great many priorities. And,
14134 in short, if a company goes into bankruptcy, a bankruptcy judge
14135 is overseeing and attempting to get the highest and best value
14136 for the creditors. In that situation, a great many other items,
14137 including whether their data is being gathered, and the like,
14138 the balance really comes down to you want to make sure you have
14139 the highest bidder.
14140 Bankruptcy is not something people enter into lightly, but
14141 it happens, and it happens very often. So to not have these four
14142 large companies, along with Berkshire Hathaway and plenty of other
14143 companies, able to bid for a company and bid quickly, what you
14144 have in this situation under the underlying bill is you have a
14145 great deal of delay and uncertainty that would make it impossible
14146 for these four companies to bid in bankruptcy in an effective
14147 way for all or part of a company, any of its portfolio, and the
14148 like.

14149 You have to be able to go to the bankruptcy court and go
14150 with their timelines, go with their requirements, and you have
14151 to make a commitment, which you cannot say I am making the
14152 commitment, but mine is subject to a 120-day delay. It is subject
14153 to interference with others and perhaps an adjudication that you
14154 don't know how it is going to go.
14155 So in the situation in which the federal court is already
14156 involved, and they are making a decision on behalf of an entity,
14157 that entity could be large or small, but these four companies
14158 clearly should be able to represent the highest and the best value
14159 for the creditors. And that is the reason that I think it is
14160 a narrow carveout, and it is, quite frankly, simply one that I
14161 think was unforeseen by the authors, that in addition to others
14162 you might have this occur.
14163 But in the real business world, this occurs all the time.
14164 And in technology it occurs a lot more often than people might
14165 think, and you have to be able to bid and bid without asking the
14166 FTC in advance of a deal that you don't have.
14167 So that is the reason that I thought that this narrow one
14168 would probably slip past the objections of some, and I think it
14169 will, because I believe that it won't happen that often. But
14170 when it does happen, we want to make sure that the creditors and
14171 the employees, and so on, get the best synergy and the highest
14172 value, and that would include all bidders at the table.

14173 And with that, I thank the chairman, and I will yield back.

14174 Chairman Nadler. The gentleman yields back.

14175 Does the gentleman from Rhode Island insist on his point

14176 of order?

14177 Mr. Cicilline. I withdraw my point of order, but I seek

14178 recognition in opposition.

14179 Chairman Nadler. The point of order is withdrawn. The

14180 gentleman is recognized.

14181 Mr. Cicilline. I would just say, once again, I don't think

14182 this is an appropriate carveout. The value -- the asset value

14183 of a company in bankruptcy can still be very substantial. It

14184 only has to be that their liabilities exceed the value of their

14185 assets.

14186 Radio Shack is one that comes to mind had very, very valuable

14187 patents. There is no reason to treat those any differently for

14188 purposes of this piece of legislation. I urge my colleagues to

14189 vote against this amendment.

14190 Chairman Nadler. Does the gentleman yield back?

14191 Mr. Cicilline. I yield back, Mr. Chairman.

14192 Chairman Nadler. The gentleman yields back.

14193 For what purpose does Mr. Gaetz seek recognition?

14194 Mr. Gaetz. Strike the last word.

14195 Chairman Nadler. The gentleman is recognized.

14196 Mr. Gaetz. I would point out that a company in bankruptcy

14197 can have substantial assets. And you might even see a perversion
14198 of the bankruptcy laws where people would try to access bankruptcy
14199 just for the point of facilitating an acquisition that might not
14200 otherwise be allowed.

14201 But the real problem I have with this amendment is one of
14202 priorities, because the amendment seems to prioritize creditors
14203 getting their money over the health of the marketplace. And I
14204 think the author of the amendment was pretty clear that that is
14205 the equity that he values most, but the objective of the committee
14206 ought to be to keep the marketplace healthy, even if a few
14207 creditors have to take a little less from a company in bankruptcy.

14208 I yield back.

14209 Chairman Nadler. The gentleman yield back.

14210 Who else seeks recognition?

14211 Mr. Bentz. Mr. Chair?

14212 Chairman Nadler. For what purpose does the gentleman seek
14213 recognition?

14214 Mr. Bentz. To strike the last word.

14215 Chairman Nadler. The gentleman is recognized.

14216 Mr. Bentz. Thank you, Mr. Chair. So it would be helpful
14217 if someone who helped write this bill could define the term in
14218 line 4, page 2, the whole or any part of the assets. I do not
14219 see a description or a definition of the term "assets."

14220 So, for example, would "the assets" mean something that you

14221 need every day in the operation of your business? Or are you
14222 suggesting it is something larger than that? If anyone knows.
14223 Mr. Cicilline. Consistent with the Clayton Act.
14224 Mr. Bentz. And you will have to forgive me, but I don't
14225 enjoy the knowledge that you apparently do, perhaps you can share
14226 with me.
14227 Mr. Cicilline. Anything of value.
14228 Mr. Bentz. So let me see if I have this right. This means
14229 that once this bill passes, these four companies cannot buy
14230 anything. Is that what you are saying? What can they buy?
14231 Mr. Cicilline. If the gentleman will yield?
14232 Mr. Bentz. Yes, I will yield. Go ahead, please.
14233 Mr. Cicilline. Thank you. So if they are a covered
14234 platform, the presumption shifts for their acquisition and they
14235 have to demonstrate their acquisition will not enlarge their
14236 market dominance and impair competition. And so it doesn't
14237 prohibit mergers.
14238 It simply says the burden shifts to the acquiring platform
14239 to demonstrate that they will not enlarge their market dominance
14240 as a result of that acquisition and thereby diminish competition,
14241 innovation, and all of the things that come from a competitive
14242 market. It doesn't bar any transactions. It simply shifts the
14243 burden to the covered platform to demonstrate that the acquisition
14244 will not do those things. Nothing more.

14245 I yield back.

14246 Mr. Bishop. Would the gentleman yield?

14247 Mr. Bentz. I will yield. Sure.

14248 Mr. Bishop. Mr. Bentz, you would yield to me? Would you
14249 yield?

14250 Mr. Bentz. I yield. Sure.

14251 Mr. Bishop. So I just want to understand the import of your
14252 question and your colloquy with Mr. Cicilline. So if, say, Google
14253 wants to go out and buy a ream of copier paper, and they would
14254 need to prove to the FTC these four prongs here. They would have
14255 to -- is that what your understanding is?

14256 Mr. Bentz. I think that is what we just heard, if that ream
14257 paper would assist Google in conducting its business and
14258 competing, which Google probably does as a business.

14259 Mr. Bishop. Wow. Thank you, sir.

14260 Mr. Issa. Would the gentleman further yield?

14261 Mr. Bentz. Yes.

14262 Mr. Issa. I think another example might be if we put the
14263 Post Office up that has been losing $10 billion out -- $60 billion
14264 worth of revenue every year for a decade now, if it went up for
14265 sale, Amazon would not be able to buy it, even though they could
14266 run it better, even though it would be good for the consumer,
14267 because of course it would increase their market share.

14268 So, yes, the "all or part" would include about anything from

14269 paper, if it was over $50 million, to even the Post Office, even
14270 if you would in fact be benefitting the consumer, but you would
14271 clearly be reducing competition.
14272 And it is one of the reasons that I included bankruptcy,
14273 because our Post Office is currently beyond bankruptcy. The only
14274 reason it doesn't enjoy the term "bankruptcy" is because you and
14275 the other taxpayers are bailing out their billions of losses every
14276 year.
14277 So you are exactly right to point out one of the flaws in
14278 the bill which is, yes, they are prohibited from buying all or
14279 part of anything, unless this passes, and then it will be up to
14280 $50 million.
14281 Mr. Cicilline. Mr. Issa, if you will yield, I will explain
14282 to you why -- oh, I am sorry.
14283 Mr. Bentz. Just so -- I am thinking that perhaps if Google
14284 had lost maybe $10 million in the previous year, it could -- I
14285 guess it doesn't quite know when it has to establish this baseline.
14286 But maybe it could add $10 million back, but we are not quite
14287 sure what baseline we are working from.
14288 So is it more competitive now than it was then? You get
14289 my drift. But I would love to be enlightened.
14290 I yield back.
14291 Chairman Nadler. The gentleman yields back, and I yield
14292 my -- I will recognize myself to strike the last word. And I

14293 will yield to Mr. Cicilline.

14294 Mr. Cicilline. Thank you, Mr. Chairman. With respect to
14295 the suggestion of having to buy paper, that would not be required
14296 to be reviewed, according to Section 7A8 of the Clayton Act, which
14297 is specifically exempted in the bill.

14298 In addition to that, the acquired assets do not compete with
14299 the covered platform or covered -- or an operator for the sale
14300 or provision of any product, constitute nascent or potential
14301 competition. So it has to meet one of those things, and it does
14302 not meet any of those, so you are not precluded from making
14303 acquisitions that relate to paper.

14304 And with that, I yield back, Mr. Chairman.

14305 Mr. Issa. Would the chairman further yield?

14306 Chairman Nadler. Yes.

14307 Mr. Issa. My understanding is Amazon does sell a lot of
14308 paper, and I also understand that Amazon delivers in competition
14309 with the Post Office. So at least in the examples that we were
14310 using, yes, it would fall under this prohibition. And even if
14311 the Post Office or UPS or somebody went into bankruptcy, they
14312 wouldn't be able to compete for bidding, even if they were the
14313 best future operator, because consumer benefit is not in the bill,
14314 just this question of sort of market share.

14315 If the consumer would benefit, that doesn't -- that isn't
14316 the test here where under current bankruptcy law -- I mean, sorry,

14317 under current antitrust law, it would be a consideration. The
14318 consumer benefit would matter. It is not mattering the way you
14319 have written this bill for these covered platforms.
14320 I thank the gentleman for yielding.
14321 Chairman Nadler. I will back.
14322 Does anyone else seek recognition on this amendment?
14323 In that case, the question occurs on the amendment.
14324 All those in favor, say aye.
14325 Opposed, no.
14326 In the opinion of the chair, the noes have it.
14327 Mr. Issa. On that I would request a recorded vote.
14328 Chairman Nadler. The yeas are requested. The clerk will
14329 call the roll.
14330 Ms. Fontenot. Mr. Nadler?
14331 Chairman Nadler. No.
14332 Ms. Fontenot. Mr. Nadler votes no.
14333 Ms. Lofgren?
14334 Ms. Lofgren. No.
14335 Ms. Fontenot. Ms. Lofgren votes no.
14336 Ms. Jackson Lee?
14337 Ms. Jackson Lee. No.
14338 Ms. Fontenot. Ms. Jackson Lee votes no.
14339 Mr. Cohen?
14340 [No response.]

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. No.

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

Mr. Deutch?

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

[No response.]

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa?

Mr. Issa. Yes.

Ms. Fontenot. Mr. Issa votes yes.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. Yes.

Ms. Fontenot. Mr. Owens votes yes.

14461 Chairman Nadler. Has everyone who wishes to vote -- has
14462 everyone who wishes to vote voted? The clerk will report.
14463 Ms. Fontenot. Mr. Chairman, there are 16 ayes and 26 noes.
14464 Chairman Nadler. The amendment is not agreed to.
14465 Are there any further amendments to the amendment in the
14466 nature of a substitute? In that case, the question occurs --
14467 the question occurs on the amendment in the nature of a substitute.
14468 This will be followed immediately by a vote of final passage
14469 of the bill.
14470 All those in favor, respond by saying aye.
14471 Opposed, no.
14472 In the opinion of the chair, the ayes have it, and the
14473 amendment in the nature of a substitute is agreed to.
14474 Reporting quorum being present, the question is on the motion
14475 to report the bill H.R. 3826, as amended, favorably to the House.
14476 Those in favor, respond by saying aye.
14477 Those opposed, no.
14478 The ayes have it, and the bill is ordered to be reported
14479 favorably to the House. On this, the yeas and nays are requested.
14480 The clerk will call the roll.
14481 Ms. Fontenot. Mr. Nadler?
14482 Chairman Nadler. Aye.
14483 Ms. Fontenot. Mr. Nadler votes aye.
14484 Ms. Lofgren?

Ms. Lofgren. No.

Ms. Fontenot. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. Aye.

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

Mr. Deutch?

Mr. Deutch. Aye.

Ms. Fontenot. Mr. Deutch votes aye.

Ms. Bass?

Ms. Bass. Aye.

Ms. Fontenot. Ms. Bass votes aye.

Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Fontenot. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Fontenot. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Fontenot. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Fontenot. Ms. Jayapal votes aye.

Mrs. Demings?

Mrs. Demings. Aye.

Ms. Fontenot. Mrs. Demings votes aye.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. Aye.

Ms. Fontenot. Ms. Scanlon votes aye.

Ms. Garcia?

Ms. Garcia. Aye.

Ms. Fontenot. Ms. Garcia votes aye.

Mr. Neguse?

[No response.]

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. Aye.

Ms. Fontenot. Ms. Dean votes aye.

Ms. Escobar?

Ms. Escobar. Aye.

Ms. Fontenot. Ms. Escobar votes aye.

Mr. Jones?

Mr. Jones. Aye.

Ms. Fontenot. Mr. Jones votes aye.

Ms. Ross?

Ms. Ross. Ross votes aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. Bush votes aye.

Ms. Fontenot. Ms. Bush votes aye.

Ms. Jackson Lee. How am I recorded?

Ms. Fontenot. Ms. Jackson Lee, you are recorded as no.

Ms. Jackson Lee. Aye.

Ms. Fontenot. Ms. Jackson Lee votes aye.

Mr. Jordan?

Mr. Jordan. No.

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Fontenot. Mr. Chabot votes no.

Mr. Gohmert?

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa?

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. No.

Ms. Fontenot. Mr. Johnson of Louisiana votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. No.

Ms. Fontenot. Mr. Tiffany votes no.

Mr. Massie?

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy?

Mr. Roy. No.

Ms. Fontenot. Mr. Roy votes no.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. No.

14605 Ms. Fontenot. Mrs. Spartz votes no.

14606 Mr. Fitzgerald?

14607 Mr. Fitzgerald. No.

14608 Ms. Fontenot. Mr. Fitzgerald votes no.

14609 Mr. Bentz?

14610 Mr. Bentz. No.

14611 Ms. Fontenot. Mr. Bentz votes no.

14612 Mr. Owens?

14613 Mr. Owens. Present.

14614 Ms. Fontenot. Mr. Owens votes present.

14615 Chairman Nadler. Has everyone who wishes to vote voted?

14616 Ms. Fontenot. Mr. Chairman, there are 24 ayes, 17 --

14617 Chairman Nadler. The clerk will report.

14618 Ms. Fontenot. Mr. Chairman, there are 24 ayes, 17 noes,

14619 and 1 present.

14620 Chairman Nadler. The amendment -- the ayes have it, and

14621 the bill, as amended, is ordered to be reported favorably to the

14622 House. Members will have 2 days to submit views. Without

14623 objection, the bill will be reported as a single amendment in

14624 the nature of a substitute, incorporating all adopted amendments,

14625 and staff is authorized to make technical and conforming changes.

14626 Pursuant to notice, I now call up H.R. 3816, the American

14627 Choice and Innovation Online Act, for purposes of markup, and

14628 move that the committee report the bill favorably to the House.

14629 The clerk will report the bill.

14630 Ms. Fontenot. H.R. 3816, to provide that certain

14631 discriminatory --

14632 [The Bill H.R. 3816 follows:]

14633 **********COMMITTEE INSERT**********

14634 Chairman Nadler. Without objection, the bill is considered
14635 as read and open for amendment at any point. I will begin by
14636 recognizing myself for an opening statement.
14637 H.R. 3816, the American Innovation and Choice Online Act,
14638 restores competition online and ensures that digital markets are
14639 fair and open. It does so by preventing dominant online platforms
14640 from using their market power to pick winners and losers, favor
14641 their own products, or otherwise distort the marketplace through
14642 abusive conduct online.
14643 The open internet has delivered enormous benefits to
14644 Americans and our economy. The internet and the services
14645 available online have increased economic opportunity and
14646 innovation and have greatly expanded access to information,
14647 communications, and education.
14648 Online platforms have been an important part of this success
14649 story. Businesses of all types rely on digital platforms to serve
14650 customers all over the world. Consumers rely on these platforms
14651 to serve customers all over the world. Consumers rely on these
14652 platforms to communicate with one another and to enhance their
14653 lives.
14654 However, a small set of online platforms have become
14655 gatekeepers for much of the digital marketplace. In many cases,
14656 businesses and consumers no longer have meaningful alternatives
14657 online. As the committee's investigation has shown, these

14658 dominant platforms can have the incentive and ability to abuse
14659 their market power to pick winners and losers among the firms
14660 that rely on their platforms to reach users and customers.
14661 Additionally, these dominant platforms often compete
14662 directly against the very businesses that rely on their platform.
14663 This allows these gatekeepers to exploit their control over the
14664 platform to favor their own products or to exclude or disadvantage
14665 rivals.
14666 Such conduct harms competition. It eliminates incentives
14667 and opportunities for small businesses and entrepreneurs to
14668 compete in the digital economy, undermining innovation, and
14669 depriving consumers of meaningful choice online.
14670 This legislation would address this sort of anti-competitive
14671 behavior by prohibiting certain forms of discriminatory conduct
14672 which causes harm to the competitive process. It also includes
14673 important safeguards. It ensures that online platforms may
14674 continue to police conduct, stop malicious and illegitimate
14675 activity, protect user privacy and security, and pull down illegal
14676 content.
14677 The American Innovation and Choice Online Act is bipartisan
14678 legislation tailored to improve opportunity and innovation
14679 online. It serves to prevent gatekeepers from abusing their
14680 power in ways that harm competition and consumers, and it does
14681 so without disrupting the benefits of the open internet that

14682 consumers enjoy today.

14683 I thank Chairman Cicilline for his leadership on this bill,
14684 together with Congressman Gooden, and I urge all members to
14685 support it.

14686 I now recognize the ranking member of the Judiciary
14687 Committee, the gentleman from Ohio, Mr. Jordan, for his opening
14688 statement.

14689 Mr. Jordan. Thank you, Mr. Chairman. This bill would give
14690 the Biden Administration extensive new power to define and
14691 prohibit a wide variety of practices as, quote, "discriminatory."
14692 This bill does nothing, as the previous four did nothing, to
14693 address the real problem: censorship, the limits on speech.

14694 In fact, it will mean big tech will censor more. Think about
14695 it. The Biden FTC will effectively have the power to approve
14696 or disapprove the business practices of companies. Do you think
14697 the Biden appointees are going to look more or less favorably
14698 at business practices that advance, quote, "woke causes"? They
14699 won't even have to say it. The companies will know that if they
14700 don't heel to the Democrats, they won't be able to make as much
14701 money. That is how business in America -- that is not how business
14702 in America is supposed to work.

14703 To accomplish all of this, the bill creates a new Bureau
14704 of Digital Markets, a fourth bureau at the FTC charged with
14705 enforcement, solely with enforcement of this legislation.

14706 So a couple of bills ago, a few hours ago, in the so-called
14707 access bill, we had the secret committees. Now we have a new
14708 bureau. And even if you agree with the premise of this bill,
14709 it is a totally unnecessary expansion of the administrative state.
14710
14711 The Trump Administration already created a big tech and
14712 focused enforcement division appropriately placed in FTC's Bureau
14713 of Competition. This bureau was responsible for investigating
14714 all anti-competitive conduct in markets in which digital
14715 technology is an important dimension.
14716 This bill takes power away from judges, transfers it to
14717 regulators. If you want to challenge these rules, the bill
14718 demands clear and convincing evidence to establish unclear
14719 defenses, so firms can bring evidence showing conduct did not
14720 result in harm to the competitive process by eliminating, quote,
14721 "legitimate business activity." But none of these standards --
14722 none of these standards are defined.
14723 So, again, this legislation and related rulemaking would
14724 interlock the government and big tech to the detriment of anyone
14725 who dares challenge Democrat orthodoxy.
14726 And with that, Mr. Chairman, I yield back.
14727 Chairman Nadler. The gentleman yields back.
14728 I now recognize the ranking -- the chair of the subcommittee
14729 on antitrust, commercial, and administrative law, the gentleman

14730 from Rhode Island, Mr. Cicilline, for his opening statement.

14731 Mr. Cicilline. Thank you, Mr. Chairman. I am proud to

14732 be the sponsor of H.R. 3816, the American Innovation and Choice

14733 Online Act. This legislation will stop the largest online

14734 platforms from abusing their gatekeeper power. It will ensure

14735 that there is free and fair competition online.

14736 Dominant platforms possess enormous gatekeeper power over

14737 the digital marketplace. Too often they exploit their power to

14738 harm rivals and boost their own products and services.

14739 Ultimately, this conduct destroys competition and harms

14740 consumers.

14741 Firms that abuse their gatekeeper power to gain and advance

14742 in the marketplace have less incentive to invest and innovate.

14743 Firms that have destroyed their competitors and hold their

14744 customers hostage have little reason to improve the quality of

14745 their products and lower their prices.

14746 H.R. 3816 includes prohibitions to stop dominant platforms

14747 from abusing their gatekeeper power to advantage their own

14748 products and services and discriminate against rivals. This bill

14749 also restricts other specific types of anti-competitive and

14750 harmful conduct. For example, dominant platforms will be

14751 prohibited from requiring users of the platform to buy other

14752 services to access the platform over preferential treatment.

14753 This means that a dominant platform will be restricted from

14754 requiring the use of its advertising, logistics, or payment
14755 processing service in exchange for use of the platform. As a
14756 result, this bill will lead to a more dynamic and competitive
14757 digital economy, and I urge my colleagues to support this
14758 amendment to restore competition and to combat monopoly power
14759 online.
14760 And with that, Mr. Chairman, I yield back.
14761 Chairman Nadler. The gentleman yields back.
14762 I now recognize the ranking member of the antitrust
14763 subcommittee, the gentleman from Colorado, Mr. Buck, for his
14764 opening statement.
14765 Mr. Buck. Thank you, Mr. Chair. At the beginning of the
14766 big tech investigation, I was skeptical about what we would find.
14767 I was fairly sure these companies were monopolies in the academic
14768 sense, but I didn't see what harm they were causing to small
14769 businesses or consumers. If a small enterprise was put out of
14770 business by big tech, I assumed that was just the unfortunate
14771 byproduct of our robust free enterprise system.
14772 Then we had a field hearing in Colorado. We heard firsthand
14773 from companies like PopSockets, Sonos, and Tile, about the abuses
14774 they have suffered at the hands of big tech.
14775 This bill allows consumers, not big tech monopolists, to
14776 decide who wins in the marketplace. Online consumers will no
14777 longer face the Henry Ford conundrum presented by these companies.

14778 For those who may not remember, Henry Ford famously told
14779 Americans they could have any color car so long as it is black.
14780 Today we have Tim Cook telling consumers, "You can have any app
14781 you like, so long as it is Apple."
14782 This bill would break the big tech stranglehold by freeing
14783 up competition. This bill is also a pro-small business bill.
14784 It levels the playing field, but, importantly, it respects our
14785 free enterprise system because it does not pick winners and
14786 losers. This bill means that entrepreneurs will no longer see
14787 their businesses -- business ideas stolen and products throttled
14788 by Amazon once they have become successful.
14789 Leveling the playing field for small business is a worthy
14790 policy goal, because it is the backbone of our economy. Small
14791 businesses employ approximately 60 million Americans, or about
14792 47 percent of Americans in the workforce. According to their
14793 10-K reports filed with the SEC, Google, Amazon, Apple, and
14794 Facebook employ about 1.639 million people worldwide.
14795 This bill does not create a heavy-handed new regulatory
14796 scheme. It does not establish a new agency ripe for capture by
14797 industry. It is narrowly scoped and addresses the problem of
14798 big tech discrimination through classic American antitrust
14799 solutions, prioritizing free markets and access to the internet
14800 highways of commerce.
14801 It also aligns with conservative views of how government

14802 should interact with the private sector, not dictating outcomes
14803 but ensuring the market function in a free and neutral manner.
14804 Republicans must stand with American consumers and small
14805 businesses against big tech monopolies and their lobbyists.
14806 And with that, Mr. Chair, I yield back.
14807 Chairman Nadler. Without objection, all other opening
14808 statements will be included in the record.
14809 I now recognize myself for purposes of offering an amendment
14810 in the nature of a substitute. The clerk will report the
14811 amendment.
14812 Ms. Fontenot. Amendment in the nature of a substitute to
14813 H.R. 3816 offered by Mr. Nadler of New York. Strike all after
14814 the --
14815 [The amendment offered by Chairman Nadler follows:]
14816
14817 **********COMMITTEE INSERT**********

14818 Chairman Nadler. Without objection, the amendment in the
14819 nature of a substitute will be considered as read and shall be
14820 considered as base text for purposes of amendment.
14821 I recognize myself to explain the amendment. In addition
14822 to certain technical revisions to enhance clarity and to make
14823 conforming changes, the amendment in the nature of a substitute
14824 makes several substantive changes which serve to strengthen the
14825 bill.
14826 The amendment makes technical changes to Section 2E of the
14827 bill to clarify when and how the agencies may remove a covered
14828 platform designation. The amendment also makes technical
14829 changes to Section 2F of the bill to clarify that the Department
14830 of Justice, the Federal Trade Commission, and the Attorney General
14831 of any state may seek, and the court may grant, the specified
14832 remedies.
14833 In addition, the amendment adds to Section 2F that a court
14834 may order any corporate officer to forfeit the specified amount
14835 of compensation as appropriate to deter violations.
14836 In Section 2G, the amendment corrects the drafting error
14837 for the definition of the term "online platform."
14838 In Section 2H, the amendment clarifies that except as
14839 otherwise provided, the Department of Justice, the commission,
14840 and the attorney general of the state has the same enforcement
14841 powers, duties, and other authorities under this Act as certain

14842 other relevant antitrust and procedural statutes.

14843 The amendment makes final technical edits to Section 3 of

14844 this bill to clarify the scope of judicial review.

14845 Finally, the amendment makes an important substantive change

14846 to Section 7 of the bill to establish that actions taken by a

14847 covered platform operator that are reasonably tailored to protect

14848 certain intellectual property rights shall not be considered

14849 unlawful under Section 2.

14850 I urge members to support the amendment, and I yield back

14851 the balance of my time.

14852 Are there any amendments to the amendment in the nature of

14853 a substitute? Are there any amendments to the amendment in the

14854 nature of a substitute?

14855 For what purpose does Mr. Jones seek recognition?

14856 Mr. Jones. I move to strike the last word, Mr. Chairman.

14857 Chairman Nadler. The gentleman is recognized.

14858 Mr. Jones. I want to thank you, Mr. Chairman, as well as

14859 Chairman Cicilline, for introducing the American Choice and

14860 Innovation Online Act. I also want to thank Ranking Member Buck

14861 and Representative [audio malfunction] to secure equal treatment

14862 online for users and small businesses.

14863 There is no question that today big tech writes the rules

14864 of the internet. The question is: should big tech be allowed

14865 to write those rules? Does this bill [audio malfunction] people

14866 deserve and demand? No.

14867 Enough of the biggest corporations telling us how to shop
14868 [audio malfunction]. There is no good reason that the
14869 corporation [audio malfunction] products and destroy their
14870 livelihoods.

14871 There is no good reason that the internet's largest search
14872 engine, Google, should be scraping data from smaller competitors
14873 like Yelp and Trip Advisor, then ranking their results lower than
14874 its own. There is no good reason that Facebook should be able
14875 to devastate local independent journalism by conditioning news
14876 organizations' access to its social networks, using its ad market
14877 [audio malfunction] trying to restore and protect the fair, open,
14878 and inclusive online economy we deserve.

14879 And that is just what this bill would do. None of the big
14880 tech companies could engage in these practices, by the way, unless
14881 they show that they would not be anti-competitive or that they
14882 are necessary to protect privacy or comply with the law.

14883 There is a dark irony to how big tech has abused its dominance
14884 over small businesses. These massive corporations owe their
14885 early success to the free and open internet that they now deny
14886 to everyone else. If the big tech companies had had to overcome
14887 the same obstacles they now pose to others, they might never have
14888 taken off in the first place.

14889 Imagine if AOL had had the power to prevent its internet

14890 subscribers from switching to Gmail. Imagine if Yahoo had had
14891 the power to make it impossible to find Google. Or take an actual
14892 case. If antitrust action had not compelled Microsoft to give
14893 rival web browsers a fair shot to compete with Internet Explorer,
14894 Chrome might never have stood a chance.

14895 Today's biggest tech companies, the innovators of the past,
14896 are entrenching their power by making sure the innovators of the
14897 future don't have the same opportunities that they did. After
14898 climbing to the heights of power, these massive corporations are
14899 pulling up the ladder behind them, so that no one else can rise.

14900 So fundamentally this is a bill that would restore the fair
14901 and open online economy that the big tech companies once relied
14902 on themselves, ensuring that today's small businesses have the
14903 same opportunities that today's giants once enjoyed.

14904 And, finally, I want to emphasize how important it is that
14905 his legislation includes a private right of action. The bill
14906 empowers anyone injured by a violation to have their day in court
14907 and to win treble damages.

14908 I am proud to have championed this provision. And as excited
14909 as I am that the brilliant Lina Khan is now chairing the FTC,
14910 we may not always have such staunch anti-monopolists in power.
14911 And so a private right of action ensures that no matter who is
14912 in charge in Washington, the people have the power to right the
14913 wrongs of big tech. So I urge all of my colleagues in both parties

14914 to support this legislation.

14915 And with that, Mr. Chairman, I would yield back the balance

14916 of my time.

14917 Chairman Nadler. The gentleman yields back.

14918 Who seeks recognition? For what purpose does Ms. Lofgren

14919 seek recognition?

14920 Ms. Lofgren. To strike the last word.

14921 Chairman Nadler. The gentlelady is recognized.

14922 Ms. Lofgren. Once again, we have identified an actual

14923 serious problem, which is large platforms that have a large share

14924 of the market, in some cases abusing that market share to the

14925 disadvantage of competitors.

14926 There is a long history in antitrust of industries

14927 discriminating and the Government taking action about that

14928 discrimination. For example, common carriers such as railroads

14929 and freight companies and telecommunication providers, and the

14930 like.

14931 So that issue is important. But before we get into it, I

14932 have to say, even though that is an important discussion, this

14933 bill goes so far, far beyond what would be necessary to address

14934 the specific real-world allegations of self-prefacing and other

14935 abuses by the platform that is simply extreme.

14936 In presumptively deeming broad and abstract categories of

14937 platform conduct as, quote, "unlawful discrimination" in Section

14938 2, it would have a result that I think will be unwelcome in the
14939 country. I will just give you one example.
14940 It will broadly deem it unlawful for a platform to interfere
14941 with or restrict a business user's pricing of its products or
14942 services. What does this mean in practice? Would it include
14943 all limitations by Google or Apple in how apps are priced in their
14944 app store?
14945 What about Amazon regulating in any way how third party
14946 sellers price their goods? And would this broad category of
14947 presumptively unlawful conduct prohibit Amazon or another
14948 platform from establishing price limits for certain products to
14949 prevent misleading price gouging?
14950 The other question about the overreach here is legitimate
14951 questions about how the bill might deem as unlawful, because it
14952 is preferencing one's own product, everything from Amazon Prime
14953 to pre-installed apps. For example, Amazon Prime does preference
14954 Amazon products. And I will tell you, I like Amazon Prime. I
14955 think if that were prevented from being available to American
14956 consumers, there would be great distress.
14957 Now, I recognize there is a defense, but that is only provable
14958 after months of litigation, with a heavy burden of proof and
14959 requiring platforms to disprove any harm to the competitive
14960 process. And because there is a private right of action included
14961 in the bill, at a minimum this would create a huge risk of

14962 unnecessary litigation for platforms throughout every part of
14963 their business. And given the way the bill is structured, I think
14964 it is highly likely this will include and promote bad faith,
14965 troll-style litigation, trying to exact quick settlements.
14966 I think this reflects a basic flaw in how this bill is
14967 designed by not requiring any sort of anti-competitive arm,
14968 anti-competitive intent, or any particular facts of concern in
14969 order to deem conduct as unlawful under Section 2. I think this
14970 creates a risk of drastic overreach far beyond what is necessary
14971 to address the specific harms and competitive risks.
14972 And just mentioning some of the alternatives, the platform
14973 product services and useful integrations would be presumptively
14974 unlawful. As I have mentioned, Amazon Prime could be eliminated
14975 because it advantages non-prime products. Google presumably
14976 would not be able to display Google Maps with information boxes
14977 on that map.
14978 Apple would be blocked from pre-installing it on my phone
14979 in Apple's iOS because pre-installation advantages its product.
14980 Those are all in Section 2A(1) and (2) and 2B.
14981 I think there are other concerns about the bill relative
14982 to disinformation sites. If you discriminate among
14983 similarly-situated business users, aren't you telling Apple that
14984 they can't kick Infowars out of their app store unless they also
14985 do something about 4chan, Parler, and Gab? And, if not, they

14986 are going to result in litigation.

14987 I think, as I say, there is a serious problem in this space,
14988 and it deserves a serious answer. But this bill is so flawed,
14989 and is such an overreach, that it will not actually solve the
14990 problems that we face. I say this with some regret because I
14991 know Mr. Cicilline has worked diligently for many months, really
14992 even years, and yet this bill does not provide the remedy to the
14993 problems that have been identified.

14994 So, Mr. Chairman, I see that my time has expired, and I yield
14995 back.

14996 Chairman Nadler. The gentlelady yields back.

14997 For what purpose does Mr. Lieu seek recognition?

14998 Mr. Lieu. I move to strike the last word.

14999 Chairman Nadler. The gentleman is recognized.

15000 Mr. Lieu. Thank you, Chairman Nadler, and once again, I
15001 do want to thank Subcommittee Chairman David Cicilline for taking
15002 on this very challenging and tough issue, and you've identified
15003 a lot of practices that we do need to change.

15004 I am going to give you some of my concerns I hope you can
15005 work on prior to your bill reaching the House floor.

15006 My first concern is that your bill would arbitrarily give
15007 Walmart.com a massive advantage. If the committee believes that
15008 these practices are really bad and that they should be banned
15009 because they're anti-competitive, then why are we applying the

15010 bill to only a very small handful of companies?

15011 So, for example, your bill would bar Amazon from giving

15012 preference to Amazon-branded products. Yet, Walmart.com would

15013 be able to give preference to Walmart-branded products.

15014 Walmart has more retail sales than Amazon and Walmart has

15015 a market cap of over $380 billion dollars. Why would we exempt

15016 Walmart from your bill?

15017 In fact, your bill would give an unfair advantage to any

15018 online retailer not named Amazon. A few days ago, I entered a

15019 search query, Bose Noise Cancelling Headphones Version 700. The

15020 search turned up over a dozen online platforms that sold that

15021 headphone. I'm going to give you some of those prices.

15022 Bestbuy.com was selling those headphones for $299. Amazon

15023 was selling them for $329, Qvc.com for $329, eBay for $374 and

15024 Nordstrom.com for $379.

15025 So for that headphone product on that particular day,

15026 Bestbuy.com had a better deal than Amazon in a very robust

15027 marketplace with a lot of consumer choice. Yet, of all these

15028 online platforms, each of which is also tracking your buying

15029 habits, we're applying your bill to only one online retail

15030 platform.

15031 We don't do this in other contexts in antitrust law. For

15032 example, current antitrust law bans price fixing, but we don't

15033 say, hey, medium-sized companies and large companies can engage

15034 in price fixing but one really large company can't do that. We
15035 deem price fixing anti-competitive so we ban it across the board.
15036
15037 So my view is if this committee believes a practice is bad
15038 when Amazon does it, then it should be bad when Walmart.com does
15039 it or any other retailer.
15040 So I strongly urge that before your bill hits the House floor,
15041 you've got to change the definition of the covered entity.
15042 My second concern is that this package of bills as written
15043 will likely weaken cybersecurity. Apple has chosen iPhone
15044 business model with a closed system. One advantage of that model
15045 is Apple iPhones have better privacy and cybersecurity.
15046 There's far less malware on Apple iPhones because of Apple's
15047 iOS operating system and because Apple screens the type of apps
15048 it allows on the App Store.
15049 Your proposed bill, which in the way it also interacts with
15050 their interoperability bill, would appear to dismantle Apple's
15051 closed system approach that has resulted in better privacy and
15052 cybersecurity than other business models.
15053 One of the provisions of legislation could also be read to
15054 require Apple to give unimpeded access to iPhone hardware. I'm
15055 a recovering computer science major, and I know that can cause
15056 significantly huge problems.
15057 Apple would, essentially, have to weaken its operating

15058 system to provide a direct path for another business to have
15059 unimpeded access to the iPhone hardware. That means malware
15060 could exploit that path, get direct access to iPhone hardware,
15061 and install viruses on your iPhone.
15062 And I just want to conclude again with the way that the report
15063 was generated. I commend their extensive work done on the report,
15064 except the report and the investigation focused on only four
15065 companies.
15066 How do we know Walmart.com isn't engaged in all sorts of
15067 anti-competitive practices? Or Microsoft or eBay or Twitter or
15068 Uber?
15069 And so it's sort of a circular definition to say, well, the
15070 reason we're only doing these bills on four companies is because
15071 we only investigated four companies.
15072 Well, the problem is there are other companies directly
15073 competing with these four companies that the subcommittee did
15074 not investigate.
15075 And so you're giving a massive advantage to every company
15076 that this subcommittee did not investigate by putting on all these
15077 restrictions on the only four companies that the subcommittee
15078 did investigate.
15079 So, again, I think a better approach is if you deem a practice
15080 anti-competitive, then apply it not just to Amazon but to other
15081 companies that do the same anti-competitive practice.

15082 With that, I yield back.

15083 Chairman Nadler. The gentleman yields back.

15084 For what purpose does Ms. Jackson Lee seek recognition?

15085 Ms. Jackson Lee. Mr. Chairman, I have an amendment at the

15086 desk, Amendment No. 1.

15087 Chairman Nadler. The clerk will report the amendment.

15088 Ms. Jackson Lee. And I have an Amendment No. 2.

15089 Chairman Nadler. Well, one at a time.

15090 Ms. Fontenot. Amendment to the amendment in the nature of

15091 a substitute to H.R. 3816 offered by Ms. Jackson Lee of Texas.

15092 [The Amendment offered by Ms. Jackson Lee follows:]

15093

15094 **********COMMITTEE INSERT**********

15095 Chairman Nadler. Without objection, the amendment is
15096 considered as read and the gentlelady is recognized in support
15097 of the amendment.
15098 Ms. Jackson Lee. Again, let me thank Mr. Cicilline and his
15099 co-sponsor, Mr. Gooden, for this legislation, and as well to the
15100 chairman and for the members who are here for this important
15101 historic moment.
15102 I rise to support -- no, I'm doing them in order -- I rise
15103 to support -- ladies and gentlemen, it's No. 1 that's coming to
15104 you.
15105 [Pause.]
15106 Ms. Fontenot. Amendment to the amendment in the nature of
15107 a substitute to H.R. 3816 offered by Ms. --
15108 Chairman Nadler. Without objection, the amendment is
15109 considered as read and the gentlelady is recognized in support
15110 of the amendment.
15111 Ms. Jackson Lee. Do all the members have No. 1?
15112 [Pause.]
15113 Ms. Jackson Lee. Again, thank you, Chairman, for the
15114 opportunity to explain my amendment to H.R. 3816, the American
15115 Choice and Innovation Online Act, which I'm proud to strongly
15116 support.
15117 My amendment is easy to understand and vitally important.
15118 It simply expands the prohibition on retaliation already in the

15119 bill to protect all persons who might raise concerns with law
15120 enforcement about a covered platform's violation of state and
15121 federal law rather than only protecting business users and covered
15122 platform users.

15123 My amendment also expands the prohibition on retaliation
15124 to include retaliation from participating in litigation to
15125 enforce this act. This amendment is critically important because
15126 it expands protection to the employees and independent
15127 contractors of public platforms, among others.

15128 It is employees and independent contractors who are most
15129 intimately familiar with an organization's business practices,
15130 and those are the individuals who are most likely to uncover
15131 potential violations of law.

15132 If retaliation for contacting law enforcement entities were
15133 not prohibited, it would have a chilling effect on the willingness
15134 of individuals to speak out upon uncovering such violations.

15135 Mr. Chairman, history is littered with accounts of brave
15136 individuals who spoke out when they discovered that the
15137 organization they were a part of was potentially violating the
15138 law for Mark Felt, a former FBI officer who anonymously provided
15139 the Washington Post with critical information about the Watergate
15140 scandal, to Sherron Watkins, a former vice president of Enron
15141 Corporation who raised the alarm about accounting irregularities
15142 in the company's financial reports.

15143 Again, this is a very straightforward amendment. I ask my
15144 colleagues to support it, and I yield back my time.
15145 Chairman Nadler. The gentlelady yields back.
15146 I recognize myself in support of the amendment. This
15147 amendment clarifies the bill to improve the bill in that -- in
15148 that retaliation against certain parties -- to clarify the
15149 retaliation against certain parties is not permitted.
15150 And I urge support of the amendment and I yield back.
15151 Anyone else seek recognition?
15152 [No response.]
15153 Chairman Nadler. If not, the --
15154 Mr. Swalwell. Mr. Chairman?
15155 Chairman Nadler. Who seeks recognition?
15156 Mr. Swalwell. Swalwell.
15157 Chairman Nadler. The -- for what purpose does the gentlemen
15158 seek recognition?
15159 Mr. Swalwell. Move to strike the last word.
15160 Chairman Nadler. The gentleman is recognized.
15161 Mr. Swalwell. Mr. Chairman, my concern with this amendment
15162 and, frankly, the bill is the scope, and let me begin by saying,
15163 essentially, if the scope was to include every American business,
15164 you would be telling Walmart or Target that they would have to
15165 carry any widget that any person wants to bring into their store
15166 in addition to what that store would want to sell to its consumers.

15167 You would tell a Mexican restaurant that they would have
15168 to sell French food, and a French restaurant that they would have
15169 to sell Mexican food if someone came into their store and said,
15170 I want you to do this.
15171 It's called side loading, as it relates to Apple, and the
15172 real scope here is that this is aimed directly at Apple and Amazon,
15173 and you are telling Apple that their curated App Store, which
15174 is not a defect but a feature that its users, with other choices
15175 of Samsung, Google, multiple Chinese phones, have signed up to
15176 use would no longer be curated by Apple.
15177 But, rather, it would essentially be a flea market where
15178 anyone could bring any app into the store, regardless of security
15179 or privacy concerns.
15180 So the Chinese, for example, could flood the App Store with
15181 apps that would allow the Chinese government to go all the way
15182 down the stack into all of our data. This new flea market style
15183 App Store would also have no regard to the privacy restrictions,
15184 the high privacy standards, that Apple has always had in place.
15185 I don't think we want to go there. There is enough
15186 competition in the market. And while Mr. Issa said earlier that
15187 Apple has, you know, I think half of the iPhone -- half of the
15188 smart phones in the United States, I don't think it's that high.
15189
15190 Actually, as I said earlier, you have Samsung, you have

15191 Google, you have other Chinese products on the market. Consumers
15192 have choices. If they don't like the curated Apple Store, they
15193 can go to the Google Play Store or the Samsung store or the other
15194 devices.
15195 I will tell the committee that I have about 3,500 Apple
15196 employees who live in my district. But this is not a bias I carry.
15197
15198 This is knowledge that I have from interacting with these
15199 employees and understanding what makes the secret sauce at Apple
15200 and how you would essentially break this brand because they would
15201 be required to do something that no other business is going to
15202 be asked to do.
15203 We are all aware of the Parler example after the January
15204 6th insurrection where Apple told Parler because they were
15205 allowing violence and messages of violence to be displayed on
15206 their platform they would be de-platformed unless they cleaned
15207 that up.
15208 They were able to do that because this legislation was not
15209 in place. If this legislation is in place, Parler, with no
15210 restrictions, being a platform to allow insurrection, goes right
15211 back onto the Apple platform into the App Store.
15212 Also, I think it's important to note that only 70 of the
15213 2 million apps in the App Store are Apple products. And so this
15214 is not a case where the store is flooded with Apple products and

15215 consumers do not have a choice.

15216 Mr. Lieu brought up an example about Amazon, and just two
15217 nights ago I had to buy aluminum foil for our house. We have
15218 got a four-year-old and a two-year-old. We go through a lot of
15219 leftovers.

15220 I went on Amazon, and actually Amazon's choice -- and if
15221 you all look this up right now on your phone on your Amazon Prime
15222 account, Amazon's choice is not even its own Amazon product.
15223 It's a Reynolds product that Amazon features as Amazon's choice.
15224

15225 So, again, I don't accept that this is an abuse that is
15226 occurring, especially when you have so much competition in the
15227 market.

15228 So one final point, Mr. Chair. You know, Apple's biggest
15229 competitor is a foreign competitor in Samsung, but Samsung would
15230 not be -- would not have to comply with any of these rules.

15231 So we would make an American company that has thousands of
15232 American jobs here in the United -- here in the United States,
15233 they would be subjected to these rules while foreign companies
15234 would not.

15235 So that's why I'm going to oppose this bill. I would also
15236 ask to insert into the record a June 22 letter from Apple to the
15237 chairman, as well as a June 2021 white paper from Apple laying
15238 out their concerns.

15239 And I yield.

15240 Chairman Nadler. Without objection.

15241 [The information follows:]

15242

15243 **********COMMITTEE INSERT**********

15244 Chairman Nadler. The gentleman yields back?

15245 Mr. Swalwell. Yield back. Yes.

15246 Chairman Nadler. The gentleman yields back.

15247 For what purpose -- for what purpose does Mrs. Spartz seek

15248 recognition?

15249 Mrs. Spartz. I move to strike the last word.

15250 Chairman Nadler. The gentlelady is recognized.

15251 Mrs. Spartz. Thank you, Mr. Chairman.

15252 I should not oppose this amendment. But I do have a similar

15253 problem what my -- some other colleagues mentioned with this bill.

15254 You know, I thank you for work further on this bill. You know,

15255 maybe that could be resolved.

15256 But as of right now, there is some conflict of interest and

15257 conducts can be outrageous and, really, can get to the level where

15258 they become unlawful. But what is good for the goose it should

15259 be good for the gander, right?

15260 So we cannot adjust apply to some people and not apply to

15261 other entities. So I think if we evenly apply we believe this

15262 is about illegal conduct. If we believe it's bad then it's bad

15263 regardless who is doing that conduct, and I think that is a big

15264 flaw with this particular bill.

15265 We shouldn't be just target it to any particular entities.

15266 Are they bad or good, and we should decide and deliberate on

15267 some of these items. Some of them sounds pretty bad and -- but

15268 I think the whole application of the bill is very concerning to
15269 me.
15270 So I'll support this amendment and I know we have, I think,
15271 a lot of amendments, and I'll be open minded to this bill. But
15272 I think in the form like it is, I think it just really targets
15273 only a few entities and it should -- we should apply law equally
15274 to all of the stakeholders.
15275 If it's a crime, it's a crime. If it's not, if it's not.
15276 It should be applied equally to any and not exempt anyone from
15277 the effects of the law.
15278 I yield back.
15279 Chairman Nadler. The gentlelady yields back.
15280 Mr. Cicilline. Mr. Chairman?
15281 Chairman Nadler. For what purpose does the gentleman from
15282 Rhode Island seek recognition?
15283 Mr. Cicilline. Move to strike the last word.
15284 Chairman Nadler. The gentleman is recognized.
15285 Mr. Cicilline. I, first, want to thank the gentlelady from
15286 Texas for her amendment. I think it's an excellent one and
15287 improves the bill, and I strongly urge my colleagues to support
15288 the amendment.
15289 I also want to use this opportunity to respond to some of
15290 the issues that have been raised that I think, you know, to be
15291 very frank, are part of the industry talking points.

15292 Nothing in this bill prevents Amazon Prime from existing.
15293 Nothing in this bill prevents preinstalled apps.
15294 With respect to Amazon Prime, that is a service that is
15295 offered both for Amazon products and third party sellers. So
15296 it's not discriminatory.
15297 With respect to preinstalled apps, so long as those apps
15298 can be uninstalled and users have the option to do that easily,
15299 it's not discriminatory. And so if you look at the definitions
15300 in the bill that are included in the American Innovation and Choice
15301 Online, it will not prevent dominant platforms also from
15302 protecting user privacy and data security.
15303 In fact, the legislation includes explicit protections to
15304 ensure that covered platforms can protect user privacy and data
15305 security to make certain these firms can stop malware, scams,
15306 and illegal conduct and prevent the spread of malicious content.
15307
15308 I would understand my colleagues' concerns if this bill
15309 actually stopped a covered platform from these beneficial
15310 activities, but it does not. It's not -- it is not
15311 anti-competitive for platforms to protect user privacy.
15312 It's not anti-competitive for platforms to protect the
15313 security of their ecosystems. And it's not anti-competitive for
15314 platforms to protect users from malware, scams, or illegal and
15315 malicious content.

15316 I'll repeat it loudly and clearly the bill does not prohibit
15317 platforms from protecting their users. It does not prohibit
15318 platforms from protecting security. What the bill does is
15319 narrowly targets a discrete set of abusive and exploitative
15320 practices that dominant platforms engage in to disadvantage
15321 rivals and boost their own products and services.
15322 Time and again, these companies rely on buzzwords like
15323 privacy and security as a pretext to justify anti-competitive
15324 conduct. All too often these firms use privacy as a sword and
15325 a shield. They justify anti-competitive conduct under the guise
15326 of enhancing privacy and security.
15327 They decry efforts to rein in their monopoly power by
15328 claiming it will impede their ability to protect user privacy
15329 and security. These claims are nothing but gaslighting. These
15330 companies are counting on their ability to scare us into doing
15331 nothing.
15332 This legislation before us will stop monopolistic practices
15333 by covered platforms and, importantly, will inject much-needed
15334 competition and dynamism to the digital marketplace.
15335 And the examples that have been given do not violate the
15336 statute and, again, the legislation was developed after an
15337 extensive record where we heard from small businesses about the
15338 unfair treatment by these large platforms that routinely favored
15339 their own products and services to the disadvantage of small

15340 businesses, often resulting in driving them out of business.

15341 This eliminates that. It creates a level playing field to

15342 bring more dynamism, more competition, better results for

15343 consumers, more opportunities for small businesses, and more

15344 competition.

15345 And with that, I yield.

15346 Mr. Bishop. Would the gentleman yield for a question?

15347 Will the gentleman yield?

15348 Mr. Cicilline. I've already yielded back to the chairman

15349 but -- was that Mr. Jones?

15350 Mr. Jones. Yes.

15351 Mr. Cicilline. Yes. If I'm allowed to, yes. Mr. Jones,

15352 I'm happy to yield to you.

15353 Mr. Jones. Thank you.

15354 I just want to -- I want to sort of elaborate one of the

15355 points that you made, because we have heard more than one person

15356 say, well, why doesn't this cover Walmart? Why doesn't -- why

15357 doesn't this affect certain other companies?

15358 And the fact is [inaudible] anti-competitive [inaudible]

15359 size of the company as well as the structure to that company.

15360 So let's use Walmart, for example, right. What separates

15361 Amazon from Walmart is that Amazon is a -- both a platform and

15362 a seller whereas Walmart is barely a platform at all.

15363 So Amazon's self-preferencing hurts small businesses in a

15364 way that Walmart's could never hurt small businesses, one, because
15365 Amazon hosts 50 percent of all online retail and an even larger
15366 percentage of third party small business sales.
15367 So unlike Walmart, it has the power to decide whether those
15368 small businesses live or die.
15369 And second, Amazon has complete access to its third party
15370 sellers' data, so it can copy them, kill them, or extort them.
15371 And so I just think it's important to clarify that like, again,
15372 practices are only anti-competitive in the context of the size
15373 of these companies as well as the structure of those companies.
15374
15375 And with that, I yield back.
15376 Mr. Cicilline. Yield back, Mr. Chairman.
15377 Chairman Nadler. The gentleman yields back.
15378 Does anyone else seek recognition on this --
15379 In that case, the question occurs on the amendment.
15380 All in favor say aye.
15381 Opposed, no.
15382 The ayes, obviously, have it. The amendment is agreed to.
15383
15384 Ms. Jackson Lee. Mr. Chairman?
15385 Chairman Nadler. For what purpose does the gentlelady from
15386 Florida seek recognition?
15387 Ms. Jackson Lee. I'm from Texas.

15388 Chairman Nadler. Texas. I'm sorry. I keep doing that.

15389 [Laughter.]

15390 Chairman Nadler. From Texas seek recognition?

15391 Ms. Jackson Lee. I have an amendment at the desk, Amendment

15392 No. 2. I don't mind sharing with my sister.

15393 Chairman Nadler. The clerk will report the amendment.

15394 Ms. Fontenot. Amendment to the amendment in the nature of

15395 a substitute to H.R. 3816 offered by Ms. Jackson Lee of Texas.

15396 On page 1 line 17 amend Section 2(a)(3) by inserting before the

15397 period the following quote: "including those business users

15398 employed by businesses owned by -- "

15399 Chairman Nadler. Without objection, the amendment is

15400 considered as read and the gentlelady is recognized in support

15401 of the amendment.

15402 [The Amendment offered by Ms. Jackson Lee follows:]

15403

15404 **********COMMITTEE INSERT**********

15405 Ms. Jackson Lee. Thank you very much, Mr. Chairman. And
15406 I really -- let me, first of all, thank my colleagues on the other
15407 side of the aisle for their support of the previous amendment.
15408 Excuse me for my raspy voice.
15409 Let me, again, thank Mr. Cicilline and Mr. Buck, and thank
15410 the chairman and ranking member of the full committee as well,
15411 and thank you for this opportunity to express my concerns, which
15412 I hope that I can draw up bipartisan support.
15413 My amendment is easy to understand. It's vitally important.
15414 It simply specifies that discrimination among business users
15415 includes discrimination against minority and women-owned
15416 businesses.
15417 Let me share some numbers with you. According to a 2014
15418 special report of the Equal Employment Opportunity Commission,
15419 African Americans make up 7.4 percent of tech workers, Latinx
15420 make up 8 percent of tech workers, AAPI make up 14 percent of
15421 tech workers, women make up 36 percent of tech workers, compared
15422 with others at 68.5 percent.
15423 After six years of diversity reports by the largest
15424 technology, it is clear that there has been difficulty in change.
15425
15426 Without diverse employees, bias is a serious problem that
15427 creeps into artificial intelligence models, negatively affecting
15428 enterprises that use artificial intelligence tools that resulted

15429 in harmful consequences.

15430 As one extreme example, it was reported in 2015 that the
15431 Google image recognition algorithm was classifying African
15432 Americans as gorillas. It took Google three years to fix this
15433 issue. And that's due to lack of diverse employees.

15434 It is difficult to ensure that women and minority-owned
15435 businesses are not disadvantaged by algorithms designed primarily
15436 by others.

15437 Over the -- over the first two months of the health crisis,
15438 the number of active minority business owners plummeted. Black
15439 business owners dropped 41 percent, Latino business owners
15440 dropped 32 percent, Asian business owners dropped 26 percent,
15441 as compared to the majority.

15442 This is a very small provision that I hope will get bipartisan
15443 support that simply emphasizes in a simple manner that the
15444 minority and women-owned businesses should, in particular, not
15445 be discriminated against.

15446 We hope that what we will do is increase the diversity, build
15447 on the economy, and as you well know, when you build on diverse
15448 communities you build on the economic engine of America.

15449 So I ask my colleagues to support this amendment, and I
15450 reserve --

15451 Mr. Cicilline. Will the gentlelady yield?

15452 Ms. Jackson Lee. Which way is -- oh. I yield to the

15453 gentleman.

15454 Mr. Cicilline. I thank the gentlelady, and I thank her for
15455 raising this issue because while her remarks relate to specific
15456 discrimination against women and communities of color and the
15457 focus of the underlying bill is about economic discrimination,
15458 there is no question that the absence of competition and the
15459 crushing power of these monopolies has been particularly harmful
15460 to women and minority-owned businesses.

15461 And so I would ask the gentlelady if she would work with
15462 me to figure out what's the best language to make sure that we
15463 embed that in a way that kind of reflects the concerns you've
15464 raised in this bill and perhaps in others that we have considered
15465 tonight, because I think this is a very, very important issue
15466 and I thank you for raising it.

15467 And I'd ask if you would withdraw this particular amendment
15468 just and commit to work with me before this reaches the floor
15469 to be sure it has a provision that reflects your concerns that
15470 you've articulated tonight.

15471 Ms. Jackson Lee. As the gentleman knows, this is an
15472 extremely important issue to many of us and extremely important
15473 issue to me. I would hope that this would have bipartisan
15474 support.

15475 I would look forward to working with the gentleman. I'd
15476 like to do so in the immediacy of this committee session so that

15477 we have language that we can work on that actually expands
15478 opportunity for minority and women-owned businesses, which I
15479 think the statistics suggest that there is a great need.
15480 At this time I will withdraw the amendment.
15481 Chairman Nadler. The amendment is withdrawn.
15482 Mr. Bishop. Mr. Chairman, move to strike the last word.
15483
15484 Chairman Nadler. The gentleman is -- for what purpose does
15485 the gentleman --
15486 Mr. Bishop. Move to strike the last word.
15487 Chairman Nadler. The gentleman is recognized.
15488 Mr. Bishop. Thank you, Mr. Chairman.
15489 I think the amendment offered and then withdrawn sort of
15490 raises something that is of interest. The gentleman from Rhode
15491 Island, I think, a moment ago said that there are a series of
15492 discrete ways in which discrimination against business users is
15493 prohibited, and, indeed there is.
15494 If you go down to subsection (b) of Section 2, you got a
15495 lengthy series of them. You ban tying arrangements. You ban
15496 -- you have a mandate -- let's say you have a derived data
15497 exploitation ban. You have a derived data access court
15498 portability mandate, a hard default, apps and services ban, an
15499 anti-redirect ban. It goes on at some length.
15500 But I think what the -- what the attempt of the member or

15501 the tentative amendment that was then withdrawn stuck in there
15502 at the end of subsection (a) tends to point out is, what is the
15503 purpose of having (a)?
15504 You can't tell what it is that it bans, particularly, given
15505 that you've got this impressive list of specific economic wrongs
15506 that are -- that are banned in subsection (b). I don't think
15507 it's understandable, and I think it is -- it could mean anything.
15508
15509 And as I said a long time ago now, when you -- this is another
15510 example of empowering regulators to make up something that none
15511 of us can possibly predict.
15512 And I'd be inclined to yield to the gentleman if he would
15513 be interested in responding to that.
15514 Mr. Cicilline. Thank you. Happy to.
15515 So Section (a) reflects prohibitions on self-preferencing
15516 and exclusion. What's contained in subsection (b) are a set of
15517 prohibited conduct for which there's really no competitive
15518 justification.
15519 All of those things were identified during the course of
15520 the investigation. I think each of them, section (b)(1) through
15521 (3), (4), (5), (6) are all discriminatory behaviors with no
15522 competitive justification.
15523 Mr. Bishop. I thank the gentleman and reclaiming my time.
15524 I guess what I -- I think all of those discrete examples

15525 in subsection (b) are ways in which the covered platforms are
15526 not going to be permitted to preference themselves.
15527 But they are -- they're specific and, therefore,
15528 understandable. (A) doesn't add anything and, certainly, when
15529 you get to a (a)(3), it says it's unlawful for any person operating
15530 in a covered platform to engage in any conduct in connection with
15531 the operation of that covered platform that discriminates among
15532 similarly situated business users. It's just indecipherable.
15533 It's so vague and vacuous it leaves someone to make it up as
15534 they go.
15535 And unless there's somebody else who wants to take over.
15536 Do you want to yield?
15537 I yield to the gentlewoman from Indiana, Mrs. Spartz.
15538 Mrs. Spartz. Thank you. I just wanted to add to that.
15539 It seems like this section is really broad, ambiguous, and very
15540 -- have a lot of application because what is really discriminate
15541 amongst similar situated businesses, it's very broad and seems
15542 like -- I can understand bringing some of the other questions
15543 that is more particular with behavior.
15544 But interpretation -- it's open to a lot of interpretations.
15545 So you can argue that, you know, minority and women-owned
15546 businesses are already included. That's part of that, is similar
15547 situated.
15548 You can argue anything you want, and it's really becoming

15549 very, you know -- you know, needs to be tied. And if this bill
15550 should proceed, this section really needs some work because it
15551 really opens cans of worms with applications. Such a broad
15552 language.
15553 Mr. Cicilline. Will the gentlelady yield for a question?
15554 Oh, I'm sorry. The gentleman.
15555 Mr. Bishop. I would -- I would yield to Mr. Cicilline for
15556 an answer.
15557 Mr. Cicilline. Thank you. So I think, again, that language
15558 in subsection (3) discriminates among similarly situated business
15559 uses intended to create an even playing field and prevent
15560 platforms from picking winners and losers.
15561 But I agree with you that there's a lot of detail in the
15562 other discriminatory conduct in subsection (b). So, you know,
15563 we have accepted some of your amendments in the past.
15564 If you're saying striking (3) as an amendment would cause
15565 you to support the balance of the bill, that's something I would,
15566 certainly, contemplate because I think if that -- if that raises
15567 concern, I think it's, clearly, intended -- that language is
15568 intended to ensure that platforms don't get to pick winners and
15569 losers and discriminate amongst similarly situated businesses.
15570
15571 But if you're uncomfortable with that language, part of this
15572 process is deliberative. If it would earn your support to remove

15573 (3) and leave (1) and (2) intact I'd, certainly, entertain that.

15574

15575 Mr. Bishop. My time has expired. I yield back.

15576 Chairman Nadler. The gentleman --

15577 [Laughter.]

15578 Mr. Cicilline. We'll take that as a no.

15579 Chairman Nadler. The gentleman yields back.

15580 Mr. Jordan. I have an amendment.

15581 Chairman Nadler. For what purpose does the gentleman from

15582 Ohio seek recognition?

15583 Mr. Jordan. Thank you, Mr. Chairman. I have an amendment

15584 -- the amendment at the desk.

15585 Chairman Nadler. The clerk will report the amendment.

15586 Mr. Cicilline. Reserve a point of order, Mr. Chairman.

15587 Chairman Nadler. A point of order is -- a point of order

15588 is reserved.

15589 Ms. Fontenot. Amendment to the amendment in the nature of

15590 a substitute to H.R. 3816, offered by Mr. Jordan. Page 1 line

15591 15 strike --

15592 Chairman Nadler. Without objection, the amendment is

15593 considered as read and the gentleman is recognized in support

15594 of the amendment.

15595 [The Amendment offered by Mr. Jordan follows:]

15596

15597 **********COMMITTEE INSERT**********

15598 Mr. Jordan. Thank you, Mr. Chairman.

15599 Democrats have told us that we can't change the definition
15600 of covered platform, even though a week ago they change the
15601 definition. They changed it in an effort to keep Microsoft out
15602 of the four companies that they want to have covered.

15603 Democrats told us that there's a burden shift for any
15604 mergers, and then they changed that and said, well, there's a
15605 burden shift for any mergers for the covered platforms unless
15606 they're merging with a company of $50 million or less.

15607 And Democrats said we have to give the FTC and DOJ more money
15608 but we can't put any limits on how that money is spent. And then
15609 time and time again, they've said no to the most important
15610 question, in my judgment.

15611 I think probably the most important question, certainly,
15612 for the Republican side of the aisle and that is the censorship
15613 of speech, the restriction on speech, the limits placed on free
15614 speech, the content moderation that is done by these big
15615 companies.

15616 So I'm going to try one more time. This amendment explicitly
15617 creates a private right of action. The amendment would prohibit
15618 a covered platform from engaging in politically biased content
15619 moderation.

15620 Time and again, we have seen big tech stifle viewpoints that
15621 don't align with their political ideologies, and all too often

15622 these viewpoints are conservative. If a person believes that
15623 they've been discriminated against by a qualifying company, they
15624 will be able to seek a remedy in federal court.
15625 If the person prevails, they will be able to recover actual
15626 damages, costs, and punitive damages. During the 2020 election,
15627 we saw big tech play politics under the guise of enforcing content
15628 moderation standards.
15629 Big tech is out to get conservatives, from elected officials
15630 to everyday Americans across the country, and this gives the
15631 average American a remedy.
15632 It is very similar to what the governor of Florida has done
15633 with the Florida legislature, empowering candidates, empowering
15634 people to bring causes of action when their content has been taken
15635 down, when it's been censored, when it's been restricted.
15636 That's all this amendment does. It seems straightforward.
15637 I hope that the majority will not, once again, say, oh, we can't
15638 deal with this. We can't deal with the most important issue when
15639 it comes to big tech, at least the most important issue I hear
15640 from my constituents.
15641 My guess is you all hear -- and someone said this earlier.
15642 This whole thing, it's going to -- if it hasn't hit you yet it's
15643 going to hit everyone. So it seems to me, as I've said before,
15644 that this committee should -- the Judiciary Committee should want
15645 to give American people an explicit private right of action when

15646 this, in fact, this kind of behavior happens to them on these
15647 platforms.
15648 Ms. Lofgren. Would the gentleman yield?
15649 Mr. Jordan. With that -- yeah, I'll yield to the lady --
15650 the gentlelady from California.
15651 Ms. Lofgren. It seems to me, and I will -- you know, we
15652 see this differently, and I will have an amendment that would
15653 cure the problem I'm about to point out.
15654 But I think this -- your amendment is unnecessary because
15655 if you take a look at Section 2(a)(3) --
15656 Mr. Jordan. Page?
15657 Ms. Lofgren. On the first page. You're in violation if
15658 you discriminate among similarly situated business users. So
15659 if you are doing content moderation for a particular entity but
15660 not another, you're discriminating among the business users of
15661 the site, and because the remedy includes a private right of action
15662 for damages in the bill, you could sue under the bill without
15663 this amendment.
15664 Mr. Jordan. Yeah, I think -- I think our amendment is
15665 representing people, too, not just business entities.
15666 Ms. Lofgren. An entity, for example, the Republican Party
15667 or Jim Jordan for Congress --
15668 Mr. Jordan. I appreciate that.
15669 Ms. Lofgren. -- all of which you would have a private right

15670 of action, too.

15671 Mr. Jordan. As a political -- as a political entity.

15672 Ms. Lofgren. Correct. And I thank the gentleman for

15673 yielding.

15674 Mr. Jordan. What I was talking about is individuals as well.

15675 Ms. Lofgren. I thank the gentleman for yielding.

15676 Mr. Jordan. You bet. Thank you.

15677 Mr. Chairman, I yield back.

15678 Chairman Nadler. The gentleman yields back.

15679 Mr. Cicilline. Mr. Chairman?

15680 Chairman Nadler. For what purpose does the gentleman from

15681 Rhode Island seek recognition?

15682 Mr. Cicilline. Move to strike the last word.

15683 Chairman Nadler. The gentleman is recognized.

15684 Mr. Cicilline. Mr. Jordan will not be surprised to hear

15685 that I oppose this amendment. I know he has tried a number of

15686 times to have a content moderation discussion.

15687 But this legislation does not involve content moderation.

15688 It's targeted at anti-competitive conduct in the digital

15689 economy.

15690 I understand that the ranking member has introduced

15691 legislation to address his concerns about this matter. That

15692 legislation has been referred to the Committee on Energy and

15693 Commerce. That is the appropriate venue for addressing these

15694 concerns.

15695 And again, this is about promoting competition online which,

15696 of course, is the purpose of antitrust law, broadly, and the

15697 purpose of this statute, to prevent discriminatory behavior that

15698 favors the product or services of a covered platform, not about

15699 the content and content moderation. And, again, there's a --

15700 Mr. Bishop. Would the gentleman yield for a question?

15701 Mr. Cicilline. Mr. Chairman, I yield back.

15702 Mr. Bishop. Will the gentleman yield for a question before

15703 yielding back?

15704 Mr. Jordan. Is he allowed to -- can we respond?

15705 Mr. Bishop. I don't think the chairman has recognized that.

15706 Chairman Nadler. Did the gentleman yield back?

15707 Mr. Bishop. Mr. Cicilline?

15708 Chairman Nadler. The gentleman yields back.

15709 For what purpose does Mr. Bishop seek recognition?

15710 Mr. Jordan. Can you yield me some time? Thank you. I

15711 thank the gentleman.

15712 Well, I would just --

15713 Chairman Nadler. The gentleman is recognized.

15714 Mr. Jordan. Thank you. Thank you, Mr. Chairman.

15715 Just to respond to the gentleman from Rhode Island, I think

15716 the gentlelady from California said there is a right of action.

15717 She just said it's in the bill. Now you're telling me that we

15718 can't do it. Looks like you did it in your own bill. That's
15719 what Ms. Lofgren just pointed out.
15720 Mr. Cicilline. It's to business users, Mr. Jordan.
15721 Mr. Jordan. Pardon?
15722 Mr. Cicilline. Applies to business users in the bill.
15723 Mr. Jordan. Well, I know, and I said that earlier. We want
15724 to -- we want to extend it to individuals, and you're saying you're
15725 -- is it -- you're making a germane argument or you're saying
15726 you're just opposed to it?
15727 Mr. Cicilline. No, it's different. The bill prohibits it
15728 with respect to business use --
15729 Mr. Jordan. So you are making a germane argument?
15730 Mr. Cicilline. No. No. I'm not making a -- I'm just
15731 opposing your amendment.
15732 Mr. Jordan. Oh, okay. Okay. I got it. I got it.
15733 So I would have a question for the gentlemen then. Do you
15734 support the idea of the amendment I offered -- I don't know if
15735 it was today or yesterday -- but the amendment I offered --
15736 Mr. Issa. Earlier.
15737 Mr. Jordan. -- earlier, definitely earlier, the taking
15738 away the liability protection, do you or do any of the Democrats
15739 support the idea of allowing an explicit private right of action
15740 for an individual and taking away the liability protection that
15741 big tech currently enjoys.

15742 Do you guys support that idea? Because you keep saying no
15743 to it in this context. I want to know if there's any context
15744 that you'll support that. Because, certainly, again, the
15745 constituents I get the privilege of representing they certainly
15746 like that concept.
15747 Mr. Cicilline. Will the gentleman yield? I'm happy to --
15748 Mr. Jordan. Of course.
15749 Mr. Cicilline. I can't remember precisely your proposal,
15750 but I'm certain that I share the views put forth by Mr. Raskin
15751 that I think we need reform of Section 230. That's a matter that,
15752 obviously, is not within the jurisdiction of this committee, but
15753 it's something I believe in strongly.
15754 I would be delighted to work with you and I know Mr. Raskin
15755 would as well, to think -- and Ms. Lofgren -- what the right
15756 contours of that are. I just don't think that this is the
15757 appropriate place to do it. But I --
15758 Mr. Jordan. Then and how about this, if I could, Mr.
15759 Chairman --
15760 Chairman Nadler. Sure.
15761 Mr. Jordan. -- reclaim my time. How about the second
15762 question, do you support this amendment that you're -- I mean,
15763 in a different context. I know you don't support it in this
15764 context. But in a different context do you support a private
15765 right of action if, in fact, an individual's content has been

15766 taken down for political reasons?

15767 Mr. Cicilline. I've explained to you my position on your
15768 amendment. You're talking about revisions to the content
15769 moderation rules governed by Section 230. I think that requires
15770 reform. I just don't think that's appropriate in this bill.
15771 I don't think your amendment --

15772 Mr. Jordan. I know -- I know you don't. I get that. I
15773 know you don't think it's appropriate in this bill. Do you think
15774 it's appropriate in a different bill? Because --

15775 Mr. Cicilline. I told you I think we need to reform Section
15776 230.

15777 Mr. Jordan. I'm not talking about Section 230 here. I'm
15778 talking about explicit private right of action. There are two
15779 different ideas. One is to take away the liability protection
15780 they have, in other words, to allow you to sue explicitly.

15781 Mr. Cicilline. I'm happy to have that conversation after
15782 the markup and talk to you about it. I have no sort of fixed
15783 views on it. I think reform is necessary. Making sure those
15784 rights can be vindicated is an important part of the conversation.
15785

15786 Mr. Jordan. I think it's Mr. Bishop's time, but if he can
15787 yield to the gentlelady --

15788 Ms. Lofgren. Could you yield for a question because it's
15789 getting late and it's hard not to feel grumpy, honestly.

15790 But I think what's being suggested or the question that the
15791 ranking member is asking is whether -- essentially, he's saying
15792 discriminates among similar situated businesses would be expanded
15793 to individuals who are discriminated against.
15794 Mr. Jordan. Yeah. Exactly. Exactly.
15795 Ms. Lofgren. And that's -- I am opposed to that. But that's
15796 what the issue that he's raising. Thank you for yielding.
15797 Mr. Jordan. I thank the gentleman for yielding. I yield
15798 back.
15799 Mr. Bishop. You yield to me, Mr. Jordan.
15800 Mr. Jordan. I think it's your time that I'm yielding back
15801 to you.
15802 Mr. Bishop. Thank you. And I -- excuse me, I'm getting
15803 choked up. My peanuts, which I do have a mild allergy.
15804 I wanted to ask another question to Mr. Cicilline, if you'd
15805 yield to him, and that is his answer to the proposed amendment
15806 then withdrawn from Ms. Jackson Lee was that he thought there
15807 needed to be an amendment to deal with that issue in an appropriate
15808 way. That is to say, the notion of racial or women-owned business
15809 discrimination.
15810 Why not the same sort of treatment here to have something
15811 that avoids discrimination on the basis of political motivation
15812 by virtue of politically biased content moderation?
15813 Mr. Cicilline. Is that -- is that question for me?

15814 Mr. Bishop. But he'd have to yield to you. That's my --
15815 I yield back to Mr. Jordan with the request. I hope that he'll
15816 yield to you.
15817 I beg your pardon. I didn't -- I thought it was Mr. Jordan's.
15818 So he yielded to me.
15819 Mr. Jordan. No, that's yours.
15820 Mr. Bishop. So I'd offer to yield to you, Mr. Cicilline,
15821 if you'd like to answer.
15822 Mr. Cicilline. Yeah. Again, I think one of them relates
15823 to economic discrimination, which is what the purpose of antitrust
15824 and the purpose of this proposal that's before the committee right
15825 now. I think that's quite different, though.
15826 As I mentioned to Ms. Jackson Lee, the consequences to women
15827 and communities of color have been particularly devastating with
15828 respect to this market concentration, and I think that's an
15829 important issue. But that is different than economic harms that
15830 are intended to be covered by this bill.
15831 Mr. Bishop. But you said -- you acknowledged that some
15832 amendment needed to be made to take account of her concern, but
15833 not Mr. Jordan's?
15834 Mr. Cicilline. Because, again, her concern relates to the
15835 economic implications for women-owned businesses and communities
15836 of color. His relates to content moderation for individuals.
15837 They're different issues.

15838 I yield back.

15839 Chairman Nadler. The gentleman's time -- the gentleman's

15840 time has expired. The question occurs on the amendment.

15841 All in favor say aye.

15842 Opposed no.

15843 The noes have it.

15844 Mr. Jordan. A recorded vote on this.

15845 Chairman Nadler. A recorded vote is requested. The clerk

15846 will call the roll.

15847 Ms. Fontenot. Mr. Nadler?

15848 Chairman Nadler. No.

15849 Ms. Fontenot. Mr. Nadler votes no.

15850 Ms. Lofgren?

15851 Ms. Lofgren. No.

15852 Ms. Fontenot. Ms. Lofgren votes no.

15853 Ms. Jackson Lee?

15854 Ms. Jackson Lee. No.

15855 Ms. Fontenot. Ms. Jackson Lee votes no.

15856 Mr. Cohen?

15857 Mr. Johnson of Georgia?

15858 Mr. Johnson of Georgia. No.

15859 Ms. Fontenot. Mr. Johnson of Georgia votes no.

15860 Mr. Deutch?

15861 Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No.

Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. Aye.

Ms. Fontenot. Mr. Owens votes aye.

Chairman Nadler. Mr. Deutch?

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Chairman Nadler. Mrs. Fischbach?

Mrs. Fischbach. Yes. Or, I'm sorry. No.

Ms. Fontenot. Ms. Fischbach votes no.

Chairman Nadler. Has everyone voted who wishes to vote?

[No response.]

Chairman Nadler. The clerk will report.

[Pause.]

Ms. Fontenot. Mr. Chairman, there are 18 ayes and 24 noes.

15982 Chairman Nadler. The amendment is not agreed to.

15983 Are there any further amendments to the amendment in the

15984 nature of a substitute?

15985 Ms. Lofgren. Mr. Chairman, I --

15986 Chairman Nadler. For what purpose does the gentlelady from

15987 California seek recognition?

15988 Ms. Lofgren. I have an amendment at the desk.

15989 Chairman Nadler. The clerk will report the amendment.

15990 Ms. Lofgren. 15 XML, page 23.

15991 Ms. Fontenot. Amendment to the amendment in the nature of

15992 a substitute to H.R. 3816 offered by Ms. Lofgren of California.

15993 Page 23 after line 5 --

15994 Chairman Nadler. Without objection, the amendment is

15995 considered as read and the gentlelady is recognized in support

15996 of the amendment.

15997 [The Amendment offered by Ms. Lofgren follows:]

15998

15999 **********COMMITTEE INSERT**********

16000 Ms. Lofgren. Mr. Chairman, this amendment provides an
16001 action taken by a covered platform operator shall not be
16002 considered unlawful conduct under subsection 2(a) or (b) of this
16003 act if it is good faith, nonpretextual, and reasonably tailored
16004 in its application of content moderation policies intended to
16005 restrict access to or availability of material that a covered
16006 platform operator or user considers to be obscene, lewd,
16007 lascivious, filthy, excessively violent, harassing, hateful,
16008 facilitating unlawful content, or otherwise objectionable,
16009 whether or not such material is constitutionally protected.
16010 Now, why am I offering this? If you take a look at Section
16011 2(a)(3), for example, it is a violation to discriminate among
16012 similarly situated businesses, and there's no requirement that
16013 there be an anti-competitive aspect to it.
16014 It's simply the discrimination on its face. That would
16015 allow a moderated business to seek redress. For example, recall
16016 a few years ago Apple removed Infowars, that app, from its App
16017 Store for violating Apple's content policies, spreading
16018 misinformation and hateful content in bad faith.
16019 Now, they could bring a claim that similarly situated apps
16020 were left up on the platform and that they were discriminated
16021 against.
16022 Now, I know Mr. Cicilline will likely argue that the
16023 affirmative defense in the bill would protect content moderation

16024 policies. But I think that is uncertain at best and that we would
16025 be much better off to affirmatively defend the right to moderate
16026 content.

16027 There's no stable body of law on this concept and I would
16028 note that Mr. Buck said earlier in this markup that Google had
16029 changed its algorithm to advantage Mr. Biden and disadvantage
16030 Mr. Trump, which is the exact language of the bill in identifying
16031 unlawful categories of discriminatory content.

16032 Now, I'm very skeptical of that claim about Google. But
16033 the bigger point here is the very argument shows how content
16034 moderation decisions could be the subject of litigation.

16035 I do think creating disincentives to good faith platform
16036 actions is not a good idea, and if anything that the last few
16037 years have shown us that we need more content moderation because
16038 of the hateful sites and the violent sites that continue to be
16039 on these platforms.

16040 I recognize that my Republican colleagues will almost
16041 certainly oppose this amendment, and I accept that. But I do
16042 want to make an observation.

16043 While I think it's often grossly exaggerated, I do recognize
16044 there is concern about over censorship by the platforms and that
16045 my colleagues feel genuine about this and, certainly, it is
16046 possible that there could be action, you know, against perfectly
16047 innocuous activity.

16048 That said, it's simply not possible to have functional social
16049 media and other online services without at least some significant
16050 moderation, and the question is how far should it go, what's too
16051 far, the devil is in the detail, and in that regard, antitrust
16052 will never really fix censorship.
16053 Here, I note that it's not just the dominant platforms who
16054 have policed hate speech and disinformation. Also many other
16055 platforms from Reddit to Twitter to Discord and many other sites.
16056
16057 But I do think it would be of value to us not to rely on
16058 the affirmative defense, the possibility that litigation will
16059 deter platforms from taking the steps that we want them to take,
16060 which is to moderate hateful conduct -- content, to moderate
16061 racist, anti-Semitic, or content that incites to violence or other
16062 disorders.
16063 So I think this improves the bill. I hope that we can adopt
16064 it. And with that, Mr. Chairman, I yield back.
16065 Mr. Cicilline. Mr. Chairman?
16066 Chairman Nadler. The gentlelady yields back. For what
16067 purposes does the gentleman from Rhode Island seek recognition?
16068 Mr. Cicilline. Move to strike the last word.
16069 Chairman Nadler. The gentleman is recognized.
16070 Mr. Cicilline. Thank you, Mr. Chairman.
16071 I oppose the gentlelady's amendment. This amendment is

16072 unnecessary because, again, this bill does not involve content
16073 moderation. A platform that applies its policies in a uniform
16074 way to similarly situated business users' standards would face
16075 no liability.

16076 So the amendment is unnecessary. You don't even need to
16077 get to the affirmative defenses. The American Innovation and
16078 Choice Online Act does not restrict the ability of platforms to
16079 moderate user content.

16080 The bill does not apply to user-generated content or online
16081 speech by individual users. They do not do anything to prevent
16082 a covered platform from moderating content by the individual users
16083 on the platform.

16084 The legislation only applies to the covered platforms'
16085 conduct that affects businesses that use the platform. In short,
16086 the bill tells covered platforms they can have rules and they
16087 can enforce those rules.

16088 But those rules have to be applied evenly, and the platform
16089 services that use the platform have to play by the same rules
16090 as every everyone else.

16091 Nothing in this bill prevents a covered platform from
16092 adopting or enforcing policies to remove hate speech,
16093 misinformation, scams, or illegal activity. A platform that
16094 uniformly applies its content moderation standards would face
16095 no liability.

16096 Ms. Lofgren. Would the gentleman yield?

16097 Mr. Cicilline. So the amendment is unnecessary. I urge
16098 my colleagues to --

16099 Ms. Lofgren. Would the gentleman yield?

16100 Mr. Cicilline. Sure. Of course.

16101 Ms. Lofgren. I understand that you believe that this is
16102 covered. But let me just make this point.

16103 If you have hateful content on YouTube and you're making
16104 money, you're running a business, and you might not be able to
16105 moderate all of the hateful contact.

16106 Maybe you've only found some of it. Infowars made money.
16107 It was a business. But not every right wing hateful business
16108 was removed from the platform. Therefore, that is
16109 discrimination.

16110 Mr. Cicilline. In that instance -- reclaiming my time.

16111 In that instance, I would say to the gentlelady, that's,
16112 in fact, when the affirmative defense comes into play. But,
16113 again, if you have a standard and that is applied evenly, there's
16114 no liability.

16115 Mr. Cicilline. With that, I yield back.

16116 Mr. Jordan. Mr. Chairman?

16117 Chairman Nadler. The gentleman yields back. The gentleman
16118 yields back.

16119 For what purpose does the gentleman from Ohio seek

16120 recognition?

16121 Mr. Jordan. Strike the last word.

16122 Chairman Nadler. The gentleman is recognized.

16123 Mr. Jordan. Yeah, the concern here is the two words

16124 "otherwise objectionable." That's the catch-all. That's where

16125 they can say if you disagreed with what Dr. Fauci was saying last

16126 year, even though it looks like he was absolutely wrong about

16127 the origin of the virus, that they could take that content down.

16128 We had a long discussion from the gentleman from Texas

16129 talking about that issue a year ago. So that's the problem, and

16130 this is exactly the language we think needs to come out, needs

16131 to be dealt with in the amendment offered again several hours

16132 ago relative to Section 230.

16133 So that's the concern here, and Ms. Lofgren wants to add

16134 that -- keep that in. So I guess I'm with Mr. Cicilline in

16135 opposing this amendment, but I'm opposing specifically for what

16136 it means to -- what these platforms can do to Americans' speech.

16137

16138 That is the problem. That is the area that needs to change.

16139 That's what's in our legislation we introduced a week ago and

16140 the amendment I offered earlier, or yesterday sometime.

16141 With that I yield back.

16142 Mr. Johnson of Louisiana. Would the gentleman --

16143 Chairman Nadler. The gentleman yields --

16144 Mr. Jordan. Yeah, I yield to Mr. -- I yield to Mr. Johnson
16145 of Louisiana.
16146 Mr. Johnson of Louisiana. I thank the gentleman from Ohio.
16147 I just want to say that, I mean, I'm just stunned. I know
16148 it's 3:00 o'clock in the morning, but everybody needs to pay
16149 attention to this, that this would -- the "otherwise
16150 objectionable" phrase, of course, is a problem.
16151 But there's a lot here as well. It's hopelessly subjective
16152 language, harassing and hateful. What does that even mean?
16153 I mean, that's part of the problem with the -- that we have
16154 with the big tech censorship right now is that some people in
16155 a room somewhere determine what is appropriate to be online, which
16156 is the equivalent of the free marketplace of ideas now and the
16157 public square. It's the modern public sidewalk.
16158 I mean, for 20 years I was in federal courts defending free
16159 speech, religious freedom, and the idea of free expression, and
16160 it was under assault. And we used to routinely go in and sue,
16161 you know, public universities because they had these crazy,
16162 oppressive, hopelessly subjective speech codes and they would
16163 say, you know, a Christian student wants to, you know, quietly
16164 respectfully express what the Bible says about human sexuality
16165 and it was deemed, you know, hate speech or whatever, and they
16166 would try to, you know, discipline them and it was just blatantly
16167 unconstitutional.

16168 So, look, I'm just saying this is a Pandora's box. I would
16169 oppose the amendment, too, just because -- I mean, basically,
16170 why don't we just say we're going to give a license to the liberal
16171 operators of big tech to just censor and silence conservatives
16172 in perpetuity. Let's just make that --
16173 Mr. Gohmert. Would my friend yield? Would Mr. Johnson
16174 yield?
16175 Mr. Johnson of Louisiana. I would yield. I'll be happy
16176 to yield to Mr. Gohmert.
16177 Mr. Gohmert. Yeah. What about the language "otherwise
16178 objectionable?" I think that pretty well just leaves the door
16179 open to anyone who doesn't like what a conservative is saying,
16180 because we don't eliminate outrageous liberal speech. It's only
16181 conservative.
16182 Mr. Johnson of Louisiana. It's celebrated, yeah.
16183 Mr. Gohmert. So "otherwise objectionable," I think, pretty
16184 well does embrace everything you're concerned about.
16185 Mr. Johnson of Louisiana. Yeah.
16186 Mr. Jordan. It's -- and it's -- if I could reclaim my time
16187 -- and it's further qualified. "Otherwise objectionable," even
16188 if it's constitutional.
16189 Mr. Gohmert. Right. There you go.
16190 Mr. Jordan. Shazam. Well, whatever they want it to be
16191 that's the standard. That's our concern, and it's been our

16192 concern the last two days when we talked about it. It has been
16193 our concern forever with dealing with what is happening to
16194 people's speech right now.
16195 Ms. Lofgren. Would the gentleman --
16196 Mr. Jordan. I will yield to you. But I think the gentleman
16197 from North Carolina -- and then I'll come to you.
16198 Mr. Bishop. Let me just point out one other thing. It's
16199 availability of material that a covered platform operator or user
16200 considers to be otherwise objectionable.
16201 So it may not be otherwise objectionable except in someone's
16202 extraordinary subjective judgment, and yet, it still is covered.
16203
16204 So and I think the same issue -- it's the same issue we
16205 uncovered in the interoperability bill earlier tonight, which
16206 Mr. Massie, I think, observed. You cannot avoid this, and what
16207 all of these bills are doing -- and again, I think it's most
16208 relevant to those Republicans who decided to support these bills
16209 that confer all this discretion upon the FTC -- is it locks in
16210 government control and government imprimatur upon this censorship
16211 that, you know, Facebook will describe as exercising content
16212 moderation in its -- in its humble discretion?
16213 Mr. Jordan. I would argue, and I'll yield the last few
16214 seconds I have -- but I would argue I think that's what the
16215 Democrats want. I hate to say it, but I think that's what they

16216 want. They've sent letters to the big carriers telling them to
16217 take certain networks off their platform.
16218 I mean, we had -- we had -- the gentleman from Maryland said
16219 earlier he went on Fox one time and he thought it was a -- it
16220 was a tough interview.
16221 Welcome to the world. That happens every time we go on CNN.
16222 But I don't -- I don't write letters to carriers saying, don't
16223 carry CNN on your platform. I'm for free speech. I'm for the
16224 First Amendment.
16225 But it sure seems like the other party isn't and that's the
16226 scary thing. That's what -- and now the other party wants to
16227 give so much power to the FTC. That's what we're all concerned
16228 about.
16229 I yield to the --
16230 Mr. Cicilline. Mr. Jordan, it sounds like we agree. So
16231 maybe we can --
16232 Chairman Nadler. The gentleman's time -- the gentleman's
16233 time has expired.
16234 For what purpose does -- for what purpose --
16235 Mr. Raskin. Move to strike the last word.
16236 Chairman Nadler. For what purpose does Mr. Raskin seek
16237 recognition?
16238 Mr. Raskin. I move to strike the last word, Mr. Chairman.
16239 Chairman Nadler. The gentleman is recognized.

16240 Mr. Raskin. So at 3:08 in the morning, maybe we have begun
16241 to achieve some analytical clarity about what the real questions
16242 are here.
16243 I'm listening to Mr. Johnson, and it seems to me that he
16244 wants to treat any website on the internet as a state actor, as
16245 a -- as the government, and I just want to see whether that's
16246 the case. In other words, does everybody have a right to speak
16247 on everyone else's website or platform?
16248 Mr. Johnson of Louisiana. Would the gentleman yield?
16249 Mr. Raskin. By all means.
16250 Mr. Johnson of Louisiana. Let me give it to you in a
16251 nutshell. Okay? Conservatives, as the gentleman from Ohio was
16252 saying just a moment ago, are for more free speech. We defend
16253 the free marketplace of the ideas. We want more free speech.
16254 Our liberal friends, our progressive friends, what to restrict
16255 and censor and silence speech with which they disagree.
16256 Mr. Raskin. Well, wait. Well, then perhaps let me pursue
16257 it with you, if we could, Mr. Johnson. The reason I raised the
16258 example of Fox News is it's a private corporation and they very
16259 clearly wanted to censor my speech when they invited me on. Do
16260 I have a right to sue them for not allowing me to speak as much
16261 as the other people on the platform or is it up to them? Is Fox
16262 News a speaker or are they like the state? Are they like a
16263 marketplace of speech?

16264 Mr. Johnson of Louisiana. No, Fox News is a broadcast
16265 channel, and I probably would dispute that they censored you.
16266 I'm not sure about that. I've had rough interviews on CNN --
16267 Mr. Raskin. And I agree with you. I agree with you. But,
16268 Mr. Johnson, don't miss my point. What I'm saying is Fox News
16269 is just like websites that you're accusing of censoring
16270 conservatives. They are a speech --
16271 Mr. Johnson of Louisiana. Now, listen -- sorry, all right.
16272 So, clearly, Fox News is a private company.
16273 Mr. Raskin. So, what's the difference?
16274 Mr. Johnson of Louisiana. Jamie, my friend, what we are
16275 looking at here, the reality is that the big tech oligarchs, the
16276 online community is the equivalent of what you and I used to talk
16277 about in teaching con law as being the quintessential public
16278 square. This is public fora now. I mean --
16279 Mr. Raskin. Okay. Good. So, let me ask you, if you're
16280 saying it's a public square, you're saying it should be treated
16281 like the government.
16282 Mr. Johnson of Louisiana. No, no.
16283 Mr. Raskin. And the First Amendment should apply against
16284 it and everybody should have a right to speak there.
16285 Mr. Johnson of Louisiana. No, I'm not saying --
16286 Mr. Raskin. Is that right.
16287 Mr. Johnson of Louisiana. I am not arguing that, but I am

16288 saying --

16289 Mr. Raskin. Well, you just said it was the public square.

16290 People have the right in the public square under the public forum

16291 doctrine.

16292 Mr. Johnson of Louisiana. It is --

16293 Mr. Raskin. So, I'm not trying to catch you up here. Okay?

16294 Mr. Johnson of Louisiana. And you're not catching me up

16295 at all.

16296 Mr. Raskin. Not everything is conservative and Democrat,

16297 Republican. Just reclaiming my time, my question is this: how

16298 do you want to treat websites and how do you want to treat the

16299 internet?

16300 Mr. Johnson of Louisiana. Bingo.

16301 Mr. Raskin. Are you saying it is like government property

16302 and everybody's got an equal right to be there? Or are you saying

16303 that private speakers are entitled to control their own speech?

16304 What is the analogy you're making?

16305 Mr. Johnson of Louisiana. So, here you have just, I think,

16306 illustrated the point that we've been trying to make for the last

16307 12-15 hours, however long we've been here, that this is a very

16308 complex, unprecedented, unusual Brave New World situation that

16309 we have. We don't know what this is, and you and I could debate

16310 and discuss the contours of this for a month.

16311 Mr. Cicilline. Mr. Raskin, will you yield for just a moment?

16312 Mr. Raskin. I will. Just to reclaim my time for 1 second,
16313 I just want to make the point it can't be the case that, if hate
16314 speech gets kicked off of a liberal platform, that that is a First
16315 Amendment free speech violation. But if a liberal speaker gets
16316 kicked off of a conservative private corporate platform --
16317 Mr. Johnson of Louisiana. I didn't say --
16318 Mr. Raskin. -- that that's just free speech. It's got
16319 to work in both directions. So, you've got to decide what your
16320 analogy is.
16321 Mr. Johnson of Louisiana. Right.
16322 Mr. Jordan. Would the gentleman yield to speak to that?
16323 Mr. Raskin. Do you want to treat all speech that takes place
16324 on the internet as an open public forum like people going out
16325 to a park?
16326 Mr. Jordan. Would the gentleman yield?
16327 Mr. Johnson of Louisiana. They're not treating it that way.
16328 They're not treating it that way.
16329 Mr. Jordan. Would the gentleman yield? Mr. Raskin, would
16330 you yield for a question?
16331 Mr. Raskin. I'm going to yield to the gentleman from Rhode
16332 Island.
16333 Mr. Cicilline. Thank you, Mr. Raskin.
16334 I think you've made the point that competition in this space
16335 is important because it gives people options. But we've had a

16336 long discussion about content moderation. That's not the purpose
16337 of the bill. I think we're all ready to vote.
16338 And I yield back to Mr. Raskin.
16339 Mr. Raskin. Right. But I guess here's the point we need
16340 to be clear about. Okay? I know that some people view there
16341 being political mileage and whining about they're victims and
16342 they have a victim complex, and everybody's discriminating
16343 against them, and so on.
16344 Mr. Johnson of Louisiana. You're the one who did that.
16345 Mr. Raskin. The point is --
16346 Mr. Johnson of Louisiana. Well, you just said you were
16347 censored by Fox.
16348 Mr. Raskin. -- if you want to have a discussion about
16349 content moderation at some point, let's have a serious discussion
16350 about it and decide whether people have a free speech right to
16351 speak on other people's websites if they don't want them there.
16352 And it can be right on left websites or left on right websites,
16353 or whatever. But that is a very different question from the
16354 antitrust question which is being posed here.
16355 And I yield back to you, Mr. Chairman.
16356 Chairman Nadler. The time is expired.
16357 For what purpose does Mr. Issa seek recognition?
16358 Mr. Issa. I move to strike the last word.
16359 Chairman Nadler. The gentleman is recognized.

16360 Mr. Issa. Okay. Thank you, Mr. Chairman.

16361 I'd yield to the ranking member for a minute.

16362 Mr. Jordan. We're not the ones asking for networks to be
16363 taken off of the platforms; Democrats are. I didn't write the
16364 letter saying, "Are you planning to continue to carry Fox News,
16365 Newsmax, and One America News?" Democrats wrote that letter.
16366 I didn't bring up Fox News today. Democrats brought up Fox News.
16367 Mr. Raskin brought up Fox News saying, "Oh, they mistreated me
16368 when I went on for an interview." I'll go on Fox News anytime
16369 you want.

16370 Mr. Raskin. Would the gentleman yield, please?

16371 Mr. Jordan. Mr. Raskin, I'll go on Fox News anytime you
16372 want. I'll debate you. I'll go on CNN and debate you. That's
16373 just, as Mr. Johnson I think eloquently said, we're for speech.
16374 We're for the First Amendment. You guys are the ones who want
16375 to stop it. You wrote the letter.

16376 Mr. Raskin. Not for Liz Cheney, you're not.

16377 Mr. Jordan. You wrote the letter. Republicans didn't
16378 write the letter. I have never once said CNN shouldn't be on
16379 the --

16380 Mr. Raskin. Are you for Colin Kaepernick's free speech?

16381 Mr. Jordan. I'm for free speech. God bless America.
16382 Right? There's the thing called the First Amendment. That's
16383 what I'm for.

16384 I yield back to the gentleman from California.

16385 Mr. Issa. I thank the gentleman.

16386 The gentlelady from California, Ms. Lofgren, you had

16387 something you wanted to say earlier?

16388 Ms. Lofgren. I did. And actually, I was just going to read

16389 the First Amendment, which is that "Congress shall make no law

16390 respecting an establishment of religion, or prohibiting the free

16391 exercise thereof; or abridging the freedom of speech, or the

16392 press;" et cetera.

16393 These platforms are not Congress and they're not the

16394 government. They have the right to define the speech that's going

16395 to appear on their platforms. And they have policies, most of

16396 them, I believe. And I don't expect that you will support this

16397 amendment, I mean, because it goes in a different direction than

16398 where you think we ought to go.

16399 But my point is, for those of us who believe that there ought

16400 to be some content moderation, that there is some material out

16401 there that is polluting the mind of the public, driving people

16402 into crazy conspiracy theories, leading them to attack the

16403 Capitol, that we would like that content moderated.

16404 And in my judgment -- and I think Mr. Cicilline pretty much

16405 admitted that -- if you have a business that is thrown off a

16406 platform and other businesses similarly situated are not, which

16407 is quite possible because content moderation is not an easy thing

16408 to do -- then there is a cause of action and it will lead platforms
16409 to be less willing to moderate that content. And I think the
16410 remedy, from my point of view -- I know you don't see it the same
16411 way -- is to explicitly say that the content moderation is not
16412 covered by the discrimination discussed in 2A(3).
16413 And I thank the gentleman for yielding.
16414 Mr. Issa. I thank the gentlelady. And I'm more sympathetic
16415 to your goal than you might imagine. I'm not prepared to support
16416 the amendment in its current form, but I think it's a lively,
16417 it's an appropriate discussion. Hopefully, both sides can come
16418 to an understanding, at least as the Republican position, and
16419 that is that we think that we should have more content, not less
16420 content; that when in doubt, it's fine to have a dissenting view.
16421 The idea that a particular treatment might have been helpful,
16422 and some medical doctors have thought it was helpful for patients
16423 with COVID-19, and yet, those were taken down because a platform
16424 made a medical decision in favor of one side's view or another,
16425 it worries me. I want to have more debate. And more importantly,
16426 if these platforms, these platforms that hold themselves out to
16427 be immune from prosecution or civil suit for any prejudice or
16428 wrongdoing, if they say, well, look, we're not interfering with
16429 content, except when needed because it's pornographic or
16430 threatening, or et cetera -- the famous example of fire in a movie
16431 theater -- then they have to live up to that. And that's what

16432 we'd like to choose to have them do.

16433 I don't think that CNN has to welcome me on or not yell at

16434 me or talk me down. I understand these are private companies.

16435 The challenge is that CNN and Fox, and the others, are not immune

16436 from lawsuits for their action, and periodically, there will be

16437 lawsuits and they're meritorious.

16438 So, my concern with this amendment is that I don't think

16439 it's well enough drafted to be narrow enough to meet the

16440 requirement of limiting it to the kind of prohibited speech that

16441 we could all agree on. And for that reason, I won't support it,

16442 but I appreciate the gentlelady's motives.

16443 And I yield back.

16444 Chairman Nadler. The gentleman yields back.

16445 For what purpose does Mrs. Spartz seek recognition?

16446 Mrs. Spartz. Move to strike the last word.

16447 Chairman Nadler. The gentlelady is recognized.

16448 Mrs. Spartz. I just wanted to kind of echo Congressman Issa

16449 because, you know, to give an example, Amazon just recently

16450 decided that, no, that they don't like some conservative writer;

16451 they decided to kick off his book and not to sell it. And they

16452 have an opinion, and they're a private company. Ultimately, I

16453 would say from my personal opinion, Karl Marx's Capital book

16454 probably caused more damage, and a lot of people died because

16455 of this very bad philosophy, but I will still defend the right

16456 to be sold. And I will not go and say to them and object that
16457 they shouldn't be selling it. We should have no dictatorship
16458 of opinion. We should have an open place where people can have
16459 differences of opinion, unless it's harmful and where a particular
16460 court said their opinion is bad. And I think the courts should
16461 rule on that.

16462 The problem that we have, we keep expanding immunity, and
16463 this even gives further immunity, which already these companies
16464 have an enormous amount of blanket immunity. If they're really
16465 a private company, why do they have the Section 230? I mean,
16466 if we're going to go with that, we don't even really need them.
16467 Why should they even worry about the content, if they are really
16468 private entities?

16469 So, we kind of have a double standard here. And I think
16470 we have to have the discussion because it's a very serious
16471 discussion. I don't have a problem what they do in a private
16472 company. I have a problem with unlimited amount of immunity,
16473 and if they harm me as a business, I have no way to have recourse
16474 in the tort law and through courts.

16475 And I think our American system is based not on government
16476 regulations, but me, as a business, doing the right things because
16477 I have a liability, and you can sue me for wrongdoing, because
16478 the government almost has no ways to enforce all these rules or
16479 regulations. But if I know that I'm going to get sued if I cause

16480 harm, I will try to treat people properly and not violate their
16481 rights. And I think that is an important discussion we should
16482 have.

16483 And to expand and expand immunity, it's really unreasonable,
16484 and it really suppresses the people who cannot afford to have
16485 an expensive attorney, people who don't have the money to have
16486 this Bohemia of a legal system, you know, to be stuck against
16487 them because it doesn't treat everyone equally.

16488 We either believe in equality of rights or don't believe
16489 in the equality of rights. And equality of rights doesn't give
16490 immunity for larger players and not to the smaller ones. And
16491 I think it's a very discussion we should have.

16492 And I am very happy to see that Congressman Cicilline is
16493 open to talking about Section 230, and Congressman Raskin, because
16494 I think that is a discussion we should have as Congress. And
16495 I hope we can work on that.

16496 I yield back.

16497 Chairman Nadler. The gentlelady yields back.

16498 For what purpose does Mr. Chabot seek recognition?

16499 For what purpose does Mr. Gohmert seek recognition?

16500 Mr. Gohmert. I move to strike the last word.

16501 Chairman Nadler. The gentleman is recognized.

16502 Mr. Gohmert. And I appreciate the gentlelady from
16503 California pointing out what the First Amendment said, that

16504 Congress shall make no laws -- and yet, Congress created Section
16505 230. That made a law and it made these entities completely immune
16506 when they went about violating people's constitutional right.
16507 We gave the authority that I wish we would end to say, we're
16508 going to shut people down. We've got this town square. We
16509 assured Congress that we were going to let anybody speak, say
16510 whatever, as long as it was not constitutionally prohibited.
16511 And yet, once they got the immunity, here's where we moved, and
16512 apparently, being encouraged by some on the other side of the
16513 aisle.

16514 So, it is a congressional action that some of us say, sure,
16515 fine, they are free to choose anybody they want to speak on their
16516 platform or to shut down anybody they want on their platform.
16517 But the way they got to be such a big monopoly is by that immunity
16518 that Congress made laws to create. So, we created the monster,
16519 and now, we're trying to come up with legislation of how to rein
16520 the monster in. And yet, we're still letting them keep the
16521 immunity that let them grow more powerful in some ways than the
16522 federal government.

16523 Now the allegation about a victim complex, we don't have
16524 a victim complex. Just like Mr. Jordan said, you know, you go
16525 on CNN; they turn off your mic; they mistreat you. But none of
16526 us have said, "Oh, we're going to sue them. We want to shut them
16527 down. We want them kicked off any cable." Like Mr. Jordan said,

16528 we never asked that happen.

16529 Now some of us have sent letters wanting channels added,
16530 like One America News or Newsmax added, you know, Fox Business,
16531 things that are not always on. But we're not asking to
16532 discriminate and to take things off. We've been asking just for
16533 a fair shot.

16534 And until this committee gets ready to say, you know what,
16535 Congress really should not have made a law that discriminates,
16536 allows someone else to discriminate with our protection all around
16537 them -- we need to pull that law back, Section 230, or 320 rather,
16538 and -- yes, that's right, it's 230. Yes, it's 320 or 325.

16539 But that is a problem, and we could fix that. And I think
16540 you'd find a lot more harmony between both sides of the aisle
16541 if we weren't protecting entities that got to discriminate and
16542 eliminate free speech. And to put in the amendment, though,
16543 "otherwise objectionable, whether or not such material is
16544 constitutionally protected," that would be fine if Section 230
16545 were not there giving them immunity.

16546 But we've cloaked them in congressional protection, and
16547 then, we're saying, you know, you can discriminate with our
16548 blessing, with our protection, and we'll protect you because we're
16549 not going to pull back your immunity. So, you just keep on
16550 discriminating and eliminating free speech of conservatives, or
16551 even worse, what we've seen this week, there's ruling that if

16552 you referred to biblical viewpoints, that that somehow needs to
16553 be eliminated; it's somehow offensive. Man, we've come a long
16554 way the wrong way.
16555 But, anyway, as long as 230 is there giving immunity, that's
16556 an act of Congress. And I'm hoping that the Supreme Court is
16557 getting ready to do what Congress should have done and say that
16558 is where we violated the Constitution, the First Amendment, and
16559 we've got to get rid of it. So, hopefully, the Supreme Court
16560 will help.
16561 I yield back.
16562 Chairman Nadler. The gentleman yields back.
16563 For what purpose does Mr. Gaetz seek recognition?
16564 Mr. Gaetz. To strike the last word.
16565 Chairman Nadler. The gentleman is recognized.
16566 Mr. Gaetz. I agree with almost everything the gentleman
16567 from Texas said, but he took some liberty in suggesting that none
16568 of us on this side of the aisle would sue CNN. I want to make
16569 clear for the record that does not include me.
16570 [Laughter.]
16571 I have been voting along with the bipartisan majority in
16572 favor of these bills, and if this amendment were to pass, it would
16573 drive me off the bill. The sponsor of the amendment suggested
16574 that this would allow us to combat conspiracy theories. Well,
16575 I remember saying that our own government had been weaponized

16576 against the President of the United States using illegal tools
16577 to try to destabilize an election that resulted in Donald Trump's
16578 victory. And folks said that was a conspiracy theory, and then,
16579 we did some investigation and found out that it was not.
16580 I remember saying that COVID erupted from Wuhan Institute
16581 of Virology, and the powers that be all suggested that that was
16582 a conspiracy theory. Now it turns out it might not be.
16583 The time we find ourselves in is certainly unique. I can't
16584 imagine that we would have a liberal Democrat from California
16585 offering an amendment to limit obscene, lewd, lascivious, filthy
16586 content on the internet, and then, a Southern Baptist from
16587 Louisiana arguing against that amendment. It is certainly not
16588 the '90s anymore because now we have the left in America trying
16589 to constrain what is accessible to people not just in these areas
16590 of obscenity, where there's well-developed law, but also just
16591 in defining the nature of truth itself.
16592 I believe that this amendment embodies the desire of the
16593 political left to embrace cancel culture and to allow tech
16594 companies to be able to define the characteristics of truth, to
16595 set the four corners of truth, to be the arbiters of truth. I
16596 think that some of these platforms probably would have banned
16597 Galileo.
16598 So, it's essential that we not empower these platforms even
16599 more. I think that this amendment would do. And that's why I'm

16600 voting against, and I would encourage all my colleagues to do,
16601 so we could continue our great bipartisan --
16602 Mr. Johnson of Louisiana. Will the gentleman yield for just
16603 a moment?
16604 Mr. Gaetz. I'll yield to my friend from Louisiana.
16605 Mr. Johnson of Louisiana. The Southern Baptist from
16606 Louisiana.
16607 Let me just point out that we were just talking here, a
16608 sidebar. It's very late and our wheels are turning slowly. But,
16609 I mean, I think that Ms. Lofgren read from the First Amendment,
16610 and, of course, the famous phrase there is "abridging the freedom
16611 of speech". And I'm not so sure that her amendment on its face
16612 doesn't do exactly that, because you're empowering tech companies
16613 to ban, in your words, "material that is constitutionally
16614 protected". So, this is an act of Congress, and therefore, you're
16615 abridging the freedom of speech of people or empowering others
16616 to do so.
16617 Ms. Lofgren. Would the gentleman yield?
16618 Mr. Gaetz. Yes, I'll yield to the gentleman from Texas for
16619 a moment.
16620 Turn your mic on, Chip.
16621 Mr. Roy. I would just add to the gentleman from Louisiana
16622 that, when you say, "Congress shall make no law," that that's
16623 what we're talking about right here. This is the problem, right?

16624 We're not talking about the lack of the ability of a private
16625 company to say what they want to say or do what they want to do.
16626 We're talking about the act of Congress that is actually stepping
16627 on -- I mean, that's making the case. That's the whole point.
16628 Ms. Lofgren. Would the gentleman yield?
16629 Mr. Roy. Well, it's not my time to yield. I yield back
16630 to --
16631 Mr. Gaetz. I would observe before yielding to the
16632 gentlelady from California that I believe we do need more than
16633 a legalistic view of the First Amendment. I think that we need
16634 to embrace the values of free speech in American, and that means
16635 that the terms of service on social media platforms shouldn't
16636 be more important than the values that undergird the First
16637 Amendment.
16638 I'd yield to the gentlelady from California.
16639 Ms. Lofgren. I realize we disagree on this issue. But just
16640 to be clear about the meaning of the amendment, under the bill,
16641 the capacity of these private companies to ban speech that they
16642 have decided not to host -- violent speech antisemitic, and the
16643 like -- that would otherwise be protected, were it the government,
16644 is diminished because of the Section 3, the discrimination and
16645 the private right of action.
16646 My intent was simply to, once again, empower the platforms
16647 to freely do that. You disagree with that; I understand that.

16648 But, clearly, that's what the amendment.

16649 And I thank the gentleman for yielding.

16650 Mr. Gaetz. No, I appreciate of that. I mean, it is that

16651 reposing that power in these platforms, when all of the work of

16652 Mr. Cicilline's subcommittee just shows how that power can be

16653 abused, gives us, I think, enhanced reservation.

16654 And I yield back.

16655 Chairman Nadler. The gentleman yields back.

16656 Does anybody else seek recognition on the amendment?

16657 [No response.]

16658 The question occurs on the amendment.

16659 All in favor, say aye.

16660 Opposed, no.

16661 In the opinion of the chair, the noes have it.

16662 Ms. Lofgren. Mr. Chairman, I'd like a recorded vote on that.

16663 Chairman Nadler. A recorded vote has been requested. The

16664 clerk will call the roll.

16665 Ms. Fontenot. Mr. Nadler?

16666 Chairman Nadler. No.

16667 Ms. Fontenot. Mr. Nadler votes no.

16668 Ms. Lofgren?

16669 Ms. Lofgren. Aye.

16670 Ms. Fontenot. Ms. Lofgren votes aye.

16671 Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. No.

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

Mr. Deutch?

Mr. Deutch. Aye.

Ms. Fontenot. Mr. Deutch votes aye.

Ms. Bass?

[No response.]

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Fontenot. Mr. Swalwell votes aye.

Mr. Lieu?

[No response.]

Mr. Raskin?

16696 Mr. Raskin. No.

16697 Ms. Fontenot. Mr. Raskin votes no.

16698 Ms. Jayapal?

16699 Ms. Jayapal. No.

16700 Ms. Fontenot. Ms. Jayapal votes no.

16701 Mrs. Demings?

16702 Mrs. Demings. No.

16703 Ms. Fontenot. Mrs. Demings votes no.

16704 Mr. Correa?

16705 Mr. Correa. Aye.

16706 Ms. Fontenot. Mr. Correa votes aye.

16707 Ms. Scanlon?

16708 Ms. Scanlon. No.

16709 Ms. Fontenot. Ms. Scanlon votes no.

16710 Ms. Garcia?

16711 Ms. Garcia. No.

16712 Ms. Fontenot. Ms. Garcia votes no.

16713 Mr. Neguse?

16714 Mr. Neguse. With great respect for my colleague from

16715 California, no.

16716 Ms. Fontenot. Mr. Neguse votes no.

16717 Mrs. McBath?

16718 Mrs. McBath?

16719 Mrs. McBath. No. Sorry, I was looking at --

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. No.

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Fontenot. Mr. Chabot votes no.

Mr. Gohmert?

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa?

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. Present.

Ms. Fontenot. Mr. Gaetz votes present.

Mr. Johnson of Louisiana?

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. No.

Ms. Fontenot. Mr. Johnson of Louisiana votes no.

Mr. Biggs?

[No response.]

Mr. McClintock?

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube?

[No response.]

Mr. Tiffany?

Mr. Tiffany. No.

Ms. Fontenot. Mr. Tiffany votes no.

Mr. Massie?

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy?

Mr. Roy. No.

Ms. Fontenot. Mr. Roy votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Fontenot. Mr. Bishop votes no.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. No.

Ms. Fontenot. Mrs. Spartz votes no.

Mr. Fitzgerald?

Mr. Fitzgerald. No.

Ms. Fontenot. Mr. Fitzgerald votes no.

16792 Mr. Bentz?

16793 Mr. Bentz. No.

16794 Ms. Fontenot. Mr. Bentz votes no.

16795 Mr. Owens?

16796 Mr. Owens. No.

16797 Ms. Fontenot. Mr. Owens votes no.

16798 Mr. Biggs. Mr. Chairman? Mr. Chairman?

16799 Chairman Nadler. Yes?

16800 Mr. Biggs. Biggs here. How am I recorded?

16801 Ms. Fontenot. Mr. Biggs, you are not recorded.

16802 Mr. Biggs. I vote no.

16803 Ms. Fontenot. Mr. Biggs votes no.

16804 Mr. Lieu. Mr. Chairman, how am I recorded?

16805 Ms. Fontenot. Mr. Lieu, you are not recorded.

16806 Mr. Lieu. Lieu votes no.

16807 Ms. Fontenot. Mr. Lieu votes no.

16808 Chairman Nadler. Has everyone who wishes to be recorded

16809 been recorded?

16810 Ms. Jackson Lee. How am I recorded?

16811 Ms. Fontenot. Ms. Jackson Lee, you are recorded as no.

16812 Chairman Nadler. The clerk will report.

16813 Ms. Fontenot. Mr. Chairman, there are 5 ayes and 36 noes.

16814 Chairman Nadler. The amendment is not agreed to.

16815 Are there any further amendments to the amendment in the

16816 nature of a substitute?

16817 Mr. Bentz. Yes, Mr. Chair.

16818 Chairman Nadler. For what purpose does the gentlelady from

16819 California seek recognition?

16820 Ms. Lofgren. It's their turn.

16821 Chairman Nadler. Oh. For what purpose does Mr. Bentz seek

16822 recognition?

16823 Mr. Bentz. I have an amendment at the desk, Mr. Chair.

16824 Chairman Nadler. The clerk will report the amendment.

16825 Ms. Fontenot. "Amendment to the amendment in the nature

16826 of a substitute to H.R. 3816 offered by Mr. Bentz of Oregon.

16827 Page 4" --

16828 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

16829 Chairman Nadler. A point of order is reserved.

16830 Ms. Fontenot. "Page 4, after line 16, enter the following"

16831 --

16832 Chairman Nadler. Without objection, the amendment is

16833 considered as read.

16834 [The amendment offered by Mr. Bentz follows:]

16835

16836 **********COMMITTEE INSERT **********

16837 Chairman Nadler. And the gentleman is recognized in support
16838 of the amendment.
16839 Mr. Bentz. Thank you, Mr. Chair.
16840 This is a modest and simple amendment to the affirmative
16841 defenses found on page 4 of the bill. Currently, there are two
16842 affirmative defenses. Both require a showing by a clear and
16843 convincing evidence standard.
16844 The first is that, if you can show that your conduct would
16845 not result in harm to the competitive process by restricting or
16846 impeding legitimate activity by business users, and the second
16847 one is a narrowly tailored, "could not be achieved through less
16848 discretionary means".
16849 My amendment would add a third affirmative defense, which
16850 would be "increases consumer welfare". The concept here is quite
16851 simple, and that is that, under our current approach to antitrust
16852 law, we focus on whether or not competition leads to an increase
16853 in consumer welfare. If it does, then it's viewed as not being
16854 violative antitrust principles.
16855 Thus, if we were to add this to the list of affirmative
16856 defenses, keeping in mind that it must be proven by clear and
16857 convincing evidence, a business who could show it was operating
16858 to the benefit of the consumers would not be subject to the
16859 discriminatory standard set forth in Section A and B of the bill.
16860 I think this, if you look at the definition of "business

16861 users," you'll find, of course, that they are business people,
16862 and that's how the definition is set up on page 9, lines 17, 18,
16863 and 19. And so, what we have is a clear reflection of the approach
16864 this bill is trying to use by saying that, as currently written
16865 without my amendment, you are safe if you benefit businessmen
16866 and women, business users. I would add in the fact that we should
16867 also take into consumers, since that is the proper focus and
16868 long-time focus, over the past 40 years at least, of our antitrust
16869 law.

16870 It seems to me, Mr. Chair, that we couldn't have a better
16871 comparison of what is underlying this bill than my amendment.
16872 Because either we are only interested in benefitting business
16873 users or we are interested in benefitting consumers. I think
16874 the better bet is consumers, and therefore, I suggest everyone
16875 support my amendment.

16876 Thank you.

16877 Ms. Lofgren. Would the gentleman yield?

16878 Mr. Bentz. I would yield, yes.

16879 Ms. Lofgren. I thank the gentleman.

16880 This is very similar to an amendment that I was going to
16881 offer, now will not, essentially, providing that the benefits
16882 to consumers or end users substantially outweighs competitive
16883 harms.

16884 You know, it's interesting that there are times when the

16885 interests of competitors are at odds with the interests of the
16886 consumer. And in such a case, the consumers' interest ought to
16887 be considered. But in this bill there's no consideration
16888 whatsoever for consumer benefit. For example, third-party
16889 websites don't want Google to put direct information boxes right
16890 at the top of the search results. They want you to always click
16891 through, but it might be more convenient for consumers.
16892 I love that Apple now has a thing where you can ask the apps
16893 not to track you. It's one of my favorite things that they've
16894 done. But that may not be something that would be competitive
16895 and might fall if your amendment is not approved.
16896 So, I think there is a serious risk the law will end up
16897 protecting specific competitors, to the detriment of consumers
16898 generally. And I'm grateful that you offered this amendment.
16899 And I yield back.
16900 Mr. Bentz. Thank you.
16901 And I would remind everyone that, long ago when we started
16902 this hearing, and I was talking about another one of the bills,
16903 I referenced a case that was decided back in 1897 which talked
16904 about the focus of antitrust law at that time, which was upon
16905 benefitting "small dealers and worthy men" who should be
16906 protected, even if doing so came at the expense of mere reduction
16907 in the price of a commodity. The point is we moved away from
16908 that, and we moved away from that about 40 years ago. And we

16909 have focused, instead, upon benefitting the consumer.

16910 It's not perfect. And I want to take this opportunity to

16911 say how much I appreciate the efforts of those who have tried

16912 to address the challenges of big tech. These bills don't get

16913 us there, but it's hard to fault the effort. But I think I --

16914 Mr. Swalwell. Will the gentleman yield?

16915 Mr. Bentz. I would yield. Go ahead.

16916 Mr. Swalwell. All right. Thank you.

16917 And I just wanted to associate my comments with the

16918 gentlelady from San Jose. I, too, will be supporting this

16919 amendment for the same reasons that she has stated.

16920 And I'll yield back to the gentleman.

16921 Mr. Bentz. Thank you.

16922 And I yield back, Mr. Chair.

16923 Chairman Nadler. The gentleman yields back.

16924 For what purpose does the gentleman from Rhode Island seek

16925 recognition?

16926 Mr. Cicilline. To strike the last word.

16927 Chairman Nadler. The gentleman is recognized.

16928 Mr. Cicilline. Mr. Chairman, I would just say that this

16929 amendment is redundant because in Section C1, where this is added

16930 on page 4, it reflects to harm to the competitive process, which

16931 includes consumer welfare as a kind of standard in antitrust law.

16932 So, it's redundant and unnecessary, and urge my colleagues to

16933 defeat the amendment.

16934 Mr. Issa. Mr. Chairman.

16935 Chairman Nadler. Does the gentleman yield back?

16936 Mr. Cicilline. Yes, I yield back, Mr. Chairman.

16937 Chairman Nadler. The gentleman yields back.

16938 Mr. Issa. Mr. Chairman?

16939 Chairman Nadler. For what purpose does the gentleman from

16940 California --

16941 Mr. Issa. To speak in support of the bill and strike the

16942 last word.

16943 Chairman Nadler. The gentleman is recognized.

16944 Mr. Issa. Thank you, Mr. Chairman.

16945 You know, the term "this is redundant and it's already in

16946 the bill," when I chaired a committee, my staff gave me that

16947 statement to make from time to time. But you can say in a bill

16948 something twice or three times, and it does not invalidate the

16949 fact that you might be saying it twice or three times. As a matter

16950 of fact, much legislation, in fact, repeats things again and again

16951 and again. It's not uncommon. This is not the Constitution.

16952 We do not have to make it super-succinct to make understood by

16953 a future court.

16954 And so, I join the gentlelady in wanting to say, even if

16955 some would say that there's a level of redundancy, I want it to

16956 be said that, in fact, if this is to the benefit of the consumer,

16957 if, in fact, it is more efficient and effective and drives down
16958 the cost of living, and thus, increases the value of a hardworking
16959 person's dollar and how far it goes, then, in fact, that is a
16960 benefit to our economy. And that has to be considered.
16961 More than a hundred years ago, Sears & Roebuck, in fact,
16962 drove a lot of small businesses out of business, but it did not
16963 lead to a less efficient distribution system. It led to others
16964 forming companies to compete at that level. And it hasn't
16965 completely eliminated the mom-and-pop, but, of course, we all
16966 understand that efficient distribution systems and logistic
16967 systems and computer systems that deliver high-quality goods at
16968 a good price on time to the consumer is now the standard around
16969 the world. And it was led by the United States. And it was led
16970 by Sears & Roebuck, but, then, it was led by Walmart, and now,
16971 it is being led by Amazon.
16972 I believe that competition is generational. I think the
16973 gentlelady from San Jose is right to say that we have to consider
16974 this, and failure to do so would, in fact, persecute these
16975 companies without looking out for the consumer we claim is being
16976 disenfranchised by some of their activities. If what they're
16977 doing is anticompetitive and anti-consumer, that would be
16978 evaluated. But if what they're doing is, in fact, good for the
16979 consumer, truly good for the consumer, it has to be considered
16980 in the process.

16981 And so, again, I join with the gentlelady in believing this
16982 is a good amendment. It makes a bill that I could not support
16983 less bad, and perhaps even good enough for some people to change
16984 their mind on. And hopefully, the authors would consider that.
16985 And with that, I thank the gentlelady for her thoughtful
16986 amendment and yield back.
16987 Ms. Lofgren. It's not; it's his.
16988 Mr. Issa. Oh, I'm sorry. I'm sorry. The gentleman's
16989 amendment, which the gentlelady spoke on. I apologize. She so
16990 eloquently in favor, I got confused. Thank you.
16991 Mr. Lieu. Mr. Chairman, I'd like to move to strike the last
16992 word as well.
16993 Chairman Nadler. The gentleman yields back? The gentleman
16994 yields back.
16995 Who just --
16996 Mr. Lieu. Congressman Lieu. I'd like to move to strike
16997 the last word.
16998 Chairman Nadler. The gentleman is recognized.
16999 Mr. Lieu. I thank you, Chairman Nadler.
17000 I, too, will be supporting this amendment. I think focusing
17001 on the consumer is critical and it's very important.
17002 And I also want to take this opportunity to respond to a
17003 member that somehow suggested that walmart.com wasn't an adequate
17004 competitor to Amazon. And I just want to enter for the record

17005 an article from CNN Business, dated June 27, 2019. The title
17006 is that article is, "Scathing report says Walmart's grocery store
17007 dominance must be stopped." And then, the article talks about
17008 how Walmart has monopologized the grocery business across the
17009 United States. And then, I'm going to read you this sentence:
17010 "But growing pressure from rivals, such as Amazon, Kroger, and
17011 Dollar General, has forced Walmart to keep prices low and
17012 innovate. Amazon bought Whole Foods in 2017." And then, it goes
17013 on.
17014 [The information follows:]
17015
17016 **********COMMITTEE INSERT **********

17017 Mr. Lieu. And again, what this bill does, because the
17018 subcommittee never investigated Walmart or walmart.com, it simply
17019 puts on all the restrictions just on Amazon, even though Whole
17020 Foods is competing with Walmart. Walmart.com is competing
17021 directly with amazon.com. And to simply have not investigated
17022 a bunch of these online retailers, it's just not clear to me why
17023 we would do that.
17024 And so, I think focusing on consumer harm and focusing on
17025 anticompetitive practice -- so, if Walmart is preferencing its
17026 own brand and product and we think that's bad, then it should
17027 be bad for Walmart to do it, just as it's bad for Amazon to do
17028 it.
17029 Mr. Jones. Will the gentleman yield?
17030 Mr. Lieu. That's why I support this amendment.
17031 I yield back.
17032 Mr. Jones. Will the gentleman yield? Will the gentleman
17033 yield?
17034 Mr. Lieu. I'm sorry, I'll yield. I'll yield to whoever
17035 would like to speak.
17036 Mr. Jones. Yes. I hope that we can agree that competing
17037 in the context of selling groceries is very different than the
17038 much more expansive context of amazon.com, which sells all
17039 varieties of goods, right? And so, I think that we're comparing
17040 apples and oranges here. My point remains that you have one

17041 platform, or one company rather, that has so much more of the
17042 market share than the other. And one is able to engage in what
17043 legitimately be defined as anti-competitive conduct. Whereas,
17044 Walmart, I think, for the intention of our antitrust statutes,
17045 is nowhere on that level and I think is in a completely different
17046 league. And it's not just Walmart, obviously. There's a whole
17047 bunch of other companies that I don't think should be falling
17048 into the coverage that people, that some people at least, have
17049 been suggesting.
17050 And I guess I'm curious to know what your response would
17051 be to that.
17052 Mr. Lieu. Well, thank you so much for raising that. So,
17053 that's why I entered that article into the record. Walmart is
17054 clearly not in a different league, for example, when it comes
17055 to food. It's dominant. And so, we're somehow going to now allow
17056 walmart.com and Walmart to do all these practices that we have
17057 now deemed unlawful and uncompetitive when Whole Foods does it.
17058 That's the problem, right? And also, we don't know if Walmart
17059 is dominant, or walmart.com is dominant, because the subcommittee
17060 never did an investigation of Walmart or walmart.com or, for that
17061 matter, eBay or Uber or Twitter, or I could go on and on.
17062 And so, let me give this analogy: imagine if the
17063 subcommittee said, hey, we're going to look at monopoly power
17064 in the airline industry. And the subcommittee looks at American

17065 Airlines, Delta Airlines, and United Airlines, and then, it comes
17066 out with a bunch of bills that only apply to those three airlines.
17067 And we're like, hey, what about Southwest? And then, the
17068 committee says, well, we can't write laws about Southwest because
17069 we never investigated Southwest. But, then, you have the issue
17070 of you write all these laws just on three airlines, but not on
17071 the other ones. Then, you're going to give Southwest a huge
17072 unfair advantage.

17073 But the analogy is actually slightly worse than that. It's
17074 as if the subcommittee just investigated American Airlines,
17075 because Amazon is literally the only online retailer that the
17076 subcommittee investigated. And then, it's putting all these
17077 restrictions on Amazon, but not on Walmart or walmart.com. And
17078 so, that's my point. That's why I support this amendment.

17079 Mr. Swalwell. Hey, Ted, will you yield quickly?

17080 Mr. Lieu. I'll yield to Representative Swalwell.

17081 Mr. Swalwell. Thanks, Ted.

17082 And I appreciate what Mondaire is saying, but pull up
17083 walmart.com right now. You'll see they're offering a credit
17084 card. They are offering a prescription drug benefit, and they
17085 are offering a grocery delivery service. So, I don't think it's
17086 that much different from Amazon. And so, that's just why I'm
17087 concerned that we have not fully delved into the likeness between
17088 the two companies.

17089 And I'll yield back to Ted.

17090 Mr. Neguse. Would the gentleman yield?

17091 Chairman Nadler. The gentleman's time has expired.

17092 Who seeks recognition?

17093 Mr. Neguse. Mr. Neguse seeks to --

17094 Chairman Nadler. Mr. Neguse? For what purpose does Mr.

17095 Neguse seek recognition?

17096 Mr. Neguse. Move to strike the last word.

17097 Chairman Nadler. The gentleman is recognized.

17098 Mr. Neguse. Thank you, Mr. Chairman. I'll be very brief.

17099 I just wanted to jump in the colloquy here or perhaps extend

17100 the colloquy between my good friend from California -- well, both

17101 of my good friends from California, Mr. Lieu and Mr. Swalwell,

17102 and my colleague from New York, Mr. Jones, because I do think

17103 that the distinction here is an important one. As I understand

17104 it, Amazon, in this year, just based on a recent article, will

17105 represent 40 percent of e-sale market in the United States --

17106 40 percent entirely. Walmart will be second and it's at 7

17107 percent.

17108 So, I think the distinction here is that Amazon, as we've

17109 discussed repeatedly throughout the course of this hearing, and

17110 as was, I think, gleaned during the course of the subcommittee's

17111 investigation, ultimately, is becoming, if not has already

17112 become, the marketplace itself. When a firm has 40 percent of

17113 the sales of online sales in the United States, clearly, it's
17114 moved past dominant, in my view. And I think that that's what
17115 has animated much of the committee's, the subcommittee's, rather,
17116 work in terms of the investigation that it did.
17117 Mr. Jones. Would the gentleman yield?
17118 Mr. Neguse. And I'm happy to yield to Representative Jones,
17119 if he'd like to expand on that further.
17120 Mr. Jones. Thank you so much.
17121 Look, I mean, it is no answer today that if you go to
17122 walmart.com, you'll see them selling a couple of different
17123 products. But the fact remains that it is not large enough in
17124 terms of its market share and its dominance to be comparable,
17125 and even to rise to the level of being able to impact the market
17126 in a significant way, certainly not with Amazon and the four big
17127 tech companies, which are, again, a league of their own. It's
17128 why we have to limit the discussion to the grocery context and
17129 talk about the ways in which they are competitive as against each
17130 other. But we are looking at holistically at the dominance of
17131 these companies in the market, and it's why we're not focused
17132 on a particular niche industry in which they happen to be selling
17133 their products, very specific products.
17134 And I'll just also add that the stat in that report was 50
17135 percent and not 40 percent.
17136 Ms. Lofgren. Would the gentleman yield? Lofgren here.

17137 Mr. Neguse. Yes. Sorry, I was muted. Yes, I'd be happy
17138 to yield to the gentlewoman from California.
17139 Ms. Lofgren. It just seems to me that the consumer benefit
17140 is, obviously, not limited to the fight between Walmart groceries
17141 and Whole Foods groceries. There are times when you're
17142 theoretically discriminating among similarly situated
17143 businesses, but it helps or benefits the consumer.
17144 And I'll go back -- I know Mr. Cicilline said that it wouldn't
17145 be the case. But there are people selling on Amazon's platform
17146 that are not eligible for Amazon Prime. And arguably, Amazon
17147 Prime would, therefore, be discriminatory towards those vendors.
17148 I like Amazon Prime, and I think a lot of Americans do.
17149 We've got Apple that is discriminating against other
17150 platforms that are trying to track across ad platforms, and that
17151 would, theoretically, violate the same section. And yet, I think
17152 that does benefit consumers. In fact, that's moving us towards
17153 the privacy direction that we were trying to accomplish when
17154 Congresswoman Eshoo and I wrote the strongest privacy bill that's
17155 been introduced into the Congress in the last Congress.
17156 So, I think it's not just this. It's, if there is a benefit
17157 to the consumer, that should be factored in. It shouldn't just
17158 be what's good for some other business competitor.
17159 And I thank the gentleman for yielding, Mr. Lieu.
17160 Mr. Neguse. And, Mr. Chairman, I yield back the balance

17161 of my time.

17162 Chairman Nadler. The gentleman yields. The gentleman

17163 yields back.

17164 Does anyone else seek recognition on the amendment?

17165 [No response.]

17166 The question occurs on the amendment.

17167 All in favor, say aye.

17168 Opposed, no.

17169 In the opinion of the chair, the noes have it.

17170 Ms. Lofgren. We should have a recorded vote.

17171 Chairman Nadler. A recorded vote having been requested,

17172 the clerk will call the roll.

17173 Ms. Fontenot. Mr. Nadler?

17174 Chairman Nadler. No.

17175 Ms. Fontenot. Mr. Nadler votes no.

17176 Ms. Lofgren?

17177 Ms. Lofgren. Aye.

17178 Ms. Fontenot. Ms. Lofgren votes aye.

17179 Ms. Jackson Lee?

17180 Ms. Jackson Lee. No.

17181 Ms. Fontenot. Ms. Jackson Lee votes no.

17182 Mr. Cohen?

17183 [No response.]

17184 Mr. Johnson of Georgia?

Mr. Johnson of Georgia. No.

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

Mr. Deutch?

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Fontenot. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. Aye.

Ms. Fontenot. Mr. Correa votes aye.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Fontenot. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

[No response.]

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. No.

Ms. Fontenot. Mr. Owens votes no.

Ms. Escobar. Mr. Chairman, how am I recorded?

Ms. Fontenot. Ms. Escobar, you are not recorded.

Ms. Escobar. Vote no.

17305 Ms. Fontenot. Ms. Escobar votes no.

17306 Chairman Nadler. Has everyone voted who wishes to vote?

17307 The clerk will report.

17308 The clerk will report.

17309 Ms. Fontenot. Mr. Chairman, there are 22 ayes and 21 noes.

17310 Chairman Nadler. The amendment is agreed to.

17311 Are there any further amendments to the amendment in the

17312 nature of a substitute?

17313 Ms. Lofgren. Mr. Chairman, I have two amendments at the

17314 desk, which I would ask unanimous consent to consider en bloc.

17315 Chairman Nadler. Without objection.

17316 Ms. Lofgren. The clerk will report?

17317 Yes, it's on page 1, line 7, and also on page 23. 013 and

17318 016.

17319 Mr. Cicilline. [Presiding.] The clerk will report the

17320 amendments.

17321 Ms. Fontenot. "Amendment to the amendment in the nature

17322 of a substitute to H.R. 3816 offered by Ms. Lofgren of California.

17323 Page 1, line 7, strike, quote, "any conduct," quote, "and

17324 enter", quote --

17325 Mr. Cicilline. The gentlelady is recognized to explain her

17326 amendments.

17327 [The amendments en bloc offered by Ms. Lofgren follow:]

17328

17329 **********COMMITTEE INSERT **********

17330 Ms. Lofgren. Thank you, Mr. Chairman.

17331 These are two amendments which, given the hour, I thought
17332 I would offer together.

17333 They're really quite simple. The first amendment moves
17334 "harm to the competitive process" out of affirmative defenses
17335 and, instead, requires it as an upfront element to establish
17336 unlawful conduct, discriminatory conduct, under Section 2.

17337 The bill as currently drafted actually requires no proof
17338 or element of any anti-competitive intent or harm to establish
17339 unlawful conduct under the bill. This in many ways is the
17340 fundamental problem with the bill and the cause of its
17341 overreaching. If the authors of this bill believe in the standard
17342 of harm to the competitive process, then it should be a basic
17343 element to establish a legal claim under the bill. But, at a
17344 minimum, it should be an upfront element, not a further burden
17345 on platforms to establish the only affirmative defense with clear
17346 and convincing evidence.

17347 The second amendment relates to actions that would permit
17348 platforms who are making a good-faith effort reasonably necessary
17349 to protect the core privacy and security interests, so they will
17350 not be classified as unlawful conduct under Section 2.

17351 These bills closely regulate the platforms' day-to-day
17352 operations and technical decisions, and that includes the
17353 platforms' effort to safeguard the security of user data and

17354 against other threats.

17355 Examples of platform privacy and security actions that could
17356 qualify as presumptive unlawful conduct under Section 2 include:

17357 Restricting third-party access to user data versus the
17358 platform's own access to such data could be construed as the
17359 platform advantaging its own services or disadvantages those of
17360 third parties. That's in Section 2A(1) and (2).

17361 Restrictions or impediments on third-party businesses
17362 accessing platform user data are broadly prohibited under Section
17363 2B(4), and restrictions or impediments on a business user
17364 interoperating or connecting to any product or service are broadly
17365 prohibited under Section 2B(9). For example, under this bill,
17366 it appears to me that, when Apple restricts the extent of
17367 third-party app tracking of users on the iPhone, they may be able
17368 to challenge such privacy protections as unlawful discrimination
17369 against invasive advertising-based business models. And that's
17370 not something I think any of us want.

17371 Another example, alleged inconsistencies in the enforcement
17372 of platform privacy policies can become the subject of litigation
17373 as unlawful discrimination against similarly situated users.
17374 Now, I grant you, the bill does an affirmative defense for actions
17375 taken to defend user privacy, but it's far too difficult to assert
17376 and the platform can only prevail after months, if not years,
17377 of litigation, overcoming a heightened burden of proof. And

17378 let's recall that there is a private right of action on this.

17379 Further, the affirmative defense only extends to narrowly

17380 tailored privacy actions when the goal could not be achieved,

17381 quote, "through less discriminatory means". Now I think forcing

17382 platform actions on privacy and security declares such a high

17383 bar, it's unwise. Introducing litigation risk and legal

17384 uncertainty is not necessary.

17385 And to the extent that I am sure my friend, Mr. Cicilline,

17386 will say this is covered in the bill, let's make clear upfront

17387 that these privacy and security measures are protected and that

17388 we actually want to have a standard of anti-competitive conduct

17389 as part of the initial screen for bad conduct.

17390 And with that, because it is after 4:00 a.m., I will yield

17391 back to the chairman and offer no other amendments.

17392 Mr. Cicilline. I thank the gentlelady for yielding back.

17393 I recognize myself in opposition to the amendment.

17394 And I oppose the gentlelady's amendments. The gentlelady's

17395 amendments will make it more difficult for our antitrust agencies

17396 to enforce this Act and stop anti-competitive conduct by covered

17397 platforms. Importantly, as the gentlelady acknowledged, this

17398 bill establishes an affirmative defense for conduct that does

17399 not cause harm to the competitive process or that was narrowly

17400 tailored, could not be achieved through less discriminatory

17401 means. It's not pretextual and necessary to grant a violation

17402 of law or to protect user privacy, or other non-public data.
17403 So, privacy protections are built into the bill. Creating
17404 additional carveouts, as proposed in this amendment, could serve
17405 to swallow the entire rule.
17406 I urge my colleagues to oppose the amendments.
17407 And with that, I yield back.
17408 Seeing no one else who seeks recognition, the question now
17409 is on the amendments en bloc.
17410 All those in favor, say aye.
17411 Opposed, say nay.
17412 In the opinion of the chair, the nays have it.
17413 Are there any additional -- oh, yes. Ms. Jackson Lee, I've
17414 conferred with Mr. Gaetz and Mr. Buck, and there has been a
17415 discussion and I think a modification to the language she offered
17416 earlier, and to add, "including, but not limited to those business
17417 users employed by businesses owned by women and minorities."
17418 Does anyone have any objection to adding that?
17419 Ms. Jackson Lee. Mr. Chairman?
17420 Mr. Cicilline. So ordered.
17421 Ms. Jackson Lee. Unanimous consent? Okay.
17422 Mr. Cicilline. Mr. Roy, you're recognized.
17423 Mr. Roy. Amendment at the desk.
17424 Mr. Cicilline. Oh, the gentleman has an amendment at the
17425 desk. Will the clerk please report?

17426 Ms. Fontenot. "Amendment to the amendment in the nature
17427 of" --
17428 Ms. Jackson Lee. Reserve a point of order.
17429 Mr. Cicilline. Ms. Jackson Lee reserves a point of order.
17430 I'm sorry, proceed.
17431 Ms. Fontenot. -- "in the nature of a substitute to H.R.
17432 3816 offered by Mr. Roy of Texas.
17433 Beginning on page 1, strike line 1 and all that follows
17434 through the amendment to the title on page 23 and insert the
17435 following:
17436 Section 1, Prohibiting Discrimination and Distribution.
17437 The Clayton Act, 15 USC Code 12, et seq, is amended by inserting
17438 after Section 28 the following:"
17439 Quote, "Section 29, Prohibiting Discrimination and
17440 Distribution.
17441 A. Definitions" --
17442 Mr. Cicilline. I'm sorry, the gentleman is recognized to
17443 explain his amendment. My apologies to the clerk.
17444 [The amendment offered by Mr. Roy follows:]
17445
17446 **********COMMITTEE INSERT **********

17447 Mr. Cicilline. Mr. Roy, you're recognized.

17448 Mr. Roy. I thank the chairman.

17449 Obviously, due to the late hour, I'll try to make this brief.

17450 It will not be new. This is the same as before where I applaud

17451 the efforts and recognize --

17452 Mr. Cicilline. You can never do that enough.

17453 Mr. Roy. I'm aware.

17454 We know that there's discriminatory conduct that we all

17455 recognize the need to address. The only question is, how? I've

17456 laid out my concerns about how we target certain companies and

17457 how that's going to be an evolving standard and we'll be picking

17458 winners and losers, and my belief is we should try to avoid that.

17459 And I wish we were able to do that. We, obviously, did not get

17460 the amendment earlier that I had worked with in conjunction with,

17461 again, Senator Lee and Senator Lee's staff. This is similar from

17462 the TEAM Act. This has got language that Senator Lee is

17463 advancing.

17464 And the purpose of this is to amend the Clayton Act to specify

17465 that a company with monopoly power in a distribution market that

17466 also offers a product or service in that market -- again, it's

17467 on marketplace; the Apple app store, for instance -- if that

17468 company has monopoly power in that distribution market, then the

17469 company may not engage in discrimination that harms competition.

17470 Again, the goal here is to try to look at the conduct. The

17471 goal here is to look at the market broadly, not to define the
17472 class of $600 billion above and $500 million, and so forth, which,
17473 as I've established before, is going to keep changing and put
17474 Congress in the situation of having to chase where the market
17475 is. Rather, we should be focusing on the content and come up
17476 with standards that make sense to target the discriminatory
17477 conduct. Or, as before when I was trying to address the issues
17478 of when certain mergers, certain acquisitions could occur.
17479 I think this amendment improves the bill in a number of ways.
17480 I think it brings the focus of antitrust back to monopoly power
17481 and practices that harm competition. I don't believe it's
17482 overinclusive. I think it will not lump in practices that benefit
17483 competition and benefit consumers that I fear the other might.
17484 It takes the heavy hand of government out of the process.
17485 As a limited-government conservative, I'm a little skeptical
17486 of empowering FTC and DOJ. Obviously, we had a debate over the
17487 fees use earlier. But, again, I don't want it to be taken away
17488 about my belief of the good-faith effort here to try to address
17489 this discriminatory practice by my friend, Mr. Buck, and by the
17490 chair, and the purpose of this amendment is also in good faith.
17491 I expect someone might be trying to raise a germaneness
17492 issue. I'm just going to go out on a limb and assume that may
17493 occur.
17494 Mr. Cicilline. I believe it's already occurred. Ms.

17495 Jackson Lee has reserved that, but --

17496 Mr. Roy. And I would just preemptively go ahead and address
17497 it by saying, as similarly as before, you know, it's directly
17498 on point on the question. I understand the four corners of the
17499 technicality of how we deal with respect to germaneness, but this
17500 is the whole question. The whole question is how we do it, how
17501 we go about doing it. I mean, heck, you could raise a question
17502 of whether the amendments in the nature a substitute are germane
17503 because of the nature of what they do.

17504 So, I would just throw out to the committee that we should
17505 debate this, and then, I wish we would.

17506 I will yield.

17507 Mr. Cicilline. The gentleman yields back.

17508 Does the gentlelady press her germaneness objection?

17509 Ms. Jackson Lee. I press and continue to object on the
17510 grounds that it is not germane. The amendment amends a law that
17511 the bill is not amending. So, it is, therefore, not germane to
17512 this bill and at this time.

17513 I thank the gentleman very much and I yield back.

17514 Mr. Cicilline. The chair is prepared to rule. Clause 7
17515 of House Rule 16 prohibits amendments that are on a different
17516 subject matter than the proposal that is under consideration.
17517 The subject of the bill we are currently considering is
17518 discriminatory conduct of covered platforms. The gentleman's

17519 amendment proposes to amend a statute not addressed in the bill,
17520 which is a subject that is different from what we are considering
17521 in the bill. The amendment is, therefore, not germane and
17522 violates Clause 7 of Rule 16.

17523 But, as I did in the last amendment, I look forward to working
17524 with Mr. Roy and Mr. Buck and Senator Lee with respect to revisions
17525 to the Clayton Act, and we'll be sure to include this in that
17526 discussion.

17527 Mr. Roy. And I take the chairman at his word that we'll
17528 do that and I appreciate it. And I would yield to the ruling
17529 of the chair.

17530 Mr. Cicilline. All right. And you appeal the ruling, you
17531 said? But I'm saying I want to work with you to address this
17532 issue when it's appropriate.

17533 Mr. Roy. All right.

17534 Mr. Cicilline. All right. We'll just do it by a voice vote
17535 then.

17536 All those who support -- I'm sorry. A motion to table has
17537 been made by Representative Lee. Those in favor of a motion to
17538 table, say aye.

17539 Opposed?

17540 The ayes have it. The motion's tabled.

17541 Thank you, Mr. Roy.

17542 Any additional amendments?

17543 Ms. Jackson Lee. I'd like to strike the last word.

17544 Mr. Cicilline. The gentlelady is recognized.

17545 Ms. Jackson Lee. Mr. Chairman, you were very generous, but
17546 very fast. So, I just want to make sure that it reflects that
17547 we did come to an agreement on the Jackson Lee amendment. We
17548 ask unanimous consent, and it's Amendment No. 3, which adds
17549 language, "including, but not limited to those business users
17550 employed by businesses owned by women and minorities."

17551 Mr. Cicilline. Yes, we have already done that, Ms. Jackson
17552 Lee.

17553 Ms. Jackson Lee. By unanimous consent?

17554 Mr. Cicilline. Yes, correct.

17555 Ms. Jackson Lee. The amendment is in, right?

17556 Mr. Cicilline. Correct.

17557 Ms. Jackson Lee. Thank you very much, Mr. Chair. I just
17558 wanted to get a ruling that I could hear.

17559 Mr. Cicilline. Yes.

17560 Ms. Jackson Lee. Thank you. I yield back.

17561 Mr. Cicilline. Oh, the chairman's back.

17562 Chairman Nadler. [Presiding.] Are there any further
17563 amendments on the bill?

17564 [No response.]

17565 Hearing none, the question occurs on the --

17566 Mr. Fitzgerald. Mr. Chair?

17567 Chairman Nadler. For what purpose does Mr. Fitzgerald seek
17568 recognition?
17569 Mr. Fitzgerald. I have an amendment at the desk.
17570 Chairman Nadler. The clerk will report the amendment.
17571 Mr. Cicilline. Mr. Chairman, I reserve a point of order.
17572 Chairman Nadler. A point of order is reserved.
17573 Ms. Fontenot. "Amendment to the amendment in the nature
17574 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of Wisconsin
17575 and Mr. Issa of California.
17576 Page 4, after line 16, insert the following and make" --
17577 Chairman Nadler. Without objection, the amendment is
17578 considered as read.
17579 [The amendment offered by Mr. Fitzgerald and Mr. Issa
17580 follows:]
17581
17582 **********COMMITTEE INSERT **********

17583 Chairman Nadler. And the gentleman is recognized in support
17584 of the amendment.
17585 Mr. Fitzgerald. Thank you, Mr. Chair.
17586 I'll be briefed. I worked on this amendment with Mr. Issa
17587 as well. He may have some comments on it.
17588 Because the bill would prevent platforms from doing the
17589 necessary vetting on apps, which was already discussed, to
17590 determine if they are operated by a foreign entity -- and let's
17591 focus on the CCP -- how would that information flow directly from
17592 China? The former Director of the National Counterintelligence
17593 and Security Center recently stated that China has stolen the
17594 personal identifiable information of 80 percent of Americans.
17595 You know, there are big concerns about some of the apps that
17596 many kids throughout the U.S. have on their phones right now.
17597 This amendment would allow platforms to ban an app if it would
17598 likely result in data from another user being transferred to China
17599 or another foreign adversary.
17600 I'm not sure if Mr. Issa has comments on it.
17601 Mr. Issa. Would the gentleman yield?
17602 Mr. Fitzgerald. Absolutely, I yield.
17603 Mr. Issa. Thank you.
17604 Again, one of the challenges with the bill in its current
17605 form is that we have now agreed to be interoperable with entities
17606 that are one-directional. And as we all know, in some cases,

17607 all they really want to do is scrape the data. But, in this case,
17608 the gentleman's amendment seeks to ensure that your personally
17609 identifiable information, your proprietary information, is not
17610 sent to a foreign country, particularly an adverse one.
17611 And I think the most important thing is that it would likely
17612 result in data from another business user being transferred, too.
17613 And that's the important thing, is they can allow it to go to
17614 anybody, but not allow it to go out of the country to a foreign
17615 adversary, either directly or indirectly. It limits the
17616 interoperability. It limits the transfer. But it limits your
17617 data going where you didn't want it to go. You might choose to
17618 opt in for interoperability, but you're not choosing to have your
17619 information used by a foreign power, and that's why I support
17620 the amendment and cosponsored it.
17621 I thank the gentleman and yield back.
17622 Mr. Gaetz. Will the gentleman yield for a question?
17623 Mr. Fitzgerald. Yes, I'd yield.
17624 Mr. Gaetz. Is there a portion of the bill or federal law
17625 or the amendment that defines what constitutes a foreign
17626 adversary?
17627 Mr. Fitzgerald. It's not further defined, I think, other
17628 than what you would find in the bill itself. So, no.
17629 Mr. Gaetz. Would the gentleman acknowledge that our foreign
17630 relationships are at times complex, and definitionally, it would

17631 seem challenging to have to determine who's a foreign adversary
17632 pursuant to the amendment?
17633 Mr. Fitzgerald. Absolutely. Yes, I think, I mean, that's
17634 part of the question, is how do you make that determination.
17635 And then, how much of that software possibly had made its way
17636 through the states? I mean, that's our big concern. As soon
17637 as we heard that Tik Tok was on every kid's phone in America,
17638 how to deal with it?
17639 Mr. Issa. Will the gentleman yield again?
17640 I think the important thing about the gentleman's amendment
17641 that makes it make sense is, in light of the other portions of
17642 these bills where the Federal Trade Commission and its committees
17643 are deciding things, where the Federal Trade Commission has
17644 authority, we certainly have the ability. In addition, the chair
17645 has the ability to make technical and conforming decisions.
17646 So, this is a principled item, and if Mr. Gaetz, as one of
17647 the coauthors of much of this legislation, feels that it needs
17648 to be more clear, that's not difficult. But it's very clear that
17649 the gentleman's amendment is really about people's privacy and
17650 their rights, and the platforms being able to protect that. And
17651 so, that's the reason I support it, and I think it's well enough
17652 written for everyone to understand.
17653 I yield back to the gentleman.
17654 Chairman Nadler. Does the gentleman yield back?

17655 Mr. Fitzgerald. I would yield, yield back.

17656 Chairman Nadler. Does the gentleman yield back?

17657 Mr. Fitzgerald. Yes.

17658 Chairman Nadler. The gentleman yields back.

17659 For what purpose does the gentleman from Rhode Island seek

17660 recognition?

17661 Mr. Cicilline. Move to strike the last word.

17662 Chairman Nadler. The gentleman is recognized.

17663 Mr. Cicilline. And, Mr. Chairman, I'll be brief.

17664 First of all, Mr. Gaetz's point about foreign adversary not

17665 being defined. The FTC is not authorized to make that

17666 definitional determination. They are a highly qualified agency,

17667 but, clearly, not equipped to do that. So, I think there's a

17668 very serious problem with that.

17669 But, even more fundamentally, it's drafted incorrectly

17670 because it currently says, "Sections A and B shall not apply if

17671 the defendant establishes by clear and convincing evidence that

17672 the conduct described...," and then, it lists one, two, three.

17673 So, the defendant would establish by clear and convincing

17674 evidence that the conduct described in Subsections A and B "would

17675 likely result in data from another business being transferred

17676 to China." So, you make an affirmative defense if the user

17677 demonstrates it actually goes to China. It's exactly the

17678 opposite, I think, of what you intend to do. So, I urge my

17679 colleagues to vote against the amendment.

17680 Chairman Nadler. Does the gentleman yield back?

17681 Mr. Cicilline. I yield back, Mr. Chairman.

17682 Chairman Nadler. The gentleman yields back.

17683 Mr. Jordan. Mr. Chairman?

17684 Chairman Nadler. For what purpose does the gentleman from

17685 Ohio seek recognition?

17686 Mr. Jordan. To strike the last word and --

17687 Chairman Nadler. The gentleman is recognized.

17688 Mr. Jordan. -- and just to support the gentleman from

17689 Wisconsin's amendment.

17690 It's interesting that we're raising questions about defining

17691 a foreign adversary. I think we know what a foreign adversary

17692 is. It's China. It's North Korea. It's Russia. But there's

17693 all kinds of words in the bill -- we don't know what the definition

17694 of "advantages" are. We don't even know what "discrimination"

17695 is. We're leaving that all up to the FTC. And we don't know

17696 -- we had a big debate on how you define "interoperability".

17697 There are tons of terms that aren't defined that the FTC is going

17698 to define, but, suddenly, now we're going to make an issue of

17699 "foreign adversary"? Those are the bad guys out there that want

17700 to do harm to America. I'll define it.

17701 I think the gentleman from Wisconsin knows what the term

17702 means. But, somehow, now we can't take this amendment because

17703 "foreign adversaries," we can't define that.

17704 Mr. Gaetz. Would the gentleman yield for a question?

17705 Mr. Jordan. There are countless number of terms in the bill

17706 that we haven't defined, and we've had hours and hours of debate

17707 on those, but, suddenly, now it's, "Oh, foreign adversary has

17708 to be defined." I just fail to see --

17709 Mr. Gaetz. Would the gentleman yield?

17710 Mr. Jordan. I'd be happy to yield to my friend, good friend.

17711 Mr. Gaetz. Is Pakistan a foreign adversary?

17712 Mr. Jordan. Yes. You want to include them in? Go ahead.

17713 You can define it, too. You can define it, too.

17714 Mr. Gaetz. Mr. Jordan, I'm asking you because you're a

17715 supporter of the amendment and you just debated that you know

17716 what a foreign adversary is. So, I have a series of questions,

17717 as a member of the Armed Services Committee.

17718 Mr. Jordan. Yes, Pakistan is.

17719 Mr. Gaetz. Okay. Is Turkey a foreign adversary?

17720 Mr. Jordan. I don't know that one.

17721 [Laughter.]

17722 But it may. It may be, but --

17723 Mr. Gaetz. I'll yield back to the gentleman.

17724 Mr. Jordan. Well, I'll ask you a question. What is

17725 "advantages"? What is "disadvantages"? What's

17726 "discrimination"? What's "interoperability"? How are we going

17727 to define all those terms?

17728 Mr. Gaetz. I think those are far easier to define than a
17729 foreign adversary for the FTC. The gentleman from Ohio and the
17730 gentleman from California have been spending a good portion of
17731 the last 20 hours telling us that the FTC should not have the
17732 ability to define these digital interactions, and now you would
17733 give the FTC the ability to define what constitutes a foreign
17734 adversary, and even you don't know what constitutes a foreign
17735 adversary by your own admission in this --

17736 Mr. Jordan. You don't know countless other terms in the
17737 bill you've been supporting, all the bills you've been supporting,
17738 and you're going to give all that power to Lina Khan.

17739 Mr. Gaetz. It is a different question to define technical
17740 terms within the jurisdiction of the FTC and to literally use
17741 the FTC to define international relationships. The sponsors of
17742 this amendment must understand spatially that it is improperly
17743 drafted. And to maintain that this is somehow definable at some
17744 later time, when the gentleman from Ohio can't define it, when
17745 the FTC couldn't possibly define it, strains credulity.

17746 Mr. Jordan. I yield back.

17747 Mr. Issa. Would the gentleman yield?

17748 Mr. Jordan. I'll be happy to yield.

17749 Mr. Issa. Thank you. I thank the gentleman for yielding.

17750 Mr. Chairman, you know, a lot of people are going to say

17751 it's difficult to decide that, but I will say that it was defined
17752 in the last administration repeatedly. Wilbur Ross defined it
17753 and used the term and gave examples of countries at that time.
17754 In this administration, they've already used multiple times the
17755 term "foreign adversary".
17756 And I will agree with the gentleman from Florida that, in
17757 fact, at a given time to say this is an adversary or that is an
17758 adversary may not be possible, only because from time to time
17759 our adversary changes. And so, the term "foreign adversary" is
17760 often used not for our permanent adversaries, which seems to be
17761 Iran and North Korea, but for the shifting sands of who we can
17762 trust and we can't.
17763 And when it comes to data security, when it comes to the
17764 idea that it's going to be used against us, yes, we have decades
17765 of China and Russia being foreign adversaries, but we will from
17766 time to time have countries that become adverse. So, the term
17767 "foreign adversary" is very appropriate. It has been used by
17768 administrations back to at least before Truman, and it has been
17769 used by the last administration and already used repeatedly by
17770 this administration.
17771 And I thank the gentleman for yielding.
17772 Mr. Jordan. Mr. Chairman, I yield back.
17773 Chairman Nadler. The gentleman yields back.
17774 I recognize myself in opposition to the amendment.

17775 In addition to the reasons stated by the gentleman from Rhode
17776 Island, in addition to those amendments, I find myself in
17777 agreement, I think, with Mr. Gaetz. The term "foreign adversary"
17778 is impossible of definition. It is impossible. China may be
17779 an adversary today. In World War II, it was a great ally. Russia
17780 was an ally in World War II. Today, it is an adversary.
17781 One writes legislation for ages or until it is amended.
17782 One doesn't write legislation that is impossible of definition
17783 because the term changes all the time. Therefore, I must agree
17784 with Mr. Gaetz and Mr. Cicilline in opposition to this amendment.
17785 And I yield back.
17786 The question occurs on the amendment.
17787 Oh, for what purpose does Mr. Roy seek recognition?
17788 Mr. Roy. Move to strike the last word.
17789 Chairman Nadler. The gentleman is recognized.
17790 Mr. Roy. I would only say the chairman made a really good
17791 point about the underlying bill structure of $600 billion, $250
17792 billion, of the many variables that you could stick with
17793 throughout the bills. That's the point of that flexibility.
17794 This, I think China is going to be an adversary a lot longer than
17795 $600 billion will be the standard.
17796 [Laughter.]
17797 I yield back.
17798 Chairman Nadler. The gentleman yields back.

17799 The question occurs on the amendment. The question occurs
17800 on the amendment.
17801 All in favor, say aye.
17802 Opposed, no.
17803 The noes have it.
17804 Mr. Fitzgerald. The yeas and nays.
17805 Chairman Nadler. The yeas and nays are requested. The
17806 clerk will call the roll.
17807 Ms. Fontenot. Mr. Nadler?
17808 Chairman Nadler. No.
17809 Ms. Fontenot. Mr. Nadler votes no.
17810 Ms. Lofgren?
17811 Ms. Lofgren. No.
17812 Ms. Fontenot. Ms. Lofgren votes no.
17813 Ms. Jackson Lee?
17814 Ms. Jackson Lee. No.
17815 Ms. Fontenot. Ms. Jackson Lee votes no.
17816 Mr. Cohen?
17817 [No response.]
17818 Mr. Johnson of Georgia?
17819 Mr. Johnson of Georgia. No.
17820 Ms. Fontenot. Mr. Johnson of Georgia votes no.
17821 Mr. Deutch?
17822 Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

[No response.]

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

[No response.]

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. No.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

[No response.]

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. No.

Ms. Fontenot. Mr. Buck votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Fontenot. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. No.

Ms. Fontenot. Mr. Johnson of Louisiana votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Fontenot. Mr. Biggs votes no.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Yes.

Ms. Fontenot. Mr. Massie votes yes.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

17919 Mrs. Fischbach?

17920 Mrs. Fischbach. Yes.

17921 Ms. Fontenot. Mrs. Fischbach votes yes.

17922 Mrs. Spartz?

17923 Mrs. Spartz. Yes.

17924 Ms. Fontenot. Mrs. Spartz votes yes.

17925 Mr. Fitzgerald?

17926 Mr. Fitzgerald. Aye.

17927 Ms. Fontenot. Mr. Fitzgerald votes aye.

17928 Mr. Bentz?

17929 Mr. Bentz. Yes.

17930 Ms. Fontenot. Mr. Bentz votes yes.

17931 Mr. Owens?

17932 Mr. Owens. Yes.

17933 Ms. Fontenot. Mr. Owens votes yes.

17934 Mr. Raskin. Mr. Chairman, how am I recorded? It's Raskin.

17935 Ms. Fontenot. Mr. Raskin, you are not recorded.

17936 Mr. Raskin. I vote no.

17937 Ms. Fontenot. Mr. Raskin votes no.

17938 Chairman Nadler. Are there any members who wish to be

17939 recorded who have not been recorded?

17940 [No response.]

17941 The clerk will report.

17942 Ms. Fontenot. Mr. Chairman, there are 15 ayes and 26 noes.

17943 Chairman Nadler. The amendment is not agreed to.

17944 Are there any further amendments to the amendment in the

17945 nature of a substitute?

17946 Mr. Issa. Well, Mr. Chairman, I have an amendment at the

17947 desk.

17948 Chairman Nadler. The clerk will report the amendment.

17949 Ms. Jackson Lee. A point of order. I reserve a point of

17950 order.

17951 Chairman Nadler. The point of order is reserved.

17952 Ms. Fontenot. "Amendment to the amendment in the nature

17953 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of Wisconsin

17954 and Mr. Issa of California.

17955 Page 4, after line 16" --

17956 Chairman Nadler. Without objection, the amendment is

17957 considered as read.

17958 [The amendment offered by Mr. Fitzgerald and Mr. Issa

17959 follows:]

17960

17961 **********COMMITTEE INSERT **********

17962 Chairman Nadler. And the gentleman is recognized in support
17963 of the amendment.
17964 Mr. Issa. Thank you, Mr. Chairman.
17965 As the freshman offering this the second time, I wanted to
17966 make the point that we heard you loud and clear. We heard the
17967 objections. And we have now struck for another foreign
17968 adversary. And the bill now says simply "would likely result
17969 in data from another business user being transferred to China."
17970 I don't think we have any question about China being a current
17971 adversary and even an existential threat. Our President,
17972 President Joseph Biden, has already made that clear. It is clear
17973 that, in fact, we have a foreign adversary that we cannot trust,
17974 one who is scraping our data, one who is, in fact, trying to eat
17975 everyone's lunch, including these four, and if given the
17976 opportunity, will.
17977 So, it's very straightforward. It is not what we might have
17978 wanted, but we do want to be expansive for expansive's sake, and
17979 therefore, we heard you loud and clear. We've made the secondary
17980 amendment and we now offer a perfected amendment with the hopes
17981 that it will be taken in the spirit in which it's given.
17982 And with that, I yield to -- Mr. Fitzgerald, do you want
17983 to comment further on it? I yield.
17984 Mr. Fitzgerald. I'm in full support.
17985 Mr. Johnson of Louisiana. Would the gentleman yield?

17986 Mr. Issa. I would yield to the gentleman from Louisiana.

17987 Mr. Johnson of Louisiana. Just to play devil's advocate
17988 here, how do we determine likely results? I mean, what's the
17989 objective criteria on that? I mean, I'm all against China.
17990 We're going to vote unanimously for this, I think. But, I mean,
17991 how do we -- the problem is that there's so much subjectivity
17992 in this whole package of bills.

17993 Mr. Issa. And I agree with the gentleman that it is
17994 difficult, but it is clear that every day in the cyber world our
17995 companies, including these four large and many much smaller, and
17996 including, by the way, every one of your servers being hosted
17997 here at the Capitol, are dealing with attacks from China. So,
17998 do we know that China is an adversary? Absolutely. Do we know
17999 there's a likelihood, if you deal directly with Alibaba, that
18000 you're going to have it taken? Yes. Will China use surrogates
18001 and will companies have to play cat and mouse to determine that?
18002 Absolutely.

18003 And that's the reason that it says that these four companies
18004 will have the ability to make that -- that can be second-guessed,
18005 that it's not being abused, but it's pretty clear that every day
18006 they're in battle with China, and so are tens of thousands of
18007 other companies and millions of Americans.

18008 So, I appreciate the gentleman's question. I think that
18009 by narrowing it to China -- we have no doubt that they are every

18010 day attacking everything, including every one of our sites that
18011 we use as Members of Congress. Tens of thousands of times,
18012 hundreds of thousands of times, they attack the House of
18013 Representatives every day.
18014 Mr. Johnson of Louisiana. But is this a known or
18015 should-have-known standard? Is that what you would -- I mean,
18016 how is that to be determined? I still don't know the answer to
18017 my question. Maybe there is no answer to it.
18018 Mr. Issa. There's no question at all that "would likely
18019 result" is less than "could result," "might result". So, it's
18020 very clear that these companies are not in a position where they
18021 can lackadaisically say, well, anything could result. They have
18022 to have a level of confidence that it would likely result, which
18023 is a standard that is well understood in the law. Is it variable?
18024 Yes. Is it certainly one in which we would know that doing
18025 business with Alibaba or other Chinese companies directly that
18026 are owned by the Chinese Communist Government would clearly lead
18027 to that.
18028 And, of course, our government works with all four of these
18029 large companies on a cyber basis cooperatively. So, they do share
18030 data. And the federal government, many departments of the
18031 federal government, share with these companies, and vice versa.
18032 As a matter of fact, Google operates on behalf of the federal
18033 government with cleared personnel. So, there's no question at

18034 all that there is a synergy in which these companies, for all
18035 their shortcomings, are some of the most qualified to know what,
18036 in fact, is likely to go to the Chinese.
18037 And I appreciate the gentleman's question. I think it is
18038 well thought out.
18039 Mr. Johnson of Louisiana. I yield. Thank you.
18040 Chairman Nadler. Does the gentleman yield back?
18041 Mr. Issa. If no one else seeks my time, I would happily
18042 yield back.
18043 Chairman Nadler. The gentleman yields back.
18044 For what purpose does the gentleman from --
18045 Ms. Jackson Lee. Mr. Chairman, I withdraw my point of order.
18046 Chairman Nadler. The point of order is withdrawn.
18047 Mr. Issa. We're good to go.
18048 [Laughter.]
18049 Chairman Nadler. For what purpose does the gentleman from
18050 Rhode Island seek recognition?
18051 Mr. Cicilline. I move to strike the last word.
18052 Chairman Nadler. The gentleman is recognized.
18053 Mr. Cicilline. And before Mr. Issa got too smug with Mr.
18054 Fitzgerald, he actually didn't fix the amendment, because it
18055 provides an affirmative defense if the defendant establishes by
18056 clear and convincing evidence. And it adds this: so, if the
18057 defendant establishes by clear and convincing evidence that the

18058 conduct described in Subsections A and B would likely result in
18059 data from another business user being transferred to China, they,
18060 then, have an affirmative defense available to them. I don't
18061 think that's what you intend to do.
18062 I urge my colleagues to vote against this amendment. Mr.
18063 Issa corrected half of it, but left the other part exactly as
18064 it is. I urge you to vote no.
18065 I yield back.
18066 Chairman Nadler. The gentleman yields back.
18067 For what purpose does the gentleman from Texas seek
18068 recognition?
18069 Mr. Gohmert. To delightfully strike the last word.
18070 Chairman Nadler. The gentleman is recognized to
18071 delightfully strike the last word.
18072 [Laughter.]
18073 Mr. Gohmert. Thank you.
18074 With that, I would yield to my friend from California.
18075 Mr. Issa. I thank the gentleman from Texas.
18076 Chairman Nadler. Delightfully.
18077 Mr. Issa. I'm sure that if I had said "would likely not
18078 result in data from another business user being transferred to
18079 China," the gentleman from Rhode Island would find it just as
18080 objectionable. So, the fact that it's an affirmative defense,
18081 yes, we want to have these four large companies have affirmative

18082 defenses when they are, in fact, protecting data from being
18083 transferred to a hostile competitor -- a hostile country that
18084 means to, in fact, eat our lunch militarily, economically, and
18085 in every other possible way.
18086 This is a country that has developed specifically the ability
18087 to take our satellites out of space; to shut down our
18088 communications; to build islands; to, in fact, take back Taiwan
18089 by force. The list is endless. But, in this case, it is, in
18090 fact, their stripping of data, their cyberattacks that, in fact,
18091 should give these companies certain abilities to defend on behalf
18092 of all of us.
18093 And I trust that the gentleman from Rhode Island would agree
18094 that China is, in fact, a clear and convincing threat. Our
18095 President has said so.
18096 I would yield to --
18097 Mr. Cicilline. Only that your amendment doesn't achieve
18098 that objective.
18099 Mr. Issa. And so, I would query the gentleman. If I said,
18100 "would likely not result in" --
18101 Mr. Cicilline. With all due respect, Mr. Issa, I'm not going
18102 to rewrite your amendment at this late hour. I oppose it.
18103 Mr. Issa. But you know I can scratch it and submit another
18104 one. I just want to know --
18105 Mr. Cicilline. I'm happy to work on it with you before it

18106 goes to the Floor.

18107 Mr. Issa. You know, we're here and we've got all the time

18108 in the world. It's a new day.

18109 Mr. Cicilline. It is a new day, but I'm happy to work on

18110 it with you before it goes to the Floor, Mr. Issa.

18111 Mr. Issa. Yes, but, you know, the problem is, even the

18112 Supreme Court, when they turn things down, generally tell us why.

18113 I remember the Stolen Valor. They didn't like how we did it,

18114 but they told us what was wrong. So, we as a Congress -- you

18115 were here -- could pass a new bill that protected against that

18116 kind of statement.

18117 I only say that, if you're going to say no, then, in fact,

18118 the question is, do you want to give these people the out to protect

18119 from China or not? Because you're not going to work with us in

18120 good faith if that's --

18121 Mr. Cicilline. Mr. Issa, I've never offered to work on an

18122 issue and haven't worked in good faith, and I wouldn't start

18123 tonight. So, I promise you I'm speaking good --

18124 Mr. Issa. Well, with the remaining two and a half minutes,

18125 the question is, what is it that you find technically wrong with

18126 this? So, "would not likely result"?

18127 I'm pausing. It's that poignant pause that it takes to get

18128 30 copies of the change.

18129 Chairman Nadler. You have one minute and 44 seconds left

18130 in your pause.

18131 Mr. Issa. Mr. Chairman, if I may inquire during te minute

18132 of remaining time, how much further do you think we can get before

18133 we have to vote on the Floor on today's bills?

18134 Chairman Nadler. I don't know, but we're going to persist

18135 until we finish our business.

18136 Mr. Issa. I'm looking forward to that, and I hope we don't

18137 have to adjourn anytime soon. I suspect they won't have votes

18138 before, oh, 8:00 or 9:00 in the morning, would you think?

18139 Chairman Nadler. I think we're good to go.

18140 Does the gentleman yield back?

18141 Mr. Issa. No, no, I'm pausing for the moment. Sometimes

18142 an opportunity to think, and for people to reflect, can be

18143 productive.

18144 Chairman Nadler. For some members, that may be a new

18145 experience.

18146 Mr. Issa. Yes. Yes, the pause for thought, Mr. Chairman,

18147 that could be reflective.

18148 And with that, Mr. Chairman, I urge support of this first

18149 amendment -- or second amendment, as it is, and the third one

18150 soon to come.

18151 And I happily yield back.

18152 Chairman Nadler. The gentleman yields back.

18153 Mr. Swalwell. Mr. Chairman, I call the previous question.

18154 Chairman Nadler. The motion on the previous question, on
18155 the Issa amendment or on the bill?
18156 Mr. Swalwell. On the bill.
18157 Chairman Nadler. On the bill. There is a pending
18158 amendment. There is a pending amendment.
18159 Are we ready to vote on the amendment?
18160 Mr. Swalwell. Then, I call it on the amendment.
18161 Chairman Nadler. The question occurs on the amendment.
18162 All in favor, say aye.
18163 Opposed, no.
18164 In the opinion of the chair, the noes have it.
18165 Is a recorded vote requested?
18166 Mr. Issa. Mr. Chairman, Mr. Chairman, the ayes have it --
18167 or the noes have it. Mr. Chairman, I have another amendment at
18168 the desk.
18169 Mr. Swalwell. Mr. Chairman, I call the previous question.
18170 Chairman Nadler. Wait. Wait, wait, wait, wait, wait.
18171 Mr. Swalwell. I call the previous question on the bill.
18172 Chairman Nadler. The gentleman from California moves the
18173 previous question on -- the gentleman from California moves the
18174 previous question. The motion on the previous question is --
18175 we'll suspend for a moment.
18176 For what purpose does Mr. Issa --
18177 Mr. Issa. Mr. Chairman, I have a final amendment at the

18178 desk. It is at the desk. It's reduced to writing. It's my final
18179 amendment.
18180 Ms. Jackson Lee. Point of order, Mr. Chairman. What
18181 happened to Mr. Swalwell's motion to call the question?
18182 Chairman Nadler. He wasn't recognized for that purpose.
18183 Mr. Swalwell. Mr. Chairman, I seek recognition.
18184 Chairman Nadler. The gentleman from California is
18185 recognized.
18186 Mr. Swalwell. I call the previous question.
18187 Chairman Nadler. Not that gentleman. I'm sorry. Mr. Issa
18188 is recognized.
18189 Mr. Issa. Mr. Chairman, I have an amendment at the desk.
18190 Chairman Nadler. The gentleman will --
18191 Mr. Issa. It is my final amendment on this bill.
18192 Chairman Nadler. The clerk will report the amendment.
18193 Ms. Fontenot. "Amendment to the amendment in the nature
18194 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of Wisconsin
18195 and Mr. Issa of California.
18196 Page 4, after line 16" --
18197 Chairman Nadler. Without objection, the amendment is
18198 considered as read.
18199 [The amendment offered by Mr. Fitzgerald and Mr. Issa
18200 follows:]
18201

18202 **********COMMITTEE INSERT **********

18203 Chairman Nadler. And the gentleman is recognized in support
18204 of the amendment.
18205 Mr. Issa. Mr. Chairman, I will not waste any of the
18206 committee's time. This final change is well understood. It
18207 changes it to "not," which the gentleman from Rhode Island kindly
18208 agreed would be the fix, at least for the intent. So, regardless
18209 of whether it's going to be voted up or down, I think it's
18210 understood, and would urge that it now be accepted.
18211 And I yield back.
18212 Chairman Nadler. The gentleman yields back.
18213 Does anyone else seek recognition on the amendment?
18214 Mr. Cicilline. Mr. Chairman?
18215 Chairman Nadler. For what purpose does the gentleman from
18216 Rhode Island --
18217 Mr. Cicilline. Move to strike the last word.
18218 Chairman Nadler. The gentleman is recognized.
18219 Mr. Cicilline. Once again, now Mr. Issa's amendment would
18220 provide that all the prohibited conduct is now permissible so
18221 long as it would not likely result in data from another business
18222 user being transferred to China. That, clearly, doesn't make
18223 any sense. So, I urge people to vote no.
18224 Chairman Nadler. The question occurs on the amendment.
18225 All in favor, say aye.
18226 Opposed, no.

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

Mr. Issa. The yeas and nays.

Chairman Nadler. The yeas and nays are requested. The clerk will call the roll.

Ms. Fontenot. Mr. Nadler?

Chairman Nadler. No.

Ms. Fontenot. Mr. Nadler votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

Ms. Fontenot. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Fontenot. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Mr. Johnson of Georgia?

[No response.]

Mr. Deutch?

Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

[No response.]

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar, you will have to turn your camera on.

Ms. Escobar. I'm sorry. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

18299 Mr. Jeffries. Mr. Chairman, how am I recorded?

18300 Ms. Fontenot. Mr. Jeffries, you are not recorded.

18301 Mr. Jeffries. No.

18302 Ms. Fontenot. Mr. Jeffries votes no.

18303 Ms. Ross?

18304 Ms. Ross. No.

18305 Ms. Fontenot. Ms. Ross votes no.

18306 Ms. Bush?

18307 Ms. Bush. Bush votes no.

18308 Ms. Fontenot. Ms. Bush votes no.

18309 Mr. Jordan?

18310 Mr. Johnson of Georgia. Madam Clerk? Madam Clerk, this

18311 is Hank Johnson. How am I recorded?

18312 Ms. Fontenot. Mr. Johnson, you are not recorded.

18313 Mr. Johnson of Georgia. Vote no.

18314 Thank you.

18315 Ms. Fontenot. Mr. Johnson of Georgia votes no.

18316 Mr. Jordan?

18317 Mr. Jordan. Yes.

18318 Ms. Fontenot. Mr. Jordan votes yes.

18319 Mr. Chabot?

18320 Mr. Chabot. Aye.

18321 Ms. Fontenot. Mr. Chabot votes aye.

18322 Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Fontenot. Mr. Issa votes aye.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Aye.

Ms. Fontenot. Mr. Massie votes aye.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

18371 Mr. Owens. Yes.

18372 Ms. Fontenot. Mr. Owens votes yes.

18373 Mr. Lieu. Mr. Chair, how am I recorded?

18374 Ms. Fontenot. Mr. Lieu, you are not recorded.

18375 Mr. Lieu. Lieu votes no.

18376 Ms. Fontenot. Mr. Lieu votes no.

18377 Mr. Cohen. This is Congressman Cohen. How am I recorded?

18378 Ms. Fontenot. Mr. Cohen, you are not recorded, but you will

18379 have to turn your camera on.

18380 Mr. Cohen. No.

18381 Ms. Fontenot. Mr. Cohen votes no.

18382 Chairman Nadler. How is Ms. Bass recorded? How is Ms. Bass

18383 recorded?

18384 Ms. Bass. As no. I voted.

18385 Ms. Fontenot. Ms. Bass, you're recorded as no.

18386 Chairman Nadler. The clerk will report.

18387 Ms. Fontenot. Mr. Chairman, there are 20 ayes and 24 noes.

18388 Chairman Nadler. The amendment is not agreed to.

18389 Are there any further amendments to the amendment in the

18390 nature of a substitute?

18391 Mr. Fitzgerald. Mr. Chairman?

18392 Chairman Nadler. For what purpose does Mr. Fitzgerald seek

18393 recognition?

18394 Mr. Fitzgerald. I have one more amendment.

18395 Chairman Nadler. The clerk will report the amendment.

18396 Mr. Cicilline. Mr. Chairman, I reserve a point of order.

18397 Chairman Nadler. A point of order is reserved.

18398 Ms. Fontenot. "Amendment to the amendment in the nature

18399 of a substitute to H.R. 3816 offered by Mr. Fitzgerald of

18400 Wisconsin.

18401 Page 4, after line 16, insert the following and make such

18402 technical and conforming changes as may be appropriate" --

18403 Chairman Nadler. Without objection, the amendment will be

18404 considered as read.

18405 [The amendment offered by Mr. Fitzgerald follows:]

18406

18407 **********COMMITTEE INSERT **********

18408 Chairman Nadler. And the gentleman is recognized in support
18409 of his amendment.
18410 Mr. Fitzgerald. Thank you, Mr. Chair.
18411 In 2018, over the objections of big tech, Congress passed
18412 the Stop Enabling Sex Trafficking Act and the Fight Online Sex
18413 Traffickers Act, known collectively as FOSTA/SESTA. These bills
18414 give victims the ability to hold internet platforms accountable
18415 for facilitating sex trafficking.
18416 I'm concerned that this bill would undermine these
18417 protections by making it more difficult for platforms to remove
18418 apps and users that facilitate sex trafficking. My amendment
18419 would fix this by allowing a platform to remove the apps that
18420 do not comply with the standard set in the Fighting Online Sex
18421 Traffickers/Stop Enabling Sex Traffickers Act.
18422 I urge my colleagues to support the amendment.
18423 Mr. Cicilline. Mr. Chairman?
18424 Chairman Nadler. Does the gentleman yield back?
18425 Mr. Fitzgerald. I do, Mr. Chair.
18426 Chairman Nadler. The gentleman yields back.
18427 For what purpose does the gentleman from Rhode Island seek
18428 recognition?
18429 Mr. Cicilline. I move to strike the last word.
18430 Chairman Nadler. The gentleman is recognized.
18431 Mr. Cicilline. I thank Mr. Fitzgerald for this amendment

18432 and I appreciate the intention. The good news is it's already
18433 covered in the existing text. If you look at No. 2, this was
18434 narrowly tailored. "Could not be achieved through less
18435 discriminatory means." "Was non-pretextual and was necessary
18436 to prevent a violation of or comply with federal or state law."
18437 This is a federal law, so it's already included. So, it's
18438 unnecessary to pull out this particular statute. Yes, it's
18439 included in the legislative history.
18440 I yield back.
18441 Chairman Nadler. The gentleman yields back.
18442 Are there any further amendments?
18443 Mr. Issa. Well, Mr. Chair, I move to strike the last word.
18444 Chairman Nadler. The gentleman is recognized.
18445 Mr. Issa. On this amendment, which is still under debate,
18446 once again, people love to tell us that something's covered, and
18447 I appreciate that. But saying it twice on something as important
18448 as this does not seem to be a problem. This certainly would not
18449 negate the first time, if it was said again. So, I strongly
18450 support that, since it will do no harm, and we certainly want
18451 to do good when it comes to preventing sex trafficking, I certainly
18452 think that gentleman has hit the nail on the head. And I would
18453 hope that saying it twice is appropriate.
18454 And with that, I thank the gentleman and yield back.
18455 Chairman Nadler. The gentleman yields back.

18456 The question occurs on the amendment.

18457 All in favor, say aye.

18458 Opposed, no.

18459 In the opinion of the chair, the noes have it.

18460 Mr. Issa. Yeas and nays.

18461 Chairman Nadler. The yeas and nays are requested. The

18462 clerk will call the roll.

18463 Ms. Fontenot. Mr. Nadler?

18464 Chairman Nadler. No.

18465 Ms. Fontenot. Mr. Nadler votes no.

18466 Ms. Lofgren?

18467 Ms. Lofgren. No.

18468 Ms. Fontenot. Ms. Lofgren votes no.

18469 Ms. Jackson Lee?

18470 Ms. Jackson Lee. No.

18471 Ms. Fontenot. Ms. Jackson Lee votes no.

18472 Mr. Cohen?

18473 Mr. Cohen. No.

18474 Ms. Fontenot. Mr. Cohen votes no.

18475 Mr. Johnson of Georgia?

18476 Mr. Johnson of Georgia. No.

18477 Ms. Fontenot. Mr. Johnson of Georgia votes no.

18478 Mr. Deutch?

18479 Mr. Deutch. No.

Ms. Fontenot. Mr. Deutch votes no.

Ms. Bass?

Ms. Bass. No.

Ms. Fontenot. Ms. Bass votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Fontenot. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Fontenot. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Fontenot. Mr. Lieu votes no.

Mr. Raskin?

Mr. Raskin. No.

Ms. Fontenot. Mr. Raskin votes no.

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Fontenot. Ms. Jayapal votes no.

Mrs. Demings?

Mrs. Demings. No.

Ms. Fontenot. Mrs. Demings votes no.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. No.

Ms. Fontenot. Ms. Scanlon votes no.

Ms. Garcia?

Ms. Garcia. No.

Ms. Fontenot. Ms. Garcia votes no.

Mr. Neguse?

Mr. Neguse. No. Ms. Fontenot. Mr. Neguse votes no.

Mrs. McBath?

Mrs. McBath. No.

Ms. Fontenot. Mrs. McBath votes no.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. No.

Ms. Fontenot. Ms. Dean votes no.

Ms. Escobar?

Ms. Escobar. No.

Ms. Fontenot. Ms. Escobar votes no.

Mr. Jones?

Mr. Jones. No.

Ms. Fontenot. Mr. Jones votes no.

Ms. Ross?

Ms. Ross. Ross votes no.

Ms. Fontenot. Ms. Ross votes no.

Ms. Bush?

Ms. Bush. No.

Ms. Fontenot. Ms. Bush votes no.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Fontenot. Mr. Jordan votes yes.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Fontenot. Mr. Chabot votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Fontenot. Mr. Gohmert votes aye.

Mr. Issa?

[No response.]

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

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

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Fontenot. Mr. Biggs votes aye.

Mr. McClintock?

Mr. McClintock. Aye.

Ms. Fontenot. Mr. McClintock votes aye.

Mr. Steube?

Mr. Steube. Yes.

Ms. Fontenot. Mr. Steube votes yes.

Mr. Tiffany?

Mr. Tiffany. Aye.

Ms. Fontenot. Mr. Tiffany votes aye.

Mr. Massie?

Mr. Massie. Present.

Ms. Fontenot. Mr. Massie votes present.

Mr. Roy?

Mr. Roy. Aye.

Ms. Fontenot. Mr. Roy votes aye.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Fontenot. Mr. Bishop votes yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

Ms. Fontenot. Mrs. Fischbach votes yes.

Mrs. Spartz?

Mrs. Spartz. Yes.

Ms. Fontenot. Mrs. Spartz votes yes.

Mr. Fitzgerald?

Mr. Fitzgerald. Aye.

Ms. Fontenot. Mr. Fitzgerald votes aye.

Mr. Bentz?

Mr. Bentz. Yes.

Ms. Fontenot. Mr. Bentz votes yes.

Mr. Owens?

Mr. Owens. Yes.

Ms. Fontenot. Mr. Owens votes yes.

Mr. Issa. Mr. Chairman, how am I recorded?

Ms. Fontenot. Mr. Issa, you are not recorded.

Mr. Issa. Yes.

Ms. Fontenot. Mr. Issa votes yes.

Chairman Nadler. Are there any members who wish to be recorded who haven't been recorded?

[No response.]

The clerk will report.

Ms. Fontenot. Mr. Chairman, there are 18 ayes, 25 noes, and 1 present.

Chairman Nadler. The amendment is not agreed to.

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

[No response.]

The question occurs on the amendment in the nature of a substitute.

This will be followed immediately by a vote on final passage of the bill.

All those in favor, respond by saying aye.

Opposed, no.

In the opinion of the chair, the ayes have it. The amendment in the nature of a substitute is agreed to.

A reporting quorum being present, the question is on the motion to report the bill H.R. 3816, as amended, favorably to the House.

Those in favor, respond by saying aye.

Opposed, no.

The ayes have it, and the bill is ordered to be reported favorably.

The yeas and nays are requested. The clerk will call the roll.

Ms. Fontenot. Mr. Nadler?

Chairman Nadler. Aye.

Ms. Fontenot. Mr. Nadler votes aye.

Ms. Lofgren?

Ms. Lofgren. No.

Ms. Fontenot. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Fontenot. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

Ms. Fontenot. Mr. Cohen votes aye.

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. Aye.

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

Mr. Deutch?

Mr. Deutch. Aye.

Ms. Fontenot. Mr. Deutch votes aye.

Ms. Bass?

Ms. Bass. Aye.

Ms. Fontenot. Ms. Bass votes aye.

Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Fontenot. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Fontenot. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Fontenot. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Fontenot. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Fontenot. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Fontenot. Ms. Jayapal votes aye.

Mrs. Demings?

Mrs. Demings. Aye.

Ms. Fontenot. Mrs. Demings votes aye.

Mr. Correa?

Mr. Correa. No.

Ms. Fontenot. Mr. Correa votes no.

Ms. Scanlon?

Ms. Scanlon. Aye.

Ms. Fontenot. Ms. Scanlon votes aye.

Ms. Garcia?

Ms. Garcia. Aye.

Ms. Fontenot. Ms. Garcia votes aye.

Mr. Neguse?

Mr. Neguse. Aye. Ms. Fontenot. Mr. Neguse votes aye.

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Fontenot. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. No.

Ms. Fontenot. Mr. Stanton votes no.

Ms. Dean?

Ms. Dean. Aye.

Ms. Fontenot. Ms. Dean votes aye.

Ms. Escobar?

Ms. Escobar. Aye.

Ms. Fontenot. Ms. Escobar votes aye. Mr. Jones?

Mr. Jones. Aye.

Ms. Fontenot. Mr. Jones votes aye.

Ms. Ross?

Ms. Ross. Ross votes aye.

Ms. Fontenot. Ms. Ross votes aye.

Ms. Bush?

Ms. Bush. Aye.

Ms. Fontenot. Ms. Bush votes aye.

Mr. Jordan?

Mr. Jordan?

Mr. Jordan. No.

Ms. Fontenot. Mr. Jordan votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Fontenot. Mr. Chabot votes no.

Mr. Gohmert?

Mr. Gohmert. No.

Ms. Fontenot. Mr. Gohmert votes no.

Mr. Issa?

Mr. Issa. No.

Ms. Fontenot. Mr. Issa votes no.

Mr. Buck?

Mr. Buck. Aye.

Ms. Fontenot. Mr. Buck votes aye.

Mr. Gaetz?

Mr. Gaetz. Aye.

Ms. Fontenot. Mr. Gaetz votes aye.

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. No.

Ms. Fontenot. Mr. Johnson of Louisiana votes no.

Mr. Biggs?

Mr. Biggs. Nay.

Ms. Fontenot. Mr. Biggs votes nay.

Mr. McClintock?

Mr. McClintock. No.

Ms. Fontenot. Mr. McClintock votes no.

Mr. Steube?

Mr. Steube. No.

Ms. Fontenot. Mr. Steube votes no.

Mr. Tiffany?

Mr. Tiffany. No.

Ms. Fontenot. Mr. Tiffany votes no.

Mr. Massie?

Mr. Massie. No.

Ms. Fontenot. Mr. Massie votes no.

Mr. Roy?

Mr. Roy. Nay.

Ms. Fontenot. Mr. Roy votes nay.

Mr. Bishop?

Mr. Bishop. Nay.

Ms. Fontenot. Mr. Bishop votes nay.

Mrs. Fischbach?

Mrs. Fischbach. No.

Ms. Fontenot. Mrs. Fischbach votes no.

Mrs. Spartz?

Mrs. Spartz. No.

Ms. Fontenot. Mrs. Spartz votes no.

Mr. Fitzgerald?

Mr. Fitzgerald. No.

Ms. Fontenot. Mr. Fitzgerald votes no.

Mr. Bentz?

Mr. Bentz. No.

Ms. Fontenot. Mr. Bentz votes no.

Mr. Owens?

Mr. Owens. Yes.

Ms. Fontenot. Mr. Owens votes yes.

Chairman Nadler. Are there any members who have not voted who wish to be recorded?

[No response.]

The clerk will report.

Ms. Fontenot. Mr. Chairman, there are 24 ayes and 20 noes.

Chairman Nadler. The ayes have it, and the bill, as amended, is ordered reported favorably to the House.

Members will have two days to submit views.

Without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments.

And staff is authorized to make technical and conforming changes.

18768 The committee will now stand in recess until 11:00 a.m. this
18769 morning, when we will take up H.R. 3825.
18770 [Whereupon, at 5:10 a.m., the committee recessed, to
18771 reconvene at 11:00 a.m., Thursday, June 24, 2021.]