

1 NATIONAL CAPITOL CONTRACTING
2 RPTS HALATYN
3 HJU017000

4 MARKUP OF H.R. 4170, THE "DISCLOSING
5 FOREIGN INFLUENCE ACT"
6 Wednesday, January 17, 2018
7 House of Representatives,
8 Committee on the Judiciary,
9 Washington, D.C.

10 The committee met, pursuant to call, at 10:00 a.m., in
11 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Smith, Chabot,
14 Issa, King, Gohmert, Jordan, Marino, Labrador, Farenthold,
15 DeSantis, Buck, Ratcliffe, Roby, Gaetz, Johnson of
16 Louisiana, Biggs, Rutherford, Handel, Nadler, Lofgren,
17 Jackson Lee, Johnson of Georgia, Jeffries, Cicilline, Lieu,
18 Raskin, Jayapal, and Demings.

19 Staff Present: Shelley Husband, Staff Director; Branden
20 Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian

21 and General Counsel; Paul Taylor, Chief Counsel,
22 Subcommittee on the Constitution and Civil Justice; Alley
23 Adcock, Clerk; Matthew Morgan, Minority Counsel; James Park,
24 Minority Chief Counsel; Danielle Brown, Minority
25 Parliamentarian and Chief Legislative Counsel; David
26 Greengrass, Minority Counsel; Rachel Calanni, Minority
27 Professional Staff Member; and Perry Apelbaum, Minority
28 Chief Counsel and Staff Director.

29 Chairman Goodlatte. Good morning. The Judiciary
30 Committee will come to order and, without objection, the
31 chair is authorized to declare a recess at any time.
32 Pursuant to notice, I now call up H.R. 4170 for purposes of
33 markup and move that the committee report the bill favorably
34 to the House. The clerk will report the bill.

35 Ms. Adcock. H.R. 4170: to amend the Foreign Agents
36 Registration Act of 1938 to promote greater transparency in
37 the registration of persons serving as the agents of foreign
38 principles to provide the Attorney General with greater
39 authority to investigate alleged violations of such act and
40 bring criminal and civil actions against persons who commit
41 such violations and for other purposes.

42 [The bill follows:]

43 ***** INSERT 1 *****

44 Chairman Goodlatte. Without objection, the bill is
45 considered as read and open for amendment at any time, and I
46 will begin by recognizing myself for an opening statement.

47 I commend Representative Johnson for introducing H.R.
48 4170, the Disclosing Foreign Influence Act, a narrowly-
49 focused bill aimed at acquiring greater transparency when
50 entities advocate on behalf of foreign governments in the
51 United States. The Foreign Agents Registration Act, called
52 FARA, was enacted in 1938 to require individuals, groups, or
53 organizations advocating on behalf of foreign governments to
54 register and report to the Department of Justice on a
55 periodic basis. Such disclosures allow the American people
56 and their law enforcement agencies to evaluate statements
57 made by registrants in light of their function as foreign
58 agents in the U.S.

59 However, several loopholes exist in FARA as currently
60 codified. Loopholes that have been highlighted by
61 independent agencies from the inspector general offices to
62 the Government Accountability Office. The Justice
63 Department's National Security Division inspector general
64 concluded in a 2016 report that the Federal Government
65 currently lacks both the comprehensive enforcement strategy
66 and, more importantly, the basic tools to obtain the
67 information necessary to enforce FARA. That report followed
68 the Government Accountability Office's 1980, 1990, and 2008

69 reports that all recommended that the Federal Government be
70 given and demand authority to obtain the information
71 necessary to FARA's enforcement.

72 Answering the call for such enforcement authority is
73 Mr. Johnson's bill before us today. The bill grants the
74 Attorney General the same civil investigative demand
75 authority he currently has to investigate false claims made
76 to the Federal Government. This demand authority is a type
77 of subpoena that allows the Department of Justice to obtain
78 documents, require responses to interrogatories, and take
79 depositions. Twenty-eight of the bill's 34 pages simply
80 replicate the provisions of the civil investigative demand
81 authority, and 31 United States code section 3733, and
82 codify those same provisions in the context of FARA
83 investigations.

84 The bill also eliminates a loophole that currently
85 allows entities for forego registration under FARA when they
86 register under the Lobbying Disclosure Act of 1995. Those
87 who advocate for foreign governments and entities in the
88 United States should register under both that act and FARA
89 when appropriate as this bill requires. The bill also
90 requires the Department of Justice to develop a
91 comprehensive strategy for administering and enforcing FARA,
92 including setting standards for the timely review of FARA
93 filings and the encouragement of the coordination between

94 national security agencies and law enforcement.

95 Senator Grassley has introduced companion legislation
96 in the Senate, and I look forward to working with all my
97 colleagues to see these common-sense transparency provisions
98 enacted into law. It is now my pleasure to recognize the
99 ranking member of the committee, the gentleman from New
100 York, Mr. Nadler, for his opening statement.

101 [The prepared statement of Chairman Goodlatte follows:]

102 ***** COMMITTEE INSERT *****

103 Mr. Nadler. Thank you, Mr. Chairman. H.R. 4170, the
104 Disclosing Foreign Influence Act, appears to be a good-faith
105 attempt to strengthen the Department of Justice's ability to
106 enforce the Foreign Agents Registration Act of 1938, or
107 FARA. Under FARA, an agent of a foreign principal must
108 register with the Department, file any information or
109 materials that he or she has distributed within the United
110 States on behalf of the foreign principal, and maintain
111 records of his or her activity.

112 Among other things, the bill amends FARA to eliminate
113 existing exemption for individuals who have already
114 registered as lobbyists pursuant to the Lobbying Disclosure
115 Act of 1995. It also gives the Department of Justice the
116 authority to issue Civil Investigative Demands, or CIDs,
117 which are effectively administrative subpoenas that the
118 Department may issue to demand documents, interrogatory
119 answers, or moral testimony from any persons with
120 information relevant to an investigation. The bill's CID
121 provision appears to be substantively similar to the CID
122 provision in the False Claims Act.

123 I appreciate the work that Representative Mike Johnson
124 has put into crafting this legislation, and I share the goal
125 of ensuring that FARA is enforced properly. It is
126 understandable why many public interest groups would support
127 this bill, including many that I admire and respect. H.R.

128 4170, however, is not yet ripe for markup, as it might raise
129 several constitutional and policy questions that should give
130 us some pause before we move forward.

131 I note that the Judiciary Committee has held no
132 legislative hearing on this bill and does not appear to have
133 held an oversight hearing on FARA since 1991. By bringing
134 this bill straight to markup without a hearing, majorities
135 made it very difficult to determine the extent of these
136 concerns, or whether or how any of them can or should be
137 resolved. A hearing on this bill is critical for members to
138 fulfill their obligations to legislate properly.

139 There are also other proposals, such as the bill
140 offered by Mr. Cicilline. We should explore various options
141 before deciding on a course of action. There is no good
142 reason not to have a hearing, and proceeding without one
143 risks unintentionally introducing new errors into existing
144 law.

145 Turning to the substance, H.R. 4170's CID provision may
146 raise Fourth Amendment and other constitutional concerns.
147 We have heard informally from the American Civil Liberties
148 Union, the Center for Democracy and Technology, and the
149 National Association of Criminal Defense Lawyers. And I
150 have a letter here, which I ask unanimous consent to insert
151 into to the record, from the National Association of
152 Criminal Defense Lawyers.

153 Chairman Goodlatte. Without objection, it will be made
154 a part of the record.

155 [The information follows:]

156 ***** COMMITTEE INSERT *****

157 Mr. Nadler. Thank you. We have heard from these
158 organizations that the use of CIDs may effectively be an
159 end-run around the Fourth Amendment, particularly where, as
160 in the case of FARA, criminal prosecution sanctions may
161 result from an investigation.

162 To obtain documents and other evidence in a criminal
163 investigation, law enforcement officials must get a search
164 warrant issued by a judge after a showing of probable cause
165 that a crime was committed, and that items connected with a
166 crime are likely to be found at the locations specified in
167 the warrant. The CID language in this bill, however,
168 appears to allow law enforcement to obtain such items
169 without any prior judicial authorization, thereby
170 circumventing an important constitutional limit on
171 government authority.

172 I recognize that the bill's CID provision was largely
173 taken from a long-standing provision in the False Claims
174 Act, and I appreciate that it includes and even bills upon
175 that statute's procedural protections with the targets of
176 CIDs. I note, however, that the False Claims Act carries no
177 criminal penalties and that the False Claims Act
178 investigations are purely civil in nature. By contrast,
179 FARA investigations may be criminal in nature when there has
180 been an alleged willful violation. Thus, the
181 constitutionality of the use of CIDs in the False Claims Act

182 context may not be the same as the use in the FARA context.

183 The bill may also raise potential due process concerns,
184 for, while the bill allows the target of a CID to have
185 counsel present during oral testimony, it does not require
186 that a target be informed of their right to have counsel.
187 In addition, although a witness may refuse to provide
188 testimony by raising his or her privilege against self-
189 incrimination, the bill's CID provision allows the Attorney
190 General to seek a court order compelling testimony in
191 response to the raising of such privilege if it is in the
192 public interest to do so. And such testimony may still be
193 used to prosecute an individual for perjury or giving a
194 false statement, if not for the underlying FARA violation.

195 Finally, I note that a coalition of nonprofit groups
196 that includes the American Bar Association and the
197 International Center for Not-For-Profit Law have expressed
198 concern about what they believe of FARA's overly broad and
199 vague definitions of "agents of a foreign principal" and
200 "foreign principal." They believe that strengthening the
201 enforcement of FARA without addressing these concerns,
202 together with the threat of criminal penalties, risks
203 chilling important civil society work, both in the United
204 States and abroad.

205 While I make no final judgement on the merit of these
206 and other concerns, it is worth our effort to hear them out

207 before proceeding to markup, and a hearing would have been
208 beneficial to that end. I would ask the we postpone today's
209 markup until we have the opportunity to hear from and
210 examine outside experts and interested stakeholders on the
211 record so that we can craft legislation that can truly have
212 strong bipartisan support.

213 Before I yield back, I must note one issue that ought
214 to be at the forefront of the Judiciary Committee's agenda
215 today, instead of this bill, and that is President Trump's
216 unconscionable and racist comments last week. It has been
217 widely reported that, during a White House meeting to
218 discuss a proposed bipartisan immigration deal, the
219 President made a number of racist and offensive comments
220 including, when discussing the inclusion of Haitians in the
221 deal, asking, "Haitians? Why do we need more Haitians?
222 Take them out." When referring to African countries as
223 "shitholes" and suggesting that, instead of accepting
224 immigrants from Haiti and Africa, we should instead bring in
225 more people from countries like Norway, with a clear
226 implication that he was referring to countries that are
227 predominantly white.

228 I ask all my colleagues on both sides of the aisle to
229 repudiate these comments immediately. I hope that we will
230 join Mr. Richmond, the chairman of Congressional Black
231 Caucus, myself, and many other democrats, including many

232 members of this committee, in supporting a formal resolution
233 of censure, condemning the President's hateful,
234 discriminatory, and racist statements. This is a time when
235 Congress should speak with one voice, and I hope that you
236 will seize the moment.

237 I know that the White House has disputed whether the
238 President used the specific vulgar term I referenced
239 earlier, but they have not disavowed the racist sentiment
240 behind it. At a minimum, I hope that we will reaffirm this
241 Nation's historic commitment to diversity and its long
242 history as a beacon of hope and refuge for those who need
243 its protection.

244 As we condemn the President's comments, we must also
245 not lose sight of the fact that we are inching closer to a
246 deadline that puts 800,000 DREAMers at risk of being
247 expelled from the only country they have ever known. It is
248 imperative that we pass the DREAM Act without delay, and
249 without the hateful and divisive rhetoric flowing from the
250 White House. I thank you, and I yield back the balance of
251 my time.

252 [The prepared statement of Mr. Nadler follows:]

253 ***** COMMITTEE INSERT *****

254 Chairman Goodlatte. I would now like to recognize the
255 sponsor of the bill, the gentleman from Louisiana, Mr.
256 Johnson, for his opening statement.

257 Mr. Johnson of Louisiana. Thank you, Mr. Chairman.
258 One of the worst-kept secrets in Washington is how
259 frequently lobbyists have violated our foreign registration
260 laws by accepting millions of dollars from foreign
261 principals without disclosing a thing about those
262 relationships. More Americans are becoming aware of the
263 problem, especially over the past year, since specific focus
264 and attention has come to light on two high-profile failures
265 to register under the Foreign Agents Registration Act,
266 commonly referred to as FARA. It is no coincidence that a
267 number of foreign agents have recently begun to register
268 under the FARA statute retroactively in an obvious effort to
269 avoid prosecution for their prior activities.

270 Since its enactment in 1938, the Foreign Agents
271 Registration Act has served as a critical tool to monitor
272 and track individuals, groups, or organizations who advocate
273 on behalf of a foreign government within the United States.
274 These entities who lobby on behalf of a foreign government
275 or principal in a political or quasi-political capacity must
276 adhere to registration requirements and report necessary
277 information to the Department of Justice. Requiring these
278 types of disclosures reveals relationships with foreign

279 entities that help disclose important information to the
280 U.S. government and to the American people, so we can
281 responsibly evaluate the activities of these individuals and
282 their functions as foreign agents.

283 Unfortunately, as a result of numerous changes and
284 modifications since its inception in 1938, the Foreign
285 Agents Registration Act has numerous loopholes and long-
286 standing deficiencies that allow foreign agents to evade
287 FARA disclosure requirements and instead simply register
288 with very minimal informative disclosure standards under the
289 Lobbying Disclosure Act. A recent series of recent scandals
290 in which persons lobbying on behalf of foreign governments
291 failed to register and disclose the foreign interests they
292 represented mirrors many of the shortcomings of FARA,
293 identified by the inspector general's Office of the
294 Department of Justice.

295 Similarly, in 2014, a series of scandals involving
296 high-profile groups in Washington led Congress to direct the
297 inspector general to conduct a specific year-long review
298 into the deficiencies of this law. These loopholes I
299 question open the door to problematic activities at the
300 highest levels of government, and without the necessary
301 investigative tools, allegations of FARA abuses will remain
302 unanswered. There are four overarching areas which the DOJ
303 Office of the Inspector General reports 14 recommendations

304 and the historical evidence all highlight. Enforcement
305 strategy, subpoena authority, problematic exemptions,
306 transparency, and oversight.

307 The legislation before the House Judiciary Committee
308 today, H.R. 4170, the Disclosing Foreign Influence Act, uses
309 carefully crafted legislation based on the historical
310 evidence to address each area with real reforms. By doing
311 this, we will achieve necessary but balanced progress, and,
312 as our chairman just articulated, this is a matter of common
313 sense.

314 This bill seeks to correct clear violations and close
315 the unnecessary loopholes to increase transparency so the
316 American people can rightfully identify what foreign
317 principals that are attempting to influence our U.S. policy.
318 Specifically, my legislation remedies ambiguity in the law
319 and updates the following threshold for disclosing
320 requirements by aligning fair reporting to the Lobbying
321 Disclosure Act timeframe. H.R. 4170 also closes major
322 carve-outs and loopholes such as eliminating the LDA
323 exemption that allows foreign agents to avoid FARA
324 registration.

325 The Department of Justice has stated that,
326 increasingly, foreign state-owned companies that qualify for
327 current exemption are increasingly a cause for concern in
328 respect to national security. To ensure full compliance

329 under this legislation, the Department of Justice has
330 granted civil investigative demand authority to investigate
331 possible violations of those who should be registered under
332 FARA while also codifying over 50 years of improvements and
333 safeguards that have been put in place for CID authority to
334 prevent any government overreach or abuse.

335 These two reforms alone establish sorely-needed reforms
336 to enhance reinforcement of the law and transparency, and
337 have been publicly supported by major civil liberties groups
338 as necessary reform. To that end, I would like to insert
339 into the record a letter of support for this bill by a
340 coalition of civil liberties groups, Mr. Chairman.

341 Let me summarize by reiterating the important purpose
342 of what we are doing today. This legislation will finally
343 put an end to the major ambiguities and exemptions that have
344 been exploited by foreign nations to maneuver around our
345 laws and lobby the Federal Government without transparency.
346 The American people deserve to know when foreign adversaries
347 are attempting to meddle in our domestic affairs, and my
348 legislation will ensure we have that information.

349 I would like to thank the members who are co-sponsors
350 of this important bill, and I specifically wish to thank
351 Congressmen Richmond and Bishop for working with me to make
352 this bill a bipartisan effort. With that, I yield back, Mr.
353 Chairman.

354 [The prepared statement of Mr. Johnson of Louisiana
355 follows:]

356 ***** COMMITTEE INSERT *****

357 Chairman Goodlatte. The chair thanks the gentleman.

358 Are there any amendments to H.R. 4170?

359 Mr. Johnson of Louisiana. Mr. Chairman?

360 Chairman Goodlatte. For what purpose does the

361 Gentleman from Louisiana seek recognition?

362 Mr. Johnson of Louisiana. Sorry, Mr. Chairman. I have
363 an amendment at the desk.

364 Chairman Goodlatte. The clerk will report the
365 amendment.

366 Ms. Adcock. Amendment to H.R. 4170, offered by Mr.

367 Johnson of Louisiana. Page 32, beginning line 3 --

368 [The amendment of Mr. Johnson of Louisiana follows:]

369 ***** COMMITTEE INSERT *****

370 Chairman Goodlatte. Without objection, the amendment
371 is considered as read, and the gentleman is recognized for 5
372 minutes.

373 Mr. Cicilline. Mr. Chairman, point of order.

374 Chairman Goodlatte. For what purpose does the
375 gentleman from --

376 Mr. Cicilline. Is it not appropriate to ask whether or
377 not any members of the opposition wish to strike the last
378 word before you go again to Republican members of this
379 Committee? We have not had an opportunity to make opening
380 comments on the bill.

381 Chairman Goodlatte. You can move to strike the last
382 word at any time.

383 Mr. Cicilline. But we have a custom of going
384 Republican, Democrat, Republican, Democrat.

385 Chairman Goodlatte. We checked to find out if the
386 ranking member of the subcommittee wished to make a
387 statement; it was advised that he did not, so we then went
388 to the amendment offered by the gentleman from Louisiana.

389 Mr. Cicilline. I sought recognition, Mr. Chairman, to
390 move to strike the last word, so I could make comments on
391 the bill, and I am asking --

392 Chairman Goodlatte. We were not informed ahead of
393 time, but we will consider the amendment. You can move to
394 strike the last word at any time.

395 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. As
396 evidence included in the 2016 DOJ Inspector General audit of
397 the Foreign Agents Registration Act showed, this is clearly
398 an important area where independent oversight is needed, and
399 a review by the Department's implementation of the statutory
400 requirements in this draft legislation -- if they were to
401 become law -- would be beneficial.

402 The technical modifications in my amendment include
403 adding a 120-day timeframe for completion of the development
404 and implementation of the comprehensive enforcement
405 strategy. Second, it removes the indefinite open-ended time
406 period of the Inspector General oversight that is mandated
407 by this section. Namely, requiring the DOJIG to conduct
408 "regular ongoing review" of the areas described in sections
409 4B1A and 4B1B. The DOJIG already has the authority to
410 follow up on previously-made recommendations or reported
411 issues. Such a statutory provision would require the I.G.'s
412 audit division to continually obligate its limited resources
413 to review these FARA provisions year after year, even if a
414 risk analysis does not support continuing to conduct such a
415 review.

416 Lastly, my amendment would add a requirement for the
417 DOJ to include information in its annual report to Congress
418 detailing the usage over the preceding year of the authority
419 granted to the Attorney General by this act to issue civil

420 investigator demands. We believe this will be extremely
421 beneficial in determining if the law should be reenacted
422 after its 5-year sunset provision.

423 Specifically, the DOJ inspector general would be
424 required to produce within 1 year of the enactment of this
425 legislation a report detailing the number of CIDs issued,
426 description of the nature and the alleged violation,
427 description of the documentary materials and interrogatory
428 testimony required by CID, the number of times the Attorney
429 General filed in a district court of the United States a
430 petition for an order for CID enforcement, a description of
431 the results of CID demands issued, and whether the Attorney
432 General subsequently filed alleged violations of FARA, and
433 any other pertinent information as necessary.

434 I encourage my colleagues to support, again, this
435 common-sense amendment, and I yield back.

436 Chairman Goodlatte. For what purpose does the
437 gentleman from New York seek recognition?

438 Mr. Nadler. Mr. Chairman, this amendment seems fine,
439 and I yield to the gentleman from Rhode Island.

440 Mr. Cicilline. I thank the gentleman for yielding.
441 Ove the past year and a half, it has become clear that
442 foreign governments are seeking to exert pressure on
443 American public opinion lawmakers in ways that do not comply
444 with U.S. law. Last fall, our intelligence agencies

445 concluded that the Russian government engaged in an extended
446 influence campaign to interfere in our presidential
447 election.

448 In the course of the investigation into the election
449 hacking, at least two Trump associated have been found to
450 have violated required reporting under the Foreign Agents
451 Registration Act, or FARA, and we know that there are almost
452 certainly more cases where Americans have not properly
453 registered as foreign agents.

454 I have grown increasingly concerned about foreign
455 interference in the United States, and have concluded that
456 current enforcement of the Foreign Agents Registration Act
457 is not sufficient. And that is why, last June, I introduced
458 bipartisan legislation along with Congressman Gaetz here in
459 the House, and bipartisan legislation was introduced in the
460 Senate as well by Senator Shaheen and Senator Young that
461 would give the Department of Justice additional authority to
462 investigate FARA cases.

463 The bill we are taking up here today shares some
464 similarities to the bill I introduced last summer, and it
465 seeks to address the same problem. Unfortunately, as the
466 ranking member said, we have had no hearing on this where we
467 could examine the differences between the Johnson
468 legislation and the bipartisan bicameral bills previously
469 introduced. Nonetheless, the American government has really

470 taken very limited action to protect against Russia's
471 ongoing efforts to undermine our institutions and, indeed,
472 our democracy. The American people deserve to know when
473 they are being given information back by a foreign
474 government, and, in fact, it is already required under the
475 law.

476 The Foreign Agents Registration Act requires persons
477 and organizations advocating on behalf of a foreign
478 government in the United States to regularly register and
479 report to the Department of Justice so that the American
480 public can clearly identify foreign propaganda and other
481 information operations designed to influence U.S. elections.
482 But, unfortunately, as we have clearly seen over the last
483 year, law enforcement does not have the tools it needs to
484 effectively enforce FARA. Right now, the Justice Department
485 must have enough evidence to bring charges in a civil or
486 criminal proceeding in a foreign case before they can compel
487 the production of documents. It is a catch-22.

488 The current law hamstring the ability of law
489 enforcement to untangle the complicated network of shadow
490 organizations, corporations, and boards that governments can
491 utilize to hide their activity. This legislation, like my
492 own, gives the Justice Department new authority to
493 investigate potential violations of the Foreign Agents
494 Registration Act. I think enhancing the Department of

495 Justice's investigatory power is clearly needed in FARA
496 cases, but I am mindful that we cannot overreact and
497 compromise the civil liberties of Americans in our quest to
498 protect our democracy.

499 Overall, I am supportive of the intent of the bill. I
500 will offer a number of amendments that I believe will
501 clarify the scope of the new investigatory authority and
502 that will improve the reporting requirements so that we can
503 have transparency in foreign activity, the ability to
504 investigate when we believe there are people who are
505 skirting the law, yet maintain the fundamental civil
506 protections for the better of our democracy. And I think
507 that obviously this is a very serious issue, that there are
508 some significant differences between the legislation
509 introduced in the House and the Senate and the Johnson bill.

510 And I will just end where I began: I think it is
511 lamentable that we did not actually have a hearing where we
512 could examine the implications of some of this language and
513 the differences between the bipartisan bill and the Senate,
514 the bipartisan bill and the House, and this legislation.
515 And I am going to attempt to do that by way of offering
516 amendments to accomplish the same objective, but it is
517 certainly not the most efficient way to do business in our
518 committee.

519 And, with that, I thank the gentleman from New York,

520 and I yield back to him.

521 Mr. Nadler. I thank the gentleman from Rhode Island,
522 and I yield back.

523 Chairman Goodlatte. The motion occurs on the amendment
524 offered by the gentleman from Louisiana.

525 All those in favor will respond by saying, "Aye."

526 Those opposed, "No."

527 The ayes have it, and the amendment is agreed to.

528 Are there further amendments? For what purpose does
529 the gentlewoman from Texas seek recognition?

530 Ms. Jackson Lee. I have an amendment at the desk.

531 Chairman Goodlatte. The clerk will report the
532 amendment.

533 Ms. Adcock. Amendment to H.R.4170 offered by Ms.
534 Jackson Lee of Texas. Page 2, line 2, strike "Disclosing
535 Foreign Influence Act and insert --"

536 [The amendment of Ms. Jackson Lee follows:]

537 ***** COMMITTEE INSERT *****

538 Chairman Goodlatte. Without objection, the amendment
539 is considered as read, and the gentlewoman is recognized for
540 5 minutes on her amendment.

541 Ms. Jackson Lee. Thank you very much, Mr. Chairman.
542 Let me join with my colleagues on the importance of process
543 in a committee that is as august and esteemed as a Judiciary
544 Committee as it relates to the adherence to the rule of law
545 and the Constitution. This particular act, the Disclosing
546 Foreign Influence Act, to amend the Foreign Agents
547 Registration Act and the Lobbying Disclosure Act, is an
548 important policy. I join with my colleague from Rhode
549 Island to indicate that, if there ever has to be regular
550 order, it should be here in the Judiciary Committee.

551 I am reading from the letter from the National
552 Association of Criminal Defense Lawyers, and it indicates
553 that there are some possible constitutional problems with
554 this particular legislation, because it grants Federal
555 authorities the power to compel the production of documents
556 and force the testimony of the targets of criminal
557 investigations without any prior showing of probable cause
558 or court approval. It eliminates exemption, and it grants
559 civil investigation authority to the DOJ. A number of
560 questions that should be raised.

561 My amendment, however, seeks to emphasize the long
562 trail of problems with this administration. And the fact

563 that this particular committee has chosen to offer
564 amendments or legislation that have had no hearings, that
565 have not taken into consideration Mr. Cicilline's bicameral
566 and bipartisan legislation, but have sought to interject in
567 the waning hours of this week this particular amendment or
568 this particular bill. I offered to change the title of the
569 bill to "No More Manafort or Michael Flynn Act," because
570 this committee has yet to investigate and to look at the
571 elements of obstruction of justice. We have yet to call any
572 witnesses as Judiciary Committee in the Senate or the House
573 and Senate Intelligence Committees. We have yet to hold a
574 hearing on the constitutional parameters of these issues of
575 obstruction of justice or Russian collusion or the security
576 of elections as we approach 2018.

577 As indicated, we have not held a hearing on FARA, and
578 the last possible hearing was in 1991. This is a very
579 complex issue. The appropriate way to legislate on this
580 issue is to first hear from experts. Hiding from the
581 elephant in the room is not the proper way to legislate.
582 FARA and the special council of investigation of Russian
583 interference in the 2016 presidential election has not even
584 been addressed in this committee.

585 To emphasize why I chose to name it in this way, for
586 example, the former National Security Advisor Michael Flynn
587 retroactively filed a FARA registration with the DOJ that

588 revealed he was paid more than \$530,000 to serve as a
589 lobbyist for the Turkish government while serving as a Trump
590 campaign advisor. Former President Obama warned President
591 Trump of General Flynn, and so did Deputy Attorney General
592 Sally Yates. But in disregard for the sanctity of
593 government and the integrity of government, the Trump
594 administration refused to acknowledge the danger that might
595 have been caused. Through his firm, Flynn Intel Group,
596 Flynn was hired by the Dutch company NFOBE, which is owned
597 by the prominent Turkish businessman with strong ties to the
598 Turkish government.

599 There is a long list which included in his being hired
600 a proposal of \$15 million, plot to kidnap the dissident and
601 fly him to an island prison in Turkey, and that is, of
602 course, the individual that is housed in Pennsylvania. We
603 know the story of Manafort. We also recognize that this
604 committee has had no hearings on the DREAM Act, or the
605 status of DACA, or the reforming of the immigration system,
606 and we have had no constitutional hearings on the question
607 of censor and the words that were said by the President of
608 the United States that disrupted a whole long history of
609 alliances with the continent of Africa and the countries of
610 Honduras, Haiti, El Salvador, as relates to the TPS.

611 So, I believe that this particular committee has not
612 done its job, and it certainly does not adhere to regular

613 order. So, if we are going to pass this bill by the
614 majority, then I would ask that it be named the "No More
615 Paul Manafort or Michael Flynn Act," since the most
616 conspicuous and notorious individuals who have not properly
617 registered are certainly these individuals, and the most
618 conspicuous disregard for the regular order is the Trump
619 administration refusing to acknowledge the insight of the
620 Deputy Attorney General of the Department of Justice, who
621 has only the concern to uphold the law, and the former
622 President of the United States of America, whose only desire
623 is to ensure that the United States comports with the law --
624 meaning the government -- and that the people of the United
625 States have their rights.

626 So, I would offer this amendment so that maybe it can
627 be a truthful bill, and as well, I would offer this
628 amendment in the context that we have not done in regular
629 order the important work of providing status for DREAMers --
630 800,000. We have not done comprehensive immigration
631 reform; we have not begun to question some of the very
632 important issues that the Judiciary Committee should be
633 concerned with, dealing with obstruction of justice and the
634 question of election security and Russian collusion in the
635 last election. With that, I asked for the support of the
636 Jackson Lee amendment.

637 Chairman Goodlatte. For what purpose the gentleman

638 from Louisiana seek recognition?

639 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. I
640 oppose the amendment. Clearly, it is an effort to
641 unnecessarily politicize what is truly a bipartisan bill
642 based on common sense and intended to uphold the rule of
643 law. You know, there is a well-documented history of
644 inadequate compliance with FARA that goes back to 1974. We
645 have had repeated reports by the GAO, for example -- all
646 this is cited in the committee memo today -- 1974, 1980,
647 1990, 2008, and most recently, the DOJ's report in 2016,
648 pointing to the urgent necessity of the changes that were
649 bringing today.

650 I requested permission to enter into the record earlier
651 in my opening statement this letter from center-left groups
652 that begins, "We are writing to encourage all members of the
653 House Judiciary Committee in bipartisan spirit to support
654 and cosponsor the Disclosing Foreign Influence Act, because
655 this legislation would provide desperately needed
656 improvement to the Foreign Agents Registration Act to
657 strengthen monitoring for compliance and enforcement of the
658 Act." And it is signed by a number of groups, including the
659 Campaign Legal Center, Citizens for Responsibility and
660 Ethics in Washington, Common Cause Issue One, the Project on
661 Government Oversight, Public Citizen, the Sunlight
662 Foundation, and noted academics.

663 So, you know, it is unfortunate that we would insert
664 politics into this. This is a measure to clean up the
665 system, to provide necessary disclosure for the American
666 people, and for that reason it is a bipartisan measure that
667 I think that all members of the committee should
668 enthusiastically support. With that, I yield back.

669 Chairman Goodlatte. Would the gentleman yield?

670 Mr. Johnson of Louisiana. Yes, sir.

671 Chairman Goodlatte. I thank the gentleman for
672 yielding. I share his sentiments. You know, this measure
673 is based upon a lot of information that was compiled over a
674 long period of time. It is associated with a similar
675 measure in the United States Senate.

676 You could name other people on both sides of the aisle
677 -- John Podesta comes to mind -- that you could add to this
678 title. Would you really want the long-term title of a bill
679 to reform our laws and require respect by foreign
680 governments to comply with and report, and people
681 representing them to report, their actions to have a name
682 like that instead of a neutral name that makes it clear that
683 it applies to all people for all time? So, I join the
684 gentleman in opposing this amendment.

685 For what purpose does the gentleman from Georgia seek
686 recognition?

687 Mr. Johnson of Georgia. I move to strike the last

688 word.

689 Chairman Goodlatte. The gentleman is recognized for 5
690 minutes.

691 Mr. Johnson of Georgia. I rise in support of this name
692 change for this bill, and I would note that the minority
693 comes forward with a proposal such as this is kind of almost
694 like a protest. Because we get jammed with this kind of
695 legislation repeatedly and habitually, failing to go through
696 regular order on bills that are very important. There is no
697 doubt that the FARA bill is very important. It is very
698 serious. It is clear that this 1938 law needs reform; it
699 needs revision. It needs attention by this committee, but
700 not in the way that this bill has been brought to us.

701 It has been brought to us outside of regular order. It
702 has been brought to us for markup we have not had any
703 hearings on it, no witness testimony. We have just had
704 legislation drafted, and it is being shoved down our throats
705 right now, and the least we can do is try to rename it so
706 that it gives to the public the semblance of importance that
707 it should have.

708 I mean, a lot has changed since 1938. We have now
709 entered the information age in a global economy. It is no
710 question that the circumstances that were anticipated in
711 1938 were unimaginable at that time. The life that we are
712 in right now needs to be soberly addressed, and the

713 circumstances that this legislation fits within need to be
714 addressed with respect to today's reality. So, what is
715 today's reality?

716 Today's reality is that since 1966, 50 years ago, we
717 have had only seven cases brought by the Department of
718 Justice prosecuting persons accused of failing to register
719 as foreign agents, and out of those seven cases there has
720 only been one successful prosecution. So, seven cases in 50
721 years; one successful prosecution. Now, all of a sudden, we
722 have the Manafort and Flynn situations that come up. It
723 highlights the need for this law to be addressed.

724 It is important, but yet we do not want to throw the
725 baby out with the bathwater. We do not want to hastily pass
726 a revision of this very important law, and that revision
727 opens up criminal prosecutions of select individuals without
728 constitutional protections, depriving folks, targets of key
729 constitutional protections which this legislation has the
730 potential to result in.

731 This civil investigative demand that can be brought as
732 part of an inquiry in preparation for a civil or a criminal
733 case; that is a lot of power in the hands of a government
734 bureaucrat that can be used as a fishing expedition against
735 political opponents, misused, and enable civil, but, most
736 ominously criminal, prosecutions. This is not something
737 that we should pass without due consideration of the

738 consequences that would ensue from passage, and I ask my
739 colleagues to ask themselves, "What is the haste?"

740 Why are we rushing forward to give this kind of power
741 to the Department of Justice under a Trump administration
742 which is abusing and showing disrespect for the rule of law
743 and showing the inclination to prosecute political
744 opponents? Is it because we want to give the current
745 Attorney General the power to prosecute political opponents?
746 Is that why we are rushing this bill through right now? I
747 ask my colleagues to ask themselves that question. And with
748 that, I will yield back.

749 Chairman Goodlatte. The chair thanks the gentleman and
750 recognizes himself in opposition to the amendment only to
751 say, first, I want to correct my earlier statement. I think
752 was Tony Podesta; that would be more appropriate to name.
753 But I do not think we should amend this to do that. I think
754 that this is not the appropriate title for a bill like this.
755 And I would just say that we have as many GAO reports and as
756 many inspector general reports and concerns, we should do
757 this.

758 And as to asking questions in a civil matter, it is
759 certainly under all sorts of current Federal law. If you
760 ask a question in a civil matter that leads to information
761 that could result in a criminal prosecution, unless there is
762 a defense to answering that question in a civil matter, and

763 civil discovery is very broad, I do not see that we are
764 doing anything different here than already exists in other
765 areas of the law.

766 So, I thank the gentleman for his concerns, but I think
767 this is the appropriate thing to do, and the right thing to
768 do. And I must oppose the amendment with changing the title
769 of the name.

770 Mr. Raskin. Mr. Chairman?

771 Chairman Goodlatte. For what purpose does the
772 gentleman from Maryland seek recognition?

773 Mr. Raskin. I move to strike the last word.

774 Chairman Goodlatte. The gentleman is recognized for 5
775 minutes.

776 Mr. Raskin. Thank you kindly, Mr. Chairman. First of
777 all, I do want to salute the gentleman from Louisiana for
778 bringing forward this legislation to amend the Foreign
779 Agents Registration Act of 1938. It is long overdue, and
780 recent events have focused our attention on the fact that
781 there are major loopholes in the law, the most glaring of
782 which, of course, is the fact that if you register as a
783 lobbyist you do not have to register under the FARA, and
784 that simply makes no sense. And it becomes a built-in
785 mechanism for camouflage of what a person is really up to.

786 Having said that, I have got to join my colleagues in
787 objecting to the massive process failure that we are seeing

788 again on the committee. It would not be that difficult to
789 have a hearing on the Foreign Agent Registration Act. There
790 are lots of issues with it, and I think there are tremendous
791 grounds for bipartisan compromise. A hearing would not
792 undermine our ability to create a consensus on the
793 committee; it would strengthen our ability to create a real
794 consensus in the committee, and we would come up with a much
795 better product.

796 You could think of whatever your favorite Federal
797 legislation is over American history: the Civil Rights Act,
798 the Voting Rights Act, the Agricultural Adjustment Act.
799 Whatever it is, I challenge anyone to find a great act that
800 was passed by the Congress without hearings to discuss what
801 the real problems are to try to manage the full complexity
802 of the problem and the full magnitude of the issues. And
803 so, you know, I feel badly that a very positive effort here
804 looks like it is being immersed in the general partisan muck
805 that seems to surround us in this Congress. But if we had a
806 hearing, and we could really discuss things, I think it
807 would not occur at the markup stage that people are raising
808 problems for the first time.

809 I do have one serious issue that I will raise in due
810 course, but I wanted to yield to my colleague from Texas,
811 Ms. Lee.

812 Ms. Jackson Lee. Let me thank the gentleman from

813 Maryland, both for his astute analysis, and I too wanted to
814 have this opportunity to make sure that Mr. Johnson knows
815 that this is a very important issue, and his initiative is
816 an important issue. And I would hope that we would have an
817 opportunity to engage in regular order. As Mr. Cicilline
818 said, there are already existing bills. In addition, the
819 National Association of Criminal Defense Lawyers has laid
820 out a very important, detailed analysis of the difficulty
821 with the legislation. I ask unanimous consent, Mr.
822 Chairman, to put the letter from the National Association of
823 Criminal Defense Lawyers in the record.

824 Chairman Goodlatte. Without objection.

825 [The information follows:]

826 ***** COMMITTEE INSERT *****

827 Ms. Jackson Lee. Thank you.

828 Chairman Goodlatte. I think it is already in the
829 record.

830 Ms. Jackson Lee. If it is, it is double in, but thank
831 you very much. But I chose to say, "No More" -- that is the
832 naming of the bill -- "Paul Manafort or Michael Flynn Act,"
833 and I think everyone would understand that. For Mr.
834 Manafort, who registered retroactively as a foreign agent
835 under FARA on June 27, 2017, months after it was revealed he
836 had provided services to Ukraine's pro-Kremlin party regions
837 and to former Ukrainian President Viktor Yanukovich from
838 2006 to 2015.

839 And as part of the Special Counsel's investigation into
840 Manafort and his college Richard Gates, Manafort was charged
841 with conspiracy to launder money, failing to register as an
842 agent of foreign principal, for making false and misleading
843 FARA statements. So, he is an example of what we should not
844 do. How do we know without having hearings that the
845 President's underlying legislation has covered all of the
846 elements that would be necessary to ensure due process, but
847 to cover issues dealing with FARA?

848 So, I think the point is well taken. I am naming it
849 because it fits aptly for the actions of these individuals
850 that reflect globally, and well understood. I do not think
851 there are probably many in the world that have not heard of

852 General Flynn and Paul Manafort. But it also speaks to this
853 administration. In a long litany of violations of the law
854 and speaking the untruth; impacting foreign policy; in the
855 week of Dr. King's birthday, being divisive and acting in a
856 racial and racist manner; and again putting a block in the
857 way of legitimizing and legalizing 800,000 students,
858 doctors, lawyers, individuals who have finished school but
859 are still designated as DREAMers without status,
860 jeopardizing their family and their future.

861 So, where are the hearings on those issues? Where is
862 the legislation on those issues? The chairman knows how
863 passionate many of us are in criminal justice reform. We
864 have been trying over and over and over again to try and
865 move that legislation forward, and in many of our districts
866 we get asked about that important work. So, I do think this
867 is an appropriate renaming of this bill, and I would ask Mr.
868 Johnson that he call for regular order so that the hearings
869 can cover his legislation, other legislation, and certainly
870 the potential good merger of good bills and good elements.
871 So, I would ask my colleagues to support the Jackson Lee
872 Amendment.

873 Chairman Goodlatte. The question occurs on the
874 amendment offered by the gentlewoman from Texas.

875 All those in favor, respond by saying aye.

876 Those opposed, no.

877 In the opinion of the chair, the noes have it, and the
878 amendment is not agreed to.

879 Are there further amendments to H.R. 4170? For what
880 purpose does the gentleman from Rhode Island seek
881 recognition?

882 Mr. Cicilline. Mr. Chairman, I have four amendments at
883 the desk. I would like to begin with --

884 Chairman Goodlatte. Pick one.

885 Mr. Cicilline. -- an amendment in the nature of a
886 substitute.

887 Chairman Goodlatte. If he wants to combine any of them
888 we would welcome that, but we will consider them one at a
889 time, and the clerk will report the amendment.

890 Ms. Adcock. Amendment in the nature of a substitute to
891 H.R. 4170, offered by Mr. Cicilline of Rhode Island. Strike
892 all after the enacting clause, and insert the following.
893 Section --

894 [The amendment of Mr. Cicilline follows:]

895 ***** COMMITTEE INSERT *****

896 Chairman Goodlatte. Without objection, the amendment
897 is considered as read, and the gentleman is recognized for 5
898 minutes on his amendment.

899 Mr. Cicilline. Thank you, Mr. Chairman. This
900 amendment in the nature of a substitute would strike the
901 language of H.R. 4170 and replace it with the language of
902 H.R. 2811, the Foreign Agents Registration Modernization and
903 Enforcement Act. To be clear, it is not because I have any
904 great affinity for the authors of the bill, but this is a
905 piece of legislation which is bipartisan here in the House,
906 bipartisan in the Senate. And if we are serious about
907 moving forward on modernizing FARA and reforming it, it has
908 to be done in a bipartisan way, and that is what this bill
909 does.

910 It also is substantively different in the following
911 ways. The bill that is before us provides for very
912 expansive use of civil investigative demands not just for
913 the production of documents, which is how it is
914 traditionally used, but for the compelling of testimony, for
915 the compelling of written answers to questions. Those
916 implicate a whole series of constitutional challenges in the
917 context of criminal investigations which the amendment
918 avoids.

919 This amendment recognizes the Department of Justice
920 need the ability to collect documents to begin civil or

921 criminal investigations. It does so by creating a civil
922 investigative demand authority related to documentary
923 evidence. It specifically, in page three, protects against
924 the demand for the production of documentary evidence that
925 would be privileged if sought by a grand jury in similar
926 circumstances. So, it strikes the balance of making certain
927 that, A, it is for purposes of document production, not
928 expansively requiring compelled testimony written
929 interrogatories. Which I understand this language was
930 lifted from the False Claims Act, which is wonderful but
931 maybe does not have great application to a statute that has
932 criminal components to it, unlike the False Claims Act.

933 So, I think this remedies that problem by making this a
934 civil investigative demand. It does not extend to
935 compelling written testimony or oral testimony. It
936 expressly prohibits privileged materials from being the
937 subject of a demand. It has an important reporting
938 requirement, and it is bipartisan. I think this solves the
939 problem of the Justice Department not having the civil
940 investigative tool to get at information to help unravel the
941 sources of this foreign registry or foreign advocacy in a
942 way that does not implicate constitutional challenges, that
943 ensures that in the Senate it is bipartisan, and will
944 accomplish this.

945 And to be clear, I have had conversations with Mr.

946 Johnson about my bill. I offered him to be the lead
947 Republican sponsor on it. When I first introduced it, he
948 declined and decided to write his own bill. So, I am only
949 saying that this is more limited, which I think is the right
950 approach. It avoids constitutional challenges; it is
951 bipartisan in the House and the Senate. Let's, on this day
952 where we see so little bipartisanship, accept my amendment
953 so we can make real progress on modernizing the FARA Act.
954 And with that, I will yield back.

955 Chairman Goodlatte. For what purpose does the
956 gentleman from Louisiana seek recognition?

957 Mr. Johnson of Louisiana. Mr. Chairman, I oppose the
958 amendment, and --

959 Chairman Goodlatte. The gentleman is recognized for 5
960 minutes.

961 Mr. Johnson of Louisiana. Thank you. I do appreciate
962 my friend and his effort. We have discussed this at length.
963 To be clear, to correct his statement he just made, we have
964 been working on this --- I have been working on this -- for
965 I think 8 months, since early last year. We were thinking
966 along parallel lines and doing different work. I think the
967 bill I have offered is superior to the amendment for a
968 number of reasons.

969 Look, there are longstanding provisions in current law
970 that serve as the basis for my legislation. They have both

971 civil and criminal liability while having CID authority.
972 And the authority provided in this bill is limited in its
973 delegation, it has a sunset on the authority, it includes
974 probable cause provisions and specific oversight and
975 reporting language. It is very tightly controlled, to put
976 in a simple word. And you know, the efforts to object
977 appear to be based against CID authority entirely, not just
978 what is in this bill.

979 According to the Congressional Research Service, no
980 other CID authority in existence says this level of
981 limitation or any warrant requirements. You know, we have
982 worked on this in bipartisan fashion. It is a bipartisan
983 bill. It is based upon, as we mentioned earlier, 50 years
984 of history and requests for this, and the DOJ has
985 specifically requested this use of the CID authority because
986 it will make the job easier, it will enhance enforcement of
987 FARA, and it will pursue the underlying objectives of the
988 legislation that has been a part of our law since 1938.

989 The jurisprudence strongly shows that administrative
990 subpoenas do not violate the Fourth Amendment, and based on
991 a review of existing law, our legislation more than suffices
992 to provide protections to challenge any government efforts
993 that overstepped their bounds. Some of these examples are
994 subsection K, judicial proceedings; Part Two, petition to
995 modify or set aside a demand; K(3), petition to modify or

996 set aside demand for product of discovery.

997 There is a probable cause provision in place in my bill
998 when Federal investigators use the civil investigative
999 demand authority, and it says at the bottom of page three,
1000 lines 19 through 24, "Whenever the Attorney General or the
1001 Attorney General's designee has reason to believe that any
1002 person may be in possession, custody, or control of any
1003 documentary material, or may have any information relevant
1004 to an investigation under this Act" in civil investigatory
1005 demands may be issued.

1006 This is standard language. It is used in CID
1007 provisions across the labyrinth of the Federal government
1008 and the statutes, and it is much like the standard for
1009 filing a lawsuit and then being able to demand answers to
1010 questions from the defendant. The plaintiff just has to
1011 serve some basis in law or fact to follow a lawsuit. So, we
1012 have drafted this very carefully. It has gone through a
1013 number of revisions, hours and hours of discussion with all
1014 relevant parties, and I highlight again that it is supported
1015 by civil libertarian groups on the left and rule of law
1016 folks on the right.

1017 It is the right compromise. It has protections; it has
1018 a sunset provision. We will be able to evaluate how well
1019 this is being used, and more importantly, if it is being
1020 abused in any way, and we will correct those. But for all

1021 those reasons, Mr. Chairman, I oppose the amendment and
1022 encourage my colleagues to do the same.

1023 Chairman Goodlatte. For what purpose does the
1024 gentleman from New York seek recognition?

1025 Mr. Nadler. I move to strike the last word.

1026 Chairman Goodlatte. The gentleman is recognized for 5
1027 minutes.

1028 Mr. Nadler. Mr. Chairman, I will be very brief. The
1029 gentleman from Rhode Island very ably explained his
1030 amendment. I support the amendment. It goes in the
1031 direction of the bill, but provides proper protections for
1032 CIDs.

1033 CIDs should not be used, at least not until we have
1034 further examined the question, probably should not be used
1035 in the context of a possible criminal investigation, because
1036 they do raise significant Fourth Amendment concerns, and
1037 that is the big advantage of Mr. Cicilline's amendment here.
1038 Mr. Cicilline's amendment would make this bill
1039 constitutionally, I think, unquestionable. It would be a
1040 very useful amendment, a very useful bill at that point, and
1041 I urge the adoption of the amendment. I yield back.

1042 Chairman Goodlatte. The question occurs on the
1043 amendment offered by the gentleman from Rhode Island.

1044 All those in favor respond by saying aye.

1045 Those opposed, no.

1046 In the opinion of the chair, the noes have it. The
1047 amendment is not agreed to.

1048 Are there further amendments?

1049 Mr. Cicilline. Mr. Chairman, I have another amendment
1050 at the desk.

1051 Chairman Goodlatte. The clerk will report the
1052 amendment of the gentleman from Rhode Island.

1053 Ms. Adcock. Amendment to H.R. 4170, offered by Mr.
1054 Cicilline of Rhode Island. Page 3, begin --

1055 [The amendment of Mr. Cicilline follows:]

1056 ***** COMMITTEE INSERT *****

1057 Chairman Goodlatte. Without objection, the amendment
1058 is considered as read, and the gentleman is recognized for 5
1059 minutes.

1060 Mr. Cicilline. Thank you, Mr. Chairman. This
1061 amendment strikes "or criminal" from the authority described
1062 in this legislation. Under the longstanding principles of
1063 the Fourth Amendment, the government generally cannot invade
1064 a person's privacy or seize their person or property without
1065 a valid warrant supported by probable cause. However, as it
1066 is currently drafted, H.R. 4170 would allow the government
1067 to administer a civil subpoena prior to the instituting of a
1068 criminal proceeding by asserting merely that it has reason
1069 to believe a person has knowledge or documentation related
1070 to an alleged violation of FARA.

1071 Without requiring prior judicial review or probable
1072 cause, this provision of H.R. 4170 could be used by the
1073 government to undermine a party's constitutionally protected
1074 rights in criminal proceedings. And by striking the words
1075 "or criminal," it would bring this legislation in line with
1076 the Fourth Amendment and make the civil demand authority a
1077 civil enforcement proceeding. And so, all the other
1078 concerns we have about compelling testimony, compelling
1079 written answers, would at least be avoided by making this a
1080 strictly civil authority. And that is the reason for the
1081 amendment, and I urge my colleagues to support it.

1082 Chairman Goodlatte. For what purpose does the
1083 gentleman from Louisiana seek recognition?

1084 Mr. Johnson of Louisiana. Mr. Chairman, I oppose this
1085 amendment.

1086 Chairman Goodlatte. The gentleman is recognized for 5
1087 minutes.

1088 Mr. Johnson of Louisiana. Thank you. I oppose this
1089 amendment, again reiterating that so much work and effort
1090 has gone into this this language, making it precise and
1091 specific. There is no history of abuses with regard to the
1092 concerns of Mr. Cicilline.

1093 Now, I will say that I am willing to work with him, to
1094 continue to work with him, on further enhancements to the
1095 bill as it moves along. But right now, the problem with
1096 adding these changes and these modifications that he is
1097 suggesting at this stage is that it might unnecessarily
1098 interfere in what the DOJ does in terms of enforcement of
1099 FARA across the board. They use other statutes, other
1100 Federal statutes, when it comes to investigating and
1101 enforcing these provisions. And adding this right now, I
1102 just feel the risk would outweigh the benefits.

1103 Now, that said, again, I am willing to work with him.
1104 We can work together on specific language going forward, but
1105 today I encourage my colleagues to avoid the amendment,
1106 because we might add unnecessary complexity to a matter that

1107 has been discussed and deliberated and resolved over the
1108 last 8 or 9 months. I yield back.

1109 Chairman Goodlatte. The question --

1110 Mr. Johnson of Georgia. Mr. Chairman?

1111 Chairman Goodlatte. For what purpose does the
1112 gentleman from Georgia seek recognition?

1113 Mr. Johnson of Georgia. I move to strike the last
1114 word.

1115 Chairman Goodlatte. The gentleman is recognized for 5
1116 minutes.

1117 Mr. Johnson of Georgia. Mr. Chairman, I rise in strong
1118 support of this amendment. There is absolutely no reason
1119 why in the legislation that we are considering we should
1120 expressly give Federal authorities the ability to use what
1121 is essentially a civil process to conduct a criminal
1122 investigation. Why would we give DOJ expressly that right
1123 to use a civil process, essentially a civil subpoena, an
1124 administrative subpoena, when they know that they are
1125 engaged in a criminal investigation?

1126 Why do we not require the DOJ, as we do right now, to
1127 use its abundant powers to investigate criminal matters
1128 pursuant to their authority that they have now? It is
1129 sufficient. There is no need to enlarge the authorities
1130 upon which they can conduct criminal investigations. I
1131 think this is a dangerous step on a slippery slope which can

1132 only go to the detriment of the constitutional rights of
1133 Americans. All Americans should be concerned about
1134 protecting constitutional rights. That is not a partisan
1135 issue. It should not be. But yet, on this committee when
1136 we have a very reasonable amendment such as this one -- very
1137 simple, very reasonable -- then we get a knee-jerk reaction
1138 in opposition, simply because no Republican wants to go
1139 against the prevailing winds of partisanship.

1140 I am not saying that this legislation does not deserve
1141 to be considered; it does. But why are we rushing through
1142 this kind of legislation, giving this kind of power to the
1143 Federal Government, particularly at this time when the
1144 persons who hold the levers of government show an
1145 inclination to misuse it? I strongly ask my colleagues to
1146 consider their positions and to be in favor of this
1147 amendment, and with that I will yield back.

1148 Chairman Goodlatte. The chair recognize himself in
1149 opposition to the amendment and yields to the gentleman from
1150 Louisiana, Mr. Johnson.

1151 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. I
1152 just want to add one example to address the concerns and the
1153 reasons why I would oppose this amendment. Case in point is
1154 the Racketeer Influence and Corrupt Organizations Act of
1155 1970. All of us are familiar with RICO, what an effective
1156 and important tool that has been for the Department of

1157 Justice and for the rule of law in this country.

1158 RICO allows the Justice Department's Organized Crime
1159 and Gang section of the criminal division to institute
1160 criminal penalties in a civil cause of action for acts
1161 performed as part of an ongoing criminal organization. Now,
1162 CIDs have been an essential component in RICO's success, and
1163 no changes have been made with respect to the DOJ's CID
1164 power with RICO. It is an example of how this has been used
1165 very effectively and not abused. It is an essential tool.

1166 I just want to note, by the way, that RICO was passed
1167 in a strong show of bipartisan support. The House passed
1168 the bill by a margin of 341 to 26, and the Senate passed
1169 that bill 74 to 1. All of us know it is an extremely
1170 effective tool. It is a good, I think, example of how this
1171 can be done without abuse. And, again, in this bill, if it
1172 is abused in this arena, which we do not anticipate and do
1173 not expect, we can fix it. We have the ability to do that.

1174 Mr. Johnson of Georgia. Would the gentleman yield?

1175 Mr. Johnson of Louisiana. I yield.

1176 Mr. Johnson of Georgia. It is one thing to use the
1177 criminal process, and at the same time a civil process be
1178 rolling down the track concurrently or simultaneously. But
1179 then it is another thing to use the civil process to conduct
1180 a criminal investigation simultaneously. That is the
1181 difference. And I would ask that we strongly support the

1182 Cicilline amendment.

1183 Mr. Johnson of Louisiana. Thank you. I reclaim my
1184 time. I understand the difference very well, and I am
1185 suggesting to you that we do not allow a margin for the
1186 abuse here. We could correct it later if there is, but I do
1187 not believe that there is, and all the experts who have
1188 looked into this -- again, on the right and on the left --
1189 agreed that this is an appropriate measure whose time has
1190 come. I yield back.

1191 Mr. Johnson of Georgia. Would the gentleman yield?

1192 Mr. Johnson of Louisiana. I will yield.

1193 Mr. Johnson of Georgia. It would really be wonderful
1194 for us to hear from these experts in a hearing and have them
1195 subject to examination by the reasoned members on this
1196 committee so that we can arrive at a truly bipartisan piece
1197 of legislation to deal with this need that is glaring. I
1198 want to commend the gentleman for bringing forward the
1199 legislation, but I just want it to be handled in the normal
1200 course.

1201 Mr. Johnson of Louisiana. Reclaiming my time, I
1202 appreciate my colleague's insistence on the details, and I
1203 would just suggest to you in this particular case there may
1204 not be a need for exhaustive hearings and oral testimony,
1205 the reason being, as we have mentioned, we have almost a
1206 half-century of detailed, specific written reports about the

1207 failures and the problems with this law, its enforcement,
1208 its comprehensive strategy. This legislation directly
1209 targets that. It is based on bipartisan support. And with
1210 that, I yield back and oppose the amendment.

1211 Mr. Raskin. Mr. Chair?

1212 Chairman Goodlatte. For what purpose does the
1213 gentleman from Maryland seek recognition?

1214 Mr. Raskin. I move to strike the last word.

1215 Chairman Goodlatte. The gentleman is recognized for 5
1216 minutes.

1217 Mr. Raskin. Thank you very much. I rise in favor,
1218 very strong favor, of the Cicilline amendment. I am afraid
1219 without it this language is a sitting duck constitutionally
1220 and would be struck down immediately by Federal court. I
1221 would hope the author of the bill, which I think is
1222 otherwise very strong, should reconsider.

1223 The Fourth Amendment provides that no warrants shall
1224 issue but upon probable cause supported by oath or
1225 affirmation. This language says, "Whenever the Attorney
1226 General has reason to believe that any person may be in
1227 possession, et cetera, of relevant evidence the Attorney
1228 General may prior to the institution of a civil or criminal
1229 proceeding" -- that is in glaring violation of the Fourth
1230 Amendment right there. And I think all the amendment does,
1231 as I understand it, it removes two words, "or criminal," in

1232 order to guarantee the constitutional seaworthiness of this
1233 vehicle.

1234 I think the RICO analogy is unavailing here. As I
1235 understand it, the argument is that because there can be a
1236 civil proceeding under RICO, and also a criminal proceeding,
1237 that somehow vindicates this arrangement. But civil actions
1238 under RICO are brought by private citizens, where private
1239 citizens allege that there are a series of predicate
1240 offenses under extortion in the Hobbs Act -- conspiracy and
1241 so on -- relevant criminal offenses, and that they have been
1242 civilly damaged by it, and then they bring a civil action.
1243 But they do not have the authority to use the State, or to
1244 put it differently, the government does not have the
1245 authority to bring a civil action and then use that evidence
1246 in a criminal prosecution against someone.

1247 So, I do think that this is an invitation to strike the
1248 whole thing down, and I am going to speak in very strong
1249 favor of the Cicilline amendment, because I want to be able
1250 to vote for the bill. I yield back, Mr. Chairman.

1251 Chairman Goodlatte. For what purpose does the
1252 gentlewoman from Florida seek recognition?

1253 Ms. Demings. Thank you so much, Mr. Chairman. I move
1254 to strike the last word.

1255 Chairman Goodlatte. The gentlewoman is recognized for
1256 5 minutes.

1257 Ms. Demings. I rise in strong support of the Cicilline
1258 amendment. You know, as someone who served in law
1259 enforcement, I certainly commend my colleague and my
1260 classmate for revising and updating this particular statute.
1261 However, I believe that we really have to be very, very
1262 careful whenever we expand the ability to use a civil
1263 process in a criminal investigation. What makes this
1264 country beautiful are the protections that are given to
1265 every individual, guaranteed by the Fourth Amendment, the
1266 right to due process.

1267 The standard in a criminal case and a civil case are
1268 clearly different. In a criminal case, we are not talking
1269 about preponderance of the evidence, or clear and convincing
1270 evidence. We are talking about probable cause. So, for
1271 that reason alone, if we just stop right there, I believe
1272 that the amendment offered by the gentleman from Rhode
1273 Island is quite appropriate, and I rise in support of that
1274 amendment. Thank you, Mr. Chairman.

1275 Chairman Goodlatte. The question occurs on the
1276 amendment offered by the gentleman from Rhode Island.

1277 All those in favor, respond by saying aye.

1278 Those opposed, no.

1279 In the opinion of the chair, the noes have it, and the
1280 amendment is not agreed to.

1281 Mr. Cicilline. I request a recorded vote, Mr.

1282 Chairman.

1283 Chairman Goodlatte. A recorded vote is requested, and
1284 the clerk will call the role.

1285 Ms. Adcock. Mr. Goodlatte?

1286 Chairman Goodlatte. No.

1287 Ms. Adcock. Mr. Goodlatte votes no.

1288 Mr. Sensenbrenner?

1289 [No response.]

1290 Mr. Smith?

1291 [No response.]

1292 Mr. Chabot?

1293 [No response.]

1294 Mr. Issa?

1295 Mr. Issa. No.

1296 Ms. Adcock. Mr. Issa votes no.

1297 Mr. King?

1298 Mr. King. No.

1299 Ms. Adcock. Mr. King votes no.

1300 Mr. Gohmert?

1301 [No response.]

1302 Mr. Jordan?

1303 [No response.]

1304 Mr. Poe?

1305 [No response.]

1306 Mr. Marino?

1307 Mr. Marino. No.

1308 Ms. Adcock. Mr. Marino votes no.

1309 Mr. Gowdy?

1310 [No response.]

1311 Mr. Labrador?

1312 [No response.]

1313 Mr. Farenthold?

1314 Mr. Farenthold. Aye.

1315 Ms. Adcock. Mr. Farenthold votes aye.

1316 Mr. Collins?

1317 [No response.]

1318 Mr. DeSantis?

1319 [No response.]

1320 Mr. Buck?

1321 [No response.]

1322 Mr. Ratcliffe?

1323 [No response.]

1324 Mrs. Roby?

1325 [No response.]

1326 Mr. Gaetz?

1327 [No response.]

1328 Mr. Johnson of Louisiana?

1329 Mr. Johnson of Louisiana. No.

1330 Ms. Adcock. Mr. Johnson votes no.

1331 Mr. Biggs?

1332 Mr. Biggs. No.

1333 Ms. Adcock. Mr. Biggs votes no.

1334 Mr. Rutherford?

1335 Mr. Rutherford. No.

1336 Ms. Adcock. Mr. Rutherford votes no.

1337 Mrs. Handel?

1338 Mrs. Handel. No.

1339 Ms. Adcock. Mrs. Handel votes no.

1340 Mr. Nadler?

1341 Mr. Nadler. Aye.

1342 Ms. Adcock. Mr. Nadler votes aye.

1343 Ms. Lofgren?

1344 Ms. Lofgren. Aye.

1345 Ms. Adcock. Ms. Lofgren votes aye.

1346 Ms. Jackson Lee?

1347 [No response.]

1348 Mr. Cohen?

1349 [No response.]

1350 Mr. Johnson of Georgia?

1351 Mr. Johnson of Georgia. Aye.

1352 Ms. Adcock. Mr. Johnson votes aye.

1353 Mr. Deutch?

1354 [No response.]

1355 Mr. Gutierrez?

1356 [No response.]

1357 Ms. Bass?

1358 [No response.]

1359 Mr. Richmond?

1360 [No response.]

1361 Mr. Jeffries?

1362 Mr. Jeffries. Aye.

1363 Ms. Adcock. Mr. Jeffries votes aye.

1364 Mr. Cicilline?

1365 Mr. Cicilline. Aye.

1366 Ms. Adcock. Mr. Cicilline votes aye.

1367 Mr. Swalwell?

1368 [No response.]

1369 Mr. Lieu?

1370 Mr. Lieu. Aye.

1371 Ms. Adcock. Mr. Lieu votes aye.

1372 Mr. Raskin?

1373 Mr. Raskin. Aye.

1374 Ms. Adcock. Mr. Raskin votes aye.

1375 Ms. Jayapal?

1376 Ms. Jayapal. Aye.

1377 Ms. Adcock. Ms. Jayapal votes aye.

1378 Mr. Schneider?

1379 [No response.]

1380 Ms. Demings?

1381 Ms. Demings. Aye.

1382 Ms. Adcock. Ms. Demings votes aye.

1383 Chairman Goodlatte. The gentleman from Colorado?

1384 Mr. Buck. No.

1385 Ms. Adcock. Mr. Buck votes no.

1386 Chairman Goodlatte. The gentleman from Texas?

1387 Mr. Ratcliffe. No.

1388 Ms. Adcock. Mr. Ratcliffe votes no.

1389 Chairman Goodlatte. The gentleman from Texas, Mr.

1390 Smith?

1391 Mr. Smith. No.

1392 Ms. Adcock. Mr. Smith votes no.

1393 Chairman Goodlatte. The gentleman from Idaho?

1394 Mr. Labrador. No.

1395 Ms. Adcock. Mr. Labrador votes no.

1396 Chairman Goodlatte. Has every member voted who wishes

1397 to vote? The clerk will report.

1398 Ms. Adcock. Mr. Chairman, 10 members voted aye; 12

1399 members voted no.

1400 Chairman Goodlatte. And the amendment is not agreed

1401 to. Are there further amendments?

1402 Mr. Cicilline. Mr. Chairman --

1403 Chairman Goodlatte. For what purpose does the

1404 gentleman from Rhode Island seek recognition?

1405 Mr. Cicilline. -- I have an amendment.

1406 Chairman Goodlatte. The clerk will report the

1407 amendment.

1408 Ms. Adcock. Amendment to H.R. 4170, offered by Mr.
1409 Cicilline of Rhode Island. Page 20, beginning line 17,
1410 striking nothing in this in subparagraph and all that
1411 follows through line 23.

1412 [The amendment of Mr. Cicilline follows:]

1413 ***** COMMITTEE INSERT *****

1414 Chairman Goodlatte. Without objection, the amendment
1415 is considered as read, and the gentleman is recognized for 5
1416 minutes on his amendment.

1417 Mr. Cicilline. Thank you, Mr. Chairman. I have this
1418 final amendment at the desk, which I am hoping is one more
1419 attempt to save this piece of legislation from being struck
1420 down as unconstitutional. This amendment in particular
1421 would put limitations on what the Justice Department can do
1422 with information it obtains from a civil investigative
1423 demand to enforce compliance with FARA.

1424 Civil investigative demands permit the government to
1425 obtain records without a court or grand jury. Many kinds of
1426 administrative subpoenas, such as the one created on the
1427 current bill, allow government agencies to obtain records in
1428 order to ensure compliance by a party that is subject to its
1429 regulations. Courts have consistently held that the
1430 issuance of an administrative subpoena without a showing of
1431 probable cause does not violate the Fourth Amendment,
1432 because it is less intrusive than a search and seizure that
1433 necessitates a warrant.

1434 In addition, the Supreme Court has recognized that an
1435 administrative subpoena should not be subject to a probable
1436 cause determination because they are often used as
1437 information-gathering tools for the very purpose of
1438 determining whether probable cause exists.

1439 Although these subpoenas have a basis in law, civil
1440 liberties advocates also have a legitimate concern that
1441 administrative subpoenas can lead to government's abuse of
1442 authority. If left unchecked, administrative subpoenas can
1443 be used to get around the Fourth Amendment and to subject
1444 individuals to investigations unrelated to the basis of the
1445 subpoena.

1446 My amendment would address these concerns by
1447 prohibiting information obtained through a civil
1448 investigative demand -- and I call your attention to the
1449 civil investigative demand; this is what it is; it is not a
1450 criminal investigation; it is a civil investigate demand --
1451 under this act from being used for any administrative or
1452 civil action that does not directly arise out of an alleged
1453 FARA violation. For example, if DOJ subpoenaed a foreign
1454 agent's bank records to verify its funding sources, my
1455 amendment would prevent the DOJ from turning around and
1456 providing those records to the IRS for a civil or criminal
1457 tax evasion case.

1458 In addition, my amendment would entirely bar the use of
1459 information obtained through a subpoena under this bill for
1460 use in any criminal action against the individual. This
1461 would stop the government from using FARA civil
1462 investigative demands to bypass the Fourth Amendment
1463 probable cause and warrant requirements which are paramount

1464 in a criminal case and required by our Constitution.

1465 The latter is an important element, because
1466 investigations can and do shift from civil to criminal
1467 investigations based on the progress of the investigation.
1468 When this shift takes place, the government must ensure that
1469 the investigation satisfies Fourth Amendment standards. My
1470 amendment would preserve the information-gathering utility
1471 of administrative subpoenas, while providing an important
1472 check against abuse by the Justice Department and other
1473 government agencies.

1474 So, this will really ensure that civil investigative
1475 demands are used for the purpose for which they were
1476 created: To gather investigations for a civil enforcement
1477 proceeding and bar their use in a criminal proceeding. Now,
1478 it does include in the second page of the amendment "Nothing
1479 precluding a law enforcement agency from gathering through
1480 their regular process," whether it is a warrant, a subpoena,
1481 a grand jury proceeding, "the same information." So, they
1482 would still be entitled to investigate it and proceed with
1483 criminal prosecutions, but they would not be able to use the
1484 civil demand production as a way to skirt the requirements
1485 of Fourth Amendment.

1486 If my colleague and friend is serious about doing this
1487 in a way which respects the Fourth Amendment and protects
1488 this from being struck down as unconstitutional, this

1489 limited-use amendment will provide that answer, and I
1490 certainly hope he will support my amendment, as will my
1491 colleagues. And with that, Mr. Chairman, I yield back.

1492 Chairman Goodlatte. For what purpose does the
1493 gentleman from Louisiana seek recognition?

1494 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. I
1495 oppose the amendment.

1496 Chairman Goodlatte. The gentleman is recognized for 5
1497 minutes.

1498 Mr. Johnson of Louisiana. Thank you. We are making
1499 similar arguments for all these amendments, and I do not
1500 want to repeat myself just for the sake of it. But I do
1501 just want to reiterate that what we are doing here is
1502 supported by the Office of the inspector general's recent
1503 report, and multiple GAO reports, and civil liberty groups,
1504 and that we have sections in here that add CID limitations
1505 and oversight. The OIG has recommended suggesting
1506 additional controls on CID. We have done that. The
1507 provisions here are the product of 55 years of refinement of
1508 these provisions included in previously passed bipartisan
1509 legislation. We have got a sunset provision.

1510 I just do not believe that what is being suggested as
1511 areas of abuse are real concerns based upon --

1512 Mr. Cicilline. Will the gentleman yield?

1513 Mr. Johnson of Louisiana. Wait, let me finish. Based

1514 upon more than a half-century of experience in the Federal
1515 Government and with the use of these. I understand that you
1516 are saying we are doing something novel here. What I do not
1517 want to do with the amendment today is add in complexity
1518 that has not been vetted properly by the DOJ, by the OIG,
1519 all the interest groups we have been working on this very
1520 carefully, as I said.

1521 I reiterate, I am willing to work with you going
1522 forward as we move it to the floor and move it through the
1523 process, but for today I have to oppose the amendment,
1524 because I fear, though it is not that way by my colleague --
1525 this is done in good faith -- it could wind up being in some
1526 way a poison pill in the legislation. So, for that reason I
1527 oppose the amendment, and I urge my colleagues to do the
1528 same. I yield back. I yield to you.

1529 Mr. Cicilline. I thank the gentleman for yielding. I
1530 would just say that the suggestion that we have a half-
1531 century of experience -- we have almost 300 years of
1532 experience with the Constitution. And it is not a question
1533 that, well, it is sunsetted, so if there is some violation.
1534 The Fourth Amendment is a current obligation we have to
1535 honor and respect and pass laws consistent with, so the
1536 notion of, like, people might not abuse it, or for 50 years
1537 we have tried it: our Constitution and Fourth Amendment
1538 requirement has existed much longer than 50 years.

1539 And all this is saying is I certainly hope it is not
1540 your intention to create a statutory authority to compel the
1541 production of documents, compel the testimony of an
1542 individual or the written answers to a question, and then
1543 use that without finding of probable cause or any finding of
1544 a judicial review, compel the production of that, and then
1545 use it for criminal prosecutions. You will have eviscerated
1546 the Fourth Amendment.

1547 And the notion that you do not think people will do it,
1548 or we have the other contents in which there has not been
1549 abused does not address the fundamental obligation we have
1550 to pass legislation that does not violate the Fourth
1551 Amendment. So, I would just ask the gentleman --

1552 Chairman Goodlatte. Without objection, the gentleman
1553 is granted an additional minute. Would the gentleman from
1554 Louisiana yield so I can respond to the gentleman from Rhode
1555 Island?

1556 Mr. Johnson of Louisiana. Of course.

1557 Chairman Goodlatte. So, this happens in all kinds of
1558 civil cases where information is requested. It happens
1559 right here in the United States Congress, where information
1560 is requested that somebody may not want to reveal because it
1561 may imply criminal obligations. And, you know, there is the
1562 Fifth Amendment as well as the Fourth Amendment, which
1563 people can exercise if they feel the need to do that. But

1564 civil discovery is not an unreasonable thing for any
1565 government agency to use if it is used appropriately, and I
1566 do not see how these guidelines are in any way inappropriate
1567 here as they are and in a whole host of other places where
1568 they are used.

1569 Mr. Raskin. I move to strike the last word.

1570 Chairman Goodlatte. The gentleman is recognized for 5
1571 minutes.

1572 Mr. Cicilline. Can I go first? Mr. Chairman, I would
1573 say in response to that, because the underlying legislation
1574 does not have an express provision as was in the bill I
1575 attempted to use as a substitute that recognizes the right
1576 to the assertion of a privilege, the concerns about the use
1577 of a civil demand authority in a civil proceeding is quite
1578 different than allowing the government to compel the
1579 production of documents testimony and evidence that then can
1580 be used against a person in a criminal proceeding. I mean,
1581 you are the chair of the Judiciary. You surely do not think
1582 that that is appropriate.

1583 Chairman Goodlatte. No, but the assertion of a
1584 privilege is a constitutional right. It is not a right set
1585 forth in statute.

1586 Mr. Cicilline. No, but it has to recognize the
1587 inability to use the civil demand in the presence of those
1588 assertions.

1589 Chairman Goodlatte. I am opposed to the amendment in
1590 its form. I would reiterate what the gentleman from
1591 Louisiana said, that if we carefully review this in terms of
1592 all the different concerns, we are more than happy to work
1593 with you. We think your intentions are well-intended, just
1594 as the gentleman from Louisiana's are.

1595 Mr. Raskin. Mr. Chairman?

1596 Chairman Goodlatte. But in the current legislation, I
1597 do not think it would be helpful to pass this amendment.

1598 Mr. Nadler. Mr. Chairman?

1599 Chairman Goodlatte. For what purpose does the
1600 gentleman from New York seek recognition?

1601 Mr. Nadler. I move to strike the last word.

1602 Chairman Goodlatte. The gentleman is recognized for 5
1603 minutes.

1604 Mr. Nadler. Thank you. I will be very brief. I will
1605 not use the 5 minutes. Let me just say that I support this
1606 amendment in light of the fact that we are specifically
1607 expanding CIDs in areas which could have criminal
1608 prosecutions. This limitation on the use on the information
1609 from them I think does protect the constitutionality of the
1610 underlying legislation, and does go in accord with our basic
1611 principles.

1612 Yes, information obtained in civil discovery can be
1613 used in criminal cases, but the difference here is that we

1614 are setting up specific procedures for civil discovery aimed
1615 at what may be criminal proceedings, and that seems to go in
1616 the wrong direction and implicate some constitutional
1617 problems. I therefore support the amendment. I yield to
1618 the gentleman from Rhode Island.

1619 Mr. Cicilline. I thank the gentleman for yielding. I
1620 just want to answer the chairman's question, because Foreign
1621 Agents Registration Modernization Act, we specifically
1622 included a provision that says, "A demand under this section
1623 may not require the production of any documentary evidence
1624 that would be privileged from disclosure if demanded by a
1625 subpoena duces tecum issued by the court of the United
1626 States in aid of a grand jury investigation of such alleged
1627 violations." So, there is an expression.

1628 That was not included in the underlying bill offered by
1629 Mr. Johnson. That was replaced on page eight that says, "A
1630 civil investigation demand under this section may not
1631 require the production," and it says, "The standards
1632 applicable to discovery requests under the Federal rules of
1633 civil procedure to the extent," et cetera. So, they get rid
1634 of, they do not include this protection against disclosures
1635 of stuff that would be privileged to a grand jury, and they
1636 replace it with a reference to rules of civil procedure.
1637 That is not adequate protection.

1638 And so, you are, by passing this bill in its current

1639 form without this protection, allowing the government to
1640 compel not just the production of documents, but the
1641 production of testimony from an individual, require them to
1642 answer written questions, and all of that can be used to
1643 criminally prosecute them with no compliance with the Fourth
1644 Amendment requirement. That is clearly not permitted by
1645 law.

1646 Chairman Goodlatte. Would the gentleman from New York
1647 yield as I respond to the gentleman?

1648 Mr. Nadler. Do I yield? Yes.

1649 Chairman Goodlatte. I thank the gentleman for
1650 yielding. I just want to say that what the gentleman states
1651 is correct, but it is stated in the United States
1652 Constitution in a prior law. It does not need to be
1653 restated that the Constitution applies here.

1654 Mr. Raskin. Would the gentleman yield?

1655 Mr. Nadler. I yield to --

1656 Chairman Goodlatte. To whom?

1657 Mr. Nadler. To the gentleman from Maryland.

1658 Mr. Raskin. Thank you very much. Just to intervene in
1659 this colloquy for a second, there is no Fifth Amendment
1660 defense to a Fourth Amendment demand for production of
1661 physical or documentary evidence, and the Supreme Court has
1662 repeatedly said, "You cannot say, 'I am not going to turn
1663 over these materials because they could implicate me in a

1664 crime.'"

1665 Chairman Goodlatte. But you need a warrant for that.

1666 Mr. Raskin. Well, right, you need a warrant under the
1667 Fourth Amendment.

1668 Chairman Goodlatte. Correct.

1669 Mr. Raskin. That is our whole point. I think that is
1670 why Mr. Cicilline's amendment is necessary here, because you
1671 need a criminal warrant in order to obtain evidence, a
1672 criminal warrant based upon probable cause, in order to
1673 obtain evidence that can be used against someone in a
1674 criminal prosecution. And what happens in the language of
1675 the gentleman from Louisiana's bill here is that there is a
1676 bridge. So, you get the evidence on the civil side with the
1677 mere reasonable cause standard, and then you walk over the
1678 bridge behind the scenes, and you give it to the criminal
1679 prosecutors, and then they use it to prosecute someone.

1680 And, Mr. Chairman, whose time am I on? I am sorry.

1681 Mr. Nadler. Mine.

1682 Mr. Raskin. If I could continue just for a second, I
1683 mean, Washington is an interesting place, because had we
1684 suggested giving this power, for example, to the Special
1685 Counsel, where the Special Counsel could, on a civil
1686 standard, make a demand, say, of Mr. Manafort or any of the
1687 Trumps on a civil basis, and then take the evidence and then
1688 turn it over for criminal prosecution, they would be yelling

1689 not only witch hunt, but that this is a complete disruption
1690 of the Constitution. And I certainly hope that I would have
1691 the courage of my convictions and the principles to stand
1692 with you in saying, "That is completely unacceptable." So,
1693 I do not see why we would turn around now and say that is
1694 somehow a novel exception that should swallow the entire
1695 rule of the Fourth Amendment.

1696 So, again, I would just urge my colleagues to rethink
1697 this one small part of a very good bill in general. But I
1698 do think that it taints the entire bill, and it risks it
1699 being struck down for being a complete violation of the
1700 Fourth Amendment. I yield back.

1701 Mr. Nadler. I agree with the gentleman from Maryland,
1702 and I yield to the chairman.

1703 Chairman Goodlatte. I thank the gentleman for
1704 yielding. I just want to say to the gentleman from Maryland
1705 that this has been the standard in RICO cases for decades.

1706 Mr. Raskin. Will the gentleman yield? What has been
1707 the standard? I am not following. Under RICO probable
1708 cause operates.

1709 Chairman Goodlatte. This bill tracks the exact same
1710 language in the RICO statute, the civil RICO statute.

1711 Mr. Raskin. Okay, under the civil RICO statute --
1712 again, as I understand it -- is that if I believe I have
1713 been injured by people engaging in a pattern of racketeering

1714 activity, including extortion, conspiracy, embezzlement,
1715 other felonies, I can bring a civil action against them, but
1716 I need to prove those are predicate offenses. All I need to
1717 prove is that they have been convicted of those offenses
1718 before.

1719 Chairman Goodlatte. Without objection, the gentleman
1720 from New York is recognized for an additional 2 minutes.
1721 Let me just read to you from the RICO statute. "Whenever
1722 the Attorney General has reason to believe that any person
1723 or enterprise may be in possession, custody, or control of
1724 any document or material relevant to a racketeering
1725 investigation, he may, prior to the institution of a civil
1726 or criminal proceeding thereon, issue in writing and cause
1727 to be served upon such person a civil investigative demand
1728 requiring said person to produce such material for
1729 examination."

1730 Now, given that that is current law, to make the change
1731 suggested by the amendment of the gentleman from Rhode
1732 Island would cause serious conflict and disruption to our
1733 standards today, and therefore I must oppose that amendment.
1734 Notwithstanding that to assure both the gentleman for Rhode
1735 Island and the gentleman from Maryland and the gentleman
1736 from New York that we are doing everything that is
1737 appropriate under the law and the Fourth Amendment to
1738 protect individuals, we are more than happy to continue that

1739 discussion with you, if there is some language that does not
1740 upset the apple cart, to meet that concern. But this
1741 amendment does not accomplish that. I must oppose it.

1742 Mr. Nadler. I yield to the gentleman from Maryland.

1743 Mr. Raskin. If I just might question the chairman
1744 about that, I understand that the provision you have cited
1745 is limited to the authority of issuing a civil investigative
1746 demand for a civil action under RICO, not for a criminal
1747 prosecution. Is that --

1748 Chairman Goodlatte. If the gentleman will yield, it
1749 says, "He may, prior to the institution of a civil or
1750 criminal proceeding thereon, issue in writing and cause to
1751 be served upon such a person a civil investigative demand,"
1752 and it continues.

1753 Mr. Nadler. Reclaiming my time, let me just comment
1754 very briefly. I support the gentleman's amendment. The
1755 chairman is reading from RICO -- leads me to suspect that
1756 perhaps you had to take a close look at RICO. Maybe it goes
1757 too far in the Fourth Amendment. And the fact that you have
1758 a law in one area that perhaps goes too far should not be
1759 used a predicate for expanding a law in the wrong direction
1760 in a different area. I yield back.

1761 Chairman Goodlatte. Would the gentleman yield? First
1762 of all, this is not a constitution, but if the gentleman
1763 wants to revisit that language, let's find language that is

1764 agreeable here. Then maybe it would be applicable there.
1765 But I am not in agreement that there is anything wrong with
1766 the language that is in this current legislation right now,
1767 but I am certainly happy to have further discussions to
1768 assure you that there is nothing wrong with it as well.

1769 With that, the question occurs on the amendment offered
1770 by the gentleman from Rhode Island.

1771 All those in favor, respond by saying aye.

1772 Those opposed, no.

1773 In the opinion of the chair, the noes have it, and the
1774 amendment is not agreed to.

1775 Mr. Nadler. I request a recorded vote, Mr. Chairman.

1776 Chairman Goodlatte. A recorded vote is requested, and
1777 the clerk will call the roll.

1778 Ms. Adcock. Mr. Goodlatte?

1779 Chairman Goodlatte. No.

1780 Ms. Adcock. Mr. Goodlatte votes no.

1781 Mr. Sensenbrenner?

1782 Mr. Sensenbrenner. No.

1783 Ms. Adcock. Mr. Sensenbrenner votes no.

1784 Mr. Smith?

1785 Mr. Smith. No.

1786 Ms. Adcock. Mr. Smith votes no.

1787 Mr. Chabot?

1788 Chairman Goodlatte. You know, we have had from both

1789 sides people shouting from the cloakroom. We have been
1790 tolerant of that when they were shouted in response to their
1791 own name, but when they shout response to someone else's
1792 name we have to back up and begin the roll call again.

1793 Ms. Adcock. Mr. Goodlatte?

1794 Chairman Goodlatte. No.

1795 Ms. Adcock. Mr. Goodlatte votes no.

1796 Mr. Sensenbrenner?

1797 [No response.]

1798 Mr. Smith?

1799 Mr. Smith. No.

1800 Ms. Adcock. Mr. Smith votes no.

1801 Mr. Chabot?

1802 [No response.]

1803 Mr. Issa?

1804 Mr. Issa. No.

1805 Ms. Adcock. Mr. Issa votes no.

1806 Mr. King?

1807 Mr. King. No.

1808 Ms. Adcock. Mr. King votes no.

1809 Mr. Gohmert?

1810 Mr. Gohmert. No.

1811 Ms. Adcock. Mr. Gohmert votes no.

1812 Mr. Jordan?

1813 [No response.]

1814 Mr. Poe?
1815 [No response.]
1816 Mr. Marino?
1817 Mr. Marino. No.
1818 Ms. Adcock. Mr. Marino votes no.
1819 Mr. Gowdy?
1820 [No response.]
1821 Mr. Labrador?
1822 Mr. Labrador. No.
1823 Ms. Adcock. Mr. Labrador votes no.
1824 Mr. Farenthold. No.
1825 Ms. Adcock. Mr. Farenthold votes no.
1826 Mr. Collins?
1827 [No response.]
1828 Mr. DeSantis?
1829 Mr. DeSantis. No.
1830 Ms. Adcock. Mr. DeSantis votes no.
1831 Mr. Buck?
1832 [No response.]
1833 Mr. Ratcliffe?
1834 [No response.]
1835 Mrs. Roby?
1836 Mrs. Roby. No.
1837 Ms. Adcock. Mrs. Roby votes no.
1838 Mr. Gaetz?

1839 [No response.]

1840 Mr. Johnson of Louisiana?

1841 Mr. Johnson of Louisiana. No.

1842 Ms. Adcock. Mr. Johnson votes no.

1843 Mr. Biggs?

1844 Mr. Biggs. No.

1845 Ms. Adcock. Mr. Biggs votes no.

1846 Mr. Rutherford?

1847 Mr. Rutherford. No.

1848 Ms. Adcock. Mr. Rutherford votes no.

1849 Mrs. Handel?

1850 Mrs. Handel. No.

1851 Ms. Adcock. Mrs. Handel votes no.

1852 Mr. Nadler?

1853 Mr. Nadler. Aye.

1854 Ms. Adcock. Mr. Nadler votes aye.

1855 Ms. Lofgren?

1856 [No response.]

1857 Ms. Jackson Lee?

1858 [No response.]

1859 Mr. Cohen?

1860 [No response.]

1861 Mr. Johnson of Georgia?

1862 Mr. Johnson of Georgia. Aye.

1863 Ms. Adcock. Mr. Johnson votes aye.

1864 Mr. Deutch?
1865 [No response.]
1866 Mr. Gutierrez?
1867 [No response.]
1868 Ms. Bass?
1869 [No response.]
1870 Mr. Richmond?
1871 [No response.]
1872 Mr. Jeffries?
1873 Mr. Jeffries. Aye.
1874 Ms. Adcock. Mr. Jeffries votes aye.
1875 Mr. Cicilline?
1876 Mr. Cicilline. Aye.
1877 Ms. Adcock. Mr. Cicilline votes aye.
1878 Mr. Swalwell?
1879 [No response.]
1880 Mr. Lieu?
1881 Mr. Lieu. Aye.
1882 Ms. Adcock. Mr. Lieu votes aye.
1883 Mr. Raskin?
1884 Mr. Raskin. Aye.
1885 Ms. Adcock. Mr. Raskin votes aye.
1886 Ms. Jayapal?
1887 Ms. Jayapal. Aye.
1888 Ms. Adcock. Ms. Jayapal votes aye.

1889 Mr. Schneider?

1890 [No response.]

1891 Ms. Demings?

1892 Ms. Demings. Aye.

1893 Ms. Adcock. Ms. Demings votes aye.

1894 Chairman Goodlatte. The gentleman from Colorado, Mr.

1895 Buck?

1896 Mr. Buck. No.

1897 Ms. Adcock. Mr. Buck votes no.

1898 Chairman Goodlatte. The gentleman from Texas, Mr.

1899 Ratcliffe?

1900 Mr. Ratcliffe. No.

1901 Ms. Adcock. Mr. Ratcliffe votes no.

1902 Chairman Goodlatte. Has every member voted who wishes

1903 to vote? The clerk will report.

1904 Ms. Adcock. Mr. Chairman, 8 members voted aye; 16

1905 members voted no.

1906 Chairman Goodlatte. And the amendment is not agreed

1907 to. Are there further amendments to H.R. 4170? For what

1908 purpose does the gentleman from Maryland seek recognition?

1909 Mr. Raskin. Thank you, Mr. Chairman. Again, I wanted

1910 to restate my general agreement with the thrust of this bill

1911 and my admiration for Mr. Johnson for bringing it forward

1912 and Mr. Cicilline for making this an issue. I think we must

1913 use this as an opportunity to clean up some potentially

1914 fatal vagueness in the definitional section, Section Six of
1915 the underlying Foreign Agents Registration Act of 1938, and
1916 I have got an amendment at the desk.

1917 Chairman Goodlatte. The clerk will report the
1918 amendment.

1919 Ms. Adcock. Amendment to H.R. 4170, offered by Mr.
1920 Raskin of Maryland. Page 34, insert after line 8 the
1921 following new section.

1922 [The amendment of Mr. Raskin follows:]

1923 ***** COMMITTEE INSERT *****

1924 Chairman Goodlatte. Without objection, the amendment
1925 is considered as read, and the gentleman is recognized for 5
1926 minutes on his amendment.

1927 Mr. Raskin. Mr. Chairman, thank you. So, what we are
1928 in the process of doing with the gentleman from Louisiana's
1929 bill is strengthening the Department of Justice's ability to
1930 enforce the Foreign Agents Registration Act of 1938. In the
1931 process, I think we need to clean up a problem in the
1932 definition section which I think is potentially fatally
1933 vague to the underlying statute.

1934 The common sense understanding that any of us would
1935 have about a foreign agent is the same understanding that is
1936 embodied in principle agent law, which is someone who is
1937 acting under the direction or control of another person.
1938 But this language applies to anyone who is acting at the
1939 order, request, or under the direction or control of a
1940 foreign principal or of a person any of whose activities are
1941 directly or indirectly supervised, directed, controlled,
1942 financed, or subsidized in whole or in part by a foreign
1943 principal.

1944 So, the purpose of this amendment is simply to simplify
1945 it to say, "Under the direction or control of a foreign
1946 principal or of a person directed or controlled by a foreign
1947 principal," which is both the common sense and common-law
1948 understanding of what a foreign agent is. Without that,

1949 again, I am afraid that no matter how upset people are about
1950 what we have seen in recent revelations in the news, we are
1951 going to go way too far. So, take, for example, the example
1952 that is probably on a lot of people's minds, which is the
1953 meeting that took place in Trump Tower with Natalia
1954 Veselnitskaya and other Russians who came to speak with
1955 representatives of the Trump campaign.

1956 Now, should everyone who was in the room in the Trump
1957 campaign have had to register as a foreign agent simply
1958 because they responded to a request from these people that
1959 they, for example, oppose the Russian sanctions? And I do
1960 not think that should be enough to compel someone to
1961 register as a foreign agent. Now, if they are acting under
1962 the direction or control of the Russian team that was
1963 assembled, yes, then, by all means, but if there is simply a
1964 request made to them -- "Will you please work against the
1965 sanctions that were put in by the prior administration?" --
1966 and they agree to do it, I do not think that that should
1967 subject them to the requirement to register as a foreign
1968 agent, punishable by years in jail and so on, through a
1969 knowing violation.

1970 Similarly, you could find in another context if Amnesty
1971 International asked a group in America to have a fundraising
1972 concert to raise funds for political prisoners in -- you
1973 name it -- Saudi Arabia, Turkey, whatever country, and they

1974 hold a concert. I do not think answering that request makes
1975 them a foreign agent. Now, again, if they are acting under
1976 the direction or control of a foreign government, then, by
1977 all means, they should be included. But I just think that
1978 we are opening this up way too wide if we are strengthening
1979 the ability of the Department of Justice to compel
1980 registration under FARA, which we should do, but we are not
1981 being very precise about who is swept within the definition.

1982 So, with that I would submit it to the wisdom of the
1983 committee, and I hope that Mr. Johnson would see the logic
1984 of cleaning this up at this point.

1985 Mr. Johnson of Louisiana. [Presiding.] I thank the
1986 gentleman and recognize myself in opposition to the
1987 amendment, and let me explain why. None of the published
1988 Inspector General reports that we have referenced today have
1989 called for a change of this provision, and I think that is
1990 important, because making changes to the definition of an
1991 agent or of a foreign principal could have dramatic
1992 consequences on how the law is enforced.

1993 The amendment would limit and narrow the definition,
1994 obviously. I know that is by design, but as such, it is
1995 reasonable to expect the amendment would lead to
1996 noncompliance with FARA, like we have seen with the LDA
1997 exemption. Let me give you a specific example that is been
1998 cited to us. This amendment could weaken FARA and create a

1999 | loophole for bad actors to exploit.

2000 | This is the example. Under this potentially new
2001 | definition, a U.S.-based subsidiary of a foreign company
2002 | could potentially donate to a charity that then engages in
2003 | political activities and thus avoids FARA registration.
2004 | FARA loopholes have been highlighted in the OIG reports for
2005 | decades, and Congress should not draft legislation that
2006 | makes it easier for individuals and entities to subvert the
2007 | law. And I am concerned that this amendment, while I know
2008 | well-intended and offered in good faith, might have the
2009 | unintended consequence of that.

2010 | Our aim with H.R. 4170 is to strengthen FARA
2011 | enforcement and increase compliance. I know you agree with
2012 | that objective. I just feel this amendment would accomplish
2013 | neither of those things. The Department of Justice has not
2014 | issued any recommendations regarding the definitions, and we
2015 | could consult with them, but this is another one that I
2016 | would commit to you on the record to work with you going
2017 | forward if there is a way to do this that would not weaken
2018 | the compliance with the law, the enforcement of the law, so
2019 | far as DOJ is concerned. I would be willing to do it, but
2020 | at this point, have to oppose the amendment for that basis.

2021 | Mr. Raskin. Would the gentleman yield?

2022 | Mr. Johnson of Louisiana. I will.

2023 | Mr. Raskin. Thank you very much, and thank you also

2024 for your stated willingness to work with me in terms of
2025 dealing with the potentially fatal vagueness and overbreadth
2026 of this provision, especially if we get into an era of much
2027 more muscular enforcement, which I hope we do.

2028 The problem that you identify about the funneling of
2029 foreign money is one I take very seriously. In fact, I have
2030 got legislation to deal with that, called the Get Foreign
2031 Money Out Act, in order to address a loophole that was
2032 created by Citizens United, which, of course, turns every
2033 corporate treasury into a potential political slush fund,
2034 thereby allowing foreign governments and corporations and
2035 businesses, by taking over a business or taking over a large
2036 part of the business, to channel money into our politics.
2037 And I think that that is a much more direct way of dealing
2038 with the problem that you have identified rather than
2039 essentially classifying anybody who is involved with
2040 international organizations or foreign businesses as a
2041 foreign agent.

2042 So, again, I think that this is a problem that we are
2043 going to have to deal with eventually, if not now. I
2044 appreciate your willingness to work with me on clarifying
2045 the issue, but I think when we talk about foreign agents we
2046 are really talking about people who are acting under the
2047 direction or control of a foreign government, and not
2048 someone who simply responds to a request by any foreign

2049 entity.

2050 And, again, that would, I think, clearly make -- at
2051 least, based on published accounts -- everybody who was in
2052 the room at Trump Tower a foreign agent to the extent that
2053 they acted in response to a request made by the Russian
2054 foreign nationals were present in the room. So, again, I
2055 would submit the amendment, and I thank you for your
2056 consideration, Mr. Chairman.

2057 Mr. Johnson of Louisiana. Reclaiming my time, just
2058 want to make a note for the record that my bill does not
2059 change any definitions in the underlying statute, and of
2060 course yours would, and that is one of the bases for my
2061 opposition to the amendment.

2062 The question occurs on the amendment.

2063 All those in favor, say aye.

2064 All those opposed, no.

2065 In the opinion of the chair, the noes have it, and the
2066 amendment is not agreed to. Are there any further
2067 amendments?

2068 Ms. Jayapal. Mr. Chairman?

2069 Mr. Johnson of Louisiana. Yes?

2070 Ms. Jayapal. I have an amendment at the desk.

2071 Mr. Johnson of Louisiana. Ms. Jayapal is recognized
2072 for 5 minutes.

2073 Ms. Jayapal. Thank you, Mr. Chairman. I would like to

2074 thank you for bringing this bill forward. I think we all
2075 understand how important this issue is. And I also want to
2076 thank you and your office for your work with us. We had --

2077 Mr. Johnson of Louisiana. Would the gentlelady suspend
2078 for just a moment? I apologize. The clerk needs to report
2079 the previous amendment.

2080 Ms. Adcock. Amendment to H.R. 4170, offered by Ms.
2081 Jayapal of Washington. At the appropriate place, insert the
2082 following: "Report to Congress the" --

2083 [The amendment of Ms. Jayapal follows:]

2084 ***** COMMITTEE INSERT *****

2085 Mr. Johnson of Louisiana. Without objection, the
2086 amendment is reported as read. Ms. Jayapal, you may
2087 continue.

2088 Ms. Jayapal. Thank you, Mr. Chairman. As I said, I
2089 appreciate the work that you and your office have done in
2090 reaching out to us. We would have preferred that there was
2091 a hearing, but I do think you have made many attempts to try
2092 to reach out to us.

2093 I also want to thank Mr. Cicilline for his longstanding
2094 work on this issue and for his bipartisan bill that is also
2095 introduced into the House, and I think that there are some
2096 still-serious concerns around Fourth Amendment protections
2097 in this bill that really do need to be addressed one way or
2098 another. And I am disappointed that we were not able to
2099 accept one of Mr. Cicilline's amendments that would have at
2100 least started to address this issue. And I hope that if
2101 this legislation proceeds, that we can continue to work with
2102 you and your office to really address that, because it is a
2103 significant issue for many of us, and I think that it limits
2104 the ability for us to be as bipartisan on this bill as we
2105 all would hope to be.

2106 The Foreign Agents Registration Act of 1938, as you and
2107 others have said, has long been in need of reforms to ensure
2108 that foreign agents are following our laws. FARA is
2109 intended to increase public transparency of the activities

2110 of foreign governments attempting to influence U.S. policy,
2111 but the enforcement is entirely dependent on voluntary
2112 registration disclosures and recordkeeping by the people
2113 that FARA seeks to regulate. And I do not think we can
2114 expect bad actors to independently follow our laws to help
2115 us to conduct oversight of their actions. So, it is
2116 important for the strength of our democracy that we make
2117 improvements to FARA so that we are less dependent on people
2118 we are regulating to follow our laws.

2119 Certainly, over the last few years we have seen more
2120 and more evidence come out indicating the critical need to
2121 conduct robust oversight of foreign agents seeking to
2122 influence U.S. policy. The evidence of Russian interference
2123 in our elections and democracy raise serious concerns, and
2124 it is our duty as members of Congress to ensure we do
2125 everything we can to defend our democracy.

2126 Mr. Chairman, my amendment would require the Department
2127 of Justice to report to Congress within two years on the
2128 steps that they have taken to make use of electronic filing
2129 of all reports in a digitized format, which in turn would
2130 then make the FARA website database fully searchable,
2131 sortable, and downloadable. The events of the past year
2132 have truly illustrated how important it is for us to
2133 exercise this proper oversight, and we have watched as high-
2134 ranking members of the administration and the President's

2135 inner circle have fallen, and as Special Counsel Mueller has
2136 uncovered evidence around potential obstruction of justice
2137 and collusion.

2138 For example, former national security adviser Michael
2139 Flynn retroactively filed a FARA registration indicating
2140 that he was paid more than \$530,000 to serve as a lobbyist
2141 for the Turkish government while working as a Trump campaign
2142 adviser, and it was also really revealed that Mr. Flynn was
2143 working on a \$15 million plan to kidnap a political enemy of
2144 Turkish President Erdogan and fly him to an island prison.
2145 This has all occurred as we have witnessed a dramatic
2146 reduction in overall FARA registrations.

2147 Since the mid-1990s, we have seen a 60 percent drop in
2148 registered FARA lobbyists and a 73 percent drop in
2149 registered foreign principals. According to a 2016 audit by
2150 the DOJ'S Inspector General, there is a general disregard
2151 for timely filing and accurate reports among those who have
2152 registered, and the DOJ has only pursued seven criminal
2153 enforcement actions for FARA violations over the last
2154 century.

2155 So, Mr. Chairman, I appreciate your bringing forward
2156 this bill. I hope that you will accept this friendly
2157 amendment, and I hope that we can resolve these Fourth
2158 Amendment protection issues that I think would bring many of
2159 the Democrats on our side of the aisle along, because we all

2160 do believe that this is a critical issue that you have
2161 brought forward. So, with that, I thank you, and I yield
2162 back.

2163 Mr. Johnson of Louisiana. I thank the gentlelady from
2164 Washington. I do agree the amendment is a good one, and do
2165 accept it and encourage our colleagues to do the same. I am
2166 for further disclosure -- for more disclosure -- as you are.
2167 I think this will help. I think the electronic filing of
2168 all reports in a digitized format will assist in that
2169 effort, and so for that reason I urge my colleagues to
2170 support it.

2171 With that, the question occurs on the amendment.

2172 All in favor, say aye.

2173 All opposed, no.

2174 In the opinion of the chair, the ayes have it. The
2175 amendment is agreed to.

2176 Any further amendments? If not, the question is on
2177 final passage of the bill as amended.

2178 A reporting quorum being present, the question is on
2179 the motion to report the bill H.R. 4170 as amended favorably
2180 to the House.

2181 Those in favor, say aye.

2182 Those opposed, no.

2183 In the opinion of the chair, the ayes have it, and the
2184 bill is ordered reported favorably.

2185 Mr. Nadler. Mr. Chairman, on that I ask for the ayes
2186 and nays.

2187 Mr. Johnson of Louisiana. A recorded vote has been
2188 requested. The clerk will call the roll.

2189 Ms. Adcock. Mr. Goodlatte?

2190 Chairman Goodlatte. Aye.

2191 Ms. Adcock. Mr. Goodlatte votes aye.

2192 Mr. Sensenbrenner?

2193 [No response.]

2194 Mr. Smith?

2195 Mr. Smith. Aye.

2196 Ms. Adcock. Mr. Smith votes aye.

2197 Mr. Chabot?

2198 [No response.]

2199 Mr. Issa?

2200 Mr. Issa. Aye.

2201 Ms. Adcock. Mr. Issa votes aye.

2202 Mr. King?

2203 Mr. King. Aye.

2204 Ms. Adcock. Mr. King votes aye.

2205 Mr. Gohmert?

2206 [No response.]

2207 Mr. Jordan?

2208 [No response.]

2209 Mr. Poe?

2210 [No response.]

2211 Mr. Marino?

2212 [No response.]

2213 Mr. Gowdy?

2214 [No response.]

2215 Mr. Labrador?

2216 Mr. Labrador. Yes.

2217 Ms. Adcock. Mr. Labrador votes yes.

2218 Mr. Farenthold?

2219 Mr. Farenthold. Yes.

2220 Ms. Adcock. Mr. Farenthold votes yes.

2221 Mr. Collins?

2222 [No response.]

2223 Mr. DeSantis?

2224 [No response.]

2225 Mr. Buck?

2226 [No response.]

2227 Mr. Ratcliffe?

2228 [No response.]

2229 Mrs. Roby?

2230 Mrs. Roby. Aye.

2231 Ms. Adcock. Mrs. Roby votes aye.

2232 Mr. Gaetz?

2233 [No response.]

2234 Mr. Johnson of Louisiana?

2235 Mr. Johnson of Louisiana. Aye.

2236 Ms. Adcock. Mr. Johnson votes aye.

2237 Mr. Biggs?

2238 Mr. Biggs. Aye.

2239 Ms. Adcock. Mr. Biggs votes aye.

2240 Mr. Rutherford?

2241 Mr. Rutherford. Aye.

2242 Ms. Adcock. Mr. Rutherford votes aye.

2243 Mrs. Handel?

2244 Mrs. Handel. Yes.

2245 Ms. Adcock. Mrs. Handel votes yes.

2246 Mr. Nadler?

2247 Mr. Nadler. No.

2248 Ms. Adcock. Mr. Nadler votes no.

2249 Ms. Lofgren?

2250 [No response.]

2251 Ms. Jackson Lee?

2252 [No response.]

2253 Mr. Cohen?

2254 [No response.]

2255 Mr. Johnson of Georgia?

2256 Mr. Johnson of Georgia. No.

2257 [No response.]

2258 Mr. Deutch?

2259 [No response.]

2260 Mr. Gutierrez?
2261 [No response.]
2262 Ms. Bass?
2263 [No response.]
2264 Mr. Richmond?
2265 [No response.]
2266 Mr. Jeffries?
2267 Mr. Jeffries. No.
2268 Ms. Adcock. Mr. Jeffries votes no.
2269 Mr. Cicilline?
2270 Mr. Cicilline. No.
2271 Ms. Adcock. Mr. Cicilline votes no.
2272 Mr. Swalwell?
2273 [No response.]
2274 Mr. Lieu?
2275 [No response.]
2276 Mr. Raskin?
2277 Mr. Raskin. No.
2278 Ms. Adcock. Mr. Raskin votes no.
2279 Ms. Jayapal?
2280 Ms. Jayapal. No.
2281 Ms. Adcock. Ms. Jayapal votes no.
2282 Mr. Schneider?
2283 [No response.]
2284 Ms. Demings?

2285 Ms. Demings. No.

2286 Ms. Adcock. Ms. Demings votes no.

2287 Mr. DeSantis. How am I recorded?

2288 Ms. Adcock. Not recorded.

2289 Mr. Johnson of Louisiana. Mr. DeSantis?

2290 Mr. DeSantis. Yes.

2291 Ms. Adcock. Mr. DeSantis votes yes.

2292 Mr. Johnson of Louisiana. Mr. Gohmert?

2293 Mr. Gohmert. Yes.

2294 Ms. Adcock. Mr. Gohmert votes yes.

2295 Mr. Johnson of Louisiana. Mr. Ratcliffe?

2296 Mr. Ratcliffe. Yes.

2297 Ms. Adcock. Mr. Ratcliffe votes yes.

2298 Mr. Johnson of Louisiana. The gentleman from Ohio?

2299 Mr. Chabot. Aye.

2300 Ms. Adcock. Mr. Chabot votes aye.

2301 Mr. Johnson of Louisiana. The clerk will report.

2302 Ms. Adcock. Mr. Chairman, 15 members voted aye; 6

2303 members voted no.

2304 Mr. Johnson of Louisiana. The ayes have it, and the

2305 bill is ordered reported favorably to the House. Members

2306 will have 2 days to submit views. Without objection, the

2307 bill will be reported as a single amendment in the nature of

2308 a substitute incorporating all adopted amendments, and the

2309 staff is authorized to make technical and conforming

2310 changes.

2311 This concludes our business for today. Thanks to all
2312 our members for attending. The markup is adjourned.

2313 [Whereupon, at 12:25 p.m., the committee was
2314 adjourned.]