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4 FULL COMMITTEE CONTINUED MARKUP OF H.R. 4369, THE FURTHERING

5 ASBESTOS CLAIM TRANSPARENCY (FACT) ACT OF 2012

6 Friday, June 8, 2012

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The committee met, pursuant to call, at 9:30 a.m., in  
11 Room 2141, Rayburn House Office Building, Hon. Lamar Smith  
12 [chairman of the committee] presiding.

13 Present: Representatives Smith, Gallegly, Goodlatte,  
14 Chabot, Issa, Forbes, Franks, Jordan, Poe, Chaffetz,  
15 Griffin, Gowdy, Ross, Adams, Quayle, Amodei, Conyers,  
16 Berman, Nadler, Scott, Watt, Jackson Lee, Waters, Cohen,

17 Pierluisi, Quigley, Chu, Deutch, Sanchez, and Polis.

18 Staff Present: Richard Hertling, Majority Staff

19 Director and Chief Counsel; Travis Norton, Majority

20 Parliamentarian; Sarah Kish, Clerk; Perry Apelbaum, Minority

21 Staff Director; Danielle Brown, Minority Parliamentarian;

22 and James Park, Minority Counsel.

23

24 Chairman Smith. The Judiciary Committee will come to  
25 order, and the clerk will call the roll.

26 Ms. Kish. Mr. Smith?

27 Chairman Smith. Present.

28 Ms. Kish. Mr. Sensenbrenner?

29 Mr. Coble?

30 Mr. Gallegly?

31 Mr. Goodlatte?

32 Mr. Lungren?

33 Mr. Chabot?

34 Mr. Issa?

35 Mr. Pence?

36 Mr. Forbes?

37 Mr. King?

38 Mr. Franks?

39 Mr. Franks. Here.

40 Ms. Kish. Mr. Gohmert?

41 Mr. Jordan?

42 Mr. Poe?

43 Mr. Poe. Here.

44 Ms. Kish. Mr. Chaffetz?

45 Mr. Chaffetz. Present.

46 Ms. Kish. Mr. Griffin?

47 Mr. Marino?

48 Mr. Gowdy?

49 Mr. Ross?

50 Mr. Ross. Present.

51 Ms. Kish. Mrs. Adams?

52 Mr. Quayle?

53 Mr. Amodei?

54 Mr. Conyers?

55 Mr. Berman?

56 Mr. Nadler?

57 Mr. Nadler. Present.

58 Ms. Kish. Mr. Scott?

59 Mr. Scott. Present.

60 Ms. Kish. Mr. Watt?

61 Ms. Lofgren?

62 Ms. Jackson Lee?

63 Ms. Waters?

64 Mr. Cohen?

65 Mr. Johnson?

66 Mr. Pierluisi?

67 Mr. Quigley?

68 Mr. Quigley. Here.

69 Ms. Kish. Ms. Chu?

70 Mr. Deutch?

71 Ms. Sanchez?

72 Mr. Polis?

73 Mr. Polis. Present.

74 [Pause.]

75 Chairman Smith. The gentleman from California, Mr.

76 Gallegly?

77 Mr. Gallegly. Present.

78 Chairman Smith. And the gentleman from Arizona, Mr.

79 Quayle?

80 Mr. Quayle. Present.

81 [Pause.]

82 Chairman Smith. The gentleman from Virginia, Mr.

83 Forbes?

84 Mr. Forbes. Present.

85 Chairman Smith. The indispensable gentlewoman from

86 Florida, Mrs. Adams?

87 Mrs. Adams. Present.

88 Chairman Smith. The clerk will report.

89 Ms. Kish. Mr. Chairman, 13 Members responded present.

90 Chairman Smith. A reporting quorum being present, we  
91 will proceed.

92 When we adjourned earlier this week, we were considering  
93 H.R. 4369, the Furthering Asbestos Claim Transparency Act,  
94 which was introduced by the gentleman from Arizona, Mr.  
95 Quayle, and the gentleman from Florida, Mr. Ross. We had  
96 finished debate on an amendment from the gentleman from New  
97 York, Mr. Nadler, but had not yet voted on it. I will now  
98 call up the bill so that we can resume its consideration.

99 Pursuant to notice, I now call up H.R. 4369 for purposes  
100 of markup, and the clerk will designate the bill.

101 Ms. Kish. H.R. 4369, to amend Title 11 of the United  
102 States Code to require the public disclosure by trusts  
103 established under Section 524(g).

104 Chairman Smith. And without objection, the bill will be  
105 considered as read and open for amendment at any point.

106 [The information follows:]

107

108 Chairman Smith. The question is on the pending Nadler  
109 amendment. Those --

110 Mr. Scott. Parliamentary inquiry, Mr. Chairman?

111 Chairman Smith. The gentleman from Virginia, Mr. Scott?

112 Mr. Scott. Could you briefly remind us what the  
113 amendment is or yield to the gentleman from New York to --

114 Chairman Smith. That is a good point, and we will  
115 recognize the gentleman from New York, Mr. Nadler, to  
116 summarize his amendment. The gentleman is recognized for 5  
117 minutes.

118 Mr. Scott. I am yielding.

119 Mr. Nadler. Mr. Chairman, the amendment would require  
120 any defendant seeking information that the bill would make  
121 available to provide information relevant to the case that  
122 pertains to the protection of public health or safety to any  
123 other person or to any Federal or State entity that has the  
124 authority to enforce the law regulating an activity relating  
125 to such information. It would make the -- it would put an  
126 obligation to make public the -- that information relevant  
127 to public health and safety.

128 Chairman Smith. Okay. Does the gentleman yield back

129 his time?

130 Mr. Nadler. I yield back.

131 Chairman Smith. If so, thank you, Mr. Nadler.

132 The question is on the pending Nadler amendment.

133 All in favor, say aye.

134 Opposed, no.

135 In the opinion of the chair, the nays have it. The

136 amendment is not agreed to.

137 Mr. Nadler. Mr. Chairman, a recorded vote?

138 Chairman Smith. A recorded vote has been requested, and

139 the clerk will call the roll.

140 Ms. Kish. Mr. Smith?

141 Chairman Smith. No.

142 Ms. Kish. Mr. Smith votes no.

143 Mr. Sensenbrenner?

144 [No response.]

145 Ms. Kish. Mr. Coble?

146 [No response.]

147 Ms. Kish. Mr. Gallegly?

148 [No response.]

149 Ms. Kish. Mr. Goodlatte?

150 [No response.]

151 Ms. Kish. Mr. Lungren?

152 [No response.]

153 Ms. Kish. Mr. Chabot?

154 [No response.]

155 Ms. Kish. Mr. Issa?

156 [No response.]

157 Ms. Kish. Mr. Pence?

158 [No response.]

159 Ms. Kish. Mr. Forbes?

160 Mr. Forbes. No.

161 Ms. Kish. Mr. Forbes votes no.

162 Mr. King?

163 [No response.]

164 Ms. Kish. Mr. Franks?

165 Mr. Franks. No.

166 Ms. Kish. Mr. Franks votes no.

167 Mr. Gohmert?

168 [No response.]

169 Ms. Kish. Mr. Jordan?

170 [No response.]

171 Ms. Kish. Mr. Poe?  
172 Mr. Poe. No.  
173 Ms. Kish. Mr. Poe votes no.  
174 Mr. Chaffetz?  
175 Mr. Chaffetz. No.  
176 Ms. Kish. Mr. Chaffetz votes no.  
177 Mr. Griffin?  
178 [No response.]  
179 Ms. Kish. Mr. Marino?  
180 [No response.]  
181 Ms. Kish. Mr. Gowdy?  
182 [No response.]  
183 Ms. Kish. Mr. Ross?  
184 Mr. Ross. No.  
185 Ms. Kish. Mr. Ross votes no.  
186 Mrs. Adams?  
187 Mrs. Adams. No.  
188 Ms. Kish. Mrs. Adams votes no.  
189 Mr. Quayle?  
190 Mr. Quayle. No.  
191 Ms. Kish. Mr. Quayle votes no.

192 Mr. Amodei?

193 [No response.]

194 Ms. Kish. Mr. Conyers?

195 Mr. Conyers. Aye.

196 Ms. Kish. Mr. Conyers votes aye.

197 Mr. Berman?

198 [No response.]

199 Ms. Kish. Mr. Nadler?

200 Mr. Nadler. Aye.

201 Ms. Kish. Mr. Nadler votes aye.

202 Mr. Scott?

203 Mr. Scott. Aye.

204 Ms. Kish. Mr. Scott votes aye.

205 Mr. Watt?

206 [No response.]

207 Ms. Kish. Ms. Lofgren?

208 [No response.]

209 Ms. Kish. Ms. Jackson Lee?

210 [No response.]

211 Ms. Kish. Ms. Waters?

212 [No response.]

213 Ms. Kish. Mr. Cohen?

214 Mr. Cohen. Aye.

215 Ms. Kish. Mr. Cohen votes aye.

216 Mr. Johnson?

217 [No response.]

218 Ms. Kish. Mr. Pierluisi?

219 [No response.]

220 Ms. Kish. Mr. Quigley?

221 Mr. Quigley. Aye.

222 Ms. Kish. Mr. Quigley votes aye.

223 Ms. Chu?

224 [No response.]

225 Ms. Kish. Mr. Deutch?

226 Mr. Deutch. Aye.

227 Ms. Kish. Mr. Deutch votes aye.

228 Ms. Sanchez?

229 [No response.]

230 Ms. Kish. Mr. Polis?

231 Mr. Polis. Aye.

232 Ms. Kish. Mr. Polis votes aye.

233 Chairman Smith. The gentleman from Ohio?

234 Mr. Jordan. No.

235 Ms. Kish. Mr. Jordan votes no.

236 Chairman Smith. The gentleman from California, Mr.

237 Gallegly?

238 Mr. Gallegly. No.

239 Ms. Kish. Mr. Gallegly votes no.

240 Chairman Smith. The clerk will report.

241 Ms. Kish. Mr. Chairman, 7 Members voted aye; 10 Members

242 voted nay.

243 Chairman Smith. A majority having voted against the

244 amendment, the amendment is not agreed to.

245 Are there any other amendments?

246 Mr. Polis. Mr. Chairman?

247 Chairman Smith. The gentleman from Colorado, Mr. Polis,

248 is recognized for the purpose of offering an amendment.

249 Mr. Polis. Mr. Chairman, I have an amendment at the

250 desk.

251 Chairman Smith. The clerk will report the amendment.

252 Ms. Kish. Amendment to H.R. 4369, offered by Mr. Polis.

253 Page 2, strike lines 7 through 26 and insert the following -

254 -

255 Chairman Smith. Without objection, the amendment will  
256 be considered as read.

257 [The amendment of Mr. Polis follows:]

258

259 Chairman Smith. And the gentleman is recognized to  
260 explain his amendment.

261 Mr. Polis. Thank you, Mr. Chairman.

262 Essentially, my amendment would preserve State civil  
263 procedure and discovery laws and prevent Federal preemption,  
264 which would otherwise occur in the current language of the  
265 bill.

266 As we know, this bill seeks to override State law  
267 regarding discovery and disclosure of information. In all  
268 50 States and the various territories, we have rules that  
269 govern disclosure of a trust claimant's work and exposure  
270 history, extensive case law and various rules regarding that  
271 discovery. If the information is relevant to a State law  
272 claim, a defendant can request and obtain that information,  
273 according to the State discovery rules.

274 Now what State discovery rules do not allow and what  
275 asbestos defendants are seeking with this bill is a fishing  
276 expedition totally above and beyond State civil procedures  
277 for irrelevant information, which has no other use than to  
278 continue to delay or hinder or obstruct an asbestos victim's  
279 claim for compensation and ultimate resolution of these

280 claims.

281       The bill in its current form really infringes on States  
282 rights to determine their own discovery rules and rules of  
283 civil procedures. Now, as we know, asbestos litigation is  
284 brought under State law. The vast majority of claims are  
285 filed in State court and properly litigated according to  
286 State court rules.

287       Now we began this session of the 112th Congress by  
288 reading the Constitution, and we frequently talk about our  
289 respect for the Constitution on both sides of this body,  
290 including the Bill of Rights. And under the 10th Amendment,  
291 powers not specifically granted to the Federal Government  
292 nor prohibited to the States are reserved to the States.

293       This bill would upset the careful balance of federalism  
294 as preserved in the 10th Amendment by overriding State  
295 discovery and civil rule procedures with a Federal takeover  
296 of discovery rules. This amendment ensures that States  
297 rights are respected by ensuring defendants abide by State  
298 court rules.

299       The bill also infringes on States rights by preempting  
300 State law. Now under many States laws, defendants,

301 including asbestos defendants, are held jointly and  
302 severally liable for a plaintiff's harm. This bill preempts  
303 State joint and several liability law by giving asbestos  
304 defendants automatic access to trust information, basically  
305 allowing them to avoid liability in joint and several  
306 liability states.

307 So, again, we have a 10th Amendment issue. We have an  
308 issue with preempting the rules in State courts and  
309 effectively advocating a Federal takeover and  
310 micromanagement of how States regulate discovery.

311 My amendment would address that. It restores the  
312 appropriate balance of powers. And for any claim pending in  
313 court, it is the appropriate and exclusive role of the  
314 judiciary to determine what information will be made  
315 available through discovery, not to be micromanaged by  
316 Congress.

317 Mr. Conyers. Would the gentleman yield?

318 Mr. Polis. Yes, I just have another moment, and then  
319 would you like to speak? Would you like to get your own  
320 time or -- I will be happy to yield to the ranking member.  
321 I am just finished --

322 Mr. Conyers. All I wanted to find out is, is it correct  
323 that the bill shifts the cost of discovery to the trusts?

324 Mr. Polis. That is correct, yes.

325 Mr. Conyers. Thank you.

326 Mr. Polis. Further disincentive, a further disincentive  
327 to seeking justice for victims. My amendment would restore  
328 the appropriate balance of powers and allow defendants to  
329 overwhelm the trusts with needless information requests, as  
330 the ranking member indicated, that are not relevant to their  
331 claim nor discoverable under State rules.

332 So, again, it is a very straightforward amendment. It  
333 strikes Section 2 of the bill. Obviously, I think there is  
334 the opportunity to discuss the asbestos tort issue and  
335 towards a final resolution.

336 But a Federal takeover of the micromanagement of  
337 discovery rules and the several ability of liability is not  
338 a constructive part of an answer. And it is the very  
339 antithesis to the federalism that many on this panel have  
340 espoused on a number of issues and, absent an overarching  
341 deal in this area, I think is a very perilous path to go  
342 down with regard to the preemption of State civil procedure.

343           And I also thank the ranking member for pointing out the  
344 additional delays and cost that victims would incur in  
345 seeking justice.

346           I urge a yes vote on the amendment, and I yield back.

347           Chairman Smith. Thank you, Mr. Polis.

348           The gentleman from Arizona, Mr. Quayle, is recognized.

349           Mr. Quayle. Thank you, Mr. Chairman.

350           I thank the gentleman for his amendment and his love of  
351 the 10th Amendment, as do I love States rights. But don't -  
352 - you know, rest assured this does not violate any States  
353 rights because the trusts are -- actually continue to be  
354 maintained by the bankruptcy courts, which is a Federal  
355 issue.

356           And so, by allowing the transparency into these trusts  
357 to save the trusts from actually being depleted by  
358 fraudulent action, I think that this is a good bill. It is  
359 transparent. And to address the point that the ranking  
360 member made, the manager's amendment actually provides that  
361 the trust may elect to charge reasonable cost to the party  
362 seeking discovery. Therefore, the discovery obligation  
363 should cost the trust absolutely nothing.

364 I oppose this amendment on other grounds because it  
365 essentially replaces the quarterly report in discovery  
366 sections of the bill with a simple requirement that the  
367 trust provide limited discovery to a party to a pending  
368 State court action relating to asbestos exposure, provided  
369 that discovery cannot otherwise be obtained through  
370 applicable nonbankruptcy law.

371 The problem with relying on nonbankruptcy law for  
372 discovery is that many of these trusts prohibit disclosure  
373 of any information except by subpoena issued by the  
374 bankruptcy court. For example, the Babcock and Wilcox  
375 personal injury asbestos settlement trust plan now provides  
376 that the trust will preserve the confidentiality of such  
377 claimant submissions and shall disclose the contents thereof  
378 only in response to a valid subpoena of such materials  
379 issued by the bankruptcy court.

380 With respect to this in other trusts, State law  
381 discovery procedures don't make the cut. Moreover,  
382 plaintiffs in asbestos litigation cases frequently resist  
383 discovery requests made to the trusts.

384 An example one witness at the FACT Act hearing last

385 month noted was a recent filing by the plaintiffs of a  
386 blanket joint motion for a protective order asking the court  
387 to prevent the disclosure of the terms and supporting  
388 documentation of any settlement entered into between any  
389 plaintiff and any trust.

390 I refer my colleague to the hearing testimony of Leigh  
391 Ann Schell, who has witnessed firsthand the extreme  
392 difficulty that State court litigants face when trying to  
393 get discovery of trust documents. The bottom line is that a  
394 Federal statute is needed to ensure that State court  
395 litigants have access to the records of 524(g) trusts.

396 Applicable nonbankruptcy law, the recourse to which the  
397 gentleman's amendment would leave litigants, is demonstrably  
398 inadequate. The FACT Act streamlines discovery. My  
399 manager's amendment makes clear that trusts will bear no  
400 financial burden for complying with discovery requests.

401 I encourage my colleagues to oppose this amendment, and  
402 I yield back the balance of my time.

403 Chairman Smith. Thank you, Mr. Quayle.

404 Are there other Members who wish to be heard on the  
405 amendment?

406 [No response.]

407 Chairman Smith. If not, the question is on the  
408 amendment.

409 Those in favor, say aye.

410 Those opposed, say nay.

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

413 Mr. Polis. Mr. Chairman, I ask for a recorded vote.

414 Chairman Smith. The gentleman asked for a recorded  
415 vote, and the clerk will call the roll.

416 Ms. Kish. Mr. Smith?

417 Chairman Smith. No.

418 Ms. Kish. Mr. Smith votes no.

419 Mr. Sensenbrenner?

420 [No response.]

421 Ms. Kish. Mr. Coble?

422 [No response.]

423 Ms. Kish. Mr. Gallegly?

424 Mr. Gallegly. No.

425 Ms. Kish. Mr. Gallegly votes no.

426 Mr. Goodlatte?

427 [No response.]

428 Ms. Kish. Mr. Lungren?

429 [No response.]

430 Ms. Kish. Mr. Chabot?

431 Mr. Chabot. No.

432 Ms. Kish. Mr. Chabot votes no.

433 Mr. Issa?

434 [No response.]

435 Ms. Kish. Mr. Pence?

436 [No response.]

437 Ms. Kish. Mr. Forbes?

438 Mr. Forbes. No.

439 Ms. Kish. Mr. Forbes votes no.

440 Mr. King?

441 [No response.]

442 Ms. Kish. Mr. Franks?

443 Mr. Franks. No.

444 Ms. Kish. Mr. Franks votes no.

445 Mr. Gohmert?

446 [No response.]

447 Ms. Kish. Mr. Jordan?

448 Mr. Jordan. No.

449 Ms. Kish. Mr. Jordan votes no.

450 Mr. Poe?

451 [No response.]

452 Ms. Kish. Mr. Chaffetz?

453 Mr. Chaffetz. No.

454 Ms. Kish. Mr. Chaffetz votes no.

455 Mr. Griffin?

456 [No response.]

457 Ms. Kish. Mr. Marino?

458 [No response.]

459 Ms. Kish. Mr. Gowdy?

460 Mr. Gowdy. No.

461 Ms. Kish. Mr. Gowdy votes no.

462 Mr. Ross?

463 Mr. Ross. No.

464 Ms. Kish. Mr. Ross votes no.

465 Mrs. Adams?

466 Mrs. Adams. No.

467 Ms. Kish. Mrs. Adams votes no.

468 Mr. Quayle?

469 Mr. Quayle. No.

470 Ms. Kish. Mr. Quayle votes no.

471 Mr. Amodei?

472 Mr. Amodei. No.

473 Ms. Kish. Mr. Amodei votes no.

474 Mr. Conyers?

475 Mr. Conyers. Aye.

476 Ms. Kish. Mr. Conyers votes aye.

477 Mr. Berman?

478 [No response.]

479 Ms. Kish. Mr. Nadler?

480 Mr. Nadler. Aye.

481 Ms. Kish. Mr. Nadler votes aye.

482 Mr. Scott?

483 Mr. Scott. Aye.

484 Ms. Kish. Mr. Scott votes aye.

485 Mr. Watt?

486 Mr. Watt. Aye.

487 Ms. Kish. Mr. Watt votes aye.

488 Ms. Lofgren?

489 [No response.]

490 Ms. Kish. Ms. Jackson Lee?  
491 [No response.]  
492 Ms. Kish. Ms. Waters?  
493 Ms. Waters. Aye.  
494 Ms. Kish. Ms. Waters votes aye.  
495 Mr. Cohen?  
496 Mr. Cohen. Aye.  
497 Ms. Kish. Mr. Cohen votes aye.  
498 Mr. Johnson?  
499 [No response.]  
500 Ms. Kish. Mr. Pierluisi?  
501 Mr. Pierluisi. Aye.  
502 Ms. Kish. Mr. Pierluisi votes aye.  
503 Mr. Quigley?  
504 Mr. Quigley. Aye.  
505 Ms. Kish. Mr. Quigley votes aye.  
506 Ms. Chu?  
507 [No response.]  
508 Ms. Kish. Mr. Deutch?  
509 [No response.]  
510 Ms. Kish. Ms. Sanchez?

511 [No response.]

512 Ms. Kish. Mr. Polis?

513 Mr. Polis. Aye.

514 Ms. Kish. Mr. Polis votes aye.

515 Chairman Smith. The gentlewoman from Texas, Ms. Jackson  
516 Lee?

517 Ms. Jackson Lee. How am I recorded?

518 Ms. Kish. Not recorded, ma'am.

519 Ms. Jackson Lee. Aye.

520 Ms. Kish. Ms. Jackson Lee votes aye.

521 Chairman Smith. The gentleman from Florida, Mr. Deutch?

522 Mr. Deutch. Aye.

523 Ms. Kish. Mr. Deutch votes aye.

524 Chairman Smith. Are there any other Members who wish to  
525 be recorded?

526 [No response.]

527 Chairman Smith. If not, the clerk will report.

528 Ms. Kish. Mr. Chairman, 11 Members voted aye; 12  
529 Members voted nay.

530 Chairman Smith. A slim majority having voted against  
531 the amendment, the amendment is not agreed to.

532 Are there any other amendments?

533 [No response.]

534 Chairman Smith. If not, before we go to final passage  
535 on this bill, I want to thank Members for their  
536 participation this week.

537 This has been a rare week with our having two markups on  
538 two different days. But I do want to point out that even  
539 though there wasn't general agreement on these last two  
540 bills, that of the six bills this committee marked up this  
541 week, four, in fact, were bipartisan bills. And that is a  
542 tribute to this committee and to the ranking member for  
543 helping us get those bills across the final finish line.

544 Reporting quorum being present, the question is on  
545 reporting the bill, as amended, favorably to the House.

546 Those in favor, say aye.

547 Opposed, no.

548 The ayes have it, and the bill, as amended, is ordered  
549 reported favorably.

550 A request has been made for a recorded vote, and the  
551 clerk will call the roll.

552 Ms. Kish. Mr. Smith?

553 Chairman Smith. Aye.

554 Ms. Kish. Mr. Smith votes aye.

555 Mr. Sensenbrenner?

556 [No response.]

557 Ms. Kish. Mr. Coble?

558 [No response.]

559 Ms. Kish. Mr. Gallegly?

560 Mr. Gallegly. Aye.

561 Ms. Kish. Mr. Gallegly votes aye.

562 Mr. Goodlatte?

563 [No response.]

564 Ms. Kish. Mr. Lungren?

565 [No response.]

566 Ms. Kish. Mr. Chabot?

567 Mr. Chabot. Aye.

568 Ms. Kish. Mr. Chabot votes aye.

569 Mr. Issa?

570 [No response.]

571 Ms. Kish. Mr. Pence?

572 [No response.]

573 Ms. Kish. Mr. Forbes?

574 Mr. Forbes. Aye.

575 Ms. Kish. Mr. Forbes votes aye.

576 Mr. King?

577 [No response.]

578 Ms. Kish. Mr. Franks?

579 Mr. Franks. Aye.

580 Ms. Kish. Mr. Franks votes aye.

581 Mr. Gohmert?

582 [No response.]

583 Ms. Kish. Mr. Jordan?

584 Mr. Jordan. Yes.

585 Ms. Kish. Mr. Jordan votes aye.

586 Mr. Poe?

587 [No response.]

588 Ms. Kish. Mr. Chaffetz?

589 Mr. Chaffetz. Aye.

590 Ms. Kish. Mr. Chaffetz votes aye.

591 Mr. Griffin?

592 [No response.]

593 Ms. Kish. Mr. Marino?

594 [No response.]

595 Ms. Kish. Mr. Gowdy?

596 Mr. Gowdy. Yes.

597 Ms. Kish. Mr. Gowdy votes aye.

598 Mr. Ross?

599 Mr. Ross. Aye.

600 Ms. Kish. Mr. Ross votes aye.

601 Mrs. Adams?

602 Mrs. Adams. Aye.

603 Ms. Kish. Mrs. Adams votes aye.

604 Mr. Quayle?

605 Mr. Quayle. Aye.

606 Ms. Kish. Mr. Quayle votes aye.

607 Mr. Amodei?

608 Mr. Amodei. Aye.

609 Ms. Kish. Mr. Amodei votes aye.

610 Mr. Conyers?

611 Mr. Conyers. No.

612 Ms. Kish. Mr. Conyers votes no.

613 Mr. Berman?

614 Mr. Berman. No.

615 Ms. Kish. Mr. Berman votes no.

616 Mr. Nadler?

617 Mr. Nadler. No.

618 Ms. Kish. Mr. Nadler votes no.

619 Mr. Scott?

620 Mr. Scott. No.

621 Ms. Kish. Mr. Scott votes no.

622 Mr. Watt?

623 Mr. Watt. No.

624 Ms. Kish. Mr. Watt votes no.

625 Ms. Lofgren?

626 [No response.]

627 Ms. Kish. Ms. Jackson Lee?

628 Ms. Jackson Lee. No.

629 Ms. Kish. Ms. Jackson Lee votes no.

630 Ms. Waters?

631 Ms. Waters. No.

632 Ms. Kish. Ms. Waters votes no.

633 Mr. Cohen?

634 Mr. Cohen. No.

635 Ms. Kish. Mr. Cohen votes no.

636 Mr. Johnson?

637 [No response.]

638 Ms. Kish. Mr. Pierluisi?

639 Mr. Pierluisi. No.

640 Ms. Kish. Mr. Pierluisi votes no.

641 Mr. Quigley?

642 Mr. Quigley. No.

643 Ms. Kish. Mr. Quigley votes no.

644 Ms. Chu?

645 Ms. Chu. No.

646 Ms. Kish. Ms. Chu votes no.

647 Mr. Deutch?

648 Mr. Deutch. No.

649 Ms. Kish. Mr. Deutch votes no.

650 Ms. Sanchez?

651 [No response.]

652 Ms. Kish. Mr. Polis?

653 Mr. Polis. No.

654 Ms. Kish. Mr. Polis votes no.

655 Chairman Smith. The gentleman from Arkansas?

656 Mr. Griffin. Aye.

657 Ms. Kish. Mr. Griffin votes aye.

658 Chairman Smith. The gentleman from South Carolina?  
659 Mr. Gowdy. We need time.  
660 Chairman Smith. And the gentleman from Arizona?  
661 Mr. Franks. Aye.  
662 Ms. Kish. Mr. Franks votes aye.  
663 Chairman Smith. Are there other Members who wish to be  
664 recorded?  
665 Mr. Forbes. Mr. Chairman?  
666 Chairman Smith. Who seeks recognition? Oh, the  
667 gentleman from Virginia, Mr. Forbes?  
668 Mr. Forbes. Mr. Chairman, how am I recorded?  
669 Ms. Kish. Mr. Forbes has voted aye.  
670 Mr. Forbes. Thank you, Mr. Chairman.  
671 Mr. Franks. Mr. Chairman?  
672 Chairman Smith. Who seeks recognition?  
673 Mr. Franks. Mr. Chairman?  
674 Chairman Smith. The gentleman from Arizona?  
675 Mr. Franks. How am I recorded?  
676 Ms. Kish. Mr. Franks has voted aye.  
677 Mr. Franks. Thank you.  
678 Mr. Chabot. Mr. Chairman?

679 Chairman Smith. The gentleman from Ohio?

680 Mr. Chabot. Mr. Chairman, I would like to make  
681 absolutely sure how I voted on this particular issue.

682 Chairman Smith. And how is that the gentleman has  
683 voted?

684 Ms. Kish. Mr. Chabot has voted aye.

685 Voice. Mr. Chairman?

686 Chairman Smith. Let me say to Members we are going to  
687 hold this vote open for a couple of minutes. I can hear  
688 footsteps in the hall, and we don't want to deny anyone the  
689 opportunity to vote on such an important piece of  
690 legislation.

691 [Pause.]

692 Mr. Conyers. Mr. Chairman, could I call for regular  
693 order, please?

694 Chairman Smith. The ranking member's call for regular  
695 order has been heard, is being considered, and will be ruled  
696 on shortly.

697 Let us go back to the days of proxy votes.

698 [Pause.]

699 Mr. Conyers. Mr. Chairman, I again call for regular

700 order, please.

701 Mr. Nadler. Mr. Chairman?

702 Chairman Smith. Thank you, Mr. Conyers.

703 The gentleman -- yes?

704 Mr. Nadler. Mr. Chairman, is the pending vote the  
705 Medicare drug bill?

706 Chairman Smith. I didn't understand the gentleman.

707 Mr. Nadler. Is the pending vote the Medicare drug bill?

708 That was held open for 3.5 hours.

709 Chairman Smith. That was another time, another year.

710 And as I recall, that vote was held open for 3 hours and 12  
711 minutes.

712 Mr. Nadler. Yes, it was.

713 Chairman Smith. So we have no intention of breaking  
714 that record here today.

715 Mr. Nadler. I would hope not.

716 Chairman Smith. In fact, I expect that we will be able  
717 to close the vote in a couple of minutes. And now this is  
718 expected to be the last vote of the day. Those who have  
719 already voted are free to leave.

720 [Laughter.]

721 Mr. Nadler. But then you would lack a reporting quorum.

722 Mr. Deutch. Point of parliamentary inquiry, Mr.

723 Chairman?

724 Chairman Smith. Who seeks recognition? The gentleman  
725 from Florida, Mr. Deutch?

726 Mr. Deutch. Mr. Chairman, the point of parliamentary  
727 inquiry, is it the chairman's prerogative to hold open  
728 votes?

729 Chairman Smith. It is the chairman's prerogative to  
730 hold open the votes for a reasonable amount of time. That  
731 to be defined, of course, by the chairman.

732 [Laughter.]

733 Mr. Deutch. I thank the chairman for his thoughtful  
734 response.

735 [Pause.]

736 Mr. Watt. Mr. Chairman, might I ask for a unanimous  
737 consent request, or are we in the middle of something?

738 Chairman Smith. No. The gentleman is recognized for a  
739 unanimous consent request.

740 Mr. Watt. I ask unanimous consent that the vote be held  
741 open for our side for an equivalent amount of time after you

742 get your votes for us to get our people here.

743 Chairman Smith. The vote is being held open for both  
744 sides. Anybody can walk in the door at any point. So I  
745 would have to object to the gentleman's unanimous consent  
746 request.

747 I thought it was going to be for documents in the record  
748 or something like that.

749 Mr. Watt. Well, I assumed the record will document  
750 itself as to how the rules are being twisted and turned and  
751 used for the benefit of the chairman.

752 Mr. Franks. Mr. Chairman? Mr. Chairman?

753 Chairman Smith. The gentleman from Arizona is  
754 recognized.

755 Mr. Franks. May I engage in a colloquy with the  
756 chairman?

757 Chairman Smith. Yes, the gentleman is recognized to  
758 engage in a colloquy. Is the gentleman still willing to  
759 engage in a colloquy?

760 Mr. Franks. Mr. Chairman, that is up to you.

761 Chairman Smith. Let us recognize the gentleman from  
762 Virginia, Mr. Goodlatte, for his vote.

763 Mr. Goodlatte. Aye.

764 Mr. Nadler. Mr. Chairman?

765 Chairman Smith. The gentleman from New York? If not,  
766 we are going to close the vote.

767 Mr. Nadler. Mr. Chairman, how am I recorded, please?

768 Ms. Kish. Mr. Nadler has voted no.

769 Mr. Nadler. I am sorry, Mr. Chairman. I didn't hear  
770 that.

771 Ms. Kish. Mr. Nadler has voted no.

772 Mr. Nadler. You are sure I voted no?

773 Ms. Kish. Yes.

774 Chairman Smith. The clerk will report.

775 Ms. Sanchez. Mr. Chairman?

776 Chairman Smith. Oh, the clerk will not report yet. The  
777 gentlewoman from California?

778 Ms. Sanchez. How am I recorded?

779 Ms. Kish. Not recorded, ma'am.

780 Ms. Sanchez. I vote nay.

781 Ms. Kish. Ms. Sanchez votes no.

782 Chairman Smith. The gentleman from California, Mr.

783 Issa?

784 Mr. Issa. Aye.

785 Ms. Kish. Mr. Issa votes aye.

786 Chairman Smith. The gentleman from California votes  
787 aye.

788 Ms. Jackson Lee. Mr. Chairman?

789 Chairman Smith. The gentlewoman from Texas, Ms. Jackson  
790 Lee?

791 Ms. Jackson Lee. How am I recorded?

792 Ms. Kish. Ms. Jackson Lee has voted no.

793 Ms. Jackson Lee. What did you say? I am sorry.

794 Ms. Kish. No.

795 Ms. Jackson Lee. No. Thank you.

796 Mr. Quigley. Mr. Chairman?

797 Chairman Smith. The clerk will report.

798 Mr. Quigley. Mr. Chairman, how did the Cubs do last  
799 night?

800 [Laughter.]

801 Ms. Kish. Mr. Chairman, 15 Members voted aye; 14  
802 Members voted nay.

803 Chairman Smith. The ayes have it, and the bill, as  
804 amended, is ordered reported favorably.

805           Without objection, the bill will be reported as a single  
806 amendment in the nature of a substitute, incorporating  
807 amendments adopted. Staff is authorized to make technical  
808 and conforming changes. Members will have 2 days to submit  
809 their views.

810           I thank all Members. We stand adjourned.

811           [Whereupon, at 10:02 a.m., the committee was adjourned.]