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4 MARKUP ON H.R. 906, TO MODIFY THE EFFICIENCY STANDARDS FOR

5 GRID-ENABLED WATER HEATERS;

6 H.R. _____, IMPROVING COAL COMBUSTION RESIDUALS REGULATION ACT

7 OF 2015; AND

8 H.R. _____, DATA SECURITY AND BREACH NOTIFICATION ACT OF 2015)

9 WEDNESDAY, APRIL 15, 2015

10 House of Representatives,

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The Committee met, pursuant to call, at 10:10 a.m., in

14 Room 2123 of the Rayburn House Office Building, Hon. Fred

15 Upton [Chairman of the Committee] presiding.

16 Members present: Representatives Upton, Barton,

17 Whitfield, Shimkus, Pitts, Walden, Murphy, Burgess,

18 Blackburn, Scalise, Latta, McMorris Rodgers, Harper, Lance,

19 Guthrie, Olson, McKinley, Pompeo, Kinzinger, Griffith,
20 Bilirakis, Johnson, Long, Ellmers, Bucshon, Flores, Brooks,
21 Mullin, Hudson, Collins, Cramer, Pallone, Rush, Eshoo, Engel,
22 Green, DeGette, Capps, Doyle, Schakowsky, Butterfield,
23 Matsui, Castor, Sarbanes, McNerney, Welch, Lujan, Tonko,
24 Yarmuth, Clarke, Loeb sack, Schrader, Kennedy, and Cardenas.

25 Staff present: Nick Abraham, Legislative Clerk; Gary
26 Andres, Staff Director; Charlotte Baker, Deputy
27 Communications Director; Ray Baum, Senior Policy Advisor for
28 Communications and Technology; Leighton Brown, Press
29 Assistant; Allison Busbee, Policy Coordinator, Energy and
30 Power; Karen Christian, General Counsel; Jerry Couri, Senior
31 Environmental Policy Advisor; Patrick Currier, Counsel,
32 Energy and Power; James Decker, Policy Coordinator, CMT;
33 Graham Dufault, Counsel, CMT; Melissa Froelich, Counsel, CMT;
34 Tom Hassenboehler, Chief Counsel, Energy and Power; Brittany
35 Havens, Legislative Clerk; Kirby Howard, Legislative Clerk;
36 Peter Kielty, Deputy General Counsel; David McCarthy, Chief
37 Counsel, Environment/Economy; Paul Nagle, Chief Counsel, CMT;
38 Tim Pataki, Professional Staff Member; Tina Richards,
39 Counsel, Environment; Chris Sarley, Policy Coordinator,
40 Environment and Economy; Charlotte Savercool, Legislative
41 Clerk; Adrianna Simonelli, Legislative Clerk; Heidi Stirrup,
42 Health Policy Coordinator; Olivia Trusty, Professional Staff,

43 CMT; Jessica Wilkerson, Legislative Clerk; Michelle Ash,
44 Democratic Chief Counsel, Commerce, Manufacturing, and Trade;
45 Jen Berenholz, Democratic Chief Clerk; Christine Brennan,
46 Democratic Press Secretary; Jeff Carroll, Democratic Staff
47 Director; Jacqueline Cohen, Democratic Senior Counsel;
48 Elizabeth Ertel, Democratic Deputy Clerk; David Goldman,
49 Democratic Chief Counsel, Communications and Technology; Lisa
50 Goldman, Democratic Counsel; Tiffany Guarascio, Democratic
51 Deputy Staff Director and Chief Health Advisor; Caitlin
52 Haberman, Democratic Professional Staff Member; Brendan
53 Hennessey, Democratic Policy and Research Advisor; Ashley
54 Jones, Democratic Director, Outreach and Member Services;
55 Rick Kessler, Democratic Senior Advisor and Staff Director,
56 Energy and Environment; Elizabeth Letter, Democratic
57 Professional Staff Member; John Marshall, Democratic Policy
58 Coordinator; Tim Robinson, Democratic Chief Counsel; Ryan
59 Schmit, Democratic EPA Detailee; and Ryan Skukowski,
60 Democratic Policy Analyst.

|
61 The {Chairman.} Committee is--will come to order, and
62 at conclusion of opening statements yesterday afternoon, the
63 Chair called up H.R. 906, and the bill was open for amendment
64 at any point. And the Chair would recognize Mr. Whitfield
65 for the purpose of offering an amendment.

66 Mr. {Whitfield.} Well, thank you, Mr. Chairman, and
67 since you mentioned Jimmy Buffett, I wanted to talk about
68 Dire Straits, because some of you may remember Dire Straits
69 had this wonderful song about selling microwave ovens,
70 refrigerators, and color TVs, ad 906 is about hot water
71 heaters, which is very important. But my amendment--

72 The {Chairman.} Let me--let us let the Clerk report the
73 amendment.

74 Mr. {Whitfield.} Yeah, let her--

75 The {Clerk.} Amendment to H.R. 906, offered by Mr.
76 Whitfield of Kentucky.

77 [The amendment of Mr. Whitfield follows:]

78 ***** INSERT 1 *****

|
79 The {Chairman.} Without objection, the reading of the
80 amendment is dispensed with, and the gentleman is recognized
81 for 5 minutes in support of his amendment.

82 Mr. {Whitfield.} Okay. Now I can continue talking
83 about Dire Straits, but--no, let me just say that, first of
84 all, 906 is a bill that was voted on twice now by the House
85 and the Senate. And I particularly want to give some thanks
86 to Representatives Welch, Latta, Loeb sack, Cramer, and Doyle,
87 all who have worked on this bill.

88 Now, this bill basically corrects a problem that is
89 imposed by the Department of Energy. Approximately 250
90 electric cooperatives in 34 states utilize large electric
91 resistant water heaters in energy saving programs, such as
92 Demand Response. The Department of Energy's energy
93 efficiency standard basically prohibits the manufacture of
94 these water heaters that are 40 to 55 gallons or larger in
95 favor of heat pump technology, and many heat pump water
96 heaters are not compatible with utility thermal energy
97 storage and demand response programs.

98 So this bill is very simple. It simply allows the
99 continued manufacture for use in demand response programs to
100 help with reliability and consumer cost. And our amendment,
101 my amendment, simply does one thing, and I don't know how

102 this happened, but in our bill we made the effective date
103 2016, and we want it to be 2015, so that is all this
104 amendment does. So I would urge the passage of the
105 amendment, and certainly passage of the legislation. Unless
106 someone else would like to talk about water heaters, and--
107 yield back the balance of my time.

108 The {Chairman.} Gentleman yields back. Chair would
109 recognize Mr. Pallone, Ranking Member.

110 Mr. {Pallone.} I just wanted to say that we support the
111 bill. I mean, the bill obviously deals with efficiency
112 standards, and it is a very good bill. I also wanted to--
113 also the amendment from Whitfield.

114 What I wanted to mention, though, if I could, Mr.
115 Chairman, is that I don't know if all the members realize
116 that last night in the Senate, I think the vote was 92-8,
117 passed the SGR fix, which obviously included the House bill.
118 So I wanted to congratulate you, Mr. Chairman, and everyone,
119 really, on both sides of the aisle who was--were very much
120 involved with it.

121 I was actually watching as the various amendments went
122 down, and then the House bill passed. I stressed the House
123 bill passing in the Senate. Doesn't happen that often, it
124 seems to me, on something that is this important. And it
125 just--again, it is an example of how we can work in a

126 bipartisan--thank you.

127 The {Chairman.} Well, if the gentleman would yield--

128 Mr. {Pallone.} I will.

129 The {Chairman.} --I remind all my colleagues that this
130 was an issue that we took up in earnest for the last couple
131 of years, and it was this Committee, when it passed it out
132 51-0 last July--or last Congress that really set the stage
133 for what we saw with 392 votes in the House floor last month,
134 and 92 votes in the Senate. So I am not even sure that we
135 could get a vote to congratulate the Michigan Wolverines on
136 winning the national championship, when that occurs--look at
137 Mr. Latta shaking his head, and others--when that happens.

138 So it was--seriously, it was a great victory for all of
139 us, particularly not only the senior community, because it
140 really did save Medicare, but also the physician community,
141 because that means that they will continue to want to treat
142 folks over 65. So it is a great bipartisan victory, and I
143 congratulate every Republican and every Democrat,
144 particularly those like Dr. Burgess, who helped shepherd it
145 through, and Joe Gibbs, through the Subcommittee to get it
146 done. It was a nice win, and one that will not go unnoticed.
147 Now I yield back.

148 Mr. {Pallone.} Well, I yield back again.

149 The {Chairman.} There other--further members wishing to

150 speak on the Whitfield amendment?

151 Seeing none, if there is no further discussion, all
152 those in favor will signify by saying aye.

153 All those opposed say no.

154 The ayes have it, the amendment is agreed to.

155 Are there other amendments?

156 Seeing none, the vote occurs now reporting H.R. 906, as
157 amended, to the House.

158 All those in favor will signify by saying aye.

159 All those opposed, say no.

160 Ayes appear to have it. The ayes have it, and the bill
161 is favorably reported.

|
162 H.R. 1734

163 The {Chairman.} The Chair now calls up H.R. 1734, and
164 asks the Clerk to report.

165 The {Clerk.} H.R. 1734, to amend subtitle D of the
166 Solid Waste Disposal Act to encourage recovery and beneficial
167 use of coal combustion residuals, and establish requirements
168 for the proper management and disposal of coal combustion
169 residuals that are protective of human health and the
170 environment.

171 [The bill follows:]

172 ***** INSERT 14 *****

|
173 The {Chairman.} Without objection, the first reading of
174 the bill is dispensed with, and the bill will be open for
175 amendment at any point. Are there any bipartisan amendments
176 to the bill?

177 Seeing none, are there any other amendments to the bill?

178 Seeing none, this is good work, Mr. McKinley, the
179 question now occurs--Chair would recognize the gentleman from
180 New Jersey for 5 minutes.

181 Mr. {Pallone.} Well, I mean, I just wanted to strike
182 the last word, Mr. Chairman, and I will be brief. You know,
183 obviously, you know, in the Subcommittee, in the hearing, I
184 was very much opposed to this bill, and I urged my colleagues
185 to join me in opposition that would undermine the health
186 protections in the EPAs final coal ash rule, putting human
187 health and the environment at greater risk. It would give
188 greater leeway to electric utilities to continue dumping
189 their garbage in massive unlined ponds without taking basic
190 safeguards. It is no surprise that the utilities are
191 supporting the bill.

192 But, you know, public interest groups, state
193 legislators, concerned citizens--yesterday I received 290
194 groups, legislators, and concerned citizens' letters or
195 e-mail opposing the bill because it would delay or eliminate

196 important health protections, including the national minimum
197 standards for protection of drinking water. And all these
198 groups opposed the bill because it would block effective
199 oversight in state programs and limit public access to
200 information. And they also oppose it because it is
201 unnecessary.

202 As they know, EPA has, at long last, finalized a Federal
203 rule for coal ash disposal that addresses the concerns of the
204 electric industry and coal ash recyclers. The situation has
205 changed dramatically since the last time coal ash legislation
206 was considered in the House, and there is no longer any
207 reason to support this bill. Past concerns that the EPA
208 would not be able to finalize the coal ash rule no longer
209 have merit because the EPA has done so. Past concerns that
210 an EPA might characterize coal ash as hazardous or--are no
211 longer relevant because EPA chose to regulate ash as non-
212 hazardous, and protect--so some may say today that this bill
213 is needed to provide the industry with certainty that EPA
214 won't someday change its rule. But EPA has no plans to
215 change a rule, and any effort to do so would require a
216 lengthy process, with public notice and comment.

217 The bottom line is, at the Subcommittee markup last
218 month, I offered an amendment to ensure that all the
219 requirements included in EPA's final rule would be included

220 in state programs under this bill, and the majority rejected
221 that amendment, so no one should be fooled into thinking that
222 this bill embodies the requirement of the final rule. I am--
223 we are not offering any amendments today because, at this
224 point, I don't think the bill could be fixed, Mr. Chairman.
225 But, again, the legislation is unnecessary, dangerous for
226 public health and the environment, and I urge my colleagues
227 to oppose it.

228 Mr. {Shimkus.} Would the gentleman yield on--just--and
229 I appreciate my colleague's comments. All we are trying to
230 do in the legislation is to codify, put into statutory
231 language, the EPA guidance. There was three problems. There
232 was really no enforcement mechanism, so we tried to move and
233 have a state permitting program. There is--open ended
234 because, based upon--our reading of the regulation is that,
235 you know, it would allow citizen--to help the--determine the
236 standards. So we cleaned that up in this legislation. And
237 the open-endedness of the subtitle D, Toxic Identification,
238 creates uncertainty in the recycling sector.

239 So, for those reasons--we want to move the bill. We
240 know that we have issues with it, and appreciate you letting
241 me have some time to speak on the bill.

242 Mr. {Pallone.} Sure. I mean, the problem I have,
243 again, is that I think the EPA's final rule reflects the

244 tremendous effort that, for the first time--we are addressing
245 the serious environmental problems. This bill would
246 undermine that rule, and put in place weaker requirements for
247 groundwater and protection, cleanup, and closure of unsafe
248 sites, and more. And I think it--new model of delegation--
249 the states, with a sharply curtailed rule for EPA. So,
250 again, I think it is a bad solution for coal ash, and bad
251 precedent, and I would urge my colleagues to oppose it.
252 Unless anybody wants my time? Yeah, go ahead, Mr. Tonko.

253 Mr. {Tonko.} Mr. Chair, I move to strike the last word.

254 The {Chairman.} Gentleman still has--Mr. Pallone, do
255 you--

256 Mr. {Pallone.} Do you want your own time--

257 The {Chairman.} --like full time?

258 Mr. {Pallone.} --Mr. Tonko? Then I will yield back.

259 The {Chairman.} Gentleman from New York.

260 Mr. {Tonko.} Yes. Mr. Chair, I move to strike the last
261 word. I don't want to take a lot of time. I just want to
262 state my opposition to the bill. I believe it is premature,
263 and would undermine important national safeguards contained
264 in the EPA's final rule, a rule that will become final this
265 week. The rule is the result of extensive stakeholder input
266 and compromise, and offers something to all stakeholders.
267 This bill does not. This bill is an attempt to undermine the

268 6 years of work done by EPA, and the entire stakeholder
269 community, to craft a balanced approach to deal with a very
270 serious problem.

271 We should concentrate our efforts on oversight. The
272 rule will take time to implement. The problems with this
273 rule are speculative, but the problems with improper coal ash
274 disposal are not. It is long past time to address the
275 problems that we know exist, problems that have not been
276 solved by state-based regulation. So Congress may need to
277 step in at some time in the future, if this rule proves to be
278 ineffective, but now is not the time. So, therefore, I
279 oppose the bill, and encourage my colleagues to do the same.

280 With that, Mr. Chair, I yield back.

281 The {Chairman.} Gentleman yields back. Other members
282 wishing to speak on the bill?

283 Seeing none, are there any further amendments to the
284 bill?

285 Seeing none, the question now occurs on favorable
286 reporting H.R. 1734 to the House. A recorded vote has been
287 asked for. Clerk will call the roll.

288 The {Clerk.} Mr. Barton?

289 Mr. {Barton.} Aye.

290 The {Clerk.} Mr. Barton votes aye.

291 Mr. Whitfield?

292 Mr. {Whitfield.} Aye.
293 The {Clerk.} Mr. Whitfield votes aye.
294 Mr. Shimkus?
295 Mr. {Shimkus.} Aye.
296 The {Clerk.} Mr. Shimkus votes aye.
297 Mr. Pitts?
298 Mr. {Pitts.} Aye.
299 The {Clerk.} Mr. Pitts votes aye.
300 Mr. Walden?
301 [No response.]
302 The {Clerk.} Mr. Murphy?
303 Mr. {Murphy.} Aye.
304 The {Clerk.} Mr. Murphy votes aye.
305 Mr. Burgess?
306 Mr. {Burgess.} Aye.
307 The {Clerk.} Mr. Burgess votes aye.
308 Mrs. Blackburn?
309 Mrs. {Blackburn.} Aye.
310 The {Clerk.} Mrs. Blackburn votes aye.
311 Mr. Scalise?
312 Mr. {Scalise.} Aye.
313 The {Clerk.} Mr. Scalise votes aye.
314 Mr. Latta?
315 Mr. {Latta.} Aye.

316 The {Clerk.} Mr. Latta votes aye.
317 Mrs. McMorris Rodgers?
318 [No response.]
319 The {Clerk.} Mr. Harper?
320 Mr. {Harper.} Aye.
321 The {Clerk.} Mr. Harper votes aye.
322 Mr. Lance?
323 Mr. {Lance.} Aye.
324 The {Clerk.} Mr. Lance votes aye.
325 Mr. Guthrie?
326 [No response.]
327 The {Clerk.} Mr. Olson?
328 Mr. {Olson.} Aye.
329 The {Clerk.} Mr. Olson votes aye.
330 Mr. McKinley?
331 Mr. {McKinley.} Aye.
332 The {Clerk.} Mr. McKinley votes aye.
333 Mr. Pompeo?
334 Mr. {Pompeo.} Aye.
335 The {Clerk.} Mr. Pompeo votes aye.
336 Mr. Kinzinger?
337 Mr. {Kinzinger.} Aye.
338 The {Clerk.} Mr. Kinzinger votes aye.
339 Mr. Griffith?

340 [No response.]

341 The {Clerk.} Mr. Bilirakis?

342 Mr. {Bilirakis.} Aye.

343 The {Clerk.} Mr. Bilirakis votes aye.

344 Mr. Johnson?

345 Mr. {Johnson.} Aye.

346 The {Clerk.} Mr. Johnson votes aye.

347 Mr. Long?

348 Mr. {Long.} Aye.

349 The {Clerk.} Mr. Long votes aye.

350 Mrs. Ellmers?

351 Mrs. {Ellmers.} Aye.

352 The {Clerk.} Mrs. Ellmers votes aye.

353 Mr. Bucshon?

354 Mr. {Bucshon.} Aye.

355 The {Clerk.} Mr. Bucshon votes aye.

356 Mr. Flores?

357 Mr. {Flores.} Aye.

358 The {Clerk.} Mr. Flores votes aye.

359 Mrs. Brooks?

360 Mrs. {Brooks.} Aye.

361 The {Clerk.} Mrs. Brooks votes aye.

362 Mr. Mullin?

363 Mr. {Mullin.} Aye.

364 The {Clerk.} Mr. Mullin votes aye.
365 Mr. Hudson?
366 Mr. {Hudson.} Aye.
367 The {Clerk.} Mr. Hudson votes aye.
368 Mr. Collins?
369 Mr. {Collins.} Aye.
370 The {Clerk.} Mr. Collins votes aye.
371 Mr. Cramer?
372 Mr. {Cramer.} Aye.
373 The {Clerk.} Mr. Cramer votes aye.
374 Mr. Pallone?
375 Mr. {Pallone.} No.
376 The {Clerk.} Mr. Pallone votes no.
377 Mr. Rush?
378 Mr. {Rush.} No.
379 The {Clerk.} Mr. Rush votes no.
380 Ms. Eshoo?
381 Ms. {Eshoo.} No.
382 The {Clerk.} Ms. Eshoo votes no.
383 Mr. Engel?
384 [No response.]
385 The {Clerk.} Mr. Green?
386 [No response.]
387 The {Clerk.} Ms. DeGette?

388 [No response.]

389 The {Clerk.} Ms. Capps?

390 Mrs. {Capps.} No.

391 The {Clerk.} Ms. Capps votes no.

392 Mr. Doyle?

393 Mr. {Doyle.} Aye.

394 The {Clerk.} Mr. Doyle votes aye.

395 Ms. Schakowsky?

396 Ms. {Schakowsky.} No.

397 The {Clerk.} Ms. Schakowsky votes no.

398 Mr. Butterfield?

399 [No response.]

400 The {Clerk.} Ms. Matsui?

401 Ms. {Matsui.} No.

402 The {Clerk.} Ms. Matsui votes no.

403 Ms. Castor?

404 Ms. {Castor.} No.

405 The {Clerk.} Ms. Castor votes no.

406 Mr. Sarbanes?

407 Mr. {Sarbanes.} No.

408 The {Clerk.} Mr. Sarbanes votes no.

409 Mr. McNerney?

410 Mr. {McNerney.} No.

411 The {Clerk.} Mr. McNerney votes no.

412 Mr. Welch?
413 Mr. {Welch.} No.
414 The {Clerk.} Mr. Welch votes no.
415 Mr. Lujan?
416 Mr. {Lujan.} No.
417 The {Clerk.} Mr. Lujan votes no.
418 Mr. Tonko?
419 Mr. {Tonko.} No.
420 The {Clerk.} Mr. Tonko votes no.
421 Mr. Yarmuth?
422 Mr. {Yarmuth.} No.
423 The {Clerk.} Mr. Yarmuth votes no.
424 Ms. Clarke?
425 Ms. {Clarke.} No.
426 The {Clerk.} Ms. Clarke votes no.
427 Mr. Loeb sack?
428 Mr. {Loeb sack.} No.
429 The {Clerk.} Mr. Loeb sack votes no.
430 Mr. Schrader?
431 Mr. {Schrader.} Aye.
432 The {Clerk.} Mr. Schrader votes aye.
433 Mr. Kennedy?
434 Mr. {Kennedy.} No.
435 The {Clerk.} Mr. Kennedy votes no.

436 Mr. Cardenas?
437 Mr. {Cardenas.} No.
438 The {Clerk.} Mr. Cardenas votes no.
439 Chairman Upton?
440 The {Chairman.} Votes aye.
441 The {Clerk.} Chairman Upton votes aye.
442 The {Chairman.} Other members wishing to--Mr.
443 Butterfield. Mr. Butterfield?
444 The {Clerk.} Mr. Butterfield is not recorded. Mr.
445 Butterfield votes no.
446 The {Chairman.} Mr. Guthrie?
447 The {Clerk.} Mr. Guthrie votes aye.
448 The {Chairman.} Ms. Kathy--Ms. McMorris Rodgers?
449 The {Clerk.} Mrs. McMorris Rodgers votes aye.
450 The {Chairman.} Mr. Griffith?
451 The {Clerk.} Mr. Griffith votes aye.
452 The {Chairman.} Other members wishing to cast a vote?
453 Seeing none, the Clerk will report the tally.
454 How is Mr. Engel recorded?
455 The {Clerk.} Mr. Engel is not recorded.
456 The {Chairman.} Mr. Engel?
457 The {Clerk.} Mr. Engel votes no.
458 Mr. Chairman, on that vote there were 32 ayes and 19
459 nays.

460 The {Chairman.} 32 ayes and 19 nays, the bill is
461 favorably reported, H.R. 1734, and the ayes have it, so it is
462 favorably reported.

|

463 H.R. 1770

464 The {Chairman.} Chair now calls up H.R. 1770, and asks
465 the Clerk to report.

466 The {Clerk.} H.R. 1770, to require certain entities to
467 collect and maintain personal information of individuals, to
468 secure such information, and to provide notice to such
469 individuals in the case of a breach of security involving
470 such information, and for other purposes.

471 [The bill follows:]

472 ***** INSERT 15 *****

|
473 The {Chairman.} Without objection, the first reading of
474 the bill is dispensed with, and the bill will be open for
475 amendment at any point.

476 And going to strike the last word, and just say this is
477 a bill that I congratulate folks on both sides of the aisle,
478 as we have tried to get this bill ready for the House floor.
479 And I will confess that it is not quite ready, and probably
480 won't be quite ready when we get to final passage later this
481 morning, or early this afternoon, but that doesn't mean that
482 our work isn't going to continue. And I have tasked a couple
483 members on each side to work particularly on the medical
484 records side.

485 I am not comfortable with where we are yet, but I also
486 know that, with a couple more days, we can be ready for what
487 would be a bipartisan amendment on the House floor. And I am
488 going to work particularly with both sides to see that--if we
489 can accomplish that, and get it done in time for what should
490 be consideration at some point next week on the floor. So we
491 will work with the Rules Committee, and with our members.

492 So I just want to say it is a little bit like a bracket
493 on the bill. It is not quite ready, but I would urge my
494 colleagues to support it today to get it to that point, and
495 we will see where we are come next week. So I just want to

496 make that confession at the very beginning.

497 Yeah, would--yeah. Yield--strike the last word, the
498 gentleman from New Jersey.

499 Mr. {Pallone.} Well, again, I know we had opening
500 statements yesterday, Mr. Chairman, so I don't want to
501 belabor the point on the overall bill, but, you know, I just--
502 -I do believe that the Committee should be taking action to
503 reduce data breaches and their adverse effects.
504 Unfortunately, the bill before us does not do that, and I
505 think it weakens existing consumer protections, particularly
506 to the extent that it pre-empts stronger breach notification
507 laws and greater protections that are provided by many of the
508 state laws that would be pre-empted here.

509 I did want to ask you a question, though. Is--do you--
510 is it your intention, or is it the intention of the
511 leadership, to combine this with other legislation that is
512 brought to the floor--

513 The {Chairman.} I don't know. I will--if the gentleman
514 will yield? I have discussed in brief our role. It is--we
515 are going to do a number of cybersecurity bills next week on
516 the floor, and it is--I am not quite--I don't know the
517 procedure that it will be--that will be considered on the
518 floor. My guess is it will have three separate bills, as two
519 other committees have reported out, and at some point they

520 will be combined to send to the Senate, but I don't know that
521 a final decision is--

522 Mr. {Pallone.} Well, if you would just yield--

523 The {Chairman.} It is your time.

524 Mr. {Pallone.} It is my time? I just--I wanted to say
525 that, you know, I am very concerned. I mean, I understand
526 you are saying that, you know, you are still going to work on
527 this, and, you know, it is a work in progress, but I just
528 think that this is moving much too quickly. I mean, there
529 are a lot of changes that I think need to be made, and right
530 now I am very concerned about--in particular the pre-emption
531 issue, and the fact that it might be combined with other
532 bills. And all these things are, you know, I think need a
533 lot of time and work.

534 And I think that--to just, you know, put this in with
535 other bills that come from the Senate, even as you admit, at
536 this point, that it needs more work, I think, you know, we
537 are just moving too quickly, without the opportunity, really,
538 to look at what we are doing overall. You are--not only this
539 bill, but the other bills that it might be combined with.

540 So, you know, if--I would like to see the process slowed
541 down, because I think this is an important issue that we are
542 not really addressing effectively.

543 The {Chairman.} If the gentleman will yield? And I say

544 with a smile, I don't expect it to come up under suspension.

545 Mr. {Pallone.} Okay.

546 The {Chairman.} The--

547 Mr. {Pallone.} Mr. Rush?

548 The {Chairman.} And we have a manager's amendment, I
549 know, on our side here, but, again, I want to encourage both
550 sides to see if we can't work on this medical records issue
551 with the states. I am encouraged that we can see that happen
552 and be ready for Rules Committee next week.

553 Mr. {Pallone.} Mr. Rush wants me to yield.

554 Mr. {Rush.} Thank you, Mr. Ranking Member for yielding
555 the time. I also think that we are moving much too hastily
556 on this bill, that we need to slow down for--to get--not only
557 members of--on both sides of this committee, but also--others
558 throughout the nation. And, Mr. Chairman, I do have a letter
559 that I want to unanimous consent to read, and--into the
560 record from my Attorney General, Lisa Madigan.

561 But I heard from--in the letter she states, ``The bill
562 provides the appearance of action on data security at the
563 Federal level, while in reality it rolls back many of the
564 data security protections that have been made at the state
565 level in recent years, and either replaces them with weaker
566 provisions, or deletes them entirely. For that reason, I
567 cannot support the bill in its current form, and would urge

568 you to--the bill's inefficiencies before voting in its favor.
569 Based upon the feedback I have received from Illinois
570 residents--your constituents are opposed to a bill that
571 decreases the protections currently available to them under
572 Illinois law now in the fold.''

573 Mr. Chairman, I think my Attorney General has said it
574 real clearly, and plainly, succinctly, and I think that we
575 are moving too fast. And what I--like to do, Mr. Chairman,
576 is--I request unanimous consent to enter--

577 The {Chairman.} Without objection, it will be included
578 as part of the record.

579 [The information follows:]

580 ***** COMMITTEE INSERT *****

|
581 Mr. {Rush.} Thank you.

582 The {Chairman.} Gentleman yields?

583 Mr. {Pallone.} Does Ms. Eshoo want her own time?

584 The {Chairman.} Strike the last words. Gentlelady will
585 be recognized for 5 minutes.

586 Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning
587 to you. I am encouraged by what you have said. This is a--
588 an issue that needs to be addressed. It is a challenge to
589 our country. We know that it is. I wanted to say to both
590 Mr. Welch, and to those on your side of the aisle, that,
591 while the bill falls short, and has some issues, as you said,
592 that need to be addressed, I give them credit for going at
593 this issue, because it is a challenge for our country that
594 can be met, should be met.

595 And, again, I am encouraged with what you said. The
596 issue of health information, and other issues, really need to
597 be addressed. So, as my colleagues have said, they think
598 that we are moving too fast. Whatever time we have, we
599 should optimize it. And so if people think it is moving too
600 fast, well, then we should put the pedal to the metal to, as
601 I said, optimize time to address the challenges that are
602 still left. So I am very encouraged by your saying that you
603 see where some of the shortcomings are, and what need to be

604 worked on, and if I can help in any way, I stand ready to do
605 so. So I yield back. Thank you.

606 The {Chairman.} Okay. Are there amendments? Any
607 bipartisan amendments to the bill?

608 Mr. {Kinzinger.} Mr. Chairman?

609 The {Chairman.} Wait. I have a--is it a bipartisan
610 amendment?

611 Mr. {Kinzinger.} It is.

612 The {Chairman.} It is? Gentleman is--Clerk will report
613 the title of the amendment.

614 The {Clerk.} Which number, sir?

615 The {Chairman.} Kinzinger 13.

616 Mr. {Kinzinger.} Kinzinger.

617 The {Clerk.} Amendment to H.R. 1770, offered by Mr.
618 Kinzinger of Illinois.

619 [The amendment of Mr. Kinzinger follows:]

620 ***** INSERT 2 *****

|
621 The {Chairman.} Gentleman is recognized for 5 minutes
622 in support of his amendment.

623 Mr. {Kinzinger.} Well, thank you, Mr. Chairman. I also
624 would like to thank Dr. Burgess, and I appreciate the
625 Committee's diligent work in crafting a bipartisan targeted
626 data breach bill. I would also like to thank Congressmen
627 Welch and McNerney for working with me on this amendment, and
628 working in a bipartisan fashion--the underlying bill.

629 This amendment is very simple. It would add e-mail
630 address, in combination with a password or security question,
631 that would permit access to an online account to the
632 definition of personally identifiable information. I
633 appreciate the narrow focus of the draft--that the draft bill
634 takes in protecting consumers against economic harm, and I
635 believe this amendment would strengthen that focus.

636 Today nearly every aspect of our lives makes its way
637 into our e-mail account. If you think about it, we receive
638 monthly statements from our banks, credit card companies,
639 student loan companies, and mortgage companies. Maybe we
640 even send ourselves an e-mail to remind us of our passwords
641 for access to those same accounts. It is not the best
642 practice by any stretch, but this is how the average consumer
643 uses their e-mail. More importantly, criminals know this as

644 well.

645 In short, a criminal could quickly build a profile by
646 having access to your e-mail, and it would almost certainly
647 lead to consumer economic harm. That is why it is incredibly
648 important for us to adopt this amendment to protect
649 consumers.

650 Again, I would like to thank you, and thank all that has
651 worked with me, and I would encourage all of my colleagues to
652 support this bipartisan--

653 Mr. {Pallone.} Would the gentleman yield?

654 Mr. {Kinzinger.} I will.

655 Mr. {Pallone.} I just wanted to--I think it is clear to
656 all of us there are major problems with the limited
657 definition of personal information in the bill, and this
658 amendment acknowledges that by trying to expand the
659 definition, although in a minimal way. E-mail addresses are
660 an important personal identifier. If you had my e-mail
661 address, you can usually pretty easily discover my name, and
662 possibly a lot more information. I am also glad to see this
663 amendment recognizes there are more types of financial
664 account identifiers than listed in the bill, and there are
665 also different types of passcodes, including some that are
666 based on some other underlying code that can change from
667 minute to minute.

668 And I will support this--I will support anything that
669 makes this bad bill better, even if it only is in small ways.
670 And although I urge my colleagues to support this amendment,
671 it does not contemplate other information that should be part
672 of the definition. So, again, we should still oppose final
673 passage of the bill. I yield back.

674 The {Chairman.} Thank you.

675 Mrs. {Blackburn.} If the gentleman would yield?

676 Mr. {Kinzinger.} I will.

677 Mrs. {Blackburn.} Thank you, and I want to thank the
678 gentleman for the amendment, for the addition of this, and
679 also for the bipartisan cooperation that is brought to bear
680 on this. And it does expand the definition. It does provide
681 some clarity, and I think an understanding to consumers who
682 are looking for the appropriate--with which to have
683 protection, and to know that their data--companies that want
684 to know their data is secure. So I yield back.

685 Mr. {Kinzinger.} Thank you, Mr. Chairman. Unless
686 somebody else wants to speak, I will yield my time back.

687 The {Chairman.} Gentleman yields back. Is--other
688 members wishing to speak? Gentleman from California is
689 recognized.

690 Mr. {McNerney.} Thank you, Mr. Chairman. I speak in
691 support of the amendment introduced by my colleague, Mr.

692 Kinzinger. The bill currently includes several items under
693 the definitions of personal information that must be breached
694 in order to trigger a notification, but fails to mention e-
695 mails or usernames in conjunction with password or security
696 questions, and I believe it is crucial that these items be
697 included in the legislation. Very often a variety of
698 personal information about a person can be gathered from the
699 e-mail account, and we can't exclude a breach of someone's
700 online persona in our discussion about breach notification.

701 I thank my colleague for his work on this issue, and I
702 urge my colleagues to support this simple, but practical,
703 change that will improve the current bill. And I yield back.

704 The {Chairman.} Gentleman yields back. Other members
705 wishing to speak on the amendment? Gentleman from Vermont.

706 Mr. {Welch.} I support this as well. It is a very
707 practical, but limited, extension of personal information
708 that would be subject to protection. One of the issues that
709 we are going to have to contend with is what is the scope of
710 personal information that is going to trigger a notice, and
711 there are two points of view on that. One is you want it be-
712 -you want it to be narrow, but protective, and the other is
713 everything that could possibly be considered a breach
714 requires--triggers a notification.

715 The reality is the core of this bill has been narrowly

716 presented and defined. Mr. Burgess worked very hard on that.
717 Ms. Blackburn worked very hard on that. And the narrow
718 approach is what is essential if we are going to have success
719 to provide any protection to consumers. This amendment is
720 very consistent with the necessity of having a narrow
721 definition that, in my view, enhances the likelihood of
722 consumers being protected, so I thank Mr. Kinzinger for this
723 amendment. I yield back.

724 The {Chairman.} Gentleman yields back. Other members
725 wishing to speak?

726 Seeing none, the vote occurs on the amendment offered by
727 Mr. Kinzinger.

728 All those in favor will say aye.

729 Those opposed say no.

730 In the opinion of the Chair the ayes have it. The
731 amendment is agreed to.

732 Are there other amendments to the bill? Gentlelady from
733 California, Ms. Eshoo, has an amendment at the desk--was it--
734 I am sorry, Mr. Rush.

735 Mr. {Rush.} Mr. Chairman, I have an amendment in the
736 nature of a substitute--

737 The {Chairman.} Gentleman has--

738 The {Clerk.} Amendment in the nature of a substitute to
739 H.R. 1770, offered by Mr. Rush and Ms. Schakowsky.

740 [The amendment of Mr. Rush and Ms. Schakowsky follows:]

741 ***** INSERT 3 *****

|
742 The {Chairman.} And the gentleman is recognized for 5
743 minutes in support of his amendment.

744 Mr. {Rush.} Thank you, Mr. Chairman. The Rush-
745 Schakowsky amendment today makes significant improvements to
746 this bill. These changes that we are proposing include more
747 robust security requirements to protect personal information,
748 and special requirements for data brokers, whose business it
749 is to collect, assemble, and maintain personal information.
750 It also includes, no matter what the harm might be--
751 potentially might be, notification, even without a harm
752 analysis, within 30 days of the discovery of a breach.

753 This notification requirement recognizes there are no--
754 there are other harms besides financial harm that can result
755 from a breach of your personal information, and from
756 consumers--and consumers deserve to be notified so that they
757 can mitigate damages, or prevent harms from occurring at all.
758 And it requires notice of an entity's website--it requires
759 notice on an entity's website, and through print and
760 broadcast media as part of the original notice, not just some
761 substitute or insufficient notice.

762 Mr. Chairman, this amendment significantly provides for
763 free credit monitoring and credit reports to individuals for
764 2 years following the breach, and provides notice of

765 breachings to state Attorneys General, who are one of the
766 primary enforcers, and who have all remedies, including civil
767 penalties, injunctive relief, and restitution on behalf of
768 residents available to them. This amendment also--
769 enforcement that currently exists by extending application to
770 common carriers and not-for-profits, while requiring that the
771 FTC coordinate its enforcement efforts within--with the FCC
772 and the CFBP to avoid duplicate enforcement. This amendment
773 also contains pre-emption, but instead of weakening existing
774 state law, this pre-emption replaces state laws with strong
775 Federal law, which preserving state common law, and consumer
776 protection laws.

777 Finally, Mr. Chairman, this amendment covers
778 significantly more types of personal information, including
779 biometric and genetic information, e-mail addresses and
780 passwords, information about someone's location, health--
781 medical information, health insurance information, non-public
782 communications, and payroll and credit history. It also
783 gives the FC--FTC the rulemaking authority to change the
784 definition, through rulemaking, to address changes in
785 technology, new hacking techniques, and the types of
786 information that may become valuable.

787 Mr. Chairman, I urge my colleagues to support this
788 amendment, and, unless there is someone requesting time, I

789 yield--

790 The {Chairman.} Let me--you still have the time.

791 Mr. {Rush.} I yield back.

792 The {Chairman.} Gentleman yields back. Other members
793 wishing to speak?

794 Mr. {Barton.} Mr. Chairman?

795 The {Chairman.} Mr. Barton, recognized for 5 minutes.

796 Mr. {Barton.} Mr. Chairman, I want to rise in support
797 of the Rush amendment. I was very comforted by your opening
798 statement today, and you know the bill before us, while a
799 good work product, is not a finished product, and that you
800 intend to continue to work with members on both sides of the
801 aisle as we prepare to go to the floor.

802 I support your decision to go to the floor next week. I
803 think it is always better to legislate than to not legislate,
804 and I am absolutely certain that when you say you are going
805 to work with members that want to try to improve the bill,
806 that you mean that, because you are a man of honor, and you
807 intend to do exactly what you say.

808 The Rush amendment is an amendment that was a bill that
809 Mr. Rush and I introduced several Congresses ago, and passed
810 this Committee. Every Republican on the Committee at that
811 time, while possibly not in total support of it, it was--it
812 passed on a voice vote--so it--this amendment passed the

813 Committee, passed the House. It was not taken up in the
814 Senate. Now, that was several Congresses ago, and the world
815 changes, and the work product that has come out of Dr.
816 Burgess's subcommittee reflects some of those changes in a
817 positive way. However, there are still basic questions that
818 people can honorably disagree on.

819 And the problem that people like myself have with the
820 current work product is that it doesn't, in my opinion, go
821 far enough to protect the individual, and identify those
822 individual items that truly should be protected. It is an
823 honest attempt to do so, but it doesn't--go far enough. The
824 Rush amendment, in my opinion, does do that, but it is not
825 perfect. And, you know, I am going to support the Rush
826 amendment.

827 I am also going to support your effort, and Dr.
828 Burgess's effort, to work with both--those of us in the
829 majority that have some concerns, and the minority, to see if
830 we can't come up with--or perhaps some amendments that we
831 could--so that the body can work its will when we get it to
832 the floor.

833 I am going to vote for the base text on final passage
834 today, if you take it to final passage, but I do feel honor
835 bound, as the co-chairman of the privacy caucus in the House
836 for the last 10 to 12 years to support this product because

837 it is a serious effort to address this--issue. So I support
838 the Rush amendment, and with that, Mr. Chairman, I yield
839 back.

840 The {Chairman.} Gentleman yields back. Other members
841 wishing to speak? Gentleman from New Jersey, Mr. Pallone.

842 Mr. {Pallone.} Thank you, Mr. Chairman. As you have
843 heard me say, I think the underlying bill is deeply flawed.
844 This amendment, the Rush amendment, or maybe the Rush-Barton
845 amendment, in the nature of a substitute strikes the right
846 balance between lessening burdens on businesses by providing
847 uniform standards and protecting consumers through strong
848 security standards, and proper notice of when their
849 information is put--breach. And the amendment provides a
850 number of improvements over the draft bill before us today.

851 Despite its name, the bill, the underlying bill, does
852 not truly provide for adequate data security. One
853 stakeholder explained that it should not be subject to a
854 security standard that is so vague it will surely be
855 litigated and left to traditional interpretation. This
856 amendment provides a strong security standard, with needed
857 specificity, while ensuring that it is technology neutral,
858 and allows for flexibility for businesses to implement
859 appropriate security procedures. It also gives FTC
860 rulemaking authority to flesh out the needed details, and

861 allows those details to change over time as criminals get
862 more and more creative.

863 Security experts know that unauthorized access, or use
864 of all kinds of personal information, can harm the people
865 whose information is stolen. That is why this amendment does
866 not include a financial harm trigger for notification to
867 consumers. Also, this amendment covers additional personal
868 information beyond just financial information, and provides
869 the FTC with authority to change the definition over time.
870 The Anthem and Provera breaches show how health and
871 employment data are now valuable, perhaps more valuable to
872 criminals than Social Security Numbers. And this amendment
873 also acknowledges the important role of the states, and
874 eliminates the limitations on state enforcement that are in
875 the draft underlying bill. It protects their authority to
876 police unfair and deceptive acts and practices.

877 So these are just a few of the improvements the
878 amendment makes on the draft bill. Rather than diminishing
879 consumers' current protections through--pre-emption and weak
880 security standards and notification requirements, this
881 amendment protects consumers without overburdening businesses
882 that are victims of criminal breaches. So I urge support for
883 the Rush amendment, and I yield back.

884 The {Chairman.} Gentleman yields back. Gentleman

885 yields back?

886 Mr. {Pallone.} Yes.

887 The {Chairman.} Other members wishing to speak? Chair
888 would recognize the gentlelady from Tennessee, Ms. Blackburn.

889 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I thank
890 Mr. Rush, and Mr. Barton, for their attention through--to
891 this issue through the years. They certainly have followed
892 it, and we appreciate that. I think the--H.R. 1770, the bill
893 that is before us today, is something that is much more
894 narrow than what the Barton-Rush bill was when we had it
895 before us 6 years ago.

896 Now, the amendment that Mr. Rush has brought is
897 something that would still perpetuate concerns that have--
898 that are--that we have with a patchwork of state laws. This
899 is a problem that has grown, that has not diminished through
900 the years. The--an amendment would incorporate requirements
901 for data brokers, which unnecessarily injects confusion into
902 the law, and potentially harms consumers by creating
903 different protections for personal information, depending on
904 who is holding that information.

905 So we know that the amendment is broad, it would add to
906 the confusion, we would not have the pre-emption. And, with
907 that, Mr. Chairman, I yield back my time, as I encourage a no
908 vote on the amendment.

909 The {Chairman.} Other members wishing to speak? The
910 gentlelady from Illinois, Ms. Schakowsky.

911 Ms. {Schakowsky.} Thank you, Mr. Chairman. I move to
912 strike the last word. This amendment offers the improvements
913 to the bill that I believe are needed to adequately protect
914 consumer data, provide notification to those whose
915 information has been breached. The bill maintains the
916 Blackburn-Welch data security requirement and the FTC penalty
917 authority, so it maintains some of the good parts of the bill
918 that is before us.

919 But the amendment also allows for joint FCC-FTC
920 authority over telecommunications, cable, and satellite
921 providers by allowing new FTC enforcement, while maximizing
922 existing consumer protections under the Communications Act.
923 This amendment also eliminates the harm trigger that I and
924 many others in the Subcommittee believe to be too narrowly
925 focused on financial harm. States like California,
926 Massachusetts, New York, and Texas already require breach
927 notification without the harm trigger. With this amendment,
928 when any personal information is breached, consumers must be
929 notified.

930 This substitute also expands the definition of personal
931 information to include geolocation, which could be important
932 for a person who is a victim of domestic violence, health

933 related, biometric, and e-mail and social media account
934 information. It gives the FTC the authority to amend the
935 definition of personal information through a rulemaking
936 process as technology and commerce evolve.

937 The amendment requires notice within 30 days of
938 discovery of a breach, rather than after a potentially
939 lengthy investigation conducted by breached entities has been
940 completed. The Rush amendment guarantees 2 years of free
941 credit monitoring in the event that personal information is
942 breached, ensuring that consumers have assistance of limiting
943 their losses that are associated with a breach, excuse me.
944 The amendment covers electronic--non-electronic data, so that
945 paper documents must also be protected against breach.

946 I believe that this amendment--my colleague, Ms.
947 Blackburn, talked about it, the bill being narrower, but here
948 we have a real shot at good data protection. Why should we
949 narrow the bill to the extent that we do? Adding the things
950 that Mr. Barton and Mr. Rush worked on for so many years to
951 make a bill that has been accepted by so many, I think we
952 ought to have a more comprehensive bill. Maybe one shot at
953 the--at this, and I think we should do as much as we can to
954 protect consumers.

955 So I believe this amendment addresses the flaws of the
956 bill in a way that will benefit consumers, while providing

957 businesses more clarity in meeting data security and breach
958 notification standards. So I thank Mr. Rush, and I thank Mr.
959 Barton for his support, and I urge my colleagues to support
960 the bill. I yield back.

961 The {Chairman.} Gentlelady yields back. Other members
962 wish to speak?

963 Seeing--gentleman from Vermont.

964 Mr. {Welch.} Two things. Number one, I am going to
965 support this amendment, and it is out of respect for the
966 groundbreaking work that Mr. Barton and Mr. Rush have done.
967 Second, in the ideal world, many of the provisions that they
968 want would be passed, but they are highly contentious, and
969 that is why the narrow approach that has been taken in the
970 original bill, I think, ultimately is the one that has the
971 chance to succeed.

972 And let me just give one example. I am a co-sponsor of
973 legislation that would provide geolocation protection, but
974 there is no legislation in this Congress that is passed that
975 provides that protection. There is no legislation to be
976 passed on many of the privacy concerns that many members of
977 both sides have. And one of the reasons we don't have that
978 legislation is because we don't have anything close to a
979 consensus on many of these things. So I would like to see us
980 be able to pass this, but I also know that the reason that

981 the Chairman and others have focused on a narrow bill is
982 because there is an immediate and urgent problem that has to
983 do with criminals who are constantly making the effort to
984 steal our financial information.

985 And you know what? I want us to solve that problem. I
986 want to protect people's financial information. If we can do
987 all these other things that Mr. Barton and Mr. Rush have
988 worked on, great, let us do it. But at the end of the day,
989 the one thing that has to be done is to protect financial
990 information, and close how--the criminals from going into our
991 files. I yield back.

992 The {Chairman.} Gentleman yields back.

993 Mr. {Burgess.} Would the gentleman yield?

994 Mr. {Welch.} I would yield, yes.

995 Mr. {Burgess.} And I thank the gentleman for his
996 observations, and he said it very well--the law. Why did you
997 rob banks, Mr. Sutton? Because that is where the money is.
998 The money in this theft is in the theft of personal
999 identification, which could then be monetized and sold
1000 between criminals. They are not really interested in the
1001 information on our Fit Bits. They are not really interested
1002 in geolocation data. Not that it is not important, but we
1003 have a cost of \$100 billion a year to the American economy
1004 that is going on right now. By taking a narrow approach, the

1005 thought was that we could contain this. It doesn't do
1006 everything. It is not going to stop every episode of
1007 criminal activity, but let us go after where the heart is,
1008 and that is the monetization of data that is stolen in these
1009 data breaches.

1010 I thank the gentleman for his work with the
1011 Subcommittee, and being willing to work with us on several of
1012 these provisions. I will yield back to the gentleman.

1013 Mr. {Rush.} I think that we must focus on two areas
1014 here. One is the bill before us. It really handicaps, if
1015 not prevents, Attorney Generals from across this country from
1016 doing what they do best, and what they have been doing for a
1017 number of years. This pre-empts all existing state laws,
1018 every one of them, and I think the Attorney Generals, they
1019 got it right.

1020 We certainly--they want a Federal statute, but they
1021 don't want a Federal statute that penalizes their
1022 constituents, or our constituents, that forces them out of
1023 the data protection efforts. They want something that would
1024 enhance their ability to do what they have been doing without
1025 any Federal standards for a number of years now. And, you
1026 know, I think in terms of--but none of us like a half done
1027 cake.

1028 I feel ask though what we are doing right now is that we

1029 are--the American people a cake, even though it is half done.
1030 Let us complete--let us cook this bill. Let us--the right
1031 way. Let us make this bill what the American people are
1032 looking for. They are looking for something substantive.

1033 I would hate to go to my constituents and say, well, in
1034 spite of your fears, and in spite of your concerns about data
1035 protection, we are not going to protect your e-mails. We are
1036 not going to protect other parts of your data. We are not
1037 going to protect your issues. We are not going to protect
1038 your credit reports, because we are only going to protect one
1039 thing, when you have got 20 things that need to be protected.
1040 That is not any good. That doesn't make sense to people.

1041 The {Chairman.} Gentleman's time has expired. Other
1042 members wishing to speak on the amendment?

1043 Seeing none--I am sorry. See--I see none. The vote
1044 occurs--yeah, we will--the vote occurs on the amendment
1045 offered by Mr. Rush. A roll call vote has been asked. The
1046 Clerk will call the roll.

1047 The {Clerk.} Mr. Barton?

1048 Mr. {Barton.} Aye.

1049 The {Clerk.} Mr. Barton votes aye.

1050 Mr. Whitfield?

1051 Mr. {Whitfield.} No.

1052 The {Clerk.} Mr. Whitfield votes no.

1053 Mr. Shimkus?
1054 [No response.]
1055 The {Clerk.} Mr. Pitts?
1056 Mr. {Pitts.} No.
1057 The {Clerk.} Mr. Pitts votes no.
1058 Mr. Walden?
1059 Mr. {Walden.} No.
1060 The {Clerk.} Mr. Walden votes no.
1061 Mr. Murphy?
1062 Mr. {Murphy.} No.
1063 The {Clerk.} Mr. Murphy votes no.
1064 Mr. Burgess?
1065 Mr. {Burgess.} No.
1066 The {Clerk.} Mr. Burgess votes no.
1067 Mrs. Blackburn?
1068 Mrs. {Blackburn.} No.
1069 The {Clerk.} Mrs. Blackburn votes no.
1070 Mr. Scalise?
1071 [No response.]
1072 The {Clerk.} Mr. Latta?
1073 [No response.]
1074 Mrs. McMorris Rodgers?
1075 Mrs. {McMorris Rodgers.} No.
1076 The {Clerk.} Mrs. McMorris Rodgers votes no.

1077 Mr. Harper?
1078 Mr. {Harper.} No.
1079 The {Clerk.} Mr. Harper votes no.
1080 Mr. Lance?
1081 Mr. {Lance.} Aye.
1082 The {Clerk.} Mr. Lance votes aye.
1083 Mr. Guthrie?
1084 [No response.]
1085 The {Clerk.} Mr. Olson?
1086 Mr. {Olson.} No.
1087 The {Clerk.} Mr. Olson votes no.
1088 Mr. McKinley?
1089 Mr. {McKinley.} No.
1090 The {Clerk.} Mr. McKinley votes no.
1091 Mr. Pompeo?
1092 Mr. {Pompeo.} No.
1093 The {Clerk.} Mr. Pompeo votes no.
1094 Mr. Kinzinger?
1095 Mr. {Kinzinger.} No.
1096 The {Clerk.} Mr. Kinzinger votes no.
1097 Mr. Griffith?
1098 Mr. {Griffith.} No.
1099 The {Clerk.} Mr. Griffith votes no.
1100 Mr. Bilirakis?

1101 Mr. {Bilirakis.} No.
1102 The {Clerk.} Mr. Bilirakis votes no.
1103 Mr. Johnson?
1104 Mr. {Johnson.} No.
1105 The {Clerk.} Mr. Johnson votes no.
1106 Mr. Long?
1107 Mr. {Long.} No.
1108 The {Clerk.} Mr. Long votes no.
1109 Mrs. Ellmers?
1110 Mrs. {Ellmers.} No.
1111 The {Clerk.} Mrs. Ellmers votes no.
1112 Mr. Bucshon?
1113 Mr. {Bucshon.} No.
1114 The {Clerk.} Mr. Bucshon votes no.
1115 Mr. Flores?
1116 Mr. {Flores.} No.
1117 The {Clerk.} Mr. Flores votes no.
1118 Mrs. Brooks?
1119 Mrs. {Brooks.} No.
1120 The {Clerk.} Mrs. Brooks votes no.
1121 Mr. Mullin?
1122 Mr. {Mullin.} No.
1123 The {Clerk.} Mr. Mullin votes no.
1124 Mr. Hudson?

1125 Mr. {Hudson.} No.

1126 The {Clerk.} Mr. Hudson votes no.

1127 Mr. Collins?

1128 Mr. {Collins.} No.

1129 The {Clerk.} Mr. Collins votes no.

1130 Mr. Cramer?

1131 [No response.]

1132 The {Clerk.} Mr. Pallone--Mr. Cramer?

1133 Mr. {Cramer.} No.

1134 The {Clerk.} Mr. Cramer votes no.

1135 Mr. Pallone?

1136 Mr. {Pallone.} Aye.

1137 The {Clerk.} Mr. Pallone votes aye.

1138 Mr. Rush?

1139 Mr. {Rush.} Aye.

1140 The {Clerk.} Mr. Rush votes aye.

1141 Ms. Eshoo?

1142 Ms. {Eshoo.} Aye.

1143 The {Clerk.} Ms. Eshoo votes aye.

1144 Mr. Engel?

1145 Mr. {Engel.} Aye.

1146 The {Clerk.} Mr. Engle votes aye.

1147 Mr. Green?

1148 [No response.]

1149 The {Clerk.} Ms. DeGette?
1150 [No response.]
1151 The {Clerk.} Ms. Capps?
1152 Mrs. {Capps.} Aye.
1153 The {Clerk.} Ms. Capps votes aye.
1154 Mr. Doyle?
1155 Mr. {Doyle.} Aye.
1156 The {Clerk.} Mr. Doyle votes aye.
1157 Ms. Schakowsky?
1158 Ms. {Schakowsky.} Aye.
1159 The {Clerk.} Ms. Schakowsky votes aye.
1160 Mr. Butterfield?
1161 Mr. {Butterfield.} Aye.
1162 The {Clerk.} Mr. Butterfield votes aye.
1163 Ms. Matsui?
1164 Ms. {Matsui.} Aye.
1165 The {Clerk.} Ms. Matsui votes aye.
1166 Ms. Castor?
1167 Ms. {Castor.} Aye.
1168 The {Clerk.} Ms. Castor votes aye.
1169 Mr. Sarbanes?
1170 Mr. {Sarbanes.} Aye.
1171 The {Clerk.} Mr. Sarbanes votes aye.
1172 Mr. McNerney?

1173 Mr. {McNerney.} Aye.
1174 The {Clerk.} Mr. McNerney votes aye.
1175 Mr. Welch?
1176 Mr. {Welch.} Aye.
1177 The {Clerk.} Mr. Welch votes aye.
1178 Mr. Lujan?
1179 Mr. {Lujan.} Aye.
1180 The {Clerk.} Mr. Lujan votes aye.
1181 Mr. Tonko?
1182 Mr. {Tonko.} Aye.
1183 The {Clerk.} Mr. Tonko votes aye.
1184 Mr. Yarmuth?
1185 Mr. {Yarmuth.} Aye.
1186 The {Clerk.} Mr. Yarmuth votes aye.
1187 Ms. Clarke?
1188 Ms. {Clarke.} Aye.
1189 The {Clerk.} Ms. Clarke votes aye.
1190 Mr. Loeb sack?
1191 Mr. {Loeb sack.} Aye.
1192 The {Clerk.} Mr. Loeb sack votes aye.
1193 Mr. Schrader?
1194 Mr. {Schrader.} Aye.
1195 The {Clerk.} Mr. Schrader votes aye.
1196 Mr. Kennedy?

1197 Mr. {Kennedy.} Aye.

1198 The {Clerk.} Mr. Kennedy votes aye.

1199 Mr. Cardenas?

1200 Mr. {Cardenas.} Aye.

1201 The {Clerk.} Mr. Cardenas votes aye.

1202 Chairman Upton?

1203 The {Chairman.} Votes no.

1204 The {Clerk.} Chairman Upton votes no.

1205 The {Chairman.} Members wishing to vote? Mr. Shimkus?

1206 Mr. {Shimkus.} No.

1207 The {Clerk.} Mr. Shimkus votes no.

1208 The {Chairman.} Mr. Latta?

1209 Mr. {Latta.} No.

1210 The {Clerk.} Mr. Latta votes no.

1211 The {Chairman.} Mr. Scalise?

1212 Mr. {Scalise.} No.

1213 The {Clerk.} Mr. Scalise votes no.

1214 The {Chairman.} Other members wishing to cast a vote?

1215 Seeing none, the Clerk will report the tally.

1216 The {Clerk.} Mr. Chairman, on that vote there were 23

1217 ayes and 28 nays.

1218 The {Chairman.} 23 ayes, 28 nays, the amendment is not

1219 agreed to.

1220 Other amendments to the bill? Gentleman from Texas, Mr.

1221 Olson, has an amendment to the bill.

1222 Mr. {Olson.} Mr. Chairman, I have an amendment at the
1223 desk.

1224 The {Chairman.} And the Clerk will report the title of
1225 the amendment.

1226 The {Clerk.} Which number is your amendment, sir?

1227 Mr. {Olson.} My amendment, let me find it here, it is
1228 Olson #1. Boy, I can't--all sorts of letters and numbers,
1229 file--

1230 The {Clerk.} I think we have it, sir. Amendment to
1231 H.R.--

1232 Mr. {Olson.} Okay.

1233 The {Clerk.} --1770, offered by Mr. Olson.

1234 [The amendment of Mr. Olson follows:]

1235 ***** INSERT 4 *****

|
1236 The {Chairman.} The gentleman will be recognized--the
1237 Clerk will distribute the amendment. The amendment will be
1238 considered as read, and the gentleman is recognized for 5
1239 minutes in support of his amendment.

1240 Mr. {Olson.} Mr. Chairman, my amendment reduces the per
1241 record fine, and caps the FTC penalties for first time
1242 offenders. I appreciate the caps for state AGs already in
1243 the bill, and believe it is also important to cap civil
1244 penalties to the FTC. More often than not, companies who
1245 suffer a data breach that results in financial harm or
1246 identity theft are the victims of criminals hacking their
1247 system. My amendment reduces the fine per record in the bill
1248 from \$11,000 to \$1,000.

1249 In the President's recent data plan, he proposed a fine
1250 of \$1,000 per--and while I rarely agree with President Obama,
1251 in this case, \$1,000 is a more appropriate number. My
1252 amendment caps FTC fines at 8.76 million for Section 2
1253 violations, and 17.52 million for violations of Section 3. I
1254 urge my colleagues to vote for the amendment, and unless
1255 anyone wants to speak, I yield back my time.

1256 Mrs. {Blackburn.} If the gentleman would yield?

1257 Mr. {Olson.} I yield, yes, ma'am. Sorry.

1258 Mrs. {Blackburn.} I thank the gentleman for his work on

1259 the issue. I thank him for bringing forward the amendments,
1260 and I support the amendment, and I yield back my time to the
1261 gentleman.

1262 The {Chairman.} Gentleman from New Jersey is recognized
1263 for 5 minutes.

1264 Mr. {Pallone.} Thank you, Mr. Chairman. I would urge
1265 my colleagues to oppose the Olson amendment. The scope of
1266 data breaches can be massive. These breaches often affect
1267 some of the largest companies in the world. Therefore, the
1268 impact of these breaches have--can be devastating for
1269 millions of consumers. The FTC needs the ability to match
1270 the scope of these breaches without penalties. They have
1271 long used their discretion in imposing fair penalties, and
1272 have been judicious in where they bring the cases.

1273 This amendment establishes a \$1,000 per violation cap on
1274 penalties that can be imposed under Section 3 of the Federal
1275 Trade Commission Act. This amendment also establishes a
1276 maximum total penalty of \$8,760,000 that can be imposed for a
1277 violation of Section 2 of the Act, and then further gives
1278 violators a pass on their first violation of Section 2.

1279 This amendment unnecessarily hamstring the FTC, and
1280 takes away their discretion in getting penalties that will
1281 deter future violations. It has become an unfortunate
1282 reality that hackers can, and will, access personal

1283 information without permission and use that information to
1284 hurt consumers. Companies need to be vigilant in securing
1285 consumer information. Giving them a free pass on their first
1286 violation and reducing the penalties does nothing to
1287 incentivize vigilance.

1288 Just the other day the FTC was able to assess a \$25
1289 million fine on AT&T for failure to maintain proper data
1290 security, and this was a reasonable sum, given the breadth of
1291 the security breach, but this amendment would limit the FTC's
1292 fining authority to much less, and therefore I would oppose
1293 the amendment, Mr. Chair.

1294 The {Chairman.} Other members wishing to speak on the
1295 amendment?

1296 Mr. {Rush.} Mr. Chairman?

1297 The {Chairman.} Gentleman from Illinois.

1298 Mr. {Rush.} Mr. Chairman, the underlying bill would
1299 allow FTC to pursue violations of the bill--unfair and
1300 deceptive acts or practices. This gives the FTC the
1301 flexibility to seek fair penalties that are commensurate with
1302 the damage that has been done. It has been stated earlier
1303 the FTC has settled more than 30 matters, challenging
1304 companies' expressed and implied claims about the security
1305 they provide for consumers' personal data, and the FTC has
1306 settled more than 20 cases alleging that a company's--to

1307 reasonably safeguard consumer data was an unfair practice.

1308 In its first data security enforcement action, it
1309 settled for \$10 million in civil penalties, and \$5 million in
1310 consumer redress. This case involved a data breach of
1311 personal information for 163,000 persons, and the penalties
1312 were commensurate with the damage done. But other breaches
1313 have reached into the tens of millions, consumers, and we
1314 really can't fully anticipate what types of breaches may come
1315 in the future. As such, the FTC must maintain the ability to
1316 settle penalties at a level that would help ensure future
1317 compliance, and help consumers.

1318 This amendment, Mr. Chairman, takes away the FTC's
1319 ability to ensure companies comply with the law, and fail to
1320 incentivize strong security measures being built into
1321 products and services from day one. Mr. Chairman, I urge
1322 members to vote--

1323 Mr. {Olson.} Will the gentleman yield, please?

1324 Mr. {Rush.} Yes, I will yield.

1325 Mr. {Olson.} Thank you. My friend, we must remember
1326 that entities that suffer a breach are victims of crimes.
1327 And while penalties are a good and necessary purpose,
1328 excessive penalties--the breach the opportunity to implement
1329 the appropriate remedy will potentially do more harm to
1330 growth and developing the economy. The cost of penalties are

1331 ultimately passed on to the consumers, or, in some cases, it
1332 can drive them out of business. That is not the intent of
1333 this bill.

1334 My amendment does not remove FTC's ability to bring
1335 civil actions calling for fines against covered entities. It
1336 merely caps those fines in the first instance, which
1337 maintains important incentives for compliance, while not
1338 imposing unjust punitive actions against breach victims. I
1339 urge my colleagues to vote for my amendment. I yield back.
1340 Thank you.

1341 The {Chairman.} Other members--gentlelady from
1342 California, Ms. Eshoo.

1343 Ms. {Eshoo.} Thank you, Mr. Chairman. I have a
1344 question to ask Mr. Olson. As I understand it, this places a
1345 cap on civil penalties that the FTC can seek under Section 3
1346 of the FTC Act at \$1,000 per violation, and at \$8,760,000 for
1347 all violations under Section 2, if it is covered under the
1348 entity's first violation.

1349 My question is the following. What is the rationale for
1350 these numbers? How did you come up with them?

1351 Mr. {Olson.} I came up--President Obama, in his recent
1352 data plan, he proposed a fine of \$1,000 per record. I
1353 thought, that is a good idea.

1354 Ms. {Eshoo.} And is it capped at 8,760,000?

1355 Mr. {Olson.} For Section 2 violations, it is capped at
1356 8.76 million--

1357 Ms. {Eshoo.} Yeah.

1358 Mr. {Olson.} --Section 3, 17.52 million.

1359 Ms. {Eshoo.} But the rationale for the 8,760,000--

1360 Mr. {Olson.} The rationale--

1361 Ms. {Eshoo.} --is what?

1362 Mr. {Olson.} --is some sanity for first time offenders.

1363 Let them survive. Have the cap--President Obama's plan--

1364 Ms. {Eshoo.} Well, let me ask this, who hasn't

1365 survived?

1366 Mr. {Olson.} Ma'am--that just go on the--by the wayside
1367 because of all these excessive lawsuits. All--

1368 Ms. {Eshoo.} But is there--but let me just get back--I
1369 appreciate the gentleman trying to explain it, but since I
1370 don't know a lot about your amendment, this is what I am
1371 zeroing in on, because I think it is the heart of it. Who
1372 has failed? You are--you based your numbers on protection of
1373 those that are violating in order for them not to fail, so
1374 who has failed that you came up with this \$8,760,000 cap?
1375 Who has failed?

1376 Mr. {Olson.} Who has failed--the system may fail these
1377 people. We have got to make sure this doesn't happen. It is
1378 a pre-emptive strike, and it is probably happened already.

1379 Again, President Obama wants this cap. His recent data plan,
1380 1,000--

1381 Ms. {Eshoo.} Well, I want to reclaim my time. I don't
1382 think this is well thought out, with all due respect. I
1383 understand what you are trying to do, but I don't think that
1384 we are--that--the whole reason we are taking up data
1385 breaches, and then with penalties, are--is to, you know, on
1386 the one hand, the--rewarding people that have violated. And
1387 so I don't--it doesn't seem to me that you have solid ground
1388 on what you are asserting, because you can't name who has
1389 failed, and yet you are putting a cap on it.

1390 So--these are serious violations against all of our
1391 constituents. It is a real threat. It is an underlying
1392 threat to our overall economy. And while I understand that
1393 this will put, you know, nips--or dents in whoever violates,
1394 I think it is a strong message to them that there not be
1395 violations. So I--it is not--your explanation is not
1396 convincing, but I appreciate your attempting to. Thank you,
1397 and I yield back.

1398 The {Chairman.} The gentlelady yields back. Other--the
1399 gentlelady from Illinois is recognized.

1400 Ms. {Schakowsky.} You know, if this were a new issue
1401 that we hadn't been thinking about for probably a decade, one
1402 might understand that imposing something for a first

1403 violation could be a problem. But we have been dealing with
1404 this issue. Every company is aware that they need to put in
1405 place the kinds of standards for--from the get-go from the
1406 first time, not just the second time, but that they had
1407 better get busy right now in making sure that they have in
1408 place the kinds of precautions that are--that prevent the
1409 kind of data breaches that we are talking about.

1410 I think this is one of the most central parts of the
1411 bill, that we are telling companies that they will--if they
1412 don't put in place those kinds of precautions, that they are
1413 going to be fined. And I think that for most of these
1414 companies, that this is a reasonable kind of, you know, it is
1415 both severe enough and reasonable enough to make sure that we
1416 are protecting consumers in the way that they should--no one
1417 should be surprised by this legislation and the requirements.
1418 And I yield back.

1419 The {Chairman.} Gentlelady--

1420 Ms. {Schakowsky.} Someone--

1421 The {Chairman.} --yields back. Other members would--

1422 Ms. {Schakowsky.} Wait, did someone want me to yield to
1423 them?

1424 The {Chairman.} Mr. Schrader, I think.

1425 Ms. {Schakowsky.} You want time? Go ahead.

1426 The {Chairman.} Want your own time? Gentleman is

1427 recognized for 5 minutes.

1428 Mr. {Schrader.} Thank you, Mr. Chairman. I just want
1429 to reiterate what the proponent of this amendment said at the
1430 outset. The victim, you know, businesses are victims. They
1431 are not trying to rip somebody off. They are not trying to
1432 make money off of their consumers, the people that come to
1433 their business and depend on them. And so I think we have to
1434 keep that in mind as we go through this general discussion,
1435 the businesses are the victims.

1436 I agree that the larger businesses, perhaps, that are
1437 out there have been dealing with this for years, both on the
1438 financial--side, energy side, and not apparently everybody.
1439 And I will tell you that most small businessmen and women
1440 have no clue about any obligation in this regard. There has
1441 been a lot of discussion--and it is expensive. And they
1442 probably have no idea about how they are going to go about
1443 implementing even the base bill at this stage of the game.
1444 This legislation, to the gentleman from Vermont's point--it
1445 at least an attempt to get at a solution where businesses
1446 could start to adjust their practices, protect their
1447 consumers from these hackers that may misuse their
1448 information.

1449 Most of the businesses that we have been talking about
1450 so far are big businesses. They have resources. They have

1451 accountants. They have HR departments. They have--most of
1452 the businesses that are now going to become affected under
1453 the purview as statutorily liable for penalties are small
1454 businesses. 96--98 percent of businesses in this country are
1455 mom and pop operations. I think they want to do the right
1456 thing. I think they want to do the right thing, but \$11,000
1457 maximum penalty every day? That is going to crucify them.
1458 And the chance of a small business being able to react in the
1459 same way that a Target, or Sony, or a Chase Bank, and
1460 immediately get after something, or afford several days'
1461 worth of penalties, that is just not realistic.

1462 So if we are out here just to penalize business, and
1463 discourage job creation in this country, that is one thing.
1464 If, on the other hand, we are out there trying to say, hey,
1465 you know, you have got to pay attention now, this is wrong, I
1466 don't see anything wrong with a smaller fine, particularly
1467 for the smaller businesses, right up front. Give them
1468 notice, and then, after that, yeah, hit them with a hammer.
1469 Shame on them if they are not paying attention.

1470 But I think we have to keep in mind, ladies and
1471 gentlemen, that this is, you know, not malice of forethought
1472 by the business community. For the first time in American
1473 recorded history, we are at the table, generally in favor of
1474 this bill. I think that speaks volumes for--interest in

1475 trying to solve this problem while the--here, so I would give
1476 a little more consideration to the amendment from the
1477 gentleman from Texas. And I yield back--

1478 Mr. {Rush.} Gentleman yield? Would the gentleman
1479 yield? I think the--Mr. Chairman, I think that what you are--
1480 -and what we have heard over this last few moments regarding
1481 this amendment underline our initial statement--the Ranking
1482 Member's initial statement that we really need to slow down,
1483 because--I understand the argument of my colleague, who just
1484 stated about the question of small businesses versus large
1485 businesses, but I believe in this Committee we ought to get
1486 it right. You know, we should not send some--some--less than
1487 our best effort out of this Committee. We should not send
1488 something that is not--that doesn't answer and solve the real
1489 problems.

1490 You know--he argues about small businesses, and we are
1491 also award that--I am not a lawyer, but it seems to me that
1492 there is some protection in the courts, some Judge that is
1493 going to have to decide whether or not a small business has
1494 the wherewithal, or the FTC going to have the wherewithal to
1495 have to make a decision about whether or not they have the
1496 wherewithal to actually pay the fine. They are not going to
1497 give a business that only have \$100,000 a year in revenues a
1498 million dollar fine. That doesn't make sense. You know, I

1499 mean, there is some rationale that has to exist, some due
1500 process and due diligence that make--that is going to be a
1501 part of this entire process once this bill leaves, and once
1502 it becomes law.

1503 I am just concerned, Mr. Chairman, that we need to slow
1504 down--and continue to work. We don't need to pass this out
1505 today. Let us try to get this better--in better shape, and
1506 take into consideration the interests of small businesses
1507 versus large businesses. We are all in favor of small mom
1508 and pop businesses, on your side and on our side, all right?
1509 Let us get this together. Let us work it--come up with a
1510 better product than what we are working with right now.

1511 The {Chairman.} Gentleman's time has expired. Other
1512 members wishing to speak on the amendment?

1513 Seeing--gentleman from Texas--

1514 Mr. {Burgess.} Move to strike the--

1515 The {Chairman.} --Dr. Burgess.

1516 Mr. {Burgess.} --number of words, and I won't take the
1517 whole 5 minutes--do remember the costs imposed on small
1518 business are passed directly onto the consumer. This
1519 amendment establishes reasonable caps for first time
1520 offenders. I support the amendment, and thank the gentleman
1521 for offering it, and I urge--

1522 Ms. {Schakowsky.} Mr. Burgess, would you yield--thank

1523 you. Let me just point out to everyone that the \$11,000 is a
1524 maximum cap. By imposing a \$1,000 for a first time offense,
1525 that would mean that Walmart, or Target, or some other large
1526 company would also just get \$1,000. It is possible for it to
1527 be lower than \$11,000. Just wanted to point that out. I
1528 yield back--or I yield back to the gentleman.

1529 The {Chairman.} Gentlelady--gentleman from Vermont is
1530 recognized.

1531 Mr. {Welch.} I don't know what the right number is, so
1532 I am going to vote no on this amendment, but there is a point
1533 the gentleman is making that I think bears real
1534 consideration. Mr. Schrader is talking about it as well.
1535 What is the fundamental objective we have in this
1536 legislation? Is it to protect the consumer, or is it to
1537 punish the company? My view, our primary goal is to protect
1538 the consumer. Now, when a company is negligent, penalties
1539 are appropriate, what is that right number? And that is a
1540 matter of discussion, and consideration, and balance.

1541 But there is another point the gentleman made, both Mr.
1542 Schrader and the sponsor of this amendment, and that is that
1543 companies do not want this to happen. This is, like, brutal
1544 for them. They get a breach, and the reputational damage--I
1545 mean, the Target breach, heads rolled, money was lost. I
1546 mean, there--just on a practical, real world situation, you

1547 have a company, whether it is small or it is large, it is a
1548 nightmare when your Chief Information Officer comes in and
1549 says, we have got a problem.

1550 So I think that is something all of us should take into
1551 account here, that in the real world, for real companies, by
1552 and large they--the last thing they want is to have a breach.
1553 On the other hand, if there is negligence, they get it wrong,
1554 then a penalty is appropriate, but the circumstances are
1555 going to vary. So the spirit of this amendment, I think,
1556 does make sense. Whether the number is right, I am not ready
1557 to say, so I am going to vote no, but I do appreciate the
1558 gentleman--

1559 Ms. {Eshoo.} Would the gentleman yield? I thank the
1560 gentleman. There--there is a factor that is, I believe,
1561 missing in the whole debate on data breaches, cybersecurity,
1562 and what happens as a result of these breaches, and that is
1563 that we have never examined prevention, and it is something
1564 that I have consistently asked the private sector about, the
1565 most nascent start-ups, where I visited them during the
1566 Easter break, three employees, seven, 11, 17, right up to the
1567 largest brand companies, and this is what they have told me.
1568 This is what they have told me, and that is that anywhere
1569 from 80 to 90 percent of the breaches in our country--and
1570 remember, out of the universe of this, 90 percent is in the

1571 private sector. 10 percent is government. I mean, we are a
1572 major player, but it is still 90 percent in the private
1573 sector.

1574 And what they have instructed me is is that 80 to 90
1575 percent of these breaches occur due to two major factors.
1576 One, where a system--a system's hygiene is not what it should
1577 be, and number two, that very poor--or poor security
1578 management. So there isn't--this is something else, Mr.
1579 Chairman, that I think we should examine. Now, when I went
1580 back to people and asked them, how would you address this,
1581 because I know the Administration's proposal is leaving it to
1582 voluntary participation, it was suggested to me that NIST
1583 standards be followed. And none of the businesses I have
1584 raised--I have raised it with the giant ones, right down to
1585 those that have three employees. No one objected to that,
1586 because there is confidence in what this does.

1587 So I point this out because of your opening statement,
1588 that, you know, there is more work to be done. And I would
1589 ask that this be a consideration. I don't know if we have
1590 the possibility to do it, but I think that this Committee
1591 should be the first one to examine prevention. And it does
1592 fit with this conversation about Mr. Olson's amendment.
1593 Small businesses, large businesses--businesses to--as someone
1594 said, they are the--they don't want this to happen because it

1595 is so costly to them. But I think that this is an area that
1596 needed to be examined, so I appreciate the gentleman yielding
1597 to me.

1598 The {Chairman.} Gentleman yields back. Are there other
1599 members wishing to speak? Seeing none, vote occurs on the
1600 amendment. A roll call has been asked for, so the Clerk will
1601 call the roll.

1602 The {Clerk.} Mr. Barton?

1603 Mr. {Barton.} No.

1604 The {Clerk.} Mr. Barton votes no.

1605 Mr. Whitfield?

1606 Mr. {Whitfield.} Aye.

1607 The {Clerk.} Mr. Whitfield votes aye.

1608 Mr. Shimkus?

1609 [No response.]

1610 The {Clerk.} Mr. Pitts?

1611 Mr. {Pitts.} Aye.

1612 The {Clerk.} Mr. Pitts votes aye.

1613 Mr. Walden?

1614 [No response.]

1615 The {Clerk.} Mr. Murphy?

1616 [No response.]

1617 The {Clerk.} Mr. Burgess?

1618 Mr. {Burgess.} Aye.

1619 The {Clerk.} Mr. Burgess votes aye.
1620 Mrs. Blackburn?
1621 Mrs. {Blackburn.} Aye.
1622 The {Clerk.} Mrs. Blackburn votes aye.
1623 Mr. Scalise?
1624 [No response.]
1625 The {Clerk.} Mr. Latta?
1626 [No response.]
1627 The {Clerk.} Mrs. McMorris Rodgers?
1628 [No response.]
1629 The {Clerk.} Mr. Harper?
1630 Mr. {Harper.} Aye.
1631 The {Clerk.} Mr. Harper votes aye.
1632 Mr. Lance?
1633 Mr. {Lance.} Aye.
1634 The {Clerk.} Mr. Lance votes aye.
1635 Mr. Guthrie?
1636 Mr. {Guthrie.} Aye.
1637 The {Clerk.} Mr. Guthrie votes aye.
1638 Mr. Olson?
1639 Mr. {Olson.} Aye.
1640 The {Clerk.} Mr. Olson votes aye.
1641 Mr. McKinley?
1642 Mr. {McKinley.} Aye.

1643 The {Clerk.} Mr. McKinley votes aye.
1644 Mr. Pompeo?
1645 Mr. {Pompeo.} Aye.
1646 The {Clerk.} Mr. Pompeo votes aye.
1647 Mr. Kinzinger?
1648 Mr. {Kinzinger.} Aye.
1649 The {Clerk.} Mr. Kinzinger votes aye.
1650 Mr. Griffith?
1651 Mr. {Griffith.} Aye.
1652 The {Clerk.} Mr. Griffith votes aye.
1653 Mr. Bilirakis?
1654 Mr. {Bilirakis.} Aye.
1655 The {Clerk.} Mr. Bilirakis votes aye.
1656 Mr. Johnson?
1657 Mr. {Johnson.} Aye.
1658 The {Clerk.} Mr. Johnson votes aye.
1659 Mr. Long?
1660 Mr. {Long.} Aye.
1661 The {Clerk.} Mr. Long votes aye.
1662 Mrs. Ellmers?
1663 Mrs. {Ellmers.} Aye.
1664 The {Clerk.} Mrs. Ellmers votes aye.
1665 Mr. Bucshon?
1666 Mr. {Bucshon.} Aye.

1667 The {Clerk.} Mr. Bucshon votes aye.
1668 Mr. Flores?
1669 Mr. {Flores.} Aye.
1670 The {Clerk.} Mr. Flores votes aye.
1671 Mrs. Brooks?
1672 Mrs. {Brooks.} Aye.
1673 The {Clerk.} Mrs. Brooks votes aye.
1674 Mr. Mullin?
1675 Mr. {Mullin.} Aye.
1676 The {Clerk.} Mr. Mullin votes aye.
1677 Mr. Hudson?
1678 [No response.]
1679 The {Clerk.} Mr. Collins?
1680 Mr. {Collins.} Aye.
1681 The {Clerk.} Mr. Collins votes aye.
1682 Mr. Cramer?
1683 Mr. {Cramer.} Aye.
1684 The {Clerk.} Mr. Cramer votes aye.
1685 Mr. Pallone?
1686 Mr. {Pallone.} No.
1687 The {Clerk.} Mr. Pallone votes no.
1688 Mr. Rush?
1689 Mr. {Rush.} No.
1690 The {Clerk.} Mr. Rush votes no.

1691 Ms. Eshoo?

1692 Ms. {Eshoo.} No.

1693 The {Clerk.} Ms. Eshoo votes no.

1694 Mr. Engel?

1695 [No response.]

1696 The {Clerk.} Mr. Green?

1697 [No response.]

1698 The {Clerk.} Ms. DeGette?

1699 [No response.]

1700 Ms. Capps?

1701 Mrs. {Capps.} No.

1702 The {Clerk.} Ms. Capps votes no.

1703 Mr. Doyle?

1704 Mr. {Doyle.} No.

1705 The {Clerk.} Mr. Doyle votes no.

1706 Ms. Schakowsky?

1707 Ms. {Schakowsky.} No.

1708 The {Clerk.} Ms. Schakowsky votes no.

1709 Mr. Butterfield?

1710 [No response.]

1711 The {Clerk.} Ms. Matsui?

1712 Ms. {Matsui.} No.

1713 The {Clerk.} Ms. Matsui votes no.

1714 Ms. Castor?

1715 Ms. {Castor.} No.

1716 The {Clerk.} Ms. Castor votes no.

1717 Mr. Sarbanes?

1718 Mr. {Sarbanes.} No.

1719 The {Clerk.} Mr. Sarbanes votes no.

1720 Mr. McNerney?

1721 Mr. {McNerney.} No.

1722 The {Clerk.} Mr. McNerney votes no.

1723 Mr. Welch?

1724 Mr. {Welch.} No.

1725 The {Clerk.} Mr. Welch votes no.

1726 Mr. Lujan?

1727 Mr. {Lujan.} No.

1728 The {Clerk.} Mr. Lujan votes no.

1729 Mr. Tonko?

1730 Mr. {Tonko.} No.

1731 The {Clerk.} Mr. Tonko votes no.

1732 Mr. Yarmuth?

1733 Mr. {Yarmuth.} No.

1734 The {Clerk.} Mr. Yarmuth votes no.

1735 Ms. Clarke?

1736 Ms. {Clarke.} No.

1737 The {Clerk.} Ms. Clarke votes no.

1738 Mr. Loeb sack?

- 1739 Mr. {Loebsack.} No.
- 1740 The {Clerk.} Mr. Loebsack votes no.
- 1741 Mr. Schrader?
- 1742 Mr. {Schrader.} Aye.
- 1743 The {Clerk.} Mr. Schrader votes aye.
- 1744 Mr. Kennedy?
- 1745 Mr. {Kennedy.} No.
- 1746 The {Clerk.} Mr. Kennedy votes no.
- 1747 Mr. Cardenas?
- 1748 Mr. {Cardenas.} No.
- 1749 The {Clerk.} Mr. Cardenas votes no.
- 1750 Chairman Upton?
- 1751 The {Chairman.} Votes aye.
- 1752 The {Clerk.} Chairman Upton votes aye.
- 1753 The {Chairman.} Members wishing to vote? Mr. Walden?
- 1754 The {Clerk.} Mr. Walden votes aye.
- 1755 The {Chairman.} Cathy McMorris Rodgers?
- 1756 The {Clerk.} Mrs. McMorris Rodgers votes aye.
- 1757 The {Chairman.} Mr.--Dr. Murphy?
- 1758 The {Clerk.} Mr. Murphy votes aye.
- 1759 The {Chairman.} Mr. Latta?
- 1760 The {Clerk.} Mr. Latta votes aye.
- 1761 The {Chairman.} Mr. Hudson?
- 1762 The {Clerk.} Mr. Hudson votes aye.

1763 The {Chairman.} Mr. Shimkus?

1764 The {Clerk.} Mr. Shimkus votes aye.

1765 The {Chairman.} Mr. Butterfield?

1766 The {Clerk.} Mr. Butterfield votes no.

1767 The {Chairman.} Other members wishing to cast a vote?

1768 Seeing none, Clerk will report the tally.

1769 The {Clerk.} Mr. Chairman, on that vote there were 30

1770 ayes and 20 nays.

1771 The {Chairman.} 30 ayes, 20 nays, the amendment is

1772 agreed to.

1773 Other amendments to the bill? Gentlelady from

1774 California, Ms. Eshoo. Is the amendment at the desk? What

1775 number?

1776 Ms. {Eshoo.} 9.

1777 The {Chairman.} Eshoo 9? Clerk will report the title

1778 of the amendment.

1779 The {Clerk.} Amendment in the nature of a substitute to

1780 H.R. 1770, offered by Ms. Eshoo of California.

1781 [The amendment of Ms. Eshoo follows:]

1782 ***** INSERT 5 *****

|
1783 The {Chairman.} The amendment will be considered as
1784 read, and the gentlelady is recognized for 5 minutes in
1785 support of this--

1786 Ms. {Eshoo.} Thank you, Mr. Chairman. In 2003
1787 California became the first state in our country to implement
1788 a comprehensive data breach notification law. That was in
1789 2003. In the years that have followed, our reliance on
1790 technology has certainly grown, and it has grown
1791 tremendously, and so has our vulnerability to data breaches
1792 by both domestic and foreign actors. With one of the
1793 strongest state data security and breach notification laws,
1794 California has led the way.

1795 My amendment, with fellow California colleagues of our
1796 Committee, Representatives Matsui, McNerney, Capps, and
1797 Cardenas, I want to thank each one of them, instructs the FTC
1798 to promulgate rules consistent with California's law, making
1799 our state standards the floor for the nation. In doing so,
1800 the amendment would pre-empt state breach notification laws
1801 that fail to meet this high benchmark.

1802 And I think the benchmark needs to be high. I don't
1803 think we should go for the lowest common denominator. I
1804 think that we should go out and brag that we have established
1805 the highest. At the same time, the amendment allows states

1806 to innovate and strengthen their own laws beyond the base
1807 standard that the amendment contains for data security. This
1808 amendment ensures that the definition of personal information
1809 includes health insurance and medical information, and this
1810 has been brought up both by the Chairman, in his opening
1811 statement, and by others today. It is very important for all
1812 of our constituents. It eliminates the cap on state
1813 Attorneys General ability to seek civil penalties, and it
1814 ensures consumer notification of a data breach, whether or
1815 not there is financial harm. The amendment also provides
1816 consumers with a private right to enforce the protections in
1817 the law.

1818 Importantly, this amendment preserves the FCC's
1819 authority to protect consumers' telecommunications, cable,
1820 and satellite records. As the settlement reached last week
1821 between the FCC and AT&T demonstrates, the Communications
1822 Act--and that wasn't a pittance, my colleagues, it is a ton
1823 of dough. And I think you have all read about it, but I
1824 think you need to re-appreciate what was there. That
1825 settlement reached last week between the FCC and AT&T
1826 demonstrates that the Communications Act provides consumers
1827 with important protections that would be severely undercut by
1828 the underlying legislation which is under discussion today.
1829 So, for all of these reasons, I urge my colleagues to support

1830 this amendment to best protect consumers and establish a
1831 baseline set of protections nationwide.

1832 I also want to compliment Representative Kennedy,
1833 because I know that his state has a very, very high standard,
1834 it may even be higher than California's, and I know that he
1835 offered an amendment in the subcommittee. This is an
1836 important issue for all of us. And, at any rate, I will
1837 yield back. Does anyone--

1838 Mr. {Pallone.} Will you--

1839 Ms. {Eshoo.} --anything--

1840 Mr. {Pallone.} Will the gentlewoman yield to me?

1841 Ms. {Eshoo.} Sure, and I think Ms. Capps would like
1842 some time too, so--

1843 Mr. {Pallone.} Okay. I just wanted to urge my
1844 colleagues to support the Eshoo amendment. It replaces a
1845 troublesome bill with language that makes improvements in a
1846 number of places. For one, California's data breach
1847 notification law is better than this bill in that it does not
1848 first require a company to decide whether a consumer will
1849 suffer financial harm as a result of the breach before
1850 providing them with notice. Instead, it requires
1851 notification in all types of breaches. This amendment adopts
1852 that process, and removes the current trigger for
1853 notification, which is only initiated when a company finds

1854 that there may be financial harm to the consumer.

1855 The Eshoo amendment does not include a cap on the fines
1856 that State Attorney Generals or the FTC can pursue. This
1857 allows states and the FTC to use their discretion to ensure
1858 that fines are a sufficient deterrent. The Eshoo amendment
1859 includes a private right of action so that consumers who
1860 suffer losses due to data breach can seek remedy. And the
1861 amendment includes a requirement that companies provide
1862 notice to state Attorney Generals when a breach has occurred
1863 so that they can react to promptly protect and educate
1864 consumers. And the amendment adds health information and
1865 health insurance information to the definition of personal
1866 information so that, if this type of information is breached,
1867 consumers will hear about it.

1868 The bill we are considering today does none of these
1869 things, and therefore the Eshoo amendment makes significant
1870 improvements that I would encourage my colleagues to support,
1871 and I yield back to the--

1872 Ms. {Eshoo.} I thank the Ranking Member. If there is
1873 anyone else that would like the remainder of the time?
1874 Otherwise, I will yield back. Mr. McNerney.

1875 Mr. {McNerney.} Thank you. I support Ms. Eshoo's
1876 amendment in the nature of a substitute. This amendment
1877 addresses many concerns I have about the legislation. In

1878 fact, it goes to the very heart of whether I support the
1879 legislation or not. While I believe that a national standard
1880 for breach notification is necessary, and importantly I
1881 commend my colleagues for working on this, I also believe
1882 that it should be created in a way that does not eliminate
1883 some of the excellent standards that are already put in place
1884 by states that are leaders in fair and strict standards that
1885 keep our consumers safe.

1886 Not only do I support this amendment's modification to
1887 allow the FTC to create a floor for rules based on
1888 California's laws, but I also believe in the provision that
1889 ensures that states are able to evolve and meet new
1890 challenges with new threats without Federal involvement. I
1891 support my colleague on--and I urge my colleagues to support
1892 this amendment. And I yield back to Ms. Eshoo.

1893 The {Chairman.} She yields back. The gentleman from
1894 Texas is recognized for 5 minutes.

1895 Mr. {Barton.} Mr. Chairman, I won't take 5 minutes. I
1896 just wanted to ask the gentlelady from California some
1897 questions about her amendment. As I understand it, it takes
1898 the current California law and makes that a floor upon which
1899 the Federal Trade Commission has a year in which to
1900 promulgate national standards, but they have to be at least
1901 as strict as the California standard, is that correct?

1902 Ms. {Eshoo.} Correct.

1903 Mr. {Barton.} And if a--under the bill, as I understand
1904 it, that is before the Committee, the Committee bill does
1905 pre-empt state standards, but it does allow some flexibility
1906 about enforcement. Is that, to your knowledge, correct or
1907 incorrect?

1908 Ms. {Eshoo.} Well, my amendment still allows for pre-
1909 emption, but this--the floor for what states can do. Now,
1910 they can add to it. They can add to the data security
1911 standards, certainly, but it is a floor.

1912 Mr. {Barton.} Well, I am, obviously, in the minority on
1913 the majority side of this Committee in this--terms of this
1914 issue. And--but I--even I, I don't think, am ready to accede
1915 that the Golden Gate State of California should set the
1916 standard for the country. I don't believe my Texan
1917 constituents would accept that. So, with reluctance, I am
1918 going to have to oppose the gentlelady's amendment. And I--
1919 but I do appreciate her answering my questions.

1920 Ms. {Eshoo.} Well, I appreciate the gentleman always
1921 being a gentleman.

1922 Mr. {Barton.} I--

1923 Ms. {Eshoo.} And--while--maybe oil and California don't
1924 mix, I think that we still appreciate all the work you have
1925 done on privacy. This strengthens what you have been

1926 pursuing--

1927 Mr. {Barton.} I am not--

1928 Ms. {Eshoo.} --all these years--

1929 Mr. {Barton.} --arguing that.

1930 Ms. {Eshoo.} --but--thank you.

1931 Mr. {Barton.} And I would point out that the Golden
1932 State of California is the number four oil producing state in
1933 the country at this moment, so there is some unity between
1934 California and Texas.

1935 Ms. {Eshoo.} --no?

1936 Mr. {Barton.} I am going to yield the rest of my time
1937 to the gentlelady from Tennessee.

1938 Mrs. {Blackburn.} Thank you, Mr. Barton. I will just
1939 point out that there would not be a Texas without Tennessee,
1940 and we came to bear so you all could not have California, and
1941 Texas couldn't have this argument. That is exactly right.

1942 Just a couple of things on Ms. Eshoo's amendment, and I
1943 do oppose the amendment. This amendment would give
1944 rulemaking authority to the FTC to go in and redefine
1945 personal information, and our bill, H.R. 1770, gives us a
1946 clear definition of personal information without ceding,
1947 necessary, authority to the FTC to go in and expand that
1948 definition. That is an important point to make.

1949 Here again I am going to go back to what we have said

1950 several times as we have worked through this process, through
1951 our Subcommittee and today. Our bill is narrow. It is
1952 narrow for a reason. We want to keep things in their lane.
1953 The American people expect us to do something about the data
1954 security issue. The bill that we are bringing forward is the
1955 appropriate way to do that, and I think that the expansion
1956 that would come about through Ms. Eshoo's amendment is a bit
1957 too much. Thereby, I oppose it, and I--

1958 Ms. {Eshoo.} Would you yield? Would the gentlewoman
1959 yield?

1960 Mrs. {Blackburn.} Sure.

1961 Ms. {Eshoo.} I think, with all due respect, there is a
1962 misread of the amendment. It is silent on what you have just
1963 described. There is not an expansion.

1964 Mrs. {Blackburn.} If the--reclaiming my time--

1965 Ms. {Eshoo.} Sure.

1966 Mrs. {Blackburn.} Anytime you give a Federal agency the
1967 opportunity to expand through rulemaking, it--there becomes
1968 an expansion. And I would oppose that, and I stand with the
1969 bill that we have before us, and I oppose the amendment.
1970 Yield back my time.

1971 The {Chairman.} Gentleman from Texas yields back?

1972 Other members that--gentlelady from California, Ms. Capps.

1973 Mrs. {Capps.} Mr. Chairman, I would like to voice my

1974 very strong support for the Eshoo amendment, and start with
1975 my remarks for--with the premise that our vulnerability to
1976 data breaches is something we all agree upon. It is
1977 continually increasing and evolving. And I believe we also
1978 agree that ensuring strong standards is essential to
1979 protecting our constituents. We need to ensure that the
1980 rules are workable for companies, but they also need to be
1981 strong. It really has to be about consumers.

1982 I am particularly concerned that this underlying bill
1983 does not meet those standards. Maybe it is because I am from
1984 California, and we are--we base our assumptions on a strong
1985 protection bill in California. This--and we have had this
1986 law, and--in place since 2003, and it is proving to be the
1987 most successful data security and breach notification law in
1988 the country, or at least one of them. And this law has
1989 strong consumer protection standards that companies have been
1990 able to comply with. And also, we have seen that it does
1991 allow for the flexibility for California to adjust the rules
1992 over time, which it has done, to deal with threats and
1993 technology as they evolve.

1994 This amendment would simply direct the FTC to promulgate
1995 rules that are consistent with the California law.
1996 Otherwise, it is really tough for those of us in California
1997 to do something that would weaken our standards, because we

1998 want to set these strong standards as the floor for a
1999 national regulation. So that is where I am coming down on
2000 this.

2001 And this amendment does set a high national benchmark,
2002 but it allows states to continue to innovate and fill in the
2003 gaps. It is not a one size necessarily fits all, but it
2004 provides that floor. It also strengthens safeguards for
2005 personal health information, very important area, toughens
2006 enforcement, and ensures that consumers are notified whenever
2007 there is a serious data breach, not just when the company
2008 determines there is financial harm. It really is--goes to
2009 the heart of consumer protection.

2010 I think we should be pushing the bar higher when it
2011 comes to consumer protection, not lowering it. I don't think
2012 it makes sense to lower the bar of protection for millions of
2013 Americans who happen to live in California, and in other
2014 states where these protections have--are at a high bar when
2015 we can do better, because we can follow these examples. So I
2016 urge my colleagues to support this amendment. And I will be
2017 happy to yield to Mr. McNerney.

2018 Mr. {McNerney.} Thank you. I just want to address the
2019 gentleman from Texas's concerns. And I understand how he
2020 would be reluctant to tell the good people in Texas that they
2021 are adopting California standards, but Texas has good

2022 standards on its own. New York has good standards.
2023 Massachusetts has good standards. California has good
2024 standards. How can any of us go home and tell our
2025 constituents that we gave them weaker standards than our own
2026 state has already adopted? And so it doesn't have to be the
2027 California standards that are adopted. It has to be good,
2028 solid standards that we can all agree to.

2029 And so I think it is important that we consider this
2030 amendment, and if it doesn't pass today, then I recommend
2031 that my friend from Texas put together an amendment like this
2032 based on Texas standards, and you might get some more of the
2033 general House. So, with that, I will yield back.

2034 The {Chairman.} Gentlelady yields back her time? Other
2035 member? Gentlelady from Illinois.

2036 Ms. {Schakowsky.} Thank you, Mr. Chairman. Well, here
2037 is what I want to say on behalf of California, that for over
2038 a decade California, who is, I would say, equally concerned
2039 about the business community, about the economic development,
2040 and about consumer protection, that this is a piece of
2041 legislation that has worked well in a very large state for
2042 lots of consumers, a diverse body of consumers, and
2043 businesses, and all kinds of interests. And so it seems to
2044 me, when we are looking at a state that, for 12 years, has
2045 been functioning well, that we should not dismiss that. We

2046 are looking for a model that has functioned, that businesses
2047 have complied with, and has been flexible.

2048 I want to just--kind of to--my friend from Tennessee,
2049 this idea, you know, when the bill was first initiated by Mr.
2050 Rush and Mr. Barton, we had not actually anticipated some of
2051 the ways in which personal information might be defined, that
2052 we have now redefined, because technology has moved forward,
2053 and so we cannot anticipate the kinds of personal information
2054 that we want to protect as we go forward.

2055 And so letting the FTC, and California State, letting
2056 the State of California be more flexible, I think is really a
2057 good thing for us. Rulemaking does require comment periods,
2058 and so everyone would be able to weigh in on changes that
2059 would be made. But I--though, in Illinois, we have
2060 legislation that would also be pre-empted by this bill, but I
2061 think, looking at the California standard, and applying that
2062 to the rest of the country, makes a lot of good sense,
2063 because they have a lot of experience in making it work. And
2064 I yield back. Yes, I would be more than happy to yield to my
2065 colleague.

2066 Ms. {Eshoo.} I appreciate all the important comments
2067 that members have made, not only on what the amendment
2068 represents. I just want to underscore something else, going
2069 back to the previous discussion from Mr. Olson's amendment,

2070 and businesses. This has been--these standards have been in
2071 place for some time, and I haven't had one business come to
2072 me, since 2003, to tell me, to report to me, that this is
2073 onerous, that it is a standard that they can't meet, or
2074 comply with. We all get complaints when we are home on a
2075 whole plethora of issues, but there has not been one.

2076 And for those that, you know, are just poking a little
2077 fun at California, there isn't a person on this Committee
2078 that can't wait to come to California, and the ATM machine
2079 that it represents, and the robust businesses that are
2080 revolutionizing our economy, and understanding that we are
2081 the home, and the hub, of innovation. Not only in our
2082 nation, but in the world.

2083 So if you want to take into consideration what
2084 California has established, that businesses have done very,
2085 very well by this, I just want to pick up an eraser and erase
2086 out that little particular bias that may be there about
2087 California, because you embrace California in many other
2088 ways. So thank you, and I think that this has been a
2089 wonderful debate. Yield back.

2090 The {Chairman.} Time has expired. I think we are ready
2091 for the vote. A roll call vote has been asked for. The
2092 clerk will call the tally.

2093 The {Clerk.} Mr. Barton?

2094 Mr. {Barton.} No.

2095 The {Clerk.} Mr. Barton votes no.

2096 Mr. Whitfield?

2097 Mr. {Whitfield.} No.

2098 The {Clerk.} Mr. Whitfield votes no.

2099 Mr. Shimkus?

2100 [No response.]

2101 The {Clerk.} Mr. Pitts?

2102 Mr. {Pitts.} No.

2103 The {Clerk.} Mr. Pitts votes no.

2104 Mr. Walden?

2105 [No response.]

2106 The {Clerk.} Mr. Murphy?

2107 Mr. {Murphy.} No.

2108 The {Clerk.} Mr. Murphy votes no.

2109 Mr. Burgess?

2110 Mr. {Burgess.} No.

2111 The {Clerk.} Mr. Burgess votes no.

2112 Mrs. Blackburn?

2113 Mrs. {Blackburn.} No.

2114 The {Clerk.} Mrs. Blackburn votes no.

2115 Mr. Scalise?

2116 [No response.]

2117 The {Clerk.} Mr. Latta?

2118 Mr. {Latta.} No.

2119 The {Clerk.} Mr. Latta votes no.

2120 Mrs. McMorris Rodgers?

2121 Mrs. {McMorris Rodgers.} No.

2122 The {Clerk.} Ms. McMorris Rodgers votes no.

2123 Mr. Harper?

2124 Mr. {Harper.} No.

2125 The {Clerk.} Mr. Harper votes no.

2126 Mr. Lance?

2127 Mr. {Lance.} No.

2128 The {Clerk.} Mr. Lance votes no.

2129 Mr. Guthrie?

2130 Mr. {Guthrie.} No.

2131 The {Clerk.} Mr. Guthrie votes no.

2132 Mr. Olson?

2133 Mr. {Olson.} No.

2134 The {Clerk.} Mr. Olson votes no.

2135 Mr. McKinley?

2136 Mr. {McKinley.} No.

2137 The {Clerk.} Mr. McKinley votes no.

2138 Mr. Pompeo?

2139 [No response.]

2140 The {Clerk.} Mr. Kinzinger?

2141 Mr. {Kinzinger.} No.

2142 The {Clerk.} Mr. Kinzinger votes no.
2143 Mr. Griffith?
2144 Mr. {Griffith.} No.
2145 The {Clerk.} Mr. Griffith votes no.
2146 Mr. Bilirakis?
2147 Mr. {Bilirakis.} No.
2148 The {Clerk.} Mr. Bilirakis votes no.
2149 Mr. Johnson?
2150 Mr. {Johnson.} No.
2151 The {Clerk.} Mr. Johnson votes no.
2152 Mr. Long?
2153 Mr. {Long.} No.
2154 The {Clerk.} Mr. Long votes no.
2155 Mrs. Ellmers?
2156 Mrs. {Ellmers.} No.
2157 The {Clerk.} Mrs. Ellmers votes no.
2158 Mr. Bucshon?
2159 Mr. {Bucshon.} No.
2160 The {Clerk.} Mr. Bucshon votes no.
2161 Mr. Flores?
2162 Mr. {Flores.} No.
2163 The {Clerk.} Mr. Flores votes no.
2164 Mrs. Brooks?
2165 Mrs. {Brooks.} No.

2166 The {Clerk.} Mrs. Brooks votes no.
2167 Mr. Mullin?
2168 Mr. {Mullin.} No.
2169 The {Clerk.} Mr. Mullin votes no.
2170 Mr. Hudson?
2171 Mr. {Hudson.} No.
2172 The {Clerk.} Mr. Hudson votes no.
2173 Mr. Collins?
2174 Mr. {Collins.} No.
2175 The {Clerk.} Mr. Collins votes no.
2176 Mr. Cramer?
2177 Mr. {Cramer.} No.
2178 The {Clerk.} Mr. Cramer votes no.
2179 Mr. Pallone?
2180 Mr. {Pallone.} Aye.
2181 The {Clerk.} Mr. Pallone votes aye.
2182 Mr. Rush?
2183 Mr. {Rush.} Aye.
2184 The {Clerk.} Mr. Rush votes aye.
2185 Ms. Eshoo?
2186 Ms. {Eshoo.} Aye.
2187 The {Clerk.} Ms. Eshoo votes aye.
2188 Mr. Engel?
2189 [No response.]

2190 The {Clerk.} Mr. Green?
2191 [No response.]
2192 The {Clerk.} Ms. DeGette?
2193 [No response.]
2194 The {Clerk.} Ms. Capps?
2195 Mrs. {Capps.} Aye.
2196 The {Clerk.} Ms. Capps votes aye.
2197 Mr. Doyle?
2198 Mr. {Doyle.} Aye.
2199 The {Clerk.} Mr. Doyle votes aye.
2200 Ms. Schakowsky?
2201 Ms. {Schakowsky.} Aye.
2202 The {Clerk.} Ms. Schakowsky votes aye.
2203 Mr. Butterfield?
2204 Mr. {Butterfield.} Aye.
2205 The {Clerk.} Mr. Butterfield votes aye.
2206 Ms. Matsui?
2207 Ms. {Matsui.} Aye.
2208 The {Clerk.} Ms. Matsui votes aye.
2209 Ms. Castor?
2210 Ms. {Castor.} Aye.
2211 The {Clerk.} Ms. Castor votes aye.
2212 Mr. Sarbanes?
2213 Mr. {Sarbanes.} Aye.

2214 The {Clerk.} Mr. Sarbanes votes aye.
2215 Mr. McNerney?
2216 Mr. {McNerney.} Aye.
2217 The {Clerk.} Mr. McNerney votes aye.
2218 Mr. Welch?
2219 Mr. {Welch.} Aye.
2220 The {Clerk.} Mr. Welch votes aye.
2221 Mr. Lujan?
2222 Mr. {Lujan.} Aye.
2223 The {Clerk.} Mr. Lujan votes aye.
2224 Mr. Tonko?
2225 Mr. {Tonko.} Aye.
2226 The {Clerk.} Mr. Tonko votes aye.
2227 Mr. Yarmuth?
2228 Mr. {Yarmuth.} Aye.
2229 The {Clerk.} Mr. Yarmuth votes aye.
2230 Ms. Clarke?
2231 Ms. {Clarke.} Aye.
2232 The {Clerk.} Ms. Clarke votes aye.
2233 Mr. Loeb sack?
2234 Mr. {Loeb sack.} Aye.
2235 The {Clerk.} Mr. Loeb sack votes aye.
2236 Mr. Schrader?
2237 Mr. {Schrader.} Aye.

2238 The {Clerk.} Mr. Schrader votes aye.
2239 Mr. Kennedy?
2240 Mr. {Kennedy.} Aye.
2241 The {Clerk.} Mr. Kennedy votes aye.
2242 Mr. Cardenas?
2243 Mr. {Cardenas.} Aye.
2244 The {Clerk.} Mr. Cardenas votes aye.
2245 Chairman Upton?
2246 The {Chairman.} From Michigan votes no.
2247 The {Clerk.} Chairman Upton votes no.
2248 The {Chairman.} Other members wishing to cast a vote?
2249 Mr. Walden? Mr. Pompeo?
2250 The {Clerk.} Mr. Walden votes no.
2251 The {Chairman.} Mr. Shimkus? Other members wishing to
2252 cast a vote?
2253 Seeing none, the Clerk will report the tally.
2254 The {Clerk.} Mr. Chairman, on that vote there were 20
2255 ayes and 30 nays.
2256 The {Chairman.} 20 ayes, 30 nays, the amendment is not
2257 agreed to. Chair will recognize the gentlelady from
2258 Tennessee to offer an amendment.
2259 Mrs. {Blackburn.} Thank you, Mr. Chairman. I have
2260 Blackburn amendment 29. This is the--
2261 The {Clerk.} Amendment to H.R. 1770, offered by Mrs.

2262 Blackburn of Tennessee.

2263 [The amendment of Ms. Blackburn follows:]

2264 ***** INSERT 6 *****

|
2265 The {Chairman.} The amendment will be considered as
2266 read, and the gentlelady is recognized for 5 minutes in--

2267 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I want
2268 to begin by thanking the Subcommittee. Chairman Burgess has
2269 done such a wonderful job on this, and Mr. Welch, who has
2270 worked with me for the past couple of years on this issue,
2271 such a wonderful job. So I say thank you to them, and also
2272 to the subcommittee staff, who has done such a wonderful job
2273 working on this.

2274 Now, the manager's amendment does reflect the work of
2275 the Subcommittee after this bill passed out, concerns that
2276 were raised, items that needed to be addressed. And as the
2277 Chairman said, as we began the markup, there are still some
2278 issues that Mr. Welch and I will be working on through the
2279 next week before this bill goes to the floor. We want to
2280 keep this narrow. We are going to work on the health and
2281 medical information issues, but we know that it is important
2282 for us to get a data breach and data security standard on the
2283 books. We know that confusion about this issue leads to
2284 noncompliance, and it is harmful to consumers. So yes, we
2285 are going to continue to work through to get these issues
2286 addressed.

2287 Now, in the manager's amendment that is before you, and

2288 this is the one--29, and it is time stamped 9:19 a.m., some
2289 of the items that are addressed, third party language, it
2290 defines the obligations imposed on both the breached and the
2291 non-breached covered entities. It removes references to
2292 undefined terms to clarify the intent of the language. The
2293 amendment clarifies that call information, CPNI, is covered
2294 under the bill regardless of whether it is held by a
2295 telecommunications carrier. The hyperlink issue that was
2296 brought up, it removes a provision prohibiting the inclusion
2297 of a hyperlink in electronic notification after a breach of
2298 security. E-mails that are forwarded often automatically
2299 include hyperlinks to websites, even when the hyperlink was
2300 removed in the original e-mail, so making compliance with the
2301 previous provision impractical.

2302 Access and acquisition, it provides that in order for a
2303 breach of security to have occurred, personal information
2304 must have been accessed and acquired. Data that is merely
2305 accessed is not necessarily usable by a cybercriminal. The
2306 underlying bill provides that any two of the above items with
2307 name constitutes personal information, and those items are
2308 phone number, address, date of birth, or the mother's maiden
2309 name. The amendment provides that all of the above items
2310 must be coupled with name to constitute personal information.
2311 The underlying bill provides that name, along with a

2312 government ID number, constitutes personal information. It
2313 provides that a government ID number alone constitutes
2314 personal information.

2315 The amendment adds futures commission--special purpose
2316 vehicles, credit union service organizations, state chartered
2317 non-Federally insured credit unions, and finance companies to
2318 the list of the entities exempted from the bill. The
2319 amendment furthers the purpose of ensuring that entities that
2320 are already subjected to Gramm-Leach-Bliley are not double
2321 regulated by the bill.

2322 So those are the issues that arose through the
2323 Subcommittee's work. This is the manager's amendment that
2324 covers those entities, and I yield the balance of my time to
2325 Chairman Burgess for any comments that he would like to make
2326 on the amendment.

2327 Mr. {Burgess.} Well, I thank the gentlelady for the
2328 thoughtful amendment, and the important adjustments that the
2329 manager's amendment makes to the underlying bill--to
2330 reiterate the concept here was to keep this narrow. We
2331 didn't want the perfect to be the enemy of the good. As I
2332 explained to several members of the Subcommittee, my vision
2333 of success was not reporting a bill favorably out the
2334 Subcommittee. My vision of success is a signing ceremony.
2335 That vision remains intact, so I thank the gentlelady for her

2336 work on this, in perfecting the language. I hope that the
2337 discussions that are going to continue are going to be
2338 fruitful. I stand ready to assist the Chairman of the full
2339 Committee in my capacity as a Rules Committee member, and we
2340 will get this done. And I yield back.

2341 The {Chairman.} Gentlelady's time has expired.
2342 Recognize the Ranking Member of the Committee, Mr. Pallone.

2343 Mr. {Pallone.} Mr. Chairman, I urge my colleagues to
2344 oppose the Blackburn amendment. I had high hopes for a
2345 manager's amendment that would improve the underlying bill,
2346 but my hopes have been dashed. Instead of strengthening
2347 consumer protections, it still leaves large gaps.

2348 One provision we heard might be included would have
2349 filled the hole with regard to information currently required
2350 to be protected by telecommunications, satellite, and cable
2351 providers. But this amendment does not--does nothing with
2352 regard to cable and satellite providers. Records, such as
2353 your pay-per-view transactions, will no longer have to be
2354 secured. With regard to telecommunications carriers, here
2355 are just a few examples of personal information that will
2356 still not be covered by this bill, and which will no longer
2357 have to be secured under the Communications Act. For
2358 example, information that one telecommunications company
2359 holds about another telecommunications company, info that

2360 shows that a subscriber gets public benefits, such as SNAP or
2361 Medicaid, or is a member of the Lifeline Program. Features
2362 that the caller subscribes to, such as call waiting, and the
2363 amount of subscribers' bills. And other provisions of this
2364 amendment weaken the already narrow definition of personal
2365 information.

2366 There are a number of other changes in this amendment,
2367 but I just want to close by noting the amendment does not
2368 make any improvements to the bill, so I encourage my
2369 colleagues to vote against it--the amendment, as well as
2370 against the bill. Unless--I yield to the gentlewoman from
2371 Illinois.

2372 Ms. {Schakowsky.} Thank you. So this amendment, I
2373 think, severely reduces consumer protections. So it sets a
2374 new, higher threshold for those companies who are responsible
2375 for failing to secure data by adding the word ``and'', and
2376 that is--if they are unable to determine whether a breach led
2377 to access and acquisition of that information. In the
2378 original bill it says or acquisition of this information, so,
2379 in other words, they--if they know that there has been a
2380 breach, your data has been exposed, you have to show even
2381 further that it is--there has been an acquisition of that
2382 data. If they are unable to tell whether that information
2383 was actually acquired, they no longer need to notify. I see

2384 that as a serious weakening of an already weak consumer
2385 protection standard.

2386 It limits even further the definition of covered
2387 entities and personal information. The bill has a list of
2388 what we call personal information under financial
2389 information, and some of those are strong, so that means that
2390 fewer data breaches that are likely to lead to financial harm
2391 would be reported. These are just a handful of the--I think
2392 the lowlights from an amendment that harms consumer
2393 protection, and I strongly urge my colleagues to defeat it.
2394 And I would yield to Mr. Rush.

2395 Mr. {Rush.} I want to thank the lady--the gentlelady
2396 for yielding to me. Mr. Chairman, I want to associate myself
2397 with previous comments. The manager's amendment does nothing
2398 to strengthen the bill. It fails to the American consumer in
2399 a better place of--Subcommittee I pointed out that this bill
2400 creates gaps in the retention of information that is
2401 currently required to be protected by telecommunications,
2402 satellite, and cable providers. I was hopeful that today we
2403 would see an amendment that closes these gaps, but that is
2404 not the case. Instead, this amendment completely avoids
2405 cable and satellite providers.

2406 There are many forms of personal information that are
2407 currently covered by the Communications Act that will no

2408 longer be required to be secured if this bill becomes law.
2409 This is sensitive information, such as the time, the
2410 destination, the frequency of text messages that are sent, a
2411 consumer's membership in a particular organization, or a
2412 consumer's viewing habits. In addition, this amendment--for
2413 the type of personal information that triggers notification
2414 of a breach to consumers, needlessly making it easier for
2415 hackers to a--to commit identity theft, and to access
2416 personal accounts.

2417 Mr. Chairman, we should err on the side of caution, and
2418 not further weaken this bill. However, there are many more
2419 systemic problems in this bill. Unfortunately, this
2420 amendment fails to address these larger problems, and
2421 therefore, Mr. Chairman, I am opposed. Again, I say narrow
2422 is nice, but narrow is not enough when it comes to protecting
2423 the American consumer. And I hope my colleagues will join in
2424 me in voting no to this amendment. I yield.

2425 The {Chairman.} Time has expired. Other members
2426 wishing to speak on the amendment? Gentleman from Vermont.

2427 Mr. {Welch.} Thank you very much. I want to address,
2428 first of all, the comments, Mr. Chairman, that you made at
2429 the beginning about the healthcare issue, that we are going
2430 to continue to have discussions on. It is not resolved in
2431 the manager's amendment, and for me that is a big problem.

2432 And I know we are all going to do this in good faith,
2433 but we really do, in my view, want, at the end of the day, to
2434 let states, as eight states have already done, protect the
2435 healthcare information of their citizens. In fact, it is a
2436 lot of Republican led states that have led the way on that,
2437 Florida, Arkansas, Missouri, New Hampshire, North Dakota,
2438 Texas, by the way, and California.

2439 And people really get, rightly, concerned about the
2440 integrity of their healthcare information, so I hope it is
2441 something that can be included so that states have some
2442 latitude here, and I take you at your word. And if we get
2443 that resolved, I am going to be on this bill.

2444 The {Chairman.} If the gentleman will yield? I--you
2445 can take me at my word, and I--

2446 Mr. {Welch.} I know that.

2447 The {Chairman.} We are going to work very hard on this--
2448 -

2449 Mr. {Welch.} Right.

2450 The {Chairman.} --and we will see where we come out.

2451 Mr. {Welch.} Yeah, and I think--the--and another reason
2452 I think we want to do it, and the whole concept that Mr.
2453 Burgess is advocating for a narrow bill, we but in this
2454 exclusion on healthcare, where eight states have already
2455 acted, it kind of makes a broader pre-emption than is

2456 necessary to achieve the data breach and data security goals
2457 of the bill. So thank you, Mr. Chairman. Let us work that
2458 out. If we work it out, I am on the bill.

2459 The second thing, and I want to say why I would be
2460 enthusiastically on this bill, aside from working well with
2461 lots of people on both sides, a narrow bill is an ambitious
2462 bill. It is ambitious because the heart of the problem is--
2463 the effort to get to people's financial information. There
2464 are other issues, but if 90 percent of the problem, and 100
2465 percent of the motivation, is to get to your information and
2466 mine so that you steal money from us, or from the companies
2467 that have been hacked into it, and we have a bill that
2468 narrowly focuses on achieving it, that is not a timid bill.
2469 That is an ambitious bill. So I want to get this passed.
2470 Second, there are some concerns that are very valid that have
2471 been raised largely by my colleagues, and I feel confident
2472 that we have addressed them in this bill, even if we don't
2473 have all the privacy concerns expanded that have to be at
2474 some point legislated.

2475 First of all, pre-emption. That is generally something
2476 I oppose, but what I have concluded in this situation is if
2477 we don't have pre-emption, we don't have protection. You
2478 know, you may have a good state law, but that protects you
2479 within the four corners of the boundaries of that state. If

2480 you have been on the Internet, and you go from your state to
2481 my state, and my state does something that infringes your
2482 information, how is that going to help you, that you are in
2483 California and have a good law, but you got ripped off in
2484 Vermont, or Missouri, or some other place? So to have
2485 protection, we have to have pre-emption, and that is why I
2486 support that effort.

2487 Second, on the notice, there is a debate about what is
2488 the right time of notice, but I think in the real world a lot
2489 of states, including California, give some time for the
2490 hacked in company to try to investigate what happened, to try
2491 to limit the scope of what happened, and to shut down what
2492 that breach has been. That is a common sense situation, for
2493 me. Can it be abused in some situations? It might be
2494 abused, but we are going to have penalty authority if there
2495 has been negligent or malicious conduct on the part of the
2496 actor. So the notice that we have doesn't require, like,
2497 real time. It allows for practical investigation, and then
2498 30 days' notice so that that will happen.

2499 Three, on the--on getting back to enforcement with this
2500 pre-emption question, we are giving the FTC very solid
2501 authority to do its job, and they have got the staff to do
2502 it, and we are making certain that the Attorney General in
2503 your state and mine has enforcement authority. That was very

2504 important, I think, to all of us, because, you know, it is a
2505 long way for folks in Vermont to come down to Washington to
2506 try to get the FTC's attention to take action, but it is a
2507 pretty short trip to Montpelier, and our Attorney General
2508 answers the phone, and I am sure all of us have more
2509 confidence in that.

2510 Then, on the privacy question, we did something that,
2511 again, is controversial. We are--we are shifting
2512 jurisdiction from the FCC on certain issues to the FTC.
2513 Anytime there is a jurisdictional transfer, there is a fight.
2514 The question for me is not who is the cop on the beat, the
2515 question is is there a cop on the beat, and is the consumer
2516 going to be protected? The language in this bill is focused
2517 solely on the data breach/data notification provisions. And
2518 when you go through with a fine toothed comb the language,
2519 the CPNI information, the privacy rights, the information
2520 that we all believe should be protected, what are your
2521 viewing habits, what are your call habits, all of that is
2522 going to continue to receive the protection. We have agreed
2523 on that from the beginning. We had some struggles on trying
2524 to get the right language to make sure the agreed-upon
2525 approach was reached. I am satisfied we have got the
2526 language, so we will have those protections.

2527 So, bottom line here, this is a pretty good bill. It is

2528 going to help folks on the data breach, and it is going to
2529 help on the data--on the breach notification. And it
2530 represents, in fact, solid potential for enforcement through
2531 the FTC and the Attorney General's Office. So I appreciate
2532 the good work that has been done not just by this Committee,
2533 but by folks that have led the way on this, Mr. Barton and
2534 Mr. Rush. You know, we don't get from here to there
2535 overnight, and we sure know that around here. But this is a
2536 solid step in the right direction.

2537 All we have got to do, from my perspective, is we have
2538 got to address this healthcare issue--in my view, actually
2539 doesn't belong here. It really doesn't belong here, so let
2540 us not let it get in the way. Let us have that discipline
2541 that Mr. Burgess imposed on the process from the day--from
2542 day one of this--

2543 The {Chairman.} Gentleman's time has expired--

2544 Mr. {Welch.} And I yield back.

2545 The {Chairman.} --strong arguments in support of the
2546 manager's amendment.

2547 Other members wishing to speak on the amendment?

2548 Seeing none, the occur--the vote occurs on the amendment
2549 offered by the gentlelady from Tennessee.

2550 Those in favor will say aye.

2551 Those opposed say no.

2552 The Chair--the ayes have it. The ayes have it, and the
2553 amendment is agreed to.

2554 Are there further amendments to the bill? Gentleman
2555 from California, Mr. McNerney, has an amendment, number--

2556 Mr. {McNerney.} Thank you, Mr. Chairman. I have an
2557 amendment at the desk, 020, 0-2-0.

2558 The {Chairman.} Number 20.

2559 Mr. {McNerney.} Found it?

2560 The {Chairman.} Clerk will report the title of the
2561 amendment.

2562 The {Clerk.} Amendment to H.R. 1770, offered by Mr.
2563 McNerney of California.

2564 [The amendment of Mr. McNerney follows:]

2565 ***** INSERT 7 *****

|
2566 The {Chairman.} And the amendment will be considered as
2567 read, and the gentleman is recognized for 5 minutes in
2568 support of his amendment.

2569 Mr. {McNerney.} Thank you, Mr. Chairman. This bill
2570 takes the necessary steps--the underlying bill takes the
2571 necessary steps to ensure that the FBI, the Secret Service,
2572 and the Commission are notified in the event of a data
2573 breach, however, it doesn't require states Attorney General
2574 to be notified, nor does it require notification if the
2575 breach has less than 10,000 people affected, so this
2576 amendment attacks those two issues.

2577 90 percent of the data breaches are below the 10,000
2578 threshold. My amendment instructs breached entities to
2579 notify the appropriate Attorney General's office in the event
2580 of a data breach of more than 500 people. California has
2581 been a leader on this notification, and I believe we can
2582 learn from my home state's policies. If state Attorneys
2583 General are required to notify the Commission whenever they
2584 are taking civil action in response to a breach, then it is
2585 only fair that they are informed when there is a significant
2586 breach in their state.

2587 This amendment does not in any way infringe on Federal
2588 authority. Instead, it ensures that the current state

2589 authority is not undermined. As we increasingly depend on
2590 the technology to conduct day to day business, it is not
2591 surprising that mistakes are made, or that nefarious people
2592 attempt to steal personal information to make money. In our
2593 efforts to create a robust system addressing how these
2594 inevitable breaches are handled, both consumers and criminals
2595 need to know that our laws will be enforced.

2596 That is why it is critical that our Attorneys General
2597 are informed and able to work within their existing systems,
2598 as well as with the Federal counterparts in ensuring that
2599 breaches are responded to effectively and efficiently. In
2600 summaries, when there is a major data breach, Attorney
2601 Generals must be notified, in addition to Federal agencies,
2602 and the notification must happen when over 500 people are
2603 affected, instead of 10,000. I urge my colleagues to support
2604 this amendment, and I yield back.

2605 Mr. {Pallone.} Would you yield to me, just--

2606 Mr. {McNerney.} Yeah.

2607 Mr. {Pallone.} I just wanted to urge support.

2608 Mr. {McNerney.} --Ranking Member.

2609 Mr. {Pallone.} I think it is a good amendment with
2610 regard to notice. I urge my colleagues to support it.

2611 Mr. {McNerney.} Yield back.

2612 The {Chairman.} The--time has expired. Other--do you

2613 want to still use his time? Go ahead.

2614 Ms. {Schakowsky.} As was shared by Mr. Rush, our
2615 Attorney General in Illinois, Lisa Madigan, has expressed
2616 strong opposition to this bill, and among her concerns is the
2617 absence of any requirement within the bill to notify state
2618 Attorneys General in the event of a breach, so I strongly
2619 support this amendment. Her letter to the Illinois members
2620 of the Committee, which I--okay--says that, ``Over the past
2621 decade, additional transparency about data breaches has been
2622 achieved due to notification requirements at the state
2623 level.'' Understanding the source and cause of data breaches
2624 has helped her office, and others around the country, helped
2625 determine appropriate fixes. The McNerney amendment would
2626 address the bill's failure to notify state AGs. It simply
2627 says that when 500 citizens of a state have had their data
2628 breached, their Attorney General must be informed. Actually,
2629 in Illinois, any breach would be--have to be informed.

2630 Providing Attorneys General with notice of breaches
2631 would not result in the over-notification over which many of
2632 this bill's proponents have raised concerns. It would simply
2633 ensure that the state's top law enforcement officer is aware
2634 of the problem, and able to help find a solution. There is
2635 no credible reason to oppose this amendment, and I urge my
2636 colleagues to support it, and I yield back. Or I yield back

2637 to the gentleman.

2638 The {Chairman.} Gentleman yields back his time. From
2639 California? I--strike the last word. I would urge my--I
2640 appreciate the gentleman's amendment, I do, but, as you know,
2641 we are trying to keep the bare--the bill narrow so that we
2642 can actually get the bill through the Senate, to the
2643 President. And--so I ask my colleagues to vote no.

2644 The goal of the notice to the state Attorneys General
2645 does vary among the 20 states with such a requirement, and
2646 the bill--underlying bill streamlines the process by
2647 requiring a covered entity to notify law enforcement and the
2648 FTC after a breach that involves personal information of more
2649 than 10,000, as you know. The balance ensures that a covered
2650 entity is not bogged down trying to send out notices to
2651 multiple state AGs, and is providing notice to the nationwide
2652 Consumer Protection Agency about such a breach.

2653 So the goal is to move away from the existing patchwork
2654 of state laws. However, this amendment would create more of
2655 a piecemeal approach than there was--that is contrary to the
2656 overarching goal of the draft--

2657 Ms. {Eshoo.} Would the gentle--would the Chairman
2658 yield?

2659 The {Chairman.} Yeah. Since I didn't start the clock,
2660 I can yield.

2661 Ms. {Eshoo.} Mr. Chairman, with all due respect, all
2662 they have to do is press a button. These notifications are
2663 not typed out, with carbon copies, that will take weeks, and
2664 present burdens to God knows how many people. We are in a
2665 digital age. We are living in that. We--it is a completely
2666 different landscape than what you just described.

2667 So I don't think, you know, the rationale really stands.
2668 It is the push of a button, and they are notified. So I
2669 just--I think, in the time that you are going to spend with
2670 Mr. Welch and others, hopefully myself. I offered myself, if
2671 you think I can offer anything to help make the bill better,
2672 that you reconsider this. Because it really doesn't--it
2673 really--the world that we live in does not--is very different
2674 than the rationale that you explained, and the world that
2675 that rationale belonged to at one time. So I thank you for
2676 yielding to me.

2677 The {Chairman.} It--I was glad to yield. I just want
2678 to say, we are trying to thread the needle to get a bill that
2679 can get done, so that is the balance that we are trying to
2680 look at. So, with that, I yield back.

2681 Are there other members wishing to speak on the bills--
2682 on the amendment?

2683 Seeing none, the vote occurs on the amendment offered by
2684 the gentleman from California.

2685 Those in favor will say aye.

2686 Those opposed say no.

2687 Opinion of the Chair, the noes have it. The noes have
2688 it, and the amendment is not agreed to.

2689 Are there further amendments to the bill? I am going to
2690 go here to Mr. Barton. What number?

2691 Mr. {Barton.} Well, I have a number of amendments. I
2692 have Barton #4, Barton #9, Barton #10, Barton #8, Barton #11.
2693 I want to have Barton #8, 9, 10--8, 9, and 10 considered en
2694 bloc, and I simply want to say I want to work with you--first
2695 of all, I want those three to be considered en bloc.

2696 The {Chairman.} So the Clerk will report the titles of
2697 8, 9, and 10?

2698 Mr. {Barton.} Correct?

2699 The {Chairman.} And ask unanimous--

2700 Mr. {Barton.} And I am going to withdraw them as soon
2701 as I--

2702 The {Chairman.} Okay.

2703 Mr. {Barton.} --spend about 15 seconds talking about
2704 them.

2705 The {Chairman.} Gentleman is recognized for 20--no,
2706 gentleman is recognized, and ask unanimous consent that those
2707 three be considered en bloc, 8, 9, and 10.

2708 Mr. {Barton.} Correct.

2709 The {Chairman.} Clerk will report the titles.

2710 The {Clerk.} Amendment to H.R. 1770, offered by Mr.

2711 Barton of Texas.

2712 [The amendment offered en bloc of Mr. Barton follows:]

2713 ***** COMMITTEE INSERT *****

|
2714 The {Chairman.} Gentleman is recognized for 5 minutes.

2715 Mr. {Barton.} Thank you, sir. Amendments #8, 9, and
2716 10, Mr. Chairman, deal with the amount of--different section
2717 of the bill, the amount of time a covered entity has in which
2718 to alert somebody that there has been a breach. It tightens
2719 up the timeline. Amendment #10 actually is probably the most
2720 substantive, because it would eliminate the state pre-
2721 emption. It would actually let the states continue to set
2722 standards, so that is a controversial one. So--and then the
2723 last one simply says strike the words ``upon written
2724 request'' and insert ``30 days, or such lesser period''. So
2725 it tightens up, and gives some definition to when somebody
2726 who has been breached has to be notified.

2727 So I am going to withdraw those amendments, Mr.
2728 Chairman, on your assurances that we will at least discuss
2729 them between now--

2730 The {Chairman.} We will have an opportunity to discuss-
2731 -

2732 Mr. {Barton.} Now--

2733 The {Chairman.} --those--

2734 Mr. {Barton.} I do withdraw, yes, sir. Now, I do want
2735 to offer Amendment #11.

2736 The {Chairman.} So the Clerk will report the title of

2737 #11.

2738 The {Clerk.} Amendment to H.R. 1770, offered by Mr.

2739 Barton of Texas.

2740 [The amendment of Mr. Barton follows:]

2741 ***** INSERT 8 *****

|
2742 The {Chairman.} And the gentleman has recognized--the
2743 amendment will be considered as read. The gentleman is
2744 recognized for 5 minutes.

2745 Mr. {Barton.} This is really, Mr. Chairman, the
2746 technical amendment. You used the term, in several places in
2747 the bill, breached covered entity. This amendment would
2748 strike ``breached covered entity'', or ``non-breached covered
2749 entity'', as the case may be. This simply clarifies in the
2750 bill the term, and brings the bill, throughout its entirety,
2751 in conformity with the plain English language. It is
2752 something the staff says you support. It is a technical
2753 amendment.

2754 The {Chairman.} Gentleman is correct. I have--if the
2755 gentleman will yield?

2756 Mr. {Barton.} I yield.

2757 The {Chairman.} I think the amendment is viewed by many
2758 of us as a technical amendment. It is a good amendment, and
2759 one that I can support, and--

2760 Mr. {Pallone.} I support it.

2761 The {Chairman.} And if the gentleman will yield back,
2762 we will have a vote on the amendment.

2763 Mr. {Barton.} I am honored to yield back, Mr. Chairman.

2764 The {Chairman.} Time has expired. The vote occurs on

2765 the Barton amendment.

2766 Those in favor will say aye.

2767 Those opposed say no.

2768 Opinion of the Chair, the ayes have it. The amendment
2769 is agreed to.

2770 Are there further amendments to the bill? Gentleman
2771 from Massachusetts has an amendment.

2772 Mr. {Kennedy.} Thank you, Mr. Chairman. I do have an
2773 amendment at the desk.

2774 The {Chairman.} Number--

2775 Mr. {Kennedy.} We can start with--I have got two.

2776 Start with the--one.

2777 The {Chairman.} Number one.

2778 The {Clerk.} Which number, sir? I am sorry.

2779 Mr. {Kennedy.} I have got written here as UDAP--01--

2780 The {Clerk.} Amendment to H.R. 1770, offered by Mr.

2781 Kennedy.

2782 [The amendment of Mr. Kennedy follows:]

2783 ***** COMMITTEE INSERT *****

|
2784 The {Chairman.} Gentleman is--the amendment will be
2785 considered as read, and the gentleman is recognized for 5
2786 minutes in support of his amendment.

2787 Mr. {Kennedy.} Thank you, Mr. Chairman. I will--I
2788 won't take that much time. My amendment, Mr. Chairman, deals
2789 with an issue clarifying the Committee intent with regards to
2790 Section 6 of the underlying bill. Section 6(a) pre-empts
2791 state information security laws, but it also pre-empts state
2792 consumer protection laws, including state laws prohibiting
2793 unfair and deceptive acts or practices. While this bill took
2794 a step to ensure that the Federal Trade Commission can still
2795 bring cases under its--relating to unfair, deceptive acts or
2796 practices, it failed to do the same for states.

2797 At the Subcommittee markup, I sought to address Section
2798 6(a)'s broad state pre-emption. The amendment failed on a
2799 party line vote. I am still concerned about the language in
2800 Section 6(a). Therefore, I am offering this narrower
2801 amendment just to address state laws relating to unfair or
2802 deceptive acts and practices.

2803 We have heard that this is supposed to be a narrowly
2804 tailored bill, dealing with the narrow issue of financial
2805 harm. If that is the case, we should not prohibit states
2806 from bringing actions when their residents are injured in

2807 ways other than financial. I will provide a brief example.
2808 An individual could provide sensitive health information
2809 self-identifying as having a mental illness to a non-HIPPA
2810 covered entity, or provide sensitive information self-
2811 identifying as a problem gambler. If the business that
2812 received this data promised to secure them, but failed to do
2813 so, a state might consider that deceptive misrepresentation,
2814 and want to take action.

2815 This amendment should be supported so that states, just
2816 like the FTC, can continue to bring cases that are beyond the
2817 scope of the bill, and continue to protect their residents.
2818 And with that, Mr. Chairman, I yield back.

2819 The {Chairman.} Gentleman yields back. Other members
2820 wishing to speak on the amendment? The gentleman from New
2821 Jersey is recognized.

2822 Mr. {Pallone.} I would urge support for the Kennedy
2823 amendment. This bill includes broad pre-emption that
2824 prevents states from using the state laws designed to protect
2825 consumers from unfair or deceptive practices or acts. In
2826 these states, UDAP laws give states the flexibility they need
2827 to go after companies when they promise consumers that they
2828 will protect their information, and then fail to provide the
2829 same level of protection they promised.

2830 While many states have strong data security and breach

2831 notification laws on the books, state UDAP laws allow law
2832 enforcement to protect consumers when these laws, and other
2833 state laws, do not speak to a set of particular circumstances
2834 where consumers are harmed. In many cases, other causes of
2835 action under common law are not available, so state
2836 legislatures have responded by enacting UDAP laws. And when
2837 a consumer cannot use common law claims, such as negligence
2838 or breach in contract, state law enforcement can rely on UDAP
2839 laws to go after bad actors that are using unfair and
2840 deceptive practices.

2841 So this amendment is simple. It would preserve state
2842 UDAP authority. If this amendment is adopted, it will simply
2843 allow states to continue protecting their residents from
2844 unfair and deceptive practices and acts. State UDAP laws are
2845 critical to ensuring consumers are protected. States would
2846 not have UDAP laws on the books if they were not an important
2847 tool to allow states to accomplish what is not possible under
2848 common law. So I ask my colleagues to support adoption of
2849 the Kennedy amendment. I yield back.

2850 The {Chairman.} Gentleman yields back. Or--

2851 Ms. {Schakowsky.} Again, this bill may be broader than
2852 one thinks. As currently written, it--as the Ranking Member
2853 mentioned, it would prevent states from enforcing their own
2854 laws regarding unfair and deceptive practices--acts and

2855 practices as it relates to data. So even states without
2856 specific data standards are able to--and have prosecuted
2857 back--bad actors for their failure to protect Internet
2858 searches, or report on data breaches under these so-called
2859 UDAP statutes. That includes authority for states to go
2860 after entities that sell personal information, or habits that
2861 their customers have a right and expectation to keep private.

2862 If an entity engages in what are legally considered to
2863 be unfair or deceptive practices--acts or practices, illegal,
2864 they should be held accountable. This amendment makes sure
2865 that states will continue to be able to exercise UDAP
2866 authority to protect their citizens. It is straightforward.
2867 It should be unobjectionable. I hope everyone on this
2868 Committee will support it. I don't know if it was an
2869 unintended consequence, but in any case, I think it is much
2870 broader than the--it has been spoken to so far. I yield--or
2871 I yield to the gentleman that has the time.

2872 The {Chairman.} Time has--the gentleman from New Jersey
2873 yields back. Chair will yield to the gentlelady from--

2874 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I do
2875 thank the gentleman for his amendment, and for staying on
2876 this issue. And I know he is concerned about pre-emption in
2877 the bill, but the--his amendment would end up subverting the
2878 pre-emption provisions that are in our bill. And as I said

2879 earlier, different rules for different states, this will lead
2880 to corporate gamesmanship. When there is confusion, it leads
2881 to less protection for consumers, and it also leads to more
2882 non-compliance. We know that happens. That is the reason we
2883 have the bill in the way that we do. Pre-emption is
2884 important for consumers, it is important for businesses, it
2885 is important for victims of these data breaches.

2886 So I oppose the gentleman's amendment. I thank him for
2887 staying interested in the issue, and I yield back the balance
2888 of my time.

2889 The {Chairman.} She yields back her time. Other
2890 members wishing to speak?

2891 Seeing none, the occur--vote occurs on the Kennedy
2892 amendment.

2893 Those in favor will say aye.

2894 Roll call that--vote has been asked. The Clerk will
2895 call the roll.

2896 The {Clerk.} Mr. Barton?

2897 [No response.]

2898 The {Clerk.} Mr. Whitfield?

2899 Mr. {Whitfield.} Aye.

2900 The {Clerk.} Mr. Whitfield votes aye.

2901 Mr. Shimkus?

2902 [No response.]

2903 The {Clerk.} Mr. Pitts?
2904 Mr. {Pitts.} No.
2905 The {Clerk.} Mr. Pitts votes no.
2906 Mr. Walden?
2907 [No response.]
2908 The {Clerk.} Mr. Murphy?
2909 Mr. {Murphy.} No.
2910 The {Clerk.} Mr. Murphy votes no.
2911 Mr. Burgess?
2912 Mr. {Burgess.} No.
2913 The {Clerk.} Mr. Burgess votes no.
2914 Mrs. Blackburn?
2915 Mrs. {Blackburn.} No.
2916 The {Clerk.} Mrs. Blackburn votes no.
2917 Mr. Scalise?
2918 [No response.]
2919 The {Clerk.} Mr. Latta?
2920 Mr. {Latta.} No.
2921 The {Clerk.} Mr. Latta votes no.
2922 Mrs. McMorris Rodgers?
2923 [No response.]
2924 The {Clerk.} Mr. Harper?
2925 Mr. {Harper.} No.
2926 The {Clerk.} Mr. Harper votes no.

2927 Mr. Lance?
2928 Mr. {Lance.} No.
2929 The {Clerk.} Mr. Lance votes no.
2930 Mr. Guthrie?
2931 Mr. {Guthrie.} No.
2932 The {Clerk.} Mr. Guthrie votes no.
2933 Mr. Olson?
2934 Mr. {Olson.} No.
2935 The {Clerk.} Mr. Olson votes no.
2936 Mr. McKinley?
2937 Mr. {McKinley.} No.
2938 The {Clerk.} Mr. McKinley votes no.
2939 Mr. Pompeo?
2940 Mr. {Pompeo.} No.
2941 The {Clerk.} Mr. Pompeo votes no.
2942 Mr. Kinzinger?
2943 Mr. {Kinzinger.} No.
2944 The {Clerk.} Mr. Kinzinger votes no.
2945 Mr. Griffith?
2946 Mr. {Griffith.} No.
2947 The {Clerk.} Mr. Griffith votes no.
2948 Mr. Bilirakis?
2949 Mr. {Bilirakis.} No.
2950 The {Clerk.} Mr. Bilirakis votes no.

2951 Mr. Johnson?
2952 Mr. {Johnson.} No.
2953 The {Clerk.} Mr. Johnson votes no.
2954 Mr. Long?
2955 Mr. {Long.} No.
2956 The {Clerk.} Mr. Long votes no.
2957 Mrs. Ellmers?
2958 Mrs. {Ellmers.} No.
2959 The {Clerk.} Mrs. Ellmers votes no.
2960 Mr. Bucshon?
2961 Mr. {Bucshon.} No.
2962 The {Clerk.} Mr. Bucshon votes no.
2963 Mr. Flores?
2964 [No response.]
2965 The {Clerk.} Mrs. Brooks?
2966 Mrs. {Brooks.} No.
2967 The {Clerk.} Mrs. Brooks votes no.
2968 Mr. Mullin?
2969 Mr. {Mullin.} No.
2970 The {Clerk.} Mr. Mullin votes no.
2971 Mr. Hudson?
2972 Mr. {Hudson.} No.
2973 The {Clerk.} Mr. Hudson votes no.
2974 Mr. Collins?

2975 Mr. {Collins.} No.

2976 The {Clerk.} Mr. Collins votes no.

2977 Mr. Cramer?

2978 Mr. {Cramer.} No.

2979 The {Clerk.} Mr. Cramer votes no.

2980 Mr. Pallone?

2981 Mr. {Pallone.} Aye.

2982 The {Clerk.} Mr. Pallone votes aye.

2983 Mr. Rush?

2984 Mr. {Rush.} Aye.

2985 The {Clerk.} Mr. Rush votes aye.

2986 Ms. Eshoo?

2987 Ms. {Eshoo.} Aye.

2988 The {Clerk.} Ms. Eshoo votes aye.

2989 Mr. Engel?

2990 [No response.]

2991 The {Clerk.} Mr. Green?

2992 [No response.]

2993 The {Clerk.} Ms. DeGette?

2994 [No response.]

2995 The {Clerk.} Ms. Capps?

2996 Mrs. {Capps.} Aye.

2997 The {Clerk.} Ms. Capps votes aye.

2998 Mr. Doyle?

2999 Mr. {Doyle.} Aye.

3000 The {Clerk.} Mr. Doyle votes aye.

3001 Ms. Schakowsky?

3002 Ms. {Schakowsky.} Aye.

3003 The {Clerk.} Ms. Schakowsky votes aye.

3004 Mr. Butterfield?

3005 [No response.]

3006 The {Clerk.} Ms. Matsui?

3007 Ms. {Matsui.} Aye.

3008 The {Clerk.} Ms. Matsui votes aye.

3009 Ms. Castor?

3010 Ms. {Castor.} Aye.

3011 The {Clerk.} Ms. Castor votes aye.

3012 Mr. Sarbanes?

3013 Mr. {Sarbanes.} Aye.

3014 The {Clerk.} Mr. Sarbanes votes aye.

3015 Mr. McNerney?

3016 Mr. {McNerney.} Aye.

3017 The {Clerk.} Mr. McNerney votes aye.

3018 Mr. Welch?

3019 Mr. {Welch.} Aye.

3020 The {Clerk.} Mr. Welch votes aye.

3021 Mr. Lujan?

3022 Mr. {Lujan.} Aye.

3023 The {Clerk.} Mr. Lujan votes aye.
3024 Mr. Tonko?
3025 Mr. {Tonko.} Aye.
3026 The {Clerk.} Mr. Tonko votes aye.
3027 Mr. Yarmuth?
3028 Mr. {Yarmuth.} Aye.
3029 The {Clerk.} Mr. Yarmuth votes aye.
3030 Ms. Clarke?
3031 [No response.]
3032 The {Clerk.} Mr. Loeb sack?
3033 [No response.]
3034 Mr. Schrader?
3035 Mr. {Schrader.} Aye.
3036 The {Clerk.} Mr. Schrader votes aye.
3037 Mr. Kennedy?
3038 Mr. {Kennedy.} Aye.
3039 The {Clerk.} Mr. Kennedy votes aye.
3040 Mr. Cardenas?
3041 Mr. {Cardenas.} Aye.
3042 The {Clerk.} Mr. Cardenas votes aye.
3043 Chairman Upton?
3044 The {Chairman.} Votes no.
3045 The {Clerk.} Chairman Upton votes no.
3046 The {Chairman.} Members wishing to cast a vote? Mr.

3047 Barton.

3048 Mr. {Barton.} Aye.

3049 The {Clerk.} Mr. Barton votes aye.

3050 The {Chairman.} Mr. Walden?

3051 Mr. {Walden.} No.

3052 The {Clerk.} Mr. Walden votes no.

3053 The {Chairman.} Mr. Shimkus?

3054 Mr. {Shimkus.} No.

3055 The {Clerk.} Mr. Shimkus votes no.

3056 The {Chairman.} Other members wishing to cast a vote?

3057 Seeing none, the Clerk will report the tally.

3058 The {Clerk.} Mr. Chairman, on that vote there were 19

3059 ayes and 26 nays.

3060 The {Chairman.} 26 nays, the amendment is not agreed

3061 to.

3062 Are there further amendments to the bill? Gentleman

3063 from Massachusetts.

3064 Mr. {Kennedy.} Last one, Mr. Chairman, I promise.

3065 The {Chairman.} Clerk will report the title of the

3066 amendment.

3067 Mr. {Kennedy.} --01. There is--11:02 time stamp.

3068 The {Clerk.} Amendment to H.R. 1770, offered by Mr.

3069 Kennedy.

3070 [The amendment of Mr. Kennedy follows:]

3071 ***** INSERT 9 *****

|
3072 The {Chairman.} The amendment will be considered as
3073 read, and the gentleman is recognized as--for 5 minutes in
3074 support of his amendment.

3075 Mr. {Kennedy.} Thank you, Mr. Chairman. Thank you,
3076 Madam Clerk, as well. Mr. Chairman, when this bill was
3077 considered in Subcommittee, Section 6(b), regarding common
3078 law, was in brackets. There was a discussion at that time by
3079 members about what 6's pre-emption of state information
3080 security laws also pre-empted state common law. The
3081 Subcommittee draft even indicated that there was no clear
3082 decision by the bill's authors at that time as to their
3083 desires with regards to whether Section 6's pre-emption of
3084 state information security laws should pre-empt state common
3085 law.

3086 The bill before us now states that Section 6 ``shall not
3087 exempt a covered entity from liability beyond''--or, excuse
3088 me, ``under common law''. That sounds good, and I am in
3089 agreement that the--with the bill's authors that the bill
3090 should not pre-empt state common law. Unfortunately, Section
3091 6(a) appears to be in direct conflict with Subsection 6(b).
3092 At the Subcommittee markup, I sought to address this conflict
3093 by deleting words from Subsection 6(a) that are problematic.
3094 That amendment again failed on a party line vote.

3095 I am still concerned with the language in Section 6(a).
3096 The Supreme Court has ruled that when a law says that the
3097 language included--the language included in 6(a), that law
3098 pre-empts common law. While courts may dismiss common law
3099 cases on various grounds, such as insufficient pleadings, the
3100 right to bring those cases exists under state law. These
3101 cases include--interference with a business relationship,
3102 implied covenant of good faith and fair dealing, as was
3103 explained in the Supreme Court case mentioned above, and the
3104 negligent misrepresentation--so on.

3105 The amendment before us now seems to ensure that those
3106 cases claiming negligent misrepresentation are not dismissed
3107 due to the passage of the bill before us. This is one of
3108 many common law actions that I will assume the authors do not
3109 intend to pre-empt by this bill. Since it is a claim seen in
3110 the context of data security and breach notification--
3111 purposes. Here is an example. An individual could buy a
3112 firearm from a dealer, and the dealer could have a written
3113 policy claiming that it would secure the personal information
3114 needed to perform a background check for that purchaser. If
3115 the firearm dealer then failed to secure that information, an
3116 individual might want to bring an action claiming negligent
3117 misrepresentation.

3118 This amendment should be supported so that states,

3119 courts, and other stakeholders understand that, regardless of
3120 the language in 6(a), this Committee does not want to pre-
3121 empt state common law. Thank you, Mr. Chairman. I yield
3122 back.

3123 Mr. {Pallone.} Would you yield, Mr. Kennedy?

3124 Mr. {Kennedy.} Yes, of course.

3125 Mr. {Pallone.} Mr. Chairman, I just want to urge
3126 support for the Kennedy common law amendment. In today's
3127 modern society, you can't function without using a product or
3128 service that maintains your personal information in
3129 electronic form. With the benefits that come with this new
3130 technology, there are serious financial, physical,
3131 reputation, and other harms that can befall an individual if
3132 their information is breached.

3133 Since the founding of the U.S., common law protections
3134 have given Americans recourse for their injury, even when
3135 rapidly changing technologies have led to new forms of harm
3136 previously unanticipated. Today consumers can seek remedy
3137 under a number of common law claims when their information is
3138 breached. Recently consumers have used common law claims
3139 such as negligence, breach of implied contract, and unjust
3140 enrichment to seek revenue after a breach. If consumers have
3141 suffered because of one of these torts, they should be able
3142 to have a court vindicate their rights. Similarly, one

3143 business should be able to seek recourse if it believes it
3144 has been harmed by the actions of another business.

3145 Common law is about making sure that the citizens of
3146 different states can exert some pretty basic legal
3147 protections. In the context of data security and breach
3148 notification, these protections are particularly important
3149 because they are flexible, and accommodate changes in
3150 technology and business practices. The language in this bill
3151 should make clear that common law is not pre-empted, and that
3152 a covered entity is not exempt from liability under common
3153 law. In my opinion, our constituents deserve no less, and
3154 that is what Mr. Kennedy's amendment would do.

3155 The {Chairman.} Gentleman yields back? Gentleman
3156 yields back. Other members wishing to speak on the
3157 amendment? I would urge my colleagues to vote no.
3158 Gentl lady is recognized.

3159 Ms. {Schakowsky.} So I, you know, support the Kennedy
3160 common law amendment. I know that it has been a top priority
3161 of Mr. Welch that this bill does not interfere with state
3162 common law protection, but, unfortunately, the pre-emption
3163 language in this bill has been found by the Supreme Court to
3164 do exactly that. All state common law protections, as they
3165 relate to data security, would be stripped. This legislation
3166 includes a brief savings clause in Section 6 that says,

3167 ``This section shall not exempt a covered entity from
3168 liability under common law.'' I find the clause both
3169 conflicting and vague.

3170 The Kennedy amendment would specify the types of
3171 protections that would be maintained under the bill. That
3172 includes negligent misrepresentation about the security of
3173 financial information, information regarding an individual's
3174 purchase of firearms, and information regarding an
3175 individual's membership in protest or religious
3176 organizations, protections, I think, that are very important
3177 to everyone here.

3178 The amendment says that entities can be held accountable
3179 for selling or failing to secure that type of information in
3180 breach of state common law. This is a common sense
3181 amendment, and I expect the full Committee will support it,
3182 and make sure that their constituents have a right to secure
3183 data protections. And I yield back, or to--yield back.

3184 The {Chairman.} Time--gentlelady yields back her time.
3185 Other members wishing to speak?

3186 Seeing none, the vote occurs on the Kennedy amendment.
3187 A roll call has been asked for, so the Clerk will call the
3188 vote--call the roll.

3189 The {Clerk.} Mr. Barton?

3190 Mr. {Barton.} No.

- 3191 The {Clerk.} Mr. Barton votes no.
- 3192 Mr. Whitfield?
- 3193 Mr. {Whitfield.} No.
- 3194 The {Clerk.} Mr. Whitfield votes no.
- 3195 Mr. Shimkus?
- 3196 Mr. {Shimkus.} No.
- 3197 The {Clerk.} Mr. Shimkus votes no.
- 3198 Mr. Pitts?
- 3199 Mr. {Pitts.} No.
- 3200 The {Clerk.} Mr. Pitts votes no.
- 3201 Mr. Walden?
- 3202 [No response.]
- 3203 The {Clerk.} Mr. Murphy?
- 3204 [No response.]
- 3205 The {Clerk.} Mr. Burgess?
- 3206 Mr. {Burgess.} No.
- 3207 The {Clerk.} Mr. Burgess votes no.
- 3208 Mrs. Blackburn?
- 3209 Mrs. {Blackburn.} No.
- 3210 The {Clerk.} Mrs. Blackburn votes no.
- 3211 Mr. Scalise?
- 3212 [No response.]
- 3213 The {Clerk.} Mr. Latta?
- 3214 Mr. {Latta.} No.

3215 The {Clerk.} Mr. Latta votes no.
3216 Mrs. McMorris Rodgers?
3217 [No response.]
3218 The {Clerk.} Mr. Harper?
3219 Mr. {Harper.} No.
3220 The {Clerk.} Mr. Harper votes no.
3221 Mr. Lance?
3222 Mr. {Lance.} No.
3223 The {Clerk.} Mr. Lance votes no.
3224 Mr. Guthrie?
3225 Mr. {Guthrie.} No.
3226 The {Clerk.} Mr. Guthrie votes no.
3227 Mr. Olson?
3228 Mr. {Olson.} No.
3229 The {Clerk.} Mr. Olson votes no.
3230 Mr. McKinley?
3231 Mr. {McKinley.} No.
3232 The {Clerk.} Mr. McKinley votes no.
3233 Mr. Pompeo?
3234 Mr. {Pompeo.} No.
3235 The {Clerk.} Mr. Pompeo votes no.
3236 Mr. Kinzinger?
3237 Mr. {Kinzinger.} No.
3238 The {Clerk.} Mr. Kinzinger votes no.

3239 Mr. Griffith?
3240 Mr. {Griffith.} No.
3241 The {Clerk.} Mr. Griffith votes no.
3242 Mr. Bilirakis?
3243 Mr. {Bilirakis.} No.
3244 The {Clerk.} Mr. Bilirakis votes no.
3245 Mr. Johnson?
3246 Mr. {Johnson.} No.
3247 The {Clerk.} Mr. Johnson votes no.
3248 Mr. Long?
3249 Mr. {Long.} No.
3250 The {Clerk.} Mr. Long votes no.
3251 Mrs. Ellmers?
3252 Mrs. {Ellmers.} No.
3253 The {Clerk.} Mrs. Ellmers votes no.
3254 Mr. Bucshon?
3255 Mr. {Bucshon.} No.
3256 The {Clerk.} Mr. Bucshon votes no.
3257 Mr. Flores?
3258 [No response.]
3259 The {Clerk.} Mrs. Brooks?
3260 Mrs. {Brooks.} No.
3261 The {Clerk.} Mrs. Brooks votes no.
3262 Mr. Mullin?

3263 Mr. {Mullin.} No.

3264 The {Clerk.} Mr. Mullin votes no.

3265 Mr. Hudson?

3266 Mr. {Hudson.} No.

3267 The {Clerk.} Mr. Hudson votes no.

3268 Mr. Collins?

3269 Mr. {Collins.} No.

3270 The {Clerk.} Mr. Collins votes no.

3271 Mr. Cramer?

3272 Mr. {Cramer.} No.

3273 The {Clerk.} Mr. Cramer votes no.

3274 Mr. Pallone?

3275 Mr. {Pallone.} Aye.

3276 The {Clerk.} Mr. Pallone votes aye.

3277 Mr. Rush?

3278 Mr. {Rush.} Aye.

3279 The {Clerk.} Mr. Rush votes aye.

3280 Ms. Eshoo?

3281 Ms. {Eshoo.} Aye.

3282 The {Clerk.} Ms. Eshoo votes aye.

3283 Mr. Engel?

3284 [No response.]

3285 The {Clerk.} Mr. Green?

3286 [No response.]

3287 The {Clerk.} Ms. DeGette?
3288 Ms. {DeGette.} Aye.
3289 The {Clerk.} Ms. DeGette votes aye.
3290 Ms. Capps? Ms. Capps?
3291 Mrs. {Capps.} Aye.
3292 The {Clerk.} Ms. Capps votes aye.
3293 Mr. Doyle?
3294 Mr. {Doyle.} Aye.
3295 The {Clerk.} Mr. Doyle votes aye.
3296 Ms. Schakowsky?
3297 Ms. {Schakowsky.} Aye.
3298 The {Clerk.} Ms. Schakowsky votes aye.
3299 Mr. Butterfield?
3300 [No response.]
3301 The {Clerk.} Ms. Matsui?
3302 Ms. {Matsui.} Aye.
3303 The {Clerk.} Ms. Matsui votes aye.
3304 Ms. Castor?
3305 Ms. {Castor.} Aye.
3306 The {Clerk.} Ms. Castor votes aye.
3307 Mr. Sarbanes?
3308 Mr. {Sarbanes.} Aye.
3309 The {Clerk.} Mr. Sarbanes votes aye.
3310 Mr. McNerney?

3311 Mr. {McNerney.} Aye.

3312 The {Clerk.} Mr. McNerney votes aye.

3313 Mr. Welch?

3314 [No response.]

3315 The {Clerk.} Mr. Lujan?

3316 Mr. {Lujan.} Aye.

3317 The {Clerk.} Mr. Lujan votes aye.

3318 Mr. Tonko?

3319 [No response.]

3320 The {Clerk.} Mr. Yarmuth?

3321 [No response.]

3322 The {Clerk.} Mr. Welch?

3323 Mr. {Welch.} Aye.

3324 The {Clerk.} Mr. Welch votes aye.

3325 Mr. Lujan? Sorry. Mr. Yarmuth?

3326 Mr. {Yarmuth.} Aye.

3327 The {Clerk.} Mr. Yarmuth votes aye.

3328 Ms. Clarke?

3329 [No response.]

3330 The {Clerk.} Mr. Loeb sack?

3331 Mr. {Loeb sack.} Aye.

3332 The {Clerk.} Mr. Loeb sack votes aye.

3333 Mr. Schrader?

3334 Mr. {Schrader.} Aye.

3335 The {Clerk.} Mr. Schrader votes aye.
3336 Mr. Kennedy?
3337 Mr. {Kennedy.} Aye.
3338 The {Clerk.} Mr. Kennedy votes aye.
3339 Mr. Cardenas?
3340 [No response.]
3341 The {Clerk.} Chairman Upton?
3342 The {Chairman.} No.
3343 The {Clerk.} Chairman Upton votes no.
3344 The {Chairman.} Other members wishing to cast a vote?
3345 Mr. Walden?
3346 Mr. {Walden.} No.
3347 The {Clerk.} Mr. Walden votes no.
3348 The {Chairman.} Mr. Tonko?
3349 Mr. {Tonko.} Aye.
3350 The {Clerk.} Mr. Tonko votes aye.
3351 The {Chairman.} Mr.--I am sorry, Mr. Cardenas.
3352 Mr. {Cardenas.} Aye.
3353 The {Clerk.} Mr. Cardenas votes aye.
3354 The {Chairman.} Other members wishing to cast a vote?
3355 Seeing none, the Clerk will report the tally.
3356 The {Clerk.} Mr. Chairman, on that vote--
3357 The {Chairman.} Get to the--yeah, go ahead.
3358 The {Clerk.} --there were 19 ayes and 27 nays.

3359 The {Chairman.} 19 ayes, 27 nays, the amendment is not
3360 agreed to. Just--there are other members? Hold on just one
3361 second. Take a 60 second delay.

3362 There further amendments to the bill? Seeing--recognize
3363 the gentleman from California, Mr. Cardenas. I think--some
3364 amendments en bloc.

3365 Mr. {Cardenas.} Yes. Thank you. Cardenas amendment 1-
3366 2, en bloc with 1-3 and 1-7.

3367 The {Chairman.} So, Mr. Cardenas, what I might suggest,
3368 it is obviously up to you, is that--you have, as I understand
3369 it, six amendments.

3370 Mr. {Cardenas.} Correct.

3371 The {Chairman.} So I am--what I would like to do is
3372 suggest that you put six amendments en bloc, and then we will
3373 have a little colloquy.

3374 Mr. {Cardenas.} Okay.

3375 The {Chairman.} And then you can decide what to do.

3376 Mr. {Cardenas.} Okay.

3377 The {Chairman.} And then we could get the final. So
3378 ask unanimous consent that your six amendments be offered en
3379 bloc, if that is all right?

3380 Mr. {Cardenas.} What I would like to--Mr. Chairman, is
3381 take them en bloc, but I would like to speak to--

3382 The {Chairman.} Yeah. You can speak to as many as you

3383 want. So the Clerk will report the amendments en bloc.

3384 The {Clerk.} Amendment to H.R. 1770, offered by Mr.

3385 Cardenas of California.

3386 [The amendments offered en bloc of Mr. Cardenas follow:]

3387 ***** INSERTS 10, 11, 12, 13 *****

|
3388 The {Chairman.} And the gentleman is recognized for 5
3389 minutes in support of all six amendments. And we will have a
3390 colloquy at the end.

3391 Mr. {Cardenas.} Thank you very much, Mr. Chairman, and
3392 members. Speaking to Amendment 012, which was submitted at
3393 12:08 a.m., which would lower the trigger to inform law
3394 enforcement entities, and to inform the state AGs, also what
3395 it would do is lower it from 10,000, which the current bill
3396 has, to 5,000. For example, in California, there is a
3397 minimum requirement of a breach period, so this amendment
3398 actually speaks to a compromise between the current bill,
3399 which has 10,000, and to what is standard in California,
3400 which is a simple breach, to 5,000.

3401 So, with that, what I would like to do, Mr. Chairman, is
3402 withdraw that amendment, as the Chairman has indicated that
3403 perhaps we could work on the threshold of that--the threshold
3404 lowering from 10,000. So we will continue to work on that,
3405 so I will withdraw that amendment, which is seen as 012,
3406 which was submitted at 10:08 a.m.

3407 In addition to that, I would like to speak to the
3408 Amendment 013, for--which refers to the breaches that affect
3409 more than 2,500 residents. The covered entity must issue a
3410 sample notification to the affected AGs, as well as the FTC.

3411 The current bill does not require that the effective--the AGs
3412 in the affected states be notified, and that is the main
3413 effort of that particular amendment. And that way each state
3414 Attorney Generals came make sure that the notifications are
3415 accurate, and in plain language, so that each consumer and/or
3416 victim understands what has happened.

3417 So this amendment actually speaks to not only the 2,500
3418 residents affected, but it also speaks to making sure that
3419 the AGs are able to review and make sure that the entities
3420 that were involved with being affected by the breach are
3421 actually notifying in plain language so people understand
3422 what has, in fact, occurred with their personal information.

3423 Next I would like to speak to amendment--otherwise known
3424 as 15, which has to do with--a covered entity should provide
3425 the notification in a language other than English if it is
3426 requested by the individual. In a country as diverse as
3427 ours, it is important that all American consumers be allowed
3428 to request that their information be given to them in a
3429 language. This I see is not a cumbersome amendment because
3430 it requires the consumer to individually request it, and it
3431 does not require a blanket requirement on the actual
3432 provider.

3433 In addition to that, I would like to speak to the
3434 amendment which is otherwise known as 17, which has to do

3435 with the breach notifications--covered entities must include
3436 an offer to provide appropriate identity theft prevention and
3437 mitigation services at no cost to the breached individual.
3438 Again, in my state, when a consumer has their identity or
3439 personal information stolen, the breached entity must pay for
3440 identity theft prevention and mitigation services to that
3441 consumer.

3442 Many companies are already providing these protections
3443 when they are breached, but this amendment would ensure that
3444 all Americans who suffer such a loss are, in fact, protected.
3445 When a consumer does everything in their power to protect
3446 their identity, and their personal information is acquired
3447 through no fault of their own, they should not have to suffer
3448 the financial loss of paying for this identity theft
3449 protection.

3450 In addition to that, I would like to speak to Amendment
3451 16, which removes the ISP carve-out. Mr. Chairman, and
3452 members, the main purpose of this bill is to protect
3453 consumers from identity theft, economic loss, or economic
3454 harm and financial fraud by establishing strong and uniform
3455 national data security and breach notification standards for
3456 electronic data in the interstate commerce, a goal is--which
3457 is--I strongly support. However, Internet and other service
3458 providers may not be held to the same standards as other

3459 businesses if they don't own data that has been stolen. Why
3460 is it the case? Because these service providers are only
3461 responsible to either notify the covered entity, or do
3462 nothing, where there is no contract if the breach occurs on
3463 their network, and another company owns the data.

3464 Mr. Chairman, when a company does everything right to
3465 protect the consumers' data, they should not have to be
3466 punished for the breach that occurred on someone else's
3467 system or network. Service providers transport vast amounts
3468 of data, which may--which is much in content unknown to those
3469 providers, and we should understand that. When they do not
3470 know what--the data has been leaked, or who is the owner or
3471 license of that data, they should have no obligation under
3472 this bill. But if the service provider can figure out who
3473 the--who owns it with the stolen data, then that should be
3474 addressed appropriately.

3475 But this particular amendment, due to shortage of time,
3476 I will just announce that I will withdraw this amendment
3477 known as 16, and hopefully we can work on a compromise, and
3478 put this important compromise in the final version of the
3479 bill. And with that, I will just mention that Amendment 18
3480 allows states to petition the FTC for a waiver to go beyond
3481 the Federal bill for data breach, which allows--if they can
3482 prove that there is significant harm to their residents. Mr.

3483 Chairman?

3484 The {Chairman.} The--recognize myself to strike the
3485 last word. I commend, you know, this bill has been a long
3486 work in progress. It is not only the last couple of weeks
3487 coming from the Subcommittee mark, but it is--Mr. Barton, Mr.
3488 Rush, and others who were on the Committee for years have
3489 recognized that we have been dealing with this, and we wanted
3490 to get something done, with the bottom line--protect our
3491 consumers. And we are not done yet.

3492 And I appreciate the gentleman putting the amendments en
3493 bloc, and he has a choice of either--of withdrawing the
3494 amendments, or having them--a voice vote, but I just--I want
3495 to say two things with regard to two amendments. One, I want
3496 to work with you, and--as well as Mr. McNerney, who offered
3497 an amendment lowering the threshold. I think there is some
3498 room there, and I want to negotiate in good faith on that,
3499 and see where we are, to have an amendment perhaps ready for
3500 the floor.

3501 The other thing that I am--I think all of us are
3502 concerned about is the notification in multi-language--multi-
3503 lingual. I think that is a strong amendment. I am not sure
3504 that it is just right to now, but I think that we could work
3505 together between now and when this bill is likely to go to
3506 the floor and work on Cardenas amendment on the House floor

3507 to strengthen that, and I want to offer that in good faith.

3508 And I would ask maybe--my preference would be that you
3509 would withdraw the en bloc amendment, so that we don't have
3510 to go through the--what is likely to be a voice vote on the
3511 en bloc amendment, but it is up to the gentleman. But I just
3512 want to say you raise some very good points. We want to work
3513 with you to get things done, and I would yield maybe to Mr.
3514 Pallone, and then Mr. Cardenas.

3515 Mr. {Pallone.} It is up--I mean, I think that the
3516 Chairman has made an offer there to work with us on some of
3517 these, Mr. Cardenas, so if you would just withdraw them, it
3518 is probably the best.

3519 Mr. {Cardenas.} Okay. I will do that, in the spirit of
3520 the request by the Chairman, and I look forward to hopefully
3521 making progress on some of these amendments, and in the
3522 interest of time, and of all my--on this Committee, I will
3523 withdraw all the amendments.

3524 The {Chairman.} I would be glad to yield--

3525 Ms. {Eshoo.} Thank you, Mr. Chairman. I will just be
3526 brief. I know that--I think this is the last of the
3527 amendments. I appreciate my colleague from California
3528 offering them en bloc. I also appreciate what you said.
3529 Members are restless. We want to leave. Some have already
3530 left. Others are having conversations, the papers rustling,

3531 but I listened very carefully to each one of his amendments.
3532 As you said, Mr. Chairman, there really is promise in them,
3533 so I appreciate your saying that you will work with Mr.
3534 Cardenas. He has really offered some thoughtful additions
3535 that I think will strengthen the overall effort. So I
3536 appreciate that, and I yield back. Thank you for yielding to
3537 me.

3538 The {Chairman.} Still on my time, I will yield to the
3539 gentleman from California.

3540 Mr. {Cardenas.} Thank you very much, Mr. Chairman. I
3541 would be remiss if I didn't take the opportunity to take a
3542 few seconds to thank the Sub Chair, Mr. Burgess, for his
3543 access and willingness to work with me and some of my
3544 colleagues. And, in addition to that, I would like to thank
3545 Subcommittee Chairwoman Schakowsky for her constructive
3546 support on my behalf, and her guidance in this process.
3547 Thank you very much. I yield back.

3548 The {Chairman.} Okay. I will yield back my time. And
3549 are there further amendments to the bill?

3550 Seeing none, the question now occurs on favorably
3551 reporting H.R. 1770, as amended, to the House.

3552 All those in favor will say aye.

3553 All those opposed say no.

3554 Roll call vote is requested. The Clerk will call the

3555 roll.

3556 The {Clerk.} Mr. Barton?

3557 Mr. {Barton.} Aye.

3558 The {Clerk.} Mr. Barton votes aye.

3559 Mr. Whitfield?

3560 Mr. {Whitfield.} Aye.

3561 The {Clerk.} Mr. Whitfield votes aye.

3562 Mr. Shimkus?

3563 Mr. {Shimkus.} Aye.

3564 The {Clerk.} Mr. Shimkus votes aye.

3565 Mr. Pitts?

3566 Mr. {Pitts.} Aye.

3567 The {Clerk.} Mr. Pitts votes aye.

3568 Mr. Walden?

3569 [No response.]

3570 The {Clerk.} Mr. Murphy?

3571 [No response.]

3572 The {Clerk.} Mr. Burgess?

3573 Mr. {Burgess.} Aye.

3574 The {Clerk.} Mr. Burgess votes aye.

3575 Mrs. Blackburn?

3576 Mrs. {Blackburn.} Aye.

3577 The {Clerk.} Mrs. Blackburn votes aye.

3578 Mr. Scalise?

3579 [No response.]

3580 The {Clerk.} Mr. Latta?

3581 Mr. {Latta.} Aye.

3582 The {Clerk.} Mr. Latta votes aye.

3583 Mrs. McMorris Rodgers?

3584 Mrs. {McMorris Rodgers.} Aye.

3585 The {Clerk.} Mrs. McMorris Rodgers votes aye.

3586 Mr. Harper?

3587 Mr. {Harper.} Aye.

3588 The {Clerk.} Mr. Harper votes aye.

3589 Mr. Lance?

3590 Mr. {Lance.} Aye.

3591 The {Clerk.} Mr. Lance votes aye.

3592 Mr. Guthrie?

3593 Mr. {Guthrie.} Aye.

3594 The {Clerk.} Mr. Guthrie votes aye.

3595 Mr. Olson?

3596 Mr. {Olson.} Aye.

3597 The {Clerk.} Mr. Olson votes aye.

3598 Mr. McKinley?

3599 Mr. {McKinley.} Aye.

3600 The {Clerk.} Mr. McKinley votes aye.

3601 Mr. Pompeo?

3602 Mr. {Pompeo.} Aye.

3603 The {Clerk.} Mr. Pompeo votes aye.
3604 Mr. Kinzinger?
3605 Mr. {Kinzinger.} Aye.
3606 The {Clerk.} Mr. Kinzinger votes aye.
3607 Mr. Griffith?
3608 Mr. {Griffith.} Aye.
3609 The {Clerk.} Mr. Griffith votes aye.
3610 Mr. Bilirakis?
3611 Mr. {Bilirakis.} Aye.
3612 The {Clerk.} Mr. Bilirakis votes aye.
3613 Mr. Johnson?
3614 Mr. {Johnson.} Aye.
3615 The {Clerk.} Mr. Johnson votes aye.
3616 Mr. Long?
3617 Mr. {Long.} Aye.
3618 The {Clerk.} Mr. Long votes aye.
3619 Mrs. Ellmers?
3620 Mrs. {Ellmers.} Aye.
3621 The {Clerk.} Mrs. Ellmers votes aye.
3622 Mr. Bucshon?
3623 Mr. {Bucshon.} Aye.
3624 The {Clerk.} Mr. Bucshon votes aye.
3625 Mr. Flores?
3626 [No response.]

3627 The {Clerk.} Mrs. Brooks?
3628 Mrs. {Brooks.} Aye.
3629 The {Clerk.} Mrs. Brooks votes aye.
3630 Mr. Mullin?
3631 Mr. {Mullin.} Aye.
3632 The {Clerk.} Mr. Mullin votes aye.
3633 Mr. Hudson?
3634 Mr. {Hudson.} Aye.
3635 The {Clerk.} Mr. Hudson votes aye.
3636 Mr. Collins?
3637 Mr. {Collins.} Aye.
3638 The {Clerk.} Mr. Collins votes aye.
3639 Mr. Cramer?
3640 Mr. {Cramer.} Aye.
3641 The {Clerk.} Mr. Cramer votes aye.
3642 Mr. Pallone?
3643 Mr. {Pallone.} No.
3644 The {Clerk.} Mr. Pallone votes no.
3645 Mr. Rush?
3646 Mr. {Rush.} No.
3647 The {Clerk.} Mr. Rush votes no.
3648 Ms. Eshoo?
3649 Ms. {Eshoo.} No.
3650 The {Clerk.} Ms. Eshoo votes no.

3651 Mr. Engel?
3652 [No response.]
3653 The {Clerk.} Mr. Green?
3654 [No response.]
3655 The {Clerk.} Ms. DeGette?
3656 Ms. {DeGette.} No.
3657 The {Clerk.} Ms. DeGette votes no.
3658 Ms. Capps?
3659 Mrs. {Capps.} No.
3660 The {Clerk.} Ms. Capps votes no.
3661 Mr. Doyle?
3662 Mr. {Doyle.} No.
3663 The {Clerk.} Mr. Doyle votes no.
3664 Ms. Schakowsky?
3665 Ms. {Schakowsky.} No.
3666 The {Clerk.} Ms. Schakowsky votes no.
3667 Mr. Butterfield?
3668 Mr. {Butterfield.} No.
3669 The {Clerk.} Mr. Butterfield votes no.
3670 Ms. Matsui?
3671 Ms. {Matsui.} No.
3672 The {Clerk.} Ms. Matsui votes no.
3673 Ms. Castor?
3674 Ms. {Castor.} No.

3675 The {Clerk.} Ms. Castor votes no.
3676 Mr. Sarbanes?
3677 Mr. {Sarbanes.} No.
3678 The {Clerk.} Mr. Sarbanes votes no.
3679 Mr. McNerney?
3680 [No response.]
3681 The {Clerk.} Mr. Welch?
3682 Mr. {Welch.} No.
3683 The {Clerk.} Mr. Welch votes no.
3684 Mr. Lujan?
3685 Mr. {Lujan.} No.
3686 The {Clerk.} Mr. Lujan votes no.
3687 Mr. Tonko?
3688 Mr. {Tonko.} No.
3689 The {Clerk.} Mr. Tonko votes no.
3690 Mr. Yarmuth?
3691 Mr. {Yarmuth.} No.
3692 The {Clerk.} Mr. Yarmuth votes no.
3693 Ms. Clarke?
3694 Ms. {Clarke.} No.
3695 The {Clerk.} Ms. Clarke votes no.
3696 Mr. Loeb sack?
3697 Mr. {Loeb sack.} No.
3698 The {Clerk.} Mr. Loeb sack votes no.

3699 Mr. Schrader?

3700 Mr. {Schrader.} No.

3701 The {Clerk.} Mr. Schrader votes no.

3702 Mr. Kennedy?

3703 Mr. {Kennedy.} No.

3704 The {Clerk.} Mr. Kennedy votes no.

3705 Mr. Cardenas?

3706 Mr. {Cardenas.} No.

3707 The {Clerk.} Mr. Cardenas votes no.

3708 Chairman Upton?

3709 The {Chairman.} Votes aye.

3710 The {Clerk.} Chairman Upton votes aye.

3711 The {Chairman.} Other members wishing to cast a vote?

3712 Mr.--

3713 The {Clerk.} Mr. Walden?

3714 Mr. {Walden.} Aye.

3715 The {Clerk.} Mr. Walden votes aye.

3716 The {Chairman.} Mr. Scalise?

3717 Mr. {Scalise.} Aye.

3718 The {Clerk.} Mr. Scalise votes aye.

3719 The {Chairman.} Other members wishing to cast a vote?

3720 The {Clerk.} Mr.--

3721 The {Chairman.} Seeing none, the Clerk will report the

3722 tally, and I would ask unanimous consent to--while you are--

3723 Ms. {Eshoo.} Yes. I ask for unanimous consent to place
3724 in the record a letter dated April 14 from six consumer
3725 organizations, Mr. Chairman.

3726 The {Chairman.} Without objection, the letter will be
3727 inserted in the record.

3728 [The information follows:]

3729 ***** COMMITTEE INSERT *****

|
3730 Ms. {Eshoo.} Thank you very much.

3731 The {Chairman.} Wait just one second.

3732 The {Clerk.} Mr. Chairman--

3733 The {Chairman.} Clerk--yes?

3734 The {Clerk.} --on that vote there were 29 yeas and 20
3735 nays.

3736 The {Chairman.} The 29 yeas, 20 nays, the bill will--is
3737 favorably reported, and Committee stands adjourned.

3738 Without objection, staff is authorized to make technical
3739 and conforming changes to the bills reported by the Committee
3740 today. So ordered.

3741 And pursuant to House Rule 11(2)(1), all members will be
3742 given two calendar days to file written and signed views for
3743 the bills approved by the Committee today.

3744 Without objection, the Committee stands adjourned.

3745 [Whereupon, at 12:58 p.m., the Committee was adjourned.]