

1 MORNINGSIDE PARTNERS, LLC

2 MARKUP OF:

3 H.R. 1433, "DISTRICT OF COLUMBIA
4 HOUSE VOTING RIGHTS ACT OF 2007";

5 H.R. 580, "RESTORING CHECKS
6 AND BALANCES IN THE CONFIRMATION
7 PROCESS OF U.S. ATTORNEYS"; AND

8 APPROVAL OF ASSIGNMENT TO
9 SUBCOMMITTEE VACANCIES

10 Thursday, March 15, 2007

11 House of Representatives,
12 Committee on the Judiciary,
13 Washington, D.C.

14 The committee met, pursuant to call, at 10:20 a.m., in Room
15 2141, Rayburn House Office Building, Hon. John Conyers

16 [chairman of the committee] presiding.

17 Present: Representatives Conyers, Berman, Boucher,
18 Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Meehan,
19 Delahunt, Wexler, Sanchez, Cohen, Johnson, Gutierrez,
20 Sherman, Weiner, Schiff, Davis, Wasserman Schultz, Ellison,
21 Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot,
22 Lungren, Cannon, Keller, Issa, Pense, Forbes, King, Feeney,
23 Franks, Gohmert, and Jordan.

24 Staff present: Perry Apelbaum, Chief Counsel, Staff
25 Director; Joseph Gibson, Minority Chief Counsel; Kanya
26 Bennett, Counsel; Paul Taylor, Minority Counsel; Daniel
27 Flores, Minority Counsel; Michone Johnson, Chief Counsel,
28 Subcommittee on Commercial and Administrative Law; and Anita
29 L. Johnson, Chief Administrative Officer.

30 Chairman Conyers. [Presiding.] The committee will come
31 to order.

32 Thank you, and good morning.

33 Pursuant to notice, I now call up House Resolution 1433,
34 the District of Columbia House Voting Rights Act of 2007, for
35 purposes of markup.

36 And I ask the clerk to please report the bill.

37 The Clerk. "H.R. 1433, a bill to provide for the
38 treatment of the District of Columbia as a congressional
39 district for purposes of representation in the House of
40 Representatives and for other purposes--"

41 [The bill follows:]

42 ***** INSERT *****

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

45 And I will begin with a brief statement describing the
46 bill and then yield to Mr. Smith.

47 Members of the committee, this legislation is an
48 important step in fixing a gaping hole in our democracy. I
49 am not happy that we are the only democracy in the world
50 where citizens living in the capital city are denied
51 representation in their legislature.

52 As we know, there have been a number of attempts over
53 the last 40 years to address this by statute and by
54 constitutional amendment as well. And in the last Congress,
55 thanks to many on this committee, we came close with
56 bipartisan legislation approved in the Government Reform
57 Committee.

58 I hope this time we can be successful in finishing the
59 job. The Government Reform Committee has done its work, and
60 now the ball is in our court. It is in our hearing room.

61 And we just witnessed a very important hearing yesterday
62 that highlighted the fundamental unfairness of the current
63 situation. Some of our members discussed other ways, and
64 there were several novel idea, that we may approach this
65 subject.

66 But this is the way that shows the most promise at this
67 time. Some raise questions as to constitutional soundness of

68 this approach, but that has been considered as carefully as
69 it can be, and I am satisfied that we are on firm footing.

70 Article 1, section 8, clause 17, known as the District
71 Clause, provides the Congress with ample authority to give
72 the District a vote.

73 The courts have upheld numerous instances of where the
74 Congress has used the District Clause to give the District
75 rights and privileges accorded to the states in the text of
76 the Constitution in a variety of contexts and across the
77 years.

78 And so it is hard for me to imagine that the courts
79 would now depart from these precedents to deny our ability to
80 ensure our citizens living in the District that they have the
81 same right to voting representation in the people's house as
82 citizens everywhere else.

83 And I have had entered into the record the incredible
84 number of constitutional authorities, from law schools all
85 over this country, that have supported and backed up this
86 proposition on which we base the bill that is before us
87 today.

88 A half million residents of the District have strong
89 equitable claims to full voting representation in Congress.
90 They assumed the full responsibilities of United States
91 citizenship and should be accorded the full privileges,
92 especially the most fundamental privilege of all, on which so

93 many others ultimately rest.

94 And so we go into this knowing full well that there is
95 likely to be a court contest over this matter, and I am
96 prepared to face that challenge.

97 And I turn now to the distinguished ranking member of
98 Judiciary Committee, Lamar Smith.

99 Mr. Smith. Thank you, Mr. Chairman.

100 Mr. Chairman, as I commented in my statement at
101 yesterday's hearing, what makes this committee extraordinary
102 to me is that it serves as the guardian of the Constitution.
103 So I am still troubled by the legislation we consider today,
104 because I believe it exceeds constitutional bounds.

105 Supporters of the bill claim Congress has the authority
106 to enact this bill under the so-called District Clause in
107 Article 1, section 8. However, that very clause would seem
108 to constitutionally doom this legislation, as it clearly
109 implies that D.C. is not a state.

110 And Article 1, section 2 clearly says that, "The House
111 of Representatives shall be composed of members chosen every
112 second year by the people of the several States." Since D.C.
113 is not a state, it cannot have a voting member in the House.

114 In 2000, a federal district court in D.C. stated, "We
115 conclude from our analysis of the text that the Constitution
116 does not contemplate that the District may serve as a state
117 for purposes of the apportionment of congressional

118 representatives."

119 Supporters of the bill point for precedent to a case
120 decided by the Supreme Court in 1949 that upheld a federal
121 law extending the diversity jurisdiction of the federal
122 courts to hear cases in which D.C. residents were parties.

123 But the Congressional Research Service stated in a
124 recent report, "The plurality opinion in that case took pains
125 to note the limited impact of their holding. The plurality
126 specifically limited the scope of its decision to cases which
127 did not involve an extension of any fundamental right." And
128 of course, that means the right to vote for a member of
129 Congress.

130 If that 1949 Supreme Court case does what proponents of
131 the bill say it does, then there was no need for Congress in
132 1978 to consider a constitutional amendment on the subject.
133 That amendment failed to get the approval of three-quarters
134 of the states over a 7-year period. In fact, only 16 of the
135 38 states required for its ratification supported the
136 amendment.

137 What is being attempted by this legislation requires a
138 constitutional amendment that the vast majority of states
139 have already failed to approve.

140 Even conceding for purposes of argument the proponents'
141 interpretation of the vast breadth of the District Clause,
142 the bill unfairly subjects many citizens to unequal

143 treatment.

144 H.R. 1433 grants Utah an additional representative who
145 will run at large, or statewide. The at-large provision
146 creates a situation this country has not seen since the
147 development of the Supreme Court's line of cases affirming
148 the principle of one man, one vote.

149 Under this provision, voters in Utah would be able to
150 vote for two representative, their district representative
151 and their at-large representative, whereas voters in every
152 other state would only be able to vote for their one district
153 representative.

154 The result would be that Utah voters would have
155 disproportionately more voting power than the voters of every
156 other state.

157 As Professor Turley pointed out yesterday, H.R. 1433 is
158 not only unconstitutional but also its enactment while
159 awaiting a legal challenge could produce chaos by placing
160 into doubt future legislation passed by Congress.

161 To avoid this risk, I will offer an amendment shortly to
162 require the expedited judicial review of this legislation and
163 will explain that amendment in more detail at the appropriate
164 time.

165 Mr. Chairman, I urge members to oppose H.R. 1433 for the
166 reasons that I have mentioned, and I yield back the balance
167 of my time.

168 Chairman Conyers. I thank the gentleman.

169 And I will include opening statements of any other

170 member that would wish to submit one into the record.

171 [The statement of Ms. Jackson Lee follows:]

172 ***** INSERT *****

173 Chairman Conyers. Are there any amendments?

174 Mr. Smith. Mr. Chairman?

175 Chairman Conyers. Yes. Mr. Smith?

176 Mr. Smith. Thank you, Mr. Chairman. I have an
177 amendment at the desk.

178 Chairman Conyers. The clerk will report.

179 The clerk doesn't have the amendment yet. All right.

180 Mr. Nadler. Mr. Chairman, I reserve a point of order on
181 that.

182 Chairman Conyers. The gentleman from New York, Mr.
183 Nadler, reserves a point of order.

184 The Clerk. "Amendment to H.R. 1433 offered by Mr. Smith
185 of Texas. Add at the end the following new section: Section
186 8, Expedited Judicial Review. (A) Special—"

187 [The amendment by Mr. Smith follows:]

188 ***** INSERT *****

189 Chairman Conyers. Without objection, the amendment is
190 considered as read, and the gentleman from Texas is
191 recognized for 5 minutes in support of his amendment.

192 Mr. Smith. Thank you, Mr. Chairman.

193 Mr. Chairman, my amendment is very simple. It would
194 require expedited judicial review of the constitutionality of
195 the provisions of H.R. 1433. This ensures that if the bill
196 unconstitutionally grants D.C. a voting member,
197 unconstitutional action does not go on any longer than it has
198 to.

199 This amendment's language is substantially identical to
200 the expedited judicial review provisions in the McCain-
201 Feingold campaign finance law which were employed to
202 facilitate the Supreme Court's expeditious review of that
203 legislation.

204 Professor Jonathan Turley, someone the majority consults
205 frequently for his views, said in his remarks offered at
206 yesterday's hearing, "Permit me to be blunt. I consider this
207 act to be the most premeditated unconstitutional act by
208 Congress in decades."

209 As Professor Turley also pointed out, this bill could
210 produce legislative chaos. With a relatively close party
211 division in the House, the casting of a deciding vote
212 subsequently held invalid by a court could throw the validity
213 of untold pieces of future legislation into question.

214 Most people agree that the District of Columbia is not a
215 state and that the Constitution, unless amended, allows
216 members of Congress to be elected only by citizens in the
217 several states.

218 Congress knows a constitutional amendment is required to
219 change that, and Congress passed such an amendment to the
220 states in 1978, but only 16 of the required 38 states
221 ratified it.

222 There is no good reason to prolong a judicial resolution
223 of these important issues, especially when doing so risks
224 constitutional chaos regarding the validity of future
225 legislation passed by the House.

226 When this House Judiciary Committee under the leadership
227 of Democratic Chairman Peter Rodino in the 95th Congress
228 reported out a constitutional amendment to do what this bill
229 purports to be able to do, the report accompanying that
230 constitutional amendment stated, "If the citizens of the
231 District are to have voting representation in the Congress, a
232 constitutional amendment is essential. Statutory action
233 alone will not suffice."

234 If this committee does not want to take advice from its
235 own Democratic predecessors, I would hope they would be
236 willing to submit the question to the federal courts on an
237 expedited basis.

238 Frankly, opposition to this amendment makes me wonder if

239 the reason for the opposition is doubt about the bill's
240 constitutionality. If supporters of the bill believe the
241 bill is constitutional, I would think that they would want to
242 get that constitutionality established by the Supreme Court
243 as soon as possible.

244 Likewise, I would think that everyone would want to
245 shorten the time that the representatives created under this
246 bill would serve if they are declared unconstitutional. In
247 that case, even a short period of service would cause chaos
248 and extended litigation.

249 Why would we want to prolong that period? The bill is
250 either constitutional or it is not. Let's get that resolved
251 as soon as possible and prevent as much as the uncertainty
252 and chaos as we can. I hope members will support this
253 amendment.

254 And, Mr. Chairman, I yield back the balance of my time.

255 Mr. Cannon. Mr. Smith, would you yield? Would you
256 yield, Mr. Smith?

257 Mr. Smith. I will be happy to yield to the gentleman
258 from Utah.

259 Mr. Cannon. Thank you. The gentleman and I disagree as
260 to whether the underlying bill is constitutional. I think it
261 is. But we do agree on the idea that a quick adjudication is
262 in everyone's interest.

263 So I just want to agree with the gentleman as to the

264 amendment and ask for its support and urge my colleagues to
265 vote for it.

266 Mr. Smith. I appreciate my colleague's support.

267 Mr. Issa. Would the gentleman further yield?

268 Mr. Smith. Well, we are getting close to the time—

269 Mr. Issa. I will be very quick.

270 Mr. Smith. All right. I will yield briefly to the
271 gentleman from California.

272 Mr. Issa. And I am a supporter of the bill. I
273 recognize that it is critical that we bring certainty so that
274 this body, if it is held not constitutional, can find an
275 alternate constitutional remedy.

276 So for all of us who support the bill, I commend you for
277 bringing this to our attention and would ask all of my
278 colleagues on the other side of the aisle who also support
279 the bill to recognize the need for this expedited evaluation.

280 Mr. Smith. I thank the gentleman from California for
281 his comments.

282 And, Mr. Chairman, I yield back.

283 Chairman Conyers. The time of the gentleman has
284 expired.

285 Does the gentleman from New York insist on his point of
286 order?

287 Mr. Nadler. Mr. Chairman, I will withdraw the point of
288 order.

289 Chairman Conyers. I thank you.

290 Mr. Nadler. Mr. Chairman?

291 Chairman Conyers. Yes.

292 Mr. Nadler. On the amendment—

293 Chairman Conyers. The gentleman seeks recognition?

294 Mr. Nadler. Yes, I do.

295 Chairman Conyers. For 5 minutes.

296 Mr. Nadler. Thank you, Mr. Chairman. They must have
297 improved the mikes since we were here last.

298 Mr. Chairman, it is one thing for the gentleman's
299 amendment to ask for expedited judicial review. I am not
300 sure I see the necessity for expedited judicial review of
301 this, because, I mean, we have passed legislation in the last
302 few years that is much more questionable constitutionally
303 than this. I think this is constitutional.

304 When we suspended habeas corpus last year, despite the
305 clear command of the Constitution that the writ of habeas
306 corpus shall not be suspended except when in cases of
307 invasion or insurrection—the United States is not currently
308 under invasion.

309 We are fighting a foreign war but we are not under
310 invasion. Nor is there an insurrection, unless you consider
311 the newspapers insurrectionists. So that was clearly
312 unconstitutional. We did not provide for expedited judicial
313 review, in addition to which this amendment is a wolf in

314 sheep's clothing, because it is a lot more than just
315 expedited judicial review.

316 This amendment also gives standing to members of
317 Congress, unprecedented standing to members of Congress as
318 individuals, to bring a lawsuit.

319 There is currently a case before the United States
320 Supreme Court seeking to overturn *Flast v. Cohen* from 1968 to
321 say that taxpayers have no standing to sue on establishment
322 of religion cases, that if you give money to a church school,
323 no one should have the standing to bring a lawsuit against
324 that. That is before the Supreme Court currently. It was
325 argued a couple weeks ago.

326 When the United States invaded Cambodia without the
327 bother of a declaration of war or any congressional action, a
328 number of members of Congress brought a lawsuit—thrown out of
329 court on the grounds that Congress as a whole has standing.
330 The individual members did not.

331 I don't see why we, as we adopt a perfectly legitimate
332 and constitutional provision, should empower the opponents
333 more than normally to go into court. If someone has standing
334 to bring a lawsuit against it, God bless them. Let them
335 bring a lawsuit.

336 But why should we give special standing to members of—
337 now, if someone wanted to bring a bill to this committee and
338 say members of Congress shall have standing to go into court

339 to challenge any act that they believe violates the
340 Constitution, that is an interesting change. Maybe we should
341 discuss it.

342 But why only this one? I think that this is not a good
343 amendment.

344 Mr. Smith. Would the gentleman from New York yield?

345 Mr. Nadler. Yes, I will yield.

346 Mr. Smith. Thanks. You mentioned the habeas corpus
347 bill. I am not aware that any amendment was offered for
348 expedited judicial review during the consideration of that
349 particular—

350 Mr. Nadler. Reclaiming my time—

351 Mr. Smith. But had there been, I would have supported
352 it.

353 Mr. Nadler. Reclaiming my time, no amendment was so
354 offered because it was considered presumptuous to do so, as
355 this is presumptuous.

356 We should not grant special standing to members of
357 Congress as individuals.

358 Mr. Smith. Would the gentleman—

359 Mr. Nadler. I yield back.

360 Mr. Smith. Would the gentleman further yield?

361 Mr. Nadler. Yes, I will further yield.

362 Mr. Smith. Okay. I just want to point out two other
363 things that might differentiate this legislation from others.

364 First of all, all of the majority's witnesses yesterday,
365 all three of them, acknowledged that there were legitimate
366 constitutional questions with this legislation. That is
367 another argument for expedited review.

368 Mr. Nadler. Reclaiming my time, we heard all the
369 testimony yesterday. I believe this is constitutional.
370 Otherwise believe it is. Some people believe it isn't.
371 Clearly, there is some dissension.

372 That is true of a lot of things we pass, unfortunately.
373 We don't generally go out of our way to give special standing
374 to people to bring a lawsuit against it. I yield back the
375 balance of my time.

376 Chairman Conyers. The time of the gentleman has
377 expired.

378 Mr. Sensenbrenner. Mr. Chairman?

379 Chairman Conyers. I recognize the gentleman from
380 Wisconsin, former Chairman Jim Sensenbrenner.

381 Mr. Sensenbrenner. Mr. Chairman, I rise in support of
382 the amendment.

383 Mr. Chairman, I would just point out that because of the
384 constitutional questions that have been raised in this bill,
385 I think it is highly likely that when a lawsuit is filed, and
386 we know that it will be filed, the court would enjoin the
387 seating of the people who were elected both from Utah and
388 from the District of Columbia to be seated in the Congress

389 pending the outcome of the lawsuit.

390 And the purpose of injunctions are to maintain the
391 status quo when there is a likelihood that a lawsuit would
392 prevail. Now, I think there is a likelihood that a lawsuit
393 would prevail. Others may disagree on that. That would be
394 up to the judge.

395 But it seems to me with the threat of an injunction
396 hanging over this bill, having expedited judicial review
397 would at least speed the process up and, if the bill is found
398 to be constitutional, allow for a much more prompt seating of
399 the representatives from Utah and the District of Columbia
400 than if there was not the expedited review.

401 You know, I don't have a problem with giving standing to
402 members of Congress either to intervene or to file the
403 lawsuit on this. I think that you are either going to have
404 it that way or you are going to have a flood of amicus curiae
405 briefs of members of Congress opining on the constitutional
406 issues.

407 And the other provisions of the gentleman from Texas's
408 amendment I think simply are designed to clear up those types
409 of legal questions on who may intervene or who has standing
410 to file a lawsuit, rather than having interlocutory appeals
411 on a denial of a motion to intervene or the granting of a
412 motion that a plaintiff doesn't have standing.

413 So the second page, or most of the second page, of the

414 gentleman from Texas's amendment I think is also designed to
415 speed all this up. Either you want it speeded up—if you do,
416 you ought to vote for the amendment that has been offered.

417 Or if you don't want it speeded up and have the votes of
418 the people of Utah and the District of Columbia be put into
419 litigation limbo, then vote no. I am voting in favor of it
420 and yield back the balance of my time.

421 Chairman Conyers. I recognize myself for 5 minutes to
422 respectfully oppose the amendment.

423 Members of the committee, we are talking about a
424 constitutional disagreement that occurs all the time in the
425 Judiciary Committee and quite frequently in the Congress.

426 But to subject this to an expedited review I think is
427 not necessary. We are burdening the jurisdiction of the
428 federal courts. When we consider the legal merit of this
429 amendment, we must ask ourselves if there are constitutional
430 interests here that should be placed ahead of pending
431 litigation. I think not.

432 Does this matter involve the unique interests of
433 personal freedom? Hardly. We don't even expedite, very
434 frequently, criminal appeals where an individual's liberty is
435 at stake.

436 Does this matter involve unique financial interests?
437 Again, the answer is no.

438 Should members of Congress be entitled to explicit

439 standing and expedited review in this legislation? Clearly
440 not. Why? There is no good reason for that.

441 What irreparable harm will be experienced if this bill
442 is enacted? This is not like one measure, McCain-Feingold,
443 that specifically governs the activity of lawmakers.

444 And this legislation presents a straightforward
445 constitutional claim which is in dispute. Our courts have
446 procedures to hear such cases. We don't need to tell the
447 courts how to review this. We don't need to give them free
448 advice as to who has standing.

449 Outside a showing of irreparable harm, which I am
450 confident can't be shown here, there is no reason beyond
451 convenience to support this amendment.

452 And this amendment might be viewed as an attempt to
453 manipulate the timing and the merits of any challenge. And
454 so, ladies and gentlemen, for that reason, I urge that this
455 amendment be turned back.

456 Mr. Lungren. Mr. Chairman?

457 Chairman Conyers. Who seeks recognition?

458 Mr. Lungren. Mr. Chairman?

459 Chairman Conyers. Yes. From California, Mr. Lungren is
460 recognized for 5 minutes.

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

462 You know, it is apparent that the Constitution is an
463 inconvenient thing. It sometimes gets in the way of what we

464 want to do.

465 In a prior life, I had experience with seeing guilty
466 parties go free, not because they hadn't committed a crime,
467 but because the constitutional protections allowed them an
468 opportunity to not be convicted.

469 And yet we understand that, and we, in fact, revel in
470 that because it shows our commitment to protecting individual
471 rights. And we look at the Constitution, and we try and
472 follow the Constitution.

473 What is more fundamental than the question of the value
474 of each vote in the House of Representatives? What is more
475 fundamental than a constitution which says that this body
476 shall be made up of representatives from the several states?

477 Now, I understand that the level of jurisprudence today
478 that was developed in—that has developed in this country—that
479 it is easier to find things in the Constitution that aren't
480 there than it is to find things that are there.

481 This is not a penumbra we are talking about. These are
482 the words of the Constitution that, unless words have
483 changed, that say one ought to be represented by those from
484 the several states means that we are directly challenging
485 what appears on its face to be fairly straightforward.

486 Ms. Lofgren. Would the gentleman yield?

487 Mr. Lungren. Why would we say that there is not a
488 particular reason to give members of Congress explicit

489 standing to bring suit when, in fact, this question involves
490 the value of the vote of the members who are here?

491 Ms. Lofgren. Would the gentleman yield?

492 Mr. Lungren. If the Constitution says that we are to be
493 divided up among the states and then we allow someone to vote
494 who is not from the states, we have devalued the vote of
495 everybody here.

496 And who better to bring a lawsuit to challenge that, to
497 have direction on that, than the members of Congress who have
498 been elected under that section of the Constitution?

499 Now, I understand this is a difficult bill on a number
500 of points. Some have called it the Cannon gratification act,
501 because he may be the first person in history who is able to
502 vote for himself for Congress and vote for somebody else.

503 Or perhaps this new interpretation will allow him to be
504 elected from two different points of view, one from a
505 district and one at large, and perhaps he will be the only
506 member of Congress to have two votes.

507 Mr. Berman. Would the gentleman yield?

508 Mr. Lungren. But I understand that the man to my left
509 might very well support this bill, but even he believes it
510 ought to be constitutionally determined by the court at the
511 earliest possible hour.

512 Ms. Lofgren. Would the gentleman yield?

513 Mr. Lungren. And so I would just hope that we would at

514 least understand this amendment allows us to take a very
515 serious look at the fundamental question here. Is this or is
516 this not constitutional?

517 Very few times have we been in this body where we have
518 voted something that appears on its face to be a direct
519 violation of the specific words of the Constitution. And I
520 know we can change the meanings of words, but we ought not to
521 do that easily.

522 Ms. Lofgren. Would the gentleman yield?

523 Mr. Lungren. I would be happy to yield to my friend
524 from California.

525 Ms. Lofgren. I actually think I disagree with you on
526 what a court would find, but I find myself trending in favor
527 of the proposed amendment, because—

528 Mr. Lungren. So I should be quiet.

529 Ms. Lofgren. —because of the other assignment you and I
530 share in House Administration. We are going to have—if we
531 don't have a speedy resolution of this issue, the Congress is
532 going to be faced with the issue of who to seat and who not
533 to seat.

534 The practices are, to the extent possible, to defer to
535 the court proceedings of the several states. We have really
536 never had a situation such as this.

537 And I think to the extent that this can be resolved in
538 the judicial branch before the legislative branch has to

539 grapple with that seating issue it would be a favor to the
540 institution, and an important one.

541 And so I thank the gentleman for yielding.

542 Mr. Lungren. I thank the gentlelady for her comments.

543 And with that, I yield back the balance of—

544 Chairman Conyers. And the chair notes, as you all do,
545 that there is one vote pending on the floor. We will recess
546 until the vote, and we will start back—from the time it takes
547 to walk from the floor back to 2141, we will resume the
548 hearing.

549 The committee stands in recess.

550 [Recess.]

551 Chairman Conyers. The committee will come to order,
552 please. Everyone take their seats.

553 The chair recognizes for continued discussion on the
554 amendment of Mr. Smith—the chair recognizes the gentlelady
555 from Houston, Texas, Sheila Jackson Lee, for 5 minutes.

556 Ms. Jackson Lee. I thank the chairman very much.

557 And I certainly appreciate the intent of the gentleman
558 from Texas on the legislation or the amendment that has been
559 offered.

560 But, Mr. Chairman, let me counter some of what I think
561 this particular amendment is attempting to suggest.

562 First of all, I think we were well informed by the
563 witnesses that, clearly, we don't have a question of

564 weightiness, if you will, in that—I think that is—certainly,
565 if it is a questionable issue, can be deliberated on by the
566 courts, as I will call it, in regular order.

567 If you have expedited relief, you disallow the will of
568 the people of both Utah and the District of Columbia. You
569 disallow or you have the potential of disallowing the elected
570 persons from being seated, therefore ignoring their standing.

571 It is interesting that in a number of legislative
572 initiatives in the 109th Congress and the 108th Congress that
573 I might have thought an expedited relief would have been
574 necessary, i.e. the Patriot Act, where there were enormous
575 challenges as to or concerned about the constitutionality of
576 what was being done.

577 Now, the argument there was that we had a crisis, and
578 therefore maybe an expedited review would interfere with what
579 we were responding to. Well, in this instance, there is no
580 crisis. We are, in a certain instance, fixing what has been
581 broken for now centuries.

582 We are allowing citizens to have a right to vote. And
583 the constitutional experts yesterday made it clear that there
584 is sufficient, if you will, support that the weight of each
585 of those individuals in this body would not be any different.

586 That is the argument that has been made by the other
587 side, that there is a question of the weight. There is no
588 question of the weight. There is no one that is going to be

589 voting twice. Each one will be equal to a sitting member of
590 Congress.

591 But in any event, if that question is of concern to my
592 colleagues and the proponent of this amendment, I don't put
593 it in the context of a crisis, and therefore the necessity of
594 an expedited review does not seem necessary.

595 Then lastly, with respect to giving Congress special
596 standing, again, we are the first to say treat us like
597 everyone else. And I have been in a number of lawsuits where
598 my standing has been developed as a member of Congress, and I
599 have been able to pursue the constitutional question without
600 any special rights.

601 I, frankly, think that we put ourselves in a
602 questionable position to suggest that we should have standing
603 either equal to or more than the actual voters and
604 stakeholders who would be impacted by the denial or the
605 continuing denial of their right to vote.

606 I would ask my colleagues to both oppose this amendment
607 and to move us forward, because I think that this guts the
608 bill, or at least moves a pathway on to gutting the bill, and
609 it gives us privileges that, frankly, I don't believe the
610 Congress deserves, because I believe we will have the right
611 to pursue it in the normal regular order of a proceeding.

612 But it does deny, Mr. Chairman—it does deny duly elected
613 individuals the right to be seated, and the right to pursue

614 relief, or the right to have those who support their standing
615 to pursue relief as members who are stakeholders.

616 I, at this time, yield back my time.

617 Chairman Conyers. Does the gentleman from Virginia seek
618 recognition?

619 Mr. Goodlatte. Yes, Mr. Chairman.

620 Chairman Conyers. He is recognized for 5 minutes.

621 Mr. Goodlatte. Thank you, Mr. Chairman.

622 And I rise in support of the amendment offered by the
623 gentleman from Texas in the response to the gentlewoman from
624 Texas.

625 I must say, first of all, that this is not anything
626 special for members of Congress. This measure, if it passes
627 and becomes law, is, in fact, affecting every single American
628 citizen, because it goes to the core of the meaning of our
629 Constitution.

630 And it goes to the question of exactly what
631 representation each member of our country, each citizen, has
632 because the addition of additional votes dilutes the value of
633 the votes of those who are already representing individuals
634 here.

635 And it dilutes their votes, at least by one vote, so—
636 Ms. Jackson Lee. Would the gentleman yield?

637 Mr. Goodlatte. No, I will not yield. Let me finish my
638 comments.

639 Second, let me say that it would seem to me that the
640 protection of all of those individual rights by expeditiously
641 moving this through the process and having a determination by
642 the courts—when the panel yesterday—and I was here for the
643 entire hearing, as the chairman knows—was very uncertain
644 about particular aspects of this.

645 There wasn't a single member of the panel who would give
646 a clear constitutional green light to every aspect of this
647 legislation—needs to be resolved quickly.

648 And finally, in terms of the interest of the members of
649 the Congress in this, we clearly have an interest, but we
650 also have, as the gentlewoman from California noted, a very
651 serious problem here if we do not resolve this issue quickly
652 once we get this legislation into law, if, indeed, it does
653 become law.

654 And I am opposed to it, and I hope it does not. But if
655 it does, we ought to resolve those interests very quickly,
656 because of the fact that we are going to have, I think, very
657 serious concerns about how this institution operates during
658 the time that this is under question.

659 So I would urge my colleagues to support this—

660 Ms. Jackson Lee. Will the gentleman yield?

661 Mr. Goodlatte. I yield back.

662 Chairman Conyers. Does the gentleman return his time?

663 The chair recognizes the gentleman from Alabama, Mr.

664 Artur Davis.

665 Mr. Davis. Thank you, Mr. Chairman.

666 Mr. Chairman, let me emphasize my support for the bill
667 and my opposition to this amendment. I point out one thing
668 about the amendment that my colleagues on both sides of the
669 aisle should be aware of.

670 Under 28 USC 2284, passed by this Congress, obviously,
671 there is a requirement that a three-judge panel be convened—a
672 three-district-judge panel be convened to review any action
673 challenging the constitutionality of the apportionment of a
674 congressional district.

675 Given the implications that this law would have on
676 Utah's apportionment, I think it is a very, very strong case
677 that can be made that there would be three-judge
678 jurisdiction.

679 As I am sure my colleagues on both sides of the aisle
680 are aware, there is automatic direct appeal to the U.S.
681 Supreme Court under that provision.

682 There is another reason this is unnecessary. I cannot
683 imagine, given the state of standing law, that any court,
684 whether it was the D.C. Circuit, or U.S. District Court, or a
685 three-judge panel, would deny the right of a member of
686 Congress to intervene in this matter.

687 Given the ample case law that has been developed around
688 the War Powers Act, the independent counsel statute, it is

689 almost inconceivable that a member of Congress would not be
690 given that opportunity.

691 So I am a little bit suspicious, Mr. Chairman, when I
692 see an amendment which does two things that are unnecessary—
693 creates a provision for a three-judge panel that is already
694 there, opens up a door for standing when there is no
695 practical door for standing for a member of Congress in these
696 kinds of cases.

697 And while I hear the concern of my friend, Ms. Lofgren,
698 from California and my colleagues on the other side of the
699 aisle about getting a prompt and speedy resolution of this
700 matter, I would submit that there is no real question that
701 that will happen.

702 I noticed one provision of the second page, subsection
703 4—it shall be the duty of the District Court and the Supreme
704 Court to advance on the docket and to expedite to the
705 greatest possible extent the disposition of the action on
706 appeal—well, of course.

707 I cannot imagine the U.S. Supreme Court not expediting
708 this appeal. If they have done in the context of the
709 military tribunal act and the independent counsel act, the
710 War Powers Act, there is no question, I think the Supreme
711 Court would do all that it could to move this matter
712 practicably.

713 So I am a little bit—I find it a little bit interesting

714 that my conservative friends on the other side of the dais,
715 who normally talk about the value of precedent and standing
716 by established legal traditions, want to pass an unnecessary
717 amendment. And I wonder about the agenda.

718 The final point that I would make, Mr. Chairman—this is
719 incredibly bad precedent. As we have heard from the argument
720 today, there is no limiting principle here.

721 We hear from Mr. Lungren, we hear from the ranking
722 member, that, "Well, this is really important, so therefore
723 we ought to open up a shortcut."

724 I would submit, Mr. Chairman, that any of us on this
725 committee could probably frame a pretty succinct and nice
726 argument about a number of things that are passed by this
727 Congress being really important, or a number of things being
728 such that they demand an expedited process.

729 There has got to be a limiting principle beyond, "This
730 one is a really big deal, and this one ought to get a
731 shortcut."

732 Ms. Jackson Lee. Would the gentleman yield?

733 Mr. Davis. So I would urge—well, let me finish my
734 point. I would urge my colleagues to—

735 Ms. Jackson Lee. Would the gentleman yield? I thank
736 the gentleman very much for yielding.

737 In my attempt to respond to the gentleman from Virginia,
738 he decided not to do so.

739 But I certainly associate myself with your remarks, and
740 I would like to follow up on this question of weightiness, if
741 you will.

742 And just to refer to any of the underlying discussion on
743 this—is that all Utah residents' votes, as I was saying,
744 would have equal value. If there is some question about
745 that—and I raise this definition or I raise this explanation
746 in the context of whether or not there is a crisis needing
747 expedited review.

748 Each Utah representative would have a one-quarter
749 interest in the at-large representative and a three-quarter
750 interest in the single member representative. And so that
751 means that there would be equal value.

752 If there is an issue that is ripe and needs a crisis
753 response, one could argue possibly that there needed to be
754 expedited review. But my good friend from Alabama has made
755 it very clear the question is whether or not any member of
756 Congress would be denied the right to intervene.

757 And I think that the interpretation of how the vote from
758 Utah, for example, would come would clearly say that they are
759 equal value.

760 What is the beef, if you will? And I think this
761 amendment clearly makes an issue where there is no issue,
762 because we would have the rightful standing to be engaged.

763 And I would also hope that the sponsor would be kind

764 enough to withdraw the amendment so that we could move
765 forward and move this bill so that maybe it could possibly
766 seek final remedy in the courts.

767 And I thank the gentleman for yielding.

768 Chairman Conyers. The gentleman's time has expired.

769 Who seeks recognition?

770 Mr. Issa. Mr. Chairman?

771 Chairman Conyers. Yes, the gentleman from California is
772 recognized for 5 minutes.

773 Mr. Issa. Thank you, Mr. Chairman.

774 I am a co-sponsor of this bill and a strong believer
775 that we have to find a constitutional solution for what the
776 framers did in order to protect this body.

777 As we heard yesterday, and we have heard last year in my
778 other committee, in the Government Reform Committee, the
779 District of Columbia was a deliberate anomaly created not to
780 disenfranchise voters but, in fact, to provide certain
781 protections to the members of the House, members of the
782 Senate, and the other bodies.

783 And we did so—our framers did so because in Philadelphia
784 the Pennsylvania militia failed to protect the ability of the
785 Continental Congress to do its job.

786 There is a clear need for a District of Columbia. We
787 have to find a way to preserve the District of Columbia and,
788 if we possibly can, provide full voting rights for the

789 residents. That is clear. People who oppose this bill have
790 agreed with that.

791 At the same time, I am appalled to find a bipartisan
792 bill being made partisan over an amendment. The ranking
793 member is attempting to bring a quick resolution to this so
794 that there not be any question but that the next election
795 would be full, complete and constitutional.

796 The likelihood that this will be challenged is 100
797 percent. No one questions that.

798 We are only dealing with whether or not it is expedited
799 so that we not have an intervening election in which either,
800 A—unlikely, but an unconstitutional election might occur,
801 leading to members who either were or were not seated and
802 were or were not changing an election—or a particular piece
803 of legislation; or, more likely, a period of 2 years, 4 years
804 or 6 years in which there is uncertainty and the people of
805 the District of Columbia are unnecessarily disenfranchised.

806 So I would call on my co-sponsors on the Democrat side,
807 very clearly, to stop being partisan and look at the benefit
808 of the people of the District of Columbia. If there is a
809 flaw in this amendment, we are happy to fix it, I am sure.

810 But to deny such an unusual, important attempt on a
811 bipartisan basis from getting an immediate hearing as quickly
812 as possible so there can be certainty for the people of the
813 District of Columbia—and so in the next election they would

814 then have, as I believe they should, their ability to vote
815 for a voting member of the House of Representatives—

816 Mr. Davis. Would the gentleman yield to explain why 28
817 USC 2284 is not applicable?

818 Mr. Issa. No, I won't, and I will—I will when I am
819 finished.

820 But as simply as possible, if you don't like this
821 amendment, and you choose to vote it down, and nobody who is
822 a fellow co-sponsor and supporter of this bill is willing to
823 come up with a fix that provides expedited appeal as quickly
824 as possible to the Supreme Court, then I would say that we
825 are making a partisan issue out of a non-partisan one.

826 So for all of the people—we have people from the
827 District of Columbia. We have advocates' groups that I have
828 worked with for years on this. We should make sure that we
829 bring certainty quickly. I believe that Mr. Smith is trying
830 to do that.

831 I will yield to the gentleman to explain why this
832 amendment might not, but I will challenge him to come up with
833 one that meets that requirement before this markup ends.

834 Mr. Davis. I thank the gentleman for yielding. And I
835 respect your argument, Mr. Issa. My only concern is 28 USC
836 2284 almost certainly opens up exactly what this amendment
837 seeks to do. So I could grant every single premise that you
838 laid out before the committee.

839 I am simply asking you to explain to me why 2284 is not
840 applicable. Because of the Utah provision—

841 Mr. Issa. Right. Reclaiming my time, I am not going to
842 try to pretend to be a constitutional specialist.

843 Mr. Sensenbrenner. Would the gentleman yield?

844 Mr. Issa. I will in just a moment.

845 Mr. Davis. You waded into the argument, Mr. Issa.

846 Mr. Issa. I have waded into the argument.

847 Mr. Sensenbrenner. Will the gentleman yield?

848 Mr. Issa. I have waded into the argument because if
849 there is a flaw in this amendment, I see no alternative
850 amendment that creates expedited appeal to the Supreme Court
851 being offered by any of my fellow co-sponsors.

852 I would yield to the gentleman from Wisconsin.

853 Mr. Davis. Well, with further regard to the—

854 Mr. Sensenbrenner. Okay. I just point out that this is
855 the only way to ensure expedited constitutional review in the
856 court system. Otherwise, it is in the discretion of the
857 federal courts, district court, appeals court, and the
858 Supreme Court.

859 The other point I would like to make is that the
860 provision of the—

861 Chairman Conyers. The gentleman's time has expired.

862 Mr. Issa. I would ask unanimous consent for 1 more
863 minute for him to finish his thought.

864 Mr. Sensenbrenner. The other point I would like to make
865 is that the provision of the United States Code that the
866 gentleman from Alabama has referred to deals with
867 redistricting challenges in multidistrict states.

868 Now, since the District of Columbia is not going to be
869 given more than one district, I don't think it is applicable
870 here.

871 And I thank the gentleman for yielding.

872 Chairman Conyers. The chair recognizes the gentleman
873 from California, Mr. Berman, and then—

874 Mr. Berman. Thank you. I move to strike the last word,
875 Mr. Chairman.

876 Chairman Conyers. All right.

877 Mr. Berman. I think the gentleman from Alabama's
878 argument is worth dealing with more specifically on the
879 merits.

880 There is one kind of case that requires convening of a
881 three-judge court with direct appeal to the U.S. Supreme
882 Court. That is a Voting Rights Act case, which includes, as
883 I think the gentleman from Wisconsin mentioned, redistricting
884 issues.

885 There is a non-severability clause in this provision.
886 The issue of the constitutionality of this law that we are
887 passing will be raised in that context. One of the arguments
888 in attacks on this bill is the at-large provision in Utah. I

889 think it is a weak argument. But that is one of the
890 arguments.

891 The issue will come up in the context of a three-judge
892 court with direct appeal to the Supreme Court. I have,
893 unfortunately, personal experience with how speedy a process
894 that can be.

895 Well, it actually was not unfortunate, because it came
896 down right, but in a very short time on an issue which
897 clearly will be decided not on a detailed trial on facts but
898 on a matter of law, through a motion to dismiss or summary
899 judgment, you will get a ruling from a three-judge panel
900 which the Supreme Court will then have the ability to take
901 immediately.

902 You have, under existing law, a quick remedy. You don't
903 need this amendment. I think that is the point of the
904 gentleman from Alabama. I think if—before we vote on this,
905 someone should give a case or a situation why that doesn't
906 solve the problem.

907 Mr. Issa. Would the gentleman yield?

908 Chairman Conyers. Who seeks recognition?

909 Mr. Issa. I was asking if the gentleman would yield.
910 He hadn't yielded back.

911 Mr. Berman. I would be happy to, if I—

912 Mr. Issa. Yes. I hope the gentleman is true. The only
913 thing—

914 Mr. Berman. The gentleman is true. He just may not be
915 right.

916 Mr. Issa. Right, and I join the gentleman in the hopes
917 that this bill does not need this amendment.

918 But I would ask, are we willing, without that specific—
919 are we willing today to pass this bill out of the House with
920 a possible defect that it doesn't get to a three-judge panel,
921 and the people of the District of Columbia see a law not
922 becoming available to them, the vote not becoming available
923 to them, in the next election, in spite of our actions here
924 today?

925 Mr. Berman. If I may reclaim my time, I would argue
926 that the purpose of this amendment is the opposite. It is to
927 find a way to keep the people of D.C. from having a vote, and
928 the answer is I am prepared to vote for this bill without
929 this amendment, in part because of the reasons offered by the
930 gentleman from Alabama.

931 There is an expeditious way to have a determination on
932 the law by a three-judge panel with a direct appeal to the
933 Supreme Court, one of the fastest ways—

934 Mr. Berman. I yield to the gentleman from Alabama, then
935 the gentleman from New York.

936 Mr. Davis. Thank you, Mr. Berman.

937 I would invite any member on the other side of the dais,
938 or any member who supports this amendment to advance any law

939 review article, any precedent, which suggests that 2284 would
940 not apply.

941 If the Utah provision were not contained, there might be
942 an argument. There might be force in Mr. Sensenbrenner's
943 point. But given that the Utah provision would be part of
944 any challenge, and plainly that is an apportionment issue,
945 again I would happily yield time to any member of the
946 opposition or any member who supports this amendment to cite
947 any law review or any precedent that suggests why 2284 is not
948 applicable.

949 And if it is applicable, this is unnecessary and
950 redundant.

951 Mr. Berman. I yield to the gentleman from New York.

952 Mr. Nadler. Yes, thank you.

953 I would simply point out that we reported this identical
954 bill to the floor out of this committee last year—we reported
955 a very similar bill last year out of this committee, when it
956 was sponsored by the distinguished chairman at that time, Mr.
957 Sensenbrenner, and there was no amendment in that bill for
958 expedited judicial review.

959 Mr. Coble. Mr. Chairman?

960 Mr. Berman. Thank you.

961 Mr. Coble. Mr. Chairman?

962 Chairman Conyers. The gentleman yields back?

963 Mr. Coble. Mr. Chairman?

964 Chairman Conyers. Does the gentleman seek recognition?

965 Mr. Coble. I do, indeed, Mr. Chairman.

966 Chairman Conyers. Mr. Coble is recognized for 5
967 minutes.

968 Mr. Coble. I thank the chairman. Mr. Chairman, I
969 yield—with respect to the last word, I yield to the gentleman
970 from Wisconsin.

971 Mr. Sensenbrenner. I thank the gentleman for yielding.

972 First of all, let me say that 2284 only applies to
973 question of apportionment. In the District of Columbia there
974 is no redistricting question because the District would be
975 given one seat under this bill.

976 There is a redistricting question in Utah. Without this
977 amendment, the venue for the three-judge panel would be in
978 Utah. It would not be in the District of Columbia.

979 And the gentleman's amendment says that the action shall
980 be filed in the United States Court for the District of
981 Columbia and I think makes it very clear that even though the
982 apportionment language in 2284 does say apportionment, that
983 this applies and the three-judge panel would be applicable.

984 Now, if you want to have the action filed in Utah, then
985 kill the gentleman from Texas's amendment. I don't think
986 that is what the authors of the bill want. The gentleman
987 from Texas's amendment very clearly says that the action
988 relative to determining the constitutionality shall be filed

989 in the United States Court for the District of Columbia.

990 Without that, I think that the venue belongs in Utah.

991 Mr. Goodlatte. Will the gentleman yield?

992 Mr. Sensenbrenner. I yield back to the gentleman from
993 North Carolina.

994 Mr. Coble. I reclaim, Mr. Chairman, and yield to the
995 gentleman from Virginia.

996 Mr. Goodlatte. I thank the gentleman for yielding, and
997 to the point of the gentleman from Alabama, the combination
998 of the at-large seat combined with three other seats in the
999 state of Utah, with the addition of voting rights for the
1000 District of Columbia makes it highly unlikely that there are
1001 many, if any, law review articles that would address this
1002 point.

1003 And I think the point of the gentleman from Wisconsin
1004 that, A, it may well go to the state of Utah and the three-
1005 judge panel to review this, with regard to the issue in Utah
1006 and the circuit that Utah resides within, but also it goes to
1007 the point of will that panel, if it is instituted under the
1008 statute that the gentleman cites--will they address the issues
1009 pertinent to the District of Columbia?

1010 They may decide one way or the other what the issues are
1011 with regard to Utah and leave aside the issues with regard to
1012 the District of Columbia and--

1013 Mr. Davis. Would the gentleman yield for a question?

1014 Mr. Goodlatte. -we would not have addressed all of the
1015 constitutional issues that are required here. I yield to the
1016 gentleman from Alabama.

1017 Mr. Coble. Well, I have the time.

1018 Chairman Conyers. Actually, the gentleman from North
1019 Carolina-

1020 Mr. Davis. Would the gentleman yield for a question?

1021 Mr. Coble. I will yield to the gentleman from Virginia.

1022 Mr. Davis. Would the gentleman yield?

1023 Mr. Goodlatte. I yield to the gentleman from Alabama.

1024 Mr. Davis. The question I would raise, going to Mr.
1025 Sensenbrenner's point-clearly, the action that is at issue is
1026 an action by the United States Congress that occurs in
1027 Washington, D.C. So therefore, again, I am searching as to
1028 how a Utah court would get jurisdiction over a decision by a
1029 legislative body in Washington, D.C.

1030 And I will yield back for an answer to that question.

1031 Mr. Coble. Well, that is where the enforcement is.

1032 Mr. Goodlatte. Would the gentleman yield?

1033 Mr. Coble. I yield.

1034 Mr. Goodlatte. Well, the apportionment takes place in
1035 the state of Utah.

1036 Mr. Davis. But the deciding action is by this Congress
1037 in Washington, D.C., and it would seem a court in D.C. would
1038 have jurisdiction.

1039 Mr. Goodlatte. Well, but wherever it winds up, that
1040 court is not provided expedited authority to review the
1041 decisions related to the District of Columbia and its vote.
1042 It only purports to relate to the actions taken with regard
1043 to reapportionment, which is only in the state of Utah.

1044 Mr. Davis. But the action takes place, Mr. Goodlatte,
1045 in Washington, D.C. There is nobody in Utah that is making
1046 the reapportionment determination.

1047 Mr. Goodlatte. Well, if the decision—let's assume the
1048 gentleman is correct that the matter winds up in a three-
1049 judge panel constituted in Washington, D.C. That three-judge
1050 panel, based on the statute the gentleman has cited, only
1051 pertains to the issues related to the state of Utah.

1052 So if that is—

1053 Mr. Davis. That is not accurate.

1054 Mr. Berman. Will the gentleman yield just on that
1055 point?

1056 Mr. Goodlatte. The gentleman from North Carolina
1057 controls the time. But let me just finish the point that if
1058 indeed that takes place, we still have not resolved the issue
1059 of the other—there are at least two constitutional questions
1060 here.

1061 Mr. Davis. They would have to be resolved in one
1062 sitting, in one case and controversy, Mr. Goodlatte.

1063 Mr. Goodlatte. Mr. Chairman, I have the time.

1064 Mr. Davis. I demand regular order.

1065 Mr. Goodlatte. The issue then remains what will happen
1066 with the constitutional issue related to the District of
1067 Columbia. I happen to feel that we need to have a
1068 constitutional amendment to resolve that issue.

1069 I yield back the gentleman's time.

1070 Mr. Coble. I reclaim and yield back, Mr. Chairman—I
1071 yield to the gentleman from Wisconsin.

1072 Mr. Sensenbrenner. I would just like to point out that
1073 if you want to make sure that this action is brought in the
1074 federal court for the District of Columbia, you have to adopt
1075 the amendment, because the amendment clearly states, page 1,
1076 line 7, the action shall be filed in the United States
1077 District Court for the District of Columbia.

1078 You vote down the amendment, you do not have the
1079 mandatory jurisdiction and venue in the U.S. District Court
1080 for the District of Columbia, which the gentleman from
1081 Texas's amendment provides. And it can go to Utah.

1082 I yield back the balance of my time.

1083 Mr. Davis. Under what circumstance would it go to Utah?

1084 Mr. Sherman. Mr. Chairman?

1085 Chairman Conyers. The time of the gentleman has
1086 expired.

1087 The chair recognizes the gentleman from California, Mr.
1088 Brad Sherman.

1089 Mr. Sherman. Thank you.

1090 I am new to the committee and generally confused by this
1091 debate. We should want to see these issues resolved as
1092 quickly as possible. If, God forbid, a court were to throw
1093 this out, I am sure that the best minds on this committee
1094 would then act immediately to write a new statute designed to
1095 end what has been a 200-year travesty.

1096 If we do not adopt this amendment—and I will yield to
1097 more senior members of the committee—is it clear who would
1098 have standing to move this judicial resolution forward
1099 quickly?

1100 Chairman Conyers. Well, if the gentleman would yield,
1101 anyone could move it here, and it would go to the Washington
1102 federal court. We don't need to instruct the court as to who
1103 should receive expedited treatment or not.

1104 Mr. Berman. Would the gentleman yield further?

1105 Mr. Sherman. I will yield further, although that was a
1106 perfectly wonderful answer.

1107 Mr. Berman. I think any citizen claiming that by virtue
1108 of the expansion of the House and their assertion regarding
1109 the constitutionality of that expansion that their vote has
1110 been diluted in some fashion—

1111 Mr. Sherman. So it would be a resident of some place
1112 other than D.C.

1113 Mr. Berman. Well, it could—

1114 Mr. Davis. Would the gentleman yield?

1115 Mr. Sherman. -yielded to Mr. Berman.

1116 Mr. Berman. But just to finish the point, though, I am
1117 using part of this time to pick up on something the gentleman
1118 from Wisconsin said.

1119 If the issue is your concern about where the three-judge
1120 panel will be convened, one doesn't need this amendment to do
1121 that.

1122 One could take the gentleman from Wisconsin's one-line
1123 suggestion regarding where the statute that now exists—where
1124 in this particular law that case should be brought and add
1125 that one sentence to it and ensure the District of Columbia
1126 will have jurisdiction.

1127 I am sure the people of Utah will be very happy with
1128 that.

1129 Mr. Davis. Would the gentleman yield?

1130 Mr. Cannon. Would the gentleman yield, Mr. Sherman?

1131 Mr. Sherman. I will yield to the gentleman here. Then
1132 I yield to the gentleman from Alabama.

1133 I did want to get into a second issue, but if this one
1134 seems to—

1135 Mr. Cannon. Let me suggest on this point that there are
1136 people in Utah who want to file a lawsuit here, and I don't
1137 think they are going to file it in the District of Columbia.

1138 And so it is—there is a practical consideration that

1139 ought to be had as we consider the matter. And I yield back.

1140 Mr. Davis. Would the gentleman yield?

1141 Mr. Sherman. I yield to the gentleman from Alabama.

1142 Mr. Davis. I would simply reiterate this point. The
1143 United States Congress is the body that would be creating the
1144 injury. The United States Congress is the body that would be
1145 passing this statute.

1146 I have not heard any argument from anyone who supports
1147 this amendment how someone could possibly go into Utah and
1148 challenge something the United States Congress did.

1149 The fact that Utah is implicated in a factual sense
1150 doesn't change the fact that the decision-maker is the United
1151 States Congress in Washington. Can someone go into Alabama
1152 and file a—well, could someone go into Alabama and file a
1153 claim in federal court based on something the United States
1154 Congress did?

1155 Mr. Sherman. I would like to reclaim my time at this
1156 point, because I do have one other issue I would like the
1157 opponent, some opponent, of the amendment to—is this
1158 amendment harmful or does it simply state in clear
1159 legislative language that which the courts would do anyway?

1160 Mr. Davis. Would the gentleman yield?

1161 Mr. Sherman. I yield to the gentleman from Alabama as
1162 one of the—

1163 Mr. Davis. The contention is that the amendment is

1164 wholly unnecessary, and I have yet to hear an argument why
1165 2284 is not applicable. I hear speculation that strikes me
1166 as—

1167 Mr. Sherman. Could this amendment cause harm other than
1168 unduly lengthening the statute?

1169 Mr. Davis. Well, it is redundant, and presumably one of
1170 the things that we try to do is to not do things that are
1171 purely unnecessary.

1172 Mr. Sherman. Do we want to skip the Court of Appeals
1173 with this—

1174 Mr. Davis. Well, I think it is—if the gentleman would
1175 yield, I think it is legitimate to have a three-judge panel.
1176 My position is that we would get a three-judge panel under
1177 2284 and that we would get an expedited review under 2284.

1178 Mr. Sherman. I have voted for so many redundant
1179 statutes in the past, and—

1180 Mr. Delahunt. Would the gentleman—would the gentleman
1181 yield for a question?

1182 Chairman Conyers. The gentleman's time—

1183 Mr. Sherman. I believe my time has expired, yes.

1184 Chairman Conyers. Not quite, but it is close enough.

1185 Does anyone else seek recognition on this—

1186 Mr. Franks. Mr. Chairman?

1187 Chairman Conyers. Oh, yes, Mr. Forbes—Mr. Franks?

1188 Excuse me.

1189 Mr. Franks. That is fine. Mr. Chairman—
1190 Chairman Conyers. The gentleman is recognized for 5
1191 minutes.

1192 Mr. Franks. Thank you, sir.

1193 Mr. Chairman, I speak in favor of the amendment because
1194 I believe that, number one, the ranking member has reminded
1195 us all that this committee is the guardian of the
1196 Constitution and that he has concerns that this bill,
1197 underlying bill, is unconstitutional.

1198 Now, I think that there is prima facie evidence in his
1199 concern. And sometimes it might do us all well on this
1200 committee just to read the words of the Constitution.

1201 Article 1, section 2 says, "The House of Representatives
1202 shall be composed of members chosen every second year by the
1203 people of the several States," states being capitalized.

1204 Mr. Chairman, I don't think really any of us would
1205 contend that Washington, D.C. is a state, and the courts
1206 certainly do not. Yet the bill's drafters have boldly stated
1207 that, "Notwithstanding any other provision of law, the
1208 District of Columbia shall be considered a congressional
1209 district for purposes of representation in the House of
1210 Representatives."

1211 Mr. Chairman, what this language really means is
1212 notwithstanding any provision of the Constitution. And of
1213 course, the problem with that is that this legislation cannot

1214 set aside provisions of the Constitution absent a ratified
1215 constitutional amendment. And we can't look to subordinate
1216 statute to uphold our reasons for doing so.

1217 The language of this bill is strikingly similar to the
1218 1978 constitutional amendment that failed after being
1219 ratified by only 16 states. Indeed, both prior to successful
1220 and unsuccessful amendments, as well as in arguments made in
1221 court, Congress has conceded that the District is not a state
1222 for the purposes of voting in Congress.

1223 And now unable to pass a constitutional amendment,
1224 sponsors hope to circumvent the process laid out in Article 5
1225 by claiming the inherent authority to add a non-state voting
1226 member to the House of Representatives.

1227 Mr. Chairman, this is unconstitutional. And the ranking
1228 member's concern is well-founded with this amendment.

1229 And I would submit that those of us who do not support
1230 the underlying bill can be candid and say part of the reason
1231 that we support the amendment is because we believe that the
1232 courts, given a quick look at this bill, will come to the
1233 same conclusion that we have.

1234 And I would submit that the only logical reason or one
1235 of the most logical reasons for those who support the
1236 underlying bill to be against the amendment is because they
1237 are afraid that the courts may come to exactly that
1238 conclusion.

1239 When this committee is faced with such prima facie
1240 evidence that we are passing an unconstitutional bill, the
1241 very least that we can do is to give the courts the first
1242 look at it as soon as possible.

1243 Thank you, Mr. Chairman.

1244 Mr. Smith. Would the gentleman yield?

1245 Mr. Franks. Certainly.

1246 Mr. Smith. I thank the gentleman for yielding, and I
1247 also thank him for his very articulate explanation as to why
1248 we should vote against this bill.

1249 Now, Mr. Chairman, I just want to make a final point in
1250 regard to this amendment that is under debate right now, and
1251 that is there is one thing we can agree on, and that is that
1252 there is confusion or at least there is a difference of
1253 opinion as to what the amendment would or would not do.

1254 The individuals who oppose this amendment have used such
1255 phrases as they think 28 USC will apply. Another individual
1256 said he was "almost certain that 28 USC would apply." What
1257 this amendment does is to raise that standard and say it is
1258 certainly going to apply.

1259 So if we are not sure, we ought to support the
1260 amendment. If it is unnecessary, then there is no harm in
1261 supporting the amendment. And at the very least, it would
1262 clarify and guarantee that we would have that expeditious
1263 judicial review.

1264 I thank the gentleman for yielding.

1265 Mr. Delahunt. Mr. Chairman?

1266 Chairman Conyers. Yes, the gentleman from

1267 Massachusetts, Mr. Delahunt.

1268 Mr. Delahunt. Yes, in response to the question—

1269 Chairman Conyers. The gentleman is recognized for 5

1270 minutes.

1271 Mr. Delahunt. I thank the gentleman for yielding.

1272 In response to the question by Mr. Sherman from

1273 California regarding whether this amendment is just simply

1274 redundant or reinforcing what already exists, I think the

1275 answer to that is no.

1276 What it does to in terms of conferring standing on

1277 Congress is exceptional. And I think that that is a point

1278 that we should reflect on, because it certainly would be used

1279 in the future during the course of debate on an array of

1280 issues that people feel passionately about. So it does

1281 establish a legislative precedent of considerable

1282 consequence.

1283 In terms of the expediting of this particular hearing, I

1284 agree with the conclusion of the gentleman, Mr. Davis. I

1285 mean, it is going to happen. You know, the Supreme Court is

1286 going to reach down. It is going to decide this

1287 expeditiously in any event.

1288 But maybe the sponsor of the amendment, the ranking

1289 member, might consider amending his amendment and eliminating
1290 the conferring of special standing on Congress, and we could
1291 have a go at the rest of it.

1292 Chairman Conyers. The gentleman yields back his time.

1293 I think we have had extensive debate on the amendment of
1294 Mr. Smith, more than he even imagined he would receive, and
1295 the chair is going to hold the votes and roll them so that we
1296 dispose of all the amendments at one time, and would
1297 recognize—or ask if there are any other amendments—

1298 Mr. Smith. Mr. Chairman?

1299 Chairman Conyers. —at this juncture.

1300 Mr. Smith. Mr. Chairman, may I make a point of order?

1301 Chairman Conyers. Yes.

1302 Mr. Smith. I am not going to object to your request to
1303 roll the votes, but since we do have an adequate quorum here,
1304 I would like for us to vote on this particular amendment if
1305 we at all could.

1306 Chairman Conyers. Well, I have unfortunately
1307 prematurely assured members on other committee assignments
1308 that they could rest comfortably at their other positions,
1309 and that is the only reason I am doing this. I am sorry.

1310 Mr. Smith. Since you have told members that, Mr.
1311 Chairman, I will accede to your request.

1312 Chairman Conyers. All right. Thank you so much.

1313 Are there other amendments?

1314 Mr. Cannon. Mr. Chairman, I have an amendment at the
1315 desk.

1316 Chairman Conyers. Yes. Mr. Cannon of Utah has an
1317 amendment that will be reported.

1318 Mr. Cannon. Mr. Chairman, we have some question on our
1319 side as to when we are going to—at what point in time will we
1320 have the votes that we are rolling.

1321 Chairman Conyers. Well, we are trying to make sure that
1322 there aren't any more coming in. There are some that are
1323 sending these amendments up that we aren't sure if they are
1324 going to be considered in the course, so I can't give you a
1325 specific time, but it will certainly be—you will receive
1326 adequate notice at least 30 minutes in advance.

1327 Mr. Cannon. So we will roll all the votes until all the
1328 amendments are done on this bill, and then we will—

1329 Chairman Conyers. Exactly, sir.

1330 Mr. Cannon. Great. Thank you. I have an amendment at
1331 the desk.

1332 Chairman Conyers. All right. The clerk will report.

1333 The Clerk. "Amendment to H.R. 1433 offered by Mr.
1334 Cannon of Utah. Amend the heading of paragraph (3) of
1335 section 4(c) to read as follows: permitting additional
1336 representative to be—"

1337 [The amendment by Mr. Cannon follows:]

1338 ***** INSERT *****

1339 Chairman Conyers. Without objection, the amendment is
1340 considered as read.

1341 The gentleman from Utah is recognized for 5 minutes in
1342 support of his amendment.

1343 Mr. Cannon. Thank you, Mr. Chairman.

1344 Today this committee is presented with a unique
1345 opportunity to address two prevailing or important questions
1346 about representation in the House.

1347 One relates to the District and whether it is entitled
1348 to representation in the House of Representatives—that is,
1349 the District of Columbia—and the other whether Utah is owed
1350 an additional seat in Congress.

1351 Utah lost out on a fourth seat because of a Census
1352 Bureau decision to not count and innumerate to their
1353 respective home states government employees residing
1354 temporarily abroad. They did not count similarly situated
1355 missionaries.

1356 Had the bureau not counted any Americans residing
1357 temporarily abroad or counted all such Americans and not just
1358 those employed by the federal government, Utah would have
1359 been awarded a fourth seat.

1360 Although this legislation provides Utah the seat it
1361 deserves which was denied in the 2000 census, I do have
1362 concerns with the language of the bill, which ties the hands
1363 of the Utah legislature.

1364 The preemption language in this legislation demeans the
1365 role of the state in the reapportionment process. My
1366 amendment simply removes the language of the bill mandating
1367 the at-large seat in section four and leaves it to the state
1368 to decide.

1369 The amendment simply changes "shall" to "may." It does
1370 not provide at large but calls on the collective wisdom of
1371 Utah's state officials to decide what the state should do.

1372 Reapportionments are often bloody, time-consuming
1373 battles, and I am not here to advocate for redistricting.
1374 But rather, I am here to reaffirm the role of the Utah
1375 legislature in the decision-making process.

1376 I urge support for this amendment and yield back.

1377 Chairman Conyers. The chair will yield himself 5
1378 minutes to respectfully oppose the amendment offered by my
1379 friend from Utah because, as he knows, I appreciate his
1380 efforts in attempting to reach a bipartisan solution to this
1381 matter, but the compromise legislation will be weakened if
1382 this amendment passes and Utah redistricts before its
1383 regularly scheduled decennial process.

1384 I think that introduces a whole new and more complex
1385 consideration into what is already a complicated matter. The
1386 redistricting of congressional districts is one of the most
1387 important issues for citizens in our representative form of
1388 democracy.

1389 How it is accomplished, as evidenced by this discussion
1390 now going on, is equally important. There are several
1391 serious disadvantages to allowing a subsequent redistricting
1392 process. It is costly in time—it is costly in money—to
1393 create each plan and defend it from any court challenges.

1394 The tug of war between parties for control of the
1395 legislature can, believe it or not, worsen. And citizens'
1396 representation suffers when boundaries change quickly and
1397 often.

1398 Granted, the circumstance surrounding Utah's new at-
1399 large seat are special, but the implications of a mid-decade
1400 redistricting are great, especially given these
1401 circumstances.

1402 And considering the implications of the various ways to
1403 redistrict the state under this legislation, I firmly believe
1404 that we should select a proposal and stay with it until the
1405 regular decennial process is in place.

1406 Therefore, I hope I have explained the reasons that I
1407 reluctantly but firmly oppose the amendment from the
1408 gentleman from Utah.

1409 Mr. Cannon. Would the gentleman yield, Mr. Chairman?

1410 Chairman Conyers. Of course.

1411 Mr. Cannon. I thank the gentleman for his very gracious
1412 comments. I appreciate those and would just say that what
1413 the gentleman is referring to are expenses and difficulties

1414 that the state would incur, and it should be the state's
1415 prerogative.

1416 But that said, I appreciate the complexity of the
1417 negotiations and the environment here, but would encourage
1418 the members of the committee to vote in favor of my
1419 amendment.

1420 And thank you, Mr. Chairman. I yield back.

1421 Chairman Conyers. I return my time. Does anyone seek
1422 recognition in support or opposition to the Cannon amendment?

1423 Mr. Sensenbrenner?

1424 Mr. Sensenbrenner. Mr. Chairman, I have an amendment at
1425 the desk.

1426 Chairman Conyers. Now that you have taken your seat
1427 properly, you are recognized to have your amendment reported.

1428 The Clerk. Amendment to the Cannon amendment to H.R.
1429 1433 offered by Mr. Sensenbrenner. Strike text of amendment
1430 and insert following: Page 6, strike line 21 and all that
1431 follows through page 7--"

1432 [The amendment by Mr. Sensenbrenner follows:]

1433 ***** INSERT *****

1434 Mr. Sensenbrenner. Mr. Chairman, I ask unanimous
1435 consent that the amendment be considered as read.

1436 Chairman Conyers. Without objection. The gentleman is
1437 recognized.

1438 Mr. Sensenbrenner. Mr. Chairman, this amendment deals
1439 with the issue of how Utah is to elect its additional
1440 representative in a different way than that which has been
1441 proposed by the gentleman from Utah, Mr. Cannon.

1442 When the committee was considering this bill last year,
1443 the governor of Utah called a special session of the state
1444 legislature, and the state legislature passed a four-seat
1445 redistricting plan overwhelmingly, and it was signed into law
1446 by Governor Huntsman.

1447 And what the amendment does is it states that the extra
1448 seat in Utah will be elected pursuant to the districting plan
1449 that has already been passed by the Utah legislature. The
1450 Cannon amendment gives a second kick at the cat for the Utah
1451 legislature.

1452 I think that the state of Utah has already spoken and
1453 they did so kind of as a condition precedent to this
1454 legislation being enacted in the last Congress, which of
1455 course never happened.

1456 Now, the underlying bill attempts to remedy a situation
1457 that has made lovers of democracy uncomfortable since the
1458 founding, the lack of representation in the House by citizens

1459 of the District.

1460 The bill seeks to solve this problem by authorizing a
1461 new voting member for the District and also a new member for
1462 Utah. Unfortunately, the bill provides that the new seat
1463 established in Utah be filled by a member at large.

1464 Choosing to proceed in this manner is fraught with
1465 constitutional concerns. The provision of the bill that
1466 would make the additional seat in Utah one that would be
1467 filled at large is problematic.

1468 Superimposing an at-large seat under the existing three
1469 seats elected by district in Utah would create an anomalous
1470 situation that this country has not seen since the
1471 development of the Supreme Court's one man, one vote line of
1472 cases.

1473 As Professor Turley noted yesterday, in effect, under
1474 this at-large arrangement all voters in Utah would be able to
1475 vote for two representatives, their district representative
1476 and their at-large representative, whereas voters in the rest
1477 of the country would only be able to vote for their one
1478 district representative.

1479 This situation would result in Utah voters having a
1480 disproportionately large voting power compared to voters in
1481 the other states. At-large seats have a disproportionate
1482 impact on minority interests.

1483 In Connor v. Finch, the court noted that at-large voting

1484 tends to, "submerge electoral minorities and overrepresent
1485 electoral majorities."

1486 Ever since the one man, one vote doctrine established in
1487 *Wesberry v. Sanders* in 1964, at-large districts have been
1488 frowned upon. Federal law codified this in 1967, which is 2
1489 United States Code section 2(c), which essentially prohibited
1490 at-large elections in multiseat states after the 91st
1491 Congress.

1492 To rectify the trouble that has been caused, last year
1493 the Utah legislature met in special session to approve a
1494 redistricting map adding a fourth congressional seat to the
1495 state's delegation. This was done to assuage my concerns
1496 relating to the constitutionality of an at-large seat.

1497 My amendment to this bill simply strikes its requirement
1498 that the new Utah seat be filled at large and results in Utah
1499 using the new boundaries that its state legislature adopted
1500 last year.

1501 A few years ago, in *Branch v. Smith*, 2003, Justices
1502 Stevens, Breyer and Souter referred to "the 1950s and 1960s
1503 when Congress enacted the voting rights legislation that
1504 recognized the central importance of protecting minority
1505 access to the polls. It was only then that an important
1506 federal interest in prohibiting at-large voting, particularly
1507 in states like Mississippi, became a matter of congressional
1508 concern."

1509 If my amendment is not adopted, Congress will have taken
1510 a tragic step toward ignoring, quoting the court, "the
1511 central importance of protecting minority access to the
1512 polls."

1513 The Wesberry court stated that congressional
1514 representation must be based on population as nearly as is
1515 practicable. H.R. 1433 fails to meet this standard because
1516 of the problem that it creates in Utah.

1517 In its current form, the District of Columbia House
1518 Voting Rights Act fails to meet the basic one person, one
1519 vote requirements of the equal protection clause of the 14th
1520 Amendment.

1521 I urge my colleagues to vote in favor of my amendment to
1522 remove one constitutional impediment to this legislation.

1523 And again, I would point out that even if you are
1524 opposed to my amendment if it were standalone, I would ask
1525 members to vote in favor of it as a substitute to Mr.
1526 Cannon's amendment, which in effect says the Utah legislature
1527 can go back and redistrict in the four-seat plan a second
1528 time.

1529 With that, I yield back the balance of my time.

1530 Chairman Conyers. I thank the former chairman.

1531 And I recognize myself to reluctantly oppose the
1532 amendment, considering all of Mr. Sensenbrenner's commitment
1533 and work on this bill that almost got us to the floor last

1534 year.

1535 I think this could get us into a big difficulty in that
1536 the Government Reform Committee has already done what most of
1537 the people working on the bill, in crafting a bipartisan
1538 agreement, have agreed to.

1539 I believe that the gentleman from Utah's proposition
1540 that they be allowed to redistrict any time before 2012 is
1541 perfectly good, rather than replacing it with the
1542 Sensenbrenner recommendation that says that they redistrict
1543 as soon as this law is passed and signed into law.

1544 Article 1, section 4 provides us, the Congress, with
1545 authority to mandate a temporary at-large seat for Utah. CRS
1546 analysts are clear that Congress has ultimate authority over
1547 most aspects of the congressional election process.

1548 They agree that Congress has the authority to mandate a
1549 temporary at-large seat for Utah. Significantly, the one
1550 person, one vote principle isn't jeopardized with an at-large
1551 seat. All Utah voters have the opportunity to vote for a
1552 district representative and an at-large representative.

1553 It doesn't give them any more or less power by doing it
1554 that way, and I think that this agreed-upon direction is
1555 still in the best interest of not only the citizens of Utah
1556 but are consistent with the powers that we have in the
1557 Congress.

1558 And so I have given you my best reasons for urging that

1559 we reject the Sensenbrenner amendment.

1560 Does anyone else seek recognition?

1561 Mr. Cannon. Mr. Chairman?

1562 Chairman Conyers. Yes, Mr. Cannon is recognized.

1563 Mr. Cannon. You have spoken eloquently. Let me support
1564 what you said. I point out that this is constitutionally
1565 problematic. And the case law that Mr. Sensenbrenner has
1566 quoted he quotes correctly.

1567 But Utah is not Mississippi, and I think the distinction
1568 there is dramatic and why we won't have a problem. But this
1569 is something that should be left to the prerogative of the
1570 state.

1571 And if the governor believes that an at-large seat would
1572 be constitutionally problematic, he can choose to either use
1573 the map that has already been passed by the state or he can
1574 call the legislature into session and do another map.

1575 This gives the state all the deferences that are
1576 appropriate. That is, my amendment gives the deference to
1577 the state that is appropriate for the state and allows them
1578 to make decisions as to the risk of constitutionality.

1579 And so I would urge with the chairman a rejection of
1580 this amendment to my amendment and passage of my amendment as
1581 it was introduced.

1582 Chairman Conyers. Thank you.

1583 The gentleman from California, Mr. Berman.

1584 Mr. Berman. Yes. Mr. Chairman, I move to strike the
1585 last word.

1586 Chairman Conyers. Recognized.

1587 Mr. Berman. I would like to support—basically take off
1588 on what the gentleman from Utah just said in some
1589 disagreement with the gentleman from Wisconsin.

1590 I am unaware of any Supreme Court decision which has
1591 said that at-large per se is unconstitutional.

1592 There have been many efforts to create at-large seats
1593 which have been found that their purpose and effect was to
1594 exclude or dilute minority voters' role in an election, and
1595 in those cases at-large seats have been struck down. But
1596 there are many situations in this country where at-large
1597 seats are allowed.

1598 The Congress decided to pass a law, not on
1599 constitutional grounds but on policy grounds, to prohibit at-
1600 large seats. The Congress now can choose to revisit that
1601 decision and allow an at-large seat in this particular case.

1602 I have thought from the beginning that of the ranking
1603 member's arguments on constitutionality, the one on the at-
1604 large seat in Utah is the weakest, because in so many other
1605 situations we have allowed at-large seats.

1606 And on the argument of dilution, yes, every member—every
1607 citizen in Utah has an opportunity to vote under this scheme
1608 for two members of Congress, but their vote in each case is

1609 substantially diluted, and in the end washes to be even. It
1610 is a total wash.

1611 They are voting in a single-member district that is
1612 larger than the population of Utah would justify, and
1613 therefore their vote is fractionally diluted, and then they
1614 are voting for an at-large seat where they have another
1615 fraction of the vote, much less. And the sum total of those
1616 two fractions equals one.

1617 So it is a wash. And I think the gentleman from Utah is
1618 right, this is not a plan designed to exclude or have the
1619 effect of excluding minority voters in Utah.

1620 And therefore, in following with the constitutional
1621 rule, you look at the facts of a specific case, and you
1622 decide what the purpose and effect of it is, and some at-
1623 large seats are okay, and some are violative of the Voting
1624 Rights Act and the Constitution, and—

1625 Mr. Sensenbrenner. Would the gentleman yield?

1626 Mr. Berman. Sure.

1627 Mr. Sensenbrenner. This case is different because you
1628 have a mixture of district and at-large seats for the same
1629 legislative body. If they are all elected at large or all
1630 elected by district, I think you would not have the legal
1631 problem that I have referred to.

1632 But one of the things that has been challenged in the
1633 courts—I will grant you, there has never been a majority

1634 opinion of the Supreme Court—is when you elect some
1635 representatives at large and others by district for the same
1636 legislative body, whether it be a city council or a county
1637 commission, and the like.

1638 And that is what is being proposed here, is that in Utah
1639 you would have one representative elected at large and three
1640 representatives elected by district. What I am trying to do
1641 is to restrict the number of constitution issues that the
1642 court will have to decide and I would enlist your support for
1643 it.

1644 Mr. Berman. If I may just reclaim my time, for a guy
1645 who did as badly at math as I always did, I feel funny making
1646 a mathematical argument. But I stand by my notion of the
1647 combination of the dilution.

1648 The dilution of a voter in seats that are larger than
1649 they otherwise would be exists. And then the additional
1650 benefit of being able to vote for an at-large seat ends up
1651 bringing you back to a whole.

1652 So I don't quite understand what the constitutional
1653 argument is going to be. I hear it being made, but I don't
1654 understand the reasoning behind the argument.

1655 Chairman Conyers. The gentleman's time is just about
1656 out, and he has yielded back.

1657 If there are no further discussions on this amendment,
1658 the chair would take the prerogative to hold this vote to be

1659 brought back when we vote all of the amendments out and ask
1660 the members of the committee, are there any further
1661 amendments?

1662 Hearing none, we are—

1663 Mr. King. Mr. Chairman?

1664 Chairman Conyers. Mr. King, I didn't know you had an
1665 amendment.

1666 Mr. King. I do not, but I would appreciate if I could
1667 move to strike the last word in the bill.

1668 Chairman Conyers. Of course.

1669 Mr. King. Thank you, Mr. Chairman.

1670 You know, this has been one of the more engaging and
1671 constitutional debates we have had here in this Judiciary
1672 Committee, and me now into this fifth year.

1673 And I very much appreciate the positions that are taken
1674 on both sides of this issue. I believe that there is an
1675 underlying motive on the part of Republicans and Democrats to
1676 reach out to the people of the District of Columbia and try
1677 to find a way to give them voting representation here in this
1678 Congress.

1679 I hear it in the voices on both sides. I know it is in
1680 the hearts of many of my colleagues. And I listened with
1681 great interest to the testimony that was here before this
1682 committee yesterday.

1683 And each of the witnesses, as were recognized or was

1684 stipulated by—or stated by Mr. Smith—conceded that there was
1685 a profound constitutional obstacle that we are trying to
1686 reach.

1687 And from my view, I would like to go back through and
1688 just restate some of those obstacles so that it is fresh in
1689 our minds before we might go to a final passage on this bill.

1690 And first of all is Article 1, section 2. And very
1691 clearly, the House shall be composed of members chosen by the
1692 people of the several states. And the definition of state
1693 was brought up in a couple of—case law that was referenced
1694 here by Mr. Dinh, as I recall.

1695 I also would point out that Article 1, section 3 says
1696 the Senate shall be composed of two senators from each state.
1697 And so by extension, we can't avoid the argument that if we
1698 are going to give the right to vote for representatives in
1699 the District of Columbia, then it is inevitable that that
1700 same right shall be extended to two senators from the
1701 District of Columbia.

1702 And the case has been clearly and solidly made that
1703 there are two alternatives here that are constitutional for
1704 the people of the District, and one of them is a
1705 constitutional amendment, and the other one is to cede the
1706 District of Columbia, aside from the federal buildings, back
1707 to Maryland, in which case there would be representation.

1708 I would point out I can't help but reflect that I live

1709 in this district. I own property in this district. I pay
1710 property tax in this district and occasionally a parking
1711 ticket in this district. But I am not represented in this
1712 district.

1713 But we do pledge an oath to uphold the Constitution.
1714 And I would point out also that there seems to be a political
1715 motive that flows here as well that has not been discussed,
1716 and certainly there is a belief that there would be another
1717 Democrat seat in the House of Representatives.

1718 And I can't help but speculate that if this were a
1719 strong, powerful, conservative Republican enclave there might
1720 be some people that don't have quite such the conviction with
1721 their arguments if that shoe were on the other foot.

1722 However, I would like to think that I stand on the
1723 Constitution regardless of politics and regardless of those
1724 extraneous issues, and that is our pledge to do so.

1725 The language in the bill itself is, I think, telling.
1726 And as I just go down through here, it says the District of
1727 Columbia residents have fought and died to defend our
1728 democracy in every war since the War of Independence. That
1729 is compelling. But it is not controlling from a
1730 constitutional perspective.

1731 And I point out American Samoa, which was in topic here
1732 as well. They fought and died. So have also from the U.S.
1733 Virgin Islands and the Northern Marianas and Guam, out of

1734 proportion to their population. The list goes on.

1735 And I think that the rules here in the House that have
1736 been passed that grant a measure of voting representation for
1737 the representatives from the U.S. territories in equal
1738 proportion to the representation here in the District of
1739 Columbia argue then that that voting representation also
1740 should extrapolate into them.

1741 I think that is a rather compelling precedent that one
1742 should consider if we are to go down this path.

1743 And I mentioned the taxation. But then I would take us
1744 back to Mr. Dinh's argument that the Congress concluded, when
1745 the District was formed in 1790, the 10 miles by 10 miles,
1746 that the residents in the states of Virginia and Maryland of
1747 which the District was formed would, for that period of time,
1748 until there was federal jurisdiction here, be able to vote
1749 either as residents of Virginia or residents of Maryland.

1750 And that was a centerpiece of Mr. Dinh's argument
1751 yesterday. But I would argue that the Congress made that
1752 decision. The House and the Senate concurred.

1753 The president signed the legislation that allowed those
1754 residents to have those voting rights as if there hadn't been
1755 jurisdiction here and until such time as the District were
1756 formed 10 years later in 1800.

1757 Well, because there was a practice that was codified by
1758 Congress is not a compelling argument. It has never been

1759 challenged in court. Many times the Congress, House and
1760 Senate, and the White House may agree on a constitutional—on
1761 a point that may be unconstitutional, but if it is
1762 unchallenged, it is not a precedent.

1763 And so those things all weigh heavily on me. But there
1764 is a consensus—if I might? And there is a consensus that if
1765 we believe profoundly that it is unconstitutional, we have an
1766 obligation to vote no, and I will.

1767 And I thank the chairman, and I yield back.

1768 Chairman Conyers. I thank the gentleman.

1769 And I agree with him that the tone of the debate and the
1770 caliber of our analysis has been extraordinarily superior in
1771 this debate. But I was stunned to find that he detected some
1772 order of politics in this matter.

1773 And the chair asks if there are any—

1774 Mr. Issa. Mr. Chairman?

1775 Chairman Conyers. —further amendments—

1776 Mr. Issa. I have an amendment.

1777 Chairman Conyers. Who seeks—Mr. Issa?

1778 Mr. Issa. Mr. Chair, I have an amendment at the desk.

1779 Chairman Conyers. All right. The clerk will report the
1780 amendment.

1781 The Clerk. Amendment to H.R. 1433 offered by Mr. Issa.
1782 Amend section 7 to read as follows: Section 7,
1783 Nonseverability of provisions. (A) In general. Except as

1784 provided in subsection (b), if any provision of this act or
1785 any amendment made by this act is declared or held invalid
1786 or—"

1787 [The amendment by Mr. Issa follows:]

1788 ***** INSERT *****

1789 Chairman Conyers. Without objection, the amendment is
1790 considered as read.

1791 And the gentleman is recognized for 5 minutes in support
1792 of his amendment.

1793 Mr. Issa. Thank you, Mr. Chairman. Thanks for assuming
1794 I was in support of my amendment, too.

1795 This amendment, Mr. Chairman, is the direct result of
1796 the hearing held yesterday. As you are well aware, I am a
1797 co-sponsor of this bill.

1798 But I recognized from the hearing that there certainly
1799 is potential—particularly if Mr. Smith's amendment is not
1800 heard, or Mr. Berman is not correct that there is
1801 inevitability of an expedited, full and complete evaluation
1802 of the constitutionality of this piece of legislation.

1803 So in the possibility that Chairman Berman is, this one
1804 time, not fully correct, or that Ranking Member Smith's
1805 amendment is not agreed to, it is essential that when the
1806 question of Utah becomes moot that this legislation declare
1807 it such.

1808 This amendment simply says that upon it becoming moot,
1809 meaning in 2010, when redistricting would occur normally, and
1810 the 437 seats would be divided normally and equally for the
1811 2012 election, Utah no longer receives any special treatment
1812 but falls back onto its normal per capital—whatever it earns.
1813 If it earns four, it earns four. If it earns five, it earns

1814 five.

1815 By severing that question after the critical date on
1816 which we all know there will be a census, we eliminate the
1817 possibility that this legislation tied up in the courts would
1818 then be defective.

1819 Under the current language, there is considerable doubt
1820 as to whether or not the entire legislation would fall
1821 because of the lack of severability even after Utah becomes a
1822 moot point.

1823 In other words, why would you give a specific seat
1824 potentially at large to the state of Utah if the state of
1825 Utah in redistricting is getting an additional seat as a
1826 result of its population? That is all this does.

1827 I drafted this and submitted it on a bipartisan basis so
1828 that there would be no doubt that this is not intended to
1829 destroy the compromise or any other parts of the legislation,
1830 but rather to prevent the remote—because I believe that
1831 Chairman Berman once again is a good predictor, and I also
1832 believe that Ranking Member Smith's idea of belt and
1833 suspenders is a good one, but in the case that both fail,
1834 this would provide the certainty that in 2012 the people of
1835 the District of Columbia, notwithstanding Utah, would have
1836 the vote.

1837 And with that, I would recommend its immediate movement
1838 and approval and yield back.

1839 Chairman Conyers. I thank the gentleman and recognize
1840 myself for 5 minutes to commend the gentleman's good
1841 intentions but reserve my support of the amendment because
1842 what we are doing now is undermining the goal of this
1843 proposed legislation that it be bipartisan.

1844 And so what we would be saying is that D.C. could get
1845 that seat if Utah didn't, but they wouldn't be able to occupy
1846 it—they wouldn't be able to take it until 2012.

1847 And this is a—I know you are friends of both sides and
1848 you have supported the bill in both committees, and so that
1849 makes it even more difficult for me to fathom why we would
1850 want to engage in this kind of a speculation at this point.

1851 I think our bill is very properly balanced at this
1852 point, and I am very reluctant to enter into this situation.
1853 If Utah loses its seat, then the District loses its seat.

1854 Mr. Issa. Mr. Chairman, would you yield?

1855 Chairman Conyers. In just a moment—and vice versa. It
1856 is crucial that the Utah and District seats be paired under
1857 this proposal. It is critical that we not alter the non-
1858 severability provision of the legislation.

1859 And now I yield to the gentleman from California.

1860 Mr. Cannon. Would the gentleman yield? Mr. Chairman,
1861 would you yield to me?

1862 Chairman Conyers. All right. I will yield to Mr.
1863 Cannon.

1864 Mr. Cannon. Let me see if I understand this amendment,
1865 and that may help. I think the concern is what happens if a
1866 decision is delayed after the next census and Utah has a
1867 seat, because Utah has actually grown—I don't think it is—it
1868 might actually get two seats, although that may be too much
1869 to hope for.

1870 So I think the gentleman's concern is that the
1871 severability clause, after it is irrelevant to Utah, could
1872 result in a loss of representation in the District just based
1873 on severability.

1874 I agree with the chairman, I think that that is remote,
1875 but it is a matter of concern, and so let me just ask the
1876 gentleman if I understand correctly that this is—the purpose
1877 of this amendment is to retain the seat in the District even
1878 after 2012 when the issue of Utah's representation is
1879 irrelevant.

1880 Mr. Issa. If the gentleman is yielding, yes. That is
1881 exactly it. We still keep 437 as the bill produces, and we
1882 still keep the District of Columbia. As we can all imagine,
1883 in this legislation, after 2012 if Utah gets a seat and then
1884 doesn't have the population—in this legislation it doesn't
1885 have a guarantee to keep it. It would lose it.

1886 So the idea of Utah becomes moot in this legislation.
1887 But nowhere do we allow severability, so a court would not be
1888 able to, in and of itself, deem that it was moot.

1889 This simply makes it very clear that in 2012, when Utah
1890 will either get or lose seats based on its own population,
1891 the District of Columbia still has one, and that additional
1892 seat, the 437th seat, would go appropriately wherever the
1893 population justifies.

1894 This was crafted not as a poison pill. This was crafted
1895 to make sure that if this is tied up in the courts for 3
1896 years or 4 years that we still get the District of Columbia
1897 their seat.

1898 Mr. Cannon. Mr. Chairman, may I make a suggestion, if
1899 you will—

1900 Chairman Conyers. Let me say this. I am happy to hear
1901 your enthusiasm for protecting D.C., but it is not my feeling
1902 that this is going to be necessary nor is the speculation
1903 surrounding it going to actually happen.

1904 This is a what-if kind of an amendment, and I really
1905 think that we may not be doing ourselves the favor that it
1906 sounds like you are trying to give to the District of
1907 Columbia.

1908 Mr. Issa. Mr. Chairman, I would offer to withdraw this
1909 amendment in order for the committee to have time to
1910 recognize that it does not disturb the balance and that, in
1911 fact, it is a perfecting amendment and would ask your
1912 indulgence to consider it—

1913 Chairman Conyers. We would reconsider that, and without

1914 objection, the gentleman's request to withdraw the amendment
1915 is accepted.

1916 Are there any further amendments?

1917 Mr. Gohmert. Mr. Chairman?

1918 Chairman Conyers. The chair recognizes the gentleman
1919 from Texas, Mr. Gohmert, and asks him about how many
1920 amendments does he have on the desk somewhere there now.

1921 Mr. Gohmert. Well, there is a potential for 43, but
1922 right—

1923 Chairman Conyers. Forty-three.

1924 Mr. Gohmert. —or 44, but right now—

1925 Chairman Conyers. Forty-four.

1926 Mr. Gohmert. —I have just got one that I would like to
1927 take up, and we could go from there.

1928 Chairman Conyers. Well, I don't know what you would be
1929 doing this weekend, sir, but we are under some constraints to
1930 move this forward as quickly as we can.

1931 I just hope you will go through those 43 remaining and
1932 if there is any one other that you would like to have
1933 considered before we get to a vote today, we would all be
1934 grateful.

1935 Mr. Gohmert. Thank you, Mr. Chairman.

1936 Chairman Conyers. Let's report the gentleman from
1937 Texas's amendment—which one?

1938 Mr. Gohmert. Gohmert amendment number A, as in alpha,

1939 to H.R. 1433 is at the desk.

1940 Mr. Berman. Mr. Chairman, I would like to reserve a
1941 point of order.

1942 Chairman Conyers. Mr. Berman reserves a point of order,
1943 and it is noted.

1944 The Clerk. "Gohmert amendment #A to H.R. 1433. Page 4,
1945 line 16, strike all words from 'subsection' through '110th
1946 Congress' and substitute the following: 'This section and
1947 amendments made by this section shall have application
1948 beginning with the 112th Congress.'"

1949 [The amendment by Mr. Gohmert follows:]

1950 ***** INSERT *****

1951 Chairman Conyers. The gentleman is recognized for 5
1952 minutes in support of his amendment.

1953 Mr. Gohmert. Thank you, Mr. Chairman.

1954 Mr. Berman. Mr. Chairman, I withdraw my reservation.

1955 Mr. Gohmert. Thank you.

1956 Mr. Chairman, the bill here is awfully aggressive in
1957 indicating that it should, in page 4, begin with the 110th
1958 Congress, which obviously is the Congress we are in right
1959 now.

1960 The ranking member's amendment discussed trying to
1961 expedite judicial review, but regardless, we have a number of
1962 issues coming up. We have got the issue of apportionment.
1963 That could have a great effect on this bill even if it were
1964 to be found constitutional. There are great apportionment
1965 issues.

1966 In addition, we were wondering why rush in and make a
1967 mess when this should be done more expediently. I did hear
1968 the gentleman across the aisle earlier say that this travesty
1969 had been going on for 200 years.

1970 There are some things that were travesties—for example,
1971 the allowing of slavery to go on as long as it did. That
1972 should have been ended, should have never started in this
1973 country, and this country paid a price for allowing it.

1974 But as far as the representation, that was well debated
1975 back when the Constitution was written. And as was discussed

1976 yesterday by some of the experts, the issue was brought
1977 forward—the discussion at Philadelphia.

1978 It was made clear that when the capital belongs to an
1979 individual state, that it is dangerous, because the state
1980 could actually try to intimidate or extort things from the
1981 Congress because it is lying there within the state, and that
1982 that was not a good condition.

1983 So they saw the need to create a 10-by-10 district that
1984 was not owned by any state. They debated the fact of whether
1985 or not that 10-by-10 district should be allowed to have a
1986 representative and a senator within the Congress.

1987 One of the arguments—and there was a good argument on
1988 the one side saying, "Gee, the revolution started because
1989 they were being taxed without representation." That was a
1990 big deal.

1991 So they debated that, and they discussed it, and that
1992 side pushed by Alexander Hamilton did not prevail, but the
1993 side that said, "Look, however many senators there end up
1994 being, however many representatives there end up being, every
1995 one of those representatives and senators will have a vested
1996 interest in what occurs in Washington, D.C."

1997 They will be living there much of the time. They will
1998 be using the streets, using the sewer, some using gutters
1999 more than others. But nonetheless, they will have a vested
2000 interest in everything that occurs in that city. So there

2001 will be some type of representation.

2002 There are two sides to this issue, but to say that it
2003 was not debated, or to insinuate that it was a travesty at
2004 the time—those issues were weighed, and the Constitution was
2005 drafted to say we would have a district and the Congress
2006 would have legislative authority over it.

2007 But when it comes to who actually is in the House of
2008 Representatives, section 2 makes clear you have to come from
2009 a state. Section 3 makes clear a senator has to come from a
2010 state.

2011 So because that is so clear to some of us—and I realize
2012 this is Washington, D.C., where even words like "is", you
2013 know, avoid or have trouble being defined. Being from a
2014 state is pretty clear, it would seem to some of us, so I
2015 would humbly submit what is the rush?

2016 You are changing what was done over 200 years ago.
2017 Let's do it in a methodical, proper manner. And I would
2018 submit that this amendment ought to be passed to put off this
2019 taking effect until the 112th Congress.

2020 I yield back.

2021 Chairman Conyers. I thank the gentleman, and I rise to
2022 strike the last word.

2023 You were at the ASCAP event the other night, weren't
2024 you, where Stevie Wonder was recognized and was honored by
2025 the music association?

2026 Mr. Gohmert. Rightfully so.

2027 Chairman Conyers. And rightfully so. And there is a
2028 great jazz tune that I may refer to you now, and it is called
2029 "Now is the Time." It was written by Charlie Parker and
2030 Dizzy Gillespie.

2031 And you know, after you have gone back over centuries
2032 and you say, "What is the harm, and let's throw in a couple
2033 of more Congresses later," I would urge you to reflect on the
2034 fact that so many people are watching our deliberations and
2035 hoping that we can make this great turn that you have so
2036 skillfully described in your own remarks—that we move on this
2037 now.

2038 I think we have come to this point in our history where
2039 we can serve our country and the Congress and the American
2040 people best by moving the bill forward as expeditiously as
2041 possible.

2042 Mr. Gohmert. Would the chairman yield for one moment?

2043 Chairman Conyers. Of course.

2044 Mr. Gohmert. And I appreciate the allusion to music. I
2045 tend to like the musical notion that many of us like a
2046 Congress with a slow hand, and so I would just simply offer
2047 that for your consideration.

2048 Chairman Conyers. I have never heard that song before,
2049 but, hey, I am sure somebody has recorded it. It sounds like
2050 western music, probably. But I thank the gentleman so much.

2051 Is there any further discussion—

2052 Mr. Franks. Mr. Chairman?

2053 Chairman Conyers. Yes.

2054 Mr. Franks. Mr. Chairman, I just have a minor

2055 correcting amendment here that I think—

2056 Chairman Conyers. Mr. Franks is recognized for his

2057 amendment.

2058 Mr. Franks. All right.

2059 Chairman Conyers. Is it at the desk?

2060 Mr. Franks. Yes, it is, sir. It should be passed out

2061 here.

2062 The Clerk. "Franks amendment to Gohmert amendment #A to

2063 H.R. 1433. The words, '112th' are struck and the words

2064 '113th' is substituted."

2065 [The amendment by Mr. Franks follows:]

2066 ***** INSERT *****

2067 Chairman Conyers. All right. Mr. Franks—

2068 Mr. Franks. Thank you, Mr. Chairman.

2069 Chairman Conyers. —you are recognized.

2070 Mr. Franks. Our scribe made a little mistake there.

2071 That should be "are substituted," of course.

2072 But, Mr. Chairman, the reason for this amendment is that
2073 if, indeed, Mr. Gohmert's amendment passes, this would put it
2074 past the census so that whatever was going to occur at that
2075 time would have already occurred, and it could save us all a
2076 great deal of confusion.

2077 I offer it as a friendly amendment. If the sponsor is
2078 inclined to accept it, that is great. Thank you.

2079 Chairman Conyers. Does the gentleman accept the
2080 amendment?

2081 Mr. Gohmert. If I might inquire, working through this,
2082 the census would occur every 10 years, so 2010. The 112th
2083 Congress would then take office January of 2011. So they
2084 would have already been elected in 2010.

2085 So the gentleman's amendment apparently would allow that
2086 to actually take place after the reapportionment and after
2087 the census. That makes sense. I would certainly accept the
2088 friendly amendment.

2089 Chairman Conyers. All right.

2090 The gentleman from California is recognized.

2091 Mr. Berman. There is a reason why Utah was given an

2092 additional seat in this proposal. Why do you assume that if
2093 this didn't take effect until 2013, which is what the
2094 amendment to the amendment would do, that Utah should be
2095 getting an extra seat and an at least seat?

2096 It might be Texas. It might be Arizona that is the
2097 next—is on the cusp of getting the next seat. You are making
2098 an assumption based on the 2000 census for a proposal that
2099 you are trying to delay until 2013.

2100 I think there is something missing there.

2101 I yield back.

2102 Mr. Franks. Mr. Chairman, the gentleman makes a
2103 sterling point and one which I wouldn't take issue with at
2104 all. The purpose of the amendment was to avoid the confusion
2105 related to the census.

2106 Mr. Berman. And therefore I withdraw my amendment, is
2107 that—

2108 Mr. Franks. Therefore vote your conscience, sir.

2109 Mr. Berman. Oh, okay.

2110 Chairman Conyers. If there is no further consideration
2111 on the amendment, let's roll the vote in consideration of
2112 this amendment.

2113 And I will ask if there are any further amendments
2114 outstanding.

2115 Mr. King. Mr. Chairman?

2116 Chairman Conyers. Yes.

2117 Mr. King. Inquiry of the chair?

2118 Chairman Conyers. Yes.

2119 Mr. King. I would just ask that in the future, if there
2120 is an announcement that is made to the members of the
2121 committee of the majority that there will be rolled votes,
2122 could I ask the courtesy that the minority receive the same
2123 announcement?

2124 Chairman Conyers. We thought we did. We passed this
2125 through Mr. Smith. Although I had promised not the majority
2126 but I had promised other individuals whose time were
2127 constrained on other committees.

2128 Mr. Smith. Would the gentleman yield just for a minute?

2129 Mr. King. I would be happy to yield.

2130 Mr. Smith. Mr. Chairman, I was not aware that this side
2131 had been alerted to the fact that you were not going—that you
2132 were going to roll the votes and give members 30 minutes'
2133 notice.

2134 And I think Mr. King, the gentleman from Iowa, makes a
2135 good point. But I would add one more point, and that is I
2136 hope you can reassure us that this isn't going to become a
2137 habit where we roll votes.

2138 I checked with the former chairman, the gentleman from
2139 Wisconsin, who at the very most only rolled votes one time
2140 during his chairmanship.

2141 And I think it is important for members to be here, hear

2142 the debate, and vote immediately after the debate, if at all
2143 possible.

2144 So I understand the dynamics today, but I hope it just
2145 won't become a habit.

2146 Chairman Conyers. Well, we will try to emulate the
2147 great qualities of the previous chairman from Wisconsin in
2148 terms of following this practice.

2149 Mr. King. I thank the chairman, and I yield back.

2150 Chairman Conyers. You are welcome.

2151 If there are no further—

2152 Mr. Gohmert. Mr. Chairman?

2153 Chairman Conyers. Oh, the gentleman from Texas is
2154 recognized.

2155 Mr. Gohmert. Thank you, Mr. Chairman.

2156 I have an amendment at the desk, amendment #1 to H.R.
2157 1433.

2158 Chairman Conyers. The clerk will report the amendment.

2159 Mr. Berman. Mr. Chairman, I reserve a point of order.

2160 Chairman Conyers. And a point of order is reserved by
2161 the gentleman from California, Mr. Berman.

2162 The Clerk. "Amendment #1 to H.R. 1433 offered by Mr.

2163 Gohmert. Page 2, line 18, insert the following: (b)

2164 Notwithstanding any other provision of law, certain qualified
2165 military installations shall be considered congressional
2166 districts for the purposes of—"

2167 [The amendment by Mr. Gohmert follows:]

2168 ***** INSERT *****

2169 Chairman Conyers. Without objection, the amendment will
2170 be considered as read.

2171 And the gentleman from Texas, Mr. Gohmert, is recognized
2172 for 5 minutes in support of his amendment.

2173 Mr. Gohmert. Thank you, Mr. Chairman.

2174 We heard yesterday during the testimony regarding this
2175 bill that—and we had four people testify. One of them made
2176 very clear this is the most—

2177 Mr. Nadler. Mr. Chairman, I reserve a point of order.

2178 Mr. Gohmert. How many are you going to get reserved?

2179 Chairman Conyers. Another point of order is reserved by
2180 Mr. Nadler.

2181 Mr. Gohmert. I may want to reserve one myself.

2182 Mr. Sensenbrenner. Mr. Chairman, a parliamentary
2183 inquiry. I believe the gentleman from New York has reserved
2184 a point of order too late, because the gentleman from Texas
2185 has already been recognized and debate has begun.

2186 Chairman Conyers. The gentleman is correct, and the
2187 point of order reserved by the gentleman from California
2188 still remains.

2189 Mr. Gohmert. And hopefully, since I don't talk nearly
2190 as fast as the gentleman from New York, his time didn't take
2191 up mine.

2192 But in any event, we heard from four experts, so-called,
2193 yesterday, and one made clear this is the most premeditated

2194 unconstitutional revision in decades that has been proposed
2195 here, because it is so clear representatives have to be from
2196 the several states.

2197 And if the majority believes truly that there should be
2198 an additional representative from the District of Columbia,
2199 the Constitution should be amended.

2200 The three witnesses brought in by the majority yesterday
2201 indicated that their entire constitutional basis for saying
2202 we could go forward with this was not—and I have got a blow-
2203 up here—was not section 2 that says it has to be from the
2204 several states, but was from section 8 that says that
2205 Congress has the power to exercise exclusive legislation in
2206 all cases whatsoever over such district.

2207 Now, they said that was their entire basis for this
2208 being constitutional, the overall bill granting additional
2209 representation to allow someone from the District of
2210 Columbia.

2211 The thing is if you believe that is true, then you have
2212 to accept that the next part—this is all part of the same
2213 clause, the same paragraph, within the Constitution.

2214 The very next part says, "and to exercise like authority
2215 over all places purchased by the consent of the legislature
2216 of the state in which the same shall be for the erection of
2217 forts, magazines, arsenals, dockyards, and other needful
2218 buildings."

2219 So it is very clear one of the arguments yesterday was
2220 how many people from the District of Columbia had given their
2221 service to this country in our military services, in our
2222 armed services, and that is so wonderful and so commendable.

2223 But it also reflected back to my time at Fort Benning,
2224 Georgia, nearly 4 years, and how many people would love to
2225 have had a representative from that area, because every one
2226 of the service members at Fort Benning—in fact, every one of
2227 the service members at posts, forts all over the country—that
2228 is what they do.

2229 So I would humbly submit the potential is there for a
2230 representative from a needful building as set out here, like
2231 the Pentagon.

2232 But what this amendment does—basically, if we are going
2233 to have a bill that starts handing out representatives and
2234 one of the bases is the fact that people from Washington,
2235 D.C. have served their country in the military, then, my
2236 goodness, what more appropriate place to give representation,
2237 since I think pretty well everybody in the Congress has said
2238 we support the troops.

2239 Well, how much do you support them? Do you support them
2240 enough to let them have their own representative? Because by
2241 golly, if D.C. is constitutional to have one without amending
2242 the Constitution, it is certainly constitutional to give a
2243 military installation—in fact, military installations all

2244 over the country.

2245 So we have military installations all over the country.

2246 We have Camp Pendleton, California; San Diego Navy Yard,
2247 California; Twentynine Palms; Fort Carson, Colorado; North
2248 Island, California.

2249 Here in Washington, D.C., Fort Myer—another
2250 installation; Jacksonville, Florida, Mayport Naval Station;
2251 Pensacola, Florida, all the naval installations there; Fort
2252 Benning, Georgia, where my heart still, part of it, remains;
2253 Fort Gordon, Georgia; Fort Stewart, Georgia; Robins Air Force
2254 Base, Georgia; Pearl Harbor, Hawaii—they know about paying
2255 the price; Schofield Barracks, Great Lakes, Illinois; Fort
2256 Riley, Kansas; Fort Campbell, Kentucky; Fort Knox, Kentucky;
2257 Fort Leonard Wood, Missouri; Fort Drum, New York; Camp
2258 Lejeune, North Carolina; Cherry Point, North Carolina; Fort
2259 Bragg, North Carolina; Wright-Patterson, Ohio; Fort Sill,
2260 Oklahoma; Tinker Air Force Base, Oklahoma; Fort Jackson,
2261 South Carolina; Fort Bliss, Texas; Fort Hood, Texas; Fort Sam
2262 Houston, Texas; Lackland Air Force Base, Texas; Hill Air
2263 Force Base—

2264 Chairman Conyers. Will the gentleman yield for a
2265 second?

2266 Mr. Gohmert. I am almost through, and I will.

2267 Arlington, Virginia has bases; Fort Belvoir, Virginia;
2268 Langley Air Force Base, Virginia; Norfolk, Virginia;

2269 Portsmouth, Virginia; Quantico, Virginia; Virginia Beach;
2270 Bremerton, Washington; Fort Lewis, Washington; Eglin Air
2271 Force Base, Florida.

2272 If we really support our troops and we believe it is
2273 constitutional to amend the Constitution with legislation,
2274 then let's really support the troops and give them a vote
2275 that counts. And we won't be arguing about their—

2276 Chairman Conyers. The time of the gentleman has
2277 expired.

2278 Mr. Watt. Mr. Chairman, I was wondering if I could 15
2279 seconds for him to yield.

2280 Chairman Conyers. I will give you 15 seconds. I would
2281 like to move this as long as quickly as I can. I rise to
2282 oppose this amendment, and I yield to the gentleman from
2283 North Carolina.

2284 Mr. Watt. I was just going to inquire of him whether a
2285 citizen who was a resident of the District of Columbia who
2286 happened to be in the military in one of these locations
2287 would be able to vote in that location, since—would he be
2288 able to vote twice? All right, thank you.

2289 I yield back to the—

2290 Mr. Gohmert. Well, that is a good question.

2291 Chairman Conyers. Let me proceed on.

2292 I will give you some time, Mr. Gohmert.

2293 Mr. Gohmert. Could I answer the question, though, Mr.

2294 Chairman?

2295 Chairman Conyers. No, I want to proceed on with mine.

2296 I will try to give you some time if I have any left.

2297 Here is the point. I have some very comforting news for
2298 you. When I first went into the service, the first vote that
2299 I cast at 21 years of age, then, was for a federal election
2300 for a president of the United States, and also for a member
2301 of Congress.

2302 Everyone in every military installation in the United
2303 States and overseas is permitted to vote and can vote. And
2304 what you are doing here is covering some territory that has
2305 been very well taken care of by our military for so long.

2306 Mr. Watt. Mr. Chairman, would you yield just for a
2307 correction? Except residents of the District of Columbia.

2308 Chairman Conyers. Exactly. Those residents couldn't
2309 vote when they were in the service and they couldn't vote
2310 when they were not in the service.

2311 And so I know the answer to the question. This would
2312 provide District residents with the right to vote. This is
2313 one of the most unusual ways to give a part of the citizens
2314 of this district the right to vote, but to deny all the rest
2315 of them.

2316 And so to me, I am not sure if this would satisfy even
2317 those in the service from the District of Columbia who would
2318 receive much gratification knowing that they could vote but

2319 everybody else in their family and neighborhood and district
2320 could not.

2321 Mr. Jordan. Mr. Chairman?

2322 Chairman Conyers. Yes.

2323 Mr. Jordan. Mr. Chairman?

2324 Chairman Conyers. Who seeks—Mr. King?

2325 Mr. Jordan. Mr. Jordan.

2326 Chairman Conyers. Oh, Mr. Jordan. Yes? Do you have a
2327 question or do you want time?

2328 Mr. Jordan. I want to yield some time to the
2329 representative from Texas. Oh, I am sorry, could I be
2330 recognized? Move to strike the last word, excuse me.

2331 Chairman Conyers. All right. The gentleman is
2332 recognized.

2333 Mr. Jordan. I yield to the gentleman from Texas.

2334 Mr. Gohmert. Thank you, Mr. Jordan.

2335 And, Mr. Chairman, you make a good point, but the bill
2336 here that we are about that has been brought by the majority
2337 and a couple of our members allows Utah to vote twice.

2338 And if you really believe that the residents of the
2339 District of Columbia have been disenfranchised, not treated
2340 fairly, and one of the bases for giving them the vote is that
2341 they have been serving in the military, with all respect to
2342 our friends from Utah—and I am greatly appreciative of the
2343 people they keep sending us here to serve in Congress.

2344 If the people in Utah are going to get to vote for two
2345 representatives, how much more wonderful to allow members of
2346 the military who are legal residents of the District of
2347 Columbia but also serving their country to get to vote twice
2348 and to elevate them to the status of a citizen of Utah.

2349 So I would encourage the adoption of this for that basis
2350 to allow members of the military in the District of Columbia
2351 to be elevated to the level of citizens from Utah.

2352 I yield back to my friend, Mr. Jordan.

2353 Chairman Conyers. All right. The gentleman yields
2354 back.

2355 The gentleman from Wisconsin?

2356 Mr. Sensenbrenner. Mr. Chairman, I move to strike the
2357 last word.

2358 Chairman Conyers. Recognized.

2359 Mr. Sensenbrenner. Mr. Chairman, I am not going to vote
2360 for the amendment of the gentleman from Texas, but I think he
2361 makes a very good point.

2362 And the point that he is making is that the clause of
2363 the Constitution which gives Congress the plenary legislative
2364 power over the District of Columbia upon which the supporters
2365 of this bill base its constitutional argument also gives
2366 Congress the same plenary legislative power over military
2367 reservations, whether they be forts or other necessary
2368 buildings, or what have you.

2369 And I think this shows the stretch to which members of
2370 the majority and those who are supporting this bill are
2371 having to this clause of the Constitution relative to plenary
2372 legislative powers.

2373 And I guess it disturbs me that the entire
2374 constitutional underpinnings of this piece of legislation are
2375 on the plenary powers clause of the Constitution that applies
2376 both to the District as well as to military reservations.

2377 I guess that that is probably another reason why the
2378 gentleman from Texas's amendment on expedited constitutional
2379 review ought to be adopted.

2380 But having said that, I really want to express my
2381 concern and dismay. The decision that the gentleman from
2382 Michigan, my friend and the distinguished chairman of the
2383 committee, made to roll the votes has had practically
2384 everybody on the majority side of the aisle head for the exit
2385 to go to something else that they have deemed to be more
2386 important than debating this bill.

2387 And you look at the wide-open spaces on the majority
2388 side of the aisle—and the fact that most of the Republican
2389 seats on this committee are filled during the debate on this
2390 amendment I think is a shocking indictment to how this
2391 committee is being run.

2392 And if this is the way we are going to start out in this
2393 new Congress, folks, we are in for trouble, because I think

2394 these debates are serious debates, and they require the
2395 attention and the priority of all the members that can
2396 possibly get here.

2397 Now, when I was the chairman of the committee, I had the
2398 power to roll votes. The only time I ever rolled votes on
2399 amendments is when we didn't have a quorum here.

2400 And there was a quorum when the chair made his decision
2401 to roll the votes. And now there is not a reporting quorum
2402 on this legislation because the Democrats have left.

2403 Now, let's get our priorities straight.

2404 Chairman Conyers. Mr. Chairman—

2405 Mr. Sensenbrenner. If this is an important bill, we
2406 ought to be here.

2407 Chairman Conyers. Would the gentleman yield?

2408 Mr. Sensenbrenner. I yield back the balance of my time.

2409 Chairman Conyers. I thank you for your instructions and
2410 lecture on the subject. Our rules are the same rules that we
2411 had in both the 108th, 109th and 110th Congresses.

2412 Mr. Watt. Mr. Chairman?

2413 Chairman Conyers. What reason does the gentleman from
2414 North Carolina seek to—

2415 Mr. Watt. I move to strike the last word—

2416 Chairman Conyers. Recognized.

2417 Mr. Watt. —and assure the chairman that I won't take 5
2418 minutes, but to the extent that comments about our interest

2419 in the bill were directed at me for being in and out, I want
2420 to make it clear that there are other important things going
2421 on here, too.

2422 And when you serve on more than one committee, you must
2423 attend to the important things on both committees. And that
2424 is the status of where I have been.

2425 Ms. Waters. Mr. Chairman?

2426 Chairman Conyers. The gentlelady from California?

2427 Ms. Waters. I move to strike the last word. First, let
2428 me—

2429 Chairman Conyers. The lady is recognized.

2430 Ms. Waters. I was surprised at the diatribe of the
2431 gentleman who admonished you about how you managed this
2432 committee.

2433 I have always known that you had a pretty good
2434 relationship, and I know that there have been times when he
2435 was chairing this committee that you had the opportunity to
2436 talk with him in private about things that you may have
2437 disagreed with.

2438 Let me just say that also the statement of indictment
2439 about Democrats not being present is absolutely misleading.
2440 Mr. Watt is absolutely correct, we are trying to take care of
2441 business in two committees. We are in Financial Services
2442 right now with the reform of all of the GSEs, and we are
2443 trying to make ourselves available in both committees.

2444 I have been sitting here while dilatory amendments have
2445 been proposed, and I am wondering if there is a delaying
2446 tactic going on here so that we don't get to the U.S.
2447 attorney's bill here today.

2448 And if that is what is being done, I wish it would stop
2449 so that we could get on with the business of the vote on this
2450 bill.

2451 Chairman Conyers. I thank the gentlelady.

2452 I would like us not to engage in the continuation of
2453 this, because this is delaying the progress on the bill.

2454 I recognize the gentleman from New York.

2455 Mr. Nadler. I will be brief. But I want to join the
2456 gentlelady from California in commenting on the form of the
2457 distinguished chairman's diatribe.

2458 We are having, unlike the previous Congresses where many
2459 important things weren't done in committees, so you didn't
2460 have conflicts, we reported out of this committee, for
2461 example, and—we didn't report out of this committee, I am
2462 sorry.

2463 We sent a bill straight to the floor without bothering
2464 with a markup—the class action bill, the Real I.D. bill.
2465 They didn't go through this committee.

2466 And now what we have here is clear dilatory tactics.
2467 This amendment that we are debating at the moment that every
2468 military base with 10,000 people should get a congressman is,

2469 frankly, insulting to the intelligence of the members of this
2470 committee. And it is done purely as a dilatory tactic.

2471 I yield back.

2472 Chairman Conyers. I thank the gentleman.

2473 Is there any further discussion on the amendment of the
2474 gentleman from Texas that is before the committee now?

2475 If not, we will roll this vote, and I will ask if there
2476 are any further amendments to be offered to the bill.

2477 Mr. Gohmert. Mr. Chairman?

2478 Chairman Conyers. Mr. Gohmert?

2479 Mr. Gohmert. Yes. Mr. Chairman, I have, I think, 43 or
2480 44 amendments, and I had intended to—I just told my staff—and
2481 I had one of them tell Mr. Smith, the ranking member, that I
2482 made my point—because it was not dilatory.

2483 It was to make the point about section 8 of the
2484 Constitution. But in view of being chastised by two of the
2485 members across the aisle that this was, indeed, dilatory, I
2486 want to do what I can to prevent them from being untruthful.

2487 So despite my having advised the ranking member I would
2488 make no more amendments, I want to keep them truthful, so I
2489 am going to become dilatory and offer other amendments to
2490 satisfy them and to keep them honest.

2491 Chairman Conyers. Could I ask the gentleman, in the
2492 spirit of comity that we are working, that you stick to your
2493 original plan?

2494 Yes, we will discuss the comments that made you reverse
2495 your original decision.

2496 Mr. Gohmert. Well, then might I ask—

2497 Chairman Conyers. —my other three colleagues.

2498 Mr. Gohmert. I am sorry. Might I ask the gentlelady
2499 from California and the gentleman from New York to consider
2500 whether or not my purpose may have been to accentuate section
2501 8 and how that was being utilized other than being dilatory
2502 with this amendment?

2503 Chairman Conyers. Absolutely.

2504 Ms. Waters. Mr. Chairman, I do not want to mess up this
2505 committee, but I stand by my comments.

2506 Mr. Gohmert. All right. Then let's go through the
2507 amendments.

2508 I have another amendment at the desk. I have amendment
2509 #2.

2510 Chairman Conyers. The clerk will report the amendment.

2511 The Clerk. "Amendment #2 by Mr. Gohmert. Page 2, line
2512 18, insert the following: (b) Notwithstanding any other
2513 provision of law, Camp Pendleton, California shall be
2514 considered congressional districts for the purposes of
2515 representation in the House of Representatives."

2516 [The amendment by Mr. Gohmert follows:]

2517 ***** INSERT *****

2518 Chairman Conyers. Could the chair inquire of the
2519 gentleman before he is recognized for his amendment, is it
2520 his intention to go through every base or fort or camp that
2521 might be involved in the objectives of his amendment, and if
2522 we can't do them all en bloc?

2523 Mr. Gohmert. Well, Mr. Chairman, there may be
2524 opposition to doing them all. It does create a large number
2525 of new representatives. If there is one where we can find
2526 commonality, then that is what I would seek to do.

2527 And by doing it en bloc, perhaps I would be unable to
2528 have an opportunity to get one representative for one
2529 military installation—for example, there are more members of
2530 Congress from California than any other state, so I would
2531 hope that I have more chance of getting California's passed
2532 than others.

2533 So that is why we are starting there, with Camp
2534 Pendleton. It has about 40,000 service members there. So I
2535 have an amendment at the—that is why this amendment was just
2536 read. I just want to see if there—what opportunities we may
2537 have because of the stakes involved.

2538 And if we could get service men at least—and by service
2539 men, generic—

2540 Ms. Waters. Mr. Chairman?

2541 Mr. Gohmert. —service men and women—another
2542 representative that actually is representing their interests

2543 in Congress, especially as Congress begins to micro-manage
2544 war efforts.

2545 Chairman Conyers. Well, the clerk—

2546 Ms. Waters. Mr. Chairman?

2547 Chairman Conyers. Who seeks—

2548 Ms. Waters. I call for the question.

2549 Chairman Conyers. We haven't called—

2550 Ms. Waters. Did they report the amendment?

2551 Chairman Conyers. No, it has not been reported.

2552 It has been reported. The clerk assures me that it has
2553 been read.

2554 And the gentlelady calls for the question on the
2555 amendment, for reporting the amendment.

2556 Is there any unreadiness? If not, all in—wait a minute.
2557 We can't do that, because we have said we were going to roll
2558 all the votes. We are rolling all the votes, and I have been
2559 advised that there is very shortly coming a vote—votes on the
2560 floor.

2561 Ms. Waters. Mr. Chairman, will you yield, please?

2562 Chairman Conyers. Yes.

2563 Ms. Waters. If you would yield, I suppose if you
2564 continue in the fashion that we have in calling for the
2565 question—I mean, in rolling the vote, then this one could be
2566 rolled, too.

2567 And I intend to call for the question on each one, and

2568 they all can be rolled. So if that is what the gentleman
2569 would like to continue to do, then I would respectfully
2570 request that you move forward in that manner.

2571 Mr. Cannon. Mr. Chairman? Mr. Chairman?

2572 Chairman Conyers. Yes, the gentleman from Utah?

2573 Mr. Cannon. Move to strike last word. Actually, no, I
2574 just—an inquiry about where we are headed here.

2575 We have a vote coming up. We have been sitting here for
2576 a long time. Could we just come back after the vote and pick
2577 this up? Would that work?

2578 Chairman Conyers. That would work fine, because nobody
2579 that I know of has had lunch yet either.

2580 Mr. Cannon. That is right.

2581 Chairman Conyers. Including the chair. And so let's
2582 stand in recess, and we will do the roll votes after we come
2583 back from the votes on the floor. That will give us
2584 sufficient time.

2585 So the committee stands in recess.

2586 Mr. Cannon. Mr. Chairman, we will still be open for
2587 amendment after we recess, right?

2588 Chairman Conyers. Absolutely.

2589 [Recess.]

2590 Chairman Conyers. Ladies and gentlemen of the
2591 committee, we were in the process of discussing amendment #2
2592 by the gentleman from Texas.

2593 Before we continue that discussion, I would like to
2594 announce to all of us here that we note that the gentleman
2595 from Texas, Mr. Gohmert, originally had planned to offer many
2596 more amendments than the ones that he has already.

2597 He has been cooperative, he has not been dilatory. I
2598 regret any suggestion made to the contrary. He is, in fact,
2599 my good friend and, in my experience, is cooperative as long
2600 as he believes he is being treated fairly.

2601 I think I have led him to be persuaded, but that is the
2602 case this afternoon. And as chairman, I will try to make
2603 sure that all members are treated respectfully and fairly on
2604 this committee as long as I am chair.

2605 And I thank the gentleman for his cooperative spirit.

2606 Mr. Gohmert. Thank you.

2607 Mr. Chairman, may I move to strike the last word?

2608 Chairman Conyers. Absolutely.

2609 Mr. Gohmert. With regard to amendment #2, I do
2610 appreciate the chairman's words very much, and I do have
2611 great respect for you.

2612 I was recalling through this last vote session that my
2613 public-school-teacher mother was a brilliant lady, and she
2614 drilled it into my head so often: repetition, repetition,
2615 repetition. And that is what I had thought in order to make
2616 an extremely important constitutional point that I would do
2617 with the number of amendments. Though different, they would

2618 be making a similar point repeatedly.

2619 But during this time, during the vote, we were on the
2620 floor, I thought about another comment my mother told me
2621 once, and she said, "Son, you know how important perseverance
2622 is. Don't ever give up, but on the other hand," she said, "I
2623 have to tell you, son, sometimes you persist until it ceases
2624 to be a virtue."

2625 And so with that part of my mother's warning and
2626 admonition, I would submit, Mr. Chairman, that I have offered
2627 amendment #1—we are to the point of a roll vote on that—and
2628 amendment A, and those will be all the amendments I will
2629 offer.

2630 Chairman Conyers. I thank the gentleman. Does he
2631 choose to withdraw his amendment at this time?

2632 Mr. Gohmert. I would withdraw amendment #2 at this
2633 time.

2634 Chairman Conyers. All right.

2635 And now, ladies and gentlemen, we will attempt to
2636 dispose of the roll votes as orderly as possible. We are
2637 going to start from the beginning, and there may be some—I am
2638 almost sure there will be some that a voice vote will
2639 suffice.

2640 So let's begin with the first amendment of the day that
2641 was made by Lamar Smith, and we would like now to call for a
2642 vote on the amendment. It has already been requested. Mr.

2643 Smith has requested a record vote, and so let us have the
2644 clerk call the roll.

2645 "Ayes" that support, "noes" that are opposed.

2646 And, without objection, I will ask the clerk to begin to
2647 call the roll.

2648 The Clerk. Mr. Chairman?

2649 Chairman Conyers. No.

2650 The Clerk. Mr. Chairman votes no.

2651 Mr. Berman?

2652 Mr. Berman. No.

2653 The Clerk. Mr. Berman votes no.

2654 Mr. Boucher?

2655 Mr. Boucher. No.

2656 The Clerk. Mr. Boucher votes no.

2657 Mr. Nadler?

2658 Mr. Nadler. No.

2659 The Clerk. Mr. Nadler votes no.

2660 Mr. Scott?

2661 Mr. Scott. No.

2662 The Clerk. Mr. Scott votes no.

2663 Mr. Watt?

2664 Mr. Watt. No.

2665 The Clerk. Mr. Watt votes no.

2666 Ms. Lofgren?

2667 [No response.]

2668 Ms. Jackson Lee?

2669 Ms. Jackson Lee. No.

2670 The Clerk. Ms. Jackson Lee votes no.

2671 Ms. Waters?

2672 Ms. Waters. No.

2673 The Clerk. Ms. Waters votes no.

2674 Mr. Meehan?

2675 [No response.]

2676 Mr. Delahunt?

2677 [No response.]

2678 Mr. Wexler?

2679 Mr. Wexler. No.

2680 The Clerk. Mr. Wexler votes no.

2681 Ms. Sanchez?

2682 Ms. Sanchez. No.

2683 The Clerk. Ms. Sanchez votes no.

2684 Mr. Cohen?

2685 Mr. Cohen. No.

2686 The Clerk. Mr. Cohen votes no.

2687 Mr. Johnson?

2688 Mr. Johnson. Nay.

2689 The Clerk. Mr. Johnson votes nay.

2690 Mr. Gutierrez?

2691 Mr. Gutierrez. No.

2692 The Clerk. Mr. Gutierrez votes no.

2693 Mr. Sherman?

2694 Mr. Sherman. No.

2695 The Clerk. Mr. Sherman votes no.

2696 Ms. Baldwin?

2697 [No response.]

2698 Mr. Weiner?

2699 Mr. Weiner. No.

2700 The Clerk. Mr. Weiner votes no.

2701 Mr. Schiff?

2702 Mr. Schiff. No.

2703 The Clerk. Mr. Schiff votes no.

2704 Mr. Davis?

2705 Mr. Davis. No.

2706 The Clerk. Mr. Davis votes no.

2707 Ms. Wasserman Schultz?

2708 Ms. Wasserman Schultz. No.

2709 The Clerk. Ms. Wasserman Schultz votes no.

2710 Mr. Ellison?

2711 Mr. Ellison. No.

2712 The Clerk. Mr. Ellison votes no.

2713 Mr. Smith?

2714 Mr. Smith. Aye.

2715 The Clerk. Mr. Smith votes aye.

2716 Mr. Sensenbrenner?

2717 Mr. Sensenbrenner. Aye.

2718 The Clerk. Mr. Sensenbrenner votes aye.
2719 Mr. Coble?
2720 Mr. Coble. Mr. Chairman, this is the Smith amendment,
2721 correct?
2722 Chairman Conyers. Yes.
2723 Mr. Coble. Aye.
2724 The Clerk. Mr. Coble votes aye.
2725 Mr. Gallegly?
2726 [No response.]
2727 Mr. Goodlatte?
2728 Mr. Goodlatte. Aye.
2729 The Clerk. Mr. Goodlatte votes aye.
2730 Mr. Chabot?
2731 Mr. Chabot. Aye.
2732 The Clerk. Mr. Chabot votes aye.
2733 Mr. Lungren?
2734 Mr. Lungren. Aye.
2735 The Clerk. Mr. Lungren votes aye.
2736 Mr. Cannon?
2737 [No response.]
2738 Mr. Keller?
2739 Mr. Keller. Aye.
2740 The Clerk. Mr. Keller votes aye.
2741 Mr. Issa?
2742 [No response.]

2743 Mr. Pence?

2744 Mr. Pence. Aye.

2745 The Clerk. Mr. Pence votes aye.

2746 Mr. Forbes?

2747 Mr. Forbes. Aye.

2748 The Clerk. Mr. Forbes votes aye.

2749 Mr. King?

2750 Mr. King. Aye.

2751 The Clerk. Mr. King votes aye.

2752 Mr. Feeney?

2753 Mr. Feeney. Aye.

2754 The Clerk. Mr. Feeney votes aye.

2755 Mr. Franks?

2756 [No response.]

2757 Mr. Gohmert?

2758 Mr. Gohmert. Aye.

2759 The Clerk. Mr. Gohmert votes aye.

2760 Mr. Jordan?

2761 Mr. Jordan. Yes.

2762 The Clerk. Mr. Jordan votes yes.

2763 Chairman Conyers. Are there any members that have not
2764 voted who wish to be recorded?

2765 Yes, Mr. Cannon?

2766 Mr. Cannon. Aye.

2767 The Clerk. Mr. Cannon votes aye.

2768 Chairman Conyers. Mr. Franks?

2769 Mr. Franks. Aye.

2770 The Clerk. Mr. Franks votes aye.

2771 Chairman Conyers. The clerk will report.

2772 The Clerk. Mr. Chairman, 15 members voted aye, 19

2773 members voted nay.

2774 Chairman Conyers. The vote is 15 ayes, 19 noes. And so

2775 the amendment fails.

2776 Well, first of all, let's ask the Sensenbrenner

2777 amendment to the Cannon amendment is next up.

2778 Those who support the Sensenbrenner amendment will

2779 signify by saying, "aye."

2780 Those who oppose, signify by saying, "no."

2781 In the opinion of the chair, the noes have it.

2782 Mr. Cannon. Oh, Mr. Chairman, I ask for a roll call.

2783 Chairman Conyers. Well, this will prove who is right,

2784 whose hearing is better.

2785 [Laughter.]

2786 All right. The ayes and noes have been requested.

2787 The clerk will call the roll.

2788 Those in favor will signify by saying, "aye." Those

2789 opposed, by saying, "no."

2790 The Clerk. Mr. Chairman?

2791 Chairman Conyers. No.

2792 The Clerk. Mr. Chairman votes no.

2793 Mr. Berman?

2794 Mr. Berman. No.

2795 The Clerk. Mr. Berman votes no.

2796 Mr. Boucher?

2797 Mr. Boucher. No.

2798 The Clerk. Mr. Boucher votes no.

2799 Mr. Nadler?

2800 Mr. Nadler. No.

2801 The Clerk. Mr. Nadler votes no.

2802 Mr. Scott?

2803 Mr. Scott. No.

2804 The Clerk. Mr. Scott votes no.

2805 Mr. Watt?

2806 Mr. Watt. No.

2807 The Clerk. Mr. Watt votes no.

2808 Ms. Lofgren?

2809 [No response.]

2810 Ms. Jackson Lee?

2811 Ms. Jackson Lee. No.

2812 The Clerk. Ms. Jackson Lee votes no.

2813 Ms. Waters?

2814 Ms. Waters. No.

2815 The Clerk. Ms. Waters votes no.

2816 Mr. Meehan?

2817 [No response.]

2818 Mr. Delahunt?
2819 [No response.]
2820 Mr. Wexler?
2821 Mr. Wexler. No.
2822 The Clerk. Mr. Wexler votes no.
2823 Ms. Sanchez?
2824 Ms. Sanchez. No.
2825 The Clerk. Ms. Sanchez votes no.
2826 Mr. Cohen?
2827 Mr. Cohen. No.
2828 The Clerk. Mr. Cohen votes no.
2829 Mr. Johnson?
2830 Mr. Johnson. No.
2831 The Clerk. Mr. Johnson votes no.
2832 Mr. Gutierrez?
2833 Mr. Gutierrez. No.
2834 The Clerk. Mr. Gutierrez votes no.
2835 Mr. Sherman?
2836 Mr. Sherman. No.
2837 The Clerk. Mr. Sherman votes no.
2838 Mr. Weiner?
2839 Mr. Weiner. No.
2840 The Clerk. Mr. Weiner votes no.
2841 Mr. Schiff?
2842 Mr. Schiff. No.

2843 The Clerk. Mr. Schiff votes no.
2844 Mr. Davis?
2845 Mr. Davis. No.
2846 The Clerk. Mr. Davis votes no.
2847 Ms. Wasserman Schultz?
2848 Ms. Wasserman Schultz. No.
2849 The Clerk. Ms. Wasserman Schultz votes no.
2850 Mr. Ellison?
2851 Mr. Ellison. No.
2852 The Clerk. Mr. Ellison votes no.
2853 Mr. Smith?
2854 Mr. Smith. Aye.
2855 The Clerk. Mr. Smith votes aye.
2856 Mr. Sensenbrenner?
2857 Mr. Sensenbrenner. Aye.
2858 The Clerk. Mr. Sensenbrenner votes aye.
2859 Mr. Coble?
2860 Mr. Coble. Aye.
2861 The Clerk. Mr. Coble votes aye.
2862 Mr. Gallegly?
2863 [No response.]
2864 Mr. Goodlatte?
2865 Mr. Goodlatte. Aye.
2866 The Clerk. Mr. Goodlatte votes aye.
2867 Mr. Chabot?

2868 Mr. Chabot. Aye.

2869 The Clerk. Mr. Chabot votes aye.

2870 Mr. Lungren?

2871 Mr. Lungren. Aye.

2872 The Clerk. Mr. Lungren votes aye.

2873 Mr. Cannon?

2874 Mr. Cannon. No.

2875 The Clerk. Mr. Cannon votes no.

2876 Mr. Keller?

2877 Mr. Keller. Aye.

2878 The Clerk. Mr. Keller votes aye.

2879 Mr. Issa?

2880 [No response.]

2881 Mr. Pence?

2882 Mr. Pence. Aye.

2883 The Clerk. Mr. Pence votes aye.

2884 Mr. Forbes?

2885 Mr. Forbes. Aye.

2886 The Clerk. Mr. Forbes votes aye.

2887 Mr. King?

2888 Mr. King. Aye.

2889 The Clerk. Mr. King votes aye.

2890 Mr. Feeney?

2891 Mr. Feeney. Aye.

2892 The Clerk. Mr. Feeney votes aye.

2893 Mr. Franks?

2894 Mr. Franks. Aye.

2895 The Clerk. Mr. Franks votes aye.

2896 Mr. Gohmert?

2897 Mr. Gohmert. Aye.

2898 The Clerk. Mr. Gohmert votes aye.

2899 Mr. Jordan?

2900 Mr. Jordan. Yes.

2901 The Clerk. Mr. Jordan votes yes.

2902 Chairman Conyers. Have all members voted?

2903 Then the clerk will report.

2904 The Clerk. Mr. Chairman, 14 members voted aye, 20
2905 members voted nay.

2906 Chairman Conyers. Fourteen, aye; 20, nay. The
2907 amendment is not agreed to.

2908 And we moved to the third roll vote, and that is the
2909 Cannon amendment, and I will call for the vote.

2910 All in favor of the Cannon amendment, indicate by
2911 saying, "aye."

2912 All opposed, by saying, "no."

2913 Apparently, the noes have it, and a roll-call vote is
2914 requested.

2915 The clerk will call the roll.

2916 The Clerk. Mr. Chairman?

2917 Chairman Conyers. No.

2918 The Clerk. Mr. Chairman votes no.
2919 Mr. Berman?
2920 Mr. Berman. No.
2921 The Clerk. Mr. Berman votes no.
2922 Mr. Boucher?
2923 Mr. Boucher. No.
2924 The Clerk. Mr. Boucher votes no.
2925 Mr. Nadler?
2926 Mr. Nadler. No.
2927 The Clerk. Mr. Nadler votes no.
2928 Mr. Scott?
2929 Mr. Scott. No.
2930 The Clerk. Mr. Scott votes no.
2931 Mr. Watt?
2932 Mr. Watt. No.
2933 The Clerk. Mr. Watt votes no.
2934 Ms. Lofgren?
2935 [No response.]
2936 Ms. Jackson Lee?
2937 Ms. Jackson Lee. No.
2938 The Clerk. Ms. Jackson Lee votes no.
2939 Ms. Waters?
2940 Ms. Waters. No.
2941 The Clerk. Ms. Waters votes no.
2942 Mr. Meehan?

2943 [No response.]

2944 Mr. Delahunt?

2945 [No response.]

2946 Mr. Wexler?

2947 Mr. Wexler. No.

2948 The Clerk. Mr. Wexler votes no.

2949 Ms. Sanchez?

2950 Ms. Sanchez. No.

2951 The Clerk. Ms. Sanchez votes no.

2952 Mr. Cohen?

2953 Mr. Cohen. No.

2954 The Clerk. Mr. Cohen votes no.

2955 Mr. Johnson?

2956 Mr. Johnson. No.

2957 The Clerk. Mr. Johnson votes no.

2958 Mr. Gutierrez?

2959 Mr. Gutierrez. No.

2960 The Clerk. Mr. Gutierrez votes no.

2961 Mr. Sherman?

2962 Mr. Sherman. No.

2963 The Clerk. Mr. Sherman votes no.

2964 Mr. Weiner?

2965 Mr. Weiner. No.

2966 The Clerk. Mr. Weiner votes no.

2967 Mr. Schiff?

2968 Mr. Schiff. No.

2969 The Clerk. Mr. Schiff votes no.

2970 Mr. Davis?

2971 Mr. Davis. No.

2972 The Clerk. Mr. Davis votes no.

2973 Ms. Wasserman Schultz?

2974 Ms. Wasserman Schultz. No.

2975 The Clerk. Ms. Wasserman Schultz votes no.

2976 Mr. Ellison?

2977 Mr. Ellison. No.

2978 The Clerk. Mr. Ellison votes no.

2979 Mr. Smith?

2980 Mr. Smith. No.

2981 The Clerk. Mr. Smith votes no.

2982 Mr. Sensenbrenner?

2983 Mr. Sensenbrenner. No.

2984 The Clerk. Mr. Sensenbrenner votes no.

2985 Mr. Coble?

2986 Mr. Coble. No.

2987 The Clerk. Mr. Coble votes no.

2988 Mr. Gallegly?

2989 [No response.]

2990 Mr. Goodlatte?

2991 Mr. Goodlatte. Aye.

2992 The Clerk. Mr. Goodlatte votes aye.

2993 Mr. Chabot?

2994 Mr. Chabot. No.

2995 The Clerk. Mr. Chabot votes no.

2996 Mr. Lungren?

2997 Mr. Lungren. Aye.

2998 The Clerk. Mr. Lungren votes aye.

2999 Mr. Cannon?

3000 Mr. Cannon. Aye.

3001 The Clerk. Mr. Cannon votes aye.

3002 Mr. Keller?

3003 Mr. Keller. No.

3004 The Clerk. Mr. Keller votes no.

3005 Mr. Issa?

3006 [No response.]

3007 Mr. Pence?

3008 Mr. Pence. Aye.

3009 The Clerk. Mr. Pence votes aye.

3010 Mr. Forbes?

3011 Mr. Forbes. Aye.

3012 The Clerk. Mr. Forbes votes aye.

3013 Mr. King?

3014 Mr. King. No.

3015 The Clerk. Mr. King votes no.

3016 Mr. Feeney?

3017 Mr. Feeney. Aye.

3018 The Clerk. Mr. Feeney votes aye.
3019 Mr. Franks?
3020 Mr. Franks. Aye.
3021 The Clerk. Mr. Franks votes aye.
3022 Mr. Gohmert?
3023 Mr. Gohmert. No.
3024 The Clerk. Mr. Gohmert votes no.
3025 Mr. Jordan?
3026 Mr. Jordan. Yes.
3027 The Clerk. Mr. Jordan votes yes.
3028 Chairman Conyers. Have all members voted?
3029 The clerk will report.
3030 The Clerk. Mr. Chairman, eight members voted aye; 26
3031 members voted nay.
3032 Chairman Conyers. And the amendment is not agreed to.
3033 We now have the Gohmert #A amendment, as modified by Mr.
3034 Franks.
3035 All those in favor of the Gohmert #A, indicate by
3036 saying, "aye."
3037 All those opposed, indicate by saying, "no."
3038 Mr. Gohmert. Mr. Chairman, I would request a recorded
3039 vote.
3040 Chairman Conyers. Did I hear correctly?
3041 [Laughter.]
3042 I did. I suppose I did. Okay.

3043 All right. The clerk will call the roll.

3044 The Clerk. Mr. Chairman?

3045 Chairman Conyers. No.

3046 The Clerk. Mr. Chairman votes no.

3047 Mr. Berman?

3048 Mr. Berman. No.

3049 The Clerk. Mr. Berman votes no.

3050 Mr. Boucher?

3051 Mr. Boucher. No.

3052 The Clerk. Mr. Boucher votes no.

3053 Mr. Nadler?

3054 Mr. Nadler. No.

3055 The Clerk. Mr. Nadler votes no.

3056 Mr. Scott?

3057 Mr. Scott. No.

3058 The Clerk. Mr. Scott votes no.

3059 Mr. Watt?

3060 Mr. Watt. No.

3061 The Clerk. Mr. Watt votes no.

3062 Ms. Lofgren?

3063 [No response.]

3064 Ms. Jackson Lee?

3065 Ms. Jackson Lee. No.

3066 The Clerk. Ms. Jackson Lee votes no.

3067 Ms. Waters?

3068 Ms. Waters. No.

3069 The Clerk. Ms. Waters votes no.

3070 Mr. Meehan?

3071 [No response.]

3072 Mr. Delahunt?

3073 [No response.]

3074 Mr. Wexler?

3075 Mr. Wexler. No.

3076 The Clerk. Mr. Wexler votes no.

3077 Ms. Sanchez?

3078 Ms. Sanchez. No.

3079 The Clerk. Ms. Sanchez votes no.

3080 Mr. Cohen?

3081 Mr. Cohen. No.

3082 The Clerk. Mr. Cohen votes no.

3083 Mr. Johnson?

3084 Mr. Johnson. No.

3085 The Clerk. Mr. Johnson votes no.

3086 Mr. Gutierrez?

3087 Mr. Gutierrez. No.

3088 The Clerk. Mr. Gutierrez votes no.

3089 Mr. Sherman?

3090 Mr. Sherman. No.

3091 The Clerk. Mr. Sherman votes no.

3092 Mr. Weiner?

3093 Mr. Weiner. No.

3094 The Clerk. Mr. Weiner votes no.

3095 Mr. Schiff?

3096 Mr. Schiff. No.

3097 The Clerk. Mr. Schiff votes no.

3098 Mr. Davis?

3099 Mr. Davis. No.

3100 The Clerk. Mr. Davis votes no.

3101 Ms. Wasserman Schultz?

3102 Ms. Wasserman Schultz. No.

3103 The Clerk. Ms. Wasserman Schultz votes no.

3104 Mr. Ellison?

3105 Mr. Ellison. No.

3106 The Clerk. Mr. Ellison votes no.

3107 Mr. Smith?

3108 Mr. Smith. Aye.

3109 The Clerk. Mr. Smith votes aye.

3110 Mr. Sensenbrenner?

3111 Mr. Sensenbrenner. No.

3112 The Clerk. Mr. Sensenbrenner votes no.

3113 Mr. Coble?

3114 Mr. Coble. Aye.

3115 The Clerk. Mr. Coble votes aye.

3116 Mr. Gallegly?

3117 [No response.]

3118 Mr. Goodlatte?
3119 Mr. Goodlatte. Aye.
3120 The Clerk. Mr. Goodlatte votes aye.
3121 Mr. Chabot?
3122 Mr. Chabot. Aye.
3123 The Clerk. Mr. Chabot votes aye.
3124 Mr. Lungren?
3125 Mr. Lungren. Aye.
3126 The Clerk. Mr. Lungren votes aye.
3127 Mr. Cannon?
3128 Mr. Cannon. No.
3129 The Clerk. Mr. Cannon votes no.
3130 Mr. Keller?
3131 Mr. Keller. No.
3132 The Clerk. Mr. Keller votes no.
3133 Mr. Issa?
3134 [No response.]
3135 Mr. Pence?
3136 Mr. Pence. No.
3137 The Clerk. Mr. Pence votes no.
3138 Mr. Forbes?
3139 Mr. Forbes. No.
3140 The Clerk. Mr. Forbes votes no.
3141 Mr. King?
3142 Mr. King. Aye.

3143 The Clerk. Mr. King votes aye.
3144 Mr. Feeney?
3145 Mr. Feeney. Aye.
3146 The Clerk. Mr. Feeney votes aye.
3147 Mr. Franks?
3148 Mr. Franks. Aye.
3149 The Clerk. Mr. Franks votes aye.
3150 Mr. Gohmert?
3151 Mr. Gohmert. Aye.
3152 The Clerk. Mr. Gohmert votes aye.
3153 Mr. Jordan?
3154 Mr. Jordan. Yes.
3155 The Clerk. Mr. Jordan votes yes.
3156 Chairman Conyers. Are there any members who have not
3157 cast their vote?
3158 Then the clerk will report.
3159 The Clerk. Mr. Chairman, 10 members voted aye; 24
3160 members voted nay.
3161 Chairman Conyers. The amendment fails.
3162 And we now turn to the last roll vote, Mr. Gohmert #1.
3163 All those in favor, signify by saying, "aye."
3164 All those opposed, signify by saying, "no."
3165 The noes appear to have it; the noes have it.
3166 Mr. Gohmert. Mr. Chairman, with due deference, I have
3167 given up a lot of amendments, but I do think the record

3168 should record this vote, so I ask for a recorded vote.

3169 Chairman Conyers. A recorded vote is requested, and the
3170 clerk will call the roll.

3171 The Clerk. Mr. Chairman?

3172 Chairman Conyers. No.

3173 The Clerk. Mr. Chairman votes no.

3174 Mr. Berman?

3175 Mr. Berman. No.

3176 The Clerk. Mr. Berman votes no.

3177 Mr. Boucher?

3178 Mr. Boucher. No.

3179 The Clerk. Mr. Boucher votes no.

3180 Mr. Nadler?

3181 Mr. Nadler. No.

3182 The Clerk. Mr. Nadler votes no.

3183 Mr. Scott?

3184 Mr. Scott. No.

3185 The Clerk. Mr. Scott votes no.

3186 Mr. Watt?

3187 Mr. Watt. No.

3188 The Clerk. Mr. Watt votes no.

3189 Ms. Lofgren?

3190 [No response.]

3191 Ms. Jackson Lee?

3192 Ms. Jackson Lee. No.

3193 The Clerk. Ms. Jackson Lee votes no.
3194 Ms. Waters?
3195 Ms. Waters. No.
3196 The Clerk. Ms. Waters votes no.
3197 Mr. Meehan?
3198 [No response.]
3199 Mr. Delahunt?
3200 [No response.]
3201 Mr. Wexler?
3202 Mr. Wexler. No.
3203 The Clerk. Mr. Wexler votes no.
3204 Ms. Sanchez?
3205 Ms. Sanchez. No.
3206 The Clerk. Ms. Sanchez votes no.
3207 Mr. Cohen?
3208 Mr. Cohen. No.
3209 The Clerk. Mr. Cohen votes no.
3210 Mr. Johnson?
3211 Mr. Johnson. Nay.
3212 The Clerk. Mr. Johnson votes nay.
3213 Mr. Gutierrez?
3214 Mr. Gutierrez. No.
3215 The Clerk. Mr. Gutierrez votes no.
3216 Mr. Sherman?
3217 Mr. Sherman. No.

3218 The Clerk. Mr. Sherman votes no.
3219 Mr. Weiner?
3220 Mr. Weiner. No.
3221 The Clerk. Mr. Weiner votes no.
3222 Mr. Schiff?
3223 Mr. Schiff. No.
3224 The Clerk. Mr. Schiff votes no.
3225 Mr. Davis?
3226 Mr. Davis. No.
3227 The Clerk. Mr. Davis votes no.
3228 Ms. Wasserman Schultz?
3229 Ms. Wasserman Schultz. No.
3230 The Clerk. Ms. Wasserman Schultz votes no.
3231 Mr. Ellison?
3232 Mr. Ellison. No.
3233 The Clerk. Mr. Ellison votes no.
3234 Mr. Smith?
3235 Mr. Smith. Aye.
3236 The Clerk. Mr. Smith votes aye.
3237 Mr. Sensenbrenner?
3238 Mr. Sensenbrenner. No.
3239 The Clerk. Mr. Sensenbrenner votes no.
3240 Mr. Coble?
3241 Mr. Coble. No.
3242 The Clerk. Mr. Coble votes no.

3243 Mr. Gallegly?
3244 [No response.]
3245 Mr. Goodlatte?
3246 Mr. Goodlatte. No.
3247 The Clerk. Mr. Goodlatte votes no.
3248 Mr. Chabot?
3249 Mr. Chabot. Aye.
3250 The Clerk. Mr. Chabot votes aye.
3251 Mr. Lungren?
3252 Mr. Lungren. No.
3253 The Clerk. Mr. Lungren votes no.
3254 Mr. Cannon?
3255 Mr. Cannon. No.
3256 The Clerk. Mr. Cannon votes no.
3257 Mr. Keller?
3258 Mr. Keller. No.
3259 The Clerk. Mr. Keller votes no.
3260 Mr. Issa?
3261 [No response.]
3262 Mr. Pence?
3263 Mr. Pence. Pass.
3264 The Clerk. Mr. Pence passes.
3265 Mr. Forbes?
3266 Mr. Forbes. No.
3267 The Clerk. Mr. Forbes votes no.

3268 Mr. King?

3269 Mr. King. Pass.

3270 The Clerk. Mr. King passes.

3271 Mr. Feeney?

3272 Mr. Feeney. No.

3273 The Clerk. Mr. Feeney votes no.

3274 Mr. Franks?

3275 Mr. Franks. No.

3276 The Clerk. Mr. Franks votes no.

3277 Mr. Gohmert?

3278 Mr. Gohmert. Aye.

3279 The Clerk. Mr. Gohmert votes aye.

3280 Mr. Jordan?

3281 Mr. Jordan. No.

3282 The Clerk. Mr. Jordan votes no.

3283 Chairman Conyers. Are there any others members that

3284 wish to vote?

3285 Yes? The gentleman is recognized.

3286 Mr. Pence. No.

3287 The Clerk. Mr. Pence votes no.

3288 Chairman Conyers. Yes, Mr. King?

3289 Mr. King. No.

3290 The Clerk. Mr. King votes no.

3291 Chairman Conyers. The clerk will report.

3292 The Clerk. Mr. Chairman, three members voted aye; 31

3293 members voted nay.

3294 Chairman Conyers. And the amendment fails.

3295 And I thank the members for this expeditious activity.

3296 Are there any further amendments?

3297 A reporting quorum being present, the question is on

3298 reporting the bill favorably to the House.

3299 All those in favor will signify by saying, "aye."

3300 Those opposed, "no."

3301 In the opinion of the chair, the ayes have it. The ayes

3302 have it, and the bill, H.R. 1433, is ordered reported

3303 favorably to the House.

3304 Do you seek a—okay.

3305 A recorded vote has been requested on H.R. 1433. The

3306 clerk will call the roll.

3307 The Clerk. Mr. Chairman?

3308 Chairman Conyers. Aye.

3309 The Clerk. Mr. Chairman votes aye.

3310 Mr. Berman?

3311 Mr. Berman. Aye.

3312 The Clerk. Mr. Berman votes aye.

3313 Mr. Boucher?

3314 Mr. Boucher. Aye.

3315 The Clerk. Mr. Boucher votes aye.

3316 Mr. Nadler?

3317 Mr. Nadler. Aye.

3318 The Clerk. Mr. Nadler votes aye.
3319 Mr. Scott?
3320 Mr. Scott. Aye.
3321 The Clerk. Mr. Scott votes aye.
3322 Mr. Watt?
3323 Mr. Watt. Aye.
3324 The Clerk. Mr. Watt votes aye.
3325 Ms. Lofgren?
3326 [No response.]
3327 Ms. Jackson Lee?
3328 Ms. Jackson Lee. Aye.
3329 The Clerk. Ms. Jackson Lee votes aye.
3330 Ms. Waters?
3331 Ms. Waters. Aye.
3332 The Clerk. Ms. Waters votes aye.
3333 Mr. Meehan?
3334 [No response.]
3335 Mr. Delahunt?
3336 [No response.]
3337 Mr. Wexler?
3338 Mr. Wexler. Aye.
3339 The Clerk. Mr. Wexler votes aye.
3340 Ms. Sanchez?
3341 Ms. Sanchez. Aye.
3342 The Clerk. Ms. Sanchez votes aye.

3343 Mr. Cohen?

3344 Mr. Cohen. Aye.

3345 The Clerk. Mr. Cohen votes aye.

3346 Mr. Johnson?

3347 Mr. Johnson. Aye.

3348 The Clerk. Mr. Johnson votes aye.

3349 Mr. Gutierrez?

3350 Mr. Gutierrez. Yes.

3351 The Clerk. Mr. Gutierrez votes yes.

3352 Mr. Sherman?

3353 Mr. Sherman. Aye.

3354 The Clerk. Mr. Sherman votes aye.

3355 Mr. Weiner?

3356 Mr. Weiner. Aye.

3357 The Clerk. Mr. Weiner votes aye.

3358 Mr. Schiff?

3359 Mr. Schiff. Aye.

3360 The Clerk. Mr. Schiff votes aye.

3361 Mr. Davis?

3362 Mr. Davis. Aye.

3363 The Clerk. Mr. Davis votes aye.

3364 Ms. Wasserman Schultz?

3365 Ms. Wasserman Schultz. Aye.

3366 The Clerk. Ms. Wasserman Schultz votes aye.

3367 Mr. Ellison?

3368 Mr. Ellison. Aye.

3369 The Clerk. Mr. Ellison votes aye.

3370 Mr. Smith?

3371 Mr. Smith. No.

3372 The Clerk. Mr. Smith votes no.

3373 Mr. Sensenbrenner?

3374 Mr. Sensenbrenner. No.

3375 The Clerk. Mr. Sensenbrenner votes no.

3376 Mr. Coble?

3377 Mr. Coble. No.

3378 The Clerk. Mr. Coble votes no.

3379 Mr. Gallegly?

3380 [No response.]

3381 Mr. Goodlatte?

3382 Mr. Goodlatte. No.

3383 The Clerk. Mr. Goodlatte votes no.

3384 Mr. Chabot?

3385 Mr. Chabot. No.

3386 The Clerk. Mr. Chabot votes no.

3387 Mr. Lungren?

3388 Mr. Lungren. No.

3389 The Clerk. Mr. Lungren votes no.

3390 Mr. Cannon?

3391 Mr. Cannon. Aye.

3392 The Clerk. Mr. Cannon votes aye.

3393 Mr. Keller?

3394 Mr. Keller. No.

3395 The Clerk. Mr. Keller votes no.

3396 Mr. Issa?

3397 [No response.]

3398 Mr. Pence?

3399 Mr. Pence. Aye.

3400 The Clerk. Mr. Pence votes aye.

3401 Mr. Forbes?

3402 Mr. Forbes. No.

3403 The Clerk. Mr. Forbes votes no.

3404 Mr. King?

3405 Mr. King. No.

3406 The Clerk. Mr. King votes no.

3407 Mr. Feeney?

3408 Mr. Feeney. No.

3409 The Clerk. Mr. Feeney votes no.

3410 Mr. Franks?

3411 Mr. Franks. No.

3412 The Clerk. Mr. Franks votes no.

3413 Mr. Gohmert?

3414 Mr. Gohmert. No.

3415 The Clerk. Mr. Gohmert votes no.

3416 Mr. Jordan?

3417 Mr. Jordan. No.

3418 The Clerk. Mr. Jordan votes no.

3419 Chairman Conyers. Are there any members that need to
3420 vote that have not voted?

3421 The clerk will report.

3422 The Clerk. Mr. Chairman, 21 members voted aye; 13
3423 members voted nay.

3424 Chairman Conyers. H.R.—he is recorded.

3425 The Clerk. Mr. Johnson is recorded as voting aye.

3426 Chairman Conyers. What was the final tally?

3427 The Clerk. Twenty-one members voted aye; 13 members
3428 voted nay.

3429 Chairman Conyers. Twenty-one to 13. And the majority
3430 having voted in favor of the bill, H.R. 1433 is ordered
3431 reported favorably to the House.

3432 And I thank you very much.

3433 We now consider—ladies and gentlemen, we now have H.R.
3434 580, the U.S. Attorneys bill, to consider.

3435 Mr. Sensenbrenner. Mr. Chairman, pursuant to the rule,
3436 I state that all members should have 2 additional days in
3437 which to file additional dissenting supplemental or minority
3438 views.

3439 Chairman Conyers. Exactly.

3440 The committee will stay in order, please.

3441 Pursuant to notice, we take up the bill, H.R. 580, to
3442 reestablish the 120-day limit for interim United States

3443 attorney appointments by the attorney general.

3444 And, without objection, the bill is discharged from the
3445 Subcommittee on Commercial and Administrative Law and called
3446 up for the purpose of markup.

3447 [The bill follows:]

3448 ***** COMMITTEE INSERT *****

3449 Mr. Smith. Mr. Chairman, I would like to reserve a
3450 point of order.

3451 Chairman Conyers. The gentleman from Texas may reserve
3452 a point of order.

3453 Mr. Smith. Mr. Chairman, may I very briefly explain my
3454 point of order? I think it will save time.

3455 Chairman Conyers. Exactly. The gentleman from Texas is
3456 recognized.

3457 Mr. Smith. Mr. Chairman, we are doing something a
3458 little unusual today, at least I hope it is going to be
3459 considered unusual, and that is skipping over a subcommittee
3460 markup.

3461 And I just would like reassurance from you, Mr.
3462 Chairman, that this is not going to be routine practice of
3463 this committee.

3464 I think we do benefit from going through committee
3465 order, and I think that this particular piece of legislation,
3466 in particular, would have benefited from consideration by
3467 being marked up in subcommittee.

3468 So I hope this isn't going to be a practice that we
3469 undertake lightly.

3470 Chairman Conyers. Would the gentleman yield?

3471 Mr. Smith. I will be happy to yield.

3472 Chairman Conyers. Because I am glad he has made this
3473 point, and I respect it.

3474 Let me just very quickly that this bill has received a
3475 new urgency, given developments over the last 48, 72 hours,
3476 and members are familiar with the issue and the bill, and we
3477 will have full debate on the bill, including consideration of
3478 any amendments, but the time to have that debate is here so
3479 that the bill can be reported to the full House and passed as
3480 expeditiously as possible.

3481 And I fully respect the point that the gentleman has
3482 made.

3483 Mr. Smith. Would the chairman yield?

3484 Chairman Conyers. Surely.

3485 Mr. Smith. Just for clarification that it is not going
3486 to be routine practice for us to bypass the subcommittee
3487 markup on—

3488 Chairman Conyers. No. We are going to stop doing that
3489 in this Judiciary Committee from now on.

3490 Mr. Smith. I will take you at your word. Thank you,
3491 Mr. Chairman.

3492 Chairman Conyers. Without objection, the bill will be
3493 considered as read and open for amendment at any point.

3494 And I now would like to recommend and recognize the
3495 chair of the Commercial and Administrative Law Subcommittee,
3496 Ms. Linda Sanchez, for a brief statement describing the bill.

3497 The gentlelady is recognized.

3498 Ms. Sanchez. Thank you, Mr. Chairman.

3499 Mr. Chairman, I urge support of H.R. 580, a bill that
3500 will revoke the attorney general's unfettered authority to
3501 appoint U.S. attorneys indefinitely.

3502 A small provision was placed into the USA Patriot Act
3503 reauthorization conference report with enormous
3504 repercussions. That provision removed the 120-day limit for
3505 interim appointment of U.S. attorneys; thereby, allowing
3506 interim appointees to serve indefinitely and without
3507 confirmation.

3508 We know that the provision was inserted into the
3509 conference report by Senator Arlen Specter's chief counsel
3510 and at the request of the Department of Justice or, if we are
3511 to believe today's press reports, at the behest of some rogue
3512 element within that DOJ.

3513 It has become clear to me that the efforts to insert
3514 this provision were just one step in the Bush
3515 administration's coordinated plan to purge U.S. attorneys
3516 across the country for political reasons.

3517 Many of my suspicions about the role of this provision
3518 and the firings of at least eight U.S. attorneys were
3519 confirmed after reading the documents turned over by DOJ on
3520 Tuesday.

3521 We learned, for example, that in an email to former
3522 White House Counsel Harriet Miers, Attorney General Chief of
3523 Staff Kyle Sampson wrote, "I strongly recommend that as a

3524 matter of administration policy we utilize the new statutory
3525 provisions that authorize the attorney general to make U.S.
3526 attorney appointments."

3527 Mr. Sampson further said that by using the new
3528 provision, DOJ could give far less deference to home state
3529 senators and thereby get, one, our preferred person
3530 appointed, and, two, do it far faster and more efficiently at
3531 less political cost to the White House.

3532 Referring to the new authority to appoint interim U.S.
3533 attorneys indefinitely, Mr. Sampson also said, "If we don't
3534 ever exercise it, then what is the point of having it?"

3535 H.R. 580, legislation that is authored by my friend and
3536 colleague from California, Mr. Howard Berman, would provide
3537 the necessary legislative response to restore checks and
3538 balances in the U.S. attorney appointment process by
3539 reinstating the 120-day limit on the interim appointment.

3540 At a legislative hearing on H.R. 580 before the
3541 Subcommittee on Commercial and Administrative Law on March 6,
3542 this bill received strong support from the president of the
3543 National Association of Former U.S. Attorneys, as well as a
3544 former Republican-appointed U.S. attorney.

3545 It is also noteworthy to point out that the attorney
3546 general himself has expressed that is not opposed to rolling
3547 back this provision of the Patriot Act, and if today's press
3548 reports are true, it would seem he never wanted the Patriot

3549 Act changes to U.S. attorney selection process in the first
3550 place.

3551 I want to make clear that the decision to mark up this
3552 legislation today will not stop the ongoing investigation of
3553 the scheme to purge U.S. attorneys.

3554 Chairman Conyers and I have instructed staff to engage
3555 with the DOJ and White House to bring in officials who may
3556 have knowledge of this issue for deposition. We hope that
3557 administration officials will be cooperative in our
3558 investigation. After months of stonewalling and untruths,
3559 the Congress and the American people deserve to know the
3560 facts surrounding the administration's concerted effort to
3561 force the resignations of all 93 U.S. attorneys.

3562 Again, I urge my colleagues to support this important
3563 piece of legislation. It is a great step in the right
3564 direction.

3565 And I yield back the balance of my time.

3566 Chairman Conyers. I thank the gentlelady, commend her
3567 for her diligence and the way that she has elevated this
3568 small, humble subcommittee to a very important role in the
3569 Judiciary Committee's proceeding.

3570 I am pleased now to recognize Lamar Smith, the ranking
3571 member of the House Judiciary Committee.

3572 Mr. Smith. Thank you, Mr. Chairman.

3573 I oppose this amendment. The amendment would render

3574 unavailable provisions of the Vacancies Reform Act to allow
3575 for the temporary filing of U.S. attorney vacancies with
3576 qualified appointees. This would be—oh, pardon me, pardon
3577 me.

3578 Mr. Chairman, I was already anticipating an amendment,
3579 and I apologize.

3580 Mr. Chairman, today we are considering legislation the
3581 majority suggests will improve the appointment system for
3582 U.S. attorneys. This legislation was proposed at the outset
3583 of the current controversy over the administration's
3584 dismissal of several U.S. attorneys.

3585 Much has been said during this controversy about
3586 changing the law to prevent alleged abuses, specifically, the
3587 appointment of interim U.S. attorneys in a manner that skirts
3588 the Senator confirmation process.

3589 We would like to have worked with the majority in a
3590 bipartisan fashion to improve existing law. We might have
3591 found a better solution. The rush to consider this
3592 legislation, however, has not allowed us to do so.

3593 Under regular order, the bill would have been referred
3594 to the Subcommittee on Commercial and Administrative Law for
3595 markup. There, as the facts were sifted with more
3596 deliberation, we might have been able to avoid language that
3597 would have called for judges to appoint the very executive
3598 branch prosecutors practicing before them, judicial

3599 appointments that raise legal and practical concerns, yet we
3600 believe would have noted more consideration.

3601 In these times of the war on terror and the continuing
3602 age-old war on crime, the service of U.S. attorneys, the
3603 frontline of federal law enforcement, is all the more
3604 important. Their appointment and dismissal is serious
3605 business.

3606 Instead of rushing this legislation, we should have
3607 given it the time it deserves. In fact, I appreciate Mr.
3608 Berman's candor at the hearing when he said, "He wasn't sure
3609 his bill was the best way to go."

3610 Likewise, witnesses for the majority seem to suggest
3611 that the more important issue here concerns Senate
3612 confirmation. That is not what we are asked to address now.

3613 Mr. Chairman, we are disappointed there was no
3614 opportunity to improve this bill, and I will yield back the
3615 balance of my time.

3616 Chairman Conyers. I thank the gentleman for his
3617 thoughtful comments.

3618 Are there any amendments?

3619 Ms. Sanchez. Mr. Chairman?

3620 Chairman Conyers. The gentlelady from California,
3621 subcommittee chair?

3622 Ms. Sanchez. I have an amendment at the desk.

3623 Chairman Conyers. The clerk will report the amendment.

3624 The Clerk. "Amendment to H.R. 580, offered by Ms. Linda
3625 Sanchez—"

3626 [The amendment by Ms. Sanchez and Mr. Berman follows:]

3627 ***** INSERT *****

3628 Ms. Sanchez. Mr. Chairman, I ask that the amendment be
3629 considered as read.

3630 Chairman Conyers. Without objection, so ordered.

3631 The gentlelady is recognized for 5 minutes in support of
3632 her amendment.

3633 Ms. Sanchez. Thank you, Mr. Chairman.

3634 I offer this amendment with Mr. Berman simply to
3635 strengthen the underlying bill. As we learned from a CRS
3636 legislative attorney, this administration has utilized the
3637 Vacancies Reform Act of 1998 to circumvent Senate
3638 confirmation.

3639 Specifically, the Department of Justice's Office of
3640 Legal Counsel issued an opinion, but the Vacancies Reform
3641 Act, independently of and in conjunction with the provisions
3642 of the pre-Patriot interim statute, could be used to appoint
3643 interim U.S. attorneys for an indefinite amount of time.
3644 This would allow the DOJ to bypass the interim appointment
3645 limit and confirmation process entirely.

3646 My amendment would close that loophole by clarifying
3647 that section 546 is the exclusive means for appointing
3648 temporary U.S. attorneys. It would ensure that if we repeal
3649 the Patriot Act reauthorization version of the interim
3650 appointment statute, the department could not revert to its
3651 old ways of circumventing Senate confirmation.

3652 The amendment would also ensure that the interim U.S.

3653 attorneys appointed under the current statute would not serve
3654 indefinitely. Specifically, this amendment would limit the
3655 current interim U.S. attorneys to a 120-day term.

3656 I urge my colleagues to support this important amendment
3657 that would clarify the much needed underlying bill, and I
3658 yield back the balance of my time.

3659 Chairman Conyers. I thank the gentlelady and turn again
3660 to the ranking member of House Judiciary, Mr. Smith, and
3661 recognize him for 5 minutes.

3662 Mr. Smith. Thank you, Mr. Chairman.

3663 I opposed this amendment before, and I oppose it again.

3664 The amendment would render unavailable provisions of the
3665 Vacancies Reform Act to allow for the temporary filing of
3666 U.S. attorney vacancies with qualified appointees, which
3667 would be an unwise departure from the rules applicable to all
3668 other similar positions in the government.

3669 It would hinder the availability of personnel who may
3670 have needed background checks and security clearances to fill
3671 these vital positions and would still further create an
3672 anomaly for this one set of positions, those of U.S.
3673 attorneys.

3674 U.S. attorney positions are too important in the war on
3675 terror and the war on crime to unwisely limit the tools of
3676 the nation to find suitable temporary officials to fight
3677 these battles.

3678 I strongly oppose the amendment, Mr. Chairman, and yield
3679 back the balance of my time.

3680 Mr. Nadler. Mr. Chairman?

3681 Chairman Conyers. I thank the gentleman.

3682 Are there any—

3683 Mr. Nadler. Mr. Chairman?

3684 Chairman Conyers. Mr. Nadler is recognized for 5
3685 minutes.

3686 Mr. Nadler. Thank you.

3687 Mr. Chairman, it has been said that patriotism is the
3688 last refuge of scoundrel. We have seen that this
3689 administration has used the excuse of the war on terrorism to
3690 abrogate to itself a tremendous power, which it has abused,
3691 which it has abused to the discomfort of liberty in this
3692 country, which it has abused to the torturing of prisoners of
3693 the United States abroad, which it has abused to fire U.S.
3694 attorneys in order to eliminate investigations or because
3695 they were doing their jobs properly and were not succumbing
3696 to political pressure to investigate members of the
3697 opposition party who did not need investigation.

3698 After this administration, it might be time to consider
3699 whether to restore to the executives some power of interim
3700 appointment. This administration cannot be trusted with it.
3701 It has completely proved that and the law that we have lived
3702 with for the last, I don't know, 60, 70 years ought to be

3703 restored now, and when a new administration is in office,
3704 then we can perhaps talk about changing the law we have had.

3705 We have had that law for 60 or 70 years. What we are
3706 seeking to amend now was only installed by trickery and ruse
3707 in the middle of the night when an aide to a senator, without
3708 even telling the senator, put it in the last draft of the
3709 Patriot Act, which was passed without proper examination in
3710 the dead of night in great haste, without having the proper
3711 opportunity to read it.

3712 Mr. Berman. Will the gentleman yield?

3713 Mr. Nadler. Yes, I will.

3714 Mr. Berman. On the issue of the amendment, just very
3715 quickly, there is a debate about whether or not the Vacancies
3716 Reform Act even applies to filling vacancies in U.S.
3717 attorneys' positions. It has never been used.

3718 It is only because of this Justice Department opinion
3719 claiming it could be used and that if it were to be used, it
3720 would totally undermine the process that has been in place
3721 from 1986 until those amendments were made in early 2006 and
3722 out of an excess of caution that the gentlelady and I are
3723 offering this amendment to preclude a process that has never
3724 before been used to appoint interim U.S. attorneys.

3725 Mr. Nadler. Reclaiming my time. For the reasons that I
3726 stated and for the reasons stated by the gentleman from
3727 California, the gentleman's amendment should be passed and

3728 nothing should be changed in it.

3729 I yield back.

3730 Chairman Conyers. I thank the gentleman.

3731 Is there any further discussion?

3732 Mr. Lungren. Mr. Chairman?

3733 Chairman Conyers. Who speaks? Oh, Mr. Lungren from

3734 California is recognized for 5 minutes.

3735 Mr. Lungren. Mr. Chairman, I rise to strike the

3736 requisite number of words.

3737 Mr. Chairman, there is no doubt in my mind that the

3738 administration and the Justice Department has bungled a

3739 number of things, including the manner in which they were to

3740 dismiss U.S. attorneys, which under the Constitution and

3741 under the relevant statute is well within the jurisdiction of

3742 the president of the United States.

3743 I recall when Mr. Issa first came to me and asked me

3744 about signing on to a letter complaining about the U.S.

3745 attorney in San Diego for her failure to take seriously the

3746 problem of illegal alien smuggling along the southern border,

3747 within her jurisdiction, that I said to him, "If we do this,

3748 we will set a trap for ourselves in allowing our political

3749 opponents to say that we are doing it because this office has

3750 prosecuted a member of Congress."

3751 And I just want to tell you that I believe that she did

3752 an insufficient job with respect to enforcing the laws of

3753 this country in terms of our border. I saluted her office
3754 publicly and privately for what they did in the investigation
3755 and prosecution of Duke Cunningham. He has everything that
3756 he has received he deserves to receive in way of punishment.

3757 But on the one hand, to say that a president of the
3758 United States does not have the right to look at the
3759 performance of his appointees in areas of emphasis of the law
3760 that he believes to be appropriate is just wrong.

3761 And then to suggest, as we have heard in the heated
3762 debated here, that somehow this shows that the administration
3763 has acted to stop investigations when the testimony here in
3764 response to a question by Mr. Keller of Florida to the U.S.
3765 attorney in San Diego, "Do you have any evidence that this
3766 action was taken because of your investigation of prosecution
3767 of Duke Cunningham," and her response was, "I have no
3768 evidence."

3769 To then put on the record here that that was the reason
3770 is absolutely unfair and misleading and wrong.

3771 We have enough to do to correct the problems without
3772 politicizing it to such an extent that we leave on the record
3773 a suggestion that someone was removed because they prosecuted
3774 a member of Congress. There is no evidence of that
3775 whatsoever.

3776 And if you are saying that a president of the United
3777 States cannot have certain emphases in his Justice Department

3778 or her Justice Department, whatever the case may be, then you
3779 are basically saying the American people have no right at
3780 election time to vote for a president who says, "I am going
3781 to have a war on drugs," or, "I am going to make sure that we
3782 secure our border," or, "I am going to emphasize something
3783 else."

3784 Because if you have ever been a prosecutor, you know you
3785 can't prosecute everything. You have to establish
3786 priorities. And those are the decisions upon which people
3787 make their judgments in a political context.

3788 And to suggest that the American people have no right to
3789 express that through their vote with the president is just
3790 wrong.

3791 Secondly, I am very concerned that are moving with such
3792 dispatch in this particular matter. We have realized in the
3793 past, on this committee, that we made a major error when we
3794 established a law that allowed for the creation of private
3795 counsel or private prosecutors, special prosecutors. We
3796 learned to our dismay that we had made a mistake there.

3797 Special prosecutors have virtually no restrictions
3798 whatsoever, and, in essence, we may be, by other means, by
3799 this law, creating a special prosecutor statute, because it
3800 requires these decisions to be made by judges now, and I
3801 think that raises a legitimate concern of the separation of
3802 powers.

3803 Now, I am not sure where we would come out ultimately on
3804 this, but for us to have this at this point without any
3805 opportunity to really look at that question, I think, is
3806 inappropriate.

3807 And while I understand how the administration has put
3808 itself in a box, how its indefensible in some of the stupid
3809 comments that have been made from the Justice Department with
3810 this, while I am offended by the revelations of the
3811 incompetent handling of NSLs, and I haven't heard a
3812 legitimate reason why such incompetency has existed, I just
3813 happen to think that because the Justice Department screws
3814 things up should not require us to screw things up here.

3815 We ought to take the time necessary to look at this
3816 issue, make the proper judgment—

3817 Chairman Conyers. The gentleman's time has expired.

3818 Mr. Lungren. —from a constitutional measure and then
3819 vote.

3820 Chairman Conyers. I thank the gentleman.

3821 And I turn now to the gentleman from California, the
3822 other one, Mr. Berman, and recognize him for 5 minutes.

3823 Mr. Berman. I thank the gentleman.

3824 Let's get a few things on the record.

3825 Number one, until my friend from California spoke, the
3826 debate was not heated.

3827 Secondly—

3828 Mr. Lungren. Would the gentleman yield on that?

3829 Mr. Berman. Let me just finish my point so you can go
3830 back at all of them together.

3831 Secondly, saying some stupid comments is much too kind a
3832 comment with respect to the Justice Department. We were told
3833 by the attorney general, politics never had anything to do
3834 with any of the decisions in this case. We were told there
3835 was no contact between the White House and the Justice
3836 Department on these issues.

3837 You talk about rushing to a judgment, we were told that
3838 an employee of the Justice Department who used to work for
3839 this committee, a nice guy, decided on his own to change the
3840 law and gave the amendment to a staffer, I think in the
3841 Senate, I am not totally sure about that, to stick into the
3842 final conference report on the revisions of the Patriot Act
3843 without every consulting with anyone else in the Justice
3844 Department, and that that is how the change was made.

3845 And all we are doing is going back to the law as it
3846 existed when the gentleman was a member of the Judiciary
3847 Committee and the attorney general, that irresponsible wild
3848 man, named Ed Meese agreed to move from a process by which
3849 the district court put in all interim U.S. attorneys to a
3850 process by which the attorney general could name interim U.S.
3851 attorneys for 120 days, of which a huge percentage are always
3852 reappointed by the district court on a regular basis.

3853 It is not moving ahead without thinking to go back to
3854 what the law was before this unseemly, inappropriate and
3855 sneaky change in the law occurred a year ago, last spring.
3856 It is the right way to move.

3857 So as the ranking member said, at that point, if we find
3858 and work together collaboratively to find a better way to
3859 deal with the issue of interim U.S. attorneys, we should do
3860 it.

3861 But the first thing we should do is we should get the
3862 blemish of this Congress passing a provision that no one knew
3863 about because of the sneaky way it was put in, without
3864 leaders in the Justice Department knowing about it, the first
3865 thing to do is to correct that blemish and to erase that
3866 blemish, and that is all we are doing here.

3867 This bill does not accuse anybody of anything, but we
3868 know that a number of statements that have been made very
3869 quickly have turned out to be incorrect by virtue of evidence
3870 that has since been revealed. Let's clean up this wrongdoing
3871 now by going back to the status quo.

3872 Mr. Lungren. Would the gentleman yield?

3873 Mr. Berman. I would be happy to yield, first, to the
3874 gentleman from California.

3875 Mr. Lungren. Well, I think it is heated when a member
3876 of this body, a member of this committee, makes a statement
3877 that U.S. attorneys were removed because they were doing

3878 investigations about members of Congress. I don't see any
3879 justification for that.

3880 When a member talks about torture, when a member
3881 suggests such abuses of the law, all in a single statement in
3882 the debate on this, I call that heated rhetoric. And I also
3883 think to allow that to lay on the record without some
3884 question is irresponsible on my part.

3885 Mr. Nadler. Would the gentleman yield?

3886 Mr. Lungren. Secondly—

3887 Mr. Nadler. Would the gentleman yield on that point?

3888 Mr. Lungren. Let me just say this to the gentleman on
3889 his second point. I am not going to be here to defend what
3890 happens on the Senate side. If the Senate works with respect
3891 to their staffers, allowing them that kind of leeway,
3892 frankly, they ought to be chastised. All I am saying is, as
3893 we look at this area—

3894 Mr. Berman. We changed the law. That is both houses.

3895 Mr. Lungren. Oh, I understand that. I understand that.

3896 As we look at this area, I am concerned about a
3897 constitutional issue with respect to separation of powers by
3898 having judges make appointments.

3899 Mr. Berman. Well, can I reclaim my time?

3900 Mr. Lungren. Certainly.

3901 Mr. Berman. I understand being concerned about
3902 separation of powers on a policy basis. There is no serious

3903 argument that a procedure which allowed district judges to
3904 appoint interim U.S. attorneys just as a matter of custom
3905 until 1966 from the Civil War and that from 1966 to 1986
3906 allowed them—

3907 Chairman Conyers. The time of the gentleman has
3908 expired.

3909 Mr. Berman. I ask unanimous consent for 2 additional
3910 minutes, if I may.

3911 Chairman Conyers. Without objection.

3912 Mr. Berman. From 1966 to 1986, we codified that change,
3913 and from 1986 till last spring, we allowed the attorney
3914 general to make the initial interim U.S. attorney
3915 appointments. And where court cases have repeatedly said
3916 that U.S. attorneys are inferior officers and the
3917 Constitution clearly gives the Congress the power to allow
3918 the judiciary to make appointments in this area, there is no
3919 serious constitutional argument.

3920 If you want to argue on policy separation of powers, it
3921 is an interesting argument, but it is not a constitutional
3922 one.

3923 Mr. Cohen. Mr. Chairman?

3924 Mr. Berman. I yield to the gentleman from Tennessee.

3925 Mr. Cohen. Thank you, sir.

3926 Mr. Chairman, I would just like to comment that, first,
3927 there is an expression in Tennessee and other places, "If it

3928 ain't broke, you don't fix it." And I don't know that there
3929 was ever a problem with this policy of having the judges make
3930 the appointments. In fact the judges have done good jobs.

3931 Secondly, in Tennessee, we have a long history, since
3932 1868, of our state attorney generals appointed by the Supreme
3933 Court, and Tennessee has had a long history of great attorney
3934 generals—Bill Leech, Mike Cody, Charles Burson and others.
3935 Democrats and Republicans respect that office and know it has
3936 been above politics and done a great job. And Tennessee's
3937 attorney generals have always been highly regarded, and they
3938 are appointed by our Supreme Court. It is a unique system
3939 but it works. So if ain't broke, don't fix it.

3940 And another expression we have got is, "If you find
3941 yourself in a hole, stop digging." I would suggest that to
3942 my colleagues on the other side of the aisle.

3943 Chairman Conyers. The time of the gentleman has
3944 expired.

3945 Mr. Sensenbrenner. Mr. Chairman?

3946 Chairman Conyers. The gentleman from Wisconsin is
3947 recognized.

3948 Mr. Sensenbrenner. Mr. Chairman, I move to strike the
3949 last word.

3950 Chairman Conyers. Without objection.

3951 Mr. Sensenbrenner. Mr. Chairman, I would just like to
3952 point out the difference between how this committee appears

3953 to be dealing with this issue and what happened back in 1993
3954 when Webster Hubbell and Janet Reno fired not eight but all
3955 93 U.S. attorneys, all in one fell swoop.

3956 At that point in time, there was no response by the
3957 Congress or at any future time during the Clinton
3958 administration to change the law relative to the appointment
3959 of United States attorneys. They are political appointments.
3960 They do reflect the priorities of whomever is the president
3961 of the United States, and we ought to respect that.

3962 Now, contrast the fact that there was a respecting of
3963 the constitutional authority of Hubbell and Reno to fire all
3964 93 U.S. attorneys with no congressional response, to what we
3965 heard from the gentleman from New York who told us, "Well, we
3966 have got to pass this bill now, but if there is another
3967 president elected, perhaps of another party, then we can
3968 change the law back and give the new president and the new
3969 attorney general freedom to do what it wants.

3970 You are the ones that are making this partisan, and you
3971 ought to step back and think about this.

3972 Mr. Nadler. Point of personal privilege.

3973 Point of personal privilege, Mr. Chairman.

3974 Mr. Sensenbrenner. I do not yield. You do not—

3975 Mr. Nadler. I said, point of personal privilege.

3976 Mr. Sensenbrenner. I did not yield for that purpose. I
3977 have the floor.

3978 Ms. Jackson Lee. Will the gentleman yield?

3979 Mr. Sensenbrenner. I do not yield.

3980 Now, getting back to the constitutional issue, in 1976,
3981 Buckley v. Valeo made it quite clear that the appointments
3982 clause of the Constitution permits the president, and only
3983 the president, with the advice and consent of the Senate, to
3984 appoint officers to exercise executive authority.

3985 United States attorneys enforce the law. They exercise
3986 executive authority. And this committee and this Congress do
3987 not have the constitutional power to determine how executive
3988 branch officials are appointed. And the Judiciary, under the
3989 Constitution, can no more exercise executive power than the
3990 legislative branch can exercise executive power.

3991 Now, I am afraid that if we go ahead and do what is
3992 being proposed in this bill, you are going to see a
3993 constitutional challenge to the appointment of an interim
3994 U.S. attorney by somebody who wishes to cite the Buckley
3995 case.

3996 Now, maybe the Supreme Court will declare that type of
3997 an appointment a violation of separation of powers, maybe it
3998 won't, but I don't think that the current ham-handed display
3999 that the Justice Department has put on should allow us to
4000 ignore the Constitution.

4001 Now, getting to the point of the change in the law and
4002 the Patriot Act, this issue was brought up in staff

4003 discussions in the Conference Committee and the Patriot Act
4004 in the fall of 2005 and the spring of 2006. When Mr.
4005 Moschella brought this proposal to the conference, there were
4006 staffers from Senator Leahy, Senator Kennedy and Senator
4007 Specter in the room as well as staff that I dispatched over
4008 there, as the chair of the committee at the time.

4009 This wasn't done in the middle of the night. There were
4010 staffers of at least two Democratic senators that were
4011 present in the room. They had no objection to it, and that
4012 is how it got into the Patriot Act reauthorization.

4013 This was done to constitutionalize clearly what happens
4014 when a United States attorney resigns or is replaced. And it
4015 puts the authority in an executive branch official who is
4016 designated for that purpose by the president of the United
4017 States who, under the Buckley case, is the only official
4018 under the Constitution that can appoint or nominate executive
4019 branch officials.

4020 I yield back the balance of my time.

4021 Chairman Conyers. I recognize the gentleman from
4022 Alabama first, Mr. Davis, and then I will recognize Mr.
4023 Schiff.

4024 Mr. Davis. Thank you, Mr. Chairman.

4025 Chairman Conyers. After, we will go to the other side.

4026 Mr. Davis. Thank you, Mr. Chairman.

4027 Let me, even though I am not sure it is, frankly, at

4028 issue in this amendment, I do want to respond to one comment
4029 from my friend from Wisconsin, Mr. Sensenbrenner.

4030 He made a point that we have seen in the press every now
4031 and then in the last few days that, well, this is something
4032 that Bill Clinton did. President Clinton replaced all 93
4033 U.S. attorneys in 1993. This is the difference, I would
4034 asset to my colleague today: President Clinton decided, as a
4035 new president, that he was going to have a new team of U.S.
4036 attorneys.

4037 Now, if you look at the next 8 years of the Clinton
4038 administration, again, I would yield time to any member of
4039 the opposition who can cite any instances of U.S. attorneys
4040 being terminated other than, in a few instances, of
4041 disciplinary issues that I can recall. I can recall, I
4042 believe, three.

4043 No one can cite an instance where U.S. attorneys were
4044 terminated because of a "policy dispute." So that is not the
4045 relevant comparison. In fact, it is a comparison that I
4046 think doesn't inform the debate.

4047 Mr. Lungren. Would the gentleman yield on that point?

4048 Mr. Davis. Not until I finish my point.

4049 Mr. Lungren. Okay.

4050 Mr. Davis. It is a comparison that doesn't inform the
4051 debate, because it compares one basket of apples and one
4052 basket of oranges.

4053 In my opinion, the relevant question is, even in the
4054 first Bush term, how many actual instances have we had of
4055 U.S. attorneys being terminated because of policy
4056 differences?

4057 If look at the Bush I term from 1989 to 1993, if you
4058 look at the Reagan term, 1981 to 1989, I would submit that if
4059 you take all of those instances, including two Republican
4060 presidents, you will find a very limited number of
4061 terminations. That is what is at issue, not appointments but
4062 terminations.

4063 And I yield back.

4064 Chairman Conyers. Does anyone seek recognition?

4065 The gentleman from California, Mr. Schiff?

4066 Mr. Schiff. I thank the chairman for yielding.

4067 As the chair is aware, the colleague to my right and I
4068 were close assistants to one of those inferior officers that
4069 was referred to earlier, which we called U.S. attorneys at
4070 the time. We had both bemoaned some of the cultural changes
4071 that we have seen and that have come to light over the last
4072 several weeks in the Justice Department.

4073 The Justice Department, I think proudly in the past, has
4074 enjoyed a culture where United States attorneys, although
4075 they were political appointments, were not political hacks.
4076 They were not political cronies. They were professionals who
4077 were given their job period of time, who did their jobs

4078 diligently, who were at the beck and call of a political
4079 agenda over the White House or anyone else.

4080 That was a culture that we all admired. It was what
4081 drew us to the office. It is one that we do not want to see
4082 eviscerated. There are a great many and the vast majority of
4083 U.S. attorneys around the country who do their jobs
4084 extraordinary well and with great professionalism, and the
4085 idea that some of them may have been not only fired but had
4086 their reputations suffer for reasons that were political in
4087 nature or expedient or to benefit the interest of patronage
4088 is extremely disturbing to us.

4089 And while a lot of the allegations have yet to be
4090 resolved, there are some things that are without question.
4091 First, as Mr. Berman pointed out to those who would complain
4092 this hasn't gone through the subcommittee, the change that
4093 was made never went through any committee, except the
4094 Conference Committee. The change that we are reversing here
4095 never had a hearing in the Judiciary Committee; it was
4096 plunked in, in the middle of nigh perhaps, in the Conference
4097 Committee, so we are correcting that error.

4098 Second, there is no question that this authority has
4099 been badly abused, and if you have any question about that,
4100 re-read the e-mail from Kyle Sampson of the Justice
4101 Department to the White House and other people in the Justice
4102 Department with respect to one of the most egregious

4103 terminations in Arkansas, when he talked about how they ought
4104 to defer any problems this would create and said, "I think we
4105 should gum this to death. Ask the senators to give Tim,"—the
4106 one they wanted to replace, "a chance to meet with him, give
4107 him some time in office to see how he performs, et cetera."

4108 "If they ultimately say, 'no, never,' and the longer we
4109 can forestall, the better, then we can tell them we will look
4110 for other candidates. Ask them for recommendations,
4111 interview their candidates and otherwise run out the clock.
4112 All of this should be done in good faith, of course." You
4113 have got to love that last line, "All of this should be done
4114 in good faith, of course."

4115 None of this was done in good faith. We know that.
4116 That is beyond dispute. How can we countenance that kind of
4117 behavior. That kind of behavior was only possible because of
4118 this in the middle of Conference Committee, without scrutiny
4119 change to the law.

4120 Mr. Berman's bill, Ms. Sanchez's bill would change that.
4121 It would restore the law to the way it was before, and I hope
4122 it will take a step toward restoring the culture that those
4123 of us that were in the Justice Department so admired by the
4124 time that we were there and want to see restored.

4125 I urge the committee to pass this bill, and I thank my
4126 colleagues for offering it.

4127 Chairman Conyers. Without rushing any of the members

4128 here, this is an important debate, we know that additional
4129 statements will be submitted, but if there are no other
4130 persons seeking recognition—

4131 Mr. Chabot. Mr. Chairman?

4132 Chairman Conyers. Who seeks—

4133 Mr. Chabot. Mr. Chairman, I hesitate to do this, but—

4134 Chairman Conyers. Mr. Chabot?

4135 Mr. Chabot. —move to strike the last word. I yield to
4136 the gentleman from California, Mr. Lungren.

4137 Mr. Lungren. Maybe we are trying to be Pollyannas about
4138 this, but if anybody with a straight face can say we have not
4139 had U.S. attorneys replaced in the past during the term of a
4140 president, I would like to talk with them.

4141 While I was attorney general of the state—

4142 Mr. Davis. Will the gentleman yield?

4143 Mr. Lungren. I will in a second. I will try and yield,
4144 as I wished you had yielded to me.

4145 When I was attorney general in California, I recall
4146 replacement of at least one U.S. attorney during a Democratic
4147 administration. The difference here was, this administration
4148 did all eight together and had a lot of questions being
4149 asked, and when backed up against the wall they defended it
4150 by saying stupid things, such as, well, it was their
4151 performance. And then, of course, you get those people whose
4152 now reputations have been sullied who are going to defend

4153 themselves.

4154 In the past, where I have observed this in a number of
4155 different situations, the administration changes a U.S.
4156 attorney, no one really says much about it, everybody says
4157 what a great job they did, but yet they are replaced.

4158 And I am not going to refer to specific names, but there
4159 are cases that have occurred that I am sure others are aware
4160 of where a decision was made by the administration in charge
4161 sometimes for "performance reasons," otherwise because they
4162 wanted them to have stronger emphasis in certain areas,
4163 whether it was drugs or whether it was public corruption or
4164 whether it was certain types enforcement of the immigration
4165 laws where those changes took place.

4166 And I am surprised a little bit by my friend from
4167 Alabama, to whom I will yield in just a moment, who said,
4168 "That, well, it is always done at the beginning of an
4169 administration, but this president did it somewhere"—I don't
4170 think the Constitution says only new presidents can do it. I
4171 don't think it is conditioned on how many months the
4172 president has in office.

4173 Mr. Davis. Will the gentleman yield?

4174 LUNGREN; I will be happy to yield, surely.

4175 Mr. Davis. Mr. Lungren, this is the point that I made.
4176 There is no question that U.S. attorneys often leave in
4177 midstream but I would submit if you look at the record, it is

4178 because they choose to run for office, they get appointed to
4179 a U.S. judgeship or they voluntarily go into the private
4180 sector. I would submit that if-

4181 Mr. Lungren. I will just take back my time, because I
4182 am telling you that I know of specific instances of where
4183 people left, and as far as the public is concerned they left-

4184 Mr. Davis. Terminations for policy differences, Mr.
4185 Lungren? How many of those can you site? Terminations for
4186 policy differences. Look at what the attorney general said
4187 was the basis.

4188 Mr. Lungren. Sometimes the question is whether it is
4189 policy or because the ineffectualness of a particular-

4190 Mr. Davis. I am following the attorney general. The
4191 attorney general said termination for policy differences.

4192 Mr. Lungren. Mr. Chairman, it is my time, and I haven't
4193 yielded to the gentleman at this point. I have yielded to
4194 the gentleman from California.

4195 I mean, my point is, in the past, the practice has been,
4196 frankly, to paper over it to the public. I mean, that is the
4197 fact. I have seen U.S. attorneys change in many, many
4198 different administrations, and normally it is never brought
4199 up about performance or anything else. They normally go to
4200 another job. In some cases, you are right, they do leave to
4201 run for another office, but in other cases, they go back to
4202 the private sector.

4203 Mr. Davis. Mr. Lungren, by implication, you are
4204 smearing more people with that suggestion.

4205 Chairman Conyers. Yes. The gentleman from California
4206 controls the time.

4207 Mr. Chabot. And I would have been happy to yield to the
4208 gentleman still would if I have additional time, but the
4209 gentleman keeps interrupting.

4210 Mr. Davis. I am just responding to the observation. I
4211 apologize.

4212 Mr. Chabot. That is not the rules. That is not the
4213 rules.

4214 Mr. Davis. Will the gentleman yield?

4215 Chairman Conyers. Wait, wait. Could I ask the
4216 gentleman from Alabama to restrain himself, because we only
4217 have 1 minute and 10 seconds left. I am not inclined to
4218 yield any additional time. This is our last amendment on the
4219 last bill, and there are people who now are put into very
4220 serious time circumstances.

4221 Excuse the interruption.

4222 Mr. Lungren. Well, the point I was trying to make is
4223 that if we have our eyes wide open, we know what practice has
4224 been in many different administrations, Democrat and
4225 Republican. If there is a suggestion the president of the
4226 United States to be a political unit in this whole process
4227 and that U.S. attorneys are to have more discretion than any

4228 other executive officer in the entire United States federal
4229 government, that argument ought to be made.

4230 But if in fact we still believe that we are a people who
4231 are self-governed, we have the right to elect a president and
4232 expect him or her to make those decisions and not have him or
4233 her handicapped by some concept that there is a spirit of the
4234 immaculate conception when one has become a U.S. attorney and
4235 that we are not able to interfere with that.

4236 And with that, I thank the gentleman for yielding the
4237 time under the rules of the committee.

4238 Chairman Conyers. The gentleman's time has expired.

4239 Mr. Chabot. Thank you, Mr. Chairman. I would ask
4240 unanimous consent for an additional 2 minutes so I can yield
4241 to the gentleman—

4242 Chairman Conyers. No, I have objected. I have
4243 indicated that I am not inclined to give additional time. I
4244 am trying to bring the discussion on this amendment, offered
4245 by the gentlelady from California, to a close so that we can
4246 determine whether we should report the bill or not.

4247 Mr. Smith. Mr. Chairman, I have a unanimous consent
4248 request.

4249 Chairman Conyers. Your unanimous consent request?

4250 Mr. Smith. This is to put an editorial from the Wall
4251 Street Journal—

4252 Chairman Conyers. Without objection—

4253 Mr. Smith. -into the record. Thank you.

4254 Chairman Conyers. -it will be entered.

4255 [The article follows:]

4256 ***** COMMITTEE INSERT *****

4257 Chairman Conyers. Ladies and gentlemen—

4258 Mr. Issa. Mr. Chairman?

4259 Chairman Conyers. Ladies and gentlemen, we are now at
4260 this point. The chair wishes to raise the question on this
4261 amendment—

4262 Mr. Issa. Mr. Chairman? Mr. Chairman?

4263 Chairman Conyers. —offered by the gentlelady—

4264 Mr. Issa. I promise to use less than 5 minutes, but I
4265 would like to strike the last word on this.

4266 Chairman Conyers. Your cooperation has been greatly
4267 appreciated up until now. I will recognize the gentleman,
4268 but this may open the door to 24 others.

4269 Mr. Issa. Mr. Chairman, I will be very brief. I have
4270 not been recognized on this piece of legislation at all. I
4271 want to be heard in support of the fact that sometimes an
4272 imperfect solution that we could talk about what should have,
4273 would have or could have been done becomes necessary.

4274 And, in brief, even though I have been an advocate for
4275 some U.S. attorney, one U.S. attorney's, in particular,
4276 performance to change, and I have done it before this
4277 committee, the nature of the firing, the nature of the false—
4278 not by the people who gave it but of the testimony that
4279 proved to be less than complete before this committee—and the
4280 e-mails which I have read, which talk in terms of potentially
4281 utilizing this new Patriot Act power in order to circumvent a

4282 process, puts us in a position in which I believe all of us
4283 must act now to put back the status quo, and I hope we will
4284 do that expeditiously.

4285 And then I would hope, Mr. Chairman, with your
4286 indulgence, that we would in fact look at a hybrid or better
4287 way for future presidents to deal with a vacancy that occurs.
4288 But I think all of us have to look at the obligation of this
4289 body and our relationship with the Office of the Attorney
4290 General, which now lacks trust because of a former employee
4291 and perhaps others.

4292 With that, I yield back. Thank you, Mr. Chairman.

4293 Chairman Conyers. I thank the gentleman so much.

4294 The question occurs on the Sanchez amendment.

4295 All those in favor will signify by saying, "aye."

4296 All those opposed, signify by saying, "no."

4297 In the opinion of the chair, the eyes have it, and the
4298 amendment is agreed to.

4299 Mr. Berman. Mr. Chairman?

4300 Chairman Conyers. Mr. Berman has a unanimous consent
4301 request.

4302 Mr. Berman. Yes. I guess my question is that the
4303 record reflect—

4304 Chairman Conyers. Do you have a unanimous consent
4305 request?

4306 Mr. Berman. My unanimous consent request is the record

4307 reflect that Ms. Sheila Jackson Lee had an amendment for
4308 certain findings related to the U.S. attorneys as interior
4309 officers that the authority in the U.S. attorney general
4310 appointed a U.S. attorney to serve an indefinite term under-
4311 Chairman Conyers. Without objection, it will be
4312 included in the record.

4313 [The amendment by Ms. Jackson Lee follows:]

4314 ***** INSERT *****

4315 Mr. Berman. Very good. That is what I want.

4316 Chairman Conyers. All right. A reporting quorum being
4317 present, the question is on reporting the bill favorably to
4318 the House.

4319 All those in favor will signify by saying, "aye."

4320 Those opposed, signify by saying, "no."

4321 In the opinion of the chair, the ayes have it. The ayes
4322 have it, and the bill, H.R. 580, is ordered reported
4323 favorably to the House.

4324 The last item is to ratify a new subcommittee
4325 appointment of our full committee ranking minority member,
4326 Lamar Smith, who will join the Courts Subcommittee.

4327 Without objection, the chair is authorized to add Mr.
4328 Smith to the subcommittee roster.

4329 And, without objection, the staff is authorized to make
4330 technical and conforming changes to all matters by the
4331 committee today.

4332 All members will have 2 days to submit any additional
4333 dissenting or other kinds of views.

4334 Pursuant to the Committee Rule, 2(j), the chair is
4335 authorized to offer such motions as may be necessary in the
4336 House to go to conference with the Senate on any bill the
4337 committee has ordered favorably reported today.

4338 There being no further business before the committee,
4339 the meeting is adjourned.

4340 [Whereupon, at 3:49 p.m., the committee was adjourned.]