

RPTS McKENZIE

DCMN NORMAN

MARKUP OF H.R. 1107, TO ENACT
CERTAIN LAWS RELATING TO PUBLIC
CONTRACTS AS TITLE 41, UNITED
STATES CODE, "PUBLIC CONTRACTS";
H.R. 1139, THE "COPS IMPROVEMENTS
ACT OF 2009"; AND
H.R. 1575, "THE END GREED ACT"

Wednesday, March 18, 2009

House of Representatives,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to call, at 1:25 p.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the committee] presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Cohen, Johnson, Pierluisi, Sherman, Baldwin, Gonzalez,

Weiner, Schiff, Wasserman Schultz, Maffei, Smith, Coble, Gallegly, Goodlatte, Lungren, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Rooney, and Harper

Staff Present: Perry Apelbaum, Staff Director/Chief Counsel; Ted Kalo, General Counsel/Deputy Staff Director; George Slover, Legislative Counsel/Parliamentarian; Sean McLaughlin, Minority Chief of Staff/General Counsel; Allison Halataei, Minority Deputy Chief of Staff/Parliamentarian; and Anita L. Johnson, Clerk.

Chairman Conyers. The committee will come to order.

Pursuant to notice, I now call up bill H.R. 1575, the "End Government Reimbursement of Excessive Executive Disbursements Act" or "End GREED Act" for purposes of markup. And I invite The Clerk to report the bill.

The Clerk. H.R. 1575, a bill to authorize the Attorney General to limit or recover excessive compensation paid or payable by entities --

Chairman Conyers. Without objection, the bill is considered as read and open to amendment at any point.

[The information follows:]

***** INSERT 1-1 *****

Chairman Conyers. Members of the committee, the legislation before us represents an effort to safeguard taxpayer funds and rein in out-of-control compensation and bonus abuses by companies that have used Federal financial assistance to avoid bankruptcy.

Like many Americans, I believe it is unacceptable that the same Wall Street firms that drove our Nation into an economic ditch, that survive only by virtue of Federal bailout money, are making multimillion-dollar payments to the very employees who got us into this predicament.

The bill applies to companies that have received more than \$10 billion in Federal financial assistance since September 1, 2008, and has essentially two key components. First, it creates a Federal fraudulent transfer statute that will allow the Attorney General of the United States to recover prior excessive compensation and bonus payments. This allows the government, as a creditor, to show that excessive payments were made bearing no relationship to fair value.

Since we now know that some of those so-called retention bonuses paid by AIG were given to individuals who were not retained, this seems to be a more-than-valid concern.

And then, on a going-forward basis, it allows the Attorney General to limit payments to its executives to 10 times the average nonmanagement wages, just as would have been the case if the company had been forced into bankruptcy absent the Federal bailout.

It is my understanding that there are two principal concerns with the measure before us. One is process. And I apologize to my colleagues on the committee. I note that the scandal essentially broke this weekend. I first considered the issue on Monday and shared a draft with the members on both sides of the aisle on Tuesday morning, which has

now been perfected in the actual introduced bill last night.

Given that my leadership has pledged floor action on these matters next week, it was unavoidable. We simply did not -- time did not permit a full-fledged hearing. And again, I want everyone on the committee to know that this is unusual procedure. It rarely, if ever, happens; and it won't happen again. However, we have done the best we could to enable the members the ability to benefit from outside experts, to provide their own input into the legislation. And I continue to remain open to any and all ideas prior to floor action.

This will not end this matter after today's action by the committee. The bill itself is only 5 pages long. It is not particularly complex, and it has been subject to review by members longer than many of the amendments offered at our markups.

The next question, as usual, is constitutionality. The first provision in the bill dealing with fraudulent transfers dates from the 1601 A.D. case of English Twine. Every State in the Union has its own version of a fraudulent transfer law, as does the Bankruptcy Code. And what we are doing today, all we are doing today is providing a single streamlined Federal law that will permit the Attorney General to recover for the taxpayers what is rightfully theirs to begin with.

Now, this doesn't mean that there won't be a court test. There frequently are. We don't doubt that there will be one. But I believe this is fully within Congress' power and does not constitute a taking, given that these laws have been on the books for hundreds of years.

The second provision of the bill simply conforms the limits on ongoing executive pay to the Bankruptcy Code. Since this provision is a general applicability, it should not be considered a bill of attainder or a taking. Please note that the bill explicitly involves the Federal courts, which will allow any affected party more than ample opportunity to have

their day in court, and if they choose to appeal any adverse decision.

This bill offers a reasonable commonsense means within our committee's jurisdiction of responding to the bonus outrages that have inflamed the entire country. This isn't a Democratic or Republican way of dealing with the problem. These bonuses are threatening the viability and credibility of our financial system. What we are doing is granting the administration the ability and discretion to review these bonuses on a case-by-case basis for abuse based on long standing legal principles and precedence and to present their case in court.

If our government can ask blue-collar auto workers in my city to cut their wages, their health-care benefits, their pensions, to allow General Motors and Ford and Chrysler to survive, there is no reason that those same rules can't apply to Wall Street as well.

So I urge my colleagues to join with me in supporting what I consider a reasonable and balanced measure. I thank you for your consideration. I am now pleased to recognize my friend, the Ranking Member of this committee, Lamar Smith of Texas.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, the American people are rightly outraged by the \$165 million in bonuses recently given to AIG executives. Using taxpayer dollars intended to save struggling companies to pay instead for bonuses is, quite frankly, hard to believe. It is a shocking but real-life example of what happens when we rush legislation through Congress without much debate. And it is why we should not be considering this bill today.

In responding to the economic crisis, Congress has let emotion overrun reason. There has been little accountability or transparency in this process despite continued promises from the administration.

When it comes to today's proposal, Congress has let expediency override common sense. We have had no debate, no hearing, no witnesses, and no real evaluation of this bill. Congress already has learned the hard way about the unintended consequences of rushing to legislate without adequate expert testimony and debate. But that is exactly what we are doing now.

The Majority told us about this proposal yesterday. I asked for a hearing so we could analyze the proposal and ensure that it doesn't result in unintended consequences. We should hear from experts, weigh their opinions, and come up with a constitutional and considered solution to the AIG bonuses blunder. It will do no good if we pass a law that is flawed.

The Supreme Court, for example, instructed us long ago in *U.S. v. Security Industrial Bank* that the bankruptcy clause is subject to the fifth amendment's taking clause. Any expectation that we can use the bankruptcy clause in this bill to get around the takings clause in my judgment is unfounded. AIG executives may be able to recover, through takings claims, the money that this bill tries to take back. Where will that get us?

Once again, the taxpayers will be left holding the bag.

Further, this bill is open to the question of whether the bankruptcy clause can be used in the unprecedented way this bill proposes. That is why we have hearings and subcommittee markups, which are glaringly missing here.

Any solution must ensure accountability, transparency and fiscal responsibility to guard against waste, fraud and abuse. We have had less than 24 hours to review and consider this bill, which raises constitutional issues. It is wrong to rush to judgment on this issue without at least holding a hearing.

The legislation that started this problem was rushed through Congress in the same manner. In fact, the language that allowed AIG executives to receive these bonuses was added by a Democratic Senator at the last minute to the \$787 billion stimulus bill. Well, why is this legislation being rushed through the Judiciary Committee? Is it on orders from the Speaker? What happened to transparency and the public's interest to know the facts?

I am sorry we are considering this bill today, but I understand the need to address the issue. And, Mr. Chairman, I was very pleased a minute ago when you said, in regard to the truncated process that this bill has received without markup and without previous hearings, that it won't happen again. And I take you at your word and appreciate the reassurance.

I might add, I hope that means that we are pulling the next bill, which also did not go through proper process or get a hearing as well.

I know that would be a separate subject. I will yield back the balance of my time.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. I thank the gentleman. Are there any amendments?

Mr. Nadler. Mr. Chairman.

Chairman Conyers. Who seeks recognition?

Mr. Nadler. I move to strike the last word.

Chairman Conyers. I recognize the gentleman from New York, Mr. Nadler.

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, this legislation to recover the notorious bonuses so outrageously paid to AIG executives relies on fraudulent conveyance law which is far from novel and which is the law in all 50 States. It is already found in the Bankruptcy Code. The basic premise behind fraudulent conveyance laws is there must be a legal remedy when money has been misappropriated so it may be returned to its rightful owner.

If there was ever an example of fraudulent conveyance, this is surely it. These so-called retention payments are particularly ludicrous, not to mention fraudulent, when 11 of the people who received retention bonuses of \$1 million or more are no longer working at AIG today.

This money belongs to the taxpayers and was provided to AIG and to a number of other insolvent institutions for the sole purpose of stabilizing our financial system and protecting our economy. It is not a slush fund for the enrichment of the very malefactors who created this mess. Giving that money to them is a clear misappropriation of the public's money, and this bill provides a time-tested, well understood, and legally sound remedy for that misappropriation.

This bill does not apply only to a group of people at AIG. It is written broadly to deal with the more general problem of using the taxpayers' money to grant bonuses to enrich people on Wall Street. And I should point out that Wall Street is in my district and

some of these people may be my constituents. I have nothing against them. They are entitled to earn a living. But this is not their money. They are not entitled to it.

We need not have been in this predicament. When we were considering the TARP legislation last fall, many of us insisted that this legislation should specifically prohibit the payment of bonuses at companies receiving public moneys. The Bush administration, Secretary Paulson, vigorously opposed that language. The compromised language we got was not air-tight and allowed Secretary Paulson to give away that money with no strings attached. And we see the results today. Once again, we are left to clean up this mess.

I don't think any member of this committee believes these bonuses were justified. It was not AIG's money to give in the first place. I hope no member of this committee believes this is an appropriate use of taxpayer money. I hope that no member believes we should simply shrug our shoulders, walk away and do nothing to right this wrong.

This bill provides a solid time-tested legal basis to ensure the public's money is used for the public's benefit and only for the public's benefit, and begins to close the loophole created at Secretary Paulson's insistence on the TARP legislation last fall. I urge all my colleagues to support this legislation.

I thank the Chairman. I yield back the balance of my time.

Chairman Conyers. Are there any amendments?

Mr. Lungren. Mr. Chairman?

Chairman Conyers. Who seeks recognition? Dan Lungren is recognized.

Mr. Lungren. Chairman, can I move to strike the last word?

Chairman Conyers. Without objection, the gentleman is recognized.

Mr. Lungren. Mr. Chairman, some might look at this as our effort to lock the barn door after the horses are already out. And that troubles me very much because the Constitution has limitations on what we can do in some ways attempting to unring the bell

or undo what we have done as a collective body in the very recent past.

I have heard from my constituents back home about the outrage that they have with respect to the actions taken by AIG, or at least this unit of AIG that was principally responsible for the firm's meltdown. I think that is one of the reasons there is so much outrage.

It is apparent that these bonuses went to the very unit that caused the problem in the first place, which seems to be, at the very least, counterintuitive of rewarding by bonuses those who brought the meltdown.

At the same time, we have not had the chance to look at this with reflection and with hearings. And I have seen some suggestions, perhaps not in this body but in the other body, that what we would do to remedy the situation is create confiscatory rates of taxes specifically targeted to a very small group of individuals versus the rest of the potential taxpayers in the Nation. I think that should give pause to any American out there that Congress would act in that way.

As outrageous as any action might be, the power of the government coming down, using the Tax Code in that way, seems to me to be overkill to say the least, and to be dangerous to say the least. And that is why I would prefer us to attempt to find a remedy that utilizes the bankruptcy power, because in fact we are in that context.

But for the actions of the Congress and the executive branch, I think there is no doubt that AIG would be in a bankruptcy, and at least this unit of AIG would be in bankruptcy. Therefore, I do commend the Chairman for attempting to resolve this in a way that, it seems to me, raises less constitutional issues than some of the others suggested by some Members in Congress, particularly in the other body.

Having said that, we have a question here of constitutional bankruptcy power. What are its limits? We also have to be obviously concerned about the subset powers of

Congress subjected to the limits of the fifth amendment and the takings clause. And although there have been court decisions in this regard that say that the protections with respect to takings are not unlimited, particularly in this context, we have not had the chance to thoroughly debate this and to try and make sure our actions are well within the Constitution.

I am of a mind to support the legislation with the Chairman's promise that this is not the end of this legislation and that we will continue to review it with respect to the constitutional limitations contained in the sections that I have referred to. And I will at some point in time offer an amendment which I believe will ensure that the action we take today is not totally inconsistent with the actions that were taken just weeks ago when we passed a stimulus package.

Chairman Conyers. Would the gentleman yield?

Mr. Lungren. I would be happy to yield.

Chairman Conyers. I want to assure the gentleman and every member of this committee that whatever action is taken by the committee today does not foreclose or conclude any further consideration of this measure, particularly if the gentleman would decide to reserve his option to offer an amendment.

Mr. Lungren. Well, I appreciate that from the Chairman. I just want to make sure that in the rush to respond to a legitimate outrage by the people across the country, in your district and in my district --

Chairman Conyers. I understand.

Mr. Lungren. -- we do not shortchange our obligation to protect the Constitution. This committee, over any other committee in the House and the Senate, ought to be the ones that say time to take a pause. Time to take a look at what we are doing to ensure, as we attempt to respond to an outrageous action by people who I think have gone far beyond

any concept of what is appropriate, that we not react in a way that undercuts the protections contained in the Constitution for other citizens.

Chairman Conyers. Would the gentleman yield one more time?

Mr. Lungren. I would be happy to yield.

Chairman Conyers. I want to assure him that the constitutional questions that are involved in this amendment are as sensitive to me as they are to you. And I realize that we are carrying a heavy burden if this bill moves forward and it is tested and we turn up short in any kind of judicial proceeding.

Mr. Lungren. I would also like to thank the Chairman for making available some experts today to brief staff. But I would have to say that as effective as that might be, that is much like watching a trailer for a movie and not watching the movie.

We didn't have a chance to really have a give-and-take with respect to the legitimate questions that are brought up under the Constitution; and, while recognized by the experts that you brought forward for our staff briefing today, I was not there, we didn't have an opportunity to really engage in that. And while that was very helpful, it was extremely limited. And I thank the Chairman for yielding.

Chairman Conyers. I thank the gentleman. And I apologize. And I will now announce to the Judiciary Committee, we have had the Chairman, the Majority leader and one member on each side make a statement. It is clear there are no amendments. The recording quorum being present --

Mr. King. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. Who has an amendment at the desk?

Mr. Forbes. I have an amendment at the desk, Mr. Chairman.

Mr. King. And I have an amendment at the desk.

Chairman Conyers. All right. The Lungren amendment is at the desk.

Mr. Nadler. Mr. Chairman, I reserve a point of order.

Chairman Conyers. The Clerk will report the Lungren amendment.

The Clerk. Amendment offered by Daniel E. Lungren of California to H.R. 1575.

Mr. Nadler. Mr. Chairman, I reserve the point of order.

Chairman Conyers. Yes. The Chair notes a point of order is reserved by the gentleman from New York.

The Clerk. Create a new section 6 entitled, "Correction" and renumber existing section 6 as section 7. Under new section 6, add the following:

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

Mr. Forbes. Objection, Mr. Chairman.

Chairman Conyers. You object to what? Who is objecting?

Mr. Forbes. I am. I would like to hear the --

Chairman Conyers. Oh, you want the amendment read.

Mr. Forbes. Yes, sir.

Chairman Conyers. Oh, that is quite cooperative. Let's read the whole amendment.

The Clerk. Should I start over or just continue?

Chairman Conyers. Just continue from where you are.

The Clerk. Section 111(b)(3)(D) of the Emergency Economic Stabilization Act of 2008, 12 U.S.C. 5221 (b)(3)(D) is amended by striking the following clause:

(iii), The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

[The information follows:]

***** INSERT 1-2 *****

Chairman Conyers. Thank you. The gentleman is recognized in pursuit of his amendment. And would the gentleman yield?

Mr. Lungren. I would be happy to yield.

Chairman Conyers. Thank you. I have looked at your amendment. It is my point of view, without going into any parliamentary determinations, that the intent of this amendment is something that I would like to discuss with you for the possibility of a manager's amendment to this measure.

Mr. Lungren. I thank the Chairman. May I just speak to it?

Chairman Conyers. Of course.

Mr. Lungren. I thank the Chairman because I offer what I hope will be perceived as a bipartisan --

Mr. Nadler. I can't hear the gentleman.

Mr. Lungren. Hello. I thank the Chairman because I offer what I hope will be perceived as a bipartisan amendment to this executive compensation issue relating to AIG. I am confident that my colleagues on the other side of the aisle would join in the reaction that we have heard from some of our constituents back home that this language was contained in the stimulus package just passed by the Congress. And since it is law, it would appear to be specifically inconsistent with what we are doing here.

The language specifically says that the prohibitions contained in the use of funding, Federal funding going forward will not be limited for any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009.

And I believe the subject of what this bill is is specifically with respect to bonuses that were paid out prior to that time, pursuant to contracts prior to that time. So my attempt here is to have an amendment that sets it straight and says, look, it appears we

made a mistake when we had this dropped into the stimulus package that was passed several weeks ago, because it appears to directly protect the bonus payments that we are now looking at and saying are not only extraordinary but inappropriate.

And so my amendment was an attempt to try and wipe the record clean, to try and make sure there is no ambiguity about what we are attempting to do here. And I think we need to assure the American people that, in a sense, the right hand knows what the left hand is doing.

And so if we are going to truly and unequivocally attack this most recent, as some would call it, iteration of greed in some boardrooms, let's purge the record of any sympathy for these beneficiaries of corporate welfare paid for out of the pockets of taxpayers. And so if we are supposed to quote-unquote end greed as this act suggests, let's not send mixed signals.

I think Congress made a major mistake in the stimulus package when it had a specific clause or specific section which protected these bonus amendments or bonus payments. And I am sure most Members weren't even aware that this was in that stimulus package that was voted on. And since it was in there, I would hope that we would have this as part of our bill, and I know the gentleman from New York has reserved a point of order on this.

All I would say in anticipation of his argument is this: The language of our bill before us is rather inclusive. The purpose of what we are to do here is to act, pursuant to Article I, section 8, clause 4, Article I, section 8, clause 18 of the Constitution, to seek recovery of previous excessive payments of compensation made by such entities after receiving such assistance would include any payment made by the Federal Government following the date that is referred to in the bill.

Therefore, we have a total inconsistency between what we are doing here and what

was contained in the stimulus package which targeted, almost laser-like, these bonus payments for protection. And so I would hope both on the substance and on the question of germaneness that we could have support for this amendment.

Mr. Nadler. Would the gentleman --

Chairman Conyers. I thought the gentleman was wanting to make a statement before he withdrew the amendment. Did I misunderstand you?

Mr. Lungren. I think the gentleman misunderstood me, because I thought we were waiting to hear what the argument was --

Chairman Conyers. Well, look, let me restate my original reason for asking you to yield.

Mr. Lungren. Okay. Well, if the Chairman will just yield for a second. If what the Chairman is telling me is I am to anticipate this rule not being germane, I obviously would accept the Chairman's gracious opportunity to have this included. I just would --

Chairman Conyers. I wasn't going to do that at all. I was just asking you, on the strength of your own relationship with me, to withdraw the amendment, and that we will look at it in terms of an issue --

Mr. Lungren. In the words of a famous actor from Hollywood, "You have made me an offer I cannot refuse." And on that basis, Mr. Chairman, I would ask that my amendment be withdrawn.

Chairman Conyers. I thank the gentleman for his amendment's withdrawal. Are there any other amendments?

Mr. King. Mr. Chairman.

Chairman Conyers. Who seeks recognition? Steve King.

Mr. King. I have an amendment at the desk.

Chairman Conyers. The Clerk will report the amendment.

The Clerk. Amendment to H.R. 1575 offered by Mr. King of Iowa.

Mr. Nadler. Mr. Chairman, I reserve a point of order.

Chairman Conyers. The gentleman from New York reserves a point of order.

Please continue.

The Clerk. Insert after section 1 the following new section: Section 2, Sense of Congress on Protecting the Integrity of the Committee Process.

It is a Sense of Congress that amendments introduced, debated, voted on, accepted and ultimately passed by the committee are the expressed will and considered opinion of the committee members and shall not be nullified by the actions of Members or unelected staff behind closed doors without public scrutiny after the committee has spoken.

Mr. Forbes. Mr. Chairman, parliamentary inquiry.

Chairman Conyers. Yes, who makes the inquiry? Yes, the gentleman is recognized.

Mr. Forbes. Mr. Chairman, I would just ask on the amendment, is the Chair going to limit the ability to offer motions to strike and comment on the amendments the way we did on the underlying bill? Or are we going to have an opportunity to do that? We weren't limiting opening statements. We were having motions to strike, and the Chair said we weren't going to entertain any more of those. Will we have the opportunity to do that on amendments?

Chairman Conyers. Of course you would be allowed to do that.

Mr. Forbes. Thank you, Mr. Chairman.

Mr. Nadler. Mr. Chairman?

Chairman Conyers. The gentleman is recognized in support of his amendment.

[The information follows:]

***** INSERT 1-3 *****

Mr. King. Thank you, Mr. Chairman. This amendment is an amendment that really identifies something that is taught in government class all across this country; and that is, how government works, how the committee process works. And all of us that are paying attention in those government and civics classes understand that a bill goes through a process, a process of perfecting the legislation, and that as legislation is introduced, then it comes through the subcommittee hearing process, subcommittee and committee process where there are amendments offered, where there is a markup on a bill.

And this amendment speaks to this issue that when a committee acts upon an amendment and subsequently on the underlying bill, and when the committee puts its approval on a piece of legislation, that that is the considered opinion of the elected Members of Congress who have the honor to serve on that particular committee. In this case it is the Judiciary Committee.

And you will recall the issue that had to do with the bankruptcy bill and the language that was passed through here by an amendment vote of 21-3 that subsequently was changed after it passed the committee.

And this amendment speaks to it this way: It says, again, that it is the expressed will and considered opinion of the committee members and shall not be nullified, not by an individual Member, not by staff, but only by a process. And you know that I care a lot about this process.

And I can recall we were marking up code editors bills when I was in the State legislature; a comma, a colon, a capitalization, all of those things were changed by legislation because the considered opinion and judgment of this committee has to be a formal act that has to come back before this committee or be dealt with by some other committee in an open public way, or the integrity of this process is forever undermined.

And I recall the Chairman's remark in the exchange this morning, about the truncated process we have before us right now in this GREED Act, about how quickly this bill comes in and how we will be having discussion afterwards that action by the committee today doesn't foreclose continued action on the bill. I heard the Chairman say it won't happen again, this truncated process.

But I haven't heard, it won't happen again, having my language or any member's language changed after the fact, after it leaves this committee. And I am asking that this committee vote on and record its judgment as to whether the government teachers in America are right or whether the people that are working behind the scenes and, after this committee acts, are going to be right.

And for me, I will come back to special meetings of this committee -- convene this thing anytime you want -- to save this process. Win or lose, I can lose 90 percent of the time, but I am going to defend the process.

And that is what this amendment does. The expressed will and considered opinion of the committee members shall not be nullified, and that is the core and the essence of this amendment. And I ask that our committee members support that, endorse it. They do, all of them have voiced it at one time or another.

So I would again urge adoption of this amendment. And I would yield back the balance of my time.

Chairman Conyers. Could the gentleman yield --

Mr. King. Or yield to the Chairman, sure.

Chairman Conyers. -- yield to me briefly before he returns his time.

To my dear friend on the committee, I think that we should examine the point that you have raised repeatedly in a different forum and setting than a bill that is before us that has obviously nothing whatever to do with the subject matter of the bill. Your amendment

doesn't. And could I offer myself, because you -- and I say this in a personal way. I lift your name up more frequently than any other member in the committee as an illustration of the kind of ways that we have tried to work together since my chairmanship. And I want to continue it. But this isn't the way to do it, Steve. For goodness sake, let's just meet after this hearing. We have got enough issues on our plate right now than for us to go back over something that you feel that you were not treated fairly with in the Rules Committee.

Mr. King. Reclaiming my time, should I have any left, Mr. Chairman. And I very much appreciate and respect the sentiment that you have expressed here today. I will say that I have yet to hear that this won't happen again. And I am committed to process. And so let me say this, that --

Chairman Conyers. I grant the gentleman 3 additional minutes. And I ask him to yield.

I don't know how long you have been in the -- well, you have been in the Congress quite a while. But when a bill goes to the Rules Committee, this is not out of the ordinary that the bill gets changed in the Rules Committee. It has happened before. And I can document it. I have had whole bills substituted in the Rules Committee. So please, I cannot assure you that this will not happen again, that never will a bill that goes before the Rules Committee ever be altered without our approval. That is what the Rules Committee does.

Mr. King. Reclaiming my time then, Mr. Chairman. And I will submit that it is my opinion and my judgment that when this committee speaks, it is a considered opinion of this committee.

Mr. Nadler. Will the gentleman yield?

Mr. King. And to complete my statement, I will yield. And that I am aware of a circumstance where there would be an exception, and I think the gentleman and the

Chairman is alluding to that.

I won't say that this is the only time this has ever happened. My point is that when you have an opinion by this committee and it passes through the Rules Committee, the members on this committee's judgment cannot be abrogated, not by a staff decision and not by a lack -- actually, a situation in the Rules Committee where there wasn't a lot of review, as a matter of fact. I.

Don't want to make exceptions. I think that we have got to respect the members of this committee, or in the end it reduces us down to irrelevancy. Win or lose on the policy, I want this committee to be relevant. And we are not very relevant if we are opening ourselves up to having our language amended. And I would yield to the gentleman.

Mr. Nadler. Thank you. I just want to say that I think the gentleman is focusing on the wrong discussion. Aside from the fact that this amendment is not germane to the bill, because it is beyond the jurisdiction of the committee -- a point of order I hope I don't have to insist on -- but aside from that, it is not what happened. Nobody changed a bill. A bill was reported with the gentleman's amendment from this committee. That is true.

What the gentleman is referring to, however, is similar but not identical language put into a different bill which went to the floor. Nobody changed the bill by a comma. Nobody changed the bill that emerged from this committee by a comma. But the bill that emerged from this committee never went to the floor. The bill that went to the floor was an entirely new bill that didn't go to the committee. It came out, I presume, of the Rules Committee.

One could say that as a matter of procedure -- and I would agree with the gentleman -- that as a matter of procedure we should frown on bills that skip this committee and come out of the Rules Committee. I agree with that. And that is a different discussion.

I have gotten the impression, listening to the gentleman before, and it is just because I inquired into this that I found that it wasn't true, that some staff person improperly changed the language of the bill and it, in fact, fraudulently changed the language of the bill. That is not what happened. The bill that was reported out of this committee was not changed, but it did not go past the Rules Committee. The bill that the gentleman is referring to with that other language was a completely separate bill that was introduced separately, did not come out of the committee, was reported out of the Rules Committee.

Mr. King. Reclaiming my time.

Chairman Conyers. The gentleman is granted 3 additional minutes.

Mr. King. Thank you, Mr. Chairman. Reclaiming my time. I will concede a number of the points made by the gentleman from New York. It was a different bill. The language was not similar, though, is where I disagree. The language actually gutted the intent of the amendment, and that is really the core of what we are talking about here.

Mr. Wiener. Would the gentleman yield?

Mr. King. I have committed to yielding to the gentleman from Virginia first. I will yield to New York.

Mr. Wiener. I happen to agree with the sentiment of your amendment. I believe you served on the committee when we had the PATRIOT Act carefully constructed, and it got near universal support in this committee by Mr. Sensenbrenner that was -- I believe the number was kept the same. The entire bill was changed, airlifted in by the administration and the Rules Committee. I agree with you. I think that this is a fair assessment. It is probably not germane, but I agree that for those of us who are not authorized in the committees, we should jealously protect --

Mr. King. Reclaiming my time. I can see the gentleman's point from New York.

Again that was in the heat of battle, and we were under the smoking hole in New York at the time. But I think our point remains that the considered opinion of this committee needs to remain intact when it leaves this committee.

I would yield to the gentleman from Virginia.

Mr. Goodlatte. I would thank the gentleman for yielding. And I would say to the gentleman and to Chairman Conyers and to both gentlemen from New York, your point is well taken regarding process. There are going to be plenty of times when we pass something in committee when, upon further reflection, something additional needs to be done. The problem, however, is in the process of getting that accomplished.

And I think the Minority feels that this would be much more productive and we wouldn't take as much committee time like this if Mr. King had been included, if Mr. Smith had been included in that discussion; so that when a change is made like this, that it doesn't just suddenly appear later on, much to the consternation of those of us who had no involvement in the process.

I am told that there were some aspects to the amendment that could have stood some improvement. So that is great. But working that out would be better, and the assurance given to the gentleman that it will be done differently in the future would, I think, end this discussion.

Mr. King. Reclaiming my time. And I appreciate the input that has come on both sides of the aisle here. And I am concerned that we are in this arena where it could happen again. I think we all anticipate that this -- what we are doing today isn't going to have the level of scrutiny that the bill that I brought up will have. So I do respect the Chairman and the position that he has taken and the working relationship that we have. And I trust that we will have sunlight on the things we are doing and have that open dialogue. And with that in mind, but still maintaining my commitment to do my best to codify the considered

opinion of this committee at some point, I would ask consent to withdraw my amendment.

Chairman Conyers. Thank you. I thank the gentleman. It is withdrawn. A reporting quorum being present --

Mr. Forbes. Mr. Chairman.

Chairman Conyers. Who seeks recognition?

Mr. Watt. On your right over here.

Chairman Conyers. Mr. Watt, the gentleman from North Carolina.

Mr. Watt. Mr. Chairman, I move to strike the last word.

Chairman Conyers. The gentleman is recognized to be heard.

Mr. Watt. Thank you, Mr. Chairman. I realize I may be about to incur the wrath of the leadership of the committee, perhaps the leadership of the House. And I want to first separate myself from the amendment that was just offered. I actually agree with Mr. Wiener and the points that he made on Mr. King's amendment. I agree with the sentiment of it, but it is not related to this.

I want to talk about this particular bill. I want to first express an equal amount of outrage as every single Member of Congress and this committee should feel about the excessive bonuses that we have read so much about. And I want to say how frustrating it is to be in the position that I was in many times when the other side was in control of the process.

But one of the commitments that I made during that period of time is, if we ever reseeded control of the House and the committee, I thought it was important for us to get back to the serious business of protecting the Constitution and legislating, as opposed to making political points, which I think is the primary purpose of this bill.

I have some serious reservations about whether we can do what this bill professes to do, whether without hearings and findings in a preamble of some kind that invokes the

authority that we profess to exercise under Title 1, section 1 of the Constitution, and without a finding that in the absence of the U.S. making contributions to AIG there would have, in fact, been a bankruptcy. I just don't think we have the authority to do this, given the record that we have built.

And so for that purpose and with that context, I will have to say, Mr. Chairman, that I will -- and I know it not only might make the leadership of the committee unhappy, it might make the leadership of the House unhappy. It may make my constituents unhappy, because I know they are really, really angry about these bonuses.

But we have got a different obligation here, to be thoughtful and protective of the Constitution of the United States. And that obligation, it seems to me, is heavier on this committee than on any other committee in the Congress. So I will not be able to vote for this bill. And I wanted to say that on the record as opposed to just sitting here and being --

Chairman Conyers. Would the gentleman yield?

Mr. Watt. I would be happy to yield to the Chair.

Chairman Conyers. I want to thank the gentleman for his forthright comments. I want to first of all assure him that I recognize him as a considered constitutional authority. We have listened to each other across the years. And so if you have a constitutional objection or concern about this measure, I think that it is totally appropriate. And I can't imagine anyone on this committee or in our leadership having objection to your reluctance to go along with it or even to oppose it.

Now, could I make this offer: that we could provide you with a considered authority on this constitutional question; that I would like to contact you and enter into these kinds of discussions.

Mr. Watt. Mr. Chairman, I would be happy to have the briefing. I understand it was offered this morning. You should know that Financial Services was in the middle of a

hearing this morning on this very issue, trying to get to the bottom of it.

I understand that there may be a bill coming to the floor out of Ways and Means tomorrow, dealing with this issue. It obviously is a hot issue and a very difficult issue, because all of us are embarrassed by the posture in which we find ourselves.

But we also have an obligation to set that aside in the interest of the Constitution. And while I will be happy to listen to whoever the Chair sends to discuss constitutional issues with me -- and would be delighted to do it -- I don't think that is going to be able to happen between now and -- because I thought the Chair was about to move the question here on the bill. And so I took this opportunity at the point in which I had to say it.

Chairman Conyers. I thank the gentleman. Because he is on both committees that examine the constitutional questions that concerns him, so that makes it even more reason for us to respect his reservations or even opposition to the measure.

Mr. Watt. Mr. Chairman, Mr. Scott is requesting that I yield to him.

Chairman Conyers. I yield the gentleman 3 additional minutes.

Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, I have similar concerns. Part of the problem we are in now is really it is our fault, because when we passed the original legislation back in October we didn't have -- the press releases said there were limitations on pay, but the language in the bill was rushed and did not effectively limit CEO or executive pay.

What we are faced with now is a company with just shameful arrogance. The President has indicated what he felt about this. And AIG, really the employees there ought to be afraid that anybody might actually cash one of these checks, for what might happen to the company or otherwise afterwards. It is just shameless.

They are going to take the money. You can't do anything about it. And then I guess they are going to expect us to just not notice.

The gentleman from California just mentioned some takings. The takings that are going on now is they took the bailout money. They would be in bankruptcy but for the bailout. And the one concern I have, frankly, with the bill, Mr. Chairman, is it doesn't go far enough. It just deals with executive pays and bonuses. I think it ought to go to everything because you have got some people in these -- what do they call it, counterparties or whatever they are, that are dealing with themselves and using the Federal money to bail themselves out of deals that never should have taken place to begin with. Some of these people knew these credit default swaps and these products were worthless. They took AIG's okay on it, insurance.

And now all of a sudden these bad deals are being backed 100 percent with Federal money. If they were in bankruptcy, somebody would look at these things and notice that the underlying asset was in fact worthless. Everybody knew it. And maybe we wouldn't be paying 100 percent on some of these worthless deals. If we had the bankruptcy laws and principles, I think there are a lot of things that we could be reviewing, not just the executive pay.

I yield back.

Mr. Watt. Mr. Chairman, Ms. Lofgren has asked me to yield to her. I can either ask for additional time, I can close out and you can give her her own time, whichever you prefer.

Chairman Conyers. I will yield an additional minute to the gentleman.

Mr. Watt. In that case, I will yield to the gentlelady from California.

Ms. Lofgren. I appreciate that. I just wanted to note my concurrence in the reservations expressed by Mr. Watt. Certainly the behavior of AIG is outrageous. And we are all properly furious and eager to unwind this behavior and make sure it doesn't happen again.

I don't think the measure before us is successful in accomplishing that. I do hope, however, that the Ways and Means measure -- and perhaps there may be a measure coming out of Financial Services that involves -- we own the company -- taking it over. And exerting our rights as the owner may be more successful. But I did want to explain that I think this is a mistaken effort, although I know well-intentioned. And I thank the gentleman.

Chairman Conyers. The gentleman's time has expired.

Mr. Watt. Mr. Chairman, could I ask unanimous consent for 1 or 2 additional minutes just to clarify a couple of points that they have made?

Chairman Conyers. The gentleman is recognized for 2 additional minutes.

Mr. Watt. First of all, we blame AIG. But if what they say is correct, we may well be exposing them and the taxpayers to even greater liability if they don't honor these contracts. The thing I am disappointed about is this administration has kind of allowed the public to buy into the notion that these were their contracts. These contracts were made under the last administration. And our Secretary of Treasury has made the determination at some level -- I don't know how well it has been thought out or investigated or evaluated -- that it may end up costing taxpayers two times as much, or three times as much, not to honor the contracts as it would cost to honor the contracts.

Now, I don't know whether that is true or not. But I don't think we have made the kind of assessment that would enable us to make it as a legislative determination. Our responsibility is to try to do what is in the interest of the taxpayers, and try to do it in a way that we believe is constitutional also.

Mr. Wiener. Would the gentleman yield?

Mr. Watt. I will yield to the gentleman.

Mr. Wiener. I just want to call the gentleman's attention to -- one of the things the

bill does is treats us, the taxpayer, as creditors in a bankruptcy proceeding and treats AIG as if it is bankrupt, which I think --

Mr. Watt. I understand that. But I don't know you can -- reclaiming my time. I don't know how you, without some legislative record, have the authority to determine that AIG is bankrupt. I will yield back, Mr. Chairman.

Mr. Forbes. Mr. Chairman.

Chairman Conyers. I am happy now -- and I apologize to the gentleman from Virginia, Randy Forbes.

Mr. Forbes. Mr. Chairman, I move to strike the last word.

Chairman Conyers. The gentleman is recognized.

Mr. Forbes. I begin with telling you what I have said over and over again, both privately and publicly, and that is the enormous amount of respect that I have for you. And a few moments ago you suggested that I might not be cooperative.

But I would just say to this committee and to the Chairman, there are situations where we might not get hearings, and we might not get the opportunity to examine witnesses, but we certainly ought to be able to move to strike the last word and at least speak on legislation. And once we have gone down that road of allowing people to move to strike the last word, we ought to continue that.

And I want to just echo something the Ranking Member said earlier, because I think it is important that we look at what is going on here. I watched yesterday as one individual after the other went up and took the floor, both sides of the aisle, and the word of the day was "outrage." And we all know why; because the consultants and the pollsters said you had better look outraged. But it was like we were using it as some kind of "get out of hot water free" card, that we walked up and said we were outraged and we were covering up what really happened.

As one of only 17 Members of the House that has voted against every one of these bailout stimulus bills, I think I have got the right to come up there and say I am outraged. And the reason was because of what the Ranking Member said. We have taken these bills and we have changed rules. We have ignored the opportunity to read them. We have cut out the ability to bring in witnesses and comment on them. We have stopped the ability to do the analysis. And then all of a sudden we look and we see where people are saying now, we may need as many as 100,000 to 250,000 bureaucrats just to monitor where these moneys are going.

If you think AIG is the only problem we are going to have, I am going to just suggest to you we are going to have a lot of opportunities to come up here and say we are outraged.

And the phone calls I am getting in from people are suggesting this is like a sitcom when they watch us, because they feel like, you know, we are the husband that has gone out and bought this expensive boat in bad economic times. All of a sudden the bill comes in the mail, and his wife gets it and opens it up. She is sitting at the kitchen table saying, how are we going to pay this? She is seething mad. He walks in the door. She throws the bill across the table at him. He picks it up. He looks at the bill, knows he can't pay it, looks in her eyes and how mad she is. And then all of a sudden he pounds the table and says, I am outraged over this bill that I have gotten.

And the reason that I raise it today is, at least once let's step up to the mike and say we made a mistake. We had better not do this again, because there are already rumors that the administration is thinking about skirting some of the other rules to get some agenda items through.

And I am just hoping when that happens, we will have the same kind of outrage to say these rules, these policies, are in here as a check-and-balance to make sure we don't

have this problem coming up again and again and again.

And Mr. Chairman, with that, I thank you for allowing me just to speak on this.

And I yield back.

Mr. Issa. Does the gentleman yield?

Chairman Conyers. I thank the gentleman.

Mr. Issa. The gentleman yielded to me.

Chairman Conyers. I am sorry. I didn't hear him yield to you.

Mr. Issa. Thank you.

Chairman Conyers. But I recognize him now.

Mr. Issa. Thank you, Mr. Chairman. I think the best place to follow on is with the gentleman from Virginia, because the outrage we hear today should be outrage at ourselves, not someone who has voted against every bill, but any of us who voted for so much as one bill where we were told it is an emergency, the markets are frozen, we have to do it now.

What I would say here today, and the reason why I oppose this action, the markets aren't frozen. The money is already in the hands of these individuals. It is a long time until the end of the tax year. There is more money needed by AIG. We have an opportunity to be thoughtful in looking at the mistakes made by the previous administration. And I am talking about President Bush, Secretary Paulson, Assistant Secretary Kashkari and others, and the mistakes made by, President Obama and Kashkari, who still manages to be here and Secretary Geithner.

The truth is every time a dollar goes to an organization, there is an opportunity to ask them to make concessions. There will be other opportunities. And it appears as though with AIG there will be other opportunities. We are rushing to be populist, as we speak. That is the wrong thing for us to do and shame on us for doing it. This bill should

not be before us today just because it is popular on talk radio on both sides of the aisle.

I will oppose this because it is ill-conceived. It is probably unconstitutional, and it very clearly is designed to appease the public rather than meet our constitutional responsibilities.

Let's start looking into the legitimate oversight of the previous administration and this administration on what they could have done, should have done, and should do going forward. If we do that, then we will be the legislative body we should be proud of.

Chairman Conyers. I thank the gentleman. And I would now note that a reporting quorum is --

Mr. Delahunt. Mr. Chairman.

Chairman Conyers. I recognize Bill Delahunt.

Mr. Delahunt. I move to strike the last word.

Chairman Conyers. The gentleman is recognized.

Mr. Delahunt. I was unaware of the fact that there are bills that either have been considered or are being reported out of both Ways and Means and Financial Services.

I don't know -- and I put this in the form of a question -- whether the Chair has had an opportunity to discuss with the Chairs of those respective committees, with the Democratic leadership, about making a coordinated effort which would allow us to defer for a period of time, a matter of days, consideration of this bill to determine -- which would allow for the hearings that I think there appears to be considerable support for, so we can move in a way that is more coherent as opposed to reactive.

Chairman Conyers. Would the gentleman yield?

Mr. Delahunt. I yield.

Chairman Conyers. As a matter of fact, the Speaker of the House of Representatives did call a meeting this morning. And the Chairman of the Ways and

Means Committee was there as were other Chairs. This bill, if it is reported, in the wisdom of the committee, will not come before the Congress as I understand it until sometime next week. But the Ways and Means Committee has a measure that may most likely come forward tomorrow. And so there is this coordination that you have recommended going on. It may not be in the form that the gentleman would like.

Mr. Delahunt. Well, reclaiming my time, I would ask the Chair if it would be appropriate to consider, given the fact that Ways and Means would come to the floor with the bill that presumably will be reported out of Ways and Means, and have a hearing prior to reporting out the Judiciary bill. If there is, you know, an opportunity here I think to meet the concerns that are expressed by all Members, it is something that I would respectfully suggest that the Chair consider.

Chairman Conyers. Well the gentleman would --

Mr. Johnson. Would the gentleman yield?

Chairman Conyers. Does anyone else seek recognition? Only three more people. Okay.

Judge Gohmert, you are recognized.

Mr. Gohmert. Thank you, Mr. Chairman. And I do appreciate my friend Mr. Delahunt asking us to be careful so that we can be coherent. I like that word. But we should be deliberative, and we haven't been that all the times that we should have been. And some of us take more time to think things through and to talk things through; for sure, to talk things through. In fact I often wonder if maybe it is an equal protection issue that those of us should -- who talk slower -- should be granted the same number of words as those who talk faster. But that is an issue for another day.

But nonetheless, this issue of the bonuses that has brought such outrage from so many people and such shock, it is not shocking at all. And some of us who read the

original bailout bill back in September went to the floor, went to conference, talked to our colleagues and said please, please, read the bill. We have never given one man this much authority.

Come to find out, it wasn't just one man. Apparently Geithner was helping Paulson come up with this brilliant plan. But in any event, we had never given any one or two men this much financial authority since we had a Constitution. It was done December 27 of 1776, when Washington was given this much authority. But he didn't ask for it. He hardly used it at all, and then he gave it back. And as I said back then, I have studied Washington. Washington is a hero of mine. And it is obvious that Paulson and Geithner are no George Washington. But that is who we gave all this power.

And if you read the bill, the only things -- it looked to me like the main restraint was that he didn't bail out the central bank of a foreign government, but he could bail out foreign banks. He could bail out foreign companies. He was authorized to pay more than fair value for what he bought.

Now, that was a terrible mistake. And people were rushed into it, not given the deliberative process we should have had; not given the information we should have gotten through a good committee process that this process is supposed to get.

Now, you look at AIG. Now these guys, they surely had to know they were being greedy when they accepted these bonuses at a company they ran into the ground. I mean, boy, you talk about audacity. It is incredible that they would do that. They had to know they were really greedy. But, unfortunately, those guys were not just jerks, they were greedy. They destroyed the very underpinnings of this country.

So now we have got people wanting government to come in and take charge of way too much. The government doesn't run things very well. Our job is to protect the country from all enemies, foreign and domestic. And I would submit to you, people that took

taxpayer dollars under these circumstances were and are enemies of this country -- domestic -- and they don't deserve to have this money.

But we are repeating the mistakes of the past by constantly rushing in. We ran in and passed the stimulus bill that we didn't even get to read. And we passed a bill that said we would have 48 hours to get to read it. And then we were told, well, people are losing their jobs every hour that you don't pass this bill. So a majority of people voted for it.

And then the President sat on it for 4 days -- letting people lose their jobs -- which we could have used to read the bill and improve it. And we weren't given that chance.

And here I think we are rushing headlong into doing the same thing. And my understanding of the law is, anytime you provide money and it is accepted by somebody else, you have both the legal and moral authority to attach conditions to that new contract. And every time money has been given, whether Paulson or Geithner, they had the legal and moral authority to say, now, if you are going to accept this -- and this will maybe keep you out of bankruptcy receivership a little longer -- here are the conditions that have to go with it. And those weren't put on by Geithner and Paulson because we didn't put it on them. And that should have been done with proper deliberative process.

And now we come in and I am afraid this is going through an improper process. I think we might could get this constitutional, but it is going to take a lot of good minds beyond and above mine, obviously, to make it work. And I am not sure we are giving it that chance. I am afraid we are going to rush right into another bill that was part of the problem that created this situation.

But I appreciate your indulgence, Mr. Chairman.

Chairman Conyers. I thank the judge. The last two speakers have agreed to divide their time. I thank the gentleman from Tennessee, Mr. Cohen, and recognize him.

Mr. Cohen. Thank you, Mr. Chairman. Would you yield for a question?

Chairman Conyers. Of course.

Mr. Cohen. Have you had discussions with individuals who you consider legal scholars who believe that this bill is constitutional?

Chairman Conyers. Absolutely.

Mr. Cohen. Can you give some of the names of those scholars?

Chairman Conyers. Well, I was hoping someone would ask me that question before the hearing. How about, Kenneth Klee? No, this is not a setup. I did not ask him to ask me this question.

Mr. Cohen. But I do have experience.

Chairman Conyers. Klee, Baird from the University of Chicago Law School, are the two most outstanding. There are some that you might consider lesser lights of constitutional authority.

Mr. Cohen. And they believe the law is constitutional?

Chairman Conyers. Absolutely. Look, do you know who is going to be the most embarrassed Member in Congress if this bill is successfully challenged in court? Of course.

Mr. Cohen. Is there a presumption that an act that is passed by the United States Congress -- Mr. Chairman, is there a presumption that an act that is passed by this United States Congress is constitutional?

Chairman Conyers. I am not sure that every bill we have passed -- God, I sure hope not, now that I think of some of the stuff that we have passed.

Mr. Watt. Will the gentleman yield?

Mr. Cohen. Reluctantly.

Mr. Watt. I will tell him that the presumption with this Supreme Court is it is

probably the opposite of that.

Mr. Cohen. I think there is a presumption of constitutionality. And I do think, obviously, it can be overcome. But I think that our Chairman has legal scholars who believe that the bill is constitutional; that there is a presumption of constitutionality. And there is a crisis. There is a situation where these are, I think, bipartisan agreement, outrageous conduct, unconscionable conduct by AIG. And this type of conduct jeopardizes the opportunity for this Congress, if it is necessary, to take other actions to fund other stimulus-type programs to get our economy moving and to see that we don't fall into a depression or a deeper recession, and it may take additional spending.

As one who has voted for every bill that has been put before me through this Congress to help this economy and feel we need to do it, when I heard about these bonuses and this compensation --

Chairman Conyers. Was the gentleman going to share his time with his colleague?

Mr. Watt. Would the gentleman yield for a second before he yields to someone else?

Mr. Cohen. Yes, I will yield. But I sure hope that that time comes out Mr. Johnson's portion.

Mr. Watt. The gentleman obviously missed one point that I made. There is at least some authority that believes this would expose taxpayers to more liability, not to pay. And not having any basis for making that determination, it doesn't seem to me to be justified for us to continue to say that this is going to free up more money to do other things with. We may end up worse off than we are now. You understand what I am saying? I just wanted to be clear on that.

Mr. Cohen. I really don't understand that because I don't see how this act can lead us to greater liability. But regardless of that, I am going to support the act because I think

it is constitutional. And I want to be able to support the administration in the future. And unless we do something, it is going to be impossible for me to do it, because I think this is the type of conduct that is so outrageous that it made me think of the guillotine.

Senator Grassley talked about Japan. But this is just reprehensible and these masters of the universe are beyond comprehension in that they think they are worth this kind of money. And they need to learn what people make in this country. Where were they when we were raising the minimum wage? They weren't around. And they think that \$6 million bonuses are okay? Well, sayonara.

Chairman Conyers. The gentleman is leaving only 56 seconds for his colleague.

Mr. Johnson. I will do my best to get my thoughts in within that time. We are in an emergency situation insofar as taxpayer dollars are concerned. I voted against the Wall Street bailout that was passed in September because I thought it vested too much discretion, unbridled discretion, in the hands of the Treasury Secretary. And lo and behold, here we suffer from the legacy of passage of that bailout bill.

When there is a crisis -- and we are in a crisis, and it calls for a prompt response, and I believe this legislation, which only authorizes recovery and authorizes the Justice Department to act.

Chairman Conyers. The gentleman's time has expired. All time has expired, Mr. Sherman.

Reporting quorum being present, the question is on reporting the bill favorably to the House.

Those in favor say aye.

Those opposed say no.

The "ayes" have it. Ayes have it, and the bill is reported favorably. Members will have 2 legislative days to submit views.

Chairman Conyers. And pursuant to notice I call up bill H.R. 1107. The Clerk will report.

The Clerk. H.R. 1107, a bill to enact certain laws relating to public contracts as title 41, United States Code, "public contracts."

Chairman Conyers. Without objection, the bill will be considered as read and open for amendment at any point.

[The information follows:]

***** INSERT 1-4 *****

Chairman Conyers. Ladies and gentlemen of the committee, thank you for your forbearance. This measure 1107 codifies into positive law as title 41, United States Code, certain general and permanent laws relating to public contracts. It was prepared by the Office of the Law Revision Counsel as part of its functions under 2 U.S.C., section 285 (b) which it performs in coordination with our committee.

The bill is substantially identical to H.R. 4779 which our committee approved last summer, updated to incorporate a few enactments that took place in the last Congress and a few technical clarifications suggested by interested parties.

This bill is not intended to make any substantive changes in law. As is typical with codification process, a number of nonsubstantive revisions are made, including the reorganization of sections into a more coherent overall structure. But these changes are not intended to have substantive effect.

As the bill has already had the opportunity for extensive review in the last two Congresses by the relevant congressional committees, agencies and practitioners, as well as the public, we hope to bring the bill to the floor in a fairly short order.

And I urge my colleagues favorable support and recognize the distinguished gentleman from Texas.

Mr. Smith. Thank you, Mr. Chairman. I, too, am a cosponsor of H.R. 1107, a bill proposed by the Office of Law Revision Counsel to update and improve the codification of title 41 of the U.S. Code. Our committee has jurisdiction over law revision bills, and this particular bill deals with the title addressing public contracts.

The Judiciary Committee considered and approved a similar bill last Congress but it was ultimately not taken up by the House before the end of the Congress. H.R. 1107 and similar law revision bills are important, because they ensure that the U.S. Code is

up-to-date, accurate and useable. So I support the legislation today.

Mr. Chairman, it is my understanding that our staffs have discovered one technical change that needs to be made, and I understand that you and I are in agreement as to making that technical change.

Chairman Conyers. If the gentleman will yield, he is absolutely correct.

Mr. Smith. And with that, I yield back.

Ms. Lofgren. Mr. Chairman?

Chairman Conyers. Does the gentlelady from California wish to be heard?

Ms. Lofgren. I would. I will strike the last word. I will not use the whole 5 minutes.

I just wanted to thank the Chair and the Ranking Member for this effort. It is unglamorous work, but it is necessary. And we are way behind, as the Chairman knows, on this effort; and that we have taken this step is to be celebrated, and I hope that we will be able to accomplish more as the 111th Congress proceeds. As I say, it is not glamorous work but exceedingly important.

And I wanted to thank the Chairman and Ranking Member, and I yield back.

RPTS JOHNSON

DCMN SECKMAN

[2:47 p.m.]

Chairman Conyers. We thank the gentlelady from California.

Are there any amendments? If not, a reporting quorum being present, the question is on reporting the bill, as amended, favorably to the House.

Those in favor say aye.

Those opposed, no.

The ayes have it.

The bill is ordered reported favorably. Members will have 2 legislative days to submit views.

Pursuant to notice, the Chair calls the bill H.R. 1139, the COPS Improvement Act of 2009, for purposes of markup, and I invite the clerk to report the bill.

The Clerk. H.R. 1139, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enhance the COPS ON THE BEAT grant program, and for other purposes.

[The information follows:]

***** INSERT 2-1 *****

Chairman Conyers. Without objection, the bill will be considered as read and open for amendment at any point.

And on behalf of the majority, I invite the Chair of the Crime Subcommittee to make a statement.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, H.R. 1139, the COPS Improvement Act of 2009, was introduced on February 23rd by the gentleman from New York. The bill has a great deal of support, with 40 original cosponsors, including a number on the committee. It reauthorizes the COPS bill.

And Mr. Chairman, I ask unanimous consent to revise and extend and enter a statement.

[The statement of Mr. Scott follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection.

The Chair is pleased to recognize the ranking member, the gentleman from Texas.

Mr. Smith. Mr. Chairman, in the last Congress, this committee authorized \$1.15 billion in spending for the COPS program. I supported that proposal because the majority agreed to reinstate several important and fiscally responsible provisions of that bill.

Today's bill nearly triples COPS spending to \$3.05 billion. Other than the President's example of excessive spending, what could possibly be the justification for this kind of increase?

Are crime rates going up, for example? Well, according to the FBI, they are not. Overall crime rates are down nationwide. From 1997 to 2006, the violent and property crime rates fell by 22 percent. In the first 6 months of 2008, violent crime decreased by 3.5 percent and property crime by 2.5 percent. Although some police departments, 44 percent, attribute a slight increase in certain property crimes to the economic downturn, most departments, 55 percent, do not.

If crime hasn't tripled, why should the spending? Clearly, the crime rate is not a justification for throwing away taxpayer dollars. Perhaps the increase in spending is designed to generate jobs. But when funds previously have been authorized for COPS jobs, many law enforcement agencies use the money for other purposes. Audits by the Justice Department's Inspector General and the GAO found that thousands of hires funded by the COPS program never occurred because law enforcement agencies used COPS funding to cover their budget shortfalls.

The bill before us today increases Federal spending without any demonstrated need. It is like giving huge bonuses to AIG executives. There is no justification other than

an insatiable desire to spend taxpayers' money. It is inexcusable to consider a bill costing the American taxpayers \$3 billion without a single hearing, with no input from any of the interested parties, and without any opportunity to discuss and evaluate how the money is going to be spent.

We should oppose the bill, Mr. Chairman, and I will yield back.

Mr. Pierluisi. Mr. Chairman?

Chairman Conyers. The Chair -- who seeks recognition?

Mr. Pierluisi. I am seeking.

Chairman Conyers. Are there any amendments to be reported to this?

Mr. Weiner. Mr. Chairman?

Chairman Conyers. The Chair recognizes the gentleman from New York, Mr.

Weiner.

Mr. Weiner. Thank you, Mr. Chairman.

I offer two amendments en bloc, Jackson Lee 003 and Weiner 001 --

Chairman Conyers. Without objection, the clerk will --

Mr. Weiner. -- and request unanimous consent they be considered as read. And I will explain them if I could.

Chairman Conyers. The gentleman is recognized.

Wait, she has got to read the title.

Mr. Weiner. Okay.

The Clerk. Amendments to H.R. 1139 offered by Ms. Jackson Lee of Texas, Mr. Weiner of New York.

[The information follows:]

***** INSERT 2-2 *****

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

Mr. Weiner. Thank you, Mr. Chairman.

First of all, I want to thank you and the chairman of the Crime Subcommittee and all of my colleagues, save maybe one or two, that voted for a reauthorization very similar to this in the last Congress that passed 381 to 34.

You know, a singular example of a program that has worked exactly how it was intended is the COPS program. If you see this chart that we have up here, that frankly almost a direct relationship between the increase in number of police officers hired under the COPS program as it was originally authorized from 1995 to 1999 and the reduction in the amount of indexed crimes as reported by the FBI.

The COPS program works. We hired 117,000 police officers, and it was a program that was designed that it was a very democratic program, as you heard me say before, with a small "d." My colleague, Mr. Jordan, his district got 131 officers, including 12 that went to a small police department in Lima, Ohio. Mr. Gohmert got 171 officers in his district, including 7 to Gilmer, Texas. That is why this reauthorization has such broad bipartisan support and such broad support among just about every police organization around.

We make some changes, including some additional changes that we make with this amendment. First of all, in recognition of what Mr. Smith said about the size of the bill and in consultation with the executive, with the Obama administration, we reduce with this amendment from 100,000 new police officers to 50,000.

We also have some changes in the bill to reflect some of the concerns made by police departments around the country that, you know what, we don't need additional officers, but we do need help with technology. We have money included for that.

And many prosecutors have said we need additional prosecution help to deal with the work that these police officers are doing.

A couple of other things we have done. Again, in reflection of our bipartisan discussions, an initiative to encourage the hiring of former troops, returning troops to be hired for the police. And also an increased amount of percentage of the bill that goes towards training.

I have to object in the strongest way to the remarks of Mr. Smith equating police officers that we hire with the COPS program to the AIG bailout. It simply misunderstands the work that our law enforcement folks do. They work with an increasing portfolio of things that they need to do.

We the Federal Government are saying every single day that homeland security starts in our home towns. What the COPS program recognizes is that those hometown police departments are under extraordinary strain. We included language in the bill, for example, dealing with the explosion of meth, dealing with the problems we have had in training for law enforcement dealing with antiterrorism. And as you see this chart here, and I can have a copy of it distributed, this is not a program that concentrates; 6,000 police officers were hired in Texas, 699 in the middle of the country, some of the smaller States and less populated States.

This program has worked. And let me just say, as I conclude, the purpose here is to reauthorize a program now that we provided funds for in the stimulus, basically providing authorization. We should jealously protect our authorizing right here as an authorizing committee and not just contract this out to the appropriators. This bill does it. When it was passed in the 110th Congress, the vote was 381 to 34, and it had, as I said, broad bipartisan support.

And let me conclude with this thought. There is no doubt about it that law

enforcement in 2009, in this generation of the challenges that we have, is a Federal responsibility. For those of you who don't believe that we have any role in law enforcement, this bill is not for you. But if you believe that we should return to our localities and say, here is how we are helping you with these immigration challenges, here is how we are helping you with these terrorism challenges, here is how we are helping you with meth, the way we are doing it is putting boots on the ground. The COPS program has worked. And with this reauthorization, it will be able to continue. And I urge support of the amendment and support of the underlying bill, and I yield back my time.

Mr. Pierluisi. Mr. Chairman?

Chairman Conyers. Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, I support both amendments, but let me speak specifically to the Weiner amendment, that component of the two.

Certainly the Weiner amendment is an improvement over the bill as it was introduced. However, nothing has changed from my opening remarks a few minutes ago except the percentage of increase, which is now 60 percent. With this amendment, we will be authorizing an additional \$753 million from the current authorization but with no apparent justification.

This Congress seems determined to solve the economic crisis, including the budget woes of police departments, by continuing to spend more and more Federal money. What we seem to lose sight of is that we don't have an endless supply of money, and that the money we are spending belongs to America's taxpayers, not the government. I would have preferred to see the authorization level returned to the levels proposed in the 110th Congress or else have a subcommittee hearing and a subcommittee markup to find out what the legitimate needs are for a 60 percent or 260 percent increase in funding. In my

judgment, it doesn't reflect well on this committee that we have not done so.

Mr. Chairman, I think this amendment is a step in the right direction. It still doesn't go far enough, but I do support it, and I will yield back.

Mr. Pierluisi. Mr. Chairman?

Chairman Conyers. Mr. Pierluisi.

Mr. Pierluisi. I move to strike the last word.

Chairman Conyers. The gentleman is recognized.

Mr. Pierluisi. Thank you, Mr. Chairman.

I want to express my strong support for H.R. 1139, as well as the amendment that was now proposed by Congressman Weiner. In fact, I commend him for doing this.

The COPS program was created by Title 1 of the Violent Crime Control and Law Enforcement Act of 1994. I was Attorney General of Puerto Rico at the time, and I am proud to have worked with the Clinton administration to help secure passage of that bill. Actually, I was at the White House when he signed it, the crime bill.

As someone whose own family has been deeply touched by violent crime and who has spent countless hours talking with families that have been similarly affected, I am unyielding in my belief that the most basic human right a government owes to its citizens is the right to personal security. And although I might be concerned about fiscal constraints, I think that if there is any area in which we have to go the extra mile, it is in the fight against crime.

Whether you live in Detroit, San Antonio, Queens or San Juan, you deserve to feel safe in your own home and in your community. The COPS program is rooted in this simple premise and has done much to make it a reality. The mission of the COPS program is to enhance the security of our citizens.

Under the program, the Federal Government awards grants to State and local law

enforcement agencies so they can hire and train police officers, purchase and use new crime-fighting technologies, and develop innovative policing strategies. The increase in annual funding authorized by the amendment that Mr. Weiner offers today will enable law enforcement agencies to hire 10,000 new officers a year and 50,000 officers over the life of the bill.

Actually, since the chart that was just shown to this committee left Puerto Rico out, let me tell you some statistics about Puerto Rico and this program in particular. To date, over \$160 million in COPS grants have been awarded to law enforcement agencies in Puerto Rico. These grants have put more than 3,500 new police officers on Puerto Rico's streets. Over \$6 million have gone to improve safety for students and teachers in the island schools. About \$9 million have been awarded for crime-fighting technologies.

Nearly every one of Puerto Rico's 78 municipalities have benefited from the COPS grants. These statistics are heartening, but they cannot adequately capture the impact the COPS funding has had for my constituents. The number of lives saved, the number of crimes prevented, and the number of families spared the pain of losing a loved one, these numbers are simply beyond calculation.

So thank you, again, Mr. Weiner.

And I thank you, Mr. Chairman.

[The statement of Mr. Pierluisi follows:]

***** INSERT 2-X *****

Mr. Lungren. Mr. Chairman?

Chairman Conyers. Is there any further discussion?

Yes, Mr. Lungren.

Mr. Lungren. Mr. Chairman, I would like to strike the last word.

Chairman Conyers. The gentleman is recognized.

Mr. Lungren. Mr. Chairman, if anybody wants to know why the Federal budget grows and grows and grows, if anybody wants to know why we have deficit after deficit after deficit, all they have to do is look at the COPS program, not because of the amount that it spends but because we constantly make our decisions based on our intentions, our good feelings, our feeling that we can deal with everything.

The gentleman, Mr. Weiner, from New York said that, if you don't understand that law enforcement is a Federal responsibility, then you just don't get it. Well, I have read the Constitution. Our Founding Fathers specifically wanted to resist the Federal Government for having the overwhelming power of designating safety in the streets provided by local law enforcement officers. They thought the diffusion of power, particularly the diffusion of the power of police, was essential to the freedom of America. That is why we have always resisted having a national police force. That is why we have always resisted the idea, for instance, of having law enforcement enforced by military on the Federal level, except in extreme circumstances.

In 1994, the Clinton administration provided this program as a seed program, a seed program. It was advertised as an effort to try and deal with an immediate, acute problem. We needed to have some additional law enforcement personnel on the streets. And they said, we, the Federal Government, will pay 100 percent of the cost of these police officers the first year; 75 percent the second year; 50 percent the third year;

25 percent the fourth year; and zero the following years. It was to provide an incentive for local law enforcement to hire additional police officers.

What happens now? What happens now is we have now made this a permanent program in which people elected at the local level are not doing the essentials that they are elected to do, which is to provide for that amount of security that is necessary. Why? Because they are doing everything else. They are doing everything else. And so they cut back on sheriffs departments. They cut back on police, and in part, they believe they will be bailed out by the Federal Government coming in.

Now, all I can say is that there are targeted programs that assist local law enforcement, particularly when you have multi jurisdictional task forces, where you have the FBI working with the Bureau of Alcohol, Tobacco, and Firearms, working with the DEA, working with your State law enforcement, working with your local law enforcement in a coordinated effort where you do have a synergy that is created. That is different than saying the Federal Government has a first-line responsibility for providing for the essentials of law enforcement across the country.

What that does is totally destroys the relationship between or among the different levels of government and says that the Federal Government has the responsibility for doing the essentials of what local government is supposed to do. Again, voting against this, are we, as Mr. Weiner suggests, not supporting local law enforcement? Are we not concerned about crime? No, we are concerned about the proper relationship of the governmental entities, about the most effective way by which you can create collaboration and synergy. But you don't do it by saying that we are going to be the ones that actually pay for the law officers on the street.

When you divide responsibility from accountability, you look for problems. And here we are once again saying that we have an obligation to provide that which they should

provide at the local level, and therefore, the Federal Government is responsible for raising the funds to pay for the officers because the local government won't do that.

When I go home, the average person that I meet is both a Federal taxpayer, a State taxpayer, a local taxpayer. And somehow they are not divided up. And so this cant that we hear every year that it is our responsibility, and if we don't do this, we don't recognize the problem of law enforcement, is a bogus argument.

And frankly, I have been involved in this for the last 30 years. I have been involved with law enforcement intimately. And if you really want to have some impact, let's focus on those grant programs that cause collaboration among the different law enforcement agencies, as opposed to us suggesting we are the responsible party for funding this.

Chairman Conyers. The gentleman's time has expired.

Mr. Lungren. I guess Mr. Weiner has decided how we are going to do it, so I will yield back.

Chairman Conyers. I thank the gentleman.

And I apologize to Judge Gohmert and recognize him at this time now.

Wait a minute.

Mr. Gohmert. Are we still on the amendment?

Chairman Conyers. Yes, sir, we are.

You don't want to be recognized? Okay. All right.

The Weiner amendments will now be voted upon. All in favor say aye.

All opposed say no.

The ayes have it, and the amendments carry.

Judge Gohmert. We have 11 minutes left.

Mr. Gohmert. Thank you, Mr. Chairman. And I will be as quick as I can.

Chairman Conyers. I apologize.

Mr. Gohmert. But as ranking member on Crime, Terrorism, and Homeland Security, I do appreciate the intention and effort behind this bill. It is true there have been officers that have been hired in my district. Some of the local entities that have done so really struggle once the Federal money runs out. The intention was to get them to hire people and then in a position a few years down the road where they could take over the full pay. But that has not been able to happen. That is not what happens.

So here we are; we have had a billion dollars that was appropriated as part of the economic stimulus. We appropriated that money, free money, no strings attached. We removed the 25 percent State matching requirement, cap on grant awards, and so because of that, the number of cops that will be able to be hired, according to the COPS office at the Department of Justice, is 6,000. So we spent a billion dollars. We don't have to hire 5,500 police officers, up to 6,000 maybe. If the majority had kept the matching requirement in place, that 1 billion would have hired 13,000 officers.

Chairman Conyers. Excuse me, Judge Gohmert, we have 9 minutes remaining.

Mr. Gohmert. All right. I am hurrying. But throwing more money into an enormous Federal program without, again, the hearing that brings the evidence we need to see where it is doing the most good, where there has been permanent law enforcement instead of Band-Aids would be more helpful. And I am afraid the bottom line effect, whether it is intended or not, and I am sure -- well, the bottom line effect, though, is to give more Federal control of local and State issues like law enforcement.

It is more control to the Federal Government over everything. And if the Federal Government programs were only about helping rather than giving the bony fingers of the Federal Government's hand, extending them into the local and State issues, then we would find a way to give tax breaks to those areas that increase the spending on these programs so

they use the money that we make sure they have without the Federal control. But that is what it is about.

And so it would be better if it were their own money, without the Federal Government dictating, but we are going to give more and more Federal control at a time we have less and less Federal money.

I yield back.

Chairman Conyers. Thank you, Judge Gohmert. I know you could have made a longer statement.

The Chair recognizes Adam Schiff.

Mr. Schiff. Mr. Chairman, I have an amendment at the desk, number two.

Chairman Conyers. The clerk will report the amendment.

The Clerk. Amendment to H.R. 1139, offered by Mr. Schiff of California.

[The information follows:]

***** INSERT 2-3 *****

Chairman Conyers. Without objection, the amendment will be considered as read. The gentleman is recognized in support of his amendment.

Mr. Schiff. Thank you, Mr. Chairman.

I am going to be very brief on this, as I understand that the author is amenable to the amendment.

This amendment would improve the underlying bill by extending the grant-making authority of COPS to include grants to States and localities for the purpose of hiring forensic analysts and laboratory personnel to work on DNA and other forensic issues. With the tremendous backlog that we have, this is a purpose well within the parameters of the COPS program, and I would urge its adoption.

Chairman Conyers. I thank the gentleman. Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, I support this amendment. The Nation's forensic labs are inundated with thousands of untested DNA samples, both for unsolved cases and post-conviction cases. The Federal Government has not quantified the country's overall DNA evidence backlog since 2003, when it stood at 524,000 cases. But researchers estimate that it still exceeds 400,000. This is due in large part to an expansion of DNA testing to include not just felonies but misdemeanors and arrestees as well. And these statistics do not even include the numerous other types of forensic evidence that labs are charged with testing. There is clearly a need for additional forensic technicians.

The Department of Justice currently operates the Forensic DNA Backlog Reduction Program to assist eligible States and units of local government to reduce forensic DNA sample turnaround time, increase the throughput of public DNA laboratories, and reduce DNA forensic case work backlogs. This amendment will help in respect to all those

backlogs that we have, and I urge its adoption.

Chairman Conyers. I thank the gentleman.

The question is on the amendment. All those in favor say aye.

All those opposed say no.

The ayes have it. The amendment is agreed to.

Adam Schiff.

Mr. Schiff. Thank you, Mr. Chairman.

I have an amendment at the desk, amendment number three.

Chairman Conyers. The clerk will report.

Mr. Weiner. Reserve a point of order, Mr. Chairman.

The Clerk. Amendment to H.R. --

Mr. Schiff. Mr. Chairman, may the amendment be deemed as read?

Chairman Conyers. Yes, the amendment will be considered as read.

[The information follows:]

***** INSERT 2-4 *****

Mr. Schiff. Thank you, Mr. Chairman. I will be very brief. The amendment --
Chairman Conyers. Mr. Weiner reserves a point of order.

Mr. Schiff. Mr. Chairman, I will be very brief. The amendment builds upon the good work done by my colleague from New York, Mr. Weiner, adopting the reforms of the COPS program.

It also joins it with a reauthorization of JJDP, which provides the funding for the Juvenile Justice Prevention Programs. This would also express a strong policy desire of a parity in funding between preventive efforts and law enforcement efforts by matching COPS funds with JJDP, now called KIDS funds.

This is similar to an approach that we used in California in a bill I authored with my colleague Cardenas, the Schiff-Cardenas Crime Prevention Act, which matched COPS funds dollar for dollar with prevention funds. I am informed by the committee parliamentarian that there is a germaneness issue, given that this would be referred as well to the Ed and Labor Committee. And I would ask the Chair if you would be willing to join me in encouraging the Ed and Labor Committee to take up the joint authorization.

Chairman Conyers. If the gentleman will yield, I would agree with that.

Mr. Schiff. I thank the Chairman, and we will work with you on a letter, if that would be all right, to Ed and Labor Committee on a joint authorization.

Chairman Conyers. Yes, I would concur.

Mr. Schiff. I appreciate the chairman's help on that and look forward to working with him on that and will withdraw the amendment.

Chairman Conyers. Well, the committee now does not have a reporting quorum. So we will conclude at this point. We will come back as quickly as we can to continue to finish up on H.R. -- no, not today -- H.R. 1139. I thank the gentlemen and the ladies for

their cooperation. And there being no further business, the committee is adjourned.

[Whereupon, at 3:13 p.m., the committee was adjourned.]