NATIONAL CAPITOL CONTRACTING

RPTS HALATYN

HJU256000

MARKUP OF H.R. 5634, H.R. 6755, H.R. 3487, H.R. 6754, H.R. 6730, H.R. 6758, H.R. 2899, H.R. 6063, H.R. 6342, H.R. 6762, AND H.R. 6176

Thursday, September 13, 2018

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

The committee met, pursuant to call, at 10:15 a.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Smith, Chabot, Issa, King, Gohmert, Jordan, Poe, Marino, Labrador, Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs, Rutherford, Handel, Rothfus, Nadler, Cohen, Bass, Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Schneider, and Demings.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian; Tony Angel, Counsel, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; Tom Stoll, Counsel, Subcommittee on Courts, Intellectual Property, and the Internet; Joe Keeley, Counsel, Subcommittee on Courts, Intellectual Property, and the Internet; Alley Adcock, Clerk; Danielle Brown, Minority Legislative Counsel and Parliamentarian; Matt Morgan, Minority Counsel; Jason Everett, Minority Counsel; David Greengrass, Minority Counsel; Joe Graupensperger, Minority Counsel; Monalisa Dugue, Minority Deputy Chief Counsel; Susan Jensen, Minority Counsel; Lisette Morgan; Rachel Calanni, Minority Professional Staff Member; and Perry Apelbaum, Minority Chief Counsel and Staff Director.

Chairman Goodlatte. Good morning. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare a recess at any time. Pursuant to notice, I now call up H.R. 5634 for purposes of markup and move that the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Adcock. H.R. 5634, to increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize healthcare providers of the Department of Veterans Affairs, to provide recommendations to veterans regarding participation in federally-approved cannabis clinical trials, and for other purposes.

[The bill follows:]

********** INSERT 1 **********

Chairman Goodlatte. Without objection, the bill is considered as read and open for amendment at any time. And I will begin by recognizing myself for an opening statement. The Controlled Substances Act and two international treaties provide the framework within which Schedule I drugs, including marijuana, are grown, manufactured, and researched. Federal law also requires that before a new drug is allowed to enter the U.S. market, it must be demonstrated through adequate and well-controlled clinical trials to be both safe and effective for its intended uses. Long ago, Congress established this process, recognizing that it was essential to protect the health and welfare of the American people.

Until 2 months ago, no drug product made from marijuana has ever been shown to be safe and effective for human consumption. In June, the Food and Drug Administration, for the first time, approved a drug that contains a purified substance derived from marijuana. Epidiolex, an oral solution containing pure cannabidiol, was studied for several years during which scientific studies and supervised human trials were conducted and showed it to be safe and effective. DEA is expected to act soon and allow this drug to be used for the treatment of seizures associated with two rare and severe forms of epilepsy in patients 2 years of age and older.

This demonstrates that the current system and implementation of the law is effective. It ensures that valid and compelling scientific evidence is behind every safe and effective drug. Federal agencies including the Drug Enforcement Administration, the Food and Drug Administration, and the National Institutes of Health all support research into the potential medical utility of marijuana and its chemical constituents.

There are a variety of factors that influence whether and to what extent such research takes place. Some of the key factors, such as funding, are beyond the control of enforcement and regulatory agencies such as DEA. However, one way this committee and Congress can help to facilitate legitimate research involving marijuana is to take steps, within the framework of the CSA and U.S. treaty obligations, to increase the lawful supply of research-grade marijuana available to qualified scientists.

H.R. 5634 has a very narrow scope and is designed to facilitate and encourage qualified researchers to develop valid, verifiable scientific evidence about the potential medicinal value of marijuana. It increases the number of federally-regulated marijuana manufacturers, solely for research purposes. It also allows Department of Veterans Affairs healthcare providers to discuss with veteran patients their participation in federally-approved marijuana

clinical trials.

No matter where each of us may fall on the issue of marijuana, this bill takes a reasonable and balanced approach toward ensuring marijuana, and particularly the over 100 cannabinoids it contains, can be studied by qualified researchers and institutions in a controlled manner to determine whether those substances have actual legitimate medical uses. The science derived from this research could improve the lives of citizens and even save lives. We should not be afraid of science. I urge my colleagues to support this bill.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, Mr. Nadler of New York, for his opening statement.

[The prepared statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, although H.R. 5634, the Medicinal Cannabis Research Act, is intended to be a modest but helpful measure to address certain restrictions on the manufacture of marijuana for research purposes, unfortunately I must oppose it because it would unfortunately and unjustly expand the collateral consequences of criminal convictions. We know that marijuana can be effective at alleviating pain, suppressing nausea, and treating conditions such as posttraumatic stress disorder.

Although continued and expanded research is necessary to further examine the potential benefits of marijuana, there are legal and practical limitations on the ability of doctors, scientists, and academics to conduct this research. Largely because marijuana is in appropriately categorized as a Schedule I drug under Federal law, there is an onerous and cumbersome process for obtaining Federal approval to conduct research. Currently, there is only one entity that is registered and approved by the DEA under the terms of the Controlled Substances Act to manufacture or grow marijuana for research purposes.

Researchers indicate that unfortunately the supply of cannabis made available by the University of Mississippi is frequently of low quality and moldy, which can cause illness. In recent years, many States have legalized

marijuana for medical purposes, and a few others have legalized it for recreational use. There have also been discussions within the executive branch about taking steps to approve more registrants to manufacture marijuana. However, at the present time, the University of Mississippi remains the sole approved manufacturer of marijuana for research.

To address this concern, H.R. 5634 would require that there be at least three federally-approved manufacturers of marijuana for research purposes. This is not a vast expansion but it would help to address the limitations on the availability and quality of marijuana for research. I am disappointed, however, that the bill includes a requirement that each person involved in a manufacturers operation undergo a background check to confirm that they have no felony or drug-related misdemeanor convictions. As this committee seeks to engage in criminal justice reform, and particularly on a day when we consider the Second Chance Act, we should not include such a requirement that would expand the collateral consequences of criminal convictions.

For decades, drug laws have been disproportionately enforced against minorities. This is particularly true with respect to misdemeanor drug convictions. Now, when we are allowing a limited number of people to financially benefit from the legal growing of marijuana, we should not compound

this injustice by preventing the very people who have been harmed from participating.

The bill includes a broad restriction based on any felony committed at any time, and also includes a mere misdemeanor drug offensives committed at any time. These restrictions are sweeping, unwarranted, and unjust. Also, the bill would clarify that the doctors and staff of the Veterans Administration are not prohibited from sharing information about federally-approved marijuana clinical trials with patients.

If there are trials that may help our veterans address their needs with regards to pain or PTSD, V.A. officials should not be prevented from sharing this information and I would endorse such a provision in a bill that I could otherwise support. Even if the committee adopts this bill today, there is more we must do to address the legal status of marijuana in this country. Continuing to arrest and incarcerate through enforcement of outdated marijuana laws, often in a racially disproportionate manner, is a disgrace when the unfortunate aspects of such enforcement is that those convicted face an array of collateral consequences, including difficulty obtaining employment.

Therefore, although I would very much like to support a measure that would help provide more marijuana for research purposes, I cannot support this bill because of the over-

broad restrictions regarding convictions. If this is not addressed by amendment, I will have to vote against this bill today. I yield back the balance of my time.

[The prepared statement of Mr. Nadler follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Thank you, Mr. Nadler. I now would like to recognize the sponsor of the bill, Mr. Gaetz of Florida, for his opening statement.

Mr. Gaetz. Thank you, Mr. Chairman. And I would like to begin by thanking Chairman Goodlatte and his staff for being faithful to their commitment to work with our office and a number of the bipartisan members of this committee who have a desire to advance the cause of cannabis reform. I have to say I never imagined that in the 115th Congress I would be in this committee with Chairman Goodlatte advocating for the advancement of cannabis reform legislation and the ranking member advocating against this particular bill. That has baffled me.

But I do want to acknowledge the tremendous contributions and encouragement and assistance that members from both parties have provided on this issue. And regardless of the vote, I am very grateful and I fully agree with the ranking member that the cause for cannabis reform will require continued effort, and energy, and focus if we have been imprecise in any of the details in such a new frontier that we are embarking upon.

I want to be very clear as to what this legislation does and does not do. It does not remove cannabis from the list of Schedule I drugs. It does not make medical cannabis available to even one additional American. What I think it

does do is demystify the debate we are having about medical cannabis. It is very frustrating to advocates for cannabis reform that when people who oppose our views say, "Well, there is no research to prove that this works," to live in an environment where the Federal Government's policies frustrate that very research. It creates a catch-22.

And so, here is what the bill does. First, it ensures that there is a sufficient supply of medical-grade cannabis. Right now, only the University of Mississippi is growing research-grade cannabis. It is sort of the government cheese of medical-grade marijuana. And I think we could do a lot better and unlock more cures if we had that expanded availability of research-based cannabis. So, I am grateful that this legislation would require that of the Department of Justice and not give the Department of Justice the discretion to suppress the quantity of research-grade product.

Second thing the bill does is create a safe harbor so that the very best and brightest minds in our country can begin working on unlocking these cures today. Actually, we held a field hearing recently where people from Penn State University came and said as a consequence of new State laws in Pennsylvania there is a real desire for the university system to collaborate with private-sector researchers with healthcare providers and to be able to determine which

strains and which therapies are effective. What dosage levels help people or do not help people. To be able to chronicle that information and to be able to present it in a research-based, acceptable setting.

But that is illegal today. They cannot do it at Penn State. Or at the University of Florida. Or any other number of universities. So, this legislation creates a safe harbor for universities, for medical institutions to be able to engage in that collaboration.

Third thing the bill does is demystify the process we have now at the V.A. I am incredibly proud of the work that our colleagues on the V.A. Committee have done so that veterans can become more aware of federally-approved clinical trials. But unfortunately, that has been administered very inequitably, where in some places veterans are given that opportunity and in other places, just as a consequence of local practice or culture, veterans are not made available of the federally-approved research that could help them. And so, this legislation incorporates the work of the Veterans Affairs Committee and would advance that forward so that we can ensure that that process is more effective for the veteran and for the scientific community.

If we do just these modest things, I think we can have a more adult debate. I am sensitive to the concerns that the ranking member raised. I will acknowledge that more

work could be done to appropriately tailor the criminal prohibitions to the allowances for additional research work. I do not think that we have sharpened the pencil on that enough.

But I would plead with my colleagues, please do not allow this to be the last opportunity we have to collaborate in this important space. It has taken 1 year of the 115th Congress to be able to get to this point where we have some bipartisan agreement on at least unlocking the research so that we can learn more and have more robust debates about whether or not broader application of medical cannabis is needed, or authorized, or even could be facilitated by the government. We are not there yet.

I am hopeful that we will be able to get there with a bipartisan vote of the committee. Again, I thank the chairman for his diligence and his fidelity to his commitment, and I thank the members on both sides of the aisle who have been so encouraging and supportive to this point. I yield back.

[The prepared statement of Mr. Gaetz follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. The chair thanks the gentleman. I would ordinarily now recognize the ranking member of the subcommittee, Ms. Jackson Lee, but she is not here. For what purpose does the gentleman from Tennessee seek recognition?

Mr. Cohen. I have an amendment at the desk.

Chairman Goodlatte. The gentleman is not recognized for that purpose. For what purpose does the gentleman from Florida seek recognition?

Mr. Gaetz. I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 5634, offered by Mr. Gaetz of Florida. Page 5, line 21 --

[The amendment of Mr. Gaetz follows:]

********** COMMITTEE INSERT **********

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

Mr. Gaetz. Thank you, Mr. Chairman. This is merely a technical amendment that identifies the type of law enforcement that would be necessary for a research application to proceed, and it corrects a date that was improper in the original drafting. That is the amendment, and I yield back.

Chairman Goodlatte. Would the gentleman yield?

Mr. Gaetz. Yes.

Chairman Goodlatte. I support this amendment. The August 2017 date places an appropriate time limit for prospective applicants to have applied for a marijuana manufacturing registration pursuant to the 2016 Federal Register notice. The addition of local law enforcement to those who must certify the good standing of prospective marijuana manufacturer assures that local citizens and government officials have input and participation in this process. For what purpose does the gentleman from New York seek recognition?

Mr. Nadler. I move to strike the last word on this.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Nadler. Thank you, Mr. Chairman. I support this

amendment because it would extend the date for the acceptance of applications and therefore would expand the applicant pool and it would modestly improve the requirement concerning the letter of good standing that applicants must submit from health and law enforcement agencies. However, I remain concerned, as I said, that the amendment does not address my concern about the restrictions concerning felony and drug-related misdemeanor convictions. But nonetheless, the amendment is good as far as it goes. I yield back.

Chairman Goodlatte. For what purpose does the gentlewoman from Georgia seek recognition?

Mrs. Handel. I move to strike the last word.

Chairman Goodlatte. The gentlewoman is recognized for 5 minutes.

Mrs. Handel. Thank you, Mr. Chairman. I rise in support of this amendment, and this overall legislation, and want to commend both the chairman and especially my colleague, Congressman Gaetz, for your incredibly hard work on this important issue. Your dedication is really commendable and I thank you for that.

This bill represents a very critical step in gathering the information that is needed to address this issue. Research into the effectiveness of medical cannabis has been significantly limited by access to the product. There is only one federally-licensed facility allowed to produce

marijuana plants for the research. As a result, researchers face significant hurdles in accessing the medical-grade cannabis on a consistent basis.

In Georgia, through the leadership of my good friend, State Representative Allen Peake, Georgia enacted a law that allows medical CBD oil for patients facing certain serious medical issues. And I want to commend Representative Peake along with the tireless advocates who have really been front and center in bringing this issue to the attention of elected officials like myself and those of us on this body. I think we all would agree, however, that additional research really is needed to fully examine the effects and merits of medical cannabis on a wide array of illnesses.

Congressman Gaetz' legislation will indeed expand the research opportunities by requiring the Department of Justice to approve at least three applications for the production of medical-grade cannabis. With this bill, researchers will have ample opportunity to examine the further potential of medical benefits and to be able to identify viable and effective treatments for an additional variety of conditions. This legislation is a very positive and important step forward. I urge my colleagues to vote yes on this bill. Thank you, Mr. Chairman. I yield back.

Chairman Goodlatte. The chair thanks the gentlewoman. For what purpose does the gentleman from Tennessee seek

recognition?

Mr. Cohen. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cohen. Would Mr. Gaetz yield for question? What would this leave as the standard for local law enforcement? What standard would they have to use to determine that somebody is an upright, good citizen, et cetera?

Mr. Gaetz. The amendment does not clarify the standard. It merely indicates that Federal law enforcement would not be able to stand in the way of that certification.

Mr. Cohen. Is there a standard in the bill?

Mr. Gaetz. There is not.

Mr. Cohen. So, it is just will and caprice of the local law enforcement to decide you are good, you are not good, you are good, you are not good, you are not good, you are not good, you are not good, you are not good?

Mr. Gaetz. No. That would be arbitrary and capricious and that would be illegal.

Mr. Cohen. So, that is why we have standards in bills, so things are not arbitrary and capricious. Why do we not have a standard which the local law enforcement person can make that determination?

Mr. Gaetz. The implied standard, though, I would concede clarity. The implied standard would merely be that

there were no laws being broken at the local level by those people. Everything from if you had someone build a grow facility that violated the zoning code to whether or not you had other illegal activity occurring, the existing standard would be the existing criminal code.

Mr. Cohen. So, any violation? So, if you were a convicted of DWI or if you were convicted of IRS violations you could not participate?

Mr. Gaetz. No, no, no. You are confusing the standard for the certification of the entity with the people who are engaging in the research. So, the business entity, for example, could be outside of legal compliance, whereas the people could be fully compliant who are, in fact, the applicants. So, the certification requirement is merely a certification that there are no laws being broken pursuant to the local law enforcement officials at that time, at that property.

Mr. Cohen. Would you read me the clause that you are referring to about the local law enforcement? I may be wrong. But if you would read it to me, I would appreciate it.

Mr. Gaetz. Yeah. Again, the local law enforcement provision is not in the bill. It is only in the amendment, and so it would be page 5, line 21.

Mr. Cohen. But the previous, what you are amending --

Mr. Gaetz. Yeah, I do not have it now.

Mr. Cohen. -- is Federal or local. And what does it say? The Federal or local shall what? Shall okay them? Shall approve them?

Mr. Gaetz. Right. Shall merely be a part of the application, I believe, is the requirement in the bill.

Mr. Cohen. Have to be licensed by the State. Have completed a criminal background check for all personnel involved in the operations and the manufacture pursuant to section and to confirm that such person have no conviction for felony or drug-related. Is that the extent of it at number 8?

Chairman Goodlatte. If the gentleman would yield?

Mr. Cohen. Yes, sir.

Chairman Goodlatte. The amendment does not refer to page 5, line 13, which is section 8. It refers to page 5, line 19, which is section I, which reads, "have a letter of reference affirming the manufacturer's good standing from each of the applicable State healthcare and law enforcement authorities in each jurisdiction of the manufacturer's operation pursuant to this subsection." And he simply adds State healthcare and the following, "local." So, it is addressed -- as he indicated in his response to you -- it is addressed at the facility, not at the employees.

Mr. Cohen. Thank you, Mr. Chairman. Let me ask you

this. What does it mean by the “manufacturer's good standing?” Does that mean that they have not been convicted of anything?

Mr. Gaetz. No, Mr. Cohen. That merely means that they are in good standing at that time for that purpose. For example, if you had a medical director who did not have their medical license, but you had listed them as their medical director. That would not be good standing for the sake of the application. For specifically the law enforcement provision, it is are you breaking any laws at that time pursuant to local law enforcement at that location.

Mr. Cohen. Thank you.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman from Florida.

All those in favor respond by saying aye.

Those opposed, no.

The ayes have it and the amendment is agreed to.

For what purpose does the gentleman from Tennessee seek recognition?

Mr. Cohen. I have an amendment at the desk, sir.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 5634, offered by Mr. Cohen of Tennessee. At the appropriate place in the bill,

strike "or drug-related misdemeanor."

[The amendment of Mr. Cohen follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Without objection, the gentleman is recognized for 5 minutes on his amendment.

Mr. Cohen. Thank you, Mr. Chairman. And to you and the sponsor and all the members, I would like to see this bill pass. It does no harm. It does not do nearly as much good as it could do if we went further because there is a problem with marijuana being a Schedule I and the difficulties of getting a research study started being a Schedule I facility. And that involves the upgrading of lab facilities and security protocols, which are difficult as well, and getting DEA approval.

But this might help; it cannot hurt. But there is no reason to limit people who have been convicted of marijuana possession in the past. This is a scarlet letter that should not be on a person forever. And because somebody smoked marijuana, it just means they are one of tens of millions, of tens of millions, of tens of millions of Americans.

Probably a third to more of the people in this room who have sometimes smoked marijuana. And to say that they could not participate is just to continue a canard that has gone on since Harry Anslinger in the '30s, that only foreigners -- people from Mexico or African-American jazz musicians, or other "undesirables" -- smoke marijuana. That was the basis of the law that made marijuana illegal in the first place

where canards and racial prejudice that was spread by Harry Anslinger and perpetuated by others who needed jobs and security. And Richard Nixon, who needed a political victory. Even though he knew it was false, he spread those canards, and had a war on drugs. And was told that marijuana should be legalized and did not do it because it was politically good for him to keep it illegal.

The chairman in his opening remarks said there have been no studies to show that marijuana is an effective and safe drug for human consumption. Mr. Chairman, there are tens of millions, of tens of millions, of tens of millions American stories who by practice show you that marijuana is safe for human consumption. This is not a need to reinvent the wheel.

Nevertheless, to say that somebody has been convicted of marijuana possession should disqualify them for a job in perpetuity is just wrong. Now, if you had something in here that said they had been convicted of theft, there would be some basis for it in due process. Because if somebody has shown that they steal and they are working in this area where you have an opportunity to possibility steal marijuana, and use it or sell it or treat your friends, then it makes sense. But because you have been convicted at any time in the past, does not make a lot of sense.

I am not sure if people convicted of DUI or buying

alcohol when you are a minor can never work as a server in a restaurant or work in a liquor store or something to that effect. I would hope that we would not continue this idea that somebody once convicted of marijuana possession, which can cause them to lose student loans still, to lose Federal housing, should be here as a prohibition from employment and a scarlet letter. A big “M” on your chest.

So, I would yield to the sponsor of the legislation and ask him if he does not concur with that and if he would not accept it, and then we could move on and possibly pass this bill.

Mr. Gaetz. I appreciate the gentleman for yielding. I very much concur with the sentiment of the amendment, just as I am certain that the sponsor of the amendment concurs with the sentiment of the bill. The objective in drafting this bill was to find the broadest area of agreement. And I know that the sponsor of the amendment is sincere because the sponsor of the amendment is a cosponsor of the bill, was an original cosponsor of the bill, and was a cosponsor of the bill when it contained this prohibition that the gentleman from Tennessee now objects to.

I think that that proves the point that there is more work here to do. The ranking member was correct about that in sharpening the pencil. Unfortunately, I cannot accept the amendment at this time because I have not had the

opportunity to discuss it with other members of the committee, with other cosponsors who have been part of the drafting process. And so, I would ask the sponsor of the amendment certainly make your points, debate the amendment, vote for it. But I would just hope that if the amendment is unsuccessful, solely by function of time and inability to really come to consensus on it, that that does not impair our progress moving forward. I yield back.

Mr. Cohen. Let me ask you another question. What is the purpose of having this in here?

Chairman Goodlatte. The time of the gentleman has expired. The chair recognizes himself so we can continue this discussion.

Mr. Cohen. Thank you.

Chairman Goodlatte. It is fully appropriate that we set a firm standard for those that are supposed to be growing and manufacturing research-grade marijuana. However, I hear the gentleman's comments and I think there may be some common ground here. I do not think the language that the gentleman has "or a drug-related misdemeanor" -- there can be lots of things that are "drug-related" that are misdemeanors that might not be acceptable. There might be simply mere possession that might be acceptable. So, I will have a suggestion here at the end of my remarks.

But these individuals will be growing and making

chemical extractions from thousands of kilograms of marijuana each year. The actual license holder -- the registrant -- will very likely be a corporation of which DEA and State and local authorities will have jurisdiction over. We should give that license holder clear standards and expectations for their conduct and the conduct and backgrounds of their employees.

We are talking about a very small number of prospective employees who should have excellent backgrounds. Legally, I am concerned about efforts, like California Proposition 47 and others, where States are legislatively turning drug felonies into misdemeanors. What is a felony in one State could be a misdemeanor in another, in this situation making a distinction between the two is not appropriate. If we are serious about developing quality scientific evidence about marijuana, then those growing and extracting from marijuana the object of that science should have and maintain reasonable background standards.

But I would make this offer to the gentleman: if he is willing to withdraw the amendment, I have no idea when this bill is going to the floor. And the gentleman from Florida is quite right that this is a consensus bill that is going to take a lot of effort to get to the floor. And we do not need to create problems like this at this stage of the process. If the gentleman would withdraw, however, I would

be more than happy to work with him to see if we can find some language that would address some of the concerns he has expressed.

Because if you are simply talking about somebody with a possession under certain circumstances, I would probably not object to that. But drug-related misdemeanor can encompass all kinds of things, many of which I would object to. So, I will make a bona fide offer to the gentleman to work with him if he will withdraw the amendment and we can proceed forward. Because the next step, once this bill leaves this committee, will be to get agreement to taking it to the floor. And what language is in the bill is going to make a big difference in that regard.

So, I will work in good faith with him because I respect his concern, and I also respect his underlying support, which I heard many, many times earlier in this Congress about wanting to do something in this area. I do, too, but we are coming at it from different perspectives. And we need to work on that if we are going to succeed.

Mr. Cohen. I appreciate that, Mr. Chairman. And you have always been honest and honorable working with folks as you did with Mr. Gaetz and myself on this and pledged to do that. Would we work together before it got to Rules Committee?

Chairman Goodlatte. Yes. My intention would be to see

if we can find language that we can agree to that we incorporate into the bill in the form of --

Mr. Cohen. So that possession alone would not be a prohibition?

Chairman Goodlatte. I do not want to define exactly. But I think it is going to have to be a lot more language than you have in these three words.

Mr. Cohen. I will accept your offer and hope that we can go forward. And you are right, you have heard from me in the past. I have been for this before Country Joe and the Fish were for it. Thank you.

Mr. Gaetz. Will the chairman yield?

Chairman Goodlatte. The chair thanks the gentleman.

Mr. Gaetz. Will the chairman yield?

Chairman Goodlatte. If the gentleman has withdrawn the amendment, then we can recognize --

Mr. Gaetz. Mr. Chairman, would you yield just to your point?

Chairman Goodlatte. Yes, sir.

Mr. Gaetz. Can I ask a question? I appreciate your position and it is my hope -- and I appreciate Mr. Cohen doing this -- that before it went to Rules we could enumerate the suggested crimes that we hope would be excluded. And I think the case of a simple possession of marijuana would be one of those. And of course, there are

others. But as this committee has taken on criminal justice reform, we would hate to see someone who had a simple possession. And then this bill was passed and it becomes law and they are not able to participate in this new economy.

Chairman Goodlatte. That would be my general expectation. There are, as I noted, different definitions of what a misdemeanor is in different States. And there are also other circumstances surrounding the misdemeanor. There may be other crimes involved that occurred at the same time. So, I think we need to study that carefully. And I am prepared to do it quickly because if we can bring this up to the floor soon, I would like to bring it to the floor soon. But in either case, in order to get it to the floor, we are going to have to have an agreement on this or it is simply not going to get there.

Mr. Gaetz. I yield back.

Mr. Nadler. Mr. Chairman?

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Nadler. Mr. Chairman, I regret that I cannot be so accommodating. Under current law, research on marijuana is

permissible, which it ought to be. And the DEA can recognize as many different facilities to grow and manufacture marijuana as they see fit. Unfortunately, they have seen fit to do only one, which the quality and quantity of the product of which is not sufficient for the research. So, we have this bill, which is a very modest bill, to mandate the DEA to allow at least three producers of marijuana for research. It is a very modest bill.

Under current law, the research -- I keep saying research facility. I mean, the production facility -- the growing facility -- does not have the restriction that says people who have been convicted of misdemeanors cannot work at the farm. Or the production facility, which is really a farm. Now, we would impose that. We would impose some sort of restriction on misdemeanors.

I feel, frankly, any restriction on misdemeanors goes exactly in the contrary direction as we will be going in in the Second Chance Act that we will be taking up a little later this morning. There is no reason for it whatsoever. And we should not be establishing these kinds of controls on misdemeanors. The fact is that people who are convicted of a misdemeanor with regarding a drug-related misdemeanor -- that could mean giving it to your friend when you are 16 years old -- should not be tarred. And the farm should not be limited in who they can hire to grow the research.

I mean, what is the possible concern? That someone of ill repute, of bad character, is going to divert some marijuana, perhaps, from this farm to other uses? Now, of course, we know there is a complete shortage of marijuana in this country. There is no source of marijuana for improper use, other than this one or three farms. That is absurd. That is absurd.

So, the danger is negligible and we should not be going further in putting prohibitions on people convicted of marijuana or drug-related offense, especially when we know that is historically for the last -- since what? Since before World War II, when these laws came in. It has been used for racially disparate purposes. So, I would hope that we can have an amendment to get rid of this misdemeanor provision. If not, I cannot support the bill.

Mr. Gaetz. Will the ranking member yield?

Mr. Nadler. Sure. Yes, I would.

Mr. Gaetz. There was a question that Mr. Cohen asked that I was not able to answer that I think goes to your point. This provision that you are concerned about -- and to which I think you and Mr. Cohen have both raised reasonable concerns -- was not a provision of an early draft that the chairman and I worked on. It actually came from the industry, interestingly enough. People in the industry are increasingly concerned that as they work on high-end,

high-tech therapies that the industry may look to outsiders, and even to policymakers like just a bunch of people who wandered out of their drum circle or their hacky sack endeavor.

And so, people in the industry wanted to raise the bar to legitimize the research work that they are doing. I will concede that I believe the current language may have overshot that mark. I believe the chairman has conceded that point as well. And just as original cosponsors of the bill from the minority party who have been so helpful may have missed that overshooting of the mark when signing on, just as I may have missed that, I am hopeful that we will be able to work together. But it would really blunt our -- that was a terrible, terrible use of the word. It would really impair our progress if we were unable to pass the bill.

So, again, I thank the gentleman. But I at least wanted the gentleman from New York to know that the genesis of that provision was not the chairman. It was not even from any member --

Mr. Nadler. Reclaiming my time. Fine. But I am really not concerned about the genesis of the provision. I mean, let's be real. The integrity of the research will be determined by the quality of the product of the research. Scientific research is peer reviewed, and in journals, and

so forth. And that will determine how honest and accurate the research is, not who does the research.

We are not even talking about who does the research. We are talking about who grows some of the product, some of the materials for use in the research. So, it really has nothing to do with that. I entered politics in 1977. I supported decriminalization of marijuana in the State legislature when we passed it a long time ago. I thought we would be well passed where we are now. But we should not be going backwards on tarring of people for previous misdemeanor convictions or drug-related misdemeanor convictions which probably should never have been misdemeanors anyway.

Mr. Cohen. Would the gentleman yield?

Mr. Nadler. Sure.

Mr. Cohen. In New York State, I do not know if they have it. In Tennessee, they have drug paraphernalia violations, which are misdemeanors.

Mr. Nadler. Yes.

Mr. Cohen. And if you are arrested with papers or something like that, would you think that that also should not be a prohibition that you may have a conviction for having rolling papers?

Mr. Nadler. Yes. To reclaim my time, yes. I think any such convictions are irrelevant to who is qualified to

be a farmer in farming the marijuana. Period. I think it is completely irrelevant and we should not be going along with expanding the collateral damage of someone who may have been convicted of something years ago. It is just the wrong thing. It is the wrong direction. We are trying to go in the other direction with the bill that we will be taking up a little later today, the Second Chance Act. And I do not see why we should be expanding it in this bill.

Chairman Goodlatte. Would the gentleman yield?

Mr. Nadler. Sure.

Chairman Goodlatte. And without objection, the gentleman is recognized for an additional 3 minutes. What is the harm in working to fine tune this language? Because, as I noted, in some States a drug-related misdemeanor could be possession of a large quantity of marijuana that is not for personal use. In another State, it could involve a drug other than -- in fact, I would assume given this language, in every State -- could involve a drug other than marijuana. It could involve an opioid --

Mr. Nadler. Reclaiming my time. Your question is clear. I am sorry. Go ahead.

Chairman Goodlatte. I just want to make this last point. It calls into question the integrity of the individual that is involved here. So, I think we can probably find some common ground. I do not think we are

going backward because we are moving forward allowing research on marijuana.

And let me just be very clear, I would never have agreed with you on the legislation you introduced in New York to decriminalize marijuana. I do not support decriminalization of marijuana. I support finding out whether this particular plant contains substances that can help people cure diseases, maybe save lives. That is my purpose in doing this, which is different than your purpose.

Mr. Nadler. No, it is not. Well, first of all, it was not my bill but it was passed in 1977. It has been the law for 40 years, and New York has survived.

Chairman Goodlatte. I would still be opposed to it.

Mr. Nadler. Okay.

Mr. Issa. Mr. Chairman?

Mr. Nadler. In any event, let me just say, even if -- as is clearly the case -- a misdemeanor may include these different types of more serious crimes that you said, the principle is that someone who is convicted of a crime -- certainly a misdemeanor. I will not even debate felonies. We are not talking about felonies. Someone is convicted of a misdemeanor, and served his punishment or whatever it was, should not have separate collateral penalties preventing his employment or other things.

Now, if you could point to some particular danger?

What is the danger? Someone who sold marijuana on the black market, let's say, now might somehow do something wrong while growing the marijuana? It is certainly not going to affect the integrity of the research. The integrity of the research is determined by the research. By the quality of the research and by the papers that are done. And you judge it.

And the fact is that scientific research may be done by people of excellent or terrible moral standards. You judge the research by the quality of the research, not by who did it. So, I would love to support this bill, but expanding the collateral damage for someone who has paid his penalty, especially for a misdemeanor, is going in the wrong direction and we should not do it.

Mr. Gaetz. Mr. Chairman?

Mr. Issa. Mr. Chairman?

Chairman Goodlatte. For what purpose does the gentleman from California seek recognition?

Mr. Issa. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Issa. Mr. Chairman, I will be brief. I support the gentleman's bill. I think that we are arguing about the word “yes.” And what I mean by that is, as the gentleman from Florida aptly said during this colloquy, what we are

debating is, for the most part, regulated by the States. And I believe that we can get to language that recognizes that States already are going to regulate if somebody wants a license to operate. Just as my State does not allow you to be a certified public accountant or a lawyer if you have been convicted for embezzling, because it is a fiduciary position.

It is primarily these kinds of decisions which are State in nature. And since we are not actually creating a Federal right but rather a waiver for a State under usually Federal grants to do certain work, I think what we have to do is trust each other that if we pass this bill today and work to get common language, we have a real opportunity to get this out of the House and make law. And our greatest goal today should be, since we all in various forms are at yes, that we simply get to yes today.

Get this bill out, and realize that the gentleman from Florida, the gentleman from Tennessee, the gentleman from New York, and the gentleman from Virginia have found a compromise that I think is historic in moving the research that I personally believe it is a scandal not to have. And have in vast amount. So, with that, I thank the chairman, and I yield back.

Mr. Cicilline. Mr. Chairman?

Chairman Goodlatte. Are there further amendments to

H.R. 5634? For what purpose does the gentleman from Rhode Island seek recognition?

Mr. Cicilline. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cicilline. Thank you, Mr. Chairman. I would like to associate myself with the remarks of the ranking member about the danger of creating additional collateral consequences for people who have a misdemeanor drug possession. And I hope that as efforts are made to work out the language that the parties that will be negotiating this will keep in mind two other factors. And that is the substantial evidence that there is a significant difference in the number of African Americans, for example, who are arrested 2 and a half times more often than white people, even though their use of drugs is at a similar rate. So, there are racial implications of this kind of disqualifying language that I hope the parties will be very conscious of.

In addition to that, the ACLU in their correspondence raises another issue which I think should be of concern to everyone. If a university ends up being the research facility or manufacturer, one could imagine that someone could argue that no one at the university then could have a drug-related misdemeanor. I mean, because that could be a custodian who cleans up the buildings. It could be someone

who mows the lawn.

Chairman Goodlatte. Would the gentleman yield?

Mr. Cicilline. So, I think, as you think about the language and what the implications might be, thinking about that disqualifying language and how it might have the impact on --

Chairman Goodlatte. Would the gentleman yield?

Mr. Cicilline. -- sure.

Chairman Goodlatte. We will certainly do that as we work on that.

Mr. Cicilline. Yeah. I mean, I think that is important. And the racial impact of these kinds of disqualifying factors is important.

Finally, to Mr. Nadler's point, adding another penalty to someone who has had this sort of an offense, when you look at the millions of Americans who have been incarcerated for drug possession: I think, again, it is sort of a fundamental question about is there a public policy? Is there a health or research legitimate justification for this kind of exclusion?

It seems to me there is not. And as Mr. Nadler says, the research will be based on the quality of the research and on the controls that are in place for the research to be done successfully. And the prior offense of one of the people who are connected to it in some way is not a

legitimate justification for excluding a whole group of people. So, I hope you will be vigorous, as I know Mr. Cohen will be, in those discussions to arrive at the right language. And with that, I yield back.

Chairman Goodlatte. For what purpose does the gentleman from Idaho seek recognition?

Mr. Labrador. I have an amendment at the desk.

Chairman Goodlatte. The gentleman is recognized for 5 minutes. The clerk will report the amendment.

Mr. Cohen. Have I withdrawn my amendment yet?

Chairman Goodlatte. You have withdrawn your amendment.

Mr. Jeffries. Mr. Chairman?

Chairman Goodlatte. Yes?

Mr. Jeffries. I move to strike the last word.

Chairman Goodlatte. He has been recognized for an amendment and the clerk is going to report the amendment.

Ms. Adcock. Amendment to H.R. 5634, offered by Mr. Labrador of Idaho. Add at the end the following --

[The amendment of Mr. Labrador follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Without objection, the amendment is considered as read. The gentleman is recognized for 5 minutes on his amendment.

Mr. Labrador. Thank you, Mr. Chairman. This is a simple amendment. It will not take me very long. All we are asking for is for the National Institute on Drug Abuse in coordination with the FDA and the DEA to develop and publish recommendations for good manufacturing practices for growing and producing marijuana for research. And with that, I yield back.

Chairman Goodlatte. Would the gentleman yield?

Mr. Labrador. Yes.

Chairman Goodlatte. This is a good amendment which will help researchers develop the science and evidence toward the medical potential of marijuana. And I urge my colleagues to support. And I yield back to the gentleman.

Mr. Labrador. Thank you, and I yield back.

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

Mr. Nadler. I see no reason not to accept this amendment.

Chairman Goodlatte. The question occurs on the amendment. For what purpose does the gentleman from New York seek recognition?

Mr. Jeffries. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Jeffries. Thank you, Mr. Chairman. I just wanted to speak on the previous discussion. One, to commend Representative Cohen for introducing the amendment. I am thankful to my colleagues on the other side of the aisle for considering the urgent need to address the possibility of collateral damage that can be done to Americans as a result of the potential racially disparate impact of prohibiting people from participating in research based on prior convictions that they may have.

New York City is often known as one of the more progressive places in the country, but I am ashamed of the fact that it is also the marijuana arrest capital of the world. More people in New York City over the last decade or so have been arrested for simple possession of marijuana than in any other place in the world. And the unfortunate part about that -- even in a place like New York City that prides itself on social, racial, economic inclusion -- is that a disproportionate number of the people arrested are Black and Latino.

Even though, everyone acknowledges that whites use marijuana at the same or equal numbers than African Americans and Latinos in New York City and across the Nation. Yet, it appears, based on the fact that more than

80 percent of the arrests for possession of marijuana -- misdemeanor possession of marijuana in New York City -- are largely young Black and Latino males. How do you account for that in New York City? It is because in certain neighborhoods -- the Upper East Side, the Upper West Side, the Village, Chelsea, Williamsburg, Park Slope, college campuses -- apparently possession of marijuana is viewed as socially acceptable behavior.

But in other neighborhoods, such as the ones that I represent -- Bedford–Stuyvesant, or East New York, Coney Island, parts of the Bronx, southeast Queens, Northshore of Staten island -- the same possession of marijuana apparently is criminal behavior. And the dividing line in those neighborhoods is race. And so, we are branding people, hurting their ability to move forward in a whole host of ways in pursuit of the American dream for doing the same exact thing that others are doing with respect to marijuana with no justification other than race and socioeconomics.

So, Mr. Chairman, I would just encourage your support of the underlying bill and Representative Gaetz' efforts here. But this really is an urgent situation that needs to be addressed before there can be any really meaningful floor action in this Congress. And I yield back.

Chairman Goodlatte. Would the gentleman yield?

Mr. Jeffries. Sure.

Chairman Goodlatte. I hear you and my offer is bonafide. We will work on some kind of language that covers simple possession without other related offenses and that would not be considered a felony in one place. We recognize the problem you see in New York. Similar things occur in other places. But then also, different things occur in other places. And we have got to find some language that encompasses that. I do not believe drug-related misdemeanor covers it. So, it has got to be something different than that, but we will find it. I would like to get to a vote. But for what purpose does the gentleman from California seek recognition?

Mr. Lieu. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Lieu. I support the intent of this bill. But I just note that we should not be having this fight at all. We do not make alcohol manufacturers go ahead and show that somehow alcohol is medically beneficial to you before we legalize alcohol. There is really no evidence that marijuana and cannabis is any more dangerous than alcohol. It is completely irrational that we are spending taxpayer's money at the Federal Government level trying to eradicate marijuana or trying to prosecute marijuana offenses. This whole thing is just sort of stupid.

We need to make sure that we legalize cannabis at some point. This is a step forward. I agree with everything the ranking member has said. I share his concerns. However, the author and the chairman of this committee have said they were going to work to address those concerns. I am going to give them the benefit of the doubt. I will vote yes on this bill. And if the concerns are not addressed, there is another opportunity for a floor vote, which I may vote differently. With that, I yield back.

Chairman Goodlatte. For what purpose does the gentlewoman from California, Ms. Bass, seek recognition?

Ms. Bass. Gentleman? Thank you, Mr. Chairman. Let me just associate myself with my colleagues in raising the concerns. And I just wanted to point out just a little irony because I know that shortly we will be talking about the Second Chance Act. And one of the consequences of many of our drug laws have been that people essentially are banned from the workforce.

In the State of California, for example, there is 56 occupations that people cannot apply for licenses, one being a license to be a barber, if you have a conviction. So, while we are going to shortly, I believe, reauthorize the Second Chance Act, here we are talking, ironically, about prohibiting people who have convictions from working in the industry. So, I appreciate Representative Gaetz and the

chair in saying that you will work on this to remove that restriction or change it because we do not want to pass and reauthorize the Second Chance Act and then continue to make the same mistakes by banning people from employment in this industry. Thank you. I yield back.

Chairman Goodlatte. Are there further amendments to H.R. 5634?

Mr. Raskin. Mr. Chairman?

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Raskin. Mr. Chairman, thank you very much. As a cosponsor and in support of this legislation, I want to restate the importance of what we are doing here, even though the bill itself is exceedingly modest in its scope and intention. But Mr. Chairman, marijuana prohibition, like its historical precursor, alcohol prohibition, has proven to be a miserable failure at every level: in terms of the criminal justice system; in terms of public health; in terms of public education. And it has criminalized millions of our fellow countrymen and women. It has corrupted police departments and it has drained away, siphoned off, billions of dollars of funds that could be used to fight real violent

crime, political corruption, and other offenses that actually harm the public good.

Now, Congress is way behind the States here. Thirty States have decriminalized marijuana, or legalized marijuana, or enacted medical marijuana programs. In my home State of Maryland, we adopted a medical marijuana program and we have decriminalized marijuana. And I think that there are tens of millions of Americans, maybe more than 100 million Americans who live in jurisdictions that have left Congress in the Dark Ages here.

So, as usual, the States are leading, as they led on any number of reforms in our past, whether it is child labor, or minimum wage, or women's suffrage, or direct election of U.S. senators. The States are where the action is, and the States are way ahead of us and Congress needs to catch up.

Now, in the work that we did in decriminalizing marijuana, in passing the medical marijuana program in Maryland, one of the constant refrains that we would get from people was, "Well, there is no Federal study that has shown that marijuana is safe." Or in the case of medical marijuana, that it actually helps the people who are desperate for it, people suffering from AIDS or multiple sclerosis or breast cancer or nausea, sickness, or any of a number of other illnesses where people came forward to say

that this is desperately needed. And so, we obviously need to pass this legislation in order to expand research capacity at the Federal level.

Now, we have tripped up on this point, which was a point also that we arrived at in Maryland at numerous junctures, which is people saying, “Well, if there is a new gold rush around marijuana, if there is a whole new industry sprouting up, if there is going to be billions of dollars to be made, if there is going to be tens of thousands or hundreds of thousands of new jobs created around the country,” as there begun to be, “we should exclude anybody who had a marijuana conviction for simple possession or anything else.”

And I went back, and I looked at Prohibition and I looked to see if, after the disaster of prohibition -- which created organized crime in America -- if after that, when alcohol was legalized, whether there were bans put in place on the involvement of anybody who had been convicted of bootlegging or any other alcohol-related crime, and we could not find any anywhere. It simply was not done.

So, why would we say to the people who arguably are probably the most expert in the commerce of it that they cannot be involved in any way? It does not make any sense, and, really, what it is, we can see, is a perpetuation of the mentality of the drug war, which has failed our country,

and which has made millions of our own people into enemies of the State. So, it makes no sense.

So, I am glad that there appears to be some kind of agreement to work out the language here. I thought that that was the purpose of the markup, and I would hope maybe by the end of the session today, since we have got a bunch of other bills, we could finetune the language, as the chairman says, and bring it back so all of us can participate in it. But this is legislation that we need; it is the very least that can be done at this point. Marijuana prohibition has been a disaster for our people. The States have moved away from it, the people have moved away from it, and it is time for Congress to catch up. I yield back.

Ms. Jayapal. Mr. Chairman?

Chairman Goodlatte. We are still considering the Labrador Amendment, and I neglected to call for a vote on that, so let's do that, and I will recognize the gentlewoman from Seattle, since I do not think there is a lot of controversy.

All those in favor of the amendment offered by the gentleman from Idaho, respond by saying aye.

Those opposed, no.

The ayes have it, and the amendment is adopted.

For what purpose does the gentlewoman from Washington seek recognition?

Ms. Jayapal. I move to strike the last word.

Chairman Goodlatte. The gentlewoman is recognized for 5 minutes.

Ms. Jayapal. Thank you, Mr. Chairman. I want to echo and associate myself with the comments of Mr. Raskin, Mr. Jeffries, our ranking member, with the concerns around the bill. I also wanted to say to Mr. Gaetz that I really appreciate your bringing this forward. I appreciate all the work you did on this. I remember when we both first came into Congress this was one of the issues that we both were excited about working on together, and I think that we are just so close to being able to move something forward that we agree with.

I will say that in my home State, which has legalized cannabis, and you know, initially, it was controversial. It was passed primarily with Democratic support for the initial recreational marijuana piece; then, when we went to medical marijuana, everybody saw what a boon it had been to their districts in a number of different ways, and then we had bipartisan support. We have now implemented work around research as well.

And in our State, we actually put into place a system which is far from perfect -- it is not what I would have wanted if I were just writing the bill on my own -- but it is a system that bases licensing on points. And the points

licensing system looks at the type, number, and dates of crimes that have been committed. And then, it allows for some leeway, because it is based on the total number of points versus an individual crime.

I do not think this is a perfect system, but it is an interesting model to look at, because at least it says that if you committed one crime -- and I really want to associate myself with our ranking member's comments in particular -- that none of these things should be barriers. But at a minimum, we should be allowing for some flexibility around this and recognizing that there really is a difference between multiple crimes that are committed; what kinds of crimes those are. Were they committed 15 years ago, and you are banned for life?

I mean, is there any redemption here for somebody who has been penalized by the system, disproportionately burdened, as Mr. Jeffries has said, and then is now borrowed from, for life, participating in the economy of this industry and of the research that we are talking about here. So, it is not a perfect system, but I guess I wish that we were agreeing on this language today, because we would all like to support your bill.

I think it is an important piece of legislation. However, you know, I will not be able to support it in this form that it is in because it includes this very detrimental

statement to an enormous group of people that have already been disproportionately burdened, and frankly has nothing to do with, as has been pointed out before, the quality of the research and all of the things that we are trying to do.

And I do believe that my colleague from Florida understands that very well and knows that our intention here is to do this together and to really be able to put our bipartisan stamp on this, and I think you would get that if we could just address this little piece, which is not so little in terms of the consequence to millions of people across this country. So, again, I think that as we reauthorize the Second Chance Act I think we have to be more forward-thinking about how we address employment in this field.

I do not think that we can continue to put forward these harsh policies that actually hinder successful reentry in employment for people with felony convictions, and I hope we can address that today in committee rather than saying, “Well, let's wait before it gets to Rules Committee.” It would be great if we could bring it back since we have another however many bills we have to mark up today.

I thank the gentleman from Florida again for bringing this forward. I wish I could support it in its current form; I would be happy to support it if we can address this issue. Thank you, Mr. Chairman. I yield back.

Chairman Goodlatte. A reporting quorum being present, the question is on the motion report the bill H.R. 5634, as amended, favorably to the House.

Those in favor, respond by saying aye.

Those opposed, no.

The ayes have it, and the bill is ordered reported favorably. Members will have 2 days to submit views. Without objection, the bill be reported as a single amendment in the nature of a substitute incorporating all adopted amendments, and staff is authorized to make technical and conforming changes.

Pursuant to notice, I now call up H.R. 6758 for purposes of markup and move the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Adcock. H.R. 6758, to direct the Undersecretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, in consultation with the Administrator of the Small Business Administration, to study and provide recommendations to promote the participation of women and minorities in entrepreneurship activities and the patent system; to extend by 8 years the Patent and Trademark Office’s authority to set the amounts for the fees it charges; and for other purposes.

[The bill follows:]

1281 ********** INSERT 2 **********

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

The U.S. patent system was established to encourage companies to invest the time and money necessary to develop the innovative products that now set America apart from the rest of the world. As a result, patents are responsible for the creation of countless jobs and contribute greatly to the growth of our economy. In many areas of technology, patents help small companies secure the funding they so desperately need to grow. By protecting inventions from theft by competitors, patents enable companies to unlock the genius of many of our most innovative American minds.

While American ingenuity is unparalleled, recent reports indicated that we have not adequately tapped into all that the American people have to offer. For example, while U.S. women earn almost half of all undergraduate degrees in science and engineering and 39 percent of all new Ph.Ds in those fields, it is estimated that only between 20 percent and 10 percent of inventors listed on patents are women. A 2017 study showed that racial minorities fared even worse.

We need participation in our patent system by each American with a great new idea to realize the full potential of the American people. By encouraging every American to

invent and innovate, America can maintain its position as the world's technology leader, and we can secure a brighter economic future for ourselves and our children.

To realize our full scientific and economic potential, the SUCCESS Act requires the United States Patent and Trademark Office, in collaboration with the Small Business Administration, to provide recommendations to Congress on how to increase the participation of women and minorities in entrepreneurship activities and the patent system. As the purveyor of patents, the PTO plays a critical role in the development of new technologies and growth of the U.S. economy. The agency runs on fees it collects from patent and trademark applicants to ensure that the PTO has all the resources it needs.

To properly examine patent applications and register trademarks; to study the issue of women and minority patenting; and perform the countless other activities it undertakes that are essential to maintaining America's competitiveness, Congress needs to reauthorize the PTO’s authority to set its fees. This bill would do just that by extending for 8 more years the PTO’s authority to set the amount of charges for the services it provides to patent and trademark applicants.

The extension provided for in this bill will give the PTO the ability to conduct long-term planning, but because

the authority will sunset unless reauthorized in 8 years, the bill will also ensure effective oversight. For these reasons, I urge my colleagues to support this important piece of legislation.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

[The prepared statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, I am pleased to support H.R. 6758, the SUCCESS Act. This bipartisan legislation would extend the U.S. Patent and Trademark Office's fee-setting authority for 8 years. Since this authority was first granted to the PTO under the America Invents Act 7 years ago, it has helped put the agency on solid financial footing and has ensured that it can continue to perform the important work of helping to protect Americans' intellectual property.

The bill would also direct the PTO and the Small Business Administration to study the underrepresentation of women and minorities among patentholders and would require agencies to recommend legislative solutions for increasing the participation of women and minorities in entrepreneurship activities and increasing the number of them who apply for and obtain patents.

Promoting greater inclusion in the innovation ecosystem is good for our economy and good for underserved communities. One study estimated that per capita GDP could grow 4.6 percent if more women and African Americans were included in the initial stages of the innovation process. It also found that exposure to innovation during childhood has an important impact on a person's desire to become an inventor. That makes it critical that young people have diverse role models in all fields of study.

This bill would provide an important first step toward narrowing the race and gender gap among patentholders, and it deserves strong support. I am pleased to be an original cosponsor of this legislation, and I appreciate the leadership of Mr. Chabot, the sponsor of the bill, along with Chairman Goodlatte, Mr. Johnson, and Mr. Jeffries.

I want to particularly thank Ms. Velazquez, the ranking member the Small Business Committee, for all she has done to bring attention to the lack of diversity among patentholders and the important issues highlighted in this bill. I look forward to continuing to work with her and the other bill sponsors to advance not only this legislation but other measures to address the underrepresentation of women and minorities within the innovation ecosystem.

I urge my colleagues to support this bill, and I yield back the balance of my time.

[The prepared statement of Mr. Nadler follows:]

********** COMMITTEE INSERT **********

Mr. Issa. [Presiding.] Thank you. I now recognize the gentleman from Illinois for purposes of offering an amendment.

Mr. Schneider. Thank you, Mr. Chairman.

Mr. Chabot. Mr. Chairman?

Mr. Issa. Oh, I am sorry. For what purpose does the gentleman seek recognition?

Mr. Chabot. I move to strike the last word.

Mr. Issa. The gentleman is recognized for 5 minutes.

Mr. Chabot. Thank you, Mr. Chairman, and I will be brief. I want to thank the gentleman from New York for his kind comments; I appreciate it very much. I want to thank the chairman for his leadership in bringing this bill before the committee in consideration, and I want to thank the members of the committee and those on this committee who have cosponsored the legislation.

Back in 2011, I was one of five members who cosponsored the Leahy-Smith America Invents Act that the President signed into law. In it, we included a provision which provided that the Director of the Patent and Trademarks Office with the authority to set fees to cover the cost of examining patent applications and registering trademarks. That fee-setting authority is set to expire on September 16th, and this legislation would extend that authority for another 8 years.

This would allow the director of the PTO the continued ability to modernize the process of issuing and examining patents and registering trademarks and ensure that patents the PTO issues are quality patents, which is really critical. When PTO Director Iancu testified before this committee, he repeatedly noted his need to be able to continue to set fees, so today we will do our part in taking the first step to provide that.

So, in addition to extending the PTO's fee-setting authority, this bill also directs the PTO to conduct a study into the number of patents applied for and obtained by women and minorities who own small businesses. As the current chairman of the House Small Business Committee -- and that is unfortunately why I was not here earlier, because I had to run down and chair that committee meeting now; we just finished -- I know all too well the lack of diversity in patent applicants and owners.

To address this issue, my bill directs the PTO, in consultation with the administrator of the SBA, to provide legislative recommendations to this committee and to the Small Business Committee on the efforts that we can undertake to promote the participation of women and minorities in entrepreneurship activities and to increase the number of women and minorities who apply for and obtain patents in the United States. Hopefully, this study and the

recommendations the PTO provides will lay the groundwork to close the patent approval gap for women and minority-owned small businesses in the U.S.

I again want to thank my colleagues who co-sponsored this legislation. I urge support for its passage, and I yield back.

Mr. Issa. The gentleman yields back. Does anyone else seek recognition?

Mr. Schneider. Yes, Mr. Chairman.

Mr. Issa. Where do we go? Oh, there we go. The gentleman is recognized.

Mr. Schneider. Thank you, Mr. Chairman. I have an amendment at the desk.

Mr. Issa. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 6758, offered by Mr. Schneider of Illinois and Mr. Gohmert of Texas. Page --

Mr. Issa. Go ahead.

Ms. Adcock. Page three, beginning on line 13, strike “women and minorities and small businesses owned by women and minorities,” and insert “women, minorities, and veterans, and small businesses” --

[The amendment of Mr. Schneider and Mr. Gohmert follows:]

********** COMMITTEE INSERT **********

Mr. Issa. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain his amendment with Mr. Gohmert.

Mr. Schneider. Thank you, Mr. Chairman. From the start of the military service, men and women continually develop a broad array of skills and leadership abilities that readily translate to make them excellent entrepreneurs when they return to civilian life. That is one reason why veterans are more likely to be self-employed than the rest of the population.

According to U.S. Small Business Administration, there are more than 2.5 million businesses that were majority-owned by veterans. Our veterans fully deserve the opportunity to take full advantage of the U.S. patent system to protect their intellectual property. The SUCCESS Act already includes a provision establishing a study on the participation of women and minorities and patent protections and provide recommendations on how to promote their entrepreneurship and participation in the patent system. I support this measure and offer an amendment to include veterans I the study.

With this amendment, the bill would require the U.S. PTO, in consultation with the Administrator of the Small Business Administration, to examine the issue and provide legislative recommendations to increase the number of women,

minorities, and veterans who apply to obtain a patent. I urge my colleagues to support my amendment to ensure the veterans are also included in this examination of the patent system and have access to the intellectual property protections they deserve. And with that, I yield back.

Mr. King. Mr. Chairman?

Mr. Issa. The gentleman yields back. The gentleman from Ohio is recognized.

Mr. King. Thank you. I move to strike the last word.

Mr. Issa. The gentleman is recognized.

Mr. King. Thank you, Mr. Chairman. I will be very brief. I think it is an excellent suggestion. I support the gentleman’s amendment; I would urge my colleagues to support the amendment and the underlying bill. I yield back.

Mr. Issa. The gentleman was brief. Does anyone else seek recognition? If not, the question is on moving the amendment to H.R. 6758.

All those in favor, say aye.

Any opposed, no.

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

The question now occurs on moving H.R. 6758, as amended.

All those in favor, say aye.

Any opposed, no.

In the opinion of the chair, the ayes have it, and the bill is moved. Let's see, there we go. Without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments, and staff is authorized to make technical and conforming changes.

We now call up H.R. 6755, the ROOM Act. The clerk will report.

Ms. Adcock. H.R. 6755, to provide for additional Article III judges to modernize the administration of justice, and for other purposes.

[The bill follows:]

********** INSERT 3 **********

Mr. Issa. Without objection, the bill is considered as read and open for amendment at any time. I now recognize myself for a short opening statement.

Today's legislation is an accumulation of at least five hearings over the last 4 years. Advocates for transparency have long sought audio and video streaming inside the courtroom so taxpayers can see government in operation; public disclosure of recusal and the reasons for them by judges; and the creation of a unified ethics code that includes the Supreme Court.

This is clearly an ambitious court reform, but it is the result of the American people who have spoken and the Congress which has listened. In February 2017, over 135,000 Americans listened to the oral argument in the Ninth Circuit involving immigration. The audio streaming did not impact the court in process or its decision in any matter. Instead, it showed to the American taxpayer what the Ninth Circuit was considering and how the judicial process operates.

Many who listen to the oral arguments asked the same questions as I did: “Why can we not see or hear other cases like this one?” This legislation would let taxpayers see and hear all appellate arguments. It is clear to this chairman that there is a case to be made for a very limited amount of arguments to be closed, but those would be so

unusual as to be excluded by a specific motion of the court.

At this point, since the arguments of an appellate court are almost always based on entirely open records, records that lawyers understand and the public has not begun to understand, there is no better way than to hear each lawyer trying to convince a panel of three or more judges of their reasons for either affirming or overturning. It is critical for the trust in conference confidence to be maintained, and the transparency is the best way to do that.

Additionally, the legislative branch has a voluntary set of ethics. The fact is there is nothing that we are asking for in this bill that would change that except to say if you determine a set of ethics, it should not be voluntary; you should, in fact, be committed to it. For that reason, we are asking the court to either become committed to what they have said voluntarily or recognize that it is appropriate for this body to, in fact, ask them to adopt ethics of their own, which they then would be bound to. Both other branches currently are; the judiciary is, if anything, the one in most need of the American people's confidence that they do not have conflicts of interest hidden from the public.

Additionally, this bill adopts health and wellness programs and other modernizations that the workforce should have and that the American people would like to see are

available to the judges. This is of course a bipartisan bill, and I look forward to moving it.

With that, I recognize the ranking member.

[The prepared statement of Mr. Issa follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. I thank you, Mr. Chairman. Mr. Chairman, President Trump is on a path to radically reshape the Federal judiciary. With the aid of a Republican Senate that has set a blistering pace for confirming judicial nominations, even if it has to break Senate norms and precedents to do so, the President is packing the courts with extremist judges who will serve out their lifetime appointments for decades to come.

Never before have we seen a President essentially outsource the process of selecting nominees to ideologically driven organizations like the Federalist Society and the Heritage Foundation. As a result, we have seen a host of troubling nominations, whether one nominee has been unable or unwilling to answer whether Brown v. Board of Education was correctly decided, one nominee said that transgender children were part of Satan's plan, and another nominee compared Roe v. Wade to the infamous Dred Scott decision.

In just a couple of weeks, the Senate will consider the nomination of Chad Readler, who currently heads the civil division of the Department of Justice. In that role, he led the administration's most recent legal effort to gut the Affordable Care Act and refused to defend the constitutionality of the Affordable Care Act and to strip health insurance for millions of Americans.

President Trump has not only strived to sharply tilt

the balance of the courts, but he has also dramatically reversed the progress toward racial and gender diversity on the Federal bench that was a hallmark of President Obama's nominations. Considering that of the President's 68 judicial nominees that have been confirmed so far, 49 of them have been male and 61 -- nearly every single one -- has been white. The bill before us today, H.R. 6755, would add 52 new district court judgeships. That is 52 more opportunities for the President to pack the Federal courts with extremist judges.

I have great respect for the Judicial Conference, and I appreciate the thoughtful analysis that went into the recommendations for new judges on which this bill is based. Given the current situation within an irresponsible administration that is seeking to pack the Federal courts and to demean the Federal judiciary, a more reasonable approach may be to delay implementation of these recommendations until after the next presidential election. That way, as has been done in the past, the decision to add new judges can be made on a bipartisan basis without knowing who will ultimately be in control of the nomination and confirmation process. We saw an example of this sort of thinking with Judge Garland 2 years ago.

In addition to the new judgeships, this bill would make a variety of other changes to the internal operations of the

Federal court system. Some of these provisions -- like requiring a Uniform Code of Conduct for judges that includes the Supreme Court; providing greater public access to court documents and exhibits; and televised access to appellate court proceedings -- would gain wide bipartisan support if considered as a separate measure. Others, like medical examinations for judges and public disclosure of recusals by Supreme Court justices, may have merit, but there are several unanswered questions about these provisions that require further review.

The bill also includes several earmarks in the form of specified Federal courthouses and the requirement that a judge sit in a specific town in the district of the Majority Leader of the House to benefit just a few powerful members of Congress. These provisions have not undergone any process of review and have no place in this bill.

Unfortunately, because this bill has had no public hearings and was only made available to the minority and the public just a few days ago, there has not been time to properly vet any of its many provisions. Most disturbing is the fact that the majority failed to consult at all with the Judicial Conference, the chief policymaking body of the Federal court system, about this comprehensive bill that would make sweeping changes to the court system it helps administer.

In what appears to be an unprecedented effort, the conference wrote to Chairman Goodlatte to request that the committee postpone today's markup, given the majority's failure to give the conference any "serious opportunity to have focused deliberations on many significant proposals in these bills." Yet again, the majority has let a broken process, or lack of process, in this case, ruin what could be a potentially beneficial bill.

I am also disappointed that we are holding this markup on a day when so many of our colleagues are unable to be with us because they are attending the Congressional Black Caucus Foundation's annual legislative conference at the convention center. I hope we will soon return to regular order and that we will work together on important measures to strengthen the Federal judiciary.

We should not make significant changes to the federal judiciary without fully understanding the consequences of our actions and without thoroughly consulting the judiciary itself and, I would add, without public hearings before this committee. With that in mind, we should honor the Judicial Conference's request to postpone this markup so that we may properly consider the ramifications of these wide-ranging changes to our judicial system. Accordingly, I now move that we postpone consideration of H.R. 6755 until November 14, 2018.

Mr. Cicilline. Mr. Chairman, I have seconded the motion.

Mr. Issa. We do not actually do seconds, but that is good.

Mr. Cicilline. I am very enthusiastic.

Mr. Issa. You can third it, if you would like.

Mr. Cicilline. If I can help, I help.

Mr. Issa. The motion is on to postpone the consideration of this bill until November 14th. You need that much time?

Mr. Nadler. To do a write-up, I think so. We are also going to be busy.

Mr. Issa. You have got something to do between now and then? You are sure you could not agree to postpone to a future date, which, by definition, would be after this next break? I am not saying I am going to vote for.

Mr. Nadler. I think we need time to consult with the Judicial Conference, and also, I am told we are not going to be here in October, basically. But if the chair wants to, we would be willing to amend it to a date “uncertain” as opposed to take it out to November 14th.

Mr. Issa. I have been told it is a no. I am just borrowing this chair for today. So, the question is on the gentleman’s motion to postpone until November. All those in favor of postponing say aye.

Any opposed, no.

In the opinion of the chair, the noes have it. The motion is not agreed to.

Does anyone else have another amendment? Oh, I now recognize myself for a substitute. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 6755, offered by Mr. Issa. Strike all that follows after the enacting clause and insert the following.

[The amendment of Mr. Issa follows:]

********** INSERT 4 **********

Mr. Issa. Without objection, the bill is considered as read. We already have the amendment in the nature of a substitute. In short, it makes technical corrections to the bill recognized by the staff. Does anyone seek recognition on the amendment in the nature of a substitute?

Mr. Nadler. Mr. Chairman?

Mr. Issa. Yes?

Mr. Nadler. I am opposed to the amendment in the nature of a substitute for the same reasons I am opposed to the bill.

Mr. Issa. But can we get through that and get to the underlying bill you are opposed to?

Mr. Issa. The gentleman is recognized for purposes of offering an amendment. One second, we have --

Mr. Nadler. No, you have got to take a vote on the next --

Mr. Issa. The gentleman is recognized for offering an amendment to the amendment in the nature of a substitute. The clerk will report his amendment.

Mr. Raskin. Thank you, Mr. Chairman. My amendment, which is at the desk; do you have the amendment?

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 6755, offered by Mr. Raskin. Page seven; insert after line five the following: “Effective date; this section and the amendments made by this section

shall take effect on January 21, 2021.”

[The amendment of Mr. Raskin follows:]

********** COMMITTEE INSERT **********

Mr. Raskin. Okay, so, Mr. Chairman, this amendment embodies a principle that should be familiar to everyone in the room, because the Senate refused to take a vote or even have a hearing on the nomination of the chief judge of the D.C. Circuit Court of Appeals, Merrick Garland, when he was nominated to the U.S. Supreme Court by President Obama, and there was a refusal to have a hearing or any process on him for a period of 1 year until the people had spoken.

And all this says is that, you know that the Judicial Conference and the ABA, which represents 400,000 lawyers, are saying they do not really know what is in this legislation. It was introduced 3 days ago. There might be some good stuff; there might be some snakes in there. We do not know. We have not had a hearing on it, which is why I supported what the ranking member suggested, which is postponing the hearing and the markup, or having a hearing and postponing the markup.

But in any event, if we are going to move forward, this should not take effect until January 21, 2021, when, at that point, neither side will know who is going to be President of the United States, and this will not proceed as a court-packing plan by one party. But we will actually simply be implementing a traditional reform to expand the number of judgeships. So, I think, in the interests of comedy and bipartisanship, this is legislation, if we are going to take

it seriously, that should be effectuated after the next presidential election. I yield back.

Mr. Issa. I recognize myself in opposition. I understand the intention of the gentleman's amendment, and I would agree with the gentleman if this was purely a political decision. However, at least as to the additional judgeships, we were with the chief justice and the AO today; this is their request. With the exception of one additional judgeship on a net basis, we accepted in total the recommendation and the request for these desperately needed, primarily district court judges.

And so, I cannot support this, not because I do not sympathize with the gentleman's view that this could potentially lead to more judges appointed by the current President, but the reality is these are judgeships that are already needed, and we simply moved their request.

Depending upon whether this amendment passes or not, the gentleman might want to consult with the court and find out if there is a staged amount that they would be interested in and, of course, how long it would take to build the courtrooms in some cases. A lesser amendment could in fact be meritorious if it was based on the recognition of how long it would take to build the courtrooms or where judgeships might be able to be delayed.

That is my reason for opposing it, is that, quite

frankly, they say they need them now. I would yield to the gentleman.

Mr. Raskin. Thank you, Mr. Chairman, and I appreciate your thoughts on that. I think that underscores the importance of having a real hearing, perhaps where we could hear from them, and we could talk about some kind of staged implementation of these judgeships. So, perhaps, you know, the two sides could agree that we could schedule a real hearing and a real markup.

Mr. Issa. Reclaiming my time, I appreciate that. It was actually June 21st that we had that hearing where they did come before us with the desperate need for these new judgeships. I introduced the staged portion because you will notice in the underlying legislation that we have a number of requirements pushing to get courtrooms built, including two that are in Congressman Peters' district in San Diego, because, quite frankly, they do not have enough courtrooms there for the judges they have, including senior judges, with the additional judges they have received, and they desperately need them.

So, we did anticipate, for example, in the case of San Diego, they desperately need the judges, but the truth is they will not be able to fully use them until they get those additional courtrooms. So, there are examples like that. We did look at it; as I said, that is one of the reasons --

in a couple of cases we are asking for courtrooms to be built -- where we see some resistance from GSA.

But what I would offer the gentleman is that I do support his basic intent. If, in fact, between now and the floor, which will certainly be several weeks, we can determine if, in fact, this independent lifetime body says that some of those would, from a practical standpoint, wait till after some date in the future, I have no objections to accepting a friendly amendment, but it would really have to be with the court changing what they said was an already-important need.

And you were not in the hearing, perhaps, but what they were saying was that if not for the senior-status judges that are working far beyond their normal number of hours, they would not be able to even keep up with the court docket they have, and they are falling behind.

So, that would be what I could offer the gentleman, because I do not disagree that this should not be about packing the court; it should be about the need that the court has told us.

Mr. Nadler. Mr. Chairman?

Mr. Issa. I yield to the gentleman. Actually, I will recognize you for your 5 minutes.

Mr. Nadler. Thank you. Mr. Chairman, this is very troubling. First of all, two comments, one on the

additional courtrooms. They may be necessary; I do not know. The point is, as far as I know, they were not recommended by the Judicial Conference. No one has taken a survey and said, "Where do we need courtrooms? Where we need new buildings?"

Mr. Issa. Will the gentleman yield? That particular group does not, but, for example, in San Diego the senior judge had actually gotten the clearance for them. He simply was having problems getting logistics. Mr. Peters had a problem with it.

Mr. Nadler. Reclaiming my time, it may very well be that they are necessary. I do not know; I am not an expert on San Diego, certainly. But it may also be that other places are necessary, and I am not aware that anybody has done a survey and, you know, come to us and said, "We need courthouses here and here and here and there." It should not be just because someone had the political clout to do it. But my major comment is on the new judgeships.

We have never seen, as far as I know, in American history what we have seen now. Throughout American history, Federal judges have basically been selected by Presidents, usually with the advice of the senators from the two States, from the States involved. And we had the blue slip for many, many decades, in effect, that said that the judge had to be acceptable to both senators, and the senators were --

well, they would not be appointed if they were for some reason hostile to the views of the President, and the President knew that.

But they were not an ideological packing of the court. They were not systematically looking for very right-wing or very left-wing judges. Now, that situation has changed; now we have a President who comes right out and says he has outsourced the list from which he will select judges to two private organizations. Private right-wing organizations, but I will object if they were left-wing, too. But private right-wing organizations; he has outsourced them.

We do not care about what the senators in the State think; we do not care about what the bar associations think. We do not care really about the quality of the nominees; some of them are fine from a standard quality, and some are not. But we are going to pack the courts with right-wing ideologues. And the President, who has elected for 4 years, and who may or may not serve beyond the 4 years, has an effect for generations by all these new members, and frankly, I do not think we ought to give him another 50-odd judgeships to help reshape the entire Federal court system.

We have never seen a President who has come outright and said and acted to say, “We are going to reshape the Federal courts to certain ideological purposes.” And I do not want to give this President the ability to do that more

than he has. We also have a Senate that deliberately slow-walked President Obama's nominations in order to save as many vacancies as possible for the next President, or they refused to give a hearing to a Supreme Court nominee for straight ideological reasons, hoping that they would get a President who would help pack the courts, and we have that.

I am not going to go into the politics of Merrick Garland and how they refused to give him a hearing and so forth. We all know that. I do not think we ought to be increasing the egregious nature of the court-packing that is going on. And by the way, this has another insidious effect, and this tells the American people -- the court-packing that is going on -- that the Supreme Court and the courts generally are just other political agencies, just like Congress.

And we now see something we never saw before: routinely, when a quick decision is reported, whether it is the appellate court decision or even a district decision or a Supreme Court decision, it says, “Judge So-and-so decided this and that. Judge So-and-so was appointed by a Republican President or a Democratic President.” It never used to say those things. It was not considered relevant. Now, routinely, it is relevant because we are remaking the courts as an ideological institution for one side or the other.

I do not think we want to continue politicizing -- I hope we continue politicizing the courts. This President and this Senate, frankly, have made it clear that they want to do so. They make no bones about it; they think it is an honorable and a good thing to do. I do not agree with that, and this bill would give them more ability to do that, and for that reason, if for no other, I would oppose the bill.

Mr. Raskin. Would the gentleman yield?

Mr. Cicilline. Mr. Chairman?

Mr. Nadler. Sure, I will yield to the gentleman from Maryland.

Mr. Raskin. Just a quick footnote to your point. It is not so much that the courts are becoming more ideological; they are becoming a lot more partisan.

Mr. Nadler. Both.

Mr. Raskin. Both. In the old days, there were a lot of Republican justices who were great justices and did not follow a party line, like Justice Souter or Justice Brennan.

Mr. Issa. Do not forget about Earl Warren.

Mr. Raskin. Earl Warren. And there were lots on the other side. It was not like a series of litmus tests. But now, under Donald Trump and the Federalist Society, which now has the contract for appointing judges in our country, we are getting extreme right-wing judges. So --

Mr. Issa. The gentleman’s time has expired.

Mr. Raskin. Okay, but my amendment is still on the floor, Mr. Chairman, right?

Mr. Issa. No, I understand.

Mr. Raskin. Got you.

Mr. Issa. Okay, the gentleman is recognized. I will mention that we do have votes coming, and I would yield to the gentleman 5 minutes, but ask if I could make one comment on his time.

Mr. Cicilline. Yes.

Mr. Issa. Notwithstanding the amendment, I just wanted to give some facts for clarity very quickly. There are 114 available seats unfilled on the court out of 677 that are authorized, 26 of which are in the Ninth Circuit. In California, there are 11 district court judgeships that are being asked to be added, but no judgeships have been added in California because the Senate has respected my two senators' wish, and they have not yet moved any forward.

I will say this to the gentleman, if I can, briefly. I would be willing to allow for half of these not to take effect till after 2021 if we would allow the court to prioritize the shortages that may be critical, and I would give the gentleman that, even without knowing anything else, based on the reality that this President at his current rate cannot get the 114 vacancies filled in the next 2 years. The gentleman's time; the full 5 minutes.

Mr. Cicilline. Thank you, Mr. Chairman. I rise in strong support of the gentleman from Maryland's amendment and thank you for offering it. I think there is something very fundamental going on here, and that is, as Mr. Nadler has described it, this is an effort to pack the courts with ideologically driven individuals that will help shape the judiciary for the next generation.

And I really worry that this effort is so obvious, it is being laid bare in this hearing because this is being jammed through without, in fact, a request from the Judicial Conference to add these judges in these particular places, while there continue to be 114 vacancies unfilled and where, as Mr. Nadler has pointed out, we have a very different process now for selecting Federal judges.

It is not the careful deliberation of the President and careful deliberation by the Senate, but this really solemn responsibility has been given to two right-wing organizations with a very clear ideological perspective. And what I worry most about is the American people's confidence in the judiciary, the ability to believe that this is the system of impartial justices and judges who uncover the law and call the cases as they see them is being threatened by this politicization of the courts.

And it is something that is going to have real consequences for our country, because if the courts continue

be packed with ideologues who are on the far right of our country that are out of step with the broad consensus of the American people, we are laying the groundwork for a constitutional crisis, where our courts will be making decisions that are at odds with the sentiments of the broad spectrum of the American people.

And so, I think we are not doing our country, we are not doing the court, we are not doing our system of justice any favor by making it very clear that judges are now just political appointments expected to advance the political agenda of those who appoint them. That is not what our courts are. So, this is a grave mistake to do it this way.

I think Mr. Raskin's amendment would at least remove the really obvious stench of packing the courts based on their ideology from this by putting this off until January of 2021. A significant improvement, a significant statement that the Judiciary Committee is going to protect the courts from being used as a political tool to advance a political agenda at the behest of two right-wing organizations that have been outsourced to do this work. And I thank the gentleman. I am happy to yield the balance of my time to Mr. Raskin.

Mr. Raskin. Mr. Cicilline, thank you very much for your thoughtful remarks. I just want to familiarize members of the committee with some of the people who have been

nominated recently by President Trump and are being considered in the Senate. One is a nominee named Thomas Farr, who has been nominated to the Federal district bench. He has spent his entire career making it more difficult for people to vote, specifically African Americans.

A George H.W. Bush Justice Department lawyer that Farr was involved in an illegal voter suppression effort while acting as a lawyer for Jesse Helms 30 years ago. The Congressional Black Caucus wrote, “It is no exaggeration to say that if the White House deliberately sought to identify an attorney in North Carolina with a more hostile record on African-American voting rights and workers' rights than Thomas Farr, it could hardly have done so.”

If it had sought to find someone more hostile on African American voting rights and workers' rights than Thomas Farr, it could hardly have done so. They could not have found anybody worse. Chad Readler, the head of the civil division at DOJ who has been nominated to the Federal bench, filed a brief that, if successful, would take health insurance from millions of Americans. This is by revoking the preexisting coverage provision, which is now the subject of a lawsuit brought by Republican attorneys general from all over the country, and he filed a brief saying that people's health insurance should in fact be taken away.

So, this is the kind of court-packing that is taking

place across the country with the extreme right-wing judges who are being nominated by Donald Trump after trampling of all of the basic rules of the Senate. The two senators from the home States are no longer allowed to sign off through the blue-slip process. The American Bar Association has basically been written out of the process.

The Federalist Society and other right-wing groups like the Heritage Foundation now have the franchise, and it has been outsourced and privatized so that we are getting extremely right-wing and unqualified people being appointed to the bench. So, all my amendment says, Mr. Chairman, is if we really mean to respond to the needs of the judiciary, then let's have all of this go into effect on January 21, 2021, after the presidential election is over.

I think that is least we can do, and we certainly should have a hearing on this bill. Not just having the Judicial Conference come and talk about the need, but on this bill and how we would actually implement it. I yield back.

Mr. Issa. The gentleman yields back. The question is on the amendment to the amendment in the nature of a substitute.

All those in favor of the amendment, say aye.

Those opposed, no.

In the opinion of the chair, the noes have it. It is

not approved. With that, we are going to recess for the vote. There are two votes, and we will come back immediately afterwards.

[Recess.]

Chairman Goodlatte. The committee will reconvene. And for what purpose does the gentleman from Maryland seek recognition?

Mr. Raskin. I have an amendment at the desk, Mr. Chairman.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of substitute to H.R. 6755, offered by Mr. Raskin. Page seven, insert after line five the following: “Effective date; this section and the amendments made by this section shall take effect on January 22, 2021.”

[The amendment of Mr. Raskin follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. The gentleman is recognized for 5 minutes on his amendment.

Mr. Raskin. Mr. Chairman, it will not take anything like that. This is similar to my last amendment, but there has been a change in the date, so the section would take effect on January 22, 2021. I want to thank Mr. Issa for his constructive intervention here, and I hope that this is something that will meet with the satisfaction of everyone on the committee. I yield back.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman from Maryland.

All those in favor, respond by saying aye.

Those opposed, no.

The ayes have it, and the amendment is agreed to. Are there further amendments to H.R. 6755?

Mr. Cicilline. Mr. Chairman, if there are no amendments, may I just be heard briefly on the bill?

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cicilline. Thank you, Mr. Chairman. I want to thank you and Mr. Issa for including in today's markup the Open Access to Courts Act as part of H.R. 6755, and while I have lots of concerns that I have already articulated about other portions of the bill, I do want to say that this provision and this piece of legislation would significantly

increase transparency in the courts by creating a pilot program to make exhibits in Federal cases publicly available online.

Federal court documents, including transcripts and court opinions are already widely accessible online. The legislation that I have proposed simply adds to the existing framework by providing public access to another integral part of legal proceedings; that is, court exhibits. This issue was brought to my attention by a constituent journalist, Phil Eil, who was doing some investigative reporting and had tremendous difficulty and had to sue, actually, over his inability to review court exhibits in connection with a case he was covering. This legislation, which was included in H.R. 6755, really responds to that.

In deciding to make information public, the government must weigh the benefits of transparency with the need to shield compromising or highly sensitive information, and that is why the legislation creates commonsense exemptions in order to prevent the disclosure of personally identifiable information, confidential proprietary information, and sealed documents.

The Open Access to Courts Act builds upon one of the fundamental aspects of our judicial system, that the courts and judicial decisionmaking should be a public and open process. Whether in the highest court in the land or a

district court, a judge's ruling will have a concrete and, in many cases, immediate impact on the lives of individuals. The public should have every opportunity to understand how the courts function, and increased transparency and public confidence in the fairness of the judicial system go hand in hand.

Without an open court system, there is little protection against even the appearance of judicial corruption. The public cannot examine whether a judge has arrived at his or her decision impartially and according to the rule of law. This bill would ensure that the media and the government accountability groups can act as an effective judicial watchdog.

These parties play an incredibly valuable role in preventing and exposing injustices by reporting on the actions of judges, lawyers, and litigants. They also keep us updated as high-profile cases that will impact the country are unfolding. Yet these parties often struggle to get court exhibits because there is not a formal, streamlined process for making them widely available.

My bill would establish the framework necessary to help make Federal exhibits available to all interested parties, and I want to thank Chairman Goodlatte and Chairman Issa for working with me in a bipartisan manner to include the Open Access to Courts Act in H.R. 6755. And with that, I yield

back.

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Nadler. Thank you. With acceptance of the amendment from the gentleman from Maryland to delay the effective date of the new judges, I would support the underlying bill. I have some serious concerns about some of the other provisions in the bill, and I hope we will continue to work together as this bill moves to the floor and through the Senate to refine some ambiguities. As a general principle, I do not like bundling these provisions, but I understand that is part of the legislative process. I also want to make it clear that my support for this agreement is contingent on it not being combined with other bills, including the other courts-related bills scheduled for markup today and to which Democrats have strong objections.

I thank the gentleman from California, Mr. Issa, for bringing this bill forward and for working with me in good faith on this agreement, and I thank the majority for their consideration. I urge a yes vote, and I yield back the balance of my time.

Chairman Goodlatte. The question is on the amendment in the nature of a substitute, as amended, to H.R. 6755.

Those in favor will say aye.

Those opposed, no.

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

A reporting quorum being present, the question is on the motion to report the bill H.R. 6755 as amended favorably to the House.

Those in favor, respond by saying aye.

Those opposed, no.

The ayes have it, and the bill is ordered reported favorably. Members will have 2 days to submit views, and, without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments. Staff is authorized to make technical and conforming changes.

Pursuant to notice, I now call up H.R. 3487 for purposes of markup and move that the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Adcock. H.R. 3487,to amend Section 1332 of Title XXVIII United States Code to provide that there the requirement for diversity of citizenship or jurisdiction is met if any one party to the case is diverse in citizenship

from any one adverse party in the case.

[The bill follows:]

********** INSERT 5 **********

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

H.R. 3487 would allow defendants to remove their cases to Federal court when citizens of different States are involved, as the founders of our country and the drafters of the Constitution intended. Chairman King will give a longer statement on his bill and his amendment in the nature of a substitute. I urge all of my colleagues to support this legislation. It is now my pleasure to recognize the ranking member of the committee, Mr. Nadler of New York, for his opening statement.

[The prepared statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, H.R. 3487 would upend 2 centuries of a bedrock legal principle so that mostly corporate defendants can more easily remove purely State law cases to Federal court, where they will have numerous advantages over injured consumers, patients, and workers.

This bill is yet another attempt by the Republican majority to tilt the legal playing field in favor of large corporations. In doing so, it would also clog the Federal courts; drain judicial resources; upset well-established law; and delay justice for plaintiffs seeking to hold wrongdoers accountable for the injuries they cause.

For more than 200 years, Congress has required what is known as complete diversity in order to remove a purely State law case from State court to Federal court. To invoke diversity of jurisdiction, every plaintiff must be a citizen of a different State from every defendant. This bill, however, would turn this concept on its head. It would require instead only minimal diversity. As long as just one defendant is from a different State from one plaintiff, the case would qualify for diversity jurisdiction and could be removed from State to Federal court.

Such a radical departure from the current well-established rule threatens State sovereignty and violates federalism principles by denying State courts the ability to

shape State law. State court should be the final arbiters of State law, but this bill would place thousands of new State law questions in the hands of Federal courts each year.

It would also increase both the complexity and the cost of civil litigation, placing further burdens on plaintiffs who tend to have fewer resources than comparatively well-funded corporate defendants. In addition, this legislation would burden an already-strained Federal court system by adding potentially thousands of new cases to Federal court dockets.

According to one of the majority's own witnesses, a minimal diversity standard would increase Federal district caseload by 7.7 percent. This figure is probably grossly understated and does not take into account the added burden and complexity of more Federal courts being required to interpret State law, or the additional appellate cases that are sure to arise from those decisions.

In 2005, Congress passed the Class Action Fairness Act, which included the minimal diversity standard for class action cases. Experience has shown that this law is made it far more burdensome, expensive, and time-consuming for injured persons to vindicate their rights under State law. What should serve as a cautionary tale, however, instead serves as inspiration for the Republican majority. They

seek to double down on this anti-plaintiff rule and to extend it to nonclass action cases as well.

This bill is part of a general effort by the Republicans to close off access to the courts to ordinary Americans. With every step they take, whether it is reducing the ability to bring class action lawsuits, reclassifying more lawsuits as frivolous and subject to mandatory sanctions, or opposing legislative attempts to limit mandatory arbitration clauses, they are transforming our system of justice into one that only serves the very rich and powerful.

Finally, the bill would double the filing fee required to remove a case to Federal court under the diversity jurisdiction statute. It is my understanding that this provision may have been intended to pay for the salaries and other costs associated with creating new judgeships under the prior bill. My support of that bill was contingent on this not being added.

Even if this provision were to generate sufficient revenue to fund these judgeships, which is highly speculative, it would likely be self-defeating. This bill would swamp the Federal courts with so many new cases that the caseloads would quickly far outpace the capacity of the new judges it is intended to fund, and we will find ourselves back again considering your requests for yet more

judges.

Once again, we are rushing into a markup on legislation that is clearly not fully thought through. As with the prior bill, we have not had a legislative hearing on this proposal, and there was no attempt to reach out to relevant stakeholders for their opinions of the bill and its potential consequences. Accordingly, I must oppose this bill and urge my colleagues to oppose it as well. I thank you. I yield back.

[The prepared statement of Mr. Nadler follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Thank you, Mr. Nadler. I would now like to recognize the sponsor of the bill, the gentleman from Iowa, Mr. King, chairman of the Constitution Subcommittee, for his opening statement.

Mr. King. Thank you, Mr. Chairman. Mr. Chairman, in the Federalist Paper Number 81, Alexander Hamilton described how Article III of the Constitution was designed to establish a system of Federal courts “competent to the determination of matters of national jurisdiction.” To that end, Article III, section 2, empowers Congress to extend the jurisdiction of Federal courts to controversies “between citizens of different States,” cases which, by their interstate nature, implicated national concerns.

Prior to the ratification of the Constitution, our new Nation was governed by the Articles of Confederation, which allowed States to impose rules that benefited their own commercial interests while hurting consumers nationwide by limiting the free flow of goods and services throughout the country. The Framers of our Constitution were clear: for America to succeed, the rules had to be changed to allow the development of a vibrant national economy that could sustain the needs of all its citizens in whatever States they might live. To that end, the Framers drafted a commerce clause and also a clause allowing Federal courts to hear disputes between citizens of different States so goods and services

could cross State lines into new markets without the fear that local State officials would stack the deck against them.

James Madison and the Virginia ratifying convention defended Federal court diversity jurisdiction over all cases involving any citizens from different States, as follows: "It may happen that a strong prejudice may arise in some States against the citizens of others who may have claims against them. We know what tardy and even defective administration of justice has happened in some States. A citizen of another State might not chance to get justice in a State court, and at all events, he might think himself injured." That is James Madison.

Alexander Hamilton also explained in Federalist Paper Number 80 that the reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial speaks for itself. And again, this is quoting from Hamilton: "No man ought certainly to be a judge in his own cause and in any cause in respect to which he has the least bit of interest or bias. This principle has no inconsiderable weight in designating the Federal courts as the proper tribunals for the determination of controversies between different States and their citizens."

He elaborated that "in order to the inviolable

maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States is essential to the peace of the Union."

H.R. 3487 would restore the intent of the Framers and also provide funding for more Federal judicial resources by allowing more parties a fair forum under the Constitution. The Constitution authorizes Congress to allow all out-of-State parties to have their arguments heard in a neutral Federal forum. This legislation would do that, fulfilling the intent of the Framers.

At the appropriate time, I will offer a substitute amendment to the bill that simply clarifies its intent and applies its concept to other relevant parts of the U.S. Code. It would also raise the current fee that must be paid by parties who want to remove their cases to Federal court. The money raised by such fees will pay for additional Federal judicial resources, which will provide more justice to more people, and faster, as the American people deserve.

Mr. Chairman, I have a letter from Vogel Payne [spelled phonetically], so I would ask unanimous consent to introduce

it into the record.

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

[The information follows:]

********** COMMITTEE INSERT **********

Mr. King. I thank the chairman. I would conclude my opening statement and urge my colleagues to support this legislation and offer the substitute amendment at the appropriate time.

[The prepared statement of Mr. King follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. That time might be right now since I do not see the ranking member of the Subcommittee on the Constitution and Civil Justice. So, we will now recognize Mr. King for purposes of offering an amendment in the nature of a substitute. The clerk will report the amendment.

Ms. Adcock. Amendment in the nature of a substitute to H.R. 3487, offered by Mr. King of Iowa. Strike all that follows --

[The amendment of Mr. King follows:]

********** INSERT 6 **********

Chairman Goodlatte. Without objection, the amendment will be considered as read, and I will recognize Mr. King to explain the amendment for 5 minutes.

Mr. King. Thank you, Mr. Chairman. I had the inclination to temporarily object while I looked for the paperwork in front of me. Let's see. I have now identified the paperwork, and I would say my remarks on the substitute amendment are fairly brief, Mr. Chairman.

And this is that, as I mentioned previously, this substitute amendment to the bill simply clarifies its intent and applies its concept to other relevant parts of the U.S. Code. It would also raise the filing fees for removal, and in doing so, supply the funds necessary to enlarge the Federal bench and provide additional Federal judicial resources so more people can get more justice in the Federal forum they deserve.

I would point out also that I do not see any question, any constitutional question, as to the authority of this Congress under Article III, section 2, to set the terms by which one qualifies for a Federal court. And the reservations that I may have already heard; I would point out that justice is going to come from the ability to require a jury trial. If anybody is concerned about a bias, we have plenty of evidence of bias from the States and the States' jurisdiction.

So, I would urge the adoption of this substitute amendment and I would yield back the balance of my time.

Chairman Goodlatte. Are there any amendments to the amendment in the nature of a substitute? For what purpose does the gentleman from New York seek recognition?

Mr. Nadler. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 3487, offered by Mr. Nadler. Page three, after line 10, insert the following.

[The amendment of Mr. Nadler follows:]

********** COMMITTEE INSERT *********

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

Mr. Nadler. Thank you, Mr. Chairman. My amendment would exempt from the bill any case involving sexual assault or sexual harassment. In those cases, complete diversity would still be required to remove a case to Federal court.

The underlying bill would make it harder for victims of sexual harassment and sexual assault to obtain justice. Once a case is removed a Federal court, the defendant has a greater ability to move the case far away from the plaintiff's home, away from her support network, and away from witnesses. There is no reason we should make it easier to revictimize these women by making it more difficult to have their State-based claims are heard locally.

This amendment would simply maintain the status quo for sexual harassment and sexual assault cases when it comes to satisfying the diversity jurisdiction requirement. I am unaware of any great crisis among the State courts that make them incapable of hearing the vast majority of sexual harassment and sexual assault claims.

We know that when cases are moved to Federal court the plaintiffs often face additional burdens with respect to the complexity and cost of the case, not to mention often the distance to the court.

My amendment would simply ensure that we do not subject plaintiffs in these most sensitive cases of sexual assault and sexual harassment to such additional burdens if it is not necessary. I urge my colleagues to support the amendment, and I yield back the balance of my time.

Chairman Goodlatte. For what purpose does the gentleman from Iowa seek recognition?

Mr. King. Thank you. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. King. Thank you, Mr. Chairman. And with respect to ranking member of the committee, I laid out a clear principle here of jurisdiction and diversity jurisdiction, and on that clear principle I have always wanted to, and I believe it is our obligation, and it was within the vision of the Framers of our constitution, including Madison and Hamilton, that we stand clearly on principle.

And if we begin carving out exceptions to this jurisdiction, there will be another exception, another exception, and another exception, which may be the subsequent amendments that could potentially be offered by the gentleman from New York. And so, I oppose this amendment on the basis of principle, and we want to get to the place where we have relief for citizens that may be drawn into a jurisdiction that is favorable to one side or

the other. That is why we are doing this in the first place. So, I see the gentleman --

Mr. Nadler. Would the gentleman yield?

Mr. King. -- wanting to ask if I would yield, and I would yield to the gentleman from New York.

Mr. Nadler. Thank you. I would just observe -- or ask, perhaps -- that for those of us who do not agree with the principle that you state, that this amendment makes sense and does not violate the principle that we do not agree with it.

Mr. King. And reclaiming my time and pointing out the strategic nature of the gentleman's amendment, my principles do stand intact, and that is what this committee is going to decide on here today, is the constitutional principle, Article III, Section Two, and relief for people that have been victims of venue shopping and been dragged into jurisdictions where the deck may be stacked against them, as was noted by some of our Framers. So, I would urge opposition the gentleman’s amendment, and I yield back the balance of my time.

Mr. Raskin. Mr. Chairman?

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

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

Chairman Goodlatte. The gentleman is recognized for 5

minutes.

Mr. Raskin. I would like to speak in favor of the gentleman from New York's amendment and also in opposition to the underlying legislation. I have to say that my friend, the chairman of the Constitution Subcommittee, never ceases to surprise or amaze me, after a first term in office proudly serving with him and hearing about his championship of State's rights and sovereignty, to now have him introduce legislation which would occasion a truly historic transfer of power from the State courts to the Federal courts.

He has eloquently invoked all of the principles that the Founders had raised in favor of diversity jurisdiction, but the definition of diversity jurisdiction that we have been operating with for more than two centuries is that you need to have complete diversity between the plaintiffs and the defendants so that if you have plaintiffs and defendants who share citizenship in the same State, you are not going to have bias or prejudice, and that has worked for more than two centuries.

And unless there is some study that would demonstrate that there is a sudden problem, I do not understand this. This to me feels like an overall strategy of pack the Federal courts with judges, and then strip the State courts of sovereignty and jurisdiction over subject matter that has been part of the State judicial province for more than two

centuries, going back to 1806 in the Strawbridge v. Curtiss case.

So, you know, I like all of the nice rhetoric brought from Madison and Hamilton and the gang about why we have diversity jurisdiction, but we have defined it in a very specific way, and now suddenly we are going to overturn that definition in order to throw all of the cases into a Federal court, including things like auto cases and simple tort cases. All you have got to do is add now a defendant who is from out of State, and suddenly you have got a Federal court jurisdiction.

Mr. Nadler. Would the gentleman yield?

Mr. Raskin. Please.

Mr. Nadler. So, you would agree, or I would assume, based on history, based on textualism and originalism, that diversity was understood in a certain way, and this bill would be unconstitutional.

Mr. Raskin. Well, the Strawbridge case was one where the Supreme Court, if recollection serves, interpreted the 1789 Judiciary Act, which was adopted by the founding generation, and they said that this is what the meaning of diversity jurisdiction is. But suddenly we are going from a situation where State courts are seen to be primary, and we know that they today have more than 90 or 95 percent of the cases, and Federal court jurisdiction is in discrete and

exceptional cases where you either have subject matter -- a Federal law like the Civil Rights Act or the Clean Water Act -- or you have got real diversity jurisdiction between the parties.

Now, suddenly, we are going to turn that over and say, "All you have got to do is add one defendant from out of State, even if the sum and substance of the conflict is intrastate," and suddenly you get into Federal courts. And I just cannot believe the chairman of the Constitution Subcommittee is really suggesting that, or at least without some factual predicate for why we would want to do that. And so --

Mr. King. Would the gentleman yield?

Mr. Raskin. -- I am just trying to figure out what is happening here.

Mr. King. Will the gentleman yield?

Mr. Raskin. I am happy to yield.

Mr. King. I thank the gentleman. I would note also for the balance of the committee that, as I understand the gentleman has taught constitutional law and is very well-versed in constitutional law. But it seemed to me that I heard you invoke a principle that 200 years of precedent or 200 years of practice, and you were surprised that I might advocate for taking away States' rights. But the gentleman would not assert that an enumerated power was a State right,

would he?

Mr. Raskin. Absolutely not.

Mr. King. And so, since we have an enumerated power here that I have clearly articulated under Article III, Section Two, then it should be clear that there is no movement to take away a State's right --

Mr. Raskin. But, Mr. King, reclaiming my time, that argument invites us to believe that the last two centuries of Federal and State judicial practice has been unconstitutional. You seem to be saying --

Mr. King. I did not suggest that it was unconstitutional.

Mr. Raskin. Well, you seem to be suggesting that what is permissible, which is -- arguably, we could define it your way; I have not really thought about whether it is constitutional -- but even if we could, it is certainly not mandatory or compulsory, is it?

Mr. King. If the gentleman would yield --

Mr. Raskin. Please.

Mr. King. -- I would agree it is not mandatory or compulsory. I think we can operate constitutionally under either provision, the current one or the one that is laid out under my bill because of Article III, Section Two, the specific enumerated power. But I would add to the gentleman -- and Chief Justice Marshall, who was a majority opinion on

the Strawbridge case, came to regret his decision, and it is about time we began to listen to that regret and correct his decision.

Mr. Raskin. Well, maybe if we had a hearing on the bill, we could invite Chief Justice Marshall to come testify about it. But, honestly, what is the rationale for doing this? I mean, I assume it is meant seriously, but why would we dramatically transfer thousands of cases from our State courts, rob our State judges and legal systems of these cases to put them in Federal court?

Mr. King. I am recognizing that the gentleman would yield. The time is expired, but I would ask unanimous consent that we continue.

Chairman Goodlatte. The gentleman is recognized for 2 additional minutes.

Mr. King. I thank the chairman. If the gentleman will continue to yield, here is a case that I think really stands out for our consideration here, and this is a West Virginia State supreme court judge, Richard Neely, who went on record saying this: “As long as I am allowed to redistribute wealth from out-of-State companies to in-State plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give someone else’s money away, but so is my job security, because the in-State plaintiffs, their families, and their friends will reelect me.”

And it continues: “As a State court judge, much of my time is devoted to designing elaborate new ways to make business pay for everyone else’s bad luck. What do I care about the Ford Motor Company? To my knowledge, Ford employs no one in West Virginia in its manufacturing process. The best I can do, and I do it all the time, is make sure that my own State’s residents get more money out of Michigan than Michigan residents get out of us.” Just an example.

Mr. Raskin. If I can reclaim my time just for a moment, I do not know whether he was one of the West Virginia Supreme Court justices who was recently impeached by the West Virginia House of Representatives or not, but I assume he was speaking sarcastically or facetiously, and not descriptively in terms of what he does.

I do not know the full context there, but, look, I do think it is an insult and an affront to State constitutions and State governments and State courts to say that somehow, they are not capable of rendering impartial justice. And again, I have not seen any data to suggest that that is happening, and it is more likely that what is going on is an attempt to steal authority from State juries and State courts and put it in Federal courts, where certain interests feel that they have greater power to manipulate the outcome. I am happy to yield back at this point, Mr. Chairman.

Chairman Goodlatte. The chair recognizes himself in

response to the gentleman from Maryland's request that we have Chief Justice Marshall testify. That is not quite possible, but we can come close, so I will describe what I think he would say were he here today. He later came to regret the decision in Strawbridge as wrongly decided.

In Louisville, Cincinnati, and Charleston Railroad v. Letson, the Supreme Court acknowledged that the Strawbridge case was not, and I quote, "maintainable upon the true principles of interpretation of the Constitution and the laws of the United States. In a remarkable passage reflecting upon the Court's internal deliberations under the late Chief Justice Marshall, who had passed away 9 years earlier, the court noted, 'By no one was the correctness of the Strawbridge more questioned than by the late chief justice who gave it. It is within the knowledge of several of us that he repeatedly expressed regret that that decision had been made, adding whenever the subject was mentioned that if the point of jurisdiction was an original one, the conclusion would be different.'

"We think we may safely assert that a majority of the members of this court have at all times partaken of the same regret. Notwithstanding this remarkable confession of error, Strawbridge has never been overruled, and Congress has never amended the diversity statute to eliminate altogether a requirement of complete diversity."

Now, in the face of those direct quotes from the Supreme Court of the United States spanning centuries comes one bureaucrat at the Judicial Conference who has issued one letter under his sole signature and objected to all these bills that mark up today on the vague, blunderbuss grounds that the Federal judiciary as a whole has somehow not approved of them.

So, I submit we should not hide behind the black robes worn by a separate branch of the Federal government, especially when those robes are worn by non-judges or anonymous judges or even not worn at all, as is the case with the signer of that letter from the Judicial Conference.

Mr. Raskin. Would the chairman yield?

Chairman Goodlatte. I would be happy to yield to the gentleman from Maryland.

Mr. Raskin. Thank you. I appreciate that interesting historical testimony about Chief Justice Marshall. It is fascinating to me that we are willing to overlook the testimony of the people wearing black robes who are alive, but not the regrets of a late Supreme Court justice who is not alive, and we have the benefit, as Jefferson would say, of centuries of experience now to look to see how this has operated. So, if --

Chairman Goodlatte. Well, reclaiming my time, how it is operated is to exclude from Federal court a

constitutionally mandated basis for being in Federal court by the misjoinder of parties that keep the cases out of Federal court, and this seems to me to be an elegant way to solve that by simply honoring the Constitution as it is written.

Mr. Poe. I move to strike the last word.

Chairman Goodlatte. The chair recognizes the gentleman from Texas for 5 minutes.

Mr. Poe. Which one?

Chairman Goodlatte. That one. The one who asked, Mr. Poe.

Mr. Poe. So, it would be me? Okay, thank you. Thank you, Mr. Chairman. To me, it seems like this bill -- frankly, since the courts have ruled that a corporation is a person -- is now to protect the person of corporations against real people, little people throughout the United States. I have great concerns about this legislation. It infringes on the outright or denies ordinary people their ability to be heard in a judicial forum of their choosing.

I used to be a judge, as the chair knows, and it seems to me that the bill violates the relationship between Article III and the Tenth Amendment, which we have not talked a whole lot about, as it would move State cases involving State law, not Federal law, away from State tribunals who specialize in their own forums substantive

doctrines into Federal courts who often have no background in the State law that they have to rule on.

So, my question is, why have State courts at all? As a former Texas judge, I can tell you this bill seems to me to disrespect State courts. It represents a massive intrusion by Congress into the historic operation of State courts; it centralizes judicial power into the Federal government; and it flies in the face of a Federal structure.

It is true the bill technically does not affect any legal theory or cause of action or prevent a lawsuit from being filed, but ask, who is better to hear a State court case than a State judge? A State judge or a Federal judge in some other State. As you know, this would allow cases to be removed from a particular State and go to any Federal court in the United States.

An experienced State law judge sitting in the State where the plaintiff and at least one defendant resides is the best place, it seems to me, to have a trial. Certainly, it does not favor those big corporations that want to prohibit the little guy from having his day in court. A State judge is going to be more knowledgeable about State law; the location of the court is more convenient for parties and witnesses; and there is nothing particularly Federal about State tort law.

If the case is removed to Federal court, the defendant

can use the Federal venue statute to move the case even further from the State where at least one plaintiff and one defendant reside, and usually where the harm or injury occurred.

Further, Mr. Chairman, it would burden the Federal courts, dilute their resources from focusing on Federal issues, things they can specialize in, like Federal law, civil rights, and important substantive Federal statutes such as antitrust and securities. This new and significant burden being placed on the Federal judiciary would inevitably further slow the Federal process.

The highly disruptive action should only be considered after careful consultation with the appropriate Federal judicial authorities, including the Judicial Conference of the United States. Mutual respect and comity between and among the branches call for careful and respectful consulting, especially with respect to a potentially far-reaching alteration in the Federal-State balance that has prevailed in the American judicial system.

And it is my understanding, Mr. Chairman, no legislative hearing has been had this Congress on this legislation. Congress should have a hearing on this before we change the whole concept of State and Federal courts. The two other items that Congress has expanded Federal diversity and jurisdiction involved hearings and committee

discussion. Those bills were considered by multiple Congresses prior to passage. Furthermore, the fact pattern addressed by those bills are somewhat, in my opinion, completely different.

Strawbridge v. Curtiss has been mentioned several times, legislation from 200 years ago. I think Chief Justice Marshall got it right the first time, and comments that were made not in the official proceeding of a court are no bearing into what the law of the land is. Otherwise we could take a Federal judge who makes a decision and then at some cocktail party says something different. That cannot be considered into what the law of the land would be.

Chairman Goodlatte. Would the gentleman yield?

Mr. Poe. When I am through, Mr. Chairman.

Chairman Goodlatte. All right.

Mr. Poe. And the question is, why the bill? And simply to protect, I think, big corporations and keep the little guys out of courts. I would oppose this legislation. I ask unanimous consent to introduce into the record at least Chief Justice Marshall's opinion in Strawbridge and also the judicial community's comments on this legislation. And with that, I will certainly yield to the chairman.

Chairman Goodlatte. Well, thank you. First of all, your unanimous consent request is granted without objection, but I would add to a unanimous consent request that we place

into the record the Supreme Court decision that I was reading from that refutes the position in Strawbridge.

Mr. Poe. I do not object to that.

[The information follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Good. We are at least in agreement on putting both of those items in the record. For what purpose does the gentleman from Texas, Mr. Gohmert, seek recognition?

Mr. Gohmert. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Gohmert. Thank you. Nobody has more respect for my friend from Iowa than I do, and great admiration. I know he is not violating any of the principles that caused him to run for Congress or to continue to maintain his consistency here in Congress. And I do believe that we have the authority as Congress to change the diversity requirement if we so desire, but here again I have tried cases in State court; tried cases in Federal court, which was a judge and chief justice in the State system.

But I loved the ability in the State system to hold judges accountable, and we just either are not able or do not in the Federal system. And I know from my experience there will be so many cases that will run to Federal court, and I know there are problems in some State courts. I ran against one and was elected.

But I will not be able to vote for this bill. I like having State court law decided in State court, and then, if it makes its way through the highest State court, and if the

U.S. Supreme Court can find a Federal issue and take it up, that is great. That is process.

But I want to be able to have cases tried in State court for State judges applying State law to the largest extent I can. And with continued respect for my friend, I will not be able to vote for that.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman from New York. All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Nadler. I request a recorded vote.

Chairman Goodlatte. A recorded vote has been requested, and the clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

Mr. Chabot. No.

Ms. Adcock. Mr. Chabot votes no.

Mr. Issa?

[No response.]

Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

Mr. Gohmert?

Mr. Gohmert. Yes.

Ms. Adcock. Mr. Gohmert votes yes.

Mr. Jordan?

[No response.]

Mr. Poe?

Mr. Poe. Yes.

Ms. Adcock. Mr. Poe votes yes.

Mr. Marino?

Mr. Marino. Yes.

Ms. Adcock. Mr. Marino votes yes.

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Collins?

[No response.]

Mr. Buck?

[No response.]

Mr. Ratcliffe?

[No response.]

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Rutherford?

[No response.]

Mrs. Handel?

Mrs. Handel. Yes.

Ms. Adcock. Mrs. Handel votes yes.

Mr. Rothfus?

Mr. Rothfus. Yes.

Ms. Adcock. Mr. Rothfus votes yes.

Mr. Nadler?

Mr. Nadler. No.

Ms. Adcock. Mr. Nadler votes no.

Mr. Nadler. No, yes, yes.

Ms. Adcock. Mr. Nadler votes yes.

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

[No response.]

Mr. Cohen?

[No response.]

Mr. Johnson of Georgia?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. Yes.

Ms. Adcock. Mr. Cicilline votes yes.

Mr. Swalwell?

[No response.]

Mr. Lieu?

Mr. Lieu. Yes.

Ms. Adcock. Mr. Lieu votes yes.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Adcock. Ms. Jayapal votes aye.

Mr. Schneider?

Mr. Schneider. Aye.

Ms. Adcock. Mr. Schneider votes aye.

Ms. Demings?

[No response.]

Mr. Johnson of Louisiana. Mr. Chairman?

Chairman Goodlatte. Yes, the gentleman from Louisiana.

Mr. Johnson of Louisiana. How am I recorded?

Ms. Adcock. As a no.

Mr. Johnson of Louisiana. Let me change that to a yes.

Ms. Adcock. Mr. Johnson votes yes.

Chairman Goodlatte. For what purpose does the gentleman from Tennessee --

Mr. Cohen. Getting my yes vote in.

Chairman Goodlatte. Has every member voted who wishes to vote? The gentleman from Idaho?

Mr. Labrador. Yes.

Ms. Adcock. Mr. Labrador votes yes.

Chairman Goodlatte. The clerk will report.

Mr. Nadler. Did you get Mr. Cohen's yes vote?

Chairman Goodlatte. I did get Mr. Cohen's yes vote.

Mr. Nadler. Mr. Deutch is in the hallway. Mr. Chairman?

Chairman Goodlatte. The clerk will report.

Ms. Adcock. Mr. Chairman, 14 members voted aye, 5 members voted no.

Chairman Goodlatte. And the amendment is agreed to. And a reporting quorum not being present, we will move to the next bill.

Pursuant to notice, I now call H.R. 6730 for purposes of markup and move the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Adcock. H.R. 6730, to amend Title XXVIII, United States Code, to prohibit the issuance of national injunctions and for other purposes.

[The bill follows:]

********** INSERT 7 **********

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

The Injunctive Authority Clarification Act arrests a disturbing trend of judicial overreach that has frustrated administrations of both parties. Federal judges are increasingly issuing injunctions that block enforcement of a challenge to Federal policy against anyone, not just the plaintiffs. These national injunctions are a recent and controversial phenomenon that for most of U.S. history did not exist.

No statute or procedural rule permits courts to issue national injunctions. In fact, the traditional view of the law was that courts had no authority to issue them. For example, in Frothingham v. Mellon, decided in 1923, the Supreme Court refused to grant a national injunction because the Court's power is limited to "declaring the law applicable to the controversy." To go beyond that, the court explained, "would be not to decide a judicial controversy but to assume a position of authority over the governmental acts of another and co-equal department and authority which plainly we do not possess."

This traditional view began to erode in the 1960s. Still, national injunctions remained rare until 2015, when conservative attorneys general used them to block major

Obama administration policy action on labor, immigration, and other issues. Now, with the tables turned, the Trump administration has faced over 22 such injunctions. There are clear signs that judges were never meant to issue national injunctions.

First, their validity seems entirely refuted by the existence of class action procedures. The Federal rule of Civil Procedure 23(b)(2) makes available a class-wide injunctive remedy if certain conditions are met, meant to ensure effective representation and fairness to everyone in the class.

There would be no need for this procedure if plaintiffs would get the same group remedy via a national injunction. In fact, these injunctions are an end run around Rule 23, providing the benefits of class certification without the corresponding procedural protections.

Second, Federal district court decisions are not even binding on judges in the same district. It is illogical to suppose that a single judge has authority to decide a question for the whole country when that judge's decisions are not even binding on other courts in the same district.

Third, national injunctions could conflict with each other, which would be catastrophic to the system. This problem was only narrowly avoided recently when a Texas judge refused a request from the State of Texas to issue a

conflicting injunction on the restart of DACA.

But perhaps most compellingly, it simply cannot be the law that opponents of government action can seek a preliminary injunction and lose in 93 of the 94 judicial circuits, win one injunction in the 94th, and via that one injunction obtain a nationwide stay of government action that was upheld everywhere else.

The Injunctive Authority Clarification Act corrects this absurd situation by restoring the traditional understanding that a Federal court's injunctive power extends only to the protection of the parties before it. Importantly, the bill does not disturb longstanding exceptions to that principle explicitly recognized in the Federal Rules of Civil Procedure, most notably class action lawsuits.

Proponents of national injunctions argue that these injunctions are essential to provide plaintiffs with complete relief in certain cases, but the examples they offer, such as redistricting, school segregation, and consumer protection cases, do not require national injunctions. Class actions are available and are in fact designed for such situations. Indeed, the committee heard testimony that the class action rule was promulgated specifically to facilitate civil rights and similar constitutional challenges. The Constitution gives courts

the authority to decide cases for the parties before them, not to act as super-legislators for everyone across the country based on a single case. This legislation has the support of a bipartisan group of some of America's leading legal scholars, who recognize the compelling need for Congress to enact a limit on national injunctions. I urge my colleagues to heed their call.

It is now my pleasure to recognize the ranking member of the committee, the gentleman from New York, Mr. Nadler, for his opening statement.

[The prepared statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, H.R. 6730, the so-called Injunctive Authority Clarification Act, should instead be called the Injunctive Authority Uncertainty Act, because this bill would inject confusion and needless barriers to relief into the legal system. The stated goal of this measure is to ban nationwide injunctions, which are sometimes imperfect but often essential equitable remedy in the Federal courts.

When the Federal Government acts in violation of the Constitution or breaks the law on a national scale, a nationwide injunction may be the only logical and fair remedy. The courts should certainly exercise caution and care when determining the proper scope of an injunction, but to prohibit nationwide injunctions in every circumstance, as this bill would do, is a gross overreaction to whatever perceived flaws this legal remedy may have.

Whenever a district court issues a nationwide injunction blocking a Federal Government policy, the quotes in the next day's newspapers are all too predictable. Opponents of that policy will hail the decision as reasonable and necessary, while supporters of the policy will claim it was a vast overreach by a single activist Federal judge. When the party in power changes hands, and the roles are reversed, those who once decried the use of nationwide injunctions will suddenly see the virtues of such

a remedy, and those who support its use previously will now consider it a fatally flawed travesty of justice.

With President Trump and his often-lawless administration in office, it is no surprise that Republican majority now seeks to prohibit nationwide injunctions, which are preventing some of the President's most legally questionable policies from coming into effect, even if they fostered and cheered such injunctions when President Obama was in office.

Nationwide injunctions are certainly not appropriate in all circumstances, and there are good reasons for courts to act cautiously before issuing such a broad remedy, but we should not completely dismantle this important tool and risk depriving Americans of the justice they deserve it. If all this bill did was to ban nationwide injunctions, that would be bad enough. It appears to be much broader, however, and potentially much more dangerous to the rule of law. The bill would confine the relief granted by any injunction against the government law, regulation, or order to the parties represented in the case. While this may sound logical at first glance, consider the implications of such a policy.

If a jurisdiction enacted an unconstitutional infringement on the right to vote, for instance, and an individual successfully enjoined enforcement of that law in

court, this bill would prevent the court from protecting anyone but the individual who challenged the law. Every other affected voter could be forced to bring their own lawsuit challenging the law as it pertains to them.

This would unleash a flood of duplicative litigation as each affected individual would be forced separately to seek relief in court. It would also be manifestly unjust since those without the resources to file a lawsuit might have no recourse against a clearly unconstitutional law. Should every mother's child who is ripped from her arms because of President Trump’s family separation policy have been forced to bring her own individual lawsuit to stop this unconscionable and unconstitutional policy? Is that really the intention of this bill? Because it would seem to be the effect.

Although the bill protects class action lawsuits from these extreme and dangerous requirements, class certification is a time-consuming, burdensome, and expensive process, thanks in part to the efforts of the majority, who have worked tirelessly to build hurdles to class action relief. For all practical purposes, this protection would ring hollow for millions of Americans.

Perhaps it is not the majority's intention to so thoroughly restrict access to justice under this bill. Perhaps there is a better reading of the bill than how I

interpret it. All of these questions could be raised in a legislative hearing on this proposal. All of this could benefit from soliciting the input of a variety of stakeholders and practitioners who can explain the likely effect of this bill, but we have done none of that.

The Courts Subcommittee held a hearing on the issue of nationwide injunctions generally, but it did not consider this particular proposal in depth. We were handled this bill mere days ago, and we are once again rushing it to markup for no discernible reason. We ought to take our time and consider this issue thoughtfully. Accordingly, I call on my colleagues to oppose the bill, and I yield back the balance of my time.

[The prepared statement of Mr. Nadler follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. The chair thanks the gentleman. I now recognize myself for purposes of offering an amendment in the nature of a substitute, and the clerk will report the amendment.

Ms. Adcock. Amendment in the nature of a substitute to H.R. 6730, offered by Mr. Goodlatte. Strike all that follows after the enacting clause and insert the following --

[The amendment of Chairman Goodlatte follows:]

********** INSERT 8 **********

Chairman Goodlatte. Without objection, the amendment will be considered as read, and I will recognize myself to explain the amendment. This amendment in the nature of a substitute simply adds an effective date provision that states explicitly that the provisions of the bill take effect on the date of enactment and makes no other substantive changes to the bill. But I do want to take the opportunity to respond to some of the points raised by the ranking member.

First of all, with regard to the example of an immigration case, some argue national injunctions are needed particularly in immigration cases, but class actions are available and suited for these occasions. The Advisory Committee notes on the Federal Rules of Civil Procedure state explicitly that the class action rule was put in place to facilitate actions in the civil rights field.

Indeed, a cursory Google search reveals numerous class actions pending right now challenging Trump administration immigration policies. These include a class action challenging the travel ban for failing to provide waivers; a class action challenging policies relating to handling of families at the border; a class action challenging ICE's tactics in arresting people in the U.S. illegally.

The class action procedures are designed for cases like these and equal to the task. This legislation would not

disturb those procedures. National injunctions are in fact an end run around these procedures, which is just one of the reasons that a bipartisan group of legal experts support congressional action to stop them.

And in that regard, I would submit for the record a letter signed by a very distinguished bipartisan group of some of America's leading professors of remedies, constitutional law, Federal courts, and administrative law from law schools like Notre Dame; Princeton; Cornell; Duke Stanford; NYU; Boston University; University of California at Berkeley; University of Michigan; who recognize the compelling need for Congress to enact a limit on national injunctions and endorse this very legislation, the Injunctive Authority Clarification Act of 2018.

[The information follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Finally, let me note, with regard to the complaint about hearings, that on November 17 of last year the House Judiciary Committee Subcommittee on Courts, Intellectual Property, and the Internet held a hearing featuring leading scholars on the issue. Professor Bray testified that the scope of the injunctive power is rightly confined to the parties before the court and those properly represented by parties before the court.

He added that he had formally requested that the Advisory Committee on the Federal Rules of Civil Procedure take action to address the issue, but they declined. Professor Morley argued that even in the class action context judges should certify classes that are narrow in scope, and Mr. von Spakovsky echoed Professor Bray's views. Professor Frost argued that national injunctions are appropriate in certain cases but agreed that preliminary national injunctions before the issues have been heard are particularly concerning.

So, for all of those reasons, I urge my colleagues to support not only amendment in the nature of a substitute, but also the underlying legislation. And the chair now recognizes the gentleman from New York.

Mr. Nadler. I thank the gentleman. Let me just say that we have a letter from various public interest groups, including Public Citizen, Public Justice Center, National

Latino Farmers, National Consumers League, Employment Lawyers Association, the National Consumer Law Center, the NAACP, Consumer Advocates, and various others, in which they say that when a government policy concerns an urgent issue such as voting rights, toxic pollution, healthcare, or immigration, nationwide injunctions may be the only way to prevent widespread and irreparable harm caused by a government policy. This is especially true when policies take effect and risk damage very quickly.

The distinguished chairman says we have class action suits. Yes, we do, but class action suits take time. They take time to certify the class. Imagine the families at the border whose children were ripped away from them; you need an immediate nationwide injunction. A class action suit is still pending. The chairman mentioned various other class action suits; still pending, but some of them probably had nationwide injunctions to start.

The class action suit can go on, but you need a nationwide injunction to stop an immediate and continuing injury to civil rights or civil liberties, to constitutional rights. Without a nationwide injunction, an administration can do a lawless policy, a policy which can inflict great harm on people and be terribly destructive of all kinds of constitutional rights, and they would go on and on. And even with a class action, that will take a long time.

You need injunctive relief; that is why we have injunctive relief. And unless you think we should go into every single district court in the country for the same constitutional injury -- when there is a travel ban or a policy of the border to tear infants away from parents, does every infant have to sue? Do you have to have a class action in every district court? You need nationwide injunctions against nationwide injuries, and that is why I oppose this bill.

Chairman Goodlatte. Are there any amendments to the amendment in the nature of a substitute?

Ms. Jayapal. Mr. Chairman?

Chairman Goodlatte. For what purpose does the gentlewoman from Washington to seek recognition?

Ms. Jayapal. I move to strike the last word.

Chairman Goodlatte. The gentlewoman is recognized for 5 minutes.

Ms. Jayapal. Thank you, Mr. Chairman. I rise in opposition to this bill, and I associate my comments with that of our ranking member; 5468 would unfortunately end an absolutely critical way to address injustice in our country. We have seen numerous times throughout history and just in the last year alone how the courts have served as a crucial check on the executive to make sure that our policies and our laws are aligned with our Constitution and our values.

If this law had been enacted prior to 1954, Mr. Chairman, the landmark Supreme Court decision Brown v. Board would have only applied to 20 children; 20. Imagine that your neighbor has the resources and the support to pursue litigation all the way up to the Supreme Court. Your neighbor is told that their daughter’s segregated school does not provide her an equal education to her white peers. Your neighbor's daughter is told that her segregated school is unconstitutional and that she has a right to a better education.

Your kid goes to the same school. Your neighbor's kid goes to the same school, but under this law, all of you would have to file your own litigation to get your kid the same rights. How is that justice? Just last month, the courts issued nationwide injunctions in several cases related to the EPA. In one decision, a district court judge in South Carolina overturned the Trump administration’s delay of WOTUS, the 2015 Waters of the U.S. rule which secured drinking water for more than 117 million Americans by extending Federal safeguards to 2 million miles of streams and 20 million acres of wetlands.

In another decision, a D.C. court judge overturned the EPA's delay of a 2017 chemical safety regulation. The rule reduces the risks of chemical disasters at more than 10,000 facilities across the country. The EPA created the rule

directly in response to a 2013 fertilizer plant explosion in West Texas which killed 15 people, but former EPA administrator Scott Pruitt delayed the rule from going into effect until 2019.

The judge stated that pushing back the effective date "makes a mockery of the Clean Air Act and that the postponement has delayed lifesaving protections." That was a quote; "delayed lifesaving protections." Further, the judge ruled that the delay was, in his words, arbitrary and capricious; in other words, an abuse of power.

With more than 1,500 serious incidents occurring at chemical facilities from 2004 to 2013, resulting in 58 deaths, over 17,000 injuries, and billions of dollars in property damage, and that is according to the EPA's own data. I hope we can all agree that court action in the form of a nationwide injunction in this case was crucial to protect all Americans.

And finally, it was a nationwide injunction ordered by Judge Dana Sabraw, appointed by President George W. Bush, that stopped the cruel mass separation of children from their moms and dads, a tragedy that drew bipartisan outrage that I have spoken out repeatedly on this committee, that I requested hearings on. But because nationwide injunctions exist, thank goodness, the courts were actually able to halt relatively quickly this callous policy and begin the arduous

process of reuniting children with their parents; a process, Mr. Chairman, that is still continuing.

As of last week, 416 children are still in detention, including 14 under the age of 5, and those numbers do not even account for the children who were torn from other close family members, including grandparents and older siblings. Four hundred and sixteen children still separated is a tragedy, and over 3,000 families who have been the victims of State-sponsored violence is an even bigger tragedy. What would have been even more tragic is if we did not have nationwide injunctions to step in and end the cruelty. Every child or parent would have to go into the courts on their own to demand justice. Without nationwide injunctions, who knows how many children would have been forcibly separated from their moms and dads and perhaps permanently orphaned?

We have seen across the board, whether it is protecting civil rights, environmental protections, immigrant rights, or even basic constitutional protections, how the ability of courts to impose nationwide injunctions can be instrumental to quickly address injustice and even prevent mass atrocities when it comes to rules and regulations that govern public safety.

After all, if a court finds that one person's rights have been violated, would we not want to stop that injustice

from being repeated in any other instance? If one person is found to have their constitutional rights violated, it is not justice for us to make every single person in the same situation get in line for justice. That is not who we are or what we stand for, and I strongly urge my colleagues to vote no.

Chairman Goodlatte. Would the gentlewoman yield?

Ms. Jayapal. I would.

Chairman Goodlatte. I thank the gentlewoman for yielding and, without objection, grant her an additional minute so I can just respond to ask her to look at the long view of this problem. Because what this is a transfer of power from the legislative and from the executive branch to the judicial branch, and it does not always work in the fashion that you just described. Let me give you a few examples where it worked just the opposite of what you describe.

In 2015, a Texas district court issued a national preliminary injunction blocking the implementation of the Obama administration's Deferred Action for Parents of Americans and Lawful Permanent Resident. I am sure many people on my side of the aisle, including me, said, “Boy, that is great. I think that is a bad law, and they should block it.” But it affected millions of people who still do not have those issues resolved because of deadlock in the

Congress, because you can go outside of the Congress and go to the courts.

Ms. Jayapal. Mr. Chairman?

Chairman Goodlatte. Union organizing; a 2016 district court entered a national preliminary injunction against a major Department of Labor regulation known as the persuader rule. Transgender bathrooms; workplace rights; overtime pay; and affordable care.

Ms. Jayapal. No, and I get your point, but I do not think that we are advocating for policies or laws that we agree with 100 percent of the time. We are advocating for policies and the opportunity to be able to utilize critical tools in the pursuit of justice. It does not mean that I am going to agree with every nationwide injunction that has been issued, but I think the opportunity to have nationwide injunctions, to be able to have the courts weigh in on an issue of critical and timely importance.

And the fact that there are very few other ways -- I mean, you mentioned class actions, but the reality is class actions are very complex; they are very timely; they are very costly. Not everybody is going to be covered by those class actions. I think that is --

Chairman Goodlatte. And they are being used right now in immigration cases.

Ms. Jayapal. Yes. But, I mean, in some ways, you have

made my point even more bipartisan, because I am not saying I agree with every single nationwide injunction that has been put out there. I am saying it is a critical responsibility of the courts to be able to utilize that power in these situations. We may not agree on every single one, but I think if you take that away --

Chairman Goodlatte. On what foundational basis does one judge in one jurisdiction get to make that decision for the entire country? This is the Congress' responsibility.

Ms. Jayapal. I think in these situations that are of critical constitutional importance -- voting rights -- all these essential --

Mr. Nadler. Would the gentlelady yield?

Ms. Jayapal. Yes, I would.

Mr. Nadler. To quote Marbury v. Madison, it is emphatically the duty of the judiciary to say what the law is. If it is before one judge, he says what the law is; he enforces a constitutional right; and that is appealable to the appellate courts and to the Supreme Court. The fact that it is one judge initially may be necessary to vindicate a constitutional right and prevent it from being trampled. I yield back.

Ms. Jayapal. No, that is exactly right. I think that is exactly the right point. One judge is making a decision in that situation, and then there is a process for that to

continue to move up. I yield back.

Chairman Goodlatte. For what purpose does the gentleman from California seek recognition?

Mr. Issa. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Issa. Mr. Chairman, you made an incredibly important point, and I just want to echo and amplify it. This bad policy, which is growing by the hubris of a judge who wants to have authority greater than his appellate court has, is in fact what we are dealing with. We need to have a structure, and I would say to my colleagues who may not be prepared for the current bill in its current form that they should not strike down the concept, that we must deal with it.

If we do not deal with it, then we wait for the Supreme Court to simply say that a district court judge does not have this authority, and so far, they have been unwilling to assert their own primacy, and by definition we did not set up the structure for them to do it. When the Supreme Court takes a decision, they take a decision with the assumption that they are binding the whole country, which means it is too late if, in fact, the lower courts have by definition over this long period of time.

Now, the gentlelady makes some good points, and I want

to just briefly say one thing. The lack of a class action is a lack of a definition that people are like. Many of these nationwide injunctions are by definition vague. You do not know whether an individual with slightly different characteristics truly fits that example. Having said all of that, if my colleagues do not like this bill today, I would suggest strongly that they look forward to making it better rather than ending it.

We certainly could -- we could; we, this body -- in fact have an expedited decision of a district court judge who makes his own decision, and then a motion is brought to make it a national injunction, and that is immediately appealable, for example, to the Fed circuit rather than sending it to appellate courts who by definition do not have that same authority. We have to determine whether or not we are going to have an appellate court in any circuit have the authority to do this. And with that, I yield back.

Chairman Goodlatte. The question occurs on the amendment in the nature of a substitute.

All those in favor, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the ayes have it, and the amendment in the nature of a substitute is agreed to.

A reporting quorum being present, the question is on the motion to report the bill H.R. 6730 as amended favorably

to the House.

Those in favor, respond by saying aye.

Those opposed, no.

And the ayes have it, and the bill is ordered reported favorably.

Mr. Nadler. I request a recorded vote.

Chairman Goodlatte. A recorded vote has been requested, and the clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Adcock. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

[No response.]

Mr. Issa?

Mr. Issa. Aye.

Ms. Adcock. Mr. Issa votes aye.

Mr. King?

Mr. King. Aye.

Ms. Adcock. Mr. King votes aye.

Mr. Gohmert?

[No response.]

Mr. Jordan?

[No response.]

Mr. Poe?

Mr. Poe. Yes.

Ms. Adcock. Mr. Poe votes yes.

Mr. Marino?

Mr. Marino. Yes.

Ms. Adcock. Mr. Marino votes yes.

Mr. Gowdy?

[No response.]

Mr. Labrador?

Mr. Labrador. Yes.

Ms. Adcock. Mr. Labrador votes yes.

Mr. Collins?

[No response.]

Mr. Buck?

[No response.]

Mr. Ratcliffe?

Mr. Ratcliffe. Yes.

Ms. Adcock. Mr. Ratcliffe votes yes.

Mrs. Roby?

Mrs. Roby. Aye.

Ms. Adcock. Mrs. Roby votes aye.

Mr. Gaetz?

[No response.]

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Mr. Biggs?

Mr. Biggs. Yes.

Ms. Adcock. Mr. Biggs votes yes.

Mr. Rutherford?

Mr. Rutherford. Aye.

Ms. Adcock. Mr. Rutherford votes aye.

Mrs. Handel?

Mrs. Handel. Yes.

Ms. Adcock. Mrs. Handel votes yes.

Mr. Rothfus?

Mr. Rothfus. Yes.

Ms. Adcock. Mr. Rothfus votes yes.

Mr. Nadler?

Mr. Nadler. No.

Ms. Adcock. Mr. Nadler votes no.

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

[No response.]

Mr. Cohen?

[No response.]

Mr. Johnson of Georgia?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Mr. Jeffries?

[No response.]

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Adcock. Mr. Cicilline votes no.

Mr. Swalwell?

[No response.]

Mr. Lieu?

Mr. Lieu. No.

Ms. Adcock. Mr. Lieu votes no.

Mr. Raskin?

[No response.]

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Adcock. Ms. Jayapal votes no.

Mr. Schneider?

Mr. Schneider. No.

Ms. Adcock. Mr. Schneider votes no.

Ms. Demings?

[No response.]

Chairman Goodlatte. The gentleman from Ohio, Mr. Chabot?

Mr. Chabot. Aye.

Ms. Adcock. Mr. Chabot votes aye.

Mr. Cohen. Mr. Chair, how was I recorded?

Chairman Goodlatte. I do not know if the gentleman was recorded or not.

Ms. Adcock. Not recorded.

Chairman Goodlatte. He is not recorded.

Mr. Cohen. No.

Chairman Goodlatte. He votes no.

Ms. Adcock. Mr. Cohen votes no.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Adcock. Mr. Chairman, 14 members voted aye; 6 members voted no.

Chairman Goodlatte. The ayes have it, and the bill is ordered reported favorably to the House. Members will have 2 days to submit views. Without objection, the bill will be reported as a single member of the nature of a substitute incorporating all adopted amendments, and staff is

authorized to make technical and conforming changes.

Pursuant to notice, I call up H.R. 6754 for purposes of markup and move that the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Adcock. H.R. 6754, to amend Title XXVIII United States Code to modify the structure of the Court of Appeals for the Ninth Circuit and for other purposes.

[The bill follows:]

********** INSERT 9 **********

Chairman Goodlatte. Without objection, the bill is considered as read and open for amendment at any time, and I will begin by recognizing myself for an opening statement. Today, the Judiciary Committee will take a major step to resolve the longstanding issue of the vastly large Ninth Circuit Court of Appeals.

For the past several decades, the size of the circuit has continued to grow far in excess of other circuits. Twenty percent of the U.S. population now resides in this circuit with nine States and two territories, making it twice the size of any other circuit. Today, the Ninth Circuit has 29 authorized judgeships, also far exceeding the next closest circuit, the Fifth, with only 17 judgeships. The Judicial Conference has asked for five additional judgeships for the Ninth Circuit, which are included in this legislation.

As noted by Justices Kennedy and Thomas in their 2005 testimonies for the House Appropriations Committee, judicial collegiality is an important component for the consistent rule of law. Oversized circuits, wherever they may be located, undercut such collegiality by limiting the interactions of the entire circuit as a collective whole. In response to those who might argue against changes to the status quo by stating that size creates efficiencies, I would point out that no one has suggested combining other

circuits to make them bigger.

It is unfortunate that a prior Congress authorized the Ninth Circuit to operate with 11-judge en banc panels that masquerade as true en banc panels. This has resulted in an important component of our appellate system being lost, that of the circuit sitting and speaking as a whole unit. Although the Ninth Circuit has procedures to use true en banc panels, they have never done so despite some of the critical cases they have handled.

In response to a similar crowding issue in the Fifth circuit, this committee in 1980 enacted legislation to move three of its six States to a new Eleventh Circuit and provided only a year of transition time. I highlight the fact that the legislation to accomplish this split passed in both the House and Senate by unanimous consent. The transition required by that bill occurred very smoothly. Various groups have studied the size of the Ninth Circuit but have often disagreed with each other.

The 1998 White Commission created by Congress recommended that the Ninth Circuit not be formally split, but instead be divided into three separate adjudicative divisions. Whatever one may think of this commission and its recommendations, the commission recognized the need to do something about the size of the Ninth Circuit. The legislation before us today implemented the recommendations

of the White Commission and authorizes an additional five Ninth Circuit judges that have been requested by the Judicial Conference.

I urge my colleagues to support this legislation to resolve a longstanding issue and provide the necessary additional resources to the Ninth Circuit. The chair now recognizes the ranking member of the committee, the gentleman from New York, Mr. Nadler for his opening statement.

[The prepared statement of Chairman Goodlatte follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, proposals to split up the Ninth Circuit Court of Appeals have been floating since at least 1941. But what was a bad idea more than 75 years ago still remains a bad idea today. Proponents of splitting up the Ninth Circuit generally mask their arguments in concerns over its size and the supposed detrimental effect this has on judicial efficiency and the consistency of its rulings.

However, the facts say otherwise. It is true that the Ninth Circuit is the largest of the 11 regional circuit courts of appeal, in terms of physical area, of population covered, and of caseload. With a district that includes Alaska, Hawaii, and the territories of Guam and the Northern Mariana Islands, it is no surprise that judges must occasionally travel great distances to serve the entire circuit.

But we have things called jet planes, video conferencing capabilities, and email that makes it possible to minimize the disruption that any physical distance may cause. There is simply no evidence that the Ninth Circuit size has impeded its ability to administer justice to the people within its jurisdiction. To the extent that there is a somewhat higher backlog of pending cases in the Ninth Circuit compared to other circuits, more resources can be devoted to resolving those issues. And technology is being

deployed in a variety of ways to help improve administrative efficiency.

There is also no evidence to support the frequently made claim that the Ninth Circuit is a renegade court with wild and unpredictable rulings. Even the often-cited statistic that the Ninth Circuit is the most reversed circuit of the Superior Court is wildly misleading. Given the very small sample size because so few cases ever reach the Superior Court, it is hard to conclude much from the modestly high rate of reversal that the Ninth Circuit faces by the most conservative Superior Court in many generations.

But these arguments are really just smokescreens. What this debate is actually about is that conservatives simply do not like the more liberal rulings that occasionally emerge from the Ninth Circuit. And they believe they can manufacture a new circuit that will produce more conservative results. That is a very different and a more dangerous matter.

Like clockwork, we see proposals to split up the Ninth Circuit whenever it delivers a controversial decision with which conservatives disagree. But to manipulate the Federal courts in order to achieve the political results you seek is highly inappropriate. Just as there is a nationwide movement to end legislative gerrymandering, we should resist this form of judicial gerrymandering as well.

The bill before us today does not create a new circuit court. Instead, it divides the Ninth Circuit into three divisions, plus an appellate division within the circuit, to resolve the inevitable conflicts that may arise between divisions. This complex and unwieldy arrangement was proposed in 1998 by a commission chaired by former Justice Byron White. The proposal landed with a thud at the time and has generated no significant support in the intervening 20 years.

I do not see why we should suddenly resurrect this plan today in the absence of any consensus behind it. Moreover, although the court's subcommittee held a hearing last year on proposals to split up the Ninth Circuit, there was little serious consideration given to this proposal and certainly no legislative hearing was held to flesh out in any detail how this plan would work. It is also worth noting that at the subcommittee's hearing last year, three Ninth Circuit judges testified in opposition to splitting the Ninth Circuit, representing a majority of their colleagues on the court. In addition, the American Bar Association and numerous other practitioners and experts who have studied the decision in great depth also oppose such a split.

Just like the other court's proposals on the agenda today, this bill has not been properly vetted and has instead been rushed through the legislative process when

there is no urgency to act. We should take time to consider all the alternatives and to liberate the bill's many ramifications in depth. Before I yield back, I want to ask unanimous consent to enter into the record a letter from the chief judge of the Ninth Circuit opposing this bill.

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

[The information follows:]

********** COMMITTEE INSERT **********

Mr. Nadler. Thank you. I urge my colleagues to oppose this bill and I yield back the balance of my time.

[The prepared statement of Mr. Nadler follows:]

********** COMMITTEE INSERT **********

Chairman Goodlatte. Thank you, Mr. Nadler. The chair now recognizes the gentleman from California, Mr. Issa, the chairman of the Court Subcommittee for purposes of offering an amendment as a substitute. And the clerk will report the amendment.

Ms. Adcock. Amendment in the nature of a substitute to H.R. 6754, offered by Mr. Issa. Strike all that follows after the enacting clause and insert the following. Section one --

[The amendment of Mr. Issa follows:]

********** INSERT 10 **********

Chairman Goodlatte. Without objection, the amendment is considered as read, and Mr. Issa is recognized for 5 minutes to explain his amendment.

Mr. Issa. Mr. Chairman, this is a technical and conforming amendment. There will be other amendments offered, including Mr. Biggs, that will be more substantive. What I wanted to make sure that the gentleman from New York had was, first of all, my concern that this is, in fact, a bill that has been worked on for 2 decades. It is a bill whose time has come, not because of some 70-year-old grudge by areas of liberal and conservative. But because, in fact, as the court load increases in just a few years we are going to be faced with similar problems in Texas and other circuits.

The fact is that this is not irreversible. This is not something where you say, "Well, we are going to break up the circuit and see if it works." In fact, it is just the opposite. It is an opportunity for the court, the Ninth Circuit, to, in fact, administratively make decisions that if they were to report back to us at the end of a reassigned period of time, was unwieldy, needed technical changes, or in fact, just simply did not work, it would not be hard for Congress to give them the authority to un-ring the bell.

Having said that, more than anything else, Mr. Nadler, what this does is it, in fact, creates three separate,

predictable, 11 or so judge en bancs. Meaning that it, in fact, gets a certain amount of congeniality between members. And for the map that I handed around, San Francisco and Reno would share. Montana and Idaho would share with Alaska, Oregon, and Washington. And in the case of Nevada and Northern California, you would also have Hawaii.

This would not be liberal-only or conservative-only but, in fact, very similar makeup between each of these, as far as the breakdown of liberal versus conservative, to what you have now. The difference is that the judges would meet together. They would be able to have cases on an ordinary basis in which three judges within the circuit would be able to predictably know that they were 3 of the 11, or 3 of the 11 plus a district court judge now and again that would be added. But they would all come with a region.

This is not to say that telework and other modern tools are not available. But as a practical reality, the courts do not, in fact, hold telephonic appellate activities. They use some of these skills to get witnesses, and so on. But judges routinely meet together, break bread together, and in fact, produce a --

Mr. Nadler. Would the gentleman yield?

Mr. Issa. -- of course.

Mr. Nadler. Thank you. Before asking my question, I would just point out that judges could use the telephone

more often and teleconferencing more often if they wanted to. But let me ask the following question.

Mr. Issa. Of course, congressman could change the Constitution and we could all stay home and vote remotely. But we do not because this kind of dialogue helps.

Mr. Nadler. Without getting into that, my real question is I look at these three divisions and you say that there would be panels in each division, obviously.

Mr. Issa. Right.

Mr. Nadler. But there are panels now. Most cases are handled, I gather, by three-judge panels. So, how would splitting the court into three divisions reduce the caseload? Or help manage the caseload?

Mr. Issa. It manages the caseload because you have a predictability of the judges. In other words, three-judge panels for the Northern District would come from Alaska, Oregon, Washington, Montana, and Idaho. The appellate 11 judges would come from that same subcircuit. There would be the predictability of these people working together.

Mr. Nadler. Would the gentleman further yield?

Mr. Issa. Yes, of course.

Mr. Nadler. The exception of the more rare en banc hearings of the court, as a practical matter, when you have three-judge courts administratively they could come from the north, from the south, from the middle, from whatever. I do

not see -- except for the en banc hearings, how does it make any practical difference.

Mr. Issa. Well, first of all, the concept is to run them like they were each a circuit for purposes. But as Justice White envisioned, there really is a fourth organization here which resolves disputes.

Mr. Nadler. To make it even more complicated.

Mr. Issa. Not really. You already have --

Mr. Nadler. You count on the ability to handle the caseload. No?

Mr. Issa. No. You already have an essentially senior judge who is overseeing the Ninth Circuit. There is nothing really unusual there. Congressman, this is really a question of do we offer a tool to be tested and reported back to us that we believe could cause a functional and permanent ability for the Ninth Circuit to operate with the same predictability. Not of decision, but a process as your own does. As you know --

Mr. Nadler. Would the gentleman yield for one further question?

Mr. Issa. Of course.

Mr. Nadler. Thank you. The chief judge of the Ninth Circuit, Sidney Thomas, wrote the following. I am not going to read the whole letter, but three sentences. "H.R. 6754 would mean additional significant cost to taxpayers. The

bill calls for each of the four divisions to be treated as a separate court, resulting in the need for additional judges and staff, chambers and office space, technology and security measures. Incurring these additional costs will not ensure a faster processing time or necessarily promote greater uniformity or predictability in outcomes." Why is he incorrect in that?

Mr. Issa. Well, first of all, there is significant less travel time in these divisions because people do operate within the divisions. Second of all, there is no additional courtroom, with the exception --

Mr. Nadler. There is no what?

Mr. Issa. There is no additional courtrooms required, with the possible exception of a greater number of en bancs. You are right that the mini en bancs are rare in the Ninth Circuit. They are less rare in other circuits, such as for you in New York. So, that might rise or fall. But the reality is it is the same number of judges. They work in a region. They have predictability. Congressman, here is the greatest question.

If we agree that splitting California into two separate circuits, it would be new ground that we do not how to resolve because you would have northern and southern single State under different laws. Then any solution that we come up that gets the number of judges reasonable would, in fact,

by definition split the States. California alone is larger than your circuit under the expanded judgeship that they are dealing with today.

So, here is why we go back to something the chairman said, and it was the most important reason this bill is right now. Would you like to have New York or other -- Massachusetts, whatever -- let's say the first and third circuits combined? Because any two circuits almost in the country combined are smaller than the Ninth Circuit. If the Ninth Circuit is more efficient because it is bigger, then you are less efficient because you are smaller. And I do not see anyone on anywhere on the dais suggesting that we combine two circuits, fold them together, to get greater efficiency. And I think that is at the crux of it.

I am a loyal Californian. I have looked at this problem for years. I am trying to blunt, if you will, the idea that conservative States simply roll themselves off into their own circuit and let California sink in favor of dealing with the too big problem but not necessarily admitting that there is such a thing too liberal.

So, your opening statement was meaningful to me because this is my proposed solution to exactly the argument you have made that others are making arguments based on ideology rather than arguments legitimately based on size. This division or one that might have different lines, and there

is going to be amendments offered that would allow the lines to potentially be different. And I am happy to have the court decide where the efficiency of those lines are. And with that, my time has expired. I yield back.

Chairman Goodlatte. Are there amendments to the amendment in the nature of a substitute? For what purpose does the gentleman from Arizona seek recognition?

Mr. Biggs. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 6754, offered by Mr. Biggs of Arizona. Strike section four --

[The amendment of Mr. Biggs follows:]

********** COMMITTEE INSERT **********

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

Mr. Biggs. Thank you, Mr. Chairman. And I thank the sponsor of the underlying bill for his willingness to work with me and cooperation as we have discussed and worked on this bill. I am always amused when those outside of the Ninth Circuit do not want to split it up. In particularly, I am intrigued by those who have never litigated nor been litigants in this overly large district.

It is not for political ideological grounds that most people want to see this split. As the gentleman from New York pointed out, there have been ideas for more than 70 years to try to split this district up. And why is it? It is because it is overly large. When two-thirds of Congress lives east of the Mississippi, it is perhaps hard to understand how vast the territory and the increasing population of this district is.

The district itself accounts for more than one-third of all pending appeals in the United States. It takes an average of 15 months to resolve a case, which is more than twice as long as the average circuit. We cannot get a true en banc hearing in this district. And as Mr. Issa and the chairman said, if this is such an ideal model, perhaps we should start looking at integrating and combining additional

districts.

There are at least four bills currently introduced in this House and an additional three in the Senate. The bills vary in how they comprise the new Ninth and Twelfth Circuits. But at least there is an agreement among many, particularly those in the west who are in this circuit, that a division is needed. I appreciate the efforts Representative Issa has made, particularly in his approach to using Justice White's approach. I believe it would be efficient and sound for the judicial system if States were not necessarily divided into separate districts.

And so, my amendment seeks to gain input from the Judicial Conference of the United States before a proposed division takes place. Within 1 year of enactment of the bill, the conference would be required to review this proposal and the other proposals that have been submitted to Congress and recommend the division that would be most preferable. The report may not recommend maintaining the status quo simply for the reasons that I have mentioned. The circuit is simply too large for Congress to consider that it be an ongoing viable solution. And I encourage my colleagues to support the amendment, and I yield back.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman from Arizona. And I support the amendment.

All those in favor respond by saying aye.

Those opposed, no.

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

That is just a study. So, the ayes have it and the amendment is agreed to. Are there further amendments to H.R. 6754?

Ms. Jayapal. Mr. Chairman?

Chairman Goodlatte. For what purpose does the gentleman from California seek recognition?

Mr. Lieu. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Lieu. Okay. I served as a law clerk on the Ninth Circuit and this legislation really is a bill in search of a problem. The Ninth Circuit is an excellent circuit with excellent judges. I get that it is a big circuit. Also, we have jet planes. Judges can fly around. It was not that big a deal when I was a law clerk. Planes are even more efficient now, over 2 decades later.

And I just think it is important not only to have submitted already into the record the letter from Chief Judge Sidney Thomas, but also to hear some of his concerns. Because we are not even splitting a circuit here. What we are doing is we are mandating this bizarre, Byzantine split within the circuit itself, where you have two different

regions within the State of California.

So, one of the things the Ninth Circuit does is it interprets the constitutionality of State law. If you have got the northern region take a position different than the southern region, then you have got to appeal that to the circuit within the circuit court that looks at that. We are talking about delaying justice even more. This adds a huge amount bureaucracy into the system. It adds additional staff, and cost, and resources. And it is going to actually make it much harder to manage this circuit.

I also know that this was done with zero studies. No study by the Ninth Circuit. No study by the Federal bar. No study by the State bar. No study by local bars. No study by industry. No studies at all. Someone just thought, "Hey, let's just put this bizarre mandate on the Ninth Circuit," that is opposed by the chief judge himself.

The other thing that people need to realize when you look at sort of the way the Ninth Circuit operates, and Ranking Member Nadler touched on this. You have technology. When I was a law clerk, judges would communicate to each other via email back then. We still have email now. There are telephones. And this whole notion that somehow because of geographic size we are going to mandate these additional subcircuits within the Ninth Circuit is just a bizarre response to really something that I am not even sure what

the exact problem is. So, I urge a no vote on this issue.

And I also do want to comment about the amendment offered by Mr. Biggs. I think it is appropriate to have the Judicial Conference put out the recommendations. It is clear to me he trusts the Judicial Conference. Totally bizarre to say the Judicial Conference cannot recommend not splitting the circuit if they actually think that is the best idea.

So again, the whole nature of this is trying to split this circuit without any studies, without any evidence that it would do anything. And the proposed solution would actually make things much worse for litigants. Increase how much time judges will take to decide cases, especially if they are appealed within this subcircuit. And it really is going to be very messy. So again, I urge a no vote. And with that, I yield back.

Ms. Jayapal. Mr. Chairman?

Chairman Goodlatte. For what purpose does the gentlewoman from Washington seek recognition?

Ms. Jayapal. Mr. Chairman, I have a an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to the amendment in the nature of a substitute to H.R. 6754, offered by Ms. Jayapal.

Beginning on Page 1 --

[The amendment of Ms. Jayapal follows:]

********** COMMITTEE INSERT **********

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

Ms. Jayapal. Thank you, Mr. Chairman. Let me pick up where my colleague, Mr. Lieu, just left off and recognize that I think that the author of the bill certainly has legitimate issues that he wants to raise. I think Mr. Biggs' amendment to have the judicial conference conduct a study was good, except the problem is that it is already mandated what cannot be a solution. And the act still takes place 2 years from the date of the enactment of the act.

And so, this bill to restructure the Ninth Circuit Court is based on recommendations from 1998. And I think instead of rushing into such a big change, my amendment would require the Federal Judicial Center to conduct a study on the effectiveness and the efficiency of the structure and operations of the Ninth Circuit but not do anything before that comes to us. Let them give us a full study, a full set of recommendations. Let's not prejudge what should or should not be in those recommendations. And let's not go ahead and enact an act when we do not even have those recommendations in hand.

Even the Judicial Conference of the United States, the national policymaking body for Federal courts, has spoken out in support of postponing markup of this bill, writing

that this bill together with the ROOM Act would have, in their words, "sweeping effects on judicial operations." The Ninth Circuit is the largest circuit, comprising nine States. It includes my home State of Washington and two territories. And changing that circuit would severely harm access to justice for 64.3 million people, nearly 20 percent of the U.S. population who reside in the circuit.

If we really do not know exactly what we are trying to achieve and what the effects of these changes would be, it could result in increased delays on the docket, exacerbate consistency problems, and expand huge startup costs. I am aware that the Ninth Circuit size is one reason why this bill has been brought forward, but it is the reason why -- the very reason why -- we should actually pause, carefully contemplate what should be done, base it on real, current, recent research rather than contemplating this bill, which was just introduced on Monday.

Splitting the Ninth Circuit is opposed by a large majority of judges serving on the Ninth Circuit, government officials, many legal groups, other stakeholders, including educators and labor. And Mr. Chairman, I seek unanimous consent to enter into the record a letter opposing this bill from over 100 organizations.

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

[The information follows:]

********** COMMITTEE INSERT **********

Ms. Jayapal. Thank you, Mr. Chairman. Congress has never before split a circuit over the advice of judges that adjudicate in that circuit or the bar associations that practice before the circuit. When the Fifth Circuit was split in 1981, legislation was introduced 2 months after a commission investigated a possible split. At the time, key stakeholders vehemently opposed the split, including some members of the court.

Congress passed legislation enacting the split several years later, once the bill had nearly complete support from stakeholders. So, that is what my amendment would put us on the path to do. I am willing to support my colleagues in looking into the matter and evaluating what makes sense after a study is complete. But I do not think that we should rush into a decision that could have devastating consequences.

So, I hope we can take a step back, Mr. Chairman, and work together with key stakeholders to fully evaluate the consequences of such a proposal. And I hope that my colleagues agree that we should not be legislating based on 20-year-old information. Thank you, Mr. Chairman.

Chairman Goodlatte. For what purpose does the gentleman from California seek recognition?

Mr. Issa. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5

minutes.

Mr. Issa. As well-meaning as this amendment might be, it effectively guts any effort to do anything other than to redo the White Commission Study. The subcommittee has done multiple hearings and meetings with parties, including the chief justice of the Supreme Court. So, we do believe that this is not a dusty old concept but, in fact, a well-thought-out process who becomes more and more important.

The gentlelady from Washington makes a valid point, which was we have never split up a circuit without buy-in from the circuit. We also have never split a State into two circuits. But one of the challenges today, as the chairman said so aptly in his opening, is that no one is saying we should combine two circuits so we could have a larger circuit. And yet, we have a circuit larger than virtually any two circuits that could be combined.

So, in opposing this amendment, I always prefer to suggest an alternative. There is nothing wrong with having up to 2 years before enactment. There is nothing wrong with having a formal report and asking for the Judicial Conference to come back to us with alternatives. And although there may be procedural basis to make sure that it can occur, there is nothing wrong with insisting on, if you will, that Congress make an up or down vote if there is an alternative proposed by them.

But I would suggest strongly to the gentlelady that an administrative -- nonbinding from a standpoint of precedent -- administrative breakup like this that impowers the Ninth Circuit to work in a predictable fashion should be considered as doable with the recognition that if the Judicial Conference wants to come back to us with changes, and certainly giving them 2 years before they would have to enact. And a year, as Mr. Biggs has now amended, before the first study -- I think you do have the opportunity to say, first year, you have Mr. Biggs' study. Certainly, you could have another set of alternatives from the Judicial Conference until 2 years and a full new Congress considering whatever alternatives they bring, that it would not be enacted.

But to do nothing when, in fact, this is simply an administrative concept that has been well-vetted by this committee, I think would be to abrogate our responsibility here today. So, I do support with some potential changes the gentlelady's suggestion. I just hope that she would realize that enactment of an administrative process is the alternative to those other pieces of legislation that literally irrevocably would break up the circuit. And with that, I yield back.

Chairman Goodlatte. The question occurs on the amendment offered by the gentlewoman from Washington.

All those in favor respond by saying aye.

Those opposed, no.

In the opinion of the chair, the noes have it and the amendment is not agreed to. Are there further amendments to the amendment in the nature of a substitute?

A reporting quorum being present, the question is on the motion to report the bill H.R. 6754 as amended favorably -- oh, wait a minute. We have to vote on the amendment in the nature of a substitute first.

So, the question occurs on the amendment offered by the gentleman from California.

All those in favor respond by saying aye.

Those opposed, no.

In the opinion of the chair, the ayes have it and the amendment in the nature of a substitute as amended is agreed to.

A reporting quorum being present, the question is on the motion to report the bill H.R. 6754 as amended favorably to the House.

All those in favor respond by saying aye.

Those opposed, no.

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

Mr. Nadler. Mr. Chairman?

Chairman Goodlatte. For what purpose does the

gentleman from New York seek recognition?

Mr. Nadler. I ask for a recorded vote.

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Adcock. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Mr. Smith?

[No response.]

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Adcock. Mr. Chabot votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Adcock. Mr. Issa votes aye.

Mr. King?

Mr. King. Aye.

Ms. Adcock. Mr. King votes aye.

Mr. Gohmert?

[No response.]

Mr. Jordan?

[No response.]

Mr. Poe?

[No response.]

Mr. Marino?

Mr. Marino. Yes.

Ms. Adcock. Mr. Marino votes yes.

Mr. Gowdy?

[No response.]

Mr. Labrador?

[No response.]

Mr. Collins?

[No response.]

Mr. Buck?

[No response.]

Mr. Ratcliffe?

[No response.]

Mrs. Roby?

Mrs. Roby. Aye.

Ms. Adcock. Mrs. Roby votes aye.

Mr. Gaetz?

[No response.]

Mr. Johnson of Louisiana?

Mr. Johnson of Louisiana. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Adcock. Mr. Biggs votes aye.

Mr. Rutherford?

Mr. Rutherford. Aye.

Ms. Adcock. Mr. Rutherford votes aye.

Ms. Handel?

Mrs. Handel. Aye.

Ms. Adcock. Ms. Handel votes aye.

Mr. Rothfus?

Mr. Rothfus. Aye.

Ms. Adcock. Mr. Rothfus votes aye.

Mr. Nadler?

Mr. Nadler. No.

Ms. Adcock. Mr. Nadler votes no.

Ms. Lofgren?

[No response.]

Ms. Jackson Lee?

[No response.]

Mr. Cohen?

Mr. Cohen. No.

Ms. Adcock. Mr. Cohen votes no.

Mr. Johnson of Georgia?

[No response.]

Mr. Deutch?

[No response.]

Mr. Gutierrez?

[No response.]

Ms. Bass?

[No response.]

Mr. Richmond?

[No response.]

Mr. Jeffries?

[No response.]

Mr. Cicilline?

[No response.]

Mr. Swalwell?

[No response.]

Mr. Lieu?

Mr. Lieu. No.

Ms. Adcock. Mr. Lieu votes no.

Mr. Raskin?

[No response.]

Ms. Jayapal?

Ms. Jayapal. No.

Ms. Adcock. Ms. Jayapal votes no.

Mr. Schneider?

Mr. Schneider. No.

Ms. Adcock. Mr. Schneider votes no.

Ms. Demings?

[No response.]

Chairman Goodlatte. The gentleman from Texas?

Mr. Ratcliffe. Yes.

Ms. Adcock. Mr. Ratcliffe votes yes.

Chairman Goodlatte. The gentleman from Texas?

Mr. Smith. I vote yes.

Ms. Adcock. Mr. Smith votes yes.

Chairman Goodlatte. The gentleman from Idaho?

Mr. Labrador. Yes.

Ms. Adcock. Mr. Labrador votes yes.

[Recess.]

Ms. Adcock. Not recorded.

Mr. Gaetz. Yes.

Ms. Adcock. Mr. Gaetz votes yes.

Mr. Buck. Yes.

Ms. Adcock. Mr. Buck votes yes. Mr. Chairman, 16 members voted aye. 5 members voted no.

Mr. Gaetz. [Presiding.] The ayes have it and the bill is ordered reported favorably to the House. Members will have 2 days to submit views. Without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments and staff authorized to make technical and conforming changes. The committee is adjourned.

[Whereupon, at 4:03 p.m., the committee was adjourned.]