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2 MARKUP OF H.R. 3570, THE "SATELLITE HOME
3 VIEWER UPDATE AND REAUTHORIZATION ACT";
4 H.R. 233, THE "RAILROAD ANTITRUST ENFORCEMENT
5 ACT OF 2009";
6 AND H.R. 3290, THE "SEPTEMBER 11 FAMILY
7 HUMANITARIAN RELIEF AND PATRIOTISM ACT OF 2009"
8 Wednesday, September 16, 2009
9 House of Representatives,
10 Committee on the Judiciary,
11 Washington, D.C.

12 The committee met, pursuant to call, at 10:10 a.m., in Room
13 2141, Rayburn House Office Building, Hon. John Conyers
14 [chairman of the committee] presiding.

15 Present: Representatives Conyers, Berman, Boucher,
16 Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt,
17 Wexler, Cohen, Johnson, Pierluisi, Quigley, Gutierrez,
18 Baldwin, Weiner, Schiff, Sanchez, Wasserman Schultz, Maffei,
19 Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren,
20 Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz,
21 Rooney, and Harper.

22 Staff present: Perry Apelbaum, Staff Director/Chief
23 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;
24 George Slover, Legislative Counsel/Parliamentarian; Sean
25 McLaughlin, Minority Chief of Staff/General Counsel; Allison
26 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and
27 Anita L. Johnson, Clerk.

28 Chairman Conyers. [Presiding.] The committee will come
29 to order.

30 Pursuant to notice, I now call up H.R. 3570, Satellite
31 Home Viewer Update and Reauthorization Act, for purposes of
32 markup and invite the clerk to report the bill.

33 The Clerk. H.R. 3570, a bill to amend title 17 United
34 States code to reauthorize the satellite statutory license to
35 conform the satellite and cable statutory licenses to all-
36 digital transmissions and for other purposes.

37 [The bill follows:]

38 ***** INSERT *****

39 Chairman Conyers. Without objection, the bill is
40 considered as read and open for amendment at any point. And
41 I would start out—the clerk—since there isn't a quorum, or
42 perhaps an insufficient number of members, I call for a
43 quorum, roll call, please.

44 The Clerk. Mr. Conyers?

45 Chairman Conyers. Present.

46 The Clerk. Mr. Berman?

47 [No response.]

48 Mr. Boucher?

49 [No response.]

50 Mr. Nadler?

51 [No response.]

52 Mr. Scott?

53 [No response.]

54 Mr. Watt?

55 [No response.]

56 Ms. Lofgren?

57 [No response.]

58 Ms. Jackson Lee?

59 [No response.]

60 Ms. Waters?

61 [No response.]

62 Mr. Watt is present.

63 Ms. Waters?

64 [No response.]
65 Mr. Delahunt?
66 [No response.]
67 Mr. Wexler?
68 [No response.]
69 Mr. Cohen?
70 [No response.]
71 Mr. Johnson?
72 [No response.]
73 Mr. Pierluisi?
74 [No response.]
75 Mr. Quigley?
76 [No response.]
77 Mr. Gutierrez?
78 [No response.]
79 Mr. Sherman?
80 [No response.]
81 Ms. Baldwin?
82 [No response.]
83 Mr. Gonzalez?
84 [No response.]
85 Mr. Weiner?
86 [No response.]
87 Mr. Schiff?
88 [No response.]

89 Ms. Sanchez?
90 [No response.]
91 Ms. Wasserman Schultz?
92 [No response.]
93 Mr. Maffei?
94 [No response.]
95 Mr. Smith?
96 [No response.]
97 Mr. Goodlatte?
98 [No response.]
99 Mr. Sensenbrenner?
100 [No response.]
101 Mr. Coble?
102 [No response.]
103 Mr. Gallegly?
104 [No response.]
105 Mr. Lungren?
106 [No response.]
107 Mr. Issa?
108 [No response.]
109 Mr. Forbes?
110 [No response.]
111 Mr. King?
112 [No response.]
113 Mr. Franks?

114 [No response.]
115 Mr. Gohmert?
116 [No response.]
117 Mr. Jordan?
118 [No response.]
119 Mr. Poe?
120 [No response.]
121 Mr. Chaffetz?
122 [No response.]
123 Mr. Rooney?
124 [No response.]
125 Mr. Harper?
126 [No response.]
127 Chairman Conyers. Clerk will report.
128 The Clerk. Mr. Chairman, 13 members responded to the
129 roll call.
130 Chairman Conyers. Ah, yes. Mr. Schiff?
131 Mr. Delahunt?
132 Mr. Delahunt. Present.
133 Chairman Conyers. Mr. King?
134 Mr. Pierluisi?
135 Mr. Pierluisi. Present.
136 Chairman Conyers. Ms. Baldwin?
137 Ms. Baldwin. Here.
138 Chairman Conyers. Mr. Coble?

139 Mr. Coble. Present.

140 Chairman Conyers. Clerk will report.

141 Mr. Gallegly?

142 Clerk will report.

143 The Clerk. -have responded to the quorum call.

144 Chairman Conyers. How many?

145 The Clerk. Twenty.

146 Chairman Conyers. A working quorum is present.

147 Ladies and gentlemen of the committee, this is an
148 extremely important intellectual property bill which extends
149 the compulsory license for satellite providers for another 5
150 years, as the committee has done in each of the last several
151 reauthorization cycles, and also makes a number of updates
152 and clarifications to the law itself.

153 We have a detailed section-by-section summary that we
154 all have. The main highlights simply are provide an audit
155 right, so artists can be sure that they are being fairly
156 compensated, an updating the licenses to reflect the national
157 digital television transition, meeting the challenges of a
158 rapidly evolving technology to provide for the quickly
159 growing practice of multicasting, resolving the phantom
160 signal problem that has caused instability and confusion for
161 the cable and content industries.

162 And the result before you today is a consensus bill
163 among the industry players, the satellite and cable

164 companies, the broadcasters, studios, and consumer groups.
165 It has been a very high-stakes series of negotiations between
166 all of the above parties, and I wanted to compliment both
167 staffs for the incredibly effective negotiations and
168 discussions that have taken place.

169 We have been working on this for a year. We had
170 hearings. We have shared drafts back and forth almost
171 incessantly. And we laid out a blueprint for action with the
172 ranking member and his colleagues—local-to-local service into
173 an all 210 markets with the ranking member. And I thank him
174 for the time that he has put in behind the scenes, numberless
175 hours, and we still seek consensus, finishing consensus among
176 all interested parties and continue to share language and
177 solicit input from each and every one of the members of the
178 committee as soon as we get through with what we are doing
179 now.

180 We have to consider the fact that we have to go to the
181 floor and into conference.

182 A special thanks to Rick Boucher, his invaluable
183 contributions as not only senior member of this committee,
184 but also as the chair of the Telecommunications Subcommittee
185 on the Energy and Commerce Committee.

186 Now, we haven't addressed all issues for all time. The
187 need for varying licenses, the method of calculating wisely,
188 the need for compulsory licenses at all are all still vital

189 questions. However, given our time constraints, I believe we
190 have done well, and I am very proud of the agreements and the
191 restraints that have come forward from my colleagues on both
192 sides of this committee.

193 So I thank you all and would now turn to Lamar Smith,
194 who has been lauded in the Supreme Court by the chief justice
195 and me, so that we recognize him now for his statement on
196 this subject.

197 Mr. Smith. Thank you, Mr. Chairman. And I am glad we
198 agree on this bill, and thank you for those compliments.

199 The satellite bill before us today is an important one.
200 It affects countless industries and literally every American,
201 regardless of whether or not they subscribe to paid
202 television. More and more choose to rely on over-the-air
203 digital programming from local broadcasters and new licensed
204 Internet distribution models for their entertainment and
205 information.

206 With the advent of digital television, America's
207 community broadcasters are able to offer a greater variety of
208 programming free and over-the-air. That is a good thing. It
209 is something this committee ought to encourage.

210 Historically, this committee has been at the forefront
211 of efforts to strengthen the relationship between networks
212 and their local communities. The men and women who work in
213 America's copyright-dependent industries also confront

214 unprecedented challenges and unfair competition, and they
215 can't make a living or continue to produce high-quality works
216 when others are able to appropriate their efforts for little
217 or no value.

218 We understand it is expensive to innovate and create,
219 but cheap to copy and distribute. We take seriously our
220 constitutional imperative, which is found in Article I,
221 Section 8 of the Constitution.

222 For more than 2 decades, Congress has enacted
223 legislation to enable satellite carriers, such as DirecTV and
224 Dish, to appropriate the property of others and retransmit it
225 to subscribers who otherwise can't receive it through the
226 air. In return, these providers are required to pay
227 statutory royalties and honor the conditions of the
228 compulsory license. That is not too much to ask, especially
229 in return for the enormous benefits these providers reap by
230 utilizing a below-market government-dictated license.

231 There are many provisions in the chairman's satellite
232 legislation that I support, and I appreciate our staff and
233 are working together. I do have a serious reservation about
234 the committee's restoring the ability of Dish Network to
235 again benefit from the distant-signal programming license in
236 the copyright act.

237 The decision to legislatively overturn the court-ordered
238 permanent injunction that prohibits Dish from exploiting the

239 distant-signal license is something I don't understand.

240 I am not aware of any precedent for Congress to step in
241 and order a federal court to relieve a law-breaker of this
242 magnitude from the foreseeable consequence of their unlawful
243 conduct.

244 I will not enumerate the countless times Dish Network
245 and its affiliated corporations have been found liable for
246 willfully and systemically violating the rights of others,
247 except to note two passages from the unanimous decision of
248 the U.S. Court of Appeals for the 11th Circuit in its ruling
249 in CBS Broadcasting v. EchoStar Communications Corp.

250 In that decision, the court wrote, "EchoStar has
251 disregarded the limitations of its statutory license and
252 sought to avoid its obligations under the law at every turn."
253 And furthermore, "As if the magnitude of its ineligible
254 subscriber base were insufficiently disconcerting, we have
255 found no indication that EchoStar was ever interested in
256 complying with the act. Indeed, we seem to have discerned a
257 pattern and practice of violating the act in every way
258 imaginable."

259 In sum, I want to again commend the chairman for his
260 desire to expand consumer choice and to solve longstanding
261 technology issues. I do think this is one outstanding issue
262 that I would like to continue to work with the chairman on
263 before we go to the House floor.

264 All that said, Mr. Chairman, despite that provision, the
265 rest of the bill is important enough to Americans, both
266 viewers and creators of programming, to justify our support.
267 And I will yield back.

268 Chairman Conyers. Thank you so much.

269 Mr. Smith. Mr. Chairman, I have a minute left. I will
270 yield to the gentleman from Virginia, Mr. Goodlatte.

271 Mr. Goodlatte. If the chairman will, I have just a very
272 short statement. I want to commend both the chairman and the
273 ranking member for working together to resolve some of the
274 problems with this bill, and I want to say that, while I am
275 not—I am supportive of the legislation.

276 It is not a perfect bill, but I am very pleased that the
277 bill fixes a problem that many short markets face across the
278 country. These are television markets where not all of the
279 television stations—all of the major networks are present
280 within the market.

281 In markets where there is not a full complement of local
282 stations, oftentimes signals from adjoining television
283 markets bleed into the local markets. When this occurs,
284 under current law, it makes extremely difficult to bring
285 distant signals of that network into that area.

286 This bill considers consumers as served by a television
287 station only when they are served by stations within their
288 own DMA. As a result, all consumers in short markets will

289 have access to a full complement of network television
290 stations.

291 And I appreciate the chairman's work on that issue.

292 Chairman Conyers. Thank you very much.

293 Before we—we are trying to finish this bill before
294 members have to leave for their various caucuses. And the
295 only person I have who wants to introduce an amendment is
296 Darrell Issa, whom I will recognize shortly.

297 But I want to yield a couple of minutes to Rick Boucher
298 for the work that he has done in this matter, working on two
299 different committees. The gentleman is recognized.

300 Mr. Boucher. Well, thank you very much, Mr. Chairman.
301 And I want to compliment you and your staff for the
302 outstanding work that you have done on this measure. I am
303 pleased to be a co-sponsor of it and encourage its reporting
304 by the full committee.

305 And I want to thank you for the coordination and the
306 work that you have done with my staff and with me, as we have
307 sought to bring our separate bills reauthorizing the
308 Satellite Home Viewer Act through the Judiciary Committee and
309 also through the Energy and Commerce Committee.

310 I am going to take just a moment this morning to comment
311 on several of the key provisions, the most important of which
312 I believe to be accepting a very generous offer that has been
313 made by EchoStar to serve all 210 local television markets

314 across the United States.

315 At the present time, there are 28 local markets. They
316 are all rural. There are lightly populated that do not have
317 local-into-local television service.

318 In these instances, the viewers in those markets are
319 either receiving the local signal across the air, by means of
320 an outdoor antenna, or they are getting distant network
321 signals imported to them from the coasts. And the principle
322 of localism truly suffers under that arrangement.

323 While these markets are lightly populated, their
324 residents want to have the same access to local-into-local
325 television service so they can receive by satellite carriage
326 the local television signals that are transmitting within
327 their market that the residents of the more populated urban
328 areas currently have.

329 And Dish Network has offered to provide that service and
330 to serve these 28 markets so that all 210 local markets
331 around the country will receive local-into-local service, if
332 it is granted the opportunity to import distant network
333 signals in those limited instances where what we have—what we
334 call short markets exist.

335 And these are markets where the full complement of
336 network stations are not found within the local market, and
337 many of these 28 unserved markets fit into that category.
338 And the carriers to date have simply not been able to make an

339 economic case to serve these markets, given that
340 circumstance.

341 So what Dish Network has promised is that it will serve
342 all of these markets if it is given the opportunity to import
343 distant network signals only to fill those gaps and serve
344 those short markets and supply the distant network in those
345 instances. That appears to me to be an outstanding offer.

346 We have accepted that in the Energy and Commerce
347 Committee, and I am very pleased that the legislation before
348 us also accepts that generous offer this morning.

349 In a number of other respects that the chairman has
350 mentioned, that Mr. Goodlatte and Mr. Smith have mentioned,
351 the principle of localism is well served in this bill, and I
352 won't repeat those, but I certainly do endorse them.

353 I will just mention one other area where a significant
354 improvement over current law is made, and that is this
355 legislation directs that the Federal Communications
356 Commission create a predictive model for digital television
357 transmissions.

358 With the transition from analog broadcasting to digital
359 broadcasting, the old predictive models to determine which
360 homes are likely to be able to receive a local television
361 signal over the air from the local station is now antiquated
362 and no longer useful.

363 And there are technical differences between digital and

364 analog transmissions that require a new predictive model.
365 The digital signal typically simply doesn't travel as far as
366 the analog signal from the same station used to travel, and
367 therefore a new methodology is needed. This bill directs the
368 FCC to create it.

369 Mr. Chairman, it is an outstanding measure. I
370 compliment you and your staff for its creation. Thank you
371 for working with us.

372 Chairman Conyers. Thank you.

373 Mr. Boucher. And I look forward to our continued work
374 together as we reconcile the two measures prior to floor
375 consideration.

376 Chairman Conyers. Thank you, Rick Boucher, for your
377 attempt at brevity.

378 Now, I am proud to recognize the chairman of the former
379 chairman of the subcommittee that this legislation came out
380 of and now full committee chairman, as everybody knows,
381 Howard Berman, for an equally short time.

382 Mr. Berman. Someone has—thank you, Mr. Chairman.
383 Someone has handed me a piece of paper which purports to be a
384 copy from the letter from the Chamber of Commerce that says
385 something, and I am asked to put it in the record, if there
386 is—

387 Chairman Conyers. Well, if you are in that much doubt
388 about it, I am not sure what we should do. You really don't

389 want to do this, do you?

390 Mr. Smith—

391 Mr. Berman. No, I—yes, I think it should go in the
392 record, whatever it says.

393 [Laughter.]

394 Chairman Conyers. I am sorry. It has already been put
395 in the record. We won't accept it.

396 Mr. Berman. All right.

397 Mr. Smith. Mr. Chairman, I always like to hear Mr.
398 Berman putting things from the Chamber of Commerce in the
399 record.

400 Chairman Conyers. Well, members on either side always
401 like to hear you putting things from the Chamber of Commerce
402 into the record.

403 Mr. Berman. And I am always pleased to please the other
404 side.

405 Mr. Chairman, may I strike the last word?

406 Chairman Conyers. Yes, sir, you may. And you are
407 recognized.

408 Mr. Berman. I thank you. And I want to congratulate
409 you and your staff for all the work in putting together the
410 reauthorization bill for the 119 license. And I intend to
411 vote for it.

412 But I do think there is an important underlying issue
413 that I would like to raise, the sense that there is something

414 that has become inevitable about reauthorizing the compulsory
415 license.

416 We asked the Copyright Office to conduct a review on the
417 various compulsory licenses, and they found the exact
418 opposite to be the case, that the public interest would be
419 best served by a permanent phase-out of the cable and
420 satellite distant compulsory licenses.

421 Whatever justification may have existed for those
422 licenses when adopted, there really is no longer a
423 justifiable reason that the cable and satellite industries
424 need a government-sponsored and sizable subsidy, paid for by
425 program providers, for the right to retransmit broadcast
426 signals.

427 This would be a different story if we were talking about
428 a compulsory license for an emerging new technology or the
429 licensing scheme is so unwieldy, but neither cable nor
430 satellite are nascent industries. There are well-developed
431 practices for licensing in this area.

432 And what is even more problematic is that, every time we
433 authorize what should be phased out, the license has been
434 expanded. Rather than serve the intended purpose of
435 providing a sunset to temporary marketplace interference, the
436 periodic renewable of the satellite license has proven to be
437 a vehicle for the slow, but steady expansion of the
438 government's incursion in an otherwise workable marketplace

439 for multi-channel video programming.

440 I am not saying this transition would be easy, but those
441 rights should be negotiated in the free market without
442 government intervention, as they are for hundreds of cable
443 and satellite channels every day.

444 Thirty years ago, Congress adopted the section 111 cable
445 compulsory license, 1976, on the assumption that it would be
446 unpractical and unduly burdensome to require every cable
447 system to negotiate with every copyright owner whose work was
448 retransmitted by a cable system.

449 At the time, the cable industry was a small and nascent
450 industry, retransmitting over-the-air signals from a small
451 number of broadcast stations. Twenty years ago, the
452 Satellite Home Viewers Act of 1988 was enacted to spur the
453 growth of a startup direct-to-home satellite industry as an
454 effective competitor to cable.

455 Congress determined then that the public interest will
456 best be served by creating an interim statutory solution that
457 will allow carriers of broadcast signals to serve home
458 satellite antenna users until marketplace solutions to this
459 problem can be developed.

460 Now we are in a much different world. Cable and
461 satellite services license programming from more than 550
462 non-broadcast networks directly in the marketplace without a
463 need for compulsory license. And the online video

464 marketplace is growing exponentially without government
465 intervention.

466 There is no reason these rights should not be negotiated
467 for in the market, just as they are for other forms, such as
468 the Internet video distribution, most of which carries some
469 of the very same programming.

470 The Copyright Office's recommendation was that Congress
471 move toward abolishing section 111 and section 119 of the
472 copyright act, but we haven't had that discussion. And an
473 appeal to those who are concerned with intellectual property
474 enforcement abroad, having just come back from China,

475 I can tell you, it is much more difficult to garner the
476 necessary protection for American intellectual property in
477 foreign countries when we continue to sanction U.S.
478 government restraint of the exclusive rights of copyright
479 owners.

480 I think this should be the last time for this
481 reauthorization. Everyone is on notice. If there are
482 problems or issues with licensing practices that need to be
483 addressed to aid marketplace negotiations, take care of that
484 now. This bill will give 5 years to do that, and I think
485 this is the last time we should just automatically
486 reauthorize and expand these compulsory licenses.

487 And I appreciate your indulgence, Mr. Chairman. And I
488 promise not to say another word on another subject.

489 Chairman Conyers. Well, I thank you very much for your
490 thoughtful—you have been working on this as long or longer
491 than anybody else, so we appreciate your remarks.

492 For what purpose does the gentleman from California seek
493 recognition?

494 Mr. Issa. Mr. Chairman, I have an amendment at the
495 desk.

496 Chairman Conyers. Clerk will report the amendment.

497 The Clerk. Amendment to H.R. 3570, offered by Mr. Issa
498 of California. Strike Section 7, and insert the following:

499 Section 7. Termination of Licenses. Subsection (a).

500 Termination. Effective December 31, 2011, sections 119 and
501 122, and section 111 (other than subsections (a) and (b)—

502 [The amendment by Mr. Issa follows:]

503 ***** INSERT *****

504 Mr. Issa. Mr. Chairman, I ask that it be considered as
505 read.

506 Chairman Conyers. Without objection, so ordered. The
507 gentleman is recognized.

508 Mr. Issa. Thank you, Mr. Chairman.

509 I will be brief. I want to include myself with each and
510 every comment that Chairman Berman has made. This has to be
511 the last time we reauthorize a temporary program. Reagan
512 many times in many different ways apparently said that you
513 can only find immortality on Earth in a federal program,
514 particularly a temporary one.

515 My amendment, which I do plan to withdraw in order to
516 get this one more time through, but to lay down a clear
517 marker, my amendment would reduce to 2 years portions of this
518 reauthorization. It is very clear that Energy and Commerce
519 has work to do. We could not do it immediately. We have
520 work to do. And the industry has to come to grips with the
521 reality that it is no longer nascent industry, it is no
522 longer small communities.

523 Comcast and Time Warner and the Dish Network and other
524 satellite providers of both video and radio, these are large
525 industries sufficiently able to do a willing buyer, willing
526 seller, and they do when we do not mandate.

527 So, Mr. Chairman, my amendment is intended to amend 111,
528 119, and 122, so that we could say that, 2 years from now,

529 this would come to an end, and that the industry would have
530 that long.

531 I have been told that, one, it would prevent the bill
532 from actually reaching conclusion this year, and that it
533 would break up certain other deals which are desirable. So
534 for that reason, Mr. Chairman, I will withdraw my amendment
535 after making it very clear that Mr. Berman was absolutely
536 right, 5 years was really too long. The industry needs to be
537 working today so that, 2 years from now, we truly can be
538 looking at bringing this to a close, rather than waiting for
539 reauthorization to then hear that they haven't quite gotten
540 there.

541 And I would unanimous consent to withdraw my amendment,
542 but lay down this marker with Mr. Berman.

543 Chairman Conyers. Well, you have made it very clear,
544 Darrell Issa. Thank you very much.

545 Ms. Jackson Lee. Mr. Chairman?

546 Chairman Conyers. Who seeks recognition?

547 Ms. Jackson Lee. Mr. Chairman?

548 Chairman Conyers. What does the gentlelady seek
549 recognition for?

550 Ms. Jackson Lee. To strike the last word, one inquiry.

551 Chairman Conyers. Without objection, the gentlelady is
552 recognized.

553 Ms. Jackson Lee. I thank the chairman. And in keeping

554 with the chairman's intent, I will work hard to be brief.

555 I do want to acknowledge the importance of the settling
556 of the phantom signal issue that has been a year-long
557 dispute. And this is the kind of work we would like to see.

558 I also want to make note of the fact that I think this
559 is a good pro-consumer bill that ensures fair compensation
560 for copyright owners, while enabling cable and satellite
561 operators to continue to provide consumers with broadcast
562 stations.

563 However, one of the issues that I still have concern
564 about is programming access. And I hope that I can, Mr.
565 Chairman, work with you and work with our good friend from
566 Virginia on an amendment that I am not offering that deals
567 with reaffirming or establishing programming diversity.

568 And I don't see it completely in the bill. I don't know
569 what is in the Energy and Commerce Bill. But I am hoping
570 that we will have the opportunity, as we have this make its
571 way to the floor, to have that expanded.

572 Chairman Conyers. They will be directed to work with
573 the lady on that.

574 Ms. Jackson Lee. Thank you very much, Mr. Chairman. I
575 yield back.

576 Chairman Conyers. If there are no other amendments, a
577 reporting quorum being present, the question is on reporting
578 the bill favorably to the House.

579 Those in favor, say "aye."

580 [A chorus of ayes.]

581 Chairman Conyers. Those opposed, say "no."

582 The ayes have it. The bill is ordered reported

583 favorably and—

584 Ms. Wasserman Schultz. Mr. Chairman? Mr. Chairman?

585 Chairman Conyers. Yes?

586 Ms. Wasserman Schultz. With that, I would ask for a

587 recorded vote.

588 Chairman Conyers. A recorded vote is demanded by the

589 gentlelady from Florida.

590 Clerk will call the roll.

591 The Clerk. Mr. Conyers?

592 Chairman Conyers. Aye.

593 The Clerk. Mr. Conyers votes aye.

594 Mr. Berman?

595 Mr. Berman. Aye.

596 The Clerk. Mr. Berman votes aye.

597 Mr. Boucher?

598 Mr. Boucher. Aye.

599 The Clerk. Mr. Boucher votes aye.

600 Mr. Nadler?

601 [No response.]

602 Mr. Scott?

603 Mr. Scott. Aye.

604 The Clerk. Mr. Scott votes aye.
605 Mr. Watt?
606 Mr. Watt. Aye.
607 The Clerk. Mr. Watt votes aye.
608 Ms. Lofgren?
609 Ms. Lofgren. Aye.
610 The Clerk. Ms. Lofgren votes aye.
611 Ms. Jackson Lee?
612 Ms. Jackson Lee. Aye.
613 The Clerk. Ms. Jackson Lee votes aye.
614 Ms. Waters?
615 [No response.]
616 Mr. Delahunt?
617 Mr. Delahunt. Aye.
618 The Clerk. Mr. Delahunt votes aye.
619 Mr. Wexler?
620 [No response.]
621 Mr. Cohen?
622 Mr. Cohen. Aye.
623 The Clerk. Mr. Cohen votes aye.
624 Mr. Johnson?
625 Mr. Johnson. Aye.
626 The Clerk. Mr. Johnson votes aye.
627 Mr. Pierluisi?
628 Mr. Pierluisi. Aye.

629 The Clerk. Mr. Pierluisi votes aye.
630 Mr. Quigley?
631 Mr. Quigley. Aye.
632 The Clerk. Mr. Quigley votes aye.
633 Mr. Gutierrez?
634 Mr. Gutierrez. Aye.
635 The Clerk. Mr. Gutierrez votes aye.
636 Mr. Sherman?
637 [No response.]
638 Ms. Baldwin?
639 Ms. Baldwin. Aye.
640 The Clerk. Ms. Baldwin votes aye.
641 Mr. Gonzalez?
642 [No response.]
643 Mr. Weiner?
644 Mr. Weiner. Aye.
645 The Clerk. Mr. Weiner votes aye.
646 Mr. Schiff?
647 Mr. Schiff. Aye.
648 The Clerk. Mr. Schiff votes aye.
649 Ms. Sanchez?
650 Ms. Sanchez. Aye.
651 The Clerk. Ms. Sanchez votes aye.
652 Ms. Wasserman Schultz?
653 Ms. Wasserman Schultz. Aye.

654 The Clerk. Ms. Wasserman Schultz votes aye.
655 Mr. Maffei?
656 Mr. Maffei. Aye.
657 The Clerk. Mr. Maffei votes aye.
658 Mr. Smith?
659 Mr. Smith. Aye.
660 The Clerk. Mr. Smith votes aye.
661 Mr. Goodlatte?
662 Mr. Goodlatte. Aye.
663 The Clerk. Mr. Goodlatte votes aye.
664 Mr. Sensenbrenner?
665 Mr. Sensenbrenner. Aye.
666 The Clerk. Mr. Sensenbrenner votes aye.
667 Mr. Coble?
668 Mr. Coble. Aye.
669 The Clerk. Mr. Coble votes aye.
670 Mr. Gallegly?
671 Mr. Gallegly. Aye.
672 The Clerk. Mr. Gallegly votes aye.
673 Mr. Lungren?
674 Mr. Lungren. Aye.
675 The Clerk. Mr. Lungren votes aye.
676 Mr. Issa?
677 [No response.]
678 Mr. Forbes?

679 Mr. Forbes. Aye.
680 The Clerk. Mr. Forbes votes aye.
681 Mr. King?
682 [No response.]
683 Mr. Franks?
684 Mr. Franks. Aye.
685 The Clerk. Mr. Franks votes aye.
686 Mr. Gohmert?
687 Mr. Gohmert. Aye.
688 The Clerk. Mr. Gohmert votes aye.
689 Mr. Jordan?
690 Mr. Jordan. Yes.
691 The Clerk. Mr. Jordan votes yes.
692 Mr. Poe?
693 Mr. Poe. Aye.
694 The Clerk. Mr. Poe votes aye.
695 Mr. Chaffetz?
696 Mr. Chaffetz. Aye.
697 The Clerk. Mr. Chaffetz votes aye.
698 Mr. Rooney?
699 Mr. Rooney. Aye.
700 The Clerk. Mr. Rooney votes aye.
701 Mr. Harper?
702 Mr. Harper. Aye.
703 The Clerk. Mr. Harper votes aye.

704 Chairman Conyers. Clerk will report.

705 Any members that want to vote that have not?

706 Mr. King. Mr. Chairman?

707 Chairman Conyers. Oh, Steve King?

708 Mr. King. Aye.

709 The Clerk. Mr. King votes aye.

710 Chairman Conyers. Anyone else?

711 Clerk will report.

712 The Clerk. Mr. Chairman, 34 members voted aye, 0

713 members voted nay.

714 Chairman Conyers. Thank you very much. And the bill is
715 ordered reported favorably.

716 This committee will stand in recess until 1 o'clock.

717 And I thank the members.

718 [Recess.]

719 Chairman Conyers. Good afternoon. The committee will
720 come to order.

721 Pursuant to notice, I now call up H.R. 233, the Railroad
722 Antitrust Enforcement Act, for purposes of markup.

723 The clerk will please report the bill.

724 The Clerk. H.R. 233, a bill to amend the federal
725 antitrust laws to expand provided coverage and to eliminate
726 exemptions from such laws that are contrary to the public
727 interest with respect to railroads.

728 [The bill follows:]

729 ***** INSERT *****

730 Chairman Conyers. Without objection, the bill is
731 reported by the subcommittee as considered original text for
732 the purposes of amendment and is considered read and open for
733 amendment at any point.

734 I invite the chairman of the Courts and Competition
735 Policy Subcommittee, Hank Johnson, for a statement.

736 Mr. Johnson. Thank you, Mr. Chairman.

737 As chairman of the Subcommittee on Courts and
738 Competition Policy, I urge my colleagues to report H.R. 233
739 favorably. This bill would eliminate antitrust exemptions in
740 the railroad industry that are harmful to consumers.
741 Consolidation of the railroad industry over the last century,
742 combined with allegedly anticompetitive industry practices,
743 has led to increased prices that have been passed on through
744 consumers.

745 The bill before us today would leave the rail carrier
746 industry no differently situated than any number of other
747 industries subject to antitrust laws. It would, however,
748 remove antiquated antitrust exemptions favoring the industry,
749 which will spur innovation, drive down costs, and ultimately
750 lower prices for consumers.

751 I thank Congresswoman Baldwin for her outstanding
752 leadership on this issue. And I urge my colleagues to report
753 this bill favorably to the whole House.

754 And I will yield back, Mr. Chairman.

755 Ms. Baldwin. Would the gentleman yield?

756 Mr. Johnson. I would.

757 Ms. Baldwin. Thank you very much.

758 Thank you, Subcommittee Chairman Johnson.

759 And, Mr. Chairman, thank you.

760 I am very appreciative of the committee's consideration
761 of this important bipartisan legislation that will restore
762 competition to the freight rail industry and provide relief
763 to thousands of shippers across the nation that depend on
764 freight rail for transportation.

765 Our nation's railroad system was designed to serve our
766 country. And over the years, they have seen good times and
767 bad times, but they have always provided an essential service
768 to the nation.

769 Back in 1980, the railroad industry was in poor
770 financial health, overbuilt, and failing. Seeking a remedy,
771 Congress removed much of the regulatory oversight over the
772 industry, and merger authority was placed under the
773 industry's sole regulator, then the Interstate Commerce
774 Commission, later renamed the Surface Transportation Board.

775 Unfortunately, in 1980, Congress did not remove the
776 antitrust exemptions that the industry had enjoyed and
777 accumulated through various acts of Congress during the
778 1900s.

779 Free from government oversight by the Department of

780 Justice and the Federal Trade Commission, the rail industry
781 has undergone dramatic consolidation, shrinking from over 40
782 major Class I railroads to seven major carriers today, with
783 only four of them carrying 90 percent of our nation's
784 freight.

785 This level of concentration and the resulting lack of
786 competition certainly were not envisioned by Congress in
787 1980. And over the years, while the railroads have reaped
788 profits, shippers with little or no access to transportation
789 competition along their routes have seen striking rate
790 increases and unreliable service.

791 In my home state of Wisconsin, we have a prime example.
792 Dairyland Power is a rural electrical co-op. It is dependent
793 on rail for its transportation of coal and is served by only
794 one railroad. It is known as a captive shipper.

795 At the end of the year 2005, the railroad that holds
796 Dairyland captive raised their rates dramatically. The
797 energy cooperative sought average rate increases of 93
798 percent for January 2006 for 1 year of rail transportation
799 service. It now costs Dairyland about \$75 million a year to
800 ship by rail \$30 million worth of coal.

801 The increase has translated into a 15 percent to 20
802 percent increase in electricity rates for their consumers
803 served by the cooperatives that depend on Dairyland for their
804 power. Consumers also face increased rates from other

805 captive shippers, including chemical companies, manufacturing
806 industries, agricultural sector, forest and paper companies,
807 among many others.

808 The trade associations representing many of these
809 industry sectors, like the American Chemistry Council, the
810 American Corn Growers, and the Steel Manufacturers
811 Association, have endorsed this bill as a means of obtaining
812 relief from this railroad monopoly power.

813 And beyond the problems posed by consolidation among
814 Class I railroads, other practices, known by names such as
815 bottlenecks and paper barriers, have also exacerbated the
816 situation.

817 H.R. 233 eliminates the antiquated railroad antitrust
818 exemption that has no current public policy justification and
819 is protecting anticompetitive conduct by the railroad
820 industry. A March 2009 letter from 20 state attorneys
821 general to the House and Senate leadership asking Congress to
822 remove the railroad antitrust exemption reflects my belief
823 that this provision is necessary. The American Bar
824 Association Antitrust Division also recommends this action.

825 Second, the bill permits the Department of Justice and
826 the FTC to review railroad mergers under the antitrust laws
827 standard to ensure competitive markets.

828 And, finally, the bill allows for state attorneys
829 general and other private parties to sue for damages and to

830 halt anticompetitive conduct, both of which are not currently
831 allowable under federal law.

832 I might add that the companion bill to this bill, S.
833 146, has already been reported out of the Senate Judiciary
834 Committee by a 14-0 vote and is awaiting a vote on the floor.

835 Certainly, this bill will not cure all ills, but it will
836 restore some of the public interest responsibilities to our
837 nation's freight rail system.

838 So thank you, Mr. Chairman, and I urge my colleagues to
839 support this legislation and yield back the remainder of my
840 time.

841 Chairman Conyers. Lamar Smith, ranking member?

842 Mr. Smith. Thank you, Mr. Chairman.

843 I appreciate the concerns of the shipping community.
844 They are suffering like many others in this economy. Rising
845 costs mean that, when their existing long-term contracts for
846 the shipment of coal expire, for example, some power
847 companies will face drastically higher rates from the
848 railroads.

849 While I am sympathetic and concerns about the plight of
850 the captive shippers, I remain concerned that the legislation
851 before us will not solve their problem.

852 The bulk of the shippers' concerns seem to lie with what
853 they view as an ineffectual regulatory body, the Surface
854 Transportation Board, or STB. Like the antitrust

855 modernization commission, I am skeptical about many antitrust
856 exemptions. To me, the elimination of some antitrust
857 exemptions for the railroad industry, such as subjecting
858 mergers in the industry to review before the antitrust
859 division of the Department of Justice, is justified.

860 Since our last hearing on this issue, the Courts and
861 Competition Policy Subcommittee marked up the bill and made
862 positive changes that address a number of concerns that have
863 been raised before. Specifically, the manager's amendment
864 adopted by the subcommittee eliminated confusion about
865 whether a court could defer to the STB a judicial doctrine
866 known as primary jurisdiction.

867 The manager's amendment clarifies that the law
868 surrounding primary jurisdiction is not changed by this bill.
869 Further, manager's amendment makes it clear that this bill is
870 only prospective in nature. This means that courts will not
871 be tempted or authorized under the bill to undue mergers that
872 were consummated years before, which is generally in keeping
873 with antitrust law.

874 I remain concerned, however, that this bill could
875 subject railroads to suits for injunctive relief throughout
876 the country. Because railroads are widespread networks that
877 are not easily diverted into other channels, an injunction in
878 one part of the network could have serious repercussions
879 throughout.

880 In addition, a railroad that runs across multiple
881 districts and circuits, as most do, could be subject to an
882 injunction in one district, whereas the exact same conduct
883 could be deemed acceptable in an adjacent district.

884 Worse still, discrepancies among district and circuit
885 courts may lead to forum shopping by aggressive plaintiffs
886 lawyers, which has created problems in the class action arena
887 before.

888 Furthermore, the railroads have raised concerns that the
889 bill as reported by the subcommittee will eliminate important
890 procedural protections in any antitrust suit authorized by
891 this bill. Specifically, they are concerned about the
892 admissibility of evidence relating to joint rate quotes and
893 the inferences that could be drawn from that evidence.

894 Under current law, evidence of these agreements is not
895 admissible. This bill would change that.

896 I understand that the majority and representatives of
897 the railroad industry have been in negotiations over
898 compromise language on this issue. And I am sorry that these
899 negotiations did not result in a satisfactory fix at this
900 point. I plan to work with the majority to include language
901 in the committee's report that addresses these concerns and
902 will continue to negotiate changes in the bill prior to its
903 consideration on the floor.

904 Despite these concerns, given the amendments adopted at

905 subcommittee, I support the legislation with the
906 understanding that we will continue to try to improve it as
907 it moves its way through the legislative process. And I hope
908 the gentlewoman from Wisconsin will agree to do that.

909 If the bill is not improved by the time it comes up on
910 the floor, it should be opposed, though I hope, Mr. Chairman,
911 that that won't be necessary. I thank you, and I will yield
912 back.

913 Chairman Conyers. Thank you. Does Johnson or Baldwin
914 have any assurances to give to the ranking member from Texas?

915 Mr. Johnson. Yes, I would say that we are always—

916 Chairman Conyers. I yield. To strike the last word, I
917 recognize the gentleman.

918 Mr. Johnson. Thank you. My good friend, Mr. Smith, I
919 know that we will have great fun as we work out the details
920 on this bill. So I look forward to working with you.

921 Mr. Smith. I thank the gentleman.

922 Chairman Conyers. Would you yield to Mr. Quigley?

923 Mr. Quigley. Thank you, sir.

924 And I appreciate the ranking member's comments. As you
925 know, being new to this committee and new to antitrust
926 issues, some of the same issues were raised with my staff and
927 myself by the industry. And I think it is fair today to
928 concur with what you have said, and that is to support this
929 legislation, but to work to address these concerns before it

930 reaches the House.

931 And I am quite confident that the chairman would work
932 well with us, as will the sponsors.

933 Mr. Smith. I thank the gentleman from Illinois for
934 those comments, Mr. Chairman.

935 And in hopes that the gentlewoman from Wisconsin will
936 say something similar, Mr. Chairman, may we recognize her—

937 Ms. Baldwin. Mr. Chairman—

938 Chairman Conyers. Who has got the time?

939 Mr. Johnson. I will yield to the distinguished
940 Congresswoman Baldwin.

941 Ms. Baldwin. Thank you, Mr. Chairman.

942 I would like to add my words of support for continued
943 dialogue between our markup today and consideration on the
944 floor. I know the gentleman spent a little bit of time
945 discussing in his remarks an issue that has emerged since the
946 subcommittee markup relating to joint interline agreements
947 that have been a part of law and practice for a long, long
948 time.

949 I know that he noted that staff has worked, in fact,
950 late into last night in negotiations to see whether there was
951 a language, an amendment that would be suitable and address
952 all the concerns, and that we were not able to, by markup
953 today, address that.

954 I do think that perhaps we can address this through

955 report language with clarity, but if that doesn't prevail, at
956 the end of the day, we will certainly look at language.

957 What I would say about this—the interline agreements—
958 generally is that interline agreements, sometimes called
959 joint agreements, are not only authorized, but virtually
960 mandated in current law. They are encouraged in the
961 Interstate Commerce Act and as a longstanding practice.

962 It is my belief that the bill before us in no way
963 changes the handling of that and would cause them a
964 disruption. But I know there is a difference of opinion on
965 that, and I think we need to continue to hear each other out.
966 And hopefully, by the time this reaches the floor, we will be
967 able to reach agreement.

968 Mr. Smith. Appreciate that, Mr. Chairman. Thank you.

969 Mr. Watt. Mr. Chairman, I wonder if the gentleman would
970 yield just for a second before he yields back or whoever has
971 the time, yield to the congressman—I can't weigh in on the
972 substance of this particular issue.

973 I just wanted to vouch for the willingness of Chairman
974 Johnson and Ms. Baldwin to work through some difficult
975 issues, because I had one or two that I raised a little bit
976 earlier than this one was raised. And I wanted to express my
977 confidence that, if they follow the same pattern that they
978 followed in the past, there will be substantial dialogue and
979 willingness to listen between now and the floor.

980 So I thank the gentleman for yielding and will yield
981 back—

982 Ms. Sanchez. Will the gentleman yield?

983 Mr. Scott. Would the gentleman yield?

984 Yes, I would like to thank the gentleman and the
985 proponents of the bill for working with some of my
986 constituents, too. There are still some unresolved issues,
987 but I appreciate the fact that you are continuing that
988 dialogue.

989 Ms. Sanchez. Will the gentleman yield?

990 Mr. Johnson. I will.

991 Ms. Sanchez. Thank you, Mr. Johnson.

992 I just want to echo some of the concerns that have been
993 raised about the setting of joint rates and the evidentiary
994 rules about using evidence of those in cases of antitrust.
995 And that seems like there is definitely a spirit to move
996 forward and try to integrate some of those concerns and
997 language that would be satisfactory.

998 And so I appreciate the hard work that you have done to
999 get the bill to this point and want to cheer you on to
1000 continue that work to try to address some of those further
1001 concerns.

1002 And I yield back.

1003 Mr. Johnson. Thank you.

1004 Chairman Conyers. You yield back?

1005 Mr. Johnson. Nothing further. I yield back.

1006 Chairman Conyers. Are there any amendments to H.R. 233?

1007 If not, a reporting quorum being present, the question
1008 is on reporting the bill as amended. We don't have a
1009 reporting quorum. All right. Then we will hold this until
1010 such time as the security has brought in the requisite number
1011 of members.

1012 And I will ask the clerk to call up H.R. 3290, September
1013 11th Family Humanitarian Relief and Patriotism Act.

1014 The Clerk. H.R. 3290, a bill to provide the spouses and
1015 children of aliens who perished in the September 11th-

1016 Chairman Conyers. Pull your mic closer, please. Thank
1017 you.

1018 The Clerk. A bill to provide the spouses and children
1019 of aliens who perished in the September 11th terrorist
1020 attacks an opportunity to adjust their status to that of an
1021 alien lawfully admitted for permanent residence.

1022 [The bill follows:]

1023 ***** INSERT *****

1024 Chairman Conyers. Without objection, the bill is
1025 considered as read and open for amendment at any point.

1026 Could I invite Zoe Lofgren, chair of Immigration, for a
1027 statement?

1028 Ms. Lofgren. Thank you, Mr. Chairman.

1029 Among the nearly 3,000 people killed during the
1030 terrorist attacks of 9/11 in New York, there was a small
1031 group of undocumented workers, most of whom worked at Windows
1032 on the World, at the top of the World Trade Center. The
1033 surviving family members of these undocumented workers were
1034 awarded benefits from the 9/11 Victims Compensation Fund
1035 after Special Master Ken Feinberg verified the deaths of the
1036 workers and identified the dependent spouses or children of
1037 the deceased.

1038 In the 110th Congress, this committee reported out H.R.
1039 1071, a bill that would have allowed this limited class of
1040 surviving dependents the opportunity to apply for adjustment
1041 of status or cancellation of removal, so long as neither the
1042 dependents nor the deceased are or were inadmissible or
1043 deportable on criminal or national security grounds.

1044 At the time, we did not know the exact number or
1045 identities of the people who would benefit from such a bill,
1046 but we expected it to be quite small. Then, in the last
1047 Congress, at the request of the minority, we sought such
1048 information.

1049 After the Immigration Subcommittee marked up the bill,
1050 16 members of the class came forward and offered proffers of
1051 information to the Department of Homeland Security in an
1052 effort to provide some form of information to the department
1053 and in furtherance of their effort to gain some form of
1054 immigration relief.

1055 Each of these 16 people now has been granted some form
1056 of temporary immigration status by the department. Working
1057 with my colleagues across the aisle to address key concerns
1058 in the latest draft of the bill, we were able to tailor a
1059 bill that takes into consideration the detailed information
1060 we now have about the spouses and children of the
1061 undocumented workers killed in the terrorist attacks.

1062 This bill, H.R. 3290, is the fruit of those bipartisan
1063 discussions and represents a substantial amount of work
1064 performed by members on both sides of the aisle, the
1065 Department of Homeland Security, and attorneys for these 16
1066 people.

1067 I would particularly like to thank Mr. Lamar Smith, the
1068 ranking member of the committee, for his support and help
1069 along the way. H.R. 3290 would permit the 16 people who
1070 submitted proffers of information to the Department of
1071 Homeland Security to adjust their status to that of an alien
1072 lawfully admitted for permanent residence, so long as, one,
1073 they apply for adjustment within 1 year of enactment; two,

1074 they are not inadmissible or deportable on criminal or
1075 security-related grounds; and, three, they satisfy any
1076 federal tax liability.

1077 We had a spirited discussion about this bill during the
1078 subcommittee markup, and I was, frankly, disappointed to see
1079 the vote along party lines, 7-5, because this is a bipartisan
1080 bill. It is supported by several members of the New York
1081 City delegation and surrounding areas, including the ranking
1082 member of the Homeland Security Committee, Peter King.

1083 It is my hope that in full committee this bill will get
1084 the support it deserves, and I strongly urge my colleagues to
1085 vote in favor of the bill and, again, would like to thank Mr.
1086 Smith for his suggestions. And I think—he and I talked
1087 recently—everything that he asked to be done, he agreed that
1088 we did do, in terms of getting this information.

1089 And with that, Mr. Chairman, I thank you for recognizing
1090 me, and I yield back.

1091 Chairman Conyers. Thank you.

1092 The ranking member from San Antonio, Texas, is
1093 recognized.

1094 Mr. Smith. Thank you, Mr. Chairman.

1095 H.R. 3290, the September 11th Family Humanitarian Relief
1096 and Patriotism Act, grants lawful permanent residence status
1097 to 16 illegal immigrant family members of illegal immigrants
1098 who were killed in the September 11, 2001, terrorist attacks.

1099 The attacks of September 11th were cowardly acts of
1100 international terrorism carried out inside America's borders.
1101 On that day, a foreign enemy attacked us, and over 3,000
1102 individuals were killed. At that time, our hearts went out
1103 to the families of those murder victims, and Americans
1104 continue to sympathize with those who loved a lost one that
1105 day.

1106 When we considered this bill during the 110th Congress,
1107 I opposed it. At that point, we were asked to grant lawful
1108 permanent residence and eventually U.S. citizenship, the
1109 greatest honor America can bestow, to a number of individuals
1110 whom we knew nothing about.

1111 We only knew they came here illegally and had a relative
1112 killed on 9/11. We did not even know how many individuals
1113 the bill covered.

1114 Immigration Subcommittee Ranking Member Steve King and I
1115 requested information about the potential beneficiaries from
1116 the attorney for these individuals. We wanted to know
1117 whether these individuals had criminal histories, their date
1118 and place of birth, how they entered the United States, and
1119 their occupation. Unfortunately, the attorney refused to
1120 provide this information to us.

1121 Ultimately, the Department of Homeland Security, with
1122 the help of Chairwoman Lofgren, provided the information to
1123 us. DHS received the information from the attorney and

1124 returned for the promise of temporary legal status. On
1125 August 15, 2008, DHS granted temporary legal status to 15 of
1126 the 16 individuals who benefit from this bill.

1127 From that information, we learned that nine of the
1128 individuals are children and seven are adults. Smugglers
1129 brought some of them into the country, some crossed
1130 illegally, and others overstayed their visas. We also
1131 learned that one of the individuals did not pay his federal
1132 taxes between 1999 and 2006. Apparently, he has subsequently
1133 paid the taxes so that he can be granted lawful immigration
1134 status.

1135 H.R. 3290 should not serve as a precedent in the event
1136 that more people have loved ones killed in any future
1137 accident, natural disaster, criminal activity, or terrorist
1138 attack. Families of illegal immigrant victims of national
1139 tragedies should not expect to receive lawful permanent
1140 residence status based on those tragedies.

1141 I made a commitment to support the bill if the
1142 subcommittee ranking member and I received the information
1143 that we requested, so I will honor that commitment and
1144 support this legislation today.

1145 Mr. Chairman, I will yield back.

1146 Chairman Conyers. Thank you.

1147 With the indulgence of the committee, a reporting quorum
1148 being—a voting quorum being present, I will now return to

1149 H.R. 233, the Railroad Antitrust Act.

1150 And the question will be reporting the bill favorably to
1151 the House. Those in favor—as amended.

1152 Those in favor, say "aye."

1153 [A chorus of ayes.]

1154 Chairman Conyers. Those opposed, say "no."

1155 [A chorus of noes.]

1156 Chairman Conyers. The ayes have it, and the bill as
1157 amended is ordered reported favorably. Without objection,
1158 the bill will be reported as a single amendment in the nature
1159 of a substitute, incorporating the amendment adopted, and
1160 staff is, of course, authorized to make technical and
1161 conforming changes. Members will be invited to submit any
1162 additional views that they choose within 2 days.

1163 Thank you very much.

1164 Now, are there—for what purpose does the gentleman from
1165 New York seek recognition?

1166 Mr. Nadler. Mr. Chairman, I move to strike the last
1167 word.

1168 Chairman Conyers. The gentleman is recognized, without
1169 objection.

1170 Mr. Nadler. Thank you.

1171 Mr. Chairman, I want to thank you for allowing us to
1172 mark up H.R. 3290 today. I also want to thank Chairwoman
1173 Lofgren, Congresswoman Maloney, the prime sponsor of the

1174 bill, Congressman Weiner, and Congressman King, for their
1175 efforts.

1176 This bill would allow lawful permanent residence status
1177 to be provided to certain spouses and children of victims of
1178 the September 11, 2001, terrorist attacks. Three thousand
1179 innocent men, women and children lost their lives that day.
1180 The lives of their families, many of whom are my
1181 constituents, were changed forever.

1182 Among those who perished were a small group of
1183 undocumented workers, many of whom worked at Windows on the
1184 World, which was in the World Trade Center. They left behind
1185 spouses and children who do not have permanent legal status
1186 to be in the United States and are thus deportable after the
1187 current temporary legal status expires.

1188 Such deportation would only add to the human tragedy of
1189 9/11. Moreover, many of these families have U.S.-citizen
1190 children, and deportation would force them to leave our
1191 country to be with their parents.

1192 H.R. 3290 would allow legal permanent residence to be
1193 granted to a small number of surviving spouses and children
1194 of those undocumented workers who died in 9/11. As Mr. Smith
1195 said, the class of beneficiaries is closed and includes
1196 exactly 16 people.

1197 It is important to remember that these people are all
1198 beneficiaries of the September 11th Victims Compensation Fund

1199 who were investigated and found to be deserving of
1200 compensation, after all the information was conducted.

1201 After September 11, 2001, we came together to rebuild
1202 New York and the Pentagon. While nothing could ever replace
1203 the loss of a loved one, we compensated victims of the
1204 tragedy and their surviving beneficiaries. Every year, we
1205 honor the heroism and sacrifice of those who lost their
1206 lives, regardless of their immigration status.

1207 H.R. 3290 is written in that same spirit of unity,
1208 compassion and honor. It recognizes the sacrifices that
1209 occurred in 9/11 by providing a few surviving family members
1210 with humanitarian immigration relief.

1211 I appreciate the efforts of those who worked on this
1212 bill over the years, as I did and others did, and I urge all
1213 members to support the bill. I appreciate the efforts, in
1214 particular, of Congresswoman Lofgren and Mr. Smith of Texas.
1215 And I yield back the balance of my time.

1216 Chairman Conyers. I thank the gentleman from New York.

1217 For what purpose does the gentleman from Iowa seek
1218 recognition?

1219 Mr. King. Mr. Chairman, as tempted as I am to move to
1220 strike the last word, I would rather ask if it is appropriate
1221 for me to offer an amendment at this time.

1222 Chairman Conyers. Are those two amendments—is that
1223 amendment combinable?

1224 Mr. King. Let's see. I think I might be able to make
1225 that work, Mr. Chairman, if that is agreeable.

1226 Chairman Conyers. All right. If anyone does not
1227 object, I would like the clerk to--the clerk doesn't have the
1228 amendments.

1229 Mr. King. Amendments one and two, which will be there
1230 in a moment.

1231 Chairman Conyers. Clerk will report the amendments.

1232 The Clerk. Amendment to H.R. 3290, offered by Mr. King
1233 of Iowa. In section 2(a)(1) of the bill--

1234 [The amendment by Mr. King follows:]

1235 ***** INSERT *****

1236 Mr. King. Mr. Chairman, I ask unanimous consent that
1237 the amendment be considered as read.

1238 Chairman Conyers. All right. Let's hear the other
1239 amendment, too.

1240 The Clerk. Amendment to H.R. 3290, offered by Mr. King
1241 of Iowa. Page 3, after line 5, insert the following (and
1242 redesignate provisions accordingly): (B) was present in the
1243 United States on September 11, 2001—

1244 [The amendment by Mr. King follows:]

1245 ***** INSERT *****

1246 Chairman Conyers. Without objection, both amendments
1247 will be considered as read. The gentleman will be recognized
1248 in support of his amendments.

1249 Mr. King. Thank you, Mr. Chairman. And I will focus on
1250 the subject at hand here.

1251 The two amendments that we have combined by consent
1252 address two things that I think improve this bill
1253 substantially. One of them is that we found out, after great
1254 difficulty and much pressure to gather some of the
1255 information and very close to—technically, the information
1256 that I asked for—that there were a couple of individuals who
1257 came to the United States after September 11th that would be
1258 advertently or inadvertently included in this legislation.

1259 And so the short amendment is, they had to be present in
1260 the United States on September 11th of 2001 before they would
1261 receive a lawful permanent residence status under the bill.

1262 Chairman Conyers. Were they stripped from the
1263 consideration?

1264 Mr. King. This amendment would take them out of the
1265 consideration. That is the purpose of it, is that I think it
1266 is the wrong precedent to be able to reward—and I know that
1267 we had discussions about that particular language—but for
1268 people to receive a path to citizenship who came to the
1269 United States after a tragedy, under this bill sets a
1270 precedent that I think is not consistent with the philosophy

1271 of the rule of law or the compassion of the United States of
1272 America.

1273 There has got to be a line that is drawn. And we see
1274 that in the case of one of the other people who would receive
1275 lawful permanent residence status, an individual who has
1276 evaded paying United States taxes, that the money he has
1277 received is \$1,382,252.

1278 Now, if that is comparable to the other people who would
1279 be the subject of this bill, to have people become
1280 millionaires out of this, regardless of their tragedy, and
1281 that—the component of that would be that they came to the
1282 United States after the tragedy, they wouldn't have a—they
1283 wouldn't have a claim, in my view. If all of their extended
1284 families came to the United States afterwards, this list
1285 would be a lot longer than it is.

1286 So I object to the precedent that would be established,
1287 and that is one of the components of the two amendments that
1288 we have combined. And the other component is, it requires
1289 that an individual will have properly paid their taxes.

1290 And not just after the fact, when they found out that
1291 they would not receive LPR status, but having done so in a
1292 willful fashion prior to. And we have controlling statutes.
1293 The U.S. Code 7201, 7202, and 7203 all make it a crime to
1294 attempt to evade paying taxes, willfully fail to pay taxes,
1295 and willfully fail to file a tax return. That seems to be

1296 the case with at least this one individual who has received
1297 the \$1.3—really, \$1.4 million.

1298 And so I would make the point that my amendment requires
1299 that individuals must have paid their taxes as directed by
1300 law and requires that if someone who is receiving what is
1301 really amnesty under the bill, after being in the country
1302 illegally and after receiving U.S. taxpayer money from the
1303 September 11th Victims Compensation Fund, that they had to
1304 have paid their taxes on time, not as a condition of
1305 receiving a green card. Now, we don't have to make deals
1306 like this. Rule of law has to stand in America.

1307 Then, according to the Department of Homeland Security,
1308 this individual has failed to file his tax returns in the
1309 years between 1999 and 2006. This is willful. The
1310 Department of Homeland Security stated that such a failure
1311 demonstrates an indifference to the social and legal
1312 obligations of residence in this country, and they have also
1313 stated that the failure to file tax returns reveals a civic
1314 irresponsibility.

1315 And I would argue that he entered the country illegally.
1316 That also demonstrates that he has failed in his civic
1317 responsibility and disrespected the laws of the United States
1318 of America. And now, receiving the dollars that I have
1319 reiterated here, so that I understand that, once this
1320 individual found out that he would only obtain legal

1321 immigration status, then he paid the taxes.

1322 This amendment would require that the taxes would have
1323 been paid before the fact, not after, not as a deal, and not
1324 as an agreement, that he now be included in this legislation,
1325 that, of course, I object to the overall legislation for the
1326 reasons that I think most of the members of this committee
1327 know. I think it sets the wrong precedent.

1328 I think those that have been in the country, the United
1329 States illegally and received funds from the Victims
1330 Compensation Fund to the tune of, in many cases, more than \$1
1331 million, would not—if they would have followed the laws of
1332 the United States of America, they wouldn't have been here in
1333 the first place.

1334 And we have American soldiers who were killed in battle
1335 immediately subsequent to the attack in the United States,
1336 and their family got a check for \$12,000.

1337 Chairman Conyers. Do you think Zoe Lofgren will go
1338 along with any of these two amendments?

1339 Mr. King. It is, you know, something that I imagine
1340 that she could consider herself, if she should be susceptible
1341 to the undeniable logic and rationale of my amendments.

1342 Chairman Conyers. Of course.

1343 Ms. Lofgren. Mr. Chairman?

1344 Chairman Conyers. Could we recognize her?

1345 Mr. King. Certainly. Free flow of conversations that I

1346 think—Mr. Chairman.

1347 Chairman Conyers. We recognize, then, the chair of the
1348 subcommittee.

1349 Ms. Lofgren. Mr. Chairman, I thank you for recognizing
1350 me. And I would like to urge that we oppose the two
1351 amendments being considered en banc.

1352 Based on the information the Department of Homeland
1353 Security now has, we know who the individuals were who were
1354 not here on the day of the tragedy, and it was five children
1355 of the people who died on 9/11. They were children who were
1356 provided visas by the United States government on a
1357 humanitarian basis to come in and be with their surviving
1358 parent. And if this amendment were to pass, their surviving
1359 parent would get legal status, but the minor children would
1360 have to go back to their country of origin, where they have
1361 no parent.

1362 Chairman Conyers. Well, we didn't know that.

1363 Ms. Lofgren. I don't think that is a fair result.

1364 As for the tax issue, the bill already requires that all
1365 federal tax liabilities be satisfied before a person could
1366 adjust their status to that of a lawful permanent resident.
1367 The amendment appears to be based on the premise that a
1368 person can never become right with the law. And I think it
1369 would also create a perverse incentive to not pay back taxes
1370 because, no matter what you do, you could never get right

1371 with the law.

1372 It is important to note that the Department of Homeland
1373 Security has scrutinized these 16 individuals. They have
1374 granted them temporary status. And if this bill passes, they
1375 will be subject to additional scrutiny.

1376 But I think that the amendment is—although, I am sure,
1377 offered in good faith—a mistaken one. And I would urge that
1378 we oppose it.

1379 And I yield back.

1380 Chairman Conyers. Is there any further discussion on
1381 this, the two amendments?

1382 Mr. King. Mr. Chairman, I am unclear as to whether I
1383 actually yielded back or if I have any time available to
1384 reclaim.

1385 Chairman Conyers. Sure. You have time available, but
1386 there are votes coming up on the floor.

1387 Mr. King. I could be brief, Mr. Chairman.

1388 Chairman Conyers. All right. You are recognized.

1389 Mr. King. I thank the chairman.

1390 And in response to the gentlelady from California, our
1391 information is it is not five children, but two children had
1392 been granted the status. We are dealing with 16 people. The
1393 taxes already—the language that is in the bill is inadequate.
1394 It allows anyone who had a tax liability to simply pay up
1395 their back taxes out of the Victims Compensation Fund and

1396 then qualify for lawful permanent residence.

1397 And so I think that that certainly violates the spirit
1398 and they violated the law. And whatever temporary—however
1399 temporary some of the people might be in this list, we know
1400 that that tax liability that existed was from 1999 until
1401 2006. And so it isn't someone who is a child of anyone else
1402 that is responsible here. It has got to be an adult with a
1403 real income and a tax liability.

1404 And I think it sends a wrong message, and I am sorry we
1405 couldn't negotiate this and come to a conclusion where we
1406 narrowed this list down to 13, rather than 16. If that were
1407 the case—and that is exactly what I am trying to do—we could
1408 be discussing the merits of those that have more merit than
1409 the ones that are the subject to my amendment.

1410 I urge their adoption of my amendment, and I yield back
1411 the balance of my time.

1412 Chairman Conyers. I thank the gentleman.

1413 Let us take a vote on the first amendment. We will take
1414 a vote on both amendments combined.

1415 All in favor of the amendments offered by Steve King,
1416 say "aye."

1417 [A chorus of ayes.]

1418 Chairman Conyers. All opposed to the amendments offered
1419 by Steve King, say "no."

1420 [A chorus of noes.]

1421 Chairman Conyers. Noes have it.

1422 Mr. King. Mr. Chairman?

1423 Chairman Conyers. You want a roll call?

1424 Mr. King. I would appreciate a roll call vote.

1425 Chairman Conyers. Okay.

1426 The Clerk. Mr. Conyers?

1427 Chairman Conyers. No.

1428 The Clerk. Mr. Conyers votes no.

1429 Mr. Berman?

1430 [No response.]

1431 Mr. Boucher?

1432 [No response.]

1433 Mr. Nadler?

1434 Mr. Nadler. No.

1435 The Clerk. Mr. Nadler votes no.

1436 Mr. Scott?

1437 Mr. Scott. No.

1438 The Clerk. Mr. Scott votes no.

1439 Mr. Watt?

1440 Mr. Watt. No.

1441 The Clerk. Mr. Watt votes no.

1442 Ms. Lofgren?

1443 Ms. Lofgren. No.

1444 The Clerk. Ms. Lofgren votes no.

1445 Ms. Jackson Lee?

1446 Ms. Jackson Lee. No.

1447 The Clerk. Ms. Jackson Lee votes no.

1448 Ms. Waters?

1449 Ms. Waters. No.

1450 The Clerk. Ms. Waters votes no.

1451 Mr. Delahunt?

1452 [No response.]

1453 Mr. Wexler?

1454 Mr. Wexler. No.

1455 The Clerk. Mr. Wexler votes no.

1456 Mr. Cohen?

1457 Mr. Cohen. No.

1458 The Clerk. Mr. Cohen votes no.

1459 Mr. Johnson?

1460 Mr. Johnson. No.

1461 The Clerk. Mr. Johnson votes no.

1462 Mr. Pierluisi?

1463 [No response.]

1464 Mr. Quigley?

1465 Mr. Quigley. No.

1466 The Clerk. Mr. Quigley votes no.

1467 Mr. Gutierrez?

1468 [No response.]

1469 Mr. Sherman?

1470 [No response.]

1471 Ms. Baldwin?
1472 Ms. Baldwin. No.
1473 The Clerk. Ms. Baldwin votes no.
1474 Mr. Gonzalez?
1475 [No response.]
1476 Mr. Weiner?
1477 Mr. Weiner. No.
1478 The Clerk. Mr. Weiner votes no.
1479 Mr. Schiff?
1480 Mr. Schiff. No.
1481 The Clerk. Mr. Schiff votes no.
1482 Ms. Sanchez?
1483 Ms. Sanchez. No.
1484 The Clerk. Ms. Sanchez votes no.
1485 Ms. Wasserman Schultz?
1486 Ms. Wasserman Schultz. No.
1487 The Clerk. Ms. Wasserman Schultz votes no.
1488 Mr. Maffei?
1489 Mr. Maffei. No.
1490 The Clerk. Mr. Maffei votes no.
1491 Mr. Smith?
1492 Mr. Smith. Aye.
1493 The Clerk. Mr. Smith votes aye.
1494 Mr. Goodlatte?
1495 Mr. Goodlatte. Aye.

1496 The Clerk. Mr. Goodlatte votes aye.
1497 Mr. Sensenbrenner?
1498 [No response.]
1499 Mr. Coble?
1500 [No response.]
1501 Mr. Gallegly?
1502 Mr. Gallegly. Aye.
1503 The Clerk. Mr. Gallegly votes aye.
1504 Mr. Lungren?
1505 [No response.]
1506 Mr. Issa?
1507 [No response.]
1508 Mr. Forbes?
1509 [No response.]
1510 Mr. King?
1511 Mr. King. Aye.
1512 The Clerk. Mr. King votes aye.
1513 Mr. Franks?
1514 [No response.]
1515 Mr. Gohmert?
1516 [No response.]
1517 Mr. Jordan?
1518 Mr. Jordan. Yes.
1519 The Clerk. Mr. Jordan votes yes.
1520 Mr. Poe?

1521 [No response.]

1522 Mr. Chaffetz?

1523 [No response.]

1524 Mr. Rooney?

1525 [No response.]

1526 Mr. Harper?

1527 Mr. Harper. Aye.

1528 The Clerk. Mr. Harper votes aye.

1529 Chairman Conyers. Anyone else? The vote on the floor
1530 is being delayed at the request of the chief of staff of the
1531 Judiciary Committee.

1532 Anyone else want to vote? Clerk will report.

1533 The Clerk. Mr. Chairman, 6 members voted aye, 17
1534 members voted nay.

1535 Chairman Conyers. The amendments fail.

1536 A reporting quorum being present, the question is on
1537 reporting the bill favorably to the House.

1538 Those in favor, say "aye."

1539 [A chorus of ayes.]

1540 Chairman Conyers. Those opposed, say "no."

1541 [A chorus of noes.]

1542 Chairman Conyers. The ayes have it. And the bill is
1543 ordered to be reported favorably.

1544 And this will—without objection, the bill will be
1545 reported as a single amendment. Members will have 2 days to

1546 submit views, and staff is authorized to make conforming
1547 changes or technical corrections.

1548 And that will end the work of the Judiciary Committee
1549 for this week at the full committee level. The meeting
1550 stands adjourned. I thank you very much.

1551 [Whereupon, at 2:56 p.m., the committee was adjourned.]