2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012—is to continue in effect beyond May 11, 2018.

The regime's brutal war on the Syrian people, who have been calling for freedom and a representative government, not only endangers the Syrian people themselves, but also generates instability throughout the region. The Syrian regime's actions and policies, including pursuing and using chemical weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to foster the rise of extremism and sectarianism and pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue in effect the national emergency declared with respect to this threat and to maintain in force the sanctions to address this national emergency.

In addition, the United States condemns the Assad regime's use of brutal violence and human rights abuses, and calls on the Assad regime to stop its violent war, uphold the Cessation of Hostilities, enable the delivery of humanitarian assistance, and negotiate a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

DONALD J. TRUMP.
THE WHITE HOUSE, *May 9, 2018.*

□ 1345

STANDARD MERGER AND ACQUISITION REVIEWS THROUGH EQUAL RULES ACT OF 2018

Mr. GOODLATTE. Mr. Speaker, pursuant to House Resolution 872, I call up the bill (H.R. 5645) to amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 872, the bill is considered read.

The text of the bill is as follows:

H.R. 5645

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Standard Merger and Acquisition Reviews Through Equal Rules Act of 2018''.

SEC. 2. AMENDMENTS TO THE CLAYTON ACT.

The Clayton Act (15 U.S.C. 12 et seq.) is amended—

(1) by striking section 4F and inserting the following:

''SEC. 4F. ACTIONS BY ATTORNEY GENERAL OF THE UNITED STATES OR THE FEDERAL TRADE COMMISSION.

''(a) Whenever the Attorney General of the United States has brought an action under the antitrust laws or the Federal Trade Commission has brought an action under section 7, and the Attorney General or Federal Trade Commission, as applicable, has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws or section 7, the Attorney General or Federal Trade Commission, as applicable, shall promptly give written notification thereof to such State attorney general.

''(b) To assist a State attorney general in evaluating the notice described in subsection (a) or in bringing any action under this Act, the Attorney General of the United States or Federal Trade Commission, as applicable, shall, upon request by such State attorney general, make available to the State attorney general, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.'';

(2) in section 5—

(A) in subsection (a) by inserting ''(including a proceeding brought by the Federal Trade Commission with respect to a violation of section 7)'' after ''United States under the antitrust laws''; and

(B) in subsection (i) by inserting ''(including a proceeding instituted by the Federal Trade Commission with respect to a violation of section 7)'' after ''antitrust laws'';

(3) in section 11, by adding at the end the following:

''(m)(1) Except as provided in paragraph (2), in enforcing compliance with section 7, the Federal Trade Commission shall enforce compliance with that section in the same manner as the Attorney General in accordance with section 15.

''(2) If the Federal Trade Commission approves an agreement with the parties to the transaction that contains a consent order with respect to a violation of section 7, the Commission shall enforce compliance with that section in accordance with this section.'';

(4) in section 13, by inserting ''(including a suit, action, or proceeding brought by the Federal Trade Commission with respect to a violation of section 7)'' before ''subpoenas''; and

(5) in section 15, by inserting ''and the duty of the Federal Trade Commission with respect to a violation of section 7,'' after ''General,''.

SEC. 3. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

The Federal Trade Commission Act (15 U.S.C. 41) is amended—

(1) in section 5(b), by inserting ''(excluding the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18), except in cases where the Commission approves an agreement with the parties to the transaction that contains a consent order)'' after ''unfair method of competition'';

(2) in section 9, by inserting after the fourth undesignated paragraph the following:

''Upon the application of the commission with respect to any activity related to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18) that may result in any unfair method of competition, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.'';

(3) in section 13(b)(1), by inserting ''(excluding section 7 of the Clayton Act (15 U.S.C. 18) and section 5(a)(1) with respect to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 of the Clayton Act (15 U.S.C. 18))'' after ''Commission''; and

(4) in section 20(c)(1), by inserting ''or under section 7 of the Clayton Act (15 U.S.C. 18), where applicable,'' after ''Act,''.

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply to any of the following that occurs before the date of enactment of this Act:

(1) A violation of section 7 of the Clayton Act (15 U.S.C. 18).

(2) A transaction with respect to which there is compliance with section 7A of the Clayton Act (15 U.S.C. 18a).

(3) A case in which a preliminary injunction has been filed in a district court of the United States.

The SPEAKER pro tempore. The bill shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary.

After 1 hour of debate, it shall be in order to consider the amendment printed in House Report 115–664, if offered by the Member designated in the report, which shall be considered read, shall be separately debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to a demand for a division of the question.

The gentleman from Virginia (Mr. GOODLATTE) and the gentleman from New York (Mr. NADLER) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

PERMISSION TO POSTPONE PROCEEDINGS ON ADOPTING AMENDMENT TO H.R. 5645

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that the question of adopting the amendment to H.R. 5645 may be subject to postponement as though under clause 8 of rule XX.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 5645.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

In 1914, Congress passed the Federal Trade Commission Act, marking the

beginning of a dual antitrust enforcement regime in the United States.

Because both Department of Justice and the Federal Trade Commission enforce our Nation's antitrust laws, companies may, and often do, have different experiences when interacting with one agency relative to the other. One area in which the disparity can be the most striking and troubling is in the merger review process.

When a company wishes to merge with or purchase another company, it must notify both antitrust enforcement agencies of the proposed transaction. The Department of Justice and the Federal Trade Commission then determine which agency will be responsible for reviewing the transaction. As there are no fixed rules for making this determination, it can appear that the decision is made on the basis of a flip of a coin.

There are two substantial differences that companies face based on the identity of the antitrust enforcement agency that reviews the companies' proposed transaction.

The first difference arises if the agency seeks to prevent the transaction by pursuing a preliminary injunction in Federal court. A different legal standard is applied to a preliminary injunction request based solely on the identity of the requesting antitrust enforcement agency.

The second difference lies in the process available to each antitrust enforcement agency to prevent a transaction from proceeding. The FTC may pursue administrative litigation against a proposed transaction, even after a court denies its preliminary injunction request. In contrast, DOJ cannot pursue administrative litigation.

There is no justification for these disparities in the merger review processes and standards. The bipartisan Antitrust Modernization Commission recommended that Congress remove these disparities, and the bill before us today, the Standard Merger and Acquisition Reviews Through Equal Rules Act, or the SMARTER Act, does just that. I applaud Representative HANDEL for introducing this important legislation that will enhance the transparency, predictability, and credibility of the antitrust merger review process.

By enacting the SMARTER Act into law, Congress will ensure that companies no longer will be subjected to fundamentally different processes and standards based on the flip of a coin. Notably, the legislation has garnered the support of former and current FTC commissioners, including former Chairman David Clanton, former Commissioner Josh Wright, and current Commissioner Maureen Ohlhausen.

The SMARTER Act is an important step toward assuring that our Nation's antitrust laws are enforced in a manner that is fair, consistent, and predictable.

Mr. Speaker, I urge my colleagues to vote in favor of this good government bill, and I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to H.R. 5645, the Standard Merger and Acquisition Reviews Through Equal Rules Act. This bill would significantly undermine the Federal Trade Commission's ability to enforce the Nation's antitrust laws, which help protect Americans from anticompetitive behavior in the marketplace. In the guise of harmonization with the Department of Justice, it would eliminate the FTC's administrative litigation enforcement authority with respect to corporate mergers and other transactions. It would also change and potentially increase the burden the FTC must demonstrate in court when seeking a preliminary injunction against the proposed merger.

In doing so, the bill would undercut a critical tool that the FTC relies on to promote competition. It also risks sacrificing the fundamental nature of the FTC as an independent administrative agency, rather than an executive department, subject to the political whims of the President. This blatant attack on the FTC's congressionally mandated independence contravenes more than a century of legislative intent.

In 1914, Congress responded to a wave of mergers and corporate abuses by establishing the FTC as an independent body of experts tasked with developing and advancing competition policy free from political pressure. In doing so, Congress specifically gave the Commission broad enforcement and investigatory authorities, including the power to challenge anticompetitive mergers and other conduct through administrative litigation.

This broad grant of statutory authority was not accidental. Louis Brandeis, a visionary architect of our Nation's competition system, advocated for the embrace of administrative litigation during Congress' consideration of the FTC Act, and President Woodrow Wilson said such authority was critical to the FTC's mission ''to warn where things were going wrong and assist instead of check.''

As former Republican FTC Chairman William Kovacic warned: ''Without a substantial, effective administrative litigation program, the aim of making the Commission an influential competition policy tribunal could not be accomplished.''

Nevertheless, this bill would eliminate this critical tool for promoting competition and, in the process, would erode the Commission's unique qualities and independence.

To further undermine the Commission's independence, the bill would also require the FTC to meet the same standard in court that the Justice Department meets when seeking a preliminary injunction against the proposed merger. But the FTC and the DOJ are two different agencies with different missions and different traditions.

Under current law, the Commission, by statute, must show that a preliminary injunction ''would be in the public interest.'' The Justice Department, on the other hand, has no statutory standard and must simply meet the common law preliminary injunction standard, such as the balance of equities and the risk of irreparable harm.

As our Nation's leading antitrust enforcers have previously testified, there is no practical difference between the standards or evidence that the Commission has abused its authority. So it is entirely unclear what problem the bill is attempting to solve. But in making this change, this bill could cause unnecessary confusion for the courts or could signal a desire to increase the burden on the agency to demonstrate the harms of an anticompetitive merger. That result alone is unacceptable.

But even more fundamentally, this legislation is a step in the wrong direction for our economy and for the prosperity and security of all Americans. The decline of antitrust enforcement over the past several decades has been an economic catastrophe for millions of workers who have lost their jobs or seen their wages lowered. It has resulted in fewer choices and higher prices for consumers, including increased costs for healthcare, prescription drugs, and other essential goods and services.

The importance of robust antitrust enforcement is not simply a question of preventing higher prices for consumers. In the absence of competition, employers have the power to suppress the wages and mobility of American workers through anticompetitive contracting practices, such as noncompete clauses and no-poach agreements.

And when large corporations run amok, locally owned businesses, the economic lifeblood of our communities, wither on the vine. Concentrated economic power is also a serious threat to our vibrant democracy. Large corporations with an outsized role in the policymaking process are able to further entrench their dominance through favorable rules and enforcement decisions.

And when a large corporation with market power has the ability to control the flow of information, it also has the power to shape public opinion in ways that erode democratic values and undermine the voice of the many in favor of the outsized profits of the few.

By further weakening our antitrust laws, H.R. 5645 would accelerate this disturbing trend. Accordingly, I must oppose this legislation and urge my colleagues to vote against this very bad bill.

Mr. Speaker, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield as much time as she may consume to the gentlewoman from Georgia (Mrs. HANDEL), the chief sponsor of the legislation.

Mrs. HANDEL. Mr. Speaker, I thank Chairman GOODLATTE for the opportunity to bring this bill forward. I rise

today in support of H.R. 5645, the Standard Merger and Acquisition Reviews Through Equal Rules Act, or the SMARTER Act.

Mr. Speaker, the SMARTER Act is a much-needed piece of legislation to harmonize and modernize our antitrust procedures. Despite the shared responsibilities for the antitrust review between the FTC and the DOJ, both agencies follow dramatically different review processes, meaning that businesses are held to conflicting standards and procedures, depending on which agency actually conducts the review. And that review, as Chairman GOODLATTE pointed out, is essentially a coin toss.

We can do better than that. The SMARTER Act in no way weakens or undermines our antitrust review process. It does not prevent or hinder either agency from conducting a full and thorough review.

Rather, the SMARTER Act actually strengthens the antitrust review process by injecting greater consistency, more transparency, and enhance consumer protection when we have these mergers and acquisitions.

With that, I urge my colleagues to support the SMARTER Act.

Mr. NADLER. Mr. Speaker, I yield 6 minutes to the the gentleman from Rhode Island (Mr. CICILLINE), the distinguished ranking member of the Regulatory Reform, Commercial and Antitrust Law Subcommittee.

Mr. CICILLINE. Mr. Speaker, I thank the gentleman from New York for yielding.

Mr. Speaker, I rise in strong opposition to H.R. 5645, the so-called SMARTER Act, an assault on the Federal Trade Commission's ability to vigorously promote competition through merger enforcement.

□ 1400

Over a century ago, Congress responded to waves of consolidation by creating the Federal Trade Commission to promote, development, and protect competition and the antitrust laws.

There is longstanding, bipartisan consensus that the Commission's use of administrative litigation to address anticompetitive mergers and conduct is core to this mission. This includes the former Republican and Democratic chairs of the Commission under George W. Bush and the Obama administrations, who have each raised serious concerns about this legislation, precisely because it eliminates a tool that has been critical in combating anticompetitive mergers and conduct, including mergers that would have raised Americans' cost of healthcare.

Top Republican antitrust enforcers have long supported the use of administrative litigation in merger enforcement to promote competition and develop the antitrust laws.

In 2003, Joseph Simons, who was appointed by President Trump and recently confirmed as the chairman of the Commission, stated as director of the FTC's Bureau of Competition that administrative litigation has ''substantial public policy benefits.'' He also referred to this tool as ''an instrument for developing the law'' that ''increases the transparency of Commission decisionmaking through carefully written opinions that accompany a Commission final litigated order can give considerable guidance to the bar and the business community on applicable standards and enforcement policy.''

And in 2004, Barry Nigro, who also served as a director of the FTC's Bureau of Competition under the George W. Bush administration, and was appointed by President Trump to serve in the Justice Department's Antitrust Division, stated that the ''volume of administrative litigation is no accident. It reflects our belief in administrative litigation as a way to take advantage of the FTC's expertise in the development of antitrust jurisprudence, particularly in the kind of complex matters that the FTC was created to address.''

Nevertheless, proponents of the SMARTER Act argue that the outcome of a transaction should not depend on a ''coin flip'' to determine which antitrust agency will review a transaction. But this claim is untethered from how antitrust enforcement actually works in the vast majority of cases. In fact, the determination of the moving party is determined by each agency's jurisdictional district, or areas committed by statute, and consistent with a well-developed body of case law, and not by a coin toss.

In the most comprehensive study of administrative litigation to date, Republican FTC Commissioner Maureen Ohlhausen debunked procedural concerns with administrative litigation as ''mostly anecdotal or theoretical,'' concluding it has been a transformative tool for advancing competition policy.

And last Congress, Jonathan Jacobson, a leading antitrust attorney, who currently serves as the chair of the American Bar Association's section on antitrust law, testified that, in his decades of practice, he has never seen a merger that turned on the differences that the SMARTER Act seeks to address. In fact, less than 2 percent of all mergers are blocked by the antitrust agencies, and an even smaller percentage of these cases go to trial.

The FTC also has a pristine record when using this authority. It has won six out of seven cases before the Supreme Court, and five of these were brought through administrative litigation.

We should, therefore, be deeply skeptical about baseless speculation and support of the bill. Empty rhetoric is no substitute for evidence that the SMARTER Act actually solves a real problem.

But even more importantly, this bill is a major step in the wrong direction on making our economy work for everybody. There is overwhelming evidence that concentrated economic power is at historic levels in this country, and has structurally weakened competition on an economy-wide basis.

This lack of competition is a fundamental threat to the economic opportunity of hardworking Americans who want lower prices, more and better services, and better wages. We need more competition, not less.

As the nonpartisan Open Markets Institute notes, ''Given the severity of the concentration problem in America today, and its economic and political consequences, Congress should be looking to enhance the powers of all of America's antimonopoly agencies.''

House and Senate Democrats have proposed a better deal to enhance competition to reduce lower prices and more choices for consumers.

Instead of undermining antitrust enforcement on the basis of purely speculative harms—as H.R. 5645 would do—we should be giving the antitrust agencies the resources and tools they need to robustly enforce the law.

In closing, I urge my colleagues to oppose this legislation, which does nothing to reduce concentrated economic power or address the economic challenges working people face every day and, in fact, will make the problem worse. It will make it easier to consolidate economic power in the way that undermines consumer choices, consumer costs, and will ultimately undermine hardworking American families.

Mr. Speaker, I urge my colleagues to vote ''no,'' and I thank the gentleman for yielding.

Mr. GOODLATTE. Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the nonpartisan Open Markets Institute, in its opposition to H.R. 5645 states: ''Given the severity of the concentration problem in America today, and its economic and political consequences, Congress should be looking to enhance the powers of all of America's antimonopoly agencies.''

I strongly agree: Congress should be strengthening, not weakening, our competition system to protect economic opportunity, innovation, and choice. That is why I have joined several of my Democratic colleagues—Representatives JOE CROWLEY, DAVID CICILLINE, and KEITH ELLISON—in introducing a package of bold economic measures to strengthen protections that will help ensure that hardworking Americans have more economic opportunity by ending anticompetitive employment practices.

This package includes H.R. 5642, the Restoring and Improving Merger Enforcement Act, legislation that I introduced to prohibit the consideration of false economic efficiencies—like corporate layoffs, actually costing employment—to justify anticompetitive mergers.

But rather than address these important measures, which would actually

help American workers and consumers, or give the antitrust agencies the resources they need to really promote competition, this bill would do the opposite by undermining the F'TC's ability to vigorously enforce antitrust laws under the guise of attempting to solve a problem that does not exist.

I would submit that an economy in which we are down to four major airlines and two major railroads, and going in the same direction in almost every other segment of the economy, we should not be weakening our antitrust laws and our antitrust enforcement, we should be strengthening them. This bill goes in exactly the wrong direction and is guaranteed to further increase the concentration of economic power in our economy, and to further decrease the bargaining power that workers have to get decent wages and working conditions.

Mr. Speaker, this is a deeply anti-employee bill, it is a pro-monopoly bill, and it is a very anti-economic growth bill. I urge my colleagues to oppose this deeply flawed measure, and I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, this is a good bill, I urge my colleagues to support it, and I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Speaker, I rise in opposition to H.R. 5645, the Standard Merger and Acquisition Reviews Through Equal Rules Act—otherwise known as the SMARTER Act.

Mr. Speaker, this bill is not about creating equal rules or implementing ''smarter'' legislation.

Rather, it is about attacking the administrative authority of the Federal Trade Commission (FTC).

H.R. 5645 is an unnecessary measure that would fundamentally undermine the FTC's independent enforcement authority and ability to prevent anti-competitive mergers.

As we all know, the FTC was created by Congress with the specific intent of creating an independent antitrust enforcement agency and supplemental authority to the Department of Justice (DOJ).

Specifically, if enacted, the SMARTER Act would strip the FTC of its power by eliminating the agency's authority to enforce antitrust laws in larger merger cases, and by blocking its ability to use its administrative proceedings to stop a harmful merger transaction.

The bill seeks to do so by requiring that the FTC use the same enforcement process as the DOJ.

This proposed sweeping change undercuts the FTC's administrative litigation process for contested mergers or acquisitions and effectively removes the very core and functioning character of this agency.

Moreover, reducing the FTC's independence directly conflicts with Congress's intent in creating this antitrust enforcement agency and policymaking body as a distinct and independent shield from political and executive interference.

As enforcers of Section 7 of the Clayton Act, both the FTC and the DOJ have the authority and responsibility to prohibit mergers and acquisitions that would ''substantially lessen competition'' or ''tend to create a monopoly''.

Under this enforcement authority, these agencies serve to complement each other, and have developed over the years to specialize in particular industries and markets.

Based upon historical experience and coordinated developments, the FTC serves to protect consumers and consumer spending. For example, healthcare, pharmaceuticals, professional services, food, energy, and certain high-tech industries like computer technology and internet services.

Whereas, the DOJ typically assumes a specialized focus on larger corporate industries like telecommunications, banks, railroads, and airlines.

Thus, while the FTC and the DOJ have operated with a shared responsibility of enforcing federal antitrust laws, these two federal agencies are unique and each retain exclusive authority of certain conduct.

Serving as joint enforcement agencies for over 100 years, the FTC and DOJ rely upon each other to coordinate agency jurisdiction and harmonized standards and practices.

The SMARTER Act is simply unnecessary as it fails to put forth any meaningful effort to enhance or rectify any expressed concerns governing these longstanding agency operations.

In particular, in 2002 Congress sought to review and amend antitrust laws and policies in light of the changing economy and rise in technological advances.

In 2007 a report issued by the Antitrust Modernization Commission (AMC) set forth specific recommendations for the FTC to eliminate real or perceived disparities in the review process for merger transactions.

According to the AMC, Congress should seek to ensure that the same or comparable standard is used when seeking a preliminary injunction against a potentially anticompetitive transaction.

However, the SMARTER Act goes beyond this recommendation and seeks to chip away and carve out the entire administrative adjudication authority of the FTC.

In order to identify potential violations of the Clayton Act, the FTC and the DOJ review proposed merger transactions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (the HSR Act), which provides advance notice and sets forth guidelines on large merger and acquisition transactions.

The heart of this concern is the alternate means by which the FTC and DOJ carry out their enforcement roles during this HSR premerger process.

Namely, H.R. 5645 is curiously motivated by the preliminary injunction process utilized by the FTC and the DOJ to halt proposed transactions that would violate the Clayton Act if completed.

Additionally, the DOJ typically consolidates the preliminary and permanent injunction proceedings, while the FTC typically only pursues preliminary injunctions.

While some argue that proposed transactions reviewed through the FTC would be treated more leniently than those reviewed through the DOJ, this assertion has not been fully substantiated by the AMC.

The pre-merger review process and the injunction standards utilized by the FTC and DOJ are the very procedural steps that characterize and distinguish the respective enforcement roles of these agencies.

This supposed area of concern addresses only a small fraction of proposed transactions, as the vast majority of merger and acquisition proposals are found to not be in violation of the Clayton Act upon undergoing the review process.

The FTC and DOJ review over a thousand merger filings every year.

Yet 95 percent of those merger filings present no competitive issues or challenged transactions.

As reported by the American Antitrust Institute (AAI), the overall concerns purported by the bill's sponsors are simply without foundation.

In contrast, the overall work of the FTC has an incredible impact on American consumers, communities and corporations and will be severely impacted if disrupted.

As highlighted by the FTC Chairwoman Edith Ramirez in her testimony before the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, the FTC prioritizes the protection of consumers and the prevention of anticompetitive market practices.

In fact, the FTC exists to ensure fair competition and to prevent enormous concentrations of economic power that hurts consumers and small businesses.

For example:

In the past year, the FTC has challenged over 28 mergers, (although in most it was able to negotiate a remedy to allow the merger to proceed).

At the consumer level in my home state of Texas, the FTC secured an $82,000 settlement against an auto-dealer found in violation of the Fair Credit Reporting Act in September 2017.

Also last year, the FTC ordered the largest divestiture ever in a supermarket merger, requiring Albertsons and Safeway to sell 168 supermarkets in 130 local markets throughout several states, ensuring that communities continue to benefit from competition among their local supermarkets.

The FTC has also taken an aggressive stance on stopping anticompetitive mergers and conduct in the healthcare market by halting such practices through administrative litigation.

In September 2017, the FTC secured a $1.1 million settlement to consumers who lost money to a health insurance telemarketing scam.

And in the last two years, the FTC took action in 13 pharmaceutical mergers, ordering divestitures to preserve competition for drugs that treat diabetes, hypertension, and cancer, as well as widely used generic medications like oral contraceptives and antibiotics.

Last year, on March 18, 2016, after a thoroughly vetted investigation, the FTC approved a final order preserving competition among outpatient dialysis clinics in Laredo, Texas.

That is, the FTC cleared U.S. Renal Care, Inc.'s (the country's third largest outpatient dialysis provider) $640 million purchase of dialysis competitor DSI Renal, on the condition that three of DSI's outpatient clinics in Laredo, Texas be handed over to a third party.

Absent this agreed divestiture, the acquisition would have led to a significant increase in market concentration and anti-competitive effects.

The likely result, according to the FTC, would have included the elimination of direct competition between U.S. Renal Care and DSI Renal, reduced incentives to improve services

or quality for dialysis patients, and increased ability for the merged company to unilaterally increase prices.

Notably, the DOJ has also been successful in securing investigations and halting suspected harmful merger practices on a much larger scale (in the health care and airline industry as of late).

In June 2016, the DOJ put pressure on several multibillion dollar health insurers seeking to engage in large merger transactions with near certain suppression of market competition in the healthcare industry.

In August 2016, the DOJ issued civil investigative demands on several major US airlines seeking to halt any potential unlawful mergers.

These cases demonstrate the need for continued protection of the FTC and its ability to effectively carry out injunctions on harmful merger and acquisition activities, as well as, anticompetitive business conduct that harms consumers and restrains market activity.

The ability of the FTC to function independently is necessary to the success of both the FTC and DOJ.

The far-reaching and elusive SMARTER Act fails to keep the foundational integrity of these agencies and should be opposed.

I urge my colleagues to vote against this serious threat to our fundamental protections of consumers and fair economic competition.

The SPEAKER pro tempore (Mr. DUNCAN of Tennessee). All time for debate on the bill has expired.

AMENDMENT NO. 1 PRINTED IN HOUSE REPORT 115–664 OFFERED BY MR. GOODLATTE

Mr. GOODLATTE. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 2, line 9, strike ''7'' and insert ''15''.

Page 3, strike lines 2 through 10, and insert the following:

(A) in subsection (a) by inserting ''or a proceeding brought by the Federal Trade Commission under section 15'' after ''United States under the antitrust laws''; and

(B) in subsection (i) by inserting ''or a proceeding instituted by the Federal Trade Commission under section 15'' after ''antitrust laws'';

Page 3, strike lines 11 through 22, and insert the following:

(3) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(A) in subsection (b) by striking ''Whenever'' and inserting ''Except as provided in subsection (m), whenever'', and

(B) by adding at the end the following:

''(m) The Federal Trade Commission may not use the procedures for administrative adjudication set forth in subsection (b) of this section to prevent the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7, unless the complaint is accompanied by a consent agreement between the Commission and a party to the transaction that resolves all the violations alleged in the complaint. The Federal Trade Commission may institute proceedings in a district court under section 15 to prevent the consummation of such a transaction. In any such proceeding the district court shall apply the same standard for granting injunctive relieve as applicable to a proceeding brought by the United States attorneys under section 15. The Federal Trade Commission may issue an administrative complaint under this section if the complaint is accompanied by a consent agreement between the Federal Trade Commission and a party to the transaction settling the alleged violations.'';

Page 3, line 23, strike ''(including'' and insert ''or''.

Page 4. beginning on line 1, strike ''with respect to a violation of section 7)'' and insert ''under section 15''.

Page 4, strike lines 3 through 5, and insert the following:

(5) in section 15, by inserting ''and the duty of the Federal Trade Commission with respect to the consummation of a proposed merger, acquisition, joint venture, or similar transaction that is subject to section 7 and not yet consummated,'' after ''General''.

Page 5, strike lines 12 through 14, and insert the following:

(4) in section 16(a)(2)—

(A) in subparagraph (D) by striking ''or'' at the end,

(B) in subparagraph (E) by adding ''or'' at the end, and

(C) by adding at the end the following:

''(F) under section 15 of the Clayton Act (15 U.S.C. 25);''.

The SPEAKER pro tempore. Pursuant to House Resolution 872, the gentleman from Virginia (Mr. GOODLATTE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Mr. Speaker, this amendment makes a series of useful technical and clarifying changes suggested by the Federal Trade Commission.

At the FTC's request, the amendment adds language stating explicitly that the agency retains independent litigating authority in merger cases brought under the Clayton Act. This makes clear that the FTC is not forced to rely on the Department of Justice in these cases.

The amendment also strikes language referring to the FTC's authority to issue civil investigative demands in merger cases. This is because the reference is unnecessary and could create a negative inference that the FTC does not enjoy such authority in other contexts.

The amendment makes further technical improvements in several places in the bill that refer to the FTC bringing an action under section 7 of the Clayton Act. The FTC's authority to bring an action in court actually derives from section 15 of the act, so the amendment updates that citation.

Furthermore, the amendment changes the phrase ''including'' FTC proceedings to ''or'' FTC proceedings in several places in the underlying bill. This is to underscore that FTC settlements are distinct from DOJ antitrust settlements and, thus, are not subject to the judicial review provisions of the Tunney Act.

The amendment also refines language in the underlying bill that ensures the same legal standards are applied to FTC and DOJ injunctions, and that preserves FTC authority to use administrative adjudication as part of a settlement agreement.

Specifically, the changes more clearly define the circumstances in which the FTC may seek an injunction and more clearly state that the FTC must proceed in Federal court, not administratively. The amended language also more accurately reflects the FTC's practices for administrative settlements, more clearly states that the district courts must apply the same standard in those cases as it would apply when the Department of Justice seeks injunctions, and more clearly provides that the new rules change only administrative adjudications, not investigative procedures.

Finally, the amendment clarifies that the FTC's duty to use the courts, rather than administrative procedures, to block anticompetitive behavior, extends only to the merger-type actions that this bill is intended to cover.

Again, these changes are of a technical nature and were all recommended by the FTC itself. Accordingly, I urge my colleagues to support this amendment.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I claim the time in opposition to the gentleman's amendment.

The SPEAKER pro tempore. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

This amendment makes several technical revisions to clarify that the bill does not apply to consummated mergers and other transactions. While this change marginally addresses one concern with the bill, it does nothing to change the most fundamental flaw with the bill, which is that it eliminates the Federal Trade Commission's administrative litigation authority in merger cases.

As we noted during consideration of this bill in the Judiciary Committee last year, and in prior Congresses, the SMARTER Act is overbroad as currently drafted and applies to both unconsummated and consummated transactions.

According to John Jacobson, a leading antitrust attorney, who served as commissioner of the Antitrust Modernization Commission, this bill could easily be ''construed as prohibiting a challenge to the consummation of any merger in administrative proceedings, even a post-merger challenge, notwithstanding the term 'proposed.' ''

Technical feedback by senior staff at the FTC, under both Democratic and Republican administrations, confirmed this view.

While the amendment makes the useful clarification that H.R. 5645 would not apply to already consummated transactions, the bill would still eliminate the FTC's ability to use administrative litigation in proposed mergers, striking at the core of the Commission's independence and congressionally mandated design, without any evidence that such a change is warranted or desirable.

As Mr. Jacobson has also noted in his testimony in opposition to a similar

version of this legislation considered by the Senate, eliminating the ''FTC's ability to conduct administrative proceedings in pre-consummation merger challenges is harmful to the sound administration of the antitrust laws.''

At a time when there is an increasing desire across the ideological spectrum to strengthen antitrust enforcement in the face of extreme concentrations of corporate power in industry after industry, the SMARTER Act proposes to go in the opposite direction. Congress was wise to establish an independent agency in 1914 to ensure strong antitrust enforcement, and we would be wise today not to undermine that choice.

Mr. Speaker, this amendment essentially puts lipstick on a pig. It does not change my basic opposition to a bill that is fundamentally flawed in its conception. Therefore, I must oppose this amendment, and I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I continue to reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, as a practical matter, the FTC only challenges a handful of proposed mergers, on average, per year. These transactions present some of the largest, most complex, and potentially most concerning issues. But in most of these cases, the parties either abandon the transaction or negotiate a settlement.

Nonetheless, in those few instances where the FTC does challenge a transaction, it is in a position to answer novel questions of law and, thereby, develop expertise and guidance for future applications. Indeed, that is the whole point of having an FTC, and that is the whole point of administrative adjudication authority.

As the Antitrust Institute has noted in its opposition to the SMARTER Act to this bill, ''the FTC's use of administrative powers should be carefully safeguarded, because it has contributed critically to the effective shaping of U.S. merger policy without detracting from the speed or effectiveness of merger review.''

□ 1415

In addition, Republican FTC Commissioner Maureen Ohlhausen's 2016 study on administrative litigation debunks the claim of procedural bias against merging parties. Her study found that the FTC's appellate success and case work ''do not support a narrative that the Commission blindly supports ill-conceived cases because of systemic bias. To the contrary, they show a recent history of solid, well-supported enforcement actions.''

Even where the FTC does not use administrative adjudication, the potential use of this tool is invaluable in the agency's ability to successfully get emerging parties to agree to structural remedies, such as divestitures, to address concerns with a proposed merger.

It is unthinkable to remove the FTC's administrative litigation authority, as this amendment would continue to do, when such authority is only used to protect against the most anticompetitive mergers that are certain to substantially lessen competition, harm consumers, raise prices, and hurt workers.

For these reasons, I urge my colleagues to oppose this amendment.

Mr. Speaker, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

The arguments we have heard against this bill are without merit.

It has charged that the SMARTER Act would make it more difficult for the FTC to fulfill its consumer protection mandate. This is incorrect.

The FTC's consumer protection powers are completely independent from the antitrust laws. The SMARTER Act deals only with the antitrust piece, so, by its terms, does not impact the FTC's ability to prosecute ''unfair or deceptive acts or practices.''

As for harm to consumers from proposed mergers, the SMARTER Act does not, in any way, affect substantive antitrust law; it does not amend, in any form or fashion, section 7 of the Clayton Antitrust Act or any of the FTC's consumer protection powers.

Opponents also claim that the SMARTER Act removes an important tool from the FTC by eliminating its ability to pursue administrative litigation. This, too, is a red herring.

The SMARTER Act only removes the FTC's administrative litigation authority in the very narrow context of proposed transactions. A report from the bipartisan Antitrust Modernization Commission determined that any benefit from such authority was marginal and ''significantly outweighed by the costs.''

The FTC can still pursue administrative litigation in conduct cases and in actions against consummated mergers. Indeed, the AMC report stated specifically that: ''Elimination of administrative litigation in . . . merger''—review—''cases will not deprive the FTC of an important enforcement option.''

Opponents also charge that enacting the SMARTER Act will make it more difficult for the antitrust enforcement agencies to stop a merger, but the SMARTER Act only changes the process; it does not have any substantive impact on merger reviews.

But don't take my word for it. A letter from 15 leading antitrust professors states: ''The SMARTER Act does nothing to undermine the FTC's authority; it simply ensures that the merger review processes and standards are equally applied to merger parties regardless of which agency reviews the transaction.''

But perhaps the most ironic argument brought against the bill is that it is unnecessary because the FTC rarely initiates administrative litigation after a court denies a preliminary injunction request. Administrative adjudications may be rare, not because regulators use the powers sparingly, but because the mere prospect of this protracted, costly process may prompt companies to abandon the merger even though they prevailed in court. That hardly seems fair.

Parties to a merger should receive the same treatment and have the same process regardless of the reviewing antitrust agency, and the SMARTER Act accomplishes that goal.

This legislation will help America continue to serve as a leader and innovator in competition law, and I urge my colleagues to support it.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to the rule, the previous question is ordered on the bill and on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE).

The question is on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE).

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. DOGGETT. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. DOGGETT. Strongly.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Doggett moves to recommit the bill (H.R. 5645) to the Committee on the Judiciary, with instructions to report the bill back to the House forthwith with the following amendment:

At the end of the bill, add the following:

SEC. 5. PROTECTING CONSUMERS AGAINST HIGH PRESCRIPTION DRUG COSTS.

Notwithstanding any other provision of this Act—

(1) the amendments made by this Act shall not apply to mergers that would unreasonably increase the costs of pharmaceutical drugs; and

(2) the Clayton Act (15 U.S.C.12 et seq.) and Federal Trade Commission Act (15 U.S.C. 45 et seq.) as in effect immediately before the date of the enactment of this Act shall apply to mergers that would unreasonably increase the costs of pharmaceutical drugs.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas is recognized for 5 minutes in support of his motion.

Mr. DOGGETT. Mr. Speaker, I offer this motion to recommit because Republicans have been motionless when it comes to acting on the spiraling drug prices that are harming so many Americans.

The willingness of this Congress to sit on its hands, stand idle in the face of the prescription price gouging that so many of our neighbors face, is nothing short of appalling, and there is

nothing ''smarter'' in this bill about dealing with that terrible problem.

Of course, President Trump has told us it is going to be ''beautiful,'' but every time you turn around, he is cozying up with some pharmaceutical lobbyists that are raising prices and putting some of their people in charge of his drug agenda.

All that this motion does is to take the very modest step of reducing the possibility that, through further mergers of drug companies, we will see the sick and dying extorted even more than they are today with skyrocketing prices that are made even worse when these mergers occur.

If this motion passes, it won't kill the bill or slow it down a moment.

What it will do is to give life to an effort to contain these mergers and see that prescription prices don't soar even further. Yes, it is not the principal issue on drug prices. Unfortunately, there is no wonder drug to stop prescription price gouging, but this is one of the only ways to get the issue to the floor of this House because our Republican colleagues in every committee are determined to remain silent and see no action whatsoever.

I continue to hear from my neighbors back in Texas who care about this a lot more than my Republican colleagues. They tell me they cannot afford their prescriptions or they are burdened with immense debt to do it.

I think of Elaine in San Antonio, who has suffered with glaucoma for a number of years. She is fighting to save her eyesight, but now her copays on three different necessary drops are costing $400, $227, $178 per month. She says she wants to finish her senior years in dignity but is burdened down by these outrageous prices.

The choice should not be blindness or rent for a senior who has worked and saved all their lifetime.

Even in the face of the opioid epidemic, where we are about to hear about a whole lot of bills on the floor that don't do a whole lot, but in the face of that crisis, a devastating national public health emergency, the price of naloxone, a lifesaving overdose reversal drug, has been spiked by almost 600 percent.

Even an effective drug is 100 percent ineffective when it is unaffordable.

Too many drugs are ineffective for too many people because drug prices have soared at a rate of ten times the rate of inflation. But where some see a crisis like that, others see a revenue opportunity.

Brand name pharmaceutical manufacturers rely upon government-approved monopolies to charge monopoly prices, whatever they can get out of the sick and dying. They utilize as many maneuvers as possible to perpetuate their monopolies as long as possible while pouring their money, not into research and development of new drugs, but into lobbying this Congress and the administration.

Drug manufacturers spent $171 million last year in Federal lobbying, more than insurance, oil and gas, electronics, or any other industries. They had more lobbyists than we had Members of Congress. In fact, they could have a two-on-one defense to assure that this Congress is quiet, it is inactive, it is unresponsive to people.

Let's pass this motion and ensure that when the pharmaceutical companies use the $80 billion tax windfall, that they were just rewarded by the Republicans to pay for more mergers, that consumers don't get caught in the middle and see their prices spike even further.

We need to commit ourselves to action by approving this motion to recommit, to commit ourselves to putting consumers first over Big Pharma.

Mr. Speaker, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I claim the time in opposition to the motion.

The SPEAKER pro tempore. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Speaker, this motion is unnecessary because this bill does nothing to undermine substantive antitrust enforcement. It might even hold up mergers that the court already found procompetitive and could help lower drug prices.

This is simply a dilatory tactic used by my friends on the other side of the aisle to hold up this important legislation.

For decades, American antitrust laws have been a shining example of how to protect against anticompetitive activities in a consistent, predictable, and fair manner.

Other countries have looked to our laws as the template for the creation of their own competition laws. Let us continue to be a model of proper antitrust enforcement.

The SMARTER Act is a commonsense process reform that ensures fairness and parity in the narrow field of merger reviews. The bill was recommended to Congress by a bipartisan commission and is supported by former top antitrust enforcement officials and past and present FTC Commissioners of both political parties.

Mr. Speaker, accordingly, I urge my colleagues to do the smart thing by opposing this bill and supporting the underlying bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KUSTOFF of Tennessee). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. DOGGETT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

CITIZENS' RIGHT TO KNOW ACT OF 2018

Mr. GOODLATTE. Mr. Speaker, pursuant to House Resolution 872, I call up the bill (H.R. 2152) to require States and units of local government receiving funds under grant programs operated by the Department of Justice, which use such funds for pretrial services programs, to submit to the Attorney General a report relating to such program, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 872, the amendment in the nature of a substitute recommended by the Committee on the Judiciary, printed in the bill, is considered as adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2152

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Citizens' Right to Know Act of 2018''.

SEC. 2. REPORTING REQUIREMENT FOR DEPARTMENT OF JUSTICE GRANT RECIPIENTS USING FUNDS FOR PRETRIAL SERVICES PROGRAMS.

(a) IN GENERAL.—For each fiscal year in which a State or unit of local government receives funds under any grant program operated by the Department of Justice, including the Edward Byrne Memorial Justice Assistance grant program under subpart I of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), and which uses funds received under such program for a pretrial services program, the State or unit of local government shall submit to the Attorney General a report which contains the following:

(1) The name of each defendant participating in a pretrial release program administered by the pretrial services program, and whether, as applicable, each occasion on which such defendant failed to make an appearance.

(2) Information relating to any prior convictions of each defendant participating in the pretrial services program.

(3) The amount of money allocated for the pretrial services program.

(b) PUBLICATION REQUIREMENT.—Subject to any applicable confidentiality requirements, the Attorney General shall, on an annual basis, make publicly available the information received under subsection (a).

(c) REDUCTION IN FUNDING.—The Attorney General shall, for State or unit of local government which fails to comply with the requirement under subsection (a) for a fiscal year, reduce the amount that the State or local government would otherwise receive under each grant program described in subsection (a) in the following fiscal year by 100 percent.

(d) REALLOCATION.—Amounts not allocated to a State or unit of local government under subsection (c) shall be reallocated under each such grant program to States and units of local government that comply with the requirement under subsection (a).

(e) DEFINITION.—The term ''failed to make an appearance'' means an action whereby any defendant has been charged with an offense before a court and who is participating in a pretrial release program for which funds received under a