The yeas and nays were ordered.

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

PROVIDING FOR CONSIDERATION OF H.R. 428, RED RIVER GRADIENT BOUNDARY SURVEY ACT, AND PROVIDING FOR CONSIDERATION OF H.J. RES. 42, DISAPPROVING RULE SUBMITTED BY DEPARTMENT OF LABOR RELATING TO DRUG TESTING OF UNEMPLOYMENT COMPENSATION APPLICANTS

Mr. COLE. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 99 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 99

Resolved, That upon adoption of this resolution it shall be in order to consider in the House the bill (H.R. 428) to survey the gradient boundary along the Red River in the States of Oklahoma and Texas, and for other purposes. All points of order against consideration of the bill are waived. The bill shall be considered as read. All points of order against provisions in the bill are waived. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources; and (2) one motion to recommit.

SEC. 2 Upon adoption of this resolution it shall be in order to consider in the House the joint resolution (H.J. Res. 42) disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants. All points of order against consideration of the joint resolution are waived. The joint resolution shall be considered as read. All points of order against provisions in the joint resolution are waived. The previous question shall be considered as ordered on the joint resolution and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means; and (2) one motion to recommit.

The SPEAKER pro tempore. The gentleman from Oklahoma is recognized for 1 hour.

Mr. COLE. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. COLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks.

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

There was no objection.

Mr. COLE. Mr. Speaker, last week, the Rules Committee met and reported a rule for consideration of two important measures. First, the resolution provides for consideration of H.R. 428, the Red River Gradient Boundary Survey Act. The rule provides for 1 hour of debate, equally divided and controlled by the chair and ranking member of the Natural Resources Committee, and provides for a motion to recommit.

In addition, the resolution provides for consideration of H.J. Res. 42, providing for congressional disapproval of a rule issued by the Department of Labor with regard to drug testing. The rule provides 1 hour of debate, equally divided and controlled by the chair and ranking member of the Ways and Means Committee, and provides for a motion to recommit.

Mr. Speaker, H.R. 428 is a product of months of negotiation between the States of Texas and Oklahoma and the Kiowa, Comanche, and Apache Tribes in my district. I am happy to have been able to work with my friend Mr. THORNBERRY to come up with a fair and equitable solution which all interested parties have agreed to.

As you may know, the Red River serves as the State line separating Oklahoma and Texas. Over time, the river has moved, as much as a mile in some areas, causing landowners' properties to be affected. Instead of working to resolve this, for nearly a century, the Bureau of Land Management, BLM, has been unwilling to survey a small portion of the Federal land along a 116-mile stretch of the Red River between Oklahoma and Texas. H.R. 428 would direct the survey to be completed, using the gradient boundary survey method that was mandated by the Supreme Court, so that ownership of the land, which has been under dispute, can be effectively resolved.

□ 1315

In addition, Mr. Speaker, the rule provides for the consideration of another Congressional Review Act resolution, which would overturn a Department of Labor rule related to drug testing for those applying for unemployment insurance.

In 2012, the Middle Class Tax Relief and Job Creation Act made a number of reforms to the unemployment insurance program, including overturning a 1960s-era Department of Labor ban on the screening or testing of unemployment applicants for illegal drugs. The 2012 provision allowed, but did not require, States to test unemployment insurance applicants who either, one, lost their jobs due to drug use or, two, who were seeking new jobs that generally required new employees to pass a drug test. Unfortunately, after 4 years and a now finalized rule, States are no closer to being able to implement this sensible policy. Instead, because of the Department of Labor's overreach, three States which have enacted necessary State law changes to implement this commonsense policy are actually now precluded from moving forward with this sensible, bipartisan policy.

Mr. Speaker, most States already limit unemployment insurance benefits or individuals who refuse to take or fail an employer drug test or who have previous employment issues with drugs. We should empower States, employers, and prospective employees who are looking for work and overturn this onerous regulation.

Mr. Speaker, I urge support of the rule and the underlying legislation.

I reserve the balance of my time.

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

I thank the gentleman from Oklahoma for yielding to me the customary 30 minutes for debate.

I rise to debate the rule for consideration, which bundles together two completely unrelated pieces of legislation. One is a joint resolution disapproving of a Department of Labor rule that relates to the drug testing of unemployment compensation applicants. The other, as the gentleman just described, is the Red River Gradient Boundary Survey Act.

There are many more important issues, in my opinion, that face this country at the moment, and for the life of me, I cannot figure out why my colleagues across the aisle think that ceding Bureau of Land Management survey authority over federally owned land to the States and impugning the integrity of those who rightfully seek unemployment insurance are on the same list of important matters this body should be addressing.

First, I would note the odd events that brought us here today as we operate, once again, under a closed rule. I just heard the debate on the previous rule, and I was illuminated by the gentleman from Alabama, on the other side, who indicated that the rule wasn't closed because we had a debate in the Rules Committee yesterday for 1 hour. A closed rule is a closed rule. It means that other Members of this body do not have an opportunity to have their amendments heard and/or made in order. We are now entering our 13th of these closed rules in a body that claimed that it was going to have open rules and regular order.

On February 3, Congressman MCCLINTOCK wrote to Chairman Sessions, asking that the Red River Gradient Boundary Survey Act be heard under a structured rule, which still isn't an open rule. An amendment deadline was set, and two germane amendments with no budgetary issues were submitted. Nevertheless, my Republican colleagues shut down the process and reported a closed rule. As of today, two-thirds of all of the rules issued this session by the Rules Committee have been closed rules. We should not be conducting the people's business this way.

I call on my Republican colleagues to put their unfounded fear aside and let this body operate under regular order, under open rules, or, at the very least, under structured rules.

I am dismayed to see, even when the Republican chairman of a subcommittee asks the Republican chairman of the Rules Committee for a structured rule, that the Republican leadership sees fit to ignore that request and continue this closed process—stifling ideas and debate before they can even get started.

It is this kind of shifting decisionmaking that sows distrust and disappointment in the American people when they survey how business is conducted in their House. However, it is not just this kind of duplicitous behavior that undermines this institution, but, as I mentioned moments ago, a complete lack of an ability to get our priorities straight.

We still have plenty of folks who are looking for jobs. We have plenty of people who are terrified that they will soon lose the health care that keeps them and their children living healthy and productive lives. We have plenty of people who are understandably concerned that our immigration policy has taken a deep dive into the shallow end. But we don't come here to address these important issues. Instead, my Republican colleagues bring to the floor, week after week, legislation to undermine well-thought-out agency rules and make it increasingly difficult for our agencies to carry out their duties.

The fact that we need to come here today and discuss the efficacy of having the Bureau of Land Management manage our Nation's land is beyond me. For nearly 100 years, the Bureau of Land Management has conducted uncontested surveys, and now we are supposed to believe that, all of a sudden, the agency is not following the appropriate standard. If folks don't like the survey methods or think the wrong standard is being used, then one needs to go through the court system. One does not engage in the unprecedented measure of ceding to the States the Federal Government's legitimate authority over Federal land.

The second completely unrelated resolution, H.J. Res. 42, overturns a Department of Labor rule regarding the drug testing of Americans who apply for unemployment compensation. Under the Middle Class Tax Relief and Job Creation Act of 2012, States were given the authority to conduct drug tests on unemployment insurance applicants under two circumstances: if the applicant were terminated from a previous job due to unlawful drug use or if the only available, suitable work were in an occupation that regularly conducts drug testing.

The rule in question clarifies that occupations that ''regularly conduct drug testing'' include occupations that are specifically identified in State or Federal law as requiring an employee to be tested. Put another way, if a State thinks a job warrants a drug test, all it needs to do is add the job to a list. The rule strikes a balance, preserving deference to States while providing commonsense clarity to the law. This is how things should be done—that is, the regulations that were in force until now, at least.

Unfortunately, Mr. Speaker, common sense is not put to much use around here these days. Republicans want to repeal the rule because, one would have to assume, it does not go far enough in embarrassing those people who are simply trying to obtain unemployment insurance during a difficult time. Let us be crystal clear in that the only purpose this repeal can serve is to embarrass folks, because there is no evidence linking those who seek unemployment insurance to increased rates of drug abuse. Be that as it may, Republicans still insist on expanding expensive and offensive drug screenings.

Today, once again, we see the Republicans engaging in the Trumpian exercise of creating alternative facts. In today's example, we have a resolution that is based on the blanket assumption that unemployed Americans use drugs. It further implies that Americans who apply for unemployment benefits are to blame for being unemployed. This implication is as unfounded as it is offensive to those hardworking Americans who find themselves unemployed due to no fault of their own.

And what do these hardworking Americans get for their troubles—a Congress dedicated to ensuring that new and well-paid jobs are there for them tomorrow?

Not at all. Instead, they get a Republican-led Congress that is bent on subjecting them to unconstitutional, offensive, and expensive drug tests.

Like it or not, facts still matter. Here is one: a conservative estimate by the Substance Abuse and Mental Health Services Administration puts the cost of drug testing at $25 to $75 per test. Because Federal law prohibits charging applicants for these tests, States would have to absorb the cost of testing thousands of unemployed workers. In the State of Texas, for instance, that would translate to, approximately, $30 million for a single year of testing. A while back, we spent a lot of time around here talking about unfunded mandates, and somehow or another, this one, I guess, doesn't fit in that category.

Mr. Speaker, arbitrarily testing Americans who apply for unemployment compensation runs contrary to our Constitution and is a solution in search of a problem. Being unemployed is not a sufficient reason to be subjected to a government-operated drug test. Proposals like this blame unemployed Americans for being unemployed. It is illegal and it is a huge waste of money. We have got some real problems that we need to address in this Congress. At some point, this Congress will need to get to work.

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

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

Obviously, the gentleman and I have some disagreement here, but let's talk for a minute about the form of what we are doing.

The gentleman is correct in that this rule covers two different pieces of legislation that don't have anything substantive in common. However, the legislation itself will be debated separately. We will have one debate on the Oklahoma-Texas issue, which involves the boundary between those two States and the tribal interests that are also intimately part of that. We will have a separate debate on the rule. That is the appropriate way to proceed. There is no reason to have a separate rule for each one of these debates, but it is appropriate, as the gentleman suggested, to have two different debates because they are two different subjects.

I am going to disagree with him—and I am probably being parochial in this sense—for, if you live in Oklahoma, we actually think the border between Oklahoma and Texas is pretty important. This is an issue that, frankly, was dealt with legislatively last year. This body did not vote out the bill. I actually opposed it last year because it did not take care of the tribal interests involved and they had not been suitably dealt with. We amended the bill. Actually, I should say it was brought up, but it was not taken up by the Senate. We changed it, but we kept working for many months. Chairman THORNBERRY is the person who deserves most of the credit here of trying to bring the parties together.

Also, just by way of explanation so everybody is clear, this does not settle the issue. This doesn't force anything on the Federal Government or the two States or the tribes. It simply creates a common database. The two States have been asking for a complete survey of the contested area for many years. The BLM has refused to do that. You simply can't sort through this problem of a shifting border—set well over a century ago—with conflicting tribal interests if you don't have a common set of data here. So that is all that is being done here.

I can assure you that, certainly, the tribes in question would not have consented to go forward if they had thought they were having a solution imposed on them. What they think they are getting is a database that will allow them to determine exactly what their interests and rights here are and, hopefully, negotiate that with the two States in question; but, if necessary, they will litigate the issue.

□ 1330

So we see this as a reasonable effort to bring parties together where there is a great deal of confusion through nobody's fault. And we think the BLM has been lax here and, frankly, may well be claiming things beyond its authority. But the survey, again, will hopefully take care of that. So I hope that eases the concerns that people have.

In terms of the drug rule, we see this as an issue where Congress made its intent in 2012 very clear, that is, we wanted States to have options to make these decisions for themselves. We think the Department of Labor rule made that more, rather than less, difficult.

We can argue over the merits of any individual treatment of people that have used illegal drugs or what the appropriate testing measure is or whatever. I happen to think those decisions are best made at the State level where you have got interested parties that are more knowledgeable about local conditions than us dictating a one size fits all. So we just simply disagree on that.

Finally, the gentleman from Florida (Mr. HASTINGS) mentioned some concerns about the speed with which we are acting and also the form with which we are acting. The form, frankly, is basically dictated by statute.

The Congressional Review Act dictates the manner in which we can bring these items on rules to the floor, the timetable which we can operate under. If we alter that over here, then, frankly, we lose privilege status in the Senate and the chances of succeeding actually diminish pretty greatly.

We think, in this case, the issues are pretty clear. These aren't really things that need to be amended. We need to decide whether or not the regulation is appropriate or not. If you think it is, you should vote in favor of keeping the regulation as it is and against this effort.

If, on the other hand, you would like to see decisionmaking devolve down to the States and where we think better decisions will be made, then, you should vote in favor of the rule and the underlying legislation.

So, again, I don't think these issues are overly complex. I do think this is an important time to deal with them. Again, we have a limited period of time on the Congressional Review Act. We have a certain format. We think we are abiding within both that timeframe and that format.

On the Oklahoma-Texas border issue, it is a knotty issue. It has been around for decades. There have been multiple efforts to deal with it. Most of them have faltered because we have not had the various parties arguing from a common database as to what their positions are. We have asked the Bureau of Land Management repeatedly to survey the affected area. They decided they didn't want to do that.

In this case, Congress says: Look, we have two sovereign States and three sovereign Indian tribes here that have a concern. We want them to be able to work it through. We want them to draw on a common set of data. So we are going to essentially make sure that that happens and hopefully we can avoid a protracted court case between the States and the Indian tribes and actually resolve an issue that needs to be had.

There are literally thousands of people along this border that are not certain whether or not they own the land that they have actually been farming, in some cases, for generations. There are three Indian tribes that have historic rights to this land that predate, frankly, the existence of Texas as a State and certainly the existence of Oklahoma as a State. They want to make sure their mineral rights issues and their land issues are appropriately handled, and they want to preserve their rights going forward if they want to litigate. Again, they need this kind of data to make those sorts of determinations.

I commend the gentleman from Texas (Mr. THORNBERRY). I, again, look forward to working with my good friend from Florida (Mr. HASTINGS) on these issues.

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

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

While we are discussing these matters that my colleagues want to discuss that I don't think are paramount or issues that are vital to America's security, there are a plethora of issues that we could be discussing, and rightly should be. Toward that end, one of the things that the minority is given as an opportunity is to offer a previous question to the matter that is on the floor at this time.

So I exercise that prerogative by asserting that the National Security Council was established in 1947 to encourage candid discussions between the Federal agencies charged with keeping America safe to ensure they would provide the President with the best policy advice possible. For this very reason, security experts on both sides of the aisle agree that partisan politics have no place in the Council's deliberations.

With this in mind, it is deeply troubling that President Donald John Trump would promote Steve Bannon, his chief political adviser, to a full seat on the Council's Principals Committee, while simultaneously relegating the chairman of the Joint Chiefs of Staff and the Director of National Intelligence to a lower status. At the very least, this sends the very dangerous signal that the Trump White House intends to let political calculations influence its decisionmaking on the life-and-death matters of national security.

Mr. Speaker, if we defeat the previous question, I am going to offer an amendment to the rule to bring up Representative STEPHANIE MURPHY's bill to prohibit political advisers from regularly attending National Security Council meetings.

Mr. Speaker, I ask unanimous consent to insert the text of my amendment in the RECORD, along with extraneous material, immediately prior to the vote on the previous question.

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

There was no objection.

Mr. HASTINGS. Mr. Speaker, to discuss our proposal, I yield 4 minutes to the distinguished gentlewoman from Florida (Mrs. MURPHY).

Mrs. MURPHY of Florida. Mr. Speaker, 2 weeks ago, I introduced H.R. 804, legislation designed to ensure that the deliberations and decisions of the National Security Council are not unreasonably influenced by partisan politics. The bill has garnered nearly 130 cosponsors, including the ranking members of the House Armed Services, Foreign Affairs, and Intelligence Committees. It is my hope that the bill will obtain support from my colleagues across the aisle because the principle it seeks to vindicate has long enjoyed bipartisan backing.

The motivation for my legislation was President Trump's directive formally authorizing his chief political adviser, Stephen Bannon, to attend all meetings of the NSC and its main subgroup, the Principals Committee. This aspect of the President's directive generated concern from respected military and intelligence professionals across the ideological spectrum.

For example, Senate Armed Services Committee Chairman JOHN MCCAIN characterized Mr. Bannon's appointment as a radical departure from precedent. Former White House Chief of Staff, Defense Secretary, and CIA Director Leon Panetta observed that the last place you want to put someone who worries about politics is in a room where they are talking about national security. And the ex-chairman of the Joint Chiefs of Staff, Michael Mullen, asserted that every President has the right and responsibility to shape the National Security Council as he sees fit, but partisan politics has no place at that table.

My bill would amend the 1947 law in which Congress created the NSC and established the statutory members of the Council. It would add simple language to provide that no individual whose primary or predominant responsibility is political in nature shall regularly attend or participate in meetings of the NSC or the Principals Committee.

I want to emphasize that while I may disagree with President Trump and Mr. Bannon on a range of matters, this bill is not about any specific individual. The prohibition in my legislation would apply whether the President or political adviser in question is Republican or Democrat and irrespective of their particular party views or personal attributes.

At its core, this bill is about fidelity to a deeply American principle: the principle that the servicemembers in our all-volunteer military, the quiet professionals in our intelligence community, and the men and women who protect our homeland should never have their lives disrupted or placed at risk because of a national security policymaking process that is contaminated by partisan politics.

The President is free to obtain political and policy advice from whomever

he wishes. However, he should not be free to place a political adviser on the most vital national security policymaking body in our country. Congress created the NSC, and Congress can and should set reasonable parameters governing its membership.

I respectfully urge my colleagues to defeat the previous question and to support H.R. 804.

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

Actually, I listened with a great deal of interest to the debate from my friends on the other side. None of it had very much to do with the rule or with the underlying legislation that we are going to discuss shortly, so I don't pretend to be an expert on the issues.

I do point out, simply in passing, that it really is up to the President of the United States as to whose advice he or she wants to take. Frankly, you know, to say that there aren't ''political people on the National Security Agency,'' with all due respect to a Chief of Staff that I admire profoundly, I think Leon Panetta is one of the great Chiefs of Staff to ever serve any President, but I would tell you that he is a pretty political guy. He was in this body, and one of his jobs was to help make sure the President of the United States was reelected. So there was a political dimension to what he did.

I don't know Mr. Bannon. I have never met him. I don't pretend to be familiar with him or his thinking. I do know that he is a valued adviser to the President of the United States. And if the President of the United States is going to seek advice from somebody—and it may be in these areas of national security—frankly, personally, I would prefer them to be part of the National Security Council, simply to have the educated debate of some of the very best professionals that we have and so that their opinion, when they advise the President, is fully formed. Again, I see this as the President's decision, not some enormous departure.

On occasions, Mr. Axelrod, who was not a chief of staff who was primarily a political counsel, did sit in on national security meetings at the request of the President. So, again, we can have this argument. I am not sure it is particularly relevant to the legislation. But at the end of the day, I want anybody advising the President of the United States—and he gets to make that choice—to get the best information they can possibly receive so that that advice is well-informed.

Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. CARTER), who is here to offer some important thoughts about some of the issues that are involved in the underlying legislation.

Mr. CARTER of Georgia. Mr. Speaker, I rise today in support of the rule providing for consideration of H.J. Res. 42, which disapproves of the rule submitted by the Department of Labor on drug testing of unemployment insurance applicants.

In 2012, the Middle Class Tax Relief and Job Creation Act was passed into law. This bipartisan reform allowed, but did not require, States to administer drug tests to those applying for unemployment insurance benefits.

Unemployment insurance applicants are required by law to be able and available for employment, and drug testing is one of the most effective ways to ensure applicants meet this requirement. This law was also intended to reassure employers and taxpayers who fund the unemployment insurance program that those claiming benefits were truly ready to be hired and work.

In the years following the passage of this law, the Department of Labor failed to issue a rule to implement it. But in the final months of the Obama administration, the Department of Labor issued a final rule that severely limited States' ability to drug test unemployment insurance applicants. In issuing this rule, the Department of Labor acted outside their authority and went against the clear intent of Congress.

H.J. Res. 42 would provide for disapproval of this rule through the Congressional Review Act. This is needed to remove this overreaching rule and allow for the original intent of the law to be fully implemented.

States are in the best position to determine how to efficiently and effectively administer unemployment insurance programs, and should be allowed to drug test applicants if they choose to do so.

Reform of the unemployment insurance program is of particular interest to me. Last Congress, I introduced the Ensuring Quality in the Unemployment Insurance Program Act, which would allow States to choose how to implement drug testing on unemployment insurance applicants.

I thank Chairman BRADY and Chairman COLE for their attention to this very important issue, and I look forward to working with them to enact meaningful reforms to the unemployment insurance program.

I urge my colleagues to support the rule and this resolution.

□ 1345

Mr. HASTINGS. Mr. Speaker, I am very pleased to yield 2 minutes to the distinguished gentlewoman from Connecticut (Ms. DELAURO), my good friend, who is the ranking member of the Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies.

Ms. DELAURO. Mr. Speaker, I rise in strong opposition to this rule. Drug testing people who are simply applying for unemployment insurance is harassment.

I am outraged on behalf of the workers across this country, workers in my congressional district, who could be subjected to insulting and unnecessary testing when they have earned the right to apply for unemployment insurance.

This is a strategy to throw up barriers to collecting unemployment insurance. It is an intimidation tactic with no basis in reality. States should not be allowed to impose additional obstacles to cut back on applications.

These jobless workers are often unemployed through no fault of their own. Their jobs were taken away by corporations who have moved their jobs overseas in order to get a tax break. And in addition to that, we have a Tax Code today that supports them moving overseas.

Or they may have lost their job because of a flawed trade agreement which, as we have seen in the past, has lost jobs and depressed wages.

We ought to be dealing with a tax code that penalizes companies that move their jobs overseas, not people who just want to do an honest day's work or collect the unemployment insurance that they are entitled to.

People want to work in this country, and it is often tiresome to listen to the ways that some of my colleagues on the other side of the aisle demean working people, people who struggle every day. We are all identified by the jobs that we have. We take pride in the work that we do.

People don't want to be on unemployment. What they want to do is to say to their kids: Be proud of me. This is my job. This is what I do. I want to be your role model.

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

Mr. HASTINGS. I yield the gentlewoman an additional 1 minute.

Ms. DELAURO. What we ought to do, again, let's penalize those companies that send their jobs overseas. Let's do something about those flawed trade agreements which have lost over 800,000 jobs or more. That is just from the NAFTA agreement. Let's do something else for working people in this country.

Or you know what? Perhaps we ought to be drug testing the CEOs of companies who move their mailboxes overseas, export jobs, and who are in the business of hurting American workers. And, by the way, they are getting massive tax breaks at taxpayers' expense.

I strongly oppose this rule and this resolution. American workers deserve better.

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

I just want to point out for the record, Mr. Speaker, that actually this rule that we are trying to repeal, the measure we are trying to instate, doesn't force drug testing on anybody; and that is not going to happen in any State, unless the people in the State decide that that is something they want to do. I am quite content to let people in any State make that decision.

I think in my State, I am pretty certain that the people who I am privileged to represent would be very upset if they thought somebody was receiving unemployment compensation while they were on drugs, because they think

that is going to make it pretty hard for that person to ever get back into the workforce, and they want to be able to identify that. They don't want to incentivize it.

Other people may have a different opinion, and that is legitimate. It is a big country. That is why our Founding Fathers adopted a Federal system, so I wouldn't begrudge another State that saw it differently.

What we are trying to avoid here is a one-size-fits-all or this body and any administration dictating to every State what they ought to do.

Frankly, I would suggest that my good friend's remarks suggest that is the concern, that they actually want to decide in Oklahoma what we would do. We are not trying to decide in Connecticut what our friends would do. We are just thinking this ought to be down to the States.

That was the intent of Congress. When this was written, it was to empower the States to allow them to pursue policies they thought were appropriate. Frankly, if they do that and they pursue different policies, which they may well, we may actually learn something out of this. Again, that is part of the genius of our system, having 50 different laboratories out there.

But let's not have a bureaucracy decide that it will circumvent the will of the Congress of the United States and write a rule that is clearly meant to undo the intent of a legislation that was passed across this floor with bipartisan support.

Again, we just disagree on the issue, but, for the record, we are not trying to impose our beliefs. We are trying to let every State do what that State thinks they ought to do.

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

Mr. HASTINGS. Mr. Speaker, through you, I ask of my good friend from Oklahoma whether or not he has additional speakers. I do not, and I am prepared to close.

Mr. COLE. Mr. Speaker, I am certainly prepared to close if my friend is.

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

Mr. Speaker, we are here debating one rule for two entirely unrelated and unnecessary bills. To make matters worse, in the process of doing so, my Republican colleagues have shut out my fellow Democrats and some of their Republicans, even after presenting two germane amendments, even having the opportunity to have those amendments debated on the floor of the House of Representatives, the people's House.

What are you afraid of? By not making in order germane amendments with no budgetary effect, even after the chairman of the pertinent committee asked that a structured rule be provided that would have allowed for those two germane amendments to be offered, the majority is silencing the duly-elected representatives of millions of Americans.

We have more important things to address here in the people's House. Continuing to undermine the dedicated work of our Federal agencies, continuing to govern not based on the reality of the situation but on how you feel things are, and then shutting out the voices of millions of Americans through their representatives from the legislative process is shameful and no way to govern. The American people deserve better.

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

Mr. COLE. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I just want to point out again that, while my friend is correct, we have two different pieces of legislation under a single rule, and those legislations, as my friend points out, are not particularly related. As a matter of fact, they are not related to one another in any way. Each piece of legislation will receive a separate debate and a separate vote on the House floor. There was simply no reason to have two rules when one would suffice for two bills that basically need to come into the same format, in our view.

I also point out that, when we are talking about the vote under the Congressional Review Act, we are actually following a form prescribed in statute, and we are moving at a pace that the law dictates and that, frankly, is necessary in order to retain the privileged status of the legislation in the United States Senate. So nothing unusual here, other than we are actually being pretty productive and undoing a lot of rules that, frankly, we think were misguided and rushed into the final days of the last administration.

My friends are free to disagree with that, but I think the issues are pretty clear, pretty easy to decide, and don't require a great deal of amendments.

On the Oklahoma-Texas issue, and that is something I know a little bit about since it affects my district, last year, when we considered this legislation, we actually did have an amendment. It was my amendment, and my amendment that probably made it unacceptable in the Senate. But I was indulged by my chairman of the Rules Committee, and for the very important reason that we actually make sure that the tribes have an opportunity to be at the table. In this case, they do.

Mr. THORNBERRY has worked very hard, and so there is no dispute between the delegations in Oklahoma, the delegations in Texas, the interests of the various Indian tribes. Everybody agrees that we need a common set of information, a common survey that we can all trust to, frankly, work out the differences here that have multiplied over a century as the border has literally shifted. So that is the appropriate thing to do. We don't need a lot of amendments on that.

Mr. Speaker, in closing, I want to encourage all Members to support the rule. H.R. 428 is a fair and equitable solution which all interested parties have agreed upon and which can provide certainty that many landowners have sought along the Oklahoma-Texas border.

In addition, H.J. Res. 42 undoes a regulation that should have never been made in the first place. By preventing implementation of this regulation, we can ensure that those actively looking for work are provided with the support necessary to reach that goal.

Mr. Speaker, in closing, I want to take a point of personal privilege. This is the last time my good friend and my staff member, Mr. Waskiewicz, will be on the floor with me. He has been with me for 6½ years. He has made a smart career move and is moving on to the Budget Committee, a more august position.

But I have had the good fortune, as I know my friends have and we all have, to have very many wonderful staff members over the years. I have never had a better staff member than Steve Waskiewicz, never had a better friend, never had a harder worker, never had anybody who was more selfless in putting the interests of our office and the constituents whom we are privileged to represent ahead of all else. So I want to commend and thank him publicly and on the record for his wonderful service.

Ms. JACKSON LEE. Mr. Speaker, I rise in strong opposition to the rule and the underlying bill.

I strongly oppose this rule because it makes in order H.J. Res. 42, a bill disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants, an effort to impose drug testing as a condition of receiving unemployment insurance and other forms of public assistance.

I oppose this rule because it would repeal a Department of Labor rule intended to implement a bipartisan agreement on implementing a provision, in the Middle Class Tax Relief and Job Creation Act of 2012, that allows states to drug test unemployment insurance (UI) applicants in certain circumstances.

In 2012, Congress approved a bipartisan compromise on drug testing unemployment insurance claimants.

The agreement permitted states to drug test UI claimants in cases where:

1) an applicant has been discharged from their last job because of unlawful drug use; or

2) an applicant who "is an individual for whom suitable work (as defined under the State law) is only available in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of Labor)."

Congress therefore mandated the Department of Labor to define through regulation those occupations that regularly conduct drug testing.

The final Department of Labor (DOL) rule, which would be repealed by H.J. Res. 42, defined "occupation" as a position or class of positions that are required, or may be required in the future, by state or federal law to be drug tested.

Some members of Congress have criticized the regulations as being too narrowly drawn, but in fact, they track the bipartisan legislation very closely.

It seems that what is really at issue is a desire to conduct broader drug testing of UI applicants.

Any proposal that seeks to expand the ability of states to drug test people for unemployment insurance should be vigorously opposed.

States already have the ability to administer drug testing and this change would needlessly shift employer costs to the states.

State UI programs already penalize job-related drug use.

Virtually all states treat a drug-related discharge as disqualifying misconduct even if it is not explicitly referenced in their discharge statutes.

Twenty states also explicitly deny benefits for any job loss connected to drug use or a failed drug test.

In addition, six states (Arizona, Arkansas, Indiana, South Carolina, Tennessee, and Wisconsin) have passed legislation equating a failed or refused pre-employment drug screen with refusing suitable work.

Employers already have testing as a tool to screen out people who use illicit drugs, at no cost to states.

Proponents of drug testing argue that states want to be able to drug test UI applicants.

However, only three states (Texas, Mississippi and Wisconsin) have enacted laws permitting state drug testing of UI claimants, consistent with the federal regulation, with all three of these states delaying implementation until after the final DOL rule targeted by H.J. Res. 42 was issued.

Suspicionless drug testing of government benefit recipients likely violates the Fourth Amendment.

Generally, government-mandated drug testing not based on individualized suspicion is unconstitutional.

Drug tests historically have been considered searches for the purposes of the Fourth Amendment.

For searches to be reasonable, they generally must be based on individualized suspicion unless the government can show a special need warranting a deviation from the norm.

However, social insurance or governmental benefit programs like UI, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) and Housing Assistance do not naturally evoke the special needs that the Supreme Court has recognized in the past.

Indeed, when states like Michigan and Florida have tried to impose mandatory suspicionless drug testing on all TANF applicants or recipients, they have been stopped by federal courts that have found such testing to be unconstitutional under the Fourth Amendment.

These court battles also imposed substantial legal costs for states.

State-administered drug testing is a poor investment of public funds.

Claims that testing will save taxpayer money are built upon the assumption that the tests will return a high number of positive results.

However, studies show that individuals who receive public benefits use drugs at rates similar to the general population, and the vast majority of such individuals do not use drugs.

Most individuals, in fact, refrain from using drugs on a regular basis.

Ten states have spent substantial amounts of money in recent years to set up and administer drug testing systems for TANF recipients, but have identified only a few claimants testing positive.

Drug testing is also costly and prone to returning false-positives.

Drug tests that do come back as positive easily identify marijuana use but often miss other drugs that ordinarily clear out of the body within a few days.

Tests do not indicate if a person is impaired, or whether they are using less than they have in the past.

Working people paid for this insurance policy, and jobless workers earned the right to access UI through their service to their employer.

Proposals to drug test UI beneficiaries needlessly stigmatize and punish jobless workers and their families who are trying to get back on their feet.

If legislators have genuine concerns about drug use, there are far better ways to respond than targeting and stigmatizing the unemployed.

I urge you to oppose H. Res. 99, the Rule governing debate for H.J. Res. 42 and any legislation that seeks to expand the ability of states to condition the receipt of unemployment insurance and other forms of public assistance on a drug test.

For these reasons and more, I oppose this rule and the underlying bill. I would also like to include the following list of organizations actively opposed to H.J. Res. 42:

9to5, National Association of Working Women; AFL-CIO; AME Church—Social Action Commission; American Civil Liberties Union; American Federation of State, County and Municipal Employees (AFSCME); Bend the Arc Jewish Action; Bill of Rights Defense Committee/Defending Dissent Foundation; Center for Community Change Action; The Center for HIV Law and Policy; Center for Law and Social Policy (CLASP); Drug Policy Alliance Economic Policy Institute Policy Center; Food Research & Action Center; Harm Reduction Coalition; Housing Works; Institute for Science and Human Values; Interfaith Worker Justice; LatinoJustice; The Leadership Conference on Civil and Human Rights; Legal Action Center; Legal Aid at Work.

Life for Pot; The Los Angeles LGBT Center; Massachusetts Law Reform Institute MomsRising; NAACP; National Asian Pacific American Women's Forum; National Association of Social Workers; National Center for Transgender Equality; National Council of Churches; National Employment Law Project; National Employment Lawyers Association National LGBTQ Task Force Action Fund; National Women's Law Center; NCADD–MD; Public Justice Center; Sargent Shriver National Center on Poverty Law; StopTheDrugWar.org; Students for Sensible Drug Policy (SSDP); The Sugar Law Center for Economic & Social Justice; Union for Reform Judaism; The United Methodist Church—General Board of Church and Society; Witness to Mass Incarceration; Workplace Fairness.

The material previously referred to by Mr. HASTINGS is as follows:

AN AMENDMENT TO H. RES. 99 OFFERED BY MR. HASTINGS

At the end of the resolution, add the following new sections:

SEC. 3. Immediately upon adoption of this resolution the Speaker shall, 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. 804) to amend the National Security Act of 1947 to protect the National Security Council from political interference, and for other purposes. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided among and controlled by the respective chairs and ranking minority members of the Committees on Armed Services, Foreign Affairs, and the Permanent Select Committee on Intelligence. After general debate the bill shall be considered for amendment under the five-minute rule. All points of order against provisions in the bill are waived. 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. 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. If the Committee of the Whole rises and reports that it has come to no resolution on the bill, then on the next legislative day the House shall, immediately after the third daily order of business under clause 1 of rule XIV, resolve into the Committee of the Whole for further consideration of the bill.

SEC. 4. Clause 1(c) of rule XIX shall not apply to the consideration of H.R. 804.

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 Republican majority agenda and a vote to allow the Democratic minority 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.''

The Republican majority may 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 Republican Leadership Manual on the Legislative Process in the United States House of Representatives, (6th edition, page 135). Here's how the Republicans describe the previous question vote in their own manual: ''Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule. . . . When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he

then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment.''

In 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 Republican majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

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

The SPEAKER pro tempore. The question is on ordering the previous question.

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

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

The yeas and nays were ordered.

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

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 1 o'clock and 56 minutes p.m.), the House stood in recess.

□ 1415

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. ROGERS of Kentucky) at 2 o'clock and 15 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

Ordering the previous question on House Resolution 99;

Adoption of House Resolution 99, if ordered;

Ordering the previous question on House Resolution 116; and

Adoption of House Resolution 116, if ordered.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

PROVIDING FOR CONSIDERATION OF H.R. 428, RED RIVER GRADIENT BOUNDARY SURVEY ACT, AND PROVIDING FOR CONSIDERATION OF H.J. RES. 42, DISAPPROVING RULE SUBMITTED BY DEPARTMENT OF LABOR RELATING TO DRUG TESTING OF UNEMPLOYMENT COMPENSATION APPLICANTS

The SPEAKER pro tempore. The unfinished business is the vote on ordering the previous question on the resolution (H. Res. 99) providing for consideration of the bill (H.R. 428) to survey the gradient boundary along the Red River in the States of Oklahoma and Texas, and for other purposes, and providing for consideration of the joint resolution (H.J. Res. 42) disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The vote was taken by electronic device, and there were—yeas 225, nays 189, not voting 17, as follows:

[Roll No. 88]

YEAS—225

Abraham
Aderholt
Allen
Amash
Amodei
Arrington
Babin
Bacon
Banks (IN)
Barletta
Barr
Barton
Bergman
Biggs
Bilirakis
Bishop (MI)
Bishop (UT)
Black
Blackburn
Blum
Bost
Brady (TX)
Brat
Bridenstine
Brooks (AL)
Brooks (IN)
Buchanan
Buck
Bucshon
Budd
Burgess
Byrne
Calvert
Carter (GA)
Carter (TX)
Chabot
Chaffetz
Cheney
Coffman
Cole
Collins (GA)
Collins (NY)
Comer
Comstock
Conaway
Cook
Costello (PA)
Cramer
Crawford
Culberson
Curbelo (FL)
Davidson
Davis, Rodney
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Donovan
Duncan (SC)
Duncan (TN)
Dunn
Farenthold
Faso
Ferguson
Fitzpatrick
Fleischmann
Flores
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gaetz
Gallagher
Garrett
Gibbs
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Griffith
Grothman
Guthrie
Harper
Harris
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Hill
Holding
Hollingsworth
Hudson
Hultgren
Hunter
Hurd
Issa
Jenkins (KS)
Jenkins (WV)
Johnson (LA)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Joyce (OH)
Katko
Kelly (MS)
Kelly (PA)
King (IA)
Kinzinger
Knight
Kustoff (TN)
Labrador
LaHood
Lamborn
Lance
Latta
Lewis (MN)
LoBiondo
Long
Loudermilk
Lucas
Luetkemeyer
MacArthur
Marchant
Marino
Marshall
Massie
Mast
McCarthy
McClintock
McHenry
McKinley
McMorris Rodgers
McSally
Meadows
Meehan
Messer
Mitchell
Moolenaar
Mooney (WV)
Mullin
Murphy (PA)
Newhouse
Noem
Nunes
Olson
Palazzo
Palmer
Paulsen
Pearce
Perry
Pittenger
Poe (TX)
Poliquin
Posey
Ratcliffe
Reed
Reichert
Renacci
Rice (SC)
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Royce (CA)
Russell
Rutherford
Sanford
Scalise
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smucker
Stefanik
Stewart
Stivers
Taylor
Tenney
Thompson (PA)
Thornberry
Tiberi
Tipton
Trott
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yoder
Yoho
Young (AK)
Young (IA)
Zeldin

NAYS—189

Adams
Aguilar
Barragán
Bass
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Boyle, Brendan F.
Brady (PA)
Brown (MD)
Brownley (CA)
Bustos
Butterfield
Capuano
Carbajal
Cárdenas
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly
Conyers
Cooper
Correa
Costa
Courtney
Crist
Crowley
Cuellar
Cummings
Davis (CA)
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Ellison
Engel
Eshoo
Espaillat
Esty
Evans
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Gonzalez (TX)
Gottheimer
Green, Al
Green, Gene
Grijalva
Gutiérrez
Hanabusa
Hastings
Heck
Higgins (NY)
Himes
Hoyer
Huffman
Jackson Lee
Jayapal
Jeffries
Johnson (GA)
Johnson, E. B.
Kaptur
Keating
Kelly (IL)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
Krishnamoorthi
Kuster (NH)
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lawson (FL)
Lee
Levin
Lewis (GA)
Lieu, Ted
Lipinski
Loebsack
Lofgren
Lowenthal
Lowey
Lujan Grisham, M.
Luján, Ben Ray
Lynch
Maloney, Carolyn B.
Maloney, Sean
Matsui
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Moore
Moulton
Murphy (FL)
Nadler
Napolitano
Neal
Nolan
Norcross
O'Halleran
O'Rourke
Pallone
Panetta
Pascrell
Pelosi
Perlmutter
Peters
Peterson
Pingree
Pocan
Polis
Price (NC)
Quigley
Raskin
Rice (NY)
Richmond
Rosen
Roybal-Allard
Ruiz
Ruppersberger
Ryan (OH)
Sánchez
Sarbanes
Schakowsky
Schiff
Schneider
Schrader
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Sires
Slaughter
Smith (WA)
Soto
Speier
Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Titus
Tonko
Torres
Tsongas
Vargas
Veasey
Vela
Velázquez
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth

NOT VOTING—17

Beatty
Duffy
Emmer
Hartzler
Hensarling
Huizenga
King (NY)
LaMalfa
Love
McCaul
Mulvaney
Payne
Rush
Shuster
Simpson
Visclosky
Zinke