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2 MARKUP OF H.R. 3773, THE "RESPONSIBLE ELECTRONIC
3 SURVEILLANCE THAT IS OVERSEEN, REVIEWED AND
4 EFFECTIVE ACT OF 2007"; H.R. 3678, THE "INTERNET
5 TAX FREEDOM ACT OF 2007"; H.R. 2830, THE "COAST
6 GUARD AUTHORIZATION ACT OF 2007"; H.R. 3564,
7 THE "REGULATORY IMPROVEMENT ACT OF 2007"; H.R. 2405,
8 THE "PROUD TO BE AN AMERICAN CITIZEN ACT"; H.R. 2884,
9 THE "KENDELL FREDERICK CITIZENSHIP ASSISTANCE ACT";
10 H.R. 1512, TO AMEND THE IMMIGRATION AND NATIONALITY
11 ACT TO PROVIDE FOR COMPENSATION TO STATES
12 INCARCERATING UNDOCUMENTED ALIENS CHARGED
13 WITH A FELONY OR TWO OR MORE MISDEMEANORS;
14 H.R. 1312, THE "ARTS REQUIRE TIMELY SERVICE
15 (ARTS) ACT"; AND H.R. 3387, TO UPDATE AND IMPROVE
16 THE CODIFICATION OF TITLE 46, UNITED STATES CODE
17 Wednesday, October 10, 2007
18 House of Representatives,
19 Committee on the Judiciary,
20 Washington, D.C.

21 The committee met, pursuant to call, at 10:21 a.m., in Room
22 2141, Rayburn House Office Building, Hon. John Conyers
23 [chairman of the subcommittee] presiding.

24 Present: Representatives Conyers, Berman, Boucher,
25 Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt,
26 Wexler, Sanchez, Cohen, Johnson, Sutton, Gutierrez, Sherman,
27 Baldwin, Weiner, Schiff, Davis, Wasserman Schultz, Ellison,
28 Smith, Sensenbrenner Jr., Coble, Gallegly, Goodlatte, Chabot,
29 Lungren, Cannon, Keller, Issa, Pence, Forbes, King, Feeney,
30 Franks, Gohmert, and Jordan.

31 Staff present: Perry Apelbaum, Staff Director-Chief
32 Counsel; Ted Kalo, General Counsel-Deputy Staff Director;
33 Joseph Gibson, Chief Minority Counsel; George Slover,
34 Legislative Counsel-Parliamentarian; and Anita L. Johnson,
35 Clerk.

36 Chairman Conyers. [Presiding.] The committee will come
37 to order.

38 Without objection, the chair is authorized to declare a
39 recess, if necessary.

40 We do have several measures on our agenda today, and we
41 begin, of course, with H.R. 3773, FISA Restore.

42 If I may begin my comments. Six years ago, the
43 administration unilaterally chose to engage in warrantless
44 surveillance of American citizens without court review. That
45 decision, to put it charitably, created a legal and political
46 quagmire.

47 Officials resigned. The program was found to be riddled
48 with errors. It was shut down for several weeks. Officials
49 rushed to the hospital to ask a sick man to reauthorize it,
50 over his deputy's objections, and vital prosecutorial
51 resources were diverted.

52 Most importantly, our own citizens questioned whether
53 their own government was operating within the confines of the
54 law.

55 Two months ago, when that scheme appeared to be breaking
56 down, the administration pushed, literally, the Congress to
57 accept an equally flawed statute. This new law gutted the
58 power of the FISA court. It granted the administration broad
59 new powers to engage in warrantless searches within the
60 United States, including physical searches of our homes,

61 computers, offices and medical records.

62 The law contained no meaningful oversight whatsoever.

63 The legislation before us today seeks to once again
64 strike an appropriate balance between needed government
65 authority and our precious rights and liberties. It tells
66 the government they need no warrant when foreign agents
67 communicate with other foreigners. It reiterates that
68 warrants are needed when Americans are being targeted.

69 The bill also allows the interception of communications
70 of foreign targets who may communicate with United States
71 citizens or persons.

72 However, it insists that procedures be in place,
73 approved by the FISA court, to ensure that no American is
74 being targeted and that his or her privacy is protected.

75 The bill also provides for several critical safeguards.
76 We include periodic audits by the inspector general. We
77 narrow the scope of the authority to protect against threats
78 to our national security and we protect the privacy of
79 Americans traveling abroad. We also sunset the legislation
80 in December of 2009.

81 Importantly, the bill has no retroactive immunity for
82 telecommunications carriers. Until we receive the underlying
83 documents relating to their conduct from the administration,
84 and we have been waiting for in excess of 9 months for that
85 to happen, we cannot even begin to consider this request.

86 To those who would claim that this bill is weak on
87 terrorism, I only have this to say—protecting the civil
88 rights and liberties of Americans does not show weakness, but
89 strength.

90 What the terrorists fear most is our Constitution and
91 our values, and that is what this bill protects.

92 To those who say that the bill is too weak on civil
93 liberties, I must say that if you trust an independent court
94 and have faith in congressional oversight, these liberties
95 will not be jeopardized. That premise is the premise our
96 democracy was founded on and that is exactly what this bill
97 does.

98 I am now privileged to introduce the ranking member of
99 this committee, the gentleman from Texas, Lamar Smith, for
100 his opening comments.

101 Mr. Smith. Thank you, Mr. Chairman.

102 Mr. Chairman, foreign terrorists want to destroy our
103 country. We are at war with them, and they continue to plot
104 deadly attacks. Our intelligence community must have the
105 necessary tools to detect and disrupt such attacks.

106 In August, Congress enacted the Protect American Act.
107 The director of national intelligence, Admiral McConnell,
108 explained that the act was needed to restore the intelligence
109 community's ability to collect foreign intelligence
110 information to protect our country.

111 The majority acceded to Admiral McConnell's request, but
112 included a 180-day sunset provision. Since then, we have had
113 two full committee hearings on this subject. At those
114 hearings, the director of national intelligence, Admiral
115 McConnell, and the justice department testified that prior to
116 the Protect America Act, the intelligence community was not
117 collecting approximately two-thirds of the foreign
118 intelligence information that it had previously.

119 Recent legal interpretations that required the
120 government to obtain Foreign Intelligence Surveillance Act
121 court orders for overseas surveillance caused the substantial
122 reduction in gaining intelligence.

123 In addition, the director testified in support of the
124 administration's FISA modernization proposal that was
125 submitted last April. The majority never acted on the
126 director's request.

127 The majority's new proposal, introduced yesterday,
128 ignores Admiral McConnell's suggestions and his testimony at
129 the oversight hearing.

130 We have an urgent need to modernize FISA.
131 Telecommunications technology has evolved rapidly in the last
132 30 years. Terrorists' tactics change constantly in response
133 to our efforts to disrupt their plots.

134 Essential tools that we use must be modernized to keep
135 up with the changing environment. The American people

136 understand what is at stake. Nearly 60 percent of Americans
137 polled on the subject of FISA reform supported the Protect
138 America Act. Less than 35 percent opposed it.

139 The simple fact is that Americans support surveillance
140 of foreign terrorists.

141 The majority's FISA proposal raises a number of
142 concerns. I will address five problems with the bill. Crime
143 Subcommittee Ranking Member Forbes and Constitutional
144 Subcommittee Ranking Member Franks will outline additional
145 problems with the majority's proposal.

146 First, the majority's proposal requires the intelligence
147 community to obtain FISA court orders for foreign
148 communications of persons reasonably believed to be outside
149 the United States.

150 Since it was enacted in 1978, FISA never required the
151 government to acquire court orders for such communications
152 and the legislative history and subsequent court decisions
153 support that view.

154 Extending constitutional protections under the Fourth
155 Amendment to terrorists, spies and other enemies overseas is
156 an unprecedented act that will threaten our country's
157 security.

158 At the oversight hearing, Admiral McConnell called this
159 solution "unworkable and impractical." This was because of
160 the need to collect and analyze foreign intelligence

161 information on a timely basis so that threats can be
162 identified and acted upon before they occur.

163 Second, the majority's proposal omits any liability
164 protection for telephone companies and other carriers that
165 assisted the government after September 11, 2001. These
166 companies deserve our thanks. They do not deserve a flurry
167 of lawsuits seeking access to documents, the disclosure of
168 which would harm our country.

169 Third, the majority's proposal injects the FISA court
170 into reviewing and approving the intelligence community's
171 procedures for, one, minimization and, two, guidelines for
172 determining that there is a reasonable basis to believe that
173 the telephone is located outside the United States.

174 This unprecedented move will burden the intelligence
175 community with court review of operational details. That
176 will only delay FISA court approval of surveillance orders,
177 all to the detriment of our security.

178 Fourth, the majority's proposal authorizes the FISA
179 court to conduct wholesale reviews of how the intelligence
180 community, "acquires, retains and disseminates foreign
181 intelligence information."

182 The FISA court plays a critical role in providing
183 judicial review of the government's FISA applications, but
184 this proposed expansion gives the court a super supervision
185 rule that is inappropriate and unnecessary.

186 Fifth, the majority's proposal inexplicably creates a
187 new sunset, December 31, 2009. If Congress needs to change
188 the law, then it should do so notwithstanding any sunset.
189 Terrorists do not lay down their arms or change their
190 objectives when a sunset fast approaches and neither should
191 the United States threaten to abandon tools on a date certain
192 in the future.

193 As currently drafted, the majority's proposal ignores
194 well established practices governing the collection of
195 foreign intelligence information which will enhance our
196 enemies' ability to carry out deadly plots.

197 Mr. Chairman, I will yield back the balance of my time.
198 Chairman Conyers. And I thank the gentleman from Texas
199 for his opening statement.

200 And for 2.5 minutes, I recognize the chairman of the
201 Constitution Subcommittee, the gentleman from New York, Jerry
202 Nadler.

203 Mr. Nadler. Thank you, Mr. Chairman.

204 I am pleased to join you in introducing the Restore Act
205 of 2007. This legislation will, as the name implies, restore
206 the proper role of the Foreign Intelligence Surveillance
207 Court in the maintenance of our national security
208 infrastructure.

209 Let's get the terms of this debate clear before we
210 begin. No one and certainly not this bill is suggesting that

211 our government should not listen to the terrorists to find
212 out what they are doing and plotting. Anyone who can read
213 will see that this bill does not inhibit the government's
214 ability to spy on terrorists or on suspected terrorists.

215 This bill gives our intelligence agencies the tools they
216 have told us they need to make us safe and gives the FISA
217 court the tools it needs to ensure that the extraordinary
218 powers we are giving to the intelligence community are used
219 correctly and consistently with our laws and our
220 Constitution.

221 The American people expect that their government will
222 keep us all safe and free. We have survived all previous
223 threats that way and we will survive the war on terror that
224 way.

225 This bill will not require intelligence agencies to stop
226 listening to terrorists. It will never require that our
227 intelligence agencies go out and get individualized warrants
228 for terrorists located outside the United States.

229 It will provide reasonable secret court oversight to
230 ensure that when our government starts spying on Americans,
231 it does so lawfully by getting a warrant from the secret
232 foreign intelligence court. It also puts an end to this
233 administration's well worn "trust me" routine.

234 It says the FISA court will supervise many things that
235 right now go completely unsupervised and we have to take on

236 faith from the administration, and we have learned we can
237 take on faith nothing from this administration.

238 Congress will receive independent reports on how the act
239 is working and what our government is doing. This
240 administration's pension for secrecy and aversion to
241 accountability will come to an end, at least in this area.

242 And, finally, let me say a word about retroactive
243 immunity. If the administration broke the law, if it broke
244 the law and if it asked telecom communications to break the
245 law and if they broke the law, they should be subject to
246 lawsuits, and if they didn't break the law, that is why they
247 have millions and millions of dollars worth of lawyers and
248 that is why we have courts to determine whether they broke
249 the law.

250 To retroactively immunize anybody and say, "If you broke
251 the law, it is okay, we don't want to know about it," is to
252 surrender the rule of law. We heard a lot about the rule of
253 law about 10 years ago in this room. It is crucial that
254 especially in an era when the administration uses the State
255 Secrets Doctrine to prevent people who think they were
256 illegally wiretapped from bringing a lawsuit, it is crucial
257 that private suits against telecommunications companies be
258 permitted, because only that way can the courts determine
259 whether, in fact, the administration broke the law, whether,
260 in fact, the telecommunications broke the law.

261 And if they did, they should be held accountable. If
262 they didn't, let the courts find that out. We shouldn't
263 short-circuit that and we certainly shouldn't say that, "You
264 are free to break the law if an administration asks you to in
265 the name of national security."

266 If the administration says, "We are breaking the law.
267 Why don't you join us," you have a responsibility to say no.
268 Otherwise, you have lawless administrations like this one
269 getting away with even more than they have.

270 Thank you, Mr. Chairman. I yield back the balance of my
271 time.

272 Chairman Conyers. I thank the gentleman from New York.

273 I now will recognize the ranking member of the
274 Constitution Committee, the gentleman from Arizona, Mr. Trent
275 Franks, for another 2.5 minutes.

276 Mr. Franks. Well, thank you, Mr. Chairman.

277 Mr. Chairman, it bears repeating that jihadists,
278 terrorists, spies and other enemies of freedom are committed
279 to killing Americans and to destroying our way of life, and
280 that vigilance is our greatest asset in this war against the
281 most dangerous ideology we have ever faced as Americans.

282 This day and every day, Al Qaida continues to plot
283 deadly attacks against this nation. This Congress should be
284 giving the director of national intelligence the tools
285 necessary to protect this nation. This is not a theoretical

286 exercise. This is a matter of life and death.

287 Unfortunately, the majority's Restore Act does not help
288 the intelligence community. Unfortunately, Mr. Chairman, it
289 helps terrorists. The Restore Act is an unprecedented
290 proposal that extends Fourth Amendment right protections to
291 foreign terrorist targets.

292 We should all stop for a moment to consider the irony
293 that under this bill, Osama Bin Laden, a terrorist whose life
294 mission is to destroy the American way of life, that in terms
295 of surveillance, he will now enjoy the same constitutional
296 protections that the founding fathers intended for the
297 citizens of this nation.

298 The Restore Act will now require that the intelligence
299 community has to secure a FISA court order to intercept
300 telephone communications between two terrorist targets
301 outside the United States. This proposal blatantly ignores
302 the deadly realities facing this country and our historic
303 struggle against jihadist terrorism and it would grant new
304 and unprecedented "rights" to foreign terrorists, to the
305 detriment of our nation's security.

306 If the majority has its way on this bill, foreign
307 terrorists, spies and enemies of freedom will gain rights
308 they have never in history had before and Americans will face
309 only a greater terrorist danger. It may someday far
310 overshadow the tragedy of 9/11.

311 And if this is a preview of what majority leadership for
312 our country looks like, we can expect more threats and less
313 security all for temporary partisan gain.

314 If we are truly to provide for the security of this
315 nation, it is imperative that the intelligence community has
316 the flexibility to monitor foreign terrorist threats and if
317 the majority insists on forcing this flawed proposal through
318 rather than simply passing the desperately needed FISA reform
319 proposal put forth by the administration, the intelligence
320 community will be prevented from carrying out their vital
321 role in protecting America and future generations will wonder
322 why we debated bills like this that weakened America in the
323 face of such an obvious threat to human peace.

324 Mr. Chairman, I yield back.

325 Chairman Conyers. I thank the gentleman.

326 I now recognize the chairman of the Subcommittee on
327 Crime, the distinguished gentleman from Virginia, Bobby
328 Scott, for the same amount of time.

329 Mr. Scott. Thank you, Mr. Chairman, and I appreciate
330 your leadership and efforts to address the warrantless
331 surveillance under the Foreign Intelligence Surveillance Act,
332 or FISA, and for introducing the bill that corrects many of
333 the shortcomings of the bill that passed the House last
334 August.

335 The Restore Act establishes a strong framework, much

336 stronger than the administration's Protect Act, to fight
337 terrorism effectively, while providing the appropriate
338 safeguards to protect personal privacy.

339 I do have a couple of concerns that I will introduce
340 amendments to address, but there are several important
341 clarifications made in the bill before us.

342 One important change in the Restore Act is it draws the
343 appropriate distinctions based on the physical location and
344 types of targets. There has never been any controversy over
345 the fact that surveillance directed at people all of whom are
346 overseas does not need any warrant at all and this bill
347 rightly clarifies that no court orders are required for the
348 government to conduct surveillance on foreign targets outside
349 the United States, even if the technical surveillance is
350 conducted on U.S. soil.

351 But if surveillance is intentionally conducted on a U.S.
352 person, this bill makes it clear that the government needs to
353 apply for an individual warrant to conduct that surveillance.

354 Second, the bill removes vague and overbroad language
355 that would allow the wiretapping of conversations without a
356 warrant if the communication was concerning a foreign target.
357 That, by its own wording, suggests that if two citizens are
358 in the United States talking about somebody overseas, that
359 you could wiretap that without a warrant.

360 The bill before us makes it clear that the persons

361 involved in the communications must be overseas, not just the
362 subject of their conversation must be overseas.

363 Finally, the Restore Act goes a step further than the
364 administration's bill and only allows for this expanded
365 wiretapping authority in cases involving intelligence if it
366 specifically relates to national security as opposed to the
367 over-expansive foreign intelligence.

368 Foreign intelligence could include trade deals or
369 anything of general foreign affairs activities. If we are
370 talking about national security, let's limit it to national
371 security.

372 Mr. Chairman, we do not have to sacrifice constitutional
373 protections or trust this administration to secretly protect
374 the rights of Americans without any public accountability to
375 fight terrorism. So it is important to note that everything
376 the administration can do under its own bill, it can do under
377 this bill. We just provide a little modicum of oversight to
378 ensure that the laws are being obeyed.

379 Thank you, Mr. Chairman.

380 Chairman Conyers. Thank you, Mr. Scott.

381 I am now pleased to recognize our final presenter in
382 opening statements, the distinguished gentleman from
383 Virginia, the ranking member of the Crime Committee, Randy
384 Forbes.

385 Mr. Forbes. Thank you, Mr. Chairman.

386 Mr. Chairman, in August, Congress passed the Protect
387 America Act and it was bipartisanship at its best, defending
388 America. Unfortunately, the bill offered by the majority
389 today reverses not only the common sense provisions in the
390 bipartisan efforts of the Protect America Act, but it also
391 reverses 30 years of foreign intelligence gathering under
392 FISA.

393 I know they had enormous pressure put on them by liberal
394 interest groups across the globe to reverse what was done
395 here to defend America just 2 months ago, but this is not the
396 place to fold.

397 It is ironic that the majority has titled their bill the
398 Restore Act, when, in fact, it restores nothing. It rolls
399 back the intelligence clock when our enemies are facing
400 forward to destroy us.

401 It is imperative that the intelligence community have
402 the flexibility to monitor foreign terrorists so that our
403 nation is safe. Requiring specific applications and
404 authority for surveillance of foreign terrorists will impose
405 burdens and delays, with possible catastrophic consequences.

406 The safety of Americans depends on responsible action by
407 Congress. Al Qaida will not rest, will not lay down its arms
408 or relent in its commitment to killing Americans.

409 As Ranking Member Smith mentioned, the Restore Act is
410 replete with problems, some of which I will briefly mention.

411 Hopefully, the majority will try again and act responsibly by
412 redrafting this bill.

413 First, the majority's proposal would, for the first
414 time, require a court order for foreign targets overseas.
415 Congress passed the Protect America Act in August to
416 specifically state that a court order is not required for
417 foreign targets overseas.

418 It is incomprehensible why the majority, just 2 months
419 later, has done a complete reversal and, with one stroke of
420 the pen, has effectively and practically gutted 30 years of
421 foreign intelligence collection.

422 The Restore Act also requires the Justice Department's
423 inspector general to conduct quarterly audits of the
424 intelligence community's compliance with the requirements of
425 the new act and an audit of all surveillance activities
426 conducted without a warrant after September 11, 2001.

427 We respect the DOJ/IG's work on a number of issues.
428 However, the Department of Justice inspector general does not
429 have the expertise or knowledge of the FISA process, the
430 intelligence community's activities and inner workings of
431 various agencies to be able to conduct meaningful reviews.

432 Moreover, the intelligence agencies already have
433 inspector generals that conduct regular audits and will
434 continue to do so, even if this provision was enacted.

435 Second, the majority's proposal requires the director of

436 national intelligence and the Justice Department to submit
437 reports every 120 days on foreign surveillance operations,
438 including any instance of noncompliance with any court
439 requirement.

440 The director and Justice Department are already required
441 to provide detailed information on such surveillance to the
442 intelligence committees and there is no need to increase that
443 requirement.

444 These are just examples of the many problems with the
445 bill. The majority needs to rethink and reanalyze this
446 proposal. There simply is too much at stake.

447 I yield back the balance of my time.

448 Chairman Conyers. I thank the gentleman from Virginia.

449 The chair welcomes other statements of the members that
450 will be included in the record.

451 Are there any amendments?

452 For what purpose does the gentleman from New York seek
453 recognition?

454 Mr. Nadler. Mr. Chairman, I have an amendment at the
455 desk, which I offer on behalf of myself and Ms. Jackson Lee.

456 Chairman Conyers. The clerk will report the amendment,
457 please.

458 The Clerk. Amendment to H.R. 3773, offered by Mr.
459 Nadler of New York and Ms. Jackson Lee. Page 10, line 1-

460 [The amendment by Mr. Nadler and Ms, Jackson Lee

461 follows:]

462 ***** INSERT *****

463 Chairman Conyers. Without objection, the amendment is
464 considered as read and the gentleman from New York is
465 recognized in support of his amendment.

466 Mr. Nadler. Thank you, Mr. Chairman.

467 Mr. Chairman, this amendment is simple. It would
468 require the FISA court to conduct—the amendment would improve
469 court oversight over the government's compliance with the
470 FISA court's orders.

471 The amendment would accomplish three objectives. One,
472 it would require the FISA court to conduct its assessment of
473 compliance with its order. The current draft uses the term
474 "may" instead of "shall." That says that "shall" conduct
475 this assessment of compliance.

476 Secondly, it would expand the scope of the assessment to
477 include all three of the guidelines the administration is
478 required to submit to the FISA court. The three guidelines
479 are, one, procedures to ensure that the targets of
480 surveillance are located outside the United States; two,
481 minimization procedures to regulate dissemination of
482 information about U.S. persons collected; and, three,
483 guidelines to ensure that the government obtains an
484 individualized FISA warrant when the target is located in the
485 United States.

486 As drafted, the bill gives the FISA court the option to
487 assess compliance with the second and the third of the three

488 I just mentioned at the time of the original application and
489 at any time during the life of the application.

490 This amendment would make it mandatory, not optional, on
491 the court and would require it on all three, not just two and
492 three. The third one that would be added is the procedures
493 to ensure that the targets of surveillance are located
494 outside the United States.

495 So I think it is a perfecting amendment. I urge its
496 adoption

497 I yield back.

498 Mr. Forbes. Mr. Chairman?

499 Chairman Conyers. Mr. Forbes?

500 Mr. Forbes. Mr. Chairman, move to strike the last word.

501 Chairman Conyers. The gentleman is recognized.

502 Mr. Forbes. We will oppose this amendment. The
503 gentleman was right in stating that it does make this
504 mandatory, but it eliminates judicial discretion to determine
505 when assessments of compliance are needed.

506 We are putting additional burdens on the court here,
507 which is already overtaxed, and on the intelligence community
508 and it is important to note that minimizations are not
509 normally done case by case. Normally, they are standards and
510 do not need to be reviewed individually each and every time.

511 I don't think the amendment is needed and I hope we will
512 reject it.

513 Ms. Jackson Lee. Mr. Chairman?

514 Chairman Conyers. Who seeks recognition?

515 Ms. Jackson Lee. Mr. Chairman?

516 Chairman Conyers. Yes. The gentlelady from Texas,
517 Sheila Jackson Lee?

518 Ms. Jackson Lee. Mr. Chairman, I am happy to join Mr.
519 Nadler in this amendment and thank him for this very
520 constructive improvement.

521 I would certainly respectfully disagree, as we are
522 showing great respect today in this hearing room, on the
523 minority's interpretation of this underlying legislation.

524 In fact, we restore our commitment to the four corners
525 of the FISA bill. We restore the protection to the American
526 people. We restore the engagement of the federal court to
527 provide us with the constructive tools to protect America.

528 And it is interesting, on the fifth anniversary of the
529 war in Iraq, that we move this bill forward so that maybe we
530 can begin to go after the target, Osama Bin Laden.

531 But Mr. Nadler's amendment improves the bill in three
532 ways. First, it requires the FISA court to conduct this
533 assessment of compliance. "Shall" is substituted for the
534 current permissive draft language, "may."

535 Second, the amendment expands the scope of the
536 assessment to include all three of the procedures, guidelines
537 described above, not just two and three. And, finally, the

538 amendment removes the limitations on the actions the FISA
539 court can take in conducting this assessment.

540 It is a fair balance of the strength of the FISA court
541 to ensure that intelligence authorities get what they need to
542 get and that they are able to surveil, but at the same time,
543 it gives Americans the appropriate comfort level that
544 recognizes the responsibilities of the Constitution.

545 The bottom line is that the Nadler amendment recognizes
546 the indispensable function of the FISA court and empowers it
547 to act as an Article 3 court, as it is expected to do under
548 our Constitution.

549 It is not a rubberstamp for the administration or, as
550 well, it is not a bottleneck to prevent us from finding
551 terrorists. It is a careful validator of the lawful process
552 of the constitutional system of government, the executive
553 power, on one hand, and, of course, the responsibility of
554 being the guardian of individual rights and liberties, on the
555 other hand.

556 I would ask my colleagues to support his amendment and I
557 yield back.

558 Chairman Conyers. Thank you very much.

559 Mr. Lungren. Mr. Chairman?

560 Chairman Conyers. Mr. Lungren is recognized.

561 Mr. Lungren. I rise to oppose the amendment.

562 Chairman Conyers. The gentleman is recognized.

563 Mr. Lungren. Mr. Chairman, with all due respect to the
564 chair, the tenor of the debate and consideration of this
565 issue was framed by the chairman's opening statement, in
566 which he referred to the signal important issue of 6 years
567 ago being the administration's actions to listen in on
568 American citizens' conversations.

569 I thought and most of the American people think the
570 signal important episode of 6 years ago was 9/11 and that
571 shows you how this debate has changed.

572 Some seem to fear more from their own government than
573 they do the terrorists who would try to destroy us, our
574 government included, and the suggestion is that we look at
575 what the administration did in a vacuum as if suddenly the
576 president woke up one morning and said, "You know, I need to
577 have more information on people and, boy, I think I need more
578 information on American citizens."

579 That is a complete distortion of the facts as we know
580 them to be historically. We were attacked on our shores, the
581 worst attack since Pearl Harbor, some would say an attack
582 worse than Pearl Harbor because of the number of casualties
583 suffered on American soil.

584 In response to that, as evidenced by the conclusions of
585 the 9/11 commission, we discovered that we had been blinded
586 in terms of our intelligence-gathering around the world.

587 We had insufficient information. We had insufficient

588 analysts. We had insufficient ability to reach conclusions
589 to allow us to connect the dots that were out there, and many
590 of those dots are uncovered only by the kinds of
591 communications envisioned by those who are discussing this
592 law, the FISA law.

593 And now we have moved from a position in which we had a
594 Democratic president, President Carter, whose attorney
595 general at that time, Griffin Bell, testified before the
596 House and the Senate that the fact that the president has
597 authority as commander in chief to gather foreign
598 intelligence with respect to those who do us harm and while
599 that administration supported the creation of FISA, they
600 indicated that they understood the natural tension that
601 exists between the executive branch and the legislative
602 branch in this regard.

603 And that is why, in many cases, compromises were reached
604 recognizing the prerogatives of both branches of government.
605 And now we have an amendment which will give basically a
606 third branch of government, that is, the courts, the
607 judiciary, the superior position in making a determination as
608 to how we adequately protect our nation by gathering that
609 information that allows us to connect the dots, to do the
610 preventive medicine to stop us from having people killed in
611 the United States.

612 The court system does a very good job in terms of making

613 determinations as to guilt or innocence with respect to
614 crimes committed in the United States.

615 The court system does not do as good a job in trying to
616 save America from those who would attempt to try and destroy
617 us, that is, enemy combatants and, in this unusual war in
618 which we are engaged, unlawful enemy combatants.

619 And the bill that was passed by this Congress and signed
620 by the president, under which the law now exists, was an
621 effort to try, in my judgment, to reach an adequate
622 compromise.

623 Unfortunately, this bill goes beyond that and this
624 amendment goes even beyond this bill in basically creating a
625 construct that we have never had before, in which, of all
626 three branches of government, we now say the federal courts
627 are the ones given the authority by the Constitution to make
628 the final determination in this arena.

629 And I would suggest it is overreach, it is overkill.
630 And I would just hope that despite the feelings that some on
631 the other side have about the present administration and the
632 comments that they have made, that they would understand that
633 the Constitution is carefully constructed, that it does give
634 certain authorities to certain branches of government because
635 of the nature of the actions that they have.

636 And in this case, for us, in the first place, to require
637 a court order in instances in which there is a reasonable

638 belief that the surveillance is directed at the accusation of
639 communications of a person reasonably believed, as I say,
640 located outside the United States, goes beyond all reason.

641 And then to say, on top of that, we are going to have
642 the courts not use their discretion, but mandate that they
643 make the specific decision with respect to the procedures
644 that have been used in gathering this information goes far
645 beyond any measure of balance that I can see in the
646 Constitution or in efforts of previous administrations, both
647 Democrat and Republican.

648 And I would hope that in the pell-mell rush to try and
649 paint this administration as attempting, out of its own mind,
650 to go after American citizens, that we would step back and
651 realize what we are doing here. We are biting off more than
652 we can chew with respect to a proper interpretation of the
653 Constitution, and I would oppose this amendment moving us
654 further in that direction.

655 Chairman Conyers. I thank the gentleman. And I must
656 point out to him a problem. Maybe he didn't hear me.

657 I did not point out that this was the signal issue, but
658 that this 6 years ago is the story of our program. And so I
659 wasn't at all suggesting that this was more important than
660 9/11 itself.

661 Mr. Lungren. I thank the chairman. I am glad he
662 recognized 9/11.

663 Chairman Conyers. Well, I am glad you recognize what I
664 actually said.

665 Mr. Scott is recognized, before we go to a vote.

666 Mr. Scott. Mr. Chairman, I yield to the gentleman from
667 New York.

668 Mr. Nadler. I thank the gentleman for yielding.

669 Mr. Chairman, I just want to say that the rhetoric on
670 this bill and this amendment is a little disturbing.

671 Everybody in this Congress, everybody in this committee,
672 both sides of the aisle, are committed to defeating the
673 terrorists and to protecting the American people.

674 Everybody recognizes the awfulness of what happened in
675 my district on September 11. Everyone wants to protect us
676 from further damage. Everyone wants to have surveillance and
677 wiretapping and spying on terrorists and suspected
678 terrorists, everybody.

679 So let's cut out the rhetoric about we don't understand
680 that. The question is under what protections of American
681 liberty will we conduct the necessary surveillance and the
682 necessary wiretapping and the necessary spying.

683 Do we continue in the American tradition and say that no
684 administration, no president, no public official is an angel
685 or can be trusted to be an angel and can be trusted with this
686 power without some sort of checks and balances, without some
687 sort of court review?

688 The other side of the aisle seems to be saying, "No,
689 trust the administration." The administration seems to be
690 saying, "Trust the administration." The so-called Protect
691 America Act said, "Trust the administration."

692 This act says, "Trust the administration to be human
693 beings, not to be perfect, to be fallible, perhaps to be
694 tempted to cut corners in the service of a good end, but to
695 the detriment of liberty and privacy unnecessarily."

696 This bill says, "Let us subject the administration, as
697 is our entire tradition since Magna Carta, to judicial
698 oversight. Let the FISA court, a secret court, oversee this
699 process."

700 That is essentially what this bill does and that is
701 essentially all it does. And that is in our tradition. It
702 gives the administration the power—it modernizes the old law.
703 It says that foreign-to-foreign communications can be
704 wiretapped without warrants, but it says it is subject,
705 everything is subject to review, in the first instance, by
706 the court and ultimately by the secret FISA court, and
707 ultimately by reports to the Congress.

708 That is essentially the change it makes.

709 Now, I want to point out specifically, with respect to
710 the remarks of the previous gentleman, that the existing law
711 that was passed, that the administration proposed that was
712 passed in August already authorizes court review of targeting

713 already and Admiral McConnell, the director of national
714 intelligence, at a House Intelligence Committee hearing just
715 last month, signed off on the concept of court review of
716 minimization procedures.

717 So these provisions of the bill should not be startling
718 and should not raise questions that they would tie the hands
719 of the administration when the administration says they would
720 not.

721 I thank the gentleman for yielding to me and I yield
722 back to him.

723 Mr. Scott. I yield back, Mr. Chairman.

724 Chairman Conyers. The chair is prepared to call for the
725 question.

726 All those in favor of the Nadler amendment, signify by
727 saying "aye."

728 Those opposed, signify by saying "no."

729 In the opinion of the chair, the ayes have it and the
730 amendment is agreed to.

731 Mr. Forbes. Mr. Chairman, on that we, as ask for a
732 recorded vote, please.

733 Chairman Conyers. Mr. Forbes asks for a recorded vote
734 and the clerk will call the roll.

735 The Clerk. Mr. Chairman?

736 Chairman Conyers. Aye.

737 The Clerk. Mr. Chairman votes aye.

738 Mr. Berman?

739 Mr. Berman. Aye.

740 The Clerk. Mr. Berman votes aye.

741 Mr. Boucher?

742 [No response.]

743 Mr. Nadler?

744 Mr. Nadler. Aye.

745 The Clerk. Mr. Nadler votes aye.

746 Mr. Scott?

747 Mr. Scott. Aye.

748 The Clerk. Mr. Scott votes aye.

749 Mr. Watt?

750 Mr. Watt. Aye.

751 The Clerk. Mr. Watt votes aye.

752 Ms. Lofgren?

753 Ms. Lofgren. Aye.

754 The Clerk. Ms. Lofgren votes aye.

755 Ms. Jackson Lee?

756 Ms. Jackson Lee. Aye.

757 The Clerk. Ms. Jackson Lee votes aye.

758 Ms. Waters?

759 Ms. Waters. Aye.

760 The Clerk. Ms. Waters votes aye.

761 Mr. Delahunt?

762 Mr. Delahunt. Aye.

763 The Clerk. Mr. Delahunt votes aye.
764 Mr. Wexler?
765 [No response.]
766 Ms. Sanchez?
767 Ms. Sanchez. Aye.
768 The Clerk. Ms. Sanchez votes aye.
769 Mr. Cohen?
770 Mr. Cohen. Aye.
771 The Clerk. Mr. Cohen votes aye.
772 Mr. Johnson?
773 Mr. Johnson. Aye.
774 The Clerk. Mr. Johnson votes aye.
775 Ms. Sutton?
776 Ms. Sutton. Aye.
777 The Clerk. Ms. Sutton votes aye.
778 Mr. Gutierrez?
779 [No response.]
780 Mr. Sherman?
781 [No response.]
782 Ms. Baldwin?
783 [No response.]
784 Mr. Weiner?
785 Mr. Weiner. Aye.
786 The Clerk. Mr. Weiner votes aye.
787 Mr. Schiff?

788 Mr. Schiff. Aye.
789 The Clerk. Mr. Schiff votes aye.
790 Mr. Davis?
791 Mr. Davis. Aye.
792 The Clerk. Mr. Davis votes aye.
793 Ms. Wasserman Schultz?
794 Ms. Wasserman Schultz. Aye.
795 The Clerk. Ms. Wasserman Schultz votes aye.
796 Mr. Ellison?
797 Mr. Ellison. Aye.
798 The Clerk. Mr. Ellison votes aye.
799 Mr. Smith?
800 Mr. Smith. No.
801 The Clerk. Mr. Smith vote no.
802 Mr. Sensenbrenner?
803 Mr. Sensenbrenner. No.
804 The Clerk. Mr. Sensenbrenner votes no.
805 Mr. Coble?
806 Mr. Coble. No.
807 The Clerk. Mr. Coble votes no.
808 Mr. Gallegly?
809 [No response.]
810 Mr. Goodlatte?
811 Mr. Goodlatte. No.
812 The Clerk. Mr. Goodlatte votes no.

813 Mr. Chabot?
814 [No response.]
815 Mr. Lungren?
816 Mr. Lungren. No.
817 The Clerk. Mr. Lungren votes no.
818 Mr. Cannon?
819 Mr. Cannon. No.
820 The Clerk. Mr. Cannon votes no.
821 Mr. Keller?
822 Mr. Keller. No.
823 The Clerk. Mr. Keller votes no.
824 Mr. Issa?
825 [No response.]
826 Mr. Pence?
827 Mr. Pence. No.
828 The Clerk. Mr. Pence votes no.
829 Mr. Forbes?
830 Mr. Forbes. No.
831 The Clerk. Mr. Forbes votes no.
832 Mr. King?
833 Mr. King. No.
834 The Clerk. Mr. King votes no.
835 Mr. Feeney?
836 Mr. Feeney. No.
837 The Clerk. Mr. Feeney votes no.

838 Mr. Franks?

839 Mr. Franks. No.

840 The Clerk. Mr. Franks votes no.

841 Mr. Gohmert?

842 Mr. Gohmert. No.

843 The Clerk. Mr. Gohmert votes no.

844 Mr. Jordan?

845 Mr. Jordan. No.

846 The Clerk. Mr. Jordan votes no.

847 Chairman Conyers. Ms. Baldwin?

848 Ms. Baldwin. Aye.

849 The Clerk. Ms. Baldwin votes aye.

850 Chairman Conyers. Mr. Boucher?

851 Mr. Boucher. Aye.

852 The Clerk. Mr. Boucher votes aye.

853 Chairman Conyers. Mr. Gutierrez?

854 Mr. Gutierrez. Aye.

855 The Clerk. Mr. Gutierrez votes aye.

856 Chairman Conyers. Mr. Wexler?

857 Mr. Wexler. Aye.

858 The Clerk. Mr. Wexler votes aye.

859 Chairman Conyers. Mr. Sherman?

860 Mr. Sherman. Aye.

861 The Clerk. Mr. Sherman votes aye.

862 Chairman Conyers. Are there other members that wish to

863 cast or change their vote?

864 The clerk will report.

865 The Clerk. Mr. Chairman, 23 members voted aye, 14
866 members voted nay.

867 Chairman Conyers. The amendment carries.

868 The chair recognizes the ranking member of the
869 Constitution Committee, Mr. Forbes.

870 Mr. Forbes. Mr. Chairman, I have an amendment at the
871 desk.

872 Chairman Conyers. Crime Committee.

873 Mr. Forbes. It is all right, Mr. Chairman. I have an
874 amendment at the desk.

875 Chairman Conyers. The clerk will report the amendment.

876 The Clerk. Amendment in the nature of a substitute to
877 H.R. 3773, offered by Mr. Forbes.

878 [The amendment by Mr. Forbes follows:]

879 ***** INSERT *****

880 Mr. Forbes. Mr. Chairman, I move that we waive the
881 reading of the amendment.

882 Chairman Conyers. Without objection, so ordered.

883 And the gentleman is recognized in support of his
884 amendment.

885 Mr. Forbes. Thank you.

886 Mr. Chairman, as you know, I appreciate both your
887 friendship and have enormous respect for you and as I take
888 your words at the opening, I think they have framed this
889 debate very clearly for the American people.

890 If we looked at the people sitting in here today
891 listening to this debate, most of them have decided which
892 side of this issue they are on before they come in here, as,
893 unfortunately, have most of the members sitting up here, and
894 it is difficult for the American people, when they are
895 listening to the debate, to really get out of the weeds and
896 say, "What is this all about?"

897 And I think your terminology puts it in very good
898 perspective, something my friend from California mentioned
899 just a minute ago, when you said, "If you trust the courts,
900 then you will have no problem with this act."

901 Now, Mr. Chairman, that misses the point about what this
902 bill does and about why we are here today.

903 I trust my wife, but I don't trust her with the
904 intelligence gathering for the United States of America to

905 defend our troops in the field. And our judges do great
906 work, but they are not entrusted, they are not trained to
907 gather the intelligence to defend America.

908 And, Mr. Chairman, I would tell you this. When our
909 troops are in the field fighting to defend their troops, our
910 troops, fighting to defend their country, our country, they
911 don't trust the judges to gather the intelligence that are
912 going to help them do that and keep them safe. They entrust
913 and they trust our intelligence community.

914 Why, in a time when our enemies are rushing forward as
915 rapidly as possible to develop new ways to kill us and to
916 destroy us, do we want to roll back the intelligence clock
917 baffles me.

918 I will just give you four points that I think are very
919 clear. First, the Protect America Act that we passed in
920 August of this year was a bipartisan agreement. It was a
921 bipartisan act, or it could have never been passed, that was
922 designed to protect America.

923 Secondly, the act before us today will reduce the amount
924 of intelligence that we are gathering, not increase it.

925 Thirdly, we are at a time when we need more intelligence
926 if we are going to stay safe and we are not at a time when we
927 need less intelligence.

928 And that is why we need to reject this bill and support
929 my amendment.

930 Mr. Chairman, my amendment is an amendment in the nature
931 of a substitute. It is the administration's proposed FISA
932 Modernization Act of 2007. The administration submitted this
933 proposal to Congress in April.

934 It is imperative that Congress act responsibly and give
935 the director of national intelligence the authority he needs
936 to conduct foreign intelligence information and protect our
937 country.

938 When Congress drafted FISA in 1978, it framed critical
939 definitions, most importantly, the definition of electronic
940 surveillance, in terms of the specific communications
941 technology and use at the time.

942 As a result, application of FISA depends heavily on the
943 technology used to communicate. Sweeping changes in
944 telecommunications technology have occurred since 1978 and
945 these changes were not and could not have been anticipated by
946 Congress.

947 The bill would amend the definition of electronic
948 surveillance in a manner that restores FISA's original focus
949 on the domestic communications of persons within the United
950 States. Importantly, the amended definition would not depend
951 on the technologies now in use and would continue to maintain
952 the right focus as technology changes.

953 The bill also streamlines the FISA application process.
954 It would eliminate the unnecessary burden that the current

955 statute places on the government. Applications should
956 contain only the information the FISA court needs to make its
957 determination.

958 The bill would provide liability protection to
959 communications providers that are alleged to have assisted
960 the government with authorized intelligence activities since
961 9/11. Those companies, as the ranking member said, deserve
962 our appreciation, not a deluge of lawsuits.

963 In addition, the bill would amend the definition of
964 agent of a foreign power to allow surveillance of non-U.S.
965 persons who possess significant foreign intelligence
966 information.

967 The bill also would modify the definition to include
968 persons who engage in the proliferation of weapons of mass
969 destruction.

970 Finally, the bill would provide for the transfer of
971 cases involving the legality of classified communications
972 intelligence activities from regular courts to the FISA
973 court. This will help protect classified information and
974 allow cases to proceed before the court most familiar with
975 communications intelligence activities and most practiced in
976 safeguarding the type of national security information
977 involved.

978 These reforms are long overdue. They should be debated
979 without exaggerated claims of abuse or misleading claims of

980 threats to civil liberties. Such a debate must also address
981 the importance to all Americans of living in a safe and
982 secure country.

983 And if and when we have another attack on the country, I
984 will tell you, Mr. Chairman, we are going to wish we had more
985 intelligence, not less intelligence on our enemies.

986 And I yield back the balance of my time.

987 Chairman Conyers. I thank the gentleman from Virginia
988 for offering the amendment in the nature of a substitute and
989 I rise in opposition, respectfully, against the substitute,
990 and here is why.

991 I oppose this substitute amendment, which essentially
992 seeks to make a flawed administration proposal permanent and
993 add in telecommunications immunity.

994 In other words, this very clever substitute not only
995 seals the fate of the August 5 proposal which brought us back
996 to the table, but it goes even further. It suffers from many
997 of the same infirmities as that legislation does.

998 It, first, guts the power of the FISA court. That is
999 what this is about. This is what we are really debating
1000 today. It guts the power of the FISA court and would
1001 essentially grant the administration carte blanche to listen
1002 in on communications involving American citizens. That is
1003 why we are here, to stop it.

1004 It would appear to allow the administration to engage in

1005 warrantless searches within the United States. We are here
1006 to stop it.

1007 It also contains hardly any meaningful oversight
1008 whatsoever. We are here to increase it.

1009 The substitute includes none of the checks and balances
1010 included in the underlying bill, no protection against
1011 reverse targeting, no new safeguards for Americans' privacy.
1012 There are no audits by the inspector general.

1013 Now, this proposal is not limited to threats against—
1014 threats to our national security, as the underlying bill
1015 does. There is no language to protect the privacy of
1016 Americans traveling abroad. There is no sunset.

1017 So we would be making a highly controversial provision
1018 of August 5 permanent with additional provisions that go even
1019 further than the one that we are hopefully coming here today,
1020 from our point of view, to correct.

1021 Now, I would also note that included in this proposal is
1022 retroactive immunity for telecommunications carriers. Again,
1023 there is no basis for this grant of immunity and the
1024 administration has not even bothered to give us the
1025 underlying documents. Why? Especially if they really want
1026 retroactive immunity, it seems to me that is the least that
1027 they could do.

1028 So for those very important reasons, I urge rejection of
1029 this substitute amendment.

1030 And I return any time not used.

1031 The gentleman from Texas, Ranking Member Lamar Smith?

1032 Mr. Smith. Thank you, Mr. Chairman.

1033 Mr. Chairman, I strongly support this amendment in the
1034 nature of a substitute. Last month, the director of national
1035 intelligence, Admiral McConnell, called on the committee and
1036 Congress to enact the FISA proposal submitted to Congress in
1037 April.

1038 The Protect America Act passed in August was a good
1039 first step. Now it is time for Congress to affirmatively and
1040 permanently—

1041 Mr. Nadler. Mr. Chairman, could you ask the speaker to
1042 speak into the mike, please?

1043 Mr. Smith. I thought I was, but I will speak even
1044 louder.

1045 The Protect America Act passed in August was a good
1046 first step. Now it is time for Congress to affirmatively and
1047 permanently reform FISA to bring it in line with the 21st
1048 century technology.

1049 Mr. Chairman, while I support the entire amendment in
1050 the nature of a substitute, I want to focus my comments on
1051 one aspect of particular importance that the pending
1052 amendment addresses.

1053 The underlying legislation fails to address the numerous
1054 lawsuits that telecommunications providers are facing as a

1055 result of their alleged activities in support of the
1056 government's efforts after September 11 to prevent another
1057 terrorist attack.

1058 Companies that cooperate with the government in the war
1059 on terror deserve our appreciation and protection, not
1060 politically motivated litigation.

1061 Nearly 50 lawsuits across the country have been filed by
1062 liberal interest groups to penetrate the State Secrets
1063 Doctrine and get their hands on highly sensitive classified
1064 information.

1065 Allowing these lawsuits risks the exposure of state
1066 secrets and threatens our national security.

1067 Many federal statutes, including FISA, currently provide
1068 litigation protection to communications providers for their
1069 compliance with government requests for intelligence
1070 information. Extending this additional liability protection,
1071 therefore, is neither unprecedented nor unwarranted.

1072 In this instance, allowing these suits to remain pending
1073 for years on end and exposing the classified intelligence
1074 threatens the lives and safety of numerous employees working
1075 for these companies overseas, as well as their complex
1076 telecommunications networks.

1077 This amendment extends common sense liability protection
1078 to communication providers who, in good faith, relied on
1079 directives or orders from the government to assist the

1080 government with intelligence activities intended to protect
1081 the United States from another terrorist attack.

1082 Mr. Chairman, I urge my colleagues to join me in
1083 supporting this amendment in the nature of a substitute.

1084 I yield back the balance of my time.

1085 Chairman Conyers. Thank you.

1086 The chair recognizes the Constitution Committee
1087 chairman, Jerry Nadler.

1088 Mr. Nadler. Thank you, Mr. Chairman.

1089 I rise in opposition to the substitute, the so-called
1090 substitute amendment by Mr. Forbes.

1091 I start with the affirmative point. The Democratic
1092 bill, the bill before us, gives the administration everything
1093 it says it needs in terms of the actual tools to collect
1094 intelligence.

1095 It is striking that nearly every comment from the
1096 minority today is directed at process and procedures, not at
1097 the substance of the tools that we seek to make available to
1098 the executive branch to protect this country's security.

1099 We have heard virtually no comments to suggest that the
1100 administration would not receive every tool that it needs.
1101 The amendment fails to address the excesses that were in the
1102 so-called Protect America Act. Most fundamentally, it fails
1103 to protect the rights of Americans to be free of electronic
1104 surveillance by the executive branch when there is no

1105 supervision or awareness by either of the other branches of
1106 government.

1107 Our history as a country has taught us that we cannot
1108 permit any executive to have unchecked secret power to invade
1109 the secret and private lives of American citizens.

1110 We face serious challenges and threats, but as stated by
1111 no less than Justice O'Connor, former Justice O'Connor,
1112 hardly a fire-breathing radical, "We have long since made
1113 clear that a state of war is not a blank check for the
1114 president when it comes to the rights of the nation's
1115 citizens."

1116 The substitute amendment is little more than the
1117 administration's request for unchecked powers, free of any
1118 meaningful scrutiny and oversight, and it must be denied.

1119 The gentleman from Texas says that the American people
1120 trust the intelligence professionals. Yes, they do and so do
1121 I. I trust the intelligence professionals to do everything
1122 possible to gather necessary intelligence.

1123 We must trust the courts to protect our liberty. We do
1124 not trust the intelligence professionals to protect our
1125 liberty. That is not their prime function. We need both
1126 intelligence and liberty. We need both intelligence
1127 professionals gathering the intelligence and courts
1128 safeguarding our liberty.

1129 That is why the Constitution establishes a system of

1130 checks and balances. The Protect America Act forgot about
1131 the second half of that equation. It forgot about allowing
1132 the courts to protect our liberty.

1133 The substitute amendment continues that forgetfulness.
1134 The bill before us restores that American tradition so that
1135 we can gather all the intelligence we need, because we are
1136 indeed in a serious conflict, we must have that intelligence,
1137 but we must have court supervision to make sure that that
1138 intelligence is gathered in a manner consistent with the
1139 Constitution, with our laws and with our liberties.

1140 That is the essence of this bill and the essence of the
1141 reason why this amendment must be rejected.

1142 Let me add a word in response to the ranking member's
1143 comments on retroactive immunity.

1144 He said that when companies cooperate in protecting us,
1145 they should not be subject to politically motivated lawsuits.
1146 Well, no one should be subject to politically motivated
1147 lawsuits. But it is up to the courts to decide when a
1148 lawsuit is politically motivated or frivolous or meritorious.
1149 That is why we have courts. That is their job.

1150 It is not our job as a Congress to decide that a
1151 telecommunications company was patriotically cooperating in a
1152 lawful endeavor to help the war on terror or was engaged in a
1153 criminal conspiracy with a lawless administration to violate
1154 our liberties and violate our laws. It is not our job. That

1155 is the job of the court.

1156 And if some people think that they broke the law, that
1157 the administration broke the law, that the telecommunication
1158 company broke the law, they should sue and the court should
1159 throw them out of court if they don't have the evidence to
1160 prove that the law was broken and should grant them damages
1161 if the evidence is there to prove that the law was broken.

1162 That is why we have courts and those courts making those
1163 decisions are our only protection from any administration,
1164 not necessarily this one, from any executive having
1165 untrammelled power over our liberties and violating our
1166 liberties and pressuring private companies to conspire with
1167 them to violate our liberties and our laws.

1168 The courts offer us protection against that. We must
1169 let the process work itself through, let the courts decide
1170 whether these companies, or some of them, were acting
1171 patriotically, with nobility and legally, or whether they
1172 were breaking the law.

1173 That is the court's function. We should not usurp the
1174 court's function by granting retroactive immunity.

1175 Why don't we simply say that we are going to grant
1176 retroactive immunity to a named list of accused rapists or
1177 murderers? Because we know better. We don't do that in this
1178 country and we should not start now.

1179 Thank you. I yield back. And I urge the defeat of this

1180 amendment.

1181 I yield back.

1182 Chairman Conyers. Thank the gentleman from New York.

1183 The chair is pleased to recognize the distinguished

1184 gentleman from California, Mr. Dan Lungren.

1185 Mr. Lungren. Thank you very much, Mr. Chairman.

1186 Let me get this right. We are attacked on 9/11.

1187 Evidently, the 9/11 commission discovered that we didn't have

1188 all of the laws and procedures we needed to connect the dots.

1189 In the aftermath of 9/11, the administration scrambled

1190 to try and assert all resources possible to try and find out

1191 who was trying to kill us, who was trying to attack us here

1192 and around the world.

1193 They discovered that there was a lot of chatter out

1194 there and we needed help in collecting that chatter. So they

1195 went to the communications companies and they said, "We need

1196 help to protect us against these terrorists that we weren't

1197 prepared to protect ourselves against. Will you help us?"

1198 And they said, "You think the American people are in danger?"

1199 We will assist you. We will respond to your request."

1200 Now, several years later, a number of groups decide that

1201 we are going to solve this problem of terror by lawsuits.

1202 And are we going to sue the terrorists? No, we are going to

1203 sue the communications companies that responded patriotically

1204 to the request of a government that was hampered by the laws

1205 that we had, that we all agreed were inadequate to the
1206 challenge at that time.

1207 Now, let's think about this, if we deny this retroactive
1208 immunity. We have another occasion where we are under
1209 attack. We discover we don't have all the laws that we
1210 needed, all of the procedures necessary to collect that
1211 information.

1212 We go to some companies and we say, "We need your help
1213 immediately to respond to this imminent threat to the United
1214 States, the greatest threat we have had since World War II,"
1215 and they say, "Well, we would like to help you, but we might
1216 be sued and we have heard members of Congress say, 'Well, we
1217 have got millions of dollars worth of lawyers, so we can
1218 respond to that later.' So you are on your own."

1219 What is missing here? It seems to me we have shifted
1220 our focus on the enemy or the presumed enemy or the presumed
1221 bad guy. Now, I realize that there almost is a visceral
1222 reaction to anything this administration does by some on the
1223 other side, that they use the word "unlawful, illegal, not
1224 bound by the Constitution," all those sorts of things.

1225 And then when we say, "That appears to be what you are
1226 doing," they say, "Oh, no, no, no, we are talking about any
1227 administration whatsoever."

1228 Well, let's talk about the facts. We were attacked on
1229 9/11. We needed to try and find out who was out there trying

1230 to kill us. We asked for assistance by American companies.
1231 American companies responded in a patriotic way and now we
1232 say, "You are on your own, buddy. Go through all these
1233 lawsuits. And you don't have the State Secrets Doctrine to
1234 defend yourselves."

1235 I don't know about you, but I find that kind of strange,
1236 passing strange, at least.

1237 And now let me go to the essence of the gentleman's
1238 substitute. It, yes, makes permanent the law change that we
1239 made just a couple of months ago. It is different than the
1240 so-called Restore Act. And the so-called Restore Act has two
1241 main parts to it.

1242 The first part says foreign-to-foreign communications,
1243 you don't have to have a warrant, notwithstanding anything in
1244 this act. And then it says, in the next major section, not
1245 withstanding anything in this act, when you have a foreign
1246 communication, a foreign target in a foreign country, you
1247 have to have, you have to go through the procedure, you have
1248 to go to the courts.

1249 And so what is the first part but a fig leaf? It is a
1250 fig leaf because Admiral McConnell told us that doesn't work.
1251 That is exactly the state of the law that has existed since
1252 the FISA court decision earlier this year that blinded us to
1253 between one-half and two-thirds of the target information
1254 that we needed.

1255 Now, I am not an expert on this, but Admiral McConnell
1256 appears to be. He was President Clinton's head of the NSA.
1257 He told us that formulation does not work.

1258 So what we have said for the first time in history now,
1259 when you have a foreign target, who you presume is going to
1260 be talking to foreigners, but may occasionally talk to
1261 someone in the United States, and that would cover, as we
1262 have been told, half to two-thirds of all our targets out
1263 there, you have got to go get a warrant—unprecedented in the
1264 history of the United States.

1265 That is the essential problem with the bill before us.
1266 That is the problem which is fixed by the gentleman from
1267 Virginia's substitute amendment. That is the most important
1268 part of this entire debate.

1269 It either works or it doesn't work and according to
1270 Admiral McConnell, the precise language that is contained in
1271 the majority's underlying bill does not work, closes our
1272 eyes, puts us at danger.

1273 Chairman Conyers. Thank you, Mr. Lungren.

1274 Before I respectfully call for a vote, could I point out
1275 that no indemnity lies against telecommunications companies
1276 in the future. So it isn't that we don't want to grant the
1277 kind of retroactive immunity. We don't know what to grant it
1278 on. We have been refused the documents.

1279 And if you would join me in looking at, just on the very

1280 first page, the very first section, notwithstanding any other
1281 provision of this act, a court order is not required for the
1282 acquisition of the contents of any communication between
1283 persons that are not United States persons and are not
1284 located within the United States.

1285 And so, ladies and gentlemen of the committee, I would
1286 ask all who support the substitute amendment to indicate by
1287 saying "aye."

1288 Thank you.

1289 I now ask all of those opposed to the amendment, please
1290 indicate by saying "no."

1291 Mr. Smith. Mr. Chairman, may we have a recorded vote?

1292 Chairman Conyers. A recorded vote has been multiply
1293 requested and the clerk will call the roll.

1294 The Clerk. Mr. Chairman?

1295 Chairman Conyers. No.

1296 The Clerk. Mr. Chairman votes no.

1297 Mr. Berman?

1298 Mr. Berman. No.

1299 The Clerk. Mr. Berman votes no.

1300 Mr. Boucher?

1301 Mr. Boucher. No.

1302 The Clerk. Mr. Boucher votes no.

1303 Mr. Nadler?

1304 Mr. Nadler. No.

1305 The Clerk. Mr. Nadler votes no.
1306 Mr. Scott?
1307 Mr. Scott. No.
1308 The Clerk. Mr. Scott votes no.
1309 Mr. Watt?
1310 Mr. Watt. No.
1311 The Clerk. Mr. Watt votes no.
1312 Ms. Lofgren?
1313 Ms. Lofgren. No.
1314 The Clerk. Ms. Lofgren votes no.
1315 Ms. Jackson Lee?
1316 Ms. Jackson Lee. No.
1317 The Clerk. Ms. Jackson Lee votes no.
1318 Ms. Waters?
1319 Ms. Waters. No.
1320 The Clerk. Ms. Waters votes no.
1321 Mr. Delahunt?
1322 Mr. Delahunt. No.
1323 The Clerk. Mr. Delahunt votes no.
1324 Mr. Wexler?
1325 Mr. Wexler. No.
1326 The Clerk. Mr. Wexler votes no.
1327 Ms. Sanchez?
1328 Ms. Sanchez. No.
1329 The Clerk. Ms. Sanchez votes no.

1330 Mr. Cohen?
1331 [No response.]
1332 Mr. Johnson?
1333 [No response.]
1334 Ms. Sutton?
1335 Ms. Sutton. No.
1336 The Clerk. Ms. Sutton votes no.
1337 Mr. Gutierrez?
1338 [No response.]
1339 Mr. Sherman?
1340 Mr. Sherman. No.
1341 The Clerk. Mr. Sherman votes no.
1342 Ms. Baldwin?
1343 Ms. Baldwin. No.
1344 The Clerk. Ms. Baldwin votes no.
1345 Mr. Weiner?
1346 Mr. Weiner. No.
1347 The Clerk. Mr. Weiner votes no.
1348 Mr. Schiff?
1349 Mr. Schiff. No.
1350 The Clerk. Mr. Schiff votes no.
1351 Mr. Davis?
1352 Mr. Davis. No.
1353 The Clerk. Mr. Davis votes no.
1354 Ms. Wasserman Schultz?

1355 Ms. Wasserman Schultz. No.

1356 The Clerk. Ms. Wasserman Schultz votes no.

1357 Mr. Ellison?

1358 Mr. Ellison. No.

1359 The Clerk. Mr. Ellison votes no.

1360 Mr. Smith?

1361 Mr. Smith. Aye.

1362 The Clerk. Mr. Smith vote aye.

1363 Mr. Sensenbrenner?

1364 Mr. Sensenbrenner. Aye.

1365 The Clerk. Mr. Sensenbrenner votes aye.

1366 Mr. Coble?

1367 Mr. Coble. Aye.

1368 The Clerk. Mr. Coble votes aye.

1369 Mr. Gallegly?

1370 [No response.]

1371 Mr. Goodlatte?

1372 Mr. Goodlatte. Aye.

1373 The Clerk. Mr. Goodlatte votes aye.

1374 Mr. Chabot?

1375 [No response.]

1376 Mr. Lungren?

1377 Mr. Lungren. Aye.

1378 The Clerk. Mr. Lungren votes aye.

1379 Mr. Cannon?

1380 Mr. Cannon. Aye.

1381 The Clerk. Mr. Cannon votes aye.

1382 Mr. Keller?

1383 Mr. Keller. Aye.

1384 The Clerk. Mr. Keller votes aye.

1385 Mr. Issa?

1386 [No response.]

1387 Mr. Pence?

1388 Mr. Pence. Aye.

1389 The Clerk. Mr. Pence votes aye.

1390 Mr. Forbes?

1391 Mr. Forbes. Aye.

1392 The Clerk. Mr. Forbes votes aye.

1393 Mr. King?

1394 Mr. King. Aye.

1395 The Clerk. Mr. King votes aye.

1396 Mr. Feeney?

1397 Mr. Feeney. Aye.

1398 The Clerk. Mr. Feeney votes aye.

1399 Mr. Franks?

1400 Mr. Franks. Aye.

1401 The Clerk. Mr. Franks votes aye.

1402 Mr. Gohmert?

1403 Mr. Gohmert. Aye.

1404 The Clerk. Mr. Gohmert votes aye.

1405 Mr. Jordan?

1406 Mr. Jordan. Aye.

1407 The Clerk. Mr. Jordan votes yes.

1408 Chairman Conyers. Are there members in the chamber who
1409 have not cast a vote?

1410 Mr. Cohen?

1411 Mr. Cohen. No.

1412 The Clerk. Mr. Cohen votes no.

1413 Chairman Conyers. Anyone else?

1414 The clerk will report.

1415 The Clerk. Mr. Chairman, 14 members voted aye, 21
1416 members voted nay.

1417 Chairman Conyers. The amendment fails.

1418 And the chair recognizes the gentlelady from Texas, Ms.
1419 Sheila Jackson Lee.

1420 Ms. Jackson Lee. I thank the distinguished chairman for
1421 yielding and I thank the ranking member of the full
1422 committee.

1423 I have an amendment at the desk.

1424 Chairman Conyers. The clerk will report the amendment.

1425 The Clerk. Amendment to H.R. 3773, offered by Ms.
1426 Jackson Lee of Texas. Page 6, line 7, strike-

1427 [The amendment by Ms. Jackson Lee follows:]

1428 ***** INSERT *****

1429 Ms. Jackson Lee. Mr. Chairman, I ask that the amendment
1430 be considered as read.

1431 Chairman Conyers. Without objection, so ordered.

1432 The gentlelady is recognized in support of her
1433 amendment.

1434 Ms. Jackson Lee. I thank you very much.

1435 Mr. Chairman, I think as we have begun this discussion,
1436 there is probably more agreement than there is disagreement.
1437 I can't imagine my friends on the other side of the podium
1438 have any quarrel with the protection of Americans and the
1439 singular responsibility that we have in protecting Americans
1440 and their constitutional rights, in particular, the Fourth
1441 Amendment, protection against unreasonable search and
1442 seizure.

1443 My amendment is straightforward and I believe that it
1444 reinforces the premise of our underlying bill, which is it
1445 restores the presence of the FISA court and all of the
1446 protections that that court and the FISA law provide.

1447 This amendment is joined—I am glad to be joined by
1448 Congressman Nadler, the chair of the Constitution
1449 Subcommittee, and, in particular, this amendment is to
1450 enforce the prevention of reserve targeting.

1451 Reverse targeting is a concept well known to members of
1452 this committee, but is not so well known or understood by
1453 those who are less steep in the arcaneness of electronic

1454 surveillance. But it is a practice where the government
1455 targets foreigners without a warrant, while its actual
1456 purpose is to collect information on certain U.S. persons.

1457 Whatever your political philosophy on this bill or
1458 however you view your constitutional rights, we know that
1459 that is an unacceptable premise in terms of protecting the
1460 civil liberties of Americans, and that is what the previous
1461 bill, the Protect America Act, did. It encouraged the
1462 potential of reverse targeting.

1463 My amendment does this. This amendment achieves the
1464 elimination of reverse targeting by requiring the
1465 administration to obtain a regular FISA warrant whenever a
1466 significant purpose of an acquisition is to acquire the
1467 communications of a specific person reasonably believed to be
1468 located in the United States.

1469 The current language in the bill provides that a warrant
1470 be obtained only when the government seeks to conduct
1471 electronic surveillance of a person reasonably believed to be
1472 located in the United States.

1473 It is difficult to understand what the operative
1474 language seeks to—is or what it means. What it is, it is.
1475 It is hard to interpret.

1476 So the language we have in this amendment, in contrast,
1477 the language used in our amendment is significant purpose.
1478 It is a term of art that has long been a staple of FISA

1479 jurisprudence and, thus, is well known and readily applied by
1480 the agencies, legal practitioners and the FISA court.

1481 Thus, my amendment provides a clearer, more objective
1482 criterion for the administration to follow and the FISA court
1483 to enforce to prevent the practice of reverse targeting
1484 without a warrant, which all of us can agree should not be
1485 permitted. All Americans should be protected.

1486 And let me conclude by saying, in short, my amendment
1487 gives the government precisely what the director of national
1488 intelligence, McConnell, asked for when he testified before
1489 the Senate Judiciary Committee.

1490 His comments are, "It is very important to me, it is
1491 very important to members of this committee. We should be
1492 required—we should be required in all cases to have a warrant
1493 any time there is surveillance of a U.S. person located in
1494 the United States."

1495 Well, Director McConnell, we are delighted of your
1496 expression of the protection of civil liberties of all
1497 Americans and this amendment helps to clarify that position.

1498 I ask my colleagues to support this amendment. And I
1499 thank the distinguished chairman for yielding. And I ask for
1500 a yes vote on my amendment.

1501 Mr. Scott. Will the gentlelady yield?

1502 Ms. Jackson Lee. I would be happy to yield.

1503 Mr. Scott. In your amendment, you have "acquire the

1504 communications of a specific person reasonably believed." In
1505 the bill, it just says "a person."

1506 If they do not know exactly who it is, but they know
1507 that it is a person in the United States, they have kind of
1508 dropped out the dragnet, does "specific" give a standard that
1509 might allow them to surveil people who they are not sure who
1510 it is appropriately?

1511 Is there any reason why the word "specific" needs to be
1512 in your amendment?

1513 Ms. Jackson Lee. Well, the gentleman raises a
1514 considered question. Our idea was to narrow it and to ensure
1515 that the surveillors would be able to name a specific person.

1516 It really was to avoid fishing. I think the point that
1517 you raise is whether or not it is too narrow, but it was to
1518 put the onus or the burden on the surveillor to have a
1519 specific person, to be able to protect that specific person
1520 against reverse targeting.

1521 In most instances, they know—

1522 Chairman Conyers. The gentlelady's time has expired.

1523 The chair recognizes the ranking member of the
1524 committee, Lamar Smith.

1525 Ms. Jackson Lee. I thank the gentleman for the
1526 question.

1527 Mr. Smith. Thank you, Mr. Chairman.

1528 Mr. Chairman, we are inclined to accept the amendment,

1529 but I have a question about another phrase in the amendment.

1530 And may I ask the gentlewoman from Texas to respond to
1531 this?

1532 Her amendment makes the same general three changes in
1533 the text of the bill and the wording that is the same in the
1534 underlying bill and in her amendment is "person reasonably
1535 believed to be located in the United States."

1536 What is different besides the word "specific," which has
1537 already been mentioned, is the phrase "conduct electronic
1538 surveillance," which is in the original bill, and her wording
1539 is "acquire the communications of."

1540 I would just like to ask the gentlewoman from Texas,
1541 what is the difference between "acquire the communications
1542 of" and "conduct electronic surveillance?"

1543 Ms. Jackson Lee. Well, I think it is the utilization of
1544 the language, Mr. Smith, and there is no real difference. It
1545 is to emphasize that we are securing information from a
1546 specific person.

1547 That is why the language goes together, "acquire the
1548 communications of a specific person." You are drawing
1549 communications from a designated person and we believe that
1550 that focuses on the direct target of the surveillers that may
1551 generate reverse targeting.

1552 I may be open to any modification, but we were trying to
1553 craft it so that you knew that you are taking information

1554 from someone specifically that was under surveillance that
1555 happened to be located in the United States.

1556 Mr. Smith. Thank you for the explanation.

1557 Mr. Chairman, we are prepared to accept the amendment.

1558 Chairman Conyers. I thank the gentleman.

1559 I have asked Mr. Nadler to generously submit his
1560 statement for the record.

1561 Mr. Nadler. I will generously do so.

1562 Ms. Jackson Lee. I welcome his support.

1563 Chairman Conyers. But I hear Mr. Scott seeking
1564 recognition.

1565 Mr. Scott. I know we are trying to move on, Mr.
1566 Chairman. I would move to strike the last word.

1567 Chairman Conyers. The gentleman may proceed.

1568 Mr. Scott. Mr. Chairman, I have concerns about this and
1569 I would just ask the chairman and the gentlelady who is
1570 offering the amendment to consider whether or not this opens
1571 up a situation, if all you know is they are calling a 703
1572 area code, but you don't know who the specific person is,
1573 whether or not you would have to get a warrant.

1574 I would think that if you know you are calling into the
1575 United States, although you don't know exactly who, you don't
1576 know the specific person, whether or not we are opening this
1577 up unrealistically and whether "specific" should be in there.

1578 So, Mr. Chairman, I would ask you, between now and the

1579 floor, to consider that issue.

1580 And I would yield back the balance of my time.

1581 Mr. Berman. Would the gentleman yield?

1582 Mr. Scott. I yield to the gentleman from California.

1583 Mr. Berman. Just to give the other side of that issue,

1584 I think that word "specific," in the context of this

1585 amendment, is what makes this amendment such a reasonable

1586 amendment.

1587 You are going after the foreign agent. You don't need a

1588 warrant. I think both sides agree about that. I think both

1589 sides agree that when your primary target is a U.S. person,

1590 you have to go for the warrant.

1591 Now, the gentlelady from Texas says, "What about you are

1592 going after the foreign person, but you have information that

1593 he is contacting a specific person in the U.S.," and that is

1594 also a significant purpose of your decision to go after that

1595 foreign person.

1596 Now you are dealing here with an issue where, in effect,

1597 where you have that reasonable belief that U.S. person is

1598 also becoming a target. And so it says in the formulation

1599 that is exactly like what we do in the Patriot Act, where we

1600 say a significant purpose of your goal is a foreign

1601 intelligence operation, we allow you to go to the FISA court

1602 to get your warrant, even if it is part of some criminal

1603 investigation.

1604 So I think the term "specific" here has real purpose.

1605 Mr. Scott. Reclaiming my time.

1606 And I just want to point out, in that case, certainly,
1607 you should have to get the warrant. The question is whether
1608 or not there are other situations.

1609 If you know he is calling into the United States and
1610 talking to someone, you don't know who it is, should they
1611 also have to get a warrant?

1612 And let me just make a—

1613 Mr. Berman. Without the surveillance, how are you going
1614 to know who that person is?

1615 Chairman Conyers. This is very interesting. The
1616 amendment has been accepted and now we are having a debate
1617 over literally one word, which the chair will guarantee will
1618 be taken into cognizance as soon as we get through with this
1619 bill.

1620 Does the gentleman yield back his time?

1621 Mr. Scott. Before I yield back, I would just like to
1622 say the significant purpose is the subject of an amendment
1623 that I will be offering.

1624 And I yield back.

1625 Chairman Conyers. I thank the gentleman and I thank the
1626 ranking member.

1627 All in favor of the amendment, indicate by saying "aye."

1628 All those opposed, say "no."

1629 The ayes have it. The amendment is agreed to.

1630 The chair recognizes—

1631 Ms. Jackson Lee. I thank the chairman, thank the
1632 members.

1633 Chairman Conyers. You are welcome.

1634 The chair recognizes the gentleman from Virginia, Mr.
1635 Scott.

1636 Mr. Scott. Thank you, Mr. Chairman.

1637 Mr. Chairman, I have two amendments and I understand
1638 from conversation that the preference is to take up my second
1639 amendment, which is Scott-037.

1640 Chairman Conyers. The gentleman is correct.

1641 Mr. Scott. Mr. Chairman, this—

1642 Chairman Conyers. Let's have the clerk report the
1643 amendment.

1644 The Clerk. Amendment to H.R. 3773, offered by Mr. Scott
1645 of Virginia. Page 14, strike lines 20 through 22 and insert
1646 the following: "(1) In the case of an application, A—

1647 [The amendment by Mr. Scott follows:]

1648 ***** COMMITTEE INSERT *****

1649 Chairman Conyers. Without objection, the amendment will
1650 be considered as read.

1651 The gentleman from Virginia is recognized in support of
1652 his amendment.

1653 Mr. Scott. Thank you.

1654 Mr. Chairman, this is the second of two amendments I
1655 wanted to introduce and I will just introduce this one. The
1656 first amendment, which would have been a stronger amendment,
1657 would have changed the standard from showing a "significant
1658 purpose of the acquisition is to obtain foreign intelligence"
1659 to restore it to the original law the way it was a long time,
1660 the primary purpose, a deep purpose.

1661 Under FISA, when an agent wanted to obtain authority to
1662 conduct electronic surveillance or secret searches, a
1663 certificate was necessary detailing what the purpose of the
1664 surveillance was in order to obtain foreign intelligence.

1665 The standard was altered by the Patriot Act, which says
1666 it only has to be "a significant purpose."

1667 Now, we need to place these amendments in context. The
1668 Department of Justice has not credibly refuted the
1669 allegations that U.S. attorneys were fired because they
1670 failed to indict Democrats in time to effect an upcoming
1671 election. So if the Department of Justice wiretaps when
1672 foreign intelligence is not the primary purpose, you have to
1673 wonder what the primary purpose is.

1674 The administration should not be able to circumvent more
1675 stringent requirements of a Title 3 criminal warrant, in
1676 which probable cause of a crime is necessary, by using the
1677 law standards of FISA when a criminal investigation is, in
1678 fact, the primary purpose of the surveillance.

1679 This amendment restores the law the way it has been for
1680 years, before the USA Patriot Act. In fact, the so-called
1681 significant purpose in the Patriot Act has been ruled
1682 unconstitutional in *Mayfield, et al, v. U.S.*, a case decided
1683 the 26th of September of last month.

1684 I assume it will be appealed, but I ask unanimous
1685 consent to introduce into the record an article on the
1686 opinion.

1687 Rather than change while that case is pending, Mr.
1688 Chairman, the "significant purpose" to the "the purpose" or
1689 "the primary purpose," the amendment that I am introducing
1690 would just require the Department of Justice, in its report,
1691 to say what the primary purpose actually is.

1692 It would allow them to continue wiretapping under the
1693 watered-down standard, but if it is not the primary purpose,
1694 just tell us what the purpose is.

1695 If intelligence investigators are directing the
1696 surveillance for the purpose of foreign intelligence, the
1697 administration will have nothing to worry about with this
1698 amendment. However, if the administration is using the USA

1699 Patriot Act for some unsavory purpose, the amendment allows
1700 them to continue to do so, but it will force them to say why
1701 they are doing it.

1702 Mr. Chairman, I would hope this amendment would be
1703 adopted.

1704 I yield back.

1705 Chairman Conyers. I thank the gentleman.

1706 Without objection, his request for introducing the
1707 Oregon opinion into the record is ordered.

1708 The gentleman from California, Dan Lungren?

1709 Mr. Lungren. Rise to strike the requisite number of
1710 words.

1711 Mr. Chairman, on this issue that the gentleman has
1712 raised about the question of "primary purpose" versus
1713 "significant purpose," I think it bears repeating here the
1714 history of this.

1715 Section 218 of the Patriot Act was adopted to address
1716 what the 9/11 commission characterized as the law, the law
1717 that had grown up between the law enforcement community and
1718 the intelligence community.

1719 The requirement under the prior law that the primary
1720 purpose of the surveillance, and that was the language,
1721 "primary purpose of the surveillance," had to relate to
1722 foreign intelligence. What we discovered was that this had
1723 the perverse effect of limiting coordination between the

1724 intelligence and law enforcement personnel.

1725 In fact, if you go and you look at the report, you will
1726 see that a great deal of confusion arose as to when the
1727 sharing of information could or could not be permitted.

1728 In fact, FBI agents were informed that too much sharing
1729 might be "a career stopper." It was based on that
1730 experience, pointed to by the 9/11 commission as creating a
1731 problem which did not allow different agencies of the
1732 government or different elements within the FBI to be able to
1733 share information with one another, that was one of the great
1734 shortcomings exposed by the 9/11 commission.

1735 Section 218 of the Patriot Act sought to eliminate the
1736 problem that had been created. It was more than a
1737 perception. It was an actual problem that there was a wall
1738 that must exist with the "significant purpose" language.

1739 And so I just thought it is important for us to
1740 understand where we are coming from on all this and that the
1741 "significant purpose" standard was effectively ended. It
1742 allowed that wall to be taken down and that is all—

1743 Mr. Berman. Would the gentleman yield?

1744 Mr. Lungren. Yes, I will be happy to. But just to make
1745 my point, I just thought we ought to at least reference why
1746 the change in language took place in the Patriot Act, that it
1747 was a considered judgment by the—I was not here at the time,
1748 but it was a considered judgment by the Congress that we had

1749 to deal with this.

1750 And so I am not suggesting that the concerns raised by
1751 the other side are not important. I am just trying to give a
1752 context to what had occurred.

1753 Ms. Lofgren. Would the gentleman yield?

1754 Mr. Lungren. Yes, sure.

1755 Mr. Berman. Three points and tell me if I am wrong
1756 here, because memories are slippery things.

1757 One, we made that change in the Patriot Act long before
1758 the 9/11 commission ever reported.

1759 Secondly, the issue of the wall and the problems of
1760 information sharing was evident to us long before the 9/11
1761 commission report came, soon after 9/11, and we made other
1762 changes in the Patriot Act to allow information to be shared,
1763 which had nothing to do with the issue of primary purpose—

1764 Mr. Lungren. I am not suggesting it was the only thing.
1765 Sorry if I said that.

1766 Mr. Berman. Third, the key issue on "significant
1767 purpose" was at what point could you go to a FISA court to
1768 get a warrant rather than go to a regular district court
1769 judge to get a warrant.

1770 And my final point is Mr. Scott's amendment isn't an
1771 effort to wipe out the—

1772 Mr. Lungren. No, I understand that. I understand that.
1773 But there was discussion about "significant purpose" versus

1774 "primary purpose," that I thought it was important for us to
1775 be reminded why this came up in the past and that even though
1776 the language was not adopted previously, for the purpose of
1777 creating the law the way it was, that was the culture that
1778 developed within the FBI and-

1779 Mr. Berman. And the Patriot Act has specific provisions
1780 to allow the information sharing.

1781 Mr. Lungren. Right, I understand that.

1782 Mr. Berman. We tore down that wall.

1783 Mr. Lungren. I understand that. I am just saying that
1784 that wall was, in part, created as a result of the response
1785 to that language used before and the way it was applied.

1786 Ms. Lofgren. Would the gentleman yield?

1787 Mr. Lungren. I am not suggesting that your concern is
1788 irrelevant. I am just saying we ought to understand why
1789 these kinds of issues about that language have been important
1790 from another perspective.

1791 And I would be happy to yield.

1792 Ms. Lofgren. I think the gentleman is correct. Well,
1793 maybe I ought to get my own time, then.

1794 Mr. Lungren. I yield back the time.

1795 Chairman Conyers. The gentleman's time has expired. We
1796 thank him for his contribution.

1797 I recognize the gentlelady from California, Ms. Lofgren.

1798 Ms. Lofgren. Thank you. I move to strike the last

1799 word.

1800 On this point, I think the gentleman from California is
1801 correct and I remember being here the weekend after 9/11,
1802 sitting at that table with lawyers from the Justice
1803 Department and lawyers from both sides of the aisle on the
1804 committee and the like, and the issue was the difficulty of
1805 is it 51 percent, 49 percent.

1806 And we did change the standard so it would be a
1807 substantial purpose, so that we would break down that all.
1808 And I think, although there are things that I disagree with
1809 in the current Patriot Act, that was one of the important
1810 things that we did and I think everyone agrees with that.

1811 Here is my question. I think that Mr. Scott's amendment
1812 does not damage that important accomplishment. I think it
1813 merely provides additional information to the committee.

1814 So understanding and agreeing with the gentleman from
1815 California as to what we did and why we did it, is the
1816 gentleman objecting to receiving this additional information,
1817 understanding that it does not damage that accomplishment?

1818 I would yield to the gentleman.

1819 Mr. Lungren. I don't object to it. I am just saying
1820 that while the gentleman said he was offering amendment
1821 number two, there was another amendment that would have
1822 changed the language specifically.

1823 I thought it just important for us to remind ourselves

1824 that we had developed a wall, for a number of different
1825 reasons, but one of the reasons was the language chosen, and
1826 that we should be reminded that FBI agents and others, in
1827 most cases, do try and follow the law and are concerned about
1828 the specific language we use.

1829 And in that case, because of overreaction, perhaps, to
1830 the language, it had prohibited us from doing the job that
1831 probably Congress intended to be done.

1832 Ms. Lofgren. Reclaiming my time, then. I am glad that
1833 you have clarified that you do not oppose this amendment and
1834 that we agree as to the history of the change in the Patriot
1835 Act.

1836 I yield to the gentleman from New York, Mr. Nadler.

1837 Chairman Conyers. I thank the gentlelady.

1838 The chair will call for the vote on the Scott amendment.

1839 All in favor, say "aye."

1840 All opposed, say "no."

1841 The ayes have it. So ordered. The amendment is agreed
1842 to.

1843 Chairman Conyers. Was there a recorded vote request?

1844 Which one did it come from?

1845 Mr. Smith. Me.

1846 Chairman Conyers. The clerk will call the roll.

1847 The Clerk. Mr. Conyers?

1848 Chairman Conyers. Aye.

1849 The Clerk. Mr. Chairman votes aye.
1850 Mr. Berman?
1851 Mr. Berman. Aye.
1852 The Clerk. Mr. Berman votes aye.
1853 Mr. Boucher?
1854 [No response.]
1855 Mr. Nadler?
1856 Mr. Nadler. Aye.
1857 The Clerk. Mr. Nadler votes aye.
1858 Mr. Scott?
1859 Mr. Scott. Aye.
1860 The Clerk. Mr. Scott votes aye.
1861 Mr. Watt?
1862 Mr. Watt. Aye.
1863 The Clerk. Mr. Watt votes aye.
1864 Ms. Lofgren?
1865 Ms. Lofgren. Aye.
1866 The Clerk. Ms. Lofgren votes aye.
1867 Ms. Jackson Lee?
1868 Ms. Jackson Lee. Aye.
1869 The Clerk. Ms. Jackson Lee votes aye.
1870 Ms. Waters?
1871 [No response.]
1872 Mr. Delahunt?
1873 Mr. Delahunt. Aye.

1874 The Clerk. Mr. Delahunt votes aye.
1875 Mr. Wexler?
1876 [No response.]
1877 Ms. Sanchez?
1878 Ms. Sanchez. Aye.
1879 The Clerk. Ms. Sanchez votes aye.
1880 Mr. Cohen?
1881 Mr. Cohen. Aye.
1882 The Clerk. Mr. Cohen votes aye.
1883 Mr. Johnson?
1884 [No response.]
1885 Ms. Sutton?
1886 Ms. Sutton. Aye.
1887 The Clerk. Ms. Sutton votes aye.
1888 Mr. Gutierrez?
1889 [No response.]
1890 Mr. Sherman?
1891 [No response.]
1892 Ms. Baldwin?
1893 Ms. Baldwin. Aye.
1894 The Clerk. Ms. Baldwin votes aye.
1895 Mr. Weiner?
1896 Mr. Weiner. Aye.
1897 The Clerk. Mr. Weiner votes aye.
1898 Mr. Schiff?

1899 [No response.]

1900 Mr. Davis?

1901 Mr. Davis. Aye.

1902 The Clerk. Mr. Davis votes aye.

1903 Ms. Wasserman Schultz?

1904 Ms. Wasserman Schultz. Aye.

1905 The Clerk. Ms. Wasserman Schultz votes aye.

1906 Mr. Ellison?

1907 Mr. Ellison. Aye.

1908 The Clerk. Mr. Ellison votes aye.

1909 Mr. Smith?

1910 Mr. Smith. No.

1911 The Clerk. Mr. Smith vote no.

1912 Mr. Sensenbrenner?

1913 [No response.]

1914 Mr. Coble?

1915 [No response.]

1916 Mr. Gallegly?

1917 [No response.]

1918 Mr. Goodlatte?

1919 Mr. Goodlatte. No.

1920 The Clerk. Mr. Goodlatte votes no.

1921 Mr. Chabot?

1922 Mr. Chabot. No.

1923 The Clerk. Mr. Chabot votes no.

1924 Mr. Lungren?
1925 Mr. Lungren. Aye.
1926 The Clerk. Mr. Lungren votes aye.
1927 Mr. Cannon?
1928 Mr. Cannon. No.
1929 The Clerk. Mr. Cannon votes no.
1930 Mr. Keller?
1931 Mr. Keller. No.
1932 The Clerk. Mr. Keller votes no.
1933 Mr. Issa?
1934 [No response.]
1935 Mr. Pence?
1936 Mr. Pence. Pass.
1937 The Clerk. Mr. Pence passes.
1938 Mr. Forbes?
1939 Mr. Forbes. No.
1940 The Clerk. Mr. Forbes votes no.
1941 Mr. King?
1942 Mr. King. No.
1943 The Clerk. Mr. King votes no.
1944 Mr. Feeney?
1945 Mr. Feeney. No.
1946 The Clerk. Mr. Feeney votes no.
1947 Mr. Franks?
1948 Mr. Franks. No.

1949 The Clerk. Mr. Franks votes no.
1950 Mr. Gohmert?
1951 Mr. Gohmert. No.
1952 The Clerk. Mr. Gohmert votes no.
1953 Mr. Jordan?
1954 Mr. Jordan. No.
1955 The Clerk. Mr. Jordan votes no.
1956 Mr. Pence?
1957 Mr. Pence. No.
1958 The Clerk. Mr. Pence votes no.
1959 Chairman Conyers. Mr. Schiff?
1960 Mr. Schiff. Aye.
1961 The Clerk. Mr. Schiff votes aye.
1962 Chairman Conyers. Ms. Waters?
1963 Ms. Waters. Aye.
1964 The Clerk. Ms. Waters votes aye.
1965 Chairman Conyers. Mr. Johnson?
1966 Mr. Johnson. Aye.
1967 The Clerk. Mr. Johnson votes aye.
1968 Chairman Conyers. Any other members wish to vote?
1969 Mr. Wexler?
1970 Mr. Wexler. Aye.
1971 The Clerk. Mr. Wexler votes aye.
1972 Chairman Conyers. Mr. Delahunt?
1973 Mr. Delahunt. Aye.

1974 Chairman Conyers. If all members have voted, the clerk
1975 will report.

1976 The Clerk. Mr. Chairman, 21 members voted aye and 12
1977 members voted nay.

1978 Chairman Conyers. The amendment is agreed to.

1979 We have four votes. The chair proposes lunch and that
1980 we return at 1:30.

1981 Let's try final passage. A reporting quorum—

1982 Mr. Gohmert. Mr. Chairman, I have an amendment at the
1983 desk.

1984 Chairman Conyers. I am sorry, then. So we will stand
1985 in recess until 1:30. Thank you very much.

1986 [Recess.]

1987 Chairman Conyers. The subcommittee will come to order.

1988 The chair recognizes Judge Louie Gohmert for an
1989 amendment.

1990 Mr. Gohmert. Thank you, Mr. Chairman.

1991 I do have an amendment to H.R. 3773 at the desk.

1992 Chairman Conyers. The clerk will report the amendment.

1993 The Clerk. Amendment to H.R. 3773, offered by Mr.

1994 Gohmert of Texas. Page 3, line 19, strike "Sec. 3 procedure
1995 for authorizing acquisitions of" and all that follows through
1996 page 14, line—

1997 [The amendment by Mr. Gohmert follows:]

1998 ***** INSERT *****

1999 Chairman Conyers. I ask unanimous consent the amendment
2000 be considered as read.

2001 The gentleman is recognized in support of his amendment.

2002 Mr. Gohmert. Thank you, Mr. Chairman.

2003 As we all know, there are people who have declared war
2004 on the United States. They have declared on the freedoms and
2005 liberties that we hold dear within our borders.

2006 Now, if we are not allowed to conduct adequate
2007 intelligence activities abroad, then we may very well be
2008 paying to clean up more terrorist attacks here at home.

2009 President Carter cut intelligence to the bone, cut it
2010 dramatically, and we have paid for years for that. Perhaps
2011 if we had had better intelligence, then we wouldn't have been
2012 lied to repeatedly about Iraq having weapons of mass
2013 destruction when the Clinton administration kept telling us
2014 that over and over and over.

2015 Maybe the Clinton administration wouldn't have lied to
2016 us about those weapons of mass destruction over and over if
2017 we had had adequate intelligence.

2018 But to require U.S. judicial intervention into foreign
2019 activities on foreign battlefields is taking this matter too
2020 far. Now, we need to protect our civil liberties. That is
2021 one of the reasons I have encouraged and been supportive of
2022 oversight activities of the executive branch. I welcome more
2023 of that. I think it is a great thing and I am proud that the

2024 chairman feels the same way.

2025 However, when you require soldiers—think about it—
2026 soldiers on a foreign battlefield—and they are foreigners,
2027 these aren't U.S. citizens—they are in harm's way out there
2028 and there are people that are not U.S. citizens and we want
2029 to do electronic surveillance and we have to retrain our
2030 soldiers to get on the horn, wake up the director of national
2031 intelligence, wake up the attorney general, have them go and
2032 find a FISA court judge, make a petition in writing and
2033 hopefully have enough cause to satisfy the judge that they
2034 can go ahead and do electronic surveillance.

2035 But that is what Section 3 requires—the DNI and the
2036 attorney general to apply to the FISA court judge for an
2037 order, and it could be for a period up to 1 year to acquire
2038 communications of non-U.S. persons reasonably believed to be
2039 outside the United States.

2040 And then the good news, though, if you are on a foreign
2041 battlefield, you will be so comforted to know this Section 3
2042 that I am trying to strike will require the judge to rule
2043 within 15 days.

2044 Section 4, similar matters. You can get emergency
2045 authorization and that will last up to 7 days, but the AG and
2046 the DNI still have got to submit an application for
2047 collection.

2048 So, folks, here is the scenario. Suppose we get Bin

2049 Laden. We believe he is in a home. But before we go in
2050 destructively, we could wiretap that home and find out who is
2051 in there and know more through our electronic surveillance.
2052 But before we can do that, we have got to get the DNI and the
2053 attorney general to go make a petition and hopefully the
2054 judge gets it ruled within 15 days to allow them to
2055 electronically surveil.

2056 What people don't seem to understand is there are those
2057 around the world who are at war with us and we have to
2058 recognize that and to tie the hands of people on those
2059 foreign battlefields is just wrong.

2060 Now, I understand the concerns. We have this Section 2
2061 that says, "Well, if it is between persons and both of them
2062 we know are not U.S. citizens on U.S. soil, then that is okay
2063 and it doesn't apply." But the problem is you can never know
2064 who a foreign terrorist on foreign soil is going to call.

2065 And I don't have any problem telling anyone that is in
2066 this country that is a United States citizen, "If you are
2067 getting calls from a foreign country, from a foreign
2068 terrorist, you ought to tell them not to call you at home."

2069 It is not that hard a thing to explain to our friends.
2070 We can protect their civil liberties. Tell your foreign
2071 terrorist friends not to call you at home. Find some other
2072 way to communicate. And that is why, though, we need to
2073 strike three and four until we can bring this back to reason

2074 and recognize we are in a war for survival of this country's
2075 life, because there are people who want to take it all away
2076 from us.

2077 I do yield back.

2078 Chairman Conyers. I thank the gentleman.

2079 He raises a very important point which I will try to
2080 describe my reluctance about.

2081 Judge Gohmert wants to strike Sections 3 and 4, the
2082 court review of regular and emergency procedures. Now, the
2083 August bill, Protect America Act, that was passed and the
2084 Restore Act that we are considering both entertain procedures
2085 and guidelines and how they ought to be administered. I
2086 think we can agree on that.

2087 The difference, of course, is that the Protect America
2088 Act, the court ratifies the conduct approved by the attorney
2089 general after the fact and the standard that they use in
2090 that, Judge Gohmert, is that the problem that may be
2091 complained of must be clearly erroneous.

2092 In the Restore Act that we have in front of us, the
2093 court approves in advance of the reasonableness of the
2094 procedures and the guidelines.

2095 And so in both acts, the government has to formulate
2096 procedures and guidelines for targeting, minimization, and
2097 how they will switch over to FISA warrants for Americans'
2098 communications.

2099 In the August legislation, the guidelines are given to
2100 the court for review after the surveillance has started and
2101 only if there is found to be a clearly erroneous basis.

2102 And as I say, the difference here is that the Restore
2103 Act makes the review of the guidelines something the court
2104 does up front and the test is on a reasonable basis once it
2105 has satisfied the issues and the order that give certainty to
2106 the telecom companies that what they are being asked to do is
2107 legal and proper.

2108 A difference in process, yes, but hugely significant in
2109 the way that it has gone about. We want certainty. We want
2110 legality. We want reasonableness. And that is what is in
2111 the act currently before us and it is why I am reluctant to
2112 omit Sections 3 and 4, as is suggested in this amendment.

2113 I return any of my unused time.

2114 Does anyone else seek time in this matter?

2115 If not, we are ready—

2116 Mr. Issa. Mr. Chairman?

2117 Chairman Conyers. Mr. Issa, the gentleman from
2118 California, is recognized.

2119 Mr. Issa. Are you calling the question on the last
2120 amendment or are you calling the question on the bill?

2121 Chairman Conyers. No, this is on the amendment.

2122 Mr. Issa. Okay, so it is just the amendment. I
2123 apologize.

2124 Chairman Conyers. Just the amendment.

2125 Mr. Issa. Thank you, Mr. Chairman. I yield. I move to
2126 strike the last word, then, on the amendment.

2127 Chairman Conyers. All right.

2128 Mr. Issa. Thank you, Mr. Chairman.

2129 I think this is one of the worst pieces of legislation
2130 that I have ever had the misfortune to see. I think that, at
2131 a minimum, this legislation is absolutely, positively going
2132 to have a chilling effect on anyone cooperating, except by
2133 subpoena, with any federal agency ever.

2134 I think it is designed to do that. I also think the
2135 lack of any clear cut solution for those who operated under
2136 the president's executive order and complied with it, with
2137 the knowledge of the speaker of the House, the now speaker of
2138 the House, with the knowledge of the then speaker of the
2139 House, with the knowledge of the majority and minority
2140 leaders and the ranking member and the chairman on the
2141 Intelligence Committee.

2142 With the knowledge of all those people, for 4 years, we,
2143 in fact, operated with our many companies, including the
2144 telecom companies, cooperating in some way, shape or form
2145 that is currently still classified and what this bill seeks
2146 to do is it seeks to deliberately expose them to the
2147 plaintiffs' trial lawyers to the tune of billions of dollars.

2148 And I think until or unless that is fixed, this bill is

2149 fatally flawed.

2150 Last, but not least, and this does not speak to your
2151 brilliant amendment, although I would get to that, but it
2152 speaks for itself, it is very clear that the sunset provision
2153 in this is overtly designed to be a hedge against a president
2154 that might be more favorable to the majority, in which they
2155 would question whether or not this kind of procedure was out
2156 of hand.

2157 If this were a good bill, it should be a good bill in
2158 perpetuity. Instead, it is a bad bill for 2 years.

2159 With that, I would yield back.

2160 Mr. Smith. Would the gentleman from California yield?

2161 Mr. Issa. I certainly would yield the remainder of my
2162 time.

2163 Mr. Smith. Since you have some remaining time left and
2164 since you mentioned two of your primary concerns, I wouldn't
2165 want those who are listening to think that those are the most
2166 egregious components of the bill and I-

2167 Mr. Issa. Reclaiming my time. Not by a long shot. I
2168 yield again.

2169 Mr. Smith. I would like to mention one at the same
2170 time. I mentioned it briefly in my opening statement, but I
2171 would like to go back and revisit it.

2172 And that is that my major concern about this bill, in
2173 addition to the omission of the liability protection, is the

2174 fact that it gives unprecedented protection to terrorists,
2175 unprecedented because never before since FISA was enacted in
2176 1978 have we, in effect, given Fourth Amendment protections
2177 to those who would try to kill innocent American citizens.
2178 And let me explain.

2179 Clearly, the bill does not require a court order if you
2180 have a terrorist communicating with another non-U.S. person
2181 abroad. But what this bill allows and, in fact, mandates is
2182 the requirement to get a court order when you have, for
2183 instance, a terrorist and you don't know who they are going
2184 to call. And it might well be somebody in the United States,
2185 it might be someone abroad.

2186 But if you don't know who they are going to call, then,
2187 in fact, you are required to get a court order.

2188 Now, let me give an example to my colleagues of what
2189 really concerns me. Suppose Osama Bin Laden, in a cave in
2190 Pakistan, wants to make a call to another terrorist in order
2191 to activate a terrorist cell in the United States that is
2192 going to say, "Attack the Sears Tower in Chicago."

2193 Under this legislation, because we don't know whom Osama
2194 Bin Laden is going to call, we will be required to get a
2195 court order before we can monitor that telephone call. It is
2196 only if we know for a certainty that he is calling someone
2197 not in the United States that we don't have to get a court
2198 order.

2199 If we don't know who he is going to call, a court order
2200 is required. That is unprecedented, never been required
2201 before and, in fact, the opposite has been true. Since 1978,
2202 as I mentioned, no such court order in that kind of a
2203 circumstance has been required.

2204 So I think we could debate what provision concerns us
2205 the most, but I certainly want to nominate that as one of the
2206 provisions that concerns me the most.

2207 And with that, I will yield back to the gentleman from
2208 California.

2209 Mr. Issa. And I thank the gentleman and once again ask
2210 my colleagues to think, think long and hard. Would you
2211 really do this to another president or are you just trying to
2212 do this to the current president rather than do the kind of
2213 legislation that is blind as to who is presently in the Oval
2214 Office?

2215 With that, I yield back.

2216 Chairman Conyers. I thank the gentleman for his
2217 carefully thought-out remarks.

2218 We will now call for the question on the Gohmert
2219 amendment.

2220 All those in support of the amendment will indicate by
2221 saying "aye."

2222 And all those opposed will say "no."

2223 Mr. Gohmert. Mr. Chairman?

2224 Chairman Conyers. Yes?

2225 Mr. Gohmert. I would ask for a recorded vote.

2226 Chairman Conyers. A recorded vote is demanded by Judge

2227 Gohmert.

2228 The clerk will call the roll.

2229 The Clerk. Mr. Chairman?

2230 Chairman Conyers. No.

2231 The Clerk. Mr. Chairman votes no.

2232 Mr. Berman?

2233 Mr. Berman. No.

2234 The Clerk. Mr. Berman votes no.

2235 Mr. Boucher?

2236 [No response.]

2237 Mr. Nadler?

2238 [No response.]

2239 Mr. Scott?

2240 Mr. Scott. No.

2241 The Clerk. Mr. Scott votes no.

2242 Mr. Watt?

2243 Mr. Watt. No.

2244 The Clerk. Mr. Watt votes no.

2245 Ms. Lofgren?

2246 Ms. Lofgren. No.

2247 The Clerk. Ms. Lofgren votes no.

2248 Ms. Jackson Lee?

2249 [No response.]

2250 Ms. Waters?

2251 [No response.]

2252 Mr. Delahunt?

2253 Mr. Delahunt. No.

2254 The Clerk. Mr. Delahunt votes no.

2255 Mr. Wexler?

2256 Mr. Wexler. No.

2257 The Clerk. Mr. Wexler votes no.

2258 Ms. Sanchez?

2259 Ms. Sanchez. No.

2260 The Clerk. Ms. Sanchez votes no.

2261 Mr. Cohen?

2262 [No response.]

2263 Mr. Johnson?

2264 Mr. Johnson. No.

2265 The Clerk. Mr. Johnson votes no.

2266 Ms. Sutton?

2267 Ms. Sutton. No.

2268 The Clerk. Ms. Sutton votes no.

2269 Mr. Gutierrez?

2270 [No response.]

2271 Mr. Sherman?

2272 [No response.]

2273 Ms. Baldwin?

2274 Ms. Baldwin. No.

2275 The Clerk. Ms. Baldwin votes no.

2276 Mr. Weiner?

2277 Mr. Weiner. No.

2278 The Clerk. Mr. Weiner votes no.

2279 Mr. Schiff?

2280 [No response.]

2281 Mr. Davis?

2282 [No response.]

2283 Ms. Wasserman Schultz?

2284 [No response.]

2285 Mr. Ellison?

2286 Mr. Ellison. No.

2287 The Clerk. Mr. Ellison votes no.

2288 Mr. Smith?

2289 Mr. Smith. Aye.

2290 The Clerk. Mr. Smith vote aye.

2291 Mr. Sensenbrenner?

2292 Mr. Sensenbrenner. Aye.

2293 The Clerk. Mr. Sensenbrenner votes aye.

2294 Mr. Coble?

2295 Mr. Coble. Aye.

2296 The Clerk. Mr. Coble votes aye.

2297 Mr. Gallegly?

2298 Mr. Gallegly. Aye.

2299 The Clerk. Mr. Gallegly votes aye.
2300 Mr. Goodlatte?
2301 Mr. Goodlatte. Aye.
2302 The Clerk. Mr. Goodlatte votes aye.
2303 Mr. Chabot?
2304 [No response.]
2305 Mr. Lungren?
2306 [No response.]
2307 Mr. Cannon?
2308 Mr. Cannon. Aye.
2309 The Clerk. Mr. Cannon votes aye.
2310 Mr. Keller?
2311 Mr. Keller. Aye.
2312 The Clerk. Mr. Keller votes aye.
2313 Mr. Issa?
2314 Mr. Issa. Aye.
2315 The Clerk. Mr. Issa votes aye.
2316 Mr. Pence?
2317 Mr. Pence. Aye.
2318 The Clerk. Mr. Pence votes aye.
2319 Mr. Forbes?
2320 Mr. Forbes. Aye.
2321 The Clerk. Mr. Forbes votes aye.
2322 Mr. King?
2323 Mr. King. Aye.

2324 The Clerk. Mr. King votes aye.
2325 Mr. Feeney?
2326 Mr. Feeney. Aye.
2327 The Clerk. Mr. Feeney votes aye.
2328 Mr. Franks?
2329 Mr. Franks. Aye.
2330 The Clerk. Mr. Franks votes aye.
2331 Mr. Gohmert?
2332 Mr. Gohmert. Aye.
2333 The Clerk. Mr. Gohmert votes aye.
2334 Mr. Jordan?
2335 Mr. Jordan. Yes.
2336 The Clerk. Mr. Jordan votes yes.
2337 Chairman Conyers. Are there other members that wish to
2338 cast a ballot?
2339 Mr. Boucher?
2340 Mr. Boucher. Votes no.
2341 The Clerk. Mr. Boucher votes no.
2342 Chairman Conyers. Ms. Jackson Lee?
2343 Ms. Jackson Lee. I vote no.
2344 The Clerk. Ms. Jackson Lee votes no.
2345 Chairman Conyers. Ms. Wasserman Schultz?
2346 Ms. Wasserman Schultz. No.
2347 The Clerk. Ms. Wasserman Schultz votes no.
2348 Chairman Conyers. Mr. Nadler?

2349 Mr. Nadler. No.

2350 The Clerk. Mr. Nadler votes no.

2351 Chairman Conyers. Mr. Schiff?

2352 Mr. Schiff. No.

2353 The Clerk. Mr. Schiff votes no.

2354 Chairman Conyers. Mr. Cohen?

2355 Mr. Cohen. No.

2356 The Clerk. Mr. Cohen votes no.

2357 Chairman Conyers. Are there any other members in the
2358 chamber that wish to cast a vote?

2359 The clerk will report.

2360 Wait a minute.

2361 Mr. Chabot of Ohio?

2362 Mr. Chabot. Aye.

2363 The Clerk. Mr. Chabot votes aye.

2364 Chairman Conyers. The clerk will report.

2365 The Clerk. Mr. Chairman, 16 members voted aye, 19
2366 members voted nay.

2367 Chairman Conyers. The amendment fails.

2368 And a reporting quorum being—

2369 Mr. Forbes. Mr. Chairman, strike the last word. Move
2370 to strike the last word.

2371 Chairman Conyers. All right.

2372 Mr. Forbes. Mr. Chairman, thank you for your patience
2373 and I know we are ready for the vote on the final bill coming

2374 up, but I want to just frame the debate one last time because
2375 there will come a point in time, I am afraid, down the road,
2376 where we will revisit today's argument and, unfortunately, we
2377 will wish we went the other way.

2378 In the 1990s, we significantly reduced the intelligence
2379 gathering capacity of the United States. On 9/11, we were
2380 brutally attacked on our soil by enemies who say over and
2381 over again they want to attack is again.

2382 That taught us that we did not have enough intelligence
2383 on what our enemies were doing. We have been fortunate
2384 enough to avoid another major attack since 9/11 and now,
2385 today, we want to repeat the mistakes that we made in
2386 reducing our intelligence gathering capacity.

2387 And how do those supporting this flawed approach argue
2388 it? Well, first, they state the obvious, such as, "We do not
2389 want unchecked secret powers to invade private lives of
2390 citizens." Nobody disagrees with that, an obvious statement.

2391 But then they put forth solutions that have absolutely
2392 no connectivity between the obvious statement they made and
2393 the solution that they are proposing.

2394 If we have another attack, there will be voices who will
2395 point their fingers at law enforcement and ask, demand,
2396 criticize why they did not stop it and we will repeat the
2397 cycle again and again and again and again.

2398 We know we do not have the votes in this committee to

2399 stop the cycle today, but the American people do and
2400 hopefully they will join their voices to ultimately stop this
2401 rollback and give our intelligence community the information
2402 they need to keep us safe.

2403 Mr. Chairman, with that, I hope that we will vote
2404 against this bill and stop it and never let it become law.

2405 And I yield back the balance of my time.

2406 Chairman Conyers. I thank the gentleman.

2407 A reporting quorum being present, the question is on
2408 reporting the bill, as amended, favorably to the House.

2409 All those in favor will signify by saying "aye."

2410 Those opposed, "no."

2411 Chairman Conyers. In the opinion of the chair, the ayes
2412 have it.

2413 A recorded vote is demanded by the gentleman from Texas,
2414 Mr. Smith.

2415 The clerk will call the roll.

2416 The Clerk. Mr. Chairman?

2417 Chairman Conyers. Aye.

2418 The Clerk. Mr. Chairman votes aye.

2419 Mr. Berman?

2420 Mr. Berman. Aye.

2421 The Clerk. Mr. Berman votes aye.

2422 Mr. Boucher?

2423 Mr. Boucher. Aye.

2424 The Clerk. Mr. Boucher votes aye.
2425 Mr. Nadler?
2426 Mr. Nadler. Aye.
2427 The Clerk. Mr. Nadler votes aye.
2428 Mr. Scott?
2429 Mr. Scott. Aye.
2430 The Clerk. Mr. Scott votes aye.
2431 Mr. Watt?
2432 Mr. Watt. Aye.
2433 The Clerk. Mr. Watt votes aye.
2434 Ms. Lofgren?
2435 Ms. Lofgren. Aye.
2436 The Clerk. Ms. Lofgren votes aye.
2437 Ms. Jackson Lee?
2438 Ms. Jackson Lee. Aye.
2439 The Clerk. Ms. Jackson Lee votes aye.
2440 Ms. Waters?
2441 [No response.]
2442 Mr. Delahunt?
2443 [No response.]
2444 Mr. Wexler?
2445 [No response.]
2446 Ms. Sanchez?
2447 Ms. Sanchez. Aye.
2448 The Clerk. Ms. Sanchez votes aye.

2449 Mr. Cohen?
2450 Mr. Cohen. Aye.
2451 The Clerk. Mr. Cohen votes aye.
2452 Mr. Johnson?
2453 Mr. Johnson. Aye.
2454 The Clerk. Mr. Johnson votes aye.
2455 Ms. Sutton?
2456 Ms. Sutton. Aye.
2457 The Clerk. Ms. Sutton votes aye.
2458 Mr. Gutierrez?
2459 [No response.]
2460 Mr. Sherman?
2461 [No response.]
2462 Ms. Baldwin?
2463 Ms. Baldwin. Aye.
2464 The Clerk. Ms. Baldwin votes aye.
2465 Mr. Weiner?
2466 Mr. Weiner. Aye.
2467 The Clerk. Mr. Weiner votes aye.
2468 Mr. Schiff?
2469 [No response.]
2470 Mr. Davis?
2471 Mr. Davis. Aye.
2472 The Clerk. Mr. Davis votes aye.
2473 Ms. Wasserman Schultz?

2474 Ms. Wasserman Schultz. Aye.

2475 The Clerk. Ms. Wasserman Schultz votes aye.

2476 Mr. Ellison?

2477 Mr. Ellison. Aye.

2478 The Clerk. Mr. Ellison votes aye.

2479 Mr. Smith?

2480 Mr. Smith. No.

2481 The Clerk. Mr. Smith vote no.

2482 Mr. Sensenbrenner?

2483 Mr. Sensenbrenner. No.

2484 The Clerk. Mr. Sensenbrenner votes no.

2485 Mr. Coble?

2486 Mr. Coble. No.

2487 The Clerk. Mr. Coble votes no.

2488 Mr. Gallegly?

2489 [No response.]

2490 Mr. Goodlatte?

2491 Mr. Goodlatte. No.

2492 The Clerk. Mr. Goodlatte votes no.

2493 Mr. Chabot?

2494 Mr. Chabot. No.

2495 The Clerk. Mr. Chabot votes no.

2496 Mr. Lungren?

2497 [No response.]

2498 Mr. Cannon?

2499 Mr. Cannon. No.

2500 The Clerk. Mr. Cannon votes no.

2501 Mr. Keller?

2502 Mr. Keller. No.

2503 The Clerk. Mr. Keller votes no.

2504 Mr. Issa?

2505 [No response.]

2506 Mr. Pence?

2507 Mr. Pence. No.

2508 The Clerk. Mr. Pence votes no.

2509 Mr. Forbes?

2510 Mr. Forbes. No.

2511 The Clerk. Mr. Forbes votes no.

2512 Mr. King?

2513 Mr. King. No.

2514 The Clerk. Mr. King votes no.

2515 Mr. Feeney?

2516 Mr. Feeney. No.

2517 The Clerk. Mr. Feeney votes no.

2518 Mr. Franks?

2519 Mr. Franks. No.

2520 The Clerk. Mr. Franks votes no.

2521 Mr. Gohmert?

2522 Mr. Gohmert. No.

2523 The Clerk. Mr. Gohmert votes no.

2524 Mr. Jordan?

2525 Mr. Jordan. No.

2526 The Clerk. Mr. Jordan votes no.

2527 Chairman Conyers. Are there other members who choose to
2528 have their vote recorded?

2529 Mr. Schiff?

2530 Mr. Schiff. Aye.

2531 The Clerk. Mr. Schiff votes aye.

2532 Chairman Conyers. Mr. Wexler?

2533 Mr. Wexler. Aye.

2534 The Clerk. Mr. Wexler votes aye.

2535 Chairman Conyers. Mr. Delahunt?

2536 Mr. Delahunt. Aye.

2537 The Clerk. Mr. Delahunt votes aye.

2538 Chairman Conyers. The clerk will report.

2539 The Clerk. Mr. Chairman, 20 members voted aye, 14
2540 members voted no.

2541 Chairman Conyers. The measure H.R. 3773 is adopted.
2542 Without objection, the bill will be reported favorably to the
2543 House in the form of a single amendment in the nature of a
2544 substitute, incorporating amendments adopted here today.

2545 And without objection, the staff is authorized to make
2546 any technical and conforming changes and all members will
2547 have 2 days, as provided by House rules, to submit additional
2548 dissenting, supplemental or minority views.

2549 Pursuant to notice, I call up the bill H.R. 3678, the
2550 Internet Tax Freedom Act, for purposes of markup, and ask the
2551 clerk to report the bill.

2552 The Clerk. H.R. 3678, a bill to amend the Internet Tax
2553 Freedom Act to extend the moratorium on certain taxes
2554 relating to the Internet and to electronic commerce.

2555 Chairman Conyers. Without objection, the bill will be
2556 considered as read and open for amendment at any point.

2557 Members of the committee, this bipartisan legislation
2558 proves that when working together, we can come to a good
2559 result on a complex issue.

2560 This is a strong bill, supported by industry groups,
2561 like the Don't Tax our Web Coalition, various government
2562 organizations, for example, the National Governors
2563 Association, the Federal Tax Administration, and the National
2564 Conference of State Legislatures, and by a wide range of
2565 labor and union organizations.

2566 H.R. 3678 temporarily bans state and local taxes on
2567 Internet access, while doing minimum harm to state and local
2568 government. This bill is pro-consumer, pro-innovation, and
2569 pro-technology. It accomplishes these goals by amending the
2570 Internet Tax Freedom Act in four critical respects.

2571 First, it extends the moratorium on state and local
2572 taxes on Internet access for 4 years, until November 1, 2011.
2573 The 4-year extension will allow the Congress to make any

2574 adjustments to the moratorium, if necessary. It will also
2575 allow companies a sufficient amount of time to plan their
2576 investments, while also giving consumers tax-free access to
2577 the Internet.

2578 Congress has made important adjustments on each previous
2579 occasion that we extended the moratorium, in 2002 and again
2580 in 2004.

2581 Secondly, the bill extends for 4 years the grandfather
2582 provisions which have preserved these taxes that were imposed
2583 prior to 1998 and is consistent with past extensions. The
2584 act also phases out those states that claim to be
2585 grandfathered as a result of the Internet Tax
2586 Nondiscrimination Act of 2004 and allows those states that
2587 have been issued public rulings before July 1, 2007 that are
2588 inconsistent with the foregoing rules to be held harmless
2589 until November 1, 2007.

2590 Third, the bill resolves a dilemma that has evolved
2591 concerning the treatment of gross receipts tax in certain
2592 states. A small group of states have recently enacted taxes
2593 that apply to almost all large businesses in the state,
2594 including Internet access providers.

2595 The new gross receipts tax in these states serve as
2596 general business taxes and either substitute for or
2597 supplement the corporate income tax currently in place in
2598 those states, whereas in all other states, corporate income

2599 taxes serve as the general business tax.

2600 The result is that an Internet access provider could
2601 potentially decide not to pay the tax on its receipts
2602 attributable to providing Internet access service in those
2603 select states.

2604 So H.R. 3678 attempts to address this problem by
2605 creating an exemption for states that have enacted laws that
2606 would structure their gross receipts taxes in such a way as
2607 to be a substitute for state corporate income taxes that are
2608 not taxes on Internet access.

2609 And, finally, the bill clarifies the definition of
2610 Internet access itself. It defines this term to mean a
2611 service that enables a user to connect to the Internet.

2612 Overall, I see this as a good, strong and necessary bill
2613 that will provide much needed clarity to the communications
2614 and Internet industries, while addressing the needs of the
2615 states and local governments, all the while, at the same
2616 time, to keep the Internet access affordable.

2617 And so I thank Subcommittee Chairwoman Linda Sanchez,
2618 Ranking Member Cannon, as well as the full committee ranking
2619 member, Lamar Smith, for their cooperation in helping us get
2620 to this point.

2621 I should observe, also, that the numerous organizations
2622 from industry, government, labor have all been very helpful
2623 in helping us craft this measure that we bring before you

2624 now.

2625 I urge support for the measure.

2626 And I am pleased to recognize the ranking minority
2627 member, the gentleman from Texas, Lamar Smith.

2628 Mr. Smith. Thank you, Mr. Chairman.

2629 In the absence of congressional action, the Internet tax
2630 moratorium will expire in 3 weeks, November 1. If Congress
2631 allows the tax moratorium to expire, Americans could face
2632 taxes of up to 20 percent for simply accessing the Internet.
2633 That is the equivalent of taxing a shopper at the local mall
2634 20 percent just for walking through the doors.

2635 The Internet Tax Freedom Act, which was initially
2636 enacted in 1998, prevents states or localities from taxing
2637 Internet access or from imposing a sales tax that applies
2638 only to Internet transactions.

2639 Internet commerce has yet to approach its full
2640 potential. The imposition of discriminatory taxes would
2641 threaten the future growth of e-commerce and would discourage
2642 companies from using the Internet to conduct business.

2643 Internet taxation would also create new regional and
2644 international barriers to global trade.

2645 I have long supported a permanent extension of the
2646 moratorium on discriminatory Internet taxes and an end to the
2647 grandfathered exemptions in current law.

2648 To that end, I cosponsored the House-passed version of a

2649 bill that would extend the moratorium permanently in the
2650 108th Congress and I am now a cosponsor, along with 237 other
2651 members on both sides of the aisle, of H.R. 743, the
2652 Permanent Internet Tax Freedom Act of 2007.

2653 The bill we have before us today is a good measure,
2654 though it does not go far enough to ensure that access to the
2655 Internet will remain tax-free in years to come.

2656 It clarifies the definition of Internet access ensure
2657 that states do not tax any portion of the provision of
2658 Internet access, including the acquisition of transmission
2659 capabilities on the Internet backbone.

2660 The bill also makes clear that providers of Internet
2661 access cannot render otherwise taxable products and services,
2662 such as television and telephone, untaxable simply by
2663 bundling those services with Internet access.

2664 The bill wisely makes certain technical changes to
2665 ensure that all Internet access is protected by the act,
2666 regardless of whether a consumer gets their access from
2667 cable, wireless, through dial-up or by DSL.

2668 Only by extending the ban on Internet access taxes in
2669 perpetuity can we give businesses the certainty necessary to
2670 spend billions to expand broadband Internet access throughout
2671 the country and only by extending the moratorium permanently
2672 can we continue to keep the cost of Internet access down so
2673 that lower income individuals, those who are most sensitive

2674 to cost, can continue to us the great informational tool
2675 that, in fact, is the Internet.

2676 Almost 240 members have signed on to cosponsor bills
2677 that provide for a permanent extension and a member of this
2678 committee, Mr. Goodlatte, it is efforts who are primarily
2679 responsible for that broad base of support.

2680 To do anything less than make the ban on Internet taxes
2681 permanent is to ignore the importance of the Internet to the
2682 American people and our economy.

2683 Mr. Chairman, I thank you for bringing this important
2684 measure before us and I hope that at today's markup, we will
2685 move to extend the Internet tax moratorium permanently.

2686 With that, I will yield back the balance of my time.

2687 Chairman Conyers. Thank you, Mr. Smith.

2688 I now recognize both Mr. Chris Cannon and the gentlelady
2689 who is the chair of the Subcommittee on Commercial and
2690 Administrative Law, Linda Sanchez, both for 2.5 minutes each,
2691 starting with the subcommittee chairwoman, Ms. Sanchez.

2692 Ms. Sanchez. I would like to thank the chairman and I
2693 am pleased that we are taking action today to address the
2694 Internet tax moratorium, which is set to expire on November
2695 1.

2696 During the last few months, the Subcommittee on
2697 Commercial and Administrative Law held hearings on this
2698 moratorium in order to obtain as much information as possible

2699 from the varying interests that it will affect. We heard
2700 testimony from representatives of state and local
2701 governments, union and industries dependent on the Internet.

2702 We heard testimony from two esteemed members of Congress
2703 who discussed their respective bills, which would both simply
2704 make the moratorium permanent.

2705 Neither of those bills address some of the concerns
2706 expressed during the two hearings and, on contrast, the bill
2707 before us today, H.R. 3678, the Internet Tax Freedom
2708 Amendments Act, addresses some of the concerns raised by
2709 state and local governments and Internet-related industries.

2710 Most notably, the bill clarifies the definition of
2711 Internet access. The definition reflects the carefully
2712 balanced effort to provide industries with the continued
2713 opportunity to expand Internet access, allows consumers and
2714 businesses to access the Internet tax-free, all the while
2715 protecting the interests of state and local governments with
2716 a more refined definition.

2717 It is this restructured definition within H.R. 3678
2718 which ensures that the moratorium applies to all Internet
2719 transport and only to Internet access and not other services.

2720 H.R. 3678 also should be considered in light of the
2721 original intent of the Internet Tax Freedom Act. In 1998,
2722 Congress justified the moratorium as a temporary solution to
2723 provide time for administrative and definitional issues to be

2724 addressed regarding the fledgling industry.

2725 We must be mindful of what prior Congresses considered
2726 and what has happened during the intervening years since the
2727 moratorium was established in 1998.

2728 With the moratorium expiring in about 3 weeks, I look
2729 forward to the opportunity today for the Judiciary Committee
2730 to report the bill promptly for full House consideration so
2731 that the Internet tax moratorium continues without
2732 interruption.

2733 And with that, I yield back the balance of my time.

2734 Chairman Conyers. Thank you, Chairwoman Sanchez.

2735 I now recognize the ranking member of the same
2736 subcommittee, the gentleman from Utah, Chris Cannon.

2737 Mr. Cannon. Thank you, Mr. Chairman. I want to thank
2738 you for your leadership on this issue.

2739 I would ask unanimous consent to have my statement
2740 included in the record and then I would like to just make a
2741 couple of comments.

2742 Chairman Conyers. Without objection.

2743 Mr. Cannon. It is, of course, as you know, Mr.
2744 Chairman, my preference that we have a permanent Internet tax
2745 moratorium, but we have had a problem over time with the
2746 other body in getting a moratorium actually passed before the
2747 expiration of that moratorium.

2748 We now have states that are postured to tax the Internet

2749 immediately if we fail to extend this moratorium. So I just
2750 wanted to suggest to my colleagues that it is really
2751 important that we do this, we get it done, we get it over to
2752 the other body and get a final bill passed.

2753 I would encourage them to support the bill and, again,
2754 would like to thank you, Mr. Chairman, and, also, Ms. Sanchez
2755 for her leadership on this issue and getting us to the point
2756 where we can get this done.

2757 Thank you, Mr. Chairman, and I yield back.

2758 Chairman Conyers. I thank the gentleman.

2759 Members of the committee, I have a substitute amendment,
2760 a manager's substitute amendment that I would like to call up
2761 now. I would ask the clerk to report.

2762 The Clerk. Amendment in the nature of a substitute to
2763 H.R. 3678, offered by Mr. Conyers of Michigan. Strike all
2764 after the enacting clause and insert the following: Section
2765 1, short title. This act may be cited as the Internet Tax
2766 Freedom Act Amendments Act of 2007.

2767 [The amendment by Chairman Conyers follows:]

2768 ***** INSERT *****

2769 Chairman Conyers. I ask unanimous consent to ask that
2770 the amendment be considered as read.

2771 And I would like to take a few minutes to explain it,
2772 because it is very straightforward, three simple changes that
2773 we think improves considerably the measure 3678 before us.

2774 First, we deal with clarifications and technical
2775 corrections. Secondly, we provide an improved solution to
2776 the gross receipts tax issue. And, third, we strike Section
2777 6 of the bill.

2778 We create, in this substitute amendment, an exemption
2779 for states that have enacted laws that would structure their
2780 gross receipt tax in a way as to be a substitute for state
2781 corporate income taxes that are not taxes on Internet access.

2782 To be exempt, the state law must meet certain criteria.
2783 The law must have been enacted between June 20, 2005 and
2784 November 1, 2007 or in the case of a state business, an
2785 occupation tax enacted after January 1, 1932 and before
2786 January 1, 1936.

2787 Secondly, the law must replace, in whole or in part, a
2788 modified value-added tax or a tax levied upon or measured by
2789 net income, capital stock or net worth.

2790 And, three, the law must be imposed on a broad range of
2791 business activity. And, finally, the law is not
2792 discriminatory in its application to providers of
2793 communications services, Internet access or

2794 telecommunications.

2795 Finally, we strike Section 6 of the underlying bill,
2796 which provides that no state may prohibit an Internet service
2797 provider from collecting the tax from a customer or
2798 separately stating the amount of tax on an invoice to a
2799 customer.

2800 It is our considered view that this language is not only
2801 confusing, but vague and potentially over-inclusive. And so
2802 the correction is made by striking the section all together.

2803 That, ladies and gentlemen of the committee, is the sum
2804 and substance of the substitute amendment and I open it up
2805 for your consideration.

2806 Mr. Goodlatte. Would the chairman yield?

2807 Chairman Conyers. I yield to Mr. Goodlatte, the
2808 gentleman from Virginia.

2809 Mr. Goodlatte. Just for a question, Mr. Chairman.

2810 This committee and the full House has, on numerous
2811 previous occasions, passed a permanent extension. Each time,
2812 we have been coming up close against the deadline, as we are
2813 again this time, and each time the House has overwhelmingly
2814 passed that.

2815 We then went to the conference with the Senate and
2816 worked out the differences and agreed to something that
2817 satisfied the Senate, didn't satisfy the House, but certainly
2818 kept the House on record as wanting to have a permanent

2819 extension of the moratorium.

2820 I just ask the chairman why, when the majority of the
2821 members of this committee and a majority of the members of
2822 the Congress have already cosponsored that permanent
2823 moratorium again, why don't we just go ahead and pass the
2824 permanent moratorium and send it over to the Senate so that
2825 those negotiations can proceed as they have in the past.

2826 Chairman Conyers. Well, I would like to produce for the
2827 gentleman the long list of people, organizations, states,
2828 industries who have all come together to reach this
2829 compromise that has struck me as unusually reasonable.

2830 I have never let past decisions made by this body over-
2831 influence the decisions that I make currently.

2832 Who seeks recognizing?

2833 Mr. Smith. Mr. Chairman?

2834 Chairman Conyers. Ranking Member Lamar Smith is
2835 recognized.

2836 Mr. Smith. Thank you, again, Mr. Chairman.

2837 I want to thank you and Mr. Cannon for offering this
2838 manager's amendment, which makes some necessary technical
2839 corrections to the bill.

2840 Among other things, it makes changes to the exception
2841 that covers certain states that have moved to a gross
2842 receipts as opposed to a net income corporate tax regime.

2843 As I understand it, these changes have met with the

2844 approval of the various stakeholders and I am glad that we
2845 were able to work in a bipartisan fashion to make this a
2846 better bill.

2847 While I do not support the timeframe in the base bill, I
2848 do support this amendment so that we can get these necessary
2849 technical changes made.

2850 And with that, Mr. Chairman, I will yield back.

2851 Chairman Conyers. I thank the gentleman for his
2852 limited, but important cooperation.

2853 Who seeks recognition on this side?

2854 Mr. Goodlatte. Mr. Chairman, if no one does, I have an
2855 amendment to the amendment in the nature of a substitute.

2856 Chairman Conyers. The gentleman is recognized and the
2857 clerk will report the gentleman's amendment.

2858 The Clerk. Amendment to H.R. 3678, offered by Mr.
2859 Goodlatte of Virginia. Strike Section 2(1). Insert the
2860 following: (1) In Section 1101-

2861 [The amendment by Mr. Goodlatte follows:]

2862 ***** COMMITTEE INSERT *****

2863 Mr. Goodlatte. Mr. Chairman, I ask unanimous consent
2864 to—

2865 Mr. Scott. I reserve a point of order, Mr. Chairman.

2866 Chairman Conyers. The gentleman from Virginia reserves
2867 a point of order on the gentleman from Virginia's amendment.

2868 And the gentleman is recognized in support of his
2869 amendment.

2870 Mr. Goodlatte. Thank you, Mr. Chairman.

2871 Mr. Chairman, the Internet Tax Fairness Act of 1998
2872 created a moratorium on Internet access taxes and multiple
2873 and discriminatory taxes on e-commerce.

2874 As a result of this moratorium, the Internet has
2875 remained relatively free from the burdens of new taxation.
2876 However, these burdens are just around the corner once again
2877 and without further action by Congress, the moratorium will
2878 sunset on November 1 of this year.

2879 While I agree that we need to extend the ban on these
2880 stifling taxes, I am extremely disappointed that the majority
2881 has dropped the ball and has put forth this bill, which only
2882 grants an additional 4-year extension and which does not
2883 eliminate the provisions that allow certain states to tax
2884 Internet access services.

2885 During the 108th Congress, House Republicans worked to
2886 pass a permanent extension of the Internet tax moratorium.
2887 That legislation was supported by overwhelming margins and

2888 passed both the House Judiciary Committee and the full House
2889 by voice vote.

2890 While the bill was ultimately scaled back in the Senate,
2891 the will of the House was clear. We wanted a permanent
2892 extension of the moratorium.

2893 This Congress, the will of the House is equally clear.
2894 A full 238 bipartisan members of the House have put their
2895 name behind H.R. 743, a bill introduced by Representative
2896 Anna Eshoo and myself, to make the ban permanent and to
2897 eliminate the grandfathering clause that allows many states
2898 to tax Internet access.

2899 Indeed, a full 21 members of this very committee have
2900 cosponsored that legislation. That is a majority of the
2901 members of this committee on record in support of a permanent
2902 ban.

2903 Despite the support of an overwhelming majority of the
2904 House, the bill before us merely extends the moratorium for 4
2905 years and does not eliminate the grandfathering clause.

2906 Is it the official policy of the new House majority to
2907 not extend the moratorium permanently? The temporary fix
2908 before us today does little to bridge the digital divide
2909 between those who can afford Internet access and those who
2910 cannot.

2911 It is estimated that only 11 percent of U.S. households
2912 with incomes of less than \$30,000 have high-speed Internet

2913 service as opposed to 61 percent of households with incomes
2914 over \$100,000.

2915 Taxes on Internet access will increase the cost of
2916 households going online, as the prices for providing Internet
2917 access service increase. What this means is that the digital
2918 divide between those who can afford to go online and those
2919 who cannot will become much larger.

2920 A permanent ban would guarantee that the price of
2921 Internet access will not be raised due to excessive taxation.
2922 In addition, a permanent ban would create certainty that the
2923 broadband providers the industry need to make the business
2924 decisions to invest in the deployment of broadband to the
2925 areas they do not now serve.

2926 Currently, these providers must factor in the likelihood
2927 that they will have to comply with a multitude of tax burdens
2928 that are a mere 4 years away, in addition to the usual costs
2929 associated with providing broadband line to the most rural
2930 areas.

2931 My amendment, which I am offering with Representatives
2932 Feeney, Franks and Jordan, would make the ban on these taxes
2933 permanent and would eliminate, in 4 years, the grandfathering
2934 clause that has allowed a handful of states to collect taxes
2935 on Internet access.

2936 This amendment is forward-looking, will help make
2937 Internet access more affordable for all citizens, and will

2938 provide much needed certainty for businesses seeking to roll
2939 out broadband Internet access.

2940 The choice today is clear. You can vote to eliminate
2941 Internet access taxes for good or you can simply kick the can
2942 and pave the way for these taxes to reemerge in 4 years.

2943 I urge the majority of the members of this committee who
2944 have already put their name behind H.R. 743 to simply be
2945 consistent and vote for this amendment to permanently ban
2946 Internet access taxes.

2947 Chairman Conyers. I thank the gentleman for his cogent
2948 remarks and I rise in opposition to his proposal.

2949 And why? Well, the vote that the gentleman from
2950 Virginia referred to took place in October of 2001. It was a
2951 voice vote.

2952 At that time, the Internet was in its infancy. It was
2953 just starting out. We wanted to give it the strength and the
2954 encouragement and the nourishment that we thought it might
2955 need to grow and thrive and become prosperous.

2956 Six years later, today, we find the Internet doing quite
2957 well, very well. And so that is my attempt to distinguish
2958 between the times.

2959 Making this tax permanent would eliminate any
2960 possibility that Congress ever would be able to revisit the
2961 issue and make adjustments to the moratorium if necessary, as
2962 innovation has and will occur in the high tech industry.

2963 Congress has made important adjustments on each previous
2964 occasion that we extended the moratorium. For example, in
2965 2004, the act provided for an amended definition of Internet
2966 access and resulted in assertions and public rulings by many
2967 states requiring the collection of tax on sales of
2968 telecommunications to an Internet service provider to provide
2969 Internet access.

2970 This is because those states have interpreted the 2004
2971 definition of Internet access to broaden the scope, the 1998
2972 grandfather clause to permit taxation on sales of
2973 telecommunications to an Internet service provider to provide
2974 Internet access.

2975 However, because the 2004 act had a temporary extension,
2976 we were able to revisit this problem in 2007 and have, again,
2977 made adjustments that would allow those states that have
2978 issued public rulings before July 1 of this year that are
2979 inconsistent with the foregoing rules to be held harmless
2980 until after November 1 of this year, after which they will be
2981 phased out.

2982 Similarly, the 2004 act made an important adjustment to
2983 the 2001 extension, which was also a temporary extension, by
2984 explicitly protecting the Texas municipal access line fee.
2985 The 2004 act included a provision that was intended to
2986 protect the ability of Texas municipalities to collect
2987 franchise fees from telecommunications providers that use

2988 public lands.

2989 Also, in 2004, this committee expanded the reach of the
2990 moratorium to protect Internet access provided via cable
2991 modem and that change, suggested by the gentleman from
2992 Carolina, North Carolina, Mr. Watt, and Mr. Cannon of Utah,
2993 has helped millions of consumers.

2994 Likewise, the current measure before us makes
2995 adjustments to the 2004 act that may need to be addressed in
2996 the future, such as a solution to the gross receipts tax
2997 problem in certain states that we have alluded to and a new,
2998 perhaps narrow definition of Internet access itself may be
2999 reconsidered as the Internet continues to grow and expand.

3000 So given where we are today and the many concerns and
3001 issues that have been raised by all sides and the tremendous
3002 coming together of the stakeholders, I truly believe that
3003 this 4-year extension is the absolute best way to get this
3004 matter to the floor and signed into law before November 1.

3005 Any extension beyond 4 years will unsettle the careful
3006 compromise that has been crafted and could result in the law
3007 expiring and that is not in anyone's interest.

3008 And so, therefore, I ask my colleagues on both sides of
3009 the aisle of this committee to join me in particularly
3010 opposing changes such as this one on the amendment.

3011 I must now, in the order of procedure, recognize the
3012 ranking member of the House Judiciary Committee.

3013 Mr. Smith. Thank you, Mr. Chairman.

3014 I appreciate the favorable mention or at least mention
3015 of my home state, Texas.

3016 Mr. Chairman, I strongly support the gentleman from
3017 Virginia's amendment. I have long supported a permanent
3018 Internet tax moratorium. For the last 8 years, Congress has
3019 helped to expand the availability of Internet access
3020 throughout the country by assuring the marketplace that the
3021 Internet will remain free of burdensome taxes on access and
3022 e-commerce.

3023 However, the marketplace has very little assurance that
3024 this will remain the case, because Congress has had to extend
3025 and often tweak the moratorium every 2 to 3 years.

3026 For example, the last time that Congress addressed this
3027 issue, the moratorium actually lapsed for over a year because
3028 the other body could not move an extension by the time the
3029 moratorium expired.

3030 In fact, if Congress does not pass legislation to extend
3031 the moratorium soon, it will expire and millions of customers
3032 will be facing significantly higher bills for their Internet
3033 access.

3034 A permanent ban on Internet access taxes and
3035 discriminatory taxes on e-commerce is the only way to ensure
3036 that the Internet will continue to grow and drive American
3037 innovation.

3038 Permanence is the only way we can give businesses the
3039 certainty necessary to expand the broadband Internet
3040 infrastructure. Permanence is the only way that we can
3041 assure lower income families that their Internet access bills
3042 will be cheaper in the long run. And permanence is the
3043 measure that is favored by a majority of the members of the
3044 House.

3045 As Mr. Goodlatte said a minute ago, almost 240 members
3046 have signed on to cosponsors bills that provide for a
3047 permanent extension.

3048 A failure to extend the moratorium permanently sends the
3049 signal that Congress does not appreciate the importance of
3050 the Internet to the American people and our economy.

3051 Mr. Chairman, I strongly support the gentleman's
3052 amendment and I urge my colleagues to support it, as well,
3053 but I would like to make one additional comment. Mr.
3054 Chairman, it is this.

3055 In my judgment, this year, in this Congress, there are
3056 really going to only be two votes that provide the people who
3057 are watching with the litmus test as to whether Congress is
3058 going to encourage and try to benefit the high tech industry
3059 in America.

3060 I think this is one vote, a vote on the permanent
3061 moratorium on Internet taxes. I think the second vote is
3062 going to be the vote on the patent reform bill. But those

3063 two votes are really the litmus test for members of Congress
3064 to signal whether they are going to encourage the high tech
3065 industry.

3066 And let me explain why I think that is important. High
3067 tech industries today employ only 4 percent of all American
3068 employees, yet high tech industries now account for 40
3069 percent of our increase in productivity and account for half
3070 of our exports.

3071 So if we are going to have a healthy economy in America,
3072 if we are going to continue to create jobs, if we are going
3073 to continue to enjoy a high standard of living, if we are
3074 going to continue to increase productivity, we have to do
3075 everything we can to encourage and help the high tech
3076 industry.

3077 And this particular vote on making the tax moratorium
3078 permanent does exactly that. And so I encourage all members
3079 who have an interest in helping the high tech industry to
3080 support the gentleman from Virginia's amendment that we are
3081 now—

3082 Ms. Lofgren. Would the gentleman yield?

3083 Mr. Smith. And I will be happy to yield to the
3084 gentlewoman from California.

3085 Ms. Lofgren. I thank the gentleman for yielding.

3086 I support the amendment. Over the last year, the United
3087 States has flipped from 12th to 15th in broadband deployment.

3088 We have now fallen behind Japan, which is at 61 megabits per
3089 second, behind France at 17.6 megabits per second. We are
3090 at, at on average, 1.9 megabits per second.

3091 And in the innovation agenda that House Democrats
3092 unveiled in September of 2005, we made a commitment to bring
3093 affordable broadband access to all Californians. I think
3094 that the ability to make investments will be enhanced in a
3095 permanent measure.

3096 I do want to give credit to the chairman of the full
3097 committee and the chairman of the subcommittee, Ms. Sanchez,
3098 for the enormous work they have put into this. Certainly,
3099 with their leadership, we got a definition of Internet access
3100 that is workable, protects the backbone, and I think that is
3101 enormously important.

3102 However, as a representative from Silicon Valley, I
3103 could do nothing but support a permanent measure, as do 237
3104 of my colleagues who have cosponsored my colleague, Ann
3105 Eshoo's bill.

3106 So I just wanted to note that, while also thanking the
3107 chairmen of both the subcommittee and full committee for the
3108 important work that they did.

3109 And I yield back to the gentleman. Thank you.

3110 Mr. Smith. Mr. Chairman, I will reclaim my time.

3111 And I want to thank the gentlewoman from California,
3112 who, as she says, represents Silicon Valley, both for her

3113 statistics and her comments and her support of the amendment.

3114 And I will yield back, Mr. Chairman.

3115 Chairman Conyers. I thank the gentleman.

3116 The gentleman from Virginia?

3117 Mr. Scott. Thank you, Mr. Chairman.

3118 I would yield to you. You are seeking time.

3119 Chairman Conyers. I thank the gentleman for yielding.

3120 I appreciate the comments of both the gentlelady from
3121 California, in the Silicon Valley area, and the gentleman
3122 from Texas, who have pointed out something that needs to be
3123 corrected here.

3124 The high tech industry, unless these letters are
3125 incorrect, have joined with the coalition of organizations
3126 supporting the 4-year moratorium contingent and I would like
3127 to insert these letters in the record.

3128 Without objection, that will be done.

3129 [The information follows:]

3130 ***** COMMITTEE INSERT *****

3131 Don't Tax our Web has written to me and Ranking Member
3132 Smith, Subcommittee Chair Sanchez, Mr. Cannon, and the
3133 Business Software Alliance says that, "While we would prefer
3134 a permanent extension, in light of the November 1 deadline
3135 and certain reservations which have been expressed about
3136 making the moratorium permanent, BSA supports and urges the
3137 enactment of H.R. 3678," this measure which is before us at
3138 this point.

3139 So I ask that they be brought into the record.

3140 Mr. Scott. Reclaiming my time, Mr. Chairman.

3141 I have a reserved point of order, which I think we are
3142 going to recess now and come back to continue the discussion.

3143 Chairman Conyers. Thank you very much.

3144 Mr. Scott. I think we are going to defer the point of
3145 order until we come back.

3146 Chairman Conyers. I think we should. And what I would
3147 ask of my colleagues, that we be able to discuss this matter
3148 in some detail, taking advantage of the time that we have.

3149 Does anyone know how many votes are pending? Four votes
3150 pending. So it will be an hour.

3151 So let's try to come back at quarter to 4:00 and we will
3152 stand in recess until that time.

3153 Thank you very much.

3154 [Recess.]

3155 Chairman Conyers. The committee will come to order.

3156 Pursuant to our agenda, we have agreed now to take up
3157 H.R. 3387, the codification update for Title 46 USC.

3158 And I would ask the clerk to report the bill.

3159 The Clerk. H.R. 3387, a bill to update and improve the
3160 codification of Title 46 United States Code. Be it enacted
3161 by the Senate and House of Representative of the United
3162 States of America—

3163 [The bill follows:]

3164 ***** INSERT *****

3165 Chairman Conyers. Without objection, the amendment will
3166 be considered as read.

3167 And if I may take a few minutes to explain what is in
3168 H.R. 3387, I will. It was prepared by the Law Revision
3169 Council to bring the codification of Title 46 up to date.

3170 It incorporates four laws passed too late in the
3171 previous Congress to be included in the original
3172 codification.

3173 In a moment, I will offer an amendment to add a few
3174 technical revisions recommended by the Law Revision Council,
3175 developed since the bill was introduced.

3176 As with other codifications by the Law Revision Council,
3177 this bill does not make any substantive changes in the law.

3178 With that terse introduction, I recognize the ranking
3179 member of the committee.

3180 Mr. Smith. Thank you, Mr. Chairman.

3181 Mr. Chairman, in the interest of time, I will ask
3182 unanimous consent that my statements both on the bill and on
3183 the manager's amendment be made a part of the record.

3184 Chairman Conyers. Without objection, so ordered.

3185 [The information follows:]

3186 ***** COMMITTEE INSERT *****

3187 Mr. Smith. Let me say, also, Mr. Chairman, that I do
3188 support the bill and I support your manager's amendment, as
3189 well, and recommend that my colleagues support those two
3190 pieces of legislation, as well.

3191 I yield back.

3192 Chairman Conyers. Thank you.

3193 I have a manager's amendment at the desk and I ask the
3194 clerk to read the amendment.

3195 Since the clerk doesn't appear to be in possession of
3196 the manager's amendment, we will add it on the way to the
3197 Rules Committee or to the floor.

3198 Does anyone have any comments or inquiry about H.R.
3199 3387?

3200 If not, the question occurs on the bill.

3201 All in favor will signify by saying "aye."

3202 And those opposed, "no."

3203 The ayes have it and the bill is agreed to.

3204 Without objection, it will be reported favorably to the
3205 House in the form of a single amendment in the nature of a
3206 substitute. And without objection, the staff is authorized
3207 to make any technical and conforming changes and members will
3208 have 2 days to submit additional dissenting, supplemental or
3209 minority views.

3210 Pursuant to notice, I now call up the bill H.R. 3564,
3211 the Regulatory Improvement Act, and ask the clerk to read the

3212 bill.

3213 The Clerk. H.R. 3564, a bill to amend Title 5 United
3214 States Code to authorize appropriations for the
3215 Administrative Conference of the United States—

3216 [The bill follows:]

3217 ***** INSERT *****

3218 Chairman Conyers. Without objection, the bill will be
3219 considered as read and open for amendment at any point.

3220 I am pleased to recognize the chair of the Subcommittee
3221 on Commercial Law, the gentlelady from California, Linda
3222 Sanchez, for opening comments.

3223 Ms. Sanchez. Thank you, Mr. Chairman.

3224 Mr. Chairman, I urge support of H.R. 3564, the
3225 Regulatory Improvement Act of 2007, a bill that would
3226 reauthorize the Administrative Conference of the United
3227 States for 4 years.

3228 During its existence, ACUS was an independent,
3229 nonpartisan agency devoted to analyzing the administrative
3230 law process and providing guidance to Congress.

3231 Although reauthorized on October 30, 2004, it was not
3232 appropriated funds.

3233 Currently, the conference's reauthorization is due to
3234 expire on September 30, 2007. This legislation would
3235 reauthorize ACUS until 2011.

3236 I especially commend my colleague, Mr. Cannon, the
3237 ranking member of the subcommittee, for his leadership in
3238 introducing this legislation and for his deep and abiding
3239 commitment to revitalizing the conference.

3240 After the hearing last week, I am convinced of the need
3241 for a nonpartisan think tank that can dispassionately examine
3242 administrative law and process and that can make credible

3243 recommendations for reform.

3244 In addition to supporting the reauthorization of ACUS, I
3245 hope my colleagues will also join me in the next step,
3246 obtaining funding for the conference once and for all.

3247 The extremely nominal investment to fund ACUS will
3248 unquestionably redound in billions of savings in taxpayer
3249 dollars. I urge my colleagues to support this very important
3250 piece of legislation.

3251 Mr. Cannon. Would the gentlelady yield?

3252 Ms. Sanchez. I will yield to the gentleman from Utah.

3253 Mr. Cannon. We shall try and save some time here, Mr.
3254 Chairman.

3255 I ask unanimous consent to have my statement included in
3256 the record.

3257 Chairman Conyers. Without objection, so ordered.

3258 [The statement of Mr. Cannon follows:]

3259 ***** COMMITTEE INSERT *****

3260 Mr. Cannon. Very little can be said in addition to what
3261 the gentlelady has said. This is a great bill and a great
3262 organization that has produced wonderful things for America
3263 and for the way we govern ourselves, and I would encourage
3264 the members of the panel to support it and, also, in the
3265 future, to support the appropriations to fund this
3266 organization.

3267 Thank you, Mr. Chairman. I yield back.

3268 Chairman Conyers. Thank you.

3269 Mr. Smith. Mr. Chairman, may I ask the chairwoman of
3270 the subcommittee, Ms. Sanchez, to yield to me, as well?

3271 Ms. Sanchez. Certainly.

3272 Mr. Smith. Thank you.

3273 Mr. Chairman, I want to say that the chair has described
3274 the bill well. I support it and ask unanimous consent that
3275 my full statement be made a part of the record.

3276 Chairman Conyers. Without objection, so ordered.

3277 [The statement of Mr. Smith follows:]

3278 ***** COMMITTEE INSERT *****

3279 Ms. Sanchez. And I will reclaim my time and yield back
3280 to the chairman.

3281 Chairman Conyers. Thank you.

3282 Are there any other comments? Are there any amendments?

3283 If not, a reporting quorum being present, the question
3284 is on reporting the bill favorably to the House.

3285 All those in favor will signify by saying "aye."

3286 Those opposed, "no."

3287 In the opinion of the chair, the ayes have it. The ayes
3288 have it and H.R. 3564 is ordered reported favorably to the
3289 House. Members will have 2 days to submit additional views.

3290 We now return to the Internet tax bill, where the
3291 Goodlatte amendment is still pending.

3292 And before I recognize the gentleman from Virginia, if
3293 he chooses to be recognized again, during the break, I should
3294 advise the members of the committee that we have discussed
3295 the desire of a number of members to offer amendments to
3296 alter or remove the sunset on the moratorium.

3297 Before the break, we were able to have a full debate on
3298 that tissue generally.

3299 A point of order was reserved regarding possible
3300 germaneness. I would like to help move us forward and, in
3301 the interest of that, many other members on the committee
3302 have that same view.

3303 So I propose that rather than pursue the point of order,

3304 we will consider the pending amendment and two additional
3305 amendments with alternative timeframes to the 4-year sunset
3306 in the bill.

3307 I want to indicate the concurrence of the ranking member
3308 and offer him an opportunity for any comments, if he so
3309 chooses.

3310 After we vote on the pending amendment, Mr. Goodlatte
3311 will speak in support of two other amendments and I would
3312 hope that we can limit debate to move promptly to a vote on
3313 each, since we are apparently under a 5 o'clock deadline with
3314 our activities, requiring our presence on the floor.

3315 I would, therefore, ask if the gentleman from Virginia,
3316 Mr. Bobby Scott, if he would kindly withdraw his reservation
3317 of a point of order.

3318 Mr. Scott. So move, Mr. Chairman.

3319 Chairman Conyers. Thank you.

3320 And now the question is on the pending amendment by Mr.
3321 Goodlatte, which would make the moratorium permanent.

3322 All those in favor of the Goodlatte amendment, signify
3323 by saying "aye."

3324 All those opposed to the Goodlatte amendment, signify by
3325 saying "no."

3326 In the opinion of the chair—the request for a roll call
3327 vote has been heard by Mr. Goodlatte, if I anticipated him,
3328 correctly, and the clerk will call the roll.

3329 The Clerk. Mr. Chairman?

3330 Chairman Conyers. No.

3331 The Clerk. Mr. Chairman votes no.

3332 Mr. Berman?

3333 [No response.]

3334 Mr. Boucher?

3335 [No response.]

3336 Mr. Nadler?

3337 [No response.]

3338 Mr. Scott?

3339 Mr. Scott. No.

3340 The Clerk. Mr. Scott votes no.

3341 Mr. Watt?

3342 Mr. Watt. No.

3343 The Clerk. Mr. Watt votes no.

3344 Ms. Lofgren?

3345 Ms. Lofgren. Aye.

3346 The Clerk. Ms. Lofgren votes aye.

3347 Ms. Jackson Lee?

3348 Ms. Jackson Lee. No.

3349 The Clerk. Ms. Jackson Lee votes no.

3350 Ms. Waters?

3351 Ms. Waters. No.

3352 The Clerk. Ms. Waters votes no.

3353 Mr. Delahunt?

3354 Mr. Delahunt. No.

3355 The Clerk. Mr. Delahunt votes no.

3356 Mr. Wexler?

3357 Mr. Wexler. No.

3358 The Clerk. Mr. Wexler votes no.

3359 Ms. Sanchez?

3360 Ms. Sanchez. No.

3361 The Clerk. Ms. Sanchez votes no.

3362 Mr. Cohen?

3363 [No response.]

3364 Mr. Johnson?

3365 Mr. Johnson. No.

3366 The Clerk. Mr. Johnson votes no.

3367 Ms. Sutton?

3368 [No response.]

3369 Mr. Gutierrez?

3370 [No response.]

3371 Mr. Sherman?

3372 [No response.]

3373 Ms. Baldwin?

3374 Ms. Baldwin. No.

3375 The Clerk. Ms. Baldwin votes no.

3376 Mr. Weiner?

3377 Mr. Weiner. Pass.

3378 The Clerk. Mr. Weiner passes.

3379 Mr. Schiff?
3380 [No response.]
3381 Mr. Davis?
3382 [No response.]
3383 Ms. Wasserman Schultz?
3384 Ms. Wasserman Schultz. No.
3385 The Clerk. Ms. Wasserman Schultz votes no.
3386 Mr. Ellison?
3387 Mr. Ellison. No.
3388 The Clerk. Mr. Ellison votes no.
3389 Mr. Smith?
3390 Mr. Smith. Aye.
3391 The Clerk. Mr. Smith vote aye.
3392 Mr. Sensenbrenner?
3393 Mr. Sensenbrenner. Aye.
3394 The Clerk. Mr. Sensenbrenner votes aye.
3395 Mr. Coble?
3396 Mr. Coble. Aye.
3397 The Clerk. Mr. Coble votes aye.
3398 Mr. Gallegly?
3399 Mr. Gallegly. Aye.
3400 The Clerk. Mr. Gallegly votes aye.
3401 Mr. Goodlatte?
3402 Mr. Goodlatte. Aye.
3403 The Clerk. Mr. Goodlatte votes aye.

3404 Mr. Chabot?
3405 [No response.]
3406 Mr. Lungren?
3407 Mr. Lungren. Aye.
3408 The Clerk. Mr. Lungren votes aye.
3409 Mr. Cannon?
3410 Mr. Cannon. Aye.
3411 The Clerk. Mr. Cannon votes aye.
3412 Mr. Keller?
3413 Mr. Keller. Aye.
3414 The Clerk. Mr. Keller votes aye.
3415 Mr. Issa?
3416 [No response.]
3417 Mr. Pence?
3418 [No response.]
3419 Mr. Forbes?
3420 Mr. Forbes. Aye.
3421 The Clerk. Mr. Forbes votes aye.
3422 Mr. King?
3423 Mr. King. Aye.
3424 The Clerk. Mr. King votes aye.
3425 Mr. Feeney?
3426 Mr. Feeney. Aye.
3427 The Clerk. Mr. Feeney votes aye.
3428 Mr. Franks?

3429 Mr. Franks. Aye.

3430 The Clerk. Mr. Franks votes aye.

3431 Mr. Gohmert?

3432 Mr. Gohmert. Aye.

3433 The Clerk. Mr. Gohmert votes aye.

3434 Mr. Jordan?

3435 Mr. Jordan. Aye.

3436 The Clerk. Mr. Jordan votes aye.

3437 Mr. Gutierrez. How am I recorded?

3438 The Clerk. Mr. Gutierrez is not recorded.

3439 Mr. Gutierrez. No.

3440 The Clerk. Mr. Gutierrez votes no.

3441 Chairman Conyers. Mr. Sherman?

3442 Mr. Sherman. No.

3443 The Clerk. Mr. Sherman votes no.

3444 Chairman Conyers. Ms. Sutton?

3445 Ms. Sutton. No.

3446 The Clerk. Ms. Sutton votes no.

3447 Chairman Conyers. Mr. Boucher?

3448 Mr. Boucher. No.

3449 The Clerk. Mr. Boucher votes no.

3450 Chairman Conyers. Mr. Berman?

3451 Mr. Berman. No.

3452 The Clerk. Mr. Berman votes no.

3453 Chairman Conyers. Mr. Nadler?

3454 Mr. Nadler. No.

3455 The Clerk. Mr. Nadler votes no.

3456 Chairman Conyers. Mr. Cohen?

3457 Mr. Cohen. No.

3458 The Clerk. Mr. Cohen votes no.

3459 Chairman Conyers. Mr. Schiff?

3460 Mr. Schiff. No.

3461 The Clerk. Mr. Schiff votes no.

3462 Chairman Conyers. Mr. Weiner?

3463 Mr. Weiner. How am I recorded?

3464 The Clerk. Mr. Weiner passed.

3465 Mr. Weiner. No.

3466 Chairman Conyers. Are there any other members in the

3467 chamber that wish to cast a vote?

3468 If not, the clerk will report.

3469 The Clerk. Mr. Chairman, 15 members voted aye, 21

3470 members voted no.

3471 Chairman Conyers. The amendment fails.

3472 Ms. Jackson Lee. Mr. Chairman?

3473 Chairman Conyers. Yes. The gentlelady from Texas?

3474 Ms. Jackson Lee. Mr. Chairman, I just want to offer a

3475 brief word of—

3476 Chairman Conyers. Do you want to strike the last word?

3477 Ms. Jackson Lee. I want to strike the last word. I

3478 guess I was rushing, as I was between two committees, but I

3479 would like to strike the last word, unanimous consent.

3480 Chairman Conyers. The gentlelady is recognized.

3481 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

3482 Let me add my appreciation for the underlying bill
3483 sponsored by yourself and a number of others. In particular,
3484 for those states who, in fact, have recognized the dilemma of
3485 this question of Internet taxation, but have already been
3486 grandfathered in, such as Texas, I am very glad that the bill
3487 proposes to extend the moratorium temporarily, retaining the
3488 grandfathering of existing taxes on Internet access and it
3489 also improves the definition of the Internet.

3490 The 4-year period gives us an opportunity again to
3491 assess our policy, but at the same time, it recognizes the
3492 role that such taxation plays in the fiscal policy of states
3493 like Texas and it provides us an opportunity for adequate
3494 public services without cutting them off, but yet respecting
3495 the importance of the industry, of which we are very grateful
3496 for the economic engine that Silicon Valley provides.

3497 So I want to add my appreciation for this legislation
3498 and ask my colleagues to vote for it and thank the chairman.

3499 And I yield back.

3500 Chairman Conyers. I thank the gentlelady.

3501 And I recognize the gentleman from Virginia, Mr.

3502 Goodlatte.

3503 Mr. Goodlatte. Thank you, Mr. Chairman. I have an

3504 amendment at the desk, number 02.

3505 Chairman Conyers. The clerk will report the amendment.

3506 The Clerk. Amendment to H.R. 3678, offered by Mr.

3507 Goodlatte of Virginia. Strike Section 2(1)-

3508 [The amendment by Mr. Goodlatte follows:]

3509 ***** COMMITTEE INSERT *****

3510 Chairman Conyers. I ask unanimous consent the amendment
3511 be considered as read and recognize the author of the
3512 amendment in support of his own amendment.

3513 Mr. Goodlatte. Thank you, Mr. Chairman.

3514 Mr. Chairman, naturally, I am disappointed that the
3515 committee has not chosen to do the will of previous
3516 Congresses or of the majority of the members of the House who
3517 cosponsored the permanent ban, including several members on
3518 the other side of the aisle who had cosponsored that
3519 legislation, but didn't see fit to take advantage of the
3520 opportunity to support it.

3521 But I will, nonetheless, offer what I think is another
3522 good idea and that is to not make this such a short extension
3523 that it is only for 4 years. This amendment would extend the
3524 current ban on Internet taxes and discriminatory taxes on
3525 electronic commerce for 8 years.

3526 This 8-year extension will give much greater certainty
3527 to businesses than the 4-year extension in the underlying
3528 bill and will also help ensure that our nation's low income
3529 families have a better shot at being able to afford broadband
3530 access.

3531 Mr. Chairman, as was noted in my earlier remarks, only
3532 11 percent of individuals in this country with incomes below
3533 \$30,000 a year have broadband Internet access and the fact of
3534 the matter is one of the big deterrents is all of those

3535 charges that show up on your phone bill, all those charges
3536 that show up on your cable bill will, over time, show up on
3537 Internet access bills, and this would avoid that and it would
3538 give greater encouragement to those who are investing in the
3539 build-out of our country.

3540 Broadband service, as was noted by the gentlewoman from
3541 California, we are falling further and further behind other
3542 countries. Having a longer period of certainty that these
3543 taxes will not apply will help us.

3544 Mr. Chairman, America's consumers and businesses need
3545 more assurance that aggressive state and local jurisdictions
3546 will not start imposing taxes on Internet access. America is
3547 lagging behind in broadband penetration and an 8-year
3548 extension will help us get back on track.

3549 And for those concerned about the grandfathering, this
3550 amendment would also have the effect of not ending the
3551 grandfathering provisions in the current law until 4 years
3552 from now, which allows certain states and localities to tax
3553 Internet access, despite the ban on these taxes.

3554 Eliminating this currently existing grandfathering
3555 provision will grant much awaited relief to consumers and
3556 businesses, but it will not occur for 4 years to allow those
3557 states and localities the opportunity to adjust to that.

3558 It will help level the playing field to ensure that
3559 Internet access, no matter where it is provided, will be free

3560 of excessive and burdensome taxation.

3561 It is my understanding that the 8-year extension to the
3562 moratorium was negotiated at the subcommittee level between
3563 the states and the telecommunications companies.

3564 So it is my hope that this amendment can be supported by
3565 a majority here at the full committee.

3566 Chairman Conyers. Thank you very much, Mr. Goodlatte.

3567 I rise with some reluctance to oppose the amendment,
3568 because this would constitute an unreasonably long extension,
3569 which would affect and limit the ability of Congress to
3570 revisit the moratorium and its effect on the industry, the
3571 states and the localities and, as well, on the consumer, as
3572 technology and innovation progress.

3573 I argue that adding 2 more years to this moratorium is
3574 unnecessary, counterproductive and not in the best interest
3575 of all the stakeholders.

3576 The Internet is still growing. It is still an ever-
3577 expanding tool. And so limiting the ability to revisit and
3578 reexamine the effects of the moratorium to a longer period
3579 will prevent industries, states and localities and consumers
3580 from reaping the true benefit of such rapidly expanding
3581 technology.

3582 What we do presently makes the much needed adjustments
3583 to the definition of the Internet access, defining it as the
3584 connection to the Internet. What if this definition is no

3585 longer sufficient in 4 years or 6 years or 7 years?

3586 And so in its current form, I would argue that we offer
3587 a strong solution to the gross receipts tax problem that has
3588 come up in certain states since the act was passed in 2004.

3589 What if a new unforeseen problem arises that could cost
3590 the industry or the states or localities millions in lost
3591 revenue? We will have to wait, to me, an unnecessary and
3592 unreasonably long period of time to fix the problem.

3593 So our best option, I recommend to each member of the
3594 committee, is to get to the floor before the deadline. The
3595 states never supported any extension above 4 years. Congress
3596 can revisit and make adjustments at our discretion within the
3597 period of the moratorium that now exists and without that
3598 reasonable extension, we won't be able to address the issues
3599 and make the proper necessary adjustments as they occur.

3600 And those are the considerations that I present to the
3601 committee in opposition to my distinguished friend from
3602 Virginia's amendment now pending.

3603 Mr. Watt. Mr. Chairman?

3604 Chairman Conyers. Yes. Mr. Watt of North Carolina?

3605 Mr. Watt. I move to strike the last word.

3606 Chairman Conyers. The gentleman is recognized.

3607 Mr. Watt. Thank you, Mr. Chairman.

3608 Chairman Conyers. Excuse me, Mr. Watt. I think I had
3609 better go to the other side.

3610 Mr. Watt. I didn't realize there was somebody over
3611 there who was seeking recognition.

3612 Chairman Conyers. There is, namely, the ranking member
3613 of judiciary, Mr. Smith.

3614 Mr. Smith. Thank you, Mr. Chairman.

3615 Mr. Chairman, I am disappointed that the committee did
3616 not adopt the amendment to extend the moratorium permanently.
3617 However, the gentleman from Virginia's amendment to extend
3618 the moratorium for 8 years is the next best option.

3619 They give some assurances to businesses so that they can
3620 expand the broadband Internet infrastructure. It also
3621 ensures that at least for 8 years, the American taxpayer will
3622 not be threatened with an additional 5 to 15 percent in sales
3623 and telecommunications taxes every time they log onto the
3624 Internet to do research for a term paper or to buy a
3625 Christmas present.

3626 For those reasons, I support this amendment and urge my
3627 colleagues to do the same.

3628 Mr. Chairman, I will yield back.

3629 Chairman Conyers. Thank you.

3630 Mr. Watt?

3631 Mr. Watt. Move to strike the last word.

3632 Chairman Conyers. The gentleman is recognized.

3633 Mr. Watt. And I will try not to take 5 minutes.

3634 As the chair knows and the members of the committee

3635 know, I have been the ranking member on the subcommittee that
3636 has had jurisdiction over this issue for all the time that it
3637 has been before the committee.

3638 And I wanted to address a couple of the arguments that
3639 have been made as a result of that.

3640 First of all, there has not been an extension of the
3641 moratorium that I have not supported, although I have been
3642 adamantly opposed to making the extension permanent, because
3643 of some pretty obvious things.

3644 The last thing we dealt with this, we, in fact, expanded
3645 the coverage and breadth of the moratorium because between
3646 that time and the time before, when we put the moratorium in
3647 effect, we found that there was a substantial inequity in the
3648 definition to which we had applied the moratorium.

3649 I think actually making the moratorium permanent without
3650 knowing the full impact of and potential of the Internet
3651 would be irresponsible, although I recognize that even if we
3652 made it permanent, we would have the option of going back and
3653 making it unpermanent.

3654 I just think this whole process that we are going
3655 through with access to the Internet and the capacity of the
3656 Internet is unknown to the members of this committee at this
3657 point.

3658 It may well be that in the next 4 years, just about
3659 everything that we now know as technology will be being done

3660 through the Internet.

3661 And contrary to the arguments that have been put
3662 forward, I don't think there is a single company out there
3663 that is deterred from the expansion of research,
3664 implementation or putting into effect the abilities of the
3665 Internet because of some prospect that 4 years down the road
3666 or 10 years down the road or 8 years down the road or even 2
3667 years down the road, there might be some kind of taxation to
3668 access or to use of the Internet.

3669 So I think we are following a wise course to make this a
3670 temporary extension of the moratorium, although I suspect 4
3671 years from now will be just as willing to support an
3672 additional extension based on a definition of the breadth of
3673 the moratorium that will be appropriate at that time.

3674 Just like in 2004, we based the definition on what was
3675 appropriate we thought at that time. This time, there is
3676 another broader definition of what is covered, which I think
3677 is appropriate, but I think it argues against making this
3678 permanent, because then we wouldn't have the flexibility of
3679 adjusting it from time to time or at least not the extent of
3680 the flexibility that we currently have.

3681 So I think we are prudently expanding the duration of
3682 the moratorium and I support the bill as it is written and
3683 oppose the amendment.

3684 Chairman Conyers. I thank the gentleman.

3685 The chair seeks now to put the question on the Goodlatte
3686 amendment.

3687 All those in favor of the Goodlatte amendment, indicate
3688 by saying "aye."

3689 All those opposed to the Goodlatte amendment, indicate
3690 by saying "no."

3691 Mr. Goodlatte. Mr. Chair, on that, I ask for a recorded
3692 vote.

3693 Chairman Conyers. Mr. Goodlatte again requests a
3694 recorded vote.

3695 The clerk will call the roll.

3696 The Clerk. Mr. Chairman?

3697 Chairman Conyers. No.

3698 The Clerk. Mr. Chairman votes no.

3699 Mr. Berman?

3700 Mr. Berman. No.

3701 The Clerk. Mr. Berman votes no.

3702 Mr. Boucher?

3703 [No response.]

3704 Mr. Nadler?

3705 [No response.]

3706 Mr. Scott?

3707 Mr. Scott. No.

3708 The Clerk. Mr. Scott votes no.

3709 Mr. Watt?

3710 Mr. Watt. No.

3711 The Clerk. Mr. Watt votes no.

3712 Ms. Lofgren?

3713 Ms. Lofgren. Aye.

3714 The Clerk. Ms. Lofgren votes aye.

3715 Ms. Jackson Lee?

3716 [No response.]

3717 Ms. Waters?

3718 Ms. Waters. No.

3719 The Clerk. Ms. Waters votes no.

3720 Mr. Delahunt?

3721 [No response.]

3722 Mr. Wexler?

3723 [No response.]

3724 Ms. Sanchez?

3725 Ms. Sanchez. Pass.

3726 The Clerk. Ms. Sanchez passes.

3727 Mr. Cohen?

3728 Mr. Cohen. No.

3729 The Clerk. Mr. Cohen votes no.

3730 Mr. Johnson?

3731 Mr. Johnson. No.

3732 The Clerk. Mr. Johnson votes no.

3733 Ms. Sutton?

3734 Ms. Sutton. No.

3735 The Clerk. Ms. Sutton votes no.
3736 Mr. Gutierrez?
3737 Mr. Gutierrez. No.
3738 The Clerk. Mr. Gutierrez votes no.
3739 Mr. Sherman?
3740 [No response.]
3741 Ms. Baldwin?
3742 Ms. Baldwin. No.
3743 The Clerk. Ms. Baldwin votes no.
3744 Mr. Weiner?
3745 Mr. Weiner. No.
3746 The Clerk. Mr. Weiner votes no.
3747 Mr. Schiff?
3748 Mr. Schiff. No.
3749 The Clerk. Mr. Schiff votes no.
3750 Mr. Davis?
3751 Mr. Davis. Aye.
3752 The Clerk. Mr. Davis votes aye.
3753 Ms. Wasserman Schultz?
3754 Ms. Wasserman Schultz. No.
3755 Mr. Ellison?
3756 Mr. Ellison. No.
3757 The Clerk. Mr. Ellison votes no.
3758 Mr. Smith?
3759 Mr. Smith. Aye.

3760 The Clerk. Mr. Smith vote aye.
3761 Mr. Sensenbrenner?
3762 Mr. Sensenbrenner. Aye.
3763 The Clerk. Mr. Sensenbrenner votes aye.
3764 Mr. Coble?
3765 Mr. Coble. Aye.
3766 The Clerk. Mr. Coble votes aye.
3767 Mr. Gallegly?
3768 Mr. Gallegly. Aye.
3769 The Clerk. Mr. Gallegly votes aye.
3770 Mr. Goodlatte?
3771 Mr. Goodlatte. Aye.
3772 The Clerk. Mr. Goodlatte votes aye.
3773 Mr. Chabot?
3774 Mr. Chabot. Aye.
3775 The Clerk. Mr. Chabot votes aye.
3776 Mr. Lungren?
3777 Mr. Lungren. Aye.
3778 The Clerk. Mr. Lungren votes aye.
3779 Mr. Cannon?
3780 Mr. Cannon. Aye.
3781 The Clerk. Mr. Cannon votes aye.
3782 Mr. Keller?
3783 Mr. Keller. Aye.
3784 The Clerk. Mr. Keller votes aye.

3785 Mr. Issa?
3786 Mr. Issa. Aye.
3787 The Clerk. Mr. Issa votes aye.
3788 Mr. Pence?
3789 Mr. Pence. Aye.
3790 The Clerk. Mr. Pence votes aye.
3791 Mr. Forbes?
3792 Mr. Forbes. Aye.
3793 The Clerk. Mr. Forbes votes aye.
3794 Mr. King?
3795 Mr. King. Aye.
3796 The Clerk. Mr. King votes aye.
3797 Mr. Feeney?
3798 Mr. Feeney. Aye.
3799 The Clerk. Mr. Feeney votes aye.
3800 Mr. Franks?
3801 Mr. Franks. Yes.
3802 The Clerk. Mr. Franks votes yes.
3803 Mr. Gohmert?
3804 Mr. Gohmert. Aye.
3805 The Clerk. Mr. Gohmert votes aye.
3806 Mr. Jordan?
3807 Mr. Jordan. Yes.
3808 The Clerk. Mr. Jordan votes yes.
3809 Chairman Conyers. Mr. Sherman?

3810 Mr. Boucher?

3811 Mr. Wexler?

3812 Mr. Wexler. No.

3813 Chairman Conyers. Mr. Nadler?

3814 Mr. Nadler. No.

3815 Chairman Conyers. Mr. Delahunt?

3816 Ms. Sanchez?

3817 The Clerk. Ms. Sanchez passed.

3818 Ms. Sanchez. Aye.

3819 The Clerk. Ms. Sanchez votes aye.

3820 Chairman Conyers. The clerk will report.

3821 The Clerk. Mr. Chairman, 20 members voted aye, 18

3822 members voted nay.

3823 Chairman Conyers. Thank you. The amendment carries.

3824 Are there any other amendments?

3825 Mr. Goodlatte. Mr. Chairman, I have no further

3826 amendments.

3827 Chairman Conyers. I would think not.

3828 Mr. Sensenbrenner. Parliamentary inquiry, Mr. Chairman.

3829 Chairman Conyers. The gentleman will state his inquiry.

3830 Mr. Sensenbrenner. If there are no further amendments,

3831 is not the question on adoption of the amendment in the

3832 nature of a substitute, as amended?

3833 Chairman Conyers. There is. The chair anticipates that

3834 there is another amendment.

3835 Mr. Sensenbrenner. Another parliamentary inquiry. Has
3836 not the chair asked if there are any further amendments and
3837 has been met with a deafening silence?

3838 Chairman Conyers. May I introduce—

3839 Mr. Sensenbrenner. Mr. Chairman?

3840 Chairman Conyers. At the end of the bill, members of
3841 the committee, notwithstanding anything to the contrary, the
3842 moratorium shall be extended for 4.5 years and that is the
3843 amendment.

3844 Mr. Sensenbrenner. Parliamentary inquiry. Has the
3845 amendment been reduced to writing and does the clerk have the
3846 amendment?

3847 Chairman Conyers. The clerk does not have the amendment
3848 at this moment, no, sir.

3849 Mr. Sensenbrenner. Mr. Chairman, I make a point of
3850 order that the amendment is not in proper form.

3851 Ms. Waters. Mr. Chairman?

3852 Chairman Conyers. Yes, the gentlelady.

3853 Ms. Waters. Is the motion for unanimous consent to
3854 waive the requirement for the amendment to be in writing in
3855 order?

3856 Mr. Sensenbrenner. I object.

3857 Chairman Conyers. I would decline to entertain this. I
3858 think we have an amendment that needs only to get to the
3859 clerk.

3860 Mr. Goodlatte. Mr. Chairman?

3861 Chairman Conyers. Who seeks?

3862 Mr. Goodlatte. I do.

3863 Chairman Conyers. Mr. Goodlatte?

3864 Mr. Goodlatte. Mr. Chairman, I understand the
3865 chairman's dilemma, but the committee has acted in accordance
3866 with the agreement that the chair reached with the minority
3867 in how we would proceed on amendments and the fact of the
3868 matter is that you are now changing that agreement by
3869 offering an additional amendment that was not contemplated by
3870 the committee when we reached agreement on how we would
3871 proceed following the recess for the last votes.

3872 Chairman Conyers. The chair is once again persuaded by
3873 the logic of the gentleman from Virginia.

3874 Mr. Davis. Mr. Chairman, will you recognize me for a
3875 request for unanimous consent?

3876 Chairman Conyers. The chair is prepared now to move
3877 forward.

3878 Mr. Davis. I seek recognition, Mr. Chairman.

3879 Chairman Conyers. For what purpose does the gentleman
3880 seek recognition?

3881 Mr. Davis. Unanimous consent request to reconsider the
3882 vote. Move to reconsider.

3883 Mr. Sensenbrenner. I object.

3884 Chairman Conyers. Objection is heard, but the gentleman

3885 was on the prevailing side.

3886 Does the gentleman move to reconsider the vote?

3887 Mr. Davis. I do, Mr. Chairman.

3888 Chairman Conyers. Is the gentleman on the prevailing
3889 side?

3890 Mr. Davis. I was, Mr. Chairman.

3891 Chairman Conyers. The gentleman qualifies.

3892 So the question occurs on reconsideration of the vote on
3893 the Goodlatte amendment.

3894 All those in favor, say "aye."

3895 Wait a minute.

3896 All in favor of reconsideration of the Goodlatte
3897 amendment, indicate by saying "aye."

3898 All those opposed, please indicate by saying "no."

3899 A roll call has been requested and the clerk will call
3900 the roll.

3901 The Clerk. Mr. Chairman?

3902 Chairman Conyers. Aye.

3903 The Clerk. Mr. Chairman votes aye.

3904 Mr. Berman?

3905 Mr. Berman. Aye.

3906 The Clerk. Mr. Berman votes aye.

3907 Mr. Boucher?

3908 [No response.]

3909 Mr. Nadler?

3910 Mr. Nadler. Aye.

3911 The Clerk. Mr. Nadler votes aye.

3912 Mr. Scott?

3913 Mr. Scott. Aye.

3914 The Clerk. Mr. Scott votes aye.

3915 Mr. Watt?

3916 Mr. Watt. Aye.

3917 The Clerk. Mr. Watt votes aye.

3918 Ms. Lofgren?

3919 Ms. Lofgren. Aye.

3920 The Clerk. Ms. Lofgren votes aye.

3921 Ms. Jackson Lee?

3922 Ms. Jackson Lee. Aye.

3923 The Clerk. Ms. Jackson Lee votes aye.

3924 Ms. Waters?

3925 Ms. Waters. Aye.

3926 The Clerk. Ms. Waters votes aye.

3927 Mr. Delahunt?

3928 [No response.]

3929 Mr. Wexler?

3930 [No response.]

3931 Ms. Sanchez?

3932 Ms. Sanchez. Aye.

3933 The Clerk. Ms. Sanchez votes aye.

3934 Mr. Cohen?

3935 Mr. Cohen. Aye.

3936 The Clerk. Mr. Cohen votes aye.

3937 Mr. Johnson?

3938 Mr. Johnson. Aye.

3939 The Clerk. Mr. Johnson votes aye.

3940 Ms. Sutton?

3941 Ms. Sutton. Aye.

3942 The Clerk. Ms. Sutton votes aye.

3943 Mr. Gutierrez?

3944 Mr. Gutierrez. Aye.

3945 The Clerk. Mr. Gutierrez votes aye.

3946 Mr. Sherman?

3947 [No response.]

3948 Ms. Baldwin?

3949 Ms. Baldwin. Aye.

3950 The Clerk. Ms. Baldwin votes aye.

3951 Mr. Weiner?

3952 Mr. Weiner. Aye.

3953 The Clerk. Mr. Weiner votes aye.

3954 Mr. Schiff?

3955 [No response.]

3956 Mr. Davis?

3957 Mr. Davis. Aye.

3958 The Clerk. Mr. Davis votes aye.

3959 Ms. Wasserman Schultz?

3960 Ms. Wasserman Schultz. Aye.

3961 The Clerk. Ms. Wasserman Schultz votes aye.

3962 Mr. Ellison?

3963 Mr. Ellison. Yes.

3964 The Clerk. Mr. Ellison votes yes.

3965 Mr. Smith?

3966 Mr. Smith. No.

3967 The Clerk. Mr. Smith vote no.

3968 Mr. Sensenbrenner?

3969 Mr. Sensenbrenner. No.

3970 The Clerk. Mr. Sensenbrenner votes no.

3971 Mr. Coble?

3972 Mr. Coble. No.

3973 The Clerk. Mr. Coble votes no.

3974 Mr. Gallegly?

3975 Mr. Gallegly. No.

3976 The Clerk. Mr. Gallegly votes no.

3977 Mr. Goodlatte?

3978 Mr. Goodlatte. No.

3979 The Clerk. Mr. Goodlatte votes no.

3980 Mr. Chabot?

3981 Mr. Chabot. No.

3982 The Clerk. Mr. Chabot votes no.

3983 Mr. Lungren?

3984 Mr. Lungren. No.

3985 The Clerk. Mr. Lungren votes no.
3986 Mr. Cannon?
3987 Mr. Cannon. No.
3988 The Clerk. Mr. Cannon votes no.
3989 Mr. Keller?
3990 Mr. Keller. No.
3991 The Clerk. Mr. Keller votes no.
3992 Mr. Issa?
3993 Mr. Issa. No.
3994 The Clerk. Mr. Issa votes no.
3995 Mr. Pence?
3996 Mr. Pence. No.
3997 The Clerk. Mr. Pence votes no.
3998 Mr. Forbes?
3999 Mr. Forbes. No.
4000 The Clerk. Mr. Forbes votes no.
4001 Mr. King?
4002 Mr. King. No.
4003 The Clerk. Mr. King votes no.
4004 Mr. Feeney?
4005 [No response.]
4006 Mr. Franks?
4007 Mr. Franks. No.
4008 The Clerk. Mr. Franks votes no.
4009 Mr. Gohmert?

4010 Mr. Gohmert. No.

4011 The Clerk. Mr. Gohmert votes no.

4012 Mr. Jordan?

4013 Mr. Jordan. No.

4014 The Clerk. Mr. Jordan votes no.

4015 Chairman Conyers. Are there any members that wish to

4016 vote?

4017 Mr. Delahunt?

4018 Mr. Delahunt. Aye.

4019 The Clerk. Mr. Delahunt votes aye.

4020 Chairman Conyers. Mr. Wexler?

4021 Mr. Wexler. Aye.

4022 Chairman Conyers. Mr. Boucher?

4023 Mr. Boucher. Aye.

4024 The Clerk. Mr. Boucher votes aye.

4025 Mr. Wexler votes aye.

4026 Chairman Conyers. Are there other members that wish to

4027 cast their vote?

4028 The clerk will report.

4029 The Clerk. Mr. Chairman, 21 members voted aye, 16

4030 members voted nay.

4031 Chairman Conyers. So the motion to reconsider carries.

4032 I want to note that Mr. Schiff came into the room

4033 seconds late and that we deeply regret the fact that the vote

4034 has been reported.

4035 The question occurs on the reconsideration of the
4036 amendment offered by Mr. Goodlatte.

4037 All those in favor of the amendment will say "aye."

4038 All those opposed will say "no."

4039 In the opinion of the chair—

4040 Mr. Goodlatte. Mr. Chairman, I would ask for a recorded
4041 vote.

4042 Chairman Conyers. —a roll call is required.

4043 The clerk will call the roll.

4044 The Clerk. Mr. Conyers?

4045 Chairman Conyers. No.

4046 The Clerk. Mr. Conyers votes no.

4047 Mr. Berman?

4048 Mr. Berman. No.

4049 The Clerk. Mr. Berman votes no.

4050 Mr. Boucher?

4051 Mr. Boucher. No.

4052 The Clerk. Mr. Boucher votes no.

4053 Mr. Nadler?

4054 Mr. Nadler. No.

4055 The Clerk. Mr. Nadler votes no.

4056 Mr. Scott?

4057 Mr. Scott. No.

4058 The Clerk. Mr. Scott votes no.

4059 Mr. Watt?

4060 Mr. Watt. No.

4061 The Clerk. Mr. Watt votes no.

4062 Ms. Lofgren?

4063 Ms. Lofgren. Aye.

4064 The Clerk. Ms. Lofgren votes aye.

4065 Ms. Jackson Lee?

4066 Ms. Jackson Lee. No.

4067 The Clerk. Ms. Jackson Lee votes no.

4068 Ms. Waters?

4069 Ms. Waters. No.

4070 The Clerk. Ms. Waters votes no.

4071 Mr. Delahunt?

4072 [No response.]

4073 Mr. Wexler?

4074 Mr. Wexler. No.

4075 The Clerk. Mr. Wexler votes no.

4076 Ms. Sanchez?

4077 Ms. Sanchez. No.

4078 The Clerk. Ms. Sanchez votes no.

4079 Mr. Cohen?

4080 Mr. Cohen. No.

4081 The Clerk. Mr. Cohen votes no.

4082 Mr. Johnson?

4083 Mr. Johnson. No.

4084 The Clerk. Mr. Johnson votes no.

4085 Ms. Sutton?
4086 Ms. Sutton. No.
4087 The Clerk. Ms. Sutton votes no.
4088 Mr. Gutierrez?
4089 Mr. Gutierrez. No.
4090 The Clerk. Mr. Gutierrez votes no.
4091 Mr. Sherman?
4092 Mr. Sherman. No.
4093 The Clerk. Mr. Sherman votes no.
4094 Ms. Baldwin?
4095 Ms. Baldwin. No.
4096 The Clerk. Ms. Baldwin votes no.
4097 Mr. Weiner?
4098 Mr. Weiner. No.
4099 The Clerk. Mr. Weiner votes no.
4100 Mr. Schiff?
4101 Mr. Schiff. No.
4102 The Clerk. Mr. Schiff votes no.
4103 Mr. Davis?
4104 Mr. Davis. No.
4105 The Clerk. Mr. Davis votes no.
4106 Ms. Wasserman Schultz?
4107 Ms. Wasserman Schultz. No.
4108 The Clerk. Ms. Wasserman Schultz votes no.
4109 Mr. Ellison?

4110 Mr. Ellison. No.

4111 The Clerk. Mr. Ellison votes no.

4112 Mr. Smith?

4113 Mr. Smith. Aye.

4114 The Clerk. Mr. Smith vote aye.

4115 Mr. Sensenbrenner?

4116 Mr. Sensenbrenner. Aye.

4117 The Clerk. Mr. Sensenbrenner votes aye.

4118 Mr. Coble?

4119 Mr. Coble. Aye.

4120 The Clerk. Mr. Coble votes aye.

4121 Mr. Gallegly?

4122 Mr. Gallegly. Aye.

4123 The Clerk. Mr. Gallegly votes aye.

4124 Mr. Goodlatte?

4125 Mr. Goodlatte. Aye.

4126 The Clerk. Mr. Goodlatte votes aye.

4127 Mr. Chabot?

4128 Mr. Chabot. Aye.

4129 The Clerk. Mr. Chabot votes aye.

4130 Mr. Lungren?

4131 Mr. Lungren. Aye.

4132 The Clerk. Mr. Lungren votes aye.

4133 Mr. Cannon?

4134 Mr. Cannon. Aye.

4135 The Clerk. Mr. Cannon votes aye.
4136 Mr. Keller?
4137 Mr. Keller. Aye.
4138 The Clerk. Mr. Keller votes aye.
4139 Mr. Issa?
4140 Mr. Issa. Still an aye.
4141 The Clerk. Mr. Issa votes aye.
4142 Mr. Pence?
4143 Mr. Pence. Aye.
4144 The Clerk. Mr. Pence votes aye.
4145 Mr. Forbes?
4146 Mr. Forbes. Aye.
4147 The Clerk. Mr. Forbes votes aye.
4148 Mr. King?
4149 Mr. King. Aye.
4150 The Clerk. Mr. King votes aye.
4151 Mr. Feeney?
4152 [No response.]
4153 Mr. Franks?
4154 Mr. Franks. Aye.
4155 The Clerk. Mr. Franks votes aye.
4156 Mr. Gohmert?
4157 Mr. Gohmert. Yes.
4158 The Clerk. Mr. Gohmert votes yes.
4159 Mr. Jordan?

4160 Mr. Jordan. Yes.

4161 The Clerk. Mr. Jordan votes yes.

4162 Chairman Conyers. Are there any members in the chamber
4163 who wish to vote?

4164 Mr. Delahunt?

4165 Mr. Delahunt. No.

4166 The Clerk. Mr. Delahunt votes no.

4167 Chairman Conyers. The clerk will report.

4168 The Clerk. Mr. Chairman, 17 members voted aye, 22
4169 members voted nay.

4170 Chairman Conyers. The amendment fails.

4171 And the chair recognizes the gentleman from Virginia,
4172 Mr. Goodlatte.

4173 Mr. Goodlatte. Thank you, Mr. Conyers.

4174 Mr. Chairman, I have one more amendment at the desk.

4175 Chairman Conyers. The clerk will report.

4176 The Clerk. Amendment to H.R. 3678, offered by Mr.
4177 Goodlatte of Virginia. Strike Section 2(1). Insert the
4178 following: (1) In Section 1101(A) by striking "2007" and
4179 inserting "2013 and."

4180 [The amendment by Mr. Goodlatte follows:]

4181 ***** COMMITTEE INSERT *****

4182 Chairman Conyers. The gentleman is recognized in
4183 support of his amendment.

4184 Mr. Goodlatte. Thank you, Mr. Chairman.

4185 Mr. Chairman, I still don't feel that the committee has
4186 worked its will in the way that so many members reflected in
4187 supporting the permanent extension.

4188 So I want to give them one more opportunity to bring
4189 some greater certainty to this process by voting for a longer
4190 extension than 4 years.

4191 This will provide for a 6-year extension. It will give
4192 greater certainty to businesses and those interested in
4193 investing in the deployment of broadband Internet access in
4194 our country.

4195 It will help lower income people. It will help all
4196 Americans, but it will especially help lower income people
4197 who will not face the difficulty of increased taxes on their
4198 Internet service access. That is a great deterrent to people
4199 of lower income to pay those things and then have an
4200 inability to buy Internet access service, particularly high-
4201 speed broadband access service.

4202 We are going to have this deployed comparable to what
4203 has been done in other countries around the world. We should
4204 make sure that we have every incentive there for that
4205 investment to be made and for that consumer to take advantage
4206 of it by getting high-speed broadband service without facing

4207 all of the variety of taxes that state and local governments
4208 currently apply on our phone bills, in our cable bills and
4209 other like circumstances.

4210 This amendment would also have the effect of ending the
4211 grandfathering provisions in the current law after 4 years,
4212 which allows certain states and localities to tax Internet
4213 access, despite the ban on these taxes.

4214 Eliminating this currently existing grandfathering
4215 provision will—

4216 Chairman Conyers. The committee will be in order.

4217 Mr. Goodlatte. Thank you, Mr. Chairman.

4218 Eliminating this currently existing grandfathering
4219 provision will grant much awaited relief to consumers and
4220 businesses in those states and localities and will help level
4221 the playing field to ensure that Internet access, no matter
4222 where it is provided, will be free of excessive and
4223 burdensome taxation.

4224 It is my hope that the committee can support this
4225 amendment, which I think is very, very reasonable, and a
4226 majority that has already cosponsored the legislation offered
4227 by Congresswoman Eshoo could certainly support this 6-year
4228 extension, since they have already shown their support for a
4229 permanent extension.

4230 Mr. Chairman, I yield back.

4231 Ms. Jackson Lee. Call the question.

4232 Chairman Conyers. Before we call the question, I merely
4233 want to say that the gentleman's persistence is recognized
4234 and celebrated.

4235 We have gone to permanent to eight to six. And my
4236 arguments against them are all the same and I have repeated
4237 them four times, actually, the original and then the three
4238 amendments, and so I will not repeat them again.

4239 I respectfully urge that this amendment, as well, be
4240 rejected.

4241 And I call the question and I ask that all those in
4242 favor of the Goodlatte amendment, indicate by saying "aye."

4243 And all those opposed to the Goodlatte amendment,
4244 indicate by saying "no."

4245 Mr. Goodlatte. Mr. Chairman?

4246 Chairman Conyers. In the opinion of the chair, the no's
4247 have it.

4248 Mr. Goodlatte. Mr. Chairman, on that, I ask for a
4249 recorded vote.

4250 Chairman Conyers. A recorded vote is ordered.

4251 The Clerk. Mr. Chairman?

4252 Chairman Conyers. No.

4253 The Clerk. Mr. Chairman votes no.

4254 Mr. Berman?

4255 Mr. Berman. No.

4256 The Clerk. Mr. Berman votes no.

4257 Mr. Boucher?
4258 Mr. Nadler?
4259 Mr. Nadler. No.
4260 The Clerk. Mr. Nadler votes no.
4261 Mr. Scott?
4262 Mr. Scott. No.
4263 The Clerk. Mr. Scott votes no.
4264 Mr. Watt?
4265 Mr. Watt. No.
4266 The Clerk. Mr. Watt votes no.
4267 Ms. Lofgren?
4268 Ms. Lofgren. Aye.
4269 The Clerk. Ms. Lofgren votes aye.
4270 Ms. Jackson Lee?
4271 Ms. Jackson Lee. No.
4272 The Clerk. Ms. Jackson Lee votes no.
4273 Ms. Waters?
4274 Ms. Waters. No.
4275 The Clerk. Ms. Waters votes no.
4276 Mr. Delahunt?
4277 Mr. Delahunt. No.
4278 The Clerk. Mr. Delahunt votes no.
4279 Mr. Wexler?
4280 [No response.]
4281 Ms. Sanchez?

4282 [No response.]

4283 Mr. Cohen?

4284 Mr. Cohen. No.

4285 The Clerk. Mr. Cohen votes no.

4286 Mr. Johnson?

4287 Mr. Johnson. No.

4288 The Clerk. Mr. Johnson votes no.

4289 Ms. Sutton?

4290 Ms. Sutton. No.

4291 The Clerk. Ms. Sutton votes no.

4292 Mr. Gutierrez?

4293 Mr. Gutierrez. No.

4294 The Clerk. Mr. Gutierrez votes no.

4295 Mr. Sherman?

4296 [No response.]

4297 Ms. Baldwin?

4298 Ms. Baldwin. No.

4299 The Clerk. Ms. Baldwin votes no.

4300 Mr. Weiner?

4301 Mr. Weiner. No.

4302 The Clerk. Mr. Weiner votes no.

4303 Mr. Schiff?

4304 [No response.]

4305 Mr. Davis?

4306 Mr. Davis. No.

4307 The Clerk. Mr. Davis votes no.
4308 Ms. Wasserman Schultz?
4309 Ms. Wasserman Schultz. No.
4310 The Clerk. Ms. Wasserman Schultz votes no.
4311 Mr. Ellison?
4312 Mr. Ellison. No.
4313 The Clerk. Mr. Ellison votes no.
4314 Mr. Smith?
4315 Mr. Smith. Aye.
4316 The Clerk. Mr. Smith vote aye.
4317 Mr. Sensenbrenner?
4318 Mr. Sensenbrenner. Aye.
4319 The Clerk. Mr. Sensenbrenner votes aye.
4320 Mr. Coble?
4321 Mr. Coble. Aye.
4322 The Clerk. Mr. Coble votes aye.
4323 Mr. Gallegly?
4324 Mr. Gallegly. Aye.
4325 The Clerk. Mr. Gallegly votes aye.
4326 Mr. Goodlatte?
4327 Mr. Goodlatte. Aye.
4328 The Clerk. Mr. Goodlatte votes aye.
4329 Mr. Chabot?
4330 Mr. Chabot. Aye.
4331 The Clerk. Mr. Chabot votes aye.

4332 Mr. Lungren?
4333 Mr. Lungren. Aye.
4334 The Clerk. Mr. Lungren votes aye.
4335 Mr. Cannon?
4336 Mr. Cannon. Aye.
4337 The Clerk. Mr. Cannon votes aye.
4338 Mr. Keller?
4339 Mr. Keller. Aye.
4340 The Clerk. Mr. Keller votes aye.
4341 Mr. Issa?
4342 [No response.]
4343 Mr. Pence?
4344 [No response.]
4345 Mr. Forbes?
4346 Mr. Forbes. Aye.
4347 The Clerk. Mr. Forbes votes aye.
4348 Mr. King?
4349 Mr. King. Aye.
4350 The Clerk. Mr. King votes aye.
4351 Mr. Feeney?
4352 [No response.]
4353 Mr. Franks?
4354 Mr. Franks. Yes.
4355 The Clerk. Mr. Franks votes yes.
4356 Mr. Gohmert?

4357 Mr. Gohmert. Yea.

4358 The Clerk. Mr. Gohmert votes yea.

4359 Mr. Jordan?

4360 Mr. Jordan. Yes.

4361 The Clerk. Mr. Jordan votes yes.

4362 Chairman Conyers. Are there other members that wish to

4363 vote?

4364 Mr. Issa?

4365 Mr. Issa. Votes yes.

4366 The Clerk. Mr. Issa votes yes.

4367 Chairman Conyers. Mr. Schiff?

4368 Mr. Schiff. No.

4369 The Clerk. Mr. Schiff votes no.

4370 Chairman Conyers. Mr. Wexler?

4371 Mr. Wexler. No.

4372 The Clerk. Mr. Wexler votes no.

4373 Chairman Conyers. Mr. Boucher?

4374 Mr. Boucher. No.

4375 The Clerk. Mr. Boucher votes no.

4376 Chairman Conyers. Ms. Sanchez?

4377 Ms. Sanchez. No.

4378 The Clerk. Ms. Sanchez votes no.

4379 Chairman Conyers. The clerk will report.

4380 The Clerk. Did Mr. Pence come into the room to vote?

4381 Chairman Conyers. He has not voted.

4382 The Clerk. I don't have him as voting.

4383 Mr. Chairman, 16 members voted aye, 21 members voted
4384 nay.

4385 Chairman Conyers. The amendment fails.

4386 The question now occurs on the manager's amendment,
4387 which requires separate approval.

4388 All those in favor of the manager's amendment, indicate
4389 by saying "aye."

4390 All those opposed, indicate by saying "no."

4391 The ayes have it and so ordered.

4392 Mr. Cannon. Mr. Chairman, on that, I ask for a recorded
4393 vote.

4394 Actually, let me withdraw that. I ask unanimous consent
4395 to withdraw my request.

4396 Chairman Conyers. I thank the gentleman.

4397 Now, a majority having voted in favor of the bill, as
4398 amended, and a reporting quorum being present, the question
4399 is on reporting the bill, as amended, favorably to the House.

4400 All those in favor will signify by saying "aye."

4401 Those opposed, signify by saying "no."

4402 The ayes have it and the bill, as amended—

4403 Mr. Cannon. Mr. Chairman, recorded vote on that.

4404 Chairman Conyers. —will be reported favorably to the
4405 House.

4406 A roll call vote is requested by the gentleman from

4407 Utah.

4408 Mr. Cannon. Thank you, Mr. Chairman.

4409 Chairman Conyers. And the clerk will call the roll.

4410 The Clerk. Mr. Chairman?

4411 Chairman Conyers. Aye.

4412 The Clerk. Mr. Chairman votes aye.

4413 Mr. Berman?

4414 Mr. Berman. Aye.

4415 The Clerk. Mr. Berman votes aye.

4416 Mr. Boucher?

4417 Mr. Boucher. Aye.

4418 The Clerk. Mr. Boucher votes aye.

4419 Mr. Nadler?

4420 Mr. Nadler. Aye.

4421 The Clerk. Mr. Nadler votes aye.

4422 Mr. Scott?

4423 Mr. Scott. Aye.

4424 The Clerk. Mr. Scott votes aye.

4425 Mr. Watt?

4426 Mr. Watt. Aye.

4427 The Clerk. Mr. Watt votes aye.

4428 Ms. Lofgren?

4429 Ms. Lofgren. Aye.

4430 The Clerk. Ms. Lofgren votes aye.

4431 Ms. Jackson Lee?

4432 Ms. Jackson Lee. Aye.

4433 The Clerk. Ms. Jackson Lee votes aye.

4434 Ms. Waters?

4435 Ms. Waters. Aye.

4436 The Clerk. Ms. Waters votes aye.

4437 Mr. Delahunt?

4438 Mr. Delahunt. Aye.

4439 The Clerk. Mr. Delahunt votes aye.

4440 Mr. Wexler?

4441 Mr. Wexler. Aye.

4442 The Clerk. Mr. Wexler votes aye.

4443 Ms. Sanchez?

4444 Ms. Sanchez. Aye.

4445 The Clerk. Ms. Sanchez votes aye.

4446 Mr. Cohen?

4447 Mr. Cohen. Aye.

4448 The Clerk. Mr. Cohen votes aye.

4449 Mr. Johnson?

4450 Mr. Johnson. Aye.

4451 The Clerk. Mr. Johnson votes aye.

4452 Ms. Sutton?

4453 Ms. Sutton. Aye.

4454 The Clerk. Ms. Sutton votes aye.

4455 Mr. Gutierrez?

4456 Mr. Gutierrez. Aye.

4457 The Clerk. Mr. Gutierrez votes aye.
4458 Mr. Sherman?
4459 [No response.]
4460 Ms. Baldwin?
4461 Ms. Baldwin. Aye.
4462 The Clerk. Ms. Baldwin votes aye.
4463 Mr. Weiner?
4464 Mr. Weiner. Aye.
4465 The Clerk. Mr. Weiner votes aye.
4466 Mr. Schiff?
4467 Mr. Schiff. Aye.
4468 The Clerk. Mr. Schiff votes aye.
4469 Mr. Davis?
4470 Mr. Davis. Aye.
4471 The Clerk. Mr. Davis votes aye.
4472 Ms. Wasserman Schultz?
4473 Ms. Wasserman Schultz. Aye.
4474 The Clerk. Ms. Wasserman Schultz votes aye.
4475 Mr. Ellison?
4476 Mr. Ellison. Aye.
4477 The Clerk. Mr. Ellison votes aye.
4478 Mr. Smith?
4479 Mr. Smith. Aye.
4480 The Clerk. Mr. Smith vote aye.
4481 Mr. Sensenbrenner?

4482 Mr. Sensenbrenner. Aye.

4483 The Clerk. Mr. Sensenbrenner votes aye.

4484 Mr. Coble?

4485 Mr. Coble. Yes.

4486 The Clerk. Mr. Coble votes yes.

4487 Mr. Gallegly?

4488 Mr. Gallegly. Aye.

4489 The Clerk. Mr. Gallegly votes aye.

4490 Mr. Goodlatte?

4491 Mr. Goodlatte. Yes.

4492 The Clerk. Mr. Goodlatte votes yes.

4493 Mr. Chabot?

4494 Mr. Chabot. Yea.

4495 The Clerk. Mr. Chabot votes yea.

4496 Mr. Lungren?

4497 Mr. Lungren. Yea.

4498 The Clerk. Mr. Lungren votes yea.

4499 Mr. Cannon?

4500 Mr. Cannon. Yes.

4501 The Clerk. Mr. Cannon votes yes.

4502 Mr. Keller?

4503 Mr. Keller. Yes.

4504 The Clerk. Mr. Keller votes yes.

4505 Mr. Issa?

4506 Mr. Issa. Aye.

4507 The Clerk. Mr. Issa votes aye.
4508 Mr. Pence?
4509 Mr. Pence. Aye.
4510 The Clerk. Mr. Pence votes aye.
4511 Mr. Forbes?
4512 Mr. Forbes. Aye.
4513 The Clerk. Mr. Forbes votes aye.
4514 Mr. King?
4515 Mr. King. Aye.
4516 The Clerk. Mr. King votes aye.
4517 Mr. Feeney?
4518 [No response.]
4519 Mr. Franks?
4520 Mr. Franks. Yes.
4521 The Clerk. Mr. Franks votes yes.
4522 Mr. Gohmert?
4523 Mr. Gohmert. Yea.
4524 The Clerk. Mr. Gohmert votes yea.
4525 Mr. Jordan?
4526 Mr. Jordan. Yes.
4527 The Clerk. Mr. Jordan votes yes.
4528 Chairman Conyers. Other members who have not cast a
4529 vote?
4530 If not, the clerk will report.
4531 The Clerk. Mr. Chairman, 38 members voted aye, with no

4532 members voting nay.

4533 Chairman Conyers. A majority having voted in favor of
4534 the bill, as amended, it is ordered reported favorably to the
4535 House.

4536 Without objection, the bill be reported favorably to the
4537 House in the form of a single amendment in the nature of a
4538 substitute, incorporating amendments adopted here today.

4539 Without objection, the staff is authorized to make
4540 technical and conforming changes and members will have 2 days
4541 to submit additional views.

4542 In concurrence with the ranking member, we will put over
4543 four other bills that were on today's agenda for the next
4544 full meeting of the Judiciary Committee.

4545 I thank all the members for their cooperation,
4546 particularly the ranking member, and pronounce this committee
4547 hearing ended.

4548 [Whereupon, at 5:07 p.m., the subcommittee was
4549 adjourned.]