

people react in the sense that we find more security.

I am concerned that we are getting into the bunker mentality, people afraid to go anyplace and afraid to leave. Why? Because some terrorist attack may occur.

It is obvious that we need to react to the crimes and these murders as a people that are affected by it. But we can't just be defensive against ISIS and other terrorist organizations. We can't just defend ourselves.

We have to eliminate ISIS. They are at war with the world and people who don't agree with them. They are at war. Now, we probably need to understand that their goal is to not only kill and maim, but to cause fear—fear—individual fear. They use every possible way they can do it, from social media to bragging about the murders on YouTube.

So we, as a people, need to understand that we are going to have to eliminate ISIS. We are going to have to track them down, go get them, and eliminate them. You can't negotiate with these people. That is out of the question.

So we either just react and try to defend ourselves when they commit crimes or we go after them. So I hope that the United States presents a better strategy and lets those folks know that, to just kill anybody that disagrees with ISIS, their days are numbered because we are going to go eliminate them. We have to.

Because they have attacked us, our response must be more than defensive. We must be offensive. We must let them know: you can't do this. You can't kill people because you don't like them, no matter where that occurs in the world.

So I would hope that the United States, with our partners in other countries, finds an overall strategy that is successful and that eliminates these people who kill because of a perverted sense of their religion.

But today we do mourn the loss and we show the support of our country with our neighbors across the seas for the crimes that have been committed against them.

As the ranking member has pointed out, this is an issue that is totally supported by both sides of the House. The Foreign Affairs Committee works together on almost all issues, and this is another example of that.

With that, Mr. Speaker, that is just the way it is.

I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Speaker, I rise in strong support of H. Res. 658 and in remembrance of the innocent victims who lost their lives, and those who were seriously injured, this morning in the barbaric attacks perpetrated by terrorists in Brussels, Belgium.

Our hearts and prayers are with the families and loved ones of the victims and our thanks and appreciation go to the first responders who selflessly came to the aid of their fellow members of the human family.

Brussels will emerge from today's attacks stronger than ever and more firmly committed

to the values and principles that have made it so great.

And as Brussels recovers and responds, I hope its people take comfort in the certain knowledge that the people of the United States stand in solidarity with them.

Today's attacks are a reminder of the common danger the free, democratic, and peace loving nations of the world face from those who reject the norms of civilized society and abuse the liberties and freedoms afforded them by free societies.

Those responsible for today's crime against humanity should make no mistake; they will be held to account in this life and the next.

But today our thoughts and prayers are with the people of Brussels, which represents everything terrorists despise: a symbol of the modern world where persons of differing faiths, creeds, races, and cultures live together in peace, harmony, and freedom.

That symbol is recognizable to Americans because it also represents the American heart and spirit.

The terrorist attacks in Brussels were horrific acts on innocent civilians perpetrated by depraved individuals who misuse the peaceful religion of Islam for their own misguided purposes.

Their horrible and heinous acts are their responsibility, and theirs alone, and for which they can be assured that they alone will be held accountable.

But that will come another day; today I ask a moment of silence for the victims killed and injured in the terrorist attacks in Brussels.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. POE) that the House suspend the rules and agree to the resolution, H. Res. 658.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. POE of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

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

STANDARD MERGER AND ACQUISITION REVIEWS THROUGH EQUAL RULES ACT OF 2015

Mr. GOODLATTE. Mr. Speaker, pursuant to House Resolution 653, I call up the bill (H.R. 2745) to amend the Clayton Act and the Federal Trade Commission Act to provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 653, the bill is considered read.

The text of the bill is as follows:

H.R. 2745

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Standard Merger and Acquisition Reviews Through Equal Rules Act of 2015".

SEC. 2. AMENDMENTS TO THE CLAYTON ACT.

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

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

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

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

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

(2) in section 5—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

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

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

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

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

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

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

The gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Georgia (Mr. JOHNSON) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 2745, currently under consideration.

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

There was no objection.

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

Mr. Speaker, in 1914, Congress passed the Federal Trade Commission Act, marking the beginning of a dual antitrust enforcement regime in the United States.

Because both the Department of Justice and the Federal Trade Commission enforce our Nation's antitrust laws, companies may and often do have different experiences when interacting with one agency relative to the other.

One area in which the disparity can be the most striking and troubling is in the merger review process. When a company wishes to merge with or pur-

chase another company, it must notify both antitrust enforcement agencies of the proposed transaction.

The Department of Justice and the Federal Trade Commission then determine which agency will be responsible for reviewing the transaction. As there are no fixed rules for making this determination, it can appear that the decision is made on the basis of a flip of the coin.

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

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

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

There is no justification for these disparities in the merger review processes and standards. The bipartisan Antitrust Modernization Commission recommended that Congress remove these disparities, and the bill before us today, the Standard Merger and Acquisition Reviews Through Equal Rules Act, or SMARTER Act, does just that.

I applaud Mr. FARENTHOLD of Texas for introducing this important legislation that will enhance the transparency, predictability, and credibility of the antitrust merger review process.

By enacting the SMARTER Act into law, Congress will ensure that companies no longer will be subjected to fundamentally different processes and standards based on the flip of a coin.

Notably, the legislation has garnered the support of former and current FTC Commissioners, including former Chairman David Clanton, former Commissioner Josh Wright, and sitting Commissioner Maureen Ohlhausen.

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

Mr. Speaker, I urge my colleagues to vote in favor of this good government bill.

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

Mr. JOHNSON of Georgia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to the so-called SMARTER Act, the Standard Merger and Acquisition Reviews Through Equal Rules Act, which really should—I mean, it is a misnomer.

We should rename this bill. Instead of that, we should rename it the Sadly More Acronyms for Really Terrible and Esoteric Requirements Act.

□ 0945

I know a lot of people around the country are wondering: Well, what is this all about? It must be important that they are doing this.

I will tell you what is important about it. It is a piece of legislation that would impact the largest and most consequential of corporate mergers, of multinational corporate mergers. Those things have to go through a review process with our Federal Trade Commission. Also, the Department of Justice has an antitrust division.

What this piece of legislation would do would be to gut one of the agency's—the FTC's—ability to oversee and deal with merger review issues that affect the largest and most consequential of their mergers, of these big corporate mergers.

Does this piece of legislation benefit the people? Or does it benefit the 1 percent of large multinational corporations that, I guess, need help avoiding regulatory authority by our government?

Well, it looks like that is what it is. It is something that is going to help out big business at a time when people in this country are very angry about the fact that the playing field is not level. The corporations and the wealthy have been doing pretty well over the last couple of generations, but people are seeing their wages stand right there where they were. They are working harder, they are more productive, but yet they can't even take a vacation. They can't even afford to take a day off to see about a sick child.

This is why people are so angry. It is because they look at Congress and they see us doing this kind of work benefiting 1 percent of the largest multinational corporations when there are other things like passing a budget, dealing with the Zika crisis which is unfolding, dealing with the Flint water crisis, dealing with the opioid addiction crisis in this country.

We can't even pass a budget. Here we are going to pass the so-called SMARTER Act today, and then we are going to go home for almost 3 weeks. They call it a district work period, but it is actually a period where folks are out campaigning, trying to retain their seats. People are angry about that.

Congress first established the Federal Trade Commission in 1914 to safeguard consumers against anticompetitive behavior by empowering the Commission with the authority to enforce, clarify, and develop antitrust law. President Woodrow Wilson later described the creation of the Commission as specifically providing for tribunals that would “determine what was fair and what was unfair competition; and to supply the business community not merely with lawyers in the Department of Justice who could cry, ‘Stop!’, but

with men in such tribunals as the Federal Trade Commission who could say, 'Go on,' who could warn where things were going wrong and assist instead of check."

Today, under the process of administrative litigation, also known as part 3 litigation, the Commission does just that. Under this authority, it may seek permanent injunctions in its own administrative court in addition to its ability to seek preliminary injunctions in Federal District Court. This authority is a unique mechanism that takes advantage of the Commission's longstanding expertise to develop some of the most complex issues in antitrust law.

But the SMARTER Act would upend this century of precedent and expertise by creating a uniform standard for preliminary injunctions in cases involving significant mergers and other transactions and, alarmingly, eliminating the Commission's ability to administratively litigate antitrust cases.

Proponents of the SMARTER Act argue that divergent standards for enjoining mergers may undermine the public's trust in the efficient and fair outcome of merger cases. They also state that the outcome of a transaction comes down to a coin flip between the agencies to determine which will review a transaction. That claim is ridiculous and it is not borne out by the evidence.

The American Antitrust Institute, a consumer-oriented antitrust organization, conducted a lengthy study of workload statistics compiled by both antitrust agencies and found that the concerns of the bill's sponsors are without foundation.

Jonathan Jacobson, a leading antitrust attorney who served on the Antitrust Modernization Commission, testified that in his 39 years of practice, the outcome of a merger has never turned on the differences that the SMARTER Act seeks to address in antitrust law.

Indeed, of the 3 percent of transactions requiring second requests for information from the antitrust agencies, only about 1.5 percent of those cases are stopped or modified. An even smaller percentage of these cases go to trial for an administrative hearing. We should hesitate before making wholesale changes to the law based on theoretical concerns involving about 1 percent of mergers, which also happen to be some of the largest and most consequential.

In the absence of any meaningful evidence suggesting a material difference in the enforcement of the antitrust laws, it is difficult to upending longstanding antitrust practices at the FTC for consistency's sake alone based on speculative harms. But even assuming that there are material differences in cases brought under these standards, we should strike a balance in favor of competition by lowering the burden of proof in cases brought by the Justice Department, not by raising the Commission's burden for obtaining preliminary injunctions.

Courts already require a lower burden of proof in cases brought by the Commission and Justice Department precisely because both are expert agencies equipped with large staffs of economists who analyze numerous mergers on a regular basis and who may only bring cases that are in the public interest. To the extent that we should address perceived differences in the standard for preliminary injunctions in merger cases, legislation should favor increased competition, not the interests of merging parties.

The SMARTER Act would eliminate the FTC's authority to administratively litigate mergers and other transactions under section 5(b) of the FTC Act. Leading authorities in antitrust across party lines have expressed serious reservations with eliminating the Commission's administrative litigation authority.

For instance, Bill Kovacic, a former Republican chair of the Commission, has referred to this aspect of the bill as "rubbish," noting that the Commission has used administrative litigation to win a string of novel antitrust cases that courts have ultimately upheld where the "Commission has had to fight for every single foot along the way."

Edith Ramirez, the chairwoman of the FTC, likewise wrote last Congress that eliminating the FTC's administrative litigation authority would "fundamentally alter the nature and function of the FTC."

Mr. Speaker, 2015 was the year of the merger, megamergers, mergermania. There was over \$3.8 trillion in merger spending, a record that far exceeded expectations. While fewer than 20 percent of mergers raise competition concerns, it is clear that a vote for H.R. 2745 is a vote for concentrated, private economic power. At a time of increased consolidation in key industries, we can't afford more Republican attacks on government, which is what H.R. 2745 is, plain and simple.

I urge my colleagues to oppose this legislation.

I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I yield as much time as he may consume to the gentleman from Texas (Mr. FARENTHOLD), a member of the Judiciary Committee, and the vice chair of the Subcommittee on Regulatory Reform, Commercial, and Antitrust Law.

Mr. FARENTHOLD. Mr. Speaker, it is a privilege to be here today to be the sponsor of the SMARTER Act.

This is just good government. We have a situation now that if you want to merge your company with another company, you could go before the Federal Trade Commission or you could go before the Department of Justice.

Now, you would think that the Clayton Act that governs antitrust law would say: All right. Well, we are going to get treated the same, no matter which way we go, the law is the law.

But that is not how it works. A big piece of this is the procedural aspect of

it. If your merger is reviewed by the Department of Justice and they have a problem with it and they need a preliminary injunction to stop it, they go to Federal Court before a judge, as the Founding Fathers intended, the executive branch agency, and there is a dispute, and it is litigated in front of a Federal court.

But if you go before the Federal Trade Commission, they could go to Federal court like the Department of Justice, but they can also go to their own court. They have got their own court with an FTC employee as the judge. Now, we have got administrative law courts that work, but they can also do both.

You have got a situation that the merger could be delayed. In these business transactions, as in life, time is money. Just the threat of going through this administrative process has the effect of giving the FTC the ability to extract concessions that the DOJ wouldn't.

Look, we need to be treated fairly no matter which agency reviews it. This is the main gist of the SMARTER Act. Let's make it the same if you go to the DOJ or the FTC.

This isn't just something that we, Republicans, pulled out of our hats. This is a recommendation from the bipartisan Antitrust Modification Commission. They have testified that this is part of what they think needs to be done to make a better, more efficient government.

Listen, nobody wants to be tied up in red tape. As you go through a merger and you draw the short straw and end up in front of the FTC, you have got another spool of red tape that you could very possibly get rolled up in. I don't think that is fair and I don't think the American people think that is fair.

Now, my colleague on the other side of the aisle, the gentleman from Georgia (Mr. JOHNSON), says this guts the antitrust laws. It doesn't. It just makes them fairer. It makes the review the same no matter where you go. It is commonsense, good government.

I don't have anything else to say. I don't see how you can be against fairness.

Mr. JOHNSON of Georgia. Mr. Speaker, before I recognize the Honorable BILL PASCRELL from New Jersey, who serves on, by the way, the Budget and the Ways and Means Committees here in Congress, I would like to point out that we have got a severe problem that we are confronting this morning. It is the big, bad FTC, which is treating the big multinational corporations unfairly. It is abusing them, and something needs to be done. The American people are demanding it.

Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. PASCRELL) so that he can explain further how important this bill is to the American people.

Mr. PASCRELL. Mr. Speaker, I thank the ranking member for yielding.

This bill is terrible. The Federal Trade Commission is tasked with protecting consumers from anticompetitive mergers. What I just heard from the gentleman is that this is all about getting rid of red tape. Baloney. This is about money, this is about keeping money in your own pocket and protecting yourself against the consumers.

□ 1000

Concessions we are talking about here.

The Federal Trade Commission is tasked with protecting consumers from anticompetitive mergers. That is what the job is. Corporate mergers can make industries more efficient and bring benefits to customers, but in some cases, they have the potential to increase costs and hurt competition. Mr. Speaker, if you deny that, then you don't have the facts, and I am going to lay them out right now.

Government should not be in the business of setting prices for healthcare services or anything else for that matter—for airline tickets, cable Internet services, or anything else. I hope we agree on that. That is why we need to rely on robust market competition—to keep the prices of goods and services down and ensure that consumers are getting a fair deal.

I tell my friends on the other side of the aisle, with due respect, that we are pretty good fans of competition; yet here we are, after Bloomberg dubbed 2015 the “Year of the Mergers,” weakening a key FTC tool to ensure healthy competition in a variety of markets.

Mr. Speaker, I have been particularly concerned with this issue, and I mentioned four areas here. I am very, very concerned about the mergers we have seen in many sectors of the healthcare industry. Read my lips: look at the facts through the Speaker. In my left hand, a recent report by the Health Care Pricing Project, which was written up in *The New York Times* late last year, found that monopoly hospitals have prices that are 15.3 percent higher than hospitals in an area with four or more hospitals—even after controlling for costs in each area.

Don't you really believe in competition, or do you just say that? Is that simply a bumper sticker, a slogan, or do you mean that?

Two pending mergers in the insurance industry, between Anthem and Cigna and Aetna and Humana, set the stage for major consolidation in this industry as well. In other words, what this report did was establish the fact—I hope you are interested in the facts—that the reason we have increasing healthcare costs—a major reason—is for the merger and the reduction in competition in health care.

Then there are the mergers that are motivated by U.S. tax dodging. Mr. Speaker, and we have talked about this, which have major implications on competition but also on the United States tax base. One pending merger would see a major United States com-

pany slash its United States tax bill by moving its headquarters overseas and creating the largest drug company in the universe.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. JOHNSON of Georgia. I yield the gentleman an additional 1½ minutes.

Mr. PASCRELL. Working Americans across the country do not have the benefit of hiring consultants, of shifting their earned income around the globe to find the lowest tax rate. And you are standing there, saying you want to help the consumer? It is just the opposite.

Many multinational corporations do just that. Corporate inversions allow companies to renege on the obligation to America, eroding the United States tax base and hurting American competitiveness. Who are you with anyway? If you live in a neighborhood and one house—let's say the biggest house on the block—doesn't pay its property taxes, what happens? Everyone understands that the rest of the houses on the block have to make up the difference.

The Treasury has taken steps to address inversions, but it is up to Congress to pass legislation that addresses this problem immediately. In the meantime, the bill before us today would weaken the FTC's ability to monitor and enforce against unfair, anticompetitive mergers, and they are all over the place. I blame, partially, the administration, as the former Attorney General did nothing about mergers. While people were trying to get him to resign for other reasons, that would have been a darned good reason.

This is not Republican or Democrat, my friends. These are simply the facts, and I can tell you this one report will very, very much crystallize what those facts are.

Mr. GOODLATTE. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. FARENTHOLD).

Mr. FARENTHOLD. Mr. Speaker, I appreciate the gentleman from New Jersey's commitment to the free market, because I think we all believe a free and fair market is in the best interest of America and in the best interest of every American consumer, but we have got to take a look at the procedure.

This is, primarily, procedural in nature so that those companies that are seeking mergers, whether they go through the FTC or through the Department of Justice, are simply treated the same. If the gentleman is concerned about the fact that there are too many mergers—that we are getting bigger and bigger companies and that it is stifling competition—that is a legitimate conversation for us to have in the context of changing the law with respect to monopolies, mergers, and acquisitions.

What we are trying to do here is not change that law, but make that law

fairer and applied equally, regardless of whether one is in front of the Department of Justice or whether one is in front of the Federal Trade Commission. If the gentleman takes that argument, then he is saying, right now, the FTC has an advantage in stopping these mergers because it has all of these other procedures in place, as opposed to the Department of Justice.

Why should one get stuck with a tougher row to hoe based on which agency one goes in front of? That is just not fair.

Mr. PASCRELL. Will the gentleman yield?

Mr. FARENTHOLD. I yield to the gentleman from New Jersey.

Mr. PASCRELL. Mr. Speaker, what we need to understand is that we are not only talking about the FTC, we are talking about the Justice Department, which oversees these mergers regardless of whether we are talking about health or airlines, which is a catastrophe. I only brought up health care today. We are having that discussion you just talked about.

Mr. FARENTHOLD. In reclaiming my time, I think the gentleman has a problem with the fact that there are so many mergers and that he thinks it is anticompetitive and not good for folks. That is an opinion that the gentleman is, certainly, entitled to, but that is, I think, out of the scope of what this bill is trying to do.

Mr. Speaker, this bill takes existing law and says, look, let's apply it the same regardless of which agency one is before. I think that is the difference there. I would be happy to meet with the gentleman in his office and see if we can find some ways that we can agree so that we might reform the overall antitrust system.

I yield to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, I am mainly concerned about this piece of legislation because you have determined—you have defined—a non-existent problem while applying a less consumer friendly standard. That is my position.

What I brought up here is part of the mix. It is putting it in context as to what has happened. The consequences of what has happened are higher prices for us—for you and me—and I know you are concerned about that.

Mr. FARENTHOLD. In reclaiming my time, my point is that, if the gentleman thinks we have too many mergers, let's change the law, but let's have a fair procedure. What this bill is designed to do is to have a fair procedure for those who are engaged in that activity.

Mr. JOHNSON of Georgia. Mr. Speaker, I yield an additional 1 minute to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, I would like to respond to my friend from Texas.

We went through a period of time in the first decade of this century of U.S.

prosecutors and attorneys looking at the subject of deferred prosecutions. I am talking about justice here. That is the bottom line. That is what we are talking about here.

Instead of bringing corporations to trial that had violated the law—and I am not an attorney. I am not the reason for two of my sons being attorneys, but I am not an attorney—they worked out a proposition. This is what they are trying to do, and this is what this is all about, if I could draw a comparison, which is you slap a corporation on the wrist, it pays a fine, and the fine becomes the cost of doing business.

Mr. Speaker, this is going in the wrong direction. It is attacking a problem that does not exist instead of attacking a problem that does exist.

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

Mr. JOHNSON of Georgia. Mr. Speaker, I yield myself such time as I may consume.

I am anguished in listening to the pleas of my friend from Texas to help these megamergers, to help these big, multinational corporations. They need us so badly because the big, bad FTC is treating them too tough. It is too rough on them. Therefore, we have to make the law fairer for them. They have all of these silk stocking lawyers off of Wall Street, but we need to help them. We are not doing anything else here in Congress other than helping multinational corporations, hearing the plea that these folks need help when it is the folks in Flint, Michigan, who need help, who are crying out for help, but their voices can't be heard in this Congress because we are too busy trying to protect these big, multinational corporations.

The only thing we want to do, according to my friends, is to harmonize the standard of proof between the DOJ and the FTC so that the big, bad corporations which need our help only have to deal with one standard of proof. They are not telling you what they are really wanting to do, which is to gut administrative review by the FTC, under section 5(b) of the FTC Act. That is where the real harm comes in, but they don't want to tell you about that. They don't want to let you know what kind of impact that has when a prescription drug company seeks to merge again with another large company and make a humongous company that is too big to fail and, also, too big to regulate your drug prices out there.

Why are your drug prices going up? What kind of policies are we implementing here in Congress to protect them? Absolutely none. We are making it easier for prices to go up with insurance, in the travel industry, in trying to get a hotel. In trying to book a hotel room on the Internet, they have got it all rigged up because there are only a couple of companies you can go through to get the room.

These are the policies that are affecting the lives of the people whom we represent. I don't represent many big,

multinational corporations. I don't think I have any, as a matter of fact, in my district, but I guess there are some folks around here who have a bunch of them.

□ 1015

Mr. Speaker, may I inquire how much time remains on both sides?

The SPEAKER pro tempore. The gentleman from Georgia has 10 minutes remaining. The gentleman from Virginia has 20½ minutes remaining.

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

Mr. GOODLATTE. Mr. Speaker, since I have one speaker remaining, I reserve the balance of my time.

Mr. JOHNSON of Georgia. Mr. Speaker, I yield 4 minutes to the gentleman from the great State of Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Speaker, I thank the distinguished gentleman from Georgia, and I thank the chairman of the full committee and the author of this bill.

I rise in combination of speaking on this bill, but also offering my deepest sympathy to the people of Brussels, the people of Belgium which, some would say, is the heart of the civic participation of Europe—they are certainly dear friends of the United States—though we would mourn any who have been impacted by the dastardly deeds of terrorism.

I know in our committee, Mr. JOHNSON and Mr. GOODLATTE are working on these issues. I would hope that we could move the no fly for foreign terrorists bill as quickly as possible as we make our way through these issues of determining how we disrupt the ideology and then the actions that result in the deaths of innocent persons. So I offer that.

Mr. Speaker, I am struck by the name of this bill because I don't know who gets smarter. I know that the consumers get poorer and that there are opportunities for victimizing the consumers. This bill does not create equal rules or implement smarter legislation.

But if I might take up the comment about the increasing cost of prescription drugs, that is clearly a result of not allowing the FTC to pursue and to proceed because it is our arm of equalizing and balancing the consumer.

On this day, when we acknowledge the sixth anniversary of the Affordable Care Act that has brought health insurance to 20 million people, we know that what we need to fix is the rising cost of prescription drugs.

So this bill is about attacking the administrative authority of the Federal Trade Commission. It is an unnecessary measure that would fundamentally undermine the FTC's independent enforcement authority and ability to prevent anticompetitive mergers.

As a law student, I remember in my antitrust classes how the FTC was highlighted as one of the anchors of balance and the anchors of protection of innocent civilians.

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

Why is that? The FTC is where you can engage and have discussion. The bill seeks to do so by requiring that the FTC use the same enforcement process as the DOJ. There is more ability for the little guy to be heard at the FTC.

This proposed sweeping change undercuts the FTC's administrative litigation process for contested mergers or acquisitions and effectively removes a very core and functioning character of the agency, lets more people in the door to express themselves for or against this merger, how it impacts, with less resources needed to get in front of an administrative agency than dealing with the Department of Justice.

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

As enforcers of section 7 of the Clayton Act, both the FTC and DOJ have the authority and responsibility to prohibit mergers and acquisitions that substantially lessen competition. That saves money because competition helps save money. These agencies serve to complement each other. Why make them the same? They are not twins.

Based upon historical experience and coordinated development, the FTC serves to protect consumers and consumer spending, health care, pharmaceuticals, professional services, food, energy, food safety, among other things. The DOJ typically assumes a specialized focus on larger corporate industries, like telecommunications, banks, railroads, and airlines. Serving as joint enforcement agencies for over 100 years, they work together.

Don't take away the consumers' arm. That is the FTC. This bill takes it away and puts the little guy under and the big guy up.

Mr. Speaker, I rise in strong opposition to H.R. 2745, the Standard Merger and Acquisition Reviews through Equal Rules Act—otherwise known as the SMARTER Act.

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

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

H.R. 2745 is an unnecessary measure that would fundamentally undermine the FTC's independent enforcement authority and ability to prevent anti-competitive mergers.

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

Specifically, if enacted, the SMARTER Act would strip the FTC of its power by eliminating

the agency's authority to enforce antitrust laws in larger merger cases, and by blocking its ability to use its administrative proceedings to stop a harmful merger transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The heart of this concern is the alternate means in which the FTC and the DOJ carry out their enforcement role during this HSR pre-merger process.

Namely, H.R. 2745 is curiously motivated by the preliminary injunction process utilized by the FTC and the DOJ to halt proposed transactions that would violate the Clayton Act if completed.

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

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

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

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

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

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

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

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

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

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

For example:

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

At the consumer level in my home state of Texas, the FTC secured an \$82,000 settlement against an auto-dealer found in violation of the Fair Credit Reporting Act in September 2015.

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

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

In September 2015, the FTC secured a \$1.1 million settlement to consumers who lost money to a health insurance telemarketing scam.

And in the last two years, the FTC took action in 13 pharmaceutical mergers, ordering

divestitures to preserve competition for drugs that treat diabetes, hypertension, and cancer, as well as widely used generic medications like oral contraceptives and antibiotics.

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

That is, the FTC cleared U.S. Renal Care, Inc.'s (the country's third largest outpatient dialysis provider) \$640 million purchase of dialysis competitor DSI Renal, on the condition that three of DSI's outpatient clinics in Laredo, Texas, be handed over to a third party. Absent this agreed divestiture, the acquisition would have led to a significant increase in market concentration and anti-competitive effects. The likely result, according to the FTC, would have included the elimination of direct competition between U.S. Renal Care and DSI Renal, reduced incentives to improve services or quality for dialysis patients, and increased ability for the merged company to unilaterally increase prices.

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

In June 2015, the DOJ put pressure on several multibillion dollar health insurers seeking to engage in large merger transactions with near certain suppression of market competition in the healthcare industry.

In August 2015, the DOJ issued civil investigative demands on several major US airlines seeking to halt any potential unlawful mergers.

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

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

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

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

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

Mr. JOHNSON of Georgia. Mr. Speaker, I yield myself the balance of my time to close.

It is not often that I come to the floor to argue a bill and to debate and nobody on the other side shows up to participate in the debate. I have been feeling kind of lonely over here.

I guess that people are too embarrassed on the other side to come here and defend this legislation at this particular time, as we get ready to depart for what will be just about 3 weeks, while we are leaving dangling and hanging important issues, like a budget for this country that was promised to us back at the beginning of the year. It was supposed to be regular order. It was supposed to be that we are going to do a budget.

After the budget is done and we have our top lines and bottom lines in place, then we will embark upon the appropriations process and we will pass all of

the 12 appropriations bills for the first time in years and we will get back to regular order around here. They can't even produce enough votes to pass a budget.

So what do we do then? We revert to trying to protect and coddle and make things easy for big multinational corporations that want to get bigger. They want to get bigger so that they can get a lock on the market, they have no competition, and then they can set whatever price they want to set and the American people are left having to pay.

What can you do when you need your prescription medication and there is no competition, no other similar drug, and you only have one player in the room; therefore, you have to pay whatever they are holding you over the barrel for.

The American people are sick and tired and they are angry about having been held over a barrel year after year after year as this Congress continues to coddle and protect and make things good for big business.

Well, what about the working people of this country? When are we going to do something about making sure that they don't have to pay these increased bills that they would have to pay for things like hotel rooms, insurance, medical care, prescription drugs, nursing homes, and food?

I don't even want to talk about the price of gas that is going to go up this summer. Despite the fact that we have a glut in the oil market, you are going to be seeing your gas prices rise. Why? Because you are getting out on the road and trying to go on vacation. It is getting more and more difficult to do that because wages haven't gone up.

So this Congress continues to make it easy for big corporations to increase their profits while doing nothing to raise wages for the regular working people of this country.

Now we are getting ready to go on another 3-week district work period. I have a lot of work to do in the district trying to explain to the people of my district why we are not getting down to business and doing the things that they expect this Congress to do.

Mr. Speaker, I would ask that my colleagues in this body oppose the SMARTER Act and do what is right for the American people.

I yield back the balance of my time.
Mr. GOODLATTE. Mr. Speaker, I yield myself the balance of my time to close.

Let's look at the arguments, the straw men that have been set up by the other party claiming that this legislation does a manner of things that it simply does not do.

First, they say enacting the SMARTER Act only benefits large companies that wish to merge, but the SMARTER Act protects small and midsize companies which also come under the Federal Trade Commission's scrutiny.

This legislation is not designed to help big companies get bigger. Indeed,

large companies have the resources to hire the lawyers, economists, lobbyists, and other regulatory professionals to wrestle with the FTC.

It is the small- and medium-size companies that would benefit from a fair process and an assurance that they would have their day in court.

The FTC does not always focus its attention on the large companies. In fact, a Wall Street Journal article from 2013 documents how the FTC pursued anti-competitive practices of the Music Teachers National Association, a nonprofit with about a dozen employees.

In short, this nonprofit was a collection of piano teachers. So if you think the FTC only engages with conglomerates, you are mistaken. They will even prosecute your after-school piano teacher.

The SMARTER Act ensures that, if the FTC does focus its efforts on piano teachers, on the small- and medium-size companies, they will have the benefit of a fair process.

Then they make the argument that the SMARTER Act will make it more difficult for antitrust enforcement agencies to stop a merger, but the SMARTER Act only changes the process. It does not have any substantive impact on merger reviews.

The SMARTER Act does not make any substantive changes to antitrust law. Rather, the legislation only standardizes the process between the two antitrust enforcement agencies.

The witnesses at the committee hearings on the SMARTER Act testified that the legislation only affects the process and not the substantive standard.

As Deborah Garza, former chairwoman of the Antitrust Modernization Commission stated:

No one on the AMC believed at the time, and I do not believe today, that this legislation would make it difficult or impossible for the FTC Commission to do its job. The Justice Department has done very well in pursuing its merger enforcement agenda working with the standards that apply to it. And I firmly believe that the FTC can do so as well.

Indeed, even the current Department of Justice Assistant Attorney General for the antitrust division stated:

I do not think there is a practical difference in how the courts assess the factual and legal basis for enjoining a merger challenged by the FTC on the one hand and the Department on the other.

Let me also quote from a letter written by 15 leading antitrust professors who wrote to Congress expressing their support for the SMARTER Act:

The FTC is a very impressive agency that plays a valuable role in antitrust enforcement. The SMARTER Act does nothing to undermine the FTC's authority. It simply ensures that the merger review processes and standards are equally applied to merger parties, regardless of which agency reviews the transaction.

The gentleman from New Jersey complained about what was going on with the review of proposed mergers by health insurance companies. Guess

what. Who is doing those reviews? Not the FTC. The Department of Justice. It doesn't make any sense.

What does make sense is that there are lots of companies going through lots of things caused, in part, by ObamaCare forcing healthcare providers, insurance companies, and others to look at mergers and acquisitions. When they do so, the public should have the right to know that justice is being done.

This is not about big business or small business. This is about making sure that the laws are fairly and equally applied. When that happens, we should have this legislation at hand so that we have the assurance that we are going to have justice done. The FTC should operate by the same merger review processes and standards that the Department of Justice does.

I believe in the vigorous prosecution of antitrust practices and transactions by the Department of Justice and the FTC. I would not support the SMARTER Act if I thought that it would disadvantage our antitrust enforcement agencies.

The CONGRESSIONAL RECORD demonstrates that the SMARTER Act only makes the process more fair and predictable while providing the antitrust enforcement agencies with the same powers to prosecute antitrust practices.

□ 1030

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

This legislation will help America continue to serve as a leader and innovator in competition law, and I urge my colleagues to vote in favor of this bill.

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

Mr. CONYERS. Mr. Speaker, H.R. 2745, the "Standard Merger and Acquisition Reviews Through Equal Rules Act of 2015" or SMARTER Act, would require the Federal Trade Commission to use the same merger enforcement procedures as the Justice Department's Antitrust Division for proposed mergers, acquisitions, joint ventures, and other similar transactions.

I oppose this flawed bill for several reasons.

Most importantly, H.R. 2745—by weakening the Commission's independence—undermines Congress's original intent in creating the Federal Trade Commission in the first place.

For good reasons that are still relevant today, Congress established the Commission to be an independent administrative agency.

Although the Sherman Antitrust Act of 1890 empowered the Justice Department to enforce antitrust laws, Congress determined that more needed to be done to address the wave of mergers and anti-competitive corporate abuses that continued notwithstanding the enactment of that Act.

Accordingly, Congress created the Commission in 1914 as an independent body of experts charged with developing antitrust law and policy free from political influence, and particularly executive branch interference.

To this end, Congress specifically gave the Commission broad administrative powers to investigate and enforce laws to stop unfair methods of competition as well as the authority to use an administrative adjudication process to develop policy expertise, rather than requiring the Commission to try cases before a generalist federal judge.

Yet, rather than strengthening the Commission's independence and enforcement authority, the SMARTER Act does the opposite.

Of greatest concern is the bill's elimination of the administrative adjudication process for merger cases under section 5(b) of the Federal Trade Commission Act.

By doing so, the SMARTER Act would effectively transform the Commission from an independent administrative agency into just another competition enforcement agency indistinguishable from the Justice Department and, thereby, arguable redundant.

The Commission's administrative authority is key to its distinctive role as an independent administrative agency. But the SMARTER Act—by eliminating the Commission's administrative authority—opens the door for the ultimate elimination of the Commission.

And, you do not just have to take my word for it. Former Republican Commission Chairman William Kovacic, while expressing support for the bill's harmonization of preliminary injunction standards, says that the "rest of the SMARTER Act is rubbish."

He continued, "Let me put it this way: behind the rest of [the SMARTER Act] is the fundamental question of whether you want the Federal Trade Commission involved in competition law."

Similarly, current Commission Chairwoman Edith Ramirez observes that the bill would have "far-reaching immediate effects" and "fundamentally alter the nature and function of the Commission, as well as the potential for significant unintended consequences."

Consumers Union also opposes the SMARTER Act not only because it is completely unnecessary, but also because the bill could "create unintended hurdles to effective and sound enforcement" and "set the stage for further tinkering—both of which risk undermining what is now a coherent, consistent, well-established, familiar enforcement procedure within the" Commission.

Finally, the SMARTER Act is problematic because it may apply to conduct well-beyond large mergers, which could further hinder the Commission's effectiveness.

In particular, the SMARTER Act would eliminate the Commission's authority to use administrative adjudications not just for the largest mergers, but for non-merger activity, like a "joint venture" or "similar transaction."

I recognize that the bill's authors have tried in good faith to respond to some of the concerns expressed by me and by the Commission during the last Congress and I appreciate those efforts.

Moreover, I recognize that the Commission itself last year changed its procedural rules to make it easier to end the use of administrative litigation where it loses a preliminary injunction proceeding in court.

I continue to have concerns, however, about the bill's prohibition against the Commission's

administrative litigation authority with respect to all merger cases.

Accordingly, I must oppose the SMARTER Act, even in its rewritten form, and I urge my colleagues to join me in opposition to H.R. 2745.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 653, the previous question is ordered on the bill.

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

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

MOTION TO RECOMMIT

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

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

Mr. DOGGETT. I am.

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

The Clerk read as follows:

Mr. Doggett moves to recommit the bill (H.R. 2745) to the Committee on the Judiciary, with instructions to report the bill back to the House forthwith with the following amendment:

At the end of the bill, add the following:

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

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

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

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

Mr. DOGGETT. Mr. Speaker, for many months now so many of us Democrats here in the House have been pleading with our Republican colleagues to recognize that there is a very serious cost to the American people of prescription price gouging; such a serious matter that, overwhelmingly, in the fall, when the Kaiser Family Foundation surveyed healthcare concerns of Americans, the number one issue was soaring, unaffordable prescription drugs.

We have not been very successful in getting their attention on this just to recognize the severity of the problem—not even getting to the point of agreeing on what legislative action this Congress, this administration might take in order to address this problem.

We got another indication of the severity of the problem and the way that people across America are being impacted by the Republican failure to address prescription price gouging in the latest survey done this year by AARP, their RxPrice Watch report, which found the average retail price among 622 prescription medicines that are widely used by seniors more than doubled from less than \$6,000 in 2006 to

over \$11,000 in 2013. That is an incredible increase.

It is not just seniors who are impacted, but working families, people all over the United States, by the fact that prescription drug prices are rising much faster than the cost of living and other health care.

Now, we have been asking for months that Republicans recognize the severity of this problem. I have asked in the Committee on Ways and Means. We cannot even get a hearing on the subject.

Our colleagues have asked, in the Commerce Committee, how about a hearing to look at what is happening to the American people on these outrageous prescription price increases that just keep increasing and increasing? The Commerce Committee has refused to hold a hearing on it.

The Committee on Appropriations has been asked to review and consider this problem. They won't hold a hearing on it.

The Committee on Oversight and Government Reform, under the leadership of ELIJAH CUMMINGS as the ranking Democrat, asked for a subpoena. Finally—and it is appropriate for this bill, they call it the SMARTER Act, and Republicans are always so much better at naming their legislation than what is in it—we had a smart aleck who got subpoenaed, the guy who thought it was okay to raise the price of an over 60-year-old drug by over 5,000 percent in 1 day, having a big impact on people who needed it for reduced immunity from any number of kinds of treatments, a 5,000 percent increase, and they at least were willing to get him over video to make his various smart-aleck remarks about his ability to do that.

Competition by itself is not solving the problem with the soaring cost of prescription drugs. But trying to maintain competition, if Republicans won't recognize how endangered so many Americans are by prescription price gouging, we ought not to go backwards, and that is what I fear this bill would do.

Let me give you a precise example. On November 18, the Federal Trade Commission, which would be impacted by this bill, approved a final order that was concerned with the merger on generic drugs that treat certain types of ulcers and thyroid conditions. This is the merger, an \$8 billion merger between Endo International and Par Pharmaceuticals.

The FTC was concerned about the effect on competition and raising prices and gouging consumers even more than is occurring already. I do not want to impair in any way their ability to initiate litigation, to be involved, to see that competition remains—to the limited extent it is now—and not see seniors or working families with a sick child or anyone who gets a sad diagnosis of a life-threatening disease and then finds themselves facing financial ruin even if they have insurance, to see

one of the few tools we have to deal with these anticompetitive provisions eliminated by this bill.

This is the last amendment on the bill. It will not send the bill back to committee. It will at least preserve this one narrow area. If Republicans won't recognize the problem, at least don't go make it worse.

They could be bringing up bills to this floor like the one that had bipartisan support about 8 or 9 years ago. Former Representative John Dingell had a bill so that we would begin to have Medicare negotiate prices with these pharmaceutical companies. Twenty-four Republicans even joined us. That is the kind of bipartisan action we need.

At least approve this motion to recommit. Let the bill move forward, but without gouging consumers on prescription drug prices even more than they are today.

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

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

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

Mr. GOODLATTE. Mr. Speaker, there is no question that, because of ObamaCare and government regulation, the cost of prescription drugs is going up—and going up too fast. We definitely need to reform our healthcare system, starting with repealing ObamaCare and putting in place real patient-centered reforms to our healthcare system, but that is not what this legislation is about today.

The SMARTER Act is predicated on a very simple notion: the results of an antitrust merger review should not be dependent on which antitrust enforcement agency happens to review the deal. The outcome should not be determined by the flip of an agency coin. The SMARTER Act is a process reform that ensures that all parties have their day in court and are subject to the same standards, regardless of which antitrust enforcement agency reviews their merger.

The motion to recommit defeats this simple reform by carving out an exception for one area. Why, if we are seeking justice, why, if we are seeking a fair standard for all people before these antitrust review agencies, would we take this particular area and say, no, we are not going to have a consistent standard for reviewing something that the gentleman feels is so important.

We all feel that is very important, and that is why we all should oppose this motion to recommit and vote for the underlying bill. I urge my colleagues to vote against the motion.

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

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

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

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

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of the bill, if ordered, and the motion to suspend the rules and agree to House Resolution 658.

The vote was taken by electronic device, and there were—yeas 174, nays 235, not voting 24, as follows:

[Roll No. 136]

YEAS—174

Adams	Gabbard	Moore
Aguilar	Gallego	Moulton
Beatty	Garamendi	Murphy (FL)
Becerra	Graham	Napolitano
Beyer	Grayson	Neal
Bishop (GA)	Green, Al	Nolan
Bonamici	Green, Gene	Norcross
Brady (PA)	Gutiérrez	O'Rourke
Brownley (CA)	Hahn	Pallone
Bustos	Hastings	Pascarell
Butterfield	Heck (WA)	Payne
Capps	Higgins	Pelosi
Capuano	Himes	Perlmutter
Cárdenas	Hinojosa	Pingree
Carney	Honda	Pocan
Carson (IN)	Hoyer	Polis
Cartwright	Huffman	Price (NC)
Castor (FL)	Israel	Quigley
Castro (TX)	Jackson Lee	Rice (NY)
Chu, Judy	Jeffries	Roybal-Allard
Cicilline	Johnson (GA)	Ruiz
Clark (MA)	Johnson, E. B.	Ruppersberger
Clarke (NY)	Jones	Rush
Clay	Kaptur	Ryan (OH)
Cleaver	Keating	Sanchez, Linda T.
Clyburn	Kelly (IL)	Sanchez, Loretta
Cohen	Kennedy	Sarbanes
Connolly	Kildee	Schakowsky
Conyers	Kilmer	Schiff
Cooper	Kind	Schrader
Costa	Kirkpatrick	Scott (VA)
Courtney	Kuster	Scott, David
Crowley	Langevin	Serrano
Cuellar	Larsen (WA)	Sewell (AL)
Cummings	Larsen (CT)	Sherman
Davis (CA)	Lawrence	Sires
Davis, Danny	Lee	Slaughter
DeFazio	Levin	Swalwell (CA)
DeGette	Lewis	Takai
Delaney	Lieu, Ted	Takano
DeLauro	Lipinski	Thompson (CA)
DelBene	Loeb sack	Thompson (MS)
DeSaulnier	Lofgren	Titus
Deutch	Lowenthal	Tonko
Dingell	Lowe	Torres
Doggett	Lujan Grisham	Tsongas
Doyle, Michael F.	(NM)	Van Hollen
Duckworth	Luján, Ben Ray	Vargas
Duncan (TN)	(NM)	Veasey
Edwards	Lynch	Vela
Ellison	Maloney,	Velázquez
Engel	Carolyn	Visclosky
Eshoo	Maloney, Sean	Walz
Esty	Matsui	Wasserman
Farr	McCollum	Schultz
Fattah	McDermott	Waters, Maxine
Foster	McGovern	Watson Coleman
Frankel (FL)	McNerney	Welch
Fudge	Meeks	Yarmuth
	Meng	

NAYS—235

Abraham	Bishop (MI)	Burgess
Aderholt	Blackburn	Byrne
Allen	Blum	Calvert
Amash	Bost	Carter (GA)
Amodei	Boustany	Carter (TX)
Ashford	Brady (TX)	Chabot
Babin	Brat	Clawson (FL)
Barletta	Bridenstine	Coffman
Barr	Brooks (AL)	Cole
Barton	Brooks (IN)	Collins (GA)
Benishek	Buchanan	Collins (NY)
Bera	Buck	Comstock
Bilirakis	Bucshon	Conaway

Cook	Jordan	Rice (SC)
Costello (PA)	Joyce	Rigell
Cramer	Katko	Roby
Crawford	Kelly (MS)	Roe (TN)
Crenshaw	Kelly (PA)	Rogers (AL)
Culberson	King (IA)	Rogers (KY)
Curbelo (FL)	King (NY)	Rohrabacher
Davis, Rodney	Kinzing (IL)	Rokita
Denham	Kline	Rooney (FL)
Dent	Knight	Ros-Lehtinen
DeSantis	LaHood	Roskam
DesJarlais	LaMalfa	Ross
Diaz-Balart	Lamborn	Rothfus
Dold	Lance	Rouzer
Donovan	Latta	Royce
Duffy	LoBiondo	Russell
Duncan (SC)	Long	Salmon
Ellmers (NC)	Loudermilk	Sanford
Emmer (MN)	Lucas	Schweikert
Farenthold	Luetkemeyer	Scott, Austin
Fitzpatrick	Lummis	Sensenbrenner
Fleischmann	MacArthur	Sessions
Fleming	Marchant	Shimkus
Flores	Marino	Shuster
Forbes	Massie	Simpson
Fortenberry	McCarthy	Sinema
Fox	McCaul	Smith (MO)
Franks (AZ)	McClintock	Smith (NE)
Frelinghuysen	McHenry	Smith (NJ)
Garrett	McKinley	Smith (TX)
Gibbs	McMorris	Stefanik
Gibson	Rodgers	Stewart
Goodlatte	McSally	Stivers
Gosar	Meadows	Stutzman
Gowdy	Meehan	Thompson (PA)
Granger	Messer	Thornberry
Graves (GA)	Mica	Tiberi
Graves (LA)	Miller (FL)	Tipton
Graves (MO)	Miller (MI)	Trott
Griffith	Moolenaar	Turner
Grothman	Mooney (WV)	Upton
Guinta	Mullin	Valadao
Guthrie	Mulvaney	Wagner
Hanna	Murphy (PA)	Walberg
Hardy	Neugebauer	Walden
Harper	Newhouse	Walker
Harris	Nunes	Walorski
Hartzler	Olson	Walters, Mimi
Heck (NV)	Palazzo	Weber (TX)
Hensarling	Palmer	Webster (FL)
Hice, Jody B.	Paulsen	Wenstrup
Hill	Pearce	Westerman
Holding	Perry	Westmoreland
Hudson	Peters	Whitfield
Huelskamp	Peterson	Williams
Huizenga (MI)	Pittenger	Wilson (SC)
Hultgren	Pitts	Wittman
Hunter	Poe (TX)	Womack
Hurd (TX)	Poliquin	Woodall
Hurt (VA)	Pompeo	Yoder
Issa	Posey	Yoho
Jenkins (KS)	Price, Tom	Young (AK)
Jenkins (WV)	Ratcliffe	Young (IA)
Johnson (OH)	Reed	Young (IN)
Johnson, Sam	Renacci	Zeldin
Jolly	Ribble	

NOT VOTING—24

Bass	Gohmert	Reichert
Bishop (UT)	Grijalva	Richmond
Black	Herrera Beutler	Scalise
Blumenauer	Labrador	Smith (WA)
Boyle, Brendan	Love	Speier
F.	Nadler	Wilson (FL)
Brown (FL)	Noem	Zinke
Chaffetz	Nugent	
Fincher	Rangel	

□ 1100

Messrs. LAMALFA, ASHFORD, LANCE, Mrs. HARTZLER, Messrs. SCHWEIKERT, FRANKS of Arizona, DUFFY, BERA, WESTMORELAND, MACARTHUR, and FITZPATRICK changed their vote from "aye" to "no."

Messrs. NOLAN, DEUTCH, and DOGGETT changed their vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 235, noes 171, not voting 27, as follows:

[Roll No. 137]

AYES—235

Abraham	Graves (MO)	Pearce
Aderholt	Griffith	Perry
Allen	Grothman	Peters
Amash	Guinta	Pittenger
Amodeli	Guthrie	Pitts
Babin	Hanna	Poe (TX)
Barletta	Hardy	Poliquin
Barr	Harper	Pompeo
Barton	Harris	Posey
Benishek	Hartzler	Price, Tom
Bilirakis	Heck (NV)	Ratcliffe
Bishop (MI)	Hensarling	Renacci
Blackburn	Hice, Jody B.	Ribble
Blum	Hill	Rice (SC)
Bost	Holding	Rigell
Boustany	Hudson	Roby
Brady (TX)	Huelskamp	Roe (TN)
Brat	Huizenga (MI)	Rogers (AL)
Bridenstine	Hultgren	Rogers (KY)
Brooks (AL)	Hunter	Rohrabacher
Brooks (IN)	Hurd (TX)	Rokita
Buchanan	Hurt (VA)	Rooney (FL)
Buck	Issa	Ros-Lehtinen
Bucshon	Jenkins (KS)	Roskam
Burgess	Jenkins (WV)	Ross
Byrne	Johnson (OH)	Rothfus
Calvert	Johnson, Sam	Rouzer
Carter (GA)	Jolly	Royce
Carter (TX)	Jordan	Russell
Chabot	Joyce	Salmon
Clawson (FL)	Katko	Sanford
Coffman	Kelly (MS)	Schweikert
Cole	Kelly (PA)	Scott, Austin
Collins (GA)	King (IA)	Sensenbrenner
Collins (NY)	King (NY)	Sessions
Comstock	Kinzing (IL)	Shimkus
Conaway	Kline	Shuster
Cook	Knight	Simpson
Costello (PA)	LaHood	Sinema
Cramer	LaMalfa	Smith (MO)
Crawford	Lamborn	Smith (NE)
Crenshaw	Lance	Smith (NJ)
Cuellar	Latta	Smith (TX)
Culberson	LoBiondo	Stefanik
Curbelo (FL)	Long	Stewart
Davis, Rodney	Loudermilk	Stivers
Denham	Lucas	Stutzman
Dent	Luetkemeyer	Thompson (PA)
DeSantis	Lummis	Thornberry
DesJarlais	MacArthur	Tiberi
Diaz-Balart	Marchant	Tipton
Dold	Marino	Trott
Donovan	Massie	Turner
Duffy	McCarthy	Upton
Duncan (SC)	McCaul	Valadao
Duncan (TN)	McClintock	Wagner
Ellmers (NC)	McHenry	Walberg
Emmer (MN)	McKinley	Walden
Farenthold	McMorris	Walker
Fitzpatrick	Rodgers	Walorski
Fleischmann	McSally	Walters, Mimi
Fleming	Meadows	Weber (TX)
Flores	Meehan	Webster (FL)
Forbes	Messer	Wenstrup
Fortenberry	Mica	Westerman
Fox	Miller (FL)	Westmoreland
Franks (AZ)	Miller (MI)	Whitfield
Frelinghuysen	Moolenaar	Williams
Garamendi	Mooney (WV)	Wilson (SC)
Garrett	Mullin	Wittman
Gibbs	Mulvaney	Womack
Gibson	Murphy (PA)	Woodall
Gohmert	Neugebauer	Yoder
Goodlatte	Newhouse	Young (AK)
Gosar	Nunes	Young (IA)
Gowdy	Olson	Young (IN)
Granger	Palazzo	Zeldin
Graves (GA)	Palmer	
Graves (LA)	Paulsen	

NOES—171

Adams	Gabbard	Murphy (FL)
Aguilar	Gallego	Napolitano
Ashford	Graham	Neal
Beatty	Grayson	Nolan
Becerra	Green, Al	Norcross
Bera	Green, Gene	O'Rourke
Beyer	Gutiérrez	Pallone
Bishop (GA)	Hahn	Pascarell
Bonamici	Hastings	Payne
Brady (PA)	Heck (WA)	Pelosi
Brownley (CA)	Higgins	Perlmutter
Bustos	Himes	Pingree
Butterfield	Hinojosa	Pocan
Capps	Honda	Polis
Capuano	Hoyer	Price (NC)
Cárdenas	Huffman	Quigley
Carney	Israel	Rice (NY)
Carson (IN)	Jackson Lee	Richmond
Cartwright	Jeffries	Roybal-Allard
Castor (FL)	Johnson, E. B.	Ruiz
Castro (TX)	Jones	Ruppersberger
Cicilline	Kaptur	Rush
Clark (MA)	Keating	Ryan (OH)
Clarke (NY)	Kelly (IL)	Sánchez, Linda
Clay	Kennedy	T.
Cleaver	Kildee	Sanchez, Loretta
Clyburn	Kilmer	Sarbanes
Cohen	Kind	Schakowsky
Connelly	Kirkpatrick	Schiff
Conyers	Kuster	Schrader
Cooper	Langevin	Scott (VA)
Costa	Larsen (WA)	Scott, David
Courtney	Larson (CT)	Serrano
Crowley	Lawrence	Sewell (AL)
Cummings	Lee	Sherman
Davis (CA)	Levin	Sires
Davis, Danny	Lewis	Slaughter
DeFazio	Lieu, Ted	Swalwell (CA)
DeGette	Lipinski	Takai
Delaney	Loebsock	Takano
DeLauro	Loftgren	Thompson (CA)
DeBene	Lowenthal	Thompson (MS)
DeSaulnier	Lowe	Titus
Deutch	Lujan Grisham	Tonko
Dingell	(NM)	Torres
Doggett	Luján, Ben Ray	Tsongas
Doyle, Michael	(NM)	Van Hollen
F.	Lynch	Vargas
Duckworth	Maloney,	Veasey
Edwards	Carolyn	Vela
Ellison	Maloney, Sean	Velázquez
Engel	Matsui	Visclosky
Eshoo	McCollum	Walz
Esty	McDermott	Wasserman
Farr	McGovern	Schultz
Fattah	McNerney	Waters, Maxine
Foster	Meeks	Watson Coleman
Frankel (FL)	Meng	Welch
Fudge	Moulton	Yarmuth

NOT VOTING—27

Bass	Grijalva	Reed
Bishop (UT)	Herrera Beutler	Reichert
Black	Johnson (GA)	Scalise
Blumenauer	Labrador	Smith (WA)
Boyle, Brendan	Love	Speier
F.	Moore	Wilson (FL)
Brown (FL)	Nadler	Yoho
Chaffetz	Noem	Zinke
Chu, Judy	Nugent	
Fincher	Rangel	

□ 1106

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. REED. Mr. Speaker, on rollcall No. 137, I was unavoidably detained. Had I been present, I would have voted "yes."

Mrs. BLACK. Mr. Speaker, on rollcall No. 137 for passage of H.R. 2745 which took place on Wednesday, March 23, 2016, I am not recorded because I was unavoidably detained at the Supreme Court. Had I been present, I would have voted "aye" on rollcall No. 137 for passage of H.R. 2745.

Stated against:

Ms. MOORE. Mr. Speaker, during rollcall vote No. 137, I was unavoidably detained. Had I been present, I would have voted "no."

CONDEMNING THE TERRORIST
ATTACKS IN BRUSSELS

The SPEAKER pro tempore (Mr. POE of Texas). The unfinished business is the vote on the motion to suspend the rules and agree to the resolution (H. Res. 658) condemning in the strongest terms the terrorist attacks in Brussels on March 22, 2016, which murdered more than 30 innocent people, and severely wounded many more, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. POE) that the House suspend the rules and agree to the resolution.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 409, nays 0, not voting 24, as follows:

[Roll No. 138]

YEAS—409

Abraham	Conyers	Gibson
Adams	Cook	Gohmert
Aderholt	Cooper	Goodlatte
Aguilar	Costa	Gosar
Allen	Costello (PA)	Gowdy
Amash	Courtney	Graham
Amodeli	Cramer	Granger
Ashford	Crawford	Graves (GA)
Babin	Crenshaw	Graves (LA)
Barletta	Crowley	Graves (MO)
Barr	Cuellar	Grayson
Barton	Culberson	Green, Al
Beatty	Cummings	Green, Gene
Becerra	Curbelo (FL)	Griffith
Benishek	Davis (CA)	Grothman
Bera	Davis, Danny	Guinta
Beyer	Davis, Rodney	Guthrie
Bilirakis	DeFazio	Gutiérrez
Bishop (GA)	DeGette	Hahn
Bishop (MI)	Delaney	Hanna
Blackburn	DeLauro	Hardy
Blum	DeBene	Harper
Bonamici	Denham	Harris
Bost	Dent	Hartzler
Boustany	DeSantis	Hastings
Brady (PA)	DeSaulnier	Heck (NV)
Brady (TX)	DesJarlais	Heck (WA)
Brat	Deutch	Hensarling
Bridenstine	Diaz-Balart	Hice, Jody B.
Brooks (AL)	Dingell	Higgins
Brooks (IN)	Doggett	Hill
Brownley (CA)	Dold	Himes
Buchanan	Donovan	Hinojosa
Buck	Doyle, Michael	Holding
Bucshon	F.	Honda
Burgess	Duckworth	Hoyer
Bustos	Duffy	Hudson
Byrne	Duncan (SC)	Huelskamp
Calvert	Duncan (TN)	Huffman
Capps	Edwards	Huizenga (MI)
Capuano	Ellison	Hultgren
Cárdenas	Ellmers (NC)	Hunter
Carney	Emmer (MN)	Hurd (TX)
Carson (IN)	Engel	Hurt (VA)
Carter (GA)	Eshoo	Israel
Carter (TX)	Esty	Issa
Cartwright	Farenthold	Jackson Lee
Castor (FL)	Farr	Jeffries
Castro (TX)	Fattah	Jenkins (KS)
Chabot	Fitzpatrick	Jenkins (WV)
Chu, Judy	Fleischmann	Johnson (GA)
Cicilline	Fleming	Johnson (OH)
Clark (MA)	Flores	Johnson, E. B.
Clarke (NY)	Forbes	Johnson, Sam
Clawson (FL)	Fortenberry	Jolly
Clay	Foster	Jones
Cleaver	Fox	Jordan
Clyburn	Frankel (FL)	Joyce
Coffman	Franks (AZ)	Kaptur
Cohen	Frelinghuysen	Katko
Cole	Fudge	Keating
Collins (GA)	Gabbard	Kelly (IL)
Collins (NY)	Gallego	Kelly (MS)
Comstock	Garamendi	Kelly (PA)
Conaway	Garrett	Kennedy
Connolly	Gibbs	Kildee