

been accomplished in the 109th Congress by passing H.R. 5371, the "Lawful Intelligence and Surveillance of Terrorists in an Emergency by NSA Act," "LISTEN Act," which I have co-sponsored with the then Ranking Members of the Judiciary and Intelligence Committees, Mr. Conyers and Ms. HARMAN.

The Bush administration has not complied with its legal obligation under the National Security Act of 1947 to keep the Intelligence Committees "fully and currently informed" of U.S. intelligence activities. Congress cannot continue to rely on incomplete information from the Bush administration or revelations in the media. It must conduct a full and complete inquiry into electronic surveillance in the United States and related domestic activities of the NSA, both those that occur within FISA and those that occur outside FISA.

The inquiry must not be limited to the legal questions. It must include the operational details of each program of intelligence surveillance within the United States, including: (1) Who the NSA is targeting; (2) how it identifies its targets; (3) the information the program collects and disseminates; and most important; (4) whether the program advances national security interests without unduly compromising the privacy rights of the American people.

Given the unprecedented amount of information Americans now transmit electronically and the post-9/11 loosening of regulations governing information sharing, the risk of intercepting and disseminating the communications of ordinary Americans is vastly increased, requiring more precise—not looser—standards, closer oversight, new mechanisms for minimization, and limits on retention of inadvertently intercepted communications.

Madam Speaker, the legislation before us is not necessary. The bill which a majority of the House voted to pass last year is more than sufficient to address the intelligence gathering deficiency identified by Director McConnell. That bill, H.R. 3356, provided ample amount of congressional authorization needed to ensure that our intelligence professionals have the tools that they need to protect our Nation, while also safeguarding the rights of law-abiding Americans. That is why I supported H.R. 3356, but cannot support H.R. 5104.

I encourage my colleagues to join me in voting against the unwise and ill-considered reauthorization of the Protect America Act of 2007.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 5104, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A Bill to extend the Protect America Act of 2007 for 15 days."

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 1528, NEW ENGLAND NATIONAL SCENIC TRAIL DESIGNATION ACT

Mr. CARDOZA. Madam Speaker, by direction of the Committee on Rules, I

call up House Resolution 940 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 940

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1528) to amend the National Trails System Act to designate the New England National Scenic Trail, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Natural Resources. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived except those arising under clause 10 of rule XXI. Notwithstanding clause 11 of rule XVIII, no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived except those arising under clause 9 or 10 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. During consideration in the House of H.R. 1528 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to such time as may be designated by the Speaker.

The SPEAKER pro tempore. The gentleman from California (Mr. CARDOZA) is recognized for 1 hour.

Mr. CARDOZA. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Mr. CARDOZA. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days within

which to revise and extend their remarks on House Resolution 940.

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

There was no objection.

Mr. CARDOZA. Madam Speaker, I yield myself as much time as I may consume.

Madam Speaker, House Resolution 940 provides for consideration of H.R. 1528, the New England National Scenic Trail Designation Act, under a structured rule. The rule provides 1 hour of general debate, equally divided and controlled by the chairman and ranking member of the Committee on Natural Resources. The rule makes in order two Republican amendments submitted to the Rules Committee by the ranking member of the Subcommittee on National Parks, Forests and Public Lands, Mr. BISHOP of Utah. The rule waives all points of order against consideration of the bill except for clauses 9 and 10 of rule XXI. Finally, the rule provides one motion to recommit, with or without instructions.

Madam Speaker, the bill before us today, H.R. 1528, amends the National Trails System Act to designate most of the MMM Trail System as the New England National Scenic Trail.

The MMM Trail System extends from the Massachusetts border with New Hampshire through western Massachusetts and Connecticut toward the Long Island Sound. The highly popular trail system has existed for over 50 years and is predominantly managed and maintained by volunteers.

The trail system travels through important historical landmarks and harbors a range of diverse ecosystems and natural resources, including mountain summits, waterfalls, and critical habitats for endangered species.

In a recent feasibility study, the National Park Service recommended that the trail system be designated as a national scenic trail, with some adjustments and rerouting for a total of 220 miles. However, this study has been out since the spring of 2006; and while no changes are expected, it has been trapped in a giant morass of bureaucratic red tape that has not been finalized.

H.R. 1528 is simply about cutting through this red tape and getting Federal recognition and administrative support for a trail that is already extremely popular and well managed.

H.R. 1528 includes specific language protecting private property rights, and landowner cooperation in the national scenic trail designation is entirely voluntary. All landowners affected by the trail have the opportunity to have the trail rerouted around their property.

Furthermore, since no Federal land is involved, Federal designation of the land has no impact on State or local laws currently in place, including those governing hunting, fishing, or trapping or local zoning or other land use issues.

Madam Speaker, this designation is widely supported. It is supported by

the administration and the local communities across New England, and it has bipartisan congressional support, including the Representatives of all affected districts in Connecticut and Massachusetts.

In closing, I'd like to thank Chairman RAHALL, Chairman GRIJALVA, and Mr. OLVER for their hard work in bringing this legislation to the floor today so we can ensure that America's most treasured resources are protected for future generations.

Madam Speaker, I reserve the balance of my time.

Mr. DREIER. Madam Speaker, I yield myself as much time as I may consume.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Madam Speaker, I'd like to express my great appreciation to my very good friend and Rules Committee colleague, the gentleman from Atwater, California, who so ably represents his constituents here, is beginning his second session as a member of the Rules Committee, and I will say that it is great to welcome a fellow Californian to the Rules Committee.

But, Madam Speaker, at first blush one looks at this bill and it is, as I think was really reflected in the gentleman's remarks, sort of innocuous and noncontroversial. I mean, it's a pretty simple measure. New England National Scenic Trail Designation Act, who can be opposed to that? I mean, who could be concerned about that?

It certainly wouldn't be the first time in the 110th Congress that we have had a measure brought up with a rule that could have very easily been considered under suspension of the rules. After all, today so far we have under suspension of the rules passed a bill that provided a \$150 billion economic stimulus to our Nation's economy, an issue which I'm very proud to say, as we all are, that saw the two parties come together, working with the White House in a bipartisan way to make sure that we could have this economic stimulus package. And I hope and pray that it mitigates the economic challenges that our constituents are facing in the future.

And then, Madam Speaker, we move from there to consider the Foreign Intelligence Surveillance Act, an extension of that, as we worked on the issue of reform. And so here we've dealt with the economic stimulus and the Foreign Intelligence Surveillance Act, both measures considered under suspension of the rules, and now we have a rule for consideration of the New England National Scenic Trail Designation Act.

I think my point is that this is a measure that very easily could have been considered under suspension of the rules, and we understand that there is an attempt to fill the schedule and there were people who quipped about that last night up in the Rules Committee. It is unfortunate. I know a number of other Members have already

left. We didn't work today until noon; and we are in a position now, having begun working so late, that we're going into the night on this measure, which is a bill that initially, as I said, could have been completely noncontroversial and considered under suspension of the rules.

But I will say, having looked now at the measure, there are concerns that have been raised. They are concerns about private property rights and the threat of eminent domain. In fact, Madam Speaker, the State of New Hampshire opted out of the national designation because of these concerns. The people of New Hampshire believe that the trail running through their State is well managed and is in no need whatsoever of Federal intervention.

□ 1615

But the other States involved would like to move forward on the Federal designation, so we are here late this afternoon to consider this.

Now, as we proceed, we've simply asked that the concerns that have been raised see the light of day on the House floor; as I said, these concerns as they relate, first and foremost, with the issue of private property rights and eminent domain.

Unfortunately, while seven amendments were submitted to us in the Rules Committee, only two were made in order, two out of seven amendments submitted. And unfortunately, contrary to the promise that was made at the beginning of the 110th Congress by Speaker PELOSI that we would have a substitute made in order for legislation that's considered, a substitute that was proposed by Mr. BISHOP was, in fact, denied by the Rules Committee. And why? I mean, I ask about the time constraints again. As I said, we didn't begin work today until noon. The House convened at noon. Our most critical business of the day, as I said, the stimulus bill and the FISA law, were considered under suspension of the rules. So, why the rush for us to proceed with this New England Scenic Trails bill?

There is really no practical reason why, Madam Speaker, now that we've decided to not take this up under suspension of the rules and have a debate, that we can't engage in a little extra debate to allow for the concerns to be vetted. And if we can't have an open debate on the issue of scenic trails, then one's got to ask, what issue will we have an open debate on? I mean, what hope is there for an open process for the most significant and the most controversial issues if we can't have it on the New England National Scenic Trail Designation Act?

Now, six amendments were submitted by our friend, former Rules Committee colleague, Mr. BISHOP, addressing the private property rights issue. Four were rejected by the Rules Committee. A seventh amendment was offered by Mr. FLAKE that would explicitly prevent the use of earmarks in this bill.

Now, Mr. FLAKE's amendment would have provided an opportunity to examine this bill's provision to direct unspecified Federal dollars to two private entities. Now, did any Members have a personal stake in these private groups, in these private entities? Did any Member make a specific request on behalf of these private entities? Mr. FLAKE's amendment would have helped to shed a little sunlight on this provision before we direct Federal taxpayer dollars towards two private groups. But this amendment was also rejected, Madam Speaker, unfortunately, by the Rules Committee.

Shutting out this amendment is, to me, probably the most troubling of all. Obviously, the issue of private property rights and eminent domain that Mr. BISHOP has wanted to address and his four amendments that were denied is very, very troubling. But this issue of completely preventing Members from the opportunity for sunshine and disclosure on what could have been a request by a Member for support for two private organizations is very troubling.

Now, Madam Speaker, I've got to say that this issue itself gets right to the heart of one of the biggest challenges that we faced under the Democratic leadership in this place, and it is the inability or unwillingness to rein in wasteful earmarks.

Now, last week, we Republicans were meeting in West Virginia, and we spent a great deal of time talking about the issue of earmarks when our Republican conference came together. And I'm happy to say that, with a united front, Republicans came together on this issue and we decided that we would call for a moratorium on earmarks, a moratorium until a bipartisan committee can formulate a proposal that eradicates waste, fraud, and abuse in the earmark process. It's the so-called Kingston-Wolf-Wamp legislation that has been put forward.

Now, we offered to have a complete ban on earmarks, and we challenged our Democratic colleagues to join in with a bipartisan agreement to have a moratorium on earmarks until such time as this bipartisan committee can come forward. Now, Madam Speaker, as I see you in the chair, as I see my friend from Atwater, I suspect that either or both of you, and certainly a lot of your Members, are going to be going on to your retreat. The Democratic Caucus is, I know, going for a meeting that will be taking place over the next few days. And it's fun, but challenging, and great to have an opportunity for the two parties to work within their caucuses, your caucus, our conference, to deal with these issues.

Well, I would just like to say that, just as we did at our meeting last week, while far be it for me to be so presumptuous as to say I should set the agenda for the Democratic Caucus retreat, I would like to say that in light of the offer that we made coming forward as Republicans on this issue of earmarks, I would recommend that in

light of the discussion that came here on the floor today on this issue, the speech that was delivered last night from the President of the United States in which he called for cutting in half the number of earmarks saying that he would veto legislation if he didn't see it cut in half, the request that we have made on behalf of our constituents to say we should have this moratorium done in a bipartisan way, and we as Republicans are challenging our Democratic colleagues to do that, I would like to say that I hope very much that Members at your retreat would, rather than spending a lot of time on a number of other issues, I would hope that you would put partisanship aside and try to work, just as we did on this economic stimulus issue, in a bipartisan way to recognize the very, very pressing need for earmark reform and our proposal, which should, in fact, provide strong bipartisan support.

I will say, Madam Speaker, that the integrity and the effectiveness of this body depends on our agreement to proceed with very, very important bipartisan reform on this issue. It's my hope that my Democratic colleagues will use their upcoming retreat over the next few days as an opportunity to urge their leadership to accept our proposal to make a bipartisan effort to tackle this very, very critical issue.

Today's bill was perhaps a small but yet a significant opportunity to signal a newfound commitment to open process and meaningful earmark reform. Unfortunately, today's bill is a missed opportunity. I suspect that this measure will proceed. I don't think that we'll have the votes to defeat the previous question, which I should say I'm going to attempt to do, to defeat the previous question so that we can make in order what I would describe as the Marshall proposal, the proposal that has been put forward by one of our Democratic colleagues, Mr. MARSHALL, which is basically identical to the Boehner proposal that we have on earmark reform, which will provide a greater degree of transparency, accountability, disclosure, and enforcement on this issue, which unfortunately is not there.

So, when it comes to our attempt to defeat the previous question on this, what I will be offering is tantamount to a bipartisan proposal for our colleagues as we seek to address this issue.

So, again, I would say, Madam Speaker, if my colleagues had proceeded with this bill under a suspension of the rules, you would not have had to listen to the speech I just delivered because we would have done the exact same things as we did on the \$150 billion economic stimulus bill, and we would have done the exact same thing as we did on the very important Foreign Intelligence Surveillance Act reform measure, and albeit simply an extension, the steps towards bringing about reform.

But in light of the fact that we are here, denying the opportunity for us to address the issue of private property rights and eminent domain, and the opportunity for the kind of transparency and disclosure that everyone around here talks about on the issue of earmarks that would have come forward in the amendment offered by our colleague, Mr. FLAKE, I'm going to encourage my colleagues to vote "no" on the previous question so that we can make that earmark reform proposal in order. And if that is defeated, I will urge a "no" vote on the rule as we proceed with this.

With that, Madam Speaker, I reserve the balance of my time.

Mr. CARDOZA. Madam Speaker, I thank the gentleman from California for his kind words that he opened his statement with.

He mentioned throughout the statement that we might not be here if we were under suspension. I feel that under suspension of the rules, we would not be able to hear any of the debate that Mr. BISHOP is going to offer on his two amendments. So, we are actually, in fact, allowing Mr. BISHOP to make his amendments before the House of Representatives.

Mr. DREIER. Will the gentleman yield?

Mr. CARDOZA. I will yield to the gentleman.

Mr. DREIER. I thank the gentleman for yielding, Madam Speaker.

I would simply say that I very much appreciate his willingness to have greater openness on this debate. And unfortunately, when the Rules Committee met late yesterday afternoon, I offered an amendment to have this considered under an open amendment process, and that was defeated. And I then made an attempt to offer this under a modified open amendment process.

Mr. CARDOZA. Reclaiming my time, Madam Speaker, the gentleman did make that offer in Rules. However, it should be noted that Mr. BISHOP is the ranking member of his subcommittee. He had an opportunity to amend this bill in committee. He did not choose to offer but one amendment in committee, is my understanding, and then he came to the Rules Committee at the last minute with seven amendments.

The Rules Committee is allowing two amendments to be offered on the floor today. I think that's a fair hearing for the gentleman.

Mr. DREIER. Would the gentleman further yield?

Mr. CARDOZA. The gentleman has his own time.

Mr. DREIER. Well, I look forward to yielding to you if you would ever like to ask.

Mr. CARDOZA. I would like to just get through a few of my points, if I may.

The gentleman also brought up the issue of whether or not this bill has any effect on eminent domain. And I can tell you that there is absolutely no

authority in H.R. 1528 for the National Park Service to take land by eminent domain, nor does the Service have any authority in local zoning issues that might affect national scenic trails.

Further, H.R. 1528 explicitly states that "the United States does not acquire for trail any land or interest in land without the consent of the owner." In fact, this bill is an opt-in bill; you have to agree to have your land put into this act and used in this way.

The second part of the gentleman's statement with regard to earmarks, I'd like to just refer the gentleman to the committee report, page 7, the earmark statement. And in the committee report it states that "H.R. 1528 does not contain any congressional earmarks." This is an authorization bill, not an appropriation bill. Further, the report states that it does not contain any limited tax benefits or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI." It states that very clearly in the committee report.

Finally, the bill does allow two private groups that manage the trail currently, and this is the entire point of the bill, to receive Federal technical assistance. And that is in the way of educational experience or technical assistance to manage the trail, not resources to manage the trail.

So, I would say that there is no earmark whatsoever in this legislation.

Madam Speaker, I reserve the balance of my time.

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

I would like to respond to my very dear friend from Atwater by saying a few things.

First, on this notion of Mr. BISHOP's very able leadership position on the committee, my friend, who served with great distinction in the California State Legislature, knows very well that the legislative process is an ongoing process, and people work on amendments, people work on legislation in committee. And the fact that Mr. BISHOP may have been working on some of the amendments that he is dealing with right now and did not offer them in the committee should in no way deny him the right to represent his constituents and the American people with one of his brilliant, new, and creative ideas that quite possibly developed from the markup to the Rules Committee and now to the floor.

So, I would argue that it is very important for us to do everything that we can to ensure the most open amendment process, which is what we were promised at the beginning of this Congress.

Second, Madam Speaker, I would say to my friend on this notion of the designation of earmarks, I will say that I am particularly proud of the fact that in the 109th Congress we dealt with stronger enforcement, we dealt with the issue of earmark authorization, tax bills, and appropriations bills. Now, I will recognize that the definition that

exists for earmarks in the 110th Congress is not nearly as strong as the definition that was put into place in the 109th Congress. Why? Because the gentleman is trying to argue right now that there are no earmarks in this bill. Well, I would argue that in the 109th Congress, based on the definition that we passed in this House and was implemented, that this would have been considered an earmark.

□ 1630

Now, I know that there is a lot of vagueness on this, but we do know the following: this is an authorization bill, and there are two private entities that are the beneficiaries of this. The gentleman may be absolutely right. It may be critically important to the New England National Scenic Trail Designation Act to have these items in there. It may be. Far be it from me to say that they shouldn't be there because I don't know at this point. All we're arguing is that we should, in fact, have the opportunity for our colleague, Mr. FLAKE, who spent a great deal of time dealing with the earmark issue, to come forward with his amendment so that we could debate it. That's what we are hoping for.

So I will say, Madam Speaker, that I believe that if we, as an institution, are serious about the issue of earmark reform, reining in wasteful Federal spending, we should, in fact, in a bipartisan way, in a bipartisan way, proceed with this moratorium until such time as the bipartisan committee can come back with a group of recommendations as to how we can again, in a bipartisan way, deal with this issue of earmark reform.

With that, Madam Speaker, I would like to yield such time as he may consume to my very good friend from Utah, my former Rules Committee colleague (Mr. BISHOP).

Mr. BISHOP of Utah. Madam Speaker, I appreciate the opportunity in being here and talking on this particular bill. This is a day when we have dealt with some emergency measures in a very bipartisan way. I don't know if this is classified as an emergency measure, but it can be a bipartisan approach, too, depending on how we go from here on out.

I am grateful to the Rules Committee for taking my six amendments and approving two for the floor. This is a .333 batting average. It's enough to get me in the Hall of Fame. I'm at least above the Mendoza line, and I appreciate your doing that for me.

However, there are some amendments that really are bad amendments aimed at trying to scuttle a bill, aimed at putting shackles on the runner to prohibit him or her from getting to the finish line. The amendments that were proposed by Representative FLAKE and myself are not aimed to do that. They are aimed to take a bill and to improve a bill so they can be approved in a bipartisan way and take a bill and make it even better.

Let me assume that I can just talk for a moment on a couple of amendments that were not made in order. This trail covers the States of Massachusetts and Connecticut, but in reality the trail goes to New Hampshire, Massachusetts, Connecticut. Only two of those States are proposed in this particular bill and then a process allowed for New Hampshire to join later on. One of the amendments simply said, why don't you make the same process for all three States? It's not an effort to slow anything down. It's an effort to try to be rational in the approach to take place. I thought it was a significant and simple and straightforward amendment.

One of the things we always talk about is how important it is to have informed citizens and an informed citizenry. We had, for this particular bill, one specific property owner who did not wish her property to be included in the bill. At great expense to her, with a great deal of study and effort coming to Washington to lobby us, she was allowed by the committee to be exempt from this trail boundary line. I appreciate the committee's doing it. It was appropriate to do so. It's very positive on the part of the Natural Resources Committee to do so.

But the question that should be brought to mind is, was she an isolated situation, or was she indicative of a greater problem? Indeed, if you look at the record of the testimony, there are at least 40 other people that have the same question, the same concerns, the same approach. And so what we wanted to do is to make sure in one of our amendments that citizens were allowed to be notified that they would be now included in what before had been a voluntary trail system now into a federally mandated and regulated trail system.

And this is not an onerous task. We were told in committee that both the organizations that are currently managing this, as well as States, had a database of all the property owners in both Massachusetts and Connecticut, and they are already being mailed yearly. What would be the problem in including another paragraph in the yearly mailing saying, this is about to happen to you and if you don't like it, this is the process you can use to exempt yourself, or, even better, if you do want to be part of it, this is the process you could use to include yourself and your property?

Once again, that's not to stop the bill. It's simply a matter of making sure that everyone is clearly informed of what is about to take place, because in the history of trails, in the history of land issues in these United States, that has not always been the case, that every individual is informed of what is happening to him before it takes place.

I don't think, once again, that was an onerous request. It was unfortunate. I think it simply indicates that we should value the individual in our legislation, that we should say if even one

person is going to be adversely affected and does not wish to be adversely affected, his home, his farm, his property should be held inviolate, and we should respect that. And that was the purpose of one amendment that was ruled out of order by the Rules Committee. Once again, I don't think it would have negatively harmed the bill. In fact, I think it would have moved the bill forward in a bipartisan manner.

We will talk a great deal about the concept of takings. No one who has talked about this bill wants takings to take place, wants property taken from an individual. We have heard that before. And yet in the attempt on the committee staff's part to protect individuals, there is a loophole. There is a huge loophole that will result in contradictions coming into the future. Those are some of the things we tried to put in order. And simply if you had taken that loophole out of the system and done what everyone says they want to do, we would have had a bill that all of us on this side of the aisle could have stood up and said, yes, this is a bill that we all had our input on and we are all prepared to move forward on the bill.

It could have moved forward in the same bipartisan manner, hopefully even a bigger bipartisan manner, than the other two emergency pieces of legislation we handled today, as well as the LSU resolution, which we also did in a bipartisan way, except for the people from Ohio.

Let me, at last, very briefly, re-echo what Mr. DREIER said about the Flake amendment, the so-called earmark amendment. By definition this bill does not have earmarks. That's because the committee said it didn't. By definition this bill doesn't have a PAYGO question, because the committee said it didn't. But, indeed, right after we had the State of the Union and the President talked about earmarks and the Speaker talked about earmarks, the minority talked about earmarks, we have the first authorization bill coming before us with two organizations, the Appalachian Mountain Club, the Connecticut Forest and Park Association, specifically mentioned as being eligible for grants given to them by the Federal Government, and then the language goes on and says "or other groups," I think "groups" or "associations." Had you simply taken out the specific names of the two organizations and simply allowed it to be the other groups, any group could apply for these grants and the leadership in this particular one, it would have solved all of the problem. And that's what Mr. FLAKE was trying to say. It wouldn't have prohibited them from being in the management position on this trail, but it would have simply made it a clear and open process without giving an earmark to these two organizations. That's all that needs to be taken.

Once again, these amendments that we presented were not in an effort to kill the bill, to slow it down, to make

sure it does not pass. They were in an effort to try to make sure that we took some of the areas which we think are a little rough, smoothed them over, and gave us some protections for the future that we could feel comfortable, as the Republican side, in joining with our Democratic colleagues to move this bill forward and understand that many of the things we are concerned about, protecting the individual, protecting the process that we go through, to ensure that those things are included in the bill before it leaves this body. It would have been a chance to show real bipartisan support for this concept going forward.

Hopefully, we will still have some debate on the amendments that were made in order, maybe some other issues that we can once again show the ability of this body to come together and make sure that a bill that everyone can support goes forward as opposed to one that seems to be skewed in one direction or the other.

With that, I appreciate the time being yielded to me.

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

I agree totally with one statement that Mr. DREIER, my colleague and friend from California, said, and that is that Mr. BISHOP often comes up with brilliant ideas. Today we are allowing two of those brilliant ideas to be debated on the floor.

With regard to some of the other issues that were raised, I already read into the RECORD the fact that the committee has certified that there are no earmarks in this bill. Mr. BISHOP says, well, there's a potential to have grants later on down the road. My understanding of grants is that they come from the administration, not from Congress. And if we start talking about every grant that is given by the Federal Government or the U.S. Government to the myriad of people who receive them throughout this country, that is a process that Congress has set up for a number of years. That has never before been the definition of an earmark, to my knowledge. So if that's the new definition of earmarks, that's news to me.

But I don't believe, based on the committee's certification, what I have heard, the testimony I have heard, there are any earmarks in this bill. That is what has been reported in the report, and I believe that to be the case.

Secondly, as I have previously stated as well, this bill is a voluntary measure where landowners have the absolute right to opt in or out. And so I can't see where there is coercion. There is agreement among the delegations in the affected regions, our House colleagues.

I believe that this is a good measure and it should go forward, and I would encourage my colleagues to support the rule.

Madam Speaker, I reserve the balance of my time.

Mr. DREIER. Madam Speaker, I yield myself such time as I may consume as we proceed with this debate on this authorization and earmark process.

I will acknowledge that based on this new and, I believe, rather unfortunate definition that is provided for earmarks, you have, in fact, seized a little loophole in trying to determine that these are not earmarks.

And I will tell you, Madam Speaker, what that loophole consists of. Not a specific dollar amount. Now, Madam Speaker, potentially this is even more egregious. Why? Because without a specific dollar amount, we don't know exactly how much is going to be expended. And Mr. BISHOP has just given me a copy of the proposed blueprint budget; and, Madam Speaker, what that consists of is specific designation to these private entities. And in many ways, this is, as I said, more egregious than had a specific amount been put into place, which would have required this to have been considered as an earmark.

Madam Speaker, our quest is simply for more transparency, accountability, and disclosure of our constituents' hard-earned taxpayer dollars; and we believe very strongly that that should, in fact, be the case. Now, everyone says what I just said. Everyone says we want more transparency, accountability, and disclosure. Everyone says that we want to be great stewards of the taxpayer dollars, those dollars of our hardworking constituents. The fact is what we have got here is something that is potentially even worse than under the definition that you all have as an earmark.

So I will say that looking at this proposed blueprint budget makes it even more imperative that we do everything within our power to proceed with making sure that we defeat the previous question and make in order the earmark amendment that we are going to be offering, and I hope very much that my colleagues will join in doing that.

Madam Speaker, I will be asking Members to oppose the previous question, as I have said, so that I can amend the rule to allow for consideration of H. Res. 479, the Boehner earmark enforcement rule changes. And don't fear, the amendment would not prevent the House from considering the New England National Scenic Trail Designation Act. It would merely allow the House to also consider the Boehner earmark reform proposal.

Over the first year of Democratic control, we have learned that the earmark rule does not apply when considering amendments between the Houses as well as a myriad of other legislative scenarios which were not contemplated when the new Democratic majority put through the so-called earmark reform rules. These loopholes, as I was saying earlier, have prevented numerous earmarks from being challenged in the energy bill, the State Children's Health Insurance Program expansion legislation, and the omnibus bill, which, as

we all know, contained nearly 9,000 earmarks, including at least 150 earmarks that were air-dropped in the bill at the last minute.

Now, Madam Speaker, it's not just Republicans as I was saying in my opening remarks who have taken note of these earmark loopholes. Our colleague from Georgia (Mr. MARSHALL) recently introduced a virtually identical rules change geared at closing the air-drop loophole as well as the amendments between the Houses loophole.

□ 1645

Obviously, I believe it's about time for the Democratic majority to start listening not only to concerns that are emerging from those of us who serve in the minority, but from members of their own caucus on this issue as well.

Madam Speaker, I ask unanimous consent that the text of the amendment and extraneous material be inserted into the RECORD just prior to the vote on the previous question.

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

There was no objection.

Mr. DREIER. Madam Speaker, I urge my colleagues to vote "no" on the previous question so that I can amend the rule in order to restore accountability and enforceability to House earmark rules.

With that, I yield back the balance of my time.

Mr. CARDOZA. Madam Speaker, I thank the gentleman for his debate today. I disagree vehemently that his rendition of the earmark process is an accurate one. I don't believe that last Congress's rules on earmarks were stricter and more transparent than this Congress's. In fact, I believe that the country knows that the earmark process has gotten more transparent under the Democrats and that we have far fewer earmarks in the current process than we had previously. I think voters spoke about that in the last election.

I would just go on to say, Madam Speaker, that 40 years ago, the National Trails System Act was established to provide a system of trails for outdoor recreation and the enjoyment of scenic, historic, and naturally significant areas. H.R. 1528 adheres to these very long-established values. It ensures that the sweeping, natural landscapes across New England remain protected and untouched so they may be enjoyed by our children and grandchildren for years to come. It deserves strong support by all Members on the floor today, and I urge a "yes" vote on the rule and a "yes" vote on the previous question.

The material previously referred to by Mr. DREIER of California is as follows:

AMENDMENT TO H. RES. 940

OFFERED BY MR. DREIER OF CALIFORNIA

At the end of the resolution, add the following:

SEC. 3. That immediately upon the adoption of this resolution the House shall, without intervention of any point of order, consider the resolution (H. Res. 479) to amend the Rules of the House of Representatives to provide for enforcement of clause 9 of rule XXI of the Rules of the House of Representatives. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution and any amendment thereto to final adoption without intervening motion or demand for division of the question except: (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Rules; (2) the amendment printed in section 4, if offered by Representative Boehner of Ohio or his designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read and shall be separately debatable for forty minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

SEC. 4. The amendment referred to in section 3 is as follows:

Strike all after "That" and insert the following:

(1) Clause 9(a) of rule XXI is amended by striking "or" at the end of subparagraph (3), striking the period at the end of subparagraph (4) and inserting "; or", and adding the following at the end:

"(5) A Senate bill held at the desk, an amendment between the Houses, or an amendment considered as adopted pursuant to an order of the House, unless the Majority Leader or his designee has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill and amendments (and the name of any Member, Delegate, or Resident Commissioner who submitted the request for each respective item in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration."

(2) Clause 9(c) of rule XXI is amended to read as follows:

"(c) As disposition of a point of order under paragraph (a), the Chair shall put the question of consideration with respect to the proposition. The question of consideration shall be debatable for 10 minutes by the Member initiation the point of order and for 10 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn."

(The information contained herein was provided by Democratic Minority on multiple occasions throughout the 109th Congress.)

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Democratic majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's *Precedents of the House of Representatives*, (VI, 308-311) describes the vote on the previous question on the rule as "a motion to direct or control the consideration of the subject before the House being made by the Member in charge." To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that

"the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition" in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: "The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition."

Because the vote today may look bad for the Democratic majority they will say "the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever." But that is not what they have always said. Listen to the definition of the previous question used in the *Floor Procedures Manual* published by the Rules Committee in the 109th Congress, (page 56). Here's how the Rules Committee described the rule using information from *Congressional Quarterly's* "American Congressional Dictionary": "If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business."

Deschler's *Procedure in the U.S. House of Representatives*, the subchapter titled "Amending Special Rules" states: "a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate." (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon."

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. CARDOZA. Madam Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GRIJALVA. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous materials on H.R. 1528.

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

There was no objection.

NEW ENGLAND NATIONAL SCENIC TRAIL DESIGNATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 940 and rule

XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1528.

□ 1649

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1528) to amend the National Trails System Act to designate the New England National Scenic Trail, and for other purposes, with Mr. LYNCH in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Arizona (Mr. GRIJALVA) and the gentleman from Utah (Mr. BISHOP) each will control 30 minutes.

The Chair recognizes the gentleman from Arizona.

Mr. GRIJALVA. Mr. Chairman, I yield myself such time as I may consume.

H.R. 1528 amends the National Trails System Act to designate most of an existing trail system in Massachusetts and Connecticut as the New England National Scenic Trail. In 2002, Congress directed the National Park Service to study this trail for potential addition to the National Trails System. The draft study, completed in 2006, supports designation of the trail, with some changes to the route to address landowner concerns. The administration has testified that no major changes in the study are expected, and expressed support for the measure in testimony before the Natural Resources Committee.

The trail runs 220 miles through the heart of Connecticut and Massachusetts, past some of the most spectacular vistas and landscapes in New England. The trail offers some of the world's best opportunities to view volcanic and glacial geology, including fossil and dinosaur footprints. The proposed trail also fulfills another requirement of the National Trails System Act by being close to population centers. This trail has over 2 million people that live within 10 miles of the route, and this accessibility makes the trail a wonderful recreational opportunity.

The route of the trail crosses land owned by State and local governments and by private landowners. No Federal land is involved. Local trails associations have obtained permission from landowners allowing existing trails to cross their lands. If a landowner requests that the association close the trail on his or her property, the association honors that request. The NPS study identified no need for direct Federal trail ownership or direct Federal trail management.

If H.R. 1528 is enacted, the role of the National Park Service in implementing the designation would be to provide technical and financial assistance to