

1 {York Stenographic Services, Inc.}

2 RPTS TOOT

3 HIF084.170

4 MARKUP ON H.R. \_\_\_\_\_, THE DATA BREACH SECURITY AND

5 NOTIFICATION ACT OF 2015

6 WEDNESDAY, MARCH 25, 2015

7 House of Representatives,

8 Subcommittee on Commerce, Manufacturing, and Trade

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 12:30 p.m.,  
12 in Room 2123 of the Rayburn House Office Building, Hon.  
13 Michael C. Burgess [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Burgess, Lance,  
15 Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger,  
16 Bilirakis, Brooks, Mullin, Upton (ex officio), Schakowsky,  
17 Clarke, Kennedy, Cardenas, Rush, Welch, and Pallone (ex  
18 officio).

19 Staff present: Nick Abraham, Legislative Clerk; Gary  
20 Andres, Staff Director; Charlotte Baker, Deputy  
21 Communications Director; Leighton Brown, Press Assistant;  
22 Karen Christian, General Counsel; James Decker, Policy  
23 Coordinator, CMT; Graham Dufault, Counsel, CMT; Melissa  
24 Froelich, Counsel, CMT; Kirby Howard, Legislative Clerk;  
25 Peter Kielty, Deputy General Counsel; Paul Nagle, Chief  
26 Counsel, CMT; Graham Pittman, Staff Assistant; Charlotte  
27 Savercool, Legislative Clerk; Adrianna Simonelli, Legislative  
28 Clerk; Olivia Trusty, Professional Staff, CMT; Jessica  
29 Wilkerson, Legislative Clerk; Ziky Ababiya, Democratic Policy  
30 Analyst; Michelle Ash, Democratic Chief Counsel, Commerce,  
31 Manufacturing, and Trade; Jen Berenholz, Democratic Chief  
32 Clerk; Jeff Carroll, Democratic Staff Director; Lisa Goldman,  
33 Democratic Counsel; Brendan Hennessey, Democratic Policy and  
34 Research Advisor; Ashley Jones, Democratic Director, Outreach  
35 and Member Services; and Tim Robinson, Democratic Chief  
36 Counsel.

|  
37 H.R. \_\_\_\_

38 12:30 p.m.

39 Mr. {Burgess.} At the conclusion of opening statements  
40 yesterday, the Chair called up the Committee print, and the  
41 bill was open for amendment at any point. Are there any  
42 bipartisan amendments to the bill?

43 Mr. {Welch.} Mr. Chairman, I believe Manager's  
44 Amendment #2 is a bipartisan amendment.

45 Mr. {Burgess.} Does gentleman seek recognition for the  
46 purpose of offering the amendment?

47 Mr. {Welch.} Yes, I do.

48 Mr. {Burgess.} Very well. The Clerk will report the  
49 amendment.

50 The {Clerk.} Amendment to the discussion draft, offered  
51 by Mr. Welch and Chairman Burgess.

52 [The amendment of Mr. Welch and Mr. Burgess follows:]

53 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
54           Mr. {Burgess.} Without objection, the reading of the  
55 amendment is dispensed with, and the gentleman is recognized  
56 for 5 minutes in support of the amendment.

57           Mr. {Welch.} My understanding, Mr. Chairman, is that  
58 these are largely technical amendments, and I would yield to  
59 the Chairman to give an explanation of the content of  
60 Manager's #2.

61           Mr. {Burgess.} Thank the gentleman for yielding. This  
62 amendment does make technical corrections to clarify language  
63 of the bill around who is covered, and around publicly  
64 available language.

65           Does any other member seek recognition on the amendment?

66           Mr. {Welch.} Mr. Chairman?

67           The {Clerk.} Yes, gentleman from Vermont.

68           Mr. {Welch.} Thank you. If I could just ask a few  
69 questions of Counsel to clarify some issues that have been  
70 presented to me by some of my colleague?

71           Mr. {Burgess.} The gentleman is recognized.

72           Mr. {Welch.} The first question to Counsel, does this  
73 bill, as drafted, preempt state laws as it relates to  
74 privacy?

75           {Counsel.} Mr. Congressman, no. The plan language of  
76 the tax limits the draft's application to data security

77 requirements and breach notification requirements.

78 Mr. {Welch.} Thank you. Second, does this bill preempt  
79 the Federal Communications Commission's ability to regulate  
80 privacy as it currently does?

81 {Counsel.} No. Again, the plain language of the draft  
82 is specifically limited to data security and breach  
83 notification requirements.

84 Mr. {Welch.} Thank you. Number three, specifically,  
85 does this bill preempt the FCC's ability to regulate privacy  
86 of, and prohibit the disclosure of cable and satellite  
87 companies as it relates to an individual's viewing habits?

88 {Counsel.} No. The cable and satellite providers would  
89 not be relieved of their duty under existing rules to not  
90 disclose a subscriber's viewing habits.

91 Mr. {Welch.} Okay. My final question, Counsel, does  
92 this bill preempt the Federal Communications Commission's  
93 ability to implement the recent Open Internet order?

94 {Counsel.} No. The language of the draft imports the  
95 definition on a carrier from the Communications Act and  
96 applies it to this draft.

97 Mr. {Welch.} I thank Counsel for those answers. Mr.  
98 Chairman, I yield back.

99 Mr. {Burgess.} Gentleman yields back. Is there further  
100 discussion on the amendment?

101           If there is no further discussion, the vote occurs on  
102 the amendment. All those in favor shall signify by saying  
103 aye.

104           All those opposed, nay.

105           The ayes appear to have it. The ayes have it, and the  
106 amendment is agreed to.

107           Are there further bipartisan amendments to the bill?

108           Mr. {Pompeo.} Mr. Chairman, I have an amendment I  
109 believe is bipartisan. It is amendment 03.

110           Mr. {Burgess.} Chairman is--gentleman is recognized.

111           Mr. {Pompeo.} Thank you, Mr. Chairman.

112           Mr. {Burgess.} Beg your pardon, the Clerk will report  
113 the amendment.

114           The {Clerk.} Amendment to the discussion draft offered  
115 by Mr. Pompeo and Mr. Welch.

116           [The amendment of Mr. Pompeo and Mr. Welch follows:]

117           \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
118           Mr. {Burgess.} Without objection, the reading of the  
119 amendment is agreed to. The gentleman is recognized on his  
120 amendment.

121           Mr. {Pompeo.} Thank you, Mr. Chairman. Last week, at  
122 the legislative hearing on data breach, there was lots of  
123 discussion about the proper party, about the third party  
124 notice provision that was contained in the base text. In  
125 particular there were questions raised about which party  
126 should provide notice to affected individuals when a breach  
127 covered entity who handles data for another non-breach  
128 covered entity suffers a breach. All four of the witnesses  
129 at the CMT's first hearing back in January supported a rule  
130 that the breached party--the breached third party should be  
131 responsible for providing notice under the bill.

132           And then again last week--just last week we received  
133 written testimony and heard oral statements at the  
134 legislative hearing that the bill--that the third party  
135 notice provision of the discussion as drafted could lead to  
136 significant over-notification of consumers. Frankly, another  
137 benefit too is that we require all breached entities to have  
138 the same legal burden to provide notice after a breach is  
139 that it provides strong incentives for all companies to  
140 improve data security itself in order to avoid having to make

141 public notice of their breaches.

142 I do understand that there are still some outstanding  
143 concerns with the amendment I am offering today. I look  
144 forward to working with my colleagues to address any of the  
145 possible issues they might have before we move to full  
146 Committee markup. I yield back, Mr. Chairman.

147 Mr. {Burgess.} Gentleman yields back. Further  
148 discussion on the amendment? Gentleman from Vermont is--

149 Mr. {Welch.} Thank you. I think, Mr. Pompeo, this  
150 language is important and helpful, and with the assurance,  
151 too, that we are going to have an opportunity to further  
152 refine this language and make sure that it achieves the  
153 shared goal on third party notification, and make certain  
154 that it doesn't have any unknown adverse impact on consumers  
155 or others. I fully support this amendment. Thank the  
156 gentleman for his effort.

157 Mr. {Burgess.} The gentleman yields back. Further  
158 discussion on the amendment? If there is no further  
159 discussion, all those in favor shall signify by saying aye.

160 All those opposed, nay.

161 The ayes appear to have it. The ayes have it. The  
162 amendment is agreed to.

163 Further bipartisan amendments? Mr. Cardenas is  
164 recognized for the--

165 Mr. {Cardenas.} Thank you very much. I have two  
166 amendments, the first one being on education and outreach.

167 Mr. {Burgess.} The Clerk will report the amendment.

168 The {Clerk.} I am sorry, could you please designate by  
169 the language at the top--

170 Mr. {Cardenas.} Education and outreach. Section 7,  
171 education and outreach.

172 The {Clerk.} All right. Amendment to discussion draft  
173 offered by Mr. Cardenas and Ms. Blackburn.

174 [The amendment of Mr. Cardenas and Mrs. Blackburn  
175 follows:]

176 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
177           Mr. {Burgess.} Without objection, the reading of the  
178 amendment is dispensed with, and the gentleman is recognized  
179 for 5 minutes in support of his amendment.

180           Mr. {Cardenas.} Thank you very much. I appreciate the  
181 support by Congresswoman Blackburn--bipartisan nature of this  
182 effort. And the amendment is basically education and  
183 outreach for small businesses. The Commission shall conduct  
184 education and outreach for small business concerns on data  
185 security practices, and how to prevent hacking, and other  
186 unauthorized access, acquisition of, or use of data  
187 maintained by such small business concerns.

188           It is pretty self-explanatory, and I just--I think it  
189 would be good practice for the Commission to assist those who  
190 need that kind of support. Thank you. I yield back.

191           Mr. {Burgess.} The gentleman yields back. Is there  
192 further discussion on the amendment? The gentlelady from  
193 Tennessee is recognized.

194           Mrs. {Blackburn.} Thank you, Mr. Chairman. I just want  
195 to thank Mr. Cardenas for bringing the amendment forward.  
196 This is an area where we can all agree it is important for  
197 the FTC to engage with small businesses, who may be  
198 unfamiliar with some of the data security protocols. And I  
199 thank him for the amendment, and yield back.

200 Mr. {Burgess.} Gentlelady yields back. Further  
201 discussion on the amendment? If there is no further  
202 discussion, the vote, then, occurs on the amendment.

203 All those in favor shall signify by saying aye.

204 All those opposed nay. The ayes have it. The amendment  
205 is agreed to.

206 Further bipartisan amendments? For what purpose does  
207 the gentleman from California seek recognition?

208 Mr. {Cardenas.} I have an amendment on website--on data  
209 security best practices.

210 Mr. {Burgess.} Clerk will report.

211 The {Clerk.} Amendment to the discussion draft offered  
212 by Mr. Cardenas and Ms. Blackburn.

213 [The amendment of Mr. Cardenas and Mrs. Blackburn  
214 follows:]

215 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
216           Mr. {Burgess.} Without objection the reading of the  
217 amendment is dispensed with, and the gentleman is recognized  
218 for 5 minutes in support of his amendment.

219           Mr. {Cardenas.} Thank you very much. As Congress  
220 continues to work towards addressing preventative measures to  
221 secure Americans' data and cybersecurity, this bill is a step  
222 in the right direction. Also, it ensures that there is a  
223 standard of notification for all Americans. For example, in  
224 my state of California, we have strong personal information  
225 protections that trigger for notifications that protects all  
226 consumer equally, and much stronger notifications  
227 requirements. Because, when our personal information as it  
228 risk, we should be given as much time to protect ourselves as  
229 possible.

230           And, in that spirit, I think it is important that--I  
231 appreciate the support, once again, of Congresswoman  
232 Blackburn on this amendment, on website and data security  
233 best practices. The Commission--it reads very simply, the  
234 Commission shall establish and maintain an Internet website  
235 containing non-binding best practices for businesses  
236 regarding data security, and how to prevent hacking, and  
237 other unauthorized access to, acquisition of, or use of data  
238 maintained by such businesses. I yield back.

239 Mr. {Burgess.} The Chair would ask the gentleman from  
240 California if he would be willing to yield to Ms. Blackburn.

241 Mr. {Cardenas.} Yes.

242 Mrs. {Blackburn.} I--

243 Mr. {Burgess.} The gentlelady is recognized.

244 Mrs. {Blackburn.} Thank you, Mr. Chairman, and again I  
245 thank the gentleman from California. One of the components  
246 we have discussed regularly, as we have talked about data  
247 security and breaches, is the need for public information and  
248 ready access to that information, and also for industry to  
249 work with the FTC in the establishment of best practices and  
250 protocols. So I thank him for the amendment, and I  
251 appreciate his diligence and his work, and I yield back.

252 Mr. {Burgess.} The gentlelady yields back. Any further  
253 discussion on the amendment? Seeing none, the vote then  
254 occurs on the amendment.

255 All those in favor shall signify by saying aye.

256 All those opposed, nay.

257 Opinion of the Chair, the ayes appear to have it. The  
258 ayes have it, and the amendment is agreed to. Are there  
259 further bipartisan amendments? Are there any other  
260 amendments?

261 Mr. {Pompeo.} Mr. Chairman, I have an amendment at the  
262 desk.

263 Mr. {Burgess.} Gentleman from Kansas is recognized for  
264 the purpose of offering an amendment.

265 Mr. {Pompeo.} Thank you. The amendment is numbered 01.

266 Mr. {Burgess.} The Clerk will report.

267 The {Clerk.} Amendment to the discussion draft offered  
268 by Mr. Pompeo.

269 [The amendment of Mr. Pompeo follows:]

270 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
271           Mr. {Burgess.} Without objection, the reading of the  
272 amendment is dispensed with, and the gentleman is recognized  
273 for 5 minutes in support of his amendment.

274           Mr. {Pompeo.} Thank you, Mr. Chairman. During last  
275 week's hearing there was lots of discussion about some  
276 language that is in the bill, page 24, line six through 10,  
277 that is bracketed language having to do with an exemption  
278 from the preemption provision for common law causes of  
279 action. During the data breach discussion, witnesses  
280 highlighted lots of concerns with the language that preserved  
281 a covered entity's liability under common law. This is very  
282 troubling. This is an open gate in the preemption language  
283 that I am very concerned about.

284           The inclusion of this language in the enforcement  
285 section that specifically states a private cause of action  
286 cannot be brought against a covered entity for a violation of  
287 this Act is eliminated if common law causes of action are  
288 permitted to be brought forward by class action plaintiffs,  
289 undermining the--one of the core premises of this language.  
290 I--or of the bill.

291           I understand that there are lots of discussions taking  
292 place. I will withdraw this amendment today, but intend to  
293 work hard to make sure that this language is modified before

294 this legislation moves forward to full committee. And with  
295 that, I withdraw the offer of this amendment.

296 Mr. {Burgess.} Without objection, the amendment is  
297 withdrawn. The Chair wishes to thank the gentleman for  
298 bringing this to our attention, and his ability to--his  
299 willingness to work with the Subcommittee staff.

300 Are there further amendments?

301 Ms. {Clarke.} Mr. Chairman--

302 Mr. {Burgess.} Gentlelady is recognized.

303 Ms. {Clarke.} --I have an amendment at the desk.

304 Mr. {Burgess.} Clerk will report.

305 Ms. {Clarke.} This is the PI rule.

306 The {Clerk.} Amendment to the discussion draft offered  
307 by Ms. Clarke.

308 [The amendment of Ms. Clarke follows:]

309 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
310           Mr. {Burgess.} Without objection, the reading of the  
311 amendment is dispensed with, and gentlelady is recognized for  
312 5 minutes in support of her amendment.

313           Ms. {Clarke.} I thank you, Mr. Chairman. The draft  
314 bill includes a limited and finite list of types of  
315 information that is personal information. Only the types of  
316 information in that short list are required to be secured  
317 under the data security section of the bill. And for there  
318 to be a requirement that any consumer ever hear about their  
319 personal information being breached, that information has to  
320 fit within the bill's definition of personal information, and  
321 be related to identity theft or financial harm.

322           I think that the bill's definition of financial--excuse  
323 me, of personal information is far too limited. It does not  
324 cover, for example, health information, or geolocation, or  
325 other types of information currently covered under some state  
326 laws. And even if we agree that the list of what is personal  
327 information be limited to those data related to identity  
328 theft or financial harm, the definition in the bill is still  
329 too narrow.

330           As we have seen, the methods of hacking change and adapt  
331 as some holes are plugged, and criminals become more  
332 sophisticated. The types of information that is valuable for

333 identity theft changes over time. With the recent breaches  
334 of the--and Primera, we are learning that health and medical  
335 information are becoming more valuable to criminals than  
336 credit card information. And as I said, health and medical  
337 information is not covered by the draft bill.

338         So as we have heard throughout this Subcommittee's  
339 hearings on this subject, the data security and breach  
340 notification law must be flexible and adaptable. The  
341 amendment I am offering today will provide the FTC with  
342 rulemaking authority to change the definition of personal  
343 information as needed. We have heard that this bill is  
344 narrowly targeted to protect the information that is valuable  
345 to criminals, but that changes over time, and the enforcers  
346 must be able to change with it.

347         With that, Mr. Chairman, I yield back.

348         Mr. {Burgess.} Gentlelady yields back. Is there anyone  
349 seeking discussion of the amendment? Well, the Chair will  
350 recognize himself first, if that is all right.

351         The draft legislation that is--recognize myself for 5  
352 minutes. The draft legislation clearly defines what is  
353 considered personal information, without ceding unnecessary  
354 authority to the Federal Trade Commission to expand that  
355 definition. Nothing in the draft takes away Congress's  
356 ability to change the definition of personal information.

357 Nothing takes away the Federal Trade Commission's existing  
358 authority, its ability to obtain injunctions, consent  
359 decrees, or investigate unfair or deceptive trade practices.  
360 That remains untouched. It is outside the scope of this  
361 bill.

362 I will yield to the gentlelady from Indiana--from  
363 Illinois.

364 Ms. {Schakowsky.} Before I comment on this amendment, I  
365 just want to point out for the record that last--at our last  
366 hearing Mr. Johnson, of the Federal Communications  
367 Commission, and Laura Moy of the Open Technology Institute  
368 testified very differently what Counsel responded to Mr.  
369 Welch regarding the FCC requirement to secure information,  
370 such as viewing habits, and maintaining consumer privacy.  
371 Wanted to make sure that that disagreement, at least, was  
372 registered.

373 But regarding the Clarke amendment, I want to strongly  
374 support it. The legislation lists specific types of  
375 information as personal, and subject to the terms of the  
376 bill. Not included in those terms are new and evolving forms  
377 of information. Geolocation, where you are, and information  
378 not completely covered by other data protection laws, such as  
379 health information. This amendment would address those  
380 shortcomings by providing the FTC with the rulemaking

381 authority needed to amend and enhance the definition of  
382 personal information as needed to adequately protect consumer  
383 data.

384         Geolocation information can be used to pinpoint the  
385 location of an individual, his or her regular movement  
386 patterns and home address, among other information. And as I  
387 said last week, no one would have thought to include  
388 geolocation in the definition of personal information just a  
389 few years ago. In fact, the Committee did not include  
390 geolocation data when the House passed the Data Act in 2009.  
391 The states are increasingly considering geolocation data as  
392 personal in nature. Recently introduced legislation in  
393 Illinois would require businesses to notify consumers if  
394 geolocation information is breached.

395         I don't know, and none of us knows, what the future of  
396 data will hold, or whether and how that data could be used to  
397 identify the--any individual. That is one reason why we need  
398 to provide the FTC with that authority. Health information  
399 might also be used to identify an individual, and, more  
400 importantly, access to that information by an unauthorized  
401 source could lead to financial or other types of harm.

402         The Health Insurance Portability and Accountability Act,  
403 HIPAA, protects data collected by health care providers,  
404 health plans, and other entities that process health

405 insurance claims, as well as contractors--subcontractors for  
406 those entities. But HIPAA does not cover over the counter  
407 drugs, Internet searches for health data, medical record--  
408 medical related social networks, purchases of health related  
409 products through online retailers, or retail store  
410 preferences and locations.

411 Recognizing that vulnerability, states included--  
412 including Florida and Texas have included health related  
413 information as protected personal information under their  
414 consumer protection statutes. The FTC has the expertise to  
415 ensure the gaps in HIPAA can be addressed by this legislation  
416 through a rulemaking process. I think that these two  
417 examples make clear that the FTC must have the authority to  
418 amend the definition of personal information, and I would  
419 urge my colleagues to support this amendment. I yield back.

420 Mr. {Burgess.} Gentlelady yields back. Anyone seeking  
421 further time? Gentleman from New Jersey is recognized.

422 Mr. {Pallone.} Thank you, Mr. Chairman. I support the  
423 amendment from the gentlewoman from New York. One of the  
424 biggest flaws in this bill is the definition of personal  
425 information. The current definition will limit the  
426 protections to a narrow set of information, while preempting  
427 stronger state laws that contain more robust definitions of  
428 personal information. This bill does not require protection

429 of health or e-mail and password combinations, both of which  
430 are protected by some state laws. In addition to displacing  
431 stronger state laws, such a narrow definition actually could  
432 hurt current efforts to curb data breaches.

433 Enforcement actions have already been brought based on  
434 companies' failures to properly protect consumers' personal  
435 information, such as payroll information, employer histories,  
436 health information, mortgage information, e-mail addresses,  
437 income histories, book and music purchase information, tax  
438 returns, and more. None of these kinds of personal  
439 information would be covered by this bill, and a breach of  
440 these kinds of information, which could lead to devastating  
441 effects to the people whose information is stolen would not  
442 be subject to enforcement for either a failure of security or  
443 failure to notify.

444 Another issue here is what would be considered personal  
445 information in the future. This Committee has been working  
446 on data breach legislation for years now, and in that time  
447 the types of information that is considered personal  
448 information has evolved. Biometric data, for example, was  
449 not considered just a few years ago. But as technology  
450 changes, and criminals get more sophisticated, so do the  
451 types of personal information that should be protected, and  
452 this bill should be flexible enough to allow for changes over

453 time.

454           So I support this amendment because it gives the Federal  
455 Trade Commission rulemaking authority to change the  
456 definition of personal information over time, and to develop  
457 and adjust with the needs of the times. I urge my colleagues  
458 to support the Clarke amendment, and I yield back.

459           Mr. {Burgess.} Gentleman yields back. Does anyone seek  
460 further time on the amendment? If not, the vote occurs on  
461 the amendment.

462           All those in favor shall signify by saying aye.

463           All those opposed, nay.

464           The nays appear to have it. Gentleman is recognized.

465 The gentleman wish a roll call vote? Clerk will report.

466           The {Clerk.} Mr. Lance?

467           Mr. {Lance.} No.

468           The {Clerk.} Mr. Lance votes no.

469           Ms. Blackburn?

470           Mrs. {Blackburn.} No.

471           The {Clerk.} Ms. Blackburn votes no.

472           Mr. Harper?

473           Mr. {Harper.} No.

474           The {Clerk.} Mr. Harper votes no.

475           Mr. Guthrie?

476           Mr. {Guthrie.} No.

477 The {Clerk.} Mr. Guthrie votes no.  
478 Mr. Olson?  
479 Mr. {Olson.} No.  
480 The {Clerk.} Mr. Olsen votes no.  
481 Mr. Pompeo?  
482 Mr. {Pompeo.} No.  
483 The {Clerk.} Mr. Pompeo votes no.  
484 Mr. Kinzinger?  
485 Mr. {Kinzinger.} No.  
486 The {Clerk.} Mr. Kinzinger votes no.  
487 Mr. Bilirakis?  
488 Mr. {Bilirakis.} No.  
489 The {Clerk.} Mr. Bilirakis votes no.  
490 Ms. Brooks?  
491 Mrs. {Brooks.} No.  
492 The {Clerk.} Ms. Brooks votes no.  
493 Mr. Mullin?  
494 Mr. {Mullin.} No.  
495 The {Clerk.} Mr. Mullin votes no.  
496 Chairman Upton?  
497 The {Chairman.} No.  
498 The {Clerk.} Chairman Upton votes no.  
499 Ms. Schakowsky?  
500 Ms. {Schakowsky.} Aye.

501 The {Clerk.} Ms. Schakowsky votes aye.  
502 Ms. Clarke?  
503 Ms. {Clarke.} Aye.  
504 The {Clerk.} Ms. Clarke votes aye.  
505 Mr. Kennedy?  
506 Mr. {Kennedy.} Aye.  
507 The {Clerk.} Mr. Kennedy votes aye.  
508 Mr. Cardenas?  
509 Mr. {Cardenas.} Aye.  
510 The {Clerk.} Mr. Cardenas votes aye.  
511 Mr. Rush?  
512 Mr. {Rush.} Aye.  
513 The {Clerk.} Mr. Rush votes aye.  
514 Mr. Butterfield?  
515 [No response.]  
516 The {Clerk.} Mr. Welch?  
517 [No response].  
518 The {Clerk.} Mr. Pallone?  
519 Mr. {Pallone.} Aye.  
520 The {Clerk.} Mr. Pallone votes aye.  
521 Chairman Burgess?  
522 Mr. {Burgess.} Chair votes no.  
523 The {Clerk.} Chairman Burgess votes no.  
524 Mr. {Burgess.} Does any member wish to change their

525 vote? The Clerk will report the result.

526 The {Clerk.} Mr. Chairman, on that vote there were  
527 seven ayes and 12 nays.

528 Mr. {Burgess.} The amendment is not agreed to. Are  
529 there further amendments?

530 Mr. {Rush.} Mr. Chairman?

531 Mr. {Burgess.} Is the gentleman--for purposes--  
532 gentleman--

533 Mr. {Rush.} Mr. Chairman, I have an amendment at the  
534 desk.

535 Mr. {Burgess.} --recognition. The Clerk will report.

536 Mr. {Rush.} 001, concurrent jurisdiction.

537 The {Clerk.} Congressman, is it the provider amendment  
538 or the carrier amendment?

539 Mr. {Rush.} This is the carrier amendment. It is--

540 The {Clerk.} Amendment to discussion draft offered by  
541 Mr. Rush.

542 Mr. {Rush.} Right.

543 [The amendment of Mr. Rush follows:]

544 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
545           Mr. {Burgess.} Without objection, the reading of the  
546 amendment is dispensed with, and the gentleman is recognized  
547 for 5 minutes in support of his amendment.

548           Mr. {Rush.} Thank you, Mr. Chairman. Mr. Chairman, if  
549 this draft bill were enacted, the regulatory and enforcement  
550 authority over data security and breach notification  
551 currently granted to the FCC under certain sections of the  
552 Communications Act and its regulations will have absolutely  
553 no force or effect. The data security and breach  
554 notification protections under the Communications Act are  
555 broader than the protections afforded under this draft.

556           The Communications Act provides security protections for  
557 information regarding the telecommunications and VOIP  
558 subscribers' use of the service, but this draft does not  
559 provide security protections for all of that information. In  
560 addition, the Communications Act provides security  
561 protections for information regarding cable and satellite  
562 subscriber services, and use of those services. This draft  
563 does not provide security protections for any of that  
564 information. This draft bill also voids breach notification  
565 obligations under the Communications Act and its regulations.

566           Mr. Chairman, my amendment would simply delete Section  
567 6(c) of the draft bill and allow the FCC to continue to

568 regulate data security and breach notification for providers  
569 of telecommunications, VOIP, cable, and satellite services.  
570 My amendment further ensures that carriers will not have  
571 notice obligations under both the FTC and the FCC. If a  
572 carrier provided notice of a breach under this bill, it would  
573 not have to provide notice under the Communications Act.

574 With that, Mr. Chairman, I ask that my amendment receive  
575 an affirmative vote by members of this Subcommittee, and I  
576 yield back the balance of my time.

577 Mr. {Burgess.} The gentleman yields back. The Chair  
578 will recognize himself for 5 minutes for the purposes of--  
579 striking the last word.

580 So the draft before us today is not a privacy draft. It  
581 does nothing to preempt privacy, but it is not a privacy  
582 draft. And just to reiterate, the scope of the bill is  
583 limited to information that is directly tied to identity  
584 theft and financial fraud. Federal law exists addressing the  
585 privacy of users and their viewing habits, in the Video  
586 Privacy Protection Act. That Act, the Video Privacy  
587 Protection Act, regulates what a company like Netflix can  
588 allow their users to share their viewing history. An over  
589 the top video provider, such as Netflix or Hulu, cannot share  
590 a user's viewing history without their express consent.

591 This issue is a perfect example of a privacy statute

592 that deals directly with permissible uses of an individual's  
593 information that is directly outside the scope of this draft  
594 for discussion before the Subcommittee. To the extent that  
595 there are concerns about the scope of the Video Privacy  
596 Protection Act, those concerns are best dealt with in  
597 legislation that would be considered by the Judiciary  
598 Committee, Telecom Subcommittee.

599 I will yield back my time, and ask--

600 Mr. {Rush.} Chairman--Mr. Chairman, I just respectfully  
601 disagree with you. I think that what we have now--if this  
602 bill were to pass, there wouldn't--you--and anything--what  
603 you would be doing is preventing the FCC from enforcement of  
604 its now--provisions for privacy. With this bill, where are--  
605 you seem to maintain that we are--this is not a privacy bill,  
606 but if this bill passed as it is, then this bill steps right  
607 into the middle of the privacy guarantees, and the privacy  
608 authority that the FCC currently have.

609 So there is no way to say, well, this is not a privacy  
610 matter, privacy is not a topic of this discussion, and at the  
611 same time you are preventing the stated authority and the  
612 current authority that the FCC currently have as it relates  
613 to enforcement of privacy. So you are in the middle of it.  
614 There is no way out of it. You are in the middle of it. We  
615 are--

616 Mr. {Burgess.} Reclaiming my time, and the gentleman's  
617 objections are noted, it is unclear how his amendment  
618 improves consumer protections in the bill. Under our  
619 definition, the carriers are required to safeguard the  
620 information, including the number dialed, the number from  
621 which a call was placed, and the time and duration of calls.

622 I will yield back my time, and recognize the gentlelady  
623 from Illinois--

624 Ms. {Schakowsky.} Well, I--

625 Mr. {Burgess.} For what purposes does the lady from  
626 Illinois seek--

627 Ms. {Schakowsky.} I--to strike the last word, please.

628 Mr. {Burgess.} Gentlelady is recognized.

629 Ms. {Schakowsky.} I want to first thank Mr. Rush,  
630 because he has been working on this kind of legislation for  
631 many years now, in conjunction with the former Chairman of  
632 the Committee, Joe Barton, and I support his amendment.

633 The bill would move authority over telecommunications,  
634 voice over Internet protocol, VOIP, satellite and cable data  
635 security, and breach notification from the FCC to the FTC,  
636 but in doing so, FCC regulatory and enforcement authority  
637 under certain sections of the Communications Act would have  
638 no force or effect.

639 The Communications Act provides security protections for

640 information regarding telecommunications, VOIP, cable, and  
641 satellite subscribers' use of the service, but this bill does  
642 not provide security protections for all of that information.  
643 It covers only ``the location of number from which and to  
644 which a call is placed, and the time and duration of such  
645 call.''

646 As Mr. Johnson for the FCC testified last week, the  
647 number of calls a person has made, peak calling periods, the  
648 time of day the calls are typically made, call waiting, or  
649 caller ID services, financial status of account holders,  
650 Federal assistance programs in which the customers are  
651 enrolled, TV shows watched on cable would not be protected  
652 under the bill.

653 This amendment is simple. It maintains FCC's existing  
654 authority to protect telecommunications, VOIP, cable, and  
655 satellite customers, as it currently does. The rest of the  
656 bill and its authorities would remain intact. I urge my  
657 colleagues to support this amendment, and I yield back.

658 Mr. {Rush.} Would the gentlelady yield? The Ranking  
659 Member will yield?

660 Ms. {Schakowsky.} I would be happy to yield to Mr.  
661 Rush.

662 Mr. {Rush.} Yeah. I--thank you for yielding. I want  
663 to ask the alleged Counsel a question. Do you have an

664 interpretation of the discussion draft's effect on the FCC's  
665 authority to exercise its privacy regulations under the  
666 Communications Act?

667 {Counsel.} Mr. Congressman, the language of the draft  
668 legislation, specifically Section 6(c), designates that the  
669 scope of the regulations listed are actually limited to data  
670 security and breach notification requirements, as opposed to  
671 any other requirements in those sections, and preserves the  
672 FCC's authority under the sections.

673 Mr. {Rush.} Are you saying, then, only in respect to  
674 data security? Do you have any language, or any information,  
675 or any--have there been any discussion about viewing habits?

676 {Counsel.} In regards to viewing habits, the  
677 interpretation that has been given in these instances, there  
678 is one case that we are aware of where viewing habits for  
679 information that was contained in a set top box was not  
680 considered personal information under the CPNI rules, and  
681 that is our understanding of the scope.

682 Mr. {Burgess.} Chair thanks the gentleman, gentleman  
683 yields back. Further discussion on the amendment? The  
684 gentleman from New Jersey is recognized. Gentleman from New  
685 Jersey seek to strike the last word? Gentleman is recognized  
686 for 5 minutes.

687 Mr. {Pallone.} Thank you, Mr. Chairman, and I want to

688 speak in support of the amendment from the gentleman from  
689 Illinois. While we have heard that the purpose of this draft  
690 bill is to ensure uniformity of standards for data security  
691 and breach notification, the preemption of certain provisions  
692 of the Communications Act and associated regs--regulations in  
693 Section 6(c) goes against that purpose, in my opinion.

694         Currently the Communications Act includes a number of  
695 provisions that place obligations on telecommunications,  
696 VOIP, satellite and cable service providers to protect  
697 consumer information from disclosure, and this includes  
698 viewing history, OnDemand purchases, IP addresses, Medicaid,  
699 SNAP status, how many calls made to a certain number for  
700 customer future preferences, locations, and passwords.

701         The customer information protected by Sections 201, 202,  
702 222, 338, and 631 of the Communications Act would no longer  
703 have to be protected if this bill becomes law, and carriers  
704 would no longer be obligated to notify consumers if that info  
705 is compromised. Furthermore, this bill could hamper FCC's  
706 privacy portfolio.

707         While I appreciate the effort in Section 6(c) to limit  
708 the preemption to data security and breach notification only,  
709 instead of also preempting all privacy protections in the  
710 Communications Act, we have heard from the FCC itself that  
711 separating data security from privacy is virtually

712 impossible. If the bill passes, the FCC will continue to  
713 require carriers to get consent before sharing customer  
714 information, but the FTC, in enforcing the security  
715 provisions of this Act, would not be allowed to require that  
716 info to be secured, leaving the info exposed to be shared  
717 with anyone.

718 I also want to point out that this amendment does not  
719 remove the provisions of the bill that gives the FTC  
720 authority to enforce this bill against common carriers.  
721 Instead of weakening protections, this amendment would put  
722 two cops on the beat, and ultimately strengthen consumer  
723 safeguards.

724 And as I have said repeatedly, Mr. Chairman, our goal  
725 for legislation should always be putting people in a better  
726 place than they are today. Weakening the protections over  
727 the personal information of telecommunications, VOIP,  
728 satellite, and cable subscribers does not meet that goal.  
729 And, therefore, I support the Rush amendment to strike this  
730 preemption from the bill to ensure that consumers and their  
731 personal information continues to be properly protected. And  
732 I would yield back.

733 Mr. {Burgess.} Gentleman yields back. Further  
734 discussion on the amendment? Seeing none, the vote occurs on  
735 the amendment.

736 All those in favor shall signify by saying aye.  
737 Those opposed nay.  
738 Request--there is a request for a roll call vote. Clerk  
739 will call the roll.  
740 The {Clerk.} Mr. Lance?  
741 Mr. {Lance.} No.  
742 The {Clerk.} Mr. Lance votes no.  
743 Ms. Blackburn?  
744 Mrs. {Blackburn.} No.  
745 The {Clerk.} Ms. Blackburn votes no.  
746 Mr. Harper?  
747 [No response.]  
748 The {Clerk.} Mr. Guthrie?  
749 Mr. {Guthrie.} No.  
750 The {Clerk.} Mr. Guthrie votes no.  
751 Mr. Olson?  
752 Mr. {Olson.} No.  
753 The {Clerk.} Mr. Olsen votes no.  
754 Mr. Pompeo?  
755 Mr. {Pompeo.} No.  
756 The {Clerk.} Mr. Pompeo votes no.  
757 Mr. Kinzinger?  
758 Mr. {Kinzinger.} No.  
759 The {Clerk.} Mr. Kinzinger votes no.

760 Mr. Bilirakis?  
761 Mr. {Bilirakis.} No.  
762 The {Clerk.} Mr. Bilirakis votes no.  
763 Ms. Brooks?  
764 Mrs. {Brooks.} No.  
765 The {Clerk.} Ms. Brooks votes no.  
766 Mr. Mullin?  
767 Mr. {Mullin.} No.  
768 The {Clerk.} Mr. Mullin votes no.  
769 Chairman Upton?  
770 The {Chairman.} No.  
771 The {Clerk.} Chairman Upton votes no.  
772 Ms. Schakowsky?  
773 Ms. {Schakowsky.} Aye.  
774 The {Clerk.} Ms. Schakowsky votes aye.  
775 Ms. Clarke?  
776 Ms. {Clarke.} Aye.  
777 The {Clerk.} Ms. Clarke votes aye.  
778 Mr. Kennedy?  
779 Mr. {Kennedy.} Aye.  
780 The {Clerk.} Mr. Kennedy votes aye.  
781 Mr. Cardenas?  
782 Mr. {Cardenas.} Aye.  
783 The {Clerk.} Mr. Cardenas votes aye.

784 Mr. Rush?

785 Mr. {Rush.} Aye.

786 The {Clerk.} Mr. Rush votes aye.

787 Mr. Butterfield?

788 [No response.]

789 The {Clerk.} Mr. Welch?

790 Ms. {Welch.} Aye.

791 The {Clerk.} Mr. Welch votes aye.

792 Mr. Pallone?

793 Mr. {Pallone.} Aye.

794 The {Clerk.} Mr. Pallone votes aye.

795 Chairman Burgess?

796 Mr. {Burgess.} No.

797 The {Clerk.} Chairman Burgess votes no.

798 Mr. {Burgess.} Clerk will report the--is there any  
799 other member seeking to vote?

800 The {Clerk.} Mr. Harper votes no.

801 Mr. {Burgess.} Any member wish to change their vote?

802 The Clerk will report the result.

803 The {Clerk.} Mr. Chairman, on that vote there were  
804 seven ayes and 12 nays.

805 Mr. {Burgess.} The amendment is not agreed to. Further  
806 amendments?

807 Mr. {Rush.} Mr. Chairman?

808 Mr. {Burgess.} For what purpose does the gentleman from  
809 Illinois seek recognition?

810 Mr. {Rush.} Mr. Chairman, I have an amendment at the  
811 desk, 01, on the carrier.

812 Mr. {Burgess.} Clerk will report.

813 Mr. {Rush.} It is the data security standards--  
814 provider, I am sorry. Data security standards.

815 The {Clerk.} Provider?

816 Mr. {Rush.} Provider.

817 The {Clerk.} Amendment to discussion draft offered by  
818 Mr. Rush.

819 [The amendment of Mr. Rush follows:]

820 \*\*\*\*\* INSERT 8 \*\*\*\*\*

|  
821           Mr. {Burgess.} Without objection, the reading of the  
822 amendment is dispensed with. The gentleman--recognized for 5  
823 minutes in support of his amendment.

824           Mr. {Rush.} Well, thank you, Mr. Chairman. Mr.  
825 Chairman, this amendment is a simple amendment. It really  
826 gets us to the place that has been promised by the majority.  
827 This bill preempts several sections of the Communications Act  
828 with regard to data security and breach notification.

829           The authors of the bill have stated that the bill will  
830 continue to ensure data security and breach notification  
831 requirements for providers of telecommunications, VOIP,  
832 cable, and satellite providers. Unfortunately, Mr. Chairman,  
833 as we have clarified at the subcommittee held on last week,  
834 the bill only requires security of the information defined as  
835 personal information under the bill, and not all the  
836 information that is currently required to be secured under  
837 the Communications Act. The hearing also confirmed that when  
838 there is a breach, carriers will not have to provide notice  
839 under this bill. This amendment simply requires that all  
840 information currently required to be protected under the  
841 Communications Act will now be required to be protected under  
842 this bill, and notice will have to be provided in the event  
843 of a breach as it is now required under the Communication

844 Act.

845           And, Mr. Chairman, just to list some of the information  
846 that is now required to be provided that will not be provided  
847 under this bill, we have propriety information of, and  
848 related to, other telecommunications carriers or providers of  
849 interconnected VOIP services, equipment managers and  
850 customers, including telecommunications carriers, or  
851 providers of interconnected VOIP service re-selling  
852 telecommunications services, or interconnected VOIP services  
853 provided by the telecommunications carrier, or provider of  
854 interconnected VOIP service, information that relates to the  
855 quality, technical configuration, type, destination,  
856 location, and amount of use of telecommunications services,  
857 or interconnected VOIP services to--by any customer of a  
858 telecommunication provider of interconnected VOIP services,  
859 and indication of information in electronic form maintained  
860 by a cable operator or satellite carrier, personally  
861 identifiable information concerning any subscriber to a cable  
862 service, satellite services, or any other wire or radio  
863 communication service providers using any other facility of a  
864 cable operator, or a satellite carrier that are using--of  
865 cable or satellite service, and on, and on, and on, and on,  
866 and on, and on, ad infinitum.

867           So, Mr. Chairman, at the end of the day, if this bill--

868 if my amendment is not adopted, we have left the American  
869 consumer open, not protected at all, and I am certain that  
870 that is not the intention of the authors of this bill. So,  
871 Mr. Chairman, in all humility and humbleness, and thinking in  
872 terms of what is best for the American consumer, I would ask  
873 that this bill--my amendment be passed. And I yield back the  
874 balance of my time.

875       Mr. {Burgess.} The gentleman yields back. The Chair  
876 thanks the gentleman. Does anyone on the Republican side  
877 seek time in opposition? If not, I will strike the requisite  
878 number of words and recognize myself for 5 minutes,  
879 acknowledging that this amendment amends the Communications  
880 Act significantly. The amendment also imposes breach  
881 notification obligations on service providers, even as they  
882 act as transmission facilities for those who send and receive  
883 information.

884       The service provider structure in the bipartisan draft  
885 is the same as the structure that was proposed by Congressman  
886 Rush and Congressman Barton in H.R. 580 in the 114th  
887 Congress, and last Congress by Representative Blackburn in  
888 the Secure IT Act, in a bill drafted by Senator Toomey. This  
889 is a bipartisan group of legislators tackling a challenging  
890 situation with a very similar approach. I am unclear on what  
891 the immediate concern is regarding the approach of this draft

892 bill, and I believe it makes sense, given the engineering and  
893 policy realities.

894         During transmission, we should not be requiring  
895 broadband providers to monitor data as it traverses their  
896 network so that they can identify breach victims. Actually,  
897 the implications of them doing that, to me, are quite  
898 problematic. I will yield back my time, and ask for--  
899 gentlelady--for what purpose does the gentlelady from  
900 Illinois seek recognition?

901         Ms. {Schakowsky.} I seek to strike the last word.

902         Mr. {Burgess.} Gentlelady is recognized for 5 minutes.

903         Ms. {Schakowsky.} So the last amendment offered by Mr.  
904 Rush presented an option to maintain existing consumer data  
905 security and breach notification protections at the Federal  
906 Communications Commission. If the majority will not accept  
907 that proposal, I hope you will reconsider, Mr. Chairman and  
908 members, accepting this one--that you will accept this one.

909         The amendment would ensure that, as data security and  
910 breach notification authority over telecommunications, voice  
911 over--VOIP, cable, satellite providers shifts from FCC to  
912 FTC, it brings with it all existing FCC requirements. The  
913 list of data that is currently protected at the FCC, but  
914 would not be protected by the FTC as the bill is currently  
915 drafted, Mr. Rush named some, and--the number of calls a

916 person makes, the calling periods, call waiting or caller ID  
917 services, financial status of account holders, Federal  
918 assistance programs in which customers are enrolled, and TV  
919 shows watched on cable.

920         And as I said last week, I am not overly concerned about  
921 whether the FTC or the FCC has the authority here, just that  
922 consumers are adequately protected. This addresses the same  
923 issues as the last amendment, but does so in a way that  
924 allows the Federal Trade Commission to be in charge. I would  
925 urge my colleagues to support this amendment, and I yield  
926 back.

927         Mr. {Burgess.} Gentlelady yields back. Further  
928 discussion on the amendment? If not, the vote then occurs.  
929 I beg your pardon, for what purpose does the gentleman from  
930 New Jersey--

931         Mr. {Pallone.} Strike the last word. I will be brief,  
932 Mr. Chairman.

933         Mr. {Burgess.} Gentleman is recognized for 5 minutes.

934         Mr. {Pallone.} I just want to say, obviously, I support  
935 the gentleman from Illinois's amendment. And as Ms.  
936 Schakowsky said, the majority did not accept giving authority  
937 to the FTC to enforce this bill against common carriers,  
938 while protecting the authority of the FCC to regulate and  
939 enforce their own laws and regulations, ultimately putting

940 two cops on the beat. So let us just actually do what they  
941 say they aim to do, and give the FTC the authority to enforce  
942 all the security and notification protections that currently  
943 exist under the Communications Act and associated  
944 regulations.

945         The Rush amendment also ensures that all of that  
946 information must be protected under the security requirement  
947 of Section 2, and the customers must be notified of a breach  
948 under the same circumstances as other personal information,  
949 and it adds language that ensures that the FTC can use its  
950 full authority to take action against telecommunications,  
951 satellite, and cable operators when necessary.

952         We have heard that the intent of the bill is simply to  
953 move these protections from one agency to another, and not to  
954 weaken customer protection, and the Rush amendment ensures  
955 that that intent is realized. I yield back--or I yield to  
956 the gentleman from Illinois.

957         Mr. {Rush.} I want to thank you for yielding. Mr.  
958 Chairman, in your opposition, you indicated that the intent  
959 of this bill is to amend the Communications Act, and that is  
960 just a mischaracterization of the intent of this bill. This  
961 bill has nothing to do with--

962         Mr. {Burgess.} --the intent of the amendment was--

963         Mr. {Rush.} --amendment--

964 Mr. {Burgess.} Okay.

965 Mr. {Rush.} --is to amend the Communications Act. And  
966 I just wanted to clarify that the intention of this amendment  
967 is not to amend the Communications Act, but it is to amend  
968 the bill's undercurrent consideration, and not the  
969 Communications Act. So I wanted to clarify that. You  
970 mentioned that in your opening remarks. I yield back. Thank  
971 you for yielding the time.

972 Mr. {Burgess.} Chair thanks the gentleman for the  
973 clarification. Gentleman yields back. Further discussion on  
974 the amendment? If there is no further discussion, the vote  
975 occurs on the amendment. The Chair would just ask the  
976 Ranking Member if the intention is to ask for a roll call  
977 vote?

978 Ms. {Schakowsky.} Yes.

979 Mr. {Burgess.} The gentlelady requests a roll call  
980 vote. The Clerk will call the roll.

981 The {Clerk.} Mr. Lance?

982 Mr. {Lance.} No.

983 The {Clerk.} Mr. Lance votes no.

984 Ms. Blackburn?

985 Mrs. {Blackburn.} No.

986 The {Clerk.} Ms. Blackburn votes no.

987 Mr. Harper?

988 [No response.]

989 The {Clerk.} Mr. Guthrie?

990 Mr. {Guthrie.} No.

991 The {Clerk.} Mr. Guthrie votes no.

992 Mr. Pompeo?

993 Mr. {Pompeo.} No.

994 The {Clerk.} Mr. Pompeo votes no.

995 Mr. Olson?

996 Mr. {Olson.} No.

997 The {Clerk.} Mr. Olsen votes no.

998 Mr. Kinzinger?

999 Mr. {Kinzinger.} No.

1000 The {Clerk.} Mr. Kinzinger votes no.

1001 Mr. Bilirakis?

1002 Mr. {Bilirakis.} No.

1003 The {Clerk.} Mr. Bilirakis votes no.

1004 Ms. Brooks?

1005 Mrs. {Brooks.} No.

1006 The {Clerk.} Ms. Brooks votes no.

1007 Mr. Mullin?

1008 Mr. {Mullin.} No.

1009 The {Clerk.} Mr. Mullin votes no.

1010 Chairman Upton?

1011 The {Chairman.} No.

1012 The {Clerk.} Chairman Upton votes no.  
1013 Ms. Schakowsky?  
1014 Ms. {Schakowsky.} Aye.  
1015 The {Clerk.} Ms. Schakowsky votes yes.  
1016 Ms. Clarke?  
1017 Ms. {Clarke.} Aye.  
1018 The {Clerk.} Ms. Clarke votes yes.  
1019 Mr. Kennedy?  
1020 Mr. {Kennedy.} Aye.  
1021 The {Clerk.} Mr. Kennedy votes yes.  
1022 Mr. Cardenas?  
1023 Mr. {Cardenas.} Aye.  
1024 The {Clerk.} Mr. Cardenas votes yes.  
1025 Mr. Rush?  
1026 Mr. {Rush.} Aye.  
1027 The {Clerk.} Mr. Rush votes yes.  
1028 Mr. Butterfield?  
1029 [No response.]  
1030 The {Clerk.} Mr. Welch?  
1031 Ms. {Welch.} Aye.  
1032 The {Clerk.} Mr. Welch votes yes.  
1033 Mr. Pallone?  
1034 Mr. {Pallone.} Aye.  
1035 The {Clerk.} Mr. Pallone votes yes.

1036 Chairman Burgess?

1037 Mr. {Burgess.} No.

1038 The {Clerk.} Chairman Burgess votes no.

1039 Mr. Harper votes no.

1040 Mr. Chairman, on that vote there were seven ayes and 12  
1041 nays.

1042 Mr. {Burgess.} The amendment is not agreed to. Are  
1043 there further amendments to the bill? Gentleman from  
1044 Massachusetts--for what purpose does the gentleman from  
1045 Massachusetts seek recognition?

1046 Mr. {Kennedy.} Mr. Chairman, I have an amendment at the  
1047 desk. It is Kennedy preempted two.

1048 Mr. {Burgess.} The Clerk will report.

1049 The {Clerk.} Amendment to the discussion draft offered  
1050 by Mr. Kennedy.

1051 [The amendment of Mr. Kennedy follows:]

1052 \*\*\*\*\* INSERT 9 \*\*\*\*\*

|  
1053           Mr. {Burgess.} Without objection, the reading of the  
1054 amendment is dispensed with, and the gentleman is recognized  
1055 for 5 minutes in support of his amendment.

1056           Mr. {Kennedy.} Thank you very much, Mr. Chairman. Mr.  
1057 Chairman, as is often the case, states have been very active  
1058 in protecting consumers from data breaches. While this issue  
1059 has been discussed, and argued, and voted on in Congress,  
1060 almost all the state have enacted breach notification  
1061 legislation. In many cases, those state laws are stronger  
1062 than the draft before us today. This is certainly the case  
1063 for my home state, the Commonwealth of Massachusetts.

1064           I understand why some want to create a single national  
1065 standard for breach notification. Reducing the burdens on  
1066 businesses, particularly businesses that were the victim of  
1067 criminal breaches, is a sensible and laudable goal. But we  
1068 must also ensure the consumers, who are also the victim of  
1069 breaches, do not lose protections that they currently have in  
1070 place.

1071           Last week we had the Assistant Attorney General from  
1072 Massachusetts testify before this Committee. Frankly, some  
1073 of the statistics that she cited were shocking. From 2008 to  
1074 July 2014 the Massachusetts Attorney General's office  
1075 received a notice of 8,665 security breaches, affecting

1076 nearly five million Massachusetts residents. For 2013, each  
1077 breach, on average, affected 74 Massachusetts residents.

1078 Section 6(a) of this bill completely preempts all state  
1079 laws that regulate--excuse me, that relate to data security  
1080 and breach notification, including all common law and state  
1081 consumer protection laws, as applied to data security and  
1082 breach notification. I believe that preemption is far too  
1083 broad.

1084 The amendment that I am introducing today allows states  
1085 to continue doing their good work at protecting consumers,  
1086 whose personal information is put at risk because of data  
1087 breach. It allows states that have enacted data security  
1088 requirements, like Massachusetts, to continue to enforce  
1089 their own data security laws, but it also provides a single  
1090 standard for companies to follow in the event of a breach.  
1091 Notification to consumers will be unified, and businesses  
1092 won't be burdened with trying to comply with 51 different  
1093 breach notification laws. Further, this amendment fixes a  
1094 glaring omission in the bill. This amendment helps state  
1095 Attorney Generals with their enforcement of Federal  
1096 legislation by requiring notice to state AGs.

1097 The states are strong enforcers of data security and  
1098 breach notification laws. This amendment will only help them  
1099 in their ongoing efforts to protect consumers to the

1100 sometimes devastating effects of data breaches. Thank you,  
1101 Mr. Chairman. I yield back.

1102 Mr. {Burgess.} Gentleman yields back. Does anyone on  
1103 the Republican side seek time in opposition? If not, the  
1104 Chair will--

1105 Mr. {Olson.} Mr. Chairman, strike the last word, sir.

1106 Mr. {Burgess.} Beg your pardon, for what purpose does  
1107 the gentleman from Texas seek recognition?

1108 Mr. {Olson.} I move to strike the last word.

1109 Mr. {Burgess.} Gentleman is recognized for 5 minutes.

1110 Mr. {Olson.} Thank you, Mr. Chairman. I do not support  
1111 this amendment. Strong preemption is essential. I say  
1112 again, strong preemption is essential. Right now there are  
1113 47 different notification rules in 47 different states. We  
1114 cannot create the 48th standard with this amendment. Doing  
1115 so results in too many notices, which will likely be  
1116 confusing to these folks we are trying to help. I appreciate  
1117 the efforts to have bipartisan preemption language, and I  
1118 reiterate my support for the strongest language possible, but  
1119 this amendment is not that. I urge my colleagues to vote  
1120 against it. I yield back.

1121 Mr. {Burgess.} Chair thanks the gentleman. Gentleman  
1122 yields back. Other people seeking time on the other--

1123 Ms. {Schakowsky.} Yes.

1124 Mr. {Burgess.} For what purpose does the gentlelady  
1125 from Illinois seek recognition?

1126 Ms. {Schakowsky.} Thank you, Mr. Chairman. I would  
1127 like to strike the last word.

1128 Mr. {Burgess.} Gentlelady is recognized for 5 minutes.

1129 Ms. {Schakowsky.} But first let me thank Mr. Kennedy  
1130 for offering this amendment to ensure that states have the  
1131 information and authority needed to continue to protect  
1132 consumers. This amendment would require that states are  
1133 informed in the event of a security breach impacting their  
1134 citizens, and that state Attorneys General are able to  
1135 maintain their authority to investigate, subpoena, and pursue  
1136 legal action against entities that steal or fail to protect  
1137 consumer data. It provides companies with a single set of  
1138 requirements to provide notice to consumers in the event of a  
1139 breach, while maintaining states' ability to protect their  
1140 citizens.

1141 Last year Illinois Attorney General Lisa Madigan  
1142 appeared before the Subcommittee on the issue of data breach.  
1143 She said that since 2006 her office had received more than  
1144 40,000 requests for assistance, and have helped thousands of  
1145 Illinois residents related to data breaches. Her office  
1146 joined with the Connecticut Attorney General's office to lead  
1147 the multi-state investigation into the breaches of Target,

1148 Nieman Marcus, and Michael's.

1149           Attorney General Madigan specifically asked that we not  
1150 preempt Illinois law in strengthening the Federal response to  
1151 this issue. As she said, ``The states have been on the front  
1152 lines of this battle for a decade.'' We cannot afford to  
1153 lose that valuable consumer protection--we need more eyes on  
1154 the issue, not fewer. This amendment balances the  
1155 enforcement needs of states at the same it lessens burdens on  
1156 businesses. Again, I would urge my colleagues to support Mr.  
1157 Kennedy's amendment. And I yield to the gentleman from New  
1158 Jersey.

1159           Mr. {Pallone.} Thank you. I just want to also urge  
1160 support of the Kennedy amendment. It is a guarantee that  
1161 consumers do not lose important safeguards. It is imperative  
1162 that states have the tools necessary, and the Kennedy  
1163 amendment preserves the goal of the bill, which is to inform  
1164 uniformity and notification of breaches.

1165           If a company that has suffered a breach provides notice  
1166 under the provisions of this bill, that company would not  
1167 have further notification requirements under state law. And  
1168 the amendment also preserves state common law, including  
1169 contract, tort, and consumer protection laws, and it assures  
1170 that states' Attorney Generals are provided with notices of  
1171 breaches. Most of the breaches are not the huge breaches

1172 that we hear about in the news that affect millions of  
1173 people, so forcing State AGs to rely on customer complaints  
1174 or news reports will constrain their ability to enforce this  
1175 bill and protect the consumer, so I would urge my colleagues  
1176 to support the gentleman from Massachusetts's amendment. And  
1177 I yield back, excuse me--the gentleman from--the gentlewoman  
1178 from Illinois.

1179       Mr. {Kennedy.} If I could ask for a brief word? Thank  
1180 you. Just want to--I appreciate my colleagues' comments as  
1181 well in support, and my colleague who has spoken in  
1182 opposition to the amendment. Just to clarify, the amendment  
1183 does not create an additional standard. It allows for a  
1184 Federal standard that would require--would be uniform across  
1185 the entire country, but allows--on notification, but then  
1186 allows for states to enforce their own standards when it  
1187 comes to breach of security. So it is a different--there--it  
1188 doesn't actually add another layer on. It actually does try  
1189 to allow for a bit of both, so--just to clarify. Thank you.  
1190 Yield back.

1191       Mr. {Burgess.} Gentlelady yields back. The Chair  
1192 thanks the gentlelady. Other members seeking time? If there  
1193 is no further discussion, the vote will occur on the  
1194 amendment. And the Chair would ask the gentlelady if she  
1195 requests--

1196 Ms. {Schakowsky.} I would ask for a roll call vote.  
1197 Mr. {Burgess.} The gentlelady requests a record vote.  
1198 The Clerk will call the roll.  
1199 The {Clerk.} Mr. Lance?  
1200 Mr. {Lance.} No.  
1201 The {Clerk.} Mr. Lance votes no.  
1202 Ms. Blackburn?  
1203 Mrs. {Blackburn.} No.  
1204 The {Clerk.} Ms. Blackburn votes no.  
1205 Mr. Harper?  
1206 Mr. {Harper.} No.  
1207 The {Clerk.} Mr. Harper votes no.  
1208 Mr. Guthrie?  
1209 Mr. {Guthrie.} No.  
1210 The {Clerk.} Mr. Guthrie votes no.  
1211 Mr. Olson?  
1212 Mr. {Olson.} No.  
1213 The {Clerk.} Mr. Olsen votes no.  
1214 Mr. Pompeo?  
1215 [No response.]  
1216 The {Clerk.} Mr. Kinzinger?  
1217 Mr. {Kinzinger.} No.  
1218 The {Clerk.} Mr. Kinzinger votes no.  
1219 Mr. Bilirakis?

1220 Mr. {Bilirakis.} No.

1221 The {Clerk.} Mr. Bilirakis votes no.

1222 Ms. Brooks?

1223 Mrs. {Brooks.} No.

1224 The {Clerk.} Ms. Brooks votes no.

1225 Mr. Mullin?

1226 Mr. {Mullin.} No.

1227 The {Clerk.} Mr. Mullin votes no.

1228 Chairman Upton?

1229 The {Chairman.} No.

1230 The {Clerk.} Chairman Upton votes no.

1231 Ms. Schakowsky?

1232 Ms. {Schakowsky.} Aye.

1233 The {Clerk.} Ms. Schakowsky votes aye.

1234 Ms. Clarke?

1235 Ms. {Clarke.} Aye.

1236 The {Clerk.} Ms. Clarke votes aye.

1237 Mr. Kennedy?

1238 Mr. {Kennedy.} Aye.

1239 The {Clerk.} Mr. Kennedy votes aye.

1240 Mr. Cardenas?

1241 Mr. {Cardenas.} Aye.

1242 The {Clerk.} Mr. Cardenas votes aye.

1243 Mr. Rush?

1244 Mr. {Rush.} Aye.

1245 The {Clerk.} Mr. Rush votes aye.

1246 Mr. Butterfield?

1247 [No response.]

1248 The {Clerk.} Mr. Welch?

1249 Ms. {Welch.} Aye.

1250 The {Clerk.} Mr. Welch votes aye.

1251 Mr. Pallone?

1252 Mr. {Pallone.} Votes aye.

1253 The {Clerk.} Mr. Pallone votes aye.

1254 Chairman Burgess?

1255 Mr. {Burgess.} Votes no.

1256 The {Clerk.} Chairman Burgess votes no.

1257 Mr. {Burgess.} Other members seeking to be recorded?

1258 The Clerk will report the result.

1259 The {Clerk.} Mr. Chairman, on that vote there were

1260 seven ayes and 11 nays.

1261 Mr. {Burgess.} The amendment is not agreed to. Are

1262 there further amendments to the bill?

1263 Mr. {Kennedy.} Mr. Chairman, I have one further

1264 amendment.

1265 Mr. {Burgess.} For what purpose does the gentleman from

1266 Massachusetts seek recognition?

1267 Mr. {Kennedy.} Mr. Chairman, I have an amendment at the

1268 desk. It is Kennedy common 01.

1269 Mr. {Burgess.} The Clerk will report the amendment.

1270 The {Clerk.} Amendment to the discussion draft offered

1271 by Mr. Kennedy.

1272 [The amendment of Mr. Kennedy follows:]

1273 \*\*\*\*\* INSERT 10 \*\*\*\*\*

|  
1274 Mr. {Burgess.} Without objection, the reading of the  
1275 amendment is dispensed with, and the gentleman is recognized  
1276 for 5 minutes--

1277 Mr. {Kennedy.} Thank you, Mr. Chairman.

1278 Mr. {Burgess.} --in support of his amendment.

1279 Mr. {Kennedy.} Thank you, Mr. Chairman, I apologize.  
1280 And, at the risk of repeating myself, I will try to be brief.  
1281 While my previous amendment was voted down, the preemption  
1282 language in this bill still needs to be fixed. Section 6(b)  
1283 of the discussion draft seems to reflect the intent to  
1284 preserve state common law. However, as I just noted, the  
1285 language in Section 6(a) plainly preempts state common law.  
1286 The terms ``rule, requirement and other provision having the  
1287 force and effect of law'' have been held to encompass common  
1288 law.

1289 Sections 6(a) and 6(b) are directly in conflict with  
1290 each other. I don't believe anyone on the Subcommittee  
1291 should vote on a draft that is internally inconsistent. I  
1292 have introduced this amendment to correct this error, and to  
1293 clarify that state common law, including any state consumer  
1294 protection law, any state law that--relating to acts of fraud  
1295 or deception, and any state trespass, contract, or tort law  
1296 not be preempted. Again, Massachusetts is a leader in

1297 consumer protection. It will be a grave mistake for Congress  
1298 to remove the important tools at the disposal of our state's  
1299 Attorney General.

1300 Without some fix for this conflicting language, the  
1301 preemption provision will be open for unnecessary litigation,  
1302 and ultimately left to judicial interpretation, which may not  
1303 reflect the intent of the drafters. We should endeavor to  
1304 minimize inconsistencies and lessen the need for litigation,  
1305 where possible. And again, we must ensure that Federal  
1306 legislation does not weaken protections for consumers.

1307 I urge my colleagues to support this amendment, and I  
1308 yield back the balance of my time.

1309 Mr. {Burgess.} Gentleman yields back. Anyone seeking  
1310 time to speak on the amendment? I will move to strike the  
1311 requisite number of words and--I was going to speak in  
1312 opposition, if that is okay with the Ranking Member of the  
1313 full Committee. Move to strike the last word, and recognize  
1314 myself for 5 minutes in opposition.

1315 And, again, the question on preemption is one that,  
1316 indeed, the Subcommittee has studied, and the--and hear  
1317 testimony by our witnesses in both the general hearing and  
1318 the legislative hearing. Preemption is important for both  
1319 consumers and businesses, who are both victims of criminal  
1320 data breaches, and there does seem to be bipartisan agreement

1321 that state laws that deal specifically with breach  
1322 notification should be preempted. For businesses, there are  
1323 51 different state and territory regimes for breach  
1324 notification.

1325 I would also like to call attention to--that all of the  
1326 consumer protections that are in this bill for consumers  
1327 relative to the significant data breaches and the data that  
1328 criminals can monetize. Counsel has some bar graphs that  
1329 show how consumers across the nation actually will be better  
1330 protected, and better served, under this bill, the bright  
1331 green bar representing the data--or the consumer protections  
1332 that are included in the draft Blackburn/Welch legislation  
1333 that we are considering today.

1334 If other members wish to peruse the bar graphs, I will  
1335 make them available to them, but if not, I will yield back my  
1336 time.

1337 Mr. {Kennedy.} Mr. Chairman, if I may? Could add in  
1338 Massachusetts there, I would like to see how much higher it  
1339 would go.

1340 Mr. {Burgess.} Absolutely. Is--further discussion on  
1341 the amendment? The Chair--for what purpose does the  
1342 gentlelady from Illinois seek recognition?

1343 Ms. {Schakowsky.} To strike the last word, Mr.  
1344 Chairman.

1345 Mr. {Burgess.} Gentlelady is recognized for 5 minutes.

1346 Ms. {Schakowsky.} That chart is kind of hard to follow,  
1347 but I do want to say that, you know, we are not limited in  
1348 the amount that we can protect consumers, and I believe--and  
1349 I think the--on this side, we believe that our amendments  
1350 actually added to the protection of consumers, and that our  
1351 graph would be actually off the charts.

1352 I support the Kennedy amendment. Last week, for  
1353 example, Mr. Welch made clear that he wants his bill to  
1354 maintain the common law protections consumers currently have,  
1355 and this discussion draft was conflicted over the preemption  
1356 over common law. Mr. Pompeo's amendment attempted to address  
1357 that issue, eliminating the language that--saying that the  
1358 bill shall not exempt a covered entity from liability under  
1359 common law. I appreciate the fact that that was withdrawn,  
1360 and I hope that it will not be reintroduced.

1361 Under Section 1, the bill explicitly states that one of  
1362 the purposes of the legislation is to preempt common law.  
1363 That portion is bracketed, meaning that it is subject to  
1364 future negotiations, and Section 6(a) completely preempts all  
1365 state laws that specifically address data security or breach  
1366 notification. That includes common law.

1367 This amendment would ensure the common law protections  
1368 are maintained. Those protections include state laws

1369 prohibiting fraud and deception, as well as contract and tort  
1370 law. The preemption of common law would leave consumers  
1371 without the protection they currently have, replacing those  
1372 standards with weaker and more limited Federal rules. This  
1373 Subcommittee should not send a bill to the full Committee  
1374 that would blow a hole through existing common law  
1375 protections, protections the public deserves in addressing  
1376 data security and breach notification. This amendment would  
1377 make sure that we don't.

1378 I encourage my colleagues to support Mr. Kennedy's  
1379 common sense improvement to the bill, and I yield back.

1380 Mr. {Burgess.} Other members seeking recognition?  
1381 Gentleman from New--for what purpose does the gentleman--New  
1382 Jersey--

1383 Mr. {Pallone.} Strike the last word in support of the  
1384 Kennedy amendment.

1385 Mr. {Burgess.} Gentleman is recognized for 5 minutes.

1386 Mr. {Pallone.} I just wanted to say to the Republican  
1387 Counsel that when he was holding up those charts, it reminded  
1388 me of a time long ago when I had to put the chart in front  
1389 and in back of me and walk around like advertising. I got  
1390 paid once to do that, I can't remember when. But I won't ask  
1391 you to do that, I promise you that.

1392 The Kennedy amendment should be supported by everyone

1393 today. It corrects conflicting language in the bill, and  
1394 ensures common law is protected. This amendment leaves in  
1395 place the language that preempts the 51 data security and  
1396 breach notification laws at the state and territory level.

1397 While opinions differ about state preemption, I  
1398 understand the interest in creating uniform Federal standards  
1399 for data security and breach notification. However, when  
1400 doing so, we must ensure that the states who are charged with  
1401 enforcing this legislation are not overly limited by  
1402 inconsistent and unworkable statutory language. Section 6 of  
1403 the bill is unclear and impractical for state AGs in its  
1404 current form. Section 6(a) and 6(b) are patently  
1405 contradictory, in my opinion, and Section 6(a) completely  
1406 preempts all state laws that specifically address data  
1407 security or breach notification, as well as rules, standards,  
1408 or other provisions that address data security or breach  
1409 notification.

1410 The U.S. Supreme Court has concluded terms rules,  
1411 standard, and other provisions having the force and effect of  
1412 law encompass common law. Common law is law derived from  
1413 judicial decisions, including much of contract and tort law.  
1414 Section 6(b), on the other hand, purports to preserve state  
1415 common law. Apparently the sponsors of this bill have not  
1416 yet come to an agreement on the scope of the preemption.

1417 Either way, the language in the bill does not work.

1418           Moreover, preemption of common law is overly broad.

1419 This bill already preempts stronger state laws and replaces  
1420 them with weaker standards. Having said that, if the purpose  
1421 of the bill is to create uniform standards, even weaker  
1422 standards, preemption of common law is not necessary, and  
1423 only serves to further weaken protections for consumers and  
1424 businesses who have disputes with each other. So I would  
1425 urge my colleagues to support the Kennedy amendment. I yield  
1426 back.

1427           Mr. {Burgess.} Chair thanks the gentleman.

1428           Mr. {Rush.} Mr. Chairman? Mr. Chairman?

1429           Mr. {Burgess.} For what purpose does the gentleman from  
1430 Illinois seek recognition?

1431           Mr. {Rush.} Move to strike the last word.

1432           Mr. {Burgess.} Gentleman is recognized for 5 minutes.

1433           Mr. {Rush.} Mr. Chairman, I am not a lawyer, but I do  
1434 understand contradictories, and this--I think that we are  
1435 talking about two--well, first of all, Mr. Chairman, I don't  
1436 know how you all are getting us through the contradictions  
1437 that obviously anybody--in Section 6(a) and 6(b). I don't  
1438 understand how you resolve those apparent in your face  
1439 contradictions, but between now and full Committee I hope  
1440 that you will at least try to eliminate the contradictions,

1441 or deal with the contradiction.

1442 But in regards to the Kennedy amendment, I think that we  
1443 are discussing two different things. This amendment  
1444 wouldn't--does not involve creating a 48th standard. It  
1445 seems to me that there isn't an ability to sue for data  
1446 breach under--tort, trespass or contract law, and I really  
1447 admit I am not a lawyer. And that is different and  
1448 distinctive from statutory or regulatory notice, or breach  
1449 requirements under the state. And so I just wanted to make  
1450 sure that we can get some kind of reasoning, some kind of  
1451 understanding of really what we are trying to do here with  
1452 this bill.

1453 And there is much work to be done between now and full  
1454 Committee on this bill, as you can obviously see. And so,  
1455 Mr. Chairman, I am definitely in support of the Kennedy  
1456 amendment. I think the Kennedy amendment is--takes us a long  
1457 way. And after the Kennedy amendment, I think this--the bill  
1458 is full of holes, and full of contradictions that--full of  
1459 ill-conceived intentions. So I--with that, I yield back the  
1460 balance of my time.

1461 Mr. {Burgess.} Chair appreciates the gentleman's  
1462 concern. The gentleman yields back the balance of his time.  
1463 Further discussion on the amendment? The gentleman from  
1464 Vermont--for what purpose does the gentleman from Vermont

1465 seek recognition?

1466 Mr. {Welch.} I move to strike the last word.

1467 Mr. {Burgess.} Gentleman is recognized for 5 minutes.

1468 Mr. {Welch.} Thank you very much, Mr. Chairman. I want  
1469 to make a couple of comments about the bill and the  
1470 amendment. First, I want to acknowledge the good job, from  
1471 my perspective, that you have done by doing two things. One,  
1472 making the bill narrow, number two, building on the  
1473 foundation of the work that was done by Congressman Rush and  
1474 Congressman Barton. And I think that that has resulted in  
1475 what I regard as a very practical, helpful bill.

1476 Second, you were very accommodating to many of the--I  
1477 expressed when I was working with you and Congresswoman  
1478 Blackburn, and thank you for that. Third, what I have  
1479 appreciated about this approach is that we are actually  
1480 trying to legislate here, and listen to one another with  
1481 respect to how we can improve this bill, and we have got some  
1482 time between this Committee markup and the full Committee.

1483 I do think many of the amendments that have been offered  
1484 by my colleagues, Congressman Rush, Congresswoman Clarke, and  
1485 Congressman Kennedy, have merit, and my hope is that you will  
1486 continue this open approach that you have had in your work on  
1487 this bill thus far with our leaders on our side, Ms.  
1488 Schakowsky and Mr. Pallone, to see whether there might be

1489 some additional improvements that can be made, as well as  
1490 working on the language that Mr. Pompeo has offered in his  
1491 amendment to make certain that we get that as right as we  
1492 can.

1493           So I--as you know, I am fully supporting this bill, but  
1494 I think that if there is an opportunity to make this bill  
1495 even better, then I would encourage all of us, with your  
1496 leadership, working with Ms. Schakowsky and Mr. Pallone, to  
1497 use the time between now and the full Committee markup to see  
1498 what improvements we could make. And I yield back.

1499           Mr. {Burgess.} Gentleman yields back. The Chair  
1500 appreciates the gentleman's comments, and the comments on  
1501 openness. Of course we will continue. Are there other  
1502 members seeking time? If not, the vote occurs on the  
1503 amendment, and the Chair would ask the gentlelady if she  
1504 intends to ask for a roll call vote?

1505           Ms. {Schakowsky.} Yes.

1506           Mr. {Burgess.} Gentlelady does request a record vote,  
1507 then the Clerk will call the roll.

1508           The {Clerk.} Mr. Lance?

1509           Mr. {Lance.} No.

1510           The {Clerk.} Mr. Lance votes no.

1511           Ms. Blackburn?

1512           Mrs. {Blackburn.} No.

1513 The {Clerk.} Ms. Blackburn votes no.  
1514 Mr. Harper?  
1515 Mr. {Harper.} No.  
1516 The {Clerk.} Mr. Harper votes no.  
1517 Mr. Guthrie?  
1518 Mr. {Guthrie.} No.  
1519 The {Clerk.} Mr. Guthrie votes no.  
1520 Mr. Olson?  
1521 Mr. {Olson.} No.  
1522 The {Clerk.} Mr. Olsen votes no.  
1523 Mr. Pompeo?  
1524 Mr. {Pompeo.} No.  
1525 The {Clerk.} Mr. Pompeo votes no.  
1526 Mr. Kinzinger?  
1527 Mr. {Kinzinger.} No.  
1528 The {Clerk.} Mr. Kinzinger votes no.  
1529 Mr. Bilirakis?  
1530 Mr. {Bilirakis.} No.  
1531 The {Clerk.} Mr. Bilirakis votes no.  
1532 Ms. Brooks?  
1533 Mrs. {Brooks.} No.  
1534 The {Clerk.} Ms. Brooks votes no.  
1535 Mr. Mullin?  
1536 Mr. {Mullin.} No.

1537 The {Clerk.} Mr. Mullin votes no.  
1538 Chairman Upton?  
1539 The {Chairman.} No.  
1540 The {Clerk.} Chairman Upton votes no.  
1541 Ms. Schakowsky?  
1542 Ms. {Schakowsky.} Aye.  
1543 The {Clerk.} Ms. Schakowsky votes aye.  
1544 Ms. Clarke?  
1545 Ms. {Clarke.} Aye.  
1546 The {Clerk.} Ms. Clarke votes aye.  
1547 Mr. Kennedy?  
1548 Mr. {Kennedy.} Aye.  
1549 The {Clerk.} Mr. Kennedy votes aye.  
1550 Mr. Cardenas?  
1551 Mr. {Cardenas.} Aye.  
1552 The {Clerk.} Mr. Cardenas votes aye.  
1553 Mr. Rush?  
1554 Mr. {Rush.} Aye.  
1555 The {Clerk.} Mr. Rush votes aye.  
1556 Mr. Butterfield?  
1557 [No response.]  
1558 The {Clerk.} Mr. Welch?  
1559 Ms. {Welch.} Aye.  
1560 The {Clerk.} Mr. Welch votes aye.

1561 Mr. Pallone?

1562 Mr. {Pallone.} Aye.

1563 The {Clerk.} Mr. Pallone votes aye.

1564 Chairman Burgess?

1565 Mr. {Burgess.} No.

1566 The {Clerk.} Chairman Burgess votes no.

1567 Mr. {Burgess.} Ms.--Clerk will report the result.

1568 The {Clerk.} Mr. Chairman, on that vote there were

1569 seven ayes and 12 nays.

1570 Mr. {Burgess.} The amendment is not agreed to. Chair

1571 asks if there are further amendments. Seeing none, the

1572 question now occurs on forwarding the Committee print as

1573 amended to the full Committee. All those--the Chair would

1574 just ask the gentlelady if she is going to ask for a roll

1575 call vote.

1576 Chair asks all those in favor to say aye.

1577 All those opposed, nay.

1578 The ayes appear to have it. The ayes have it, and the

1579 bill is favorably forwarded.

1580 Without objection, the staff is authorized to make

1581 technical and conforming changes to the legislation approved

1582 by the Subcommittee today, which is so ordered, and without

1583 objection the Subcommittee stands adjourned.

1584 [Whereupon, at 1:45 p.m., the Subcommittee was

1585 adjourned.]