

1 MORNINGSIDE PARTNERS, LLC

2 MARKUP OF H.R. 3609, THE "EMERGENCY HOME
3 OWNERSHIP AND MORTGAGE EQUITY PROTECTION
4 ACT OF 2007"; H.R. 1312, THE "ARTS REQUIRE
5 TIMELY SERVICE (ARTS) ACT"; H.R. 1759, THE
6 "MANAGING ARSON THROUGH CRIMINAL HISTORY
7 (MATCH) ACT OF 2007"; H.R. 2489, THE
8 "GENOCIDE ACCOUNTABILITY ACT OF 2007";
9 H.R. 3971, THE "DEATH IN CUSTODY REPORTING
10 ACT OF 2007"; H.R. 3992, THE "MENTALLY ILL
11 OFFENDER TREATMENT AND CRIME REDUCTION
12 REAUTHORIZATION AND IMPROVEMENT ACT OF 2007";
13 AND H.R. 971, THE "COMMUNITY PHARMACY
14 FAIRNESS ACT OF 2007"
15 Wednesday, November 7, 2007
16 House of Representatives,
17 Committee on the Judiciary,
18 Washington, D.C.

19 The committee met, pursuant to call, at 1:10 p.m., in
20 Room 2141, Rayburn House Office Building, Hon. John Conyers
21 [chairman of the committee] presiding.

22 Present: Representatives Conyers, Berman, Nadler,
23 Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler,
24 Sanchez, Cohen, Johnson, Sutton, Sherman, Weiner, Schiff,
25 Davis, Wasserman Schultz, Smith, Sensenbrenner Jr., Coble,
26 Gallegly, Goodlatte, Chabot, Lungren, Cannon, Keller, Issa,
27 Pence, Forbes, King, Feeney, Franks, Gohmert, and Jordan.

28 Staff present: Perry Apelbaum, Staff Director-Chief
29 Counsel; Ted Kalo, General Counsel-Deputy Staff Director;
30 Joseph Gibson, Chief Minority Counsel; George Slover,
31 Legislative Counsel-Parliamentarian; and Anita L. Johnson,
32 Clerk.

33 Chairman Conyers. [Presiding.] Good afternoon. The
34 committee will come to order.

35 We have seven measures before us. I would like to
36 begin with where we left off, and that was with H.R. 1312,
37 the Arts Require Timely Service Act. We had just adopted an
38 amendment by the gentleman from California, Howard Berman,
39 and the chair recognizes Steve King of Iowa for any amendment
40 or for whatever purposes he would like to be recognized.

41 Mr. King. Thank you, Mr. Chairman. I have an amendment
42 at the desk, number two.

43 Mr. Berman. Mr. Chairman, I reserve a point of order.

44 Chairman Conyers. Mr. Berman reserves a point of order.

45 The clerk will report the bill.

46 The Clerk. Amendment to H.R. 1312 offered by Mr. King
47 of Iowa. "Page 3, line 10, after (a qualified nonprofit
48 organization), insert 'whose total revenue in the taxable
49 year preceding the calendar year—"

50 [The amendment by Mr. King follows:]

51 ***** INSERT *****

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

55 Mr. King. Thank you, Mr. Chairman. I would like to
56 remind the committee the bill that was before us when we
57 broke from this subject matter, and that is a bill that
58 waives the premium processing fee for those kind of visas
59 that would bring in the highly talented performing artists to
60 places like the New York Philharmonic or the Boston Symphony,
61 and also on down the line with the smaller type of
62 organizations that we might have in smaller cities.

63 The point that I seek to make is that this is a zero-sum
64 game, that whenever we provide out-of-order premium
65 processing and waive the fee for that premium processing,
66 then those fees have to go against the other applicants that
67 are applying for other types of visas. I would submit that
68 there are many kinds of applicants for many kinds of visas
69 who are less financially able than many of the foundations
70 that would be exempted from the premium processing fees by
71 this type of a bill.

72 So in the previous session, I offered an amendment to
73 exempt those organizations that have \$1 million in revenue
74 from being waived from the premium processing fee, and let
75 them pay the ordinary higher dollar premium processing fee
76 for their applicants. That amendment was defeated, largely

77 on a party-line vote here in the last session of the
78 Judiciary Committee. This amendment speaks to the \$5
79 million.

80 So if you are a foundation, if you are a philharmonic,
81 if you are an organization that promotes the arts and your
82 revenue is less than \$5 million a year, then this amendment
83 is for you because you would be exempted from premium
84 processing fees, and you could bring in your artists with a
85 waiver of those premium processing fees. Those who have a
86 revenue stream that is larger than \$5 million would then
87 still have to pay that fee as is current law.

88 Of all of the debates that come forward in this
89 committee, this is an elitist bill. This is a bill that
90 waives appropriate fees for accelerated processing of the
91 visas for the artists who would come to perform. Many times,
92 this is going to foundations that have hundreds of millions
93 of dollars in assets, that have hundreds of millions of
94 dollars in revenue. And if they can't figure out how to get
95 their premium processing fee for their performing artists out
96 of the ticket prices of the people that contribute those
97 hundreds of millions of dollars and come in limousines
98 wearing tuxedos, then we are going it out of the hands and
99 the pockets of people that are wearing blue jeans and tennis
100 shoes to fund the fees to provide the arts for the elitists
101 in America.

102 I am all for elitism. I think we ought to have that
103 kind of an economy that will roll these kinds of arts. I
104 think it is wonderful that we have people that have the
105 wherewithal to climb in the limousine and put on their
106 tuxedo, but I don't think that they should be getting some
107 kind of a discount at the expense of the people that are
108 trying to achieve that level of prosperity.

109 So that is the reason and the purpose for this
110 amendment. The million dollars, as I spoke earlier, was
111 turned down by this committee, largely on a party-line vote.
112 This is the amendment of \$5 million. We would waive the
113 premium processing fee up to \$5 million and at that point
114 then if this amendment is adopted, I am willing to offer no
115 further amendments and allow this committee to move forward
116 with its business.

117 So that would conclude my opening remarks. I urge
118 adoption of my amendment, and I would then, Mr. Chairman,
119 yield back the balance of my time.

120 Mr. Berman. Would you yield?

121 Mr. King. Having not quite yielded my time back, I
122 would be happy to yield.

123 Mr. Berman. Is the gentleman aware that he is seeking
124 to amend a part of the bill that is no longer in the bill as
125 a result of the Berman-Smith amendment that was adopted at
126 the previous markup session? You have already had a vote. I

127 am opposed to putting in a monetary threshold on this. While
128 generally, I am attracted to the notion of "soak the rich,"
129 as you seem to be, putting that into the context of arts
130 organizations which are nonprofit, I don't think makes sense.
131 Some groups raise huge amounts of money and have large
132 numbers of events with large numbers of people for whom a
133 \$1,000 processing fee for each visa ends up a huge amount of
134 money. So I don't think that approach works.

135 My only point is that unless the gentleman wants to
136 redraft his amendments, his amendment can't work in this bill
137 because he is amending something which doesn't exist in this
138 bill.

139 Mr. King. Reclaiming my time and speaking to the
140 subject very well brought up by the gentleman from
141 California, having become just immediately aware of that
142 circumstance, I would ask consent to be able to redraft my
143 amendment so we can draft it to the amended portion of the
144 Berman-Smith portion of the bill.

145 Chairman Conyers. Without objection, the gentleman is
146 allowed to withdraw his amendment.

147 We will during the passage of time, you can alert me
148 when we will be ready to go again.

149 Mr. King. Mr. Chairman, I have an amendment at the desk
150 that is adapted to the issue that was raised by the
151 gentleman, Mr. Berman.

152 Chairman Conyers. All right.

153 The clerk will report the amendment. The clerk is going
154 to report the amendment first.

155 The Clerk. Amendment to H.R. 1312 offered by Mr. King
156 of Iowa. "Insert in the appropriate place after 'a qualified
157 nonprofit organization' insert 'whose total revenue in the
158 taxable year preceding the calendar year in which the
159 petition is submitted was less than \$5 million.' Strike 'a
160 qualified nonprofit,' and insert 'such an-' "

161 [The amendment by Mr. King follows:]

162 ***** INSERT *****

163 Ms. Lofgren. I would like to reserve a point of order,
164 Mr. Chairman.

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

167 Mr. King. Thank you, Mr. Chairman. I have spoken to
168 the subject and the substance of this amendment. I could
169 expand upon this debate here today, but I think in the
170 interests of expediency, I would instead yield back the
171 balance of my time on this amendment for the purposes of
172 hearing the reserved point of order from the gentlelady, or
173 the gentleman from—

174 Mr. Berman. Mr. Chairman, can one offer an amendment
175 that says "insert in the appropriate place"?

176 Ms. Lofgren. Mr. Berman, would you yield on that,
177 because actually that was my—I didn't know whether it was a
178 point of order or a point of parliamentary procedure. I
179 oppose it on the substance, but I don't think this is
180 properly drafted. I hate to be a stickler, but I don't think
181 this is good legislative practice. We could argue on the
182 merits, but I do think that it is important that the
183 committee have some standards for legislative drafting. I
184 would suggest that "in the appropriate place" doesn't meet
185 that standard and that we should ask unanimous consent for
186 the gentleman to withdraw it and re-redraft this
187 appropriately.

188 Mr. Berman. Would the gentlelady yield?

189 Ms. Lofgren. I would yield.

190 Mr. Berman. I would urge the gentleman either to give
191 it up or to redraft it. If it was my choice, you would give
192 it up, because you are still gearing this to language, a
193 qualified nonprofit organization, that is not in the bill.
194 We got rid of the concept of a qualified nonprofit
195 organization, working closely with the ranking member of the
196 committee. We substituted language limiting to an arts
197 organization described under certain sections of the Internal
198 Revenue Code. There are many nonprofit organizations that
199 would not be empowered by this bill to file these petitions.
200 So I would suggest if you don't want to give it all up,
201 withdraw the amendment and then get it into the right form.
202 We could go to another bill and come back. I do hope we come
203 back since this has been a very—we are tailing along here on
204 this markup.

205 Chairman Conyers. In agreement with the gentleman from
206 Iowa, we will withdraw the amendment, move to another measure
207 that is waiting and come back to it.

208 Mr. King. I would agree with the chairman, and thank
209 you.

210 I yield back.

211 Chairman Conyers. You are welcome.

212 We would like now, pursuant to notice, to call up H.R.

213 1759, Managing Arson Through Criminal History, for purposes
214 of markup. I ask the clerk to report the bill please.

215 The Clerk. H.R. 1759, a bill to establish guidelines
216 and incentives for states to establish arsonist registries
217 and to require the attorney general to establish a national
218 arsonist registry and notification program and for other
219 purposes.

220 [The bill follows:]

221 ***** INSERT *****

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

224 I will ask Chairman Scott and then Ranking Member Smith
225 to describe the bill in that order.

226 Chairman Scott?

227 Mr. Scott. Thank you, Mr. Chairman. A parliamentary
228 inquiry, has a motion been made to favorably report the bill?

229 Chairman Conyers. Yes.

230 Mr. Scott. Okay. Thank you, Mr. Chairman. I want to
231 thank you, Mr. Chairman, for holding today's markup.
232 According to the United States Fire Administration, arson is
233 the leading cause of fire in the United States, causing over
234 2,000 injuries and 4,000 deaths annually. It also results in
235 an annual \$1.4 billion in property losses and is one of the
236 most difficult crimes to prosecute, with only 16 percent of
237 cases resulting in any arrests and only 2 percent resulting
238 in an actual conviction.

239 Although arson places a tremendous cost on property and
240 lives every year, there is no national registry requiring
241 convicted arsonists to notify law enforcements of their
242 residence, place of employment or other information that
243 would aid law enforcement in identifying offenders with a
244 demonstrated proclivity for committing arson offenses.

245 To aid law enforcement in identifying criminal activity
246 related to arson, the gentlelady from California, Ms. Bono,

247 introduced H.R. 1759, the MATCH Act of 2007, which would
248 establish a comprehensive nationwide network registry
249 database maintained by the attorney general that would track
250 convicted arsonists. The bill has 52 cosponsors with broad
251 bipartisan support and would mandate that convicted arsonists
252 register in each jurisdiction in which he or she resides, is
253 an employee or a student at an educational institution.

254 Proponents of H.R. 1759 believe that with such
255 information, law enforcement authorities would be able to
256 identify those who have a demonstrated proclivity for arson
257 crimes and are residing, working or studying in the area in
258 which an arson fire occurs. In turn, law enforcement
259 authorities could solve more arson crimes and possibly
260 prevent them because potential arsonists know that they are
261 registered with local authorities and would immediately fall
262 under suspicion. The result would be presumably an expected
263 reduction in the toll in property and on lives that arson
264 fires take in the United States.

265 On the other hand, Mr. Chairman, opponents of H.R. 1759
266 object to the bill on a number of constitutional and policy-
267 based grounds. First, opponents find that the bill violates
268 separation of powers by impermissibly delegating legislative
269 power to the attorney general. Opponents also find that H.R.
270 1759 could lead to violations of the ex post facto clause of
271 the Constitution and that the bill would exceed Congress's

272 authority under the commerce clause. Further, they believe
273 that the bill would be an improper exercise of Congress's
274 spending powers. And finally, that the bill is broader than
275 necessary to accomplish valid law enforcement purposes.

276 Mr. Chairman, I also have concerns about the registry's
277 potential when considering the cost of its implementation.
278 In the subcommittee, witnesses testified that California
279 already has a limited arson registry in use, but to date has
280 not solved any arson crimes by using it. Perhaps at this
281 point, a study on registries and their effectiveness would be
282 more prudent use of resources than fully investing in a
283 national arson registry. Of course, this is not to say, Mr.
284 Chairman, that a registry cannot work, only that because we
285 don't know its full potential, creating one at this point
286 would be premature.

287 I understand that the gentleman from California, Mr.
288 Schiff, will offer a substitute amendment which will improve
289 the bill. I intend to support the amendment and offer
290 several amendments to the substitute, which I believe would
291 further improve it, but at this point, Mr. Chairman, I am not
292 in support of the legislation.

293 With that, I yield back the balance of my time.

294 Chairman Conyers. Thank you very much.

295 Lamar Smith, ranking member?

296 Mr. Smith. Thank you, Mr. Chairman.

297 Southern California has been devastated in recent weeks
298 by nearly two dozen wildfires. Investigations are ongoing
299 into the cause of these fires, and to date two fires have
300 been identified as arson, including the San Diego fire, which
301 was ignited over 2 weeks ago and has burned over 30,000
302 acres.

303 The Managing Arson Through Criminal History, or MATCH
304 Act, establishes a national arson registry. This registry
305 will help America's law enforcement and fire officials
306 identify and apprehend arsonists. The substitute amendment
307 to the MATCH Act that will be offered today makes common
308 sense improvements and technical corrections to this
309 legislation. I urge my colleagues to support the amendment
310 and the underlying bill.

311 Mr. Chairman, I yield the balance of my time to the
312 gentleman from Virginia, Mr. Forbes, the ranking member of
313 the Crime Subcommittee.

314 Mr. Forbes. Thank you, Ranking Member Smith.

315 At a hearing before the Crime Subcommittee yesterday, we
316 heard first-hand accounts from two of California's brave fire
317 chiefs who have been confronted in recent weeks with nearly
318 two dozen wildfires. Fourteen people have been killed by
319 these fires, and thousands of homes have been destroyed. Two
320 fires, the Santiago fire in Orange County and the Buckwheat
321 fire in Los Angeles, were set deliberately. Many arsonists

322 begin by starting small fires and then escalate to larger and
323 larger fires to satisfy their excitement. Yet only 17.1
324 percent of arson offenses result in convictions nationwide.

325 Unfortunately, the evidence needed to convict these
326 arsonists is often destroyed by the fire, and as arsonists
327 become more sophisticated in their techniques, identifying
328 and prosecuting them becomes more challenging. Each year, an
329 estimated 267,000 fires are caused by arson. In recent
330 years, arson has been used to burn churches and to protest
331 urban sprawl, but the ongoing threat remains those who set
332 fires to get a rush and to feed a compulsion. We may never
333 be able to fully prevent wildfires, but we can implement
334 tools to help prevent arsonists, particularly serial
335 arsonists, from eluding law enforcement and escaping
336 punishment.

337 The MATCH Act creates a national arson registry and
338 requires criminal arsonists to report where they live, work
339 and go to school. In addition, the act requires the national
340 database to include finger and palm prints and an up-to-date
341 photograph. The MATCH Act will assist law enforcement
342 officials with identifying and apprehending arsonists,
343 particularly serial arsonists and eco-terrorists.

344 I commend our colleagues from California, Congresswoman
345 Bono and Congressman Schiff, for their dedication to this
346 legislation.

347 Mr. Chairman, I yield back the balance of my time.
348 Chairman Conyers. Thank you very much.
349 I am pleased now to recognize Adam Schiff of California.
350 Mr. Schiff. Thank you, Mr. Chairman.
351 I have an amendment at the desk.
352 Chairman Conyers. The clerk will report the amendment.
353 The Clerk. Amendment in the nature of a substitute to
354 H.R. 1759 offered by Mr. Schiff of California. "Strike all
355 after the enacting clause and insert the following--"

356 [The amendment by Mr. Schiff follows:]

357 ***** INSERT *****

358 Mr. Schiff. Mr. Chairman, I would request that the
359 amendment be deemed as read.

360 Chairman Conyers. Without objection, so ordered. The
361 gentleman is recognized in support of his amendment.

362 Mr. Schiff. Mr. Chairman, I want to thank you for
363 marking up this legislation that Congresswoman Mary Bono and
364 I introduced earlier this year. The Managing Arson Through
365 Criminal History Act, MATCH Act, would create a national
366 arson registry which would provide an important tool for law
367 enforcement officers to track arsonists and share information
368 across jurisdictions. Over recent weeks, the nation saw the
369 destruction caused by the fires in Southern California where
370 over 1,500 homes were destroyed, a half-million acres of land
371 burned, seven people died, 85 more were injured, including 61
372 firefighters who put their lives on the line for us every day
373 to protect our people, our homes and wildlife.

374 When I was a prosecutor in Los Angeles, I saw the
375 benefit of a registry like this in working on an arson case
376 where someone was setting fires in the San Bernardino Forest.
377 It was difficult to find out who was doing it. Arson of that
378 type has an unusual motive, and we were ultimately able to
379 prosecute the case because, in large part by fortuity, we
380 found a probation officer who kept the records of the suspect
381 in the case in his basement, old records from years before
382 when he had been on probation, which showed the same modus

383 operandi the suspect had used in setting fires years earlier,
384 he was using again now.

385 If we had had a registry at that time, and I think in
386 many other cases, where we could much more scientifically
387 than boxes in the basement, identify people who set fires in
388 the same manner using the same incendiary devices, and more
389 than that, to deter people who are arsonists from committing
390 any further arson because they are aware that they are part
391 of the registry, I think it would have an important impact in
392 preventing these fires and also identifying and prosecuting
393 those responsible.

394 The MATCH Act creates a registry that would require
395 convicted arsonists to report where they live, work and go to
396 school. The database would include finger and palm prints of
397 the arsonist, a recent photograph, vehicle information, and
398 criminal history. The length of time that a convicted
399 arsonist would be required to register would be based on how
400 many acts of arson they had committed—5 years for one
401 offense, 10 years for two, and a lifetime for a serial
402 arsonist who has committed three or more offenses.

403 The information would only be available to law
404 enforcement agencies and relevant personnel, and not the
405 general public. Most important, when a convicted arsonist
406 updates his or her information with a change of residence
407 notification, it would be sent to appropriate law enforcement

408 agencies.

409 The amendment in the nature of a substitute which I
410 worked on with subcommittee Chairman Scott and Ranking Member
411 Forbes, would clarify that the information in the registry is
412 for law enforcement use only and will not be disseminated to
413 individuals outside law enforcement. The amendment would
414 also extend the time from 3 to 5 days for convicted arsonists
415 to initially register, and from 3 to 10 days to update their
416 information when moving or changing jobs or school.

417 This amendment would also address juveniles in the
418 database by including only juveniles who have been convicted
419 of arson when they were tried as adults. Like other first-
420 time offenders, juveniles would be subject to the registry
421 requirement for 5 years. However, if the juvenile doesn't
422 commit any other felony in the 5 years after their registry
423 requirements are completed, then the information about them
424 in the registry would be expunged.

425 Additionally, the amendment addresses constitutional
426 concerns raised about the registry by ensuring there is no ex
427 post facto violation. The registry requirements would only
428 apply to individuals that are convicted after the date of
429 enactment. States would be required to include information
430 about individuals convicted in the prior 10 years in the
431 registry and notify those individuals that they are included.

432 When arson has occurred, it is critical to find out who

433 is involved and prevent future acts of arson and prosecute
434 those responsible. The use of a registry of this nature will
435 assist law enforcement in doing exactly that. I appreciate
436 very much the time that the full committee and the
437 subcommittee has devoted to this issue so important to us in
438 California, but important to all of us throughout the 50
439 states.

440 I urge support for the amendment in the nature of a
441 substitute, and yield back the balance of my time.

442 Chairman Conyers. I thank the gentleman.

443 I recognize the ranking member on the subcommittee,
444 Randy Forbes.

445 Mr. Forbes. Thank you, Mr. Chairman.

446 This substitute includes a number of important changes
447 to the bill, and were negotiated, as the gentleman said, on a
448 bipartisan basis among the bill's sponsors, members of the
449 committee, and the committee staff. The substitute clarifies
450 that the arson registry requirements and any penalties for
451 failure to register are prospective and apply only to those
452 convicted of arson after enactment of the bill. The
453 substitute provides the ability of states to include in the
454 arson registry database the records of those convicted of
455 arson within the last 10 years. This will provide law
456 enforcement easier access to prior arson offenses to compare
457 patterns and identify possible suspects.

458 The substitute also limits access to information
459 contained in the arson registry to law enforcement and fire
460 officials. The key purpose of creating this national
461 registry is the exchange of information among those who
462 investigate and prosecute arson. This change ensures that
463 those who need the information have access to it, while
464 preventing others from exploiting or misusing the
465 information.

466 The substitute amendment also clarifies that juveniles
467 are excluded from the registry requirements unless they are
468 tried and convicted as adults. The registry records of such
469 juveniles can be removed from the arson database 5 years
470 after the registry requirement expires, unless the individual
471 commits a subsequent felony offense.

472 I urge my colleagues to support the substitute
473 amendment.

474 Mr. Chairman, I yield back the balance of my time.

475 Chairman Conyers. Thank you very much.

476 The chair recognizes the gentleman from Virginia,
477 Chairman Scott.

478 Mr. Scott. Thank you, Mr. Chairman. I move to strike
479 the last word.

480 Chairman Conyers. Without objection, so ordered, and
481 the gentleman is recognized.

482 Mr. Scott. I thank the gentleman from California for

483 his amendment because it addresses a number of concerns. The
484 amendment would ensure that the data registry would be
485 restricted to law enforcement only, which would reduce the
486 likelihood of harassment and employment discrimination
487 against those who have already served their debt to society.

488 I am also pleased that the gentleman's amendment would
489 prohibit ex post facto registration requirements because
490 aside from the potential unconstitutionality of such a
491 requirement, making such ex post facto requirements would
492 simply be wrong. Again, when one has paid his debt to
493 society and is rehabilitating himself into a productive
494 member of that society, we should not undermine that
495 rehabilitation by forcing the person to be continually
496 involved in the criminal justice system after the fact.

497 Finally, I am pleased that the gentleman's amendment
498 would extend the reporting period from 3 days in all
499 instances to 5 days for the first registration and for 10
500 days in subsequent registration entries. The proposed
501 timeframes are more practical, and the shorter time
502 constraints would needlessly increase the number of violators
503 for not meeting the registration requirements, which would
504 again undermine an individual's efforts to rehabilitation and
505 would cause administrative problems as people would have to
506 be chased after 3 days to make sure that they were properly
507 registered.

508 However, Mr. Chairman, I am concerned that the
509 gentleman's amendment does not sufficiently address other
510 problems with the bill, and I will be introducing amendments
511 to address those at the appropriate time.

512 Thank you, Mr. Chairman. I yield back.

513 Chairman Conyers. This is the appropriate time.

514 Mr. Scott. Thank you, Mr. Chairman.

515 I have an amendment at the desk, amendment number one.

516 Chairman Conyers. All right. The clerk will report the
517 amendment.

518 The Clerk. Amendment offered by Mr. Scott of Virginia
519 to the amendment in the nature of a substitute to H.R. 1759
520 offered by Mr. Schiff. "Page 6, line 8, insert 'or in
521 exchange for the successful completion by the criminal
522 arsonist of a treatment program approved by the court at
523 sentencing.' After--"

524 [The amendment by Mr. Scott follows:]

525 ***** INSERT *****

526 Chairman Conyers. Without objection, the amendment will
527 be considered as read, and Mr. Scott is recognized in support
528 of his amendment.

529 Mr. Scott. Thank you, Mr. Chairman.

530 This amendment to the substitute makes changes in the
531 underlying bill to enable jurisdictions to offer the
532 possibility of treatment to first-time arson offenders,
533 rather than registration in the arson database. Already in
534 the underlying bill, the bill would enable jurisdictions to
535 exempt an offender for substantial assistance in
536 investigation of another offender. This amendment would
537 enable jurisdictions to also offer an exemption to an
538 offender who successfully completes a treatment program.
539 After all, Mr. Chairman, the objective of the registry is not
540 only to solve arson fires, but to prevent them as well. The
541 option of treatment would encourage those who may have a
542 proclivity to setting fires to get the help they need which
543 would do far more for protecting the community against future
544 offenses than exempting someone to the jurisdiction who it
545 has determined is dangerous, but exempts them without
546 treatment for cooperation with law enforcement.

547 Therefore, Mr. Chairman, I would ask my colleagues to
548 support this amendment, and I yield back the balance of my
549 time.

550 Chairman Conyers. I thank the gentleman.

551 I recognize the ranking member from Virginia, Mr.

552 Forbes.

553 Mr. Forbes. Thank you. Mr. Chairman, I move to strike

554 the last word.

555 Chairman Conyers. Without objection, the gentleman is

556 recognized.

557 Mr. Forbes. Mr. Chairman, I reluctantly oppose my

558 friend's amendment to this bill. When you look at the

559 amendment, it talks about successfully completed a treatment

560 program, but there is no mention in there as to what the

561 treatment program might be. So for example, you may have

562 someone who is convicted with an arson charge and a drug

563 charge, and they may be sentenced to a drug treatment

564 program. That is certainly not what we are trying to get at

565 here.

566 Secondly, we have absolutely no evidence, one, that

567 there are such arson treatment programs in existence in the

568 country. Nothing was presented before our committee in the

569 hearing of this bill. And specifically, I would suggest to

570 you that there is no test out there that you can take that

571 says that you will no longer be a sexual predator and you

572 won't have recidivism. At the same time, there is no such

573 test that says you won't commit arson again.

574 The whole purpose of this bill from the testimony that

575 was mentioned to us is to make sure that we catch these

576 arsonists before they commit the third, fourth and fifth
577 fire, which can have absolutely devastating consequences as
578 we have seen in California.

579 So I hope it will be the pleasure of this committee to
580 not support this bill and to keep the amendment as the
581 substitute was agreed to.

582 Chairman Conyers. Mr. Schiff?

583 Mr. Schiff. Thank you, Mr. Chairman.

584 I want to speak very briefly, reluctantly in opposition
585 as well. But at the outset, I wanted to thank my colleague
586 from Virginia, Mr. Scott, for all of the very constructive
587 input in the substitute amendment and the issues that he
588 highlighted, which I think have really improved the bill. I
589 reluctantly oppose the amendment, I guess for a couple of
590 reasons. One is that when someone is convicted of arson,
591 which is a felony, they are going to have that felony record.
592 That record won't be expunged. So when there are future
593 arsons, law enforcement can try if they are successful to
594 find out what convicted arsonists live in the area, but it is
595 very difficult to do. It is a very imperfect system.

596 By taking someone out of the registry, we don't remove
597 their arson conviction, we just make it a lot more difficult
598 for law enforcement to find it. If there are subsequent
599 fires, we make it much more difficult for people to find
600 convicted arsonists who may be in the same area and may have

601 started committing arson again. Because in the substitute
602 amendment we made abundantly clear, this information is only
603 to be used by law enforcement. It is not to be used or
604 accessible to the outside public. Whatever additional
605 privacy interests that the convicted arsonist has in not
606 being in the registry, although being in the database of
607 convicted arsonists, I think is a fairly small privacy
608 interest compared to the interests of hundreds of thousands
609 of people in the state of California, for example, to be
610 secure from fire.

611 So I think weighed in that way, the bipartisan
612 amendments that we were able to hammer out protect the
613 privacy interest, but at the same don't hamper law
614 enforcement should someone who treated or otherwise commits
615 subsequent acts of arson.

616 With that, I yield back, Mr. Chairman.

617 Chairman Conyers. If there are no other speakers on the
618 amendment offered by Mr. Scott, I will call for a voice vote.

619 All those in favor of the amendment indicate by saying
620 "aye."

621 All those opposed indicate by saying "no."

622 The noes have it. The noes have it.

623 The gentleman from Virginia is recognized for another
624 amendment.

625 Mr. Scott. I have an amendment at the desk, number two.

626 Chairman Conyers. The clerk will report Scott amendment
627 number two.

628 The Clerk. Amendment offered by Mr. Scott of Virginia
629 to the amendment in the nature of a substitute to H.R. 1759
630 offered by Mr. Schiff. "Amends section 2(d) to read as
631 follows: (d) duration of registration requirement. A
632 criminal arsonist shall keep--"

633 [The amendment by Mr. Scott follows:]

634 ***** INSERT *****

635 Chairman Conyers. Without objection, the amendment will
636 be considered as read, and the chairman of the subcommittee
637 is recognized in support of his amendment.

638 Mr. Scott. Thank you, Mr. Chairman.

639 This amendment would exclude all people under the age of
640 18 from the requirement to register in the state or national
641 databases. Mr. Chairman, 100 years ago, we set up a separate
642 system for juveniles, separate from the adult system. The
643 objective was to counsel juvenile offenders and help them
644 mature into productive adults while they still had the
645 greatest capacity for accepting that counseling.

646 Requiring young offenders to register in a state or
647 national database counters that concept by ensuring the
648 proper development of juveniles because it is punitive,
649 rather than rehabilitative. Although Representative Schiff's
650 amendment would ensure that only law enforcement officials
651 have access to the information in the registries, law
652 enforcement officers would be able to use that information to
653 label and target youth for further arrests.

654 Mr. Chairman, although the amendment exempts all the
655 juveniles tried as juveniles, this amendment would also
656 exempt those juveniles tried as adults. I would hope that we
657 would adopt this amendment.

658 Chairman Conyers. Thank you, Mr. Scott.

659 Mr. Forbes?

660 Mr. Forbes. Thank you, Mr. Chairman. I move to strike
661 the last word.

662 Mr. Chairman, I also reluctantly ask that we oppose this
663 amendment. Yesterday, we had a compromise to this bill that
664 was worked out among all the parties. This particular
665 amendment would effectively gut a large portion of that
666 compromise. Remember that the juveniles that we are now
667 taking out of the bill with this amendment are basically
668 those juveniles that the state legislature and the state
669 judicial system determined had arson offenses that were so
670 severe that the state felt it was necessary to try them as
671 adults.

672 The other thing that was particularly important in
673 yesterday's hearing was that the testimony that we had was
674 that 50 percent to 55 percent of all arson fires are started
675 by juveniles. While it is true that some of those may simply
676 be adolescent pranks, others of them it is the beginning of
677 an escalating series of arsons and other criminal offenses.
678 If our real purpose of this legislation is to try to get at
679 these arsonists before they are able to set the third,
680 fourth, fifth fire, then I think we are harming the intent of
681 the bill by taking this group of individuals out, and I hope
682 that we will not support the amendment.

683 I yield back the balance of my time.

684 Chairman Conyers. Thank you very much, Mr. Forbes.

685 Mr. Schiff?

686 Mr. Schiff. Thank you, Mr. Chairman. I will be very
687 brief as well.

688 As my colleague from Virginia, Mr. Forbes, mentioned, 49
689 percent of all arson arrests nationwide are of juveniles, and
690 of those, 58 percent of those arrested involve very young
691 juveniles under the age of 15. In the bipartisan compromise
692 we reached yesterday, we have excluded all juveniles that are
693 not tried as adults. But more than that, we also provide
694 that juveniles who are tried as adults and convicted of arson
695 can have their name expunged from the registry and will have
696 it expunged from the registry if 5 years after their
697 registration requirement expires, they haven't committed any
698 further felony.

699 So if a juvenile commits an arson fire and the state
700 deems that it was a kid playing with matches and didn't
701 warrant treatment as an adult, they are excluded from the
702 bill altogether. If the state determines, no, this was a
703 deliberate arson by maybe a 17-year-old who knew what they
704 were doing, and ought to be treated as an adult, they would
705 be treated as an adult. They would be in the registry, but
706 if after the completion of the registration requirements,
707 they go 5 years without a further felony, they get expunged.

708 So I think we have some good protections in the bill,
709 and I appreciate the work that my colleague, Mary Bono, and

710 others did to try to hammer out the compromise, and
711 regrettably oppose the amendment.

712 Chairman Conyers. If there is no further speakers on
713 the amendment, the chair will all the question.

714 Those in favor of Scott amendment number two indicate by
715 saying "aye."

716 And those opposed to Scott two indicate by saying "no."
717 The noes appear to have it and the amendment fails.

718 The gentleman from Virginia is recognized for his third
719 amendment.

720 Mr. Scott. Mr. Chairman, I have an amendment at the
721 desk, amendment number three.

722 Chairman Conyers. The clerk will report the amendment.

723 The Clerk. Amendment offered by Mr. Scott of Virginia
724 to the amendment in the nature of a substitute to H.R. 1759
725 offered by Mr. Schiff. "Section 2(n) is amended by—"

726 [The amendment by Mr. Scott follows:]

727 ***** INSERT *****

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

730 The gentleman from Virginia, Mr. Scott, will be
731 recognized to describe his amendment.

732 Mr. Scott. Thank you, Mr. Chairman.

733 Mr. Chairman, this amendment would ensure that in
734 requiring the states to create an arson offender registry to
735 comply with this act, states should not be unduly burdened
736 financially. Section 3(b) of the bill offers the possibility
737 of grants to apply in jurisdictions to help offset the cost
738 of implementing the registry. But Mr. Chairman, requiring
739 the states to implement an entirely bureaucracy to develop
740 the program, to staff the program, and to oversee the
741 maintenance of the program without funding is unfair. It is
742 an unfunded mandate, and only three states currently have any
743 arson registries, which means 47 must start the program from
744 scratch or risk losing significant funding from other
745 sources. We cannot demand that states take on this burden
746 for programs that they did not request without helping them
747 fund it.

748 Therefore, my amendment would exempt those jurisdictions
749 from implementing the program should they not be awarded a
750 grant to help offset the cost of establishing the database.

751 Mr. Chairman, I hope we would adopt the amendment and I
752 yield back the balance of my time.

753 Chairman Conyers. Thank you, Mr. Scott.

754 Would Mr. Forbes respond to this amendment please?

755 Mr. Forbes. Mr. Chairman, I would like to yield to the
756 cosponsor of the bill, the gentleman from California.

757 Mr. Schiff. Mr. Chairman, may I move to strike the last
758 word?

759 Chairman Conyers. Without objection, so ordered. The
760 gentleman is recognized.

761 Mr. Schiff. Thank you, Mr. Chairman.

762 I can very well see circumstances where a state applies
763 for a grant and, through no fault of the state, doesn't get
764 the grant, and we don't want a state penalized under those
765 circumstances. I am a little concerned about the breadth of
766 the language in this amendment because it doesn't talk at all
767 about the circumstances in which the grant is denied. If a
768 state is not making a good-faith effort to comply, we
769 wouldn't want it excluded for that.

770 If the author of the amendment would be willing to work
771 with us, I would love to see if we can hammer this out and
772 offer it on the floor.

773 Mr. Scott. If the gentleman would yield?

774 Mr. Schiff. I would welcome that opportunity, yes.

775 Mr. Scott. I think if there is an understanding that we
776 will try to, without a commitment of course, but we will try
777 to fix the language so that the states without any assistance

778 would not be placed in a situation where they would have to
779 set it up on their own funds, I would be willing to work with
780 that and see if we can come up with some acceptable language.

781 With that, Mr. Chairman, I would ask unanimous consent
782 to withdraw the amendment.

783 Chairman Conyers. Without objection, so ordered. We
784 hope that we will be able to accommodate the gentleman in
785 this regard.

786 Are there other amendments? If not, we do not have a
787 reporting quorum, so we will—

788 Mr. Watt. Mr. Chairman?

789 Chairman Conyers. Yes, Mr. Mel Watt?

790 Mr. Watt. I move to strike the last word.

791 Chairman Conyers. Fine. The gentleman is recognized.

792 Mr. Watt. Thank you, Mr. Chairman.

793 As the only member of the House who voted against the
794 Megan's law and with a longstanding opposition to the
795 creation of registries, I think I would be remiss if I did
796 not express on the record my serious reservations and
797 opposition to this bill. Perhaps in the subcommittee there
798 has been a record created that once somebody commits an
799 arson, I think that there would be some major predisposition
800 to commit it again. I suspect that that same kind of
801 evidence exists for any criminal violation.

802 So I just want to go on record as expressing my

803 reservations about it. I will look at whatever evidence has
804 been developed at the subcommittee level. I am not on the
805 subcommittee so I wasn't at the hearing, but in the absence
806 of that kind of showing, a major increase in propensity, I
807 think we are on a slippery slope that is going to be
808 difficult for us to get off of. So I just wanted that on the
809 record so that it is transparent.

810 Chairman Conyers. I thank the gentlemen for bringing
811 his reservation to our attention. I hope the members of the
812 committee will work with Mel Watt on this.

813 The vote now occurs on the Schiff amendment.

814 All those in favor indicate by saying "aye."

815 All those opposed indicate by saying "no."

816 The ayes have it and the amendment is adopted.

817 Final reporting will be reserved until we have a
818 reporting quorum, and we will move to the next bill.

819 Pursuant to notice, the chair calls up H.R. 2489, the
820 Genocide Accountability Act for purposes of markup and asks
821 the clerk to report the bill.

822 The Clerk. H.R. 2489, a bill to amend section 1091 of
823 Title 18 United States Code to allow the prosecution of
824 genocide in appropriate circumstances. "Be it enacted by the
825 Senate and House of Representatives of the United States of
826 America—"

827 [The bill follows:]

828 ***** INSERT *****

829 Chairman Conyers. I ask unanimous consent the bill be
830 considered as read, and recognize the chairman of the Crime
831 Committee, Bobby Scott, to describe the bill.

832 Mr. Scott. Thank you, Mr. Chairman. I want to thank
833 you for holding today's markup on this important bill.

834 Mr. Chairman, following the mass atrocities committed
835 before and during World War II, the international community
836 sought to condemn genocide. The slaughtering of individuals
837 simply because they are a member of a certain ethnic or
838 racial group has occurred throughout history and continues
839 today. As we witnessed, as many as 800,000 Tutsis, minority
840 men, women and children were murdered in Rwanda. Mass
841 violence has occurred against civilians in Bosnia, where
842 8,000 Muslim men and boys were systematically executed.

843 The obligations of the United States under the Genocide
844 Convention are in the criminal code Title 18, beginning at
845 section 1091. Genocide is defined as having a specific
846 intent to destroy in whole or in part a national, ethnic,
847 racial or religious group. The code offers severe
848 punishments for anyone who commits genocide within the United
849 States. The law also makes it a federal crime for a U.S.
850 national to commit genocide anywhere in the world.

851 Fortunately, there has not been a need to use the law
852 against anyone now covered by it. However, by only covering
853 genocide if it is committed in this country or committed by a

854 U.S. national, we are leaving a gap which allows non-U.S.
855 persons who commit genocide elsewhere to come into this
856 country with impunity under our laws.

857 To this end, the gentleman from California, Mr. Berman,
858 has introduced the Genocide Accountability Act, H.R. 2489,
859 legislation to amend Title 18 of the United States Code to
860 expand jurisdiction of genocide over the following categories
861 of persons who have committed genocide outside the United
862 States: one, an alien lawfully admitted for permanent
863 residence; two, a stateless person whose habitual residence
864 is in the United States; and three, an individual physically
865 present in the United States.

866 So much of this legislation and many other federal laws,
867 including those laws that criminalize torture, allow for this
868 extraterritorial jurisdiction for crimes committed outside
869 the United States by those presently in the United States.
870 Genocide continues to be a threat in the world and should be,
871 and we should attack it anywhere we find it. We see that the
872 lack of enforcement against genocide evolves most clearly
873 today in Darfur. In that region, hundreds of thousands of
874 innocent people have been killed, raped or tortured, or
875 forced to flee, and over two million people have been driven
876 from their homes.

877 For them, the commitment of "never again" after the
878 Holocaust rings hollow. The United States should have the

879 ability to prosecute those who find safe haven in the United
880 States for their acts of genocide. The Genocide
881 Accountability Act would end this impunity gap within the
882 genocide law.

883 Again, I would like to thank the gentleman from
884 California, Mr. Berman, for all of his hard work on this
885 issue, and I would like to yield him the balance of my time.

886 Chairman Conyers. The gentleman is recognized.

887 Mr. Berman. I thank the gentleman for yielding me the
888 time, and even more importantly for focusing his
889 subcommittee's attention on holding a hearing and marking up
890 this bill and presenting it to the full committee. I might
891 say, given my initial inclinations, the hearing the gentleman
892 held brought up an issue to my attention which I am hoping
893 the committee report will clarify and which I will get to in
894 just a moment.

895 The gentleman has outlined the basic purposes and what
896 this bill seeks to do. Basically, that the Genocide
897 Convention that was completed in 1948 and finally much later
898 in a sense adopted or accepted by the United States through
899 its passage of implementing legislation, leaves a loophole
900 the gentleman spoke about. The Justice Department has
901 identified individuals who participated in the Rwandan and
902 Bosnian genocides who are now living in the United States.
903 Under the laws as it now stands, these individuals cannot be

904 prosecuted for genocide because they are not U.S. nationals
905 and the genocides in which they were involved did not take
906 place in the United States.

907 Based on the testimony at the subcommittee hearing, I
908 think it is important to clarify that this bill in seeking to
909 fill the gap that has been left by the law, this bill does
910 not run afoul of the ex post facto clause of the Constitution
911 as the changes it proposes are merely procedural and have no
912 impact whatsoever on the crime of genocide itself under the
913 law, its punishment, or any defenses available to individuals
914 charged under the law.

915 The first legal application of the term "genocide" came
916 after the Nuremberg trials. After the Holocaust, the
917 Genocide Convention was the world's pledge, the promise of
918 "never again," yet this promise has proven to be one of the
919 world's most unfulfilled. As the gentleman mentioned, we see
920 the devastation of the genocide in Darfur, shortly before
921 that Rwanda, Bosnia. We can spend our time talking about it.
922 This bill acknowledges that in some cases, the perpetrators
923 of this evil have ended up not just on the doorstep of the
924 United States, but sitting in our living room. Current law
925 allows us to deport them, but it doesn't let us deliver
926 justice for their crimes.

927 I strongly urge my colleagues to support this
928 legislation and fulfill the duties that we entered into in

929 that Genocide Convention to do everything we can to prevent
930 genocide and do everything we can to punish genocide.

931 I yield back.

932 Chairman Conyers. I thank the gentleman.

933 Mr. Berman. Could I just add one thing? My partner in
934 all of this has been the gentleman from Indiana, Mr. Pence.
935 I am very grateful for his immediate and strong and
936 continuing support.

937 Chairman Conyers. I thank Chairman Scott and Mr. Berman
938 for their fine statements, and recognize Lamar Smith, the
939 ranking member of the committee.

940 Mr. Smith. Thank you, Mr. Chairman.

941 I support this legislation. Mr. Chairman, in the
942 interest of time, I would ask unanimous consent that my
943 opening statement be made a part of the record.

944 Chairman Conyers. Without objection, so ordered.

945 [The statement of Mr. Smith follows:]

946 ***** COMMITTEE INSERT *****

947 Mr. Smith. Thank you, Mr. Chairman.

948 I want to yield to the gentleman from Virginia, the
949 ranking member of the Crime Subcommittee, first, and then to
950 the gentleman from Indiana, Mr. Pence after Mr. Forbes.

951 Chairman Conyers. The gentlemen are recognized.

952 Mr. Forbes. Thank you, Ranking Member Smith.

953 Perpetrators of genocide have committed some of the most
954 heinous crimes ever carried out. Genocide is a crime not
955 only against the specific victims targeted for extermination,
956 but it is also a crime against humanity. History is replete
957 with horrible images of human suffering where victims are
958 selected based on their human characteristics. In the modern
959 era, we have seen technological advances used for destructive
960 reasons in carrying out genocide.

961 The idea that individuals, hundreds, thousands and
962 hundreds of thousands, are singled out and systematically
963 targeted for extermination offends any person's belief in
964 humanity or the rule of law. In recent decades, we have seen
965 ethnic cleansing during the civil war in the former
966 Yugoslavia; systematic mass killings in Rwanda; and of course
967 there is ongoing suffering in Darfur.

968 H.R. 2489, the Genocide Accountability Act of 2007,
969 expands federal criminal jurisdiction for prosecution of
970 those responsible for genocide. Federal law allows for the
971 prosecution of genocide under section 1091 of Title 18 when

972 the offense is committed within the United States or the
973 alleged offender is a national of the United States. H.R.
974 2489 expands jurisdiction of genocide offenses to those
975 committed in whole or in part within the United States; cases
976 in which the alleged offender is a national of the United
977 States; the alleged offender is an alien lawfully admitted
978 for permanent residence in the United States; the alleged
979 offender is a stateless person whose habitual residence is
980 the United States; or after the conduct required for the
981 offense occurs, the alleged offender is brought into or found
982 in the United States, even if that conduct occurred outside
983 the United States.

984 With this improvement, I hope the federal prosecutors
985 will be able to prosecute aggressively those heinous
986 criminals. I urge my colleagues to support this bill, and I
987 yield back to the ranking member.

988 Mr. Forbes. Mr. Chairman, I yield to the gentleman from
989 Indiana, Mr. Pence.

990 Chairman Conyers. The gentleman is recognized.

991 Mr. Pence. I thank the chairman, and ask unanimous
992 consent that my full statement be included in the record.

993 Chairman Conyers. Without objection, so ordered.

994 [The statement of Mr. Pence follows:]

995 ***** INSERT *****

996 Mr. Pence. With the chair's indulgence, just a few
997 thoughts. I am profoundly grateful for the opportunity to
998 work with the gentleman from California on this issue. I am
999 grateful for Mr. Berman's leadership. People think that a
1000 Berman-Pence partnership is unusual. They are right, but
1001 they might equally be struck by the bipartisan support in the
1002 other body, the body where Senators Durbin, Coburn, Leahy and
1003 Cornyn came together around this issue.

1004 Quite simply put, it is an opportunity for the United
1005 States of America to close a critical loophole in the law. I
1006 cannot add further to the thoughtful explanation of it. I
1007 will simply say here in Washington, D.C., down the street
1008 from this very building is the United States Holocaust
1009 Memorial Museum—a museum that serves as a living memorial to
1010 the Holocaust and to a genocide, and which challenges its
1011 visitors to confront hatred, prevent genocide, promote human
1012 dignity, and strengthen democracy.

1013 Those of us serving in Congress must take this challenge
1014 seriously, as should every American, and today we have the
1015 unique opportunity to promulgate a law and policies to do
1016 just that. The Genocide Accountability Act meets this
1017 challenge. Elie Weisel stated, "Once you bring life to the
1018 world, you must protect it. You must protect it by changing
1019 the world." I say very humbly, the Genocide Accountability
1020 Act does just that, where the United States will provide the

1021 kind of moral leadership to change our jurisdiction in the
1022 world in one small, but profound way, to say to those who do
1023 genocide there will not be permitted to find safe harbor
1024 here.

1025 I urge my colleagues to support this important
1026 bipartisan and moral legislation. I commend Mr. Berman from
1027 California, and I yield back.

1028 Chairman Conyers. The chair thanks the gentlemen, Lamar
1029 Smith, Randy Forbes and Mr. Pence for their very fine
1030 statements.

1031 We will stand in recess, but come back immediately after
1032 the votes. So we will come back shortly. I think this is a
1033 very important bill. I think it is historic and I
1034 congratulate the committee for their bipartisanship.

1035 The committee stands in recess.

1036 [Recess.]

1037 Chairman Conyers. The committee will come to order.

1038 The consideration of H.R. 2489, the Genocide
1039 Accountability Act, discussion continues. The chair
1040 recognizes the gentlelady from Texas, Sheila Jackson Lee.

1041 Ms. Jackson Lee. Thank you, Mr. Chairman.

1042 I would like to commend Mr. Berman and Mr. Pence for
1043 this legislation, and to reinforce the common sense approach
1044 that is being taken. Having just come back from Sudan, I can
1045 attest to the horror of genocide and its continuing impact.

1046 Who knows whether individuals who were involved or were
1047 alleged to be involved in genocide may, through some strange
1048 set of circumstances, make their way through to the United
1049 States.

1050 We do know that Nazis who hid in South America after
1051 World War II made their way to the United States. We know
1052 that those who involved themselves again in the horror of the
1053 genocide of Rwanda were found allegedly to be in the United
1054 States.

1055 So although we might wish that did not happen, I think
1056 that this brings a circle of justice to complete the need to
1057 find justice as it relates to these horrible crimes. So I
1058 believe it is a common sense approach and it does close any
1059 loopholes that would cause individuals because of the nature
1060 of our free democracy to be able to hide in the United
1061 States.

1062 With that, I appreciated the testimony of the witnesses
1063 at the hearing, and I would be happy to yield back my time
1064 and ask my colleagues to support this important legislation.

1065 I yield back.

1066 Chairman Conyers. I thank the gentlelady for her
1067 statement.

1068 Does anyone else choose to be recognized on the Genocide
1069 Accountability Act?

1070 Do we have a reporting quorum? We don't. So we will

1071 hold the measure and come back as soon as we get a few more
1072 members.

1073 The chair calls up now, pursuant to notice, H.R. 3971,
1074 the Death in Custody Reporting Act, and ask the clerk to
1075 report the bill.

1076 The Clerk. H.R. 3971, a bill to encourage states to
1077 report to the attorney general certain information regarding
1078 the deaths of individuals in the custody of law enforcement
1079 agencies. The--"

1080 [The bill follows:]

1081 ***** INSERT *****

1082 Chairman Conyers. Without objection, the bill will be
1083 considered as read and open for amendment at any point. I
1084 now recognize once more the chairman of the Subcommittee on
1085 Crime, Bobby Scott.

1086 Mr. Scott. Thank you, Mr. Chairman.

1087 Mr. Chairman, the Subcommittee on Crime, Terrorism, and
1088 Homeland Security, having had under consideration the bill
1089 H.R. 3971, reports it favorably to the committee and moves
1090 its favorable recommendation to the full House.

1091 Chairman Conyers. Without objection.

1092 Mr. Scott. Thank you, Mr. Chairman.

1093 I move to strike the last word.

1094 Chairman Conyers. The gentleman is recognized.

1095 Mr. Scott. H.R. 3971 is a measure to reauthorize the
1096 Deaths in Custody Act of 2000, which expired December 31,
1097 2006. It was introduced on October 25 of this year by myself
1098 and the ranking member of the subcommittee, my colleague from
1099 Virginia, Mr. Forbes. Before the enactment of the Death in
1100 Custody Reporting Act of 2000, states had no information
1101 requirements, no uniform requirements for reporting the
1102 circumstances surrounding the death of persons in custody.
1103 The lack of uniform reporting requirements made it impossible
1104 for ascertain the percentage of deaths by suicide, homicide
1105 or natural causes, which in turn made oversight of the
1106 treatment of those in custody inadequate.

1107 Consequently, an environment of suspicion arose
1108 surrounding the over 1,000 deaths that were believed to have
1109 occurred in custody situations each year. Many were ruled
1110 suicide or death by natural causes, but were suspected of
1111 being homicides committed either by officers or other
1112 prisoners. However, indifference to prisoners' rights and
1113 the safety of those in custody made scrutiny of suspect
1114 deaths a low priority and questionable cause-of-death rulings
1115 were rarely investigated.

1116 From the mid-1980s to the enactment of the Death in
1117 Custody Reporting Act, researchers and activists scrutinized
1118 the death rate in our nation's jails and prisons and found
1119 very little reporting of the circumstances surrounding the
1120 deaths. In fact, in 1986, only 25 states and the District of
1121 Columbia even had jail inspection units. Moreover, even the
1122 states that did report deaths differed on basic reporting
1123 standards. The insufficient data and lack of uniformity of
1124 the data collected made oversight of prisoner safety woefully
1125 inadequate.

1126 However, the interest in oversight that emerged through
1127 researchers and activists shed light on conditions in state
1128 and local jails which began a rising tide of wrongful death
1129 litigation. The increasing litigation forced some measure of
1130 accountability and conditions somewhat improved. Moreover,
1131 activism and news of litigation spurred media interest which

1132 shed further light on the conditions.

1133 The watershed moment for bringing the death-in-custody
1134 rate to national attention occurred in 1995 after a 1-year
1135 investigation by journalists Mike Masterson of prison
1136 conditions and death rate of persons in custody, the Asbury
1137 Park Press in New Jersey ran a series of award-winning
1138 editorials that brought the seriousness of the lack of
1139 reporting to the nation's attention. The editorials went on
1140 to detail abuses, including racism, overzealous police
1141 interrogations, cover-ups, and general police incompetence
1142 which prompted congressional action.

1143 Following the successive introduction of bills in
1144 several Congresses with my Republican colleagues from
1145 Arkansas, first Representative Tim Hutchinson and then
1146 Representative Asa Hutchinson, the Death in Custody Reporting
1147 Act of 2000 was passed. The law required states receiving
1148 certain federal funds to comply with reporting requirements
1149 established by the attorney general.

1150 Since the enactment of the act, the Bureau of Justice
1151 statistics has compiled a number of statistics detailing not
1152 only the circumstances of prisoners' deaths, but the rate of
1153 deaths in prisons versus jails, and the rates of death based
1154 on the sizes of various facilities, which has revealed an
1155 astounding trend. Since the focus on deaths in custody
1156 emerged in the mid-1980s, the latest BJS report dated August,

1157 2005 shows a 64 percent decline in suicides and a 93 percent
1158 decline in homicide rates.

1159 The significant decline in death rates in the nation's
1160 prisons and jails and stricter oversight that has been in
1161 place suggests that oversight measures such as the Death in
1162 Custody Reporting Act play an important role in ensuring the
1163 safety and security of prisoners who are in custody in state
1164 facilities. On July 24 of this year, during a hearing on
1165 H.R. 2904, the prior version of the Deaths in Custody
1166 Reporting Act of 2007, this subcommittee heard testimony from
1167 expert witnesses whose testimony also supported the
1168 suggestion that oversight has improved prison conditions.

1169 However, no actual study has been conducted to ascertain
1170 what specific policies and practices have lowered the death
1171 rate, and H.R. 2908 contained no provision to fund such a
1172 study. Therefore, to ascertain whether the cause and effect
1173 exists and how to make the most effective use of the
1174 statistical data, my colleague Mr. Forbes and I introduced
1175 H.R. 3971, the Death in Custody Act of 2007, which is
1176 presented today for markup.

1177 This bill includes all aspects of H.R. 2908, but also
1178 authorizes \$500,000 for a study to determine which policies
1179 and procedures have led to, or at least assisted in
1180 decreasing the death rate among prisoners. H.R. 3971 is thus
1181 an improvement over the prior bill, with the analysis

1182 accompanying the statistical data which we can make yet
1183 further informed decisions on policy and oversight.

1184 Finally, Mr. Chairman, I believe that the chairwoman of
1185 the Immigration Subcommittee has an amendment which will help
1186 in expanding the act. In closing, Mr. Chairman, I would like
1187 to thank the ranking member of the subcommittee for his
1188 support on the bill, and encourage my colleagues to support
1189 it as well.

1190 I yield back the balance of my time.

1191 Chairman Conyers. I thank the gentleman, and recognize
1192 the ranking member of the committee, Lamar Smith.

1193 Mr. Smith. Thank you, Mr. Chairman.

1194 The Death in Custody Reporting Act of 2000 directed the
1195 Bureau of Justice Statistics to collect data on deaths that
1196 occur in the process of arrest and in jails and prisons.
1197 H.R. 3971 reauthorizes this data collection program and
1198 directs the attorney general to commission a study to
1199 determine how to reduce its incidence.

1200 I support the bill and urge my colleagues to do the
1201 same, and yield the balance of my time to the gentleman from
1202 Virginia, Mr. Forbes, the ranking member of the Crime
1203 Subcommittee.

1204 Mr. Forbes. Thank you, Ranking Member Smith.

1205 I am an original cosponsor of H.R. 3971, the Death in
1206 Custody Reporting Act of 2007. I want to thank my good

1207 friend and colleague from Virginia, Subcommittee Chairman
1208 Scott, for his leadership on this issue. The Death in
1209 Custody Reporting Act of 2000 directed the Bureau of Justice
1210 Statistics within the Department of Justice to collect data
1211 on deaths that occur in two primary stages of the criminal
1212 justice system: first, deaths that occur in the process of
1213 arrest or during transfer after arrest; and second, deaths in
1214 jails and prisons.

1215 H.R. 3971 reauthorizes this data collection program and
1216 directs the attorney general to commission a study of death-
1217 in-custody data to determine how to reduce deaths in custody
1218 and examine the relationship between deaths in custody and
1219 management of jail and prison facilities.

1220 The Bureau of Justice Statistics reports that between
1221 2001 and 2005, there were 15,308 state prisoner deaths.
1222 Likewise, there were an additional 5,935 local prisoner
1223 deaths and 43 juvenile deaths between 2000 and 2005. Half of
1224 all state prisoner deaths are the result of heart disease and
1225 cancer; two-thirds involve inmates aged 45 or older; and two-
1226 thirds are the result of medical problems which were present
1227 at the time of admissions. Although illness-related deaths
1228 have slightly increased in recent years, the homicide and
1229 suicide rates in state prisons have dramatically increased
1230 over the last 25 years.

1231 I urge my colleagues to support this legislation, and I

1232 yield back the balance of my time.

1233 Chairman Conyers. I thank the gentlemen for their
1234 presentations.

1235 Now, I turn to the gentlelady from California, chair of
1236 Immigration, for an amendment.

1237 Ms. Lofgren. Thank you, Mr. Chairman.

1238 I have an amendment at the desk.

1239 Chairman Conyers. The clerk will report.

1240 The Clerk. Amendment to H.R. 3971 as introduced,
1241 offered by Ms. Zoe Lofgren—"

1242 Mr. King. Mr. Chairman, I reserve a point of order.

1243 Chairman Conyers. The gentleman from Iowa reserves a
1244 point of order.

1245 The Clerk. "Page 2, line 4, strike 'any person who is
1246 under arrest' and insert 'any person who is detained' "—

1247 [The amendment by Ms. Lofgren follows:]

1248 ***** INSERT *****

1249 Chairman Conyers. Without objection, the bill be
1250 considered as read and open for amendment.

1251 The gentlelady from California is recognized in support
1252 of her amendment.

1253 Ms. Lofgren. I thank you, Mr. Chairman.

1254 Mr. Chairman, no death in custody by any government
1255 agency should ever go unnoticed, and that is why I strongly
1256 support the underlying bill. I am offering this amendment to
1257 enhance the bill to ensure that deaths occurring in all
1258 state-run facilities, no matter what type of detainee or
1259 facility, are reported. This amendment would ensure that we
1260 know exactly who the deceased detainees are, including
1261 information about the law enforcement agency that detained,
1262 arrested, or was in the process of arresting the decedent.

1263 The General Accountability Office reported that the
1264 majority of immigration detainees are held in state contract
1265 facilities. There are 330 total immigration detention
1266 centers, 300 of which are state and local jails. On October
1267 4, the Immigration Subcommittee held a hearing on medical
1268 care in immigration detention centers. We learned of over 60
1269 deaths in detention since 2004, many at state and local
1270 jails.

1271 One of our witnesses, the Immigrations and Custom
1272 Service at the Department of Homeland Security, better known
1273 as ICE, testified that they report all deaths that occur in

1274 the custody of ICE. However, we have a letter from the
1275 inspector general at DHS stating that they were not aware
1276 until well over 4 months of one of the deaths in the
1277 detention of an immigrant at a local jail who has a contract
1278 with ICE. So I ask unanimous consent to enter this letter
1279 into the record.

1280 Chairman Conyers. Without objection.

1281 [The information follows:]

1282 ***** COMMITTEE INSERT *****

1283 Ms. Lofgren. These are deaths of real people. The
1284 Boston Globe recently reported on the death of a man who died
1285 in ICE custody due to epilepsy complications, despite the
1286 fact that his sister twice attempted to provide his
1287 medication, but she was turned away. Another case involves
1288 Victoria Arianna, who was taken off HIV drugs while in
1289 custody and subsequently died after serious complications and
1290 lack of appropriate medical care for several months, while
1291 other inmates attempted to provide care.

1292 These deaths and all others occurring while the decedent
1293 is in custody should be reported to the public, especially at
1294 a time when the General Accounting Office reports that nearly
1295 300,000 men, women and children were detained by ICE in 2006,
1296 triple the amount over 2001, when less than 100,000 were
1297 detained.

1298 I strongly urge support of this amendment. I believed
1299 that this amendment was supported as well on the other side
1300 of the aisle. I hope that is true.

1301 I yield back.

1302 Chairman Conyers. I thank the gentlelady.

1303 Does the gentleman from Iowa insist upon his point of
1304 order?

1305 Mr. King. Thank you, Mr. Chairman. Just to speak to
1306 that briefly, if I might be recognized.

1307 That is that on having reviewed the gentlelady's

1308 amendment, and being an individual on this committee that
1309 recognizes a broader definition of germaneness than the
1310 gentlelady who has offered this amendment, I would be willing
1311 to withdraw my point of order, but I may well ask to be
1312 recognized to speak to the amendment.

1313 Chairman Conyers. Absolutely. You seek recognition?

1314 The gentleman from Virginia, Mr. Forbes.

1315 Mr. Forbes. Mr. Chairman, I move to strike the last
1316 word.

1317 Chairman Conyers. Without objection, so ordered.

1318 Mr. Forbes. Mr. Chairman, I think this is an
1319 appropriate amendment and I appreciate the congresswoman from
1320 California's willingness to restrict this amendment to state-
1321 run facilities, and I hope it will be our pleasure to adopt
1322 the amendment.

1323 Chairman Conyers. Thank you.

1324 If there are no further—

1325 Mr. King. Mr. Chairman?

1326 Chairman Conyers. Steve King, yes.

1327 Mr. King. I move to strike the last word.

1328 Chairman Conyers. The gentleman is recognized.

1329 Mr. King. Thank you, Mr. Chairman.

1330 I would only speak to this issue from the standpoint of
1331 the gentlelady who offered the amendment from California
1332 spoke to the deaths within ICE. Even though this amendment

1333 doesn't address that, the record now includes those
1334 discussions about deaths within ICE custody.

1335 I have taken the trouble to look into the ICE custody
1336 deaths and compared that to the custody deaths in other
1337 institutions across the country. So for example, there were
1338 25 deaths in fiscal year 2004 under ICE custody. In 2005, it
1339 was 16. In 2006, it was 17. And so far in 2007, it is only
1340 11.

1341 Now, it begs the question of what would be comparable—I
1342 mean, if you put people in institutions, you will lose some,
1343 as we do in normal regular life or in the military or
1344 wherever. So what is a comparable measure? So I asked that
1345 we go back and measure the numbers of those who we lost
1346 incarcerated under the Federal Bureau of Prisons, under our
1347 state institutions, and it came back with these numbers to
1348 compare it to. In 2004, the chance of death, when we look at
1349 the total ICE numbers, was 1 out of every 8,186 inmates. In
1350 2005, it was 1 out of every 12,912. In 2006, it was 1 out of
1351 every 13,288 inmates, and in 2007 it was 1 out of every
1352 23,146. So I averaged all those together for the years and
1353 the comparable measure would be this: 1 out of every 14,383
1354 ICE inmates died in custody.

1355 To compare that to the aggregate of the Bureau of
1356 Prisons, our state prisons and our local prisons, that would
1357 be 1 out of every 884. I could give you all the details of

1358 that, but in the interests of time, I will just say that you
1359 have a 1 in 14,383 chance of dying in custody if you are in
1360 ICE's custody, and a 1 out of only 884 chance of dying in
1361 custody if you are in somebody else's custody here in the
1362 United States. That would tell me that ICE's numbers look
1363 pretty good by comparison. In fact, if you divide those two
1364 numbers, you come to it is 16.3 times statistically safer to
1365 be in ICE's custody than it is to be in any else's custody.

1366 So even though I know the chairman himself had an
1367 experience that brought focus on this, and I think we should
1368 look at the individual cases to see if there have been
1369 violations or lack of attention where it needed to be, I
1370 don't think there is statistical support for a significant
1371 alarm with regard to ICE.

1372 I will support the gentlelady's amendment, and I would
1373 yield back the balance of my time.

1374 Ms. Lofgren. Would the gentleman yield?

1375 Mr. King. I would yield.

1376 Ms. Lofgren. Just very briefly. I appreciate that you
1377 will support the amendment. I think that having the data
1378 will be a good thing. I would just note that when ICE takes
1379 away your HIV drug, the chance of dying goes to 100 percent.
1380 So I thank the gentleman for yielding, and I yield back to
1381 him.

1382 Mr. King. Reclaiming my time, I will support this

1383 amendment, and yield back to the chairman.

1384 Chairman Conyers. I thank you for your interesting
1385 statistical analysis and support of the amendment.

1386 Those in favor of the Lofgren amendment indicate by
1387 saying "aye."

1388 Those opposed indicate by saying "no."

1389 The ayes have it. The amendment is agreed to.

1390 Ms. Jackson Lee. Mr. Chairman.

1391 Chairman Conyers. Yes?

1392 Ms. Jackson Lee. I have an amendment at the desk.

1393 Chairman Conyers. I recognize Sheila Jackson Lee, and
1394 ask that her amendment be reported.

1395 The Clerk. Amendment to H.R. 3971 offered by Ms.

1396 Jackson Lee of Texas. "Page 2, line 13, before the period,

1397 insert—"

1398 [The amendment by Ms. Jackson Lee follows:]

1399 ***** INSERT *****

1400 Ms. Jackson Lee. Mr. Chairman, I ask that the amendment
1401 be considered as read.

1402 Chairman Conyers. Without objection, so ordered.

1403 The gentlelady is recognized in support of her
1404 amendment.

1405 Ms. Jackson Lee. Mr. Chairman, I am grateful for this
1406 legislative initiative. I think it is an important step to
1407 not only protect the incarcerated persons in a variety of
1408 institutions, but the institution itself, the institution of
1409 justice, those who are incarcerated, as I indicated, and of
1410 course, the law enforcement officers.

1411 I believe that those who are engaged with individuals
1412 who are incarcerated are in harm's way. I also believe that
1413 states should include training so that the individuals who
1414 are responsible for governing those individuals are also
1415 likely trained to protect themselves, but also to ensure that
1416 there is not excessive conditions that result in death in
1417 custody.

1418 Just as an example, in the Harris County jail system,
1419 over the past 6 years at least 101 inmates have died in the
1420 Harris County Jail. That is an example probably of large
1421 jails across America. This particular legislation requires
1422 the states to report those kinds of incidents.

1423 This is a simple amendment. In order to help those who
1424 incarcerate and protect, it would be important I think to add

1425 to the state's reporting system the identity of the law
1426 enforcement officer, if any, whose direct custody the
1427 deceased was in at the time of death. Maybe in that
1428 instance, one will find an opportunity for better training;
1429 or one will find an opportunity for those who may be
1430 excessive in force. An example, of course, is the case that
1431 occurred with a juvenile in Florida, and frankly I believe
1432 that information is already public, so it is not violating of
1433 the law enforcement's privacy because those reports will
1434 already be made on a local basis.

1435 I would ask my colleagues to consider this amendment
1436 because it is constructive. Again, it is a helpful statistic
1437 to provide special training and-or some form of discipline to
1438 those who may be repetitive based upon the facts of this
1439 horrible occurrence. We know that justice deserves a fair
1440 system. It also deserves that people who are involved in the
1441 violation of the law, that they are incarcerated. But if
1442 their sentence is not death, then it would be I think
1443 important for our system and the confidence in the system
1444 that we have the responsible treatment of those who are
1445 incarcerated.

1446 I would ask my colleagues to support this amendment.

1447 I yield back.

1448 Chairman Conyers. I thank the gentlelady.

1449 The chair recognizes the ranking member of the

1450 Subcommittee on Crime, Randy Forbes.

1451 Mr. Forbes. Thank you.

1452 Mr. Chairman, I hope we will defeat this amendment.

1453 First of all, the underlying bill that we have before us with

1454 the other amendments have been reached based upon a

1455 compromise reached between both sides of the aisle. This

1456 particular amendment has a number of problems with it, the

1457 first of which I would suggest when you talk about direct

1458 custody, I would encourage anyone to show me a statutory or

1459 case definition of what "direct custody" really means. Does

1460 it mean you are standing outside of the cell? Does it mean

1461 that they are in a police car? Does it mean you are in an

1462 interrogation room or a holding cell? It is almost

1463 impossible to get that definition because it doesn't exist

1464 anywhere.

1465 Secondly, about 89 percent of all the deaths in custody

1466 between 2001 and 2005 were illness-related. Does that mean

1467 that we are going to report an officer just because he

1468 happened to be standing beside someone when they had a heart

1469 attack and died? I don't think that is what we want to do.

1470 The other thing is we don't want to single-out these

1471 officers. That was never the intent of this legislation.

1472 The intent of this legislation was to simply give us the

1473 statistics on these deaths so we could see what was going on

1474 and see if we needed to do anything to adjust for some of

1475 these deaths that were taking place.

1476 I just refuse to be a part of an amendment that I think
1477 demonstrates really a profound distrust in our country's law
1478 enforcement officers, and I hope that we will defeat the
1479 amendment.

1480 Ms. Jackson Lee. Will the gentleman yield?

1481 Mr. Forbes. I would be happy to.

1482 Ms. Jackson Lee. I am sorry that the gentleman is
1483 confused about my intent, and I think "direct custody" is
1484 clear on its English interpretation. Your very examples are
1485 correct. It could be in a police car. It could be in a jail
1486 cell. Obviously, the intent was not to punish, it was to
1487 correct. It means that if, for example, an officer is
1488 repeatedly in those circumstances, maybe there should be
1489 additional training that would assist not only the officer,
1490 but those who are incarcerated in the officer's direct
1491 control.

1492 So it is an attempt to be helpful and I would disagree
1493 with the gentleman's interpretation.

1494 Mr. Forbes. Mr. Chairman, reclaiming my time, I would
1495 just simply say I appreciate the gentlelady's intent, but we
1496 have to go by the language of the statute, and there simply
1497 is no definition of what "direct custody" is. I think one
1498 can make a huge argument as to what it actually means. Also,
1499 I don't think it is fair to punish or to give any kind of

1500 indication that an officer is not doing their job if someone
1501 happens to die because they happened to be in a cell. If it
1502 was a heart attack, or it was some other thing that they had
1503 no control over at all.

1504 Once again, I just hope that we will not see fit to
1505 upset the compromise agreement that we have by putting this
1506 amendment in it.

1507 Chairman Conyers. I thank the gentleman, and recognize
1508 the chair of the Subcommittee on Crime, Bobby Scott.

1509 Mr. Scott. Thank you, Mr. Chairman.

1510 I thank the gentlelady from Texas for her amendment.
1511 But unfortunately, the record does not suggest that the
1512 amendment is necessary to improve the success that requiring
1513 reporting deaths in custody has enjoyed. It obviously will
1514 jeopardize the bipartisan support for the act, so I therefore
1515 must oppose the amendment.

1516 The requirements of the underlying bill are that the
1517 facts and circumstances surrounding the death of a person in
1518 custody be reported. With that information, investigative
1519 authorities can begin an investigation should one be
1520 warranted. The mere presence, as my colleague from Virginia
1521 has indicated, the mere presence of an officer does not
1522 necessarily mean that he or she is involved in the facts and
1523 circumstances of the death in custody. Therefore, there
1524 could be over-reporting of officers who were merely present,

1525 but not involved, and whose reputations could therefore be
1526 unfairly tainted.

1527 For these reasons, Mr. Chairman, I regret that I cannot
1528 support the amendment, and I yield back the balance of my
1529 time.

1530 Chairman Conyers. I thank the gentleman.

1531 All those in favor of the amendment—

1532 Ms. Wasserman Schultz. Mr. Chairman?

1533 Chairman Conyers. Who seeks recognition?

1534 Ms. Wasserman Schultz. I do.

1535 Chairman Conyers. Yes? Debbie Wasserman Schultz is
1536 recognized

1537 Ms. Wasserman Schultz. Thank you.

1538 I move to strike the last word.

1539 Chairman Conyers. Without objection, the gentlelady is
1540 recognized.

1541 Ms. Wasserman Schultz. I yield to the gentlelady from
1542 Texas.

1543 Ms. Jackson Lee. Mr. Chairman, thank you very much.

1544 Let me just briefly say that I am going to ask for this
1545 amendment to be carried forward, and I accept the fact that
1546 the chairman and ranking member oppose it, and I appreciate
1547 and respect their opposition.

1548 The amendment's intent is clearly not to punish. I
1549 think that it is self-explanatory without a definition.

1550 However, even as it is voted on today, I think it is
1551 important as an instructive component to this legislation.
1552 The reporting of officers that are already going to be in a
1553 public record is no more exposing them to any negative
1554 ramifications, and it is distinctive from the full-blown
1555 report and investigation that obviously will occur.

1556 I frankly believe that in the circumstances of the young
1557 teenager that died in Florida, all of those persons that were
1558 engaged around that should have, if this bill had passed,
1559 been listed in a report to the federal government. And so I
1560 hope that as this amendment is put forward and if it does not
1561 prevail, that I will continue to work to get that language
1562 in, because I think it is constructive more so than it is a
1563 hindrance.

1564 I thank my colleagues and I yield back my time, and ask
1565 my colleagues to support the amendment. I yield back to the
1566 gentlelady from Florida, and I thank her for yielding.

1567 Ms. Wasserman Schultz. I yield back the balance of my
1568 time, Mr. Chairman.

1569 Chairman Conyers. I thank the spirit of the gentlelady
1570 from Texas.

1571 All in favor of the Jackson Lee amendment indicate by
1572 saying "aye."

1573 All those opposed indicate by saying "no."

1574 In the opinion of the chair, the noes have it and the

1575 amendment fails.

1576 The dedication of the gentlelady from Texas is noted in
1577 the record.

1578 Ms. Jackson Lee. Mr. Chairman, might I ask unanimous
1579 consent to include this article on the number of deaths at
1580 one particular jail, the Harris County Jail, into the record.
1581 I ask unanimous consent.

1582 Chairman Conyers. Without objection, so ordered.

1583 [The information follows:]

1584 ***** committee INSERT *****

1585 Ms. Jackson Lee. Thank you, Mr. Chairman.

1586 Chairman Conyers. Are there any other amendments?

1587 A reporting quorum being present, the question is on
1588 reporting the bill as amended favorably to the House.

1589 All in favor say "aye."

1590 All opposed say "no."

1591 The ayes have it and the bill as amended is ordered
1592 reported favorably to the House.

1593 Without objection, the bill will be reported to the
1594 House in the form of a single amendment in the nature of a
1595 substitute, incorporating amendments adopted here today.

1596 Without objection, the staff is authorized to make any
1597 technical and conforming changes, and members, as usual, will
1598 have 2 days to submit additional views.

1599 We are now going to go back, since we have a reporting
1600 quorum, to examine and report H.R. 1759, the MATCH Act. A
1601 reporting quorum being present, the question is on reporting
1602 the bill favorably to the House.

1603 All in favor will signify by saying "aye."

1604 All opposed will say "no."

1605 In the opinion of the chair, the ayes have it. The ayes
1606 have it and the bill is reported favorably to the House.

1607 All members will have 2 days as provided by the House
1608 rules in which to submit additional views. Without
1609 objection, the bill will be reported favorably to the House

1610 in the form of a single amendment in the nature of a
1611 substitute, incorporating any amendments adopted here today.
1612 Without objection, the staff is authorized to make any
1613 technical and conforming changes.

1614 We have now a vote on the Genocide Accountability Act.
1615 Since a reporting quorum is present, the question is on
1616 reporting the bill favorably to the House.

1617 All in favor will signify by saying "aye."

1618 Those opposed say "no."

1619 The ayes have it, and H.R. 2489 is ordered reported
1620 favorably to the House, and all members will have 2 days by
1621 House rules to submit additional views.

1622 Pursuant to notice, I call up now H.R. 3992, the
1623 Mentally Ill Offender Treatment and Crime Reduction
1624 Reauthorization Act, for purposes of markup, and ask the
1625 clerk to report the bill.

1626 The Clerk. H.R. 3992, a bill to amend Title I of the
1627 Omnibus Crime Control and Safe Streets Act of 1968 to provide
1628 grants to improve mental health treatment and services
1629 provided to offenders with mental illnesses and for other
1630 purposes.

1631 [The bill follows:]

1632 ***** INSERT *****

1633 Chairman Conyers. Without objection, the bill will be
1634 considered as read and open for amendment at any point.

1635 Once more, I recognize the chair of the Subcommittee on
1636 Crime, Bobby Scott of Virginia.

1637 Mr. Scott. Thank you, Mr. Chairman.

1638 The Subcommittee on Crime, Terrorism and Homeland
1639 Security has had under consideration the bill H.R. 3992, the
1640 Mentally Ill Offender Treatment and Crime Reduction
1641 Reauthorization and Improvement Act of 2007, and reports it
1642 favorably to the committee, and now moves its favorable
1643 recommendation to the full House.

1644 Mr. Chairman, since the 1960s, the state mental health
1645 hospitals have increasingly reduced their populations of
1646 mentally ill individuals in response to a nationwide call for
1647 de-institutionalization. The movement toward de-
1648 institutionalization has been based on the fact that mentally
1649 ill individuals are constitutionally entitled to refuse
1650 treatment or at least have it provided in the least
1651 restrictive environment.

1652 Unfortunately, community mental health treatment centers
1653 have not been created at the rate necessary to meet the needs
1654 created by this movement. The report by the U.S. Department
1655 of Justice Bureau of Justice Statistics suggests the criminal
1656 justice system has become by default the primary caregiver of
1657 the most seriously mentally ill. More specifically, the

1658 report said that at least 16 percent of the U.S. prison
1659 population is seriously mentally ill. The highest rate of
1660 serious mental illness is among white females, at 29 percent.

1661 The National Alliance for the Mentally Ill reports that
1662 on any given day, at least 284,000 seriously mentally ill
1663 people are incarcerated, while only 187,000 seriously
1664 mentally ill individuals are in mental health facilities.
1665 This issue is of particular concern in my home state of
1666 Virginia, as well as the home state of the ranking member of
1667 the subcommittee.

1668 Last year, Virginia's General Assembly's Joint
1669 Legislative Audit and Review Commission released a 200-page
1670 report on the state of mental health services. A Times-
1671 Dispatch reporter analyzed the report and found a number of
1672 disturbing facts. Hospital care accounts for only a fraction
1673 of the needs of our state's estimated 400,000 seriously
1674 mentally ill adults and children. Before de-
1675 institutionalization, the daily number of mentally ill adults
1676 in state hospitals has dropped from 11,532 to 1,452, a
1677 reduction of 87 percent.

1678 Of the 6,350 mentally ill people in hospitals and jails
1679 in a single day 2 years ago, 60 percent were in jails because
1680 "regional mental health agencies do not provide mental health
1681 services." Since 1991, the number of psychiatric beds
1682 available dropped by 800, or 31 percent, and the beds that

1683 are available are concentrated in one area of the state.
1684 There are no freestanding profitable psychiatric hospitals
1685 west of Richmond. Those findings are similar to those
1686 discussed at a hearing held this spring in our subcommittee
1687 which revealed that our criminal justice system is serving as
1688 the primary caregiver for the mentally ill. The good news,
1689 however, is that mental health courts have proven to be
1690 helpful to the several communities that have such programs.

1691 H.R. 3992 will address these needs. First of all, it
1692 will reauthorize the Mentally Ill Offender Treatment and
1693 Crime Reduction Grant Program, increasing the current
1694 authorization of \$50 million to \$75 million. It will also
1695 reauthorize the Mental Health Courts Program, which will
1696 expand the permissible use of funds to include pretrial
1697 services and assessments of alternatives to incarceration.

1698 Additionally, the bill creates four new programs. One
1699 will provide grants to state, local and tribal law
1700 enforcement to help them learn how to access individuals with
1701 mental illnesses and to work with local agencies to make the
1702 most effective placement for the person. Another program
1703 will provide grants to correctional agencies to learn how to
1704 identify and screen mentally ill prisoners so that they can
1705 get the help they need while incarcerated, or be placed in
1706 alternative programs to incarceration. These grants will
1707 also help correctional services plan for reentry into the

1708 community.

1709 Another program provides grants to state to coordinate
1710 and improve the treatment of mentally ill offenders,
1711 including facilitating information sharing between agencies.
1712 The grant will also encourage states to promote evidence-
1713 based practices to improve treatment and services. Lastly, a
1714 new program will provide states and units of government to
1715 improve treatment of female offenders with mental illness and
1716 create family support services and intensive care management.

1717 The total cost of these new programs is \$35 million for
1718 fiscal years 2008 to 2013. Despite common misconceptions,
1719 the majority of people who are arrested and incarcerated are
1720 low-level, nonviolent offenders. If the programs help
1721 jurisdictions assist mentally ill people so they can avoid
1722 going to jails and prisons, we will easily recoup the costs
1723 of these programs and savings that would have gone to house
1724 thousands of people who should not have been incarcerated in
1725 the first place.

1726 I therefore urge my colleagues to support the bill, and
1727 yield back the balance of my time.

1728 Chairman Conyers. Thank you, Mr. Scott.

1729 Ranking Member Lamar Smith?

1730 Mr. Smith. Thank you, Mr. Chairman.

1731 H.R. 3992 reauthorizes the Mentally Ill Offender
1732 Treatment and Crime Reduction Act and adds new and innovative

1733 programs to improve diversion and treatment services for
1734 mentally ill offenders. The problem of mentally ill
1735 offenders imposes significant strains on state and local
1736 criminal justice agencies. This act provides immediate
1737 relief to state and local governments.

1738 I support this legislation and urge my colleagues to
1739 support it as well.

1740 Mr. Chairman, I now yield to the gentleman from
1741 Virginia, Mr. Forbes, the ranking member of the Crime
1742 Subcommittee.

1743 Mr. Forbes. Thank you, Ranking Member Smith.

1744 This is an important piece of legislation, as you just
1745 mentioned. The problem of mentally ill offenders has created
1746 unique challenges to our criminal justice system. Mentally
1747 ill offenders have been swept up into the wheels of the
1748 criminal justice system. Sixteen percent of the prison or
1749 jail population, over one million prisoners, have a serious
1750 mental illness. The Los Angeles County Jail and New York's
1751 Rikers Island Jail hold more people with mental illnesses
1752 than the largest psychiatric in-patient facilities in the
1753 United States. More than one-fifth of jails have no access
1754 to any mental health services at all.

1755 I want to commend Chairman Conyers, Subcommittee
1756 Chairman Scott, his Chief Counsel Bobby Vassar, and the many
1757 interested advocacy groups for their dedication and hard work

1758 to address this problem. Many criminal justice agencies are
1759 unprepared to meet the comprehensive treatment and needs of
1760 individuals with mental illness. Poorly trained law
1761 enforcement officers can be put in danger when interacting
1762 with individuals in crisis, and may spend crucial hours
1763 trying often unsuccessfully to connect these individuals to
1764 treatment.

1765 Jails and prisons require extra staffing and treatment
1766 resources for inmates with mental illness. In addition,
1767 mentally ill offenders can be affected by incarceration in
1768 many different ways from the general population offenders.
1769 H.R. 3992 represents an innovative and new approach to the
1770 problem of mentally ill criminal offenders. I strongly
1771 support this bipartisan measure and urge my colleagues to do
1772 the same.

1773 In my view, H.R. 3992 represents the first step in
1774 treating mentally ill offenders in a human and appropriate
1775 way. At the same time, it should help to alleviate some of
1776 the costly strains imposed on state and local criminal
1777 justice institutions. There is no question that public
1778 safety is critical and that innocent people must be protected
1779 from mentally ill offenders.

1780 The public safety can be served by a more strategic
1781 approach when dealing with mentally ill offenders and
1782 fortunately there are effective models for the subcommittee

1783 to examine and support. H.R. 3992 reauthorizes the Mentally
1784 Ill Offender Treatment and Crime Reduction Act; encourages
1785 early intervention for individuals with mental illness;
1786 reauthorizes the Mental Health Courts Program; maximizes
1787 diversion opportunities for nonviolent offenders with mental
1788 illness and co-occurring disorders; promotes training for
1789 justice and treatment professionals in criminal justice
1790 processes on mental health and substance abuse issues;
1791 establishes new state and local planning grants to address
1792 the needs of mentally ill offenders; and facilitates
1793 communication, collaboration, and the delivery of support
1794 services among justice professionals, treatment and related
1795 service providers, and government partners.

1796 I urge my colleagues to support this measure, and I
1797 yield back the balance of my time.

1798 Chairman Conyers. I thank the leaders of the committee
1799 for their opening statements. All others can submit opening
1800 statements for the record.

1801 The chair recognizes the gentlelady from Houston, Texas,
1802 Sheila Jackson Lee.

1803 Ms. Jackson Lee. Mr. Chairman, I have an amendment at
1804 the desk.

1805 Chairman Conyers. The clerk will report the amendment.

1806 The Clerk. Amendment to H.R. 3992 offered by Ms.
1807 Jackson Lee of Texas, add at the end of the proposed section

1808 2992, a (1) of the Omnibus Crime Control and Safe Streets Act
1809 of 1968, page 6912, the following: "such programs to help
1810 provide incentives for such law enforcement personnel to
1811 enroll in mental health training programs—"

1812 [The amendment by Ms. Jackson Lee follows:]

1813 ***** INSERT *****

1814 Chairman Conyers. Without objection, the amendment will
1815 be considered as read.

1816 The gentlelady is recognized in support of her
1817 amendment.

1818 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

1819 Let me thank the authors of the legislation, including
1820 the chairman and subcommittee chairman of the Crime
1821 Subcommittee on this issue.

1822 I have worked on the issues dealing with mental health
1823 since coming to the United States Congress, and particularly
1824 issues dealing with the mental health needs of our youth. We
1825 realize that law enforcement officers experience enormous
1826 crises as they try to protect the public, whether it be
1827 domestic calls of incidents that involve family members;
1828 whether it is an elderly mother who is subject to the violent
1829 temper of a child, yet that child is suffering from mental
1830 illness and might wind up at the hands of an officer, losing
1831 their life because that officer has to address this question.

1832 This is to encourage our officers of whatever status
1833 that they are in—constables, sheriffs, police officers—to
1834 secure training, and in that training, to provide for an
1835 incentive for them to accept that training and to become
1836 better informed on dealing with those who are mentally ill.

1837 Although the data is not recent, Mr. Chairman, the
1838 Treatment Advocacy Center indicated that the most recent data

1839 shows, official data, found that people with mental illness
1840 were killed by law enforcement four times more often than
1841 that of the general population. So this is an addition to
1842 this legislation to provide that added incentive so that
1843 officers vastly spread throughout our legal or police and law
1844 enforcement fabric would be given incentives under this
1845 legislation to ensure their participation in this training.

1846 This has been supported in local jurisdictions by the
1847 local mental health associations and frankly I believe that
1848 this would be an important component to this legislation.

1849 With that, I yield back my time and ask my colleagues to
1850 support this amendment.

1851 Chairman Conyers. I thank the gentlelady.

1852 Who seeks time?

1853 Mr. Scott. Mr. Chairman?

1854 Chairman Conyers. Yes? Mr. Scott of Virginia is
1855 recognized.

1856 Mr. Scott. I move to strike the last word.

1857 Chairman Conyers. Without objection, and the gentleman
1858 is recognized.

1859 Mr. Scott. I would just like to ask the gentlelady if
1860 we could agree to work on this amendment. What we are trying
1861 to do with this bill is work to conform our bill with the
1862 Senate bill to avoid a conference if possible, so the
1863 negotiations, if we accept an amendment, we need to try to

1864 negotiate the exact same language with the Senate. So I was
1865 wondering if the gentlelady would be willing to withdraw the
1866 amendment and have us work on this to see if we can get it in
1867 both the House and the Senate versions.

1868 I yield.

1869 Ms. Jackson Lee. I thank the gentleman. I am looking
1870 at both the gentleman and the ranking member, and I want to
1871 cooperate. This is a very important issue. I have worked on
1872 these mental health issues for a very long time.

1873 My question is, that if we can have a favorable response
1874 out of this committee, isn't it possible to then have the
1875 language, if we cannot get agreement, removed if there is a
1876 disagreement in the Senate? I think that is has strong
1877 support from mental health organizations. I think it is
1878 important for police to have incentives, or law enforcement
1879 to have incentives, and it is an enormous hurdle to overcome
1880 in terms of the numbers of people that die only because, of
1881 course, that it is a dangerous situation that we put our
1882 officers in. The more training that they can get, the more
1883 lives that we can save.

1884 I am just wondering if I could yield to the ranking
1885 member. I saw him looking at the legislation. Are we all in
1886 the same posture? Could this amendment go forward and then
1887 try to work it out with the Senate?

1888 Mr. Forbes. I thank the gentlelady for yielding to me.

1889 Ms. Jackson Lee. It is not my time to yield.

1890 Mr. Forbes. I thank my friend from Virginia for
1891 yielding to me.

1892 I have to support his request to withdraw the amendment
1893 and trust that we can have him and the chairman work to get
1894 language like this perhaps into the bill. One of the things
1895 that I would point out is the intent of this amendment is
1896 something I think we can all agree on and it is a good
1897 intent. But I want to reemphasize what the subcommittee
1898 chairman mentioned. Today, we have had several bills that I
1899 think we can be proud of because they were worked on in a
1900 bipartisan manner. But in this bill, it is not just a
1901 bipartisan, but a bicameral matter. In fact, the same bill I
1902 think was put in by Senators Domenici, Kennedy, Specter and
1903 Leahy over in the Senate.

1904 We wouldn't want to do anything to upset that balance.
1905 I think the best approach for us to do would be, if you would
1906 agree to withdraw the amendment and trust that the
1907 subcommittee chairman will work to try to get language in
1908 that would be acceptable into the final bill. So I am going
1909 to support his request on that.

1910 Ms. Jackson Lee. Would you yield to me?

1911 Mr. Scott. I yield to the gentlelady from Texas.

1912 Ms. Jackson Lee. This is offered in the deepest of
1913 respect, and to say that I will consent to the request by the

1914 chairperson and the ranking member. However, allow me just
1915 to offer on the record, it makes it very difficult for
1916 members of this committee to legislative properly when we
1917 come with already agreed-to bicameral agreements that really
1918 don't take into consideration in maybe some very small part
1919 some very important concerns.

1920 This whole issue of incentives for the officers I think
1921 is an important one, and I am going to commit this language
1922 to your trust, and I truly believe in the both of you. But
1923 we now have the same response was given on the second-chance
1924 bill, which is still not passed out of the Senate. We
1925 couldn't amend anything here or add anything to it because it
1926 was an agreement in the Senate. I only suggest that we have
1927 a fair opportunity to add constructive additions to the
1928 legislation because they are important issues that may not
1929 have been addressed by the good work of the committee.

1930 So I ask unanimous consent to withdraw it. I would like
1931 to work with the subcommittee chair and the ranking member on
1932 what I think is important, and would like to see us achieve
1933 this incentive as a part of the legislation. With that, I
1934 ask unanimous consent to withdraw the amendment.

1935 Chairman Conyers. Without objection, so ordered.

1936 The gentlelady is to be commended because there were
1937 those on both sides of the aisle thinking about sending you
1938 over to the Senate to negotiate this thing out.

1939 Ms. Jackson Lee. Send me. That's what Bill said.

1940 [Laughter.]

1941 Chairman Conyers. Well, that is what we were thinking,
1942 but you have already agreed to what the subcommittee chair
1943 and ranking member wanted, and we are very grateful to you
1944 for that.

1945 [Laughter.]

1946 A reporting quorum being present on H.R. 3992, the
1947 Mentally Ill Offender Treatment Act, the question is on
1948 reporting the bill favorably to the House.

1949 Those in favor signify by saying "aye."

1950 Those opposed by saying "no."

1951 The ayes have it. The bill is ordered reported
1952 favorably to the House, and the members will have 2 days as
1953 provided by House rules to submit additional views.

1954 We now return to the Arts Require Timely Service Act.
1955 We have amendments perhaps from the gentleman from Iowa,
1956 Steve King.

1957 Mr. King. Thank you, Mr. Chairman.

1958 I have an amendment at the desk, number four.

1959 Chairman Conyers. The clerk will report the amendment.

1960 The Clerk. Amendment to H.R. 1312 offered by Mr. King
1961 of Iowa. "Page 3, line 10, after a qualified nonprofit
1962 organization, insert whose total revenue in the taxable year
1963 preceding the calendar year in which the—"

1964 [The amendment by Mr. King follows:]

1965 ***** INSERT *****

1966 Chairman Conyers. Without objection, the amendment will
1967 be considered as read, and Steve King will be recognized in
1968 support of his amendment.

1969 Mr. King. Thank you, Mr. Chairman.

1970 In the interests of being able to expedite the process
1971 of this committee, I have bypassed the amendment that I
1972 offered earlier for which there was a point of order
1973 reserved, the \$5 million amendment. This is the \$10 million
1974 amendment. This exempts the revenue in any performing arts
1975 entity that is qualified under this bill, it exempts those
1976 that have a revenue stream of up to \$10 million. So the
1977 poorest of the arts organizations, \$10 million or less, would
1978 be exempted for the purposes of premium processing of those
1979 highly talented arts visas, the O and the O and the P visas.

1980 In the interests of expediting this process, I would
1981 urge the adoption of my amendment. I think it is reasonable.
1982 I think it allows for the gentleman's bill to come forward
1983 and do what he intends it to do, I believe, in the most part,
1984 and yet still allows that we are able to not exempt those
1985 very rich foundations that can get along with out this.

1986 I yield back.

1987 Chairman Conyers. Thank you.

1988 Has the gentleman had an opportunity to consult with any
1989 of the other leaders in the committee?

1990 Mr. King. Mr. Chairman, I have had discussions with

1991 regard to the germaneness of this amendment, but haven't
1992 really discussed it in depth with anyone during this period
1993 of time.

1994 Chairman Conyers. All right.

1995 Who seeks recognition? The gentleman from California,
1996 Howard Berman.

1997 Mr. Berman. Thank you, Mr. Chairman.

1998 I would really ask the committee to reject this
1999 amendment. I do agree with the gentleman from Iowa that
2000 accepting it would expedite the process, but in and of
2001 itself, I think there should be a somewhat stronger basis for
2002 support. I have several different reasons for saying we
2003 shouldn't apply a revenue to a nonprofit arts organization as
2004 the test of whether the government should do what the law
2005 requires.

2006 What has failed to be mentioned in proposing this
2007 amendment is we have a law now that says there is a special
2008 American interest in encouraging foreign cultural groups,
2009 groups from other countries, individuals from other
2010 countries, to come and perform in this country. The cultural
2011 exchange aspect of this is fundamental. Pursuant to that, we
2012 have passed a law that says the government has 14 days to
2013 process a visa for these purposes, to either have the
2014 specific artist or the group, the opera, the symphony, the
2015 ballet, to get their visas to come in here.

2016 In effect, what the gentleman from Iowa is suggesting is
2017 in order to get a processing which allows you to get a visa
2018 in 15 days, 1 day longer than the law requires them to get
2019 the visa, they should have to pay \$1,000. The basic visa fee
2020 is \$390. They pay that. They are supposed to get an answer
2021 in 14 days, but if they add another \$1,000, they can get it
2022 in 15 days.

2023 We aren't pushing this bill to provide the expedited
2024 processing out of some theoretical problem. We have had
2025 horrible problems with a governmental agencies that in so
2026 many different areas is broken in this area. The result is
2027 groups in the United States, nonprofit arts organizations
2028 from the large ones to the small ones, can't schedule
2029 artists, symphonies, ballets, operas, individual cultural
2030 stars to come on a specific date because they can't be sure
2031 of the visa.

2032 The second reason I am against this is this assumes size
2033 of organization is about wealth of organization. Yes, it is
2034 true I am sure that the Metropolitan Opera and the New York
2035 Symphony and some of the major city cultural organizations
2036 have much larger budgets than some of the smaller cities and
2037 some of the other nonprofit groups around this country. But
2038 they also frequently perform many more events. So you
2039 multiply the \$1,000 by each group they have and you run up to
2040 very significant costs.

2041 let us take the biggest, or one of the biggest, the
2042 Metropolitan Opera engages nearly 150 foreign guest artists
2043 each year. This says to get the processing that is 1 day
2044 longer than what you are entitled to under law, you put in
2045 \$150,000 to the government. It has nothing to do if they are
2046 running on tight budgets. I believe there is a group in this
2047 Congress who actually think that when we increase costs to
2048 the providers of goods and services, that the consumer
2049 ultimately pays. I know it is a quaint notion, but all I can
2050 assure you is, if we want access to cultural events by
2051 moderate-income people and people for whom the price of the
2052 ticket is sensitive, this unnecessary addition of a fee will
2053 simply raise the price to the consumers, in some cases cause
2054 them not to sponsor organizations. I can read you a list of
2055 organizations that are above \$10 million in terms of revenues
2056 they get annually who are not well established "rich"
2057 organizations.

2058 I urge the committee to reject the amendment.

2059 Ms. Lofgren. Would the gentleman yield?

2060 Chairman Conyers. I thank the gentleman, and yield to
2061 Lamar Smith.

2062 Mr. Smith. Thank you, Mr. Chairman.

2063 While I support this bill, I also strongly support the
2064 amendments that are going to be offered by Mr. King, both
2065 this amendment and the subsequent two amendments.

2066 We can all sympathize with small cash-strapped nonprofit
2067 arts organizations. Many of them find it difficult to pay a
2068 \$1,000 premium processing fee each time they want to host a
2069 foreign performing artists. However, we may get
2070 organizations with budgets of many millions of dollars who
2071 seek foreign artists. They should not get special treatment.
2072 Mr. King's amendment provides that only small nonprofit arts
2073 organizations should be eligible for the fee waiver.

2074 On another subject, Mr. Chairman, I want to note my
2075 concern regarding the recent examples of advocacy journalism
2076 that this issue has triggered. For instance, an article that
2077 appeared in The Washington Post on October 20 presented a
2078 completely one-sided view of the alleged impediments put in
2079 the way of performing arts organizations by post-9/11 visa
2080 security measures and the \$1,000 premium processing fee. The
2081 article liberally quotes arts activists describing the visa
2082 process as becoming a nightmare full of reprehensible bad
2083 laws that is grinding down the arts world and fostering
2084 increasing ill-will towards the United States.

2085 All these accusations go unanswered in the article, as
2086 if 9/11 never happened and arts organizations that sponsor
2087 foreign visitors deserve special treatment that no one else
2088 gets. This article is simply an editorial posing as a news
2089 story. It fails to adhere to the high standards of
2090 journalism that we expect from a major American newspaper.

2091 With that said, Mr. Chairman, I urge my colleagues to
2092 support the King amendment, and I yield back the balance of
2093 my time.

2094 Mr. Berman. Would the gentleman yield?

2095 Mr. Smith. Yes, I will be happy to yield.

2096 Mr. Berman. I just want to respond to one thing. This
2097 notion of special treatment, we have a law that says every
2098 group, large or small, that is bringing in a foreign artist
2099 or group is entitled to processing in 14 days. To say that,
2100 oh, it is special treatment not to follow the law for certain
2101 kinds of groups, that is not special treatment. If that is
2102 not a good law, let us change that law, but don't say that
2103 you have to pay to get the law followed.

2104 Mr. Smith. I will reclaim my time. The special
2105 treatment description goes to the fact that we would be
2106 waiving the fee for certain organizations and not other
2107 organizations. But I am relieved that the gentleman chose
2108 not to respond to my charge of advocacy journalism. I assume
2109 he agrees with that.

2110 Mr. Watt. Could I respond to that?

2111 Mr. Smith. I yield to the gentleman from North
2112 Carolina.

2113 Chairman Conyers. I will tell you, I was just saying to
2114 Ms. Lofgren, as you were speaking, you make it sound like we
2115 have some control over The Washington Post. I have been in

2116 constant feud with The Washington Post for years and years
2117 about the way they cover a particular legislative weekend
2118 that the Congressional Black Caucus does, where there must be
2119 100 substantive discussions going on, and they always put the
2120 event on the Style page. What control do we have over The
2121 Washington Post and what they write? Did somebody on this
2122 committee write it?

2123 Mr. Smith. I reclaim my time. I thank the gentleman
2124 for adding another example to my point. However, I don't
2125 pretend to have any control over that paper or any other
2126 paper. My point was, and I thought I would have credibility
2127 in making the point since I support the underlying bill,
2128 whereas that regardless of whether I support a piece of
2129 legislation or not, we need good objective news coverage.
2130 The American people need to have the facts if they are going
2131 to reach a judgment themselves. And one-sided journalism is
2132 not the way to accomplish that goal, but I appreciate the
2133 gentleman's point.

2134 Mr. Chairman, I yield back again.

2135 Chairman Conyers. The chair recognizes the gentlelady
2136 from California, chair of the Immigration Committee.

2137 Ms. Lofgren. Mr. Chairman, I will be brief since I
2138 think there has been a substantial discussion. I would urge
2139 that we oppose the amendment for many of the reasons that Mr.
2140 Berman has already outlined. But I would just note in

2141 addition, just directly, that revenue without deducting
2142 expenses does not necessarily leave you with a good piece of
2143 information. If you have \$10 million in revenue, and this
2144 has actually happened to some arts organizations that I
2145 support, little ones, and your revenue is \$11 million--this
2146 happened I think with the San Jose Symphony one year--you have
2147 a problem.

2148 So really, it depends on how many musicians you have to
2149 pay. I understand the desire to have the well-to-do cover
2150 themselves, and I don't dismiss that desire as at all wrong,
2151 but I don't think this amendment actually accomplishes that.
2152 I recall last year I was on a personal vacation and took a
2153 day from my vacation to spend at the American Embassy in
2154 London to look at how they were processing visa applications.
2155 The consular officer was actually going to go up to
2156 Birmingham rather than have the entire symphony orchestra
2157 come down to London to interview them for their visas. So
2158 you could have hundreds of people in a symphony orchestra
2159 going on tour.

2160 I don't dismiss the intentions. I just don't think the
2161 amendment accomplishes what the gentleman is trying to do. I
2162 would note that this underlying bill is important. I think
2163 all of us probably, or maybe not, but I have certainly had
2164 the experience where there is an event that is advertised, an
2165 art event, the Mariachi festival or whatever it is, and

2166 significant expenses are incurred in the advertising.

2167 Tickets are sold. The applications for the visas are made
2168 well in advance, and it gets delayed, and it is just a huge
2169 mess.

2170 We hope that ultimately we are going to do more
2171 oversight hearings on the Department of Homeland Security.
2172 We all know that the administration of the law by DHS and the
2173 State Department together could be improved. That is a kind
2174 way to put it. But I think until we succeed in getting those
2175 improvements made, and these problems are not new ones. They
2176 were there in the Clinton administration. They were there in
2177 Bush I. I mean, it is decades of problems that we need to
2178 resolve. But I think until we accomplish that, hopefully
2179 working together, something like this actually is merited.

2180 I would yield to Mr. Sherman briefly.

2181 Mr. Sherman. Only in Washington is it thought to be
2182 sane for us, through the Appropriations Committee, to be
2183 subsidizing these arts organizations, and then to come here
2184 and put fees, taxes and obstacles in the way of the very
2185 things we are subsidizing. I think we should oppose the arts
2186 tax and vote no on the amendment.

2187 I yield back.

2188 Ms. Lofgren. I would reclaim my time and yield back,
2189 Mr. Chairman. Thank you.

2190 Chairman Conyers. Thank you very much.

2191 The chair recognizes the gentleman from California, Dan
2192 Lungren.

2193 Mr. Lungren. Mr. Chairman, as someone who was dragged
2194 to the Long Beach Symphony Orchestra as a child by my soon-
2195 to-be 90-year old mother, I have to rise in opposition to
2196 this amendment. These organizations that are nonprofit
2197 oftentimes are just scrounging around the best they can. If
2198 you have ever been in a situation where you are waiting
2199 trying to figure out whether you are going to get the artist
2200 or artists who are supposed to come in from overseas to
2201 perform, that uncertainty can totally blow your entire
2202 season.

2203 I will give you some of the organizations that are above
2204 \$10 million in revenues: Dallas Opera Company, Florida Grand
2205 Opera, Houston Ballet, Miami City Ballet, Milwaukee Symphony
2206 Orchestra, Pacific Northwest Ballet, the St. Paul Chamber
2207 Orchestra, the Utah Symphony and Opera, Mr. Cannon. I said
2208 "Utah," Mr. Cannon.

2209 Now, other than the chamber orchestra, most of those
2210 have a lot of people that they have to utilize to be able to
2211 put together their overall effort. Probably it means they
2212 have greater expenses. Greater expenses require greater
2213 revenue. It doesn't mean that they are any less worthy than
2214 some organization below \$5 million or at \$500,000.

2215 For the life of me, I do not understand where we are

2216 trying to encourage the exchange of artists back and forth,
2217 and these are organizations that are doing exactly what we
2218 would want them to do. They are not profit. Last time I
2219 checked, "nonprofit" means you don't make a profit. I just
2220 don't understand when we have a situation with an agency of
2221 the federal government that has a tough time doing their job,
2222 and then we say, "Well, we will get them to do their job by
2223 charging this amount of money, and by the way, we are going
2224 to do it if you are a non-for-profit," how that really serves
2225 any purpose.

2226 I respect the gentleman from Iowa. I understand he is
2227 saying those that have a lot of money on their hands ought
2228 not to be given special treatment. My suggestion is probably
2229 most of these don't have a whole lot of money on their hands.
2230 I don't want to see us on the federal level do anything more
2231 to cause difficulty to these organizations.

2232 So that I can go and celebrate my mother's 90th birthday
2233 a week from Saturday in Sacramento, I must oppose the
2234 gentleman's amendment.

2235 I yield back the balance of my time.

2236 Chairman Conyers. I thank the gentleman, and recognize
2237 the gentleman from Virginia, Bob Goodlatte.

2238 Mr. Goodlatte. Thank you, Mr. Chairman.

2239 I support the amendment. The reason I support it is the
2240 same concern the gentleman has, but the fact of the matter is

2241 the fees that we collect to fund the operation of the
2242 Immigration Service fund the entire operation of the
2243 Immigration Service. We have a multitude of small businesses
2244 who need nonimmigrant visas to be granted to people to come
2245 over and work for them, provide services for them, who aren't
2246 going to get this kind of treatment, and yet they are small
2247 businesses. They aren't nonprofit. They have to pay taxes,
2248 and yet they are going to be treated disparately by this
2249 development.

2250 I support the underlying legislation, but I think the
2251 amendment has merit, and I yield the balance of my time to
2252 the gentleman from Iowa.

2253 Mr. King. I thank the gentleman from Virginia for
2254 yielding.

2255 As I listen to the debate, it is curious to me that a
2256 couple of things don't come up. One of them is we have had
2257 our hearings here on the CIS fee distribution. We have been
2258 in in-depth discussions on that. This is a zero-sum game.
2259 Someone has to pay for USCIS. It will be the visa
2260 applicants. We have concluded that that, at least in the
2261 lion's share of the funding, will come from there.

2262 So presumably if Mr. Berman's bill is passed in the
2263 version that it is offered here today, that those costs will
2264 be made up somewhere in the formula process. Now, I can
2265 imagine Emilio Gonzalez coming back before a hearing in the

2266 Immigration Subcommittee, and saying, "All right, here are
2267 the costs that we have been recovering for premium processing
2268 fees to the arts, and it is X million dollars, and now we are
2269 going to distribute it equally across H1(b)s, H2(a)s, H2(b)s,
2270 H3s, Ls—across the visa applications."

2271 And who are these people? These are not the people that
2272 are arriving in a limousine with a tuxedo? These are the
2273 blue jeans and the sneakers people that will be paying the
2274 difference, or their employers.

2275 I would also argue that if you are setting up an event,
2276 perhaps the celebratory event for Mr. Lungren's mother's 90th
2277 birthday, which I certainly congratulate her slightly before
2278 the fact, and you have 1,000 people that are coming in to
2279 view a performance by an artist, then that would be \$1 a head
2280 to pay the premium processing fee. But they have an
2281 opportunity to plan ahead.

2282 If we remove the premium processing fee, then the arts
2283 will understand that it is going to be expedited. It is
2284 going to be expedited without a fee, so they won't have the
2285 incentive to look ahead, get the applications in, plan their
2286 schedule further than they do otherwise. This is the wrong
2287 incentive. It will not give USCIS the opportunity to be able
2288 to process these applications in the period of time that they
2289 have today. That means that something else suffers. The
2290 pressure comes back on them and something has to be

2291 sacrificed if they can't plan ahead.

2292 I would also point out that the question on consumer
2293 pays. I like that comment. I think the consumer should pay,
2294 and that is the 1-dollar-a-head for 1,000. If you have
2295 10,000 people who come in, then it is a dime a head. That is
2296 not much for one artist. I know you are going to tell me
2297 that there are thousands, maybe \$150,000 a year, but it isn't
2298 the case that many of these organizations, even though they
2299 are not-for-profit, it doesn't mean they are not making
2300 profit. It just means that they are tax-exempt and they roll
2301 the profits back into their assets.

2302 So I would point out the Metropolitan Museum of Art that
2303 has \$325,959,000 in revenue and assets of \$2.4 billion, how
2304 can I explain to those people in blue jeans and sneakers that
2305 they should have to pay the difference in this fee, and the
2306 people that are arriving in limousines do not? I think this
2307 is a reasonable approach. It is \$10 million in exemptions.
2308 Those fledgling organizations will be able to process—and
2309 maybe they can compete with the large foundations and be able
2310 to offer the arts at a more competitive fashion so that we
2311 have 1,000 points of light here, instead of a few dozen
2312 points of prosperity.

2313 So I urge the adoption of this very reasonable
2314 amendment, and I ask that consideration, and I yield back to
2315 the gentleman from Virginia and thank him for yielding to me.

2316 Ms. Sutton. Mr. Chairman?

2317 Chairman Conyers. Yes, the gentlelady from Ohio, Ms.

2318 Sutton?

2319 Ms. Sutton. I move to strike the last word.

2320 Chairman Conyers. You are recognized.

2321 Ms. Sutton. I yield time to the gentleman, Mr. Berman.

2322 Mr. Berman. Just very quickly, Mr. King, the arguments

2323 you make are very fair arguments, but they are really

2324 arguments, one, against this kind of visa and the notion that

2325 they should be granted faster than other kinds of visas, or

2326 that there should be premium processing for anyone. In other

2327 words, you and I have a disagreement. I think there is a

2328 public interest beyond the needs of a particular business

2329 entity that Mr. Goodlatte raises. There is a public interest

2330 in these kinds of cultural exchanges, these kinds of tours of

2331 foreign artists, this kind of exposure to the American public

2332 and to American school children from these events.

2333 The Congress has said that it is, because we have

2334 provided these special provisions. But because of the way

2335 the system has broken down, we are not able to get the access

2336 to it. The distinction here shouldn't be between the small

2337 revenue nonprofits versus large revenue nonprofits. It

2338 should be, do we want to facilitate access to the American

2339 people of these cultural events of many different varieties?

2340 Some of those cultural events are for those guys in blue

2341 jeans that you are talking about as well. They are not all
2342 for the tux and Chablis crowd.

2343 So I just think that it is very strange that you would
2344 talk about the revenue as the test, when the public interest
2345 isn't the organization, it is the American people and what
2346 those organizations are bringing to the American people.

2347 I yield back and I thank the gentlelady for yielding.
2348 Ms. Sutton. I yield back the time.

2349 Chairman Conyers. Ladies and gentlemen, the question
2350 turns on the Steve King amendment.

2351 Those in favor indicate by saying "aye."

2352 Those opposed indicate by saying "no."

2353 The noes have it and the amendment fails.

2354 Mr. King. Mr. Chairman?

2355 Chairman Conyers. Mr. King, is there any way you can
2356 roll—I have noticed the nature of all your amendments seem to
2357 have the same tenor except that they increase the amount. Is
2358 there any way we can put them together, or is that not
2359 possible?

2360 Mr. King. Mr. Chairman, as you may recognize, I was
2361 attempting or considering asking for a recorded vote, but in
2362 the spirit of your inquiry, I would perhaps allow that voice
2363 vote to stand without a recorded vote.

2364 Chairman Conyers. Thank you.

2365 Mr. King. I will try to expedite this process and get

2366 directly to the heart of the matter in a subsequent
2367 amendment.

2368 Chairman Conyers. All right.

2369 The clerk will report the next amendment of Mr. King.

2370 Oh, the amendment fails.

2371 Would the clerk report?

2372 Mr. King. Mr. Chairman, I have an amendment at the
2373 desk, number six.

2374 Chairman Conyers. Okay.

2375 The Clerk. Amendment to H.R. 1312 offered by Mr. King
2376 of Iowa. "Page 3, before or an individual—"

2377 [The amendment by Mr. King follows:]

2378 ***** INSERT *****

2379 Chairman Conyers. The amendment will be considered as
2380 read. The gentleman will be recognized in favor of his
2381 amendment.

2382 Mr. King. Thank you, Mr. Chairman.

2383 This amendment addresses—it is \$100 million in revenue.
2384 I think that is a lot of money, and \$100 million in revenue
2385 is a big enough number that I don't the numbers of people or
2386 the numbers of entities that would be covered under this. I
2387 haven't drilled the research out, but I simply would
2388 reiterate the previous arguments that I have made, and say
2389 this is a multiple of 10. If it was not enough to exempt \$10
2390 million, and if it is the will of this committee not to
2391 exempt up to \$10 million, this is the amendment that exempts
2392 up to \$100 million.

2393 Chairman Conyers. This one says \$50 million.

2394 Mr. King. Oh, I am sorry. I intended to offer the \$100
2395 million. May my remarks stand and could we make this the
2396 amendment number six?

2397 I ask unanimous consent to amend the amendment to read
2398 \$100 million.

2399 Chairman Conyers. Without objection.

2400 Mr. King. I thank you, Mr. Chairman.

2401 My remarks do stand because of that unanimous consent
2402 agreement. I will submit that this is 10 times the number
2403 that we debated. Now, I understand Mr. Berman has an

2404 opinion, which I respect, that it is a different kind of an
2405 argument for him, in that do we want to enhance the arts.
2406 Well, I will say we have nonprofit foundations. The IRS does
2407 not step in and draw anything out of that revenue if they are
2408 not-for-profit. That is the statement that is made by this
2409 Congress on endorsing the arts.

2410 This is a matter of pushing the costs off onto other
2411 people. I believe that is fundamentally wrong. I have said
2412 so at one dollar. I have said so at each dollar all the way
2413 on up the line. This is the \$100 million amendment. So any
2414 of the arts that have revenue of up to \$100 million would be
2415 able to get the premium processing fee waived and follow this
2416 path.

2417 I would also point this question out that I may hear
2418 from Mr. Berman. It is an inquiry as part of remarks. My
2419 information as I analyzed this bill says that the premium
2420 processing would be waived if they fail to provide the visa
2421 within the first 30 days, that it would be waived and if
2422 produced within 15 days following that. So we would be
2423 talking about a 45-day window here, rather than a 16-day
2424 window.

2425 I would conclude and yield back, and hope for the
2426 gentleman from California to respond to that question.

2427 Chairman Conyers. The gentleman is recognized.

2428 Mr. Berman. The gentleman said it exactly right. I

2429 think I in my earlier comments might have looked like I
2430 didn't know what I was talking about, and at that moment I
2431 didn't. You have reminded me. The law says these visas must
2432 be processed within 14 days. That is the law. We have
2433 created a process which says if they haven't been processed
2434 within 30 days, that is 16 days longer than the law requires,
2435 you can go for expedited processing, and if you are a
2436 nonprofit arts organization, you can get that expedited
2437 process without paying the \$1,000 fee per person you are
2438 bringing in, and you then get an answer within an additional
2439 15 days.

2440 So my point is, the law that is on the books says do it
2441 in 14 days, and we are giving this particular group of
2442 nonprofit arts organizations because of what think is the
2443 value of this kind of program, a way to come within 30 days
2444 of getting what the law promised them they would get. My
2445 argument against your amendment, \$50 million—hell, you offer
2446 an amendment for \$1 billion.

2447 [Laughter.]

2448 But there is a principle here, and that is what I am
2449 just talking about. So I would urge a no vote on this
2450 amendment because I don't think we should establish that
2451 principle.

2452 Chairman Conyers. I think we have examined this very
2453 carefully on both sides.

2454 Those in favor of the King amendment for a \$100 million
2455 indicate by saying "aye."

2456 Those opposed say "no."

2457 The noes have it. The amendment fails.

2458 Mr. King. Mr. Chairman, I ask for a recorded vote.

2459 Chairman Conyers. And the clerk will call the roll on
2460 the vote.

2461 The Clerk. Mr. Conyers?

2462 Chairman Conyers. No.

2463 The Clerk. Mr. Conyers votes no.

2464 Mr. Berman?

2465 Mr. Berman. No.

2466 The Clerk. Mr. Berman votes no.

2467 Mr. Boucher?

2468 [No response.]

2469 Mr. Nadler?

2470 [No response.]

2471 Mr. Scott?

2472 Mr. Scott. No.

2473 The Clerk. Mr. Scott votes no.

2474 Mr. Watt?

2475 Mr. Watt. No.

2476 The Clerk. Mr. Watt votes no.

2477 Ms. Lofgren?

2478 Ms. Lofgren. No.

2479 The Clerk. Ms. Lofgren votes no.
2480 Ms. Jackson Lee?
2481 [No response.]
2482 Ms. Waters?
2483 [No response.]
2484 Mr. Delahunt?
2485 [No response.]
2486 Mr. Wexler?
2487 [No response.]
2488 Ms. Sanchez?
2489 [No response.]
2490 Mr. Cohen?
2491 Mr. Cohen. No.
2492 The Clerk. Mr. Cohen votes no.
2493 Mr. Johnson?
2494 [No response.]
2495 Ms. Sutton?
2496 [No response.]
2497 Mr. Gutierrez?
2498 [No response.]
2499 Mr. Sherman?
2500 Mr. Sherman. No.
2501 The Clerk. Mr. Sherman votes no.
2502 Ms. Baldwin?
2503 [No response.]

2504 Mr. Weiner?

2505 Mr. Weiner. No

2506 The Clerk. Mr. Weiner votes no.

2507 Mr. Schiff?

2508 Mr. Schiff. No.

2509 The Clerk. Mr. Schiff votes no.

2510 Mr. Davis?

2511 Mr. Davis. No.

2512 The Clerk. Mr. Davis votes no.

2513 Ms. Wasserman Schultz?

2514 Ms. Wasserman Schultz. No.

2515 The Clerk. Ms. Wasserman Schultz votes no.

2516 Mr. Ellison?

2517 [No response.]

2518 Mr. Smith?

2519 Mr. Smith. Aye.

2520 The Clerk. Mr. Smith votes aye.

2521 Mr. Sensenbrenner?

2522 [No response.]

2523 Mr. Coble?

2524 [No response.]

2525 Mr. Gallegly?

2526 [No response.]

2527 Mr. Goodlatte?

2528 Mr. Goodlatte. Aye.

2529 The Clerk. Mr. Goodlatte votes aye.
2530 Mr. Chabot?
2531 Mr. Chabot. No.
2532 The Clerk. Mr. Chabot votes no.
2533 Mr. Lungren?
2534 Mr. Lungren. No.
2535 The Clerk. Mr. Lungren votes no.
2536 Mr. Cannon?
2537 Mr. Cannon. Aye.
2538 The Clerk. Mr. Cannon votes aye.
2539 Mr. Keller?
2540 Mr. Keller. Aye.
2541 The Clerk. Mr. Keller votes aye.
2542 Mr. Issa?
2543 [No response.]
2544 Mr. Pence?
2545 Mr. Pence. Aye.
2546 The Clerk. Mr. Pence votes aye.
2547 Mr. Forbes?
2548 Mr. Forbes. Aye.
2549 The Clerk. Mr. Forbes votes aye.
2550 Mr. King?
2551 Mr. King. Aye.
2552 The Clerk. Mr. King votes aye.
2553 Mr. Feeney?

2554 Mr. Feeney. Aye.

2555 The Clerk. Mr. Feeney votes aye.

2556 Mr. Franks?

2557 [No response.]

2558 Mr. Gohmert?

2559 [No response.]

2560 Mr. Jordan?

2561 Mr. Jordan. Aye.

2562 The Clerk. Mr. Jordan votes aye.

2563 Chairman Conyers. Are there members—Mr. Delahunt?

2564 The Clerk. You are not recorded, sir.

2565 Mr. Delahunt. No.

2566 The Clerk. Mr. Delahunt votes no.

2567 Chairman Conyers. Ms. Waters?

2568 Ms. Waters. No.

2569 The Clerk. Ms. Waters votes no.

2570 Chairman Conyers. Ms. Sanchez?

2571 Ms. Sanchez. No.

2572 The Clerk. Ms. Sanchez votes no.

2573 Chairman Conyers. Mr. Wexler?

2574 Mr. Wexler. No.

2575 The Clerk. Mr. Wexler votes no.

2576 Chairman Conyers. Mr. Nadler?

2577 Mr. Nadler. No.

2578 The Clerk. Mr. Nadler votes no.

2579 Chairman Conyers. Anyone else?

2580 Mr. Issa?

2581 Mr. Issa. Yes.

2582 The Clerk. Mr. Issa votes aye.

2583 Chairman Conyers. Any other members?

2584 The clerk will report.

2585 The Clerk. Mr. Chairman, 10 members voted "aye," 17

2586 members voted "nay."

2587 Chairman Conyers. The amendment passes.

2588 Are we ready to report the bill?

2589 The Clerk. Defeated—it is defeated.

2590 Chairman Conyers. The amendment fails, excuse me.

2591 Mr. King. Mr. Chairman?

2592 Chairman Conyers. Who seeks recognition?

2593 Mr. King?

2594 Mr. King. Thank you Mr. Chairman.

2595 I really wasn't going to offer another amendment until I

2596 heard your ruling. I have one at the desk, and that is

2597 number nine.

2598 Chairman Conyers. The clerk will report the amendment.

2599 The Clerk. Amendment to H.R. 1312 by Mr. King of Iowa.

2600 On page 3, before "or an individual or entity," insert "and

2601 whose total assets, in the taxable year preceding the

2602 calendar year in which the petition is submitted, were less

2603 than \$1 billion."

2604 [The amendment of Mr. King follows:]

2605 ***** INSERT *****

2606 Chairman Conyers. The gentleman is recognized in
2607 support of his amendment.

2608 Mr. King. Thank you, Mr. Chairman. You know, in light
2609 of the discussion that I heard in the debate over the last
2610 amendment, there was a—seemed to be some support for \$1
2611 billion in assets being the limit, as opposed to the revenue
2612 stream that has been voted down at \$100 million in revenue.

2613 So I did have, in anticipation, an amendment prepared
2614 that addresses the assets rather than the revenue, and I
2615 would point out that we have—I am looking at one here that I
2616 mentioned earlier, the Metropolitan Museum of Art in New York
2617 that has \$325 million in revenue, but \$2.2 billion—\$2 billion
2618 424 million 259—no excuse me, \$2 billion 424 million 259
2619 thousand in assets. That would be one of the organizations,
2620 the numbers of them again, I don't know, that would be
2621 exempted by this.

2622 But, the point in this is that if it is the accumulation
2623 of wealth, if it is the size of the treasure chest that might
2624 be what could sway my friend from California, then the size
2625 of this treasure chest is a billion dollars. If you have
2626 less than a billion dollars in your treasure chest, then you
2627 would get out-of-order processing, premium processing, that
2628 fee of \$1,000 waived. So the measure here is \$1,000 matched
2629 up against \$1 billion. I would point out that a thousand
2630 million is a billion, so we could figure out the ratio of how

2631 much they might have to tap into this multi-billion dollar
2632 treasure chest to pay a fee that otherwise is going to come
2633 out of the pockets of some poor individual that just wants an
2634 opportunity to have access to the American dream.

2635 That is the measure—access to the American dream versus
2636 access to some of the elite places in society that are
2637 controlled by organizations that have a billion dollars in
2638 foundation assets. If it is less than that, no problem,
2639 there is no class envy involved. If it is more than a
2640 billion, then I am with Mr. Berman on this—soak the rich over
2641 a billion, give them a break under a billion. This is my
2642 amendment. I would urge adoption of it. I yield back the
2643 balance of my time.

2644 Chairman Conyers. I thank the gentleman. Do we need
2645 to—

2646 Mr. Berman. I think the only—

2647 Chairman Conyers. Mr. Berman?

2648 Mr. Berman. Well I would just say, now, how much could
2649 we lower the federal deficit if we sold Yosemite and
2650 Yellowstone and other assets. I urge a no vote.

2651 Chairman Conyers. I thank the gentleman.

2652 Ms. Lofgren. Mr. Chairman?

2653 Chairman Conyers. Yes, who seeks—

2654 Ms. Lofgren. I will be—to strike the last word. I will
2655 just say that I think, hopefully, I will support Mr. Berman

2656 in opposing the amendment. But I think the argument that has
2657 been made really misses the point, in all honesty, and I want
2658 to correct that. Under the law, the Department of Homeland
2659 Security is already required to process these visas in less
2660 time. I think the assertion that some poor person is going
2661 to end up with a cost shift is simply incorrect. We had a
2662 series of hearings, we had a workshop that, unfortunately, I
2663 was the only member of the subcommittee to attend, looking at
2664 how the money is being spent and collected. And I know the
2665 gentleman is sincere, but I think his assertion is simply
2666 incorrect, and I felt that it was important to make that
2667 correction, and I yield back.

2668 Chairman Conyers. I thank the gentlelady.

2669 All those in favor—the question is on the amendment
2670 offered by the gentleman from Iowa. All those in favor of
2671 the amendment, signify by saying "aye." All those opposed,
2672 signify by saying "no." In the opinion of the chair, the
2673 noes have it.

2674 Mr. King. Mr. Chairman? I ask for a recorded vote.

2675 Chairman Conyers. A recorded vote is requested. The
2676 clerk will call the roll.

2677 Mr. Conyers?

2678 Chairman Conyers. No.

2679 The Clerk. Mr. Conyers votes no.

2680 Mr. Berman?

2681 Mr. Berman. No.

2682 The Clerk. Mr. Berman votes no.

2683 Mr. Boucher?

2684 [No response.]

2685 Mr. Nadler?

2686 [No response.]

2687 Mr. Scott?

2688 Mr. Scott. No.

2689 The Clerk. Mr. Scott votes no.

2690 Mr. Watt?

2691 Mr. Watt. No.

2692 The Clerk. Mr. Watt votes no.

2693 Ms. Lofgren?

2694 Ms. Lofgren. No.

2695 The Clerk. Ms. Lofgren votes no.

2696 Ms. Jackson Lee?

2697 [No response.]

2698 Ms. Waters?

2699 Ms. Waters. No.

2700 The Clerk. Ms. Waters votes no.

2701 Mr. Delahunt?

2702 Mr. Delahunt. No.

2703 The Clerk. Mr. Delahunt votes no.

2704 Mr. Wexler?

2705 [No response.]

2706 Ms. Sanchez?
2707 Ms. Sanchez. No.
2708 The Clerk. Ms. Sanchez votes no.
2709 Mr. Cohen?
2710 Mr. Cohen. No.
2711 The Clerk. Mr. Cohen votes no.
2712 Mr. Johnson?
2713 [No response.]
2714 Ms. Sutton?
2715 Ms. Sutton. No.
2716 The Clerk. Ms. Sutton votes no.
2717 Mr. Gutierrez?
2718 [No response.]
2719 Mr. Sherman?
2720 Mr. Sherman. No.
2721 The Clerk. Mr. Sherman votes no.
2722 Ms. Baldwin?
2723 [No response.]
2724 Mr. Wiener?
2725 Mr. Wiener. No.
2726 The Clerk. Mr. Wiener votes no.
2727 Mr. Schiff?
2728 Mr. Schiff. No.
2729 The Clerk. Mr. Schiff votes no.
2730 Mr. Davis?

2731 Mr. Davis. No.

2732 The Clerk. Mr. Davis votes no.

2733 Ms. Wasserman Schultz?

2734 [No response.]

2735 Mr. Ellison?

2736 [No response.]

2737 Mr. Smith?

2738 Mr. Smith. Aye.

2739 The Clerk. Mr. Smith votes aye.

2740 Mr. Sensenbrenner?

2741 Mr. Sensenbrenner. Aye.

2742 The Clerk. Mr. Sensenbrenner votes aye.

2743 Mr. Coble?

2744 Mr. Coble. Aye.

2745 The Clerk. Mr. Coble votes aye.

2746 Mr. Gallegly?

2747 [No response.]

2748 Mr. Goodlatte?

2749 Mr. Goodlatte. Aye.

2750 The Clerk. Mr. Goodlatte votes aye.

2751 Mr. Chabot?

2752 Mr. Chabot. Aye.

2753 The Clerk. Mr. Chabot votes no.

2754 Mr. Lungren?

2755 Mr. Lungren. No.

2756 The Clerk. Mr. Lungren votes no.
2757 Mr Cannon?
2758 Mr. Cannon. Aye.
2759 The Clerk. Mr. Cannon votes aye.
2760 Mr. Keller?
2761 Mr. Keller. Aye.
2762 The Clerk. Mr. Keller votes aye.
2763 Mr. Issa?
2764 Mr. Issa. Aye.
2765 The Clerk. Mr. Issa votes aye.
2766 Mr. Pence?
2767 Mr. Pence. Aye.
2768 The Clerk. Mr. Pence votes aye.
2769 Mr. Forbes?
2770 Mr. Forbes. Aye.
2771 The Clerk. Mr. Forbes votes aye.
2772 Mr. King?
2773 Mr. King. Aye.
2774 The Clerk. Mr. King votes aye.
2775 Mr. Feeney?
2776 Mr. Feeney. Aye.
2777 The Clerk. Mr. Feeney votes aye.
2778 Mr. Franks?
2779 [No response.]
2780 Mr. Gohmert?

2781 [No response.]

2782 Mr. Jordan?

2783 Mr. Jordan. Aye.

2784 The Clerk. Mr. Jordan votes aye.

2785 Chairman Conyers. Mr. Wexler?

2786 Mr. Wexler. No.

2787 The Clerk. Mr. Wexler votes no.

2788 Chairman Conyers. Any other members choose to cast a

2789 ballot? Yes, Mr. Nadler?

2790 Mr. Nadler. No.

2791 The Clerk. Mr. Nadler votes no.

2792 Chairman Conyers. The clerk will report,

2793 The Clerk. Mr. Chairman, 12 members voted "aye," 18

2794 members voted "nay."

2795 Chairman Conyers. The amendment fails.

2796 And a reporting quorum being present for H.R. 1312, the

2797 question is on reporting the bill, as amended, favorably to

2798 the house, all in favor will signify by saying "aye." Those

2799 opposed, "no." In the opinion of the chair, the ayes have it

2800 and the bill, as amended, is ordered reported favorably to

2801 the House. Without objection, the bill will be reported

2802 favorably to the House in the form of a single amendment in

2803 the nature of a substitute incorporating amendments adopted

2804 here. Without objection, the staff is ordered to make

2805 technical and conforming changes. All members will have 2

2806 days as provided by House rules to submit additional views.

2807 Pursuant to notice, I call up now H.R. 3609, the
2808 Emergency Home Ownership and Mortgage Equity Protection Act,
2809 for purposes of markup and ask the clerk to report the bill.

2810 The Clerk. "H.R. 3609, a bill to amend Title 11 of the
2811 United States Code with respect to modification of certain
2812 mortgages"—

2813 [The bill follows:]

2814 ***** INSERT *****

2815 Chairman Conyers. Without objection, the bill will be
2816 considered as read and open to amendment at any point.

2817 Members of the committee, I think that on both sides of
2818 the aisle, we can agree that our nation is in the middle of a
2819 major economic crisis that will undoubtedly worsen in the
2820 coming months as a result of the spiraling problem of
2821 mortgage foreclosures. Indeed, some suggest that this
2822 mortgage meltdown may jeopardize the financial stability of
2823 all or certainly most of the American family.

2824 The administration, which initially downplayed this
2825 crisis, finally acknowledged this month that 500,000 home
2826 owners, one-quarter of the two million Americans who have
2827 subprime mortgages, scheduled to reset to higher interest
2828 rates over the next 18 months were likely to lose their home.
2829 Other economic forecasts are even more gloomy.

2830 Sadly, there is another statistic. According to the
2831 Congressional Research Service, subprime loans have been
2832 disproportionately marketed to the elderly and to minority
2833 groups, and even more disturbing, there is evidence that
2834 minorities who could qualify for cheaper prime loans are
2835 sometimes borrowing in the more expensive subprime market.

2836 If there is any doubt about that, you are welcome to
2837 visit Wayne County, Michigan, which earlier this year had the
2838 highest rate of home foreclosures among all other major
2839 metropolitan areas in the country. In fact, the State of

2840 Michigan ranked fourth highest in the nation in the number of
2841 foreclosure filings last August.

2842 We need real, immediate solutions to the crisis, and our
2843 colleague, Mr. Brad Miller, has a measure, H.R. 3609, and it
2844 is a very good start, in my judgment.

2845 I would propose that any legislative solution at least
2846 satisfy three principal objectives.

2847 A home owner in financial distress should be able to use
2848 bankruptcy to reorganize all of his or her debt. There is no
2849 reason to retain the current prohibition that prevents
2850 Chapter 13 debtors from modifying their home mortgages as
2851 part of a repayment plan.

2852 Second, we should eliminate the various pitfalls and
2853 onerous requirements created as a result of the 2005
2854 amendments to the Bankruptcy Code. As we have heard at
2855 hearings held earlier this year, many of those new
2856 requirements are simply serving as "gotchas" to catch the
2857 unwary and ill-advised consumer debtor, particularly with
2858 respect to the mandatory credit counseling requirement.

2859 And, third, we should ensure that the various fees and
2860 costs asserted by a mortgagee are fully disclosed and subject
2861 to court review. We have heard of numerous instances where
2862 consumer debtors, long after their bankruptcy cases have
2863 concluded, are hit with hidden fees that are often excessive
2864 and not documented.

2865 Home ownership is probably the most important goal of
2866 most Americans and should be able to aspire to in this
2867 nation. That goal, however, is under siege at the present
2868 time, and we need to act immediately.

2869 Before concluding my remarks, I must commend Steve
2870 Chabot of Ohio for his hard work and commitment to attempt us
2871 to reach conclusion on various issues that were outstanding,
2872 and over the last few weeks, he and I and others have worked
2873 in good faith to compromise and reach agreement, but time has
2874 run out, and we hope that we will be able to—and we will—
2875 continue our work toward a mutually satisfactory result
2876 before this measure is considered on the floor.

2877 I am pleased now to recognize Lamar Smith, our ranking
2878 minority member of the Judiciary Committee.

2879 Mr. Smith. Thank you, Mr. Chairman.

2880 For months, the nation has watched as the housing bubble
2881 collapsed, and a subprime mortgage crisis grew. Many
2882 thousands of home buyers are threatened with foreclosure.
2883 Some have already suffered foreclosure. Those families and
2884 those whose jobs depend on these mortgages need help.

2885 The Financial Services Committee has held hearings to
2886 explore what can be done. It has marked up legislation,
2887 including measures it proposed to provide protection going
2888 forward. They can propose new rules to avoid this kind of
2889 crisis in the future, but the Financial Services Committee

2890 can only prevent new crises from happening.

2891 The Judiciary Committee, which has jurisdiction over
2892 bankruptcy law, can provide relief for those who are already
2893 in trouble. In bankruptcy, we can help families on the verge
2894 of losing their home. This committee held only two hearings
2895 on the subprime mortgage crisis, and those hearings, despite
2896 our request, did not include the critical input of those who
2897 represent the securities markets, which the mortgage-backed
2898 securities stand behind over 80 percent of mortgages written
2899 today.

2900 Unfortunately, the committee ignored evidence we did
2901 hear that this bill would only hurt consumers by pushing up
2902 mortgage rates for everyone, restricting capital, and pushing
2903 middle-and low-income families on the verge of home ownership
2904 back down the slope of scrimping and saving and renting that
2905 they had laboriously climbed toward a home. The committee
2906 ignored evidence that lenders were strenuously reaching out
2907 to borrowers, offering to restructure problem mortgages, but
2908 that borrowers were not listening and were not taking
2909 advantage of the opportunity.

2910 We are now rushing to a hasty committee markup before we
2911 hear from all of the major stakeholders. At the subcommittee
2912 markup, Republicans offered five amendments that would have
2913 focused the Miller bill on responding to the real crisis and
2914 would have cut down on harmful market effects caused by

2915 undoing contracts that were voluntarily entered into between
2916 home lenders and borrowers. Every one of those amendments
2917 were rejected.

2918 Since then, we have continued to try to work with the
2919 majority towards a better bill. As the chairman mentioned a
2920 while ago, Steve Chabot has been instrumental in those
2921 efforts, even though so far they have not been successful.

2922 Mr. Chairman, I do not believe that this bill, unless it
2923 is further amended today, has been sufficiently improved to
2924 present a solution. It does not yet adequately protect
2925 against adverse effects on other consumers and the financial
2926 community.

2927 Mr. Chairman, I will yield back the balance of my time.

2928 Chairman Conyers. Thank you very much, Mr. Smith.

2929 I am now pleased to recognize the gentlelady from
2930 California, Linda Sanchez, chair of the Subcommittee on
2931 Commercial and Administrative Law, for her opening statement.

2932 Ms. Sanchez. Thank you, Mr. Chairman.

2933 Mr. Chairman, I would urge my colleagues to support H.R.
2934 3609, the Emergency Home Ownership and Mortgage Equity
2935 Protection Act of 2007.

2936 The American dream of owning a home is rapidly turning
2937 into a nightmare. It is estimated between this year and next
2938 year, there will be a whopping \$400 billion worth of mortgage
2939 defaults with as many as two million households at risk of

2940 losing their homes through foreclosure.

2941 Mortgage lenders filed a record 72,571 notices of
2942 default against delinquent borrowers from July through
2943 September. This is up 34.5 percent from the prior quarter
2944 and 166.6 percent from just a year ago today. And many
2945 individuals will face the possibility of losing their homes
2946 due to a substantial portion of subprime mortgages resetting
2947 their interest rates in the coming months.

2948 This crisis is not simply limited to borrowers. Falling
2949 real estate prices and the inability to refinance or sell
2950 homes forced many home owners into foreclosure. That is a
2951 major hit to our economy which has ramifications for
2952 everyone, borrowers and lenders alike.

2953 To resolve this catastrophe, Representative Brad Miller
2954 and I, along with a number of other members, introduced H.R.
2955 3609, a bill tailored to remedy the current subprime mortgage
2956 crisis. This measure simply makes some modest pertinent
2957 changes to bankruptcy law that would help alleviate some of
2958 the worst effects of the mortgage crisis.

2959 Under H.R. 3609, a debtor in a Chapter 13 case may
2960 reorganize his or her home mortgage obligations, just like
2961 debt on vacation homes, investment properties and even
2962 yachts. And unlike some proposals, this legislation provides
2963 guidance to the courts in terms of how this restructuring may
2964 be done.

2965 H.R. 3609 also provides an important exception to the
2966 mandatory requirement that consumers receive credit
2967 counseling before they file for bankruptcy relief. The bill
2968 excuses the Chapter 13 debtor from this requirement if he or
2969 she submits to the court a certification that a foreclosure
2970 action has been commenced against the debtor's home. It
2971 makes absolutely no sense to require someone to start a
2972 course if their home is being foreclosed the next day.

2973 And this legislation provides important protections
2974 against lenders assessing excessive fees and hidden charges
2975 against Chapter 13 debtors who are trying to save their homes
2976 from foreclosure. The Commercial and Administration Law
2977 Subcommittee held two hearings on this issue and favorably
2978 reported the legislation to the Judiciary Committee, and I
2979 would state for the record that those were very thorough
2980 hearings in which many issues cropped up and were aired
2981 fairly.

2982 The bill that we reported out of committee is a measured
2983 response to address the growing mortgage meltdown. We need
2984 to act. H.R. 3609 will restore fairness to hardworking
2985 American families struggling to save their homes from
2986 foreclosure and bankruptcy, and I would remind my colleagues
2987 that the bulk of the mortgage crisis is due to happen in the
2988 upcoming months, and while we could sit by and have committee
2989 hearing after committee hearing, the fact of the matter is

2990 that while we are doing that, people will be losing their
2991 homes.

2992 I look forward to working with my colleagues on this
2993 committee to respond to the mortgage crisis, and I urge
2994 support for this much needed legislation. And with that, I
2995 yield back my time.

2996 Chairman Conyers. I thank the gentlelady.

2997 And now the hardworking Steve Chabot from Ohio is
2998 recognized.

2999 Mr. Chabot. Thank you, Mr. Chairman.

3000 I would like to express my deep disappointment, not with
3001 you, Mr. Chairman, because I think you have dealt in very
3002 good faith with us, and we appreciate that.

3003 As of last night, we had a bipartisan agreement that
3004 provided what I thought to believe and I think what you also
3005 thought to believe to be a responsible remedy to what has
3006 been rightfully described as a crisis of epic proportions for
3007 many home owners, many of whom were victims of predatory
3008 loans. Yet the agreement fell apart because of a change in
3009 our agreed-upon manager's amendment that would now provide
3010 additional bankruptcy protections for those who chose to
3011 purchase million-dollar homes, but now find themselves unable
3012 to afford them, and that is not how I or my colleagues who
3013 supported bankruptcy reform in 2005 intended bankruptcy
3014 protections to be used.

3015 Yet there are those who truly need the help of our
3016 bankruptcy laws, and those are the people that we should be
3017 protecting. Many are first time home buyers who were victims
3018 of predatory lending practices who now find themselves in
3019 circumstances beyond their control, not millionaires who
3020 chose to risk spending beyond their means.

3021 You do not have to look any further than my own district
3022 and the rest of Ohio to see the impact that the subprime
3023 mortgage crisis is having on borrowers. Ohio leads the
3024 nation in the rate of foreclosure inventory and ranks second
3025 in the nation in the rate of foreclosure starts.

3026 Over the past year, the number of foreclosures initiated
3027 in the State of Ohio has increased by 138 percent. In the
3028 month of September alone, more than 17,800 Ohio homes went
3029 into foreclosure. Filings in 68 of Ohio's 88 counties
3030 increased by double digits. In my district, the number of
3031 foreclosure filings in Hamilton County, one of the top 10
3032 largest urban counties in the state, jumped to 5,800 in 2006.

3033 Experts predict the situation will only get worse. Each
3034 day, news reports highlight concerns and problems associated
3035 with the subprime lending market, throwing the financial and
3036 housing industries into deeper crisis. These reports link
3037 lax, predatory and other substandard lending practices to the
3038 increased number of delinquent mortgages and foreclosure
3039 filings over the last several years.

3040 The analysts predict that the lending practices that
3041 were employed between 2001 and 2005 will continue to impact
3042 the number of delinquent mortgage payments and foreclosure
3043 starts well into the future, which could be especially
3044 devastating to subprime borrowers if housing prices continue
3045 to fall.

3046 Statistics released by the Senate Joint Economic
3047 Committee indicate that there are more than three million
3048 outstanding non-prime loans that are vulnerable to
3049 foreclosure in the next few years. If these statistics are
3050 accurate, these foreclosures have the potential to directly
3051 diminish property values by more than \$71 billion in addition
3052 to the \$32 billion in lower neighborhood property values.

3053 For Ohio, the outlook is particularly bleak, as I
3054 mentioned. There are more than 293,000 outstanding subprime
3055 loans on record. Of these loans, experts anticipate that
3056 more than 82,000 will be the subject of foreclosure in the
3057 next few years, costing property owners in Ohio more than
3058 \$3.6 billion.

3059 Many legislative remedies have been proposed to address
3060 and guide future lending practices administered by the
3061 financial and lending industry. I am disappointed that we
3062 could not come together this afternoon to provide a
3063 responsible remedy for those who have been truly victimized
3064 by the industry.

3065 It is my hope that reasonable minds will come together
3066 to forge a truly bipartisan compromise before this
3067 legislation is brought to the floor. This issue is too
3068 important and affects far too many lives to not get it right
3069 when we have the opportunity to do so, and I hope we take
3070 advantage of that opportunity between today and the time this
3071 bill comes to the floor.

3072 And I, again, want to thank you, Mr. Chairman, for, I
3073 believe, dealing with me in good faith, that we have had many
3074 conversations on this, and I think you were very open. Our
3075 staffs worked very closely together. Unfortunately, we did
3076 not get there today, but I hope that we ultimately do before
3077 it gets to the floor.

3078 Thank you, and I yield back the balance of my time.

3079 Chairman Conyers. The Chair recognizes the ranking
3080 member of the subcommittee, Chris Cannon of Utah.

3081 Mr. Cannon. Thank you, Mr. Chairman.

3082 I want to be clear that I am sympathetic to those home
3083 owners who find themselves with problematic or even predatory
3084 loans and are struggling, but I just want to be clear that I
3085 do not approve of the bill in its current form for reasons
3086 that I set forth eloquently in my written statement which I
3087 ask unanimous consent be accepted into the record without
3088 objection.

3089 Chairman Conyers. Without objection, so ordered.

3090 [The statement of Mr. Cannon follows:]

3091 ***** INSERT *****

3092 Mr. Cannon. Thank you, Mr. Chairman.

3093 My concern is that we not disrupt the capital markets
3094 creating an environment where people have to have bigger down
3095 payments and pay higher interest rates because of the way we
3096 jigger with the system here, and so I leave it at that, Mr.
3097 Chairman, and yield back the balance of my time.

3098 Chairman Conyers. I thank the gentleman.

3099 Could I ask my friends on this side of the aisle to
3100 strike the record at a number of words as we proceed along?

3101 Are there any amendments?

3102 Ms. Lofgren. Mr. Chairman?

3103 Chairman Conyers. Ms. Lofgren?

3104 Ms. Lofgren. I would like to strike the last word.

3105 Chairman Conyers. We will come to that, but let us get
3106 to the amendment first.

3107 Ms. Lofgren. Oh, I see. I misunderstood. I am sorry.

3108 Mr. Cannon. Mr. Chairman, I have an amendment at the
3109 desk.

3110 Chairman Conyers. All right. The gentleman's amendment
3111 will be reported.

3112 Mr. Cannon. And that is Amendment Number 202.

3113 The Clerk. "Amendment to H.R. 3609 offered by Mr.
3114 Cannon, page 2, strike lines 12 through 15, insert the
3115 following: Section 1322(b)(2) of Title 11, United States
3116 Code, is amended by inserting 'except as provided in

3117 paragraph 12' after residence. Page 2, line 23, strike 12"-

3118 [The amendment by Mr. Cannon follows:]

3119 ***** COMMITTEE INSERT *****

3120 Chairman Conyers. I ask unanimous consent the amendment
3121 be considered as read and recognize the gentleman in support
3122 of his amendment.

3123 Mr. Cannon. Thank you, Mr. Chairman.

3124 This amendment would place a reasonable limitation on
3125 how principal can be crammed down under the bill. This bill
3126 would amend that the Bankruptcy Code so that a debtor would
3127 be allowed to cram the principle owed on his loan down to the
3128 current value of his primary residence. The difference in
3129 the amount of the principle the borrower owes and the value
3130 of the house would be converted from secured to an unsecured
3131 debt.

3132 My amendment would limit the ability of borrowers to
3133 cram down principle in those instances where the lender and
3134 the borrower come to an agreement. For months now, we have
3135 been told that borrowers are facing foreclosure because of
3136 interest rate resets on adjustable mortgages. When the
3137 interest rate resets to a higher amount, the borrower's
3138 monthly payment increases to a level that they sometimes
3139 cannot afford.

3140 Cramdown of principle, however, has nothing to do with
3141 interest rate resets. So, if the problem we are trying to
3142 address is interest rate resets, there is no reason to allow
3143 for cramdown of principle except in those cases where the
3144 lender and the borrower agree to a cramdown, like where the

3145 value of the house has fallen below the mortgage amount. In
3146 that case, the lender will be amenable to a discussion about
3147 a cramdown.

3148 My amendment requires an agreement on the cramdown, but
3149 leaves the bankruptcy judge the discretion to modify the
3150 interest rate on the loan in order to lower the borrower's
3151 monthly payments. My amendment places a reasonable sunset on
3152 this bill. A sunset was supported by witnesses at the last
3153 hearing we held on this issue.

3154 This amendment targets this bill at the real problem
3155 affecting subprime borrowers and, thereby, lessens the
3156 collateral damage the bill will cause for future borrowers,
3157 vendors and investors.

3158 I urge my colleagues to vote in favor of this modest
3159 amendment to the bill before us today, and I yield back.

3160 Chairman Conyers. The gentlelady from California is
3161 recognized.

3162 Ms. Sanchez. Sorry. I thought you meant Ms. Lofgren.

3163 With respect to the cramdown, creditor consent is
3164 already the law. However, Moody's Investor Services surveyed
3165 80 percent of the servicing market through July of this year
3166 and found that most lenders were modifying only 1 percent of
3167 subprime loans experiencing the rate resets. As a result,
3168 Moody's is expected to continue downgrading mortgage-backed
3169 securities because of rising defaults.

3170 When considering this 1 percent figure, keep in mind
3171 that the chief researcher at First American CoreLogic
3172 concluded that up to half of the 450,000 families facing
3173 subprime resets in the next 3 months will lose their homes to
3174 foreclosure. Thus, even if industry creditor consent
3175 modification efforts increase tenfold, an extraordinary
3176 increase under any circumstances, the effort would still be
3177 far from enough. Further, the reality is that it is
3178 sometimes not possible, given the legal obstacles that
3179 securitization can place on the servicer because of pooling
3180 and servicing contract limitations and the fact that up to
3181 half of 2006 subprime loans had piggyback seconds.

3182 Moreover, even where lenders or servicers have the
3183 authority to approve these changes, many are reluctant to do
3184 so out of fear that any discretion they exercise will give
3185 investors a basis for suing them. Empowering bankruptcy
3186 judges to order these changes will provide lenders and
3187 servicers with the cover that they need.

3188 Today, we are seeing the results of lenders in action.
3189 Leaving cramdowns to lender discretion would maintain the
3190 status quo and allow the foreclosure epidemic and all its
3191 negative effects to continue expanding unchecked.

3192 The biggest benefit of the law will be the establishment
3193 of standards that servicers will adopt for sustainable loan
3194 modifications enabling families to receive voluntary

3195 modifications that will allow them to avoid entering into
3196 bankruptcy altogether. These standards will insulate
3197 servicers from investor tranche warfare lawsuits so that
3198 modifications can become more common.

3199 If cramdown is limited to a certain percentage, it would
3200 penalize those subject to the worst appraisal fraud. In
3201 addition, the principle can only be crammed down to the fair
3202 market value of the house. This is the market reality anyway
3203 for a family facing foreclosure. The lender will not get
3204 this money when the house is sold at auction. In fact, they
3205 will receive less and incur larger expenses maintaining,
3206 selling and holding the house during the period of
3207 foreclosure and REA of sale. The amount over value would
3208 become unsecured debt paid to the extent the family is able
3209 during three to 5 years of the plan. If the family fails in
3210 completing the Chapter 13 plan, the loan returns to its
3211 original terms and cramdown is undone.

3212 I would just add that with respect to this legislation,
3213 what we are trying to do is give bankruptcy judges the
3214 discretion, but the guidance to be able to modify mortgages
3215 on primary residences. They already have that power for
3216 second homes, for investment properties and for other types
3217 of debt, and why there is this carve-out for primary
3218 residences when that is typically the only piece of property
3219 that most Americans own, is their primary residence, I do not

3220 understand. I do not think that we ought to be restricting
3221 what bankruptcy judges can do, they are experts in valuating
3222 property for their fair market value, and so because of that,
3223 I would ask my colleagues to defeat—

3224 Mr. Cannon. Would the gentlelady yield?

3225 Ms. Lofgren. Would the gentlelady yield?

3226 Ms. Sanchez. I will yield to the gentlewoman from
3227 California, Ms. Lofgren.

3228 Ms. Lofgren. I appreciate that, and I think you very
3229 clearly stated the concerns with the amendment from our
3230 friends from Utah. I just disagree with it.

3231 I did want to also make a comment on the overall issue
3232 of housing costs and the approach that we are taking. I
3233 chair the California Democratic Delegation, and one of the
3234 things that we know in California is the market is just a
3235 little bit different in California than it is in Ohio or Iowa
3236 or other places.

3237 For example, the median price of a house in Santa Clara
3238 County is close to \$800,000. Those are not rich people
3239 buying those. Those are working families who are struggling.
3240 I will tell you it is a huge struggle, and so whatever remedy
3241 we come up with, it has to work for working people in
3242 California, just as well as it is working for working people
3243 in the Midwest or in the South, and that is a bedrock
3244 principle for me, and it is not about rich people. It is

3245 about hardworking people who live in a very pricey part of
3246 the country.

3247 And I thank the gentlelady for yielding.

3248 Ms. Sanchez. Reclaiming my time, I would also like to
3249 add that with respect to the high cost of housing in L.A.
3250 County, it is not unusual in my district for two or three
3251 families to pool their resources to be able to buy a home,
3252 and sometimes that home, because of the high housing costs in
3253 California, may be above \$1 million. It does not mean that
3254 these families are living like millionaires. Oftentimes,
3255 families are living—entire families—in one or two bedrooms,
3256 but it is the only way that they can find to get into the
3257 housing market.

3258 And so I thank the gentlewoman from California for her
3259 comments on the general comment that we are giving relief for
3260 millionaires because I do not think that is the case, and
3261 with that I yield back.

3262 Chairman Conyers. Thank you so much.

3263 Lamar Smith?

3264 Mr. Smith. Thank you, Mr. Chairman.

3265 Mr. Chairman, I also want to thank Mr. Cannon for
3266 offering this amendment which narrows the scope of this bill
3267 in a manner that should reduce the cost this bill has on
3268 future borrowers.

3269 Allowing borrowers to cram down the principle owing on

3270 their loans and bankruptcy will only serve to cause lenders
3271 to increase the interest rates they charge and to require
3272 larger down payments from borrowers. These increased costs
3273 will delay and, in some cases, end the dream of home
3274 ownership for many people.

3275 Mr. Chairman, I will yield my time to the gentleman from
3276 Utah, Mr. Cannon.

3277 Mr. Cannon. I thank the gentleman.

3278 And I would just make a couple of points here. In the
3279 first place, I find myself in much agreement with the
3280 gentlelady from California, Ms. Sanchez, but it seems to me
3281 that the point she is making about the market forces are
3282 exactly the point that I was making in my statement in that
3283 it goes to the resetting of the interest rates rather than
3284 cramming down on the value of the principle, and while I am
3285 sensitive to the high cost in California—housing costs have
3286 accelerated in Utah, in my district, as well, largely, I
3287 think in response to what has happened in the mortgage
3288 market, we bid prices up, and in many cases, beyond the reach
3289 of many people.

3290 That is not the reason why we should change the
3291 financial system in America today. In fact, the opposite is
3292 true. The market needs to deflate a little bit, the bubble
3293 needs to burst, and we have to have a system where we can
3294 continue to have the highest number of Americans in the

3295 history of America and the highest number of people or
3296 percentage of people in the history of the world owning their
3297 own homes, even if those are highly valued. We will force
3298 people out of the market if we raise interest rates
3299 artificially and if we force down payments to be increased.

3300 And so let me go back to an issue that is not in my
3301 amendment but which the gentlelady addressed, which is the
3302 difference between second homes and primary residences. It
3303 is because we do not have this carve-out for primary homes
3304 that the lending industry is willing to suffer the risks of
3305 these kind of mortgages, and, therefore, it is settled
3306 policy. We have dealt with this in our subcommittee hearing,
3307 we may have disagreements about the effect of it, but, in
3308 fact, it has worked remarkably well, and it has worked
3309 remarkably well for poor people and working families who are
3310 now able to qualify for \$1 million loans. If those loans are
3311 reset to a level where they cannot afford them, then we
3312 probably can help them in a way without putting at risk our
3313 whole system.

3314 And so, Mr. Chairman, with those two points, I would be
3315 happy to yield for the gentlelady if she wants to disagree on
3316 those two points, but, otherwise, I suggest that nothing has
3317 been heard yet that would—

3318 Ms. Sanchez. If the gentleman will yield, I will say
3319 that—

3320 Mr. Cannon. All right. Let me just finish my sentence,
3321 and I would be happy to yield.

3322 That is nothing has been said yet that, I think,
3323 diminishes from the argument that I have made in favor of my
3324 amendment.

3325 I would be happy to yield to the gentlelady.

3326 Ms. Sanchez. While the argument is often made that it
3327 is going to affect interest rates, the fact of the matter is
3328 that prior to the Supreme Court is Nobleman decision in 1993,
3329 different jurisdictions allowed modification of primary
3330 residence. Some allowed it in all instances, some in limited
3331 instances, and some did not allow it at all. And the fact of
3332 the matter is the interest rates in those jurisdictions that
3333 did allow it or allowed it on a limited basis were not any
3334 different from the interest rates in those which did not
3335 allow it.

3336 So the argument that it is going to make it harder for
3337 people to get into housing, I think, is really a throwaway
3338 argument because it is—

3339 Mr. Cannon. Reclaiming my time because I think—

3340 Ms. Sanchez. —does not have a basis in fact.

3341 Mr. Cannon. We still have enough time to actually join
3342 this issue, and I would like to do that.

3343 In 1993, you are correct, but two things have happened.
3344 In the first place, we have had a vast increase in the

3345 percentage of people in America that own their own home, and,
3346 secondly, that, I think, in part because of the certainty in
3347 the market, but, in addition, to the certainty, the nature of
3348 the market has changed. I believe that we would agree that
3349 there are excesses in the market, but those excesses have
3350 actually led to more people owning homes, and so I think what
3351 I would suggest to the gentlelady is that it is the certainty
3352 that has evolved from that court decision that leaves us in a
3353 position where so many people actually have houses. Now the
3354 question is what do we do in the future given the current
3355 system, not the system that existed before 1993.,

3356 Ms. Sanchez. Will the gentleman yield?

3357 Mr. Cannon. I will yield.

3358 Ms. Sanchez. Just in the limited time that remains, I
3359 would say, you know, the argument about increased interest
3360 rates and making it harder for people to get into housing as
3361 a result—if you look at all other kinds of secured debt,
3362 which can be cars, yachts, a similar thing has not happened
3363 in those instances, and yet we allow bankruptcy judges the
3364 discretion—

3365 Mr. Cannon. Reclaiming my time—

3366 Ms. Sanchez. I could just finish my sentence, we allow
3367 them the discretion to modify those loans as well, and, for
3368 me, the specter that it is going to make it impossible for
3369 people to—

3370 Mr. Cannon. Let me reclaim my time before it runs out
3371 and point out that the vast majority of the wealth of America
3372 is in home ownership, not in gun ownership or car ownership,
3373 and that is the core concept here.

3374 Thank you, Mr. Smith. I yield back to you.

3375 Mr. Watt. Mr. Chairman? Mr. Chairman?

3376 Chairman Conyers. The Chair wishes to make this
3377 announcement.

3378 By unanimous consent request, because of the agreements
3379 that have been reached already on the Community Pharmacy
3380 Fairness Act, I ask unanimous consent to suspend on this
3381 matter, bring up the pharmacy bill, and then come back after
3382 the votes to finish this matter, because we think that we
3383 have reached all the agreement that is possible on the
3384 Community Pharmacy Fairness Act on both sides of the aisle.

3385 And without objection, I would ask the clerk to report
3386 H.R. 971, the Community Fairness Act.

3387 The Clerk. "H.R. 971, a bill to ensure and foster
3388 continued patient safety and quality of care by making the
3389 antitrust laws apply to negotiations"—

3390 [The bill follows:]

3391 ***** INSERT *****

3392 Mr. Smith. Mr. Chairman, I request unanimous consent
3393 the bill be considered as read.

3394 Chairman Conyers. Without objection, so ordered.

3395 Let me begin by thanking everyone for their cooperation
3396 today. It has been very good.

3397 And let us just get right into it. Pursuant to notice,
3398 I call up H.R. 971. The bill is considered as read.

3399 I ask unanimous consent to put my statement in the
3400 record.

3401 [The statement of Chairman Conyers follows:]

3402 ***** COMMITTEE INSERT *****

3403 Chairman Conyers. I would yield to the ranking member,

3404 Mr. Lamar Smith.

3405 Mr. Smith. Thank you, Mr. Chairman.

3406 I, too, would like to ask unanimous consent to have my

3407 opening statement made a part of the record, and, Mr.

3408 Chairman, if that is the case and my opening statement is

3409 made a part of the record—

3410 Chairman Conyers. Without objection, so ordered.

3411 [The statement of Mr. Smith follows:]

3412 ***** COMMITTEE INSERT *****

3413 Mr. Smith. I do want to say to the gentleman from New
3414 York that Mr. Issa has two amendments. Mr. Issa is not here
3415 right now. I am prepared to offer those amendments on his
3416 behalf-

3417 Chairman Conyers. En bloc.

3418 Mr. Smith. -as a possible solution en bloc.

3419 Mr. Weiner. Can you do one better? We also have a
3420 manager's amendment that Mr. Coble and I drafted. All three
3421 are at the desk. We could offer all three en bloc to
3422 accommodate-

3423 Mr. Smith. Let me reclaim my time. If the gentleman
3424 will offer all that, I will-

3425 Mr. Weiner. Fair enough.

3426 Okay. Mr. Chairman,,,

3427 Chairman Conyers. The Chair recognizes the gentleman
3428 from New York, Mr. Weiner.

3429 Mr. Weiner. Mr. Chairman, thank you. I will put my
3430 opening statement in the record as well.

3431 Chairman Conyers. Without objection.

3432 [The statement of Mr. Wiener follows:]

3433 ***** COMMITTEE INSERT *****

3434 Mr. Weiner. At this time, I would like to offer en bloc
3435 the manager's amendment by Messrs. Weiner and Coble and the
3436 two Issa amendments to be considered en bloc, and then I will
3437 briefly describe them.

3438 Chairman Conyers. If the clerk can read the titles of
3439 those three proposals—

3440 The Clerk. "Amendment in the nature of a substitute to
3441 H.R. 971 offered by Mr. Weiner of New York and Mr. Coble of
3442 North Carolina. Amendment"—

3443 [The amendment by Mr. Wiener follows:]

3444 ***** INSERT *****

3445 Chairman Conyers. Without objection, the amendments
3446 will be considered and the manager's amendment will be
3447 considered as read, and the gentleman from New York is
3448 recognized in support of—

3449 Mr. Weiner. Mr. Chairman, these amendments are in
3450 response to various concerns that came up from my colleagues
3451 on the other side of the aisle, all very constructive.

3452 One amendment is to limit the size of the group of
3453 pharmacies that can band together so they do not form too
3454 powerful a buying group in and of itself. We do not replace
3455 one monopoly with another.

3456 Another is a sunset provision that was requested by Mr.
3457 Smith.

3458 And a third is clarifying language to ensure that the
3459 FTC still does oversight to make sure again that actions are
3460 in the best interests of the marketplace.

3461 Mr. Issa's amendments and ours, I think, perfect the
3462 bill, get us to where we both want it to be on both sides of
3463 the aisle where you allow neighborhood pharmacies to be able
3464 to band together to compete without bigger government
3465 solutions to the problems that they are facing.

3466 I thank my colleagues on my sides for participating,
3467 Jonathan Sleeper of my staff. I urge a yes vote.

3468 Mr. Smith. Will the gentleman yield?

3469 Mr. Weiner. Certainly.

3470 Mr. Smith. As I mentioned, Chairman, a while ago, I
3471 support this omnibus amendment, but I also want to point out
3472 that one of the original cosponsors of this bill, Jerry Moran
3473 of Kansas, a few minutes ago was in the room. I think he has
3474 since left. But I do want to give him credit along with you
3475 for coming up with the legislation.

3476 Mr. Weiner. Well, the National Pharmacy Task Force we
3477 have around here is equally divided, Democrats and
3478 Republicans. Mr. Moran was one of the founders, and I thank
3479 you. And I ask for a yes vote.

3480 Chairman Conyers. I thank the members for their very
3481 generous considerate

3482 Mr. Watt. Mr. Chairman?

3483 Chairman Conyers. -cooperation and recognize Mel Watt.

3484 Mr. Watt. I trust all of my friends and colleagues on
3485 this committee, but it seems imperative that we at least have
3486 what it is we are considering and I only have the manager's
3487 amendment at this point.

3488 Chairman Conyers. Well, we did not deliberately short
3489 sheet you, but we will get them to you right away.

3490 Mr. Weiner. While they are distributing it, two Issa
3491 amendments. One defines how big a group of independent
3492 pharmacies can be, and it limits to 10 percent of the Part D
3493 Medicare zone that says you cannot get too much bigger than
3494 that, and also Mr. Issa was concerned that the FTC and

3495 Department of Justice should also still be doing oversight
3496 of this sector to make sure that that monopoly power is not
3497 concentrated somewhere else, although I think it is unlikely,
3498 given how large the chains are compared to the independent
3499 pharmacies. I think it is a helpful change. Those are the
3500 two amendments from Mr. Issa who could not be here.

3501 Chairman Conyers. I thank the gentleman.

3502 All those in favor of the amendments en bloc, signify by
3503 saying aye.

3504 All those opposed, signify by saying no.

3505 The ayes have it, and the amendments are agreed to.

3506 A reporting quorum being present, the question is on
3507 reporting the bill as amended favorably to the House.

3508 All in favor will signify by saying aye.

3509 All opposed, say no.

3510 The ayes have it, and the bill as amended is ordered
3511 reported favorably to the House.

3512 Without objection, the bill will be reported favorably
3513 to the House in the form of a single amendment in the nature
3514 of a substitute.

3515 Incorporating the amendments here today, the staff is
3516 authorized to make technical and conforming changes.

3517 Members will have 2 days as provided by the House rules
3518 in which to submit additional views.

3519 The members, please, must come back to finish the

3520 measure that we suspended. That is H.R. 3609 will be taken
3521 up immediately after the vote.

3522 The committee will stand in recess. [Whereupon, at

3523 6:30 p.m., the committee was adjourned.]