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2 MARKUP OF: H.R. 1139, THE "COPS IMPROVEMENTS

3 ACT OF 2009"

4 AND H.R. 985, THE "FREE FLOW OF INFORMATION

5 ACT OF 2009"

6 Wednesday, March 25, 2009

7 House of Representatives,

8 Committee on the Judiciary,

9 Washington, D.C.

10 The committee met, pursuant to call, at 10:15 a.m., in

11 Room 2141, Rayburn House Office Building, Hon. John Conyers

12 [chairman of the committee] presiding.

13 Present: Representatives Conyers, Boucher, Nadler,

14 Scott, Watt, Jackson Lee, Waters, Johnson, Pierluisi,
15 Gutierrez, Sherman, Baldwin, Gonzalez, Weiner, Schiff,
16 Sanchez, Wasserman Schultz, Maffei, Smith, Sensenbrenner,
17 Coble, Goodlatte, Lungren, Issa, Forbes, King, Franks,
18 Gohmert, Poe, and Rooney.

19 Staff present: Perry Apelbaum, Staff Director/Chief
20 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;
21 George Slover, Legislative Counsel/Parliamentarian; Sean
22 McLaughlin, Minority Chief of Staff/General Counsel; Allison
23 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and
24 Anita L. Johnson, Clerk.

25 Chairman Conyers. [Presiding.] Good morning, everyone.
26 The committee will come to order. Welcome to the Judiciary.

27 Before turning to our legislative agenda, I would like
28 to briefly recognize our esteemed colleague, Debbie Wasserman
29 Schultz. As you know, she has faced and won an incredible
30 battle with breast cancer, and she has been carrying on an
31 also equally incredible schedule at the same time, performing
32 her congressional duty as well as taking care of her family.
33 Most of us aren't surprised by her accepting these
34 challenges, and she is introducing tomorrow legislation to
35 ensure that other young women have the information and
36 resources they need to protect their own health through early
37 detection of disease, and I will be a proud cosponsor of that
38 bill as soon as it is introduced.

39 And I know I speak for everyone on all sides of the
40 aisle when I say that Debbie Wasserman Schultz, your
41 strength, your bravery, your commitment to helping others is
42 an inspiration to us all.

43 Does anyone want me to yield? If not, we turn to H.R.
44 1139, the COPS Improvement Act, and continue the amendment
45 process. The clerk will report the bill.

46 The Clerk. H.R. 1139, a bill to amend the Omnibus Crime
47 Control and Safe Streets Act of 1968—

48 [The bill follows:]

49 ***** INSERT *****

50 Chairman Conyers. Without objection, the bill is
51 considered as read, and the chair recognizes Judge Gohmert.

52 Mr. Gohmert. Thank you, Chairman. I didn't even get my
53 hand wiped to wave, so thank you.

54 This amendment is simple. I would report—

55 Chairman Conyers. Do we move to—let us report the—

56 Mr. Gohmert. —amendment at the desk.

57 The Clerk. Amendment offered by Mr. Gohmert, COPS
58 Improvements Act of 2009.

59 [The amendment by Mr. Gohmert follows:]

60 ***** INSERT *****

61 Chairman Conyers. Without objection, the amendment is
62 considered as read. The gentleman is recognized in support
63 of his amendment.

64 Mr. Gohmert. Thank you, Mr. Chairman. This amendment
65 is simple. It replaces the \$1.8 billion authorization level
66 with the \$1.15 billion proposed by the gentleman from New
67 York, approved by this committee, passed by the House in the
68 110th Congress, but never enacted into law in the last
69 Congress.

70 So it didn't get done in the last Congress, and
71 especially with budgets being so tight everywhere, I don't
72 see the need to increase by 70 percent when this amendment
73 would bring it down to a 10 percent increase over what was
74 previously authorized, and again, there was nothing passed in
75 the last Congress.

76 But remember when you were a kid standing in front of a
77 big buffet line, and you filled your plate as high as you
78 could but you only could eat a small portion of the food on
79 your plate, and your mother looked at you and said your eyes
80 were bigger than your stomach? Well, this committee is
81 standing before an infinite buffet of federal spending, and
82 our eyes are bigger than our stomach.

83 I am not sure we should approve a 70 percent increase in
84 authorization when the \$1.15 billion we passed last Congress
85 was never actually enacted into law. It is an unnecessary

86 increase to go from where we are up 70 percent. So I propose
87 to take a step back from the buffet table, focus our eyes a
88 little bit, and bring the increase down to a 10 percent
89 increase rather than a 70 percent increase, and I urge my
90 colleagues to adopt the amendment.

91 I yield back the balance of my time.

92 Chairman Conyers. Thank the gentleman.

93 Recognize the gentleman from New York, Mr. Weiner.

94 Mr. Weiner. Thank you, Mr. Chairman. I would encourage
95 my colleagues to oppose this. Mr. Gohmert is—his district
96 will—under this amendment—will lose about 75 police officers.
97 So if Mr. Gohmert is successful, his constituents will lose
98 the help of the federal government for the things he cares
99 about: enforcing anti-terrorism efforts, enforcing border
100 issues, immigration, all the things that I hear the
101 distinguished gentleman talk about so frequently.

102 Look, here is the situation: The COPS Program was a
103 success. It was a success because it was democratic, with a
104 small "d." Overwhelmingly, the grants go to smaller cities,
105 smaller sheriff's departments who really do need the help.

106 The question is, well why would we do this now? Why
107 would—you know, and putting aside the slight offensiveness of
108 referring to hiring police officers as somehow standing
109 before a buffet table, why would we do this now?

110 Well, because cities and localities are under

111 extraordinary stress in this time for a couple of reasons.
112 One, they are under economic stress, so they are having to
113 lay off—literally lay off—police officers, and at the same
114 time the federal government is giving localities and police
115 departments more work to do. They didn't have to do large
116 amounts of anti-terrorism work 10 years ago. They didn't
117 have to do a large amount of work dealing with other crimes
118 that they now have to do.

119 And it is also a circumstance that we have certain
120 demographic things that are starting to happen that lead us
121 to believe that crime is going to start to pick up. So the
122 combination of a souring economy, more people that were
123 arrested during the big drug—the war on drugs of the 1990s—
124 those people are starting to return to the communities, and
125 this is an effort to add prosecutors, add investigators, and
126 add boots on the ground.

127 Now, to be consistent, there are some people who believe
128 the federal government should not be involved in law
129 enforcement. One of my colleagues on the other side made
130 that point. If you believe that, if you believe that it is
131 not the federal government's job to help, I hope you continue
132 to be consistent when it comes time to talk about immigration
133 enforcement. I really do. And if that is the view that you
134 have, if you believe that the federal government should stay
135 on the sidelines and not help with anti-terrorism, not help

136 fight crime, then you should definitely support Mr. Gohmert's
137 amendment.

138 But the president put the funding for 50,000 new police
139 officers in his budget; my bill—asked at the urging of some
140 of my Republican colleagues, I offered an amendment myself
141 earlier in this process to reduce from 100,000 to 50,000 new
142 police officers. I think that that is an appropriate amount,
143 and you look at how successful the COPS Program has been,
144 where there has been almost a direct correlation between the
145 number of police officers hired by the federal government and
146 the reduction of crime in the 1990s. Now is the time to
147 breathe life back into the program that has been an
148 unmitigated success.

149 And—

150 Mr. Gohmert. Will the gentleman yield?

151 Mr. Weiner. I certainly will.

152 Mr. Gohmert. I offer a question.

153 Mr. Weiner. Certainly.

154 Mr. Gohmert. When you say, if the gentleman is against
155 immigration or anti-terrorism, is anyone from New York saying
156 that these should now be the responsibility of the local
157 government—immigration control, national anti-terrorism—

158 Mr. Weiner. No. Reclaiming my time.

159 Mr. Gohmert. Thank you.

160 Mr. Weiner. At no point is the federal—am I proposing

161 or does the COPS Program contemplate the federal government
162 taking over the police department any more than getting
163 education money contemplates taking over the departments of
164 the local boards of ed, or any more than having the
165 Environmental Protection Agency take over local sewer and
166 plumbing projects. It is whether or not you believe the
167 federal government should have a role in helping states and
168 localities.

169 Mr. Gohmert, you are going to be able to hire 171 police
170 officers as a result of my bill; you will be able to hire
171 roughly half of that because of your amendment. Your
172 constituents are going to have to make the decision for
173 themselves whether they think the Weiner proposal for Mr.
174 Gohmert's district is better than Mr. Gohmert's proposal for
175 Mr. Gohmert's district.

176 I yield back my time.

177 Chairman Conyers. Before you do, would the gentleman
178 yield just a moment?

179 Could Detroit get his police officers if the bill passes
180 and he is still opposed to it? Yes, we need them, sure. You
181 need them, too.

182 All right. I thank the gentleman.

183 Chair recognized Lamar Smith, the ranking member.

184 Mr. Smith. Thank you, Mr. Chairman.

185 Before I get to my comments on the amendment, I just

186 want to tell Mr. Weiner I appreciate his speculation as to
187 how many police officers might go to any district, and I want
188 to point out that it is pure speculation. Of course, it
189 assumes that every single dollar would go to a police
190 officer's salary, and it assumes that they would get paid
191 about \$13,000 a year. I don't think either is the case; I
192 think there is a lot of overhead, there is a lot of
193 misspending of the money, and a lot of instances where the
194 money is not used for the intended purposes. But it is fun
195 to speculate and both sides do it, but I just don't think it
196 is accurate.

197 Mr. Weiner. Would the gentleman yield on that, please?

198 Mr. Smith. I won't, because I don't have the time. And
199 if I have time when I finish my statement on the amendment, I
200 will.

201 Mr. Chairman, I do support the amendment offered by the
202 ranking member of the Crime Subcommittee, Mr. Gohmert. This
203 is a common sense, straightforward amendment. It reinstates
204 the more fiscally responsible authorization increase approved
205 by this very committee in the last Congress.

206 I appreciate the gentleman from New York's amendment to
207 lower the authorization from over \$3 billion to \$1.8 billion;
208 however, I still do not see the need to arbitrarily increase
209 the authorization by 72 percent. As it stands now, we will
210 be authorizing an additional \$753 million to the current

211 level. Little has changed from the last Congress, except
212 that the crime rate has actually dropped, not increased.

213 In the first 6 months of 2008, violent crime dropped by
214 3.5 percent, property crime by 2.5 percent. The COPS Program
215 is currently authorized at a little over \$1 billion. This
216 amendment, offered by Mr. Gohmert, adopts the increased
217 authorization level of \$1.15 billion proposed by the
218 gentleman from New York in the last Congress. This provides
219 a 10 percent increase above the current authorization level,
220 equivalent to a generous cost-of-living increase for the last
221 2 years of 10 percent.

222 In the last Congress, \$1.15 billion was a sufficient
223 increase. This year, it is now \$1.8 billion. Why is that?
224 The crime hasn't increased; why are we increasing spending on
225 a law enforcement that has had, in fact, very mixed results?

226 Both the Justice Department the inspector general and
227 the GAO found that thousands of hires funded by the COPS
228 Program never occurred because law enforcement agencies used
229 COPS funding to cover their budget shortfalls. Some police
230 departments failed to hire officers required by the grants or
231 improperly used grant funds to retain rather than hire police
232 officers.

233 Instead of simply throwing more money into the COPS
234 Program, this committee should have reviewed the use of these
235 funds by law enforcement agencies and their effectiveness in

236 reducing the crime rate. Then we would have had information
237 to make a fiscally responsible decision about how best to
238 fund this program.

239 Last week Congress was taught a hard lesson about what
240 happens when we bail out Americans' money without proper
241 oversight and accountability. We seem unwilling to learn
242 from our mistakes.

243 It is said that Congress holds the purse strings of the
244 federal government. Lately, we have loosened those purse
245 strings so that everyone—I urge my colleagues to adopt Mr.
246 Gohmert's sensible and fiscally responsible amendment, and I
247 will now yield to the gentleman from New York, if he still
248 wishes to add—

249 Mr. Weiner. Well, I just want to make sure that the
250 gentleman understands: Those estimates are not mine. They
251 are estimates of the bipartisan COPS Office, and they have
252 some reason to believe what they say—13,200 communities have
253 gotten funding from the COPS Program.

254 Mr. Smith. Right.

255 Mr. Weiner. Eighty-two percent of the grants went to
256 police departments of less than 50 percent, and when you talk
257 about the reductions in crime, well, recently the Police
258 Executive Research Forum surveyed 200 police departments—

259 Mr. Smith. Let me reclaim my time. Obviously the cops
260 have an interest in making a projection that benefits them,

261 but the math just doesn't add up. And I will be happy to go
262 over the decision with you.

263 The other thing is that we have had another G.O. report
264 come out saying that there was no causal—very little causal
265 relationship between the COPS Program and the reduction in
266 crime. As I say, the money is simply not used for the
267 purposes for which it was intended; we would have been far
268 better off having a hearing trying to straighten out the
269 process before we approve a 70 percent increase.

270 I even think the 10 percent increase that is called for
271 in Mr. Gohmert's amendment probably is more than we need, but
272 it is an effort to at least adjust for the cost of living and
273 go a little bit beyond that. And again, it is the same
274 amount that the gentleman supported in the last Congress, so
275 I urge our colleagues to support the Gohmert amendment.

276 Chairman Conyers. Sheila Jackson Lee?

277 Ms. Jackson Lee. Thank you, Mr. Chairman.

278 Before I start, let me add my appreciation to Debbie
279 Wasserman Schultz for her bravery and courage, and as well, I
280 thank her for the introduction of what I think will be a
281 major new initiative as it relates to cancer research and the
282 response to cancer. Thank her again for her courage and
283 bravery.

284 I just want to pause for a moment, because I think my
285 good friend from Texas has good intentions. He has a history

286 of sitting on the bench with a very full docket, and he has
287 watched the process of deliberating on criminal cases,
288 probably has seen recidivism, and he knows, obviously, the
289 ups and downs of the swing of crime statistics and in the
290 state.

291 But there is no doubt that I think if you look across
292 the landscape today you will find that, unfortunately, there
293 is a resurgence of crime. And one of the proven policies of
294 yesteryear was community-oriented policing, which centers
295 around the number of police officers that you have in
296 neighborhoods.

297 I was at a border caucus meeting yesterday when one of
298 the members indicated that their border towns—one of their
299 border towns—had one and a half police officers, if you will—
300 I guess that is a part-time police officer. Those of us from
301 border states have seen an increase, resurgence, or surgence,
302 if you will, a surge of extreme violence.

303 We know that that is going to be a larger question that
304 we have to address; some of us are writing legislation. But
305 we know that border towns can receive and welcome—just like
306 Detroit; just like Houston—can welcome this increase of
307 police officers, plain and simple. These sheriffs are in
308 desperate need of police officers.

309 I might imagine that they will not spend their dollars
310 coming forward on training; they will be doing national

311 searches to get more officers, whatever their proportion of
312 this amount happens to be. In my own city of Houston, things
313 are happening that we have never seen before. People are
314 being kidnapped from shopping center parking lots—not
315 accosted, not robbed, but kidnapped. And they have lost
316 their lives.

317 Now, some would say that you can't stop all aspects of
318 crime, but certainly we know that prevention, and the number
319 of the officers, and a collaborative effort between
320 communities makes a difference. This is not an original
321 thought, but I must make mention of it because my good friend
322 from New York sort of said it to me: None of this money will
323 be used for AIG-type bonuses for police officers. Frankly,
324 this is going to put police officers where they are needed,
325 and it is frightening out there.

326 We have made some successes in the 1990s. We saw the
327 evidence of the COPS Program. We have lost some momentum in
328 the last 8 years, and we can see the results. As I
329 indicated, a series of serial killings in my community, women
330 snatched off streets, bloody shootouts in apartment complexes
331 may be the sign of the times, but it is also a sign of the
332 need for increased presence of trained police officers and, I
333 might add, community-oriented police.

334 So the COPS Program is a major component, I believe, to
335 helping us get our hands around this surge of crime, and as

336 well, it is a blessing to border states and small border
337 towns that are living under the oppressiveness of inadequate
338 funding for police officers.

339 I would be happy to yield to my distinguished colleague;
340 I just want to finish on this point before I do so. I am
341 meeting with border mayors today, and you can be assured that
342 beyond the issue of cop demands of immigration reform, they
343 are going to be talking about the violence at the border,
344 which I don't believe can be handled with military troops,
345 but it can be handled through the combination of civilian
346 efforts, ATS, EEA, cops on the border protection, and police
347 officers.

348 I yield to the gentleman from New York.

349 Mr. Weiner. Well, I thank you. And there was some
350 implication that perhaps the numbers we are talking about for
351 the projections of what this bill would mean are somehow
352 being fudged, so let us talk about what we know is a fact.
353 The COPS Program in Mr. Smith's district provided 687
354 officers to 29 local law enforcement agencies in the 21st
355 district, 15 school resource people, who essentially—law
356 enforcement within the schools—and also there was the
357 implication that somehow the GAO has said this didn't work.
358 Quite the opposite. In 2005, GAO published a report that
359 said between 200,000 and 225,000 crimes, one-third of which
360 were violent, were prevented because of police officers under

361 this program.

362 Chairman Conyers. Gentleman is given 2 additional
363 minutes.

364 Mr. Weiner. -and there was, of course--there were other
365 mistakes that--or other implications that were wrong. You
366 know, 200 police departments were recently surveyed by the
367 Police Executive Research Forum, which takes small police
368 departments and bigger ones, and here is what they found: 44
369 percent of police departments say that certain types of
370 crime, they believe, are up as a result of economic downturn;
371 39 percent said they had seen an increase in robberies. A
372 third said they increased in burglaries; 40 percent said they
373 had seen an increase in theft. So this notion that we are in
374 a crime-free period in American history is not supported by
375 the facts, and the idea that the COPS Office is somehow
376 fudging the numbers of what this means. Mr. Smith, if you
377 vote for the Gohmert amendment, will get roughly half the
378 number of police officers--

379 Mr. Smith. Would the gentleman yield after he finishes?

380 Ms. Jackson Lee. Reclaiming my time.

381 Mr. Smith. Would the gentlewoman yield?

382 Ms. Jackson Lee. I will yield for a moment.

383 Mr. Smith. Thank you. A couple of points, and one, I
384 am getting the study that shows there is very little direct
385 correlation between the COPS Program and the reduction in

386 crime, which I will mention in just a minute. On the way
387 there, I noticed that all the figures used by the gentleman
388 were less than a majority, which is to say, 44 percent was
389 one figure that he used. So a minor—in one kind of crime,
390 but 56 percent saw no increase whatsoever. And overall, the
391 crime rate is still down in almost every single—

392 Ms. Jackson Lee. Reclaiming my time—

393 Mr. Smith. I will yield back.

394 Ms. Jackson Lee. —if the gentleman—reclaiming my time.
395 Let me offer to say that any community that could document
396 that they had a 44 percent decrease in crime would be
397 zealously celebrating. Crime, in any sense, has victims,
398 whether they are home invasions or kidnapping women off of a
399 parking lot after they have finished there work. That is a
400 victim. And frankly, I believe if we can counter the surge
401 of crime in any aspect, this is a valuable legislative
402 initiative and should not be—

403 And finally, let me just say, an enormous tragedy that
404 occurred in one of our California cities, where we saw the
405 loss of life of four officers, this is not a job that you
406 take without the knowledge of the risks and sacrifice that
407 you would make. The fact that we have officers willing to
408 stand up and take charge and accept this responsibility to
409 protect us—

410 Chairman Conyers. The gentlelady's time is expired.

411 Ms. Jackson Lee. -if we cannot provide this resource, I
412 think we are derelict in our own responsibilities. And I ask
413 opposition to the amendment. I yield back.

414 Chairman Conyers. Gentleman from California, Dan
415 Lungren.

416 Mr. Lungren. Mr. Chairman, thank you very much. Mr.
417 Chairman, I am pretty sure that the amendment I would like to
418 offer following the consideration of this amendment would be
419 considered out of order, but let me just establish what it
420 is.

421 I have spoken with some people in my district who have
422 returned from Iraq, and some from Afghanistan. I have
423 communicated at length with some people that have been in
424 Afghanistan and some who are returning there. In each and
425 every conversation I have had, there has been the indication
426 that we need more troops there; we need to at least bring up
427 our troop-strength in Afghanistan to 65,000.

428 You look at our obligations around the world, and it is
429 obviously we do not have enough troops. We need to expand
430 our Army; we need to expand our Marine Corps. But yet, the
431 current administration is talking about what appears to be a
432 10 percent cut in defense over the lifetime of the budget
433 that they have presented to us. And the reason is, of
434 course, because we don't have enough money.

435 So my amendment was going to be to have a 2 percent tax-

436 well, no, actually to take 2 percent of the taxes raised by
437 all the cities just mentioned, including New York, and
438 Houston, and Sacramento, and Dallas, and so forth, and have
439 that 2 percent of the total amount of money that is taxed at
440 the local level and otherwise would go to local budgets go
441 directly to the Defense Department so that we could increase
442 the number of troops that we need.

443 Now, of course the local governments would have no
444 control over how that money was spent; they would have no
445 control over what our defense policies would be; they would
446 have no control over the Defense Department; they would have
447 no control over the disbursement of our troops around the
448 world. And I suppose if I offered the amendment people would
449 say, "Why would you do that to separate responsibility from
450 authority, accountability from authority? The idea that you
451 would have one level of government raising the taxes and yet
452 sending it off to another level of government in which they
453 have no control—wouldn't that be a confusion of the proper
454 roles of government?"

455 And even though my amendment would be considered out of
456 order, I guess, or non-germane, it is the mirror of this
457 bill. This bill says that we, the federal government, have
458 the first line responsibility for paying for cops on the
459 beat. That is the responsibility of local government.

460 We have already acknowledged we don't have enough money

461 to do the things we are supposed to do on the federal level.
462 We have got a president presenting us with a budget that will
463 bring us down to the lowest percentage of GDP for national
464 defense in a world in which we are faced with not only
465 transnational terrorism, but we are also faced with emerging
466 threats in China, North Korea, Iran, Russia is not totally
467 playing nice with us. The more we confuse the proper
468 responsibility and roles of government, the less likely we
469 are to have effective government. And we have listened as
470 the other side has created the straw men.

471 That is, if we are against this proposal in all of its
472 glory, we are against fighting crime. So why don't you go
473 back to your local officials and ask them why they are not
474 putting the proper number of cops on the beat? Why don't you
475 go back and ask your local officials why they are not taxing
476 the people they represent to pay for the kind of law
477 enforcement that you keep talking about?

478 Why do you keep presenting this false dichotomy here by
479 saying that if we don't think it is the proper role of the
480 federal government to basically be nationalizing individual
481 police forces, we are against fighting crime? I mean, the
482 fact of the matter is, this is a question of whether or not a
483 program that was established under the Clinton administration
484 as a seed program—you remember the concept of the seed
485 program? It was to give communities an incentive to hire in

486 the first place, and then have the communities pick up the
487 cost because they recognized it was their responsibility; it
488 was supposed to be a 4-year program.

489 I am not talking about the other types of assistance,
490 where you have multi-jurisdictional task forces, where the
491 federal government has a part. We are talking about whether
492 or not the federal government has the first responsibility
493 for paying for local law enforcement to put folks on the
494 beat.

495 And I would ask the chairman for 2 additional minutes.

496 Chairman Conyers. To be out of order, 2 more minutes?

497 Mr. Lungren. Yes, sir.

498 Chairman Conyers. Granted.

499 Mr. Lungren. And so if someone on the other side of the
500 aisle can tell me why my concept of taxing-taking the
501 proceeds of local government to pay for the Defense
502 Department, recognizing that we have an absolute obligation
503 to give our troops all the equipment that we need, that we
504 have responsibilities around the world that require us to
505 have additional members of the Defense Department in uniform,
506 why that is different than what you are talking about, I
507 would like to be so instructed.

508 The more you divorce responsibility from authority, the
509 more you are going to have a lack of proper decision-making.

510 Mr. Weiner. Would the gentleman yield-

511 Mr. Lungren. I would be happy to find out from the
512 gentleman from New York why we—percent of New York's total
513 tax—for the Department of Defense.

514 Mr. Weiner. It is customary around here to aver around
515 the idea of nationalizing. I am not sure the gentleman
516 understands how the COPS Program works. The COPS Program has
517 no control over the local police departments—

518 Mr. Lungren. Taking back my time, I understand exactly
519 how the COPS Program works.

520 Mr. Weiner. Apparently not.

521 Mr. Lungren. I understand exactly how it works. During
522 my tenure in California, it was at the time when it was
523 created by the Clinton administration. I remember precisely
524 what the Clinton administration said: We will pay 100
525 percent of the salaries of these new employees for 1 year—

526 Mr. Weiner. The gentleman is factually wrong. Would he
527 yield for corrections?

528 Mr. Lungren. —75 percent for the second year, 50
529 percent for the third year, 25 percent for the fourth year,
530 and after that the program would phase out. Now, if you are
531 talking about other types of the COPS training program or
532 community-oriented policing, that is a different aspect of
533 the COPS Office in the Department of Justice. And so I am
534 just trying to show folks that there is a disconnect between
535 what the proper role of government and the a taxing

536 authority, and the more that you hide the taxing authority—

537 Chairman Conyers. The gentleman's time is expired.

538 Mr. Lungren. —the more that you run into the kind of
539 huge deficits we have at all levels of government.

540 Chairman Conyers. Two minutes to Ted Poe, and then we
541 are going for a vote.

542 Mr. Poe. Thank you, Mr. Chairman.

543 Two observations: One, the first duty of government is
544 public safety. It is not building museums; it is not funding
545 a lot of programs that we do fund. But government's first
546 duty is public safety, and that actually includes the
547 national government.

548 Second, the COPS Program is one of those programs that
549 doesn't measure crime. Crime is measured by people who
550 commit crime, and then we can run a statistical analysis of
551 how many crimes—rapes, robbery, murders, pillaging—has been
552 done. But we have really no adequate system to record what
553 crime is not committed because of programs like COPS. COPS
554 is a preventative program; it is hard to measure the success.
555 But the cops I know in Houston love the program and say it
556 helps them tremendously.

557 So since the public safety is the first duty of
558 government, since this works in the eyes of the police, as we
559 call them, I certainly think—do you all use that term in New
560 York?—but in any event, I support the program. The police

561 say it works, and public safety, that is what we are supposed
562 to do.

563 I yield back.

564 Chairman Conyers. All those in favor of the Gohmert,
565 indicate by saying "aye."

566 [A chorus of ayes.]

567 Chairman Conyers. All those opposed to the Gohmert
568 amendment, indicate by saying "no."

569 [A chorus of noes.]

570 Chairman Conyers. Noes have it. A recorded vote is
571 required.

572 The Clerk. Mr. Chairman?

573 Chairman Conyers. No.

574 The Clerk. Mr. Chairman votes no.

575 Mr. Berman?

576 [No response.]

577 Mr. Boucher?

578 Mr. Boucher. No.

579 The Clerk. Mr. Boucher votes no.

580 Mr. Nadler?

581 Mr. Nadler. No.

582 The Clerk. Mr. Nadler votes no.

583 Mr. Scott?

584 [No response.]

585 Mr. Watt?

586 Mr. Watt. No.

587 The Clerk. Mr. Watt votes no.

588 Ms. Lofgren?

589 [No response.]

590 Ms. Jackson Lee?

591 Ms. Jackson Lee. No.

592 The Clerk. Ms. Jackson Lee votes no.

593 Ms. Waters?

594 [No response.]

595 Mr. Delahunt?

596 [No response.]

597 Mr. Wexler?

598 [No response.]

599 Mr. Cohen?

600 [No response.]

601 Mr. Johnson?

602 Mr. Johnson. No.

603 The Clerk. Mr. Johnson votes no.

604 Mr. Pierluisi?

605 Mr. Pierluisi. No.

606 The Clerk. Mr. Pierluisi votes no.

607 Mr. Gutierrez?

608 [No response.]

609 Mr. Sherman?

610 [No response.]

611 Ms. Baldwin?
612 [No response.]
613 Mr. Gonzalez?
614 Mr. Gonzalez. No.
615 The Clerk. Mr. Gonzalez votes no.
616 Mr. Weiner?
617 Mr. Weiner. No.
618 The Clerk. Mr. Weiner votes no.
619 Mr. Schiff?
620 Mr. Schiff. No.
621 The Clerk. Mr. Schiff votes no.
622 Ms. Sanchez?
623 [No response.]
624 Ms. Wasserman Schultz?
625 Ms. Wasserman Schultz. No.
626 The Clerk. Ms. Wasserman Schultz votes no.
627 Mr. Maffei?
628 Mr. Maffei. No.
629 The Clerk. Mr. Maffei votes no.
630 Mr. Smith?
631 Mr. Smith. Aye..
632 The Clerk. Mr. Smith votes aye.
633 Mr. Goodlatte?
634 [No response.]
635 Mr. Sensenbrenner?

636 Mr. Sensenbrenner. Aye.

637 The Clerk. Mr. Sensenbrenner votes aye.

638 Mr. Coble?

639 Mr. Coble. Aye.

640 The Clerk. Mr. Coble votes aye.

641 Mr. Gallegly?

642 [No response.]

643 Mr. Goodlatte?

644 [No response.]

645 Mr. Lungren?

646 Mr. Lungren. Aye.

647 The Clerk. Mr. Lungren votes aye.

648 Mr. Issa?

649 Mr. Issa. Aye.

650 The Clerk. Mr. Issa votes aye.

651 Mr. Forbes?

652 Mr. Forbes. No.

653 The Clerk. Mr. Forbes votes no.

654 Mr. King?

655 Mr. King. Aye.

656 The Clerk. Mr. King votes aye.

657 Mr. Franks?

658 Mr. Franks. Mr. Franks votes aye.

659 The Clerk. Mr. Gohmert?

660 Mr. Gohnmert. Aye.

661 The Clerk. Mr. Gohmert votes aye.
662 Mr. Jordan?
663 [No response.]
664 Mr. Poe?
665 Mr. Poe. No.
666 The Clerk. Mr. Poe votes no.
667 Mr. Chaffetz?
668 [No response.]
669 Mr. Rooney?
670 Mr. Rooney. Aye.
671 The Clerk. Mr. Rooney votes aye.
672 Mr. Harper?
673 [No response.]
674 Chairman Conyers. Ms. Baldwin?
675 The Clerk. Ms. Baldwin votes no.
676 Chairman Conyers. Any others?
677 Clerk will report. Oh, Ms. Waters?
678 The Clerk. Ms. Waters votes no.
679 Mr. Chairman, 16 members voted nay, 9 members voted aye.
680 Chairman Conyers. The amendment failed, and the chair
681 recognizes Mr. Smith.
682 Mr. Smith. Mr. Chairman, I have a unanimous consent
683 request that we put in the record the summary from the GAO
684 report that both Mr. Weiner and I referred to, but I would
685 like to read the operative line, which is: Factors other

686 than COPS funding accounted for the majority of the decline
687 in crime during the period studied. In fact, over a 7-year
688 period, it said that COPS was only responsible for 1.3
689 percent of the reduction in crime, and that was exactly the
690 point I was making a while ago. I thank you—

691 Mr. Weiner. Reserving the right to object.

692 Chairman Conyers. Who objects?

693 Mr. Weiner?

694 Mr. Weiner. Reserving the right to object.

695 Chairman Conyers. The gentleman is recognized.

696 Mr. Weiner. Mr. Chairman, I will not object, but I
697 would call attention to the following language: "For the
698 years 1998 through 2000, we estimated"—this is the GAO
699 speaking—"that COPS grant expenditures were associated with
700 the reduction of indexed crime from their 1993 level that
701 ranged from 200,000 to 225,000 indexed crimes. About one-
702 third of these were violent crimes; about two-thirds were
703 property crimes." Page 11, GAO-05-699R.

704 Chairman Conyers. Okay. So the gentleman doesn't
705 object. Without objection, it is included in the record.

706 [The information follows:]

707 ***** INSERT *****

708 Chairman Conyers. Reporting quorum being present, the
709 question is on reporting the bill as amended. All in favor
710 say "aye."

711 [A chorus of ayes.]

712 Chairman Conyers. All opposed say "no."

713 [A chorus of noes.]

714 Chairman Conyers. The noes have it.

715 A recorded vote is requested. Clerk will call the roll.

716 The Clerk. Mr. Chairman?

717 Chairman Conyers. Aye.

718 The Clerk. Mr. Chairman votes aye.

719 Mr. Berman?

720 [No response.]

721 Mr. Boucher?

722 Mr. Boucher. Aye.

723 The Clerk. Mr. Boucher votes aye.

724 Mr. Nadler?

725 Mr. Nadler. Aye.

726 The Clerk. Mr. Nadler votes aye.

727 Mr. Scott?

728 [No response.]

729 Mr. Watt?

730 [No response.]

731 Ms. Lofgren?

732 [No response.]

733 Ms. Jackson Lee?
734 Ms. Jackson Lee. Aye.
735 The Clerk. Ms. Jackson Lee votes aye.
736 Ms. Waters?
737 [No response.]
738 Mr. Delahunt?
739 [No response.]
740 Mr. Wexler?
741 [No response.]
742 Mr. Cohen?
743 [No response.]
744 Mr. Johnson?
745 Mr. Johnson. Aye.
746 The Clerk. Mr. Johnson votes aye.
747 Mr. Pierluisi?
748 Mr. Pierluisi. Aye.
749 The Clerk. Mr. Pierluisi votes aye.
750 Mr. Gutierrez?
751 Mr. Gutierrez. Aye.
752 The Clerk. Mr. Gutierrez votes aye.
753 Mr. Sherman?
754 [No response.]
755 Ms. Baldwin?
756 [No response.]
757 Mr. Gonzalez?

758 Mr. Gonzalez. Aye.

759 The Clerk. Mr. Gonzalez votes aye.

760 Mr. Weiner?

761 Mr. Weiner. Aye.

762 The Clerk. Mr. Weiner votes aye.

763 Mr. Schiff?

764 Mr. Schiff. Aye.

765 The Clerk. Mr. Schiff votes aye.

766 Ms. Sanchez?

767 [No response.]

768 Ms. Wasserman Schultz?

769 Ms. Wasserman Schultz. Aye.

770 The Clerk. Ms. Wasserman Schultz votes aye.

771 Mr. Maffei?

772 Mr. Maffei. Aye.

773 The Clerk. Mr. Maffei votes aye.

774 Mr. Smith?

775 Mr. Smith. No.

776 The Clerk. Mr. Smith votes no.

777 Mr. Goodlatte?

778 [No response.]

779 Mr. Sensenbrenner?

780 Mr. Sensenbrenner. No.

781 The Clerk. Mr. Sensenbrenner votes no.

782 Mr. Coble?

783 Mr. Coble. No.

784 The Clerk. Mr. Coble votes no.

785 Mr. Gallegly?

786 [No response.]

787 Mr. Goodlatte?

788 [No response.]

789 Mr. Lungren?

790 [No response.]

791 Mr. Issa?

792 Mr. Issa. No.

793 The Clerk. Mr. Issa votes no.

794 Mr. Forbes?

795 Mr. Forbes. Aye.

796 The Clerk. Mr. Forbes votes aye.

797 Mr. King?

798 Mr. King. No.

799 The Clerk. Mr. King votes no.

800 Mr. Franks?

801 Mr. Franks. No.

802 The Clerk. Mr. Franks votes no.

803 Mr. Gohmert?

804 Mr. Gohmert. No.

805 The Clerk. Mr. Gohmert votes no.

806 Mr. Jordan?

807 [No response.]

808 Mr. Poe?

809 Mr. Poe. Aye.

810 The Clerk. Mr. Poe votes aye.

811 Mr. Chaffetz?

812 [No response.]

813 Mr. Rooney?

814 Mr. Rooney. Aye.

815 The Clerk. Mr. Rooney votes aye.

816 Mr. Harper?

817 [No response.]

818 Chairman Conyers. Are there others that have not
819 recorded their vote?

820 Ms. Baldwin?

821 Ms. Baldwin. Aye.

822 The Clerk. Ms. Baldwin votes aye.

823 Chairman Conyers. Ms. Waters?

824 The Clerk. Ms. Waters votes aye.

825 Chairman Conyers. Any others?

826 Clerk will report.

827 The Clerk. Mr. Chairman, 17 members voted aye; 7
828 members voted nay.

829 Chairman Conyers. The measure is passed, and 2 days for
830 additional comment.

831 Pursuant to notice, I call off H.R. 985, the Free Flow
832 of Information Act. I ask the clerk to report the bill.

833 The Clerk. H.R. 985, a bill to maintain the free flow
834 of information to the public by providing conditions for the
835 federally compelled disclosure of information by certain
836 persons—

837 [The bill follows:]

838 ***** INSERT *****

839 Chairman Conyers. Without objection, the bill is
840 considered as read. I ask unanimous consent to put my
841 statement in the record, and I yield to Rick Boucher, of
842 Virginia.

843 Mr. Boucher. Well, thank you very much, Mr. Chairman.
844 I appreciate your recognizing me this morning, and I want to
845 thank you, Chairman Conyers, for your determined efforts to
846 move this measure expeditiously through the House Judiciary
847 Committee and to the floor of the House of Representatives
848 where, hopefully, we can pass the measure, perhaps even
849 before the end of this month.

850 This morning we are marking up the Free Flow of
851 Information Act. The bill that is before the committee today
852 is identical to the measure that was approved by the House in
853 the last Congress by a vote of 398 to 21. It is a bipartisan
854 measure, which this year, as in the last Congress, I am
855 pleased to introduce with the co-sponsorship of our
856 Republican colleague Mike Pence and 49 other cosponsors in
857 the House, including a bipartisan 14 membership of this
858 committee.

859 I want to acknowledge our colleague, Mr. Pence's,
860 leadership and his truly deep commitment to protecting
861 freedom of the press. It has been a pleasure working with
862 him, and personally I can say that I miss his membership on
863 this committee during the course of this Congress.

864 I also want to say thank you, Mr. Chairman, to the
865 outstanding work of our Virginia colleague, Bob Goodlatte,
866 for his leadership and strong support that he is providing to
867 this Congress for the passage of the Free Flow of Information
868 Act. Mr. Goodlatte and I have a long history of working
869 together on bipartisan measures. For example, we are the co-
870 chairs of the Congressional Internet Caucus, and it is a
871 privilege to be working with them on passing the Free Flow of
872 Information Act, obtaining approval in this committee, and
873 subsequent passage on the floor.

874 I want to take just a moment at the outset, Mr.
875 Chairman, to comment on the extraordinary vote that was
876 provided for this measure on the floor of the House when it
877 was debated there in 2007. That vote was 398 in favor, 21
878 opposed.

879 That sweeping majority occurred because of the truly
880 careful and constructive work that was performed during the
881 day-long markup of the measure in this committee in 2007.
882 Members on both sides of the aisle participated; they offered
883 outstanding suggestions for improving the legislation, for
884 the addition of circumstances where disclosure of information
885 would be required, for circumstances under which limitations
886 would be placed on disclosure, and other matters.

887 It was an excellent committee process involving broad
888 participation of many members, and it was that careful work

889 that earned, for this bill, on the House floor a vote of 398
890 to 21. We have the identical text before the committee this
891 morning.

892 The Senate did not have floor consideration of the bill
893 in the last Congress, and so today we begin the process anew
894 of bringing the Free Flow of Information Act to the House
895 floor. The measure protects the public's right to know. It
896 promotes the free flow of information to the public about
897 matters of large public interest, where public disclosure of
898 facts is necessary in order to prevent or correct a
899 substantial harm to society.

900 Journalists serve as public watchdogs, bringing
901 sensitive information to public scrutiny, and the bill before
902 us enables them to do a far better job of it. Often, the
903 best information that the public gains about matters of a
904 sensitive nature involving a large public interest will be
905 obtained from an individual who is close to where that harm
906 is occurring. That individual may work in a government
907 agency; that individual may work in a large organization such
908 as a large charity or corporation, and they see wrong
909 occurring.

910 The wrong could be a criminal violation, it could be a
911 violation of ethics, all of which can have the effect of
912 affecting the public interest. And it is in the public
913 interest for that information to be brought to public

914 scrutiny so that corrective action, whether that is passing
915 the statute or launching a criminal prosecution, or perhaps
916 involving a large lawsuit, can then be launched.

917 But that person on the inside truly has a lot to lose.
918 If that individual's identity is disclosed, the person can be
919 punished, perhaps by the very person who is responsible for
920 the wrongdoing. And so, while that individual on the inside
921 may sense a public responsibility to bring this information
922 to light, that person is not going to pick up a telephone and
923 call a reporter unless the reporter can offer to that source
924 anonymity and confidentiality.

925 Thirty-four states and the District of Columbia have
926 statutes that provide the ability for reporters to refrain
927 from revealing—

928 Chairman Conyers. Gentleman is given 2 additional
929 minutes.

930 Mr. Boucher. —confidential information.

931 Thank you very much, Mr. Chairman. I appreciate that.

932 Thirty-four states and the District of Columbia extend a
933 protection to refrain from revealing confidential information
934 to reporters by statutes. The bill before us would extend
935 that same opportunity to federal court proceeding. It is not
936 an absolute privilege; it is a qualified privilege for
937 reports to refrain from testifying, from producing documents,
938 and from disclosing information about confidential sources.

939 Clear exceptions to the privilege have been written into
940 the bill, and these exceptions largely arose from the
941 committee process that we had 2 years ago. Those exceptions
942 include instances where the information is needed to prevent
943 and act of terrorism or other significant harm to national
944 security; to prevent death or serious bodily harm; to reveal
945 who disclosed, in violation of law, medical, financial, or
946 trade secret information; or to identify who, having
947 authorized access, disclosed classified information, causing
948 harm to national security.

949 All of these exceptions are subject to a balancing test,
950 under which the judge will determine whether the public
951 interest in disclosure outweighs the public interest in news
952 gathering and news dissemination. It is a carefully written
953 measure, thanks to the broad participation of members of this
954 committee in 2007. It deserves our approval today, just as
955 it did then, and I thank you, Mr. Chairman, for recognizing
956 me, and I am urging this committee to approve the measure.

957 I yield back the balance of my time.

958 Chairman Conyers. Thank you.

959 Ranking Member Lamar Smith?

960 Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, at
961 the outset, let me say that the gentleman from Virginia, Mr.
962 Boucher, is always well-spoken, and I appreciate his
963 mentioning last year's floor vote only three times in his

964 opening statement now.

965 However, Mr. Chairman, I do oppose this bill. The
966 United States has enjoyed a free press for over 200 years
967 because it is guaranteed by the First Amendment in the
968 Constitution. Our founders understood that a free press
969 protects and perpetuates our democracy. There has been no
970 federal media shield law to protect journalist sources
971 because there has been no evidence of a need.

972 No more than 17 journalists during the past 25 years
973 have been jailed for refusing to testify before a grand jury.
974 They were not singled out for punishment. Every American
975 called to testify before a grand jury must cooperate or face
976 this very same consequence. Nor is there any evidence that
977 potential sources had withheld critical information from
978 reporters because of a fear of being revealed. Just look at
979 the examples that are regularly revealed, from Watergate to
980 the mistreatment of soldiers at Walter Reed Medical Center.

981 The bill we are considering today creates a press
982 privilege under which courts can not compel reporters,
983 tabloids, or even some professional bloggers to provide
984 information needed to fight crime. In the 37 years since the
985 Supreme Court ruled that the First Amendment does not shield
986 a reporter from testifying in a grand jury proceeding, the
987 media has had no problem exposing corruptions and injustices.

988 While confidentiality is vital to the work of a

989 reporter, national security is essential to the preservation
990 of a free nation. Protecting anonymous sources should never
991 be more important than protecting the American people or
992 solving crimes that can help save lives. Unfortunately, this
993 bill raises serious law enforcement and national security
994 concerns.

995 However well-intentioned, H.R. 985 will compromise the
996 work of the Justice Department and other federal agencies
997 charged with crime-fighting, intelligence-gathering, and
998 national security matters. For example, the prospective
999 nature of some of the most important exceptions in the bill,
1000 to prevent a terrorist attack or imminent bodily harm, will
1001 not help the investigations after the attack has already
1002 occurred.

1003 Under the bill, law enforcement officials could have
1004 acquired relevant information identifying a reporter's source
1005 on September 10, 2001 to prevent the terrorist attacks, but
1006 could not have acquired that same information on September 12
1007 to track down the terrorists. Similarly, officials could
1008 acquire information regarding a reporter's source to prevent
1009 the molestation of a child, but they could not get that same
1010 information to bring a sexual predator to justice after the
1011 assault.

1012 And in cases involving the identity of a reporter's
1013 source, look at the range of misconduct that falls outside of

1014 the death or imminent bodily harm exemption: corporate and
1015 financial crimes, human trafficking, gun and drug
1016 trafficking, gang activity, and other criminal activities
1017 that might not result in the direct risk of imminent death or
1018 significantly bodily harm, even when such harm is a
1019 predictable result of the crime.

1020 This new privilege has no precedent in American legal
1021 history. All H.R. 985 does is create a privilege that allows
1022 reporters to avoid a civic duty. The bill goes way beyond
1023 promoting a free press; it confers on the press a privileged
1024 position. It exempts journalists from the same
1025 responsibilities that we are all held to in the context of an
1026 investigation.

1027 And the media should be more forthcoming about their
1028 methods in promoting H.R. 985. We hear a lot from the media
1029 about the evils of lobbying and how Congress is captive to
1030 special interests, but media outlets, in a very self-serving
1031 way, are lobbying House members to support H.R. 985 or face
1032 the consequences: irate hometown newspaper editors and local
1033 TV and radio reporters. These media proponents are a lot
1034 like the lobbyists the media regularly criticizes: those who
1035 advocate for their special interests without disclosing
1036 campaign contributions.

1037 There is no way to quantify or report the value of a
1038 journalist's in-kind contributions, a positive editorial if

1039 the member supports the bill or a negative editorial if the
1040 member opposes the bill. There is an absence of transparency
1041 and accountability here. It is unseemly, and possibly
1042 unethical, to make phone calls and write editorials in
1043 support of this bill when the motive is so clearly one of
1044 self-interest.

1045 This bill is not about protecting the public's right to
1046 know about corruption or maleficence. It is about giving a
1047 reporter a special privilege at the expense of our national
1048 crime-fighting efforts.

1049 Also, we have a new president who has said that he
1050 generally supports this legislation, but conceptual support
1051 is not an unqualified endorsement of the bill's language. We
1052 may very well benefit from listening to the president and his
1053 attorneys who know about the specific text of H.R. 985, but
1054 we have seen in the last few days, the president sometimes
1055 modifies his support of legislation he has previously
1056 encouraged.

1057 As a former reporter, I sympathize with journalists not
1058 wanting to reveal their sources. But as a member of
1059 Congress, I have a responsibility to see that the law
1060 enforcement and intelligence officials who keep us safe can
1061 do their job. This bill creates serious law enforcement and
1062 national security problems without sufficient justification.

1063 I thank you, Mr. Chairman, for the extra time, and I

1064 will yield.

1065 Chairman Conyers. Well, that was because of a
1066 malfunction of the person using the machine.

1067 Mr. Smith. I know the graciousness of the gentleman
1068 from Michigan; I know he would have yielded me additional
1069 time anyway.

1070 Thank you.

1071 Chairman Conyers. Chair recognizes Bob Goodlatte, of
1072 Virginia.

1073 Mr. Goodlatte. Mr. Chairman, thank you very much.
1074 Thomas Jefferson once wrote to the Marquis de Lafayette, "The
1075 only security of all is in a free press. The force of public
1076 opinion can not be resisted when permitted freely to be
1077 expressed. The agitation it produces must be submitted to.
1078 It is necessary to keep the waters pure." And he also wrote
1079 to future Supreme Court Justice John Jay, "Our liberty can
1080 not be guarded but by the freedom of the press, nor that it
1081 be limited without danger of losing it."

1082 The Free Flow of Information Act will help ensure that
1083 the press remain free to vigorously investigate misconduct
1084 and inform Americans. This includes informing citizens about
1085 waste or corruption in the government itself. Specifically,
1086 by protecting the confidentiality of sources, this
1087 legislation will help encourage whistleblowers to come
1088 forward to expose problems that are occurring in government

1089 agencies.

1090 If corruption is left to fester in the dark corners of
1091 our bureaucracy, it will grow. If, on the other hand, we
1092 turn the light of the free press loose on these abuses, they
1093 will be exposed and we can eliminate them. In this was, the
1094 Free Flow of Information Act strengthens the free press, a
1095 very important check on government power.

1096 I had concerns with this legislation last year when we
1097 considered it in the Judiciary Committee, and I worked with
1098 my good friends, Representatives Boucher and Pence, and
1099 Chairman Conyers, to have some of these items addressed. I
1100 would like to thank them for their efforts to improve this
1101 bill, and I would like to take some time this morning to note
1102 some of the important changes that have been made to the bill
1103 since the last Congress.

1104 The original bill would have applied to all journalists,
1105 regardless of how infrequent their activity. I was concerned
1106 that this definition was too broad and left the door wide
1107 open for opportunistic bad actors to abuse. For example, an
1108 individual who has no journalistic experience might have
1109 attempted to protect himself by creating a blog overnight.
1110 However, H.R. 985 now limits the protections in the bill to
1111 those who engage in the regular practice of journalism for a
1112 substantial portion of the person's livelihood, or for
1113 substantial financial gain. This will help ensure that

1114 abuses by non-journalists do not occur.

1115 The original bill contained a very limited exception
1116 that only allowed the disclosure of confidential sources and
1117 information when disclosure was necessary to prevent imminent
1118 and actual harm to national security. The exception now
1119 permits disclosure to prevent an act of terrorism against the
1120 U.S. or its allies, or other significant and specified harm
1121 to national security.

1122 The original bill did not contain an exception for leaks
1123 of classified information. H.R. 985 now permits compelled
1124 disclosure when unauthorized disclosure of properly
1125 classified information has caused or will cause significant
1126 and articulable harm to national security.

1127 Furthermore, in the original bill, the definition of
1128 "covered person" did not exclude terrorists. However, H.R.
1129 985 specifically excludes terrorists.

1130 Finally, the original bill contained no exception for
1131 eye-witness account information. However, 985 allows
1132 compelled disclosure of information obtained as a result of
1133 an eye-witness observation by the covered person.

1134 This legislation will enhance the freedom of the press,
1135 and thus provide for a more informed and engaged citizenry.
1136 In addition, the improvements to the bill will help ensure
1137 that the interests of justice and national security are
1138 protected. It is for these reasons that I support and

1139 encourage the members of this committee to support this
1140 important legislation.

1141 And I yield back.

1142 Chairman Conyers. I thank the gentleman.

1143 Mr. Forbes. Mr. Chairman?

1144 Chairman Conyers. Who seeks recognition?

1145 The gentleman is recognized.

1146 Mr. Forbes. Thank you, Mr. Chairman. I move to strike
1147 the last word.

1148 Chairman Conyers. Without objection, the gentleman is
1149 recognized.

1150 Mr. Forbes. Thank you. Mr. Chairman, I want to first
1151 of all commend both the gentlemen from Virginia for their
1152 hard work on this bill, and while it is a tough bill, I think
1153 they have struck the balance very well. But I do have a
1154 question. I listened to my good friend from Virginia as he
1155 correctly talked about our concern about national security
1156 and sometimes insider information, and I also listened to my
1157 good friend, Congressman Goodlatte, talk about waste and
1158 corruption, but there is no question, I think, in most of our
1159 minds, when you talk about the national security of the
1160 country, that the number one place that is borne and
1161 protected is in the Department of Defense and the creation of
1162 Department of Defense budgets.

1163 And I guess my question is, how do we reconcile—and I

1164 would ask my friend from Virginia if he would yield for a
1165 question, Congressman Boucher—how do we reconcile our desire
1166 for the free flow of information here with this
1167 administration's apparent willingness to permit a gag order
1168 on the people in the Department of Defense, so that they can
1169 not communicate to anyone?

1170 For, as far as I know, the first time ever they have had
1171 to sign a document saying that they will not communicate if
1172 they see weapon systems that might be being cut that they
1173 think are important, if they see waste that might be
1174 important in the budget—that we have, for the first time,
1175 taken all of these individuals and made them actually sign a
1176 document saying they can't disclose any of this information.
1177 How do we at least reconcile those two, because it looks like
1178 we ought to have a free flow of information coming out of the
1179 Department of Defense on many of these budgetary items? And
1180 if the gentleman would respond to that, I would appreciate
1181 it.

1182 Mr. Boucher. Would the gentleman yield?

1183 Mr. Forbes. Sure. Absolutely.

1184 Mr. Boucher. Well, I thank the gentleman for yielding.
1185 He has asked a question about which, I will have to confess,
1186 I don't have a great deal of knowledge. I am unaware of the
1187 specific memorandum or direction to the Department of Defense
1188 to which the gentleman speaks.

1189 I have been consulting with others in close proximity
1190 here, and seeking information with which to answer the
1191 gentleman's question. My understanding is that the direction
1192 that has been sent to the Department of Defense is with
1193 respect only to the budget formation process, that once a
1194 budget has been formulated internally, whatever limitations
1195 have been imposed are then eliminated for all future
1196 purposes.

1197 But let me also say, as I have indicated to the
1198 gentleman, I do not have personal knowledge of this beyond
1199 just what I am told here. I hope that is helpful.

1200 Mr. Forbes. Well, it is. And I would just say to the
1201 gentleman, I hope—and I know his good-faith efforts on this—I
1202 hope that the members of this committee will be as equally
1203 concerned about the free flow of information when it comes to
1204 the major source of defending this country. As I understand
1205 it, and I could be wrong, too, we have never required anyone
1206 to sign these kind of forms before.

1207 Number two, I haven't seen the forms, and we are
1208 certainly requesting them, but we don't know if that frees
1209 them when budgets come out. And the third thing is, the way
1210 budgets are coming out here and getting acted on before,
1211 sometimes, we get a chance to review them and look at them,
1212 it may be meaningless to have those discussions take place
1213 then. So I hope the gentleman will at least join with me and

1214 other members to try to see if we can look at that part of a
1215 free flow of information as well with this.

1216 And with that, Mr. Chairman, I certainly yield back the
1217 balance of my time.

1218 Chairman Conyers. Thank you, Randy Forbes.

1219 If there are no amendments, the question is on—

1220 Mr. King. Mr. Chairman?

1221 Chairman Conyers. Steve King?

1222 Mr. King. I move to strike the last word.

1223 Chairman Conyers. The gentleman is recognized.

1224 Mr. King. Thank you, Mr. Chairman. I am also seeking
1225 some clarification, and of course, I have been troubled by
1226 this bill for some time. But I haven't heard anyone speak to
1227 this issue from the perspective of, does this move
1228 journalists into the same status or a similar category of
1229 licensed professionals that have a confidentiality
1230 requirement as part of their professions, such as doctors'
1231 and lawyers' attorney-client privilege or a physician
1232 privilege?

1233 And as I think about how this affects our society, I
1234 would submit that it appears to me that that is what we are
1235 doing, is conferring a professional protection on journalists
1236 that are not defined by license, not defined by education,
1237 they are only defined in the bill. And I would submit that
1238 question, perhaps, to Mr. Boucher, and if you would also

1239 clarify for me the language change that we have in here that
1240 narrows this definition, I would be—

1241 Mr. Boucher. Would the gentleman yield to me?

1242 Mr. King. I would yield.

1243 Mr. Boucher. I thank the gentleman for yielding. The
1244 privileges to which the gentleman refers are conferred by
1245 state law; there are several of them, and these are
1246 privileges that result in an opportunity for the privileged
1247 person to refrain from testifying under certain circumstances
1248 in state court proceedings.

1249 We are certainly not conferring any privilege, at the
1250 federal level, that is remotely similar to these state-based
1251 privileges; this is a procedural statute for federal court
1252 actions only, and the privilege that it confers is deeply
1253 qualified. And in my statement, I went through a number of
1254 the qualifications.

1255 Just in a sentence: in those instances where disclosure
1256 is necessary to prevent an act of terrorism or other
1257 significant harm to the United States; to prevent imminent
1258 death or significant bodily harm; to identify a person who
1259 has disclosed, in violation of law, trade secrets, health
1260 information, medical information; to identify, in criminal
1261 prosecutions, persons who had authorized access and disclosed
1262 classified information. All of these are significant
1263 qualifications to the privilege that arose from the work of

1264 this committee when we had our markup 2 years ago.

1265 Mr. King. Reclaiming my time, and I appreciate the
1266 gentleman's response to that, and it is specific to your
1267 opening statement. I understand that you tried to anticipate
1268 contingencies that might flow out of this, and that is the
1269 language that has emerged with careful thought.

1270 I would more focus back on the definition of a
1271 journalist and how it has been narrowed. I am going to
1272 suggest, since I don't have the comparison of the previous
1273 language, that the word "regularly gathers" is the qualifier
1274 that has narrowed that definition. Would that be correct?
1275 And I would yield.

1276 Mr. Boucher. I thank the gentleman for yielding. There
1277 are actually two significant qualifications. One is the one
1278 the gentleman has pointed to, and that is that the individual
1279 must be regularly involved in the news reporting business.
1280 The second significant qualification is that that individual
1281 either gain a substantial portion of his or her livelihood or
1282 have substantial financial gain from the news of reporting
1283 and dissemination activities.

1284 Mr. King. I thank the gentleman. I think you have—
1285 reclaiming my time, that has filled the gaps for me on this.
1286 And just for the purposes of the committee understanding
1287 where I stand on this, I look across this profession of
1288 journalism and there is such a broad spectrum that still

1289 falls within this definition of professionalism, and I think
1290 that it includes those who write opinions as well as those
1291 who write the journalistic documents that are the news, and
1292 it is a different definition for those particular fields, but
1293 I believe it is covered underneath this bill.

1294 And I do think that we are conferring, at least
1295 figuratively and philosophically, that kind of entrusting
1296 into journalism that we trust our doctors and our lawyers
1297 with, regardless of the state statutes. And the effect of
1298 this, I am concerned, will be to elevate journalists into a
1299 protected status, and I would submit that there has been
1300 significant protection there that exists today.

1301 And probably the starkest example of that would be
1302 Robert Novak, when this nation twisted itself into a knot
1303 over the Scooter Libby issue, and all he would have had to do
1304 was say, "Here is where I have the information," and we would
1305 have found out that it was really over in the State
1306 Department instead—that was protected throughout all of that
1307 investigation, and an individual went to prison who might not
1308 have if that had been divulged.

1309 So I think that is a pretty high standard; that is high
1310 enough for me. I appreciate the sentiment that this has
1311 brought to this committee, but I will oppose the bill. And I
1312 thank the gentleman.

1313 I yield back to the chairman.

1314 Chairman Conyers. I thank all, particularly the
1315 gentlemen from Virginia. We have had a lot of them in on
1316 this bill today, and we are indebted to them.

1317 The question is on reporting the bill to the House.
1318 Those in favor, say "aye."

1319 [A chorus of ayes.]

1320 Chairman Conyers. Those opposed, say "no."

1321 [A chorus of noes.]

1322 Chairman Conyers. The ayes have it, and the bill is
1323 ordered reported. And without objection, we will have staff
1324 authorized to make technical and conform changes, not only on
1325 this bill but on the COPS bill as well.

1326 We have exhausted the agenda for March 25th, and so the
1327 committee stands adjourned.

1328 [Whereupon, at 11:20 a.m., the committee was adjourned.]