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4 MARKUP OF H.R. 2572, THE CLEAN UP GOVERNMENT ACT OF 2011,
5 AND H.R. 1433, THE PRIVATE PROPERTY RIGHTS PROTECTION ACT OF
6 2011
7 Thursday, December 1, 2011
8 House of Representatives
9 Committee on the Judiciary
10 Washington, D.C.

11 The committee met, pursuant to call, at 10:09 a.m., in
12 Room 2141, Rayburn House Office Building, Hon. Lamar Smith
13 [chairman of the committee] presiding.

14 Present: Representatives Smith, Sensenbrenner, Coble,
15 Gallegly, Goodlatte, Lungren, Chabot, Forbes, King, Franks,
16 Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy,

17 Ross, Adams, Quayle, Amodei, Conyers, Nadler, Scott, Watt,
18 Lofgren, Jackson Lee, Waters, Cohen, Johnson, Pierluisi,
19 Quigley, Chu, Deutch, and Sanchez.

20 Staff Present: Sean McLaughlin, Majority Chief of
21 Staff; Allison Halatei, Majority Deputy Chief of
22 Staff/Parliamentarian; Sarah Kish, Clerk; Arthur Radford
23 Baker, Majority Counsel; Zach Somers, Majority Counsel;
24 Perry Apelbaum, Minority Staff Director; Joe
25 Graupensperger, Minority Counsel; and David Lachmann,
26 Minority Counsel.

27

28 Chairman Smith. The Judiciary Committee will come to
29 order.

30 Without objection, the chair is authorized to declare
31 recesses of the committee at any time. The clerk will call
32 the roll to establish a quorum.

33 Ms. Kish. Mr. Smith?

34 Chairman Smith. Present.

35 Ms. Kish. Mr. Sensenbrenner?

36 Mr. Sensenbrenner. Present.

37 Ms. Kish. Mr. Coble?

38 Mr. Gallegly?

39 Mr. Gallegly. Present.

40 Ms. Kish. Mr. Goodlatte

41 Mr. Lungren?

42 Mr. Lungren. Present.

43 Ms. Kish. Mr. Chabot?

44 Mr. Issa?

45 Mr. Pence?

46 Mr. Forbes?

47 Mr. King?

48 Mr. King. Here.

49 Ms. Kish. Mr. Franks?
50 Mr. Gohmert?
51 Mr. Jordan?
52 Mr. Jordan. Here.
53 Ms. Kish. Mr. Poe?
54 Mr. Chaffetz?
55 Mr. Griffin?
56 Mr. Marino?
57 Mr. Marino. Present.
58 Ms. Kish. Mr. Gowdy?
59 Mr. Ross?
60 Mrs. Adams?
61 Mrs. Adams. Present.
62 Ms. Kish. Mr. Quayle?
63 Mr. Amodei?
64 Mr. Amodei. Present.
65 Ms. Kish. Mr. Conyers?
66 Mr. Berman?
67 Mr. Nadler?
68 Mr. Nadler. Here.
69 Ms. Kish. Mr. Scott?

70 Mr. Scott. Here.

71 Ms. Kish. Mr. Watt?

72 Ms. Lofgren?

73 Ms. Jackson Lee?

74 Ms. Waters?

75 Mr. Cohen?

76 Mr. Cohen. Present.

77 Ms. Kish. Mr. Johnson?

78 Mr. Pierluisi?

79 Mr. Pierluisi. Present.

80 Ms. Kish. Mr. Quigley?

81 Mr. Quigley. Present.

82 Ms. Kish. Ms. Chu?

83 Mr. Deutch?

84 Ms. Sanchez?

85 [Pause.]

86 Chairman Smith. The gentleman from Michigan?

87 Ms. Kish. Mr. Conyers?

88 Mr. Conyers. Present.

89 Chairman Smith. And the gentleman from North
90 Carolina?

91 Mr. Coble. Here.

92 Chairman Smith. The clerk will report.

93 Ms. Kish. Mr. Chairman, 16 Members responded present.

94 Chairman Smith. A working quorum is present.

95 [Pause.]

96 Chairman Smith. I want to say to Members this is

97 "Sensenbrenner Day" at the Judiciary Committee. We have

98 two bills we are going to consider.

99 The first, H.R. 2572, the Clean Up Government Act of
100 2011, was introduced by Mr. Sensenbrenner and the gentleman
101 from Illinois, Mr. Quigley. The second, 1433, the Private
102 Property Rights Protection Act of 2011, was also introduced
103 by the gentleman from Wisconsin. Cosponsors are
104 Representatives Smith, Coble, Goodlatte, Pence, Forbes,
105 Franks, Griffin, Gowdy, Ross, Waters, and Cohen.
106 Therefore, both bills are bipartisan products.

107 And pursuant to notice, I now call up H.R. 2572, the
108 Clean Up Government Act of 2011, for purposes of markup,
109 and the clerk will report the bill.

110 Ms. Kish. H.R. 2572. To amend Title 18 --

111 Chairman Smith. Without objection, the bill will be

112 considered as read.

113 [The information follows:]

114

115 Chairman Smith. I will recognize myself and then the
116 ranking member for opening statements, and then the
117 gentleman from Wisconsin, as well as the gentleman from
118 Illinois.

119 When an elected official violates the sacred trust of
120 their office by turning public service into self service,
121 Americans' confidence in public servants and the political
122 process erodes.

123 The FBI has identified public corruption as a top
124 criminal priority, noting that, "Public corruption poses a
125 fundamental threat to our national security and way of
126 life. It impacts everything from how well our borders are
127 secured and our neighborhoods are protected to verdicts
128 handed down in courts, to the quality of our roads,
129 schools, and other government services. And it takes a
130 significant toll on our pocketbooks, wasting billions in
131 tax dollars every year."

132 Our public corruption laws must ensure that elected
133 officials who profit illegally from their undisclosed
134 financial interest or by accepting illegal gratuities are
135 held accountable. H.R. 2572, the Clean Up Government Act

136 of 2011, was introduced by Crime Subcommittee Chairman
137 Sensenbrenner and Mr. Quigley of Illinois to improve
138 Federal public corruption statutes. The bill makes common
139 sense reforms and restores prosecutorial tools that have
140 been stripped away by various court decisions.

141 The bill clarifies the definition of "undisclosed
142 self-dealing" within the honest services fraud statute.
143 This important change reinstates Congress's intent that
144 honest services fraud prosecutions not be limited only to
145 bribery and kickback schemes.

146 Similar clarifications are made for the terms
147 "official act" and "official position." The bill also
148 enhances penalties and expands wiretap predicates. This
149 bill ensures that our public corruption laws reflect the
150 seriousness of this conduct and its effect on America's
151 trust in government.

152 I support this legislation and encourage my colleagues
153 to support it as well.

154 And the gentleman from Michigan, the ranking member of
155 the Judiciary Committee, Mr. Conyers is recognized.

156 Mr. Conyers. Good morning, Mr. Chairman and Members.

157 I would like to just add a few points. And I must
158 begin by agreeing with the chairman's summary of the bill
159 but point out that the National Association of Criminal
160 Defense Lawyers and others have some reservations that I
161 will put into the record. But I will go on to suggest that
162 there is a need to strengthen our laws in regard to public
163 corruption, and with a few amendments, I think it will work
164 out pretty well. I commend Jim Sensenbrenner and Mike
165 Quigley for their concern and detailed work on the bill.

166 We need to adjust the definition of "official act" in
167 the bill, which applies to the anti-bribery statute, and
168 this is to ensure an appropriate range of conduct is
169 clearly prohibitive. This comes out of the Valdez case,
170 and we are trying to clarify what constitutes "official
171 duties."

172 Next, we should resist calls to sentence levels
173 without evidence that the current sentence levels are too
174 low. Now let us be candid here. There is a predisposition
175 in the legislature to hike sentences. I mean, politically,
176 that is what normally happens. I have never experienced a
177 wave of sentiment to reduce the sentencing anywhere.

178 So I think we have to be very careful in terms of
179 saying that we are going to just arbitrarily or even with
180 great consideration raise sentence levels without evidence
181 that current sentences are too low.

182 And then I look forward to the substitute amendment to
183 be introduced by the gentleman from Wisconsin. I think the
184 substitute is an important addition.

185 And finally, we must be careful about eliminating or
186 increasing RICO provisions. This is a very controversial
187 problem that we have been dealing with, but I think we
188 shouldn't expand RICO in this measure. And I would like to
189 see that very carefully addressed as we move forward.

190 And so, those are my opening comments, Mr. Chairman,
191 and I yield back the balance of my time.

192 Chairman Smith. Thank you, Mr. Conyers.

193 The gentleman from Wisconsin, the chairman of the
194 Crime Subcommittee, is recognized.

195 Mr. Sensenbrenner. Thank you, Mr. Chairman.

196 Before giving my opening statement, I would like to
197 bid farewell to the last of the Sensenbrenner hires on the
198 full committee staff. Our parliamentarian, deputy chief of

199 staff, wise counsel on everything that comes before the
200 committee, Ally Halatei, who is going off to advise the
201 songwriters on how to protect their intellectual property
202 rights.

203 So you have done a great job for me. You have done a
204 great job for the chairman. I am glad to have hired you,
205 and I bid you farewell.

206 Chairman Smith. And I will recognize myself as well.
207 I was actually waiting until we had more Members present,
208 but the former chairman beat me to it.

209 And I, too, want to congratulate Ally Halatei on her
210 new position, which comes with great responsibility. We
211 will be able to stay in touch with her because she is going
212 to be working for the songwriters. But she has just done
213 such a wonderful job for all of us as parliamentarian, also
214 as deputy chief of staff, as Mr. Sensenbrenner mentioned.

215 So, Ally, if you will stand up and take a bow behind
216 me, that will be --

217 [Applause.]

218 Mr. Sensenbrenner. Now reclaiming my time. In July,
219 the Crime Subcommittee held a hearing to examine gaps in

220 our Federal corruption laws that limit their effectiveness
221 and allow corruption to persist. If elected officials
222 decide to profit from the trust they hold with their
223 constituents, then the foundation of our democracy is
224 weakened. We, as lawmakers, must ensure that prosecutors
225 and investigators have the tools they need to fully and
226 effectively address the issue of public corruption.

227 I, along with my colleague from Illinois, Mr. Quigley,
228 introduced H.R. 2572, the Clean Up Government Act of 2011,
229 to strengthen our public corruption laws by restoring some
230 of the prosecutorial tools that have been eroded by the
231 courts.

232 One such erosion was the Supreme Court's decision in
233 *Skilling v. U.S.* In *Skilling*, the court held that Federal
234 honest service fraud statute does not apply to prosecutions
235 involving undisclosed self-dealing by a public official,
236 but instead only to cases that involve traditional bribery
237 or kickback schemes.

238 Many instances of public corruption do not involve a
239 quid pro quo bribery or extortion scenario but, rather,
240 public officials who exploit their positions and influence

241 to obtain benefit from an undisclosed financial interest in
242 the matter.

243 The bill addresses the Skilling decision by clarifying
244 in the criminal code that a scheme or artifice to defraud
245 includes a scheme or artifice by a public official who
246 engaged in undisclosed self-dealing. The bill also
247 clarifies the law with regards to public officials who
248 receive gratuities simply because of their official
249 position.

250 The bill amends the definition of "official act" to
251 include conduct that falls within the range of official
252 duties of a public official, not limiting official acts to
253 just decisions or actions on a matter pending before the
254 public official.

255 The bill also enhances other existing Federal statutes
256 used to fight and deter public corruption, all aimed at
257 ensuring that public corruption and related offenses are
258 effectively addressed.

259 At our hearing in July, the Justice Department
260 properly summed up the need for this legislation. Our
261 citizens are entitled to know that their public servants

262 are making their official decisions based on the best
263 interest of citizens who elect them and pay their salaries
264 and not based on bribes, extortion, or a public official's
265 own hidden financial interest.

266 When FBI director Robert Mueller testified before the
267 committee in March this year, he testified that the FBI
268 recognizes that fighting public corruption is vital to
269 preserving our democracy, protecting our borders, securing
270 our communities. Indeed, public corruption remains our top
271 criminal priority.

272 People can differ on how much government is too much
273 government or how the government should impact their daily
274 lives. But every citizen expects and deserves an honest
275 government.

276 Some argue that votes at the ballot box or an oath of
277 office are sufficient to hold a public official accountable
278 to their constituents. Sadly, we have too many examples of
279 public corruption to know these methods are not sufficient.

280 Corrupt officials do not broadcast their illegal acts
281 or make them known to their constituents. Even the most
282 informed voters are often unaware of ongoing corruption by

283 public officials. Robust investigations and prosecutions
284 are a necessary function to ensure honest government.

285 H.R. 2572 enjoys support from diverse groups,
286 including the FBI Agents Association, the National
287 Taxpayers Union, the Campaign Legal Center, Citizens for
288 Responsibility and Ethics in Washington, and others. And I
289 have received a number of letters in support that I would
290 ask unanimous consent to be included in the record.

291 Chairman Smith. Without objection.

292 [The information follows:]

293

294 Mr. Sensenbrenner. There is bipartisan support in
295 both the House and the Senate for reforming our public
296 corruption laws. And I would hope that this bipartisan
297 bill would be one of the things that can be utilized to
298 tell the American public that we in Congress are doing our
299 jobs. And I urge its support.

300 Chairman Smith. Thank you, Mr. Sensenbrenner.

301 The gentleman from Virginia, Mr. Scott, the ranking
302 member of the Crime Subcommittee, is recognized.

303 Mr. Scott. Thank you, Mr. Chairman.

304 As the chairman of the subcommittee has outlined, the
305 fight against public corruption is one of the most
306 important functions of our Federal prosecutors. And as we
307 consider whether to modify existing laws in this area or
308 whether to adopt new ones, there are a few concerns that we
309 need to consider.

310 First, the bill provides increased penalties for
311 public corruption offenses. I am concerned that every time
312 we get alarmed about a problem, the first instinct is to
313 raise sentences. I am pleased that the substitute
314 amendment to be offered by the subcommittee chairman scales

315 back many of these proposed sentencing increases, and that
316 is a welcome change.

317 And also while we may ask the U.S. Sentencing
318 Commission to review the current sentencing guidelines for
319 certain offenses and make changes if appropriate, we should
320 not direct the commission to adjust sentences upward if it
321 is not warranted. At least we know they will study the
322 need for sentencing increases before acting, which is more
323 than Congress usually does when dealing with increasing
324 maximum sentence levels.

325 With regard to proposals to expand public corruption
326 laws, I note that there are numerous statutes on the books
327 that Federal law enforcement uses to prosecute public
328 corruption offenses, such as anti-bribery statutes, anti-
329 gratuity statutes, anti-extortion statutes, and the mail
330 and wire fraud statutes.

331 Mail and wire fraud statutes are already extremely
332 broad and allow Federal prosecutors to pursue public
333 corruption-related fraud when someone uses the mail or wire
334 communication to obtain money or property. Expanding these
335 laws even further raises concerns that we are over-

336 criminalizing behavior that is properly investigated by
337 State authorities.

338 Now this has been a problem with many well-intentioned
339 statutes on the books dealing with various issues of
340 bribery and public corruption. If a statute is too broad,
341 reasonable people disagree about how the law should be
342 applied, and sometimes, it can be applied in an overzealous
343 and unfair way.

344 The courts are left to sort out the mess, and we are
345 called upon to clarify the law. In many respects, this is
346 what brought us here today.

347 I am pleased that the substitute amendment to be
348 considered makes a number of changes in response to
349 concerns raised by Members during the Crime Subcommittee
350 hearing, and I believe that we can consider the bill in the
351 spirit of bipartisanship befitting the seriousness of the
352 issue addressed by the bill and look forward to
353 consideration of the bill today.

354 I yield back the balance of my time.

355 Chairman Smith. Thank you, Mr. Scott.

356 Before you yield back, would you want to yield to the

357 gentleman from Illinois, Mr. Quigley?

358 Mr. Scott. And I yield to the gentleman from
359 Illinois.

360 Mr. Quigley. Thank you, Mr. Chairman.

361 Thank you for yielding.

362 I want to thank Mr. Sensenbrenner for his diligence on
363 this issue and his excellent work on this legislation. It
364 is true, I am from Illinois and, sadly, no stranger to
365 corruption.

366 While the U.S. prosecutor has done an excellent job
367 ferreting out corruption and prosecuting it successfully,
368 one could make the argument that hunting for corruption in
369 Illinois is similar to hunting for a cow. It comes up to
370 you and moos.

371 Toward that end, four of our last eight Governors have
372 gone or will go to prison on corruption charges. Two of
373 the predecessors who sat in my seat have served or are
374 about to serve time for corruption. Our last Governor is
375 facing 15 to 20 years in prison for what prosecutors have
376 called serious criminal acts that have done enormous damage
377 to public confidence in Illinois government.

378 So, for me, this bill is personal. And for me, the
379 tools in this bill that will enable us to prosecute corrupt
380 officials are not simply words on a page, but vital
381 mechanisms for justice.

382 In fact, one of the key provisions of this bill that
383 will empower prosecutors to go after public officials for
384 using their offices for personal gain was used to prosecute
385 former Governor George Ryan. It was also used to prosecute
386 Mr. Blagojevich until the Supreme Court wiped it out in
387 *Skilling v. U.S.*

388 Before *Skilling*, the honest services fraud statute
389 addressed two forms of fraud by public officials -- bribes
390 and kickbacks -- and undisclosed conflicts of interest
391 resulting in personal financial gain. But the *Skilling*
392 decision effectively struck down as constitutionally vague
393 the undisclosed self-dealing language, leaving the
394 Department of Justice unable to pursue cases where public
395 officials conceal conflicts of interest that result in
396 personal gain.

397 Let me give you one brief example. Under current law,
398 if an elected official were to vote for a deal that

399 benefited a private company and that private company gave
400 him a suitcase of cash in return, that action could be
401 prosecuted. However, if an elected official voted for a
402 deal that benefitted a company in which he had an
403 undisclosed financial stake, that action would be
404 untouchable.

405 Our bill directly addresses the court's concern about
406 vagueness by using precise and definitive language that
407 clearly defines who is allowed to do what. I know there
408 has been some concern about to whom this bill applies and
409 whether it should entrap unwitting officials. So I want to
410 be clear. This provision only applies to elected officials
411 who knowingly conceal, cover up, or fail to disclose
412 material information with a specific intent to defraud.

413 The language is carefully crafted to ensure no public
414 officials are prosecuted for unknowingly violating a rule.
415 The bill includes a number of other vital tools to fight
416 public corruption, such as a provision to prevent public
417 officials from receiving gifts because of their positions
418 and a provision that makes clear that government officials
419 who accept private compensation for using the powers their

420 jobs afford them may be subject to prosecution.

421 Public corruption has real, tangible cost, both in
422 terms of dollars and in terms of depriving the citizens who
423 elected us of high-quality, efficient services. But in the
424 final analysis, the real cost of public corruption is the
425 loss of the public's trust. At these difficult times, it
426 is hard to lead without the public's trust.

427 Thank you.

428 Chairman Smith. Thank you, Mr. Quigley.

429 The gentleman from Wisconsin is recognized for the
430 purposes of offering a manager's amendment.

431 Mr. Sensenbrenner. Mr. Chairman, I have an amendment
432 in the nature of a substitute at the desk.

433 Chairman Smith. The clerk will report the amendment.

434 Ms. Kish. Amendment in the nature of a substitute to
435 H.R. 2572 --

436 Chairman Smith. Without objection, the amendment is
437 considered as read.

438 [The information follows:]

439

440 Chairman Smith. And the gentleman from Wisconsin is
441 recognized to explain the manager's amendment.

442 Mr. Sensenbrenner. Mr. Chairman, the substitute
443 amendment makes a series of changes to the bill that were
444 negotiated in a bipartisan fashion with my cosponsor, the
445 gentleman from Illinois, Mr. Quigley, and with Senators
446 Leahy and Cornyn, who are sponsors of the Senate companion
447 to this bill, and with the Justice Department. These
448 changes take into account a number of comments and
449 suggestions raised at the hearing on the bill and resolve
450 several concerns raised by Members on both sides of the
451 aisle.

452 It adjusts the bill's penalty enhancement to existing
453 public corruption statutes and removes the provision that
454 applies to mail and wire fraud statutes, to fraud involving
455 licenses and other intangible property. The amendment adds
456 a knowing requirement to the gratuities statute and a
457 \$1,000 de minimis threshold to gratuities given to someone
458 because of their official position.

459 The bill and this amendment do not create traps to
460 catch the unwary or the innocent, and every change to

461 current law is against the background of what is permitted
462 by law for the proper discharge of official duty by rule or
463 by rule or regulation. The people who elected us expect
464 that public officials will be held accountable and that
465 those who occupy public office will use that office for the
466 benefit of their constituents and not for personal gain.

467 We must be serious about restoring prosecutorial tools
468 to root out public corruption and restoring the public's
469 faith in their public officials. The bill and the
470 substitute amendment make sure that this happens.

471 I yield back.

472 Chairman Smith. Thank you, Mr. Sensenbrenner.

473 Are there any amendments to the amendment? The
474 gentleman from Virginia, Mr. Scott, is recognized.

475 Mr. Scott. Mr. Chairman, I have an amendment at the
476 desk.

477 Chairman Smith. The clerk will report the amendment.

478 Mr. Scott. Scott Amendment Number 2.

479 Chairman Smith. And the clerk will report Scott
480 Amendment Number 2.

481 Ms. Kish. Amendment to the Sensenbrenner amendment,

482 offered by Mr. Scott. Page 4, line --

483 Chairman Smith. Without objection, the amendment will

484 be considered as read.

485 [The information follows:]

486

487 Chairman Smith. And the gentleman from Virginia is
488 recognized to explain his amendment.

489 Mr. Sensenbrenner. Will the gentleman from Virginia
490 yield?

491 Mr. Scott. I yield.

492 Mr. Sensenbrenner. I believe that this is a good
493 amendment, and I support it. And in the interest of time,
494 I don't have a statement, but I will put it in the record.

495 [The information follows:]

496

497 Mr. Scott. Mr. Chairman, I yield back the balance of
498 my time.

499 Mr. Sensenbrenner. Vote.

500 Chairman Smith. The question is on Mr. Scott's
501 amendment. All in favor, say aye.

502 [A chorus of ayes.]

503 Chairman Smith. Opposed, nay.

504 [No response.]

505 Chairman Smith. In the opinion of the chair, the
506 majority having voted in favor of the amendment, the
507 amendment is agreed to.

508 Are there other amendments? The gentleman from New
509 York, Mr. Nadler, is recognized.

510 Mr. Nadler. Thank you, Mr. Chairman.

511 I have two amendments. We will do Nadler Number 6
512 first. I don't know how we got to Number 6 since I only
513 have two amendments. But Nadler Number 6.

514 Chairman Smith. The clerk will report the amendment.

515 Ms. Kish. Amendment to the Sensenbrenner amendment to
516 H.R. 2572, offered by Mr. Nadler of New York. Page 4, line
517 2, strike "includes" and insert "means."

518 Chairman Smith. Without objection, the amendment will
519 be considered as read.

520 [The information follows:]

521

522 Chairman Smith. And the gentleman from New York is
523 recognized to explain his amendment.

524 Mr. Sensenbrenner. Will the gentleman from New York
525 yield?

526 Mr. Nadler. I will be happy to yield.

527 Mr. Sensenbrenner. I incorporate by reference my
528 words of glowing support to the Scott amendment for this
529 amendment as well.

530 Mr. Nadler. Then, Mr. Chairman, reclaiming my time, I
531 incorporate by reference Mr. Scott's comment, and I yield
532 back.

533 Chairman Smith. All in favor of the amendment, say
534 aye.

535 [A chorus of ayes.]

536 Chairman Smith. All opposed, no.

537 [No response.]

538 Chairman Smith. In the opinion of the chair, the ayes
539 have it, and the amendment to the amendment is agreed to.

540 Are there any other amendments? The gentleman from
541 New York is recognized for the purpose of offering an
542 amendment.

543 Mr. Nadler. Mr. Chairman, I have an amendment at the
544 desk, marked Nadler Number 7.

545 Chairman Smith. The clerk will report Nadler Number
546 7.

547 Ms. Kish. Amendment to the Sensenbrenner amendment to
548 H.R. 2572, offered by Mr. Nadler --

549 Chairman Smith. Without objection, the amendment will
550 be considered as read.

551 [The information follows:]

552

553 Chairman Smith. And the gentleman from New York is
554 recognized to explain his amendment.

555 Mr. Nadler. Thank you, Mr. Chairman.

556 Mr. Sensenbrenner. Mr. Chairman, will the gentleman
557 yield?

558 Mr. Nadler. I will be happy to yield.

559 Mr. Sensenbrenner. Same old song of support. And I
560 thank the gentleman for yielding.

561 Mr. Nadler. And I thank the gentleman for supporting
562 the amendment, and I urge everyone to adopt it.

563 And I yield back.

564 Chairman Smith. I don't know that we have ever
565 witnessed this kind of bipartisan exchange before on the
566 Judiciary Committee.

567 Mr. Quigley. Mr. Chairman?

568 Chairman Smith. The gentleman from Illinois?

569 Mr. Quigley. I was just curious who was going to
570 start leading us in "Kumbaya?"

571 [Laughter.]

572 Chairman Smith. That could be next. All in favor of
573 the amendment, say aye.

574 [A chorus of ayes.]

575 Chairman Smith. Opposed, nay?

576 [No response.]

577 Chairman Smith. A majority having voted in favor of
578 the amendment, the amendment is agreed to.

579 Are there any other amendments? The gentleman from
580 Virginia, Mr. Scott?

581 Mr. Scott. I have an amendment at the desk, Scott
582 Number 4.

583 Chairman Smith. The clerk will report Scott Number 4.

584 Ms. Kish. Amendment to the Sensenbrenner amendment,
585 offered by Mr. Scott. Beginning on page 9, line 3, strike
586 all --

587 Chairman Smith. Without objection, the amendment will
588 be considered as read.

589 [The information follows:]

590

591 Chairman Smith. And the gentleman from Virginia is
592 recognized to explain the amendment.

593 Mr. Scott. Mr. Chairman, this amendment is an attempt
594 to rein in a statute that has gotten out of control.
595 Section 12 of the bill would add three new offenses to the
596 list of predicate crimes that allow the Government to bring
597 charges under the RICO statute.

598 RICO allows the Government to impose sentences up to
599 20 years per count and gives them expanded forfeiture
600 authority. RICO also sometimes allows civil charges to be
601 brought with the possibility of treble damages, and this
602 powerful statute should not be routinely expanded.

603 If we are worried about combating public corruption,
604 it appears that we have all the authority that we need,
605 particularly if we enact the other enhancements of public
606 corruption laws in this bill. Furthermore, the Government
607 can already use RICO against bribery, extortion, mail
608 fraud, and wire fraud.

609 This law was originally enacted in 1970 with a much
610 more limited scope. And now there are 25 Federal predicate
611 crimes that allow the use of RICO, and there is no reason

612 to keep expanding the law seemingly based on the
613 justification that we have expanded it so much, there is no
614 harm just in adding another predicate, and another and
615 another and another and so on.

616 The substitute amendment and other actions we are
617 taking today, we have tempered a number of provisions of
618 the bill. I hope we can make this improvement by striking
619 the section, and I would yield back the balance of my time.

620 Chairman Smith. The gentleman yields back his time.

621 Mr. Quigley, this may be the end of the run of
622 "Kumbaya."

623 Mr. Quigley. I understand. It was a good run.

624 Chairman Smith. It was. Good while it lasted.

625 The gentleman from Wisconsin is recognized.

626 Mr. Sensenbrenner. Mr. Chairman, I oppose this
627 amendment. "Kumbaya" is ended.

628 [Laughter.]

629 Mr. Sensenbrenner. What the amendment does is it
630 strikes from the bill the addition of certain crimes as
631 RICO predicates. The crimes that are added to the list are
632 very serious offenses that relate to embezzlement or theft

633 of public property or records, theft or bribery concerning
634 programs that receive Federal funds, and major fraud
635 against the United States.

636 The RICO Act is a highly effective tool for Federal
637 law enforcement. It allows prosecutors to include in a
638 single charge the range of related conduct that is carried
639 out by a criminal enterprise. Without this, charges might
640 be split into several cases or barred by statutes of
641 limitations. This tool is available for other serious
642 criminal offenses and should be available in public
643 corruption matters as well.

644 And let me say once again that if the amendment is
645 adopted, there will be an exemption from using RICO for
646 public corruption issues, but not for other issues. And
647 that means that public corruption prosecutors have a less
648 wide range of tools to be able to go after those who are
649 indicted for these types of crimes.

650 To use the RICO tool, underlying offenses must be
651 included in the list of predicate offenses, which is what
652 the bill does. I feel this is necessary if we are to be
653 serious about fighting public corruption and cleaning up

654 government. The bill ensures that these serious offenses
655 are investigated and prosecuted with the same tools as
656 other serious crimes that are already RICO predicates.

657 And I urge opposition to the amendment. Yield the
658 balance of my time.

659 Mr. Nadler. Mr. Chairman?

660 Chairman Smith. Thank you, Mr. Sensenbrenner.

661 The gentleman from New York, Mr. Nadler?

662 Mr. Nadler. Mr. Chairman, I am disturbed by the
663 argument the -- I am disturbed by the argument the
664 gentleman from Wisconsin makes because it seems to say that
665 every serious crime should be a RICO predicate. I thought
666 -- I always thought RICO was designed for certain basic
667 huge conspiracies for organized crime.

668 The gentleman says, well, if we don't do this, then
669 public corruption will be an exception. So my question is,
670 do we have a general principle for what RICO should be for?
671 And if we don't, should it be for every single serious
672 crime, which seems to be what the gentleman is saying.
673 That we just haven't gotten around to making every serious
674 crime a RICO offense.

675 I think you should need a requirement to be a RICO
676 predicate to show that you have a problem with major
677 organized crime that you need to get at the major organized
678 crime syndicates. Not every theft case or bribery case or
679 sexual offense case ought to be a RICO crime.

680 So I would like to hear some sort of principle as to
681 why this should be a RICO crime and something else
682 shouldn't. Would the gentleman yield to that? Or rather,
683 I will yield.

684 Mr. Sensenbrenner. I am happy to yield. What happens
685 if there is a public corruption case against multiple city
686 officials --

687 Mr. Nadler. Then prosecute them.

688 Mr. Sensenbrenner. Yes. But if you make it a RICO
689 offense, then you don't have different fact situations and
690 different statutes of limitations. And that is the point
691 of having --

692 Mr. Nadler. My question, though, is that argument
693 would hold for every single crime. Should RICO be extended
694 to every crime? And if it shouldn't --

695 Mr. Sensenbrenner. If the gentleman would yield

696 further?

697 Mr. Nadler. Let me just say this. If it shouldn't,
698 what is the principle by which we distinguish those which
699 should be RICO predicates from those which shouldn't? I
700 will yield.

701 Mr. Sensenbrenner. If the gentleman will yield
702 further? No, we shouldn't make every serious crime a
703 potential RICO offense. But I think public corruption is
704 serious enough that we ought to make it included in this
705 bill.

706 Mr. Nadler. So you are saying every really serious
707 crime. My question is, can you give me a definition or a
708 principle which would say what kinds of crimes should be
709 RICO predicates and what kinds shouldn't? Because,
710 otherwise, every time we get something, you say, well, this
711 is a serious matter. Well, yes, it is a serious matter,
712 but does that mean it should be RICO?

713 Mr. Sensenbrenner. If the gentleman will further
714 yield?

715 Mr. Nadler. Yes.

716 Mr. Sensenbrenner. We are not debating amendments to

717 the overall RICO statute. The issue here is whether the
718 RICO statute should be a predicate for public corruption
719 RICO prosecutions, and I think it should be. And that is
720 serious enough that we ought to include it.

721 Mr. Scott. Will the gentleman yield?

722 Mr. Nadler. I will yield to the gentleman.

723 Mr. Scott. I would say that the Government can
724 already use RICO if there is bribery, extortion, mail
725 fraud, or wire fraud involved. Public corruption is not a
726 -- is a term that covers a whole lot of stuff.

727 But if it is bribery, extortion, mail fraud, or wire
728 fraud, you can use RICO. But if it is some kind of
729 gratuity or something like that, there is a question of
730 whether or not it is serious enough to invoke RICO, where
731 you can get 20 years per count as a violation. So I think
732 the serious crimes are already included. They can use RICO
733 if it is a serious case of corruption or not use it on any
734 of the lesser offenses.

735 I yield back.

736 Mr. Lungren. Mr. Chairman?

737 Mr. Nadler. Again, I will just point out in the

738 balance of my time that all the gentleman from Wisconsin
739 says is it is a serious crime.

740 Now some of this stuff included in here aren't so
741 serious. As the gentleman from Virginia points out, the
742 more serious crimes that we are talking about are already
743 included as RICO predicates. So we are talking about the
744 less serious things here. Not every crime ought to be
745 RICO.

746 And aside from the gentleman from Wisconsin
747 effectively saying, "Well, this strikes me as serious," I
748 have heard no rationale for why this should be in RICO and
749 something else shouldn't. Every time we come across
750 something that says, gee, this is serious. We should add
751 RICO to it? RICO was supposed to be an extraordinary
752 remedy, an extraordinary power for criminal syndicates that
753 you couldn't get at any other way. And maybe we shouldn't
754 extend statute of limitations for gratuities.

755 It is hard for me to vote to extend RICO until someone
756 can tell me what the principle is, where RICO should apply
757 and where it shouldn't.

758 And I will yield back.

759 Chairman Smith. Okay. The gentleman yields back.

760 The question is --

761 Mr. Lungren. Mr. Chairman?

762 Chairman Smith. Who wishes to --

763 Mr. Lungren. Over here.

764 Chairman Smith. The gentleman from California, Mr.

765 Lungren, is recognized.

766 Mr. Lungren. Mr. Chairman, in 17-plus years in

767 Congress, I think I have voted with Mr. Sensenbrenner from

768 Wisconsin 99 percent of the time. This is 1 percent where

769 I differ with him.

770 I am concerned about the expansion of RICO where it is

771 unnecessary. The original concept of RICO was going after

772 racketeering, organized crime, for which we felt we had to

773 have serious additional penalties.

774 I have had experience prosecuting public corruption.

775 I have put in prison sheriffs that have supported me. I

776 convicted people on the State level. I convicted people on

777 the county level. I took that responsibility very

778 seriously.

779 At the same time, I have observed that there is a

780 balance of power among the three branches of Government,
781 and I was one of those who was disturbed by the actions of
782 the Justice Department during the investigation of William
783 Jefferson. Not that I felt that there wasn't evidence
784 finally to prosecute him, but the manner in which they came
785 into the House of Representatives and demanded access to
786 all records in Congressman Jefferson's office.

787 The Speaker of the House at that time, Denny Hastert,
788 raised a constitutional question. The position of the
789 Justice Department was they could determine what was
790 privileged and what was not, and they said they would have
791 an FBI agent who would look at everything and decide then
792 whether the FBI should be able to look at it or not.

793 Mr. Sensenbrenner. Will the gentleman yield?

794 Mr. Lungren. In a moment. And at that time, we will
795 recall that there were leaks from the Justice Department
796 indicating that Speaker Hastert was the subject of an
797 investigation. That was immediately withdrawn by the
798 department, and then another leak came out and said that is
799 what we always say when someone is not the specific target,
800 but the general target.

801 And then a third leak came out. And then, finally,
802 the number-two person at the Justice Department was
803 required to issue a statement to say that Denny Hastert was
804 not.

805 Now I don't know who did the leaking, but my reaction
806 to that was it was a shot across the bow of the Speaker of
807 the House by the Justice Department that he dared raise a
808 constitutional question of the balance of powers between
809 the two branches.

810 And as a matter of fact, a Federal judge determined
811 that the position of the House was correct. And it was a
812 determination by a judicial officer as to what was
813 privileged and what was not.

814 Mr. Sensenbrenner. Will the gentleman yield now?

815 Mr. Lungren. I will in just a moment. The point I am
816 trying to make is that there is leverage that can be
817 presented by a Justice Department against the House of
818 Representatives or the Senate, which is supposed to be the
819 oversight body of that element of the Government. And I am
820 very concerned about giving them such power that they can
821 leverage it.

822 Now I am not trying to question the integrity of most
823 members of the Justice Department. But no one has ever
824 come forward to say who it was that was involved in those
825 leaks that were directed at the Speaker of the House of
826 Representatives. And so, I would require a high level of
827 proof as to why we need to include RICO in this statute.

828 As was mentioned, if there were certain underlying
829 actions, they already are included in RICO. But to make it
830 a general proposition which allows the Justice Department
831 in many ways then to leverage accusations against a Member
832 of Congress, who might be one who wishes to limit their
833 powers, I think is somewhat dangerous.

834 So I would be happy to yield to the gentleman from
835 Wisconsin.

836 Mr. Sensenbrenner. First of all, I ask unanimous
837 consent the gentleman be given 2 additional minutes.

838 Chairman Smith. Without objection, the gentleman is
839 yielded an additional 2 minutes.

840 Mr. Sensenbrenner. Refreshing the memory of my friend
841 from California, at the time of the Jefferson raid, I was
842 chairman of the committee, and I criticized the Justice

843 Department for --

844 Mr. Lungren. Absolutely.

845 Mr. Sensenbrenner. -- a constitutional violation and
846 for ignoring the Federal Rules of Criminal Procedure, for
847 which I got a lot of criticism by talk shows, more on the
848 conservative, but not exclusively on the conservative side.

849 The Federal judge who signed the warrant, of course,
850 sided with the FBI. This was appealed to the D.C. Circuit,
851 and the D.C. Circuit ruled that there was a constitutional
852 separation of power, which vindicated the position that I
853 took and others took relative to the Justice Department
854 overstepping its bounds.

855 I share the gentleman from California's criticism that
856 we never know who leaked this to the news media. That was
857 uncalled for. And believe me, the Attorney General at the
858 time should have fired whoever did that because the Justice
859 Department should not be attempting to put political
860 pressure on Members of Congress who step up and support our
861 Constitution.

862 Now, that being said, we have got -- we are talking
863 about RICO here, and we are talking about when RICO is

864 appropriate. I believe it is appropriate for serious
865 crimes that inherently involve conspiracies, and public
866 corruption cases typically involve conspiracies among
867 multiple parties seeking a corrupt outcome.

868 Indeed, organized crime can obtain a privileged
869 position by bribing corrupt officials, and applying RICO to
870 public officials who are recipients of illegal benefits
871 from people seeking private gain at the expense of the
872 public is at the heart of what RICO was originally intended
873 to combat. And that is why I believe that the gentleman
874 from California should reduce his 1 percent disagreement to
875 0.5 percent and support -- or oppose the amendment.

876 Mr. Lungren. I appreciate the gentleman's comments.
877 I still have not been able to determine when we ought not
878 to apply RICO in a serious criminal offense. And my
879 judgment is that we ought not to extend it in all
880 circumstances, and we obviously have a disagreement on
881 that.

882 Chairman Smith. The gentleman's time has expired.

883 Mr. Watt. Would the gentleman yield?

884 Chairman Smith. The gentleman from North Carolina,

885 Mr. Watt, is recognized.

886 Mr. Watt. I was just going to extend this
887 conversation with the gentleman. Are there circumstances
888 other than bribery, extortion, mail fraud, or wire fraud
889 that are already covered by RICO? I don't know.

890 I am kind of like Mr. Nadler. I don't know what else
891 Mr. Sensenbrenner would be thinking that a public official
892 should -- describe the circumstances, I guess, is the
893 question I am asking. What are the other serious offenses
894 other than bribery, extortion, mail fraud, and wire fraud
895 that would justify this? I don't understand that.

896 I will yield to Mr. Sensenbrenner. Maybe he can --

897 Mr. Sensenbrenner. If the gentleman will yield, there
898 are four other types of public corruption offenses which
899 are RICO predicates, and what is wrong with adding a fifth
900 one? That is what the bill does.

901 Mr. Watt. Well, what is wrong with it is it doesn't
902 make any sense to do it. As several people on the
903 committee have pointed out, you have got all the serious
904 offenses already covered under the RICO statute -- bribery,
905 extortion, mail fraud, wire fraud. What is the purpose for

906 which we are extending this?

907 That is the question I think Mr. Lungren, Mr. Scott,
908 Mr. Nadler, and now I am raising. I don't know -- Mr.
909 Conyers, people are raising their hands.

910 Mr. Sensenbrenner. If the gentleman will yield
911 further? The more commonly --

912 Mr. Conyers. Would the gentleman yield?

913 Mr. Watt. I am happy to yield to the ranking member.

914 Mr. Conyers. We have expanded RICO since it was
915 enacted in 1970 25 -- more than 25 predicate offenses have
916 been included. So I think that it is an error for us to
917 now, in this amendment, add three additional new offenses -
918 - theft of public money, theft relating to programs
919 receiving Federal funds, and major fraud against the United
920 States, all of which are more than adequately covered in
921 the criminal statutes in the Federal code.

922 So I join you, Mr. Scott, Mr. Nadler, the gentleman
923 from California, in realizing that we are doing a
924 disservice to the RICO law by continually adding on
925 predicate offenses of which there are more than 25 at the
926 current time.

927 Mr. Sensenbrenner. If the gentleman from North
928 Carolina would yield?

929 Mr. Watt. I just want to say that -- reclaiming my
930 time, if it is all right? Did you want me to yield to you?

931 Mr. Sensenbrenner. The gentleman from North Carolina
932 yield?

933 Mr. Watt. I am happy to yield to the gentleman.

934 Mr. Sensenbrenner. The most commonly used bribery
935 statute, which is Section 666, is not currently a RICO
936 predicate. This bill makes it a RICO predicate. And
937 Section 666 involves theft or bribery concerning programs
938 receiving Federal funds.

939 Now if there is --

940 Mr. Watt. If bribery is covered, why is that not
941 covered?

942 Mr. Sensenbrenner. Well, because it is a separate
943 section of the criminal code, separate section of the
944 criminal code. It is not covered. I think this plugs a
945 loophole in where the RICO statute applies.

946 Mr. Nadler. Would the gentleman yield?

947 Mr. Watt. Let me yield to Mr. Conyers and then to Mr.

948 Nadler. Maybe we --

949 Mr. Conyers. All I want to point out is that the
950 gentleman from Wisconsin is adding yet another offense, all
951 of which are more than thoroughly covered. There are no
952 loopholes to be covered in this discussion.

953 Mr. Watt. Mr. Nadler?

954 Mr. Nadler. Thank you.

955 Maybe -- I haven't studied the issue, but maybe
956 Section 666 ought to be made a RICO predicate. But what
957 you are doing here is broader than that.

958 I don't think we have properly looked at what should
959 qualify as a RICO predicate. Frankly, I think that we
960 should be willing to pass Mr. Scott's amendment, don't add
961 anything in this bill as a RICO predicate, and maybe ask
962 the Subcommittee on Crime to take a look at RICO and saying
963 should we add or subtract RICO predicates and have a
964 principle.

965 Since we have added them one by one 25 times, yes, why
966 not a 26th and 27th? But we should have a general
967 principle that says this is the kind of thing to which RICO
968 appropriately applies and this is the kind of thing to

969 which it doesn't.

970 And I would hope that we could just not deal with that
971 in this bill now and ask the subcommittee to take a
972 thorough look and maybe hold hearings and say, all right,
973 let us update RICO. Let us subtract predicates, let us add
974 predicates, whatever seems appropriate. And let us have a
975 bill on that to deal with that really separate subject
976 adequately, instead of just throwing in a few extra crimes
977 without really considering them in this bill.

978 Mr. Conyers. Mr. Watt?

979 Chairman Smith. The gentleman's time has expired.

980 Mr. Watt. I ask unanimous consent for 1 additional
981 minute.

982 Chairman Smith. The gentleman is recognized for an
983 additional minute without objection.

984 Mr. Watt. I yield to --

985 Mr. Conyers. What I would like to see is that the
986 chairman of the Subcommittee on Crime and the ranking
987 member hold a hearing on RICO, that we withdraw --

988 Mr. Sensenbrenner. Will the gentleman yield?

989 Mr. Conyers. That we withdraw this amendment and

990 examine RICO --

991 Mr. Nadler. You mean withdraw the provision from the
992 bill. Pass the amendment and then --

993 Mr. Conyers. No. I want to withdraw -- I would like
994 the gentleman to withdraw this amendment on the agreement
995 that we would then hold hearings --

996 Mr. Watt. Reclaiming my time, I couldn't support that
997 because that means the bill goes forward with these
998 additional things, which the consensus of the committee
999 seems to be we ought to drop that provision from the bill,
1000 which is what Mr. Scott's amendment does.

1001 Mr. Sensenbrenner. Will the gentleman from Michigan
1002 yield?

1003 Mr. Watt. It is my time, and I will yield to the
1004 gentleman. I will yield to Mr. Sensenbrenner.

1005 Mr. Sensenbrenner. I am very happy to have a hearing
1006 on RICO. If the gentleman from Michigan is proposing a
1007 deal, I accept.

1008 Mr. Nadler. No, wait. Which deal?

1009 Mr. Watt. Well, the deal is -- the deal is to pass
1010 Mr. Scott's amendment and then hold a hearing.

1011 [Laughter.]

1012 Mr. Watt. And then have a hearing, I mean, I accept
1013 that deal, too. I ask unanimous consent for 1 additional
1014 minute since I had to yield all of my time --

1015 Chairman Smith. Without objection, the gentleman from
1016 North Carolina is recognized --

1017 Mr. Watt. So I could express myself on this a little
1018 bit.

1019 Chairman Smith. The gentleman from North Carolina is
1020 recognized for an additional minute.

1021 Mr. Watt. I mean, the one thing I usually take
1022 particular note of in criminal matters is the advice of
1023 people who have been out there. So I always sit up very
1024 carefully and listen to what Mr. Lungren says on criminal
1025 matters because I know he has been out there in the middle
1026 of this.

1027 I think most of us in the political context have been
1028 in the middle of politics, and we know what standing up in
1029 front of the public and beating ourselves on the chest and
1030 saying we are hard on crime is all about. We understand
1031 that thoroughly.

1032 But if a prosecutor is saying to me this is not a good
1033 idea, I have got to believe it is not a good idea. And I
1034 just -- you know, I don't follow criminal law as closely as
1035 I used to, but I just -- I have some serious reservations
1036 about including additional categories of things under RICO.

1037 And I know, as Mr. Lungren has pointed out, that with
1038 respect to public officials, they can be used abusively
1039 because I have had that experience myself, not with RICO,
1040 but in a public context being charged with something, had
1041 your reputation drug through the mud. And then everybody
1042 said, "Oh, yes, well, it was a mistake in the first place.
1043 You didn't do anything wrong."

1044 So let us get beyond the politics of this and deal
1045 with the substance of it. I think substantively this is a
1046 bad idea.

1047 I yield back.

1048 Chairman Smith. The gentleman's time has expired.

1049 Mr. Gohmert. Mr. Chairman?

1050 Chairman Smith. Are there other Members who wish to
1051 be recognized?

1052 Ms. Waters. Mr. Chairman?

1053 Chairman Smith. The gentleman from Texas, Mr.
1054 Gohmert, is recognized.

1055 Mr. Gohmert. Thank you, Mr. Chairman.

1056 I applaud the efforts at cleaning up government, but
1057 having sat through hearings regarding over-criminalization
1058 and seeing the damage that has been done to honest, decent
1059 people who have been thrown down by EPA SWAT teams and
1060 handcuffed or handcuffed to their kitchen chair,
1061 embarrassed in front of their family. One guy had had a
1062 stroke. He has never been the same since. We have got to
1063 really be careful in our effort to truly clean up, as I
1064 know the chairman wants to, corruption in government.

1065 But I have asked this question before, and I am still
1066 concerned about the potential answer. If you have a
1067 Justice Department that just doesn't like somebody and
1068 wants to go after them.

1069 Benefits, for example, to a Member of Congress based
1070 on an official act. We all know an official act is voting.
1071 Suppose people here on this committee vote to keep the
1072 current tax structure, which allows charitable
1073 contributions to be deductible, and a Member deducts

1074 charitable contributions. By voting to continue charitable
1075 contributions as deductible, you have truly benefited
1076 yourself. You are going to save money on your next tax
1077 return as a result of the vote. I like charitable
1078 contributions being deductible.

1079 On the other hand, we have a Justice -- there are
1080 people in the Justice Department who say they think -- and
1081 fortunately, this hasn't carried the day yet -- that if
1082 somebody makes a contribution and they are about an issue
1083 that you also support, and you vote as that contributor
1084 wants you to, then they can just presume there is a
1085 connection and come after you.

1086 When we all know -- I mean, there have been people we
1087 know from history that have taken bribes to vote certain
1088 ways or do certain acts. But in reality, people contribute
1089 to you because they believe you think like they do for the
1090 most part. That might open up people to prosecution, and I
1091 am very concerned about making it easier for a rogue
1092 prosecutor to just go after and harass someone on either
1093 side of the aisle, anybody in Congress, because the law
1094 ends up being broad enough that you can actually show there

1095 was a benefit like charitable contributions being
1096 deductible and they have benefitted, because I would.

1097 I yield to Mr. Conyers.

1098 Mr. Conyers. Yes, thank you very much.

1099 Could I plead with my colleagues to support the Scott
1100 amendment and then have the agreement that RICO be examined
1101 as soon as we can by the Crime Subcommittee so that we can
1102 -- we are bringing RICO in here when I think it is
1103 unnecessary. And that is why I think the Scott amendment
1104 is important.

1105 But I equally think that we need as a subcommittee
1106 reviewing the RICO statute enacted in 1970 that has been
1107 modified more than 25 times on issues, and they keep piling
1108 up. And I think that is what Judge Gohmert was
1109 referencing.

1110 Mr. Gohmert. I do want to be careful with the
1111 expansion of RICO. We have seen pro-life groups have RICO
1112 used against them when it was never intended for something
1113 like that. But I --

1114 Mr. Watt. Would the gentleman yield?

1115 Mr. Gohmert. Yes, I yield to my friend.

1116 Mr. Watt. Now we have a distinguished judge and a
1117 distinguished former prosecutor taking that position.

1118 Mr. Gohmert. Well, I am not sure --

1119 Mr. Watt. Whenever I hear a judge and a prosecutor
1120 saying they don't want to expand criminal law, that is a
1121 good sign that it shouldn't be expanded.

1122 Mr. Gohmert. Well, reclaiming my time, I am not sure
1123 you would get agreement on the "distinguished" part of that
1124 judge, but --

1125 [Laughter.]

1126 Mr. Gohmert. But I do appreciate the recognition.

1127 Ms. Waters. Mr. Chairman?

1128 Mr. Gohmert. Thank you. And with that, I yield back.

1129 Ms. Waters. Mr. Chairman? Mr. Chairman?

1130 Chairman Smith. Thank you, Mr. Gohmert.

1131 The gentlewoman from California, Ms. Waters, is
1132 recognized.

1133 Ms. Waters. I yield to the gentleman from New York.

1134 Mr. Nadler. I thank the distinguished gentlelady for
1135 yielding.

1136 I would follow up, the discussion on this bill has

1137 been, prior to today and properly should be, about dealing
1138 with the consequences of several Supreme Court decisions
1139 narrowing definitions of how you prosecute public
1140 corruption, and the bill is intended to deal with that in
1141 several ways and does.

1142 But you also throw into the bill a completely separate
1143 RICO thing that has nothing to do with most of the
1144 discussion on the bill. And maybe some part of that RICO
1145 expansion is justified. Maybe Section 666 that Mr.
1146 Sensenbrenner mentioned. And maybe not. I don't know. I
1147 haven't studied it.

1148 But neither has anybody else. We really haven't
1149 studied whether and haven't had a discussion or debate
1150 really until this morning as to why RICO should apply to
1151 these things or maybe to some of these things, but not to
1152 all of them that we are applying.

1153 And so, I support Mr. Scott's amendment, and I urge
1154 that we pass it. To say this is not the proper venue while
1155 we are discussing overturning a few Supreme Court decisions
1156 that narrowed what we can prosecute as public corruption
1157 and correcting that to the extent that we think proper,

1158 which is what this bill does, we should separately take a
1159 look at the RICO statute and see should we apply it here or
1160 to some of these things here. Should we apply it
1161 elsewhere?

1162 And we should take a basic look. Maybe we should
1163 unapply it where it is applied. I mean, no one has
1164 apparently taken a whole look at it in many, many years.
1165 We just keep adding things to it. There ought to be a
1166 general articulable principle of what should be under RICO,
1167 not simply, well, it is a serious crime.

1168 Yes, there should be serious crimes under RICO. There
1169 should be serious crimes not under RICO. There ought to be
1170 some general principle of what you apply RICO to, what was
1171 RICO intended to do. And I think the Crime Subcommittee
1172 ought to hold a hearing or hearings on that and take a look
1173 at the RICO statute, including this.

1174 But this bill is not the proper place to do this
1175 because we haven't had a really detailed discussion as to
1176 whether RICO should apply here or whether it should apply
1177 to some of what it is being applied to here and not others.
1178 So I urge people to support the Scott amendment and then

1179 let us take it up.

1180 And I will yield to the gentleman.

1181 Mr. Lungren. I just wondered whether we wanted to
1182 renumber Section 666? Some people might.

1183 [Laughter.]

1184 Mr. Nadler. We will call it 777. Or maybe 999.

1185 [Laughter.]

1186 Mr. Lungren. 999 has seen its day.

1187 Mr. Nadler. Hopefully. In any event -- in any event,
1188 so I urge people to vote for this amendment and then let us
1189 take a hard look at the RICO statute, period.

1190 So I thank the gentlelady for yielding.

1191 Chairman Smith. Does the gentlewoman from California
1192 yield back her time? Does the gentlewoman from California
1193 yield back her time?

1194 Ms. Waters. Yield back the balance of my time.

1195 Chairman Smith. Okay. The chair would like to
1196 proceed with a vote on this amendment. The question is on
1197 the amendment. All in favor, say aye.

1198 [A chorus of ayes.]

1199 Chairman Smith. All opposed, no.

1200 [A chorus of nays.]

1201 Chairman Smith. In the opinion of the chair, the ayes
1202 have it, and the amendment is agreed to.

1203 [Pause.]

1204 Mr. Scott. Mr. Chairman?

1205 Chairman Smith. Are there any other amendments?

1206 Mr. Scott. Mr. Chairman?

1207 Chairman Smith. The gentleman from Virginia, Mr.
1208 Scott?

1209 Mr. Scott. I have an amendment at the desk.

1210 Amendment 5.

1211 Chairman Smith. The clerk will report Scott Amendment
1212 5.

1213 Ms. Kish. Amendment to the Sensenbrenner amendment,
1214 offered by Mr. Scott. Page 3, strike lines 12 through --

1215 Chairman Smith. Without objection, the amendment is
1216 considered as read.

1217 [The information follows:]

1218

1219 Chairman Smith. And the gentleman is recognized to
1220 explain his amendment.

1221 Mr. Scott. Mr. Chairman, this amendment would strike
1222 Section 6, which expands Federal statute governing theft of
1223 Federal funds and property to include theft of District of
1224 Columbia funds and property. It is unnecessary because it
1225 is redundant to existing Federal and District of Columbia
1226 laws.

1227 Existing Federal law already prohibits theft of funds
1228 from Federal programs by employees of State and local
1229 governments, as well as the theft of Federal funds under
1230 the control or supervision of the Federal Government by
1231 employees of State and local governments. Existing
1232 District of Columbia law already prohibits theft of
1233 District of Columbia funds and property and is, in fact,
1234 similar to the statute at issue here.

1235 Section 6 violates the District of Columbia's right to
1236 self-governance by applying a Federal law only to the
1237 District of Columbia, not any other State, not any other
1238 local government. District of Columbia elected officials
1239 should make District of Columbia law, not Members of

1240 Congress, who are unaccountable to the District of Columbia
1241 voters.

1242 Now if Members of Congress have concerns with the
1243 District of Columbia law, they should at least first raise
1244 them with the representative from the District of Columbia,
1245 Eleanor Holmes Norton, and other elected leaders and give
1246 them an opportunity to consider the Members' concerns.

1247 Now I understand that the Department of Justice does
1248 not oppose removing Section 6 from the bill, and I hope our
1249 colleagues on the other side will accept this amendment.

1250 I yield back.

1251 Chairman Smith. The gentleman from Wisconsin is
1252 recognized.

1253 Mr. Sensenbrenner. Mr. Chairman, I rise in opposition
1254 to the amendment.

1255 Chairman Smith. The gentleman is recognized for 5
1256 minutes.

1257 Mr. Sensenbrenner. Mr. Chairman, the District of
1258 Columbia receives hundreds of millions of dollars from the
1259 Federal Government each year. Under current law, however,
1260 theft of D.C. funds cannot be prosecuted in Federal court.

1261 This leaves only local statutes, which are not key to the
1262 U.S. sentencing guidelines and which are prosecuted in
1263 local D.C. courts.

1264 There is a strong Federal interest in the integrity of
1265 D.C. funds, given the amount of money Congress allocates to
1266 the District each year. So these cases should be brought
1267 in Federal court.

1268 Amending the Federal theft statute to bring within its
1269 purview the D.C. government and its agencies also makes
1270 sense in view of the overall statutory scheme. D.C.
1271 government employees are already covered by the Federal
1272 bribery and conflict of interest statutes. They ought to
1273 be covered by this bill.

1274 The District has no qualms about the Justice
1275 Department handling the bulk of its criminal prosecutions,
1276 both in local and Federal courts, nor any objection to the
1277 Federal Parole Commission overseeing its prisoners. As a
1278 Federal city that receives congressional appropriations, it
1279 is fitting that fraud of those funds to be prosecuted to
1280 the fullest extent of the Federal law.

1281 And I would address this comment to my friends on the

1282 other side of the aisle. If they are prosecuted as
1283 violations of D.C. law, the Federal sentencing guidelines
1284 do not apply.

1285 By adopting the Scott amendment, it will continue to
1286 make the Federal sentencing guidelines not apply. By
1287 defeating the Scott amendment, it will allow the Federal
1288 sentencing guidelines to apply to prosecutions that take
1289 place in Federal court.

1290 I urge opposition to the amendment.

1291 Mr. Nadler. Mr. Chairman?

1292 Chairman Smith. Thank you, Mr. Sensenbrenner.

1293 The gentleman from New York, Mr. Nadler?

1294 Mr. Nadler. Would the gentleman from Wisconsin yield
1295 for a question?

1296 Mr. Sensenbrenner. Certainly.

1297 Mr. Nadler. Can the theft of New Jersey funds be
1298 prosecuted in Federal court?

1299 Mr. Sensenbrenner. If they are Federal funds, yes.

1300 Mr. Nadler. Then why do we need this for the District
1301 of Columbia? Because the law with respect to theft of
1302 District of Columbia funds ought to be the same as the law

1303 with respect to New Jersey or Michigan or New York funds.
1304 The gentleman from Virginia is saying let us not pick out
1305 the District of Columbia in a way that we would not someone
1306 else.

1307 So, if New Jersey funds, to the extent they were
1308 Federal funds, can be prosecuted, then Federal funds can be
1309 prosecuted --

1310 Mr. Sensenbrenner. Well, if the gentleman would yield
1311 further?

1312 Mr. Nadler. Yes.

1313 Mr. Sensenbrenner. The District of Columbia
1314 constitutionally is a Federal enclave, and that is why
1315 there are laws that treat the District of Columbia
1316 differently from the States.

1317 Mr. Nadler. Reclaiming my time. Reclaiming my time,
1318 I understand that. But I think the principle ought to be
1319 in line with the Home Rule legislation that Congress passed
1320 several decades ago, that we should not distinguish them
1321 from the States, except where it is absolutely essential to
1322 do so for some reason. There is no particular reason to do
1323 that.

1324 If there are Federal funds involved -- and yes, the
1325 Federal Government gives the District of Columbia funds.
1326 The Federal Government gives the State of New Jersey or
1327 Michigan or anybody else funds. If they are Federal funds,
1328 they ought to be prosecutable in Federal court --

1329 Mr. Sensenbrenner. Will the gentleman yield further?

1330 Mr. Nadler. Not yet. To the same extent as they
1331 would in some State. And if they are local funds, they
1332 should be prosecutable or not to the same extent as they
1333 would be in some State. We shouldn't have a special law,
1334 and therefore -- for the District of Columbia that is not
1335 equally applicable to other -- to States. And therefore, I
1336 support the gentleman's amendment.

1337 And I yield to the gentleman from Wisconsin.

1338 Mr. Sensenbrenner. Well, you know, again, D.C. gets a
1339 specific appropriation of Federal funds that no other
1340 entity of State and local government receives simply
1341 because the District of Columbia is a Federal enclave. And
1342 in my opinion, that is why this law should apply, because
1343 D.C. is special.

1344 Mr. Nadler. Reclaiming my time. I understand the

1345 logic. And if this amendment simply said that Federal
1346 funds should be prosecutable federally, I would agree with
1347 it. I don't know that it is necessary under current law,
1348 but I would agree with it.

1349 But D.C. also raises funds through local taxes, as
1350 does any State. And those funds should be treated the same
1351 in law as funds that any other State. If we prosecuted
1352 theft of New Jersey funds that are raised locally
1353 federally, then we should do the same for Washington, D.C.
1354 But if we don't prosecute that, then we shouldn't.

1355 Mr. Scott. Would the gentleman from New York yield?

1356 Mr. Nadler. I yield to the gentleman.

1357 Mr. Scott. Mr. Chairman, I would like to withdraw the
1358 amendment. I hope we can work with the majority to address
1359 the concerns about special adverse treatment for
1360 Washington, D.C. We have already begun discussions with
1361 our Senate colleagues to protect the District's Home Rule,
1362 and I would hope that we could continue the discussion
1363 without -- and I will just withdraw the amendment.

1364 Chairman Smith. Thank you, Mr. Scott.

1365 Without objection, the amendment is withdrawn.

1366 Mr. Lungren. Mr. Chairman? Mr. Chairman?

1367 Chairman Smith. The question is on the manager's
1368 amendment.

1369 Mr. Lungren. Mr. Chairman?

1370 Chairman Smith. The gentleman from California, Mr.
1371 Lungren?

1372 Mr. Lungren. I seek to strike the requisite number of
1373 words.

1374 Chairman Smith. The gentleman is recognized for 5
1375 minutes.

1376 Mr. Lungren. Mr. Chairman, I am sorry I haven't had a
1377 chance to speak with the chairman of the subcommittee on
1378 this beforehand. But I have been engaged in some other
1379 things and not been able to concentrate on this until
1380 recently.

1381 But I am concerned about the changes in Section 7 of
1382 the manager's amendment concerning the crime of illegal
1383 gratuities. In overturning the U.S. Supreme Court decision
1384 United States v. Sun-Diamond, we are accepting the idea
1385 that the force of the criminal law can be brought against a
1386 public official without any connection to "any official act

1387 performed" in relation to receiving something of value.

1388 At least the way I read it right now, we are about to
1389 adopt language that gratuities given to a public official
1390 because of that official or person's official position can
1391 give rise to the prosecution under the statute. In other
1392 words, mere status as a public official without an official
1393 act, as defined in Section 201(a)(3), will provide the
1394 Department of Justice with the authority to bring a
1395 prosecution under the illegal gratuity statute.

1396 Mr. Sensenbrenner. Will the gentleman yield?

1397 Mr. Lungren. I will in a moment. In oral argument in
1398 the Sun-Diamond case, the Department of Justice made clear
1399 what it sought to achieve by avoiding the requirement of
1400 demonstrating an official act to prove a violation of the
1401 illegal gratuity statute.

1402 Justice Scalia described it this way. He said the
1403 United States maintained at oral argument that a group of
1404 farmers would violate Section 201(a) by providing a
1405 complimentary lunch for the Secretary of Agriculture in
1406 connection with his speech to farmers concerning various
1407 matters of department policy so long as the Secretary had

1408 before him or had in prospect matters affecting the
1409 farmers.

1410 The consequences of such an approach to the criminal
1411 law are, at least by my view, quite serious. Justice
1412 Scalia pointed this out. The Secretary of Agriculture
1413 always has before him or in prospect matters that affect
1414 farmers. Therefore, the Department of Justice was arguing,
1415 because that is the case, if he were to accept a
1416 complimentary lunch, that would be, per se, a violation of
1417 the Federal law, requiring criminal sanctions. This is the
1418 kind of dilemma that occurs when there is no requirement of
1419 the performance of an official act in order to violate the
1420 statute.

1421 Now I understand the gentleman has in his manager's
1422 amendment sought to narrow this somewhat by including
1423 language which would create a de minimis requirement of
1424 \$1,000 and then language concerning "rule or regulation"
1425 that presumably would refer to the ethics rules of this
1426 body and a knowledge requirement. Nonetheless, I am
1427 somewhat concerned about this and would like to engage with
1428 the chairman on this issue.

1429 Let me put it this way. I realize you have these
1430 limiting factors in the bill -- \$1,000, follow the rules,
1431 et cetera. But the underlying substance is to say that if
1432 you accept something because of your official position,
1433 that is somehow illegal and could lead to criminal
1434 sanctions.

1435 The fact of the matter is people do invite us to
1436 things because of our official position. You go to a
1437 luncheon for a charitable organization, and they like the
1438 fact that the Attorney General is there, the Member of
1439 Congress is there, the Mayor is there. Would you be
1440 invited if you weren't in those positions? Probably you
1441 wouldn't be invited.

1442 But we understand that that gives a certain
1443 credibility to the organization, so to speak. Or it allows
1444 other people to pay attention to the organization. I don't
1445 think there is anything wrong with that. And I think we
1446 ought to at least seriously consider whether we want to
1447 establish as a matter of law that because you receive a
1448 benefit --

1449 Mr. Sensenbrenner. Would the gentleman yield?

1450 Mr. Lungren. -- as such a lunch or something like
1451 that merely because you are an official, that that is, in
1452 and of itself, inappropriate, illegal, and in some cases if
1453 it crossed a particular threshold, criminal.

1454 Mr. Sensenbrenner. Would the gentleman yield?

1455 Mr. Lungren. Yes.

1456 Mr. Sensenbrenner. In terms of the matter of criminal
1457 law, what the manager's amendment does is that, yes, it
1458 does reinstate the illegal gratuities law based upon one's
1459 status, being a Member of Congress or an alderperson or
1460 something like that. But there are three restrictions on
1461 it.

1462 One is the \$1,000 threshold. I don't know where your
1463 charitable organization eats, but I don't think the meal
1464 that you get would be \$1,000.

1465 Mr. Lungren. Okay, but reclaiming my time for just a
1466 moment.

1467 Mr. Sensenbrenner. You would have to knowingly --

1468 Mr. Lungren. Reclaiming my time for just a moment.

1469 Mr. Sensenbrenner. Yes.

1470 Mr. Lungren. We established this as a principle. We

1471 have a limiting factor of \$1,000. Successive Congresses
1472 could bring that down -- \$250, \$100, or something -- based
1473 on the argument that there is a general --

1474 Mr. Sensenbrenner. If the gentleman will yield to me
1475 again?

1476 Mr. Lungren. Wait a second. Based on the general
1477 principle --

1478 Mr. Sensenbrenner. I want to answer you before you
1479 reclaim your time. The third thing is that they are not
1480 allowed by law, rule, or regulation. Now we are subject to
1481 the House ethics rules, you know, which talk about eating,
1482 drinking, and being merry, and significantly restricted on
1483 that. And it is less than the \$1,000.

1484 But we could be sanctioned by the Ethics Committee for
1485 violating the rule and not be subject to criminal
1486 prosecution unless the gratuity is more than \$1,000 and you
1487 didn't -- or you knowingly took it.

1488 Chairman Smith. The gentleman's time has expired.

1489 Mr. Lungren. If I may ask for 2 additional minutes?

1490 Chairman Smith. Without objection, the gentleman is
1491 recognized for an additional --

1492 Mr. Lungren. I understand what the --

1493 Chairman Smith. Just a minute. The gentleman is
1494 recognized for an additional 2 minutes.

1495 Mr. Lungren. Thank you very much.

1496 I understand what the chairman is saying. It is just
1497 a concern I have that once we establish this as a principle
1498 of law, or reinstate it as a principle of law, that a mere
1499 requirement that it is your official position rather than
1500 you exercise an official act is what bothers me.

1501 I realize the gentleman has done a very good job of
1502 putting three limiting mechanisms in there. But I think
1503 Justice Scalia kind of pointed out the problem with that as
1504 a principle and the problem when you have a Justice
1505 Department which then can utilize it.

1506 And look, I appreciate the fact you have limitations.
1507 I do not disagree with that. It is just I just wonder if
1508 we ought not to look at the question of establishing as a
1509 principle of law that there is something necessarily wrong
1510 with an organization or an individual in a sense basking in
1511 the same sort of recognition as is given to an individual
1512 because they happen to be in a --

1513 Mr. Nadler. Would the gentleman yield?

1514 Mr. Lungren. I would be happy to yield. And maybe
1515 you have that same problem?

1516 Mr. Nadler. I am enlightened by the comments of the
1517 gentleman, and I am getting more and more disturbed. I
1518 told the chairman I had only two problems with the bill,
1519 but now I am having more problems with the bill.

1520 I am asking under this section, if the chairman of the
1521 Judiciary Committee were invited to address the Federalist
1522 Society meeting in Los Angeles, and they said they would
1523 pay his airfare back and forth and that exceeded \$1,000,
1524 would that be a crime?

1525 Mr. Lungren. I would be happy to yield to the
1526 gentleman from Wisconsin.

1527 Mr. Sensenbrenner. Yes. The answer is no because it
1528 would be in compliance with the House rules. And
1529 everything as it applies to Members of Congress is governed
1530 by the House rules.

1531 Mr. Nadler. And the House rules permit --

1532 Mr. Sensenbrenner. Yes.

1533 Mr. Nadler. -- accepting airfares to go address

1534 groups?

1535 Mr. Sensenbrenner. Yes.

1536 Chairman Smith. The gentleman's time has expired.

1537 The question is on the manager's amendment. Those in
1538 favor, say aye.

1539 [A chorus of ayes.]

1540 Mr. Nadler. Mr. Chairman?

1541 Chairman Smith. Opposed, no.

1542 [A chorus of nays.]

1543 Chairman Smith. In the opinion of the chair, the ayes
1544 have it, and the amendment is agreed to. A roll call vote
1545 has been --

1546 Mr. Nadler. What was that? What amendment was that?

1547 Mr. Lungren. Well, that was on the manager's
1548 amendment. Right?

1549 Chairman Smith. A reporting quorum being present, the
1550 question is on reporting the bill, as amended, favorably to
1551 the House. Those in favor, say aye.

1552 [A chorus of ayes.]

1553 Chairman Smith. Opposed, no.

1554 [A chorus of nays.]

1555 Chairman Smith. In the opinion of the chair, the ayes
1556 have it. The bill, as amended, is reported favorably --

1557 Mr. Sensenbrenner. Mr. Chairman, may we have a roll
1558 call?

1559 Chairman Smith. A roll call vote has been requested.
1560 The clerk will report.

1561 Ms. Kish. Mr. Smith?

1562 Chairman Smith. Aye.

1563 Ms. Kish. Mr. Smith votes aye.

1564 Mr. Sensenbrenner?

1565 Mr. Sensenbrenner. Aye.

1566 Ms. Kish. Mr. Sensenbrenner votes aye.

1567 Mr. Coble?

1568 [No response.]

1569 Ms. Kish. Mr. Gallegly?

1570 [No response.]

1571 Ms. Kish. Mr. Goodlatte?

1572 [No response.]

1573 Ms. Kish. Mr. Lungren?

1574 Mr. Lungren. Aye.

1575 Ms. Kish. Mr. Lungren votes aye.

1576 Mr. Chabot?

1577 Mr. Chabot. Aye.

1578 Ms. Kish. Mr. Chabot votes aye.

1579 Mr. Issa?

1580 [No response.]

1581 Ms. Kish. Mr. Pence?

1582 [No response.]

1583 Ms. Kish. Mr. Forbes?

1584 [No response.]

1585 Ms. Kish. Mr. King?

1586 Mr. King. Aye.

1587 Ms. Kish. Mr. King votes aye.

1588 Mr. Franks?

1589 Mr. Franks. Aye.

1590 Ms. Kish. Mr. Franks votes aye.

1591 Mr. Gohmert?

1592 Mr. Gohmert. Aye.

1593 Ms. Kish. Mr. Gohmert votes aye.

1594 Mr. Jordan?

1595 Mr. Jordan. Aye.

1596 Ms. Kish. Mr. Jordan votes aye.

1597 Mr. Poe?

1598 [No response.]

1599 Ms. Kish. Mr. Chaffetz?

1600 [No response.]

1601 Ms. Kish. Mr. Griffin?

1602 [No response.]

1603 Ms. Kish. Mr. Marino?

1604 Mr. Marino. Aye.

1605 Ms. Kish. Mr. Marino votes aye.

1606 Mr. Gowdy?

1607 Mr. Gowdy. Yes.

1608 Ms. Kish. Mr. Gowdy votes yes.

1609 Mr. Ross?

1610 Mr. Ross. Aye.

1611 Ms. Kish. Mr. Ross votes aye.

1612 Mrs. Adams?

1613 Mrs. Adams. Aye.

1614 Ms. Kish. Mrs. Adams votes aye.

1615 Mr. Quayle?

1616 Mr. Quayle. Aye.

1617 Ms. Kish. Mr. Quayle votes aye.

1618 Mr. Amodei?

1619 Mr. Amodei. Aye.

1620 Ms. Kish. Mr. Amodei votes aye.

1621 Mr. Conyers?

1622 Mr. Conyers. Aye.

1623 Ms. Kish. Mr. Conyers votes aye.

1624 Mr. Berman?

1625 [No response.]

1626 Ms. Kish. Mr. Nadler?

1627 Mr. Nadler. Aye.

1628 Ms. Kish. Mr. Nadler votes aye.

1629 Mr. Scott?

1630 Mr. Scott. Aye.

1631 Ms. Kish. Mr. Scott votes aye.

1632 Mr. Watt?

1633 Mr. Watt. Aye.

1634 Ms. Kish. Mr. Watt votes aye.

1635 Ms. Lofgren?

1636 [No response.]

1637 Ms. Kish. Ms. Jackson Lee?

1638 [No response.]

1639 Ms. Kish. Ms. Waters?

1640 Ms. Waters. Aye.

1641 Ms. Kish. Ms. Waters votes aye.

1642 Mr. Cohen?

1643 Mr. Cohen. Aye.

1644 Ms. Kish. Mr. Cohen votes aye.

1645 Mr. Johnson?

1646 [No response.]

1647 Ms. Kish. Mr. Pierluisi?

1648 Mr. Pierluisi. Aye.

1649 Ms. Kish. Mr. Pierluisi votes aye.

1650 Mr. Quigley?

1651 Mr. Quigley. Aye.

1652 Ms. Kish. Mr. Quigley votes aye.

1653 Ms. Chu?

1654 Ms. Chu. Aye.

1655 Ms. Kish. Ms. Chu votes aye.

1656 Mr. Deutch?

1657 Mr. Deutch. Aye.

1658 Ms. Kish. Mr. Deutch votes aye.

1659 Ms. Sanchez?

1660 Ms. Sanchez. Aye.

1661 Ms. Kish. Ms. Sanchez votes aye.

1662 Chairman Smith. The gentleman from California, Mr.

1663 Gallegly?

1664 Mr. Gallegly. Aye.

1665 Ms. Kish. Mr. Gallegly votes aye.

1666 Chairman Smith. The gentleman from Texas, Mr. Poe?

1667 Mr. Poe. Yes.

1668 Ms. Kish. Mr. Poe votes aye.

1669 Chairman Smith. The gentleman from Arkansas, Mr.

1670 Griffin?

1671 Mr. Griffin. Aye.

1672 Ms. Kish. Mr. Griffin votes aye.

1673 Chairman Smith. The gentlewoman from Texas, Ms.

1674 Jackson Lee?

1675 Ms. Jackson Lee. Aye.

1676 Ms. Kish. Ms. Jackson Lee votes aye.

1677 Chairman Smith. The gentleman from North Carolina?

1678 Mr. Coble. Aye.

1679 Ms. Kish. Mr. Coble votes aye.

1680 Chairman Smith. The clerk will report.

1681 Ms. Kish. Mr. Chairman, 30 Members voted aye; 0
1682 Members voted nay.

1683 Chairman Smith. The ayes have it, and the bill, as
1684 amended, is ordered reported favorably.

1685 Without objection, the bill would be reported as a
1686 single amendment in the nature of a substitute,
1687 incorporating amendments adopted. Staff is authorized to
1688 make technical and conforming changes. Members have 2 days
1689 to submit their views.

1690 Congratulations to Mr. Sensenbrenner and to Mr.
1691 Quigley.

1692 Pursuant to notice, I now call up H.R. 1433 for
1693 purposes of markup. The clerk will report the bill.

1694 Ms. Kish. H.R. 1433. To protect private property --

1695 Chairman Smith. Without objection, the bill will be
1696 considered as read.

1697 [The information follows:]

1698

1699 Chairman Smith. The committee previously heard
1700 Members' opening statements on this bill. We will now
1701 consider amendments to H.R. 1433.

1702 Does the gentleman from New York have an amendment?

1703 Mr. Nadler. Yes. I have an amendment. Which one is
1704 this? This is Nadler Amendment 6.

1705 Chairman Smith. The clerk will report Nadler
1706 Amendment 6.

1707 Ms. Kish. Amendment to H.R. 1433, offered by Mr.
1708 Nadler. On the first page --

1709 Chairman Smith. Without objection, the amendment will
1710 be considered as read.

1711 [The information follows:]

1712

1713 Chairman Smith. And the gentleman is recognized to
1714 explain his amendment.

1715 Mr. Nadler. Thank you.

1716 Mr. Chairman, this amendment does not go to the
1717 central purpose of the bill, which is to limit the ability
1718 of States and local governments to use eminent domain. But
1719 the real problem or one major problem with this bill is the
1720 remedy.

1721 The remedy threatens States and localities with
1722 bankruptcy and would likely undermine their ability to
1723 float bonds, even if they do not exercise the power of
1724 eminent domain improperly. And it would do little or
1725 nothing to help properly owners and tenants harmed by an
1726 abuse of eminent domain.

1727 The penalty is substantial. The State or locality
1728 would lose 2 years' worth of Federal economic development.

1729 Let me say this. Mr. Chairman?

1730 [Pause.]

1731 Mr. Nadler. What the bill would do is say, okay, the
1732 State took a property by right of eminent domain and then
1733 uses it for a private purpose. The remedy is that for 7

1734 years thereafter, the original owner can sue the city and
1735 stop all Federal economic aid to the city for 2 years. So,
1736 for 7 years after the misconduct.

1737 The problem with this is, number one, it doesn't get
1738 the owner any benefit. He has no benefit from this. What
1739 we ought to do, which my amendment says, is the owner can
1740 sue and can get injunctive relief. That is to say an order
1741 from the court saying, stop, do not seize that property
1742 because you are not going to use it for public use. You
1743 are going to use it for private use. That is what the
1744 owner needs.

1745 On the other hand -- so, on the one hand, the remedy
1746 in this bill doesn't help the owner, which -- the property
1747 owner, which makes no sense. On the other hand, it does
1748 harm the city. How?

1749 Let us assume you are the Mayor of a city, and you are
1750 not exercising eminent domain at all or you are not
1751 exercising it improperly, but you want to float a bond for
1752 some purpose. And you are going to find that there is a
1753 cloud on your ability to issue bonds because the lenders
1754 are going to think to themselves, wait a minute, what if

1755 your successor improperly uses eminent domain a few years
1756 down the road, and what if the property owner then sues and
1757 gets all Federal economic aid to stop and thereby means
1758 that you can't repay the debt?

1759 In other words, there is a possibility that down the
1760 road -- an inchoate possibility, a possibility that you
1761 can't predict now -- that this bill will be used to deprive
1762 the city of Federal economic aid and, therefore, of the
1763 ability to repay the bonds. So it is going to make it
1764 either impossible or much more difficult for any city or
1765 local government to issue bonds in the first place, whether
1766 or not they misuse the eminent domain power or even if they
1767 never use the eminent domain power properly or otherwise.

1768 So, on the one hand, it is draconian to a city or
1769 State that doesn't do anything wrong. And on the other
1770 hand, it doesn't help the property owner.

1771 So what my amendment does is it removes the penalty of
1772 saying that you don't get Federal economic aid. But it
1773 substitutes as the remedy saying that the property owner,
1774 whose property is being taken for an improper use, can go
1775 to court and stop the seizure of the property and get

1776 damages also. He can get injunctive relief. He can get
1777 damages.

1778 So the amendment would say, okay, the property owner
1779 is helped. He can stop the seizure. He can get damages in
1780 addition to that. But on the other hand, the city -- the
1781 city that didn't misbehave, that didn't improperly use
1782 eminent domain -- is not going to have a cloud on its
1783 ability to borrow money.

1784 So it seems to me that if you are a supporter of this
1785 bill, which I am not for other reasons, but if you are a
1786 supporter of this bill, this stops a harmful effect of the
1787 bill but gives an effective remedy to the problem that you
1788 have. So I urge adoption of the amendment.

1789 Mr. Sensenbrenner. Mr. Chairman?

1790 Chairman Smith. The gentleman from Wisconsin is
1791 recognized.

1792 Mr. Sensenbrenner. Mr. Chairman, this bill strikes a
1793 proper balance between carrots and sticks, and the
1794 amendment that is proposed by the gentleman from New York
1795 reduces the stick to a twig, and a pretty small twig at
1796 that. It should be opposed for a number of reasons.

1797 First, the amendment significantly narrows the
1798 category of private economic developments covered by the
1799 bill. The base bill covers all private economic
1800 development takings in States that receive Federal economic
1801 development funds, which is most of them, if not all of
1802 them.

1803 The amendment would amend the bill so that it would
1804 only cover those takings if the project itself involved
1805 Federal funds. And that would mean that a private economic
1806 developer could use the city to go condemn private
1807 property, as was done in the Kelo case, if there are no
1808 Federal funds directly involved in the development.

1809 Second, the amendment would reward States that abuse
1810 eminent domain with Federal dollars by providing the States
1811 that can enjoy Federal economic development funds even when
1812 they abuse eminent domain. Federal money is fungible. The
1813 more Federal dollars a State has, the more it can afford to
1814 engage in eminent domain abuse. The amendment would,
1815 therefore, allow what the bill is designed to prevent.

1816 Third, the bill is designed to prevent the abuse of
1817 eminent domain by allowing the Attorney General to flag

1818 violations of the act early so the defending entities can
1819 cure the violation before a lawsuit is necessary. But the
1820 amendment would make a lawsuit necessary by striking this
1821 beneficial early warning provision and instead requiring a
1822 court to determine the violation, ensuring the very types
1823 of takings and related lawsuits that the bill is designed
1824 to deter.

1825 And finally, the base bill is designed to avoid
1826 protracted litigation that prolongs the injury to the
1827 property owner by allowing preliminary injunctions and
1828 temporary restraining orders. The amendment denies the
1829 opportunity for both the preliminary injunctions and the
1830 TROs, and so would needlessly prolong the injury suffered
1831 by property owners under eminent domain abuse.

1832 Now, first of all, the early warning provision is
1833 stricken by the Nadler amendment, which is designed to
1834 prevent litigation, and then another provision of the
1835 Nadler amendment ends up extending the time before a
1836 permanent injunction is issued by getting rid of
1837 preliminary injunctions and temporary restraining orders.
1838 And all of this is to the benefit of the municipality that

1839 is abusing the eminent domain law to the detriment of the
1840 property owner.

1841 This is a gutting amendment. The gentleman from New
1842 York admitted that even if his amendment is adopted he is
1843 going to vote against the bill. The amendment strikes some
1844 of the most important provisions of the bill and redefines
1845 what is a covered taking, and therefore, it ought to be
1846 opposed.

1847 And I yield back the balance of my time.

1848 Chairman Smith. Would the gentleman --

1849 Mr. Conyers. Mr. Chairman?

1850 Chairman Smith. Thank you, Mr. Sensenbrenner.

1851 The gentleman from Michigan, Mr. Conyers, is
1852 recognized.

1853 Mr. Conyers. The Nadler amendment is a very important
1854 improvement of a bill that I would like you to look at this
1855 way. What this amendment does is take action before
1856 allowing the harm to occur rather than what we ought to be
1857 doing is simply prohibiting the use of eminent domain for
1858 certain purposes. But the act would only be triggered
1859 after the completion of the condemnation.

1860 In other words, the harm would have occurred already,
1861 and there would only be penalties and fines and sanctions.
1862 And what this amendment does is give real substantive
1863 relief to an aggrieved property owner rather than letting
1864 the eminent taking occur and then give some slaps on the
1865 wrist if they were found -- this was found to be
1866 inadequate.

1867 So a successful plaintiff would only succeed in
1868 stripping the jurisdiction. And so, in its present form,
1869 the proposed bill fails to protect communities from harm.

1870 Now this is very common in urban areas. In the
1871 Detroit area --

1872 Mr. Nadler. Would the gentleman yield?

1873 Mr. Conyers. Yes, in just a sec. There is an area
1874 called Poletown in which an automobile company wiped out a
1875 whole community. Well, unless -- you can't come back and
1876 say we are sorry and we will penalize an automobile
1877 company. And what this does is give a remedy before the
1878 harm rather than afterward.

1879 And I would yield to the author of the amendment.

1880 Mr. Nadler. I would simply say that the gentleman

1881 from Wisconsin has pointed out some implications of the
1882 amendment that I did not foresee. I am going to withdraw
1883 the amendment and submit a narrower version in a little
1884 while. And the narrower version will do the one thing that
1885 I said that we ought to do, and that is grant injunctive
1886 relief, but not give the ability to take economic aid away
1887 from the city years later because that puts a burden on the
1888 ability of any city that you would have.

1889 So I will withdraw the amendment at this time, but I
1890 will have another version of it, a narrower version in a
1891 little while.

1892 Chairman Smith. Does the gentleman from Michigan
1893 yield back his time?

1894 Mr. Conyers. Yes.

1895 Chairman Smith. Thank you, Mr. Conyers.

1896 The gentleman from Nevada, Mr. Amodei?

1897 Mr. Amodei. Thank you, Mr. Chairman.

1898 And I apologize if anything I am going to say --

1899 Chairman Smith. Mr. Amodei, would you suspend for a
1900 minute? I didn't understand, Mr. Nadler. Did you withdraw
1901 the amendment?

1902 Mr. Nadler. I withdrew the amendment and promised to
1903 introduce a narrower version of it.

1904 Chairman Smith. Okay. Does Mr. Amodei still wish to
1905 be recognized?

1906 Mr. Amodei. I will yield back my time for a future
1907 hopeful recognition.

1908 Chairman Smith. You were so persuasive that even the
1909 threat of your speaking, Mr. Amodei, got --

1910 Mr. Amodei. I appreciate you noting that for the
1911 record, Mr. Chairman.

1912 Chairman Smith. Without objection, the amendment is
1913 withdrawn.

1914 Are there other amendments? The gentleman from New
1915 York is recognized.

1916 Mr. Nadler. I have Amendment Number 44 at the desk.

1917 Chairman Smith. The clerk will report Amendment
1918 Number 44.

1919 Ms. Kish. Amendment to --

1920 Mr. Nadler. It is marked Number 2.

1921 Ms. Kish. Amendment to H.R. 1433, offered by Mr.

1922 Nadler of New York. Page 12, line --

1923 Chairman Smith. Without objection, the amendment will
1924 be considered as read.

1925 [The information follows:]

1926

1927 Chairman Smith. And the gentleman is recognized to
1928 explain his amendment.

1929 Mr. Nadler. Thank you, Mr. Chairman.

1930 This bill seeks to prevent private property from being
1931 taken to benefit another private party. As the majority in
1932 Kelo observed, the city would no doubt be forbidden from
1933 taking petitioner's land for the purpose of conferring a
1934 private benefit on a particular private party. Nor would
1935 the city be allowed to take property under the mere pretext
1936 of a public purpose when its actual purpose was to bestow a
1937 private benefit. Yet this bill would seem to allow for
1938 just that.

1939 While the definitions are vague, one of the allowed
1940 uses would be "to an entity such as a common carrier that
1941 makes the property available to the general public as of
1942 right, such as a railroad or a public facility."

1943 My amendment would strike the term "public facility."
1944 It is vague and could include a stadium like George Bush's
1945 Texas Rangers stadium, which was built through the use of
1946 eminent domain, or a shopping center or some other
1947 privately owned public facility.

1948 The only restriction in the bill seems to be that "an
1949 entity makes the property available to the general public
1950 "as of right." It is not restricted to common carriers
1951 because that is just one example of this type of entity.

1952 If a railroad, which takes all comers for the
1953 nondiscriminatory price of a ticket, is permitted, then
1954 surely a stadium, which does the same thing, or a shopping
1955 mall, which is open to the public for free, would also be
1956 permitted under the language of the bill.

1957 Now we can argue over whether these uses should be
1958 permitted, but this starts getting us very close to some
1959 features of projects at issue in the Kelo case. Without
1960 further clarification of the statutory language, I think
1961 this creates a loophole big enough for Donald Trump to
1962 drive one of his more outrageous developments through,
1963 something we in New York have some experience with.

1964 So I urge adoption of the amendment. Members who are
1965 really concerned about abuses of eminent domain that
1966 benefits private parties should consider just how broad and
1967 vague this term is. Perhaps the sponsors would want to
1968 revisit the term and come up with something more precise.

1969 But "public facility" is simply too broad.

1970 So this amendment would narrow the exemption to the
1971 bill. That is to say this amendment would narrow the
1972 ability of the city or the locality to use eminent domain
1973 for private purposes by omitting the term "public
1974 facility," which can be applied to a private stadium, a
1975 football stadium, or a shopping mall. I don't think the
1976 sponsors of this bill really want eminent domain to be used
1977 for shopping malls or probably for stadiums.

1978 So I offer the amendment and urge its adoption.

1979 Mr. Sensenbrenner. Mr. Chairman?

1980 Chairman Smith. Thank you, Mr. Nadler.

1981 The gentleman from Wisconsin?

1982 Mr. Sensenbrenner. Mr. Chairman, this amendment
1983 should be opposed because it is unnecessary to strike
1984 "public facility" from the bill's list of acceptable public
1985 uses. And I want to distinguish between a couple of the
1986 examples the gentleman from New York has made to show that
1987 the bill -- or that they are not public facilities.

1988 The intent of the bill is to essentially reverse the
1989 damage the Kelo decision did to the public use clause of

1990 the Fifth Amendment. This amendment, however, addresses an
1991 issue unrelated to the Kelo decision. That is the Nadler
1992 amendment.

1993 Unlike the taking at issue in Kelo, the creation of a
1994 public facility has traditionally been considered an
1995 appropriate public use, and it is properly considered as
1996 such under the base bill. According to the bill, a public
1997 facility is an entity, such as a common carrier, that makes
1998 the property available to the general public "as of right."

1999 The term "as of right" is defined in Black's Law
2000 Dictionary as "by virtue of legal entitlement." One
2001 example is a common carrier. Black's Law Dictionary
2002 defines "common carrier" as "a commercial enterprise that
2003 holds itself out to the public as offering services for a
2004 fee. A common carrier is generally required by law to
2005 transport without refusal if the approved fare or charge is
2006 paid."

2007 Now insofar as an arrangement with a private entity
2008 makes it something akin to a common carrier, which is
2009 something that may have to be determined on a case-by-case
2010 basis that will meet certain criteria for the exception in

2011 the bill and appropriately so.

2012 Now I would like to answer two of the complaints the
2013 gentleman from New York has made. A private store, such as
2014 a Target store or a shopping mall, is not open to the
2015 public as of right, as the stores have the right to kick
2016 anybody out of their stores as they see fit, as long as
2017 they are not illegally discriminating against a protected
2018 class. So the shopping mall or other big box store would
2019 not meet the criteria.

2020 Similarly, George Bush's Texas Rangers stadium, if you
2021 look at the back of the ticket to practically any sporting
2022 event or public performance, it says the ticket grants a
2023 license to the ticket holder, but that the management can
2024 kick somebody out, for example, for illegal behavior or
2025 getting drunk and spilling beer on your neighbors and stuff
2026 like that.

2027 So I don't think the two examples the gentleman from
2028 New York gave are valid. And however, with a common
2029 carrier, where like the bus company or a railroad that has
2030 to take freight or people if the fare is paid, that is a
2031 common carrier, and it is a public entity. But the

2032 stadiums and the shopping malls are not.

2033 Mr. Nadler. Would the gentleman yield?

2034 Mr. Sensenbrenner. I yield.

2035 Mr. Nadler. It is certainly true that a shopping mall
2036 or a stadium reserves the right to kick someone off the
2037 premises for improper conduct, but so does a railroad. Is
2038 a railroad ticket or a plane ticket any different in that
2039 respect?

2040 Mr. Sensenbrenner. Well, reclaiming my time, and I
2041 will use the Wisconsin example on that. A railroad ticket
2042 or a plane ticket allows somebody to get on the plane, but
2043 they can be kicked off for any purpose.

2044 But in Wisconsin, there are a lot of recall petitions
2045 floating around against our Governor and a lot of other
2046 public officials. And the shopping malls have taken the
2047 position that we are private property and if you wish to
2048 circulate these petitions, you have to be on the curb in
2049 the entrance to the parking lot.

2050 Mr. Nadler. Would the gentleman yield?

2051 Mr. Sensenbrenner. I am glad to yield.

2052 Mr. Nadler. That is completely true. Unfortunately,

2053 the Supreme Court made that decision about 20 years ago,
2054 which we ought to reverse. But the --

2055 Mr. Sensenbrenner. Well, we are reversing a Supreme
2056 Court decision here. So --

2057 Mr. Nadler. A different Supreme Court decision.

2058 Mr. Sensenbrenner. -- it will give us a good start.

2059 Mr. Nadler. But I don't understand the distinction
2060 the gentleman is making. Yes, a shopping mall is open to
2061 the general public, but it is private property, as the
2062 Supreme Court recognized by saying they could prevent
2063 people from circulating nominating or recall petitions on
2064 that property.

2065 So the point is that under -- but they are common
2066 carriers. A railroad is a common carrier and can prevent
2067 you from circulating a petition on the railroad. If they
2068 want, they can kick you off for any reason in exactly the
2069 same way as a stadium or a shopping mall. Certainly,
2070 Yankee stadium or George Bush or Rangers stadium would be
2071 within its rights, if they wanted to, to stop you from
2072 going up and down the aisles with a political petition
2073 during the baseball game.

2074 Mr. Sensenbrenner. Well, will the gentleman yield
2075 again?

2076 Mr. Nadler. I don't understand the distinction at
2077 all.

2078 Mr. Sensenbrenner. Well, Black's Law Dictionary does
2079 show the distinction because it defines "common carrier" as
2080 a commercial enterprise that holds itself out to the public
2081 as offering services for a fee.

2082 Mr. Nadler. And would the gentleman yield?

2083 Chairman Smith. The gentleman's time has expired.

2084 Mr. Nadler. I ask unanimous consent to grant the
2085 gentleman 2 additional minutes.

2086 Chairman Smith. Without objection, the gentleman is
2087 recognized for an additional minute.

2088 Mr. Nadler. Then in exactly the same way, a stadium
2089 or a shopping mall would meet that definition, and I don't
2090 know why we need public facility in the bill. What the
2091 bill is saying is that a shopping mall or a --

2092 Mr. Sensenbrenner. Well, reclaiming my time, a public
2093 facility has always been defined as something that holds
2094 itself out for public use. And what we are trying to do is

2095 to get the law back to what it was before the Kelo
2096 decision. And remember that Justice Stevens said that if
2097 he was in Congress or in a State legislature, he would have
2098 voted the other way.

2099 Mr. Nadler. If the gentleman would further yield?
2100 Why should a stadium or a -- why should you be able to use,
2101 if you believe that we should restrict the power of the
2102 States -- and that is my problem with the bill. I think
2103 the States should have their own laws on this.

2104 But if you believe that the States -- we should
2105 restrict the power of the States to use eminent domain for
2106 private purposes, a shopping center, a mall, a stadium, is
2107 as much a private purpose, and by exempting them here, you
2108 are saying that the city can use eminent domain to seize
2109 someone's property to give whoever currently -- to give
2110 George Steinbrenner a new stadium or to give whoever is
2111 developing the shopping mall a new shopping mall. And if
2112 you believe --

2113 Chairman Smith. The gentleman's time --

2114 Mr. Nadler. And that is exactly what we mostly don't
2115 like about Kelo. Therefore, I urge the adoption of the

2116 amendment.

2117 Chairman Smith. The gentleman's time has expired.

2118 The question is on the amendment. Those in favor of

2119 the Nadler amendment, say aye.

2120 [A chorus of ayes.]

2121 Chairman Smith. Opposed, no.

2122 [A chorus of nays.]

2123 Chairman Smith. In the opinion of the chair, the nays

2124 have it. A roll call vote has been requested. The clerk

2125 will call the roll.

2126 Ms. Kish. Mr. Smith?

2127 Chairman Smith. No.

2128 Ms. Kish. Mr. Smith votes no.

2129 Mr. Sensenbrenner?

2130 Mr. Sensenbrenner. No.

2131 Ms. Kish. Mr. Sensenbrenner votes no.

2132 Mr. Coble?

2133 [No response.]

2134 Ms. Kish. Mr. Gallegly?

2135 [No response.]

2136 Ms. Kish. Mr. Goodlatte?

2137 [No response.]

2138 Ms. Kish. Mr. Lungren?

2139 [No response.]

2140 Ms. Kish. Mr. Chabot?

2141 Mr. Chabot. No.

2142 Ms. Kish. Mr. Chabot votes no.

2143 Mr. Issa?

2144 [No response.]

2145 Ms. Kish. Mr. Pence?

2146 [No response.]

2147 Ms. Kish. Mr. Forbes?

2148 [No response.]

2149 Ms. Kish. Mr. King?

2150 Mr. King. No.

2151 Ms. Kish. Mr. King votes no.

2152 Mr. Franks?

2153 Mr. Franks. No.

2154 Ms. Kish. Mr. Franks votes no.

2155 Mr. Gohmert?

2156 [No response.]

2157 Ms. Kish. Mr. Jordan?

2158 Mr. Jordan. No.

2159 Ms. Kish. Mr. Jordan votes no.

2160 Mr. Poe?

2161 [No response.]

2162 Ms. Kish. Mr. Chaffetz?

2163 [No response.]

2164 Ms. Kish. Mr. Griffin?

2165 Mr. Griffin. No.

2166 Ms. Kish. Mr. Griffin votes no.

2167 Mr. Marino?

2168 Mr. Marino. No.

2169 Ms. Kish. Mr. Marino votes no.

2170 Mr. Gowdy?

2171 Mr. Gowdy. No.

2172 Ms. Kish. Mr. Gowdy votes no.

2173 Mr. Ross?

2174 Mr. Ross. No.

2175 Ms. Kish. Mr. Ross votes no.

2176 Mrs. Adams?

2177 Mrs. Adams. No.

2178 Ms. Kish. Mrs. Adams votes no.

2179 Mr. Quayle?

2180 [No response.]

2181 Ms. Kish. Mr. Amodei?

2182 Mr. Amodei. No.

2183 Ms. Kish. Mr. Amodei votes no.

2184 Mr. Conyers?

2185 Mr. Conyers. Aye.

2186 Ms. Kish. Mr. Conyers votes aye.

2187 Mr. Berman?

2188 [No response.]

2189 Ms. Kish. Mr. Nadler?

2190 Mr. Nadler. Aye.

2191 Ms. Kish. Mr. Nadler votes aye.

2192 Mr. Scott?

2193 [No response.]

2194 Ms. Kish. Mr. Watt?

2195 [No response.]

2196 Ms. Kish. Ms. Lofgren?

2197 [No response.]

2198 Ms. Kish. Ms. Jackson Lee?

2199 Ms. Jackson Lee. Aye.

2200 Ms. Kish. Ms. Jackson Lee votes aye.

2201 Ms. Waters?

2202 Ms. Waters. Aye.

2203 Ms. Kish. Ms. Waters votes aye.

2204 Mr. Cohen?

2205 Mr. Cohen. Aye.

2206 Ms. Kish. Mr. Cohen votes aye.

2207 Mr. Johnson?

2208 Mr. Johnson. Aye.

2209 Ms. Kish. Mr. Johnson votes aye.

2210 Mr. Pierluisi?

2211 Mr. Pierluisi. No.

2212 Ms. Kish. Mr. Pierluisi votes no.

2213 Mr. Quigley?

2214 Mr. Quigley. Aye.

2215 Ms. Kish. Mr. Quigley votes aye.

2216 Ms. Chu?

2217 Ms. Chu. Aye.

2218 Ms. Kish. Ms. Chu votes aye.

2219 Mr. Deutch?

2220 Mr. Deutch. Aye.

2221 Ms. Kish. Mr. Deutch votes aye.

2222 Ms. Sanchez?

2223 Ms. Sanchez. Aye.

2224 Ms. Kish. Ms. Sanchez votes aye.

2225 Mr. Scott. Mr. Chairman?

2226 Chairman Smith. The gentleman from Texas?

2227 Mr. Gohmert. No.

2228 Ms. Kish. Mr. Gohmert votes no.

2229 Chairman Smith. The gentleman from Virginia, Mr.

2230 Forbes?

2231 Mr. Forbes. No.

2232 Ms. Kish. Mr. Forbes votes no.

2233 Chairman Smith. The gentleman from California, Mr.

2234 Lungren?

2235 Mr. Lungren. No.

2236 Ms. Kish. Mr. Lungren --

2237 Chairman Smith. The gentleman from Virginia, Mr.

2238 Scott?

2239 Mr. Scott. Mr. Chairman, how am I recorded?

2240 Chairman Smith. How is the gentleman from Virginia

2241 recorded?

2242 Ms. Kish. Mr. Scott has not voted.

2243 Mr. Scott. Mr. Chairman, I vote no.

2244 Ms. Kish. Mr. Scott votes no.

2245 Chairman Smith. The gentleman from North Carolina,

2246 Mr. Coble?

2247 Mr. Coble. No.

2248 Ms. Kish. Mr. Coble votes no.

2249 Chairman Smith. The clerk will report.

2250 Ms. Kish. Mr. Chairman, 10 Members voted aye; 18

2251 Members voted nay.

2252 Chairman Smith. A majority having voted against the

2253 amendment, the amendment is not agreed to.

2254 Let me say to -- let me say before I recognize --

2255 before I recognize the gentleman from Iowa, let me say to

2256 all the Members that I anticipate adjourning after the

2257 gentleman from Iowa has made a statement. And the reason

2258 for that is that the Science Committee apparently is

2259 holding votes open for members of the Science Committee who

2260 are also members of the Judiciary Committee, and we are

2261 going to go to that committee and vote. So this will be

2262 the end of the markup for the week.

2263 We haven't gotten to adjournment yet because I now
2264 will recognize the gentleman from Iowa, Mr. King.

2265 Mr. King. Thank you, Mr. Chairman.

2266 I move to strike the last word.

2267 Chairman Smith. The gentleman is recognized for 5
2268 minutes.

2269 Mr. King. Thank you, Mr. Chairman.

2270 And I will compress this as much as I can. I just
2271 want to make sure it is into the record here from me that I
2272 am glad to see this bill before this committee. I strongly
2273 support the property rights initiative on the Sensenbrenner
2274 bill.

2275 And I think it is important to state, in my position
2276 at least, that the Supreme Court made a mistake on the Kelo
2277 decision. And when one reads that decision from those
2278 years ago, it effectively this -- and I didn't realize at
2279 the time when I spoke on the floor on this after the Kelo
2280 decision on the floor of the full House, that I had agreed
2281 with Justice O'Connor. And maybe it was one of those
2282 unusual times.

2283 But what really happened was the language in the Fifth

2284 Amendment was this. "Nor shall private property be taken
2285 for public use without just compensation." The effect of
2286 the Kelo decision was to strike those three words "for
2287 public use" from the Fifth Amendment of the Constitution of
2288 the United States, and now it effectively reads "nor shall
2289 private property be taken without just compensation."

2290 I think it is a tragic decision on the part of the
2291 Supreme Court to undermine the property rights that have
2292 been sacrosanct for 200-plus years in this country, and it
2293 is something that puts at risk the economic development and
2294 the underpinnings of the vibrancy of our free enterprise
2295 economy.

2296 And so, this is a bill that is a step in the right
2297 direction. I strongly support it. But in addition, I call
2298 upon the Supreme Court to be forward looking on this. One
2299 day I believe some of the people on this committee at least
2300 will live to see the Supreme Court reverse the decision
2301 because I think it is wrongly held, and I wanted to send
2302 that message to the Supreme Court.

2303 Thank the gentleman for bringing this piece of
2304 legislation, which is a stop-gap to a problem that was

2305 created by a mistake by the Supreme Court.

2306 And I would yield back the balance of my time.

2307 Chairman Smith. Thank you, Mr. King.

2308 And for the reasons I have just mentioned, we stand

2309 adjourned.

2310 [Whereupon, at 11:57 a.m., the committee was

2311 adjourned.]