

1 Diversified Reporting Services, Inc.

2 RPTS EUELLJ

3 HIF147170

4

5

6 MARKUP OF H.R. 2668, THE CONSUMER PROTECTION AND RECOVERY ACT

7 THURSDAY MAY 27, 2021

8 House of Representatives,

9 Subcommittee on Consumer Protection and Commerce,

10 Committee on Energy and Commerce,

11 Washington, D.C.

12

13

14

15 The subcommittee met, pursuant to call, at 11:09 a.m.
16 via Webex, Hon. Jan Schakowsky, [chairwoman of the
17 subcommittee] presiding.

18 Present: Representatives Schakowsky, Rush, Castor,
19 Trahan, McNerney, Clarke, Cardenas, Dingell, Kelly, Soto,
20 Rice, Craig, Fletcher, Pallone (ex officio); Bilirakis,
21 Upton, Latta, Guthrie, Dunn, Pence, Lesko, Armstrong, and
22 Rodgers (ex officio).

23

24 Staff Present: Jeff Carroll, Staff Director; Katherine
25 Durkin, Policy Coordinator; Lisa Goldman, Senior Counsel;
26 Waverly Gordon, General Counsel; Jessica Grandberry, Staff
27 Assistant; Daniel Greene, Professional Staff Member; Tiffany

28 Guarascio, Deputy Staff Director; Perry Hamilton, Deputy
29 Chief Clerk; Alex Hoehn-Saric, Chief Counsel, CPC; James
30 Johnson, Policy Coordinator; Ed Kaczmarski, Policy Analyst;
31 Zach Kahan, Deputy Director Outreach and Member Service;
32 Mackenzie Kuhl, Press Assistant; David Miller, Counsel;
33 Kaitlyn Peel, Digital Director; Tim Robinson, Chief Counsel;
34 Chloe Rodriguez, Deputy Chief Clerk; Kylea Rogers, Staff
35 Assistant; Caroline Wood, Staff Assistant; Anna Yu,
36 Professional Staff Member; Sarah Burke, Minority Deputy Staff
37 Director; Michael Cameron, Minority Policy Analyst, CPC,
38 Energy, Environment; Nate Hodson, Minority Staff Director;
39 Peter Kielty, Minority General Counsel; Bijan Koohmaraie,
40 Minority Chief Counsel; Tim Kurth, Minority Chief Counsel,
41 CPC; Brannon Rains, Minority Policy Analyst, CPC, Energy,
42 Environment; and Michael Taggart, Minority Policy Director.
43

44 *Ms. Schakowsky. The subcommittee will now come to
45 order.

46 We are meeting today in -- to consider H.R. 2668, the
47 Consumer Protection and Recovery Act.

48 Due to COVID-19, today's markup is being held remotely.
49 All members will participate via video conference.

50 As part of our markup, microphones will be set on mute
51 for the purpose of eliminating inadvertent background noise.
52 You will need to unmute your microphone each time that you
53 wish to speak.

54 Additionally, I ask that you use the raise hand feature,
55 the -- of the software platform when you wish to be
56 recognized, including to give an opening statement, or to
57 offer an amendment.

58 After you are recognized to speak, please use the lower
59 hand feature of the software platform so that I know that you
60 are no longer seeking recognition.

61 During voice votes you will have to unmute yourself so
62 that we can hear your response.

63 If you would like to request a recorded vote, please do
64 so immediately after you responded to the voice vote.

65 During recorded votes you will need to unmute yourself
66 to respond to the clerk once your name is called.

67 In response to the clerk, I would ask that, instead of
68 just saying aye or no, that you respond with a phrase. For

69 example, "Jan Schakowsky from Illinois votes aye.'" This
70 will provide additional time for voting members to be
71 identified, and to -- and made visible on the platform.

72 Amendments and motions should be sent to Chloe Rodriguez
73 and Perry Hamilton, and documents for the record to Ed
74 Kaczmarek at the email address that has been provided to
75 your staff. All documents will be entered into the record at
76 the conclusion of the markup.

77 So at this point I now recognize myself for five minutes
78 for an opening statement.

79 Today the subcommittee meets to mark up Vice Chair
80 Cardenas's bill, the Consumer Protection and Recovery Act.
81 This legislation is urgently needed to ensure that the
82 Federal Trade Commission can do what Congress intended for it
83 to do, and the American people need us to do: to protect
84 consumers by putting money back into the pockets of the
85 victims of fraud, scams, and other illegal activities.

86 This authority used -- this authority, under section
87 13(b) of the Federal Trade Commission, has been the FTC's
88 most effective law enforcement tool for the last 40 years, 2
89 decades. It was successfully used by the FTC to get back
90 almost \$62 million for delivery truck drivers in the -- in
91 its remarkable settlement with Amazon over the systemic
92 stealing of drivers' tips. That settlement would not have
93 been possible without the threat of the FTC using its 13(b)

94 authority.

95 Unfortunately, as you know, this authority was stripped
96 from the FTC last month by a decision of the United States
97 Supreme Court. Only criminals and scammers benefit from this
98 decision, while consumers are the losers.

99 We are here today to right that wrong. For decades the
100 FTC used section 13(b) to recover billions of dollars for
101 millions of consumers in a wide variety of cases, including
102 telemarketing fraud, data security and privacy, anti-
103 competitive pharmaceuticals practices, scammers, and those
104 who target seniors and veterans, and deceptive business
105 practices. Under Section 13(b), companies that commit --
106 that committed violations of the FTC Act could not only be
107 forced to stop the bad practices, but also to pay back the
108 ill-gotten -- that ill-gotten gains.

109 None of the millions of dollars that have been returned
110 -- and billions that have been returned to consumers would
111 have happened without the use of section 13(b). While some
112 will argue that the FTC's other tools, like section 19, that
113 those are -- that those can replace it, those are no
114 replacement. Section 19 requires years of process, and by
115 the time the case is concluded, the money is often long gone,
116 leaving the consumers out in the cold. We must provide the
117 FTC the means to quickly make consumers whole when they have
118 been victimized.

119 That is why we are moving forward today with this
120 legislation to give the FTC back its 13(b) authority. H.R.
121 2668, the Consumer Protection and Recovery Act, was
122 introduced with the support of every single Democratic member
123 of the subcommittee. But this is not a partisan issue. We
124 have asked for Republicans to -- for their support, for their
125 input before, and hope that we can work together moving
126 forward.

127 And let me be clear, this is not the only reform that I
128 would like to see and make with -- regarding the FTC's
129 authority. I think there are a number of other things that
130 we ought to be doing. But I understand what losing section
131 13(b) authority has meant for consumers in my state, in your
132 state, in all states. And I am willing and able and want to
133 work with my colleagues to move quickly to address this
134 critical need.

135 Vice Chair Cardenas's legislation is an urgent need, and
136 it is an urgent step that consumers need in order for us to
137 protect them. Lawbreakers must pay, literally, what they
138 owe. And I hope my colleagues will work with us to put the
139 consumer -- put consumers first.

140 [The prepared statement of Ms. Schakowsky follows:]

141

142 *****COMMITTEE INSERT*****

143

144 *Ms. Schakowsky. And I yield back my time, and I now
145 recognize Mr. Bilirakis, the ranking member of the
146 Subcommittee on Consumer Protection and Commerce, for five
147 minutes for an opening statement, and look forward to working
148 closely with you to make this happen today. I yield to Mr.
149 Bilirakis.

150 *Mr. Bilirakis. Thank you, Madam Chair, and good
151 morning, and welcome to today's markup, all the members.
152 H.R. 2668 will be marked up today, the Consumer Protection
153 Recovery Act.

154 I want to say, first of all, that I sincerely do
155 appreciate my colleague, Mr. Cardenas from California, for
156 introducing this particular bill. As I have said before, it
157 identifies a gap in consumer protection, where we need to
158 find a solution. I am hopeful that this can be a legacy
159 item, a very important item, just like the legacy item we
160 were able to work out last year for Chair Schakowsky on the
161 FTC first offense penalty authority for COVID scams.

162 However, it can be also a legacy if things are done the
163 wrong way, unfortunately. And sadly, I cannot understand why
164 this has become an effort the majority wants to ram through
165 without any bipartisan input. If there is a directive from
166 the Speaker's office, I would hope you resist that pressure,
167 since this will have a lasting impact, again, past our
168 tenure. So we must be responsible.

169 Just like our shared actions at the end of last year,
170 this does not have to be a zero sum outcome. The true legacy
171 of this committee is getting tough tasks done together. Mr.
172 Cardenas mentioned this at the COVID scams hearing when we
173 highlighted Senator Wicker's legislation, which addresses
174 both the 13(b) authority being considered today, and would
175 enact a national privacy standard that we have been working
176 towards.

177 Madam Chair, earlier this month we participated together
178 in the event where you called on us to hold bipartisan
179 roundtables, and taking on a call to action by industry and
180 consumer groups to enact comprehensive privacy legislation
181 this Congress. I am very glad to see you are taking this
182 matter seriously, Madam Chair. And this topic today remains
183 an ideal way to accomplish a common purpose with our Senate
184 colleagues.

185 Acting Chair Slaughter herself cited in her testimony --
186 and I quote -- that "the Commission has rallied on -- relied
187 on section 13(b) of the FTC Act to secure billions of dollars
188 in relief for consumers in a wide variety of cases," as you
189 mentioned, Madam Chair, in your opening remarks, "including
190 for data security and privacy."

191 As Leader Rodgers has said, let's think about the FTC in
192 holistic and comprehensive terms, where reasonable. We
193 appreciate the work that the FTC has done, but there are also

194 a number of areas where they haven't handled matters
195 appropriately. Our shared priority here is to protect
196 Americans.

197 I also believe we could have a different outcome here if
198 we were allowed to be together in person. Whether it is a
199 markup, a hearing, a forum, or a roundtable, whatever the
200 setting is, it is pretty hard to share an elevator and
201 consider someone an opponent to be beaten. I remember the
202 days not long ago when we had that civility and
203 collaboration, where we could share some food from our
204 districts and get to talk to each other, and talk about each
205 other's -- talk with each other about our families, not
206 having our relationships defined by glitchy technology and a
207 virtual clock.

208 Our constituents deserve better from us. Madam Chair, I
209 have expressed my frustration before with this process, and
210 the scheduling of this markup now joins that list. As I am
211 sure everyone is eager to begin their Memorial Day weekend
212 and recognize our brave heroes who fought for our freedoms --
213 for this is -- I hope you heed, of course, my advice, and
214 consider a different path forward with this legislation --
215 full committee markup.

216 I urge you to work with us to get a bipartisan
217 compromise together before it reaches that point. We may
218 disagree on the outcome here, but I know we all want to

219 protect consumers. A national privacy framework is the way
220 to do that. And it is a shame to let this opportunity slip
221 through our fingers.

222 [The prepared statement of Mr. Bilirakis follows:]

223

224 *****COMMITTEE INSERT*****

225

226 *Mr. Bilirakis. So with that, Madam Chair, thank you
227 very much for giving me the opportunity, and I yield back.

228 *Ms. Schakowsky. I thank the gentleman, Mr. Bilirakis,
229 and now I recognize Mr. Pallone, chair of the full committee,
230 for five minutes for his opening statement.

231 *The Chairman. Thank you, Madam Chair, and I do want to
232 comment briefly on what Mr. Bilirakis said about in-person,
233 and, you know, why we are doing this today.

234 I have had several conversations, one most recently with
235 Ranking Member Rodgers, and I have made it clear that I am
236 not prepared to have us go back to in-person committee
237 hearings and markups. You know, without belaboring the
238 point, because I don't really want to get personal, I mean,
239 the problem is that we know that there are many Members who
240 are not vaccinated.

241 From a privacy point of view, I don't think I can demand
242 that the Republicans give me a list of who is vaccinated or
243 not, so that, therefore, the ones that are vaccinated show up
244 at an in-person hearing, and the ones that are not do not.
245 The same is true of the staff.

246 And, you know, we are still -- I am still not sure,
247 based on what the Attending Physician has said, or what the
248 scientists have said, that having a room with a lot of
249 members and staff who are not vaccinated is a good thing. Or
250 is it something that, you know, those who are vaccinated

251 can't back -- take back home to their children, or others who
252 also have not been vaccinated.

253 So at this point I am not prepared to go back in person.
254 And it certainly hasn't been, you know, as you know, the
255 Democratic leadership is continuing to have these committee
256 weeks. And so, if -- we have to take advantage of these
257 committee weeks, which are virtual, in order to get things
258 passed. If we just wait until we are back in session, and
259 have hearings then, rather than take advantage of the
260 committee weeks, well, we won't get things done. This
261 committee has wide jurisdiction.

262 So for those two reasons -- first, we have got to get
263 things done and, secondly, I don't believe that, from a
264 health point of view, that we can go back in person -- we are
265 not going to do that at this time, and certainly not in the
266 foreseeable future.

267 Now, the other thing I wanted to say, though, is that
268 there is no directive here from the Speaker, Mr. Bilirakis.
269 The Speaker is not involved in this. We just feel very
270 strongly, as Democrats, that the Cardenas legislation is
271 necessary to help the consumer, and that we need to take
272 action, and that this is an emergency. And we have tried to
273 reach out to you and to the Republicans, but we haven't
274 gotten a response, really, until today, this morning, when we
275 got these amendments. And so, you know, that is nice that

276 the amendments come this morning, but it would have been
277 better if, you know, we had had some cooperation. It is not
278 like we haven't reached out; we have.

279 So, again, let me just go to -- say a little bit about
280 the substance, rather than just talk about process.

281 But as you know, last month the Supreme Court made a
282 decision on section 13(b) that has undermined, if not
283 eliminated, the FTC's ability to get restitution in fraud
284 cases and other matters currently being investigated by the
285 agency. And as a result, consumers are being left out in the
286 cold, and simply do not have to -- and I don't think it has
287 to be this way.

288 So, you know, for two years we have been trying to fix
289 this. We have had hearings on it. We reached out -- or is
290 it -- I should say Congressman Cardenas reached out to all
291 members of the subcommittee to work with them to draft
292 legislation. And you mentioned the then-FTC Chairman Simons
293 continued to reach out to Democrats and Republicans.

294 So, again, I don't even know what else to say. The day
295 has come to do this. Last month's decision turned this
296 worst-case scenario into a reality, and produced a crisis.
297 And following that decision, we held a hearing on the
298 legislation before us today. And no specific changes of the
299 bill were suggested by the Republicans until this morning.

300 So let's be clear. The bill we are considering is about

301 returning money stolen or otherwise illegally taken away from
302 our constituents. It is about forcing companies that have
303 broken the law to repay the consumers they have harmed and
304 defrauded. And this money that they would get back allows
305 hardworking families to pay rent, feed their kids, make ends
306 meet. It has helped -- 13(b) has helped thousands of
307 veterans, and those who want to go to college.

308 So I don't see -- there is no statutory authority that
309 can replace what the FTC lost. Other provisions are too weak
310 or take too long. I don't want to delay, and I just want to
311 thank Tony for his leadership on that issue. I urge my
312 colleagues to support the bill to ensure that the FTC is the
313 consumer protection agencies that America -- agency that
314 Americans deserve. It is that simple.

315 [The prepared statement of The Chairman follows:]

316

317 *****COMMITTEE INSERT*****

318

319 *The Chairman. I yield back, Madam Chair.

320 *Ms. Schakowsky. Thank you, Mr. Pallone. I now
321 recognize Mrs. Rodgers, ranking member of the full committee,
322 for five minutes for an opening statement.

323 *Mrs. Rodgers. Thank you, Madam Chair, Mr. Chairman,
324 and to all the members.

325 For me this is a disheartening day. Our core concern
326 with this legislation has always been about due process and
327 proper analysis. Judging by the majority's process on this
328 legislation, those concerns are well founded.

329 With -- just a month ago, a month ago, a legislative
330 hearing was scheduled, virtually, for this bill. And that
331 remote hearing excluded other FTC commissioners that the
332 Senate Commerce Committee had had just the week before. Our
333 committee didn't hear their valuable insights that could have
334 made this legislation much better, or built trust that we
335 could come together on solutions crafted around sound legal
336 arguments and proper analysis by all the proper experts.

337 This is a broken process made much worse by the fact
338 that the committee refuses to open to in-person work. Again,
339 the CDC guidance allows for it. Other committees are doing
340 it. And I know that I speak for all of my colleagues when I
341 say the screens keep us divided, and they lead to poor
342 decisions. This isn't -- this is not a way to legislate. It
343 is no way to do the people's work, and to plow the hard

344 ground necessary to deliver results.

345 We just had a subcommittee hearing where the chair told
346 us that we would be back in person in three weeks. So I ask
347 now, what is the plan?

348 Is the plan to follow the science, and reopen Energy and
349 Commerce, or is the plan to keep us muted, behind screens, so
350 that the majority can command and control the debate?

351 In the case of this remote markup, it just doesn't sit
352 right with us, when you are telling us that you are willing
353 to negotiate this legislation by jamming in a virtual markup
354 with no plan to bring us back together. Twice disheartening.

355 Now I want to address a few items. We worked together
356 last Congress by designing a national privacy standard, and
357 we made great strides. The objective was strongly linked to
358 this matter before us. Senator Wicker has also worked in
359 good faith for a compromise on the important issues before
360 the FTC. The bill's sponsor, Mr. Cardenas, even acknowledged
361 that -- the Wicker effort at the COVID scams hearing.

362 If the majority is suggesting today that acting chair of
363 the FTC is recommending this, I don't agree. President Biden
364 has not even confirmed her status as the chair, not to
365 mention that, if the current nominee is confirmed, there is
366 another current commissioner leaving. Why are we marking up
367 this bill with a rush, when we don't even know who is in
368 charge?

369 Further, last week, just last week, Leader Bilirakis and
370 I sent a letter to DoJ, asking for substantive answers from
371 the attorney general by June 1st. In a late Friday night
372 dump, the DoJ answered the inquiry with partial answers
373 earlier than the deadline. Then, coincidentally, our phones
374 rang with the news of a markup from the majority. Not too
375 far behind was the FTC a, "independent agency," answering
376 our -- some of our questions from the last hearing. We did
377 not get full answers we requested about the email traffic
378 between DoJ and FTC. That is something we can certainly look
379 to review.

380 Let me be very clear. Mr. Armstrong relayed this at the
381 last hearing, and it should be repeated. In all due respect
382 to the acting FTC chair, it is neither her duty nor her
383 request on what the right strategy and outcome is here. This
384 committee must sit down and move the legislation forward
385 together in person. There is no lack of will to take on the
386 fraudsters, the scammers, the abusers of our personal
387 information.

388 Energy and Commerce has a proud tradition. We celebrate
389 the culture, the history of this committee. We must seize
390 the opportunity to get real FTC efforts and a national
391 privacy standard done. That is the priority here, as we
392 watch the GDPR to mark a third-year anniversary. This
393 committee has a responsibility to do our job on behalf of the

394 American people, so that 49 states aren't relying on
395 California to set the rules of the road. Let's open up
396 Energy and Commerce. Let's do our job.

397 [The prepared statement of Mrs. Rodgers follows:]

398

399 *****COMMITTEE INSERT*****

400

401 *Mrs. Rodgers. With that I yield back.

402 *Ms. Schakowsky. Thank you, Mrs. Rodgers.

403 I want to invite other members who seek recognition to
404 make an opening statement. Are there any? If so --

405 *Mr. Cardenas. I seek recognition, Cardenas.

406 *Ms. Schakowsky. Mr. Cardenas, you are recognized for
407 three minutes.

408 *Mr. Cardenas. Thank you very much, Madam Chair, and I
409 would like to thank all the members for being here on this
410 very, very consumer issue that we have the opportunity, as
411 legislators, to correct (sic).

412 The FTC is our nation's primary consumer protection
413 agency, and it is underfunded, and understaffed, and doesn't
414 do as much as we all would like it to do. But the Supreme
415 Court has just pulled the rug out from under the FTC's
416 enforcement powers by interpreting the FTC Act to drastically
417 reduce the Commission's authority to put money back into the
418 pockets of hardworking Americans harmed by illegal practices.
419 We cannot sit idly by and leave our constituents without
420 adequate protection.

421 My bill amends section 13(b) of the FTC Act to restore
422 the authority that the FTC has used for nearly 40 years to
423 ask a Federal court to require violators to return the money
424 to the victims. This authority is an essential consumer
425 protection tool. The FTC has used section 13(b) of the FTC

426 Act for decades to turn billions and billions of dollars to
427 American consumers who are harmed by illegal practices like
428 COVID-19 scams, government imposter scams, deceptive business
429 scam claims, and so much more. Far too often the victims of
430 these practices are senior citizens, veterans, small
431 businesses, and the most vulnerable members of our society.

432 I urge my colleagues to remember how often we have
433 demanded that the FTC do more to protect consumers, and I ask
434 that you support the Consumer Protection and Recovery Act to
435 restore the authority the FTC used for decades to protect our
436 nation's consumers.

437 [The prepared statement of Mr. Cardenas follows:]

438

439 *****COMMITTEE INSERT*****

440

441 *Mr. Cardenas. I would also like to take the
442 opportunity, as a family member, as a Member of Congress, and
443 a person who has a responsibility of acting responsibly to
444 make sure that I do not carry COVID and infect anybody else
445 around in my life, whether it is staff, or any family member
446 or friend that I may come in contact with, if we were, in
447 fact, going to be having meetings in person, committee
448 meetings in person, where we are all required to be present,
449 when we have to respect the constitutional rights of other
450 colleagues to our left and to our right, and not have the
451 authority or demand that they tell us whether or not they
452 have been vaccinated.

453 So therefore, I agree with the chairman, Frank Pallone,
454 and also Ms. -- chairwoman of the subcommittee, Jan
455 Schakowsky, that we should continue to meet as we are right
456 now, virtually, for the safety and sake of our staff, of each
457 other, and of the people who work for us, and everybody else
458 who might be in the hallways in our Capitol. So this is the
459 most responsible way in which we can continue to do business.
460 I would love to see all of you in person, both Republican and
461 Democrat, and say hello to you in person. However, your life
462 is more important to me than my feelings of being able to see
463 you and give you a smile in person.

464 So with that, I yield back.

465 [Pause.]

466 *Mr. Cardenas. You are muted, Jan.

467 *Ms. Schakowsky. And put it back to where it was.

468 *Mr. Cardenas. We can hear you now.

469 *Ms. Schakowsky. Sorry, I am here now, I apologize.

470 I thank Mr. Cardenas.

471 I also want to mention that the ranking member said that

472 I said that we would be able to meet after we came back.

473 What I said was I would hope very much that we could. And

474 there certainly is a way, and that is called vaccination.

475 And until then, the people are at risk.

476 So, as much as I desire, I think as much as any of you,

477 that we could meet together, that we could have hearings in

478 person, markups in person, unfortunately, the situation

479 doesn't allow that right now, in our view.

480 Let me ask now if there are other members who would like

481 to seek recognition for three minutes.

482 Are there any others?

483 Okay. Well, then, that concludes our -- unless I am

484 missing somebody, that concludes our opening statement.

485 Pursuant to committee rules, members' written opening

486 statements shall be made part of the record. Please submit

487 writing (sic) opening statements to the email address that we

488 have provided.

489 At this time we will begin bill consideration. The

490 chair calls up H.R. 2668, the Consumer Protection and

491 Recovery Act. The clerk will report the title of the bill.

492 *The Clerk. H.R. 2668, a bill to amend the Federal
493 Trade Commission Act to formally confirm the authority of the
494 Federal Trade Commission to seek permanent injunctions and
495 other equitable relief for violations of any provision of law
496 enforced by the Commission.

497 *Ms. Schakowsky. I unfortunately missed the hand of
498 Mrs. Rodgers, who actually did want to, I think, have another
499 three minutes to speak. Is that is that right, Mrs. Rodgers?
500 Did you raise your hand?

501 *Mrs. Rodgers. No, I have a motion.

502 *Ms. Schakowsky. Oh, Okay.

503 *Mrs. Rodgers. After we are ready to go.

504 *Ms. Schakowsky. Okay. Without objection, the first
505 reading of the bill will be dispensed with. The bill is now
506 considered as read.

507 Without objection, the bill under consideration is read
508 for -- and for -- open to any amendments at this point.

509 [H.R. 2668 follows:]

510

511 *****COMMITTEE INSERT*****

512

513 *Mr. Cardenas. Madam Chair, I seek to be recognized.
514 Cardenas.

515 *Ms. Schakowsky. I recognize --

516 *Mr. Cardenas. For an amendment.

517 *Ms. Schakowsky. Yes, I recognize Mr. Cardenas.

518 *Mr. Cardenas. Thank you, Madam Chair. And once again,
519 I would like to thank all the members for being here today.
520 Thank you, Madam Chair. I greatly appreciate your
521 prioritizing this critical issue for consumers with the
522 hearing last month, and today's markup.

523 I would like to offer an amendment in the nature of a
524 substitute to the bill. This amendment makes important
525 technical changes to the Consumer Protection and Recovery Act
526 that focuses the bill on the matter at hand.

527 *Ms. Schakowsky. Excuse me. Let me just say that the
528 clerk will report the --

529 *Mr. Cardenas. Oh, I am sorry.

530 *Ms. Schakowsky. -- and then I will recognize you to
531 speak on behalf of your amendment for five minutes. So the
532 clerk will report the amendment.

533 *The Clerk. Amendment in the nature of a substitute to
534 H.R. 2668 offered by Mr. Cardenas of California.

535 Strike all after the enacting clause --

536 *Ms. Schakowsky. Without objection, the reading of the
537 amendment will be dispensed with.

538 [The amendment of Mr. Cardenas follows:]

539

540 *****COMMITTEE INSERT*****

541

542 *Ms. Schakowsky. Mr. Cardenas is recognized.

543 [Audio malfunction.]

544 *Ms. Schakowsky. Is that what they are saying? Okay.

545 Okay, it is a bit -- I am a bit clumsy today. I have
546 been informed that I should recognize Mrs. Rodgers first,
547 since she said that she had a motion.

548 *Mrs. Rodgers. Thank you, Madam Chair. I move that
549 consideration of H.R. 2668 be postponed until June 16th,
550 2021.

551 *Ms. Schakowsky. The gentlewoman moved that the --
552 let's see, where is that -- has made a motion to postpone.
553 Does anybody --

554 *The Chairman. Madam Chair, I would ask -- this is
555 Congressman Pallone. I would ask -- I would move to table
556 the Rodgers motion.

557 *Ms. Schakowsky. The motion to table is in order, and
558 it is not debatable, a not debatable motion. So the question
559 is, shall the subcommittee table the motion to postpone?

560 All those in favor, say, aye.

561 All those opposed, say no.

562 In the opinion of the chair, the ayes have -- and the
563 motion is tabled.

564 *Mrs. Rodgers. Madam Chair, I would request a recorded
565 vote.

566 *Ms. Schakowsky. Okay, a recorded vote has been

567 ordered. The question now occurs on the motion to postpone.

568 All those who are in favor shall signify by saying aye.

569 All those opposed, no. All those will signify by saying aye,

570 yes, and all those opposed will signify by saying no. Yes if

571 you are for a postponement, no if you are not.

572 What is wrong?

573 The clerk shall call the roll.

574 *The Clerk. Mr. Rush?

575 [No response.]

576 *The Clerk. Ms. Castor?

577 [No response.]

578 *The Clerk. Mrs. Trahan?

579 [No response.]

580 *The Clerk. Mr. McNerney?

581 *Mr. McNerney. McNerney votes to not postpone the vote.

582 *The Clerk. Mr. McNerney votes no.

583 Ms. Clarke?

584 *Ms. Clarke. No.

585 *Ms. Schakowsky. No, Mr. McNerney votes aye, right? Is
586 that one in favor of postponing? Of tabling?

587 The question is -- let me make it clear again.

588 And by the way, Ms. Castor, we couldn't hear you.

589 Okay. So the question is should we table the motion to
590 postpone. To table is a yes. Those who are for postponing,
591 vote no.

592 Wait. Yes, that is correct on the motion to table. I
593 am sorry.

594 [Laughter.]

595 *Mr. Cardenas. Clarification, Madam Chair.

596 *Ms. Schakowsky. Can we start over?

597 *Mr. Cardenas. A point of clarification, Madam Chair.

598 *Ms. Schakowsky. Yes.

599 *Mr. Cardenas. This is Cardenas. So what we are voting
600 on at the moment is Frank's motion.

601 *Ms. Schakowsky. The -- Frank's motion to table the --

602 *Mr. Cardenas. The bill we are voting on.

603 *Ms. Schakowsky. The motion, that is what we are voting
604 on.

605 *Mr. Cardenas. Okay, thank you.

606 *Ms. Schakowsky. Okay, I am sorry, let's try it again.
607 The clerk will call the roll.

608 *The Clerk. Mr. Rush?

609 *Mr. Rush. Rush of Illinois votes yes on the Pallone
610 motion to table.

611 *The Clerk. Mr. Rush votes aye.

612 Ms. Castor?

613 *Ms. Castor. Ms. Castor votes aye.

614 *The Clerk. Aye.

615 Mrs. Trahan?

616 [No response.]

617 *The Clerk. Ms. Clarke?

618 *Ms. Clarke. Ms. Clarke of New York votes aye to table
619 the motion.

620 *The Clerk. Ms. Clarke votes aye.

621 Mr. Cardenas?

622 *Mr. Cardenas. Mr. Cardenas from California votes aye
623 to table the motion.

624 *The Clerk. Mr. Cardenas votes aye.

625 Mrs. Dingell?

626 *Mrs. Dingell. Dingell votes aye.

627 *The Clerk. Mrs. Dingell votes aye.

628 Ms. Kelly?

629 *Ms. Kelly. Kelly votes aye. Ms. Kelly from Illinois
630 votes aye to table the motion.

631 And happy birthday, Jan.

632 *The Clerk. Ms. Kelly votes aye.

633 Mr. Soto?

634 *Mr. Soto. Mr. Soto from Florida votes aye.

635 *The Clerk. Mr. Soto votes aye.

636 Miss Rice?

637 *Miss Rice. Miss Rice from New York votes aye.

638 *The Clerk. Miss Rice votes aye.

639 Ms. Craig?

640 *Ms. Craig. Craig votes aye.

641 *The Clerk. Ms. Craig votes aye.

642 Mrs. Fletcher?

643 *Mrs. Fletcher. Fletcher votes yes.

644 *Ms. Schakowsky. Mrs. Fletcher votes aye.

645 Mr. Pallone?

646 *The Chairman. Pallone votes aye. Pallone votes aye.

647 *The Clerk. Pallone votes aye.

648 Mr. Bilirakis?

649 [No response.]

650 *The Clerk. Mr. Upton?

651 *Mr. Upton. Mr. Upton from Michigan votes no.

652 *The Clerk. Mr. Upton votes no.

653 Mr. Latta?

654 *Mr. Latta. Latta votes no.

655 *The Clerk. Mr. Latta votes no.

656 Mr. Guthrie?

657 *Mr. Guthrie. Guthrie votes no.

658 *The Clerk. Mr. Guthrie votes no.

659 Mr. Bucshon?

660 [No response.]

661 *The Clerk. Mr. Dunn?

662 [No response.]

663 *The Clerk. Mrs. Lesko?

664 *Voice. At the end of this --

665 *Mrs. Lesko. Happy birthday to the chair, a day late,

666 and I vote no.

667 *The Clerk. Mrs. Lesko votes no.
668 Mr. Pence?
669 *Mr. Pence. Pence votes no.
670 *The Clerk. Mr. Pence votes no.
671 Mr. Armstrong?
672 *Mr. Armstrong. No.
673 *The Clerk. Mr. Armstrong votes no.
674 Mrs. Rodgers?
675 *Mrs. Rodgers. Mrs. Rodgers votes no.
676 *The Clerk. Mrs. Rodgers votes no.
677 Chair Schakowsky?
678 *Ms. Schakowsky. Chair Schakowsky from Illinois votes
679 yes.
680 *The Clerk. Chair Schakowsky votes aye.
681 *Ms. Schakowsky. The -- have all the members had their
682 votes recorded?
683 *Mr. Bilirakis. My -- recorded?
684 *Ms. Schakowsky. Who? Who was not recorded?
685 *Mr. Bilirakis. -- was recorded.
686 *The Clerk. Mr. Bilirakis?
687 *Mr. Bilirakis. Yes. Bilirakis votes no.
688 *The Clerk. Mr. Bilirakis votes no.
689 *Mr. McNerney. Mr. McNerney would like --
690 *Mr. Dunn. Dunn here, request that my vote --
691 *Mr. McNerney. -- to know how he is recorded.

692 *Mr. Dunn. Dunn here, request my vote be read back. It
693 was a no.

694 *The Clerk. Mr. Dunn votes no.

695 *Mr. McNerney. Mr. McNerney would like to know how he
696 is --

697 *Mrs. Trahan. How is Trahan recorded?

698 *The Clerk. Trahan is not recorded.

699 *Mrs. Trahan. Trahan votes yes.

700 *The Clerk. Ms. Trahan votes yes.

701 *Mr. McNerney. Mr. McNerney would like to --

702 *The Clerk. Mr. McNerney is not recorded.

703 *Mr. McNerney. -- know how he is recorded.

704 *The Clerk. Mr. McNerney is not recorded.

705 *Ms. Schakowsky. McNerney, how is McNerney vote --
706 recorded?

707 *The Clerk. Mr. McNerney is recorded as no.

708 *Mr. McNerney. Madam Chair, I would like to change that
709 to a yes.

710 *Ms. Schakowsky. Okay.

711 *The Clerk. Mr. McNerney votes aye.

712 *Ms. Schakowsky. Okay. So if there is -- are there no
713 other changes or additions?

714 Then the clerk will report the tally.

715 *The Clerk. On that vote, Madam Chair, the yeas were 14
716 and the nays were 9.

717 *Ms. Schakowsky. Okay, what comes next?

718 Okay, the vote, then, is 14 aye and 9 nays. The motion
719 to table is not agreed to.

720 *Voice. It was agreed to.

721 *Ms. Schakowsky. I mean the motion to table is agreed
722 to.

723 And I understand, Mrs. Rodgers, that you were wanting to
724 speak to your motion, and that you were cut off. So if you
725 could -- you could be recognized now, if you wish to.

726 *Mr. Bilirakis. I move to strike the last --

727 *Mrs. Rodgers. Okay, thank you, Madam Chair. And I
728 will join in saying happy birthday a day late. I hope you
729 had a good day.

730 *Ms. Schakowsky. Thank you.

731 *Mrs. Rodgers. Yes. Yes, I will just speak to the vote
732 that we just took, because I think I do get five minutes.

733 But I think we all agree, and we all agree that we need
734 to be providing the Federal Trade Commission with the tools
735 necessary to fight fraud and scams. We worked together last
736 Congress to enact my Safe Web Act extension. Thank you for
737 that, Madam Chair. We were able to pass your legislation on
738 the first offense penalty for the FTC on COVID-19 scams. We
739 have a shared goal to protect people from harm.

740 The reason I feel like this should be postponed is
741 because, first of all, it would give us, as Republicans and

742 Democrats, an opportunity to work together to improve the
743 bill, rather than it being rushed through. As I mentioned in
744 my opening statement, this all seemed to come together on
745 Friday night, when we got notified, and there hasn't been
746 much discussion since then. And we do have some ideas. It
747 would give us some extra time.

748 Second, as Republicans, we are frustrated with the
749 process. At our April hearing on the bill, all of the FTC
750 commissioners should have appeared. The Republican bill
751 should have been considered. And the FTC and DoJ should have
752 responded with all of the information that we requested.
753 That is why I had made the motion that we postpone the markup
754 until June 16th. It would help resolve some of these
755 concerns.

756 June 16th is the first Wednesday the House is in session
757 after Memorial Day, so all of our members would be in town,
758 and able to participate in an in-person markup, safely
759 participate. It seems that, given all of the activities on
760 Capitol Hill and at the White House, you know, the -- we are
761 meeting in person. There is many activities on Capitol Hill
762 where we are gathering in person.

763 We have a two-century tradition, two-century-long
764 tradition in this committee, where we debate, we legislate,
765 we plow the hard ground necessary to get things down done.
766 The CDC guidelines would allow for us to meet in person. The

767 Senate has figured it out. They are doing it with social
768 distancing, to ensure everyone feels safe and secure. We go
769 to the floor, and we vote, and we interact with one another.
770 If anyone doesn't feel safe in the committee room, I feel
771 like it could be optional.

772 Energy and Commerce should be leading by example. We
773 often say that we all know, the members of this committee
774 know, that this is the best committee on Capitol Hill. We
775 are eager to do the people's work, and work together, face to
776 face, not through a computer screen, and muted.

777 So I just would like to know what the plan is, and is
778 the plan to follow the science and open up the Energy and
779 Commerce Committee, or is it to keep us muted and behind
780 these screens?

781 We are all duly elected to serve in the greatest
782 experiment in self governance the world has ever known. I
783 fundamentally believe that we should be doing our work in
784 person. You know, this is great technology, but it is only
785 part of the way there. There is a lot of communication that
786 is beyond what we are able to experience through this
787 computer screen. And I fear that it is further breaking down
788 the communication and the legislative process.

789 I think I just muted myself. Anyway, given that our
790 constituents are returning to their offices, why should we be
791 different?

792 So that is why I asked for the vote, I made the motion.
793 And I give you my commitment that I do want to work. We do
794 want to work together in a bipartisan way to make a
795 difference in people's lives that we have the honor of
796 representing.

797 And I yield back the balance --

798 *The Chairman. Will the gentlewoman yield --

799 *Mrs. Rodgers. Yes.

800 *The Chairman. Will the gentlewoman yield to me a
801 minute?

802 *Mrs. Rodgers. Sure, sure.

803 *The Chairman. I just want to say again the -- I am not
804 planning on having us go in person in the foreseeable future.
805 I -- and I am not saying it can't happen in another month or
806 two, or September. I mean, obviously, that is the goal,
807 eventually.

808 But I am just -- and I am trying not to make this, you
809 know, where I, you know, say, okay, which Republicans have
810 been vaccinated, which staff have been vaccinated, because
811 that becomes a privacy issue. So right now, until we know
812 that -- somehow -- that a lot of the people that, you know,
813 we suspect, based on what the Attending Physician is giving
814 for autonomous numbers, he doesn't get the names, but he
815 gives us autonomous numbers about how many Members are still
816 not vaccinated, and I assume --

817 *Mrs. Rodgers. Mr. Chairman, I am going to run out of
818 time. I just want to say the CDC says that, if you are
819 vaccinated, you are safe inside and outside.

820 *The Chairman. Yes, and I don't agree with that. I
821 think it would be a mistake for us, with so many Members and
822 probably staff unvaccinated, to go back in person. And I am
823 just going to leave it at that for now. But thank you for
824 the time.

825 *Mrs. Rodgers. Thank you. I yield back.

826 *Ms. Schakowsky. Okay. I understand that Mr. Bilirakis
827 had his hand raised for a --

828 *Mr. Bilirakis. Yes, ma'am.

829 *Ms. Schakowsky. -- a motion.

830 *Mr. Bilirakis. Yes, Madam Chair, I move to strike the
831 last word, and I do have a motion at the desk.

832 *Ms. Schakowsky. You are now recognized for five
833 minutes.

834 *Mr. Bilirakis. Thank you. I move that the
835 consideration of H.R. 2668 be postponed indefinitely. And I
836 would like to speak on my motion, Madam Chair.

837 *Ms. Schakowsky. For five minutes --

838 *Mr. Bilirakis. Madam Chair, you were gracious enough
839 to include me in a virtual forum you participated in
840 recently, we both participated in, with consumer advocacy
841 groups and business trade groups, where there was a call to

842 action to enact comprehensive privacy bills -- a
843 comprehensive privacy bill for this Congress. And I really
844 appreciate you including me.

845 As I discussed in my opener, the most important FTC
846 effort we can accomplish is enactment of such privacy
847 legislation. And the FTC itself has even cited this as a --
848 really, it is a priority. The FTC has said this, it is a
849 priority.

850 We know our Senate counterparts are eager to address
851 both privacy and 13(b), as well. And I can think of no more
852 effective way of meeting those expectations than by tackling
853 these issues together, as Senator Wicker proposed last
854 Congress. We all know a lot can change in negotiation, of
855 course, with the Senate. But they -- the key is getting a
856 negotiation with Senator Cantwell and Senator Wicker to turn
857 that landmark legislation together among the four corners. I
858 think that is the best strategy.

859 For that reason I urge you to postpone this markup, and
860 schedule a hearing and markup on privacy legislation that
861 also includes a required fix on 13(b). While I believe that
862 personal roundtables can help move the process forward, I
863 don't believe they can be a substitute for regular order and
864 legislative action for our members.

865 And now I will give the chair an opportunity to respond,
866 if she would like.

867 *Ms. Schakowsky. No, you can use your five minutes.

868 *Mr. Bilirakis. Okay. All right, well, thank you very
869 much, Madam Chair, I yield back.

870 *The Chairman. And Madam Chair, I would move to table
871 this motion, as well.

872 *Ms. Schakowsky. So Mr. Pallone has a motion to table a
873 -- that motion. Does -- not -- is not -- is it not
874 debatable?

875 *Mrs. Rodgers. I think --

876 *Ms. Schakowsky. Excuse me?

877 *Mrs. Rodgers. I -- just a parliamentary inquiry. I
878 think -- isn't a motion to table -- isn't it, like, five
879 minutes each, or something?

880 *Ms. Schakowsky. I am looking at -- that the motion to
881 table is in order, and is not debatable, and --

882 *Mrs. Rodgers. You have to debate it beforehand, then?

883 *Mr. Bilirakis. I don't know what you were saying --

884 *Mrs. Rodgers. Can we make the motion --

885 *Mr. Bilirakis. -- I just saw him.

886 [Laughter.]

887 *The Chairman. Gus, you are -- okay.

888 *Ms. Schakowsky. Can we ask the parliamentarian for a
889 parliamentary inquiry?

890 My understanding is that the motion to table is in order
891 -- this is what I was told -- and is not debatable.

892 The question is, shall the subcommittee table the motion
893 to postpone indefinitely?

894 *Mrs. Rodgers. Yes, and the question --

895 *Ms. Schakowsky. All of those -- I am sorry?

896 *Mrs. Rodgers. Sounds good.

897 *Ms. Schakowsky. All those in favor, say aye.

898 All opposed, say no.

899 The -- in the opinion of the chair, the ayes have it.

900 *Mr. Bilirakis. Madam Chair? Madam Chair?

901 *Ms. Schakowsky. Yes.

902 *Mr. Bilirakis. I ask for a recorded vote, please.

903 *Ms. Schakowsky. A recorded vote has been ordered.

904 The question now occurs on the motion to postpone.

905 All those in favor, signal by saying aye.

906 *Mr. Cardenas. Madam Chair, a point of clarification.

907 The last motion that was made was by Pallone. And I think
908 that is what we would be voting on.

909 *Ms. Schakowsky. That is what I said, yes.

910 *Mr. Cardenas. I am sorry. I heard -- I misheard, I
911 guess.

912 *Ms. Schakowsky. Okay. So the question now occurs on
913 the motion.

914 Okay -- oh, wait, a recorded vote. Do we have to vote
915 no?

916 It doesn't say that. That is not what it says.

917 [Pause.]

918 *Ms. Schakowsky. Okay, so this is written incorrectly,
919 and it says -- and thank you, Mr. Cardenas -- a recorded vote
920 has been ordered.

921 The question occurs on the motion to table the motion to
922 postpone.

923 All those in favor of tabling that motion shall signify
924 by saying aye.

925 And now a recorded vote was requested, and the clerk
926 shall call the roll.

927 *The Clerk. Mr. Rush?

928 *Mr. Rush. Rush of Illinois votes aye on the Pallone
929 motion to table.

930 *The Clerk. Mr. Rush votes aye.

931 Ms. Castor?

932 *Ms. Castor. Ms. Castor votes aye.

933 *The Clerk. Ms. Castor votes aye.

934 Mrs. Trahan?

935 *Mrs. Trahan. Trahan votes aye.

936 *The Clerk. Mrs. Trahan votes aye.

937 Mr. McNerney?

938 *Mr. McNerney. Mr. McNerney from California votes aye.

939 *The Clerk. Mr. McNerney votes aye.

940 Ms. Clarke?

941 *Ms. Clarke. Ms. Clarke of New York votes aye to table.

942 *The Clerk. Ms. Clarke votes aye.
943 Mr. Cardenas?
944 *Mr. Cardenas. Mr. Cardenas of California votes aye on
945 the Pallone measure.
946 *The Clerk. Mr. Cardenas votes aye.
947 Mrs. Dingell?
948 [No response.]
949 *The Clerk. Ms. Kelly?
950 *Ms. Kelly. Kelly from Illinois votes aye.
951 *The Clerk. Ms. Kelly votes aye.
952 Mr. Soto?
953 *Mr. Soto. -- from Florida votes aye.
954 *The Clerk. Mr. Soto votes aye.
955 Miss Rice?
956 *Miss Rice. Rice votes aye.
957 *The Clerk. Miss Rice votes aye.
958 Ms. Craig?
959 *Ms. Craig. Craig votes aye.
960 *The Clerk. Ms. Craig votes aye.
961 Mrs. Fletcher?
962 *Mrs. Fletcher. Fletcher votes aye.
963 *Ms. Schakowsky. Mrs. Fletcher votes aye.
964 Mr. Pallone?
965 *The Chairman. Mr. Pallone votes aye.
966 *The Clerk. Mr. Pallone votes aye.

967 Mr. Bilirakis?
968 *Mr. Bilirakis. Bilirakis votes no.
969 *The Clerk. Mr. Bilirakis votes no.
970 Mr. Upton?
971 *Mr. Upton. Upton votes no.
972 *The Clerk. Mr. Upton votes no.
973 Mr. Latta?
974 *Mr. Latta. Latta votes no.
975 *The Clerk. Mr. Latta votes no.
976 Mr. Guthrie?
977 *Mr. Guthrie. Guthrie votes no.
978 *The Clerk. Mr. Guthrie votes no.
979 Mr. Bucshon?
980 [No response.]
981 *The Clerk. Mr. Dunn?
982 [No response.]
983 *The Clerk. Mrs. Lesko?
984 [No response.]
985 *The Clerk. Mr. Pence?
986 *Mr. Pence. Pence votes no.
987 *The Clerk. Mr. Pence votes no.
988 Mr. Armstrong?
989 [No response.]
990 *The Clerk. Mrs. Rodgers?
991 *Mrs. Rodgers. Mrs. Rodgers votes no.

992 *The Clerk. Mrs. Rodgers votes no.
993 Chair --
994 *Mr. Armstrong. Armstrong is a --
995 [Pause.]
996 *The Clerk. Mr. Armstrong votes no.
997 Chair Schakowsky?
998 *Ms. Schakowsky. Schakowsky from Illinois votes aye.
999 *The Clerk. Chair Schakowsky votes aye.
1000 *Ms. Schakowsky. So, let's see, where is that?
1001 Have all members responded to the call of the roll?
1002 Does any member wish to change his or her vote?
1003 Okay, seeing none, the clerk will report the tally.
1004 *The Clerk. On that vote, Madam Chair, the yeas were 13
1005 and the nays were 7.
1006 *Ms. Schakowsky. The vote is 13 aye and 7 no. The
1007 motion to table is not agreed to.
1008 And now I will recognize Mr. Cardenas to offer an
1009 amendment in the nature of a substitute.
1010 The clerk will report the amendment.
1011 [Pause.]
1012 *Mr. Cardenas. Madam Chair?
1013 *Ms. Schakowsky. Yes.
1014 *Mr. Cardenas. This is Cardenas. A point of
1015 clarification. The announcement you just made on the 13 to 7
1016 vote, the 13 votes were --

1017 *Ms. Schakowsky. Were to table --

1018 *Mr. Cardenas. Motion to table, correct, to table the
1019 Bilirakis motion.

1020 *Ms. Schakowsky. Okay, thank you.

1021 *Mr. Cardenas. Just a point of clarification for the
1022 record.

1023 *Ms. Schakowsky. Let me say it directly. The vote is
1024 13 to 10 to --

1025 *Mr. Cardenas. No, seven.

1026 *Ms. Schakowsky. Thirteen to seven, and the motion to
1027 table is agreed to.

1028 *Mr. Cardenas. Got it. Thank you. Sorry.

1029 *Ms. Schakowsky. Thank you. Okay, Mr. Cardenas -- or,
1030 actually, the clerk will report your amendment.

1031 *The Clerk. Amendment in the nature of a substitute to
1032 H.R. 2668 offered by Mr. Cardenas of California.

1033 Strike all after the enacting clause, and insert the
1034 following --

1035 *Ms. Schakowsky. Without objection, the reading of the
1036 amendment will be postponed.

1037 Mr. Cardenas is recognized for five minutes.

1038 *Mr. Cardenas. Thank you, Madam Chair. And I want to
1039 thank also Ranking Member Bilirakis and all of my colleagues
1040 on both sides of the aisle for your willingness to attend
1041 this priority, which we are attending to today in this

1042 hearing.

1043 I would like to offer an amendment in the nature of a
1044 substitute to the bill. This amendment makes important
1045 technical changes to the Consumer Protection and Recovery Act
1046 that focuses the bill on the matter at hand: restoring the
1047 FTC's authority under Section 13(b) of the Federal Trade
1048 Commission Act to obtain equitable monetary relief for
1049 victimized consumers.

1050 It is vitally important that this substitute -- excuse
1051 me, that this subcommittee pass this legislation quickly, so
1052 that the FTC once again can fight for consumers and provide a
1053 level playing field for honest businesses by preventing and
1054 deterring wrongdoing, as it should do so.

1055 I thank you, Madam Chair, and I yield back.

1056 [The prepared statement of Mr. Cardenas follows:]

1057

1058 *****COMMITTEE INSERT*****

1059

1060 [Pause.]

1061 *Mrs. Rodgers. Madam Chair? It is Cathy.

1062 *Mr. Cardenas. You are muted, Madam Chair.

1063 [Pause.]

1064 *Ms. Schakowsky. Okay.

1065 *Mrs. Rodgers. Madam Chair, I move to strike the last
1066 word.

1067 *Ms. Schakowsky. The gentlewoman is recognized to
1068 strike the last word.

1069 *Mrs. Rodgers. Thank you, Madam Chair. I have a
1070 question for counsel on the markup of H.R. 2688.

1071 *Ms. Schakowsky. The gentlewoman is recognized.

1072 *Mrs. Rodgers. Counsel, would you identify the specific
1073 laws under the jurisdiction of the Federal Trade Commission
1074 that the bill would apply to?

1075 *Mr. Miller. The bill would apply to every law that the
1076 Federal Trade Commission enforces.

1077 *Mrs. Rodgers. Does the bill apply to section five
1078 violations?

1079 *Mr. Miller. Yes.

1080 *Mrs. Rodgers. Does the bill apply to matters within
1081 the jurisdiction of the Judiciary Committee, specifically
1082 anti-trust?

1083 *Mr. Miller. Yes.

1084 *Mrs. Rodgers. Can you tell us what other consumer

1085 protection laws under the FTC's jurisdiction this would apply
1086 to?

1087 *Mr. Miller. Any law the FTC has enforcement authority
1088 it may bring enforcement actions under 13(b), so all of them.

1089 *Mrs. Rodgers. Okay, so this bill is pretty broad. The
1090 Commission has enforcement or administrative responsibilities
1091 over approximately 70 consumer protection laws.

1092 Thank you. I yield back.

1093 [Pause.]

1094 *Mr. Cardenas. You are muted, Madam Chair.

1095 [Pause.]

1096 *Mr. Bilirakis. Madam Chair?

1097 [Pause.]

1098 *Mr. Bilirakis. Madam Chair?

1099 *Ms. Schakowsky. Yes.

1100 *Mr. Bilirakis. Bilirakis seeks to be recognized. I
1101 have a question for counsel, Madam Chair.

1102 *Ms. Schakowsky. Yes, the gentleman -- I am sorry, the
1103 gentleman is recognized.

1104 *Mr. Bilirakis. Thank you, thank you. Okay, this is
1105 regarding, of course, the makeup of H.R. 2668. I move to
1106 strike the last word.

1107 I believe section 13(b), ultimately, is to help and
1108 protect consumers, and to deter those from acting in
1109 violation of the law. However, I am concerned that focusing

1110 on the retroactive action will not deter those from acting in
1111 violation of the FTC Act.

1112 So I have a question for counsel. My question is, for
1113 counsels, what guardrails are established in the legislation
1114 to ensure the FTC prioritizes ongoing violations of laws
1115 enforced by the FTC?

1116 *Mr. Miller. As counsel, I can answer any question
1117 about what --

1118 [Audio malfunction.]

1119 *Mr. Miller. -- Congressman, I am not sure that the law
1120 specifies what the FTC should or should not prioritize.

1121 *Mr. Bilirakis. Okay. Well, thank you very much.
1122 And I yield back, Madam Chair.

1123 *Ms. Schakowsky. Are there any other members who seek
1124 recognition?

1125 [Pause.]

1126 *Ms. Schakowsky. Hold on a second. What comes next?

1127 [Pause.]

1128 *Mr. Bilirakis. Madam Chair?

1129 *Ms. Schakowsky. Yes?

1130 *Mr. Bilirakis. It is Bilirakis again. I seek
1131 recognition.

1132 *Ms. Schakowsky. The gentleman is recognized.

1133 *Mr. Bilirakis. Thank you, Madam Chair. I have an
1134 amendment at the desk. It is titled, "Limitations 501."

1135 [Pause.]

1136 *Mr. Cardenas. Madam Chair, you are muted.

1137 *Ms. Schakowsky. And your inquiry was what?

1138 *Mr. Bilirakis. Yes, I have an amendment at the desk,
1139 Madam Chair.

1140 *Ms. Schakowsky. Yes, the gentleman is recognized.

1141 *Mr. Bilirakis. Thank you. Thank you, Madam Chair.

1142 The current statute of limitations outlined in this
1143 legislation would allow the --

1144 *Ms. Schakowsky. Wait, does the clerk have the
1145 amendment?

1146 *The Clerk. Yes, Madam Chair.

1147 *Ms. Schakowsky. Yes. The clerk will read the
1148 amendment.

1149 *The Clerk. Amendment to the amendment in the nature of
1150 a substitute to H.R. 2668, offered by Mr. Bilirakis of
1151 Florida. Page 3, line 23, "Strike 10 years and insert 5
1152 years.'"

1153 *Ms. Schakowsky. Without objection, the amendment will
1154 be presented as -- will suspend with the reading of the
1155 amendment.

1156 [The amendment of Mr. Bilirakis follows:]

1157

1158 *****COMMITTEE INSERT*****

1159

1160 *Mr. Bilirakis. Thank you Madam Chair. I appreciate
1161 it.

1162 The current statute of limitations outlined in this
1163 legislation will allow the FTC to seek restitution or
1164 disgorgement in violations dating 10 years, but going back 10
1165 years. However, as we learned during the hearing, and from
1166 responses to our questions for the record, generally, Federal
1167 statute of limitations are limited to penalties within the
1168 previous five years. Even Acting Chair Slaughter noted most
1169 of the retroactive cases have been limited to no more than
1170 five to seven years.

1171 Dr. Howard Beales noted a shorter statute protects
1172 against surprises through the assertion of claims long after
1173 the conduct, when evidence may be stale, or no longer
1174 available, and encourages a timely filing of claims by
1175 regulatory agencies.

1176 I agree we should absolutely be going after these bad
1177 actors. But I fear, if the FTC fails to take timely action
1178 to address ongoing violations, there may be a higher risk of
1179 harm that impacts consumers. I truly doubt that this is the
1180 result that my colleagues -- they don't want to see this, my
1181 colleagues don't want to see this.

1182 My amendment is straightforward, and strikes the right
1183 balance between seeking out bad actors and deterring those
1184 from committing them in the future (sic). They would allow

1185 the FTC to retroactively pursue bad actors no more than five
1186 years prior to filing a suit.

1187 Like I mentioned earlier, it must be practical. Like I
1188 mentioned earlier, this has the potential to be a legacy bill
1189 for a great colleague of mine. So it is critical that we get
1190 this right. I urge all my colleagues to support this
1191 amendment, and I yield back.

1192 [The prepared statement of Mr. Bilirakis follows:]

1193

1194 *****COMMITTEE INSERT*****

1195

1196 *Mr. Bilirakis. Now -- yes, please.

1197 [Pause.]

1198 *Ms. Schakowsky. Are there any other members who wish
1199 to speak on the amendment?

1200 But first let me ask -- does Mr. Cardenas choose to
1201 reserve a point of order?

1202 *Mr. Cardenas. Yes, I choose to reserve a point of
1203 order.

1204 *Ms. Schakowsky. Any other people who want to speak on
1205 the amendment?

1206 *Mr. Soto. Madam Chair?

1207 *Ms. Schakowsky. Yes?

1208 *Mr. Soto. Representative Soto, if I may be recognized.

1209 *Ms. Schakowsky. Yes, the gentleman is recognized.

1210 *Mr. Soto. I move to strike the last word.

1211 First I want to just explain my support for
1212 Representative Cardenas's bill. We see -- we saw during
1213 COVID so many consumers that were defrauded. We saw
1214 everything from miracle cures like bleach being hawked in
1215 Florida, to stimulus scams, to paycheck protection program
1216 scams. And in the midst of all this, we saw several courts
1217 strike down what is already well-established authority to
1218 seek -- of these fraudulent funds by the FTC. So --

1219 [Audio malfunction.]

1220 *Mr. Soto. -- restoring a key power that the FTC has

1221 for many years.

1222 I do think we should determine what look-back period it
1223 should be, whether it is 5 or 10 years, or something of that
1224 nature. I do think it -- and I encourage Representative
1225 Cardenas to find at some point as we get -- but overall, we
1226 need to re-establish this -- consumers.

1227 The coronavirus pandemic laid bare how vulnerable our
1228 constituents are, particularly when there are benefits being
1229 awarded under the CARES Act, and now the American Rescue
1230 Plan, without the FTC being on the watch, with all the power
1231 and tools they have to protect our constituents.

1232 So I applaud Representative Cardenas for this great
1233 bill, and I yield back.

1234 *Mr. Cardenas. Will the gentleman yield? This is
1235 Cardenas.

1236 *Mr. Soto. -- to the gentleman from California.

1237 *Mr. Cardenas. Yes, thank you very, very much. I
1238 appreciate the thoughtfulness of Mr. Bilirakis, my colleague
1239 Bilirakis, and his amendment. I am more than happy to
1240 discuss his amendment with him, and deliberate that between
1241 this subcommittee and the full committee hearing. And I am
1242 taking serious the questions and the dialogue that has -- I
1243 have been approached with when it comes to what strikes the
1244 right balance when it comes to statute.

1245 So thank you so much, and thank you for yielding,

1246 Representative Soto.

1247 *Mr. Soto. I yield back --

1248 *Mr. Bilirakis. Will you yield?

1249 *Ms. Schakowsky. The gentleman --

1250 *Mr. Bilirakis. Will you yield?

1251 Go ahead, please, please. Please, Madam Chair.

1252 *Ms. Schakowsky. Who was asking recognition?

1253 *Mr. Bilirakis. Bilirakis, but I will go after you,
1254 Madam Chair.

1255 *Ms. Schakowsky. I thank you very much. I just wanted
1256 to remind everybody that what we are really talking about
1257 here is an urgency on behalf of consumers, that people right
1258 now, at this moment of being in limbo, will not get to be
1259 made whole when there are scams against them.

1260 You know, we can talk about process, and we can talk
1261 about other things that ought to be there in the legislation.
1262 But the -- as I said earlier, the most important tool right
1263 now of the FTC is the 13(b), the ability to actually put
1264 money back into people's pockets, and take it away from those
1265 who have, basically, stolen it from them.

1266 And I just -- I am just hoping, as we proceed forward,
1267 that we remember what the essence of this debate is about,
1268 and what -- the essence of the legislation that we are
1269 considering today. It is simple, it is straightforward. It
1270 is one thing, to make sure -- but a big thing, a really

1271 important thing that can make it better for consumers.

1272 And so that is why I just wanted to say we can talk
1273 about process, and all other kinds of legislation that ought
1274 to be there. But we have, I think, the opportunity to fill
1275 in a gap, to fill in something that has been there for 40
1276 years for consumers, and that it is absolutely an opportunity
1277 that we have right now to do that. And so I just want to
1278 urge support for Mr. Cardenas's legislation.

1279 You know, we had warnings that this was going to happen.
1280 We knew that the Supreme Court was going to be taking it up.
1281 We tried to move this legislation forward. And today is the
1282 day we can do this. And so I really urge all my colleagues
1283 on both sides of the aisle to just put aside all the other
1284 things that we could be doing, that we would like to do, all
1285 these other process questions, how we would like to do it,
1286 and support this pro-consumer piece of legislation.

1287 And with that, I yield back.

1288 Mr. Bilirakis?

1289 *Mr. Bilirakis. Yes, thank you, Madam Chair. Madam
1290 Chair, I appreciate so much Mr. Cardenas's willingness to
1291 work with me on this particular amendment with regard to the
1292 statute of limitations.

1293 Are you willing to discuss this with me, and work with
1294 me on this, and, obviously, in good faith?

1295 If you are, Madam Chair, I am willing to withdraw the

1296 amendment.

1297 [Pause.]

1298 *Mr. Cardenas. Yes. The question is to me, Mr.
1299 Bilirakis?

1300 *Mr. Bilirakis. Yes.

1301 *Mr. Cardenas. Okay, as the author? Yes, I am more
1302 than happy to discuss that with you. There is a lot to be
1303 discussed on this. Five or ten years, both of them sound
1304 straightforward. But we are more than happy to discuss with
1305 you on the processes with FTC, and the reasons why we will
1306 end up with a statute of limitations that is fair and
1307 appropriate. So I am more than happy to discuss that with
1308 you. Thank you.

1309 *Mr. Bilirakis. Thank you.

1310 *Ms. Schakowsky. But the gentleman does withdraw his
1311 amendment, and --

1312 *Mr. Bilirakis. Well, Madam Chair, Madam Chair?

1313 *Ms. Schakowsky. Yes?

1314 *Mr. Bilirakis. Are you willing to work with me on this
1315 particular issue?

1316 *Ms. Schakowsky. Absolutely.

1317 *Mr. Bilirakis. Very good. Thank you so much, and I
1318 will withdraw my amendment.

1319 *Ms. Schakowsky. And now are there other members who
1320 seek recognition to seek -- on amendment?

1321 I understand Ms. Castor is -- Ms. Castor? No?

1322 *Ms. Castor. I move to strike the last word, Madam
1323 Chair.

1324 *Ms. Schakowsky. Oh, okay, go ahead. You are
1325 recognized to strike --

1326 *Ms. Castor. Well, thank you so much.

1327 Colleagues, there are too many scam artists out there,
1328 and too many dishonest crooks that are preying on our
1329 neighbors. You know, this part of the Federal Trade
1330 Commission Act was so important, because that was one of the
1331 tools where they -- when they caught these crooks, they would
1332 be able to recover money, the ill-gotten gains, from these
1333 scam artists. So this -- one of the reasons we are moving
1334 quickly is this was a unanimous Supreme Court decision at the
1335 end of April. I read it as an invitation for us to get right
1336 back and fix the statute, and that is what we heard from
1337 Acting Chair Slaughter.

1338 Just a -- you know, I looked up just a quick sampling of
1339 scams. Here is one. Last month, in Massachusetts, an 81-
1340 year-old woman reported a caller that said, "Oh, your
1341 grandniece is in trouble. Please mail me \$9,000 in cash."'
1342 They tracked these -- this criminal ring down to a group in
1343 Indianapolis, and they had been operating in 10 different
1344 cities.

1345 Here is another one. Kind-hearted donors in New Jersey

1346 and New York were scammed out of tens of millions of dollars.
1347 They claimed that they were raising money for homeless
1348 veterans, for retired and disabled law enforcement officers,
1349 breast cancer survivors. They used this tool to get money
1350 back to the people who had been scammed.

1351 In Florida, from July 2018 to today, under this
1352 mechanism, about 545,000 Floridians were able to get \$81
1353 million back into their pockets. So we have got to move
1354 quickly.

1355 And I want to thank Congressman Cardenas for doing that,
1356 and for the committee for moving this quickly.

1357 But there is more that we need to do, because the --
1358 here is the FTC, our premier consumer protection agency, but
1359 it lacks a lot of the basic authorities to -- that really
1360 make it effective. And I would like to see the committee
1361 work on making sure we go to APA rulemaking, and giving the
1362 FTC the first offense civil penalty authority, instead of
1363 rulemaking under the APA which most other agencies use. We
1364 heard in testimony that they are under a more burdensome
1365 process known as Magnuson-Moss. We heard from Acting Chair
1366 Slaughter that that means this goes on for years, sometimes.
1367 So let's modernize the law there.

1368 The FTC also lacks the authority to fine companies for
1369 unfair and deceptive practices under section 5. So here is
1370 an -- the most important consumer protection agency, and they

1371 do not have the ability to penalize those who violate the
1372 law. So let's work together to make this consumer protection
1373 agency operating in a very fast-paced world, let's give them
1374 the tools they need to truly protect our neighbors across the
1375 country. There are too many bad actors out there.

1376 So Chair Schakowsky, I was going to offer some
1377 amendments today on this, but I think it is so important to
1378 move Congressman Cardenas's bill swiftly. Will you -- do you
1379 agree that we need to work on giving the FTC the additional
1380 tools they need to be as effective as possible for our
1381 neighbors at home?

1382 *Ms. Schakowsky. Well, absolutely. And I appreciate
1383 your bringing up these issues. I agree that the FTC could be
1384 more effective with these authorities, bringing it to -- or
1385 bringing it more in line with other Federal laws, law
1386 enforcement agencies, and certainly for the consumer
1387 protection that we need.

1388 But today -- and I am -- I appreciate your
1389 understanding, and your cooperation with resolving that the
1390 most important thing that we do right now is to restore
1391 Section 13(b), which is in Mr. Cardenas's bill.

1392 So I agree that the proposals that you have thought
1393 about and talked about deserve serious consideration. And my
1394 hope continues to be that we can reach bipartisan consensus
1395 on the underlying bill right now, which is something that you

1396 championed just now, as well. So I commit, certainly, to
1397 working with you and, actually, all of the members to even
1398 get more input on the proposals that will protect consumers
1399 and make them even safer. So, yes, I -- and I yield.

1400 *Ms. Castor. Well, thank you very much, Madam Chair and
1401 colleagues. Let's work together to improve the FTC and what
1402 they are able to do in protecting our neighbors from these
1403 scam artists. But move this bill, very important bill,
1404 today, swiftly. Thank you so much. I yield back.

1405 *Ms. Schakowsky. The gentleman yields back, and I am
1406 calling to see if there are any other members who seek
1407 recognition to offer an amendment to the amendment.

1408 *Mr. Armstrong. Madam Chair, I move to strike the last
1409 word.

1410 *Ms. Schakowsky. The gentleman is recognized, Mr.
1411 Armstrong.

1412 *Mr. Armstrong. Thank you. And I agree with
1413 Representative Castor, and I think Republicans on this
1414 committee have been clear that we agree that the FTC
1415 absolutely has to have the tools to protect consumers.

1416 However, we must also ensure the FTC does so in a manner
1417 that does not negate the enforcement structure Congress has
1418 created. So with that I have a couple of questions for
1419 counsel.

1420 Are there any provisions in H.R. 2668 that would ensure

1421 the FTC does not base an enforcement action on potential
1422 violation that is inconsistent with any guidelines, general
1423 statements of policy, or similar guidance, unless the acts or
1424 practices violate a provision of law enforced by the FTC?

1425 *Mr. Miller. I am sorry, Congressman, I didn't catch
1426 the beginning of your question. Could you please repeat it?
1427 I am sorry.

1428 *Mr. Armstrong. All right. Are there any provisions in
1429 this bill that would ensure that the FTC does not base an
1430 enforcement action on a potential violation that is
1431 inconsistent with any guidelines, general statements of
1432 policy, or similar guidance, unless the acts or practices
1433 violate a provision of law enforced by the FTC?

1434 *Mr. Miller. The bill does not address guidance issued
1435 by the FTC.

1436 *Mr. Armstrong. Does this legislation provide an
1437 opportunity for a defendant to offer evidence in compliance
1438 with the law?

1439 *Mr. Miller. Yes.

1440 *Mr. Armstrong. Does it allow for a defendant to offer,
1441 as evidence of compliance with the law, FTC guidelines,
1442 general statements of policy, or similar guidance?

1443 *Mr. Miller. It does not prohibit a defendant from
1444 doing that.

1445 *Mr. Armstrong. Would this legislation allow defendant

1446 to seek legal counsel?

1447 *Mr. Miller. Yes.

1448 *Mr. Armstrong. Thank you. I yield back, but I have an
1449 amendment at the desk, as well. I don't know how you want to
1450 do this, Madam Chair.

1451 *Ms. Schakowsky. Does the clerk have the amendment at
1452 the desk?

1453 *The Clerk. What is the amendment?

1454 *Mr. Armstrong. Amendments from Armstrong.

1455 *Ms. Schakowsky. Did the clerk find the amendment? No?

1456 *The Clerk. What is the name of the amendment? What is
1457 it labeled?

1458 *Mr. Armstrong. Disgorgement.

1459 *The Clerk. I have two labeled "Disgorge.'" Is it 2003
1460 or Econ?

1461 [Pause.]

1462 *Mr. Armstrong. Two thousand --

1463 *Ms. Schakowsky. The clerk will read the amendment.

1464 *The Clerk. Yes, I found it. Yes, Madam Chair, I found
1465 it.

1466 Amendment to the amendment in the nature of a substitute
1467 for 2668 --

1468 *Voice. Say no.

1469 *The Clerk. -- by the minority, page 4, line 10, strike
1470 the date of enactment of this Act, and insert date --

1471 *Mr. Cardenas. Cardenas reserves a point of order.

1472 *Ms. Schakowsky. The -- unanimous consent to postpone
1473 the reading of -- to not read the rest of the amendment.

1474 [The amendment of Mr. Armstrong follows:]

1475

1476 *****COMMITTEE INSERT*****

1477

1478 *Mr. Cardenas. Cardenas reserves a point of order,
1479 thank you.

1480 [Pause.]

1481 *Ms. Schakowsky. Did we settle --

1482 *Mr. Armstrong. The 2003 amendment.

1483 *Ms. Schakowsky. Mr. Armstrong, did we settle where the
1484 amendment was, and --

1485 *Mr. Armstrong. Madam Chair, the 2003 amendment.

1486 *Mr. Cardenas. Yes, that is what --

1487 *Ms. Schakowsky. And Mr. Cardenas has a point of order.
1488 The --

1489 *Mr. Cardenas. Yes, I do --

1490 *Ms. Schakowsky. The amendment was accepted, as it --
1491 we accepted it.

1492 Now, Mr. Armstrong, you are recognized for five minutes.

1493 *Mr. Armstrong. Thank you, Madam Chair.

1494 This amendment would delay the applicability of the bill
1495 until the FTC reinstates the policy statements on monetary
1496 equitable remedies in competition cases, and applies it to
1497 cases in which the FTC seeks monetary equitable remedies
1498 under 13(b). This policy statement was unanimously adopted
1499 in 2003, but eliminated in 2012.

1500 As articulated by Professor Beales in the subcommittee's
1501 recent hearing on 13(b) authorities, the policy statement
1502 provides reasonable guidelines for the use of disgorgement

1503 and restitution in competition cases. It concludes that
1504 disgorgement and restitution may be useful in competition
1505 cases, but only in certain circumstances, particularly when
1506 more familiar antitrust remedies like divestiture, conduct
1507 remedies, private damages, as well as civil and criminal
1508 penalties do not produce desired outcomes.

1509 There are three main factors.

1510 First, a clear violation of the law exists. This is
1511 when a defendant could reasonably expect that certain conduct
1512 would be found illegal, often based on precedent. This
1513 factor sets -- that known unlawful conduct will not be
1514 profitable. As Professor Beales explained, this clarity
1515 standard ensures adequate deterrence without -- truthful
1516 information that is beneficial to consumers.

1517 The second factor is that a reasonable basis exists for
1518 calculating remedial payment. This does not require undue
1519 exacting precision. Even a 2012 repeal of this policy
1520 statement noted that this provision merely restates existing
1521 legal standards.

1522 Finally, the third factor holds that other civil and
1523 criminal remedies would not fully address the violation by
1524 eliminating ill-gotten gains. Disgorgement and restitution
1525 are to be used as a last resort to ensure a wrongdoer does
1526 not profit. As Professor Beales wrote, "The FTC's resources
1527 should be used to complement, not compete with private

1528 remedies.' ' These remedies are not intended to be
1529 duplicative of other remedies, and should only be deployed
1530 when absolutely necessary for equity.

1531 I agree with Professor Beales, that we should reinstate
1532 the -- including this policy statement. These are reasonable
1533 factors that ensure disgorgement and restitution are only
1534 applied in circumstances where there is clarity, a
1535 quantifiable remedy, and where other remedies have failed to
1536 fulfill public policy goals.

1537 And with that, I yield back.

1538 *Mr. Cardenas. Madam Chair, this is Cardenas, and I
1539 move to strike the last word.

1540 *Ms. Schakowsky. Recognized.

1541 *Mr. Cardenas. Thank you, Madam Chair. Tying the FTC's
1542 and the court's ability to use 13(b) to a modification in the
1543 FTC's competition policy holds consumers hostage to the
1544 benefit of companies violating competition laws. There is no
1545 question about whether the companies that are forced to
1546 provide relief to consumers under Section 13(b) after the
1547 policy change acted illegally.

1548 The FTC must prove its case before getting redress.
1549 This is a bedrock of 13(b). We are only dealing with
1550 companies that a court has found to violate the law. I don't
1551 understand why we want to let some lawbreakers off the hook.

1552 Clearly, the FTC decided nearly 10 years ago that the

1553 policy the minority seeks to reinstate was outdated, and
1554 undermining its ability to get recovery for consumers in
1555 competition cases. Since then, the FTC has been returning
1556 ill-gotten gains from competition violations to all our
1557 constituents. Perpetrators inflicting such damage on
1558 commerce and consumers should not be allowed to keep the ill-
1559 gotten gains. The victims deserve restitution.

1560 Moreover, a change like this goes at the heart of the
1561 application of competition law by the FTC. The Judiciary
1562 Committee received a sequential referral on the Consumer
1563 Protection and Recovery Act. To the extent that changes are
1564 made to competition law, the judiciary should -- the
1565 Judiciary Committee should and will have the opportunity to
1566 consider and act upon such matters. And that is why it
1567 should -- that is the way it should be.

1568 I urge my colleagues to vote against this amendment that
1569 undermines the FTC's authority to get redress for consumers,
1570 and support the Consumer Protection and Recovery Act.

1571 With that, I yield back.

1572 *Ms. Schakowsky. The gentleman yields back, and I need
1573 to figure out exactly where we are at. I am waiting for some
1574 instructions.

1575 Is there anybody else, first of all, that would -- that
1576 has an amendment to offer?

1577 Is there anyone else who wants to speak on this

1578 amendment?

1579 Okay, then I will ask for a voice vote on Mr.

1580 Armstrong's amendment.

1581 All of those in favor, say aye.

1582 All of those opposed, say no.

1583 *Mr. Armstrong. Madam Chair -- roll call.

1584 *Ms. Schakowsky. Okay, the clerk will -- a roll call

1585 has been requested, and the clerk will call the roll.

1586 [Pause.]

1587 *Ms. Schakowsky. Madam Clerk?

1588 *Voice. Your audio.

1589 *The Clerk. I apologize.

1590 Mr. Rush?

1591 *Mr. Rush. Rush votes no.

1592 *The Clerk. Mr. Rush votes no.

1593 Ms. Castor?

1594 *Ms. Castor. Ms. Castor votes no.

1595 *The Clerk. Ms. Castor votes no.

1596 Mrs. Trahan?

1597 *Mrs. Trahan. Trahan votes no.

1598 *The Clerk. Mrs. Trahan votes no.

1599 Mr. McNerney?

1600 *Mr. McNerney. McNerney of California votes no.

1601 *The Clerk. Mr. McNerney votes no.

1602 Ms. Clarke?

1603 [No response.]

1604 *The Clerk. Mr. Cardenas?

1605 *Mr. Cardenas. Cardenas from California votes no.

1606 *The Clerk. Mr. Cardenas votes no.

1607 Mrs. Dingell?

1608 *Mrs. Dingell. Dingell votes no.

1609 *The Clerk. Mrs. Dingell votes no.

1610 Ms. Kelly?

1611 *Ms. Kelly. Kelly of Illinois votes no.

1612 *The Clerk. Ms. Kelly votes no.

1613 Mr. Soto?

1614 *Mr. Soto. Soto of Florida votes no.

1615 *The Clerk. Mr. Soto votes no.

1616 Miss Rice?

1617 *Miss Rice. Rice votes no.

1618 *The Clerk. Miss Rice votes no.

1619 Ms. Craig?

1620 *Ms. Craig. Craig votes no.

1621 *The Clerk. Ms. Craig votes no.

1622 Mrs. Fletcher?

1623 *Mrs. Fletcher. Fletcher votes no.

1624 *Ms. Schakowsky. Mrs. Fletcher votes no.

1625 Mr. Pallone?

1626 *The Chairman. Pallone votes no.

1627 *The Clerk. Mr. Pallone votes no.

1628 Mr. Bilirakis?

1629 *Mr. Bilirakis. Bilirakis votes yes.

1630 *The Clerk. Mr. Bilirakis votes aye.

1631 Mr. Upton?

1632 *Mr. Upton. Upton votes aye.

1633 *The Clerk. Mr. Upton votes aye.

1634 Mr. Latta?

1635 *Mr. Latta. Latta votes aye.

1636 *The Clerk. Mr. Latta votes aye.

1637 Mr. Guthrie?

1638 *Mr. Guthrie. Guthrie votes aye.

1639 *The Clerk. Mr. Guthrie votes aye.

1640 Mr. Bucshon?

1641 [No response.]

1642 *The Clerk. Mr. Dunn?

1643 [No response.]

1644 *The Clerk. Mrs. Lesko?

1645 [No response.]

1646 *The Clerk. Mr. Pence?

1647 *Mr. Pence. Pence votes aye.

1648 *The Clerk. Mr. Pence votes aye.

1649 Mr. Armstrong?

1650 *Mr. Armstrong. Yes.

1651 *The Clerk. Mr. Armstrong votes aye.

1652 Mrs. Rodgers?

1653 *Mrs. Rodgers. Mrs. Rodgers votes aye.
1654 *The Clerk. Mrs. Rodgers votes aye.
1655 Chair Schakowsky?
1656 *Ms. Schakowsky. Ms. Schakowsky of Illinois votes no.
1657 *The Clerk. Chair Schakowsky votes no.
1658 *Ms. Clarke. Madam Chairwoman, how am I recorded? This
1659 is Congresswoman Yvette Clarke.
1660 *The Clerk. Ms. Clarke, you are not recorded.
1661 *Ms. Clarke. Ms. Clarke of New York votes no.
1662 *The Clerk. Ms. Clarke votes no.
1663 *Ms. Schakowsky. Are there any others who want to
1664 either change their vote, or to be recorded?
1665 If not, the clerk will report the tally.
1666 *The Clerk. On that vote, Madam Chair, the yeas were 7
1667 and the nays were 14.
1668 *Ms. Schakowsky. The ayes were 7 and the nays were 14.
1669 That -- the -- yes, the motion is not agreed to, and the
1670 motion is not passed.
1671 Okay, are there any other members who seek recognition
1672 to offer an amendment to the amendment in the name (sic) of a
1673 substitute?
1674 *Mr. Latta. Madam Chair, Latta seeks recognition.
1675 *Ms. Schakowsky. Mr. Latta is recognized.
1676 *Mr. Latta. Thank you, Madam Chair. I have a question
1677 for counsel.

1678 *Ms. Schakowsky. Mr. Latta is recognized.

1679 Counsel?

1680 *Mr. Latta. Thank you, Madam Chair.

1681 Counsel, in the bill, what is there to ensure that the
1682 economic analysis is incorporated and applied in authorities
1683 going forward?

1684 *Mr. Miller. What economic analysis are you referring
1685 to, Congressman?

1686 *Mr. Latta. Well, the -- under the Federal Trade
1687 Commission there is a Bureau of Economics, and I wanted to
1688 check to see, is there anything in the bill that applies with
1689 economic analysis?

1690 *Mr. Miller. The bill does not address that.

1691 *Mr. Latta. Thank you.

1692 Madam Chair, Latta seeks recognition offering an
1693 amendment.

1694 *Ms. Schakowsky. Mr. Latta, you have an amendment at
1695 the desk?

1696 *Mr. Latta. I have an amendment at the desk, Madam
1697 Chair, labeled "Disgorge Econ 01."

1698 *Ms. Schakowsky. The clerk will read the amendment.

1699 *The Clerk. Amendment to the amendment in the nature of
1700 a substitute to H.R. 2668, offered by Mr. Latta of Ohio.

1701 Page 4, line 10, strike --

1702 *Ms. Schakowsky. Without objection, without objection,

1703 the reading of the amendment will be dispensed with.

1704 [The amendment of Mr. Latta follows:]

1705

1706 *****COMMITTEE INSERT*****

1707

1708 *Ms. Schakowsky. Mr. Latta is recognized for five
1709 minutes for his amendment.

1710 *Mr. Latta. Well, thank you very much, Madam Chair --

1711 *Mr. Cardenas. Cardenas reserves a point of order.
1712 Sorry, Madam Chair, sorry.

1713 *Ms. Schakowsky. Mr. Cardenas holds a point of order.

1714 *Mr. Latta. Well, thank you, Madam Chair.

1715 *Ms. Schakowsky. Mr. Latta?

1716 *Mr. Latta. Housed within the Federal Trade Commission
1717 rests the Bureau of Economics, whose mission is to evaluate
1718 the economic impact of its actions by providing economic
1719 analysis for competition and consumer protection,
1720 investigations, and rulemaking, and analyzing the economic
1721 impact of government regulations on businesses and consumers.

1722 Unfortunately, it seems that this critical piece to the
1723 FTC decision -- decisions, excuse me -- is often disregarded
1724 or overlooked. The Bureau of Economics has published a
1725 detailed analysis of how it calculates remedies. It also
1726 frequently weighs in on settlements in cases with
1727 calculations of the likely injury and proper redress.

1728 During the April 27th hearing, Republicans urged for
1729 increased transparency and economic analysis to ensure the
1730 FTC does not create unintended consequences. Unfortunately,
1731 it does not seem these considerations were taken seriously.

1732 As we examine reforms to the FTC, we must ensure that

1733 the FTC is considering the potential impacts of its actions
1734 on the market and consumers. My amendment would do just
1735 that. It would require the FTC to conduct an economic
1736 analysis prior to seeking disgorgement in any case filed by
1737 the FTC.

1738 I urge all of my colleagues to support the amendment,
1739 and bring these much-needed safeguards to the legislation.

1740 Madam Chair, thank you very much, and I yield back the
1741 balance of my time.

1742 *Ms. Schakowsky. Does anyone seek recognition to --

1743 *Mr. Cardenas. This is Cardenas. I move to strike the
1744 last word.

1745 *Ms. Schakowsky. Mr. Cardenas is recognized.

1746 *Mr. Cardenas. Thank you very much. I would like to
1747 start off by saying that I enjoy working with all of my
1748 colleagues, but I really do enjoy working with you, Mr.
1749 Latta, and thank you for your consideration, and taking the
1750 time to make your motion. I am glad that our markup today
1751 has brought my friends in the minority to the table to
1752 discuss the Consumer Protection and Recovery Act and the
1753 needed fix to the FTC's authority to get relief for
1754 consumers.

1755 The new amendments filed shows me that we are not very
1756 far apart on this issue, and that there is a path forward to
1757 work together. I have some questions about this amendment,

1758 which provides the FTC -- cannot obtain disgorgement of ill-
1759 gotten gains without conducting an economic analysis.

1760 For example, what kind of economic analysis is required?

1761 Is it cost -- is it a cost benefit analysis?

1762 Is it an analysis of the amount of consumer harm, or the
1763 amount of unjust profit the defendant earned through its
1764 illicit acts?

1765 Is it an analysis of the economic harm caused by the
1766 defendant's law violations?

1767 I believe the FTC already does thorough analysis in
1768 their investigations of potential violations so that, by the
1769 time they file suit or reach a settlement, those issues are
1770 worked out. So I am not sure this amendment is necessary.

1771 I am also not sure this amendment protects consumers or
1772 potential defendants. I think this idea needs more vetting.

1773 How will economic analysis be interpreted by the FTC?

1774 Are there unintended consequences of this economic
1775 analysis?

1776 Without those answers, I am going to vote against this
1777 amendment today, but I commit to working with my colleague to
1778 get the answers, and try to work out an agreement on this
1779 idea before this bill moves to the full committee markup.

1780 Restoring its authority to return money to consumers is
1781 critical to keeping the FTC as the world's leading consumer
1782 protection agency. I really hope we can work this out

1783 together. But until then, we are forced to have a vote on
1784 this amendment. I urge a no vote.

1785 *Ms. Schakowsky. Does the gentleman yield back?

1786 *Mr. Cardenas. I yield back.

1787 *Ms. Schakowsky. Okay. Is there anyone else who seeks
1788 recognition on this amendment?

1789 If not, Mr. Cardenas, do you withdraw your --

1790 *Mr. Cardenas. Yes, I withdraw my point --

1791 *Ms. Schakowsky. -- reservation?

1792 Then we will move to a vote on --

1793 *Mr. Latta. Madam Chair, I ask for a recorded vote.

1794 *Ms. Schakowsky. Okay, the clerk, then, will call the
1795 roll on Mr. Latta's amendment.

1796 *The Clerk. Mr. Rush?

1797 *Mr. Rush. Rush of Illinois votes no.

1798 *The Clerk. Mr. Rush votes no.

1799 Ms. Castor?

1800 *Ms. Castor. Ms. Castor votes no.

1801 *The Clerk. Ms. Castor votes no.

1802 Mrs. Trahan?

1803 [No response.]

1804 *The Clerk. Mr. McNerney?

1805 *Mr. McNerney. McNerney of California votes no.

1806 *The Clerk. Mr. McNerney votes no.

1807 Ms. Clarke?

1808 *Ms. Clarke. Ms. Clarke of New York votes no.
1809 *The Clerk. Ms. Clarke votes no.
1810 Mr. Cardenas?
1811 *Mr. Cardenas. Mr. Cardenas of California votes no.
1812 *The Clerk. Mr. Cardenas votes no.
1813 Mrs. Dingell?
1814 *Mrs. Dingell. Dingell votes no.
1815 *The Clerk. Mrs. Dingell votes no.
1816 Ms. Kelly?
1817 *Ms. Kelly. Ms. Kelly of Illinois votes no.
1818 *The Clerk. Ms. Kelly votes no.
1819 Mr. Soto?
1820 *Mr. Soto. Soto of Florida votes no.
1821 *The Clerk. Mr. Soto votes no.
1822 Miss Rice?
1823 *Miss Rice. Rice votes no.
1824 *The Clerk. Miss Rice votes no.
1825 Ms. Craig?
1826 *Ms. Craig. Craig votes no.
1827 *The Clerk. Ms. Craig votes no.
1828 Mrs. Fletcher?
1829 *Mrs. Fletcher. Fletcher votes no.
1830 *Ms. Schakowsky. Mrs. Fletcher votes no.
1831 Mr. Pallone?
1832 *The Chairman. Pallone votes no.

1833 *The Clerk. Mr. Pallone votes no.
1834 Mr. Bilirakis?
1835 *Mr. Bilirakis. Bilirakis votes yes.
1836 *The Clerk. Mr. Bilirakis votes aye.
1837 Mr. Upton?
1838 *Mr. Upton. Upton votes aye.
1839 *The Clerk. Mr. Upton votes aye.
1840 Mr. Latta?
1841 *Mr. Latta. Latta votes aye.
1842 *The Clerk. Mr. Latta votes aye.
1843 Mr. Guthrie?
1844 *Mr. Guthrie. Guthrie votes aye.
1845 *The Clerk. Mr. Guthrie votes aye.
1846 Mr. Bucshon?
1847 [No response.]
1848 *The Clerk. Mr. Dunn?
1849 [No response.]
1850 *The Clerk. Mrs. Lesko?
1851 *Mrs. Lesko. Lesko votes aye.
1852 *The Clerk. Mrs. Lesko votes aye.
1853 Mr. Pence?
1854 *Mr. Pence. Pence votes aye.
1855 *The Clerk. Mr. Pence votes aye.
1856 Mr. Armstrong?
1857 *Mr. Armstrong. Yes.

1858 *The Clerk. Mr. Armstrong votes aye.
1859 Mrs. Rodgers?
1860 *Mrs. Rodgers. Mrs. Rodgers votes aye.
1861 *The Clerk. Mrs. Rodgers votes aye.
1862 Chair Schakowsky?
1863 *Ms. Schakowsky. Schakowsky votes no.
1864 *The Clerk. Chair Schakowsky votes no.
1865 *Ms. Schakowsky. Have all members responded to the call
1866 of the roll?
1867 *Mrs. Trahan. How is Trahan recorded?
1868 *The Clerk. Mrs. Trahan is not recorded.
1869 *Mrs. Trahan. Trahan votes no.
1870 *The Clerk. Mrs. Trahan votes no.
1871 *Ms. Schakowsky. Does any member wish to change his or
1872 her vote?
1873 If not, the clerk will report the tally.
1874 *The Clerk. On that vote, Madam Chair, the ayes were 8
1875 and the nays were 14.
1876 *Ms. Schakowsky. The ayes were 8 and the nays were 14.
1877 The amendment is not agreed to.
1878 Are there any further amendments in the nature of a
1879 substitute?
1880 *Mr. Upton. Madam Chair, it is Upton. Can I strike the
1881 last word?
1882 *Ms. Schakowsky. You may. Mr. Upton is recognized.

1883 *Mr. Upton. And I have a brief question for the
1884 counsel. Looking, really, for a yes-or-no answer.

1885 The question is, the legislation -- the Supreme Court
1886 decision -- the legislation before us is going to apply to
1887 the ongoing violations of the law, is that correct?

1888 And would it apply retroactively?

1889 *Mr. Miller. Section 2(b) of the bill states that the
1890 amendments made in the bill apply with respect to any action
1891 or proceeding that is pending on or commenced after the date
1892 the bill is enacted.

1893 So if your question is whether it applies to pending
1894 matters, the answer is yes.

1895 *Mr. Upton. Thank you. I yield back.

1896 *Ms. Schakowsky. Are there any other amendments that
1897 members wish to offer?

1898 Do any members seek recognition for an amendment?

1899 Okay --

1900 *Mr. Bilirakis. Yes, Madam Chair, I have an amendment
1901 at the desk. Bilirakis.

1902 *Ms. Schakowsky. Mr. Bilirakis has a member -- does the
1903 clerk have that amendment?

1904 *Mr. Bilirakis. It is titled "FTC Reports," Madam
1905 Chair.

1906 *The Clerk. Madam Chair, I have the amendment.

1907 *Ms. Schakowsky. The clerk will read the amendment.

1908 *The Clerk. Amendment to the amendment in the nature of
1909 a substitute to 2668, offered by Mr. Bilirakis of Florida.
1910 At the end of the bill, insert the following.

1911 *Ms. Schakowsky. So, without objection, the reading of
1912 the amendment will be dispensed with.

1913 [The amendment of Mr. Bilirakis follows:]

1914

1915 *****COMMITTEE INSERT*****

1916

1917 *Ms. Schakowsky. And the gentleman is recognized to
1918 speak on his amendment.

1919 *Mr. Bilirakis. Thank you, Madam Chair, I appreciate
1920 it. My amendment is straightforward, and would require the
1921 FTC to publish and submit an annual plan to Congress on
1922 December 1st of each year.

1923 This plan would include a description of FTC's policy
1924 priorities, projected rulemaking, plans to develop
1925 guidelines, plans to restructure the FTC, or establish or
1926 alter working groups, planned projects or initiatives, any
1927 projected dates and timelines associated with these
1928 initiatives, and any changes to aforementioned activities.

1929 The amendment would also require the FTC to publish and
1930 submit to Congress an annual report on the FTC's enforcement
1931 actions involving allegations of elder abuse. This is an
1932 issue I know every single member on this subcommittee
1933 supports. By providing greater information about elder
1934 fraud, it will help to better examine the FTC's focus and
1935 priorities around the vulnerable population and, of course,
1936 and ensure the elderly are adequately protected.

1937 So very important, I think it is incredibly important,
1938 as I said, considering the legislation this subcommittee
1939 passed to protect seniors from COVID-19 scams.

1940 This amendment merely requires the FTC to engage in a
1941 process that allows for more public feedback and input, which

1942 will assist the agency in better protecting consumers by
1943 addressing issues that matter to them.

1944 Madam Chair, I think you know where this trend is going.
1945 Again, Republicans have brought some really good ideas to
1946 increase transparency, checks and balances, and other reforms
1947 to prevent unintended consequences from any action taken by
1948 the FTC. But unfortunately, these ideas are being ignored.
1949 Leader Rodgers and I have shared our desire to make this a
1950 bipartisan process, and I remain hopeful that you and the
1951 sponsor of this legislation, Mr. Cardenas, will take us up on
1952 this.

1953 Again, Madam Chair, I think this is a great opportunity.
1954 We have a vehicle here to address a lot of these issues,
1955 including the privacy issue.

1956 In closing, while I plan on withdrawing my amendment,
1957 and I do so, I would ask that you work with me on this
1958 particular language, and I yield back the balance of my time,
1959 but I will withdraw the amendment, Madam Chair.

1960 *Ms. Schakowsky. I thank the gentleman for withdrawing
1961 the amendment to the amendment in the nature of a substitute.

1962 And now let me ask if there are other amendments.

1963 *Mr. Cardenas. Madam Chair, just a point of personal
1964 privilege.

1965 I look forward to working with you, Mr. Bilirakis, as I
1966 mentioned before, and thank you for your thoughtfulness. And

1967 -- through the chair and with the chair on that, as well.

1968 Thank you.

1969 *Mr. Bilirakis. Thank you. I appreciate that.

1970 *Ms. Schakowsky. Are there other --

1971 *Mr. Bilirakis. Yes, Madam Chair, I have another
1972 amendment at the desk.

1973 *Ms. Schakowsky. Okay. Madam Clerk, do you have the
1974 amendment?

1975 *Mr. Bilirakis. Madam Chair, it is titled, "SURE," S-
1976 U-R-E.

1977 *Ms. Schakowsky. This was an amendment to the amendment
1978 in the nature of a substitute?

1979 *Mr. Bilirakis. Correct.

1980 *Ms. Schakowsky. Do you have it, Ms. --

1981 *The Clerk. Madam Chair, I have the amendment.

1982 *Ms. Schakowsky. Okay. If you would, read the
1983 amendment.

1984 *The Clerk. Amendment to the amendment in the nature of
1985 a substitute to H.R. 2668, offered by Mr. Bilirakis of
1986 Florida.

1987 At the end of the bill, insert the following.

1988 *Ms. Schakowsky. Okay, without objection, the reading
1989 of the amendment will be dispensed with.

1990

1991

1992 [The amendment of Mr. Bilirakis follows:]

1993

1994 *****COMMITTEE INSERT*****

1995

1996 *Ms. Schakowsky. And --

1997 *Mr. Cardenas. Cardenas reserves a point of order.

1998 *Ms. Schakowsky. And the -- I recognize now Mr.

1999 Bilirakis to speak on his amendment to the amendment.

2000 *Mr. Bilirakis. Thank you, Madam Chair.

2001 Under current law the FTC must show that there is a
2002 substantial injury to consumers, which is not outweighed by
2003 countervailing benefits to consumers or competition, and
2004 which is not reasonably avoidable by consumers themselves.
2005 And I quoted that, so that is not my language.

2006 This amendment changes nothing about the FTC's ability
2007 to consider public policy concerns without facing entire
2008 cases on such concerns. Again, that is current law.

2009 The amendment draws from the FTC's current policy
2010 statement to clarify that, in determining whether a
2011 substantial injury has occurred, the FTC must consider the
2012 following: whether the act or practice results in monetary
2013 harm; whether the act or practice results in unwarranted
2014 health or safety risk; and whether the act or practice
2015 results only in emotional or other more subjective harm.

2016 In addition, the section would qualify the portion of
2017 the policy statement that reinforces that an act or practice
2018 must be net injurious in order to -- enforcement by the
2019 Commission. This provides additional assurance that the
2020 Commission is not inadvertently suppressing innovative

2021 products and services that, on the whole, result in a benefit
2022 to consumers or competition.

2023 It was argued at the legislative hearing that requiring
2024 an act or practice to be net injurious -- again, I am quoting
2025 that particular statement -- helps non-injured consumers to
2026 the detriment of harmed consumers. The reality is that this
2027 is required in current law. This amendment would merely
2028 reinforce this concept.

2029 Let's not forget that the FTC is a Federal cop with a
2030 big stick. That stick should be wielded with restraint, and
2031 must be used only after consideration, again, balancing the
2032 equities.

2033 I think this is incredibly important, Madam Chair, so it
2034 bears repeating. We must ensure checks and balances are
2035 included in the FTC's authority, especially when expanding
2036 their authority to seek monetary remedies. While I plan on
2037 withdrawing this amendment, I encourage my Democratic friends
2038 to work with us to ensure the language drafted by Mr. Mullin
2039 moves forward in any conversation to reform the FTC.

2040 Again, I think this language that was drafted, Mr.
2041 Mullin's amendment that I am doing on his behalf today, is
2042 very reasonable.

2043 And Madam Chair, I hope that, in the next stop, we have
2044 an opportunity to again offer these amendments and,
2045 hopefully, they are strongly considered by the majority. But

2046 I plan to withdraw, and I will withdraw this particular
2047 amendment.

2048 Thank you, and I yield back, Madam Chair.

2049 *Ms. Schakowsky. I thank the gentleman. I like the way
2050 you put it, "the next stop," because this is not the last
2051 stop, what is happening today, and I just want to assure the
2052 ranking number and all of the members on both sides of the
2053 aisle, that we can work together between now and the full
2054 committee.

2055 And let me yield to --

2056 *Mr. Cardenas. Cardenas withdraws his reservation on
2057 the point of order.

2058 And also, I agree with you, Madam Chair, and I am
2059 looking forward to working with Mr. Bilirakis and all of our
2060 -- thank you.

2061 *Ms. Schakowsky. And so, with that, are there any other
2062 members who seek recognition to offer an amendment to the
2063 amendment in the nature of a substitute?

2064 *Mr. Bilirakis. Madam Chair, I have an amendment at the
2065 desk. It is Bilirakis again. You are probably tired of
2066 hearing my voice.

2067 *Ms. Schakowsky. Never. Go ahead.

2068 *Mr. Bilirakis. Thank you, I appreciate that.

2069 *Ms. Schakowsky. Does the clerk have the amendment at
2070 the desk?

2071 *The Clerk. Madam Chair, what is the name of the
2072 amendment?

2073 *Mr. Bilirakis. The amendment is titled, "TIME," T-I-
2074 M-E.

2075 *The Clerk. Madam Chair, I have the amendment.

2076 *Ms. Schakowsky. The clerk will read the amendment.

2077 *The Clerk. Amendment to the amendment in the nature of
2078 a substitute to 2668, offered by Mr. Bilirakis of Florida.

2079 At the end of the bill, insert the following.

2080 *Ms. Schakowsky. Without objection, the reading of the
2081 amendment will be --

2082 [The amendment of Mr. Bilirakis follows:]

2083

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

2085

2086 *Mr. Cardenas. Cardenas reserves a point of order.

2087 *Ms. Schakowsky. A point of order is reserved.

2088 And Mr. Bilirakis, you are recognized on your amendment
2089 to the amendment.

2090 *Mr. Bilirakis. Thank you, Madam Chair, and I thank you
2091 for giving us these assurances that you will work with us
2092 before the next stop, and also for the prime sponsor of the
2093 amendment. What a good person he is, and I know he is trying
2094 to do the right thing.

2095 This amendment places a statutory cap on eight years,
2096 which is still longer than what we see at the FTC and the
2097 CFPB on consent decrees relating to unfair or deceptive acts
2098 or practices between the FTC and a would-be defendant, unless
2099 the case involved fraud allegations, or there is a reason to
2100 believe that the defendant is a repeat offender.

2101 This amendment also requires the FTC to review any such
2102 consent decree five years after it is entered into. Most of
2103 the Commission's enforcement actions result in settlements,
2104 also known as consent decrees, rather than judicial
2105 decisions.

2106 Madam Chair, because the consent decrees often set
2107 strict penalties for prohibited activity, even in areas
2108 beyond the scope of the original order, they empower the FTC
2109 to engage in quasi-rulemaking, especially if the consent
2110 decree covers a major company. Consent decrees should not

2111 outlive the purpose for which they were originally entered
2112 into, and the FTC should not be allowed to pursue
2113 continuously changing policy objectives through, then, over a
2114 20-year span.

2115 Madam Chair, while I plan on withdrawing -- and I will
2116 withdraw -- the amendment, I would like to ask you to
2117 consider this language drafted by, actually, Representative
2118 Burgess. So I am offering this on his behalf. So I would
2119 ask you to consider this language, moving forward.

2120 So, Madam Chair, if I can get some assurances with
2121 regard to consideration from the actual sponsor of the
2122 bill --

2123 *Ms. Schakowsky. Yes, I am more than happy to do so. I
2124 look forward to working with you, the author of the bill, as
2125 we move forward to consider whether or not it should be there
2126 when we go to -- when we leave full committee.

2127 So, yes, I appreciate the withdrawal of the amendment at
2128 this time, so that we can move forward with including
2129 consideration of ideas that have been presented, yes.

2130 *Mr. Cardenas. This is Cardenas, Madam --

2131 *Ms. Schakowsky. Go ahead.

2132 *Mr. Cardenas. I withdraw my reservation and point of
2133 order, and then also I do concur with you. I look forward to
2134 working with Mr. Bilirakis. Thank you.

2135 *Mr. Bilirakis. Thank you. In that case, I will

2136 withdraw my amendment, Madam Chair. Thank you, and I yield
2137 back.

2138 *Ms. Schakowsky. I thank the gentleman for withdrawing,
2139 and ask again whether or not there are any members who seek
2140 recognition to offer an amendment to the amendment in the
2141 nature of a substitute.

2142 *Mr. Guthrie. Madam Chair?

2143 *Ms. Schakowsky. Who is seeking --

2144 *Mr. Guthrie. Mr. Guthrie, Guthrie of Kentucky.

2145 *Ms. Schakowsky. Mr. Guthrie is recognized.

2146 *Mr. Guthrie. Thank you, Madam Chair. I have an
2147 amendment at the desk. It is "CLEAR 1005."

2148 *Ms. Schakowsky. Does the clerk have that amendment?

2149 *The Clerk. I have CLEAR.

2150 *Mr. Guthrie. CLEAR, yes, CLEAR, the CLEAR amendment,
2151 yes.

2152 *The Clerk. Okay. And yes, Madam Chair, I do have the
2153 amendment.

2154 *Ms. Schakowsky. So the clerk will report the
2155 amendment.

2156 *The Clerk. Amendment to the amendment in the nature of
2157 a substitute to --

2158 *Mr. Cardenas. Cardenas reserves a point of order.

2159 *The Clerk. -- to 2668, offered by the minority. At
2160 the end of the bill, insert the following.

2161 *Ms. Schakowsky. Without objection, the reading of the
2162 amendment will be dispensed with.

2163 [The amendment of Mr. Guthrie follows:]

2164

2165 *****COMMITTEE INSERT*****

2166

2167 *Ms. Schakowsky. Mr. Guthrie, you are recognized.

2168 *Mr. Guthrie. Thank you, Madam Chair, I appreciate it.
2169 And the debate today is extremely important.

2170 And remember, we are not restoring FTC authority under
2171 Section 13(b), we are granting it. The Supreme Court was
2172 clear, in a unanimous decision, that the FTC acted without
2173 authority, an authority they can't assume, but only we can
2174 grant. And that is a great debate, because we need to make
2175 sure they have the authority in the proper way.

2176 And the Supreme Court found that the FTC -- they did
2177 find they can seek monetary remedy, but only after following
2178 its administrative procedures. It can get an injunction to
2179 stop -- to immediately stop harm, but must go through
2180 procedures for monetary damages. And the case decided some
2181 of those mentioned are clear, clear deceptions and bad
2182 actors, and we want people to be remedied.

2183 But process is important, because sometimes the facts
2184 aren't so clear in every case. Process is important in how
2185 the FTC decides things are important, and regulated entities
2186 need clear and transparent rules on enforcement. And that is
2187 -- gets to my amendment today, which is the CLEAR Act, and
2188 there is a lack of clarity and transparency around FTC's
2189 interpretation of its broad section 5 authority.

2190 And some advocates have described the Commission's
2191 series of consent decrees under its consumer protection

2192 authority as common law. But under common law, entities are
2193 able to learn from previous cases that have been cleared.
2194 Clarifying the FTC's practices, including their legal
2195 analysis for closing cases, will improve all stakeholders'
2196 insights on the Commission's operations.

2197 Transparency to advance consumer protection should be a
2198 common goal for all of us in this space. Simply put, my
2199 amendment today requires the FTC to report annually on
2200 consumer protection investigations, and ensure an economic
2201 analysis is considered in determining whether or not an act
2202 is -- or practice is unfair. The report must include the
2203 number of investigations commenced and closed.

2204 For those that have been closed without official agency
2205 action, a sufficient description to indicate the legal
2206 analysis is required for supporting the decision not to bring
2207 forward a case. This enhanced clarity is vital, because it
2208 would help companies take innovative and, ultimately,
2209 consumer welfare-enhancing risks that otherwise could be
2210 relaxed in an uncertain legal environment.

2211 Madam Chair, as my colleagues have said, this should not
2212 be a partisan process. And so what I plan to do is withdraw
2213 my amendment, but want to work together, as we move forward,
2214 before we get to full committee, and see if it is possible to
2215 include my language.

2216 So I will withdraw my amendment, and yield back my time.

2217 *Ms. Schakowsky. I am so grateful, I really am. I am
2218 committed to working with you, Mr. Guthrie, and others as we
2219 move forward. But I really appreciate the cooperation that
2220 we are seeing today.

2221 So the gentleman withdraws the amendment.

2222 *Mr. Guthrie. Thank you.

2223 *Ms. Schakowsky. And Mr. -- thank you, and --

2224 *Mr. Cardenas. This is Cardenas. I withdraw my
2225 reservation and point of order.

2226 And like you, Madam Chair, I concur, I look forward to
2227 working with --

2228 *Mr. Bilirakis. Trying to get this thing to --

2229 *Ms. Schakowsky. The other -- I saw a hand up from
2230 Representative Clarke.

2231 Did you seek recognition?

2232 [Pause.]

2233 *Ms. Schakowsky. Representative Clarke, are you there?
2234 I know that your hand was up.

2235 Okay, well, let me ask then if there are any members who
2236 do seek recognition to offer an amendment to the amendment in
2237 the nature of a substitute. Anyone else?

2238 *Mr. Bilirakis. Madam Chair, Bilirakis again.

2239 *Ms. Schakowsky. Okay.

2240 *Mr. Bilirakis. Thank you.

2241 *Ms. Schakowsky. Mr. Bilirakis, you are recognized.

2242 *Mr. Bilirakis. I appreciate it. This amendment is
2243 titled "RECS 1," R-E-C-S, number one.

2244 *The Clerk. Madam Chair, I have the amendment.

2245 *Ms. Schakowsky. Okay, if the clerk would report the
2246 amendment.

2247 *Mr. Cardenas. Cardenas reserves a point of order.

2248 *Ms. Schakowsky. Okay.

2249 *The Clerk. Amendment to the amendment in the nature of
2250 a substitute to 2668, offered by Mr. Bilirakis of Florida.
2251 At the end of the bill, insert the following.

2252 *Ms. Schakowsky. And without objection, the reading of
2253 the amendment will be dispensed with.

2254 [The amendment of Mr. Bilirakis follows:]

2255

2256 *****COMMITTEE INSERT*****

2257

2258 *Ms. Schakowsky. And Mr. Bilirakis, you are now
2259 recognized.

2260 *Mr. Bilirakis. Thank you, Madam Chair. I appreciate
2261 that, again.

2262 This common-sense amendment is straightforward. It
2263 would prohibit the FTC from submitting recommendations for
2264 legislative action, including regulatory or enforcement
2265 action, without an economic analysis by the Bureau of
2266 Economics. This amendment brings much-needed reform and
2267 transparency to the FTC, and ensures no unintended
2268 consequences arise because of the hasty action that could go
2269 forward. So it makes good sense, good fiscal policy.

2270 While I will withdraw this legislation, this particular
2271 amendment, I want to thank Dr. Bucshon for working on this
2272 amendment, and I am hopeful my friends on the other side of
2273 the aisle will consider this, as we move forward with
2274 reforming the FTC.

2275 I want to thank the chair and, of course, the sponsor of
2276 the bill. And I will withdraw this amendment at this time.

2277 *Ms. Schakowsky. I think the gentleman and, you know,
2278 once again make it clear that we are going to work on this
2279 legislation as we go forward toward the full committee.

2280 And I yield for a withdrawal, I think, to Mr. Cardenas.

2281 *Mr. Cardenas. Thank you, Madam Chair. And I withdraw
2282 my consideration on the point of order, and also, once again,

2283 look forward to working with Mr. Bilirakis -- as well, thank
2284 you.

2285 *Mr. Bilirakis. I appreciate that. Thank you. I yield
2286 back.

2287 *Ms. Schakowsky. Are there any other members who seek
2288 recognition to offer an amendment to the amendment in the
2289 nature of a substitute?

2290 *Mr. Armstrong. Madam Chair, I have an amendment at the
2291 desk.

2292 *Ms. Schakowsky. Where are you, and who are you?

2293 Oh, okay, Mr. Armstrong. Here we go, okay. Mr.
2294 Armstrong has an amendment at the desk.

2295 Did you identify that? Could you identify that
2296 amendment?

2297 *Mr. Armstrong. Yes, it is titled "the SHIELD Act."

2298 *Ms. Schakowsky. Clerk, do you have that amendment?

2299 *The Clerk. Yes, Madam Chair, I do.

2300 *Ms. Schakowsky. And so, if the clerk will report that
2301 amendment and, Mr. Cardenas, do you have a --

2302 *Mr. Cardenas. Cardenas reserves a point of order.

2303 *The Clerk. Amendment to the amendment in the nature of
2304 a substitute to 2668, offered by the minority. At the end of
2305 the bill, insert the following: Section 3 --

2306 *Ms. Schakowsky. Without objection, the reading of the
2307 amendment will be dispensed with.

2308 [The amendment of Mr. Armstrong follows:]

2309

2310 *****COMMITTEE INSERT*****

2311

2312 *Ms. Schakowsky. And you are recognized, the author is
2313 recognized for five minutes.

2314 *Mr. Armstrong. Thank you, Madam Chair. This amendment
2315 would simply add the SHIELD Act to H.R. 2668.

2316 I introduced the SHIELD Act earlier this year to clarify
2317 that the Commission must prove a violation of law in an
2318 enforcement action. The FTC may not base an enforcement
2319 action on the Commission's own guidelines.

2320 Finally, the SHIELD Act would also allow defendants to
2321 offer evidence of compliance with a provision of the law any
2322 Commission guidelines pursuant to that law.

2323 If your concerns about the SHIELD Act would be that
2324 there is a claim that the SHIELD Act acts as a safe harbor
2325 for defendants, it is not. As I just mentioned, under --
2326 section B of the amendment provides that a defendant may
2327 offer as evidence any FTC guidance. No Federal judge would
2328 ever interpret that as a safe harbor, and neither should my
2329 colleagues. It simply allows a defendant to submit, as
2330 evidence of compliance with the law, FTC guidance pursuant to
2331 that law. Offering evidence does not confer immunity.

2332 And it is also worth noting that my colleagues often
2333 defend the Chevron and our doctrines. Both of these
2334 doctrines call for Federal courts to defer to an agency's
2335 interpretation. These doctrines suggest that the agency
2336 interpretations are valuable in understanding the underlying

2337 law. Yet in this context we sometimes get into a different
2338 position.

2339 Another option -- another issue that often gets brought
2340 up, and we are just pre-butting some of these, is that the
2341 claim that the SHIELD Act seeks to have it both ways. In
2342 other words, that the SHIELD Act prohibits the FTC from using
2343 noncompliance with FTC interpretations of law as proof of
2344 violation, yet that it also allows a defendant to offer FTC
2345 interpretations as evidence of compliance with the law. And
2346 I just always fundamentally disagree with this
2347 characterization.

2348 The SHIELD Act simply clarifies that the government has
2349 the burden to prove a violation of law, not a violation of an
2350 interpretation. We should punish defendants for violations
2351 of agency. We should never punish defendants for violations
2352 -- agency interpretations. Attempts to do so merely create
2353 legal uncertainty, and increase litigation and unjust
2354 outcomes.

2355 So I also will withdraw the amendment, but I think these
2356 are important concepts to bring up as we continue to move
2357 forward. And there is -- I am heartened to hear that we are
2358 willing to work with each other to talk about these things,
2359 because I think, as we move, they do become very important.

2360 And with that, I yield back.

2361 *Mr. Cardenas. This is Cardenas. I withdraw my

2362 reservation on the point of order. I look forward to working
2363 with the gentleman, Congressman Armstrong.

2364 *Ms. Schakowsky. I thank the gentleman. And now,
2365 Representative Clarke, you had your hand up earlier, and I
2366 wanted to recognize you.

2367 *Ms. Clarke. Thank you very much, Madam Chair. I move
2368 to strike the last word.

2369 And I want to start by thanking Vice Chair Cardenas for
2370 his leadership on this extremely crucial issue for all of our
2371 constituents.

2372 The Consumer Protection and Recovery Act is a critical
2373 piece of legislation that will allow countless victims of
2374 scams, fraud -- past, present, and future -- to regain what
2375 is -- was taken away from them by nefarious actors who
2376 frequently prey on the most vulnerable in our society. This
2377 includes older adults, members of immigrant communities, as
2378 well as folks who are Black and Latino, indigenous, who the
2379 FTC's own research shows are more likely to be victims of
2380 fraud than their White peers.

2381 Now, as we continue to grapple with the impacts of
2382 COVID-19 pandemic and its economic hardship, particularly on
2383 underserved communities and communities of color, it is more
2384 important than ever that we protect our vulnerable
2385 communities and provide the FTC with the power to bring
2386 monetary relief to those who have been defrauded, or fallen

2387 victim to a scam.

2388 Let's be clear. The Supreme Court's recent decision
2389 around Section 13(b) of the FTC Act does not imply that the
2390 FTC should function without the ability to bring restitution
2391 to victims. Rather, it implies that Congress must act to
2392 grant the FTC this authority.

2393 Today we are one step closer to re-equipping the FTC
2394 with this essential capability, and I hope that we move
2395 swiftly on our subcommittee so that this legislation can soon
2396 be signed into law. So, Madam Chair, I want to thank you.

2397 Mr. Vice Chair, I want to thank you.

2398 And to my colleagues, this is truly a bipartisan issue.
2399 When our constituents are duped into these scams, they are
2400 not asked whether they are Republican or Democrat. They are
2401 simply Americans being defrauded of their hard-working, hard-
2402 earned dollars, and put into unnecessary distress. We can do
2403 something about that today.

2404 With that Madam Chair, I yield back.

2405 *Ms. Schakowsky. The gentlewoman yields back.

2406 And once again I ask, are there any members who seek
2407 recognition to offer an amendment to the amendment in the
2408 nature of a substitute?

2409 *Mr. Dunn. Madam Chair, Neal Dunn, I have an amendment
2410 at the desk.

2411 *Ms. Schakowsky. And, Clerk, do you see that amendment

2412 at the desk, Mr. Dunn's?

2413 *The Clerk. What is the name of the amendment?

2414 *Mr. Dunn. Central 2.

2415 *The Clerk. Madam Chair, I have the amendment.

2416 *Ms. Schakowsky. And the clerk will report the
2417 amendment.

2418 *Mr. Cardenas. Cardenas reserves a point of order,
2419 thank you.

2420 *The Clerk. Amendment to the amendment in the nature of
2421 a substitute to H.R. 2668, offered by the majority. Page 4,
2422 line 6, strike the closing quotation marks and the final
2423 period. Page 4, after line --

2424 *Ms. Schakowsky. Without objection, the reading of the
2425 amendment is dispensed with.

2426 [The amendment of Mr. Dunn follows:]

2427

2428 *****COMMITTEE INSERT*****

2429

2430 *Ms. Schakowsky. And Mr. Dunn is recognized.

2431 *Mr. Dunn. Thank you, Madam Chair.

2432 Acting Chair Slaughter recently announced the creation
2433 of a new, centralized rulemaking group housed within the FTC
2434 Office of the General Counsel. In her press release she
2435 noted, and I quote, "The new structure will allow the FTC to
2436 take a strategic and harmonized approach to rulemaking across
2437 its different authorities. With this new group in place, the
2438 FTC is poised to strengthen existing rules, and undertake new
2439 rulemaking to prohibit unfair or deceptive practices, and
2440 unfair methods of competition, especially given the risk that
2441 the Supreme Court substantially curtails the FTC's ability to
2442 seek consumer redress under Section 13(b).'"

2443 But I am hesitant to support any new rulemaking process
2444 that could eliminate the input from the Commission's
2445 agencies, bureaus, offices, and commissioners, all who have
2446 industry-specific knowledge of the FTC's vast portfolio.
2447 Regardless, FTC cited the possibility the Supreme Court
2448 struck down their authority to seek monetary relief under
2449 13(b) as one of their primary reasons for this rulemaking
2450 overhaul.

2451 However, this bill, if passed, will affirm the
2452 Commission's authority to seek restoration, or disgorgement,
2453 therefore eliminating one of the main arguments for this
2454 change.

2455 My amendment will eliminate the enforcement of the rules
2456 promulgated by this central rulemaking body, which the
2457 underlying bill clearly eliminates the need for.

2458 Madam Chair, I hope that you and my other colleagues
2459 will agree to work with me on this further. And if so, I
2460 will withdraw my amendment.

2461 *Mr. Cardenas. I look forward to working --

2462 *Ms. Schakowsky. I can make that commitment to you
2463 right now, Mr. Dunn. Yes.

2464 *Mr. Dunn. Thank you, Madam Chair. With that, I
2465 withdraw my amendment.

2466 *Ms. Schakowsky. I am very grateful, thank you --

2467 *Mr. Cardenas. Cardenas withdraws his reservation on
2468 the point of order. Thank you.

2469 *Ms. Schakowsky. Okay. Once again, are there any
2470 members who seek recognition to offer an amendment to the
2471 amendment in the nature of a substitute?

2472 Anyone?

2473 Okay. So now, then, we will go to -- if there is no
2474 further discussion or amendments, we will proceed to vote on
2475 the amendment in the nature of a substitute. So we are
2476 voting on the Cardenas --

2477 *Mr. Cardenas. I ask for a voice vote, Madam Chair.

2478 *Ms. Schakowsky. And first, of course, all those in
2479 favor with the amendment in the nature of a substitute to

2480 H.R. 2668, as amended, will signify by saying aye.

2481 Those opposed will signify by saying no.

2482 In the opinion of the chair, the ayes have it, and the
2483 -- okay, and the amendment to the amendment is adopted by
2484 voice vote.

2485 Okay, so yes, in the opinion of the chair the ayes have
2486 it, and the ANS amendment, the amendment to the amendment, is
2487 adopted.

2488 And now -- okay. So the question now occurs on
2489 favorable forwarding of H.R. 2668, as amended, to the full
2490 committee.

2491 All those in favor of forwarding H.R. 2668, as amended,
2492 to the full committee will signify by saying yes or aye.

2493 All of those opposed will signify by saying no.

2494 In the opinion of the chair, the --

2495 [Audio malfunction.]

2496 *Ms. Schakowsky. There was no call for a vote. Did
2497 someone just call for a vote?

2498 *Mr. Cardenas. No, I think it was background noise,
2499 Madam Chair.

2500 *Ms. Schakowsky. Oh, so it was just -- okay.

2501 In the opinion of the chair, the ayes have it, and the
2502 ayes have it, and so it will be submitted to the full
2503 committee with a positive vote.

2504 Okay, so with that, having accomplished our mission, it

2505 may not have always been pretty, but we got this markup done.

2506 I am very happy.

2507 Without objection, the staff is authorized to make
2508 technical and conforming changes to the bill, consistent with
2509 the action taken by the subcommittee today.

2510 Once again, I just wanted to thank everybody for their
2511 cooperation. I am looking forward to working with all of
2512 you. And this being quite, obviously, I think, my first
2513 markup, I learned a lot, and I hope to do better in the
2514 future, but I am very appreciative of all the support.

2515 And we will meet again. And with that, the committee is
2516 adjourned.

2517 [Whereupon, at 1:31 p.m., the subcommittee was
2518 adjourned.]