

1 MORNINGSIDE PARTNERS, LLC

2 MARKUP OF H.R. 1748, THE "FIGHT FRAUD ACT

3 OF 2009";

4 H.R. 1788, THE "FALSE CLAIMS ACT CORRECTION

5 ACT OF 2009";

6 H.R. 1676, THE "PACT ACT";

7 H.R. 1667, THE "WAR PROFITEERING PREVENTION

8 ACT OF 2009";

9 AND H.R. 1741, THE "WITNESS SECURITY AND

10 PROTECTION GRANT PROGRAM ACT OF 2009"

11 Tuesday, April 28, 2009

12 House of Representatives,

13 Committee on the Judiciary,

14 Washington, D.C.

15 The committee met, pursuant to call, at 10:22 a.m., in Room

16 2141, Rayburn House Office Building, Hon. John Conyers  
17 [chairman of the committee] presiding.

18 Present: Representatives Conyers, Berman, Nadler,  
19 Scott, Watt, Lofgren, Waters, Cohen, Johnson, Pierluisi,  
20 Gutierrez, Gonzalez, Weiner, Schiff, Sanchez, Wasserman  
21 Schultz, Maffei, Smith, Sensenbrenner, Coble, Gallegly,  
22 Goodlatte, Lungren, Issa, Forbes, King, Franks, Gohmert,  
23 Jordan, Poe, Chaffetz, Rooney, and Harper.

24 Staff present: Perry Apelbaum, Staff Director/Chief  
25 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;  
26 George Slover, Legislative Counsel/Parliamentarian; Sean  
27 McLaughlin, Minority Chief of Staff/General Counsel; Allison  
28 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and  
29 Anita L. Johnson, Clerk.

30 Chairman Conyers. [Presiding.]  
31 The clerk will call the roll.  
32 The Clerk. Mr. Conyers?  
33 Chairman Conyers. Present.  
34 The Clerk. Mr. Conyers, present. Mr. Berman?  
35 [No response.]  
36 Mr. Boucher?  
37 [No response.]  
38 Mr. Nadler?  
39 [No response.]  
40 Mr. Scott?  
41 [No response.]  
42 Mr. Watt?  
43 [No response.]  
44 Ms. Lofgren?  
45 [No response.]  
46 Ms. Jackson Lee?  
47 [No response.]  
48 Ms. Waters?  
49 [No response.]  
50 Mr. Delahunt?  
51 [No response.]  
52 Mr. Wexler?  
53 [No response.]  
54 Mr. Cohen?

55 [No response.]  
56 Mr. Johnson?  
57 [No response.]  
58 Mr. Pierluisi?  
59 [No response.]  
60 Mr. Gutierrez?  
61 [No response.]  
62 Mr. Sherman?  
63 [No response.]  
64 Ms. Baldwin?  
65 [No response.]  
66 Mr. Gonzalez?  
67 Mr. Gonzalez. Present.  
68 The Clerk. Mr. Gonzalez, present. Mr. Weiner?  
69 Mr. Schiff?  
70 [No response.]  
71 Ms. Sanchez?  
72 [No response.]  
73 Ms. Wasserman Schultz?  
74 [No response.]  
75 Mr. Maffei?  
76 [No response.]  
77 Mr. Smith?  
78 [No response.]  
79 [No response.]

80 Mr. Goodlatte?  
81 [No response.]  
82 Mr. Sensenbrenner?  
83 [No response.]  
84 Mr. Coble?  
85 [No response.]  
86 Mr. Gallegly?  
87 [No response.]  
88 Mr. Lungren?  
89 [No response.]  
90 Mr. Issa?  
91 [No response.]  
92 Mr. Forbes?  
93 [No response.]  
94 Mr. King?  
95 [No response.]  
96 Mr. Franks?  
97 [No response.]  
98 Mr. Gohmert?  
99 [No response.]  
100 Mr. Jordan?  
101 [No response.]  
102 Mr. Poe?  
103 [No response.]  
104 Mr. Chaffetz?

105 [No response.]

106 Mr. Rooney?

107 [No response.]

108 Mr. Harper?

109 [No response.]

110 Chairman Conyers. Are there members that wish to be  
111 recorded?

112 The Clerk. Mr. Nadler?

113 Mr. Nadler. Present.

114 The Clerk. Mr. Nadler, present. Mr. Gutierrez?

115 Mr. Gutierrez. Present.

116 The Clerk. Mr. Gutierrez, present.

117 Chairman Conyers. The clerk will report.

118 The Clerk. Mr. Chairman, 14 members responded to the  
119 quorum call.

120 Chairman Conyers. Thank you. Then we can begin our  
121 working our quorum.

122 Pursuant to notice, I call up H.R. 1748, the Fight Fraud  
123 Act—

124 Mr. Chaffetz. Mr. Chairman?

125 Chairman Conyers. —of 2009, for purposes of markup.

126 Mr. Chaffetz. Mr. Chairman?

127 Chairman Conyers. Yes?

128 Mr. Chaffetz. I seek recognition.

129 Chairman Conyers. Yes, sir.

130 Mr. Chaffetz. I seem to have made the mistake the last  
131 time we met when we excused to go to hear the president.

132 I stayed through that whole event, to the very bitter  
133 end, and was there. It seems that this committee had  
134 reconvened in the meantime and then when I departed, I was  
135 held by the sergeant of arms, unable to return here.

136 I would just ask unanimous consent that the record  
137 reflect that had I been present for the vote on the final  
138 passage of H.R. 1913, the Local Law Enforcement Hate Crimes  
139 Prevention Act of 2009, I would have voted against this  
140 measure.

141 I would also appreciate the record to reflect that I  
142 would have voted in favor of the four amendments proposed by  
143 Mr. Franks, Mr. King of Iowa, and Mr. Goodlatte, and would  
144 have voted accordingly had I been able to return in time.

145 Chairman Conyers. Well, thank you, Mr. Chaffetz. And  
146 we will be happy to have that entered into the record.

147 Mr. Nadler. Mr. Chairman?

148 Chairman Conyers. I had a similar problem. They  
149 wouldn't let anybody park there. So I had to get a cab back,  
150 which took a little time.

151 Yes, sir, Mr. Nadler?

152 Mr. Nadler. Mr. Chairman, I would like to pair myself  
153 with Mr. Chaffetz.

154 I was also at the Holocaust Memorial with the president

155 and the speaker and others, and I was also unable to get back  
156 to the committee in time to vote. Indeed, I did not know the  
157 committee had reconvened before the ceremony was over.

158 I tried to get back, but I was unable to.

159 So I would ask unanimous consent that the record reflect  
160 that had I been present, I would have voted against all those  
161 amendments and in favor of the bill.

162 Chairman Conyers. Debbie Wasserman Schultz?

163 Ms. Wasserman Schultz. Thank you, Mr. Chairman.

164 And in the spirit of being in the majority, let me now  
165 make it a majority, 2-to-1, that was also stuck in the—not  
166 stuck, because it was a very moving and important ceremony.

167 But I was also detained at the Yom Hashoah observance in  
168 the rotunda, and had I been present, I would have voted in  
169 favor of the hate crimes legislation and against all of the  
170 previous aforementioned amendments, with all due respect to  
171 Mr. Chaffetz.

172 Mr. Issa. Mr. Chairman?

173 Chairman Conyers. Yes?

174 Mr. Issa. In order to be—

175 Chairman Conyers. Oh, gosh. Mr. Issa, do you seek  
176 time?

177 Mr. Issa. Mr. Chairman?

178 Chairman Conyers. How many minutes will this take?

179 Mr. Issa. Mr. Chairman, I would ask unanimous consent



180 that I be able to bring balance to this colloquy by saying  
181 that I, like Mr. Chaffetz, would have voted for the  
182 amendments and against final passage, had I been able to be  
183 here for the final vote.

184 Chairman Conyers. Thank you, Darrell Issa.

185 Mr. Sensenbrenner. Mr. Chairman?

186 Chairman Conyers. We may not have had a quorum on that  
187 vote.

188 Mr. Sensenbrenner. Mr. Chairman?

189 Chairman Conyers. Yes, Jim Sensenbrenner?

190 Mr. Sensenbrenner. I would like to say I was here and I  
191 voted on all of those votes. But let me suggest to my  
192 friends in the majority that it is not such a good idea to  
193 schedule committee meetings with unavoidable conflicts.

194 I think I learned my lesson early on in my chairmanship.  
195 So this is a constructive suggestion for the future.

196 Chairman Conyers. Well, thank you very much.

197 We will now bring up the Fight Fraud Act, H.R. 1748.

198 The clerk will report.

199 The Clerk. H.R. 1748, a bill to amend Title 18, United  
200 States Code, to enhance the investigation and prosecution of  
201 mortgage fraud and financial institution fraud and for—

202 [The bill follows:]

203 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

204 Chairman Conyers. Without objection, the bill will be  
205 considered as read.

206 And I would like to begin our discussion by pointing out  
207 that we have had some economic shocks, clearly, the worst in  
208 several generations. Millions have lost their homes. Many  
209 have lost their jobs. Savings have been diminished, health  
210 care and pensions.

211 In Detroit, two automobile companies are on the verge  
212 of—are trying to desperately to save themselves. I want to  
213 be positive about this.

214 So we find that frequently a contributing factor to  
215 these problems is irresponsible behavior and then sometimes  
216 outright fraud.

217 And so with the gentleman from Texas, Lamar Smith's  
218 cooperation, we brought forward a matter that we think deals  
219 with the problems that have occurred with some mortgage  
220 lenders, some brokers, and the financial services industry.  
221 There are people in there that bear a large share of the  
222 blame.

223 And once the subprime mortgage problem kicked in, the  
224 real estate bubble collapsed. So now it is affecting people  
225 who aren't a part of the problem, but they are in  
226 neighborhoods that are.

227 And so we are trying to clarify some of the statutes to  
228 ensure that all types of fraud that helped contribute to this

229 economic crisis are reviewed carefully.

230 Under our bill, securities fraud will clearly include  
231 fraud in marketing commodities or futures contracts. The  
232 bank fraud statute will, without question, reach nonbank  
233 mortgage lenders.

234 The fraud in connection with unique financial  
235 relationships contemplated by the stimulus or other economic  
236 recovery programs will be clearly covered.

237 And so we want to make sure that federal law enforcement  
238 and investigative agencies clearly have the resources and the  
239 legal tools needed to investigate and prosecute fraud.

240 We expect the manager's amendment put together will be  
241 offered by the chairman of the Subcommittee on Crime. And we  
242 think this is an important way to help approach, from a legal  
243 point of view, since this committee has jurisdiction over the  
244 Department of Justice, to be as effective as we can in  
245 helping protect those who still believe in the American dream  
246 of owning a home.

247 I will submit the rest of my statement, and invite Lamar  
248 Smith of Texas, who we welcome back, for his statement.

249 [The statement of Chairman Conyers follows:]

250 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

251 Mr. Smith. Thank you, Mr. Chairman.

252 Mr. Chairman, I am pleased to join you as a cosponsor of  
253 H.R. 1748, the Fight Fraud Act of 2009, which, as you just  
254 mentioned, you introduced.

255 This bill amends current criminal fraud statutes to help  
256 federal prosecutors bring predatory lenders and unscrupulous  
257 financial institutions to justice.

258 The country's economic downturn, brought on by the  
259 housing crisis and other factors, exposed a significant  
260 amount of fraud and corruption within the mortgage, banking  
261 and securities industries.

262 The push for homeownership, combined with unchecked  
263 lending practices and inflated property values, encouraged  
264 mortgage fraud, predatory lending, and institutional  
265 corruption.

266 Fighting fraud is one of the many steps that must be  
267 taken to strengthen our economy and restore prosperity. But  
268 this fraud is just a small part of the economic crisis.

269 As we look for solutions to help bolster our economy,  
270 our actions must be well informed and not lead to policies  
271 that exacerbate the problem.

272 The Fight Fraud Act amends federal fraud statutes to  
273 prohibit false statements by mortgage brokers and agents of  
274 mortgage lending businesses. The bill also expands the major  
275 fraud statutes to include fraud against the troubled assets

276 relief program, economic stimulus fund, and other federal  
277 rescue or recovery plans.

278       The Fight Fraud Act authorizes additional funds for  
279 federal law enforcement agencies and prosecutors charged with  
280 combating these fraud schemes.

281       H.R. 1748 provides for additional ways to combat the  
282 fraud and corruption that have affected millions of Americans  
283 and hinder our nation's economic recovery.

284       Like you, Mr. Chairman, I urge our colleagues to support  
285 the bill and I appreciate your introducing it.

286       And I will yield back.

287       Chairman Conyers. Thank you, Lamar.

288       Does anyone have a brief observation that they would  
289 like to bring forward at this moment?

290       Yes, Judge Gohmert?

291       Mr. Gohmert. Thank you, Mr. Chairman.

292       Mortgage fraud does come in many forms, includes  
293 deceptive practices by borrowers, predatory lending, and  
294 institutional fraud.

295       Earlier this month, the U.S. attorney's office in San  
296 Diego announced its indictment of 24 people with fraud and  
297 racketeering charges in connection with a mortgage fraud  
298 conspiracy that involved more than 220 properties and more  
299 than \$100 million.

300       This scam involved using straw buyers to submit offers

301 on properties that exceeded the asking price, then using a  
302 group of hired appraisers to inflate property values.

303 Now, federal, state and local law enforcement agencies  
304 and regulators are receiving reports of fraud targeting  
305 homeowners who are facing foreclosure as a result of mortgage  
306 fraud.

307 Foreclosure scams are targeting cash-strapped consumers  
308 on the verge of losing their homes. Victims are lured into  
309 the fraud scheme with promises of financial assistance that  
310 never materializes.

311 In Arlington, Texas, Bonita Hall contacted Home Assure,  
312 LLC, a Florida-based company, for help after Countrywide  
313 raised her monthly fixed mortgage rate payments by \$300.

314 She paid Home Assure roughly \$1,500 for a letter that  
315 Countrywide said it never received.

316 Home Assure is now one of the three "home rescue"  
317 companies under investigation by the FTC.

318 H.R. 1748, the Fight Fraud Act, provides additional  
319 tools to federal investigators and prosecutors to help put an  
320 end to mortgage fraud and securities fraud.

321 Mr. Chairman, I do think it is unfortunate that we have  
322 a system in which people can push potential buyers into  
323 mortgages they cannot afford, package those mortgages into a  
324 mortgage-backed security, where purchasers cannot even  
325 evaluate the value of each mortgage, and then sell them,

326 making millions, without recourse against the one that really  
327 pushed them into this.

328       It may not be illegal, it should be immoral, and it may  
329 be that the only way to address that specific action is  
330 eliminate mortgage-backed securities. I am not sure.

331       But I would welcome the opportunity to work with anybody  
332 that has any idea as to how we do that.

333       In the meantime, I urge support for this legislation.

334       And yield back the balance of my time.

335       Chairman Conyers. I thank you for the recommendation  
336 and maybe the Subcommittee on Crime may have an interest in  
337 that.

338       I will recognize the chairman of the Crime Subcommittee,  
339 Bobby Scott.

340       Mr. Scott. Mr. Chairman, have you dispensed with  
341 opening statements? I have an amendment at the desk.

342       Chairman Conyers. Yes. The clerk will report the  
343 amendment.

344       The Clerk. Amendment in the nature of a substitute to  
345 H.R. 1743, offered by Mr. Scott of Virginia.

346       [The amendment by Mr. Scott follows:]

347 \*\*\*\*\* INSERT \*\*\*\*\*

348 Chairman Conyers. Without objection, the amendment will  
349 be considered as read.

350 The chairman is recognized.

351 Mr. Scott. Thank you, Mr. Chairman.

352 Mr. Chairman, my substitute amendment will incorporate  
353 into the bill major provisions from H.R. 1779, the Financial  
354 Crimes Resources Act of 2009, and H.R. 1292, establishing the  
355 National White Collar Crimes Center, that I introduced, and  
356 H.R. 78, the Stop Mortgage Fraud Act, which was introduced by  
357 the gentlelady from Illinois, Mrs. Biggert.

358 I would like to thank the chairman, the ranking member  
359 of the full committee, the gentleman from Texas, Mr. Smith,  
360 and the gentlelady from Illinois, Mrs. Biggert, for working  
361 cooperatively on these amendments.

362 So this amendment will make several changes to the  
363 original bill. It authorizes \$100 million for fiscal year  
364 2010 and 2011 to the office of justice programs to award  
365 grants to states and support law enforcement efforts to fight  
366 computer and financial crimes, such as mortgage fraud,  
367 securities fraud, ID theft, sales of stolen goods.

368 State and local law enforcement agencies can use the  
369 funding to investigate, prosecute the cases, as well as  
370 training law enforcement officers and prosecutors and  
371 educating the public about preventing crimes of this nature,  
372 and assisting public defenders.



373           The amendment also authorizes the Bureau of Justice  
374 Assistance to make grants to state and local criminal justice  
375 agencies, as well as nonprofit organizations, through the  
376 National White Collar Crimes Center for prevention,  
377 investigation and prosecution of financial and mortgage fraud  
378 and cyber computer crimes.

379           The grants and contracts would be awarded to programs  
380 that assist state and local criminal justice agencies with  
381 intelligence-focused police strategies, information sharing,  
382 training and research support, and educating the public about  
383 preventing financial and computer crimes.

384           The amendment will also establish regional white collar  
385 crime training centers in an appropriate cross-section of  
386 states to provide research and training to state and local  
387 criminal justice agencies.

388           The underlying bill, H.R. 1748, will amend the  
389 definition of financial institution in Title 18 to include  
390 the definition of mortgage lending businesses.

391           Although the mortgage lending businesses could be  
392 prosecuted under current federal fraud statutes for making  
393 false statements or other common fraud in connection with  
394 mortgage applications, this amendment will specifically  
395 codify this criminal contact with reference to mortgage  
396 lending businesses.

397           I would point out, Mr. Chairman, that this does not

398 immunize activities that have already gone on. It just will  
399 clarify what is existing law.

400 This amendment will also provide resources to Department  
401 of Justice, U.S. Secret Service, U.S. Postal Service, and  
402 Department of Housing and Urban Development to fight against  
403 financial crimes and fraud.

404 Mr. Chairman, the major problem with many of these  
405 crimes is not statutory authority for the prosecution of the—  
406 or the definition of the crimes, but the resources to go  
407 after criminals.

408 We note that crimes are already crimes. The fact is  
409 that investigating the underlying fraudulent activity costs  
410 money and many of those who have perpetrated the fraud are  
411 not being prosecuted, because the law enforcement agencies do  
412 not have sufficient funding.

413 Finally, Mr. Chairman, just one point. The gentleman  
414 from California, Mr. Lungren, has expressed concerns that the  
415 bill pays insufficient attention to money laundering.

416 I don't see him here, but we have agreed, in lieu of his  
417 amendment, to have hearings on the issue of money laundering.

418 With that, Mr. Chairman, I yield back the balance of my  
419 time.

420 Chairman Conyers. Thank you.

421 Judge Gohmert? All right.

422 Yes, Lamar Smith?

423 Mr. Smith. Thank you, Mr. Chairman.

424 As the gentleman from Virginia, Mr. Scott, just  
425 mentioned, this amendment includes portions of his  
426 legislation, H.R. 1779, to provide funds to state and local  
427 governments to combat mortgage fraud and other financial  
428 crimes.

429 The amendment also incorporates legislation sponsored by  
430 Mrs. Biggert of Illinois to provide funding to the FBI  
431 specifically to address mortgage fraud.

432 Finally, this substitute also contains bipartisan  
433 legislation, which I am a cosponsor of, to authorize funding  
434 for the White Collar Crime Center in Richmond, Virginia.

435 I support this amendment and thank Chairman Scott and  
436 Chairman Conyers for working with us in such a bipartisan  
437 manner to draft this substitute.

438 I urge my colleagues to support it, and yield back.

439 Chairman Conyers. Thank you.

440 Adam Schiff?

441 Mr. Schiff. Thank you, Mr. Chairman.

442 I will be very brief.

443 I want to move to strike the last word.

444 Chairman Conyers. Without objection, the gentleman is  
445 recognized.

446 Mr. Schiff. I want to begin by thanking the committee  
447 by moving forward to address the issue of mortgage fraud.

448 Schemes both to obtain housing and profit from  
449 fraudulent activities are enormously destructive to entire  
450 communities.

451 Where I am from in southern California, we are,  
452 unfortunately, ground zero for these types of criminals.

453 According to the FBI, suspicious activity reports filed  
454 by the Department of Treasury's financial crimes enforcement  
455 network have increased from 9,000 in 2003 to 49,000 in 2007,  
456 the last year for which statistics are available, and I  
457 suspect, as I am sure we all do, that those numbers are much  
458 higher today.

459 I wanted to call attention to one particular type of  
460 fraud, often smaller in scope and targeting the most  
461 vulnerable and desperate homeowners. This is foreclosure  
462 rescue scams, which are proliferating at an alarming rate,  
463 because they, unlike many other mortgage fraud schemes, can  
464 succeed and thrive in a collapsing housing market.

465 These rescue scams promise relief to a desperate family  
466 in exchange for an upfront payment. These promises are  
467 almost always false and the scammer pockets the money, while  
468 doing little or absolutely nothing, and certainly less than  
469 the free publicly available channels that are available.

470 The schemes are small, but in the aggregate, they speed  
471 the hollowing out of neighborhoods.

472 State and local law enforcement will continue to bear

473 most of the burden in investigating and prosecuting these  
474 sorts of crimes, but I am glad the committee shares my belief  
475 that there is an important role in providing support and  
476 sources, training, and information sharing.

477 I had drafted an amendment to focus the state and local  
478 resources in this bill and verify that they can be used on  
479 these mortgage rescue scams, but I am informed by the  
480 committee that the term "mortgage fraud" would encompass  
481 these foreclosure scams.

482 The term itself was not defined in the bill and I would  
483 ask, instead of an amendment, that the committee add language  
484 to its report emphasizing that these particular scams are  
485 contemplated by the committee to be within mortgage fraud  
486 and, therefore, resources are available to law enforcement to  
487 investigate and prosecute them.

488 I thank the chairman, and yield back.

489 Chairman Conyers. Thank you for your recommendation.

490 Let's vote on the amendment by Bobby Scott.

491 All in favor, say "aye."

492 [A chorus of ayes.]

493 Chairman Conyers. All opposed, say "no."

494 [A chorus of noes.]

495 Chairman Conyers. The ayes have it.

496 Mr. Scott, did you want to make any comment about the  
497 suggestion Judge Gohmert made earlier?

498 Mr. Scott. Yes, Mr. Chairman.

499 I think he has outlined one of the problems. It is a  
500 financial services problem. They have identified it as a  
501 problem.

502 So many people buy these things that you don't know who  
503 owns it. In fact, there are some courts who have refused to  
504 foreclose on property because whoever is sitting in front of  
505 the court couldn't put the documentation together to show he  
506 had an interest in what was going on.

507 And you have got people squatting in houses, because  
508 nobody can figure out who actually owns the mortgage.  
509 Getting things in that situation, somewhere along the line,  
510 somebody may have committed fraud.

511 So it is something that the gentleman from Texas and I  
512 will look into.

513 Chairman Conyers. I thank you.

514 If there are no further amendments, a reporting quorum  
515 being present, the question is on reporting the bill  
516 favorably to the House.

517 Those in favor, say "aye."

518 [A chorus of ayes.]

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

520 [A chorus of noes.]

521 Chairman Conyers. The ayes have it and the bill is  
522 ordered reported favorably.

523           Without objection, it will be reported as a single  
524 amendment, and staff is authorized to make technical changes,  
525 and we have 2 days for additional views.

526 Chairman Conyers. The clerk will report the bill H.R.  
527 1788, False Claims Correction Act of 2009.

528 The Clerk. H.R. 1788, a bill to amend the provisions of  
529 Title 31, United States Code, relating to false claims, to  
530 clarify and make technical amendments to those provisions,  
531 and for other purposes.

532 [The bill follows:]

533 \*\*\*\*\* INSERT \*\*\*\*\*



534 Chairman Conyers. Without objection, the amendment will  
535 be considered as read.

536 Chairman Howard Berman is present. I would ask him to  
537 describe the measure that he has brought forward.

538 Mr. Berman. Well, thank you very much, Mr. Chairman.

539 I move to strike the last word.

540 Chairman Conyers. Without objection, the gentleman is  
541 recognized.

542 Mr. Berman. Mr. Chairman, I very much appreciate your  
543 scheduling this bill for markup today.

544 1788 is virtually the identical bill that this committee  
545 passed less than a year ago. But since that time, the case  
546 for the bill has only become stronger.

547 As I said in our hearing before the recess, we have  
548 taken extraordinary steps to revive our economy in the last  
549 few months. We used government funds to shore up private  
550 entities. We have made a massive investment of taxpayer  
551 dollars to open credit markets and stimulate the economy.

552 We can debate the impact and prudence of these plans,  
553 but what we know is that where there are programs with large  
554 sums of government money, there will be bad actors who will  
555 try to defraud the government through these programs.

556 Last week, the TARP inspector general, Neil Barofsky,  
557 issued a report warning that losses from fraud in the program  
558 could be staggering. Mr. Barofsky said he is currently aware

559 of more than 20 civil and criminal investigations into  
560 potential fraud in the TARP program.

561 In other words, this is precisely the time we should be  
562 strengthening what has proven to be one of the most  
563 successful antifraud tools ever created by Congress.

564 The False Claims Act contains incentives for private  
565 individuals to report false claims and fraudulent activity  
566 and it allows these private parties to sue on behalf of the  
567 United States, bring their private resources to support the  
568 government's investigation and litigation.

569 If the U.S. investigates and finds merit to the private  
570 party allegations, it may intervene in and take control of  
571 the lawsuit. This is a 145-year-old law, originally passed  
572 to address rampant fraud against government funds by defense  
573 contractors during the Civil War, and it couldn't be more  
574 relevant today.

575 In 1986, Congress passed amendments into law that  
576 Senator Charles Grassley, Congressman Dan Glickman and I  
577 worked on together. Those amendments put new life into the  
578 statute, restored incentives for whistleblowers to come  
579 forward and assist the government in protecting taxpayer  
580 dollars.

581 Since that time, the government has recovered nearly \$22  
582 billion of taxpayer money that would otherwise have been lost  
583 to fraud. That is a massive sum of recovery, and, yet, in

584 the scheme of things, it is also a drop in the bucket.

585         For perspective, a few years back, the inspector general  
586 at the Department of Health and Human Services determined  
587 that 6.3 percent of fee for service Medicare payments  
588 constituted overpayments due to fraud, waste or abuse.

589         Medicare spending will be about \$370 billion this year.  
590 If the IG finding holds across all Medicare outlays, it could  
591 mean that in Medicare alone, taxpayers are losing about \$23  
592 billion each year.

593         When I hear people say we don't need the amendments made  
594 by this bill because the False Claims Act has worked well  
595 enough, I disagree. We know for certain that the law is not,  
596 in its current state, reaching the depths of fraud against  
597 the government.

598         But, also, in the last few years, a series of judicial  
599 decisions have weakened key provisions of the act and  
600 narrowed its application. These courts have misconstrued our  
601 intent, even in clear language in the law and legislative  
602 history, in a manner that leaves entire categories of fraud  
603 outside the reach of the law.

604         The courts have thrown out cases in which the government  
605 has administered government programs and expended its funds  
606 through contractors and other agents as opposed to direct  
607 expenditure.

608         Many courts have barred suits by whistleblowers who are

609 insiders with key details of fraudulent schemes, because  
610 while they know the key details, they can't plead specific  
611 details of the billing documentation, such as the dates and  
612 identification numbers of invoices, information ordinarily  
613 sought and obtained in discovery, after the pleadings have  
614 already been filed.

615       In addition to reminding the courts of our original  
616 intent on these issues, our bill clarifies our objective on  
617 other matters within the law, like the public disclosure bar.

618       This is a tool that was never meant to be used as a  
619 jurisdictional defense. It was intended for use by the  
620 government alone. Because the government takes on the  
621 primary role of prosecuting these suits and must pay a share  
622 to a successful whistleblower, it has a sizeable incentive to  
623 ensure that only non-meritorious suits are dismissed.

624       Mr. Chairman, I thank you for the opportunity to  
625 consider this legislation and I urge my colleagues to support  
626 it.

627       Chairman Conyers. Thank you.

628       Lamar Smith?

629       Mr. Smith. Thank you, Mr. Chairman.

630       Since the False Claims Act was last amended in 1986, it  
631 has become one of the government's primary tools for  
632 recovering taxpayer dollars lost to waste, fraud and abuse,  
633 and the act has worked well.

634 As the federal government increases its spending through  
635 the stimulus bill and increased annual budgets, the  
636 importance of the False Claims Act will increase, too.

637 Congress thus has a responsibility to ensure that the  
638 False Claims Act is functioning properly.

639 Some of what is in this bill will work toward that end.  
640 For instance, section 2, which strengthens the act's  
641 liability provisions, will help the government root out fraud  
642 wherever the federal government commits taxpayer dollars.

643 However, while some of the provisions may be beneficial,  
644 other provisions could create problems in the execution of  
645 the act. In particular, the whistleblower provisions of this  
646 bill might lead to a greater number of lawsuits by private  
647 plaintiffs with questionable motives who advance and  
648 inadvertently make bad law.

649 What is more, it is entirely unclear that increased  
650 whistleblower cases will lead to increased recoveries under  
651 the False Claims Act.

652 The federal government investigates every private False  
653 Claims Act filing and has consistently declined to intervene  
654 in about 80 percent of the cases filed by private plaintiffs.

655 Of the \$21 billion in False Claims Act recovery since  
656 1986, only 2 percent was recovered in whistleblower cases in  
657 which the Justice Department declined to intervene.

658 In other words, it is suspect that the whistleblower

659 provisions in this bill would actually increase the federal  
660 government's ability to recover taxpayer dollars.

661       Rather, it is possible that these provisions will  
662 encourage private plaintiffs to file unfounded lawsuits that  
663 benefit no one but the plaintiffs and their attorneys.

664       For example, for the benefit of whistleblowers, this  
665 legislation weakens the public disclosure bar. The public  
666 disclosure bar guards against private plaintiffs bringing  
667 lawsuits based on information the government was already  
668 aware of and chose not to pursue or to pursue using other  
669 methods of laws.

670       The current public disclosure bar works well at  
671 encouraging true whistleblowers to come forward, while, at  
672 the same time, preventing suits brought by private plaintiffs  
673 with nothing new to offer.

674       Moreover, the bill would invite baseless whistleblower  
675 suits by exempting private plaintiffs, but not the Justice  
676 Department, from the requirement of Federal Civil Procedure  
677 Rule 9 that fraud claims be pled with particularity.

678       There is no reason to give private plaintiffs the  
679 special status unavailable to other litigants who bring fraud  
680 claims in federal court.

681       By encouraging frivolous, unfounded whistleblower suits,  
682 this bill may make it harder for the government to recover  
683 funds under the False Claims Act.

684           These additional suits will add to the Justice  
685 Department's burden and detract from the ability to focus on  
686 meaningful cases. So the whistleblower provisions in this  
687 bill may be counterproductive.

688           That is why organizations, such as the Association of  
689 American Universities and the Association of American Medical  
690 Colleges, among others, strongly oppose this bill.

691           The Association of American Universities has written  
692 that it has "strong reservations about the bill's unintended  
693 consequences."

694           The universities believe that the bill "will frustrate  
695 our members' efforts to monitor their financial relationships  
696 with the government through strong internal controls and will  
697 establish rigorous compliance, audit and reconciliation  
698 processes."

699           Additionally, organizations such as the American  
700 Hospital Association, the American Health Care Association,  
701 and the U.S. Chamber of Commerce have written that they  
702 believe that this legislation is "unnecessary and will impose  
703 enormous burdens on nonprofits, universities, hospitals and  
704 small businesses."

705           The False Claims Act, like so many other laws, is about  
706 striking the proper balance between competing interests.  
707 Although there may be room for improvement in the language of  
708 the False Claims Act, any improvements must continue to

709 strike the proper balance.

710       The changes proposed in H.R. 1788 might well upset that  
711 balance.

712       This legislation will likely generate additional costs  
713 to nonprofits, hospitals, universities and businesses of all  
714 sizes, and it will increase the burdens on the recipients of  
715 federal funds and remove safeguards against unfounded  
716 lawsuits brought by private False Claims Act plaintiffs.

717       We should not support this legislation in its current  
718 form, but look to improve it before approving it.

719       Mr. Chairman, thank you, yield back.

720       Chairman Conyers. Thank the gentleman.

721       The chair recognizes the gentleman from New York, Dan  
722 Maffei.

723       Mr. Maffei. Yes, Mr. Chairman, I have an amendment at  
724 the desk.

725       Chairman Conyers. The clerk will report the amendment.

726       The Clerk. Amendment to H.R. 1788, offered by Mr.

727 Maffei of New York.

728       [The amendment by Mr. Maffei follows:]

729 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



730 Chairman Conyers. Without objection, the amendment will  
731 be considered as read.

732 The gentleman is recognized in support of his amendment.

733 Mr. Maffei. Thank you, Mr. Chairman.

734 While I do support the need for the underlying bill, I  
735 believe it must take into account the manner in which  
736 universities typically receive funds from federal research  
737 agencies is distinctly different from contractor or fee-for-  
738 service payments made to other types of government  
739 contractors.

740 When a university receives a \$1 million grant from the  
741 NIH, for example, it does not receive a \$1 million payment in  
742 a lump sum at the time of the award. Rather, universities  
743 receive payments through large draw-downs on letters of  
744 credit issued by the sponsoring agency.

745 Those drawdowns are based on charges that have been made  
746 to all the grants of the sponsoring agency at the university  
747 since the law draw-down.

748 For example, if the university has multiple grants from  
749 NIH, it will draw down sufficient funds to pay all the  
750 expenses, salaries, equipment, travel, associated with each  
751 of those grants during a given period in a single lump from  
752 the NIH.

753 There can be literally thousands of charges to the  
754 grants of the single sponsor between draw-downs.

755 Now, universities have adopted a series of internal  
756 controls to help ensure that all the charges are accurate.  
757 Some of these controls come into play later in the grant  
758 term, up to and including a final review of grant charges at  
759 the closeout.

760 As a result, during the term of a federally-sponsored  
761 project, a single grant may have undercharges and overcharges  
762 at any given time.

763 University systems are designed to help ensure that any  
764 incorrect charges are adjusted through cost transfers when  
765 they are detected. In addition, agencies may conduct  
766 periodic reviews and audits during the term of a grant to  
767 ensure the charges are accurate.

768 Federal research agencies with oversight from the Office  
769 of Management and Budget developed the decentralized grant  
770 charging process to pay efficiently the large volume of  
771 charges submitted by major research universities, like  
772 Syracuse University, Stanford, Columbia, et cetera.

773 Like universities, research agencies have systems and  
774 controls in place to discover overcharges or undercharges and  
775 to correct them once discovered.

776 A similar situation also occurs with Medicare and  
777 Medicaid reimbursements to hospitals and medical schools that  
778 provide patient care. A large volume of claims is submitted  
779 throughout the year and, on occasion, there can be both

780 overpayments and underpayments.

781       The Centers for Medicare and Medicaid Services, CMS,  
782 works with provides to ensure that all accounts are squared  
783 properly at the end of a certain time period.

784       During a temporary period of any overcharge, before  
785 internal controls or audits catches and corrects it before  
786 the final audit at the closeout, someone could allege, under  
787 a provision of this bill, H.R. 1788, that there was a  
788 fraudulent charge and set in motion a time-consuming and  
789 expensive investigation for these nonprofit institutions.

790       This amendment is necessary to clarify that temporary  
791 overcharges that are subject to correction in the normal  
792 course of a grant do not expose universities and hospitals to  
793 liability under the False Claims Act.

794       Mr. Chairman, I do ask unanimous consent to submit two  
795 letters for the record, one from the American Association of  
796 Universities, another from several other organizations who  
797 have identified this concern.

798       Chairman Conyers. Without objection, they will be  
799 entered into the record.

800       [The information follows:]

801 \*\*\*\*\* INSERT \*\*\*\*\*

802 Mr. Issa. Mr. Chairman?

803 Chairman Conyers. Yes, Mr. Issa?

804 Mr. Issa. Move to strike the last word.

805 Chairman Conyers. The gentleman is recognized.

806 Mr. Issa. Mr. Chairman, I rise in support of this  
807 amendment. I think it is but the tip of the iceberg of the  
808 kinds of inadvertent, unpredicted actions and these  
809 unintended consequences that could come.

810 I think the gentleman from New York made a good case for  
811 why these kinds of things can happen. And in the complexity  
812 of billing, as a former businessman, I can tell you that we  
813 had an open book with Circuit City and Best Buy dating 3  
814 years back and it was amazing how often we discovered each of  
815 us had made mistakes.

816 Those mistakes, had they been criminalized by a  
817 whistleblower rather than scrutinized by the green eye  
818 shades, accountants, that each of us employed, would have  
819 been simply a waste of time and the courts' precious  
820 resources.

821 So I strongly support it. I hope that it will be  
822 considered and pass favorably, along with the three  
823 amendments I am going to offer that are similarly designed to  
824 improve this bill.

825 If this and my three amendments were to pass, I  
826 anticipate being able to vote for the final passage.

827 Chairman Conyers. Would the gentleman yield?

828 Mr. Issa. I would happily yield to the chairman.

829 Chairman Conyers. Is there any possibility that any of  
830 those three are combinable?

831 Mr. Issa. I think they are sufficiently different,  
832 although if you want to accept one or more of them, we could  
833 do it in en bloc.

834 Chairman Conyers. Should I see the amendment before I  
835 accept your offer?

836 Mr. Issa. Mr. Chairman, we are happy to show them all  
837 to you. We have submitted them to Mr. Berman, since I felt  
838 that he was the person most knowledgeable of the details.

839 Mr. Berman. Submitted, but not persuaded.

840 Mr. Issa. Then I am quite convinced that each will have  
841 to have its due.

842 Chairman Conyers. Well, then I think you will have to  
843 show them to me. I am sorry.

844 Mr. Issa. They are on their way, Mr. Chairman.

845 Ms. Lofgren. Mr. Chairman?

846 Chairman Conyers. Zoe Lofgren?

847 Ms. Lofgren. I move to strike the last word.

848 Chairman Conyers. The gentlelady is recognized.

849 Ms. Lofgren. First, I would like to commend Mr. Berman  
850 and Mr. Sensenbrenner for their work on this legislation.

851 With the rampant fraud committed by contractors in Iraq,

852 I think we have learned why we need an effective False Claims  
853 Act. And at a time when we are making extraordinary funding  
854 available through the American Recovery and Reinvestment Act,  
855 we need strong incentives for recipients to deal fairly with  
856 the American people and the American taxpayer.

857 And I think the arguments against the legislation are  
858 really unpersuasive. Nevertheless, I, like Congressman  
859 Maffei, do you have an interest in making sure that our fine  
860 universities are not inadvertently disadvantaged through this  
861 measure.

862 I would ask unanimous consent that a letter from  
863 Stanford University be made part of the record.

864 Chairman Conyers. Without objection, so ordered.

865 [The information follows:]

866 \*\*\*\*\* INSERT \*\*\*\*\*

867 Ms. Lofgren. And I understand, in discussing this with  
868 both Mr. Maffei and Congressman Berman, that while we want to  
869 accommodate these universities, we might need a little more  
870 refinement on the amendment, and I think Mr. Maffei is  
871 prepared to withdraw the amendment on the understanding that  
872 Mr. Berman will work with us to refine a fix for the  
873 universities whose concerns have touched us.

874 And if I am wrong on that, someone will disabuse me, but  
875 I think that would be a great result.

876 And I really want to credit Mr. Maffei for his hard work  
877 on this. I think he is right on that we need to do a small  
878 fix.

879 And with that, I would yield to Mr. Berman.

880 Mr. Berman. She really yields, and so I accept her  
881 yielding and thank her for her comments and thank Mr. Maffei  
882 for his amendment.

883 A little context. His amendment deals with an issue in  
884 the existing False Claims Act on the question of  
885 overpayments. It is not an effort to change something in  
886 this bill.

887 Secondly, there is a legitimate concern here, and I  
888 respect the gentleman very much for bringing it up.

889 Mr. Sensenbrenner and I tried to deal with that concern  
890 by making it clear that there is liability on the defendant,  
891 whether it is a university or any other contractor with the

892 government, for retention of overpayments.

893       There is only liability if the defendant has failed to  
894 comply with a statutory or contractual obligation to disclose  
895 an overpayment about which the person is on actual notice.

896       One of the things—and I will talk with both Ms. Lofgren  
897 and Mr. Maffei and others who want to about some adjustment  
898 that if that change doesn't solve the problem, we can try to  
899 find something.

900       But I do want to leave you with a notion that if you  
901 leave it open-ended or, in effect, open-ended in terms of the  
902 time period until a final accounting or report under a grant  
903 or contract or beyond such a time when a claim could be  
904 reopened, you create a situation where you could leave the  
905 contractor with an overpayment for years and years and years.

906       In the Defense Department, contracts remain open for 10  
907 or more years sometimes, and we don't want to do that either.

908       Ms. Lofgren. If I could reclaim my time.

909       Mr. Berman. Sure.

910       Ms. Lofgren. I understand the point you are making. It  
911 is certainly a valid one. From the universities' point of  
912 view, I think there is concern that you could have thousands  
913 of grants underway at the same time.

914       You could be under and over and you would have actual  
915 knowledge perhaps in the research labs at the universities  
916 and institutions might—I think maybe there is a little over-



917 concern, but I think there is an ability to refine something  
918 that is very clean for the university research situation that  
919 would preserve your very valid-

920 Mr. Berman. Would the gentlewoman yield?

921 Ms. Lofgren. I would yield further.

922 Mr. Berman. I would be very grateful if the gentleman  
923 would withdraw his amendment, and I will commit that between  
924 now and the time we take this up on the floor, we will see if  
925 there is a way where we can get to where you want to go  
926 without going where I fear we might go with this amendment.

927 Chairman Conyers. Would the gentleman from New York  
928 yield?

929 Ms. Lofgren. I am from California, and I would yield to  
930 the gentleman, to the chairman.

931 Chairman Conyers. Yes. Could I attempt to persuade the  
932 gentleman not to be inclined to withdraw his amendment?

933 We have got agreement for the first time on both sides  
934 of the aisle in Judiciary Committee. The agreement is to  
935 withdraw?

936 Mr. Issa. Mr. Chairman, perhaps we could pass it and  
937 then continue working on it until it got to the floor.

938 Chairman Conyers. That is a thought.

939 The gentlelady's time has expired.

940 Who seeks recognition?

941 Mr. Smith. Mr. Chairman?

942 Chairman Conyers. Mr. Smith is recognized.

943 Mr. Smith. Thank you, Mr. Chairman.

944 I want the gentleman from New York to know that I  
945 support his amendment to make a reasonable change to the  
946 overpayment provision of this bill.

947 As currently drafted, the bill imposes liability on  
948 universities, hospitals and others for inadvertent retention  
949 of overpayments, even if the overpayment is subject to a  
950 rigorous reconciliation process to settle federal accounts in  
951 an accurate and timely manner.

952 The bill, as currently drafted, makes no distinction  
953 between an inadvertent retention of an overpayment subject to  
954 a reconciliation process and the conscious attempt by an  
955 organization to retain overpayments.

956 This amendment addresses this problem and helps ensure  
957 that universities, hospitals and other organizations do not  
958 have to defend against unfounded False Claims Act cases based  
959 on temporary overpayments.

960 I hope the gentleman from New York will not withdraw  
961 this amendment, and, of course, it might well be offered by  
962 someone on this side, if he did. But I hope the gentleman  
963 from New York would heed to the support that he is getting on  
964 his side of the aisle and, also, the acknowledgment by Mr.  
965 Berman of California that he has a legitimate concern.

966 And I hope we will address that legitimate concern in

967 this amendment and then we can all work together—

968 Mr. Berman. Will the gentleman yield?

969 Mr. Smith. And we can always work to continue to  
970 improve the bill—

971 Chairman Conyers. Would the gentleman yield?

972 Mr. Berman. Would the gentleman yield?

973 Mr. Smith. And I will be happy to yield to the  
974 gentleman from California, Mr. Berman.

975 Mr. Berman. Two points. One, the gentleman made very  
976 nice comments about the existing False Claims Act as he tried  
977 to find criticism on this.

978 This amendment goes to the existing False Claims Act,  
979 not to anything in our bill.

980 In response to those university concerns, we put in a  
981 provision, Mr. Sensenbrenner and I accepted a provision which  
982 says that liability only attaches where the university fails  
983 to comply with a statutory or contractual obligation to  
984 disclose a overpayment about which the person, not somebody  
985 in the research lab, which the person in charge of  
986 contracting is on actual notice.

987 The contractual obligation creates a reconciliation  
988 process so the parties work to do this. But the fact that  
989 some contract might be open for a year down the road, this  
990 amendment goes too far and it eviscerates the underlying law  
991 on the False Claims Act and essentially says, "Among the

992 frauds we won't touch are overpayment of moneys. That kind  
993 of fraud no liability will attach to."

994 I think that goes too far. What I said was I will try—I  
995 will meet with the proponents of this amendment and we will  
996 try and find out if this language doesn't go far enough, we  
997 will try and find whatever the sweet spot is that doesn't  
998 allow an open-ended keeping of overpayments and have it  
999 exempt from liability for fraud.

1000 Mr. Smith. Let me reclaim my time.

1001 I don't doubt the gentleman's intent to try to solve  
1002 this situation and try to solve the problem. But the fact  
1003 remains that currently, hospitals, universities, businesses  
1004 all think that a burden is going to be imposed on them, and I  
1005 think this amendment—let me just finish—I think this  
1006 amendment tries to address that in a better way than the  
1007 gentleman's bill does and—

1008 Chairman Conyers. Will the gentleman yield?

1009 Mr. Smith. Let me also say that I know the gentleman  
1010 will work hard to try to address those problems between now  
1011 and the floor. I would hope that he would work to address  
1012 other problems, as well, and I hope he will take a serious  
1013 look at Mr. Issa's three amendments, too.

1014 I think this bill can be much improved between now and  
1015 the floor.

1016 If the gentleman will commit to doing that, then we will

1017 not offer the gentleman from New York's amendment, if he  
1018 withdraws it.

1019 Chairman Conyers. Will the gentleman yield?

1020 Mr. Berman. I will commit to work with you, as well as  
1021 Mr. Maffei and Ms. Lofgren, on finding an answer to a problem  
1022 that I am not sure is as concerning as the proponents  
1023 believe. We will get through it.

1024 Mr. Smith. I will yield to the chairman.

1025 Chairman Conyers. The question here is between whether  
1026 we will all work together before the amendment—when the  
1027 amendment is withdrawn or after it has passed.

1028 Let's work on it after it has passed.

1029 Mr. Smith. After this amendment is passed?

1030 Mr. Berman. No, no, no, no, no, no.

1031 Mr. Smith. I agree with the chairman.

1032 Mr. Sensenbrenner. Will the gentleman yield? Will the  
1033 gentleman from Texas yield?

1034 Mr. Smith. My time to the gentleman from Wisconsin.

1035 Mr. Sensenbrenner. Well, I will ask unanimous consent  
1036 he be given 2 additional minutes. The yellow light is on.

1037 Mr. Smith. Mr. Chairman, may I ask unanimous consent  
1038 for an additional 2 minutes to yield to the gentleman from  
1039 Wisconsin?

1040 Chairman Conyers. Without objection.

1041 Mr. Sensenbrenner. Mr. Chairman, I thank the gentleman

1042 from Texas for yielding.

1043       The problem that the gentleman from California, Mr.  
1044 Berman, is bringing up is a legitimate one, because the way  
1045 the Maffei amendment is drafted now, it effectively gives a  
1046 get out of jail free cards to universities and research  
1047 institutions, and what that says is that they can never do  
1048 anything wrong.

1049       I would like to put some things in evidence to the  
1050 contrary. Fifteen to 20 years ago, then Chairman Dingell of  
1051 the Energy and Commerce Committee had a bunch of university  
1052 presidents in the dock before him talking about how they  
1053 completely misappropriated unaccountable capital improvement  
1054 research funds.

1055       And one of them was then president of my alma mater,  
1056 Stanford University, where an audit came up and showed that  
1057 he had used these research funds to do things like paying for  
1058 his honeymoon and his wedding reception, and, obviously, this  
1059 was fraudulent. Mr. Kennedy subsequently resigned as  
1060 president of Stanford University.

1061       But with this amendment, we couldn't get at something  
1062 like this that was completely fraudulent simply because of  
1063 the way it is drafted and saying that a university can never  
1064 do anything wrong, and that is why this amendment is too  
1065 broadly drafted.

1066       If it is an inadvertent accounting problem, then, yes,

1067 we should amend the law. But I don't think it should be so  
1068 broad that activities like Mr. Dingell brought up before his  
1069 committee, I believe, in 1991 or 1993, can never be looked at  
1070 in the False Claims Act.

1071 So that is why this amendment needs to be fixed up and  
1072 it can strike an appropriate balance so that we can get at  
1073 where there is genuine fraud and not throw people in jail and  
1074 cause a huge penalty when there is an inadvertent accounting  
1075 error.

1076 I thank the gentleman for yielding.

1077 Mr. Goodlatte. Mr. Chairman?

1078 Chairman Conyers. Let's see. Who seeks recognition?

1079 I recognize Howard Berman.

1080 Mr. Berman. I have only spoken on other people's time,  
1081 not my own. So on my time, I will yield to Mr. Maffei.

1082 Mr. Maffei. Thank you very much, to the distinguished  
1083 gentleman from California.

1084 Listening to the arguments of both you and Mr.  
1085 Sensenbrenner, I do think that there is a possibility that  
1086 this might be a little bit too broadly drafted, and I do see  
1087 a definite desire amongst both the chairman of the full  
1088 committee and the cosponsors of this bill and the ranking  
1089 member of the full committee to address this problem.

1090 One suggestion might be to put language in the bill to  
1091 do an amendment in the next step in the process or on the

1092 floor that would talk about the intent, because part of the  
1093 issue here is, clearly, the cases I am worried about are  
1094 universities and hospitals have no intent whatsoever to  
1095 defraud and it is really a matter of paperwork. And so that  
1096 might be one way to go.

1097       But given this discussion, which I thought was very  
1098 productive, and I thank members on both sides, I would seek  
1099 to withdraw my amendment.

1100       Mr. Berman. I yield back.

1101       Chairman Conyers. Did the gentleman seek to withdraw  
1102 this amendment?

1103       Mr. Maffei. Yes, Mr. Chairman.

1104       Chairman Conyers. Without objection, so ordered.

1105       Mr. Issa. Mr. Chairman?

1106       Chairman Conyers. Who seeks recognition?

1107       Darrell Issa?

1108       Mr. Issa. Thank you, Mr. Chairman.

1109       I have an amendment at the desk. I would like to take  
1110 amendment 38 first.

1111       Chairman Conyers. The clerk will report the amendment.

1112       The Clerk. Amendment to H.R. 1788, offered by Mr. Issa  
1113 of California.

1114       [The amendment by Mr. Issa follows:]

1115 \*\*\*\*\* INSERT \*\*\*\*\*



1116 Chairman Conyers. Without objection, the amendment will  
1117 be considered as read.

1118 And the gentleman is recognized in support of his  
1119 amendment.

1120 Mr. Issa. Thank you, Mr. Chairman.

1121 I chose this one because it was the shortest and easiest  
1122 to explain.

1123 Mr. Chairman, this amendment seeks to empower the judge  
1124 in the case, when he is weighing the balances of damages,  
1125 whether or not the government has joined and whether—as you  
1126 know, typically, when the government joins, there is about a  
1127 17 percent award to the whistleblower or, if you will, the  
1128 original moving party.

1129 What we seek to do in this amendment is to create a  
1130 specific opportunity for the judge to weigh any abatement of  
1131 criminal prosecution as a result. This is to make the  
1132 assumption that often this is a co-conspirator who brings the  
1133 case and fesses up.

1134 If that individual could have been criminally prosecuted  
1135 and is not being criminally prosecuted, then the judge has  
1136 the ability to weigh that in consideration of how much money  
1137 they get, meaning if one of the major benefits is you don't  
1138 go to jail because you decided that you would rather blow the  
1139 whistle than continue being part of a conspiracy until it may  
1140 or may not inevitably be discovered, that that is a

1141 consideration.

1142       If there is no criminal behavior on the part of the  
1143 moving party, there would be no effect as to this amendment.

1144 If there is criminal behavior, then he simply may include  
1145 that into his consideration.

1146       And I would yield to the gentleman from California, Mr.  
1147 Berman. Just because of the look on your face.

1148       Mr. Berman. The look is puzzlement.

1149       I believe the gentleman understands that we already—we  
1150 have a provision in the law that permits a judge to reduce a  
1151 relator's share all the way down to zero, in other words, no  
1152 recovery, if they planned or initiated the fraud, even if  
1153 they are not convicted.

1154       In other words, not applying a criminal test, but just a  
1155 preponderance of the evidence test, the judge has that  
1156 discretion in these cases.

1157       I am unclear what else—what is the gentleman trying to  
1158 add to this?

1159       Mr. Issa. Well, reclaiming my time.

1160       What I am trying to do is to realize that often the  
1161 person bringing it was knowledgeable for a period of time,  
1162 could have been prosecuted for their criminal involvement,  
1163 even if they didn't plan, they are still part of an ongoing  
1164 conspiracy, assuming there was one.

1165       And to the extent they may not have been charged with

1166 any crime because they came forward in this case, this simply  
1167 says if they could have been and that did not happen, that is  
1168 a consideration.

1169 I agree with the gentleman that since you could receive  
1170 zero, one would say, "But it is already in the statute."  
1171 This is guidance to the court, because the typical award, if  
1172 the government does join, is 17 percent of that \$22 billion.  
1173 If the government doesn't join, of course, you are looking at  
1174 30 percent.

1175 So we are talking about relatively large amounts of  
1176 dollars and if the person was, in fact, a criminal, I think  
1177 it should be appropriately reduced.

1178 Mr. Berman. Let's just follow this through, because my  
1179 fear more—and the more I hear you talk, the greater fear I  
1180 have—is the person who has been told to adjust the books to  
1181 hide the nature of the fraud has done something wrong, as he  
1182 weighs whether or not to blow the whistle, I think there are  
1183 many inducements to do it and disincentives to do it, and I  
1184 think you are creating a disincentive to do it.

1185 I am unaware of any situation in real life where a  
1186 relator has recovered when he was a significant participant  
1187 in the fraud. If there is such a case, we should try to get  
1188 to it.

1189 My fear is you are creating a criteria that is going to  
1190 create a tipping point against blowing the whistle. I don't

1191 think we want to do that.

1192 Mr. Issa. Reclaiming my time.

1193 I would just say that if the tipping point is that a  
1194 criminal might get less—you said you were not aware of—

1195 Mr. Berman. Is he convicted of a crime?

1196 Mr. Issa. In this case, the way the language—

1197 Mr. Berman. How do you know he is a criminal?

1198 Mr. Issa. The avoiding criminal prosecution language in  
1199 the amendment makes it clear that the judge would have to  
1200 weigh that he had, in fact, avoided criminal prosecution by  
1201 coming forward.

1202 If there is no avoidance of criminal prosecution, in the  
1203 judge's mind, then there is no offset. And even if there is,  
1204 the offset is limited to the discretion.

1205 The point, though, Mr. Berman, Howard, is that if you  
1206 assume, for a moment, that someone is not going to report  
1207 because they might get less money, even though they are a  
1208 criminal, then is that—

1209 Mr. Berman. Might get no money.

1210 Mr. Issa. And I would say that criminals, in fact, are  
1211 more important to be prosecuted, by definition, than  
1212 necessarily the economic recovery, and we should, in fact, be  
1213 weighing that in this—

1214 Mr. Berman. If the gentleman would just further yield.

1215 Mr. Issa. I would ask unanimous consent for 1 more

1216 minute for the gentleman.

1217 Chairman Conyers. All right.

1218 Mr. Berman. If the person were a criminal, but what you  
1219 are creating is—how do you know? The guy files a lawsuit,  
1220 blows the whistle, Justice comes in, knows that he played  
1221 some functioning role in creating false time sheets under  
1222 direction from his supervisor, but besides, I wouldn't even  
1223 think about referring this.

1224 This is a—

1225 Mr. Issa. Reclaiming my time.

1226 The only reason we did it the way we did it is that we  
1227 know that judges make decisions all the time. We are adding  
1228 an element to be considered specifically.

1229 If we do not trust our judges in the awardance of fair,  
1230 balanced amounts, then, in fact, the entire legislation would  
1231 be moot.

1232 We must have some judgment by the judge. We are simply  
1233 specifically giving them this tool, because, in fact, it is a  
1234 reasonable tool to consider.

1235 If he is already considering it under the current  
1236 statute, there is no—

1237 Mr. Berman. What is the value of avoiding criminal  
1238 prosecution? Is it priceless?

1239 Mr. Issa. Well, I certainly would say that if you are  
1240 making \$150,000 a year and you are not in jail, that would be

1241 \$150,000 a year—

1242 Chairman Conyers. The gentleman's time has expired.

1243 Mr. Issa. But it is priceless, Mr. Chairman.

1244 Chairman Conyers. The chair recognizes Howard Berman.

1245 Mr. Berman. I don't think a case has been—we have a  
1246 general provision that gives the discretion, the ability to  
1247 reduce the award. It can include this criteria. It can  
1248 include all kinds of criteria.

1249 Specifying one particular criteria in a way that doesn't  
1250 spell out the process by which the judge would make the  
1251 determination—does he call the U.S. attorney up to testify  
1252 whether or not this would have been something they would have  
1253 prosecuted?

1254 Could I yield to my colleague from California, who had—I  
1255 am just talking. He has had real experience with this.

1256 Mr. Lungren. My question is to the gentleman from  
1257 California, because I have difficulty with this amendment.

1258 Right now, the judge has the ability to weigh all sorts  
1259 of issues and make a determination, if you bring it down to  
1260 zero, if the person were involved in the actual commission of  
1261 the crime. Is that not correct? Is that not correct?

1262 Mr. Berman. Yes.

1263 Mr. Lungren. The judge has the ability to bring it down  
1264 to zero—

1265 Mr. Berman. Zero.

1266 Mr. Lungren. -if he makes a determination the person  
1267 was involved in the actual fraud itself. Correct?

1268 Mr. Berman. Right.

1269 Mr. Lungren. Well, all I would say is if that is the  
1270 current law, this amendment not only does not offer anything,  
1271 but, with all due respect, there is a distinction between a  
1272 judge and a prosecutor in terms of who brings criminal  
1273 action.

1274 I am unaware of any jurisdiction in the United States—in  
1275 fact, it is probably unconstitutional—where a judge could  
1276 order a prosecutor to bring criminal action against any  
1277 individual.

1278 I mean, that is what happens, as I understand, in the  
1279 system in South America, where the judge both serves the role  
1280 of determining whether or not charges should be brought and  
1281 then makes a determination of whether you are guilty of the  
1282 charges that he already decided should be brought against  
1283 you.

1284 I understand the gentleman from California's intent. I  
1285 think it is already covered by the law.

1286 But beyond that, I am very concerned about us trying to  
1287 give a judge the ability to make a determination as to  
1288 whether or not a criminal prosecution should be brought.

1289 As a prosecutor, you make many decisions not to bring  
1290 criminal action, sometimes because you say it is 49 percent

1291 you think they are guilty as opposed to 51 percent, and your  
1292 obligation as a prosecutor is not to bring forth an action  
1293 unless, in good faith, you think that the person can be  
1294 convicted of it.

1295       To have the judge then make this inquiry of the  
1296 prosecutor, it seems to me, is just barking up the wrong  
1297 tree.

1298       And I understand what the gentleman from California is  
1299 trying to do, but I think it has implications beyond this.

1300       Mr. Issa. Would the gentleman yield? Mr. Berman?

1301       Mr. Berman. Yes.

1302       Mr. Issa. Perhaps to convince you, I might note that in  
1303 your legislation, you provide that if someone is convicted of  
1304 a crime, they get zero under this statute.

1305       So you have made the case that if they are a criminal,  
1306 they get zero. If they are not prosecuted, all I am saying  
1307 is that the logical distance between zero and the normal 17  
1308 or so percent should be considered by the judge.

1309       So I think if we look at a California case from our neck  
1310 of the woods with O.J. Simpson, it is not a question of  
1311 criminal guilt when you are looking at guilt. The fact is we  
1312 are looking at money here and we are asking the judge to  
1313 weigh the money against the decision made, for whatever  
1314 reason, not to prosecute somebody.

1315       And usually, in a case like this, in the discovery, in



1316 the normal process of going through and collecting the money,  
1317 the moving party is overtly giving the judge all the evidence  
1318 of the wrongdoing because that is part of the process of it.

1319       So in order to win the case, the person has either  
1320 incriminated themselves, but has immunity, or didn't  
1321 incriminate themselves. All we are asking for, Mr. Berman,  
1322 is that the judge have this tool specifically, since he does  
1323 have no choice if there is a conviction, we would like to  
1324 have him have the reasonable choice, if, in fact, you have a  
1325 criminal and he wants to reduce it based on that.

1326       Mr. Berman. And just to reclaim my time.

1327       The judge has the full discretion right now to do  
1328 exactly that and the fact is, in these cases, sometimes the  
1329 little rogue decides to turn in the big rogue.

1330       We have a little debate going on in this country right  
1331 now about line officers versus policymakers and what to do  
1332 here.

1333       I have asked the committee to leave the general  
1334 discretion which is now with the judge to reduce down to zero  
1335 or something less than what otherwise there would be based on  
1336 the plaintiff's culpability in the fraud. It is a full  
1337 discretion for the judge.

1338       I don't think we should throw in some new criteria that,  
1339 as Mr. Lungren said, will be very murky how the judge would  
1340 establish that criteria, about whether or not a prosecution

1341 would have been brought.

1342 I think we are achieving—I think existing law gives you—

1343 Chairman Conyers. The gentleman's time has expired.

1344 Mr. Berman. —the chance to make the case that you want.

1345 Chairman Conyers. The chair will call the question.

1346 All in support of the Issa amendment, indicate by saying

1347 "aye."

1348 [A chorus of ayes.]

1349 Chairman Conyers. All those opposed to the Issa

1350 amendment, indicate by saying "no."

1351 [A chorus of noes.]

1352 Chairman Conyers. The noes have it and the amendment

1353 has failed.

1354 Mr. Issa. On that, I would like to know those who are

1355 voting against criminals getting money versus criminals not

1356 getting money, and I would ask for a recorded vote.

1357 Chairman Conyers. That is poorly worded, but we will

1358 have a record vote anyway.

1359 The Clerk. Mr. Conyers?

1360 Chairman Conyers. No.

1361 The Clerk. Mr. Conyers votes no.

1362 Mr. Berman?

1363 Mr. Berman. No.

1364 The Clerk. Mr. Berman votes no.

1365 Mr. Boucher?

1366 [No response.]

1367 Mr. Nadler?

1368 Mr. Nadler. No.

1369 The Clerk. Mr. Nadler votes no.

1370 Mr. Scott?

1371 [No response.]

1372 Mr. Watt?

1373 [No response.]

1374 Ms. Lofgren?

1375 Ms. Lofgren. No.

1376 The Clerk. Ms. Lofgren votes no.

1377 Ms. Jackson Lee?

1378 [No response.]

1379 Ms. Waters?

1380 [No response.]

1381 Mr. Delahunt?

1382 [No response.]

1383 Mr. Wexler?

1384 [No response.]

1385 Mr. Cohen?

1386 Mr. Cohen. No.

1387 The Clerk. Mr. Cohen votes no.

1388 Mr. Johnson?

1389 Mr. Johnson. No.

1390 The Clerk. Mr. Johnson votes no.

1391 Mr. Pierluisi?  
1392 Mr. Pierluisi. No.  
1393 The Clerk. Mr. Pierluisi votes no.  
1394 Mr. Gutierrez?  
1395 [No response.]  
1396 Mr. Sherman?  
1397 [No response.]  
1398 Ms. Baldwin?  
1399 [No response.]  
1400 Mr. Gonzalez?  
1401 Mr. Gonzalez. No.  
1402 The Clerk. Mr. Gonzalez votes no.  
1403 Mr. Weiner?  
1404 Mr. Weiner. No.  
1405 The Clerk. Mr. Weiner votes no.  
1406 Mr. Schiff?  
1407 [No response.]  
1408 Ms. Sanchez?  
1409 Ms. Sanchez. No.  
1410 The Clerk. Ms. Sanchez votes no.  
1411 Ms. Wasserman Schultz?  
1412 [No response.]  
1413 Mr. Maffei?  
1414 Mr. Maffei. No.  
1415 The Clerk. Mr. Maffei votes no.

1416 Mr. Smith?  
1417 Mr. Smith. Aye.  
1418 The Clerk. Mr. Smith votes aye.  
1419 Mr. Goodlatte?  
1420 Mr. Goodlatte. Aye.  
1421 The Clerk. Mr. Goodlatte votes aye.  
1422 Mr. Sensenbrenner?  
1423 Mr. Sensenbrenner. No.  
1424 The Clerk. Mr. Sensenbrenner votes no.  
1425 Mr. Coble?  
1426 Mr. Coble. Aye.  
1427 The Clerk. Mr. Coble votes aye.  
1428 Mr. Lungren?  
1429 Mr. Lungren. No.  
1430 The Clerk. Mr. Lungren votes no.  
1431 Mr. Issa?  
1432 Mr. Issa. Aye.  
1433 The Clerk. Mr. Issa votes aye.  
1434 Mr. Forbes?  
1435 [No response.]  
1436 Mr. King?  
1437 Mr. King. Aye.  
1438 The Clerk. Mr. King votes aye.  
1439 Mr. Franks?  
1440 Mr. Franks. Aye.

1441 The Clerk. Mr. Franks votes aye.  
1442 Mr. Gohmert?  
1443 [No response.]  
1444 Mr. Jordan?  
1445 Mr. Jordan. Yes.  
1446 The Clerk. Mr. Jordan votes yes.  
1447 Mr. Poe?  
1448 [No response.]  
1449 Mr. Chaffetz?  
1450 Mr. Chaffetz. Aye.  
1451 The Clerk. Mr. Chaffetz votes aye.  
1452 Mr. Rooney?  
1453 Mr. Rooney. No.  
1454 The Clerk. Mr. Rooney votes no.  
1455 Mr. Harper?  
1456 Mr. Harper. Aye.  
1457 The Clerk. Mr. Harper votes aye.  
1458 Chairman Conyers. Mr. Watt?  
1459 Mr. Watt. No.  
1460 The Clerk. Mr. Watt votes no.  
1461 Chairman Conyers. Mr. Schiff?  
1462 The Clerk. Mr. Schiff is not recorded.  
1463 Chairman Conyers. Ms. Waters?  
1464 Ms. Waters. No.  
1465 The Clerk. Ms. Waters votes no.

1466 Chairman Conyers. Mr. Scott?  
1467 Mr. Scott. No.  
1468 The Clerk. Mr. Scott votes no.  
1469 Chairman Conyers. Mr. Schiff?  
1470 Mr. Schiff. No.  
1471 The Clerk. Mr. Schiff votes no.  
1472 Chairman Conyers. Mr. Forbes?  
1473 Mr. Forbes. Yes.  
1474 The Clerk. Mr. Forbes votes yes.  
1475 Chairman Conyers. The clerk will report.  
1476 The Clerk. Mr. Chairman, 10 members voted aye, 18  
1477 members voted nay.  
1478 The Clerk. The amendment failed.  
1479 Mr. Weiner. Mr. Chairman?  
1480 Chairman Conyers. The chair recognizes the gentleman  
1481 from New York, Mr. Weiner.  
1482 Mr. Weiner. Mr. Chairman, I have an amendment at the  
1483 desk.  
1484 Chairman Conyers. The clerk will report the amendment.  
1485 The Clerk. Amendment to H.R. 1788, offered by Mr.  
1486 Weiner of New York.  
1487 [The amendment by Mr. Weiner follows:]  
1488 \*\*\*\*\* INSERT \*\*\*\*\*

1489 Chairman Conyers. Without objection, the amendment will  
1490 be considered as read.

1491 The gentleman from New York is recognized.

1492 Mr. Weiner. Thank you, Mr. Chairman.

1493 My colleagues, whether you are aware of it or not,  
1494 states are exempt from the False Claims Act.

1495 The Supreme Court ruled in 2000 that they should be and,  
1496 frankly, for reasonable reasons.

1497 If you are a state and you are employing hundreds of  
1498 thousands and, in some cases, many more employees, to have  
1499 the one employee have the ability to bring down financially  
1500 an entire state was deemed to be unreasonable, and,  
1501 furthermore, it also didn't make much sense.

1502 Your state taxpayers are the same as the federal  
1503 taxpayers. Having the state taxpayers write a check to the  
1504 federal taxpayers doesn't make much sense.

1505 My amendment would extend that exemption to the logical  
1506 place it should go, which is to cities. Every one of our  
1507 cities is vulnerable under this bill in a very fundamental  
1508 way.

1509 The way the bill is structured, when a lawsuit is  
1510 brought by a whistleblower, it is brought under seal. For  
1511 months and months and months, something that was wrong that  
1512 is going on at some desk at the health and human services  
1513 department of a local city can be extended to more and more



1514 and more employees, while legally under seal.

1515       The result can be by the time the city finds out about  
1516 it, the treble damages can equal millions, in the case of a  
1517 city like New York, tens of millions of dollars.

1518       And it also runs fundamentally afoul of the basic sense  
1519 of fairness that we should have.

1520       Look, we just had a stimulus bill that was passed and a  
1521 lot of money went through states. If a state employee does  
1522 something amiss with that, the state is exempt.

1523       Yet, our small towns, villages and cities, in similar  
1524 circumstances, would face exposure.

1525       My amendment would exempt localities and say that, look,  
1526 the purpose here is what was expressed in the Senate bill,  
1527 their committee report, and I will tell you what it said.

1528       It said the bill was intended to target,  
1529 "nongovernmental entities and subcontractors of the federal  
1530 government." I have no dispute that we should make sure that  
1531 we enforce the rules against them.

1532       And I want to say one other thing, that if you think for  
1533 a moment that the deep pockets of our localities don't become  
1534 attractive for these types of actions, you are wrong.

1535       It doesn't make much sense. It is unreasonable to  
1536 expect a city to be able to prevent the sanction that the law  
1537 seeks to bring.

1538       So my amendment is simple. It says treat local

1539 governments like states. And if you oppose the amendment,  
1540 then I say you have got a choice. You can say let's include  
1541 states, and I note that Mr. Berman, in his bill, doesn't do  
1542 that. It keeps the exemption for states, because we,  
1543 frankly, don't believe—and I don't want to put words in Mr.  
1544 Berman's mouth—that you should include states and if you  
1545 exempt states, you really should exempt our localities.

1546       Every single one of them is going to be on the hook  
1547 here. It is not—the intention of the False Claims Act was to  
1548 make it so that someone who is a whistleblower can bring a  
1549 claim and then a state—and then a city can be on the hook.

1550       And let me just give you an example so you will  
1551 understand how this might redound to the detriment of your  
1552 locality.

1553       Let's say that there was a complaint about 10,000 got a  
1554 reimbursement rate that was incorrect, but the seal is put on  
1555 the complaint. So it grows to 20,000 and then 50,000. And  
1556 by the time you get to the civil penalties, let's say it is  
1557 \$1,000 per complaint, you start doing treble damages over  
1558 tens of thousands of complaints, and you find that the city  
1559 is on the hook, through no fault of their own.

1560       There are disincentives in here for the whistleblower to  
1561 maybe be public about it. He is going to bring an action  
1562 that is going to be under seal, making the problem faster and  
1563 get worse and worse and worse, and, from a financial

1564 perspective, that is certainly going to redound to the  
1565 detriment of cities.

1566       So my amendment is simple. It says we are going to  
1567 exempt units of local government so that they are not—it  
1568 doesn't do anything to stop us from bringing actions against  
1569 subcontractors, nongovernmental agencies, which, like the  
1570 Senate committee report said, should be the focus of our  
1571 action here.

1572       And I ask my colleagues for a "yes" vote.

1573       Chairman Conyers. Thank you.

1574       Lamar Smith?

1575       Mr. Smith. Thank you, Mr. Chairman.

1576       Mr. Chairman, I think, at this point, I am undecided on  
1577 the amendment until we have had further discussion, but what  
1578 I would like to do is make some comments on the amendment and  
1579 then I have a couple of questions for the gentleman from New  
1580 York, as well.

1581       First of all, what I like about the amendment is that it  
1582 is an acknowledgement that the current bill does impose  
1583 burdens on all these entities that the gentleman has  
1584 outlined, and, quite frankly, if it imposes a burden on the  
1585 entities contained in the amendment, to me, it imposes the  
1586 same burden on universities and hospitals.

1587       My question to the gentleman from New York is this. He  
1588 exempts, in addition to the cities and so forth, school

1589 districts and special districts.

1590       Why, therefore, wouldn't we exempt hospital districts  
1591 just as well and perhaps even school districts, since the  
1592 burden is equally shared by them as by the entities that the  
1593 gentleman has described in his amendment?

1594       Mr. Weiner. Well, school districts are exempt under my  
1595 amendment.

1596       Mr. Smith. Would that include universities and  
1597 colleges?

1598       Mr. Weiner. I think the distinction would be between a  
1599 public and private institution.

1600       So for example, in the case of the-

1601       Mr. Smith. Let me reclaim my time for a second.

1602       Mr. Weiner. Sure.

1603       Mr. Smith. I am not sure you mean to say that we would  
1604 exempt public-the burden on public institutions, like public  
1605 universities, and not private colleges. You do mean that?

1606       Mr. Weiner. Well, I guess under the reading of the  
1607 bill-

1608       Mr. Smith. The burden would be the same. The  
1609 distinction would only be whether they are public or private,  
1610 which, to me, is not a legitimate distinction.

1611       But I will yield back.

1612       Mr. Weiner. Well, that is fair, and I am open to hear  
1613 amendments like Mr. Maffei's or yours.

1614           The intention here is to protect one group of taxpayers  
1615 who is a subset of the other. The question is should New  
1616 York City taxpayers also pay taxes to the state and the  
1617 federal government and should we be passing money back and  
1618 forth among them.

1619           Who you are sanctioning is essentially the point. If  
1620 you want to sanction a contractor, you want to sanction the  
1621 taxpayer, it doesn't make much sense, in my view.

1622           Mr. Smith. Let me ask the gentleman to respond to the  
1623 question I had about if you are going to include all these  
1624 types of districts, why not a hospital district?

1625           Mr. Weiner. I will be honest with you, I don't know  
1626 what a hospital district is. I mean, I know what public  
1627 hospitals are, that is the world that I come from, and they  
1628 are included in this.

1629           If hospital district—if that is a city or municipality  
1630 entity that those hospitals, such as public hospitals,  
1631 meaning paid for by the taxpayer, I would be amenable to a  
1632 secondary amendment.

1633           Mr. Smith. And you also would be amenable to including  
1634 universities and colleges, as well, or just public  
1635 universities?

1636           Mr. Weiner. Well, what I am trying to get at in my  
1637 amendment, and I am open to all this discussion, because I—I  
1638 mean, I am open to your amendment and a vote here, would

1639 clearly predispose me to a vote on yours.

1640 But what I am trying to get at is the inconsistency  
1641 between a state entity and a city entity under the present  
1642 law and under—

1643 Mr. Nadler. Would the gentleman yield?

1644 Mr. Smith. I would be happy to yield to the gentleman  
1645 from California, Mr. Lungren—the gentleman from New York, Mr.  
1646 Nadler.

1647 Mr. Nadler. Thank you.

1648 I just wanted to clarify. I think that under Mr.  
1649 Weiner's amendment, as I read it, a hospital operated by a  
1650 government unit would be subject to his amendment, and that  
1651 is good.

1652 Mr. Weiner. A public hospital.

1653 Mr. Nadler. A public hospital, yes, taxpayer-supported  
1654 hospitals.

1655 Mr. Smith. I will reclaim my time and yield back, Mr.  
1656 Chairman.

1657 Chairman Conyers. Howard Berman?

1658 Mr. Berman. Let me offer a hasty amendment.

1659 My friend from New York likes to make a big issue about  
1660 states being exempt. The statute didn't exempt states. A  
1661 court decided to exempt states on 11th Amendment grounds,  
1662 looking at the definition of person. We never intended to  
1663 exempt states from any liability.

1664           And if the courts decide a local government shouldn't be  
1665 liable, I guess they will. But you know very well that under  
1666 constitutional law, states are different than a whole variety  
1667 of local entities.

1668           Now, Mr. Issa earlier made an appeal we should have a  
1669 vote to see who the criminals—and I say this is a good vote  
1670 on whether you really believe in the private sector or not.

1671           If a nonprofit hospital or the shareholders of a  
1672 company, including a pension fund that invests in a company,  
1673 if they have liability for the fraud committed by the  
1674 principals, I know of no reason why people, because it  
1675 happens to be a city-owned hospital, that there shouldn't be  
1676 liability for that same conduct.

1677           Let me tell you a few stories. We will start with New  
1678 York City. City employees were instructed to falsify foster  
1679 care records to indicate compliance with federal guidelines.

1680           As a result, the city received \$100 million in federal  
1681 incentive funds, yet thousands of children did not receive  
1682 essential services, including case worker interviews,  
1683 monitoring of birth and foster families, and biannual  
1684 reviews, and biannual reviews to plan for permanent homes.

1685           In 1998, the U.S. district court for the southern  
1686 district accepted a settlement, where the city paid \$14  
1687 million and the New York state paid \$35 million.

1688           The employee who refused to falsify the documents took a

1689 huge portion of the reward and donated it to a scholarship  
1690 fund for the foster children who had been treated by the  
1691 false application of the city government.

1692 Cook County Hospital falsified an application to receive  
1693 a \$5 million research grant from the National Institute of  
1694 Drug Abuse. The notion that a nonprofit hospital, frequently  
1695 a—sometimes a church hospital or something like that, they  
1696 should be liable or that any other entity should be liable,  
1697 but city governments or public universities as opposed to  
1698 private universities should not be liable doesn't carry  
1699 water, I don't think.

1700 Mr. Weiner. Would the gentleman yield?

1701 Mr. Berman. What I offered to Mr. Weiner, which I take  
1702 it—or through staff, at least, he wouldn't accept it, I am  
1703 prepared to exempt these local governments for their regular  
1704 daily operations.

1705 But where they own an enterprise, like a university or a  
1706 hospital, where they are applying for a whole variety of  
1707 federal funds and they are competing directly with private  
1708 institutions and private hospitals, I don't think they should  
1709 be advantaged over that.

1710 And the fact is it is the U.S. taxpayers who are  
1711 defrauded in these situations and the ultimate purpose of all  
1712 this is to have entities nervous about liability create  
1713 mechanisms internally to ensure that fraud doesn't happen or



1714 minimize the chances that fraud doesn't happen, and that is  
1715 the real beauty of the False Claims Act.

1716       It is not the \$22 billion that has been recovered. It  
1717 is the fact that a whole variety of companies, defense  
1718 contractors, health care providers, hospitals, and local  
1719 governments have put mechanisms in place to make sure there  
1720 isn't fraud in order to avoid that liability.

1721       Mr. Weiner. Would the gentleman yield?

1722       Mr. Berman. I urge the amendment—again, I repeat my  
1723 offer of my earlier proposal to you, and would yield to you.

1724       Mr. Weiner. I just want to address a couple of these  
1725 things.

1726       First of all, you are absolutely right, the Supreme  
1727 Court said that states are exempt and cities aren't. That  
1728 doesn't change the fact that the inconsistency leads to a  
1729 strange dichotomy here, that you have cities who are on the  
1730 hook and cities who are exposed that states are not.

1731       And let me say—

1732       Mr. Berman. Let me just reclaim my time on that  
1733 argument.

1734       Mr. Weiner. Sure.

1735       Mr. Berman. You are right, that is inconsistent and it  
1736 is inconstant to exempt public hospitals and not exempt  
1737 private hospitals. And in the end, we can apply consistency  
1738 and repeal the False Claims Act, because ultimately, in that

1739 world, the only choice, if you want to—if consistency is the  
1740 only test.

1741 I could offer a constitutional amendment so that states  
1742 would be covered, but I—

1743 Mr. Weiner. If you would permit me to continue.

1744 The question, though, is who is the universe of those  
1745 that you are sanctioning? There are constituents that you  
1746 are sanctioning. That is the point.

1747 Yes, there is a distinction that we are making between  
1748 stockholders and businesses.

1749 Chairman Conyers. The gentleman's time has expired.

1750 Mr. Weiner. Unanimous consent he have 2 additional  
1751 minutes, Mr. Chairman. Unanimous consent the gentleman from  
1752 California have 2 additional minutes.

1753 Chairman Conyers. Granted.

1754 Mr. Weiner. Exactly the point that we are making is  
1755 what is said in the Senate bill. We are targeting  
1756 contractors.

1757 Mr. Berman. The Senate bill doesn't exempt cities. You  
1758 keep saying that, but it doesn't.

1759 Mr. Weiner. No, but it talks to what they are  
1760 attempting to do is to target contractors.

1761 Let me just make a point about—

1762 Mr. Berman. But they didn't exempt what you are doing,  
1763 they refused to do that.

1764 Mr. Weiner. Fair enough.

1765 But, Mr. Chairman, let me just make the point about the  
1766 settlement that the city and state entered into in the case  
1767 that you articulated.

1768 If you are the city of New York, you have no choice but  
1769 to settle these cases for enormous amounts of money, because  
1770 of the potential exposure that you have, which goes into, in  
1771 the case of the city of New York, billions.

1772 You have such little leverage here. You can't afford to  
1773 go to trial on these cases, because the taxpayer is on the  
1774 hook for so much exposure.

1775 So we say, yes, there was a dramatic settlement, you are  
1776 darn right there was, because there is so much leverage that,  
1777 now, against such a deep pocket, which all of our localities—  
1778 I want to make sure you all understand this.

1779 Every single one of your localities would be exempt  
1780 under my amendment, not exempt if it is defeated. I just  
1781 want to make sure that is very clear to everyone.

1782 Mr. Berman. And every single one of your private  
1783 institutions in your district, your beloved universities,  
1784 your beloved local hospitals, would be covered, except of the  
1785 city ran the hospital. I don't think that is a fair result.

1786 Chairman Conyers. The chair recognizes the chairman  
1787 emeritus.

1788 Mr. Sensenbrenner. Thank you very much, Mr. Chairman.

1789 I rise in opposition to the amendment.

1790 Mr. Chairman, I can understand the concern of the  
1791 gentleman from New York and the conflict he sees between  
1792 protecting both local and federal taxpayers from the impact  
1793 of fraud.

1794 At the same time, I am not comfortable with exempting  
1795 local governments from the False Claims Act outright, which  
1796 he proposes to do, and here is why.

1797 Fraud does occur in local governments and a lot of  
1798 federal dollars go to local governments, more recently, as a  
1799 result of the enactment of recent legislation.

1800 Every member of this committee represents both local  
1801 taxpayers and federal taxpayers. But if your local taxpayers  
1802 happen to elect a local government that ends up defrauding my  
1803 federal taxpayers, then I don't see why we shouldn't allow a  
1804 relator with knowledge of that fraud to go forward and try to  
1805 recover the federal dollars on behalf of all federal  
1806 taxpayers, and that impacts everybody on this committee.

1807 And I don't see any reason why we would want to exempt a  
1808 local government from a suit going forward, and, in this  
1809 case, the Supreme Court, in the Cook County case, got our  
1810 intent right.

1811 In a sense, exempting local governments sends exactly  
1812 the wrong message. Many municipal and state entities operate  
1813 in essentially the same manner as private institutions, such

1814 as hospitals and universities, and engage in similar types of  
1815 misconduct as their privately owned counterparts.

1816        Holding the local government to a lesser standard of  
1817 honesty and integrity than their private counterparts is  
1818 unfair and sends the message that misconduct by public  
1819 officials is less culpable than that by private citizens.

1820        That does not make any sense at all. And additionally,  
1821 there is no demonstrable history of local government entities  
1822 being disproportionately or inappropriately subject to False  
1823 Claims Act liability nor is there any reason that knowing  
1824 misconduct by local government officials should be anymore  
1825 tolerated at the expense of federal taxpayers than of  
1826 officials of privately owned companies, whose shareholders  
1827 may be no more responsible for the misconduct than are the  
1828 taxpayers of state and municipal entities that engage in  
1829 fraud.

1830        And, unfortunately, there is not a shortage of examples  
1831 of fraud at the local government level. This is a bad  
1832 amendment. It is a get out of jail free card.

1833        It is not fair to those who are in competition directly  
1834 or indirectly with local government. And the final point is,  
1835 and I would reiterate, why should somebody's local taxpayers'  
1836 fraud end up costing everybody's federal taxpayers' money?

1837        I urge defeat of the amendment, and yield back the  
1838 balance of my time.

1839 Chairman Conyers. The gentleman from California seeks  
1840 recognition and is recognized.

1841 Mr. Lungren. Thank you very much, Mr. Chairman.

1842 I rise in opposition to the amendment.

1843 We ought to go back to what the basics of the bill are.  
1844 This law, from its very origination back in Lincoln's day,  
1845 was specifically to root out fraud, and the qui tam  
1846 provisions both on the federal and state level have actually  
1847 been very effective.

1848 When we pursued the largest qui tam state action in the  
1849 history of California, it came to our attention by way of an  
1850 individual who did his own investigation on an esoteric part  
1851 of the law that, frankly, we had no idea about.

1852 It wasn't because we weren't looking for it. It wasn't  
1853 because regulatory agencies weren't looking for it. It,  
1854 frankly, was a practice that had developed over time that  
1855 resulted in a massive fraud, as I say, the largest single qui  
1856 tam action ever taken in the state of California.

1857 And to Mr. Berman's point, you can point to huge cases,  
1858 but it is the cases that have been deterred by the results of  
1859 these kinds of actions that really merit the greatest  
1860 consideration.

1861 And if we could sit here and posit the argument that  
1862 there is no fraud at the local level of government, county or  
1863 local government, in the midst of the largest funneling of

1864 money from the federal government to local and state  
1865 governments in our nation's history, then I could understand  
1866 why we might want to support this amendment.

1867       But if we believe the basis of the False Claims Act is,  
1868 in fact, appropriate and effective, then the last thing I  
1869 think we would want do o would be to exempt local government  
1870 units and their operations from this kind of a tool that  
1871 really does more to prevent fraud than it does to uncover  
1872 fraud after it has been created.

1873       So I would just say if you believe in the efficacy of  
1874 the False Claims Act, I don't think you would want to exempt  
1875 these groups from that.

1876       Mr. Sensenbrenner has explained that, yes, we are local  
1877 taxpayers and we are county taxpayers and we are federal  
1878 taxpayers, but the point is if you have a fraudulent unit of  
1879 government and it is basically fraudulently obtaining federal  
1880 funds, that is from all of the rest of us.

1881       And to have all of the rest of us recover that, it seems  
1882 to me, is an action towards good government, not a  
1883 penalization of anybody at the local level, including my  
1884 constituents or the gentleman from New York's constituents.

1885       Otherwise, you would have to assume that the only fraud  
1886 that would take place would be fraud by your local officials.

1887       Mr. Weiner. Would the gentleman yield?

1888       Mr. Lungren. And I wouldn't want to suggest that to the

1889 gentleman from New York nor would I suggest that to myself.

1890 Yes, I would be happy to yield.

1891 Mr. Weiner. Would the gentleman yield?

1892 Look, we are furiously burning this straw man down that  
1893 I don't think destroyed a local government. That is not the  
1894 point.

1895 The point is that you have a dynamic setup where you  
1896 have a locality that has literally hundreds of thousands of  
1897 employees. You have a singular employee that has created a  
1898 situation that has triggered a qui tam action.

1899 It then goes months and months and months and years  
1900 under seal. The locality has no ability to stop it while it  
1901 is under seal. They are unaware of it.

1902 They get a subpoena, say, 2 years into the action. Only  
1903 now do they find out it is going on, but now it has grown to  
1904 maybe a million people have now theoretically had a billing  
1905 error that has been multiplied.

1906 I just don't see the equity in saying to the locality,  
1907 who perhaps did do an original billing error, unaware of it  
1908 or—we have other tools at our disposal if we want to get to  
1909 that besides bankrupting a locality.

1910 Mr. Lungren. I understand, and reclaiming my time.

1911 The gentleman has presented his straw man in this  
1912 argument, that somehow you would remain under seal for years  
1913 and years and years and let the ongoing fraud, and seriously



1914 take action for some other reason.

1915         Now, that may happen. I doubt it would. Most people  
1916 who report these things would like to get their money sooner  
1917 rather than later. They would like the action taken as  
1918 quickly as possible, and most prosecutors would rather get  
1919 their case over with sooner rather than later.

1920         Mr. Weiner. Smaller rather than larger, no way.

1921         Mr. Lungren. And I understand the gentleman's straw man  
1922 and I appreciate it, but again, unless one presumes that the  
1923 fraud is uniquely going to take place in their local  
1924 community, his argument about penalizing the very same people  
1925 doesn't follow.

1926         Mr. Issa. Would the gentleman yield?

1927         Mr. Lungren. I would be happy to yield.

1928         Chairman Conyers. The gentleman's time has expired.

1929         Mr. Maffei. Mr. Chairman, move to shrike the last word.

1930         Chairman Conyers. The chair is going to call the  
1931 question.

1932         You have got three more amendments anyway.

1933         Mr. Issa. Two, two more amendments.

1934         Chairman Conyers. Two more.

1935         Mr. Maffei. Mr. Chairman, I move to strike the last  
1936 word.

1937         Chairman Conyers. Who said that?

1938         Mr. Maffei, you withdrew an amendment.

1939 Mr. Maffei. And I might urge my colleague to do the  
1940 same.

1941 Chairman Conyers. The chair thinks that there has been  
1942 very adequate discussion on both sides.

1943 Mr. Maffei. Mr. Chairman, if I may just be yielded 1  
1944 minute?

1945 Chairman Conyers. All right, I will yield to you. The  
1946 gentleman is recognized.

1947 Mr. Maffei. Thank you, Mr. Chairman.

1948 I just might suggest, again, to the bill's authors that  
1949 if there is some way that the statute could take into account  
1950 some sort of measure of intent, because I think what both the  
1951 gentleman from New York and I are worried about in the case  
1952 of—in his case, in the case of localities, in my case, in the  
1953 case of universities and hospitals, is that there could be  
1954 situations under the act where clearly there was no intent,  
1955 but because of a paperwork snafu—

1956 Mr. Berman. Would the gentleman yield on this? This is  
1957 a very important point.

1958 Mr. Maffei. Yes.

1959 Mr. Berman. If the False Claims Act is applying to  
1960 billing errors, mistakes, even some negligent activities and  
1961 not to willful intent to deceive or such reckless disregard  
1962 for the truth, then we have got to retool the whole law.

1963 That isn't about city hospitals. It is about no

1964 contractor should be liable for these kinds of penalties. I  
1965 don't think that is the case, but let me tell you, I am  
1966 certainly willing to retool the law if that is the judgment  
1967 based on looking at the many cases—

1968 Chairman Conyers. The gentleman's time has expired.  
1969 All time has expired.

1970 The question is on the amendment offered by the  
1971 gentleman from New York.

1972 All those in favor of the amendment, indicate by saying  
1973 "aye."

1974 [A chorus of ayes.]

1975 Chairman Conyers. All those opposed, indicate by saying  
1976 "no."

1977 [A chorus of noes.]

1978 Chairman Conyers. The noes have it. The amendment  
1979 fails.

1980 Mr. Issa. Mr. Chairman, I have an amendment at the  
1981 desk.

1982 Chairman Conyers. Darrell Issa is recognized for his  
1983 amendment.

1984 The clerk will report the amendment.

1985 Mr. Issa. Number 37.

1986 The Clerk. Amendment to H.R. 1788, offered by Mr. Issa  
1987 of California.

1988 [The amendment by Mr. Issa follows:]

1989 \*\*\*\*\* INSERT \*\*\*\*\*

1990 Chairman Conyers. Without objection, the amendment will  
1991 be considered as read.

1992 The gentleman will be recognized in support of his  
1993 amendment, and act a ranking member.

1994 Mr. Issa. Mr. Chairman, I thought the closer we got,  
1995 the more likely it was to pass. We will see if that bears  
1996 any fruit.

1997 Mr. Chairman, this amendment, quite simply, in my other  
1998 role as ranking member of Government Oversight and Reform,  
1999 seeks to limit the losses to governments, federal, state and  
2000 cities, if, in fact, the discovery of this crime or this  
2001 fraud would have inevitably occurred with or without the  
2002 whistleblower.

2003 As the chairman is acutely aware, you can often have a  
2004 conspiracy and that conspiracy will inevitably be discovered.

2005 One of the challenges for us is that under the act, even  
2006 if a normal audit 2 or 3 years later would have picked up  
2007 this failure, the judge is not in a position to limit the  
2008 damages based on that explicit occurrence.

2009 So if you have a whistleblower who knows he is going to  
2010 be discovered in days, weeks or months and they go in and  
2011 they say, "Aha, I want to report this," they should not—in my  
2012 opinion, they probably shouldn't be exempt from criminal  
2013 prosecution, but certainly they should not be financially  
2014 rewarded for it.

2015           So the amendment is very limited. It limits, in the  
2016 language, the attorney general determines that relevant  
2017 agency or Department of Justice would have inevitably  
2018 discovered the material evidence and information that is the  
2019 basis for the action brought by the person under this  
2020 section, that person shall not be entitled to any  
2021 compensation under the subsection.

2022           It is a high standard. It clearly shows inevitable. I  
2023 don't believe for a moment that the government would be  
2024 self-serving in order to save money, but I do believe that it  
2025 is a fair question to, from time to time, be evaluated.

2026           And I would yield to the gentleman from California for  
2027 his concurrence.

2028           Mr. Berman. Well, I don't think I am allowed that much  
2029 time.

2030           Mr. Issa. A simple "yes" will do.

2031           Mr. Berman. To the question do I like the amendment?

2032           Mr. Issa. Yes.

2033           Mr. Berman. The answer is no.

2034           Mr. Issa. Reclaiming my time.

2035           Go ahead, Howard, please.

2036           Mr. Berman. Look, the reason we did the 1986 amendments  
2037 was because in 1943, World War II, the defense contractors  
2038 did a massive push on Congress to exempt the old Abraham  
2039 Lincoln law and we wanted to restore the law to its earlier

2040 effectiveness.

2041       But what this amendment does is put it worse than the  
2042 1943 amendments, because it is not about whether the  
2043 government knew about it, it is whether they would have known  
2044 about it.

2045       Can you imagine the costs and litigation in trying to  
2046 prove the hypothetical that would bar the lawsuit, whether  
2047 the government would have known about it?

2048       At the end of the day, with that kind of provision, no  
2049 one will invest their own resources to bring that fraud to  
2050 light.

2051       They will be fearful that their courageous efforts, they  
2052 will go out there, they will expose it, they will a lawsuit.  
2053 The federal government will come in and say, "Thank you very  
2054 much, we would have found that eventually."

2055       And so it wipes out—the whole premise of the qui tam  
2056 provisions is wiped out that amendment.

2057       Mr. Issa. And reclaiming my time.

2058       I might assert, as I did in the previous amendment to  
2059 your legislation, that, in fact, that may happen on  
2060 occasions, that, in fact, it is unlikely to happen often.  
2061 The standard is high.

2062       And most importantly, we have to make the assumption  
2063 that qui tam completely relies on pure unadulterated greed  
2064 and profit-taking and that there is no other incentive for

2065 someone to go forward and offer this litigation.

2066 I believe that the gentleman believes that. I happen to  
2067 believe that—since I understand a little bit about  
2068 plaintiffs' trial lawyers—that they take the assumption that  
2069 they win some and they lose some.

2070 Do they invest in cases where they know they are only  
2071 going to win half of them? Yes. Do they invest in cases  
2072 where they are only going to win a tenth of them? Sometimes.  
2073 It all depends on the cost-benefit.

2074 I would say that qui tam has a high cost-benefit. Will  
2075 they ask the question, during their due diligence of someone  
2076 coming in with a lawsuit, of is the litigation appropriate if  
2077 there is inevitable discovery versus other whistleblower  
2078 capability that might be given award, but not as high, I  
2079 think the answer is yes.

2080 But most importantly, I just want to clarify one thing  
2081 the gentleman said for everyone else here on the dais, even  
2082 if, in fact, it is inevitable discovery and it comes forward,  
2083 it is not required that the attorney general do it. He  
2084 simply may do it under this provision and the government  
2085 would still collect.

2086 So it really is a question of only the whistleblower and  
2087 not the government. The government would still be made  
2088 whole.

2089 Yield back.



2090 Chairman Conyers. I thank the ranking member.

2091 The vote is on the Issa amendment.

2092 All those in favor, say "aye."

2093 [A chorus of ayes.]

2094 Chairman Conyers. All those opposed, say "no."

2095 [A chorus of noes.]

2096 Chairman Conyers. The noes have it, and the amendment  
2097 is unsuccessful.

2098 Mr. Issa. Mr. Chairman, I have an amendment at the  
2099 desk.

2100 Chairman Conyers. The gentleman from California's  
2101 amendment will be reported.

2102 Mr. Issa. Last one, I guess, number 36.

2103 The Clerk. Amendment to H.R. 1788, offered by Mr. Issa  
2104 of California.

2105 [The amendment by Mr. Issa follows:]

2106 \*\*\*\*\* INSERT \*\*\*\*\*

2107 Chairman Conyers. Without objection, the amendment will  
2108 be considered as read.

2109 The gentleman will be recognized in support of his  
2110 amendment.

2111 Mr. Issa. Mr. Chairman, this one perhaps will be the  
2112 most controversial, and since I haven't done very well at the  
2113 other two, perhaps I won't win this one.

2114 But I do believe that there, again, is an assumption  
2115 that somehow the whistleblower is perfect and until recently,  
2116 I thought it was just the private sector, but now at least I  
2117 have been vindicated that we are including the people who—the  
2118 entities who receive the most money from us, which would be  
2119 municipalities and states at least in our consideration, and  
2120 I appreciate the amendment from the gentleman from New York  
2121 having been voted down, because I certainly think that it  
2122 would fly in the face of why Jesse James robbed banks and  
2123 trains, because that is where the money was.

2124 And if we were to exempt cities, clearly, we would  
2125 exempt the other place where the money is over and above the  
2126 states.

2127 So dealing once again with the underlying bill, if you  
2128 are an employee of a company and you know of fraud or some  
2129 other form and it is reasonable, and this is the way I wrote  
2130 it, it is reasonable for you to believe that you have a  
2131 mechanism to report, and let's just take, for example,

2132 Boeing, BAE, Lockheed Martin, the kinds of companies that are  
2133 household words in defense contracting.

2134       If they have a rigorous system for reporting, if they  
2135 have a clear channel and if—let's assume for a moment that  
2136 the conspiracy is known by the individual to have been at a  
2137 low level, by individuals, very much like Mr. Weiner tried to  
2138 say that big company, lots of people, relatively low level,  
2139 small folks, relative to power doing it, and there is a  
2140 mechanism, if you will, to bring forward that to save the  
2141 government money, to allow the contractor to root out this  
2142 misbilling, overbilling and so on, and the employee does not  
2143 avail himself of it.

2144       Then the question would be if he did not do it and give  
2145 the company 90 days to do it and if he is not an employee, my  
2146 amendment specifies the IG, then he may lose his award,  
2147 because it was found that it was reasonable and appropriate.

2148       Mr. Chairman, once again, like my other amendments, this  
2149 is a discretionary, in the eye of, if you will, the judge,  
2150 amendment.

2151       The assumption is, in many cases, the employee may not  
2152 know how high this fraud goes. He may not be aware or in the  
2153 case of smaller contractors, there may not be a clear path  
2154 that would allow him to report and allow the remedy.

2155       But if, to a certain extent, quoting my newfound friend  
2156 in tort reform, Mr. Weiner, if, in fact, although somebody

2157 may have created an environment in which there is  
2158 overbilling, that given reasonable reporting, it would have  
2159 been clarified, the employee has a fiduciary responsibility  
2160 to his employer to report it first.

2161       If he chooses not to use it, then he should be held to a  
2162 standard of if he had used it, would it have been cleared.

2163       And I would trust that this last one, I saved the best  
2164 for last, Mr. Chairman, would be accepted all or in part.

2165       And I guess in the name of saving time, I would ask the  
2166 gentleman from California if he could accept this one so we  
2167 can skip the vote.

2168       Mr. Berman. I can't. I liked your first one better  
2169 than this.

2170       Mr. Issa. Well, you should have taken it.

2171       Mr. Berman. Just in the scale of things.

2172       Basically, what you are doing is elevating a fairly  
2173 nonspecific company's compliance policy over and above the  
2174 law. And as I look at it, you talk discretionary, it is all  
2175 discretion, but you start saying a person may not bring an  
2176 action against an entity unless.

2177       And then in your second provision, you say a person may  
2178 not bring an action against an entity that is not his  
2179 employer unless.

2180       That doesn't sound discretionary to me.

2181       Mr. Issa. Reclaiming my time.

2182 The reason it was—

2183 Mr. Berman. You are essentially barring jurisdiction  
2184 based on insistence on an unspecified compliance procedure.

2185 In other words, I understand your notion—

2186 Mr. Issa. And I appreciate that. Reclaiming my time.

2187 There were only two elements that you may not have  
2188 noticed. One is that it is for 90 days that he is to make  
2189 this disclosure. He can make it to his immediate boss. He  
2190 can make it—under this provision, he could make it to a very,  
2191 very limited—anyone he chooses.

2192 And secondly, it creates the grounds for a potential  
2193 dismissal. Now, having said that, it is still discretionary  
2194 as to whether or not he could have done it, and that is why I  
2195 am making the clear case that if he either makes the claim  
2196 and nothing happens or if he doesn't make the claim because  
2197 there was no reasonable mechanism, then he, in fact, still  
2198 could not be dismissed.

2199 I had to create an element for the dismissal of the case  
2200 and the "may or may not bring" gives the element for the  
2201 dismissal of the case.

2202 But I would hope the gentleman would change his mind.

2203 Chairman Conyers. I thank the gentleman for his  
2204 thorough discussion of his amendment.

2205 The vote occurs on the Issa amendment.

2206 All those in favor, signify by saying "aye."

2207 [A chorus of ayes.]

2208 Chairman Conyers. Those opposed, signify by saying

2209 "no."

2210 [A chorus of noes.]

2211 The chair is in doubt, and the clerk will call the—we

2212 will have a roll call vote.

2213 The Clerk. Mr. Conyers?

2214 Chairman Conyers. No.

2215 The Clerk. Mr. Conyers votes no.

2216 Mr. Berman?

2217 Mr. Berman. No.

2218 The Clerk. Mr. Berman votes no.

2219 Mr. Boucher?

2220 [No response.]

2221 Mr. Nadler?

2222 Mr. Nadler. No.

2223 The Clerk. Mr. Nadler votes no.

2224 Mr. Scott?

2225 Mr. Scott. No.

2226 The Clerk. Mr. Scott votes no.

2227 Mr. Watt?

2228 [No response.]

2229 Ms. Lofgren?

2230 Ms. Lofgren. No.

2231 The Clerk. Ms. Lofgren votes no.

2232 Ms. Jackson Lee?  
2233 [No response.]  
2234 Ms. Waters?  
2235 [No response.]  
2236 Mr. Delahunt?  
2237 [No response.]  
2238 Mr. Wexler?  
2239 [No response.]  
2240 Mr. Cohen?  
2241 Mr. Cohen. No.  
2242 The Clerk. Mr. Cohen votes no.  
2243 Mr. Johnson?  
2244 Mr. Johnson. No.  
2245 The Clerk. Mr. Johnson votes no.  
2246 Mr. Pierluisi?  
2247 Mr. Pierluisi. No.  
2248 The Clerk. Mr. Pierluisi votes no.  
2249 Mr. Gutierrez?  
2250 Mr. Gutierrez. No.  
2251 The Clerk. Mr. Gutierrez votes no.  
2252 Mr. Sherman?  
2253 [No response.]  
2254 Ms. Baldwin?  
2255 [No response.]  
2256 Mr. Gonzalez?

2257 Mr. Gonzalez. No.

2258 The Clerk. Mr. Gonzalez votes no.

2259 Mr. Weiner?

2260 Mr. Weiner. No.

2261 The Clerk. Mr. Weiner votes no.

2262 Mr. Schiff?

2263 Mr. Schiff. No.

2264 The Clerk. Mr. Schiff votes no.

2265 Ms. Sanchez?

2266 Ms. Sanchez. No.

2267 The Clerk. Ms. Sanchez votes no.

2268 Ms. Wasserman Schultz?

2269 [No response.]

2270 Mr. Maffei?

2271 Mr. Maffei. No.

2272 The Clerk. Mr. Maffei votes no.

2273 Mr. Smith?

2274 [No response.]

2275 Mr. Goodlatte?

2276 [No response.]

2277 Mr. Sensenbrenner?

2278 Mr. Sensenbrenner. No.

2279 The Clerk. Mr. Sensenbrenner votes no.

2280 Mr. Coble?

2281 Mr. Coble. Aye.



2282 The Clerk. Mr. Coble votes aye.  
2283 Mr. Gallegly?  
2284 Mr. Gallegly. Aye.  
2285 Mr. Gallegly votes aye.  
2286 Mr. Lungren?  
2287 Mr. Lungren. No.  
2288 The Clerk. Mr. Lungren votes no.  
2289 Mr. Issa?  
2290 Mr. Issa. Aye.  
2291 The Clerk. Mr. Issa votes aye.  
2292 Mr. Forbes?  
2293 [No response.]  
2294 Mr. King?  
2295 [No response.]  
2296 Mr. Franks?  
2297 Mr. Franks. Aye.  
2298 The Clerk. Mr. Franks votes aye.  
2299 Mr. Gohmert?  
2300 Mr. Gohmert. Aye.  
2301 The Clerk. Mr. Gohmert votes aye.  
2302 Mr. Jordan?  
2303 Mr. Jordan. Yes.  
2304 The Clerk. Mr. Jordan votes yes.  
2305 Mr. Poe?  
2306 [No response.]

2307 Mr. Chaffetz?

2308 Mr. Chaffetz. Aye.

2309 The Clerk. Mr. Chaffetz votes aye.

2310 Mr. Rooney?

2311 [No response.]

2312 Mr. Harper?

2313 Mr. Harper. Aye.

2314 The Clerk. Mr. Harper votes aye.

2315 Chairman Conyers. Mr. Watt?

2316 Mr. Watt. No.

2317 The Clerk. Mr. Watt votes no.

2318 Chairman Conyers. Ms. Waters?

2319 Ms. Waters. No.

2320 The Clerk. Mr. Waters votes no.

2321 Chairman Conyers. The clerk will report.

2322 The Clerk. Mr. Chairman, eight members voted aye, 18

2323 members voted nay.

2324 Chairman Conyers. The amendment is unsuccessful.

2325 The question is now on reporting the bill favorably to

2326 the House.

2327 Those in favor, say "aye."

2328 [A chorus of ayes.]

2329 Chairman Conyers. Those opposed, say "no."

2330 [A chorus of noes.]

2331 Chairman Conyers. A recorded vote is ordered.

2332 The Clerk. Mr. Conyers?

2333 Chairman Conyers. Aye.

2334 The Clerk. Mr. Conyers votes aye.

2335 Mr. Berman?

2336 Mr. Berman. Aye.

2337 The Clerk. Mr. Berman votes aye.

2338 Mr. Boucher?

2339 [No response.]

2340 Mr. Nadler?

2341 Mr. Nadler. Aye.

2342 The Clerk. Mr. Nadler votes aye.

2343 Mr. Scott?

2344 Mr. Scott. Aye.

2345 The Clerk. Mr. Scott votes aye.

2346 Mr. Watt?

2347 Mr. Watt. Aye.

2348 The Clerk. Mr. Watt votes aye.

2349 Ms. Lofgren?

2350 Ms. Lofgren. Aye.

2351 The Clerk. Ms. Lofgren votes aye.

2352 Ms. Jackson Lee?

2353 [No response.]

2354 Ms. Waters?

2355 Ms. Waters. Aye.

2356 The Clerk. Ms. Waters votes aye.

2357 Mr. Delahunt?  
2358 [No response.]  
2359 Mr. Wexler?  
2360 [No response.]  
2361 Mr. Cohen?  
2362 Mr. Cohen. Aye.  
2363 The Clerk. Mr. Cohen votes aye.  
2364 Mr. Johnson?  
2365 Mr. Johnson. Aye.  
2366 The Clerk. Mr. Johnson votes aye.  
2367 Mr. Pierluisi?  
2368 Mr. Pierluisi. Aye.  
2369 The Clerk. Mr. Pierluisi votes aye.  
2370 Mr. Gutierrez?  
2371 Mr. Gutierrez. Aye.  
2372 The Clerk. Mr. Gutierrez votes aye.  
2373 Mr. Sherman?  
2374 [No response.]  
2375 Ms. Baldwin?  
2376 [No response.]  
2377 Mr. Gonzalez?  
2378 Mr. Gonzalez. Aye.  
2379 The Clerk. Mr. Gonzalez votes aye.  
2380 Mr. Weiner?  
2381 Mr. Weiner. Pass.

2382 The Clerk. Mr. Weiner passes.  
2383 Mr. Schiff?  
2384 Mr. Schiff. Aye.  
2385 The Clerk. Mr. Schiff votes aye.  
2386 Ms. Sanchez?  
2387 Ms. Sanchez. Aye.  
2388 The Clerk. Ms. Sanchez votes aye.  
2389 Ms. Wasserman Schultz?  
2390 [No response.]  
2391 Mr. Maffei?  
2392 Mr. Maffei. Pass.  
2393 The Clerk. Mr. Maffei passes.  
2394 Mr. Smith?  
2395 [No response.]  
2396 Mr. Goodlatte?  
2397 [No response.]  
2398 Mr. Sensenbrenner?  
2399 Mr. Sensenbrenner. Aye.  
2400 The Clerk. Mr. Sensenbrenner votes aye.  
2401 Mr. Coble?  
2402 Mr. Coble. No.  
2403 The Clerk. Mr. Coble votes no.  
2404 Mr. Gallegly?  
2405 Mr. Gallegly. Aye.  
2406 The Clerk. Mr. Gallegly votes aye.

2407 Mr. Lungren?  
2408 Mr. Lungren. Aye.  
2409 The Clerk. Mr. Lungren votes aye.  
2410 Mr. Issa?  
2411 Mr. Issa. No.  
2412 The Clerk. Mr. Issa votes no.  
2413 Mr. Forbes?  
2414 [No response.]  
2415 Mr. King?  
2416 [No response.]  
2417 Mr. Franks?  
2418 Mr. Franks. Aye  
2419 The Clerk. Mr. Franks votes aye.  
2420 Mr. Gohmert?  
2421 [No response.]  
2422 Mr. Jordan?  
2423 Mr. Jordan. No.  
2424 The Clerk. Mr. Jordan votes No.  
2425 Mr. Poe?  
2426 [No response.]  
2427 Mr. Chaffetz?  
2428 Mr. Chaffetz. No.  
2429 The Clerk. Mr. Chaffetz votes no.  
2430 Mr. Rooney?  
2431 [No response.]

2432 Mr. Harper?

2433 Mr. Harper. No.

2434 The Clerk. Mr. Harper votes no.

2435 Chairman Conyers. Are there other members that choose  
2436 to cast a vote?

2437 Mr. Gallegly. Mr. Chairman, how am I recorded?

2438 The Clerk. Mr. Gallegly is recorded as voting aye.

2439 Mr. Gallegly. No.

2440 The Clerk. Mr. Gallegly votes no.

2441 Chairman Conyers. Mr. Maffei?

2442 Mr. Maffei. Aye.

2443 The Clerk. Mr. Maffei votes aye.

2444 Chairman Conyers. Mr. Weiner?

2445 Mr. Weiner. Aye.

2446 The Clerk. Mr. Weiner votes aye.

2447 Chairman Conyers. Judge Gohmert?

2448 Mr. Gohmert. Aye.

2449 The Clerk. Mr. Gohmert votes aye.

2450 Chairman Conyers. The clerk will report.

2451 The Clerk. Mr. Chairman, 20 members voted aye, six  
2452 members voted nay.

2453 Chairman Conyers. The bill has carried and the bill  
2454 will be reported as a single amendment.

2455 The bill will be favorably reported to the House and the  
2456 staff is authorized to make the technical and conforming

2457 changes, and member will have 2 days to submit views.



2458 Chairman Conyers. The final measure is the PACT Act,  
2459 the tobacco bill, H.R. 1676.

2460 The clerk will report the bill.

2461 The Clerk. H.R. 1676, a bill to prevent tobacco  
2462 smuggling to ensure the collection of all tobacco taxes and  
2463 for other purposes.

2464 [The bill follows:]

2465 \*\*\*\*\* INSERT \*\*\*\*\*

2466 Chairman Conyers. Without objection, the bill will be  
2467 considered as read and open for amendment.

2468 But I would first call upon the gentleman from New York,  
2469 Anthony Weiner, the sponsor of the bill, to make the opening  
2470 description, please.

2471 Mr. Weiner. Thank you, Mr. Chairman.

2472 And perhaps I won't use the full 5 minutes. We are  
2473 trying to address with this bill a problem that has emerged  
2474 as increasingly states and localities have increased the tax  
2475 on tobacco in their states.

2476 We have created an Internet black market trade for  
2477 tobacco products. This bill fixes that problem by taking  
2478 what FedEx and UPS have already done and saying we are not  
2479 going to deliver tobacco products, because we have no way of  
2480 knowing whether the tax is being paid on it, and adds to the  
2481 United States Postal Service, who has also expressed a  
2482 willingness to want to do that, but said they need  
2483 congressional action to do it.

2484 The bill would provide help for the ATF to enforce  
2485 actions against tobacco smuggling rings, particularly those  
2486 that are existing on the Internet.

2487 And so you understand that this isn't just a problem  
2488 that localities are losing revenues, states losing about \$5  
2489 billion a year, but also the black market has created a lot  
2490 of source of money for other nefarious activities.

2491           The GAO found that Hezbollah, for example, is in the  
2492 business of doing this type of tobacco smuggling, because it  
2493 is ready money that is easily gained.

2494           If you think about how it can be done, you have a state  
2495 tax, for example, in South Carolina of \$0.07 a pack, a state  
2496 and local tax in New York City of \$4.25 a pack, that  
2497 difference is enormously profitable if you can create a way  
2498 to do it.

2499           Now, with the Internet, those ways are much more readily  
2500 available.

2501           What the bill also does is it creates a list that says  
2502 these are carriers, these are outlets that are paying their  
2503 taxes, they are reporting it to the local authorities, and it  
2504 says to any other carrier, besides DHL, UPS, FedEx, that if  
2505 you want to carry their products, you may, provided they are  
2506 on this list. If they are not, you are prohibited from doing  
2507 it.

2508           There are some things that we have done in the bill to  
2509 accommodate some of the concerns of the tobacco companies.  
2510 Some of them have said that there are tests that they need to  
2511 do, there are some products that are only available in very  
2512 small batches, that they want to try to figure out ways to  
2513 get into consumers' hands.

2514           We have been working with them to try to accommodate  
2515 their needs. Altria is supporting the bill, UPS is

2516 supporting the bill, the Association of Convenience and  
2517 Petroleum Retailers are, American Wholesalers Association.

2518       We worked very hard to try to balance the competing  
2519 demand.

2520       And the final point is that we also make violations of  
2521 the Jenkins Act felonies. Right now, they are only  
2522 misdemeanors. So that even if a local prosecutor finds out  
2523 that this is going on, there really isn't much incentive for  
2524 them to prosecute it, since the penalties are so low.

2525       This is very similar, if not identical to the bill that  
2526 we passed in the last Congress, late in the session, that the  
2527 Senate didn't have a chance to act on. Hopefully, they will  
2528 here.

2529       This provides revenues for our states, revenues for our  
2530 localities, provides teeth on law enforcement to stop tobacco  
2531 smuggling, and has done so in a way that accommodates the  
2532 legitimate concerns of the tobacco companies and, also, of  
2533 the common carriers.

2534       And I yield back my time and ask for a "yes" vote.

2535       Chairman Conyers. I thank the gentleman, and recognize  
2536 Darrell Issa.

2537       Mr. Issa. Thank you, Mr. Chairman.

2538       I would ask unanimous consent that Lamar Smith, the  
2539 ranking member's statement, in its full entirety, be put into  
2540 the record.

2541 Chairman Conyers. Without objection, so ordered.

2542 [The statement of Mr. Smith follows:]

2543 \*\*\*\*\* INSERT \*\*\*\*\*

2544 Mr. Issa. And in order to associate myself with Mr.  
2545 Weiner and with Mr. Smith, I will briefly read his statement.

2546 "H.R. 1676, the Prevent All Cigarette Trafficking" or  
2547 "PACT Act," will enhance the government's efforts to combat  
2548 cigarette trafficking, which is a growing problem in America.

2549 I am pleased to join Mr. Weiner as a cosponsor of this  
2550 legislation," and, Mr. Weiner, if I am not a cosponsor,  
2551 please add me immediately.

2552 Taxes on cigarettes vary greatly from state to state.  
2553 This difference in state taxes creates a market for criminals  
2554 and organized criminal syndicates to purchase cigarettes in  
2555 one state and smuggle them into another state to resell them  
2556 below market value and without paying local taxes.

2557 Cigarette trafficking is an issue that the committee and  
2558 the manufacturers have worked together on in the past and  
2559 continue to address today.

2560 In the 110th Congress, this committee favorably reported  
2561 out previous versions of the legislation that passed the  
2562 House on suspension. However, our colleagues in the Senate  
2563 did not take up the bill.

2564 H.R. 1676 varies slightly from previous versions of the  
2565 legislation and under the jurisdiction of the Oversight and  
2566 Government Reform Committee, those provisions have been  
2567 removed.

2568 This bill also contains additional funding for anti-

2569 cigarette trafficking efforts by the Bureau of Alcohol,  
2570 Tobacco and Firearms and Explosives. This bipartisan  
2571 legislation closes loopholes in current tobacco trafficking  
2572 laws and provides law enforcement with the ways to combat the  
2573 innovative methods being used by cigarette traffickers in  
2574 distributing their products.

2575       Illegal cigarette smuggling adversely impacts states'  
2576 revenues. California officials estimate that taxes unpaid  
2577 are about 15 percent of all tobacco sales in the markets in  
2578 California, totaling \$276 million per year.

2579       In a recently released study, the state of New York put  
2580 its losses at more than \$576 million per year.

2581       The PACT Act prevents the losses of tax revenues and  
2582 combats cigarette smuggling.

2583       I urge my colleagues to join with me in support of this  
2584 legislation, and yield back the balance of my time.

2585       Chairman Conyers. I thank the gentleman.

2586       Does the gentleman from North Carolina seek recognition?

2587       Mr. Coble. I do indeed, Mr. Chairman.

2588       Chairman Conyers. Mr. Coble is recognized.

2589       Mr. Coble. I will be very brief. I have an amendment  
2590 at the desk, Mr. Chairman.

2591       Chairman Conyers. The clerk will report the amendment.

2592       The Clerk. Amendment to H.R. 1676, offered by Mr. Coble  
2593 of North Carolina.

2594 [The amendment by Mr. Coble follows:]

2595 \*\*\*\*\* INSERT \*\*\*\*\*



2596 Mr. Coble. Mr. Chairman, I ask unanimous consent that  
2597 the amendment be considered as read.

2598 Chairman Conyers. Without objection.

2599 The gentleman is recognized in support of his amendment.

2600 Mr. Coble. I, first of all, want to express my thanks  
2601 to Mr. Weiner and to his staff, Mr. Dunn, who worked with Mr.  
2602 Little on our staff.

2603 And Mr. Weiner mentioned the matter of product testing  
2604 in his opening statement.

2605 Mr. Chairman, this amendment addresses section 3 of the  
2606 bill, which begins on page 45.

2607 It amends the list of exceptions to the prohibition  
2608 against the mailing of tobacco products by including a new  
2609 section covering product testing by manufacturers or their  
2610 contractors.

2611 Product testing is safe, is controlled, and has not been  
2612 linked to any illegal conduct, and I think should be  
2613 outlawed. Presently, H.R. 1676 does not permit product  
2614 testing, which is a legitimate legal business practice and  
2615 should be excluded from the prohibition, including in this  
2616 legislation.

2617 I, again, thank Mr. Weiner and his staff and I urge my  
2618 colleagues to approve this amendment.

2619 And, Mr. Chairman, if I may, I would like to ask  
2620 unanimous consent to have introduced into the record the

2621 senior vice president for Lorillard's letter to Mr. Weiner,  
2622 commending him and thanking him for his cooperation.

2623 Mr. Weiner. Would the gentleman briefly yield?

2624 Mr. Coble. I will, indeed.

2625 Mr. Weiner. I think the amendment is very helpful and  
2626 constructive. We are not looking with this bill to shut down  
2627 tobacco sales or testing or marketing or other venues that we  
2628 may decide to take up that debate, but this isn't.

2629 We are trying to make sure that the business is done by  
2630 legitimate business people and customers and consumers who  
2631 are trying to follow the rules, and this is an instance that  
2632 you have correctly pointed out, Mr. Coble, where market  
2633 testing does need to be done, and we have limitations that  
2634 you helped draft, and I appreciate it.

2635 And I urge a "yes" vote on the amendment.

2636 Mr. Coble. I thank you, Mr. Weiner.

2637 And I yield back, Mr. Chairman.

2638 Chairman Conyers. I thank you both.

2639 The chair recognizes the chairman of the Crime  
2640 Subcommittee, Bobby Scott.

2641 Mr. Scott. Mr. Chairman, this isn't on the amendment,  
2642 but I would want, at the appropriate time, to have a  
2643 unanimous consent request.

2644 Chairman Conyers. What is your unanimous consent  
2645 request?

2646 Mr. Scott. That my opening statement in favor of the  
2647 bill be made part of the record.

2648 Chairman Conyers. Without objection, so ordered.

2649 [The statement of Mr. Scott follows:]

2650 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2651 Chairman Conyers. We have a reporting quorum present.

2652 The question is on reporting the bill, as—

2653 Mr. Coble. Mr. Chairman, the amendment.

2654 Chairman Conyers. All those in favor of the Coble

2655 amendment, say "aye."

2656 [A chorus of ayes.]

2657 Chairman Conyers. All those opposed to the Coble

2658 amendment, say "no."

2659 [No response.]

2660 Chairman Conyers. The ayes have it and the amendment is

2661 agreed to.

2662 Mr. Goodlatte. Mr. Chairman?

2663 Chairman Conyers. The gentleman from Virginia, Mr.

2664 Goodlatte?

2665 Mr. Goodlatte. Mr. Chairman, I have an amendment at the

2666 desk.

2667 Chairman Conyers. The clerk will report the amendment.

2668 The Clerk. Amendment to H.R. 1676, offered by Mr.

2669 Goodlatte of Virginia, April 29, 2009.

2670 [The amendment by Mr. Goodlatte follows:]

2671 \*\*\*\*\* INSERT \*\*\*\*\*

2672 Chairman Conyers. Without objection, the amendment will  
2673 be considered as read.

2674 And the gentleman is recognized in support of his  
2675 amendment.

2676 Mr. Goodlatte. Thank you, Mr. Chairman.

2677 Mr. Chairman, I agree with the goals of this  
2678 legislation. However, I do have concerns about the  
2679 precedential effect that the new section 2A could have.

2680 Specifically, this legislation creates a new section 2A  
2681 of the Jenkins Act, which treats out-of-state sales of  
2682 certain tobacco products as though the sales occurred  
2683 "entirely within the specific state and place."

2684 While this provision will surely help enforce state laws  
2685 against abuses associated with online tobacco sales, it could  
2686 also confuse the issue of what constitutes a sufficient nexus  
2687 with a state to justify that state imposing taxes on the out-  
2688 of-state entities.

2689 The purpose of this amendment is to make clear that  
2690 online tobacco sales constitute a unique situation with  
2691 unique harms, including harms to minors due to the lack of  
2692 sufficient age verification technologies, and that this  
2693 legislation is not intended to serve as a precedent for  
2694 future efforts to determine the appropriate nexus that out-  
2695 of-state entities must have with states before the states can  
2696 impose taxes or tax collection duties on those out-of-state

2697 entities.

2698         Similar language was added to efforts to tighten remote  
2699 tobacco sales laws back in the 108th Congress. Furthermore,  
2700 language identical to what I am offering today was added to  
2701 the PACT Act during the Judiciary Committee markup that  
2702 occurred on the bill last year.

2703         It is my hope that the author of the legislation and the  
2704 members of the committee will support this language this time  
2705 around, as well.

2706         Chairman Conyers. I thank the gentleman.

2707         The chair recognizes Mr. Weiner.

2708         Mr. Weiner. I urge a "yes" vote on the amendment.

2709         Chairman Conyers. All those in favor of the Goodlatte  
2710 amendment, indicate by saying "aye."

2711         [A chorus of ayes.]

2712         Chairman Conyers. All those opposed, indicate by saying  
2713 "no."

2714         [No response.]

2715         The ayes have it and the amendment is agreed to.

2716         We have a reporting quorum.

2717         The question is on the reporting the bill, as amended,  
2718 favorably to the House.

2719         Those in favor, say "aye."

2720         [A chorus of ayes.]

2721         Chairman Conyers. Those opposed, say "no."

2722 [No response.]

2723 The ayes have it and the bill, as amended, is ordered  
2724 reported to the House.

2725 And we will authorize staff to make technical and  
2726 conforming changes, and members have 2 days for additional  
2727 views.

2728 That ends the agenda for today and the committee stands  
2729 in recess.

2730 [Whereupon, at 12:35 p.m., the committee was adjourned.]