Union Calendar No. 451

109th Congress, 2d Session – – – – – – – – – – – – House Report 109–749

REPORT ON THE ACTIVITIES

OF THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

DURING THE

ONE HUNDRED NINTH CONGRESS

PURSUANT TO

CLAUSE 1(d) RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

JANUARY 2, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

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COMMITTEE ON THE JUDICIARY

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 2, 2007.

Hon. KAREN L. HAAS,
Clerk of the House of Representatives,
Washington, DC.

DEAR MS. HAAS: Pursuant to clause 1(d) of rule XI of the Rules of the House of Representatives, I am transmitting the report on the activities of the Committee on the Judiciary of the U.S. House of Representatives in the 109th Congress.

Sincerely,

F. JAMES SENSENBRENNER, JR., *Chairman.*

Union Calendar No. 451

109TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 109–749

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

Jurisdiction of the Committee on the Judiciary

The jurisdiction of the Committee on the Judiciary is set forth in Rule X, 1.(l) of the rules of the House of Representatives for the 109th Congress:

* * * * * * *

RULE X.—ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

THE COMMITTEES AND THEIR JURISDICTION

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance wtih clause 2 of rule XII, as follows:

* * * * * * *

(l) Committee on the Judiciary.

(1) The judiciary and judicial proceedings, civil and criminal.
(2) Administrative practice and procedure.
(3) Apportionment of Representatives.
(4) Bankruptcy, mutiny, espionage, and counterfeiting.
(5) Civil liberties.
(6) Constitutional amendments.
(7) Criminal law enforcement.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

Printed Hearings [1]

Serial No. and Title

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1. Implications of the Booker/Fanfan Decisions for the Federal Sentencing Guidelines. Subcommittee on Crime, Terrorism, and Homeland Security. February 10, 2005.
2. Trademark Dilution Revision Act of 2005. Subcommittee on Courts, the Internet, and Intellectual Property. February 17, 2005. (H.R. 683).
3. Child Interstate Abortion Notification Act. Subcommittee on the Constitution. March 3, 2005. (H.R. 748).
4. Immigration Enforcement Resources Authorized in the Intelligence Reform and Terrorism Prevention Act of 2004. Subcommittee on Immigration, Border Security, and Claims. March 3, 2006.
5. Interior Immigration Enforcement Resources. Subcommittee on Immigration, Border Security, and Claims. March 10, 2005.
6. Digital Music Licensing and Section 115 of the Copyright Act. Subcommittee on Courts, the Internet, and Intellectual Property. March 8, 2006.
7. Holmes Group, the Federal Circuit, and the State of Patent Appeals. Subcommittee on Courts, the Internet, and Intellectual Property. March 17, 2005.
8. Immigration and the Alien Gang Epidemic: Problems and Solutions. Subcommittee on Immigration, Border Security, and Claims. April 13, 2005.
9. Digital Music Inoperability and Availability. Subcommittee on Courts, the Internet, and Intellectual Property. April 6, 2005.
10. Reauthorization of the USA PATRIOT Act (Part 1). Full Committee. June 8, 2005.
11. Committee Print Regarding Patent Quality Improvement (Parts 1 and 2). Subcommittee on Courts, the Internet, and Intellectual Property. April 20, 28, 2005.
12. USA PATRIOT Act: A Review for the Purpose of its Re-authorization. Full Committee. April 6, 2005.
13. Implementation of the USA PATRIOT Act: Prohibition of Material Support Under Sections 805 of the USA PATRIOT Act 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004. Subcommittee on Crime, Terrorism, and Homeland Security. May 10, 2005.
14. Implementation of the USA PATRIOT Act: Section 212 Emergency Disclosure of Electronic Communications to Protect Life and Limb. Subcommittee on Crime, Terrorism, and Homeland Security. May 5, 2005.
15. Implementation of the USA PATRIOT Act: Effect of Section 203(b) and 203(d) on Information Sharing. Subcommittee on Crime, Terrorism, and Homeland Security. April 19, 2005.
16. Implementation of the USA PATRIOT Act: Section 218, Foreign Intelligence Information ("The Wall"). Subcommittee on Crime, Terrorism, and Homeland Security. April 28, 2005.
17. Implementation of the USA PATRIOT Act: Sections of the Act that Address the Foreign Intelligence Surveillance Act (FISA). (Parts 1 and 2). Subcommittee on Crime, Terrorism, and Homeland Security. April 26, 28, 2005.
18. Implementation of the USA PATRIOT Act: Sections of the Act that Address Crime, Terrorism, and the Age of Technology, Sections 209, 217, and 220. Subcommittee on Crime, Terrorism, and Homeland Security. April 21, 2005.
19. Implementation of the USA PATRIOT Act: Sections 505 and 804. Subcommittee on Crime, Terrorism, and Homeland Security. May 26, 2005.

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[1] Includes all hearings that were printed before Jan. 2nd, 2007. There were four hearings from the 109th Congress that had not been printed at the time that this report was filed, and thus are not included in this list.

20. Implementation of the USA PATRIOT Act: Sections 201, 202, 223, of the Act that Address Criminal Wiretaps, and Section 213 of the Act that Addresses Delayed Notice. Subcommittee on Crime, Terrorism, and Homeland Security. May 3, 2005.
21. Protection of Lawful Commerce in Arms Act. Subcommittee on Commercial and Administrative Law. March 15, 2005. (H.R. 800).
22. Fiscal Management Practices of the United States Commission on Civil Rights. Subcommittee on the Constitution. March 17, 2005.
23. October 2005 Statutory Deadline for Visa Waiver Program Countries to Produce Security Passports: Why it Matters to Homeland Security. Subcommittee on Immigration, Border Security, and Claims. April 21, 2005.
24. Patent Act of 2005. Subcommittee on Courts, the Internet, and Intellectual Property. June 9, 2005. (H.R. 2795).
25. Public Performance Rights Organizations. Subcommittee on Courts, the Internet, and Intellectual Property. May 11, 2005.
26. Industry Competition and Consolidation: The Telecom Marketplace Nine Years After the Telecom Act. Full Committee. April 20, 2005.
27. Economic Development and Dormant Commerce Clause: The Lessons of Cuno v. Daimler Chrysler and Its Effect on State Taxation Affecting Interstate Commerce. Subcommittee on Commercial and Administrative Law jointly with the Subcommittee on the Constitution. May 24, 2005.
28. Copyright Office Views on Music Licensing Reform. Subcommittee on Courts, the Internet, and Intellectual Property. June 21, 2005.
29. Reauthorization of the USA PATRIOT Act (Part 2). Full Committee. June 10, 2005.
30. Child Abuse and Neglect Database Act; Dru Sjodin National Sex Offender Public Database Act of 2005; Child Predator Act of 2005; Jessica Lunsford Act; Sex Offender Registration and Notification Act; Save Our Children: Stop the Violent Predators Against Children DNA Act of 2005; DNA Fingerprinting Act of 2005; Amie Zyla Act of 2005. (H.R. 764, H.R. 95, H.R. 1355, H.R. 1505, H.R. 2423, H.R. 244, H.R. 2696, H.R. 2797).
31. Protecting Our Nation's Children from Sexual Predators and Violent Criminals. Subcommittee on Crime, Terrorism, and Homeland Security. June 9, 2005.
32. New "Dual Missions" of the Immigration Enforcement Agencies. Subcommittee on Immigration, Border Security, and Claims. May 5, 2005.
33. Protection Against Sexual Exploitation of Children Act of 2005; and Prevention and Deterrence of Crimes Against Children Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. June 7, 2005. (H.R. 2318, H.R. 2388).
34. Intellectual Property Theft in China and Russia. Subcommittee on Courts, the Internet, and Intellectual Property. May 17, 2005.
35. Illegal Immigration Enforcement and Social Security Protection Act of 2005. Subcommittee on Immigration, Border Security, and Claims. (H.R. 98).
36. Responding to Organized Crimes Against Manufacturers and Retailers. Subcommittee on Crime, Terrorism, Homeland Security. March 17, 2005.
37. Can Congress Create a Race-Based Government? The Constitutionality of H.R. 309/S. 147. Subcommittee on the Constitution. July 19, 2005.
38. Department of Homeland Security to Examine the Security of the Nation's Seaports and Cargo Entering Those Ports. Subcommittee on Crime, Terrorism, and Homeland Security. March 15, 2005.
39. New Jobs in Recession and Recovery: Who are Getting Them and Who are Not? Subcommittee on Immigration, Border Security, and Claims. May 4, 2005.
40. Appropriate Role of Foreign Judgements in the Interpretation of the Constitution of the United States. Subcommittee on the Constitution. July 19, 2005. (H. Res. 97).
41. Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. April 12, 2005. (H.R. 1528).
42. Mutual Fund Trading Abuses. Subcommittee on Commercial and Administrative Law. June 7, 2005.
43. Federal Consent Decree Fairness Act. Subcommittee on Courts, the Internet, and Intellectual Property. June 21, 2005. (H.R. 1229).
44. Secure Access to Justice and Court Protection Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. April 26, 2005. (H.R. 1751).
45. U.S. Department of Justice Civil Rights Division: A Review of the Civil Rights Division for the purpose of the Reauthorization of the U.S. Department of Justice. Subcommittee on the Constitution. March 10, 2005.
46. Terrorist Death Penalty Enhancement Act of 2005; and Streamlined Procedures Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. June 30, 2005. (H.R. 3060, H.R. 3035).

47. Federal Prison Industries Competition in Contracting Act of 2005. Subcommittee on Courts, the Internet, and Intellectual Property. July 1, 2005. (H.R. 2965).

48. Review of U.S. Patent and Trademark Office Operations, including Analysis of General Accounting Office, Inspector General, and National Academy of Public Administration Reports. Subcommittee on Courts, the Internet, and Intellectual Property. September 8, 2005.

49. The Diversity Visa Program. Subcommittee on Immigration, Border Security, and Claims. June 15, 2005.

50. Gang Deterrence and Community Protection Act. Subcommittee on Crime, Terrorism, and Homeland Security. April 5, 2005.

51. Lack of Worksite Enforcement & Employer Sanctions. Subcommittee on Immigration, Border Security, and Claims. June 21, 2005.

52. Alien Gang Removal Act. Subcommittee on immigration, Border Security, and Claims. June 28, 2005. (H.R. 2933).

53. An Amendment in the Nature of a Substitute to H.R. 2795, the "Patent Act of 2005". Subcommittee on Courts, the Internet, and Intellectual Property. September 15, 2005.

54. Immigration Removal Procedures Implemented in the Aftermath of September 11th Attacks. Subcommittee on Immigration, Border Security, and Claims. June 30, 2005.

55. Implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Subcommittee on Commercial and Administrative Law. July 26, 2005.

56. Reducing Peer-to-Peer (P2P) Piracy on University Campuses: A Progress Update. Subcommittee on Courts, the Internet, and Intellectual Property. September 22, 2005.

57. Pain of the Unborn. Subcommittee on the Constitution. November 1, 2005.

58. Sources and Methods of Foreign Nationals Engaged in Economic and Military Espionage. Subcommittee on Immigration, Border Security, and Claims. September 15, 2005.

59. Improving Federal Court Adjudication of Patent Cases. Subcommittee on Courts, the Internet, and Intellectual Property. October 6, 2005.

60. Supreme Court's Kelo Decision and Potential Congressional Responses. Subcommittee on the Constitution. September 22, 2005.

61. Methamphetamine Epidemic Elimination Act. Subcommittee on Crime, Terrorism, and Homeland Security. September 27, 2005. (H.R. 3889).

62. Business Activity Tax Simplification. Subcommittee on Commercial and Administrative Law. September 27, 2005. (H.R. 1956)

63. Dual Citizenship, Birthright Citizenship, and the Meaning of Sovereignty. Subcommittee on Immigration, Border Security, and Claims. September 29, 2005.

64. To Prevent Certain Discriminatory Taxation of Natural Gas Pipeline Property. (H.R. 1369).

65. Offender Re-entry: What is Needed to Provide Offenders with a Real Second Chance? Subcommittee on Crime, Terrorism, and Homeland Security. November 3, 2005.

66. Second Chance Act of 2005. (Part 1). Subcommittee on Crime, Terrorism, and Homeland Security. November 3, 2005. (H.R. 1704).

67. Federal Courts Jurisdiction Clarification Act. Subcommittee on Courts, the Internet, and Intellectual Property. November 15, 2005.

68. Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act. Subcommittee on the Constitution. October 20, 2005.

69. Voting Rights Act: Section 5-Preclearance Standards. Subcommittee on the Constitution. November 1, 2005.

70. To Examine the Impact and Effectiveness of the Voting Rights Act. Subcommittee on the Constitution. October 18, 2005.

71. Administrative Law, Process and Procedure Project. Subcommittee on Commercial and Administrative Law. November 1, 2005.

72. To amend Title 4 of the United States Code to clarify the treatment of self-employment for purposes of the limitation on State taxation of retirement. Subcommittee on Commercial and Administrative Law. December 13, 2005. (H.R. 4019).

73. How Illegal Immigration Impacts Constituencies: Perspectives from Members of Congress (Part 2). Subcommittee on Immigration, Border Security, and Claims. November 17, 2005.

74. Voting Rights Act: Section 5-The Judicial Evolution of the Retrogression Standard. Subcommittee on the Constitution. November 9, 2005.

75. Voting Rights Act: The Continuing Need for Section 5. Subcommittee on the Constitution. October 25, 2005.
76. How Illegal Immigration Impacts Constituencies: Perspectives from Members of Congress (Part 1). Subcommittee on Immigration, Border Security, and Claims. November 10, 2005.
77. Voting Rights Act: Sections 6 and 8-The Federal Examiner and Observer Program. Subcommittee on the Constitution. November 15, 2005. Subcommittee on the Constitution. November 15, 2005.
78. Voting Rights Act: Section 203-Bilingual Election Requirements (Part 2). Subcommittee on the Constitution. November 9, 2005.
79. Voting Rights Act: Section 5 of the Act-History, Scope, and Purpose. Subcommittee on the Constitution. October 25, 2005.
80. Content Protection in the Digital Age: The Broadcast Flag, High-Definition Radio, and the Analog Hole. Subcommittee on Courts, the Internet, and Intellectual Property. November 3, 2005.
81. Olympic Family-Functional or Dysfunctional? Subcommittee on Immigration, Border Security, and Claims. June 9, 2005.
82. Streamlined Procedures Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. November 10, 2005. (H.R. 3035).
83. Voting Rights Act: Section 203–Bilingual Election Requirements (Part 1). Subcommittee on the Constitution. November 8, 2005.
84. Scope and Myths of Roe V. Wade. Subcommittee on the Constitution. March 2, 2006.
85. Outgunned and Outmanned: Local Law Enforcement Confronts Violence Along the Southern Border. Subcommittee on Immigration, Border Security, and Claims jointly with the Subcommittee on Crime, Terrorism, and Homeland Security. March 2, 2006.
86. Second Chance Act of 2005. (Part 2): An Examination of Drug Treatment Programs Needed to Ensure Successful Re-entry. February 8, 2006. (H.R. 1704)
87. Victims and the Criminal Justice System: How to Protect, Compensate, and Vindicate the Interests of Victims. Subcommittee on Crime, Terrorism, and Homeland Security. February 16, 2006.
88. International IPR Report Card: Assessing U.S. Government and Industry Efforts to Enhance Chinese and Russian Enforcement of Intellectual Property Rights. Subcommittee on Courts, the Internet, and Intellectual Property. December 7, 2005.
89. A Bill to Require Any Federal State Contract to Recognize Any Notarization Made by a Notary Public Licensed by a State Other than the State Where the Court is Located when Such Notarization Occurs In or Affects Interstate Commerce. Subcommittee on Courts, the Internet, and Intellectual Property. March 9, 2006. (H.R. 1458).
90. Weak Bilateral Law Enforcement Presence at the U.S.-Mexico Border: Territorial Integrity and Safety Issues for American Citizens. Subcommittee on Immigration, Border Security, and Claims jointly with the Subcommittee on Crime, Terrorism, and Homeland Security. November 17, 2005.
91. Workplace Goods Job Growth and Competitiveness Act of 2005. Subcommittee on Commercial and Administrative Law. March 14, 2006. (H.R. 3509).
92. Remedies for Small Copyright Claims. Subcommittee on Courts, the Internet, and Intellectual Property. March 29, 2006.
93. Death Penalty Reform Act of 2006. Subcommittee on Crime, Terrorism, and Homeland Security. March 30, 2006. (H.R. 5040).
94. Report on Orphan Works by the Copyright Office. Subcommittee on Courts, the Internet, and Intellectual Property. March 8, 2006.
95. Should Congress Raise the H1–B Cap? Subcommittee on Immigration, Border Security, and Claims. March 30, 2006.
96. Lobbying Accountability and Transparency Act of 2006. Subcommittee on the Constitution. April 4, 2006. (H.R. 4975).
97. 10th Anniversary of the Congressional Review Act. Subcommittee on Commercial and Administrative Law. March 30, 2006.
98. Personal Information Acquired by the Government from Information Resellers: Is there Need for Improvement? Subcommittee on Commercial and Administrative Law jointly with the Subcommittee on the Constitution. April 4, 2006.
99. Patent Quality Enhancement in the Information-Based Economy. Subcommittee on Courts, the Internet, and Intellectual Property. April 5, 2006.
100. Patent Harmonization. Subcommittee on Courts, the Internet, and Intellectual Property. 2006.
101. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act. (Part 1). Subcommittee on the Constitution. May 5, 2006. (H.R. 9).

102. The Constitutional Line Item Veto. Subcommittee on the Constitution. April 27, 2006.
103. Voting Rights Act: Evidence of Continued Need. (Volumes I to IV). Subcommittee on the Constitution. March 8, 2006.
104. Patent Trolls: Fact or Fiction? Subcommittee on Courts, The Internet, and Intellectual Property. June 15, 2006.
105. Private Property Rights Implementation Act of 2005. Subcommittee on the Constitution. June 8, 2006. (H.R. 1772).
106. Cyber-Security Enhancement and Consumer Data Protection Act of 2006. Subcommittee on Crime, Terrorism, and Homeland Security. May 11, 2006. (H.R. 5318).
107. Firearm Commerce Modernization Act; and NICS Improvement Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. May 3, 2006. (H.R. 1384, H.R. 1415).
108. Discussion Draft of the Section 115 Reform Act (SIRA) of 2006. Subcommittee on Courts, the Internet, and Intellectual Property. May 16, 2006.
109. Network Neutrality: Competition, Innovation, and Nondiscriminatory Access. Taskforce on Telecom and Antitrust. April 25, 2006.
110. Energy Employees Occupational Illness Compensation Program Act: Are We Fulfilling the Promise We Made to these Cold War Veterans When We Created the Program? (Part 1). Subcommittee on Immigration, Border Security, and Claims. March 1, 2006.
111. Physicians for Underserved Areas Act. Subcommittee on Immigration, Border Security, and Claims. May 18, 2006. (H.R. 4997)
112. White Collar Enforcement: Attorney-Client Privilege and Corporate Waivers. Subcommittee on Crime, Terrorism, and Homeland Security. March 7, 2006.
113. Firearms Corrections and Improvement Act. Subcommittee on Crime, Terrorism, and Homeland Security. March 28, 2006.
114. Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE): Reforming Licensing and Enforcement Authorities. Subcommittee on Crime, Terrorism, and Homeland Security. March 28, 2006.
115. Animal Fighting Prohibition Enforcement Act of 2005. Subcommittee on Crime, Terrorism, and Homeland Security. May 18, 2006. (H.R. 817).
116. Criminal Restitution Improvement Act of 2006. Subcommittee on Crime, Terrorism, and Homeland Security. June 13, 2006. (H.R. 5673).
117. The Need to Implement WHTI to Protect U.S. Homeland Security. Subcommittee on Immigration, Border Security, and Claims. June 8, 2006.
118. Public Expression of Religion Act of 2005. Subcommittee on the Constitution. June 22, 2006. (H.R. 2679).
119. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act (Part 2). Subcommittee on the Constitution. May 4, 2006. (H.R. 9).
120. State Taxation of Interstate Telecommunications Services. Subcommittee on Commercial and Administrative Law. June 13, 2006.
121. United States v. Booker: One Year Later—Chaos or Status Quo? Subcommittee on Crime, Terrorism, and Homeland Security. March 16, 2006.
122. Reckless Justice: Did the Saturday Night Raid of Congress Trample the Constitution? Committee on the Judiciary. May 30, 2006.
123. Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE): Gun Show Enforcement (Part 1 & 2). Subcommittee on Crime, Terrorism, and Homeland Security. February 15, 28, 2006.
124. Judicial Transparency and Ethics Enhancement Act of 2006. Subcommittee on Crime, Terrorism, and Homeland Security. June 26, 2006. (H.R. 5219).
125. Animal Enterprise Terrorism Act. Subcommittee on Crime, Terrorism, and Homeland Security. May 23, 2006. (H.R. 4239).
126. Equal Access to Justice Reform Act of 2005. Subcommittee on Courts, the Internet, and Intellectual Property. May 23, 2006. (H.R. 435).
127. Should We Embrace the Senate's Grant of Amnesty to Millions of Illegal Aliens and Repeat the Mistakes of the Immigration Reform and Control Act of 1986? Subcommittee on Immigration, Border Security, and Claims. July 18, 2006.
128. Internet Gambling Prohibition Act of 2006. Subcommittee on Crime, Terrorism, and Homeland Security. April 5, 2006. (H.R. 4777).
129. Reid-Kennedy Bill: The Effect on American Workers' Wages and Employment Opportunities. Committee on the Judiciary. August 29, 2006.
130. Whether Attempted Implementation of the Reid-Kennedy Immigration Bill Will Result in an Administrative and National Security Nightmare. Subcommittee on Immigration, Border Security, and Claims. July 27, 2006.

131. Electronic Surveillance Modernization Act. Subcommittee on Crime, Terrorism, and Homeland Security. September 12, 2006. (H.R. 5825).

132. Reauthorization of the U.S. Department of Justice: Executive Office for U.S. Attorneys, Civil Division, Environment and Natural Resources Division, Executive Office for U.S. Trustees, and Office of the Solicitor General. Subcommittee on Commercial and Administrative Law. April 26, 2006.

133. The 60th Anniversary of the Administrative Procedure Act: Where Do We Go From Here? Subcommittee on Commercial and Administrative Law. July 25, 2006.

134. Regulatory Flexibility Improvements Act. Subcommittee on Commercial and Administrative Law. July 20, 2006.

135. How Does Illegal Immigration Impact American Taxpayers and Will the Reid-Kennedy Amnesty Worsen the Blow? Committee on the Judiciary. August 2, 2006.

136. Legislative Proposals to Update the Foreign Intelligence Surveillance Act (FISA). Subcommittee on Crime, Terrorism, and Homeland Security. September 9, 2006. (H.R. 4976, H.R. 5113, H.R. 5371, H.R. 5825, S. 2453, S. 2455).

137. United States Department of Justice. Committee on the Judiciary. April 6, 2006.

138. A Bill to Provide Protection for Fashion Design. Subcommittee on Courts, the Internet, and Intellectual Property. July 27, 2006. (H.R. 5005).

139. Energy Employees Occupational Illness Compensation Program Act: Are We Fulfilling the Promise We Made to These Cold War Veterans When We Created the Program? (Part III). Subcommittee on Immigration, Border Security, and Claims. July 20, 25, 2006.

140. District of Columbia Fair and Equal House Voting Rights Act of 2006. Subcommittee on the Constitution. September 14, 2006. (H.R. 5388).

141. Impeaching Manuel L. Real, a Judge of the United States District Court for the Central District of California, for High Crimes and Misdemeanors. Subcommittee on Courts, the Internet, and Intellectual Property. September 21, 2006. (H.Res. 916).

142. Is the Reid-Kennedy Bill a Repeat of the Failed Amnesty of 1986? Committee on the Judiciary. September 1, 2006.

143. Nonadmitted and Reinsurance Reform Act of 2006. Subcommittee on Commercial and Administrative Law. September 19, 2006. (H.R. 5637).

144. Implementation of the Crime Victims' Rights Provisions of the Justice for All Act. Subcommittee on the Constitution. June 21, 2006.

145. Legal Services Corporation: A Review of Leasing Choices and Landlord Relations. Subcommittee on Commercial and Administrative Law. June 28, 2006.

146. Americans with Disabilities Act: Sixteen Years Later. Subcommittee on the Constitution. September 13, 2006.

147. Should Mexico Hold Veto Power Over U.S. Border Security Decisions? Committee on the Judiciary. August 17, 2006.

148. Need for European Assistance to Colombia for the Fight Against Illicit Drugs. Subcommittee on Crime, Terrorism, and Homeland Security jointly with the Subcommittee on the Western Hemisphere, Committee on International Relations. September 21, 2006.

149. Is the Labor Department Doing Enough to Protect U.S. Workers? Subcommittee on Immigration, Border Security, and Claims. June 22, 2006.

150. A Bill to Amend Title 35, United States Code, to Conform Certain Filing Provisions Within the Patent and Trademark Office. Subcommittee on Courts, the Internet, and Intellectual Property. September 14, 2006. (H.R. 5120).

151. Energy Employees Occupational Illness Compensation Program Act: Are We Fulfilling the Promise We Made to These Cold War Veterans When We Created the Program? (Part II). Subcommittee on Immigration, Border Security, and Claims. May 4, 2006.

152. Administrative Law, Process and Procedure Project for the 21st Century. Subcommittee on Commercial and Administrative Law. November 14, 2006.

153. Reid-Kennedy Bill's Amnesty: Impacts on Taxpayers, Fundamental Fairness and the Rule of Law. Committee on the Judiciary. August 24, 2006.

154. Preventing Harassment Through Outbound Number Enforcement (PHONE) Act. Subcommittee on Crime, Terrorism, and Homeland Security. November 15, 2006. (H.R. 5304).

155. Privacy in the Hands of the Government: The Privacy Officer for the Department of Homeland Security, and the Privacy Officer for the Department of Justice. Subcommittee on Commercial and Administrative Law. May 17, 2006.

COMMITTEE ON THE JUDICIARY

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ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
CHRIS VAN HOLLEN, Maryland
DEBBIE WASSERMAN SCHULTZ, Florida [3]

[1] F. James Sensenbrenner, Jr. elected to the Committee as Chairman pursuant to House Resolution 32, approved by the House January 6, 2005.

Republican Members elected to the Committee pursuant to House Resolution 48, approved by the House January 26, 2005.

[2] John Conyers, Jr. elected to the Committee as ranking minority Member pursuant to House Resolution 33, approved by the House January 6, 2005.

Democratic Members elected to the Committee pursuant to House Resolution 49, approved by the House January 26, 2005.

[3] Debbie Wasserman Schultz elected to the Committee pursuant to House Resolution 307, approved June 8, 2005.

Tabulation of Activity on Legislation Held at the Full Committee

Legislation held at the full Committee	87
Legislation failed to be ordered reported to the House	4
Legislation reported favorably to the House	36
Legislation reported adversely to the House	5
Legislation discharged from the Committee	7
Legislation pending in the House	16
Legislation failed passage by the House	4
Legislation passed by the House	58
Legislation pending in the Senate	24
Legislation enacted into public law as part of another measure	1
Legislation enacted into public law	19
House concurrent resolutions approved	3
House resolutions approved	8
Legislation on which hearings were held	0
Days of legislative hearings	0
Days of oversight hearings	11

FULL COMMITTEE ACTIVITIES

During the 109th Congress the full Committee on the Judiciary Committee maintained its original jurisdiction with respect to a number of legislative and oversight matters. This included exclusive jurisdiction over antitrust and liability issues, including medical malpractice and product liability, legal reform generally, and such other matters as determined by the Chairman.

LEGISLATIVE ACTIVITIES

ANTITRUST

The Committee on the Judiciary has jurisdiction over all laws relating to unlawful restraints of commerce and trade. United States antitrust laws are tailored to ensure the competitive functioning of the marketplace—*i.e. competition in the marketplace and not the protection of any individual competitor*. There are two principal antitrust laws in the United States—the Sherman Act and the Clayton Act. Both are enforceable by the Antitrust Division of the Department of Justice (DOJ), the Federal Trade Commission (FTC), and private persons. Other federal agencies have authority to examine competitive aspects of market transactions within their jurisdiction. During the 109th Congress, the full Judiciary Committee retained original jurisdiction over antitrust legislative and oversight matters.

H.R. 5417, the Internet Freedom and Nondiscrimination Act of 2006

Summary.—H.R. 5417, the "Internet Freedom and Nondiscrimination Act of 2006," preserves an antitrust remedy for anticompetitive and discriminatory practices by broadband service providers. As reported by the Committee on Energy and Commerce,

H.R. 5252, the "COPE" Act, vests "exclusive" authority in the Federal Communications Commission to adjudicate complaints alleging violations of network neutrality principles. This exclusive grant may be interpreted to displace the application of the antitrust laws to remedy anticompetitive and discriminatory misconduct by broadband network providers.

H.R. 5417 reasserts an antitrust remedy for anticompetitive conduct in which the broadband network provider: (1) fails to provide network services on reasonable and nondiscriminatory terms; (2) refuses to interconnect with the facilities of other network providers on a reasonable and nondiscriminatory basis; (3) blocks, impairs or discriminates against a user's ability to receive or offer lawful content; (4) prohibits a user from attaching a device to the network that does not damage or degrade the network; or (5) fails to disclose to users, in plain terms, the conditions of the broadband service. The legislation expressly permits a broadband network provider to take steps to manage the functioning and security of its network, to give priority to emergency communications, and to take steps to prevent violations of Federal and State law, or to comply with a court order. This legislation is not intended to diminish the ability of a broadband network provider to take any otherwise lawful actions to protect copyrighted works against infringement or to limit infringement on the provider's broadband network. In addition, the legislation does not represent a "regulatory" imposition on broadband network providers. Rather, the legislation reaffirms an antitrust remedy for anticompetitive conduct by broadband network providers in order to ensure that the dominant market power of broadband network providers is not employed in a manner that assaults the pro-competitive, nondiscriminatory architecture that has been a defining feature of the Internet's success.

Legislative History.—H.R. 5417 was introduced by Chairman Sensenbrenner on May 18, 2006, and referred exclusively to the House Judiciary Committee. On May 25, 2006, the Full Committee marked up H.R. 5417. The bill was ordered reported, as amended, by the Yeas and Nays: 20–13 (H. Rept. 109–541). The substance of H.R. 5417 was offered as an amendment to H.R. 5252, the "COPE" Act, during its consideration by the Committee on Rules, but was not made in order.

H.R. 5830, the Wright Amendment Reform Act

Summary.—H.R. 5830 implements a compromise agreement reached by: the City of Dallas, Texas; the City of Fort Worth, Texas; American Airlines; Southwest Airlines; and Dallas-Fort Worth International Airport (DFW) on July 11, 2006, regarding air service at Dallas Love Field. The Judiciary Committee sought and received a sequential referral of the legislation pursuant to its rule XI(1)(1)(16) jurisdiction over the "protection of trade and commerce against unlawful restraints and monopolies."

As introduced, section 5 of the legislation provides that the agreement shall be deemed to comply in all respects with the parties obligations under title 49 United States Code, and any competition laws." While not explicitly defined in the legislation, "competition laws" encompass those related to the protections of trade against unlawful restraints, price discrimination, price fixing,

abuse of market for anticompetitive purposes, and monopolies. Principle competition laws in the United States include the Sherman Act of 1890, Clayton Act of 1914, and Federal Trade Commission Act. Competition-related aspects of the agreement to which section 5(a) of this legislation pertains are presently being litigated in Federal district court.[2] As introduced, section 6 of the legislation provides the Department of Transportation exclusive authority to review actions taken to implement the agreement "with respect to any Federal competition laws . . . that may otherwise apply." This provision would have stripped authority from Federal antitrust enforcement agencies (Department of Justice and Federal Trade Commission) to review competitive aspects of the agreement.

To ensure that this agreement is not exempt from antitrust scrutiny, the Committee adopted by voice vote an amendment offered by Chairman Sensenbrenner (with the support of Ranking Member Conyers) to strike the antitrust exemption contained in section 5. The amendment also strikes language in section 6 of the underlying bill providing the Department of Transportation exclusive authority to review or enforce competition-related aspects of the agreement. Finally, the amendment adopted by the Committee contained a clear savings clause to preserve an antitrust remedy for competitive violations stemming from the July 11, 2006 agreement and the implementation of this legislation. It is the view of the Committee that competitive aspects of the July 11, 2006 agreement must be assessed in accordance with Federal antitrust law and established antitrust principles, and that any perceived or actual conflict between the July 11, 2006 and the antitrust laws must be resolved in favor of the antitrust laws.

Legislative History.—H.R. 5830 was introduced by Representative Don Young (R–AK) on July 18, 2006. On July 26, 2006, the legislation was sequentially referred to the House Judiciary Committee. The Committee met on September 13, 2006 to mark up the bill. An antitrust amendment offered by Chairman Sensenbrenner and Ranking Member Conyers was adopted by voice vote. The bill was reported favorably, as amended (H. Rept. 109–600). No further action was taken on H.R. 5830, however it's companion bill, S. 3661, became public law on October 13, 2006 (Pub. L. No. 109–352).

OVERSIGHT HEARINGS BY THE COMMITTEE ON JUDICIARY TASK FORCE ON TELECOM AND ANTITRUST

Network Neutrality: Competition, Innovation, and Nondiscriminatory Access (Serial No. 109–109)

Over the last decade, the Internet has revolutionized the manner in which Americans access and transmit a broad range of information and consume goods. The advent of high speed (broadband) Internet access has dramatically enhanced the ability of Americans to access this medium. Many credit the rapid rise of the Internet to the open architecture that defines it. There is broad recognition that investment in a diverse, faster, and more sophisticated Inter-

[2] See *Love Terminal Partnership, L.P. and Virginia Aerospace* v. *City of Dallas, et. al, Federal District Court for the Northern District of Texas* (306–CV1279–D).

net will further expand the ways in which American live, work, and play.[3]

The Committee on the Judiciary and the antitrust laws have played a critical role in fostering competition in the telecommunications industry. Recent actions taken by the FCC and Supreme Court, coupled with increased consolidation of network providers, have heightened the risk of anticompetitive behavior in the telecom marketplace. Firms that control networks that provide access to the Internet may exercise market power to discriminate against rival services or competing technologies, or limit the ability of consumers to access online information or services in a neutral manner. Abuse of this market power may undermine the open architecture that has been a key feature of the Internet's success and utility. The basis of the hearing was to examine the concept of "net neutrality" and assess whether concerns about discriminatory access to the Internet are substantive or merely speculative. The hearing also examined whether providers of Internet service engage in discriminatory conduct and what incentives exist for a provider to utilize power in such a manner. Finally, the hearing examined the state of competition in the broadband marketplace, its effect on net neutrality, the impact of recent regulatory decisions upon broadband Internet providers, the sufficiency of existing regulatory authority to protect network neutrality, and proposals to strengthen legal safeguards to deter competitive misconduct. Moreover, the hearing helped establish the legislative record demonstrating the need for H.R. 5417.

The following witnesses appeared and submitted a written statement for the record: Mr. Paul Misener, Vice President of Global Public Policy, Amazon.com; Mr. Earl W. Comstock, President and CEO, COMPTEL; Mr. Walter B. McCormick, President and CEO, United States Telecom Association; and Mr. Timothy Wu, Professor of Law, Columbia Law School.

ANTITRUST OVERSIGHT HEARINGS BY THE FULL COMMITTEE

Industry Competition and Consolidation: The Telecom Marketplace Nine Years After the Telecom Act (Serial No. 109–26)

Since 1957, the Committee on the Judiciary has played a central role in promoting competition in the telecom industry. The Judiciary Committee's involvement in promoting competition in the telecommunications marketplace dates back nearly a half century when the Committee held oversight hearings to examine the monopoly power that AT&T wielded because of its control of the local exchange and the Department of Justice's efforts to limit that power through antitrust enforcement.[4]

Section 1 of the Sherman Act of 1890 prohibits "every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States."[5] Section 2 of the Sherman Act provides

[3] Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Silicon Flatirons Symposium on "The Digital Broadband Migration: Toward a Regulatory Regime for the Internet Age," University of Colorado School of Law, February 8, 2004.

[4] See The Consent Decree Program of the Department of Justice; Hearings Before the Subcommittee on antitrust of the House Committee on the Judiciary, 85th Cong. (1957 and 1958); Report of the antitrust Subcommittee on the Consent Decree Program of the Department of Justice, 86th Cong. (1959).

[5] 15 U.S.C. § 1.

that it is a violation of the antitrust laws to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations."[6] The principled application of the antitrust laws has served as the primary catalyst for the structural changes that have produced competitive gains and expanded consumer choice in the telecommunications field. The legal basis for the elimination of Ma Bell's national telephone monopoly was predicated in the antitrust laws. While the former AT&T had operated in a highly-intensive Federal and State regulatory regime for decades, the government relied on the antitrust laws to provide the robust pro-competitive remedy that regulation could not and does not alone provide. Specifically, the Justice Department successfully alleged that AT&T unfairly limited competition through exclusionary conduct in violation of the Sherman Act. This anticompetitive conduct was manifested by "manipulation of the terms and conditions under which competitors are permitted to interconnect with AT&T's existing services and facilities, including those of the local exchange operators."[7] The Department also successfully alleged that AT&T "imposed a number of cumbersome and unnecessary technical and operational practices on its competitors which increased their costs and lowered the quality of their service, in marked contrast to the efficient interconnection arrangements made available to AT&T's own . . . connections."[8] In the early 1990s, the Committee conducted several legislative and oversight hearings concerning the market dominance exercised by the remnants of the former AT&T monopoly, and in 1995, the Committee conducted hearings to examine the Justice Department's responsibility to aggressively monitor competition in this field.

The failure of the 1982 consent decree to produce robust competition lent impetus to congressional passage of legislation that was comprehensive and deregulatory in scope. The findings section of the 1996 Act states that its purpose is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid growth of telecommunications technologies." The 1996 Act further states that Congress intended "to provide for a pro-competitive . . . national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[9]

In order to reaffirm the centrality of the antitrust laws in the liberalized regulatory regime established by the 1996 Act, the Judiciary Committee and Congress preserved an explicit antitrust savings clause in the legislation. Specifically, the antitrust savings clause contained in § 601(c)(1) of the 1996 Act provided that: " . . . Nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws. . . . This Act and the amendment made by

[6] 15 U.S.C. § 2.

[7] See Plaintiff's Memorandum in Opposition to Defendant's Motion for Involuntary Dismissal Under Rule 41(b), *United States* v. *AT&T Co.,* No. 74–1698 (D.D.C., filed Aug. 16, 1981).

[8] *Id.* at 79.

[9] Id.

this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such act or amendments."[10]

The legislative record surrounding consideration of the 1996 Act emphasizes the crucial role of the antitrust laws in promoting competition and enhancing consumer welfare in the marketplace. The Joint Explanatory Statement of the Conference Committee stated that the antitrust savings clause: "prevents affected parties from asserting that the bill impliedly preempts other laws."[11] Members of both bodies affirmed this principle. Senator Thurmond stated: "[The 1996 Act contains an] unequivocal antitrust savings clause that explicitly maintains the full force of the antitrust laws in this vital industry. Application of the antitrust laws is the most reliable, time-tested means of ensuring that competition, and the innovation that it fosters, can flourish to benefit consumers and the economy."[12] Ranking Member Conyers observed: "[t]he bill contains an all-important antitrust savings clause which ensures that any and all telecommunications mergers and anti-competitive activities . . . [b]y maintaining the role of the antitrust laws, the bill helps to ensure that the Bells cannot use their market power to impede competition and harm consumers."[13] Senator Leahy stated: "[r]elying on antitrust principles is vital to ensure that the free market will work to spur competition and reduce government involvement in the industry."[14] In addition, the FCC formally acknowledged that its regulations did not provide the "exclusive remedy" for anti-competitive conduct.[15] The FCC expressly concluded that: "parties have several options for seeking relief if they believe that a carrier has violated the standards under section 251 or 252 . . . . [W]e clarify . . . that nothing in sections 251 and 252 or our implementing regulations is intended to limit the ability of persons to seek relief under the antitrust laws."[16] Finally, former FCC Chairman Powell concluded that "[g]iven the vast resources of many of the nation's ILECs," the FCC's current fining authority of $1.2 million per offense "is insufficient to punish and deter violations in many instances."[17]

In recent years, the Committee has conducted a number of hearings and considered legislation relating to telecommunications competition. On May 22, 2001, the Committee conducted a legislative hearing examining H.R. 1698, the "American Broadband Competition Act of 2001," and H.R. 1697, the "Broadband Competition and Incentives Act of 2001." On June 5, 2001, the Committee conducted a legislative hearing on H.R. 1542, the "Internet Freedom and Broadband Deployment Act of 2001." Because the legislation did

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[10] Id.

[11] Joint Explanatory Statement of the Committee of Conference, S. 652, H.R. Rep. No. 104–458, S. Rep. No. 104–230, at 201 (1996) ("Conference Report").

[12] 142 Cong. Rec. S687–01 (daily ed. February 1, 1996) (statement of Sen. Thurmond).

[13] 142 Cong. Rec. H1145–06 (daily ed. February 1, 1996) (statement of Rep. Conyers).

[14] 141 Cong. Rec. S18586–01 (daily ed. December 14, 1995) (statement of Sen. Leahy).

[15] First Report and Order, In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C.R. 15499, ¶ 124 (Aug. 8, 1996) (R2–7–A174).

[16] *Id.* at ¶ 129 (R2–7–A175).

[17] Letter from Chairman Powell to House and Senate Appropriations Committees, May 4, 2001, available at: http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2001/nrcc0116.html.

not contain the safeguards necessary to preserve competition in the broadband industry, the Committee adversely reported it.[18]

On July 24, 2003, the Task Force on Antitrust conducted an oversight hearing entitled "Antitrust Enforcement Agencies: The Antitrust Division of the Department of Justice and Bureau of Competition." On November 19, 2003, the Committee conducted an oversight hearing entitled "Saving the Savings Clause: Congressional Intent, the Trinko Case and the Role of the Antitrust Law in Promoting Competition in the Telecom Sector." On July 23, 2004, the Committee conducted an oversight hearing on "Regulatory Aspects of Voice Over the Internet Protocol (VoIP)."

On April 20, 2005, the Committee conducted an oversight hearing examining "Industry Competition and Consolidation: The Telecom Marketplace Nine Years After the Telecom Act." This hearing analyzed the current competitive landscape in the telecom industry. Some believe the recent wave of consolidations has created a telecom oligopoly, comprised of a diminishing number of Baby Bells that increasingly resemble the Ma Bell monopoly from which they were created. The Committee was interested in what steps it could take to ensure the vitality of competition in the telecom industry.

The following witnesses appeared and submitted a written statement for the record: Mr. Carl J. Grivner, CEO, XO Communications; Mr. Brian R. Moir, on behalf of eTug; Mr. Michael Kellogg, on behalf of the U.S. Telecom Association; and Mr. Philip Verveer, Former lead Justice Department Antitrust Counsel in original antitrust filing against former AT&T.

LIABILITY

BANKRUPTCY

S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Summary.—S. 256 consisted of a comprehensive package of reform measures pertaining to both consumer and business bankruptcy cases. The consumer bankruptcy reforms address the needs of creditors as well as debtors. With respect to the interests of creditors, the reforms responded to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability,[19] the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system. The heart of the bill's consumer bankruptcy reforms consisted of the implementation of an income/expense screening mechanism ("needs-based bankruptcy relief" or "means testing"), which was intended to ensure that debtors repay creditors the maximum they

[18] H.R. Rep. No. 107–83, Part 2.

[19] As one academic explained:

[S]hoplifting is wrong; bankruptcy is also a moral act. Bankruptcy is a moral as well as an economic act. There is a conscious decision not to keep one's promises. It is a decision not to reciprocate a benefit received, a good deed done on the promise that you will reciprocate. Promise-keeping and reciprocity are the foundation of an economy and healthy civil society.

Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary, 106th Cong. 98 (1999) (statement of Prof. Todd Zywicki).

can afford. S. 256 also established new eligibility standards for consumer bankruptcy relief and included provisions intended to crackdown on serial and abusive bankruptcy filings. It substantially augmented the responsibilities of those charged with administering consumer bankruptcy cases as well as those who counsel debtors with respect to obtaining such relief. In addition, the bill limited the amount of homestead equity a debtor may shield from creditors, under certain circumstances.

S. 256 also included various consumer protection reforms. The bill penalized a creditor who unreasonably refuses to negotiate a pre-bankruptcy debt repayment plan with a debtor. It strengthened the disclosure requirements for reaffirmation agreements (agreements by which debtors obligate themselves to repay otherwise dischargeable debts) so that debtors would be better informed about their rights and responsibilities. The legislation required certain monthly credit card billing statements to include specified explanatory statements regarding the increased amount of interest and repayment time associated with making minimum payments. The bill mandated certain home equity loan and credit card solicitations to include enhanced consumer disclosures. It also prohibited a creditor from terminating an open end consumer credit plan simply because the consumer has not incurred finance charges on the account. S. 256 allowed debtors to shelter from the claims of creditors certain education IRA plans and retirement pension funds. It required debtors to receive credit counseling *before* they can be eligible for bankruptcy relief so that they can make an informed choice about bankruptcy, its alternatives, and consequences. The bill also required debtors, after they have filed for bankruptcy, to participate in financial management instructional courses so they can hopefully avoid future financial distress.

With respect to business bankruptcy, S. 256 included several significant provisions intended to heighten administrative scrutiny and judicial oversight of small business bankruptcy cases, which often are the least likely to reorganize successfully. In addition, it contained provisions designed to reduce systemic risk in the financial marketplace, the enactment of which Federal Reserve Board Chairman Alan Greenspan described as being "extremely important."[20] The bill included heightened protections for family farmers facing financial distress and allowed family fishermen to qualify for a specialized form of bankruptcy relief currently available only to family farmers. The bill also included provisions concerning transnational insolvencies, bankrupt health care providers, the treatment of tax claims, and data collection. In response to the exponential increase in bankruptcy filings, the bill authorized the creation of 28 additional bankruptcy judgeships.

Legislative History.—On February 1, 2005, Senator Charles E. Grassley (R–IA) (for himself and seven original cosponsors) introduced S. 256, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005." Thereafter, Chairman Sensenbrenner (for himself and 60 original cosponsors) introduced legislation (H.R. 685) identical to S. 256 on February 9, 2005. S. 256, as introduced,

[20] Letter from Alan Greenspan, Chairman, Federal Reserve Board, to F. James Sensenbrenner, Jr., Chairman, Committee on the Judiciary (Sept. 3, 2002) (on file with the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary).

was substantively identical to legislation that the House passed in the prior Congress on two separate occasions with overwhelming bipartisan support.[21] It was also substantively similar to a modified version of a bankruptcy reform conference report that the House passed in the 107th Congress by a vote of 244 to 116.[22]

Since the 105th Congress, the House had passed bankruptcy reform legislation on eight separate occasions. In the 105th Congress, for example, the House passed both H.R. 3150, the "Bankruptcy Reform Act of 1998," and the conference report on that bill by veto-proof margins.[23] In the 106th Congress, the House passed H.R. 833, the successor to H.R. 3150, by a veto-proof margin of 313 to 108[24] and agreed to the conference report[25] by voice vote.[26] Although the Senate subsequently passed this legislation by a vote of 70 to 28,[27] President Clinton pocket-vetoed it. In the 107th Congress, the House again registered its overwhelming support for bankruptcy reform on two more occasions. On March 1, 2001, the House passed H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act," by a vote of 306 to 108.[28] The House thereafter passed a modified version of the conference report on H.R. 333, as previously noted.[29] In the last Congress, the House passed H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003," by a vote of 315 to 113 and S. 1920, which consisted of the text of H.R. 975, as passed by the House, by a vote of 265 to 99.[30]

The Committee and the Subcommittee, beginning in the 105th Congress, have held a total of 18 hearings on operation of the bankruptcy system and the need for reform.[31] Eleven of these hear-

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[21] On March 19, 2003, the House passed H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Prevention Act of 2003," by a vote of 315 to 113. 149 CONG. REC. H2099–00 (daily ed. Mar. 19, 2003). Thereafter, the House, on January 28, 2004, passed S. 1920, as amended, the text of which was substituted with the text of H.R. 975, as passed by the House, by a vote of 265 to 99. 150 CONG. REC. H218–19 (daily ed. Jan. 28, 2004).

[22] H. REP. NO. 107–617 (2002). The modifications consisted of the deletion of two provisions, one dealing with unlawful protest activities and the other authorizing additional bankruptcy judgeships. The text of the conference report, as amended, was introduced as H.R. 5545, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003." H.R. 5545, 107th Cong. (2002). In turn, the text of H.R. 5545 was substituted as an amendment to H.R. 333. The House, thereafter, passed H.R. 333, as amended. 148 CONG. REC. H8876–77 (daily ed. Nov. 14, 2002).

[23] 144 CONG. REC. H4442 (daily ed. June 10, 1998) (vote on final passage of H.R. 3150 was 306 to 118); 144 CONG. REC. H10239–40 (daily ed. Oct. 9, 1998) (vote on final passage of the conference report on H.R. 3150 was 300 to 125).

[24] 145 CONG. REC. H2771 (daily ed. May 5, 1999).

[25] H. REP. NO. 106–970 (2000).

[26] 146 CONG. REC. H9840 (daily ed. Oct. 12, 2000).

[27] 146 CONG. REC. S11730 (daily ed. Dec. 7, 2000).

[28] 147 CONG. REC. H600–01 (daily ed. Mar. 1, 2001).

[29] *See supra* note 2.

[30] 149 CONG. REC. H2099–00 (daily ed. Mar. 19, 2003); 150 Cong. Rec. H218–19 (daily ed. Jan. 28, 2004).

[31] The dates and subject matters of these hearings are as follows:

April 16, 1997: Hearing on the operation of the bankruptcy system and status report from the National Bankruptcy Review Commission.

April 30, 1997: Hearing on H.R. 764, the "Bankruptcy Amendments of 1977," and H.R. 120, the "Bankruptcy Law Technical Corrections Act of 1997."

October 9, 1997: Hearing on H.R. 2592, the "Private Trustee Reform Act of 1997" and review of post-confirmation fees in chapter 11 cases.

November 13, 1997: Hearing on the Report of the National Bankruptcy Review Commission.

February 12, 1998: Hearing on H.R. 2604, the "Religious Liberty and Charitable Donation Protection Act of 1997."

March 10–11, 18–19, 1998: Hearings on H.R. 3150, the "Bankruptcy Reform Act of 1998." H.R. 3146, the "Consumer Leanders and Borrowers Bankruptcy Accountability Act of 1998," and H.R. 2500, the "Responsible Borrower Protection Bankruptcy Act."

March 11–12, 18–19, 1999: Hearings on H.R. 833, the "Bankruptcy Reform Act of 1999."

Continued

ings were devoted solely to consideration of S. 256's predecessors, H.R. 3150 (105th Congress), H.R. 833 (106th Congress), H.R. 333 (107th Congress), and H.R. 975 (108th Congress). Over the course of these hearings, nearly 130 witnesses, representing nearly every major constituency in the bankruptcy community, testified. With regard to H.R. 833 alone, testimony was received from 69 witnesses, representing 23 organizations, with additional material submitted by other groups.

On February 10, 2005, the Senate Committee on the Judiciary held a hearing on S. 256, which reviewed the reasons why the current bankruptcy system needed reform and how this legislation would implement those reforms.[32] Testimony was received from eight witnesses, including: Kenneth Beine on behalf of the Credit Union National Association; Maria Vullo, a partner with the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP; Malcom Bennett on behalf of the National Multi Housing Council/National Apartment Association; Philip Strauss on behalf of the National Child Support Enforcement Association; Dave McCall on behalf of the United Steel Workers of America, AFL–CIO; R. Michael Stewart Menzies, Sr. on behalf of the Independent Community Bankers of America; Professor Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School; and Professor Todd J. Zywicki, Visiting Professor of Law at Georgetown University Law Center. Among the matters considered at the hearing were: (1) the adequacy of the current bankruptcy system with respect to the detection of fraud and abuse; (2) how abuse and fraud in the current bankruptcy system impacted on American businesses and our nation's citizens generally; (3) whether the legislation adversely impacted individuals deserving of bankruptcy relief; (4) whether the proposed reforms would assist those charged with administrative oversight of bankruptcy cases and law enforcement matters; and (5) whether, given current economic circumstances, the need for comprehensive bankruptcy reform still existed.

On February 17, 2005, the Senate Judiciary Committee marked up S. 256 and ordered the bill, as amended, to be favorably reported by a vote of 12 to 5. Over the course of the markup, five amendments were passed. On March 10, 2005, the Senate passed S. 256, as amended, by a vote of 74 to 25.[33] Nearly 130 amendments were filed. Of these, 24 failed, 24 were withdrawn, eight were passed either by vote or unanimous consent, and the remaining were not offered.

On March 16, 2005, the House Judiciary Committee marked up S. 256 and ordered it favorably reported without amendment by a recorded vote of 22 to 13. Thereafter, the House, on April 14, 2005, passed S. 256, without an amendment, by a vote of 302 to 126.

November 2, 1999: Joint oversight hearing on additional bankruptcy judgeship needs.

April 11, 2000: Oversight hearing on the limits on regulatory powers under the Bankruptcy Code.

February 7–8, 2001: Hearings on H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001."

March 4, 2003: Hearing on H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003" and the need for bankruptcy reform.

[32] *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Hearing on S. 256 Before the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary,* 109th Cong. (2005).

[33] 151 Cong. Rec. S2474 (daily ed. Mar. 10, 2005).

President George W. Bush signed the bill into law on April 20, 2005 as Public Law 109–8.

H.R. 420—The Lawsuit Abuse Reduction Act

Summary.—H.R. 420 would restore mandatory sanctions for filing frivolous lawsuits in violation of Rule 11 of the Federal Rules of Civil Procedure; restore the opportunity for monetary sanctions, including attorneys' fees and compensatory costs, against any party making a frivolous claim; abolish Rule 11's current "free pass" provision (in Rule 11 since it was amended in 1993) which allows lawyers to avoid sanctions for making frivolous claims by simply withdrawing frivolous claims within 21 days after a motion for sanctions has been filed; allow Rule 11's provisions preventing frivolous lawsuits to apply to state cases in which a state judge finds the case substantially affects interstate commerce by threatening jobs and economic losses to other states; and prevent forum shopping (the notorious practice by which personal injury attorneys cherry-pick courts and bring lawsuits in jurisdictions that consistently hand down astronomical awards, even when the case has little or no connection to the state or locality) by requiring that personal injury cases be brought only where the plaintiff resides, where the plaintiff was allegedly injured, or where the defendant's principal place of business is located. H.R. 420 also requires that if an attorney violates Rule 11 three or more times in a Federal district court, the court shall suspend that attorney from the practice of law in that Federal district court for 1 year, or longer if the court considers it appropriate.

Legislative History.—H.R. 420 was introduced by Rep. Lamar Smith on January 26, 2005. On May 25, 2005, it was reported out of the House Judiciary Committee (as amended) by a vote of 19 to 11. On October 27, 2005, H.R. 420 passed the House by a vote of 228 to 184.

H.R. 554—The Personal Responsibility in Food Consumption Act

Summary.—H.R. 554 would generally prohibit lawsuits against food manufacturers and sellers for obesity-related damages, with a few exceptions. Under such exceptions, lawsuits could still be brought against food manufacturers and sellers for breach of express contract or express warranty, and where a food manufacturer or seller violated a State or federal statute applicable to the marketing, advertisement, or labeling of a food and that violation caused someone harm. H.R. 554 also includes provisions that require that a case be halted while the court makes a decision regarding whether any of the exceptions in the bill have been met and the case can go forward, as long as halting the case does not result in unfairness. H.R. 554 also requires that the written complaint initiating any lawsuit that claims to meet the exceptions in the bill spell out with particularity the claims made, the State or federal statutes that are claimed to have been violated, and the facts regarding the claimed injury. H.R. 554 also includes a statement making clear that the bill does not create any new causes of action, or any new remedies.

Legislative History.—H.R. 554 was introduced by Rep. Keller on February 2, 2005, and referred to the Subcommittee on Commercial

and Administrative Law. On May 25, 2005, it was ordered reported (as amended) by the Judiciary Committee by a vote of 16 to 8. On October 19, 2005, it passed the House by a vote of 306 to 120.

H.R. 1176, the Nonprofit Athletic Organization Protection Act

Summary.—H.R. 1176, the "Nonprofit Athletic Organization Protection Act of 2006" is intended to stem the growing threat of lawsuits against organizations ranging from little leagues to high school sports rule-making bodies. The bill exempts nonprofit athletic organizations and their officers and employees acting in their official capacity from liability for harm caused by a negligent act or omission of such organization in the adoption of rules of play for sanctioned or approved athletic competitions or practices. The general protection preempts inconsistent State laws but makes exceptions for certain State laws requiring adherence to risk management and training procedures, State general respondeat superior laws, or State laws waiving liability limits in cases brought by any officer of the State or local government. The language mirrors provisions of the Volunteer Protection Act, 42 U.S.C. §14501.

Legislative History.—Rep. Mark Souder introduced H.R. 1176 on March 8, 2005, and the bill was referred to the Committee on the Judiciary. On March 2, 2006, the Committee on the Judiciary held a markup on the bill and reported it favorably without amendment by voice vote. The House of Representatives considered the bill, as amended, under suspension of the rules on December 5, 2006, and it failed by a recorded vote of 219 to 187.

H.R. 1871, the Volunteer Pilot Organization Protection Act

Summary.—H.R. 1871, the "Volunteer Pilot Organization Protection Act of 2006," amends the Volunteer Protection Act to include volunteer pilots and volunteer pilot organizations within the scope of its protections. Under present law, nonprofit volunteer pilot organizations and their pilots that provide life-saving medical flights without compensation are vulnerable to costly and often frivolous litigation that undermines the ability of these organizations to provide critical volunteer flight services in a timely manner. In addition, institutions that refer patients to volunteer pilot organizations are presently subject to legal jeopardy. H.R. 1871 protects and promotes the important work of volunteer pilot organizations by creating limited protection against liability to volunteer pilot organizations and pilots so that they are able to procure necessary insurance and continue their important operations.

Legislative History.—Rep. Thelma Drake introduced H.R. 1871 on April 27, 2005, and it was subsequently referred to the Committee on the Judiciary. On March 2, 2006, the Committee on the Judiciary held a markup on the bill and reported it favorably with an amendment by voice vote. The House of Representatives considered H.R. 1871 under suspension of the rules on July 17, 2006, and passed the bill by voice vote.

NATIONAL SECURITY ISSUES

H.R. 418, the REAL ID Act

Summary of Provisions of the REAL ID Act within the Jurisdiction of the Judiciary Committee

Section 101. Preventing Terrorists from Obtaining Relief from Removal. As the staff of the 9/11 Commission determined, terrorist aliens have exploited our asylum laws to enter and remain in the United States. Aliens who pose a danger to the national security of the United States have been barred from receiving asylum and withholding of removal by regulation since 1990. In 1996, Congress amended the Immigration and Nationality Act (INA) to explicitly bar aliens who were inadmissible or deportable on terrorism grounds from receiving asylum and withholding. Despite these bars to dangerous aliens receiving asylum, however, the 9/11 Terrorist Travel monograph notes that "[a] number of terrorists [have] . . . abused the asylum system."

For example, Ramzi Yousef and Ahmad Ajaj, plotters of the first World Trade Center bombing, "concocted bogus political asylum stories when they arrived" to remain in the United States in 1992. Similarly, Sheikh Abdul Rahman "avoided being removed from the United States by filing an application for asylum and withholding of deportation to Egypt in . . . 1992."

In addition to these aliens whose asylum abuse was specifically described in the Terrorist Travel Monograph, other alien terrorists have abused our generous asylum laws. In January 1993, 11 months after he applied for asylum, Mir Kansi killed two CIA employees in front of CIA headquarters in Langley, Virginia. Kansi had been a visa overstay for almost a year before filing that application. Hesham Hedayet killed two in a shooting spree at Los Angeles International Airport on July 4, 2002. He entered the United States in 1992, and extended his stay by filing an asylum application one month before his stay ended. His application was administratively denied, but he adjusted his status 17 months later after his wife won the visa lottery.

Nor did the reforms in the mid-1990s end such abuse. In February 1997, for example, Gazi Ibrahim Abu Mezer was released after entering the United States illegally when he stated that he would be applying for asylum. On July 31, 1997, Mezer was arrested in a Brooklyn apartment for planning to bomb the New York City subway system.

In January 1999, Somali Nuradin Abdi was granted asylum. According to federal prosecutors, Abdi used that status to apply for a travel document to go to Africa for terrorist training. After he returned to the United States, he was charged with conspiring to provide material support for al Qaeda, and the Justice Department claims "that Abdi, along with admitted al Qaeda operative Iyman Ferris and other co-conspirators, initiated a plot to blow up a Columbus [Ohio] area shopping mall." The government has also revoked his asylum because "with the exception of some minor biographical data, every aspect of [Abdi's] asylum application . . . was false."

The REAL ID Act responded to terrorist abuse of our asylum laws. Specifically, section 101 amended section 208 INA to: (1) authorize the Secretary of Homeland Security, in addition to the Attorney General, to grant asylum; (2) require asylum applicants to prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be (if removed) at least one central reason for their persecution; and (3) provide that an applicant's testimony may be sufficient to sustain this burden of proof only if the trier of fact determines that it is credible, persuasive, and fact-specific. It also requires the applicant to provide corroborating evidence where requested by the trier of fact unless the applicant does not have the evidence and cannot reasonably obtain it.

Section 101 of the REAL ID also authorizes a trier of fact, considering the totality of the circumstances and all relevant factors, to base credibility determinations in asylum cases on the: (1) demeanor, candor, or responsiveness of the applicant or witness; (2) inherent plausibility of the applicant's or witness's account; (3) consistency between the applicant's or witness's written and oral statements; (4) internal consistency of each such statement; (5) consistency of such statements with other evidence of record (including the Department of State's reports on country conditions); and (6) any inaccuracies or falsehoods in such statements regardless of whether they go to the heart of the applicant's claim. This section also makes these provisions regarding proof requirements and credibility determinations in asylum proceedings applicable to other requests for relief from removal, and limits judicial review of determinations regarding the availability of corroborating evidence.

In addition, section 101 removes the numerical limit on the number of aliens granted asylum who may become lawful permanent residents in any fiscal year (previously set at 10,000), and struck a provision in the INA setting refugee admission numbers for persons subject to persecution for their resistance to coercive population control methods.

Section 102. Waiver of Legal Requirements Necessary for Improvement of Barriers at Borders; Federal Court Review. Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provided that the Attorney General should take such actions necessary to install additional physical barriers and roads in the vicinity of the U.S. border to deter illegal crossings, including the construction of multiple layers of fencing along the 14 miles of the southern land border inland from the Pacific Ocean. In response to a series of lawsuits that were inordinately delaying completion of the required fencing, section 102 of the REAL ID Act provides that notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements the Secretary, in the Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under section 102 of the 1996 law. In addition, the district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or any such decision made, by the Secretary. A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. An interlocutory or final judgment, decree, or

order of the district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

Section 103. Inadmissibility Due to Terrorist and Terrorist Related Activities. Prior to enactment of the REAL ID Act, the Immigration and Nationality Act was based on a flawed understanding of how terrorist organizations operate. The INA read that if an alien provided funding or other material support to a terrorist organization that had not yet been designated by the Secretary of State as a terrorist organization, the alien was not inadmissible or deportable if the alien could show that he did not know that the funds or support would further the organization's terrorist activity, i.e., the alien's donation did not immediately go to buying explosives. This fundamentally misunderstood how terrorist organizations operate. Many terrorist organizations use front organizations (including charities and so-called "humanitarian" groups) to support their terrorist activities and as cover for their terrorist activities. As President Bush has explained:

> [I]nternational terrorist networks make frequent use of charitable or humanitarian organizations to obtain clandestine financial and other support for their activities . . . [T]he provision of humanitarian materials [to these groups] could be used as a loophole through which support could be provided to individuals or groups involved with terrorism and whose activities endanger the safety of United States nationals, both here and abroad.

Money given to terrorist organizations is fungible. In 1996, Congress "recognize[d] the fungibility of financial resources" and found that "[a]llowing an individual to supply funds . . . to a [terrorist] organization helps defray the cost to the terrorist organization of running the ostensibly legitimate activities. This in turn frees an equal sum that can then be spent on terrorist activities." Senator Dianne Feinstein has stated that:

> Some have raised the objection that certain groups, that may conduct terrorist operations, also run humanitarian or social service operations, like schools and clinics. But I simply do not accept that so-called humanitarian works by terrorist groups can be kept separate from their other operations. I think the money will ultimately go to bombs and bullets, rather than babies, or, because money is fungible, it will free up other funds to be used on terrorist activities.

Based on this understanding of how terrorist organizations work, the REAL ID Act was written so that an alien who provides funds or other material support to any terrorist organization is deportable unless the alien did not know, and should not reasonably have known, that the organization was a terrorist organization. There is no reason that knowing donations to a terrorist organization should be excused merely because the terrorist group is new or transmogrified from an earlier group or because political considerations or bureaucratic delays at the State Department have prevented it from being designated.

The specific changes to the INA made by section 103 are as follows:

—Prior to the REAL ID Act, representatives of foreign terrorist organizations as designated by the Secretary of State under section 219 of the INA were inadmissible, as were representatives of political, social or other similar groups whose public endorsement of acts of terrorist activity the Secretary of State determined undermined U.S. efforts to reduce or eliminate terrorist activity. Section 103 provides that representa-

tives of any terrorist organization are inadmissible, as are representatives of any political, social, or other group that endorses or espouses terrorist activity.

—Prior to the REAL ID Act, members of foreign terrorist organizations as designated by the Secretary of State under section 219 were inadmissible if the members knew or should have known the organizations were terrorist organizations. Section 103 provides that all members of terrorist organizations as designated by the Secretary of State under section 219 or as otherwise designated by the Secretary of State in the Federal Register are inadmissible. Also inadmissible are all members of other terrorist organizations unless the members can demonstrate by clear and convincing evidence that they did not know, and should not reasonably have known, that the organizations were terrorist organizations.

—Prior to the REAL ID Act, aliens were inadmissible who had used their position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way the Secretary of State had determined undermined U.S. efforts to reduce or eliminate terrorist activities. Section 103 provides that any aliens are inadmissible who endorse or espouse terrorist activity or persuade others to do so or to support a terrorist organization.

—Section 103 provides that any aliens who receive military-type training from or on behalf of a terrorist organization are inadmissible.

—Prior to the REAL ID Act, aliens were inadmissible who solicited funds or other things of value for a terrorist organization not designated by the Secretary of State, unless the solicitors could demonstrate that they did not know, and should not reasonably have known, that the solicitations would further the organization's terrorist activity. Section 103 provides that aliens are inadmissible who solicit for a non-designated terrorist organization unless the solicitors can demonstrate by clear and convincing evidence that they did not know, and should not reasonably have known, that the organization was a terrorist organization.

—Prior to the REAL ID Act, aliens were inadmissible who solicited any individual for membership in a terrorist organization not designated by the Secretary of State, unless the solicitors could demonstrate that they did not know, and should not reasonably have known, that the solicitations would further the organization's terrorist activity. Section 103 provides that aliens are inadmissible if they solicit any individual for membership in a non-designated terrorist organization unless the solicitors can demonstrate by clear and convincing evidence that they did not know, and should not reasonably have known, that the organization was a terrorist organization.

—Section 103 provides that aliens are inadmissible who afford material support to any member of a terrorist organization as designated by the Secretary of State under section 219 or as otherwise designated by the Secretary of State in the Federal Register.

—Prior to the REAL ID Act, aliens were inadmissible for affording material support to a terrorist organization not designated by the Secretary of State, unless the aliens could demonstrate that they did not know, and should not reasonably have known, that the acts would further the organization's terrorist activity. Section 103 provides that aliens are inadmissible for affording material support to a terrorist organization not designated by the Secretary of State, or to any member of such organization, unless the aliens can demonstrate by clear and convincing evidence that they did not know, and should not reasonably have known, that the organization was a terrorist organization.

—Prior to the REAL ID Act, a terrorist organization meant an organization (1) designated by the Secretary of State under section 219 of the INA, (2) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization committed or incited to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity, prepared or planned a terrorist activity, or gathered information on potential targets for terrorist activity, or (3) was a group of two or more individuals, whether organized or not, which engaged in the activities described above.

—Section 103 makes two changes to this definition. First, the culpable activities making an organization a terrorist organization are expanded to include (1) soliciting funds or other things of value for a terrorist activity, a terrorist organization designated by the Secretary of State under section 219 or otherwise through the Federal Register, or to any other terrorist organization unless the solicitor can demonstrate by clear and convincing evidence that it did not know, and should not reasonably have known, that the organization was a terrorist organization, (2) soliciting any individual to engage in terrorist conduct, for membership in a terrorist organization designated by the Secretary of State under section 219 or otherwise through the Federal Register, or for membership in any other terrorist organization unless the solicitor can demonstrate by clear and convincing evidence that it did not know, and should not reasonably have known, that the organization was a terrorist organization, or (3) affording material support for (a) the commission of a terrorist activity, (b) to any individual the organization knows, or reasonably should know, has committed or plans to commit a terrorist activity, (c) to a terrorist organization designated by the Secretary of State under section 219 or otherwise through the Federal Register, or (d) to any other terrorist organization unless the organization can demonstrate by clear and convincing evidence that it did not know, and reasonably should not have known, that the terrorist organization was a terrorist organization. Second, section 103 provides that a non-designated terrorist organization is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities as added above in addition to the activities described in prior law.

Section 104. Waiver for Certain Grounds of Inadmissibility. Prior to the REAL ID Act, the bar to inadmissibility for affording material support could be waived in the sole unreviewable discretion of the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State. In its place, section 103 provides that the Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may in their sole unreviewable discretion waive the ground of inadmissibility of (1) being a representative of a political, social, or other group that endorses or espouses terrorist activity, (2) endorsing or espousing terrorist activity or persuading others to do so or to support a terrorist organization, and (3) affording material support. They may also find in their sole unreviewable discretion that an organization is not a terrorist organization if it would be so categorized solely by virtue of having a subgroup that engaged in terrorist activities. Each fiscal year, the Secretaries of State and Homeland Security must provide to Congress a report on the aliens who have received waivers. They must also provide Congress with a report within one week of finding that an organization is not a terrorist organization pursuant to section 104.

Section 105. Removal of Terrorists. Prior to enactment of the REAL ID Act, one of the most basic defects in the manner in which our immigration laws responded to the threat from alien terrorists was that not all terrorism-related grounds of inadmissibility were also grounds of deportability. Essentially, some terrorists and their supporters could be kept out of the United States, but as soon as they were admitted to the U.S. on tourist visas, they could not be deported for the very same offenses. This hindered our nation's ability to protect Americans from those alien terrorists who have infiltrated the United States. Examples of aliens who could be kept out of the U.S. but who could not be deported included aliens who were likely to engage in terrorism, aliens who were representatives of terrorist organizations, aliens who were members of terrorist organizations, aliens who used their position of prominence to endorse or espouse terrorism, and aliens who had been associated with a terrorist organization (and intended while in the U.S. to engage in activities that could endanger the welfare, safety, or security of the U.S.). Section 105 makes aliens deportable for these offenses to the same extent that they would be inadmissible to the United States. It provides that all aliens who are inadmissible for terrorist or terrorist-related activities are also deportable (should they have been admitted to the U.S.), as are aliens who are inadmissible for associating with a terrorist organization.

Section 105 also deletes as duplicative the limited grounds of deportation for receiving military-type training from a terrorist organization that was contained in the Intelligence Reform and Terrorism Prevention Act of 2004.

Section 106. Judicial Review of Orders of Removal. Section 106 of Division B addresses a number of judicial review anomalies improperly favoring criminal aliens that were created by court decisions interpreting changes to the INA made in 1996. Since 1961, Congress has consistently provided that only the courts of appeals

may review removal orders. From 1961 through 1996, the INA provided that review in the courts of appeals "shall be the sole and exclusive procedure" for judicial review of deportation orders. See INA subsection 106(a) (1995). As the legislative history behind this provision reveals, Congress aimed to "create a single, separate, statutory form of judicial review of administrative orders for the deportation and exclusion of aliens from the United States."[34] Congress's "fundamental purpose" was "to abbreviate the process of judicial review of deportation orders" and to "eliminat[e] the previous initial step in obtaining judicial review—a suit in a District Court."[35] Thus, a final order of deportation could be challenged only in the appropriate court of appeals upon a timely filed petition for review.

Such order could not have been challenged in district court by way of habeas corpus. Although the INA contained another provision permitting habeas review, see INA Sec. 106(a)(10) (1995), several circuits interpreted that provision as not providing habeas review over deportation orders, but only review over collateral issues, such as whether the alien should be released from custody or granted a stay of deportation pending a petition for review.

Moreover, to the extent that habeas review of deportation orders had been available before 1996, Congress attempted to eliminate it in enacting the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104–132. One of the statute's provisions, entitled "Elimination of Custody Review by Habeas Corpus," expressly repealed the former habeas provision.[36] This was part of Congress's broad efforts to streamline immigration proceedings. Indeed, to expedite removal, section 440(a) of AEDPA precluded all judicial review of deportation orders for certain classes of criminal aliens.

Congress continued these streamlining reforms when it enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208. In IIRIRA, Congress reestablished that only courts of appeals—and not district courts—could review a final removal order (or, to use the pre-1996 nomenclature, deportation order or exclusion order).[37] In addition, Congress made clear that review of a final removal order was the only mechanism for reviewing any issue raised in a removal proceeding.[38] Together, these provisions were intended to preclude all district court review of any issue raised in a removal proceeding. Finally, as it did in AEDPA, Congress confirmed that criminal aliens could not obtain any judicial review. IIRIRA expressly provided that, "[n]otwithstanding any other provision of law, no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed" one of various criminal offenses.[39]

Despite Congress's efforts to limit judicial review in 1996, the Supreme Court expanded it just five years later. In INS v. St. Cyr, the Supreme Court held that criminal aliens are actually entitled

[34] H. Rept. No. 1086, 87th Cong., 1st Sess., reprinted in 1961 U.S.C.C.A.N. 2950, 2966 (1961).
[35] *Foti* v. *INS*, 375 U.S. 217, 224 (1963).
[36] See subsection 401(e), repealing INA paragraph 106(a)(10).
[37] See section 242(a)(1) of the INA (incorporating the Hobbs Act, 28 U.S.C. sec. 2347).
[38] Section 242(b)(9) of the INA (2000).
[39] See section 242(a)(2)(C) (2000) (emphasis added).

to more review than they had before the 1996 amendments, and more review than non-criminal aliens.[40] Specifically, the Court held that criminal aliens could seek habeas review of their removal orders under 28 U.S.C. sec. 2241. With habeas review, the criminal alien would get review in district court and, on appeal, in the court of appeals. The Court recognized that, as a result of its decision, criminal aliens would be able to seek review in district court and, on appeal, in the courts of appeals, whereas non-criminal aliens could obtain review only in the courts of appeals. It noted that Congress could fix this anomaly, however. As the Court stated, "Congress could without raising any constitutional questions, provide an adequate substitute [to section 2241] through the courts of appeals."[41]

Among the many problems caused by St. Cyr, the most significant is that this decision allows criminal aliens to delay their expulsion from the United States for years. Furthermore, because of St. Cyr, aliens who have committed serious crimes in the United States are generally able to obtain more judicial review than non-criminal aliens. As the dissent in St. Cyr pointed out, allowing criminal aliens to obtain habeas review of their immigration orders in the district court "brings forth a version of the statute that affords criminal aliens more opportunities for delay-inducing judicial review than are afforded to non-criminal aliens, or even than were afforded to criminal aliens prior to the legislation concededly designed to expedite their removal."[42] Not only is this result unfair and illogical, but it also wastes scarce judicial and executive resources.

Finally, the result in St. Cyr has created confusion in the federal courts as to what immigration issues can be reviewed, and which courts can review them. The decision in St. Cyr itself held that district courts, and not the courts of appeals, have habeas corpus review authority over statutory claims involving discretionary immigration relief. On the other hand, after St. Cyr, every circuit court has held that courts of appeals retain jurisdiction to review limited threshold "jurisdiction to determine jurisdiction" questions raised by criminal aliens in petitions for review. Therefore, following St. Cyr, some issues are still reviewable in the circuit courts while others are reviewable only in the district courts, resulting in bifurcated and inefficient review. Additionally, the circuits have split on the question of which court may entertain constitutional challenges to criminal aliens' removal orders (a question left open in St. Cyr). All of this has resulted in piecemeal review, uncertainty, lack of uniformity, and a waste of resources both for the judicial branch and Government lawyers—the very opposite of what Congress tried to accomplish in 1996.

Section 106 addresses the anomalies created by St. Cyr and its progeny by restoring uniformity and order to the law. First, under this section, criminal aliens have fewer opportunities to delay their removal, because they will not be able to obtain district court review in addition to circuit court review, and will not be able to ignore the thirty-day time limit on seeking review. Second, criminal

[40] *INS* v. *St. Cyr*, 533 U.S. 289 (2001).
[41] Id. at 314. n.38.
[42] 533 U.S. at 327 (Scalia, J. dissenting)

aliens do not receive more judicial review than non-criminals. Under the amendments in section 106, all aliens will get review in the same forum—the courts of appeals. Third, by channeling review to the courts of appeals, section 106 eliminates the problems of bifurcated and piecemeal litigation. Thus, the overall effect of the proposed reforms is to give every alien a fair opportunity to obtain judicial review while restoring order and common sense to the judicial review process.

Under section 106, all aliens who are ordered removed by an immigration judge will be able to appeal to the BIA and then raise constitutional and legal challenges in the courts of appeals. No alien, not even criminal aliens, will be deprived of judicial review of such claims. The Supreme Court has held that in supplanting the writ of habeas corpus with an alternative scheme, Congress need only provide a scheme which is an "adequate and effective" substitute for habeas corpus.[43] Indeed, in St. Cyr itself, the Supreme Court recognized that "Congress could, without raising any constitutional questions, provide an adequate substitute through the courts of appeals."[44] By placing all review in the courts of appeals, section 106 provides an "adequate and effective" alternative to habeas corpus.

Further, while the reforms in section 106 precludes criminals from obtaining review over non-constitutional, non-legal claims, it does not change the scope of review that criminal aliens currently receive, because habeas review does not cover discretionary determinations or factual issues that do not implicate constitutional due process. Moreover, section 106 does not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, it eliminates habeas review only over challenges to removal orders.

Section 401–07. H–2B Visas. H–2B visas are temporary work visas that are available in all occupations when unemployed Americans cannot be found. The existence of the job itself must be temporary—the job must cease to exist within about one year or must be seasonal. Many resorts and amusement parks utilize H–2B visas for peak employment periods. Other examples include construction, landscaping and home health care jobs. The annual quota of H–2B visas is 66,000.

The "Mikulski" amendment provided that aliens who had received H–2B visas in any of the last three years would not be counted toward the 2005 or 2006 quotas when receiving H–2B visas in those two years. In addition, the amendment establishes a $150 fraud prevention and detection fee for all H–2B visa petitions and it creates new administrative penalties (of up to $10,000 per violation and disbarment from being able to file new petitions for from one to five years) for a substantial failure to meet any of the conditions of the program or for a willful misrepresentation of a material fact in a petition. The amendment also provides that the H–2B cap shall be allocated for a fiscal year so that the total number of aliens subject to its numerical limits who enter the United States pursuant to a visa or are accorded H–2B status during the

[43] See *Swain* v. *Pressley*, 430 U.S. 372, 381 (1977).
[44] *St. Cyr*, 533 U.S. at 314 n.38.

first 6 months of such fiscal year is not more than 33,000. Finally, the amendment provides that the Secretaries of State and Homeland Security shall periodically provide Congress with information about the use of the H–2B program.

Section 501. Reciprocal Visas for Nationals of Australia. "H–1B" visas are available for workers coming temporarily to the United States to perform services in a specialty occupation, usually requiring a bachelor's or higher degree in the specific speciality. The annual quota on H–1B visas is 65,000 (with certain recipients not counted towards the cap). Employers must pay H–1B aliens the prevailing wage and meet other program requirements. The "Frist" amendment creates a new "E–3" temporary work visa for Australian nationals that mirrors the requirements of the H–1B program but has a separate annual quota of 10,500.

Section 502. Visas for Nurses. The "Hutchison" amendment makes a pool of 50,000 immigrant visas available for aliens who have been approved for employment-based preference visas as nurses or physical therapists. These visas will remain available until exhausted.

Legislative History.—On January 26, 2005, Chairman F. James Sensenbrenner, Jr., introduced H.R. 418, the REAL ID Act of 2005. On February 10, 2005, the House passed H.R. 418 as amended by a vote of 261–161. On May 11, 2005, the President signed into law H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Pub. L. No. 109–13), division B of which contained the language of H.R. 418 in modified form with additional immigration provisions.

The Western Hemisphere Travel Initiative

Summary.—Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108–458) provided that the Secretary of State shall develop and implement a plan to require biometic passports or other identification at least as secure, for all travel into the U.S. by U.S. citizens, to be implemented no later than January 2008, and shall develop and implement a plan to require biometic passports or other identification at least as secure, for all travel into the U.S. by Canadians, to be implemented no later than January 2008. The Department of Homeland Security Appropriations Act, 2007, modifies the deadline to be the earlier of June 1, 2009, or three months after the Secretary of State and the Secretary of Homeland Security make a certification that (1) the National Institute of Standards and Technology certifies that a card architecture has been selected that meets International Organization for Standardization security standards and meets best available practices for protection of personal identification documents, (2) passport card technology has been shared with the Canadian and Mexican governments, (3) an agreement has been reached with the U.S. Postal Service on the fee for the passport card, (4) an alternate procedure has been developed for groups of children crossing the border, (5) infrastructure and training has been provided for use of the passport card, (6) the passport card has been made available to U.S. citizens, and (7) a single implementation date has been set for sea and land borders.

Legislative History.—On May 22, 2006, Representative Harold Rogers introduced H.R 5441, the Department of Homeland Security Appropriations Act, 2007. On July 13, 2006, the Senate passed H.R. 5441, sec. 538 of title V of which contained the language delaying implementation of the Western Hemisphere Travel Initiative. On September 28, 2006, the conference report to H.R. 5441 was filed (H. Rept. 109–699), sec. 546 of title V of which contained this language. The House passed the conference report on September 29 by a vote of 412–6, and the Senate passed the conference report on the same day by voice vote. On October 4, 2006, the President signed into law the conference report to H.R. 5441 (Pub. L. No. 109–295).

H.R. 3199, the "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005"

Summary.—Chairman Sensenbrenner introduced H.R. 3199 on June 11, 2005, which reauthorized the 16 provisions in the USA PATRIOT Act and two provisions in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Fifteen of the provisions were set to expire in December 2005 and one provision was set to expire in December 2006. Of the USA PATRIOT Act authorities set to expire, H.R. 3199 permanently extended 14 provisions and extended two for an additional 4 years. The Act also permanently extended one provision in IRTPA and extended the other for 4 years. IRTPA reformed and enhanced authorities for the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination.

H.R. 3199 was based on four years of comprehensive, bipartisan oversight consisting of hearings, testimony, Inspector General reports, briefings, and oversight letters. For the 109th Congress, the Committee on the Judiciary held two Full Committee, nine Subcommittee oversight hearings, and one "minority-day" hearing on the provisions of USA PATRIOT Act that were set to expire on December 31, 2005 and several that were not subject to the sunset.

The terrorists who attacked us on September 11th exploited weaknesses in our own law enforcement and intelligence laws and practices, and those plotting to attack us again will continue to exploit any gaps or weaknesses. To address these problems, Chairman Sensenbrenner introduced H.R. 2975, to "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," on October 2, 2001. H.R. 2975 was unanimously reported by the Judiciary Committee. The House and Senate combined their versions of the legislation into H.R. 3162, the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," (USA PATRIOT Act). This legislation incorporated provisions of H.R. 3004 (107th), the "Financial Anti-Terrorism Act," which increased penalties for money laundering and financing terrorist organizations; and H.R. 3160 (107th), the "Bioterrorism Prevention Act of 2001," which provided law enforcement personnel greater resources to assess and prevent biological attacks on American soil. The USA PATRIOT

Act was signed into law by President Bush on October 26, 2001.[45] Due to the concerns that the USA PATRIOT Act new authorities could lead to civil liberties violations, Congress included reporting requirements and a sunset provision in the USA PATRIOT Act that covered 16 law enforcement authorities.

The USA PATRIOT Act tore down the Wall that prevented agents from "connecting the dots" of the pending 9/11 attack. H.R. 3199 would reauthorize key provisions of the USA PATRIOT Act to ensure that the Wall will never be rebuilt. The USA PATRIOT Act updated our investigative tools to better detect, dismantle, and prevent terrorist acts by an unscrupulous, deadly enemy. H.R. 3199 continues to support the efforts of our law enforcement with these updated investigative tools. The USA PATRIOT Act strengthened the penalties for attacking mass transportation systems. H.R. 3199 further enhances those penalties to conform the penalties for trains and mass transit and responds to the clear and present danger that the terrorists pose against our citizens as they travel. The USA PATRIOT Act effectively targeted terrorist financing and now terrorists have turned more and more to criminal activities and profits from theft and the illegal drug trade. H.R. 3199 addresses the new trends in terrorism financing, narco-terrorism, and the use of illicit contraband. H.R. 3199 also adopted new reporting requirements and incorporated new standards and protections against abuse.

Legislative History.—H.R. 3199 was introduced by Representative F. James Sensenbrenner Jr., on July 11, 2005. The same day, the legislation was referred to the Committee on the Judiciary, and in addition to the Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. On July 13, 2005, the Judiciary Committee met in open session and ordered favorably reported the bill H.R. 3199 with amendment by a recorded vote of 23 yeas to 14 nays and 2 passes, a quorum being present voice vote. (H. Rept. No. 109–174, Part I). On July 21, 2005, the bill passed by a recorded vote of 257 yeas to 171 nays (Roll no. 414). November 9, 2005, Chairman Sensenbrenner asked unanimous consent that the House disagree to the Senate amendment, and agree to a conference. On December 8, 2005, the Conference agreed to file a report. On December 14, 2005, the conference report was agreed to in the House by 251 yeas to 174 nays. (Roll no. 627). The Senate failed to end debate on December 16, 2005 when cloture was not invoked. The vote was 52 yeas and 47 nays. (Record Vote Number: 358). On March 2, 2006, the Senate agreed to the conference report by 89 yeas to 10 nays. On March 9, 2006, the President signed H.R. 3199 and it became public law 109–177.

[45] Pub. L. No. 107–56, 115 Stat 272 (codified as amended in scattered sections of 18 U.S.C. (2003)).

OVERSIGHT HEARINGS ON THE PATRIOT ACT

Oversight Hearing on the "USA PATRIOT Act: A Review for the Purpose of Its Reauthorization" (April 6, 2005, Serial No. 109–12)

Witnesses: The Honorable Alberto Gonzales, Attorney General of the United States

Oversight Hearing on "Reauthorization of the USA PATRIOT Act" (June 8, 2005, Serial No. 109–10)

Witnesses: The Honorable James B. Comey, Deputy Attorney General, United States Department of Justice

Oversight Hearing on "Reauthorization of the USA PATRIOT Act, continued" (June 10, 2005, Serial No. 109–29)

Witnesses: Carlina Tapia-Ruano, First Vice President, American Immigration Lawyers Association; Dr. James J. Zogby, President, Arab American Institute; Deborah Pearlstein, Director, U.S. Law and Security Program; Chip Pitts, Chair of the Board, Amnesty International USA.

OTHER FULL COMMITTEE OVERSIGHT HEARINGS

Oversight Hearing on "United States Department of Justice" (Serial No. 109–137)

Witnesses: The Honorable Alberto Gonzales, Attorney General of the United States

Oversight Hearing on "RECKLESS JUSTICE: Did the Saturday Night Raid of Congress Trample the Constitution?" (Serial No. 109–122)

Witnesses: On May 30, 2006, the Judiciary Committee conducted an oversight hearing on the constitutional questions raised by the FBI's raid of Rep. Jefferson's Capitol Hill office. The following witnesses testified before the Committee: Professor Charles Tiefer, Law Professor at the University of Baltimore School of Law and former Assistant Legal Counsel to the Senate (1979–1984), and Solicitor and Deputy General Counsel to the House (1984–1995); The Honorable Robert S. Walker, former Representative from Pennsylvania and former Chairman of the Science Committee; Professor Jonathan Turley, Professor of Law at George Washington University Law School; and Mr. Bruce Fein, Esq., Principal at the Lichfield Group.

Professor Tiefer testified that in his experience as Deputy General Counsel to the House of Representatives and Assistant Legal Counsel to the Senate, the FBI's raid on Congressman Jefferson's Capitol Hill office was unprecedented. Professor Tiefer stated that in his tenure there had been numerous investigations of Members of Congress for possible criminal activities, but that the Department of Justice and the Federal Bureau of Investigation had always respected Congress as a co-equal branch of government by not executing a search warrant on Congressional premises. Rather, in his experience, the FBI or Justice Department would obtain a subpoena for the materials they were seeking, and would allow the

subject of the investigation, together with the House General Counsel, to assert a legislative privilege over any documents that were covered by the Speech or Debate Clause of the United States Constitution.

Congressman Walker testified that the FBI's raid on a co-equal branch of government was of grave concern. He recommended that Congress demand the return of the documents seized during the raid, and that Congress conduct an extensive inquiry into the decision-making process that allowed the unprecedented search of a sitting Congressman's office. He also recommended that Congress work with the executive to establish a series of rules and guidelines for handling any similar incidents in the future.

Professor Turley testified that the search of Congressman Jefferson's office was unprecedented, and that it violated the spirit, if not the letter, of the Constitutional protections of the Speech or Debate Clause. Professor Turley testified that the Speech or Debate Clause was taken from the English Parliament's privileges—privileges that had arisen because of the Crown's encroachment on Parliament's legislative functions. Professor Turley stressed that there were other, less intrusive methods that prosecutors could have used to obtain the materials they sought without implicating the separation of powers concerns raised by the FBI's actions in this case.

Mr. Fein testified that, if anything, the concerns implicated by the Speech or Debate Clause are more important today than they were at the country's founding given the number of federal criminal statutes that could now be used to justify a search of a Congressman's office. He advocated that Congress enact a statute that would protect against these types of searches. The model for such a statute could be found in the Privacy Protection Act of 1980, which Congress enacted to mitigate the constitutional questions raised by a search on a newspaper office.

OTHER MATTERS HELD AT FULL COMMITTEE

H.R. 9, the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006

Summary.—H.R. 9, the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 reauthorizes and amends the Voting Rights Act of 1965. In addition to reauthorizing the expiring provisions for an additional 25 years, H.R. 9 amends certain provisions of the Voting Rights Act of 1965, including terminating the Federal examiner provisions and amending Section 5 to restore the provision's purpose and effect prongs that had been significantly weakened by recent Supreme Court decisions. H.R. 9 also amends Section 203, the bilingual election assistance provision, to reflect changes in the data collection method utilized by the U.S. Census Bureau and authorizes the General Accountability Office to conduct a study on the effectiveness of Section 203's bilingual assistance requirements.

Legislative History.—H.R. 9 was introduced on May 2, 2006, by Chairman Sensenbrenner. A companion bill was introduced in the Senate at the same time by Senate Judiciary Committee Chairman

Specter. H.R. 9 was referred to the House Judiciary Committee, where two legislative hearings were conducted by the House Judiciary Subcommittee on the Constitution on May 4, 2006. Testimony was taken during the first legislative hearing titled "A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part I" from the following witnesses: Mr. J. Gerald Hebert, Former Acting Chief, Civil Rights Division, Department of Justice and voting litigation expert; Mr. Roger Clegg, President and General Counsel, Center for Equal Opportunity; and Mr. Debo Adegbile, Associate Director of Litigation, NAACP Legal Defense and Education Fund, Inc.

Mr. Adegbile testified on the need for H.R. 9 to continue the protections afforded by the expiring provisions for an additional 25 years and to make certain amendments to provisions that had been significantly weakened by the Supreme Court over the last several years.

Mr. Clegg testified against H.R. 9 and reauthorizing the VRA generally. In particular, Mr. Clegg testified on the weakness of the Judiciary Committee's record and the inability of the record to sustain an almost certain constitutional challenge.

Mr. Hebert testified in support of H.R. 9 and the record compiled by the House Judiciary Committee. In particular, Mr. Hebert testified to the number of hearings held by the Subcommittee on the Constitution and the strength of the evidence compiled by the House Judiciary Committee to support continuing the expiring provisions for an additional 25 years.

The second hearing, titled "A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II," was also held and testimony was taken from the following witnesses: Ms. Rena Comisac, Principal Deputy Assistant Attorney General, Civil Rights Division, Department of Justice; The Honorable Chris Norby, Supervisor, Fourth District, Orange County Board of Supervisors; Ms. Karen Narasaki, President and Executive Director, Asian-American Justice Center; and Dr. James Tucker, Voting Rights Consultant, NALEO Educational Fund, and Adjunct Professor, Barrett Honors College, Arizona State University.

Ms. Comisac testified, on behalf of the Department of Justice, in support of H.R. 9 and the need to continue the Act's bilingual assistance provisions for an additional 25 years.

Mr. Norby presented testimony on the concerns that election officials had with renewing Section 203 for an additional 25 years. Mr. Norby expressed concerns about the cost of implementing Section 203, the Department of Justice's use of a surname to identify potential recipients of bilingual assistance, and the inadequacy of Section 203's definition of what it means to be limited English proficient.

Ms. Narasaki testified in support of H.R. 9 in order to continue the progress that has been made among language minority citizens, particularly among Asian Americans. Ms. Narasaki testified on the impact that Section 203 has had on increasing the registration and turnout rates among single language minority citizens, particularly since 1992 when Congress inserted the 10,000 single language minority threshold into Section 203's formula and the need to continue the coverage formula over the next 25 years.

Dr. Tucker testified in support of H.R. 9 and the effectiveness of the bilingual election assistance provisions in enabling illiterate citizens to participate in the political process. Dr. Tucker presented evidence revealing the continued disparities in educational opportunities between populations covered by Section 203's assistance provision and white citizens as well as the limited number of English as Second Language (ESL) literacy centers and the long waiting times to attend the existing literacy centers. Dr. Tucker testified that the continued disparities and limited number of ESL centers justified extending Section 203's bilingual assistance provision for an additional 25 years.

On May 10, 2006, the House Judiciary Committee met in open session to consider H.R. 9 for purposes of a markup. An amendment authorizing GAO to conduct a study on the effectiveness of Section 203, was offered and accepted. A quorum being present, H.R. 9 was ordered favorably reported as amended by a roll call vote of 33 to 1. On May 22, 2006, H.R. 9 was reported (H. Rept. 109–478). On July 13, 2006, the House passed H.R. 9 by a vote of 390 to 33. On July 20, 2006, the Senate took up and passed without amendment H.R. 9 by a vote of 98 to 0. H.R. 9 was presented to the President and signed into law on July 27, 2006 (Pub. L. No. 109–246).

H.R. 841, the Continuity in Representation Act

Summary.—H.R. 841 requires the expedited special election of new Members within 49 days in the event more than 100 Members are killed in extraordinary circumstances. Special provisions in H.R. 841 govern absentee ballots cast by members of our armed forces, and overseas voters, who would have the right to have their vote accepted if it is received within 45 days after the State transmits the ballots to them. Further, federal laws governing the administration of elections for federal office are explicitly preserved.

Legislative History.—H.R. 841 was introduced by Rep. Sensenbrenner on February 16, 2005. No hearings were held on H.R. 841 during this Congress, although a hearing was held by the House Administration Committee on similar legislation during the last Congress. On February 17, 2005, H.R. 841 was reported out of the House Administration Committee by voice vote. On February 24, 2005, H.R. 841 was discharged from the Judiciary Committee, and it passed the House by a vote of 329 to 68. Identical legislation became part of P.L. 109–55.

H.R. 1595, To implement the recommendations of the Guam War Claims Review Commission

Summary.—The Committee on the Judiciary received a sequential referral of H.R. 1595 and considered the legislation as reported by the Committee on Resources. The legislation would have authorized the U.S. Foreign Claims Settlement Commission to set up a claims process to pay claims for death or injury during the World War II Japanese occupation of Guam. The legislation provided for funding of those payments from the Judgement Fund (31 U.S.C. sec. 1304). Claims would have been paid for death, personal injury, forced labor, forced marching, and internment of citizens of Guam during the occupation. The legislation considered by the Committee

would have included a second category of personal injury claims by survivor claimants, when the original claimant was deceased. Those claims would have been eligible for a payment of $7,000 regardless of the severity of injury.

Legislative History.—On April 13, 2005, Representative Madeleine Bordallo introduced H.R. 1595. On April 25, 2006, the Committee on Resources reported the bill as amended (H. Rept. 109–437, Part 1). On the same day, the Committee on the Judiciary received a sequential referral of the legislation until June 9, 2006. On June 6, 2005, the Committee ordered H.R. 1595 reported by voice vote as amended by the Committee on Resources. On June 9, 2006, the Committee reported H.R. 1595 (H. Rept. 109–437, Part II). No further action was taken on H.R. 1595.

H.R. 2389, the Pledge Protection Act of 2005

Summary.—The Pledge of Allegiance reads: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." Although the United States Supreme Court reversed and remanded the Ninth Circuit's latest holding striking down the Pledge as unconstitutional, the Supreme Court did so on the grounds that the plaintiff lacked the legal standing to bring the case. The concurring Justices concluded that the Court in its decision "erect[ed] a novel prudential standing principle in order to avoid reaching the merits of the constitutional claim." In order to protect the Pledge from federal court decisions that would have the effect of invalidating the Pledge across several states, including a case that is currently pending before the Ninth Circuit, H.R. 2389 would reserve to the state courts the authority to decide whether the Pledge is valid within each state's boundaries and place final authority over a state's Pledge policy in the hands of the states themselves.

Legislative History.—H.R. 2389, the "Pledge Protection Act of 2005," was introduced by Rep. Todd Akin on May 17, 2005. No hearings were held on H.R. 2389. On June 28, 2006, the Committee failed to report H.R. 2389 favorably by a vote of 15 to 15. On July 19, 2006, H.R. 2389 passed the House (as amended) by a vote of 260 to 167.

H.R. 3402, the "Violence Against Women and Department of Justice Reauthorization Act of 2005"

Summary.—This comprehensive package was negotiated between the House and Senate to reauthorize vital programs within the Department of Justice to combat all crimes and programs within the Office of Violence Against Women to specifically target crimes of domestic violence, dating violence, sexual assault, and stalking.

Authorization is an important oversight tool that allows Congress and committees of jurisdiction to create, amend, extend, and set priorities for programs within executive agencies. Despite the law's requirement for regular Congressional authorization of the Justice Department, until recently DOJ had not been formally authorized by Congress since 1980. The Committee on Judiciary took action to rectify the situation in the 107th Congress and reauthorized the programs within the Department of Justice. In the 109th

Congress, the Committee again developed legislation to provide Congress with legislation to give direction to the Department of Justice and the important programs it administers.

Titles I through IX of this bill focus on reauthorizing, expanding, and improving programs that were established in the Violence Against Women Act of 1994 and reauthorized in 2000. The bill reauthorizes some important core programs such as STOP grants and grants to reduce campus violence. Because these crimes affect both genders, it is important to note that the text of the legislation specifies that programs addressing these problems are intended to serve both female and male victims.

Additionally, this legislation specifies that the same rules apply to these funds as to other Federal grant programs. It is illegal to use the grant funds devoted to these programs for political activities or lobbying. It is the intent of Congress that these funds be used to provide services to victims and train personnel who deal with these violent crimes. The Department of Justice is expected to enforce that provision for all its grants and monitor grant activities to ensure compliance not only with this condition, but all the conditions of the grants.

Title X of the legislation makes important changes to laws governing the collection of DNA samples. Current law allows Federal authorities to collect DNA samples from individuals upon indictment. This provision expanded that authority to permit the Attorney General to collect DNA at arrest or detention of non-citizens. Because of this expansion, this section also amended the current expungement protocols and directs the FBI to remove samples in the event of an overturned conviction, acquittal, or the charge was dismissed.

States may seek funding to reduce the backlog in crime scene evidence, to reduce the backlog in DNA samples of offenders convicted of qualifying state offenses, or to enhance the State's DNA laboratory capabilities. This section of Title X expanded the grant purpose regarding offender DNA samples to include all samples collected under applicable state law; accordingly, States can now use federal funding to test samples collected from arrestees or voluntary elimination samples. Finally, this section repealed a carve-out authorizing John Doe indictments in sexual assault crimes and made uniform the federal law that tolls the statute of limitations for all federal crimes where DNA evidence is collected (§ 3297).

Title XI will ensure further accountability from the Department with a number of provisions designed to ensure grant recipients are meeting the conditions established by Congress for the programs. The bill includes an Office of Audit, Assessment, and Management to monitor grants and a Community Capacity Development Office to assist grant applicants and grantees in meeting grant conditions.

In addition to the numerous oversight tools provided in the Act, there are a number of important reforms of grant programs and provisions designed to improve programs and offices within the Department. Title XI consolidates the Local Law Enforcement Block Grant program and the Byrne grant program into one program with the same purposes to eliminate duplication and improve administration of the grants. Additionally, it preserves the COPS program, but addresses concerns expressed by many Members about

the previous use of the these grants. This will allow grantees greater flexibility in the use of these funds.

Title XI also reauthorizes DOJ programs that will expire or have expired, such as the Juvenile Accountability Block Grants program and the Sex Offender Management program, as well as some very important modifications to the criminal code such as extending the statute of limitations for human trafficking offenses and applying increased criminal penalties to prison guards who sexually abuse persons in their custody.

Legislative History.—The legislation was introduced on July 22, 2005, on a bipartisan basis with Chairman Sensenbrenner, Ranking Member Conyers, Rep. Coble, Rep. Weiner, Rep. Green, Rep. Solis, Rep. Brown-Waite, and Rep. Schiff. On July 27, 2005, the Committee met in open session and ordered reported favorably, with amendment, the legislation, H.R. 3402, on a voice vote. The legislation passed by the House of Representatives, with amendment, by a vote of 415–4, on September 28, 2005. H.R. 3402 passed the Senate with amendment by unanimous consent on December 16, 2005. The House of Representatives agreed to suspend the rules and pass the legislation, as amended by the Senate, by voice vote on December 17, 2005. The legislation was signed by the President on January 5, 2006, and became Public Law 109–162.

H.R. 3505, the Financial Services Regulatory Relief Act of 2005

Summary.—Congressman Jeb Hensarling introduced H.R. 3505 on July 28, 2005. The bill amends various provisions of federal banking and securities laws to provide regulatory relief and promote greater efficiency and productivity for federally-insured depository institutions.

Legislative History.—H.R. 3505 was referred sequentially to the House Judiciary Committee on December 17, 2005, and the Committee was granted extensions to further consider the bill until February 24, 2006. On February 15, 2006, the Judiciary Committee held a mark-up and ordered H.R. 3505 favorably reported by voice vote. The Committee filed H. Rept. 109–356, Part II on February 16, 2006. On March 8, 2006, the House considered H.R. 3505 under suspension of the rules and passed the bill by a vote of 415–2. For further action see S. 2856, which became Pub. L. No. 109–351.

H.R. 3736, the Katrina Volunteer Protection Act

Summary.—H.R. 3736 would provide a uniform federal floor on which all volunteers can confidently stand when helping those in need in the wake of Hurricane Katrina. H.R. 3736 provides that any person or entity that, in response to Hurricane Katrina, voluntarily, in good faith, and without a preexisting duty or expectation of compensation, renders aid, medical treatment, or rescue assistance to any person, shall not be liable for injuries alleged to have been sustained by such person or entity unless the alleged injuries were caused by willful, wanton, reckless, or criminal conduct on the part of the volunteer. H.R. 3736 also does not apply to any person or entity whose conduct constitutes a violation of a Federal or State civil rights law.

Legislative History.—H.R. 3736 was introduced by Rep. Sensenbrenner on September 13, 2005. On September 14, 2005, it passed

the House on the Suspension Calendar by voice vote. No further action on this legislation was taken by the Senate.

H.R. 4698, the Disaster Relief Volunteer Protection Act

Summary.—H.R. 4698 would provide liability relief for volunteers engaged in responses to disasters. The bill applies if the circumstances are covered by a "Disaster Declaration," which could be either (1) a public health emergency declaration by the Secretary of Health and Human Services; (2) a declaration of a public health emergency or a risk of such emergency as determined by the Secretary of Homeland Security; or (3) an emergency or major disaster declaration by the President. Regarding disaster relief volunteers, the bill provides that a disaster relief volunteer shall not be liable for any injury caused by an act or omission of such volunteer in connection with such volunteer's providing or facilitating the provision of disaster relief services if (1) the injury was not caused by willful, wanton, reckless, or criminal misconduct by the volunteer, or conduct that constitutes a violation of Federal or State civil rights laws; and (2) the injury was not caused by the volunteer's operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to possess an operator's license or maintain insurance. The bill also protects from the threat of liability those who employ or are in a business partnership with disaster relief volunteers, and also those who host, work with, or make their facilities available to a disaster relief volunteer to enable such volunteer to provide disaster relief services. These provisions protect individuals, businesses, and governments from liability for the actions of any volunteers to whom they make facilities available to further their volunteer efforts. Regarding nonprofit organizations themselves, the bill provides that a nonprofit organization shall not be liable for any injury caused by its actions or omissions in connection with the nonprofit organization's providing or facilitating the provision of disaster relief services if the injury was not caused by willful, wanton, reckless, or criminal misconduct by the nonprofit organization, or conduct that constitutes a violation of Federal or State civil rights laws. Regarding the liability of governmental and intergovernmental entities, the bill provides that if they donate to an agency or instrumentality of the United States disaster relief goods, they shall not be liable for any injury caused by such donated goods if the injury was not caused by willful, wanton, reckless, or criminal misconduct by such governmental or intergovernmental entity, or conduct that constitutes a violation of Federal or State civil rights laws. The bill also protects disaster relief volunteers and governmental or intergovernmental entities donating disaster relief goods from punitive damages, unless the claimant establishes by clear and convincing evidence that its damages were proximately caused by willful, wanton, reckless, or criminal misconduct, or conduct that constitutes a violation of Federal or State civil rights laws. The bill also protects disaster relief volunteers and governmental or intergovernmental entities donating disaster relief goods under a "fair share" rule under which damages for liability for noneconomic losses, if permitted, shall be allocated in direct proportion to the percentage of responsibility of that defend-

ant. Finally, the bill applies its liability protections to anyone who volunteers and provides a service of a type that generally requires a license, certificate, or authorization, provided such volunteer is licensed, certified, or authorized to provide such services in any State, even if such State is not the State in which the disaster relief volunteer provides disaster relief services.

Legislative History.—H.R. 4698 was introduced by Rep. Sensenbrenner on February 2, 2006. On March 15, 2006, it was ordered reported by the House Judiciary Committee (as amended) by a vote of 16 to 9.

H.R. 4709, the Telephone Records and Privacy Protection Act of 2006

Summary.—Congressman Lamar Smith introduced H.R. 4709 on February 8, 2006. The bill amends title 18 of the United States Code to provide criminal penalties for the fraudulent acquisition or unauthorized disclosure of telephone records.

Legislative History.—H.R. 4709 was referred to the House Judiciary Committee on February 8, 2006. On March 2, 2006, the Judiciary Committee held a mark-up and ordered the bill favorably reported by voice vote. The Committee filed H. Rept. 109–395 on March 16, 2006. On April 25, 2006, the House considered H.R. 4709 under suspension of the rules and passed the bill by a vote of 409–0.

H.R. 4356, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2005

Summary.—Chairman F. James Sensenbrenner, Jr. introduced H.R. 4356 on November 17, 2005. The bill amends title 18 of the United States Code to provide a new criminal penalty for fraud in connection with emergency or major disaster benefits, and increases criminal penalties for mail and wire fraud in connection with such benefits.

Legislative History.—H.R. 4356 was referred to the House Judiciary Committee on November 17, 2005, and to the Subcommittee on Crime, Terrorism and Homeland Security on February 2, 2006. The Subcommittee on Crime, Terrorism and Homeland Security was discharged from consideration of the bill on February 24, 2006. On March 2, 2006, the Judiciary Committee held a mark-up and ordered the bill favorably reported by voice vote. On May 19, 2006, the Committee filed H. Rpt. 109–473. On June 20, 2006, the House considered H.R. 4356 under suspension of the rules and passed the bill by voice vote.

H.R. 4127, the Data Accountability and Trust (DATA) Act of 2006

Summary.—Congressman Cliff Stearns introduced H.R. 4127 on October 25, 2005. The bill requires owners and possessors of personal data in electronic form to adopt security policies to protect the data, and provides for nationwide notice to consumers in the event of a breach of such data.

Legislative History.—The bill was reported from the House Committee on Energy and Commerce on March 29, 2006 by a vote of 41–0. The bill was jointly and sequentially referred to the House Judiciary Committee on May 4, 2006 for a period ending not later

than June 2, 2006. On May 25, 2006, the Judiciary Committee held a mark-up and ordered the bill favorably reported by voice vote. On May 26, 2006, the Committee filed H. Rpt. 109–453, Part II. The bill was placed on the Union Calendar and there was no further action on the legislation.

H.R. 5228, To require representatives of governments designated as State Sponsors of Terrorism to disclose to the Attorney General lobbying contacts with legislative branch officials, and for other purposes

Summary.—The purpose of H.R. 5228 is to require enhanced disclosure of the lobbying activities of State Sponsors of Terror. The bill would amend the Foreign Agents Registration Act to require that the agents of a State Sponsor of Terrorism file detailed reports of their lobbying contacts with Members of Congress within 45 days of that contact.

Legislative History.—Rep. Lincoln Diaz-Balart introduced H.R. 5228 on April 27, 2006, and the bill was referred to the Committee on the Judiciary and the Subcommittee on Crime, Terrorism, and Homeland Security as well as the Committee on International Relations. Neither committee took further action on the bill. The House of Representatives considered H.R. 5228 under suspension of the rules on June 20, 2006, and the bill failed by a vote of 263 to 159.

H.R. 5285, the "Electronic Surveillance Modernization Act"

Summary.—Representative Heather Wilson, Chairman Sensenbrenner, and Select Committee on Intelligence Chairman Hoekstra, and others introduced H.R. 5825, the "Electronic Surveillance Modernization Act," on July 18, 2006. This bill would strengthen oversight of the executive branch and enhance accountability by requiring the Government to provide more information to the courts and to each Member of the House and Senate Intelligence Committees; would modernize and simplify the process for getting a FISA warrant and clarify its scope and applicability; would update FISA to account for technology changes in 21st Century communications; would clarify the authority of our intelligence agencies in the event of an attack on the United States; and would clarify the President's authority and the Congress' oversight of surveillance programs. The testimony presented at two hearings before the Subcommittee on Crime, Terrorism, and Homeland Security, demonstrated that the FISA process must be streamlined and technology-neutral.

Legislative History.—The Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security held two hearings on H.R. 5825 on the 6th and 12th of September 2006. On September 20, 2006, the Committee met in open session and ordered favorably reported the bill, H.R. 5825, with an amendment, by roll call vote with 20 ayes and 16 nays, a quorum being present. The bill was reported to the House on November 29, 2001 (H. Rept. 109–630, Part II). The House passed the bill on September 28, 2006, by a recorded vote (Roll No. 502) of 232 yeas to 191 nays. No further action was taken on the bill, H.R. 3209, during the 109th Congress.

H.R. 5318, the Cyber-Security Enhancement and Consumer Data Protection Act of 2006

Summary.—On May 9, 2006, Chairman F. James Sensenbrenner, Jr. introduced H.R. 5318. The bill amends provisions of title 18, United States Code to increase penalties for computer crimes and identity theft, and provides for notice to federal law enforcement in the event of a breach of computer systems containing personal data.

Legislative History.—The bill was referred to the Subcommittee on Crime, Terrorism and Homeland Security on May 9, 2006. The Crime Subcommittee held hearings on the bill on May 11, 2006. The Subcommittee held a mark-up and ordered the bill favorably reported by voice vote on May 18, 2006. On May 25, 2006, the Judiciary Committee held a mark-up and ordered the bill favorably reported by voice vote, with a manager's amendment. On June 22, 2006, the Committee filed H. Rept. 109–522 and the bill was placed on the Union Calendar.

H.R. 6427, a bill to increase the amount in certain funding agreements relating to patents and nonprofit organizations to be used for scientific research, development, and education, and for other purposes

Summary.—Introduced by Representative Tom Latham, H.R. 6427 increases the statutory royalty stream for smaller government entities which partner with nonprofit organizations under the Bayh-Dole Act to license patented inventions.

Legislative History.—On December 6, 2006, the House passed H.R. 6427 without amendment by voice vote.

RESOLUTIONS REFERRED TO THE FULL COMMITTEE

H. Res. 210, supporting the goals of World Intellectual Property Day, and recognizing the importance of intellectual property in the United States and worldwide

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H. Res. 210 expresses support for the goals of World Intellectual Property Day (April 26, 2005) to promote, inform, and teach the importance of intellectual property as a tool for economic, social, and cultural development. The resolution also congratulates the World Intellectual Property Organization for its work in this regard.

Legislative History.—On April 20, 2005, the Committee met in open session and ordered favorably reported the bill, without amendment, by voice vote. On April 26, 2005, the Committee reported the bill (H. Rept. 109–53). On April 28, 2005, the House passed the bill, without amendment, by a roll call of 315–0.

H. Res. 420, directing the Attorney General to transmit to the House of Representatives documents relating to the disclosure of the identity and employment of Ms. Valerie Plame

Summary.—Congressman Rush Holt introduced H. Res. 420 on July 29, 2005. The resolution sought to direct the Attorney General to transmit to the House of Representatives documents in his pos-

session relating to the disclosure of the identity and employment of Ms. Valerie Plame.

Legislative History.—H. Res. 420 was referred to the House Judiciary Committee on July 29, 2005. On September 14, 2005, the Judiciary Committee held a markup and ordered H. Res. 420 reported adversely by a vote of 15–11. The Committee filed H. Rept. 109–230 on September 22, 2005, and the resolution was placed on the House Calendar.

H. Res. 423, Honoring and recognizing the distinguished service, career, and achievements of Chief Justice William Hubbs Rehnquist upon his death, and for other purposes

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H. Res. 423 honors and recognizes the distinguished service, career, and achievements of Chief Justice William Hubbs Rehnquist upon his death, and for other purposes.

Legislative History.—Introduced on September 6, 2005, H. Res. 423 was considered by the House on September 7, 2005, pursuant to a previous order. H. Res. 423 was agreed to without amendment by voice vote.

H. Res. 547—Expressing the sense of the House of Representatives that the United States Court of Appeals for the Ninth Circuit deplorably infringed on parental rights in Fields v. Palmdale School District

Summary.—H. Res. 547 provides "[t]hat it is the sense of the House of Representatives that—(1) the fundamental right of parents to direct the education of their children is firmly grounded in the Nation's Constitution and traditions; (2) the Ninth Circuit's ruling in Fields v. Palmdale School District undermines the fundamental right of parents to direct the upbringing of their children; and (3) the United States Court of Appeals for the Ninth Circuit should agree to rehear the case en banc in order to reverse this constitutionally infirm ruling."

Legislative History.—H. Res. 547 was introduced by Rep. Tim Murphy on November 10, 2005. On November 16, 2005, H. Res. 547 was considered under suspension of the rules, passing the House by a vote of 320 to 91.

H. Res. 655—Honoring the life and accomplishments of Coretta Scott King and her contributions as a leader in the struggle for civil rights and expressing condolences to the King Family

Summary.—H. Res. 655 honors the life and accomplishments of Coretta Scott King and her contributions as a leader in the struggle for civil rights and expresses condolences to the King Family. Mrs. Coretta Scott King was the wife of the late Reverend Dr. Martin Luther King, Jr. who became one of our country's most visible members of the civil rights movement, carrying on her husband's legacy after his death. Mrs. Coretta Scott King led the campaign to recognize her late husband's birthday as a national holiday and established the Martin Luther King, Jr. Center for Non-Violent Social Change, the first institution established in the memory of an African American and which houses our country's largest archive of documents from the Civil Rights Movement.

Legislative History.—H. Res. 655 was introduced as a privileged resolution on January 31, 2006, by Chairman Sensenbrenner. The resolution was agreed to by the House by voice vote on February 1, 2006.

H. Res. 724, Honoring Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts and Secretary of the Judicial Conference of the United States

Summary.—H. Res. 724 recognizes Mr. Mecham for his more than 20 years of outstanding public service to the Federal judiciary and to the nation on the occasion of his retirement.

Legislative History.—On March 15, 2006, the Committee met in open session and ordered the bill favorably reported, without amendment, by voice vote. On April 27, 2006, the Committee reported the bill (H. Rept. 109–446).

H. Con. Res. 208—Recognizing the 50th Anniversary of Rosa Louis Parks' refusal to give up her seat on the bus and the subsequent desegregation of American Society

Summary.—H. Con. Res. 208 recognizes the 50th Anniversary of Rosa Louise Parks' refusal to give up her seat on the bus and the subsequent desegregation of American Society. Fifty years ago, through one courageous act, Rosa Parks inspired the citizens of Montgomery, Alabama to stand up to the injustice that had become commonplace among citizens. Her single act led to the 381–day Montgomery Bus Boycott and eventually to the desegregation of Montgomery, Alabama. Her actions sparked the national civil rights movement that helped lead to the equal treatment of all citizens.

Legislative History.—H. Con. Res. 208 was introduced by House Judiciary Committee Ranking Member John Conyers on July 13, 2005. It was reported out of the House Judiciary Committee by voice vote on July 27, 2005. A motion to suspend the rules was agreed to and the resolution was passed by the House by voice vote on September 14, 2005. The resolution was agreed to in the Senate without amendment and with a preamble by unanimous consent on November 18, 2005.

H. Con. Res. 245—Expressing the sense of Congress that the United States Supreme Court should speedily find the use of the Pledge of Allegiance in schools to be consistent with the Constitution of the United States

Summary.—H. Con. Res. 245 provides that "it is the sense of Congress that—(1) judicial rulings by the United States Court of Appeals for the 4th and 9th circuits have split on the issue of whether the Constitution allows the recitation of the Pledge of Allegiance in schools; (2) the ruling by the United States Court of Appeals for the 4th circuit correctly finds the Constitution does allow such a recitation; and (3) the United States Supreme Court should at the earliest opportunity resolve this conflict among the circuits in a manner which recognizes the importance and Constitutional propriety of the recitation of the Pledge of Allegiance by school children." This resolution responded to the Eastern District of Califor-

nia's holding that school district policies of voluntary, teacher-led recitations of the Pledge violate the Establishment Clause.

Legislative History.—H. Con. Res. 245 was introduced by Rep. Darrell Issa on September 15, 2005. On September 28, 2005, H. Con. Res. 245 was considered under suspension of the rules, and passed the House by a vote of 383 to 31 on September 29, 2005.

H. Con. Res. 367—Honoring and praising the National Society of the Sons of the American Revolution on the 100th anniversary of being granted its Congressional Charter

Summary.—H. Con. Res. 367 provides "[t]hat the Congress—(1) recognizes the 100th anniversary of the historic Congressional Charter of the National Society of the Sons of the American Revolution; and (2) honors and praises the National Society of the Sons of the American Revolution on the occasion of its anniversary for its work to perpetuate and honor the memory of the brave men who fought to gain our freedom during the Revolutionary War and for the Society's unfailing devotion to our Nation's youth."

Legislative History.—H. Con. Res. 367 was introduced by Rep. Howard Coble on March 29, 2006. On June 20, 2006, H. Con. Res. 367 was considered under suspension of the rules, and passed the House by a voice vote. On June 26, 2006, H. Con. Res. 367 passed the Senate by unanimous consent.

SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

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ANTHONY D. WIENER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California

Tabulation of subcommittee legislation and activity

Public:	
Legislation referred to the Subcommittee	101
Legislation on which hearings were held	9
Legislation reported favorably to the full Committee	15
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	3
Legislation pending before the full Committee	3
Legislation reported to the House	10
Legislation discharged from the Committee	0
Legislation pending in the House	3
Legislation passed by the House	9
Legislation pending in the Senate	5
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	3
Legislation enacted into Public Law as part of other legislation	1
Days of legislative hearings	9
Days of oversight hearings	20

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Courts, the Internet, and Intellectual Property has jurisdiction over the following subject matters: copyright, patent and trademark law, information technology, administration of U.S. courts, Federal Rules of Evidence and Appellate Procedure, judicial ethics, other appropriate matters as referred by the Chairman, and relevant oversight.

LEGISLATIVE ACTIVITIES

COURTS

H.R. 211, the Ninth Circuit Judgeship and Reorganization Act of 2005

Summary.—Introduced by Representative Michael K. Simpson, H.R. 211 authorizes the appointment of additional Federal circuit

judges and reorganizes the Ninth Judicial Circuit into a "new" Ninth Circuit (California, Guam, Hawaii, and the Northern Mariana Islands), the Twelfth Circuit (Arizona, Nevada, Idaho, and Montana), and Thirteenth Circuit (Alaska, Oregon, and Washington State).

Legislative History.—Introduced on January 4, 2005, H.R. 211 was referred to the Subcommittee on March 2, 2005. No action was taken on H.R. 211. A related measure, H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005," was subsequently introduced. See H.R. 4093 for further action.

H.R. 212, the Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2005

Summary.—Introduced by Representative Michael K. Simpson, H.R. 212 authorizes the appointment of additional Federal circuit judges and reorganizes the Ninth Judicial Circuit into a "new" Ninth Circuit (Arizona, California, and Nevada) and Twelfth Circuit (Alaska, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, and Washington).

Legislative History.—Introduced on January 4, 2005, H.R. 212 was referred to the Subcommittee on March 2, 2005. No action was taken on H.R. 212. A related measure, H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005," was subsequently introduced. See H.R. 4093 for further action.

H.R. 232, to authorize an additional district judgeship for the district of Nebraska

Summary.—Introduced by Representative Lee Terry, H.R. 232 would authorize one new permanent U.S. judgeship for the district of Nebraska.

Legislative History.—Introduced on January 4, 2005, H.R. 232 was referred to the Subcommittee on March 2, 2005. No action was taken on H.R. 232, although its contents were included in H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005." See H.R. 4093 for further action.

H.R. 435, the Equal Access to Justice Reform Act of 2005

Summary.—Introduced by Representative Donald A. Manzullo, H.R. 435 amends the Equal Access to Justice Act (EAJA) by eliminating the "substantial justification" defense and strengthening the ability of prevailing parties in civil litigation with agencies of the Federal government to recoup their attorney's fees.

Legislative History.—Introduced on February 1, 2005, H.R. 435 was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. The bill was referred to the Subcommittee on March 2, 2005. The Subcommittee conducted a legislative hearing, pursuant to notice, on the "Equal Access to Justice Reform Act of 2005," on May 23, 2006. The following witnesses appeared and submitted statements for the record: Ryan W. Bounds, Chief of Staff, Office of Legal Policy, U.S. Department of Justice; Michael P. Farris, J.D., Chairman and General Counsel, Home School Legal Defense Asso-

ciation (HSLDA); Jonathan Hiatt, General Counsel, American Federation of Labor-Congress of Industrial Organizations (AFL–CIO); and James M. Knott, Sr., President and Chairman of the Board, Riverdale Mills Corporation. No further action was taken on H.R. 435.

H.R. 1038, the Multidistrict Litigation Restoration Act of 2005

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H.R. 1038 would allow a designated U.S. district court (a so-called "transferee" court) under the multidistrict litigation statute (28 U.S.C. §1407) to retain jurisdiction over referred cases arising from the same fact scenario for purposes of determining liability and punitive damages, or to send them back to the respective courts from which they were transferred. It also would function as a technical fix to a "disaster" litigation statute enacted during the 107th Congress.

Legislative History.—On March 3, 2005, the Subcommittee met in open session and forwarded the bill to full Committee, without amendment, by voice vote. On March 9, 2005, the Committee ordered the bill favorably reported, without amendment, by voice vote. Eight days later the Committee reported the bill (H. Rept. 109–24). On April 19, 2005, the House passed the bill, without amendment, by voice vote. The following day the bill was received in the Senate, read twice, and referred to the Senate Committee on the Judiciary.

H.R. 1178, to create four new permanent judgeships for the eastern district of California

Summary.—Introduced by Representative William M. Thomas, H.R. 1178 would authorize four new permanent U.S. judgeships for the eastern district of California.

Legislative History.—Introduced on March 8, 2005, H.R. 1178 was referred to the Subcommittee on May 10, 2005. No action was taken on H.R. 1178, although its contents were included in H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005." See H.R. 4093 for further action.

H.R. 1229, the Federal Consent Decree Fairness Act

Summary.—Introduced by Representative Roy Blunt, H.R. 1229 would amend the Federal judicial code to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

Legislative History.—Introduced on March 10, 2005, H.R. 1229 was referred to the Committee on the Judiciary. On May 10, 2005, the "Federal Consent Decree Fairness Act" was referred to the Subcommittee, which conducted a legislative hearing, pursuant to notice, on June 21, 2005. The following witnesses appeared and submitted statements for the record: Representative Roy Blunt, Majority Whip, U.S. House of Representatives; the Honorable Nathaniel R. Jones, Blank Rome LLP; The Honorable David Goetz, Commissioner, Department of Finance and Administration, State of Tennessee; and David Schoenbrod, Professor, New York Law School. No further action was taken on H.R. 1229.

H.R. 1458, to require any Federal or State court to recognize any notarization made by a notary public licensed by a State other than the State where the court is located when such notarization occurs in or affects interstate commerce

Summary.—Introduced by Representative Robert B. Aderholt, H.R. 1458 proposed to require any Federal or State court to recognize any notarization made by a notary public licensed by a State other than the State where the court is located when such notarization occurs in or affects interstate commerce.

Legislative History.—Introduced on April 5, 2005, H.R. 1458 was referred to the Committee on the Judiciary. On May 10, 2005, the measure was referred to the Subcommittee, which conducted a legislative hearing, pursuant to notice, on March 9, 2006. The following witnesses appeared and submitted statements for the record: Timothy S. Reiniger, Esq., Executive Director, National Notary Association; Malcolm L. Morris, Esq., Professor and Associate Dean, College of Law, Northern Illinois University; Dean M. Googasian, Esq., The Googasian Firm, P.C. ; and Michael Frank Turner, Owner, Freedom Court Reporting, Inc. On May 24, 2006, the Subcommittee met in open session and ordered favorably reported H.R. 1458, with an amendment, by voice vote.

H.R. 2422, to allow media coverage of court proceedings

Summary.—Introduced by Representative Steve Chabot, H.R. 2422 would authorize the presiding judge of a U.S. appellate court or U.S. district court to permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

Legislative History.—Introduced on May 18, 2005, H.R. 2422 was referred to the Subcommittee on July 1, 2005. The text of the bill was incorporated in section 22 of H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005," which the House passed with amendment by a roll call of 375–45 on November 9, 2005. The following day H.R. 1751 was read twice and referred to the Senate Committee on the Judiciary.

H.R. 2955, the Intellectual Property Jurisdiction Clarification Act of 2006

Summary.—Introduced by Representative Lamar S. Smith, H.R. 2955 amends the Federal judicial code to clarify that the Court of Appeals for the Federal Circuit has exclusive jurisdiction of appeals relating to patents and plant variety protection, and for other purposes.

Legislative History.—Introduced on June 16, 2005, H.R. 2955 was referred to the Committee on the Judiciary. On June 27, 2005, the measure was referred to the Subcommittee, which met in open session on June 28, 2005, and ordered H.R. 2955 favorably reported, without amendment, by voice vote. On March 2, 2006, the Committee met in open session and ordered favorably reported H.R. 2955, with an amendment, by voice vote. The Committee reported the bill on April 5, 2006 (H. Rept. 109–407).

H.R. 3125, the Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2005

Summary.—Introduced by Representative Michael K. Simpson, H.R. 3125 authorizes the appointment of additional Federal circuit judges and reorganizes the Ninth Judicial Circuit into the "new" Ninth Circuit (California, Guam, Hawaii, and Northern Mariana Islands) and Twelfth Circuit (Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington).

Legislative History.—Introduced on June 29, 2005, H.R. 3125 was referred to the Committee on the Judiciary. On August 23, 2005, the bill was referred to the Subcommittee. No action was taken on the bill. A related measure, H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005," was subsequently introduced. See H.R. 4093 for further action.

H.R. 3650, the Federal Judiciary Emergency Special Sessions Act of 2005

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H.R. 3650 authorizes United States courts to conduct business outside of their respective geographic domains during emergency conditions, and for other purposes.

Legislative History.—Introduced on September 6, 2005, H.R. 3650 was referred to the Committee on the Judiciary. On September 7, 2005, the House passed H.R. 3650 without amendment by a roll call vote of 409–0. The Senate received and passed H.R. 3650 without amendment by unanimous consent on September 8, 2005. H.R. 3650 was signed by the President on September 9, 2005, and became Pub. L. No. 109–63.

H.R. 3729, the Federal Judiciary Emergency Tolling Act of 2006

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H.R. 3729 empowers the chief judge of a Federal judicial district or circuit to delay or toll time deadlines for any class of cases pending or thereafter filed in a district, circuit, or bankruptcy court in the wake of a natural disaster or other emergency situation.

Legislative History.—On November 9, 2005, the Committee met in open session and ordered the bill favorably reported, with amendment, by voice vote. On February 8, 2006, the Committee reported the bill as amended favorably (H. Rept. 109–371). On July 17, 2006, the House passed the bill, as amended, by a roll call of 363–0. The following day the bill was received in the Senate, read twice, and referred to the Senate Committee on the Judiciary.

H.R. 3953, to authorize four permanent and one temporary additional judgeships for the middle district of Florida, and three additional permanent judgeships for the southern district of Florida

Summary.—Introduced by Representative Katherine Harris, H.R. 3953 would authorize four permanent judgeships and one temporary additional judgeship for the Middle District of Florida, and three additional permanent judgeships for the Southern District of Florida.

Legislative History.—Introduced on September 29, 2005, H.R. 3953 was referred to the Subcommittee on October 17, 2005. No action was taken on H.R. 3953, although its contents were included in H.R. 4093, the "Federal Judgeship and Administrative Efficiency Act of 2005." See H.R. 4093 for further action.

H.R. 4093, the Federal Judgeship and Administrative Efficiency Act of 2005

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H.R. 4093 provides for the appointment of additional Federal circuit and district judges and reconfigures the Ninth Circuit Court of Appeals.

Legislative History.—On October 24, 2005, H.R. 4093 was referred to the Subcommittee, which discharged the measure on October 27, 2005. On October 27, 2005, the Committee on the Judiciary met in open session and ordered favorably reported H.R. 4093, with an amendment, by a roll call vote of 22–12. The Committee reported the bill on February 8, 2006 (H. Rept. 109–373). The text of H.R. 4093 was incorporated in title V, subtitles B, C, and D (sections 5202–5212) of H.R. 4241, the "Deficit Reduction Act of 2005." On November 18, 2005, the House passed H.R. 4241, as amended, by a roll call of 217–215.

H.R. 4311, to amend section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App)

Summary.—H.R. 4311 would make permanent a provision that allows Federal judges to redact, under prescribed conditions, sensitive information from their annual financial disclosure reports

Legislative History.—On November 14, 2005, the bill was referred to the Committee on the Judiciary. On December 7, 2005, under suspension of the rules, the House passed the bill, with amendment, by voice vote. Five days later the bill was received in the Senate. On January 27, 2006, the bill was read twice and referred to the Senate Committee on Homeland Security and Governmental Affairs, which discharged H.R. 4311 by unanimous consent on June 7, 2006. On the same day the bill was laid before the Senate by unanimous consent and was passed by the Senate, with amendment, by unanimous consent. On June 8, 2006, a message on Senate action was sent to the House. In addition, the text of H.R. 4311 was incorporated in section 16 of H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005," which the House passed with amendment on November 9, 2005, by a roll call of 375–45. On November 10, 2005, H.R. 1751 was received in the Senate, read twice, and referred to the Senate Committee on the Judiciary. See also S. 1558, below, for related developments.

H.R. 4496, to amend title 28, United States Code, to provide for certain transportation and subsistence in cases where district courts are holding special sessions as a result of emergency conditions

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H.R. 4496 amends the Federal Judiciary Emergency Special Sessions Act of 2005 to require a district court holding spe-

cial sessions due to emergency conditions to provide for certain prisoner transportation and subsistence allowances.

Legislative History.—Introduced on December 8, 2005, H.R. 4496 was referred to the Subcommittee on February 16, 2006. Its text was included in section 1198 of H.R. 3402, the Department of Justice Authorization of Appropriations Act, 2006–2009 (H. Rept 109–233), which the House passed, with amendment, by a roll call of 415–4 on September 28, 2005. On December 16, 2005, the Senate passed the bill with an amendment by unanimous consent. The following day, on motion offered by Representative F. James Sensenbrenner, Jr., the House agreed to the Senate amendment by voice vote. The President signed the bill on January 5, 2006. It is Pub. L. 109–162.

H.R. 5418, to establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges

Summary.—Introduced by Representative Darrell E. Issa, H.R. 5418 authorizes the establishment of a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

Legislative History.—H.R. 5418 was introduced on May 18, 2006, and was referred to the Subcommittee on June 5, 2006. On July 27, 2006, the Subcommittee met in open session and ordered favorably reported H.R. 5418, without amendment, by voice vote. The full committee considered H.R. 5418 on September 13, 2006, and ordered the bill favorably reported, with an amendment, by voice vote. The bill then passed the House under suspension of the rules and referred to the Senate Judiciary.

H.R. 5440, the Federal Courts Jurisdiction Clarification Act of 2006

Summary.—Introduced by Representative Lamar S. Smith, H.R. 5440 amends the Federal judicial code with respect to jurisdictional rules and the amount in controversy in civil litigation concerning: (1) denial of district court original jurisdiction of an action between a citizen of a state and a resident alien domiciled in the same state; (2) citizenship rules for corporations and insurance companies with foreign contacts; (3) removal procedures for civil and criminal actions and summary remand; (4) indexing the amount in controversy; and (5) the use of declarations to specify damages.

Legislative History.—H.R. 5440 was introduced on May 22, 2006, and was referred to the Subcommittee on May 23, 2006. On May 24, 2006, the Subcommittee met in open session and ordered favorably reported H.R. 5440, without amendment, by voice vote.

H. Res. 357, Honoring Justice Sandra Day O'Connor

Summary.—Introduced by Representative Ginny Brown-Waite, H. Res. 357 acknowledges and honors Justice Sandra Day O'Connor on the occasion of her retirement from the U.S. Supreme Court.

Legislative History.—Introduced on July 12, 2005, H. Res. 357 was referred to the Subcommittee on August 23, 2005. On March 1, 2006, the House passed H. Res. 357, under suspension of the rules, without amendment by a roll call vote of 410–0.

S. 1558, to amend the Ethics in Government Act of 1978 to protect family members of filers from disclosing sensitive information in a public filing and to extend for four years the authority to redact financial disclosure statements of judicial employees and judicial officers

Summary.—Introduced by Senator Susan M. Collins, S. 1558 would amend the "Ethics in Government Act of 1978" to protect family members of filers from disclosing sensitive information in a public filing and to extend for four years the authority to redact financial disclosure statements of judicial employees and judicial officers.

Legislative History.—Introduced in the Senate on July 29, 2005, S. 1558 was referred to the Senate Committee on Homeland Security and Governmental Affairs, which discharged the measure on November 10, 2005. On November 10, 2005, the Senate adopted two amendments to S. 1558, which provided a complete substitute and amended the title of the bill. The Senate then passed S. 1558, as amended, by unanimous consent. On November 14, 2005, S. 1558 was referred to the Committee on the Judiciary. On February 6, 2006, S. 1558 was referred to the Subcommittee. See also H.R. 4311 for related developments.

H. Res. 916, Impeaching Manuel L. Real, judge of the United States District Court for the District of California, for high crimes and misdemeanors

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H. Res. 916 resolves to impeach Manuel L. Real, judge of the United States District Court for the Central District of California, for high crimes and misdemeanors.

Legislative History.—On September 21, 2006, the Subcommittee met in open session and held a legislative hearing on H. Res. 916.

INTELLECTUAL PROPERTY

Copyrights

H.R. 1036, the "Copyright Royalty Judges Program Technical Corrections Act"

Summary.—Introduced by Representative Lamar Smith, H.R. 1036 makes stylistic, typographical, and clarifying changes to the "Copyright Royalty and Distribution Reform Act of 2004" (Pub. L. 108–419), which overhauled the administrative construct by which copyright royalties are determined and distributed pursuant to various compulsory licenses under the Copyright Act.

Legislative History.—On March 2, 2005, H.R. 1036 was referred to the Subcommittee. The next day the Subcommittee met in open session ordered the bill favorably reported, without amendment, by voice vote. On March 9, 2005, the Committee met in open session and ordered the bill favorably reported, without amendment, by voice vote. On April 28, 2005, the Committee reported the bill (H. Rept. 109–64). On November 16, 2005, the House passed the bill, with an amendment, by voice vote. On June 29, 2006, the Senate Committee on the Judiciary met in open session and conducted a markup of the bill. On July 13, 2006, the Senate Judiciary Com-

mittee ordered the bill favorably reported, with an amendment, by voice vote. The bill was reported without written report. On July 19, 2006, the Senate passed the bill with an amendment by unanimous consent. On September 25, 2006, the House passed the same bill. On October 6, 2006, H.R. 1036 was signed into law (Pub. L. 109–303).

H.R. 1037, to make technical corrections to title 17, United States Code

Summary.—Introduced by Representative Lamar Smith, H.R. 1037 makes stylistic, typographical, and clarifying changes to the "Satellite Home Viewer Extension and Reauthorization Act of 2004" (Pub. L. 109–447, title IX), which extended the compulsory license that allows satellite carriers to transmit copyrighted programming to their customers for another five years.

Legislative History.—On March 3, 2005, the Subcommittee met in open session ordered the bill favorably reported, without amendment, by voice vote. On March 9, 2005, the Committee met in open session and ordered the bill favorably reported, without amendment, by voice vote. On May 10, 2005, the Committee reported the bill (H. Rept. 109–75).

H.R. 5055, to amend title 17, United States Code, to provide protection for fashion design

Summary.—Introduced by Representative Bob Goodlatte, H.R. 5055 extends copyright protection to fashion designs, but excludes from such protection fashion designs that are embodied in a useful article that was made public by the designer or owner more than three months before the registration of copyright application.

Legislative History.—On July 27, 2006, the Subcommittee met in open session and held a legislative hearing on H.R. 5055. The following witnesses appeared and submitted a written statement for the record: Jeffrey Banks, fashion designer, on behalf of the Council of Fashion Designers of America; David Wolfe, Creative Director, The Doneger Group; Susan Scafidi, Visiting Professor, Fordham Law School and Associate Professor, Southern Methodist University; and Christopher Sprigman, Associate Professor, University of Virginia School of Law.

H.R. 5439, the Orphan Works Act of 2006

Summary.—Introduced by Representative Lamar Smith, H.R. 5439 limits the remedies available in a copyright infringement action for unlocatable copyright owners under prescribed conditions. The legislation also requires the Register of Copyrights to conduct an inquiry with respect to remedies for copyright infringement claims seeking limited monetary relief, including consideration of alternatives to disputes currently heard in the U.S. district courts.

Legislative History.—The Subcommittee held an oversight hearing on the issues raised by the legislation on March 8, 2006. On May 24, 2006, the Subcommittee met in open session and ordered favorably reported H.R. 5439, without an amendment, by voice vote.

H.R. 5553, the Section 115 Reform Act of 2006

Summary.—Introduced by Representative Lamar Smith, H.R. 5553 updates Section 115 of the Copyright Act by setting forth new provisions governing compulsory licenses for digital phonorecord deliveries and hybrid offerings. The legislation is designed to modernize the licensing system for digital music services while ensuring that royalties currently being held in escrow are paid to songwriters. The legislation also requires the Register of Copyrights to designate a General Designated Agent to grant and administer licenses and collect and distribute royalties payable for the use of musical works licensed under this Act.

Legislative History.—On June 8, 2006, the Subcommittee met in open session and ordered favorably reported H.R. 5553, without amendment, by a voice vote.

H.R. 5593, the Royalty Distribution Clarification Act of 2006

Summary.—Introduced by Representative Lamar Smith, H.R. 5593 modifies existing law by allowing Copyright Royalty Judges, upon the motion of a claimant and after publication of a request for responses, to make a partial distribution of cable and satellite royalty fees at any time after the filing of claims for distribution if no eligible claimant has stated a reasonable objection.

Legislative History.—The legislation was introduced on June 13, 2006. No hearings were held on the bill, but the Senate Committee on the Judiciary included its text as an amendment to H.R. 1036 during a July 13, 2006, markup. See H.R. 1036 for further action.

S. 167, the Family Entertainment and Copyright Act of 2005

Summary.—Introduced by Senator Hatch, S. 167 contains four titles. Title I is the Artists' Rights and Theft Prevention Act of 2005. The Act amends the Federal criminal code to prohibit the use or attempted use of a video camera to make a copy of a motion picture or other copyrighted audiovisual work from a performance of such work in a movie theater and sets forth penalties for such violations. The Act also establishes criminal penalties for willful copyright infringement by the distribution of a computer program, musical work, motion picture or other audiovisual work, or sound recording being prepared for commercial distribution by making it available on a computer network accessible to members of the public.

Title II is the Family Movie Act of 2005. The Act creates an exemption from copyright infringement for the creation or use of certain technology to skip over content in authorized copies of motion pictures. The legislation also amends the Trademark Act of 1946 to protect from liability for trademark infringement persons who engage in such acts and manufacturers of such technology.

Title III is the National Film Preservation Act of 2005 and the National Film Preservation Foundation Reauthorization Act of 2005. The National Film Preservation Act amends the National Film Preservation Act of 1996 to expand the use of the National Film Registry seal and directs the Librarian of Congress, in consultation with the National Film Registry Board, to expand film preservation efforts. The National Film Preservation Foundation Act modifies the structure of the National Film Preservation Foundation.

Title IV is the Preservation of Orphan Works Act. The Act expands the use of copyrighted works by libraries or archives during the last 20 years of any term of copyright of a published work.

Legislative History.—Introduced by Senator Orrin Hatch on January 25, 2005, S. 167 was passed by the Senate on February 1, 2005. On March 3, 2005, the Subcommittee met in open session and ordered the bill favorably reported, without amendment, by a voice vote. On March 9, 2005, the full Committee met in open session and ordered the bill favorably reported, without amendment, by voice vote. The joint referral to the House Administration Committee was discharged on April 12, 2005. On April 19, 2005, the bill was passed by the full House without amendment by a voice vote. On April 27, 2005, the legislation was signed into law as Pub. L. 109–9.

S. 1785, the Vessel Hull Design Protection Amendments of 2005

Summary.—Introduced by Senator John Cornyn, S. 1785 amends the "Vessel Hull Design Protection Act" by specifying that the design of both the vessel hull and deck are protected under chapter 13 of the U.S. Copyright Act. Current law only protects the design of the vessel hull, but not the deck.

Legislative History.—On November 18, 2005, the Senate passed the bill without amendment by voice vote (H. Rept. 109–33). On March 1, 2006, the Subcommittee met in open session and ordered favorably reported S. 1785 without amendment by a voice vote. On December 6, 2006, the House passed the bill with an amendment (including the text of H. Con Res. 319 and H.R. 5120) by voice vote.

Patents and Trademarks

H.R. 683, the Trademark Dilution Revision Act of 2005

Summary.—Introduced by Representative Lamar Smith, H.R. 683 establishes a likelihood-of-harm threshold in dilution cases and clarifies other definitions and provisions in the Federal Trademark Dilution Act.

Legislative History.—On February 17, 2005, the Subcommittee held a legislative hearing on H.R. 683. The following witnesses appeared and submitted written statements for the record: Anne Gundelfinger, President and Chairperson of the Board, International Trademark Association (INTA); Mark A. Lemley, William H. Neukom Professor of Law, Stanford University; William G. Barber, Partner, Fulbright & Jaworski, LLP; and Marvin Johnson, Legislative Counsel, American Civil Liberties Union (ACLU). On March 3, 2005, the Subcommittee met in open session and ordered favorably reported H.R. 683, with an amendment, by voice vote. On March 9, 2005, the Committee met in open session and ordered favorably reported H.R. 683, as amended, by voice vote (H. Rept. 109–23). On April 19, 2005, the House passed H.R. 683, with an amendment, by a roll call of 411–8. The following day H.R. 683 was received in the Senate, read twice, and referred to the Senate Committee on the Judiciary. On February 27, 2006, the Committee met in open session and ordered favorably reported H.R. 683, with an amendment and without written report, by voice vote. On March 8, 2006, the Senate passed H.R. 683, with an amendment, by unan-

imous consent. On September 25, 2006, the House suspended the rules and agreed to the Senate amendment by voice vote. H.R. 683 became Pub. L. No. 109–312 on October 6, 2006.

H.R. 2791, the United States Patent and Trademark Fee Modernization Act of 2005

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H.R. 2791 makes permanent the "new" patent and trademark fee schedule enacted in the 108th Congress, provides certain protections for small business and individual patentees, and creates a refund mechanism to ensure that the U.S. Patent and Trademark Office remits unspent revenue in a given fiscal year to the inventors who fund the system.

Legislative History.—On June 28, 2005, the Subcommittee met in open session and ordered favorably reported H.R. 2791, without amendment, by voice vote. On November 9, 2005, the Committee met in open session and ordered favorably reported H.R. 2791, without amendment, by voice vote. On February 8, 2006, the Committee reported the bill (H. Rept. 109–372). No further action was taken on the (freestanding) bill; however, the text of H.R. 2791 that reauthorizes the fee schedule from the 108th Congress was incorporated in title II of H.R. 5672 (H. Rept. 109–280), the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2007, which the House passed on June 29, 2006, with amendments, by a roll call of 393–23. On July 13, 2006, the Senate Committee on Appropriations reported favorably the bill, with amendments, by voice vote (S. Rept. 109–280).

H.R. 2795, the Patent Reform Act of 2005

Summary.—Introduced by Representative Lamar Smith, H.R. 2795 makes several changes to the U.S. patent system. The major provisions include defining patent ownership based on the status of the inventor who files first (rather than who invents first); permitting the use of third-party prior-art submissions to assist in the evaluation of novelty and non-obviousness; the creation of a post-grant opposition system; greater expansion of the inter partes reexamination system; and revision of the inequitable conduct standard.

Legislative History.—On June 9, 2005, the Subcommittee held a legislative hearing on H.R. 2795. The following witnesses appeared and submitted written statements for the record: Gary L. Griswold, President and Chief Intellectual Property Counsel, 3M Innovative Properties Company, on behalf of the American Intellectual Property Law Association (AIPLA); Carl Gulbrandsen, Managing Director, Wisconsin Alumni Research Foundation (WARF); Josh Lerner, Professor, Harvard Business School; and Daniel B. Ravicher, Executive Director, Public Patent Foundation (PUBPAT). No further action was taken on the bill.

H.R. 4742, to allow the Director of the Patent and Trademark Office to waive statutory provisions governing patent and trademarks in certain emergencies

Summary.—Introduced by Representative Lamar Smith, H.R. 4742 amends title 35 by waiving certain statutory requirements

governing patents and trademarks (such as the filing of time-sensitive maintenance fees) in emergency situations, including natural disasters and terrorist attacks.

Legislative History.—On March 1, 2006 the Subcommittee met in open session and ordered favorably reported H.R. 4742, without amendment, by voice vote. On March 15, 2006, the Committee met in open session and ordered favorably reported H.R. 4742, unamended, by voice vote. The Committee reported the bill on April 5, 2006 (H. Rept. 109–408). On December 5, 2006, the House passed the bill without amendment by voice vote.

H.R. 5120, to amend title 35, United States Code, to conform certain filing provisions within the Patent and Trademark Office

Summary.—Introduced by Representative William L. Jenkins, H.R. 5120 authorizes the Patent and Trademark Office to accept term-extension applications that deviate from the filing requirements of section 156 of the Patent Act based on "unintentional delay."

Legislative History.—On September 14, 2006, pursuant to notice, the Subcommittee met in open session and conducted a legislative hearing on H.R. 5120. The following witnesses appeared and submitted statements for the record: the Honorable Jon W. Dudas, Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office; Clive Meanwell Chief Executive Officer, The Medicines Company; Kathleen D. Jaeger, President and Chief Executive Officer, Generic Pharmaceutical Association (GphA); John R. Thomas, Professor of Law, Georgetown University Law Center. The text of H.R. 5120 was included as § 202 of S. 1785, which the House passed by voice vote on December 6, 2006.

H.R. 5618, to extend the patent term for the badge of the American Legion Women's Auxiliary, and for other purposes

Summary.—Introduced by Representative Chris Cannon, H.R. 5618 extends the (design) patent term for the badge of the American Legion Women's Auxiliary for 14 years.

Legislative History.—The text of H.R. 5618 was included in section 1094 of S. 2766, the "National Defense Authorization Act for Fiscal Year 2007," which the Senate passed with amendment by a roll call of 96–0 on June 22, 2006.

H.R. 5619, to extend the patent term for the badge of the American Legion, and for other purposes

Summary.—Introduced by Representative Chris Cannon, H.R. 5619 extends the (design) patent term for the badge of the American Legion for 14 years.

Legislative History.—The text of H.R. 5619 was included in section 1094 of S. 2766, the "National Defense Authorization Act for Fiscal Year 2007," which the Senate passed with amendment by a roll call of 96–0 on June 22, 2006.

H.R. 5620, to extend the patent term for the badge of the Sons of the American Legion, and for other purposes

Summary.—Introduced by Representative Chris Cannon, H.R. 5620 extends the (design) patent term for the badge of the Sons of the American Legion for 14 years.

Legislative History.—The text of H.R. 5620 was included in section 1094 of S. 2766, the "National Defense Authorization Act for Fiscal Year 2007," which the Senate passed with amendment by a roll call of 96–0 on June 22, 2006.

H. Con. Res. 53, Expressing the sense of Congress regarding the issuance of the 500,000th design patent by the United States Patent and Trademark Office

Summary.—Introduced by Representative John Conyers, H. Con. Res. 53 acknowledges the DaimlerChrysler Corporation and its employees for receiving the 500,000th design patent issued by the Patent and Trademark Office for their work on the Chrysler "Crossfire."

Legislative History.—On March 3, 2005, the Subcommittee met in open session and ordered favorably reported H. Con. Res. 53, without amendment, by voice vote. On March 9, 2005, the Committee ordered favorably reported H. Con. Res. 53, without amendment, by voice vote. On March 17, 2005, the Committee reported the bill (H. Rept. 109–22). On April 19, 2005, the House passed H. Con. Res., without amendment, by voice vote. The following day the bill was received in the Senate and referred to the Senate Committee on the Judiciary.

H. Con. Res. 319, Expressing the sense of the Congress regarding the successful and substantial contributions of the amendments to the patent and trademark laws that were enacted in 1980 (Public Law 96–517; commonly known as the "Bayh-Dole Act"), on the occasion of the 25th anniversary of its enactment

Summary.—Introduced by Representative F. James Sensenbrenner, Jr., H. Con. Res. 319 reaffirms Congress' commitment to the policies and objectives of the Bayh-Dole Act on the 25th anniversary of its enactment.

Legislative History.—On March 10, 2006, the Subcommittee discharged H. Con. Res. 319. On March 15, 2006, the Committee met in open session and ordered favorably reported H. Con. Res. 319, without amendment, by voice vote. The Committee reported the bill on April 5, 2006 (H. Rept. 109–409). The text of H. Con. Res. 319 was included as §201 of S. 1785, which the House passed by voice vote on December 6, 2006.

OVERSIGHT ACTIVITIES

Summary of the Committee's oversight plan and the Subcommittee's responses thereto

Pursuant to its obligations under Rule X of the House Rules, the Committee submitted the following subject matter as part of its oversight plan for the 109th Congress.

The Federal Judicial system

The Subcommittee has oversight responsibility for four entities located within the Federal Judicial Branch: (1) the Judicial Conference of the United States; (2) the Administrative Office of the U.S. Courts; (3) the Federal Judicial Center; and (4) the State Justice Institute. The Subcommittee also has jurisdiction over the Federal Rules Enabling Act and the Advisory Committees on Civil Rules, Appellate Rules and Rules of Evidence.

During Chairman Sensenbrenner's tenure, the Subcommittee has devoted much time and resources to enhancing judicial ethics and investigating instances of judicial misconduct. Pursuant to discussions with Chairman Sensenbrenner and former Chief Justice Rehnquist during the 108th Congress, Justice Breyer was appointed to head an ad hoc judicial commission to review the judicial misconduct and recusal statutes to determine whether they are serving the public interest. This commission developed its findings and reported them on September 19, 2006, which should lay the groundwork for further amendments to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the "1980 Act") in the 110th Congress.

The Subcommittee also conducted an impeachment investigation of U.S. District Judge Manuel L. Real of the Central District of California in the fall of 2006. The Ninth Circuit twice dismissed complaints filed against Judge Real under the 1980 Act for his conduct in a case he oversaw from 2000–03.

In addition, the Subcommittee's oversight plan noted an ongoing problem regarding the referral of patent appeals to State courts and the regional Federal circuits. Congress created the Federal Circuit in 1982 to unify patent law. This means that the Federal Circuit was always intended to hear patent appeals—not the individual circuit courts of appeals or the State courts. A 2002 Supreme Court decision (Holmes Group) has cast the role of the Federal Circuit in doubt. More specifically, the Court ruled that appeals from cases in which the patent claim appears in a pleading other than the complaint must go to the regional circuits. This has led to both the regional circuits accepting patent cases and some State courts hearing patent and copyright cases. The Subcommittee conducted hearings on March 17, 2005, in regards to the Holmes Group problem and reported legislation to fix it.

The U.S. copyright system

The Subcommittee continued to devote considerable time to oversee the operation of the copyright system in a world of ever-changing technology. It is vital to the protection of our copyright industry that the Subcommittee be vigilant in its exercise of its jurisdiction to carry out its constitutional mandate to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries[.]" (U.S. Const. art. I §8. cl. 8).

The Subcommittee has oversight responsibilities over the operation of the U.S. Copyright Office, which is part of the Library of Congress. The Copyright Office has a number of responsibilities, from collecting and distributing copyright royalties to registering and granting certificates of copyrights to thousands of people each

year. The Subcommittee conducted an oversight hearing on April 5, 2006, to address the changing needs and efficient operation of that office.

Many of the Office's employees have been physically displaced due to renovations and re-engineering within the Madison Building. The Office also required additional appropriations to discharge its obligations under the new "CARP" statute. Both issues were explored more fully during an oversight hearing in 2005.

Much of the Subcommittee's copyright agenda pertains to the operations of the entertainment industries, including the music business. Performance rights organizations, or "PROs," ensure that songwriters are paid when their works are publicly performed. The Society of European Stage Authors and Composers (SESAC) is the only performing rights organization that does not operate under a consent decree. Smaller than its competitors, Broadcast Music, Inc (BMI) and the American Society of Composers, Authors and Publishers (ASCAP), it is nonetheless growing. The Subcommittee followed-up on its oversight plan by reviewing operations of the PROs, with an emphasis on how SESAC treats its artists.

Two themes that have dominated the Subcommittee's copyright oversight and legislative agenda are those efforts to (1) inhibit piracy of copyrighted works and (2) modernize the Copyright Act to facilitate greater digital reproduction and distribution of copyrighted works.

Concerning piracy, defenders of peer-to-peer (P2P) systems and hardware/electronic companies argue that copyright holders are inhibiting a more robust roll-out of music/movie technologies that the public wants. While the Subcommittee has encouraged the development of such technologies, the great majority of its members believe it must be done in a manner that respects the property rights of affected content holders. During the 109th Congress, this point was explored more fully in oversight hearings that touched upon IP piracy in the People's Republic of China and Russia; P2P piracy on university campuses; and implementation of the "broadcast flag."

Concerning the "modernization" of the Copyright Act, the Subcommittee devoted considerable resources to reviewing Section 115 of the Act. This is a torturously drafted and antiquated statute that allows, under prescribed conditions, the use of "phonorecords" that have already been distributed. It is in need of an update and the affected industry players are trying to develop consensus views on how to reform the law.

In addition to its oversight hearings and staff-industry negotiation on a Section 115 reform bill, the Subcommittee took similar initiative to modernize the treatment of "orphan works." These are copyrighted works whose authors/owners cannot be identified, thereby limiting public access to them. It is hoped that a bipartisan bill can be developed that will strike an appropriate balance between the rights of the affected property owners and the public interest in accessing these works.

The U.S. patent and trademark systems

The U.S. Patent and Trademark Office (PTO) is part of the Department of Commerce and the Subcommittee has oversight responsibilities for its authorization and its operation. The PTO is re-

sponsible for the examination and issuance of U.S. Patents and Trademarks. It is also responsible for the international negotiations with other intellectual property authorities, such as the European Patent Office and the Japanese Patent Office.

The Subcommittee held oversight hearings on the PTO during the 109th Congress, including review of a Government Accountability Office report on the agency's operations (special emphasis was placed on its progress in implementing a workable electronic communications system). Improving PTO efficiency is critical in terms of securing more revenue for the agency through the appropriators.

The PTO became a completely fee-funded agency pursuant to the budget reconciliation act passed in 1990. Since 1992, however, more than $800 million in fee revenue has been diverted by congressional appropriators (with the support of both Republican and Democratic administrations) to other programs.

In June 2002, former PTO Director Jim Rogan released a "Stategic Business Plan" outlining his vision for transforming agency operations, with the intent of improving patent and trademark quality while reducing work backlogs. Representatives of the affected user groups subsequently worked with the agency to refine the plan further.

A major component of the Plan included the enactment of a new fee schedule that would raise fees, on average, by more than 15%. As a follow-up to oversight review of diversion, the Subcommittee reported legislation, H.R. 2791, to implement the new fee schedule in tandem with language to eliminate the incentive to divert excess revenue to non-PTO programs.

Finally, and commensurate with its review of copyright piracy, the Subcommittee also explored patent piracy during its oversight hearings on trade relations with the People's Republic of China and Russia.

List of oversight hearings

Digital Music Licensing and Section 115 of the Copyright Act, March 8, 2005 (Serial No. 109–6).

Holmes Group, the Federal Circuit, and the State of Patent Appeals, March 17, 2005 (Serial No. 109–7).

Digital Music Inoperability and Availability, April 6, 2005 (Serial No. 109–9).

Committee Print Regarding Patent Quality Improvement (Part 1), April 20, 2005 (Serial No. 109–11).

Committee Print Regarding Patent Quality Improvement (Part 2), April 28, 2005 (Serial No. 109–11).

Public Performance Rights Organizations, May 11, 2005 (Serial No. 109–25).

Intellectual Property Theft in China, May 17, 2005 (Serial No. 109–34).

Intellectual Property Theft in Russia, May 17, 2005 (Serial No. 109–34).

Copyright Office Views on Music Licensing Reform, June 21, 2005 (Serial No. 109–28).

Review of U.S. Patent and Trademark Office Operations, Including Analysis of General Accounting Office, Inspector General, and

National Academy of Public Administration Reports, September 8, 2005 (Serial No. 109–48).

Reducing Peer-to-Peer (P2P) Piracy on University Campuses: A Progress Update, September 22, 2005 (Serial No. 109–56).

Improving Federal Court Adjudication of Patent Cases, October 6, 2005 (Serial No. 109–59). Content Protection in the Digital Age: The Broadcast Flag, High-Definition Radio, and the Analog Hole, November 3, 2005 (Serial No. 109–80).

Federal Courts Jurisdiction Clarification Act, November 15, 2005 (Serial No. 109–67).

International IPR Report Card- Assessing U.S. Government and Industry Efforts to Enhance Chinese and Russian Enforcement of Intellectual Property Rights, December 7, 2005 (Serial No. 109–88).

Report on Orphan Works by the Copyright Office, March 8, 2006 (Serial No. 109–94).

Remedies for Small Copyright Claims, March 29, 2006 (Serial No. 109–92).

Patent Quality Enhancement in the Information-Based Economy, April 5, 2006 (Serial No. 109–99).

Patent Harmonization, April 27, 2006 (Serial No. 109–100).

Discussion Draft of the Section 115 Reform Act (SIRA) of 2006, May 16, 2006 (Serial No. 109–108).

Patent Trolls: Fact or Fiction?, June 15, 2006 (Serial No. 109–104).

Digital Music Licensing and Section 115 of the Copyright Act (Serial No. 109–6)

The hearing was held to update the Subcommittee on private sector negotiations that have been ongoing since a March 2004 Subcommittee hearing on Section 115 of the Copyright Act. The hearing also reviewed related music licensing issues. This hearing was the first of a series of music licensing hearings during the 109th Congress and explored the possibility of introducing legislation on this topic for later in the term.

The following witnesses appeared and submitted a written statement for the record: Wood Newton, Nashville Songwriters Association, International; David Israelite, President and Chief Executive Officer, National Music Publishers' Association; Larry Kenswil, President, e-Labs, Universal Music Group; and Jonathan Potter, Executive Director, Digital Media Association (DiMA).

"Holmes Group," the Federal Circuit, and the State of Patent Appeals (Serial No. 109–7)

The hearing reviewed the Supreme Court decision of Holmes Group, Inc., v. Vornado Air Circulation Systems, Inc., to determine whether the U.S. Court of Appeals for the Federal Circuit should have plenary authority to hear all patent appeals from lower courts. In addition, the Subcommittee explored the extent to which the Federal Circuit is accomplishing its main intended purpose of unifying patent law.

The following witnesses appeared and submitted a written statement for the record: Edward R. Reines, Esq., Weil, Gotshal, & Manges, LLP; Arthur D. Hellman, Professor of Law, University of Pittsburgh School of Law; Sanjay Prasad, Chief Patent Counsel,

Oracle Corporation; and Meredith Martin Addy, Esq., Brinks, Hofer, Gilson & Lione.

Digital Music Inoperability and Availability (Serial No. 109–9)

The purpose of the hearing was to explore one of the issues concerning digital music services and digital music licensing. Consumer adoption of digital music services appears to be high, indicating consumer acceptance of such services. However, some have suggested that consumer adoption of the services would be even higher if consumers better understood the various restrictions and interoperability issues that accompany digital music. Others have suggested that consumers do understand these restrictions and interoperability issues and have accepted them with little or no complaint. The issue has an impact upon artist's royalties if consumers cannot pay for legal copies of their music. This hearing did not focus on government technology mandates or the Digital Millennium Copyright Act (DMCA), although both are part of the digital interoperability discussion.

The following witnesses appeared and submitted a written statement for the record: Dr. Mark Cooper, Director of Research, Consumer Federation of America; Raymond Gifford, President, The Progress & Freedom Foundation; Dr. William Pence, Chief Technology Officer, Napster; and Michael Bracy, Policy Director, Future of Music Coalition.

Committee Print Regarding Patent Quality Improvement (Part 1) (Serial No. 109–11)

The purpose of the hearing was to explore the merits of a Committee Print that incorporates a number of changes geared toward improving the quality of patents issued by the U.S. Patent and Trademark Office (PTO). The Print also speaks to certain patent practices that disrupt the operations of manufacturers and other businesses. While the Subcommittee has documented a steady increase in application pendency and backlogs at the PTO in recent years, the consensus view among agency officials and the inventor community is that efforts to address these problems should not take precedent over improving patent quality. Patents of questionable scope or validity waste valuable resources by inviting third-party challenges and ultimately discourage private-sector investment.

The following witnesses appeared and submitted a written statement for the record: J. Jeffrey Hawley, Legal Division Vice President and Director, Patent Legal Staff, Eastman Kodak Company, on behalf of the Intellectual Property Owners Association (IPO); Richard J. Lutton, Jr., Chief Patent Counsel, Apple, on behalf of the Business Software Alliance (BSA); Jeffrey P. Kushan, Esq., Sidley, Austin, Brown and Wood, LLP, on behalf of Genetech; and William L. LaFuze, Partner, Vinson & Elkins, LLP, and Chair, Section on Intellectual Property Law, the American Bar Association, on behalf of the ABA and the Section of Intellectual Property Law.

Committee Print Regarding Patent Quality Improvement (Part 2) (Serial No. 109–11)

See the background description of the oversight hearing of the same name, Part 1, above.

The following witnesses appeared and submitted a written statement for the record: The Honorable Jon W. Dudas, Under Secretary of Commerce for Intellectual Property & Director of the U.S. Patent and Trademark Office; Richard C. Levin, President, Yale University, on behalf of the National Research Council; Nathan P. Myhrvold, Chief Executive Officer, Intellectual Ventures; and Darin E. Bartholomew, Senior Attorney, Patent Department, John Deere and Company, on behalf of the Financial Services Roundtable.

Public Performance Rights Organizations (Serial No. 109–25)

The purpose of the hearing was to explore the operations of the three public performing rights organizations (PROs) in the United States—ASCAP (American Society of Composers, Authors, and Publishers); BMI (Broadcast Music Incorporated); and SESAC (Society of European Songwriters and Composers). ASCAP and BMI operate under Department of Justice consent decrees, while SESAC does not. ASCAP and BMI combined represent in excess of 90% of the works available through the three PROs. The differences in size and existence of consent decrees for two of the three PROs result in varied licensing practices that impact those who seek to obtain public performance licenses. These same differences have also generated a competition dispute between ASCAP/BMI and SESAC.

The following witnesses appeared and submitted a written statement for the record: Del R. Bryant, President and Chief Executive Officer, Broadcast Music Inc. (BMI); Stephen Swid, Chairman and Chief Executive Officer, SESAC Inc.; Jonathan M. Rich, Partner, Morgan Lewis & Bockius, on behalf of ASCAP; and Will Hoyt, Executive Director, Television Music License Committee (TMLC).

Intellectual Property Theft in China (Serial No. 109–34)

The purpose of this hearing was to receive testimony and to assess the current state of legal and enforcement policies that relate to the protection of Intellectual Property Rights (IPR) within China. The hearing focused specifically on continuing enforcement issues in China as well as the recent decision by the U.S. Trade Representative not to invoke WTO trade dispute mechanisms against the Chinese.

The following witnesses appeared and submitted a written statement for the record: Victoria Espinel, Acting Assistant U.S. Trade Representative for Intellectual Property, Office of U.S. Trade Representative; Ted C. Fishman, Author & Journalist, China, Inc.; Myron Brilliant, Vice President, East Asia, U.S. Chamber of Commerce; and Eric H. Smith, President, International Intellectual Property Alliance (IIPA).

Intellectual Property Theft in Russia (Serial No. 109–34)

The hearing addressed specific IP enforcement problems within the Russian Federation, including evidence that a substantial number of illicit optical disk plants are being operated on land owned

and controlled by the government. This hearing assessed whether there are "lessons learned" from Chinese accession to the WTO that ought to be applied in advance of US support for Russian accession.

The following witnesses appeared and submitted a written statement for the record: the Honorable Victoria Espinel, Acting Assistant U.S. Trade Representative for Intellectual Property, Office of U.S. Trade Representative; Eric Schwartz, Vice President & Special Counsel, International Intellectual property Alliance (IIPA); Bonnie J.K. Richardson, Senior Vice President, International Policy, Motion Picture Association of America; and Matthew T. Gerson, Senior Vice President, Public Policy and Government Relations, Universal Music Group.

Copyright Office Views on Music Licensing Reform (Serial No. 109–28)

The purpose of this hearing was to review a Copyright Office print on music licensing reform that would merge the administration of mechanical and performing rights of copyrighted musical works to eliminate many of the licensing issues that have been identified as slowing the roll-out of new digital music services.

The following witness appeared and submitted a written statement for the record: the Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the united States, the Library of Congress..

Review of U.S. Patent and Trademark Office Operations, Including Analysis of General Accounting Office, Inspector General, and National Academy of Public Administration Reports (Serial No. 109–48)

The purpose of the hearing was to review the operations of the U.S. Patent and Trademark Office (PTO) and to identify problems that hinder its effectiveness. Recent reports from the Inspector General's office and the General Accountability Office (GAO) have focused on such issues as the hiring and retention of patent examiners, the PTO's application backlog, the current steps to achieve a paperless (electronic) patent process, and time required to process patents.

The following witness appeared and submitted a written statement for the record: the Honorable Jon Dudas, Under Secretary of Commerce for Intellectual Property & Director, U.S. Patent and Trademark Office (PTO); Anu K. Mittal, Director, Science and Technology Issues, U.S. General Accountability Office (GAO); Ronald J. Stern, President, Patent Office Professional Association (POPA); and Charles Van Horn, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP.

Reducing Peer-to-Peer (P2P) Piracy on University Campuses: A Progress Update (Serial No. 109–56)

The hearing focused on the extent to which university-based piracy contributes to digital copyright infringement generally. The Subcommittee also explored whether the affected schools have implemented policies to educate students about online piracy of digital works and developed programs to thwart the practice. This

hearing followed up on hearings of the same topic held in February 2003 and September 2004.

The following witness appeared and submitted a written statement for the record: Daniel A. Updegrove, Vice President for Information Technology, University of Texas at Austin; Norbert W. Dunkel, Director of Housing and Residence and Education, University of Florida; William J. Raduchel, Chairman and Chief Executive Officer, Ruckus Network; and Richard Taylor, Senior Vice President, External Affairs & Education, Motion Picture Association of America (MPAA).

Improving Federal Court Adjudication of Patent Cases (Serial No. 109–59)

The purpose of the hearing was to examine the state of patent case adjudication by the Federal judiciary and to consider the merits of several structural and litigation reforms that have been proposed to improve the adjudication of patent disputes. This hearing examined several proposals (1) to improve the accuracy of patent claims construction and trial adjudication and (2) to increase judicial expertise and efficiency in the disposition of patent cases.

The following witness appeared and submitted a written statement for the record: Kimberly A. Moore, Professor of Law, George Mason University School of Law; John B. Pegram, Senior Counsel, New York Office, Fish & Richardson, P.C.; Chris J. Katopis, Drinker Biddle & Reath LLP; the Honorable T. S. Ellis, III, United States District Judge, Eastern District of Virginia.

Content Protection in the Digital Age: The Broadcast Flag, High-Definition Radio, and the Analog Hole (Serial No. 109–80)

The purpose of the hearing was to explore content protection in the digital age in three different settings—the broadcast flag, HD radio, and the analog hole. Consumer adoption of digital sources of movies (DVDs) and music (iTunes, Napster, XM, Sirius) continues to grow sharply. However, copyright owners have argued that transmitting unprotected digital content to consumers will enable mass piracy of high quality copies of the works. Several methods are currently being used to encrypt or otherwise restrict access to and redistribution of digital content. DVDs are encrypted with the Content Scrambling System (CSS). Music downloads from iTunes are wrapped in a digital rights management technology called FairPlay that permits a limited number of copies to be made of a work protected by the method. XM and Sirius satellite radio receivers do not include a digital "signal-out" jack to enable digital copies.

The following witness appeared and submitted a written statement for the record: the Honorable Dan Glickman, Chairman and Chief Executive Officer, Motion Picture Association of America (MPAA); Mitch Bainwol, Chairman and Chief Executive Officer, Recording Industry Association of America (RIAA); Gigi B. Sohn, President, Public Knowledge; and Michael Petricone, Vice President, Government Affairs, Consumer Electronics Association (CEA).

Federal Courts Jurisdiction Clarification Act (Serial No. 109–67)

The purpose of this hearing was to explore the merits of a Committee Print that incorporates changes to title 28, United States Code, governing Federal district court jurisdiction. These changes have been submitted by the Judicial Conference of the United States. The changes to title 28 are intended to resolve particular problems that have arisen in the application of Federal jurisdictional statutes. The Committee on Federal-State Jurisdiction for the Judicial Conference developed the findings for the Committee Print, which was later approved by the Judicial Conference.

The following witness appeared and submitted a written statement for the record: the Honorable Janet C. Hall, Judge, United States District Court for the District of Connecticut, on behalf of the Judicial Conference Committee on Federal-State Jurisdiction; Arthur Hellman, Professor, University of Pittsburgh School of Law; and Richard A. Samp, Chief Counsel, Washington Legal Foundation.

International IPR Report Card—Assessing U.S. Government and Industry Efforts to Enhance Chinese and Russian Enforcement of Intellectual Property Rights (Serial No. 109–88)

The purpose of the oversight hearing was to receive testimony and to assess the current state of legal and enforcement policies that relate to the protection of Intellectual Property Rights (IPR) within China and the Russian Federation. A principal focus of this hearing was an assessment of the effectiveness of U.S. Government and industry efforts to jointly develop a comprehensive strategy for enhancing respect for intellectual property rights by the governments of China and the Russian Federation.

The following witness appeared and submitted a written statement for the record: the Honorable Chris Israel, Coordinator for International Intellectual Property Enforcement, U.S. Department of Commerce; the Honorable Victoria Espinel, [Acting] Assistant U.S. Trade Representative for Intellectual Property, Office of U.S. Trade Representative; Eric H. Smith, President, International Intellectual Property Alliance (IIPA); and Joan Borsten, President, Films by Jove, Inc.

Report on Orphan Works by the Copyright Office (Serial No. 109–94)

The purpose of the hearing was to review the Copyright Office "Report on Orphan Works." It has been released after one year of work in which more than 800 public comments were received and two rounds of public hearings were held. The report is of keen interest to both the copyright owner and copyright user community that are both impacted by orphan works issues. The term "orphan works" refers to copyrighted works whose owners cannot be located. The term does not apply to works in the public domain or to copyrighted works whose owners are asking for royalties or licensing terms that a potential user does not wish to accept. Efforts to access an orphan works is typically stymied because the owner cannot be found to authorize its use by a third party, possibly in exchange for a royalty fee. Although other provisions of existing copyright law may apply to potential orphan-works situations and allow

their use, such as fair use and reproductions by libraries and archives, these provisions cover only a limited number of orphan-works situations.

The following witness appeared and submitted a written statement for the record: Jule L. Sigall, Associate Register for Policy and International Affairs, Copyright Office of the United States, The Library of Congress; Allan Adler, Vice President for Legal and Government Affairs, Association of American Publishers, Inc. (AAP); David P. Trust, Chief Executive Officer, Professional Photographers of America, Inc.; and Maria A. Pallante, Associate General Counsel and Director of Licensing, The Solomon R. Guggenheim Foundation (Guggenheim Museum).

Remedies for Small Copyright Claims (Serial No. 109–92)

The purpose of the oversight hearing was to investigate the issues faced by copyright owners when their works are infringed and the damages caused by the infringement use would be small, perhaps only a few hundred or thousand dollars. This issue affects all copyright owners, but is particularly acute for owners of certain categories of works, including photographers, illustrators, graphic artists, and needlepoint designers. Software, music, and movie companies have the financial resources to pursue such claims, but often have much bigger cases to pursue.

The following witness appeared and submitted a written statement for the record: Paul Aiken, Executive Director, Authors Guild; Jenny Toomey, Executive Director, Future of Music Coalition; Brad Holland, founding Board Member, Illustrators' Partnership of America; and Victor S. Perlman, General Counsel and Managing Director, American Society of Media Photographers, Inc.

Patent Quality Enhancement in the Information-Based Economy (Serial No. 109–99)

The purpose of the hearing was to explore the extent to which the quality of U.S.-issued patents have deteriorated in recent years and the resulting effect on the American economy. Quality enhancement is one of the driving themes of patent reform in the 109th Congress.

The following witness appeared and submitted a written statement for the record: the Honorable Jon W. Dudas, Under Secretary of Commerce for Intellectual Property & Director of the U.S. Patent and Trademark Office; James Balsillie, Chairman and Co-Chief Executive Officer, Research In Motion (RIM); Robert A. Stewart, Director and Chief Patent Counsel of Americas, UBS AG; and Mark A. Lemley, William H. Neukom Professor of Law, Stanford Law School.

Patent Harmonization (Serial No. 109–100)

The purpose of the hearing was to explore the merits of promoting global harmonization within the U.S. patent system. Proponents of harmonization argued that inventors and the public are better served when patent systems worldwide share the same basic components or framework. This makes it easier and cheaper to obtain international patent protection.

The following witness appeared and submitted a written statement for the record: Q. Todd Dickinson, Vice President and Chief Intellectual Property Counsel, General Electric Company; Robert A. Armitage, Senior Vice President and General Counsel, Eli Lilly and Company; Gary Mueller, President and Chief Executive Officer, Digital Now, Inc.; and Pat Choate, Political Economist and author of Hot Property: The Stealing of Ideas in an Age of Globalization.

Discussion Draft of the Section 115 Reform Act (SIRA) of 2006 (Serial No. 109–108)

The purpose of the hearing was to hear testimony on H.R. _____, a discussion draft to reform Section 115 of Title 17, the U.S. Copyright Act for digital music services. Over the past two years, the Committee has held a number of hearings on music licensing reform, focusing on Section 115 of the Copyright Act. Although digital music services continue to grow in popularity, there are a number of obstacles to the success of the transition to digital music. Some of the largest obstacles are the current inefficiencies in the licensing system for mechanical rights, often referred as the "download" right.

The following witnesses appeared and submitted a written statement for the record: David Israelite, President and Chief Executive Officer, National Music Publishers' Association (NMPA); Jonathan Potter, Executive Director, Digital Media Association (DiMA); Rick Carnes, President, Songwriters Guild of America (SGA); and Cary Sherman, President, Recording Industry Association of America, Inc. (RIAA).

Patent Trolls: Fact or Fiction? (Serial No. 109–104)

The purpose of the hearing was to define "trolling" behavior, determine its degree of prevalence in the patent system, and explore legislative reforms to combat it. Critics of the patent system, including certain high-tech and software companies, believe that trolls contribute to the proliferation of poor quality patents. Ultimately, these critics assert, trolls force manufacturers to divert their resources from productive endeavors to combating bogus infringement suits. The contents of the bill, the substitute, and the redline are based on submissions proffered by the PTO, other government entities, and industry, which were reviewed by Subcommittee Chairman Lamar Smith and staff. Much of its text was culled from a Committee Print that was the subject of two prior Subcommittee hearings during the 109th Congress.

The following witnesses appeared and submitted a written statement for the record: Edward R. Reines, Esq., Weil, Gotshal & Manges, LLP; Dean Kamen, President, DEKA Research & Development Corporation; Paul Misener, Vice President for Global Public Policy, Amazon.com; and Chuck Fish, Vice President & Chief Patent Counsel, Time Warner, Inc.

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

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Tabulation of subcommittee legislation and activity

Public:	
Legislation referred to Subcommittee	178
Legislation on which hearings were held	3
Legislation reported favorably to the full Committee	0
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	5
Legislation pending before the full Committee	0
Legislation reported to the House	4
Legislation discharged from the Committee	0
Legislation pending in the House	2
Legislation passed by the House	2
Legislation pending in the Senate	1
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	1
Days of Legislative Hearings	3
Days of Oversight Hearings	25
Private:	
Claims:	
Legislation referred to the Subcommittee	4
Legislation on which hearings were held	0
Legislation reported favorably to the full Committee	1
Legislation pending before the full Committee	1
Legislation discharged from the full Committee	0
Legislation pending in the House	0
Legislation passed by the House	0
Legislation pending in the Senate	0
Legislation enacted into Private Law	0
Immigration:	
Legislation referred to the Subcommittee	77
Legislation on which hearings were held	0
Legislation reported favorably to the full Committee	2
Legislation pending before the full Committee	0
Legislation discharged from the full Committee	0
Legislation pending in the House	0
Legislation passed by the House	0
Legislation pending in the Senate	0
Legislation enacted into Private Law	0

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Immigration, Border Security, and Claims has jurisdiction over immigration and naturalization, border security, admission of refugees, treaties, conventions and international agreements, claims against the United States, federal charters of incorporation, private immigration and claims bills, non-border enforcement, other appropriate matters as referred by the Chairman, and relevant oversight.

LEGISLATION ENACTED INTO LAW

H.R. 2293, To Provide Special Immigrant Status for Persons Serving as Translators with the United States Armed Forces

Summary.—A number of alien translators are currently working in Iraq and Afghanistan embedded with units of the U.S. Armed Forces and providing extremely valuable services. Their cooperation and close identification with the U.S. military have put their and their families' lives in danger. This danger will only escalate after U.S. forces leave or reduce their strength in Iraq and Afghanistan. The U.S. Marine Corps has therefore requested immigration relief for this small group of brave individuals.

Under the legislation, permanent resident visas are available to nationals of Iraq or Afghanistan (and their spouses and minor children) who have worked directly with the U.S. Armed Forces as translators for at least 12 months, who have obtained favorable written recommendations from the officer in charge of the unit they worked with, and who have cleared a background check. No more than 50 principals may receive permanent resident status in any fiscal year, and the recipients will count towards the 10,000 per year quota of special immigrant visas.

Legislative History.—On May 11, 2005, Subcommittee on Immigration, Border Security and Claims Chairman John Hostettler introduced H.R. 2293, to provide special immigrant status for aliens serving as translators with the United States Armed Forces. On May 18, 2005, the Judiciary Committee ordered H.R. 2293 reported as amended by a voice vote. On May 26, 2005, the Judiciary Committee reported H.R. 2293 (H. Rept. 109–99). On January 1, 2006, the President signed into law H.R. 1815, the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. No.109–163), sec. 1059 of subtitle F of title X of which contained the language of H.R. 2293.

H.R. 4830, the Border Tunnel Prevention Act

Summary.—H.R. 4830 amends the federal criminal code to prohibit the construction or financing of an unauthorized tunnel or subterranean passage that crosses the international border between the United States and another country. It imposes a 20-year prison term for such offense.

H.R. 4830 imposes a 10-year prison term on any person who recklessly permits the construction or use of such a tunnel or passage on land that such person owns or controls, and doubles penalties for persons who use such a tunnel or passage to unlawfully smuggle an alien, illegal goods, controlled substances, weapons of mass destruction, or members of a terrorist organization.

H.R. 4830 directs the U.S. Sentencing Commission to promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of criminal offenses related to the construction or financing of such a tunnel or passage.

Legislative History.—On March 1, 2006, Representative David Dreier introduced H.R. 4830, the Border Tunnel Prevention Act of 2006. On April 26, 2006, Senator Dianne Feinstein introduced S. 2652, the Border Tunnel Prevention Act. On May 22, 2006, Representative Harold Rogers introduced H.R 5441, the Department of Homeland Security Appropriations Act, 2007. On July 13, 2006, the Senate passed H.R. 5441, sec. 556 of title V of which contained the language of the Border Tunnel Prevention Act. On September 21, 2006, the House passed H.R. 4830 by a vote of 422–0. On September 28, 2006, the conference report to H.R. 5441 was filed (H. Rept. 109–699), sec. 551 of title V of which contained the language of the Border Tunnel Prevention Act. The House passed the conference report on September 29 by a vote of 412–6, and the Senate passed the conference report on the same day by voice vote. On October 4, 2006, the President signed into law the conference report to H.R. 5441 (Pub. L. No. 109–295), conference report 109–699.

Extension of the "Mikulski" H–2B Visa Program Amendment

Summary.—The Mikulski amendment to the REAL ID Act provided that aliens who had received H–2B visas in any of the last three years would not be counted toward the 2005 or 2006 quotas of 66,000 visas when receiving H–2B visas in those years. This provision extended the life of the Mikulski amendment by providing that aliens who had received H–2B visas in 2004, 2005, or 2006 shall not be counted toward the 2007 quota when receiving H–2B visas in 2007.

Legislative History.—On April 6, 2006, Representative Duncan Hunter introduced H.R. 5122, the National Defense Authorization Act for Fiscal Year 2007. On June 22, 2006, the Senate passed H.R. 5122 by unanimous consent, sec. 1091 of subtitle I of title X of which provided for a two year extension of the Mikulski amendment. On September 29, 2006, the conference report to H.R. 5122 was filed (H. Rept. 109–702). On that date, the House passed the conference report by a vote of 398–23, and on the next day the Senate passed the conference report by unanimous consent. Section 1074 of title X of the conference report contained a modified one year extension of the Mikulski amendment. On October 17, 2006, the President signed into law H.R. 5122, the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law No. 109–364).

S. 3821, the COMPETE Act of 2006

Summary.—S. 3821 allows minor league professional athletes and certain performers (including ice skaters performing in theatrical ice productions) to utilize the P–1 nonimmigrant visa category. The P–1 visa category allows athletes at an "internationally recognized level of performance" and professional entertainers and artists to temporarily enter the U.S. To date, U.S. Citizenship and Immigration Services has interpreted the Immigration and Nationality Act in such a way as to only allow major league professional

athletes to utilize the P–1 visa category. As a consequence, minor league baseball and hockey players have been forced to utilize the H–2B visa category, which is capped at 66,000 visas annually and has been oversubscribed in recent years. Ice-skaters who perform in special events in the U.S. find themselves in the same situation.

Legislative History.—On August 3, 2006, Senator Susan Collins introduced S. 3821. On December 6, 2006, the Senate passed S. 3821 with an amendment by unanimous consent. On December 9, 2006, the House passed S. 3821 under suspension of the rules by a voice vote.

H.R. 4997, the Physicians for Underserved Areas Act

Summary.—Aliens who participate in medical residencies in the United States on "J" exchange program visas must generally leave the U.S. at the conclusion of their residencies to reside abroad for two years before they can be eligible for permanent residence or status as "H–1B" or "L" visa nonimmigrants. The intent behind this policy is to encourage American-trained foreign doctors to return home to improve health conditions and advance the medical profession in their native countries. In 1994, Congress created a waiver (until June 1, 1996) of the two-year foreign residence requirement when requested by state departments of public health for foreign doctors who commit to practicing medicine for no less than three years in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals. The number of foreign doctors who could receive the waiver was limited to 20 per state. In 1996, Congress extended the waiver to June 1, 2002. In 2002, Congress extended the waiver until June 1, 2004. At the same time, the numerical limitation on waivers was increased to 30 per state. In 2004, Congress extended the waiver until June 1, 2006. H.R. 4997 extends the waiver until June 1, 2008.

Legislative History.—On March 16, 2006, Representative Jerry Moran introduced H.R. 4997. On May 18, 2006, the Subcommittee on Immigration, Border Security and Claims held a hearing on H.R 4997. On September 27, 2006, the Judiciary Committee ordered H.R. 4997 reported, as amended by a voice vote. On December 6, 2006, the House of Representatives passed H.R. 4997 under suspension of the rules by a voice vote. On December 9, 2006, the Senate passed H.R. 4997 by unanimous consent.

LEGISLATION PASSED BY THE HOUSE OF REPRESENTATIVES

H.R. 1817, the Department of Homeland Security Authorization Act for Fiscal Year 2006

Summary of Major Provisions within the Jurisdiction of the Judiciary Committee.—Section 102 of H.R. 1817 would have authorized the hiring of 2,000 full-time Border Patrol agents above the number of such positions for which funds were allotted for fiscal year 2005 (excluding any supplemental appropriations). Section 108 would have authorized the hiring of 300 U.S. Immigration and Customs Enforcement attorneys and 300 U.S. Citizenship and Immigration Services adjudicators above the number of such positions for which funds were allotted for fiscal year 2005. Section 109

would have authorized the appropriation of $40,000,000 to reimburse states and localities for training costs they incur pursuant to entering into agreements with DHS under section 287(g) of the INA to assist in the enforcement of immigration laws. Section 402 would have required the Commissioner of U.S. Customs and Border Protection to prepare a report on the effectiveness of the One Face at the Border Initiative (in which each inspector at a port of entry can oversee the enforcement of immigration, customs, and agriculture laws in regard to persons seeking admission). Section 501 would have required the Secretary of DHS to report on the current organizational structure of DHS, including a description of the rationale for, and any benefits and costs of, the division of immigration and customs enforcement into an interior agency (ICE) and a border agency (CBP) and the combination within both agencies of immigration and customs enforcement functions. Section 514 would have required the Government Accountability Office to conduct a study on the consequences of increasing the fees for applications for Temporary Protected Status. Section 515 would have required GAO to conduct a study on expanding the use of premium processing fees to family-based immigration petitions and applications. Section 520 would have reaffirmed the inherent authority of state and local law enforcement to assist in the enforcement of immigration laws. Section 521 would have required DHS to establish a training manual for state and local law enforcement interested in assisting in the enforcement of immigration laws.

Legislative History.—On April 26, 2005, Representative Chris Cox introduced H.R. 1817. On April 27, 2005, the Homeland Security Committee ordered the bill reported as amended by a voice vote. On May 3, 2005, the Homeland Security Committee reported the bill (H. Rept. 109–71, Part I). On May 12, 2005, the Judiciary Committee ordered the bill reported as amended by a voice vote. On May 13, 2005, the Judiciary Committee reported the bill (H. Rept. 109–71, Part III). On May 18, 2005, the House passed H.R. 1817 by a recorded vote of 424–4. No further action was taken on H.R. 1817.

H.R. 3827, the Immigration Relief for Hurricane Katrina Victims Act of 2005

Summary.—H.R. 3827 would have provided special immigrant status for aliens who were the beneficiaries of immigrant petitions or labor condition applications pending on the date of Hurricane Katrina's arrival that were nullified as a direct result of the hurricane, and their spouses and children. This would have included, for example, individuals whose employment-based visas were nullified because the businesses where they intended to work were destroyed by the hurricane.

The bill would have extended nonimmigrant status for aliens disabled, or whose spouse or parent died, as a result of Hurricane Katrina. It also would have provided extensions of status for aliens unable to timely apply as a direct result of the hurricane. The bill would have provided relief to those aliens who won an immigrant visa through the diversity visa lottery program but were unable to use the visa as a direct result of the hurricane during the fiscal year for which it was allotted. It also would have allowed foreign

students who were adversely affected by the hurricane to remain in status while re-enrolling in an education program.

H.R. 3827 would have provided immigration relief for surviving spouses and children of citizens who died as a result of the hurricane. It would have allowed them to retain their status as relatives of hurricane victims while they petitioned for immigration benefits. It would have provided relief to family members of legal permanent residents by allowing petitions to remain valid even after the death of the legal permanent resident. And it would have provided similar relief to family members of asylees and refugees.

Legislative History.—On September 20, 2005, Chairman F. James Sensenbrenner, Jr., introduced H.R. 3827. On September 21, 2005, the House passed H.R. 3827 under suspension of the rules by a voice vote. No further action was taken on H.R. 3827.

H.R. 3647, to Render Nationals of Denmark Eligible to Enter the United States as Nonimmigrant Traders and Investors

Summary.—"E–2" visas are nonimmigrant visas available for treaty investors. Under the Immigration and Nationality Act, a visa is available to an alien who is:

> entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him . . . solely to develop and direct the operations of an enterprise in which he has invested . . . a substantial amount of capital . . . .

The U.S. has entered into treaties of commerce containing language similar to the E–2 visas since at least 1815, when we entered into a Convention to Regulate Commerce with the United Kingdom. Currently, the nationals of 74 countries are eligible for E–2 status. Nationals of Denmark are already eligible for "E–1" (treaty trader) visas pursuant to the Treaty of Friendship, Commerce, and Navigation Between the United States and Denmark of October 1, 1951. The U.S. and Denmark signed a protocol to that treaty on May 2, 2001, that would grant Danes eligibility for E–2 visas. However, the Judiciary Committee has since made clear that all immigration provisions should go through the normal legislative process and not be contained in trade agreements or treaties. This bill therefore would grant access to E–2 nonimmigrant visa status to nationals of Denmark.

Legislative History.—On September 6, 2005, Chairman F. James Sensenbrenner, Jr., introduced H.R. 3647. On September 29, 2005, the Judiciary Committee ordered H.R. 3647 reported as amended by a voice vote. On October 18, 2005, the Judiciary Committee reported H.R. 3647 (H. Rept. 109–251). On November 16, 2005, the House passed H.R. 3647 under suspension of the rules by a voice vote. No further action was taken on H.R. 3647.

H.R. 4437, The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

Summary of major provisions of the House-passed bill within the jurisdiction of the Judiciary Committee. —

1. Section 3. Sense of Congress on setting a manageable level of immigration. This section would have provided that it was the sense of Congress that the nation's immigration policy should be designed to enhance the economic, social and cultural well-being of the United States.

2. Section 104. Biometric data enhancements. This section would have required that by October 1, 2006, the Secretary of Homeland Security have enhanced the connectivity between the Automated Biometric Identification System and Integrated Automated Fingerprint Identification System biometric databases and have collected 10–fingerprints from individuals through the United States Visitor and Immigrant Status Indicator Technology program during their initial enrollment.

3. Section 118. Sense of Congress regarding enforcement of immigration laws. This section would have provided that it was the sense of Congress that the Administration should immediately use every tool available to enforce the immigration laws.

4. Section 122. Completion of background and security checks. The Department of Homeland Security Inspector General recently released a report revealing that not all applications for immigration benefits underwent an Interagency Border Inspection System background check of the applicants before they were granted. This section would have required that no immigration benefit could be granted by a court of law or by DHS or the Executive Office for Immigration Review unless and until an IBIS check had been conducted, and until all derogatory information had been assessed and completed and until any suspected or alleged benefit fraud had been investigated and found to be unsubstantiated.

5. Section 201. Definition of aggravated felony. This section would have amended the definition of aggravated felony in the INA to include all smuggling offenses and illegal entry and reentry crimes with a sentence of a year or more. It would also have brought the aggravated felony definition in line with federal criminal law by expanding it to include solicitation and assistance in specified offenses. The INA broadly defines the term "aggravated felony". If an alien has been convicted of such an offense, the alien will be ineligible for most forms of relief and for release from detention. Illegal reentry after such an offense will also subject the alien to serious criminal penalties. The aggravated felony definition does not effectively deter, however, many dangerous aliens from repeatedly reentering the United States illegally. Specifically, the definition only includes illegal entry and illegal reentry violations of the INA where the alien was previously deported for having committed another aggravated felony. The current definition is unduly restrictive in several respects. First, this definition does not reach aliens who previously committed various other felonies, even though those felonies may have been serious crimes. Second, it does not reach aggravated felon aliens who were previously deported, but who were not deported on the basis of their aggravated felony convic-

tions. Section 201 would have solved this problem by including within the definition of aggravated felony a felony illegal entry or reentry offense under section 275(a) or section 276 of the INA, without regard to whether the alien had been previously deported subsequent to conviction of an aggravated felony. In addition to these changes, section 201 would also have made all smuggling convictions aggravated felonies with the exception of smuggling related to an alien's immediate family.

Finally, the section would have made clear that the definition of aggravated felony includes "soliciting, aiding, abetting, counseling, commanding, inducing, procuring" or a conspiracy to commit any of the offenses listed in section 101(a)(43) of the INA, by incorporating the aiding and abetting language from federal law. This change is needed to reverse contrary Ninth Circuit precedent in criminal cases that has required federal prosecutors in seeking sentencing enhancements to prove that prior convictions were not based on aiding and abetting. This is often impossible to prove, because in federal court, and in almost every state jurisdiction, a defendant can be convicted of aiding and abetting a substantive offense, even if aiding and abetting is not specifically charged in the indictment.

6. Section 202. Alien smuggling and related offenses. This section would have amended the alien smuggling provisions of the INA to include offenses where the offender acted in reckless disregard of the fact that the smuggled person was an alien not allowed to enter, placed mandatory minimum sentences on smuggling convictions, and facilitated DHS's efforts to seize smugglers' property.

As the southwest border has become increasingly secure, more and more illegal aliens are utilizing the services of alien smugglers and the cost of their services has increased dramatically. Alien smuggling not only facilitates illegal immigration, but subjects smuggled aliens to inhumane treatment. Migrants are frequently abused or exploited, both during their journey and upon reaching the United States. There are many recent examples—aliens abandoned by their smugglers in the desert, without food or water, to avoid apprehension, and aliens who have died or suffered serious injuries when locked by smugglers into trucks and cargo containers. Consequently, aliens smuggled into the United States are at significant risk of physical injury, abuse, and death. In addition, smuggled aliens must often pay back their debts through long periods of indentured servitude in sweatshop conditions, and smugglers often coerce indebted aliens into drug trafficking, prostitution, and other illegal activities. Aliens who fail to cooperate with smugglers suffer severe penalties. Smuggling also poses a national security risk, as terrorists and criminals can utilize the same smugglers that economic migrants use.

However, under current law, individuals convicted of alien smuggling crimes often receive lenient sentences, which have contributed to the upsurge in alien smuggling. Organized crime syndicates realize that the risk of punishment for smuggling aliens is far less than the risk for smuggling drugs or committing other serious crimes. And lenient sentences act to dissuade U.S. Attorneys from bringing cases.

Under existing law, the offenses and penalties for unlawfully bringing aliens into the United States are set forth in two separate

provisions, sections 274(a)(1) and 274(a)(2) of the INA. For historical reasons, those provisions were implemented and developed separately. As a result, the two provisions contain inconsistent mens rea elements, and provide disparate sentences for identical or substantially similar conduct. Accordingly, the successful prosecution of virtually identical conduct can lead to different results under current law, depending upon whether a violation of section 274(a)(1)(A)(i) or (a)(2) is charged. Section 202 would have created a uniform mens rea standard for alien smuggling and related offenses, and set uniform sentences for violations of those offenses. Unlike current law, the penalties for those would have been based on the factual circumstances of the offense and the danger that the smuggling posed to the alien and to the community rather than on the code section charged. Thus, offenses that were committed for commercial profit would have been punished more severely than offenses that were not. Offenses that were committed to further other criminal acts would have been subject to even more serious mandatory sentences, as would have been offenses that result in injury or death. Consistent with existing law, offenses in which death results would have been be eligible for the death penalty.

The section would also have increased the criminal penalties for certain alien smuggling offenses and established mandatory minimum sentences for serious and repeat offenders, and where the smuggling posed a risk to individuals or the nation.

The section would have expanded the scope of the alien smuggling statute to reach conduct that is not covered by existing law. It would have reached conduct relating to facilitating the smuggling of aliens to the United States by persons who willfully participated in alien smuggling ventures, but where the government cannot demonstrate beyond a reasonable doubt that the smugglers knew the aliens were en route to the United States. Rather than forming centralized, tightly controlled hierarchies, alien smugglers often favor loose, short- or long-term associations. These global networks often match smugglers who specialize in particular nationalities or portions of routes. Under existing law, however, smugglers who play an integral role in facilitating the illegal movement of aliens to the United States cannot be prosecuted unless the government can prove that the smuggler knew or recklessly disregarded the fact that the aliens intended to travel to the United States. The section would have plugged this loophole.

The section would also have helped to take the profit out of smuggling. Under existing law, civil forfeiture is limited to any conveyance used in smuggling. Section 202 would have permitted civil forfeiture of any property, real or personal, used to commit or facilitate the commission of a violation of amended subsection (a)(1), the gross proceeds of such violation, and property traceable to such property or proceeds.

7. Section 203. Improper entry by, or presence of, aliens. This section would have made illegal presence in the United States a federal crime, and would have expanded the penalties for aliens who illegally entered the U.S. or who entered or were present illegally following convictions of certain crimes. It also would have expanded the penalties for marriage and immigration-related entrepreneurship fraud.

Section 275 of the INA currently criminalizes illegal entry into the United States. Section 203 of the bill would have amended section 275 to state that it was a crime for an alien to be "present in the United States in violation of the immigration laws or regulations prescribed thereunder." It thus would have removed incentives for aliens, having entered legally, to remain in the United States in violation of the terms of their visa or entry. Currently, "visa overstay" is not a criminal offense, and, as a practical matter, there are often no negative consequences to it. The Immigration and Naturalization service believed that about 41 percent of the total illegal immigrant population (as of 1996) consisted of alien who had overstayed temporary visas. Because overstaying a visa is not currently a criminal offense, in many cases an alien is no worse off for having remained in the United States past the expiration of an authorized stay than he would have been had he departed on time. On the contrary, in some cases aliens have sought relief based on factors that develop during the time they were out of status. In making overstaying a visa a federal crime, section 203 would have encouraged aliens to depart at the end of their authorized stay. It would have increased respect for the immigration system by deterring aliens who remain in the United States out of status in the mistaken belief that their visa overstay is merely a technical violation, or that if they elude authorities for long enough they will be granted relief from deportation based on acquired equities.

Section 203 also would have contained sentence enhancements for illegal alien criminal offenders who remain in the United States after conviction. Finally, the section would have increased the penalties for marriage and immigration-related entrepreneurship fraud. Enhanced penalties are necessary to deter an increasing level of immigration fraud, particularly by criminal organizations that utilize, promote, or derive financial benefit from immigration fraud.

8. Section 204. Reentry of removed aliens. This section would have set mandatory minimum sentences for aliens convicted of reentry after removal. Section 276 of the INA criminalizes attempted or successful entry into the United States by illegal aliens who have been previously excluded, deported, removed, or denied admission. Unfortunately, this provision has proven ineffective at deterring the reentry of aliens after removal into the United States. The problem is so out of control that United States Attorneys Offices have set threshholds for the number of reentries aliens must commit before they will be prosecuted. This problem is especially serious when it comes to criminal aliens. For example, Rafael Resendez-Ramirez, the so-called "Railway Killer" who killed at least eight people over a three-year period in the late 1990s, had an extensive criminal record in the United States beginning in 1976, including provisions for burglary and aggravated assault. He also had an extensive immigration record, having been arrested for illegal entry on seven occasions in 1998 alone. As the Department of Justice's Inspector General found, however: "Because Resendez had not reached the threshold number of prior apprehensions for prosecution established in each of the stations where he was apprehended, he was not detained for prosecution," but instead was re-

turned to Mexico. The IG found that "after each return to Mexico, he re-entered the United States illegally and continued his criminal activities," including the December 1998 murder of Dr. Claudia Benton in Houston. Section 204 would have both deterred alien criminals from reentering illegally and encouraged prosecutors to take their cases when they do.

The section would have also resolved an issue that has arisen in numerous prosecutions under section 276. At present, to prove a violation of section 276, the Government is required to show that the Secretary of Homeland Security did not consent to the alien applying for readmission to the United States or that the alien is not required to obtain such consent. Thus, in order to convict an alien of re-entering the United States after removal, the government must prove a negative, *i.e.*, that the Attorney has not "expressly consented to such alien's reapplying for admission." Each case therefore requires the government to perform an intensive search of its records, and then issue a certificate of nonexistence to certify that they search was done and no application from the specific alien-defendant was found. Although almost no aliens ever apply for the Secretary's consent, DHS must nevertheless make an exhaustive search in each case. Section 204 would have converted permission to reenter into an affirmative defense to an illegal reentry charge. Because few aliens apply for the Secretary of Homeland Security's consent, and the defendant-alien is in the best position to know whether he applied for such permission, this change would have properly apportioned the burden with respect to consent to reenter and eliminated the need for the Government to prove that the Secretary did not consent in its case-in-chief.

9. Section 205. Mandatory sentencing ranges for persons aiding or assisting certain reentering aliens. This section would have deterred the smuggling of removed aliens by imposing on smugglers the same sentences that the aliens they had smuggled would have received.

10. Section 206. Prohibiting carrying or using a firearm during and in relation to an alien smuggling crime. Section 924(c) of Title 18 criminalizes the carrying or using of firearms in the commission of violent crimes or drug trafficking crimes. Presently, however, this provision does not cover alien smugglers who use firearms to further their criminal schemes. An increasing number of alien smugglers are utilizing firearms to facilitate their smuggling, and a greater number are expected to arm themselves as their livelihood is disrupted by U.S. agents patrolling America's borders. The willingness of smugglers to use and carry firearms endangers the lives of Border Patrol agents and the aliens who are being smuggled, not to mention innocent bystanders. The use of weapons also makes it more likely that smugglers and aliens will escape apprehension, as it allows them to forcibly resist border patrol officers. Section 206 would have subjected alien smugglers to the same penalties faced by criminals who carried firearms when they trafficked in narcotics and committed federal crimes of violence.

11. Section 207. Clarifying changes. This section would have clarified that the provision barring entry to aliens who had made false claims to U.S. citizenship also applied to aliens who had made false claims to U.S. nationality. It also would have provided that

DHS shall have access to any information kept by any federal agency as to any person who was seeking a benefit or privilege under the immigration law.

12. Section 208. Voluntary departure reform. "Voluntary departure" is a benefit in removal proceedings that allows deportable aliens to agree to leave the United States within a specified time period on their own volition rather than formally being ordered removed. By departing voluntarily, aliens can avoid the adverse legal consequences of a final order of removal. Ideally, the government should also benefit from this practice, because it is spared the expenses of initiating removal proceedings, extensively litigating the aliens' cases, and, in the end, removing the aliens. The government may not realize such benefits in practice, however, because few aliens granted voluntary departure actually depart from the country expeditiously. In all too many cases, a grant of voluntary departure is often merely a prelude to years of further litigation in which the alien continues to benefit from delay in removal. Under current law, an alien who receives voluntary departure can appeal his immigration case to the Board of Immigration Appeals, and then to the Court of Appeals. Many circuit courts will toll the voluntary departure period pending review. At the end of this process, possibly years after the original voluntary departure grant, and after having every appeal denied, the alien can then leave the United States in accordance with the original voluntary departure grant.

Section 208 would have changed this process to encourage aliens to depart under the terms of the voluntary departure order. The section would have amended the INA to offer clear advantages for aliens who agreed to voluntary departure and then actually departed, and to foreclose future litigation in the alien's case. Under the section, an alien would only have been granted voluntary departure pursuant to an agreement in which the alien agreed to waive appeal. This would not have precluded the alien from taking an appeal, however. If the alien opted to take an appeal in lieu of voluntary departure, the alien may have done so. The voluntary departure agreement would have been void, however. Section 208 also contained penalties in the even that the alien failed to depart in accordance with the voluntary departure agreement. Failure to depart would have subjected the alien to a $3000 fine, and the alien would have been barred from certain forms of relief for as long as the alien remained in the country and for 10 years thereafter. An alien who violated a voluntary departure agreement by failing to depart would not have been able to reopen his removal proceedings, except to apply for withholding of removal or protection under the Convention Against Torture. Taken together, these provisions would have freed up the government's limited judicial, litigation, and removal resources. They also would have provided the alien with incentives to depart the United States as the alien agreed. In addition, the section would have reduced the maximum period of voluntary departure before the end of proceedings from 120 to 60 days, and aliens receiving such benefit would have had to post a bond or show that a bond would create a hardship or was unnecessary.

13. Section 209. Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning

to the United States after departing voluntarily. The Department of Homeland Security estimates that some 480,000 absconders—aliens who are under final orders of removal but have evaded apprehension and removal by DHS—are currently in the United States, and approximately 40,000 new absconders are added each year. In 2003, the Department of Justice Inspector General issued a report that found the former INS had successfully carried out removal orders with respect to only 13% of non-detained aliens who were subject to final removal orders—and was able to remove only 3% of non-detained aliens who had unsuccessfully sought asylum. Much of the problem with removing alien absconders is the fact that there are currently few effective administrative sanctions available under the law for absconders after they are apprehended—other than merely executing the same removal order that they had successfully flouted for months or years. Even if such aliens are unsuccessful in obtaining the reopening of their previous final order, they may simply launch a new round of litigation before the Board and the courts.

Section 209 would have provided more effective administrative tools to deter absconders from remaining in this country illegally and to prevent them from obtaining any further advantages after flouting their removal orders. It would have improved the bars on reentry by aliens ordered removed by closing a loophole allowing aliens to avoid these penalties by remaining unlawfully in the United States. Under section 209, the bars on admissibility would have applied once the alien is ordered removed—even if that alien had not yet departed. Similarly, the section would have barred aliens from future discretionary relief if they have absconded after receiving a final order of removal until they have left the United States and for 10 years thereafter. It also would have barred the granting of motions to reopen to aliens who had flouted their legal duty to depart from the United States under the final order of removal. By foreclosing future relief for aliens who fail to depart, the changes in section 209 would have increased the incentive for aliens to seek and to comply with removal orders.

14. Section 210. Establishment of the Forensic Documents Laboratory. This section would have required the Secretary of Homeland Security to establish a Forensic Documents Laboratory to collect information on the production, sale, and distribution of fraudulent documents to be used to enter or remain in the U.S. unlawfully, to maintain that information in a database, to convert the information into reports to provide guidance to government officials, and to develop a system for distributing these reports to appropriate law enforcement agencies.

15. Section 211. Section 1546 amendments. This section would have provided that a person who distributes forged or counterfeited visas or other entry documents or documents evidencing authorized stay or employment authorization was subject to the same criminal penalties as are those who forged or counterfeited the documents.

16. Section 212. Motions to reopen or reconsider. This section would have clarified that the Board of Immigration Appeals' decisions on motions to reopen are discretionary decisions that are not subject to judicial review. The granting of motions to reopen and motions to reconsider are discretionary decisions under current

DOJ regulations and have long been recognized as discretionary by the courts. When Congress enacted the current statutory provisions governing motions to reopen and to reconsider, however, Congress did not specifically provide that the grant or denial of such a motion is within the discretion of the Attorney General. The courts, therefore, have concluded that these discretionary decisions by the Attorney General and his delegates (the immigration judges and the Board of Immigration Appeals) are subject to judicial review. Judicial review of denials of such motions has contributed to the explosion in immigration litigation in the federal courts. This section would have corrected this problem. It also would have provided that an alien could file an additional motion to reopen a removal proceeding if DHS sought to remove the alien to an alternative or additional country and the alien made a prima facie case that the alien was entitled to withholding of removal or protection under the Convention Against Torture with respect to that country.

17. Section 213. Reform of passport, visa, and immigration fraud offenses. This section would have updated the criminal code provisions criminalizing passport and immigration fraud in order to increase penalties and to facilitate effective enforcement. Provisions in this section would also have penalized fraud against aliens applying for immigration benefits. Immigration and passport fraud is widespread, increasingly organized, and highly profitable. Current provisions are insufficient to deal with these crimes: sentences are too light, the elements of the offenses are poorly worded, and no special penalties are provided for those who traffic in passports or immigration documents. This revision would have addressed these problems. The revision would also have created a new crime of defrauding aliens—a major hole in existing law.

18. Section 214. Criminal detention of aliens. This section would have provided that criminal defendants' immigration status would be an express consideration in determining whether the defendants should be released on bond. Federal law currently makes no mention of immigration status as a consideration in pretrial detention determinations. As a result, the detention of aliens charged with crimes is uneven, and some courts release aliens who lack lawful status and face certain removal even if they are acquitted. The section would have created a rebuttable presumption of detention for alien defendants who (1) had no status, (2) had an outstanding order of removal, or (3) were charged with a serious immigration offense.

19. Section 215. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses. This section would have extended the statute of limitations for all immigration-related fraud to 10 years. Currently, the limitations period is five years for some immigration crimes (such as immigration and visa fraud) but 10 years for others (including passport and naturalization fraud). This disparity, which restricts the government's ability to prosecute numerous immigration frauds and alien smuggling cases, is of particular concern in the national security arena, where the authorities often uncover serious fraud committed outside the currently applicable limitations period.

20. Section 217. Inadmissibility for passport and immigration fraud. Currently, convictions for all passport offenses do not make

an alien automatically subject to exclusion, and a conviction for immigration fraud makes an alien automatically removable but not necessarily excludable. This section would have made any conviction for passport fraud, visa fraud, or immigration fraud a ground of exclusion regardless of when the offense was committed.

21. Section 218. Removal for passport and immigration fraud. This section would have made changes similar to those in section 217—all passport, immigration, and visa fraud violations under chapter 75 of Title 18 grounds would have been made grounds of removability.

22. Section 219. Reduction in immigration backlog. This section would have required that within six months of enactment, USCIS undertake maximum efforts to reduce to the greatest extent practicable the backlog in its processing and adjudicative functions. The agency may have implemented a pilot program to reduce the backlog of unadjudicated applications for immigration benefits.

23. Section 220. Federal affirmation of assistance in the immigration law enforcement by states and political subdivisions of states. This section would have reaffirmed the inherent authority of states and local law enforcement to investigate, identify, apprehend, arrest, detain, and transfer to federal custody aliens in the U.S. in order to assist in the enforcement of the immigration laws. At the present time, there are only about 2,000 Special Agents to locate and arrest the entire illegal alien population. This provision would have made crystal clear that local and state officers who were willing to do so could act as a force multiplier for those 2,000 agents.

24. Section 221. Training of State and local law enforcement personnel relating to the enforcement of immigration laws. This section would have required DHS to establish a training manual for state and local law enforcement personnel wishing to assist in the enforcement of the immigration laws. DHS would have had to make training available to state and local law enforcement personnel through multiple means, including by e-learning.

25. Section 222. Financial assistance to state and local police agencies that assist in the enforcement of immigration laws. This section would have authorized $250 million annually in grants to states and localities for procurement of necessary items to facilitate their assistance in enforcing the immigration laws.

26. Section 223. Institutional Removal Program (IRP). This section would have expanded to all states the Institutional Removal Program, under which removable aliens are identified while serving their prison sentences so that their removal proceedings can take place during their incarceration and they can be deported expeditiously once they have finished serving their sentences. The section would have required that states receiving federal funds in compensation for the cost of incarcerating illegal aliens had to cooperate with the IRP program. The section also would have authorized states to detain aliens who had served their sentences until they could be taken into custody by ICE. Finally, the section would have authorized funds to carry out the IRP.

27. Section 224. State Criminal Alien Assistance Program (SCAAP). This section would have provided an indefinite authorization for the State Criminal Alien Assistance Program (which reim-

burses states for the cost of incarcerating illegal aliens) of $1 billion per year.

28. Section 225. State authorization for assistance in the enforcement of immigration laws encouraged. This section would have provided that states and localities that prohibited their law enforcement officers from assisting and cooperating with federal immigration law enforcement were ineligible for funds under the SCAAP program.

29. Section 308. Communication Between government agencies and the Department of Homeland Security. Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provided that no state or local governmental entity or official could prohibit or restrict their employees from communicating with the INS regarding the immigration status of any individual. Many localities have been openly violating this law, and thus inhibiting the ability of the federal government to gain control over illegal immigration and deal effectively with criminal aliens. This section would have provided an enforcement mechanism for section 642 by stipulating that any state or local government entity in violation of section 642 would be ineligible for law enforcement grant programs carried out by the Department of Justice.

30. Section 401. Mandatory detention for aliens apprehended at or between ports of entry. This section would have required the Department of Homeland Security by October 1, 2006, to detain all aliens apprehended at ports of entry or along the international land and maritime borders of the United States until they were removed from the United States or a final decision granting their admission had been determined. The only exceptions to mandatory detention would have been if the alien had departed immediately, such as Mexican nationals who were voluntarily returned across the border, and those paroled due to urgent humanitarian reasons or significant public benefit. This would have ended the long-time"revolving door" whereby illegal aliens from countries other than Mexico were caught trying to illegally enter the U.S. and promptly released with the hope that they would appear for their immigration court hearing months hence. As noted earlier, the Department of Justice's Office of the Inspector General found that the INS was only able to remove 13% of nondetained aliens with final orders of removal. In 2005, 120,000 of the 160,000 "other-than-Mexicans" apprehended along the border were released. The Department of Homeland Security is currently trying to end the revolving door policy through expedited removal and increased use of detention for non-Mexicans caught along the border.

31. Section 402. Expansion and effective management of detention facilities. This section would have required the Secretary of Homeland Security to fully utilize all bed space owned and operated by the Department to full capacity and to utilize all other possible options to cost effectively increase detention capacity including temporary facilities, contracting with state and local jails, and secure alternatives to detention.

32. Section 403. Enhancing transportation capacity for unlawful aliens. This section would have authorized the Secretary to enter into contracts with private entities to provide secure domestic

transportation of aliens apprehended at or between ports of entry from the custody of the Border Patrol to a detention facility.

33. Section 404. Denial of admission to nationals of country denying or delaying accepting alien. Current law requires the Secretary of State to discontinue granting visas to nationals of countries that deny or unreasonably delay accepting the return of their nationals subject to deportation by the U.S. Because this punishment is so draconian—barring all nationals of a country from receiving visas—it is almost never used, despite the fact that a number of countries continue to refuse to accept the return of their nationals. This section would have added a more measured punishment that was more likely to be used—authorizing the Secretary of Homeland Security to deny admission to any national of a country that declined to accept the prompt repatriation of its nationals.

34. Section 405. Report on financial burden of repatriation. This section would have required the Secretary to submit an annual report to the Secretary of State and the Committee on Homeland Security that detailed the costs to the Department of Homeland Security for repatriating aliens and provide recommendations to more cost effectively repatriate such aliens.

35. Section 407. Expedited removal. By the mid-1990s, tens of thousands of aliens were arriving at U.S. airports each year without valid documents and making meritless asylum claims, knowing that they would be released into the community pending asylum hearings because of a lack of detention space. Few were ever heard from again. In response, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created the mechanism of "expedited removal". Under expedited removal, a DHS officer at a port-of-entry can immediately return an alien lacking proper documents to his or her country of origin unless the alien asks for asylum and can establish a "credible fear" of persecution. By fiscal year 2003, the INS was making over 43,000 expedited removals per year and our airports were no longer being deluged. IIRIRA provided the Administration with the authority to utilize expedited removal in the case of any alien who had entered the U.S. illegally and had not been present here for two years. Until recently, the INS and DHS never made use of this power. Recently, the Administration has taken a tentative step towards using expedited removal along the southern border because of the large numbers of non-Mexican aliens who have been caught by the Border Patrol and then released into the United States because of a lack of detention space. Under the discretionary authority provided by IIRIRA, the Administration has been utilizing expedited removal against aliens who are apprehended within 100 miles of the border and 14 days of unauthorized entry. Section 407 would have mandated the use of expedited removal in these instances.

36. Section 408. GAO Study on deaths in custody. This section would have required the Government Accountability Office to submit within six months of enactment a report to Congress on the deaths in custody of detainees held on immigration violation by the Department of Homeland Security.

37. Section 410. Listing of immigration violators in the National Crime Information Center Database. This section would have required that information regarding aliens subject to final removal

orders, aliens who were unlawfully present because they had overstayed their period of authorized presence, and certain other aliens had been contained in the National Crime Information Center database.

38. Section 601. Removal of terrorist aliens. Withholding of removal is a form of protection that, while similar to asylum, differs in two important respects: (1) it is nondiscretionary and (2) to receive this benefit, the alien must meet a higher standard of proof than asylum. Although aliens who pose a danger to the national security generally are barred from withholding of removal, aliens deportable on terrorist grounds are not expressly barred from such relief. As is apparent from the 9/11 Commission's staff report on terrorist travel, terrorist aliens have abused our humanitarian benefits to remain in the United States. First World Trade Center bomber Ramzi Yousef, the Blind Sheikh, and Mir Kansi, who killed two in front of the CIA, all made claims to asylum to remain in the United States. Congress has barred terrorist aliens from receiving asylum, but the bars to terrorist aliens receiving withholding of removal are less clear. Under the INA, aliens are currently only barred from withholding if there are reasonable grounds to believe that they are a danger to the security of the United States. While the INA makes clear that aliens described in a provision of the INA that renders deportable aliens who have engaged in any terrorist activity "shall be considered to be . . . alien[s] with respect to whom there are reasonable grounds for regarding as a danger to the Security of the United States", this has led to claims by aliens with terrorist ties that they are not a danger to the security of the U.S., and thus still eligible for withholding.

Section 601 would have barred all aliens described in the terrorist grounds of inadmissibility from eligibility for withholding of removal, with two exceptions. Under the exceptions, DHS would have had the sole discretion to determine that representatives of terrorist groups, and the spouses and children of aliens who would themselves have been barred on terrorist grounds, were not a danger to the national security and were not barred from such relief.

39. Section 602. Detention of dangerous aliens. In the 2001 decision of *Zadvydas* v. *Davis,* the Supreme Court ruled that under current law, aliens who had been admitted to the U.S. and then ordered removed could not be detained for more than six months if for some reason they could not be removed. Then, in *Clark* v. *Martinez,* the Court dealt with two Cubans who came to the U.S. during the Mariel boatlift and later committed crimes including assault with a deadly weapon, attempted sexual assault, and armed robbery. The Court expanded its decision in *Zadvydas* to apply to such nonadmitted aliens. Based on the two decisons, the Justice Department and the Department of Homeland Security have had no choice but to release back onto the streets many hundreds of criminal aliens. Jonathan Cohn, Deputy Assistant Attorney General, has testified that "the government is [now] required to release numerous rapists, child molesters, murderers, and other dangerous illegal aliens into our streets. . . . [V]icious criminal aliens are now being set free within the U.S." Cohn referenced the release of aliens including murderers, a schizophrenic sex offender and pedophiles. Many of these aliens were Mariel Cubans released from

Cuban jails or aliens who have received relief from removal pursuant to the Convention Against Torture, which prohibits the return of an alien to a country where there are substantial grounds for believing that he or she would be in danger of being tortured. Almost 900 criminal aliens ordered removed have received CAT relief and have subsequently been released into our communities pursuant to the decisions. This includes at least one alien who was implicated in a mob-related quintuple homicide in Uzbekistan. Also, one alien removable on terrorism grounds has been released after receiving CAT protection. One of the aliens released has subsequently been arrested for shooting a New York State trooper in the head.

Section 602 would have allowed DHS to detain specified dangerous aliens under orders of removal who could not be removed. The section would have authorized DHS to detain aliens who were stopped at the border beyond six months. The section would also have authorized DHS to detain aliens who effected an entry beyond six months, but only if (1) the alien would have been removed in the reasonably foreseeable future, (2) the alien would have been removed but for the alien's refusal to make all reasonable efforts to comply and cooperate with the Secretary's efforts to remove him, (3) the alien had a highly contagious disease, (4) release would have had serious adverse foreign policy consequences, (5) release would have threatened national security, or (6) release would have threatened the safety of the community and the alien either was an aggravated felon or was mentally ill and had committed a crime of violence. Such aliens could have been detained for periods of six months at a time, and the period of detention could have been renewed. The section also would have provided for judicial review of detention decisions in the United States District Court for the District of Columbia.

40. Section 603. Increase in criminal penalties. This section would have increased penalties and set mandatory minimum sentences for aliens who failed to depart when ordered removed or obstructed their removal, or who failed to comply with the terms of release pending removal.

41. Section 604. Precluding admissibility of aggravated felons and other criminals. In the INA, the most serious criminal offenses are deemed aggravated felonies. A conviction for an aggravated felony can have significant consequences for an alien. Such an offense requires the removal of an admitted alien and bars him from most forms of relief, and also subject an alien to an increased sentence for certain crimes. However, under current law a conviction for an aggravated felony is not, per se, a ground of inadmissibility. For this reason, an aggravated felony conviction will not render an alien inadmissible under section 212(a)(2) of the INA unless the conviction also falls within one of the existing criminal grounds of inadmissibility, such as a crime involving moral turpitude, or a controlled substance or money laundering offense. Section 604 would have barred aggravated felons from admission and from receiving discretionary waivers of inadmissibility under section 212(h) of the INA. This would have corrected an anomaly under current law by which aliens with aggravated felony convictions who were present illegally could receive waivers under that provision, while lawful permanent resident aliens could not.

Section 604 also would have applied the domestic violence ground of deportability to inadmissibility. This would have prevented aliens who had been convicted of crimes of domestic violence, stalking, child abuse and child neglect from entering and remaining in the United States. Finally, section 604 would have amended the inadmissibility grounds to bar the admission of aliens who had committed or been convicted of crimes relating to social security fraud or the unlawful procurement of citizenship.

42. Section 605. Precluding refugee or asylee adjustment of status for aggravated felons. In various statutory enactments since 1988, Congress has attached a series of stringent restrictions on the eligibility of aliens to obtain almost all forms of discretionary immigration relief after they have been convicted of an aggravated felony. In particular, under the asylum provisions, an alien convicted of an aggravated felony is conclusively barred from being granted asylum, and a grant of asylum may be terminated if it is determined that the alien has become subject to one of the mandatory bars to asylum, including because an asylee has been convicted of an aggravated felony. However, the provision governing asylee and refugee adjustment to permanent resident status does not expressly bar an applicant from obtaining adjustment where the alien has been convicted of an aggravated felony after obtaining refugee or asylee status. Not only is this inconsistent with statutory bars on almost all discretionary immigration relief for aggravated felons, it is also inconsistent with the treatment that the asylee or refugee would be accorded after adjustment. Specifically, an alien who has been granted refugee or asylee adjustment is barred from obtaining cancellation of removal, a waiver under section 212(h) of the INA, or section 212(c) relief from removal if the alien is convicted of an aggravated felony after attaining such status. Section 605 would have corrected this discrepancy by barring asylees and refugees convicted of aggravated felonies from adjustment.

43. Section 606. Removing drunk drivers. The section would have provided that an illegal alien who was convicted of drunk driving or who refused to submit to a test to determine blood alcohol level was removable. Each state motor vehicle administrator would have had to share with DHS and other states information regarding any such alien, and would have been required to enter the information into the NCIC database. DHS would have been required to detain any illegal alien who was apprehended for drunk driving or for failing to take a test by a state or local government law enforcement officer covered by an agreement with DHS regarding state and local law enforcement assistance in enforcing the immigration laws. Finally, the section would have required law enforcement officers who apprehended persons for drunk driving and had a reasonable belief that they were aliens to check to see whether they were present illegally, and to keep them in custody in certain circumstances.

44. Section 607. Designated county law enforcement assistance program. Section 607 would have authorized local sheriffs in the 29 counties along the southern border to transfer illegal aliens they had arrested to federal custody. It also would have reimbursed those Sheriffs for costs associated with detaining illegal aliens they

arrested until they were able to hand them over to federal authorities. The section would have deemed aliens in Sheriffs' custody to be in federal custody once determined to be unlawfully present.

45. Section 608. Rendering inadmissible and deportable aliens participating in criminal street gangs; detention; ineligibility from protection from removal and asylum. Crime by alien members of criminal street gangs is exploding. Former ICE Assistant Secretary Mike Garcia has stated: "In the last decade, the United States has experienced a dramatic increase in the number and size of transnational street gangs. . . . These gangs have a significant, often a majority, foreign-born membership . . . ." Entire neighborhoods and sometimes whole communities are held hostage by and subjected to the violence of street gangs. Currently, however, aliens who are members of criminal street gangs are not deportable or inadmissible, and can receive asylum and TPS (temporary protected status), until they are convicted of a specified criminal act. Many of the members in the United States of these gangs are present in the U.S. under TPS. One of the most violent and fastest-growing gangs, Mara Salvatrucha-13, was formed by Salvadorans who entered the U.S. during the civil war in El Salvador in the 1980s, and has an estimated 8,000 to 10,000 members of MS-13 in 31 states. The gang is estimated to have as many as 50,000 members internationally. There have been 18 MS-13-related killings in North Carolina, 11 in Northern Virginia, and at least eight in Los Angeles in the past two years.

Section 608 would have rendered alien gang members deportable and inadmissible, mandated their detention, and barred them from receiving asylum or TPS. The section would have adopted procedures similar to those used by the State Department to designate foreign terrorist organizations, to enable the Attorney General to designate criminal street gangs for purposes of the immigration laws. "Criminal street gangs" would have been defined as "a formal or informal group or association of three or more individuals, who commit two or more gang crimes (one of which is a crime of violence . . .) in two or more separate criminal episodes, in relation to the group or association." "Gang crime" would have been defined as "conduct constituting any Federal or State crime, punishable by imprisonment for one year or more" in various categories, including crimes of violence, obstruction of justice, witness tampering, burglary, and drug trafficking. Tracking the procedures that allow the Secretary of State to designate foreign terrorist organizations in section 219 of the INA, the section would have given the Attorney General authority to designate groups and associations as "criminal street gangs."

46. Section 609. Naturalization reform. Alien terrorists are deportable and are also barred from admission and most other forms of immigration relief. However, there are no express bars for terrorists from being naturalized, the most significant benefit that the United States can bestow on an alien. Section 609 would have closed this loophole and barred alien terrorists from naturalization.

Section 609 would also have corrected other discrepancies in the naturalization law. When INS was given authority to grant naturalization, INS was precluded from granting that benefit as long as the applicant was in removal proceedings. That preclusion did not,

however, apply to district courts, which retained part of their historic authority over naturalization. Section 609 would have corrected this incongruity by barring district court consideration of naturalization applications while the applicant was in removal proceedings. Section 609 would also have held in abeyance petitions to grant status for relatives filed by individuals who were, themselves, facing denaturalization or removal.

Currently, aliens can go to district court if their naturalization applications have been pending with DHS for more than 120 days. Section 209 would have given DHS 180 days to adjudicate these applications, and limited District Court relief to remand for adjudication by DHS, making the provision more in line with traditional mandamus actions. Finally, the section would have limited court review of DHS's findings with respect to whether a naturalization applicant had good moral character, whether the alien understood and was attached to the principles of the Constitution, and was well disposed to the good order and happiness of the United States.

47. Section 610. Expedited removal for aliens inadmissible on criminal or security grounds. This section would have allowed DHS to use the same expedited procedures that are available for the removal of aggravated felons to remove other inadmissible criminal aliens who were not permanent residents and were otherwise ineligible for relief. At the present time, these aliens must be placed in lengthy removal proceedings before an immigration judge despite the fact that they are not eligible for any relief.

48. Section 611. Technical correction for effective date in change in inadmissibility for terrorists under REAL ID Act. Section 103 of the REAL ID Act was designed to ensure the removal of aliens tied to terrorist organizations. However, aliens currently in deportation proceedings initiated before the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 have claimed that the REAL ID Act does not apply to them. Section 611 would have clarified that the amendments in the terrorist grounds of removal in the REAL ID Act were to be applied to aliens in all removal, deportation, and exclusion cases, regardless of when those cases were initiated.

49. Section 612. Bar to good moral character. Applicants for certain immigration benefits, including naturalization, voluntary departure, and cancellation of removal, must demonstrate "good moral character," as defined in the INA. At present, although the definition excludes (among others) "habitual drunkards" and gamblers, it does not expressly exclude aliens who are terrorists or aiders or supporters of terrorism. Section 612 would have corrected this discrepancy by barring terrorist aliens from showing good moral character. In addition, because the definition of "good moral character" in the INA does not, and could never, cover all situations in which applicants could be shown not to have good moral character, this provision would have given the Secretary of Homeland Security and the Attorney General discretionary authority to make a good moral character determination in situations not specifically set forth by the definition. The section would have clarified that the aggravated felony bar to good moral character applied regardless of when the crime was classified as an aggravated felony

and clarified the discretionary authority of DHS to find an alien not to be of good moral character could be based upon actions that did not occur within the requisite period of time for which good moral character must have been established.

50. Section 613. Strengthening definitions of "aggravated felony" and "conviction". The "aggravated felony" definition in the INA covers both murder and crimes of violence for which the term of imprisonment is at least one year, but significantly, it does not specifically include manslaughter and homicide. Many aliens accused of murder, however, will plead to these lesser offenses. Section 613 would have ensured that all aliens who had taken the life of another were covered by the "aggravated felony" definition. In addition, while the sexual abuse of a minor is an aggravated felony, proof in such cases can be limited where the victim was a minor, but the offense does not list the alien's minority status as an element. Section 613 would have allowed extrinsic evidence to be offered to establish the minority of the victim in a sexual abuse case. The section also would have prevented state courts from interfering in federal immigration law by reversing or vacating convictions after they had been entered in order to forestall removal. Some state courts have granted requests by criminal aliens to revise their sentences and convictions to allow them to avoid the immigration consequences of their acts, and have even granted these requests after aliens have served their sentences. Section 613 would have made it clear that immigration consequences would continue to attach to convictions that had been the subject of post-judicial amendment unless that amendment occurred because the alien was not guilty of the offense.

51. Section 614. Deportability for criminal offenses. This section would have rendered removable aliens who had unlawfully procured citizenship as well as aliens convicted of offenses relating to misuse of Social Security numbers and cards and fraud in connection with identification documents.

52. Section 616. Report on criminal alien prosecution. This section would have required the Attorney General to submit to Congress an annual report on the status of criminal alien and smuggling prosecutions.

53. Section 617. Determination of immigration status of individuals charged with federal offenses. This section would have required federal prosecutors to identify at the time of filing whether alien defendants were lawfully present in the United States, and required records of the U.S. courts to reflect whether a defendant was an illegal alien. This is needed because the growing volume of federal criminal cases involving illegal aliens need to be better documented, and because this bill would have made illegal presence a federal crime to be prosecuted in the federal courts.

54. Section 618. Increased criminal penalties for document fraud and crimes of violence. One of the primary mechanisms for the flagrant abuse of our immigration laws is the use of counterfeited immigration documents, the perpetration of identity fraud, and lying under oath in immigration applications. This section would have significantly strengthened criminal penalties for all of these crimes. The section also would have provided that if an illegal alien committed a violent crime or a drug trafficking offense, that the alien

should receive a criminal sentence at least five years longer than he or she would have received otherwise. If such an illegal alien had been previously ordered deported for having committed another crime, the alien would receive a sentence at least 15 years longer than he or she would have received otherwise.

55. Section 619. Laundering of monetary instruments. International traffickers and smugglers of human beings are the most barbaric of immigration violators. They force women and children into sexual slavery and aliens into indentured servitude. They place their human cargo in extremely dangerous circumstances and often abandon them and leave them to die in the rugged terrain along much of our southwestern border. This section would have ensured that federal authorities could use all the powerful tools of our money laundering statutes against the money laundering activities that these persons engaged in as part of their criminal enterprises.

56. Sections 701–708 "Employment eligibility verification". The Immigration Reform and Control Act of 1986 made it unlawful for employers to knowingly hire or employ aliens not eligible to work and required employers to check the identity and work eligibility documents of all new employees. The Act was designed to end the "job magnet" that draws the vast majority of illegal aliens to the United States. Under IRCA, if the documents provided by an employee reasonably appear on their face to be genuine, an employer has met its document review obligation. Unfortunately, the easy availability of counterfeit documents has made a mockery of IRCA. Fake documents are produced by the millions and can be obtained cheaply. Thus, the current system both benefits unscrupulous employers who do not mind hiring illegal aliens but want to show that they have met legal requirements and harms employers who don't want to hire illegal aliens but have no choice but to accept documents they know have a good likelihood of being counterfeit.

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress responded to the deficiencies of IRCA by establishing three employment eligibility verification pilot programs for volunteer employers in selected states. Under the basic pilot program, the Social Security numbers and alien identification numbers of new hires are checked against Social Security Administration and Department of Homeland Security records in order to weed out fraudulent numbers and thus to ensure that new hires are genuinely eligible to work. A 2001 report on the basic pilot program found that "an overwhelming majority of employers participating found the basic pilot program to be an effective and reliable tool for employment verification"—96% of employers found it to be an effective tool for employment verification; and 94% of employers believed it to be more reliable than the IRCA-required document check. In 2003, Congress extended the basic pilot program for another five years and made it available to employers nationwide.

The basic pilot works as follows:

- An employer has three days from the date of hire to make an inquiry by phone or other electronic means to the confirmation office. If the new hire claims to be a citizen, the employer will transmit his or her name and Social Security number. If the new hire claims to be a non-citizen, the employer will

transmit his or her name, alien identification number and Social Security number.

- The confirmation office will compare the name and Social Security number provided against information contained in Social Security Administration records and, if necessary, will compare the name and DHS-issued number provided against information contained in DHS records.
- If in checking the records, the confirmation office ascertains that the new hire is eligible to work, the operator will within three days so inform the employer. If the confirmation office cannot confirm the work eligibility of the new hire, it will within three days so inform the employer of a tentative nonconfirmation.
- If a new hire does not contest the tentative nonconfirmation, it shall be considered a final nonconfirmation. If a new hire wishes to contest the tentative nonconfirmation, secondary verification will be undertaken. Secondary verification is an expedited procedure set up to confirm the validity of information contained in the government records and provided by the new hire. Under this process, the new hire will typically contact or visit the SSA and/or DHS to see why the government records disagree with the information he or she has provided. If the new hire requests secondary verification, he or she cannot be fired on the basis of the tentative nonconfirmation.
- If the discrepancy can be reconciled within ten days, then confirmation of work eligibility will be given to the employer by the end of this period. If the discrepancy cannot be reconciled within ten days, final denial of confirmation will be given by the end of this period. The employer then has two options. It can dismiss the new hire as being ineligible to work in the United States *or* it can continue to employ the new hire. If the employer continues to employ the new hire, it must notify DHS of this decision or be subject to penalty. If legal action is brought by the government subsequent to such notification, the employer is then subject to a rebuttable presumption that it has knowingly hired an illegal alien.

Title VII would have made participation in the basic pilot program mandatory for all employers within two years of enactment. It would also have expanded the system to provide for verification of previously hired employees. Employers would have been able to use the system to verify previously hired employees on a voluntary basis (as long as they did not do so in a discriminatory manner) two years after enactment. By three years after enactment, federal, state, and local governments and the military would have been required to verify the employment eligibility of all workers who had not been previously subject to verification under the system, as would have been other employers for those employees working at federal, state or local government buildings, military bases, nuclear energy sites, weapons sites, airports, and critical infrastructure sites. By six years after enactment, all employers would have been required to verify the employment eligibility of all workers who had not been previously subject to verification under the system.

The title would have required DHS to investigate situations in which a social security number was submitted more than once by

the same employer, or where a social security number was submitted by multiple employers, in a manner that suggested fraud. The title exempted employers from liability who relied in good faith on information provided by the verification system. The title would have applied employment eligibility verification requirements to "day labor" sites (and would have prohibited localities from requiring businesses to set up day labor sites as a condition for conducting or expanding their business). The title would have established civil penalties for failure to comply with the employment eligibility verification requirements and would have increased civil penalties for knowingly hiring or employing aliens ineligible to work or for failing to comply with the I–9 process.

The title would have required the Social Security Administration to conduct a study on the cost and administrability of the elements of Representative David Dreier's "Illegal Immigration Enforcement and Social Security Protection Act of 2005" (H.R. 98)—which would have required hardened, secure Social Security cards with an electronic strip and digital photograph, the creation of a unified database between SSA and DHS for employment eligibility verification, and employers to verify employment eligibility verification of new hires by swiping the secure social security card through an electronic card-reader.

57. Section 801. Board of Immigration Appeals removal order authority. The Ninth Circuit has given aliens additional opportunities to needlessly hinder their removal by requiring the Board of Immigration Appeals to remand cases in which it has reversed an immigration judge decision granting an alien relief back to the IJ for entry of the order of removal. Section 801 would have expressly provided the BIA authority to reverse an IJ decision and enter an order of removal without remanding to the IJ.

58. Section 802. Judicial review of visa revocation. The INA allows consular officers to revoke visas after they have been issued. However, prior to enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, if a visa was revoked after an alien entered the United States, the alien was allowed to remain in the United States under the terms of admission since there existed no ground of removal for visa revocation. Section 5304 of the Intelligence Reform Act created a ground of removal for aliens whose visas were revoked after entry. This was spurred by a GAO investigation that revealed that the absence of such a ground posed a risk to the American people. In October 2002, GAO reported that the State Department had revoked 105 visas that had been erroneously issued to aliens, about whom there were questions about possible terror ties, before their background checks had been completed. GAO found that immigration agents did not attempt to track down those aliens whose visas had been revoked because of the difficulty in removing those aliens from the United States. DHS's inability to remove aliens after their visas are revoked is especially problematic in terrorism cases, because information linking an alien to terrorism is often classified and classified information cannot be used to prove deportability. The House acted to close this loophole in the Intelligence Reform Act by adding a provision to make visa revocation a freestanding ground of removal. However, in conference a modification was added stating that visa revocation

decisions would be judicially reviewable if revocation was the sole basis for the order of removal under review. This change has rendered the revocation ground of removal worthless as a removal tool. Not only could such review disclose the sensitive information that the revocation ground of removal is intended to protect, but it would also undermine the consular nonreviewability doctrine, and allow courts to second-guess all visa denial decisions. Accordingly, section 802 would have removed the judicial review provision added in the conference.

59. Section 803. Reinstatement. Section 241 of the INA provides that the government may remove an alien who has reentered the country illegally after being removed, pursuant to the prior order of removal. This provision is meant to preserve judicial resources, and to close the revolving door of illegal reentry by allowing DHS to summarily deport aliens who have reentered after removal, without having to obtain a new removal order from an Immigration Judge. In accordance with section 241, DHS has promulgated a regulation that permits reinstatement of removal orders by DHS officers. However, the Ninth Circuit has recently invalidated DHS's regulation and held that aliens are entitled to have their reinstatement cases adjudicated by immigration judges. In fiscal year 2004, prior to the Ninth Circuit's decision, DHS removed 42,886 aliens in that circuit through reinstatement. Under the Ninth Circuit's decision, Immigration Judges now must hear tens of thousands of additional cases annually from aliens ineligible for relief. This is a waste of extremely limited resources. Section 803 would have overruled the Ninth Circuit decision, validated DHS's regulation, and allowed the department to deport an alien who reentered illegally after being removed without having had to again place the alien in removal proceedings.

60. Section 804. Withholding of removal. Section 101(a)(3) of the REAL ID Act required an asylum applicant to show that one of the five protected characteristics—race, religion, political opinion, nationality, or membership in a particular social group—"was or will be at least one central reason" why the alien was persecuted or fears persecution and thereby is eligible for asylum. Section 804 would have clarified that the REAL ID motivation standard for asylum also applied to withholding of removal. Unless this clarification is made, applicants for withholding, who have traditionally borne a higher burden than applicants for asylum, now will be found to have a lesser burden.

61. Section 805. Certificate of reviewability. There has been an explosion in the number of petitions for review filed in the courts of appeals from immigration decisions in the past few years. In fiscal year 2001, there were 1,654 such petitions filed. By 2004, 10,681 immigration petitions for review were filed. The vast majority of these petitions, once reviewed, are denied. In 2004, for example, the Board of Immigration Appeals' determinations were sustained by the courts in over 90% of the cases decided, a rate that has actually increased since the Board adopted its "streamlining" reforms in 2002. Section 805 would have responded to the filing of meritless appeals of removal orders by establishing a screening process for aliens' appeals of BIA decisions. Under this provision, appeals would have been referred to a single circuit court judge for

initial review. If that judge decided that the alien had made a substantial showing that the alien's petition for review was likely to be granted, the judge would have issued a "certificate of reviewability" allowing the case to proceed to a three-judge panel. The provision would have focused limited judicial resources on those petitions for review with the greatest likelihood of proving meritorious.

62. Section 806. Waiver of rights in nonimmigrant visa issuance. Currently, aliens seeking to enter the United States under the visa waiver program must waive access to Immigration Court to challenge removal by any means other than asylum. No similar restriction is placed on the other nonimmigrants who are admitted annually. Section 806 would have imposed the same review conditions on all nonimmigrant visas that now apply only to visa waiver admissions, and would have required aliens seeking to enter temporarily to waive their ability to contest, other than through asylum, any action to deny them admission or remove them.

63. Section 807. Clarification of Jurisdiction of Review. This section would have clarified and reaffirmed existing limits on federal courts' jurisdiction to review removal orders pertaining to certain criminal aliens as well as to discretionary decisions by the Attorney General and Secretary of Homeland Security. These provisions would have overturned a series of erroneous Ninth Circuit decisions asserting jurisdiction where none exists under current law. Consistent with Congress's intent in enacting the 1996 reforms, the provisions would have made clear that the federal courts could not delay the removal of thousands of illegal aliens by asserting jurisdiction over the purely discretionary decisions of the Attorney General or the Secretary of Homeland Security; nor could they assert jurisdiction over factual questions, such as those relating to criminal aliens, that Congress had expressly deemed unreviewable.

64. Section 808. Fees and Expenses in Judicial Proceedings. This section would have clarified the Equal Access to Judgment Act to limit an alien's collection of attorney's fees from agency budgets to situations where the alien had prevailed on the question of removability. Aliens have been permitted in at least three circuits to recover attorneys' fees as the prevailing party on petitions for review, even when they have secured only a remand to the Board and are still potentially subject to removal. These fee awards are considerable often exceeding $10,000. If unchecked, substantial DHS financial resources will have to be expended on alien's attorney's fees, rather than homeland security. EAJA litigation has added to the overwhelming caseload of government immigration attorneys. Abolishing EAJA fee awards in immigration cases for aliens who are removable would reverse these effects without impairing the rights of citizens and lawful permanent residents who find themselves wrongly placed into deportation proceedings.

65. Section 1004. Sense of the Congress. This section would have stated the sense of Congress that DHS should have taken all necessary steps to secure the southwest border.

66. Section 1102. Elimination of diversity immigrant program. This section would have ended the diversity visa program, under which up to 50,000 randomly selected alien applicants win immigrant visas each year. Public scrutiny was drawn to the diversity

visa program, also known as the "visa lottery," in the late summer and early fall of 2002 when it came to light that Hesham Hedayet, who killed two during a shooting spree at Los Angeles International Airport on July 4, 2002, received permanent residence under the program. There are various shortcomings and dangers posed by the visa lottery:

- The visa lottery is susceptible to fraud. In fact, some have argued, the very laxity of its structure invites fraudulent applications.
- The lottery fails to advance any of the primary goals of our immigration system, in that it does not serve any humanitarian benefit, to unite families, or to provide skilled workers for the American economy. When tens of millions of persons seek to come to America, it makes no sense to distribute precious visas by lottery.
- Some have also termed the visa lottery unfair because winners go ahead of the spouses and children of lawful permanent residents and married sons and daughters of citizens who have waited for visas, in some instances, for years.

The most significant danger posed by the program, however, is the risk that the visa lottery could be used by aliens who pose a danger to the American people. The State Department's Inspector General has testified that the lottery program "contains significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents." To a large extent, this is because winners of the lottery need have no ties whatsoever to America, neither family or employment ties.

67. Section 1201. Oath of Renunciation and Allegiance. In 2003, the Department of Homeland Security proposed changes to the oath which every naturalized citizen must take which would have significantly weakened the oath and demeaned its historical significance. Due to strong public opposition, those changes were never implemented. However, since the oath is not set forth in federal statute, but only in regulation, the agency can modify its language at any time in the future in a similarly inappropriate way. The oath is the fundamental statement of allegiance to the United States and our Constitution, and this allegiance is what unites Americans of all backgrounds. As the gateway into U.S. citizenship, the oath should be protected by Congress. This section would have provided that the current oath laid out in regulation could not be modified by DHS.

68. Sections 1301–1310 "Elimination of Corruption and Prevention of Acquisition of Immigration Benefits through Fraud". These sections would have acknowledged that immigration fraud has become endemic and, even more seriously, that internal corruption at U.S. Citizenship and Immigration Services threatens the national security and erodes the integrity of our immigration system. The extent and seriousness of the problem was brought to light in a closed bipartisan session of the Subcommittee on Immigration, Border Security & Claims of the Judiciary Committee earlier this year. The serious allegations and investigations discussed there cannot be discussed in the open. However, the ease with which unscrupulous immigration officials can be tempted to issue visas or benefits

in return for money, goods, or favors was brought to light a month ago with the issuance of a Government Accountability Office report on consular malfeasance. In that report, it was revealed that the Diplomatic Security Service had investigated 28 cases of visa selling by State Department employees in the last few years. Those were only the cases that were discovered in the some 200 consular sections located abroad. U.S.C.I.S. conducts its application processing in the United States, and yet thousands of allegations of misconduct, some involving criminal acts and foreign influence, have yet to be investigated because of lack of focus, resources, and confusion of sub-agency jurisdiction.

These sections would have ensured that an internal law enforcement division within U.S.C.I.S. would receive, process, and investigate allegations of misconduct and internal corruption in a timely manner. The division would also have had authority to conduct immigration benefit fraud detection operations and the Director of the division would have had the authority to subpoena documents, reports, and data, and to appoint such officers as necessary to carry out the internal affairs functions. To fund this office, a $10 fee would have been charged to all visa applicants and applicants for adjustment of status and extensions of stay.

Legislative History.—Chairman F. James Sensenbrenner, Jr., and Chairman Peter King of the Homeland Security Committee introduced H.R. 4437 on December 6, 2005. On December 8, 2005, the Judiciary Committee ordered H.R. 4437 reported as amended by a vote of 23–15. On December 13, 2005, the Judiciary Committee reported H.R. 4437 (H. Rept. 109–345, Part I). On December 16, 2005, the House passed H.R. 4437 as amended by a vote of 239–182. No further action was taken on H.R. 4437.

H.R. 4681, the Palestinian Anti-Terrorism Act of 2006

Summary of provisions within the Jurisdiction of the Judiciary Committee.—The bill would have provided that with certain exceptions the U.S. government could only give assistance to the Palestinian Authority during a period for which a Presidential certification was in effect finding that (1) no ministry, agency, or instrumentality of the Authority was controlled by a foreign terrorist organization, (2) no member of a foreign terrorist organization served in a senior policy making position in a ministry, agency, or instrumentality of the Authority, (3) the Authority had publically acknowledged Israel's right to exist as a Jewish state, (4) the Authority had recommitted itself and is adhering to all previous agreements and understandings by the Palestine Liberation Organization and the Authority with the United States, Israel, and the international community (including the "Roadmap to Peace"), and (5) the Authority had taken effective steps and made demonstrable progress toward completing the process of purging from its security services individuals with ties to terrorism; dismantling all terrorist infrastructure, confiscating unauthorized weapons, arresting and bringing terrorists to justice, destroying unauthorized arms factories, thwarting and preempting terrorist attacks, and fully cooperating with Israel's security services; halting all anti-Israel incitement in Authority-controlled electronic and print media and in schools, mosques, and other institutions it controlled, and replacing

these materials, including textbooks, with material that promote tolerance, peace, and coexistence with Israel; ensuring democracy, the rule of law, and an independent judiciary, and adopting other reforms such as ensuring transparent and accountable governance; and ensuring the financial transparency and accountability of all government ministries and operations.

Within the jurisdiction of the Judiciary Committee, the bill would have provided that a visa would not be issued to any alien who was an official of, affiliated with, or serving as a representative of the Palestinian Authority during any period for which such a certification was not in effect. This bar to visa issuance would not apply if the President determined and certified to the appropriate congressional committees, on a case-by-case basis, that the issuance of a visa to such an alien was important to the national security interests of the U.S. or with respect to visas issued in connection with U.S. obligations to let officials of governments into the U.S. for United Nations business.

The bill also would have provided that it would be unlawful to establish or maintain an office within the jurisdiction of the United States at the behest or direction of, or with funds provided by, the Palestinian Authority or the Palestine Liberation Organization during any period for which a Presidential certification was not in effect with respect to the Authority. (The President was provided with waiver authority.) The Attorney General would have been required to take the necessary steps and institute the necessary legal action to effectuate this provision, including steps necessary to apply it to the Permanent Observer Mission of Palestine to the United Nations.

Legislative History.—On February 1, 2006, Representative Ileana Ros-Lehtinen introduced H.R. 4681. On April 6, 2006, the International Relations Committee ordered H.R. 4681 reported as amended by a vote of 36–2. On May 10, 2006, the Judiciary Committee ordered H.R. 4681 reported as amended by a voice vote. On May 11, 2006, the International Relations Committee reported H.R. 4681 (H. Rept. 109–462, Part I). On May 15, 2006, the Judiciary Committee reported H.R. 4681 (H. Rept. 109–462, Part II). On May 23, 2006, the House passed H.R. 4681 under suspension of the rules by a vote of 361–37, with 9 members voting present. No further action was taken on H.R. 4681.

H.R. 6094, the Community Protection Act of 2006

Summary.—The Community Protection Act includes (1) the Dangerous Alien Detention Act of 2006, a modified version of section 602 of H.R. 4437, (2) the Criminal Alien Removal Act, containing the language of section 610 of H.R. 4437, and (3) the Alien Gang Removal Act of 2006, containing the language of section 608 of H.R. 4437.

Legislative History.—On September 19, 2006, Chairman F. James Sensenbrenner, Jr., introduced H.R. 6094. On September 21, 2006, the House passed H.R. 6094 by a vote of 328–95. No further action was taken on H.R. 6094.

H.R. 6095, the Immigration Law Enforcement Act of 2006

Summary.—The Immigration Law Enforcement Act includes State and Local Law Enforcement Cooperation in the Enforcement of Immigration Law Act, containing the language of section 220 of H.R. 4437.

The bill also includes the Alien Smuggler Prosecution Act. The various United States Attorney offices do not use uniform guidelines for the prosecution of smuggling offenses. Understanding that border-area U.S. Attorneys face an overwhelming workload, a lack of sufficient smuggling prosecutions in some areas has only encouraged additional smuggling and has demoralized Border Patrol and DHS agents who have seen released many of the smugglers they have apprehended. This title would have provided a Sense of Congress that the Attorney General should adopt uniform guidelines for the prosecution of smuggling offenses to be followed by each United States Attorney's office and would have authorized in each of the fiscal years 2008 through 2013 an increase in the number of attorneys in United States Attorneys offices to prosecute such cases of not less than 20 over the previous year's level.

The bill also includes the Ending Catch and Release Act of 2006. The Department of Homeland Security is subject to injunctions entered as much as 30 years ago that impact its ability to enforce the immigration laws. For instance, one injunction dating from the El Salvadoran civil war of the 1980s effectively prevents DHS from placing Salvadorans in expedited removal proceedings. DHS is using expedited removal to expeditiously remove other non-Mexican illegal immigrants who are apprehended along the Southern border in order to end the policy of "catch and release". This title would have resulted in the end of the Salvadoran injunction by establishing requirements under which courts could order prospective relief in immigration cases, and by requiring courts to promptly rule on government motions to vacate, modify, dissolve, or otherwise terminate orders granting prospective relief in immigration cases and stay orders granting such relief.

Legislative History.—On September 19, 2006, Chairman F. James Sensenbrenner, Jr., introduced H.R. 6095. On September 21, 2006, the House passed H.R. 6095 by a vote of 277–140. No further action was taken on H.R. 6095.

H.R. 5323, the Proud to be an American Citizen Act

Summary.—H.R. 5323, the "Proud to be an American Citizen Act" would have enabled U.S. Citizenship and Immigration Services or non-profit entities to conduct naturalization ceremonies on or near Independence Day each year. It would have directed the Department of Homeland Security to make available up to $5,000 per ceremony from funds already available to the Department, thus not authorizing the expenditure of new funds for the ceremonies. The funds (up to $5,000) could have been used only for the cost of government personnel needed to administer the Oath of Allegiance (including travel), facilities rental, brochures, and other logistics such as sanitation. The bill would have required any non-government entity seeking to organize a naturalization ceremony to receive approval under an application process prescribed by the Department of Homeland Security.

Legislative History.—On May 9, 2006, Representative Sam Farr introduced H.R. 5323. On June 29, 2006, the Judiciary Committee ordered H.R. 5323 reported by a voice vote. On July 17, 2006, the Judiciary Committee reported H.R. 5323 (H. Rept. 109–576). On September 25, 2006, the House passed H.R. 5323 under suspension of the rules by a voice vote. No further action was taken on H.R. 5323.

FEDERAL CHARTERS

Subcommittee policy on new federal charters

On March 10, 2005, the Subcommittee on Immigration, Border Security, and Claims adopted the following policy concerning the granting of new federal charters:

The Subcommittee will not consider any legislation to grant new federal charters because such charters are unnecessary for the operations of any charitable, non-profit organization and falsely imply to the public that a chartered organization and its activities carry a congressional "seal of approval," or that the Federal Government is in some way responsible for its operations. The Subcommittee believes that the significant resources required to properly investigate prospective chartered organizations and monitor them after their charters are granted could and should be spent instead on the Subcommittee's large range of legislative and other substantive policy matters. This policy is not based on any decision that the organizations seeking federal charters are not worthwhile, but rather on the fact that federal charters serve no valid purpose and therefore ought to be discontinued.

This policy represented a continuation of the Subcommittee's informal policy, which was put in place at the start of the 101st Congress and has been continued every Congress since, against granting new federal charters to private, non-profit organizations.

A federal charter is an Act of Congress passed for private, non-profit organizations. The primary reasons that organizations seek federal charters are to have the honor of federal recognition and to use this status in fundraising. These charters grant no new privileges or legal rights to organizations. At the conclusion of the 104th Congress, approximately 90 private, non-profit organizations had federal charters over which the Judiciary Committee has jurisdiction. About half of these had only a federal charter, and were not incorporated in any state and thus not subject to any state regulatory requirements.

Those organizations chartered more recently are required by their charters to submit annual audit reports to Congress, which the Subcommittee sent to the General Accounting Office to determine if the reports comply with the audit requirements detailed in the charter. The GAO does not conduct an independent or more detailed audit of chartered organizations.

PRIVATE BILLS

During the 109th Congress, the Subcommittee on Immigration and Claims received referral of 4 private claims bills, 1 private claims resolution, and 77 private immigration bills. The Subcommittee held no hearings on these bills. The Subcommittee rec-

ommended 1 private claims resolution and 2 private immigration bills to the full Committee. The Committee ordered no private claims resolutions or private immigration bills reported favorably to the House.

SUMMARY OF OVERSIGHT HEARINGS

Immigration enforcement resources authorized in the Intelligence Reform and Terrorism Prevention Act of 2004, March 3, 2005 (Serial No. 109–4)

Witnesses: Mr. Peter Gadiel, 9–11 Families for a Secure America; Mr. T.J. Bonner, President, National Border Patrol Council; Mr. Robert Eggle, Father of Kris Eggle, slain National Park Service Ranger; The Honorable Solomon P. Ortiz, 27th District of Texas.

Interior immigration enforcement resources, March 10, 2005 (Serial No. 109–5)

Witnesses: Mr. Paul Martin, Deputy Inspector General, U.S. Department of Justice; Mr. Michael Cutler, Former Special Agent, Immigration and Naturalization Service; Mr. Randy Callahan, Vice President, National Homeland Security Council; Dr. Craig Haney, Professor, University of California at Santa Cruz.

Immigration and the alien gang epidemic: Problems and solutions, April 13, 2005 (Serial No. 109–8)

Witnesses: The Honorable Michael Garcia, Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security; Ms. Marsha Garst, Commonwealth's Attorney for Rockingham County, Virginia; Ms. Heather MacDonald, Senior Fellow, The Manhattan Institute; Ms. Mai Fernandez, Chief Operating Officer, Latin American Youth Center.

October 2005 statutory deadline for visa waiver program countries to produce security passports: Why it matters to Homeland Security, April 21, 2005 (Serial No. 109–23)

Witnesses: Mr. Rudi Veestraeten, Director General for Consular Affairs, Belgian Ministry of Foreign Affairs; Ms. Elaine Dezenski, Acting Assistant Secretary for Policy and Planning, Border and Transportation Security Directorate, U.S. Department of Homeland Security; Mr. Richard L. Skinner, Acting Inspector General, U.S. Department of Homeland Security; Mr. Joel F. Shaw, President/CEO, BioDentity Systems Corporation.

New jobs in recession and recovery: Who are getting them and who are not?, May 4, 2005 (Serial No. 109–39)

Witnesses: Dr. Steven Camarota, Director of Research, Center for Immigration Studies; Dr. Paul Harrington, Associate Director, Center for Labor Market Studies, Northeastern University; Mr. Matthew J. Reindl, Stylecraft Interiors; Dr. Harry J. Holzer, Professor and Associate Dean of Public Policy, Georgetown University.

The Olympic Family—Functional or Dysfunctional?, June 9, 2005 (Serial No. 109–81)

Witnesses: Mr. Jim Scherr, Chief Executive Officer, United States Olympic Committee; Mr. Mark Henderson, Chair, Athletes' Advisory Council; Mr. Paul Hamm, 2004 Athens Olympics All Around Champion; Mr. Thomas Burke, Vice Chair, Pan American Sports Council, USOC.

Diversity Visa Program, June 15, 2005 (Serial No. 109–49)

Witnesses: Howard J. Krongard, Inspector General, United States Department of State; Mark Krikorian, Center for Immigration Studies; Rosemary Jenks, Numbers USA; Bruce Morrison, Chairman, Morrison Public Affairs Group.

Lack of worksite enforcement & employer sanctions, June 21, 2005 (Serial No. 109–51)

Witnesses: Mr. Richard M. Stana, Director of Homeland Security and Justice Issues, U.S. Government Accountability Office; Mr. Terence P. Jeffrey, Editor, Human Events; Mr. Carl W. Hampe, Partner, Baker & McKenzie, LLP; Ms. Jennifer Gordon, Associate Professor of Law, Fordham Law School.

Immigration removal procedures implemented in the aftermath of the September 11th attacks, June 30, 2005 (Serial No. 109–54)

Witnesses: Lily Swenson, Deputy Associate Attorney General, U.S. Department of Justice; Joseph R. Greene, Director of Training and Development, Department of Homeland Security; Paul Rosenzweig, Senior Legal Research Fellow, the Heritage Foundation; William D. West, Former Supervisory Special Agent, INS.

Sources and methods of foreign nationals engaged in economic and military espionage, September 15, 2005 (Serial No. 109–58)

Witnesses: The Honorable Michelle Van Cleave, National Counterintelligence Executive, Office of the Director of National Intelligence; Dr. Larry Wortzel, Visiting Fellow, The Heritage Foundation; Mr. Maynard Anderson, President, Arcadia Group Worldwide, Inc., Former Deputy Under Secretary of Defense for Security Policy; Dr. William A. Wulf, President, National Academy of Engineering.

Dual citizenship, birthright citizenship, and the meaning of sovereignty, September 29, 2005 (Serial No. 109–63)

Witnesses: Dr. Stanley Renshon, Professor, City University of New York Graduate Center; Dr. John Fonte, Senior Fellow, The Hudson Institute; Dr. John Eastman, Professor, Chapman University School of Law; Mr. Peter Spiro, Associate Dean for Faculty Development and Dean and Virginia Rusk Professor of International Law, University of Georgia School of Law.

How illegal immigration impacts constituencies: Perspectives from Members of Congress, November 10 and 17, 2005 (Serial Nos. 109–73 and 109–76)

Witnesses: The Honorable Henry Bonilla, 23rd District, Texas; the Honorable Stevan Pearce, 2nd District, New Mexico; The Hon-

orable Luis Gutierrez's, 4th District, Illinois; the Honorable Jack Kingston, 1st District, Georgia; the Honorable Marsha Blackburn, 7th District, Tennessee; the Honorable John Carter, 31st District, Texas; the Honorable John Lewis, 5th District, Georgia.

Joint Oversight Hearing on weak bilateral law enforcement presence at the U.S.-Mexico border: Territorial integrity and safety issues for American citizens, November 17, 2005 (Serial No. 109–90)

Witnesses: Mr. Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation; Mr. William Reid, Acting Assistant Director, Office of Investigations, U.S. Immigration & Customs Enforcement; Mr. Rey Garza, Deputy Chief Patrol Agent, U.S. Customs and Border Protection; Mr. T.J. Bonner, President, National Border Patrol Council.

The Energy Employees Occupational Illness Compensation Program Act: Are we fulfilling the promise we made to Cold War veterans when we created the program?, March 1, May 4, July 20, November 15th, and December 5th, 2006 (Serial Nos. 109–110, 109–151, 109–139, X, Y)

Witnesses: Shelby Hallmark, Director for the Office of Worker's Compensation Programs, United States Department of Labor; John Howard, M.D., Director, National Institute for Occupational Safety and Health; James Melius, M.D., DrPH., Administrator, New York State Laborers Health and Safety Trust Fund, Member of the Advisory Board on Radiation and Worker Health; Richard Miller, Senior Policy Analyst, Government Accountability Project; the Honorable Zach Wamp, 3rd District, Tennessee; the Honorable Tom Udall, 3rd District, New Mexico; the Honorable Doc Hastings, 4th District, Washington; the Honorable Mark Udall, 2nd District, Colorado; Austin Smythe, Acting Deputy Director, Office of Management and Budget; Lewis Wade, PhD., Special Assistant to the Director, National Institute for Occupational Safety and Health; Denise Brock, Director, United Nuclear Weapons Workers; Laurence Fuortes M.D.Professor, Department of Occupational and Environmental Health, University of Iowa; John Mauro, Sanford, Cohen, and Associates; Kathy Bates Surviving Claimant under the Energy Employees Occupational Illness Compensation Program Act; Richard Miller, Senior Policy Analyst, Government Accountability Project; Shelby Hallmark Director for the Office of Worker's Compensation Programs, United States Department of Labor; John Howard M.D., Director, National Institute for Occupational Safety and Health; and Daniel Bertoni, Director, Education, Workforce, and Income Security Issues, United States Government Accountability Office.

Joint Oversight Hearing on Outgunned and Outmanned: Local law enforcement confronts violence along the southern border, March 2, 2006 (Serial No. 109–85)

Witnesses: Sheriff Leo Samaniego, El Paso County Sheriff's Office, El Paso, Texas; Sheriff Larry Dever, Cochise County Sheriff's Office, Bisbee, Arizona; Sheriff Todd Garrison, Dona Ana County Sheriff's Office, Las Cruces, New Mexico; Sheriff Sigifredo Gonzalez, Jr., Zapata County Sheriff's Office, Zapata, Texas.

Should Congress raise the H–1B cap?, March 30, 2006 (Serial No. 109–95)

Witnesses: John M. Miano, Chief Engineer, Colosseum Builders, Inc.; Stuart Anderson, Executive Director, National Foundation for American Policy; David Huber, Information Technology Professional, Chicago, Illinois; Dr. Delbert Baker, President, Oakwood College.

The need to implement WHTI to protect U.S. Homeland Security, June 8, 2006 (Serial No. 109–117)

Witnesses: Janice L. Kephart, Principal and Managing Member, 9/11 Security Solutions, LLC; David Harris, Director, Insignis Strategic Research, Inc.; Paul Rosenzweig, Acting, Assistant Secretary for Policy Development, United States Department of Homeland Security; Roger Dow, President and Chief Executive Officer, Travel Industry Association of America.

Is the Labor Department doing enough to protect U.S. workers? June 22, 2006 (Serial No. 109–149)

Witnesses: Sigurd L. Nilsen, Ph.D. , Director for Education, Workforce, and Income Security Issues, United States Government Accountability Office; Alfred Robinson, Acting Director, Wage and Hour Administration, Employment Standards Administration, United States Department of Labor; John M. Miano, Director, Programmers Guild; Ana Avendano, Associate General Counsel and Director, Immigrant Worker Program, American Federation of Labor-Congress of Industrial Organizations.

Should we embrace the Senate's grant of amnesty to millions of illegal aliens and repeat the mistakes of the Immigration Reform and Control Act of 1986?, July 18, 2006 (Serial No. 109–127)

Witnesses: The Honorable Silvestre Reyes, 16th District, Texas; Phyllis Schlafly, President, Eagle Forum; Steven Camarota, Director of Research, Center for Immigration Studies; James R. Edwards, Jr., Adjunct Fellow, Hudson Institute.

Whether attempted implementation of the Senate Immigration Bill will result in an administrative and national security nightmare, July 27, 2006 (Serial No. 109–130)

Witnesses: Peter Gadiel, President, 9/11 Families for a Secure America; Michael Maxwell, former Director of the Office of Security and Investigations, USCIS; Michael Cutler, former INS Examiner, Inspector, and Special Agent; His Excellency Nicholas DiMarzio, the Bishop of the Brooklyn Diocese, the Roman Catholic Church.

SUMMARY OF LEGISLATIVE HEARINGS

May 12, 2005: Legislative Hearing on H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005." (Serial No. 109–35)

Witnesses: The Honorable David Dreier, 26th District, California; the Honorable Silvestre Reyes, 16th District, Texas; TJ Bonner, President, National Border Patrol Council; Marc Rotenberg, Executive Director, Electronic Privacy Information Center.

June 28, 2005: Legislative Hearing on H.R. 2933, "The Alien Gang Removal Act of 2005." (Serial No. 109–52)

Witnesses: The Honorable J. Randy Forbes, 4th District, Virginia; Kris W. Kobach, Associate Professor of Law, University of Missouri Kansas City; Michael Hethmon, Staff Attorney, Federation of American Immigration Reform; David Cole, Professor, Georgetown University Law School.

May 18, 2006: Legislative Hearing on H.R. 4997, "The Physicians for Underserved Areas Act." (Serial No. 109–111)

Witnesses: The Honorable Jerry Moran, 1st District, Kansas; Edward Salsberg, Director, Center for Workforce Studies, Association of American Medical Colleges; John B. Crosby, J.D.,Executive Director, The American Osteopathic Association; Leslie G. Aronovitz, Director, Health Care, United States Government Accountability Office.

SUMMARY OF FULL COMMITTEE FIELD HEARINGS

How does illegal immigration impact American taxpayers and will the Reid-Kennedy Amnesty worsen the blow?, August 2, 2006, San Diego, California (Serial No. 109–135)

Witnesses: the Honorable Michael D. Antonovich, L.A. County Supervisor; Mr. Kevin J. Burns, Chief Financial Officer, University Medical Center, Tucson; Mr. Robert Rector, The Heritage Foundation; Mr. Leroy Baca, Los Angeles County Sheriff; Professor Wayne Cornelius, University of California, San Diego.

Should Mexico hold veto power over U.S. border security decisions?, August 17, 2006, El Paso, Texas (Serial No. 109–147)

Witnesses: Sheriff Leo Samaniego, Sheriff of El Paso County Texas; Alison Siskin, Senior Analyst, Congressional Research Service; Andrew Ramirez, Chairman, Friends of the Border Patrol; Chief Richard Wiles, El Paso Police Department, El Paso, Texas; Kathleen Walker, President-Elect of the American Immigration Lawyers Association.

The Reid-Kennedy Bill's Amnesty: Impacts on taxpayers, fundamental fairness, and the Rule of Law, August 24, 2006, Concord, New Hampshire (Serial No. 109–153)

Witnesses: The Honorable Andrew Renzullo, New Hampshire State Representative; Steven Camarota, Director of Research, Center for Immigration Studies; Peter Gadiel, President, 9/11 Families for a Secure America; Dr. John Lewy, American Academy of Pediatrics; John Young, Co-Chair, The Agricultural Coalition for Immigration Reform.

The Reid-Kennedy Bill: The effect on American workers' wages and employment opportunities, August 29, 2006, Evansville, Indiana (Serial No. 109–129)

Witnesses: Vernon Briggs, Professor of Industrial and Labor Relations, Cornell University; Steven Camarota, Director of Research, Center for Immigration Studies; Paul Harrington, Associate Direc-

tor, Center for Labor Market Studies, Northeastern University; Ricardo Parra, Midwest Council of La Raza.

Is the Reid-Kennedy Bill a repeat of the failed Amnesty of 1986?, September 1, 2006, Dubuque, Iowa (Serial No. 109–142)

Witnesses: The Honorable Charles Grassley, United States Senator from the State of Iowa; Michael W. Cutler, Former Inspector, Examiner, and Special Agent, Immigration and Naturalization Service; John Fonte, PhD., Director, Center for American Common Culture, Hudson Institute; Councilwoman Ann E. Michalski, City Council of Dubuque, Iowa; Professor Robert Lee Maril, Chair, Department of Sociology, East Carolina University.

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Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	41
Legislation reported favorably to the full Committee	4
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	2
Legislation ordered tabled in the Subcommittee	0
Legislation pending before the full Committee	1
Legislation reported to the House	4
Legislation discharged from the Committee	0
Legislation pending in the House	4
Legislation passed by the House	1
Legislation pending in the Senate	0
Legislation vetoed by the President	0
Legislation enacted into public law	1
Legislation enacted into public law as part of another bill	0
Legislation on which hearings were held	8
Days of legislative hearings	8
Days of oversight hearings	13

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Commercial and Administrative Law has jurisdiction over the following subject matters: administrative law, bankruptcy and bankruptcy judgeships, commercial law, independent counsel, interstate compacts, certain matters pertaining to privacy, State taxation affecting interstate commerce, oversight of the Justice Department and relevant agencies, and other matters as referred by the Chairman.

LEGISLATIVE ACTIVITIES

ADMINISTRATIVE LAW

H.R. 682, The "Regulatory Flexibility Improvements Act"

Summary.—H.R. 682, the "Regulatory Flexibility Improvements Act," consists of a comprehensive set of reforms intended to encourage Federal agencies "to analyze and uncover less costly alternative regulatory approaches" and to ensure that "all impacts, including foreseeable indirect effects, of proposed and final rules are consid-

ered by agencies during the rulemaking process."[1] It amends the Regulatory Flexibility Act (RFA),[2] among other provisions.

Enacted in 1980, the RFA requires Federal agencies to assess the impact of proposed regulations on "small entities," which the RFA defines as either a small business, small organization, or small governmental jurisdiction.[3] One of the principal purposes of the RFA is to address "unnecessary and disproportionately burdensome demands" that Federal regulatory and reporting requirements place on small entities.[4] This analysis is not required, however, if the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities."[5] As amended in 1996,[6] the RFA permits judicial review under certain circumstances of, among other matters, an agency's regulatory flexibility analysis for a final rule and any certification by an agency averring that a rule will not have a significant economic impact on a substantial number of small entities.[7]

Since its enactment, certain deficiencies within the RFA have been identified. The Government Accountability Office (GAO), for example, has on several occasions reported on the Act's uneven implementation and lack of clarity. In 1991, the GAO cited weaknesses in the Act and how it was implemented by the Small Business Administration (SBA).[8] Based on a report it prepared the previous year,[9] the GAO testified at a hearing in 1995 before the Senate Small Business Committee that agencies' compliance with the RFA "varied widely from one agency to another."[10] Even after the enactment of the Small Business Regulatory Enforcement Fairness Act, which amended the RFA in several significant respects, the GAO in 2002 reported that agencies' compliance was still deficient.[11]

Legislative History.—Representative Donald Manzullo (R–IL), Chair of the House Committee on Small Business, introduced H.R. 682, the "Regulatory Flexibility Improvements Act," on February 9, 2005. In the 108th Congress, he introduced similar legislation.[12]

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[1] H.R. 682, § 2, 109th Cong. (2005).
[2] Pub. L. No. 96–354, 94 Stat. 1164 (codified at 5 U.S.C. §§ 601–612).
[3] 5 U.S.C. § 601(6) (2000).
[4] Pub. L. No. 96–354, § 2(a)(3), 94 Stat. 1164 (1980).
[5] 5 U.S.C. § 605(b) (2000).
[6] Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, § 242, 110 Stat. 847, 857 (1996).
[7] 5 U.S.C. § 611 (2000).
[8] U.S. Government Accountability Office, Regulatory Flexibility Act: Inherent Weaknesses May Limit Its Usefulness for Small Governments, GAO/HRD–91–16 (Jan. 11, 1991). The report was particularly critical of the SBA. See, e.g., id. at 2 (noting, for example, that "[w]hile the SBA can address some of these problems, it has not over the past decade").
[9] U.S. Government Accountability Office, Regulatory Flexibility Act: Status of Agencies' Compliance, GAO/GGD–94–105 (Apr. 27, 1994).
[10] Regulatory Flexibility Act—Status of Agencies' Compliance: Hearing Before the S. Comm. on Small Business, 104th Cong. 51 (1995) (statement of Johnny C. Finch, Assistant Comptroller General—General Government Division, U.S. Government Accountability Office). The GAO witness explained the reasons for such noncompliance:

(1) the act does not expressly authorize SBA or any other entity to interpret key statutory provisions such as "significant economic impact" or "substantial number of small entities;" (2) the act does not require SBA or any other entity to develop criteria for agencies to follow in reviewing their rules; (3) in the absence of this express authority or requirement, no guidance has been issued to federal agencies defining key statutory provisions; and (4) the act does not authorize SBA or any other entity to compel rulemaking agencies to comply with its provisions.

[11] SBBEFA Compliance—Is It the Same Old Story?: Hearing Before the H. Comm. on Small Business, 107th Cong. 51 (2002) (statement of Victor Rezendes, Managing Director—Strategic Issues Team, U.S. Government Accountability Office).
[12] H.R. 2345, 108th Cong. (2003).

The legislation is supported by the United States Chamber of Commerce[13] and the National Federation of Independent Businesses.[14] OMB Watch, an advocacy organization, asserted that the bill's requirements would have a "troubling" impact on the regulatory process.[15] The Subcommittee held a hearing on H.R. 682, on July 20, 2006. Witnesses at the hearing included: the Honorable Thomas Sullivan, Chief Counsel for Advocacy, United States Small Business Administration; Christopher Mihm, Director of Strategic Issues at GAO; J. Robert Shull, Director of Regulatory Policy, OMB Watch; and David Frulla, Esq. from the law firm of Kelley Drye Collier Shannon.

COMMERCIAL LAW

H.R. 800, the "Lawful Commerce in Arms Act"

Summary.—H.R. 800, the "Lawful Commerce in Arms Act," intends to provide protection for firearms manufacturers from lawsuits arising out of the acts of people who criminally or unlawfully misuse their products, protecting all citizens' constitutionally protected right to bear arms.

H.R. 800 provides that a "qualified civil liability action" cannot be brought in any state or Federal court. A "qualified civil liability action" is defined to be a civil action, administrative proceeding, or any other proceeding brought by a person against a manufacturer, seller, or a trade association for damages resulting from the criminal or unlawful misuse of a qualified firearms product.[16] The bill was not intended to prevent legal actions for negligent sales or entrustments, sales that knowingly violate state or Federal statutes, actions in breach of contract or warranty, or actions for death, physical injuries, or property damage resulting directly from a defect in design or manufacture of a product.

Legislative History.—H.R. 800 was introduced by Representative Cliff Stearns (R–FL) on February 15, 2005. The Subcommittee held a legislative hearing on March 15, 2005. Witnesses who testified at the hearing included: Rodd Walton, Secretary and General Counsel, Sigarms, Inc.; Dennis Henigan, Director, Legal Action Project, Brady Center to Prevent Gun Violence; Bradley Beckman, Counsel to North American Arms, Beckman and Associates; and Lawrence Keane, Senior Vice President and General Counsel, National Shooting Sports.

On April 11, 2005, the Subcommittee was discharged from further consideration of H.R. 800. Thereafter, the Committee met on April 20, May 18, and May 25, 2005 to markup the bill. The Com-

[13] See, e.g., The RFA at 25: Needed Improvements for Small Business Regulatory Relief: Hearing Before the H. Comm. on Small Business, 109th Cong. 11 (2005) (statement of Marc Freedman, Director, Labor Law Policy, U.S. Chamber of Commerce).

[14] *See, e.g.*, National Federation of Independent Business, Current Legislation—Key Bills in Congress, http://capwiz.com/nfib/issues/bills (last visited July 6, 2006).

[15] By requiring agencies to review all such rules every ten years, this bill would drain agency resources by diverting them away from protecting the public and into navel-gazing analyses. Even proven protections such as the ban on lead in gasoline and safeguards protecting workers against black lung would be subject to these reassessments. These analyses would be even more burdensome than under current law, because the bill would force agencies to calculate reasonably foreseeable indirect economic effects, which agency representatives at a recent Senate roundtable suggested would be so speculative as to be useless for policymakers.—OMB Watch, Regulatory Impact—In Congress, http://www.ombwatch.org/article/articleview/2936/1/308?TopicID=1(last visited July 6, 2006).

[16] H.R. 800 § 4, 109th Cong. (2005).

mittee ordered H.R. 800 to be favorably reported on May 25, 2005, with an amendment, by a recorded vote of 22 yeas to 12 nays.[17] The Senate companion bill, S. 397, the "Protection of Lawful Commerce in Arms Act," passed in the Senate on July 29, 2005 by a vote of 65 to 31. It was received in the House on September 6, 2005 and passed on October 20, 2005. S. 397 was signed by the President and became Public Law 109–92 on October 26, 2005.

H.R. 3509, the "Workplace Goods Job Growth and Competitiveness Act of 2005"

Summary.—H.R. 3509, the "Workplace Goods Job Growth and Competitiveness Act of 2005," would provide for a nationwide statute of repose of twelve years for durable goods used in the workplace. This legislation would prevent manufacturers from being held liable in suits concerning products that have long since left their control. Statutes of repose have been enacted in a number of states to counter the long tail of liability that American manufacturers must endure. Approximately 12 states currently have statutes of repose for products, and among those states there is a clear consensus that the period of repose should be 12 years or less.[18] However, as manufacturers sell goods in all 50 states, a national statute of repose is needed to effectively address their liability exposure. H.R. 3509 was intended to be a narrowly crafted remedy to meet the needs of manufacturers of durable workplace goods who face serious long tail liability exposure. The bill would not apply to consumer goods.

Legislative History.—H.R. 3509 was introduced by Representative Steve Chabot (R–OH) on July 28, 2005. The Subcommittee held a legislative hearing on March 14, 2006. Witnesses who testified included: Elizabeth Sitterly, Esq., Legal Counsel, Giddings & Lewis, LLC; Kevin McMahon, Esq., Partner, Nelson Mullins Riley & Scarborough, LLP; Professor Andrew Popper, Washington College of Law, American University; and James H. Mack, Esq., Vice President of Tax and Economic Policy, The Association of Manufacturing Technology. The bill was discharged from the Subcommittee on March 24, 2006. The Committee marked up H.R. 3509 on March 29, 2006 and July 19, 2006. The legislation was ordered to be reported favorably, with an amendment, by the Committee on July 19, 2006 by a recorded vote of 21 to 12. The legislation was not further considered prior to the end of the 109th Congress.

PRIVACY

H.R. 2840, the "Federal Agency Protection of Privacy Act of 2005"

Summary.—H.R. 2840, the "Federal Agency Protection of Privacy Act of 2005," would require agencies to prepare privacy impact as-

[17] H.R. Rep. No. 109–124, at 38 (2005).

[18] *See, e.g.,* Colo. Rev. Stat. Ann. § 13–80–107 (seven year statute of repose on manufacturing equipment); Conn. Gen. Stat. Ann.§ 52–577a (ten year statute of repose on manufacturing equipment); Ga. Code Ann. § 51–1–11 (ten year statute of repose for products); 735 Ill. Comp. Stat. Ann. 5/13–213 (12 year statute of repose for products); Ind. Code § 34–20–3–1 (ten year statute of repose for products); Iowa Code Ann. § 614.1(2A) (fifteen year statute of repose for products); Neb. Rev. Stat. Ann. § 25–224 (ten year statute of repose for products); N.C. Gen. Stat. Ann. § 1–50(a)(6) (six year statute of repose for products); Or. Rev. Stat. § 30.905 (ten year statute of repose for products); Tenn. Code. Ann. § 29–28–103 (ten year statute of repose for products); and Tex. Civ. Prac. & Rem. Code Ann. § 16.012 (fifteen year statute of repose for products).

sessments for proposed and final rules that pertain to the collection, maintenance, use, or disclosure of personally identifiable information from ten or more individuals, other than agencies, instrumentalities, or employees of the Federal government. With limited exception, such assessments will be made available to the public for comment. While H.R. 2840 makes no substantive demands on Federal agencies with respect to privacy, it does require these agencies to analyze how the rule will impact the privacy interests of individuals. This requirement is similar to other analyses that agencies currently conduct, such as those required by the Regulatory Flexibility Act[19] and the E-Government Act of 2002.[20] Specifically, H.R. 2840 would require the agency to explain: (1) what personally identifiable information will be collected; (2) how such information will be collected, maintained, used, disclosed, and protected; (3) whether a person to whom the personally identifiable information pertains is allowed access to such information and whether such person may correct any inaccuracies; (4) how information collected for one purpose will be prevented from being used for another purpose; and (5) the steps the agency has taken to minimize any significant privacy impact that a final rule may have. In addition, the bill would have permitted judicial review of certain final agency actions, and required agencies to review rules on a periodic basis that have either a significant privacy impact on individuals or a privacy impact on a significant number or individuals. The bill included a limited waiver from certain requirements for national security reasons and to prevent the disclosure of other sensitive information.

Legislative History.—On June 9, 2005, Representative Steve Chabot (R–OH) introduced H.R. 2840 with Subcommittee Chairman Chris Cannon (R–UT) and Representatives Jerrold Nadler (D–NY) and William Delahunt (D–MA) as original cosponsors. Although no hearings were held on H.R. 2840 during the 109th Congress, the Subcommittee had previously held a joint hearing with the Subcommittee on the Constitution on similar legislation (H.R. 338) during the 108th Congress on July 22, 2003.[21] Testimony at that hearing was received from United States Senator Charles E. Grassley (R–IA); former Representative Bob Barr (R–GA) on behalf of the American Conservative Union; Laura Murphy, Director of the American Civil Liberties Union, and James X. Dempsey, Executive Director of the Center for Democracy & Technology. On May 17, 2006, the Subcommittee ordered H.R. 2840 to be favorably reported by voice vote. On June 7, 2006, the Committee ordered the

[19] Pub. L. No. 96–354, 94 Stat. 1165 (1980) (codified at 5 U.S.C. §§ 601 *et seq.*). The Regulatory Flexibility Act requires an agency to describe the impact of proposed and final regulations on small entities (such as small businesses) if the proposed regulation is expected to have a significant economic impact on a substantial number of small entities. The agency must prepare an initial regulatory flexibility analysis (IRFA) and the IRFA, or a summary thereof, must be published for public comment in the Federal Register together with the proposed rule. Similar requirements pertain to final rules. The Small Business Regulatory Enforcement Fairness Act of 1996 subjects the regulatory flexibility analysis to judicial review. Pub. L. No. 104–121, § 242, 110 Stat. 857, 865 (1966) (codified at 5 U.S.C. § 611).

[20] Pub. L. No. 107–347, § 208, 116 Stat. 2899, 2921 (requiring a federal agency *inter alia* to conduct a privacy impact assessment before developing or procuring an information technology system that collects, maintains or disseminates information in an identifiable form).

[21] Defense of Privacy Act and Privacy in the Hands of the Government: Joint Hearing on H.R. 338 Before the Subcomm. on Commercial and Administrative Law and the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 108th Cong. (2003).

bill to be favorably reported, with an amendment, by voice vote. On Sept 25, 2006, H.R. 2840 was placed on the Union Calendar.

STATE TAXATION AFFECTING INTERSTATE COMMERCE

H.R. 1956, the "Business Activity Tax Simplification Act of 2005"

Summary.—H.R. 1956, the "Business Activity Tax Simplification Act of 2006," would provide a bright-line physical presence nexus requirement in order for states to collect net income taxes or other business activity taxes on multistate enterprises. H.R. 1956 amends Public Law 86–272,[22] enacted in 1959, which prohibits states from imposing taxes on the net income of interstate sellers of tangible personal property if the only business activity within the state consists of the solicitation of certain sales orders. H.R. 1956 lists the conditions that a business must meet in order to establish a physical presence for the purpose of a state imposing business activity taxes. It also specifies those conditions that should be disregarded in determining whether a business has established physical presence within a state. H.R. 1956 would benefit interstate commerce by providing businesses a measure of jurisdictional certainty.

Legislative History.—H.R. 1956 was introduced by Representative Bob Goodlatte (R–VA) on April 28, 2005. The Subcommittee held a hearing on the measure on September 27, 2005. Witnesses who testified included: Carey Horne, President, ProHelp Systems, Inc.; Earl Ehrhart, State Representative, Georgia House, 36th District, National Chairman of the American Legislative Council; Joan Wagnon, Secretary of Revenue, State of Kansas, Chair, Multistate Tax Commission; and Lyndon D. Williams, Tax Counsel, Citigroup Corp. On December 13, 2005, the Subcommittee marked up H.R. 1956, and ordered it to be favorably reported, as amended, by voice vote. The Committee marked up the bill on June 28, 2006, and ordered it to be favorably reported, as amended, by voice vote. The bill was reported to the House on July 17, 2006 (H Rept. 109–575).

H.R. 1369, the "To Prevent Certain Discriminatory Taxation of Interstate Natural Gas Pipeline Property"

Summary.—H.R. 1369 would prohibit discriminatory taxation of natural gas pipeline property. The bill describes acts that unreasonably burden and discriminate against interstate commerce and which effectively increase the costs of transporting natural gas throughout the different states. It would prevent states, political subdivisions and any other taxing authority in a state from assessing a higher ad valorem tax on interstate gas pipeline property than that assessed on other commercial or industrial property. It also grants jurisdiction to the U.S. district courts to determine claims of discriminatory state taxation and provide relief.

Natural gas pipelines constitute an interstate transportation industry similar to that of railroads, trucking, and air carriers. But while Congress has passed legislation with respect to discriminatory tax treatment of property belonging to these other interstate industries, it has not acted with regard to natural gas pipeline

[22] Pub. L. No. 86–272, 73 Stat. 555 (1959) (codified, as amended, at 15 U.S.C. § 381 et set. (2004)).

transportation. For example, Congress passed the Railroad Revitalization and Regulatory Reform Act of 1976, which, in part, enjoined states from imposing discriminatory assessments and authorized the railroad industry to seek injunctive relief in federal court to eliminate such discriminatory state assessments. Since then, Congress has passed similar legislation for motor carrier transportation property and air carrier transportation property prohibiting discriminatory tax treatment.

Legislative History.—H.R. 1369 was introduced by Subcommittee Chairman Chris Cannon (R-UT) on March 17, 2005. The Subcommittee held a hearing on the bill on October 6, 2005. Witnesses who testified at the hearing included: Mark Schroeder, Vice President and General Counsel, CenterPoint Energy Gas Transmission Company; Dr. Veronique de Rugy, Research Fellow, American Enterprise Institute for Public Policy Research; Harley Duncan, Executive Director, Federation of Tax Administrators; and Laurence Garrett, Senior Counsel, El Paso Corporation, on behalf of The Interstate Natural Gas Association of America.

On June 15, 2006, the Subcommittee marked up H.R. 1369 and ordered the bill favorably reported without amendment by voice vote. The Committee marked up the bill on July 12, 2006 and ordered it to be favorably reported by voice vote. H.R. 1369 was placed on the Union Calendar on Sept. 14, 2006. The legislation was not further considered prior to the end of the 109th Congress.

H.R. 4019, "To Amend Title 4 of the United States Code to Clarify the Treatment of Self-Employment for Purposes of the Limitation on State Taxation of Retirement"

Summary.—H.R. 4019 amended Public Law 104–95 (as codified at 4 U.S.C. §114) to clarify the limitation on state taxation of retirement income with respect to workers who were self-employed. The legislation was intended to ensure that the retirement income of all retirees, whether they are employees, partners, or self-employed prior to retirement, is treated in the same manner.[23]

Public Law 104–95 was enacted in order to prevent pensions and many other types of retirement income from being taxed both by the state wherein the retiree resides when he or she receives payment of the retirement income and by the source state where the retiree worked prior to retirement. Although Congress acknowledged that such double taxation of retirement income would be avoided to the extent that the retiree's state of residence provides a credit for the income taxes that the retiree has paid to the source state on the retirement income, it concluded that such state tax credits are not always available, particularly if the retiree resides in a state with no income tax.

H.R. 4019 was intended to clarify that exemptions to payments made to retired employees apply to both retired employees and retired partners by specifically including written arrangements for retired partners. The bill makes clear that any written plan, program, or arrangement in effect at the time of retirement that provides for payments to a retired partner in recognition of prior service may qualify as exempt from nonresident state income taxation

[23] Pub. L. No. 104–95, 109 Stat. 979 (codified at U.S.C. § 114 (1996)).

as long as such payments are made over ten years or more and are made in substantially equal periodic payments.

H.R. 4019 was intended to make clear Congress's original intent when it passed section 114, to limit the taxation of retirement income to the state in which the retiree resides, whether the retirement payments are made to a retired employee or a retired partner. H.R. 4019 merely confirmed and continued this Congressional intent. H.R. 4019 also clarified the definition of substantially equal periodic payments to permit plan caps on retiree payments and cost of living adjustments and specified that the substantially equal periodic payments test would be satisfied when payments include components from both qualified and non-qualified plans. These modifications were intended to clarify existing law rather than substantively amend it.

Legislative History.—Subcommittee Chairman Chris Cannon introduced H.R. 4019 on October 7, 2005. The Subcommittee held a hearing on the bill on December 13, 2005. Witnesses who testified at the hearing included: former Representative George W. Gekas (R–PA); Lawrence Portnoy, a retired partner with PricewaterhouseCoopers LLP; Stanley Arnold, former Commissioner of the Department of Revenue for the State of New Hampshire; and Harley Duncan, Executive Director, Federation of Tax Administrators. Following the hearing, the Subcommittee marked up the bill and ordered it favorably reported by voice vote without amendment.

On June 7, 2006, the Committee marked up H.R. 4019 and reported it favorably by voice vote (H. Rept. 109–542). The House passed the legislation by voice vote, without amendment, on July 17, 2006. On July 24, 2006, the Senate unanimously passed H.R. 4019 without amendment. H.R. 4019 was signed into law by President George W. Bush on August 3, 2006 (Pub. L. No. 109–264).

LEGAL SERVICES CORPORATION

H.R. 6101, "Legal Services Corporation Improvement Act"

Summary.—H.R. 6101, the "Legal Services Corporation Improvement Act," would strengthen the independence of the Inspector General (IG) at the Legal Services Corporation (LSC). Specifically, the bill would amend the Legal Services Act to require nine of 11 members of the LSC Board of Directors to concur in the discharge of the Corporation's IG.

There would appear to be an inherent conflict between any IG and the agency for which he or she serves. The IG is charged with oversight of the functioning of the agency and must, as a matter of cause, conduct investigations of the heads of the agency—the same people to whom he or she reports and must maintain a working relationship.

Other agencies have apparently experienced similar issues with their IGs. To remedy the conflict in two organizations, the United States Postal Service and the United States Capitol Police, Congress created higher bars for dismissal than those proposed in H.R. 6101 for the IG at LSC. The Postal Reorganization Act requires agreement of seven out of nine members of the Board of Governors for dismissal, while the U.S. Capitol Police IG may be removed

from office prior to the expiration of his term only by the unanimous vote of all of the voting members of the Capitol Police Board. H.R. 6101 is modeled after the removal processes for these two organizations.

Legislative History.—On July 28, 2006, Subcommittee Chairman Cannon introduced H.R. 5974, a bill to amend the Inspector General Act of 1978 and the Legal Services Corporation Act to provide appropriate removal procedures for the Inspector General of the Legal Services Corporation, and for other purposes. Thereafter, Chairman Cannon introduced a substitute bill, H.R. 6101, the "Legal Services Corporation Improvement Act," on September 19, 2006.

On September 26, 2006, the Subcommittee held a hearing on H.R. 6101. Witnesses at the hearing included: Richard "Kirt" West, Inspector General, Legal Services Corporation; David Williams, Inspector General, United States Postal Service; and Frank Strickland, Chairman of the Board, Legal Services Corporation. The legislation was not further considered prior to the end of the 109th Congress.

OVERSIGHT ACTIVITIES

Oversight hearing list

Date/Serial No.	Hearing title
May 24, 2005/ 109–27	Joint Oversight Hearing on ''Economic Development and the Dormant Commerce Clause: the Lessons of Cuno v. Daimler Chrysler and Its Effect on State Taxation Affecting Interstate Commerce''.
June 7, 2005/ 109–42	Mutual Fund Trading Abuses.
June 28, 2005/ 109–145	Legal Services Corporation: A review of Leasing Choices and Landlord Relations.
July 27, 2005/ 109–55	Implementation of the Bankruptcy Abuse Prevention Act of 2005.
Nov. 1, 2005/ 109–71	Administrative Law, Process and Procedure Project.
March 30, 2006/ 109–97	10th Anniversary of the Congressional Review Act.
April 4, 2006/ 109–98	Personal Information Acquired by the Government from Information Resellers: Is There Need for Improvement?
April 26, 2006/ 109–132	Reauthorization of the Department of Justice: Executive Office for United States Attorneys, Civil Division, Environment and Natural Resources Division, Executive Office for United States Trustees, and Office of the Solicitor General.
May 17, 2006/ 109–155	Privacy in the Hands of the Government: The Privacy Officer for the Department of Homeland Security and the Privacy Officer for the Department of Justice.
June 13, 2006/ 109–120	State Taxation of Interstate Telecommunications Services.
July 25, 2006/ 109–133	The 60th Anniversary of the Administrative Procedure Act: Where Do We Go From Here?
Nov. 14, 2006/109–152	The Administrative Law, Process and Procedure Project for the 21st Century
Dec. 7, 2006	The Arbitration Process of the National Football League Players Association

Joint Oversight Hearing on "Economic Development and the Dormant Commerce Clause: the lessons of Cuno v. Daimler Chrysler and its effect on state taxation affecting interstate commerce"

Summary.—On October 19, 2004, the United States Court of Appeals for the Sixth Circuit issued an opinion in Cuno v. DaimlerChrysler, Inc. holding that portions of Ohio's tax code were unconstitutional on the ground that they violated the Dormant Commerce Clause.[24] At issue was Ohio's franchise tax credit for

[24] *Cuno* v. *DaimlerChrysler, Inc.*, 386 F.3d 738 (6th Cir. 2004), vacated by and remanded by, 126 S.Ct. 1854 (2006) (While not actually a provision of the Constitution, the Dormant Commerce Clause is a doctrine of Congressional power inferred by the Supreme Court that restricts the ability of States to legislate in certain areas involving interstate commerce.)

companies that chose to "[purchase] new manufacturing machinery and equipment during the qualifying period, provided that the new manufacturing machinery and equipment are installed in [Ohio]."[25] Under the terms of the tax credit and a related property tax exemption,[26] DaimlerChrysler was to obtain approximately $280 million in tax relief over ten years for investing approximately $1.2 billion in a new vehicle assembly plant that would generate approximately 5,000 new jobs in Toledo, Ohio.[27]

Apart from the question of the constitutionality of the Ohio investment tax credit is the issue of whether such credits make sound public policy. Approximately forty states have similar investment tax credits.[28] The reasons that a state might offer such a credit are many, but underlying them all is the notion that such credits make it attractive for businesses to invest in their states, thus creating higher tax revenue for the state in the form of property and payroll taxes. From a business perspective, the existence of tax credits are just one of several factors that influence a company's decision to expand or move its operations from one state or locale to another. Other factors include the cost of labor, the cost of land, the overall regulatory and tax environment, access to resources, costs of shipping, as well as historical factors such as a business's ties to a particular community. And while a tax incentive package usually represents a small amount of money relative to the company's proposed investment in a community,[29] it can help provide a rationale for staying in a particular location that otherwise would make less economic sense for the company.

On May 24, 2005 the Subcommittee, together with the Subcommittee on the Constitution, held a joint oversight hearing on "Economic Development and the Dormant Commerce Clause: the Lessons of Cuno v. DaimlerChrysler and Its Effect on State Taxation Affecting Interstate Commerce." Witnesses who testified at the hearing included: Lieutenant Governor Bruce Johnson of the State of Ohio; Michele R. Kuhrt, Director of Taxes and Financial Administration for Lincoln Electric; Professor Walter Hellerstein from University of Georgia School of Law; and Professor Edward A. Zelinsky from Benjamin N. Cardozo School of Law.

The hearing provided an opportunity for the Subcommittees to explore the scope of the Dormant Commerce Clause vis-à-vis state tax credits, and the implications of the Sixth Circuit's decision in Cuno v. DaimlerChrysler on that body of law. The hearing also addressed Congress' ability to pass legislation that renders such State statutory schemes lawful and examined the impact these tax credits have on promoting business development in economically depressed areas.

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[25] Ohio Rev. Code Ann. § 5733.33(B)(1).

[26] *Cuno*, 386 F.3d at 748-49 (The property tax exemption was upheld against challenges under the Dormant Commerce Clause and the Equal Protection clause of the Ohio Constitution.)

[27] Id. at 741; see also Gregory Castanias, National Movement Against Economic-Development Incentives Makes Inroads in the Sixth Circuit and Raises Questions About Similar Incentives Elsewhere, Mondaq Bus. Briefing, Feb. 7, 2005, available at http://www.mondaq.com/article.asp?articleid=30851&searchresults=1.

[28] Castanias, supra note 28.

[29] For example, DaimlerChrysler was to receive $280 million in tax relief over ten years for investing approximately $1.2 billion in a new vehicle assembly plant that would generate approximately 5,000 new jobs in Toledo, Ohio.

Mutual fund trading abuses

Summary.—In the summer of 2003, various trading abuses committed by many well-known mutual fund companies began to surface. As a result of numerous regulatory investigations commenced thereafter, the mutual fund industry suffered "through its most serious crisis of faith in more than six decades."[30] These abuses included, among other activities, market timing, late trading, and exorbitant fund fees. Market timing can constitute illegal conduct if, for example, it takes place as a result of undisclosed agreements between investment advisers (firms that may manage mutual fund companies) and favored customers (such as hedge funds) in contravention of stated fund trading limits. Frequent trading can harm mutual fund shareholders because it lowers fund returns and increases transaction costs. According to one estimate, market timing abuses may have resulted in $5 billion in annual losses.[31] Late trading involves the practice of trading shares after the markets have closed so that the trader can take advantage of information that becomes available after the closing.[32]

Mutual fund companies and other participants implicated in the scandal included Canary Capital, Janus Capital Group, Bank of America, Alliance Capital Management, Prudential Securities, Millennium Partners, Fred Alger Management, Putnam Investments, PBHG Funds, Massachusetts Financial Services, Security Trust, Franklin Resources, and Invesco Funds Group.[33]

Although there was extensive awareness of illegal market timing for years, the SEC failed to act. Perhaps even more problematic was the fact that many of the initial investigations and prosecutorial actions were commenced by state officials rather than the SEC. On September 3, 2003, New York Attorney General Elliot Spitzer announced that Canary Capital, a hedge fund, agreed to pay $40 million in fines and restitution relating to improper trading of mutual funds, without admitting any wrongdoing.[34] This would be the first of many regulatory enforcement efforts undertaken by state officials.

In February 2004, Chairman Sensenbrenner and Ranking Member Conyers asked the GAO to undertake a comprehensive review of the SEC's apparent failure to proactively detect and prevent ille-

[30] Patrick McGeehan, A Scandal, but Business Booms, N.Y. Times, Jan. 11, 2004, at 25.

[31] U.S. Government Accountability Office, Report to Congressional Requesters: Mutual Trading Abuses—Lessons Can Be Learned from SEC Not Having Detected Violations at an Earlier Stage, GAO–05–313, at 4–5 (Apr. 2005).

[32] Id. at 10.

[33] See, e.g., Jenny Anderson, Franklin Hit with Trading Charges, N.Y. Post, Feb. 5, 2004, at 37; Patrick McGeehan, A Scandal, but Business Booms, N.Y. Times, Jan. 11, 2004, at 28; Riva D. Atlas, Mutual Fund Ex-Executive Is Sentenced to Prison, N.Y. Times, Dec. 18, 2003, at C1 (reporting that a senior executive at Fred Alger Management received a prison sentence for tampering with evidence sought by the New York Attorney General in connection with the investigation of improper trading in mutual funds); Diana B. Henriques, Fund Compliance Plans Ignored Trade Timing, N.Y. Times, Dec. 11, 2003, at C1 (reporting on allegations that a small group of Prudential brokers "were placing hundreds of short-term trades in defiance of the funds' rules); Associated Press, Guilty Plea in Case at Security Trust, N.Y. Times, Dec. 10, 2003", at C63; Landon Thomas Jr., Memo Shows MFS Funds Let Favored Clients Trade When Others Couldn't, N.Y. Times, Dec. 9, 2003, at C1; Bloomberg News, S.E.C. Charges Mutuals.com and 3 of Its Leaders with Fraud, N.Y. Times, Dec. 5, 2003, at C6; Riva Atlas & David Barboza, Funds Scandal Hits Invesco and Founder of Strong, N.Y. Times, Dec. 3, 2003, at C1 (reporting on Richard Strong's resignation of Invesco Funds Group, in light of the "rapidly expanding investigation of improper trading").

[34] Patrick McGeehan, A Scandal, but Business Booms, N.Y. Times, Jan. 11, 2004, at 25.

gal activities in the mutual fund industry.[35] In addition, the GAO was requested to focus on the efforts of the NASD (National Association of Securities Dealers) to detect fraud in the various disclosure documents that are required to be filed with it by mutual fund companies.[36]

On June 7, 2005, the Subcommittee held an oversight hearing on mutual fund trading abuses and the results of the GAO's study of these abuses. Witnesses at the hearing included: Richard J. Hillman, Director, Financial Markets and Community Investment, GAO; Lori A. Richards, Director, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (SEC); the Honorable William Francis Galvin, Secretary of the Commonwealth of Massachusetts; and Professor Eric W. Zitzewitz of Stanford University Graduate School of Business. The hearing provided a forum for the GAO to report on the results of two investigations it conducted into the failure of the SEC to uncover billions of dollars of mutual fund trading fraud abuses.

Legal Services Corporation: A review of leasing choices and landlord relations

Summary.—In 1998, the Legal Services Corporation (LSC) began searching for a permanent location. Members of the LSC Board created a separate organization known as the Friends of Legal Services Corporation (FoLSC), which would attempt to purchase a building for LSC to avoid certain budgetary scoring requirements of the Office of Management and Budget (OMB). FoLSC received a grant of $4 million from the Bill and Melinda Gates Foundation to aid in the project. On July 2, 2002, FoLSC completed the purchase of 3333 K Street, Washington, D.C., a five-story commercial building with 60,000 square feet. LSC agreed to enter into a ten-year lease agreement to occupy 45,000 square feet of this property, for $38 per square foot. During the search and acquisition of the building, many of the original aims of the project seem to have been compromised, with detrimental results to the LSC.

The lease entered into by LSC would appear to be unacceptable by normal business entities in a commercial context. Pursuant to concerns raised by the Subcommittee as well as by LSC staff and management, LSC Inspector General Kirt West initiated an investigation into the financial implications of the lease that was entered into between LSC and FoLSC. Based on his investigation, the Inspector General found that LSC was paying significantly more than the market rate for the leasehold. Depending on a yet to be determined variable as to whether the build-out allowance would be fully utilized, his report concluded that LSC was paying between $1.23 million to $1.89 million in rent above what the market would bear for the square footage occupied over the next 10 years.[37] The

[35] Letters from F. James Sensenbrenner, Jr., Chairman of the House Judiciary Committee, to David M. Walker, Comptroller General of the United States (Feb. 3, 2004); Letter from John Conyers, Jr., Ranking Member of the House Judiciary Committee, to David M. Walker, Comptroller General of the United States (Feb. 6, 2004) (on file with the Subcommittee).

[36] Id.

[37] Report on the Financial Implications of the 3333 K Street Lease by the Inspector General to the LSC Board of Directors (Apr. 22, 2005). The Report utilized two independent appraisals contracted by the Inspector General. Although a $2 million build-out allowance was incorporated into the lease (albeit atypical of commercial lease agreements), there was no provision for any unused funds to be transferred back to LSC, the tenant.

lease contained no renewal option, nor any provision for eventual ownership of the building to transfer to LSC.[38]

The Subcommittee held an oversight hearing on LSC on June 28, 2005 to examine the fiscal soundness of a lease entered into by LSC, potentially false representations made by its landlord, FoLSC, and the relationship between LSC and its landlord. Witnesses at the hearing included: Thomas Smegal, Chairman of the Board of FoLSC; Frank B. Strickland, Chairman of the Board of Directors of LSC; and R. Kirt West, LSC Inspector General.

Implementation of the Bankruptcy Abuse Prevention Act of 2005

Summary.—The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act)[39] was signed into law by President George W. Bush on April 20, 2005. Pursuant to section 1501, most of the Act's provisions become effective on October 17, 2005.

The Act represents one of the most comprehensive overhauls of the Bankruptcy Code in more than 25 years, particularly with respect to its consumer bankruptcy reforms. These consumer bankruptcy reforms include, for example, the establishment of a means test mechanism to determine a debtor's ability to repay debts and the requirement that consumer debtors receive credit counseling prior to filing for bankruptcy relief.

The Act directs the Executive Office for United States Trustees (EOUST), which is a component of the Justice Department, and the Judicial Conference of the United States to perform various tasks to facilitate the Act's implementation. These responsibilities include the issuance of rules, forms, guidelines, and procedures.

On July 27, 2005, the Subcommittee held a hearing on the implementation of the Act. The hearing provided an opportunity for the Subcommittee to examine the efforts EOUST and the Judicial Conference had made with respect to fulfilling their enhanced responsibilities under the Act. Witnesses at the hearing included: Clifford J. White III, EOUST Acting Director; Honorable A. Thomas Small, United States Bankruptcy Judge for the Eastern District of North Carolina, on behalf of Judicial Conference of the United States; Travis B. Plunkett, on behalf of the Consumer Federation of America, National Consumer Law Center, and U.S. Public Interest Research Group; and George Wallace, who appeared on behalf of the Coalition for the Implementation of Bankruptcy Reform.

Administrative Law, Process and Procedure Project

Summary.—In light of the fact that the Administrative Procedure Act (APA)[40] was enacted more than 60 years ago, concerns have been presented as to whether the APA is sufficiently adaptable to accommodate current technological advances and policy developments (e.g., privacy versus law enforcement, globalization of standards, interagency redundancy). Other problematic trends include the absence of transparency at certain stages of the rulemaking process, the increasing incidence of agencies publishing final rules without having these rules first promulgated on a proposed basis, the apparent stultification of the rulemaking process,

[38] Id. at 2.
[39] Pub. L. No. 109–8, 119 Stat. 23 (2005).
[40] 5 U.S.C. §§ 551–59, 701–06, 1305, 3105, 3344, 5372, 7521 (2002).

and the need for more consistent enforcement by agencies.[41] Potentially positive developments include increased opportunities for fostering public comment through e-rulemaking and agencies' use of the Internet to promote greater compliance by the public and private sectors. Additional important issues concern Congress's role in its oversight of the rulemaking process and whether current laws, such as the Congressional Review Act[42] and the Regulatory Flexibility Act,[43] have resolved the problems they were intended to address.

In anticipation of funds being appropriated for the Administrative Conference of the United States (ACUS) during the 109th Congress, the Subcommittee coordinated the Administrative Law, Process and Procedure Project. As authorized by Chairman F. James Sensenbrenner, Jr., the Project consists of a comprehensive study of the state of administrative law, process and procedure in our nation. A description of the Project was included in the Oversight Plan for the 109th Congress approved by the Committee on the Judiciary on January 26, 2005.[44] The Project will culminate with a detailed report highlighting recommendations for legislative proposals and suggested areas for further research and analysis to be considered by ACUS. The Subcommittee is being assisted by the Congressional Research Service (CRS) in the conduct of the Project.[45]

The Project's objective is to conduct a nonpartisan, academically credible analysis of administrative law, process and procedure. The Project will focus on process, not policy concerns. General areas of study are anticipated to include: (1) public participation in the rulemaking process; (2) congressional review of rules; (3) presidential review of agency rulemaking; (4) judicial review of rulemaking; (5) the agency adjudicatory process; (6) the utility of regulatory analysis and accountability requirements; and (7) the role of science in the regulatory process.

On November 1, 2005, the Subcommittee held a hearing on the Project. The hearing provided an opportunity for the Subcommittee to be briefed by Morton Rosenberg, Esq., Specialist in American Public Law at the American Law Division of CRS, regarding the status of the Project. It also served as a forum for J. Christopher Mihm, Director of Strategic Issues at GAO, to share his office's expertise regarding its analysis of subject matters of relevance to the Project and opportunities for collaboration. In addition, Professor Jeffrey S. Lubbers, Professor-Fellow in Law and Government Program, Washington College of Law, American University, explained the role that ACUS could play in implementing the Project's recommendations for further review and analysis. Professor Jody

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[41] See, e.g., Regulatory Reform: Prior Reviews of Federal Regulatory Process Initiatives Reveal Opportunities for Improvements, U.S. Government Accountability Office, GAO–05–939 (2005).

[42] 5 U.S.C. §§ 801–08 (2002).

[43] 5 U.S.C. §§ 601–12 (2002).

[44] Oversight Plan for the 109th Congress, Committee on the Judiciary, at 5 (Jan. 26, 2005), available at http://judiciary.house.gov/media/pdfs/printers/109th/109th%20Oversight%20Plan.pdf.

[45] Chairman Sensenbrenner and Ranking Member Conyers requested CRS to have Mr. Rosenberg provide legal guidance, analysis and research to the Subcommittee staff in identifying significant administrative process issues for the project as well as assistance in the organization of the necessary outreach support in the academic and professional communities.

Freeman of Harvard Law School provided a status report on her ongoing empirical study of judicial review of agency regulations.

10th Anniversary of the Congressional Review Act

Summary.—Ten years ago, in 1996, Congress passed the Congressional Review Act ("CRA"). The Act was a result of a desire for more active congressional control over a rapidly growing body of administrative rules.[46] The CRA established a mechanism for Congress to review and disapprove Federal agency rules by using an expedited legislative process. Prior to the CRA, Congress had historically employed various means to assert its authority over agencies.[47] Recognizing that Congress must conform to the constitutional bicameral requirement and the Presentment clause, the CRA requires that rules be disapproved by a joint resolution of both houses, then presentment to the President for signature. It thus follows the approach taken in the Rules Enabling Act (28 U.S.C. § 2072 et seq.), under which the Supreme Court has for many years promulgated rules of practice and procedure and rules of evidence for the Federal courts subject to a review that has often been exercised by the Congress.[48]

Since the enactment of the CRA, over 41,828 major and nonmajor rules have been reported by Administrative agencies and have became effective.[49] To date, a total of 37 joint resolutions of disapproval have been introduced in both houses of Congress relating to 28 rules.[50]

Over the ten years, only once has the CRA been used to disapprove a rule.[51] It has become apparent that the reason this one rule was disapproved was more due to a convergence of special circumstances that are unlikely to happen consistently, than as an example of how the CRA can be effectively used to disapprove rules.[52]

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[46] Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Subtitle E, 110 Stat. 857–874.

[47] A popular method, particularly from the early 1970s through 1983 was the "legislative veto" under which an enabling statute sometimes provided the rules promulgated under it were subjected to reversal if one or both of the Houses passed a resolution repealing the Executive Branch's action. In 1983, however, the Supreme Court struck down the legislative vote in INS v. Chadha, 462 U.S. 919, on the grounds that when Congress acted "legislatively" it had to conform to the dictates of the bicameral requirement and Presentment Clause. See U.S. Const. art. I, § 7, cl. 2. Because the legislative veto was a legislative act that did not adhere to these provisions, it violated the Constitutional design for the separation of powers.

[48] Despite passage of the Congressional Review Act, some pressure continues for even more congressional responsibility in the oversight of agency rulemaking, as evidenced from testimony received by the Subcommittee during a hearing on the role of Congress in monitoring administrative rulemaking during the 104th Congress. Role of Congress in Monitoring Administrative Rulemaking: Hearing on H.R. 47, H.R. 2727, and H.R. 2990 Before the Subcomm. On Commercial and Administrative Law of the House Comm. On the Judiciary, 104th Cong. 2nd Sess. 104–93 (1996). The hearing considered three bills, which provided in varying degree for congressional approval of administrative rules before they could become formally effective.

[49] General Accounting Office, Reports on Federal Agency Major Rules, available at http://www.gao.gov/decisions/majrule/majrule.htm.

[50] This Congress, four joint resolutions have been introduced, two in the House and two in the Senate. H.J. Res. 23 introduced by Rep. Herseth (D–SD) and S.J. Res. 4, introduced by Sen. Conrad (D–ND) to disapprove a Department of Agriculture rule that establishes minimal risk zones for introduction of mad cow disease. H.J. Res. 56, introduced by Rep. Meehan (D–MA) and S.J. Res. 20, introduced by Sen. Leahy (D–VT) to disapprove an EPA rule regarding the removal of coal and oil-fired generating units from a list of major sources of hazardous pollutants.

[51] S.J. Res. 16, 107th Cong. (2001)(enacted as Pub. L. No 107–52 (2001).

[52] The OSHA ergonomic standards were controversial from the first publication in 1993 of the initial proposal for rulemaking. There was Congressional opposition to the standards as well, which led to riders prohibiting OSHA from promulgating proposed or final ergonomic rules during fiscal years 1995, 1996 and 1998. OSHA issued its final standard in 2000 after Congress

Continued

Congress has not used the CRA to disapprove a rule since 2001, though it has introduced joint resolutions regarding different agency rulemakings. A number of times, joint resolutions have been introduced in an effort to pressure the agency involved to modify or withdraw the rule.[53] This shows another effect of the CRA even when a joint resolution is not passed.

On March 30, 2006, the Subcommittee held an oversight hearing recognizing the 10th anniversary of the signing of the Congressional Review Act. Witnesses at the hearing included: John V. Sullivan, Parliamentarian of the United States House of Representatives, only the second time in history that a sitting parliamentarian has testified in front of a House committee. The other witnesses were J. Christopher Mihm, Managing Director for Strategic Issues at the U.S. General Accounting Office; Morton Rosenberg, Specialist in American Public Law at the Congressional Research Service; and Todd Gaziano, Director of the Center for Legal & Judicial Studies at The Heritage Foundation. The hearing provided an opportunity to discuss how the CRA has been used over the ten years since its enactment, the effectiveness as a tool in congressional oversight, and the current reach of the CRA in the rulemaking process.

Personal information acquired by the Government from information resellers: Is there need for improvement?

Summary.—In 2005, the personal financial records of more than 163,000 consumers in ChoicePoint's database were compromised.[54] As a result of that data breach, approximately 800 cases of identity theft occurred.[55] LexisNexis, another information reseller, also experienced a major data breach in 2005 that affected approximately 310,000 individuals.[56] According to an information security expert, "a small but growing market for the type of raw consumer information that has been pilfered from ChoicePoint, LexisNexis and other general data aggregators" was developing.[57]

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was unable to pass another rider in that year's appropriations. Shortly after the rule was issued and became effective, control of the White House changed parties. Therefore, there was control of both Houses of Congress and the Presidency by the same party. Longstanding opposition of the rule by those in control of Congress and a President who was willing to seek the disapproval of a rule enacted at the end of the term of a previous administration.

[53] The disapproval mechanism was utilized by Representative Wicker (R–MS) to affect a compromise with OSHA regarding the rule setting exposure limits on methylene chloride by introducting H.J. Res. 67, 105th Cong. (1997), disapproving the OSHA rule. The introduction of the resolution encouraged OSHA to negotiate with Representative Wicker, who was able to include a provision on the FY 1998 Labor, HHS and Education appropriations requiring OSHA to provide on-site assistance for companies to help comply with the new rules.

[54] Press Release, Federal Trade Commission, ChoicePoint Settles Data Security Breach Charges; to Pay $10 Million in Civil Penalties, $5 Million for Consumer Redress, at 1 (Jan. 26, 2006). According to ChoicePoint, the private information of Americans in "all 50 states may have been affected by the breach of the company's credentialing process," including 830 residents of Wisconsin. Harry R. Weber, Identity Theft Scam Far-Reaching; People in All States Possibly Affected, with 830 in Wisconsin, Milwaukee Journal Sentinel Online, Feb. 21, 2005, at http://www.jsonline.com/bym/news/feb05/303661.asp.

[55] Press Release, Federal Trade Commission, ChoicePoint Settles Data Security Breach Charges; to Pay $10 Million in Civil Penalties, $5 Million for Consumer Redress, at 1 (Jan. 26, 2006).

[56] See Brian Krebs, Computers Seized in Data-Theft Probe, Washingtonpost.com, May 19, 2005, at (reporting that the "310,000 personal records had been accessed over a series of weeks"); Jonathan Drim, LexisNexis Data Breach Bigger Than Estimated, 310,000 Consumers May Be Affected, Firm Says, Wash. Post, Apr. 13, 2005, at E1.

[57] Tom Zeller, Jr., Black Market in Credit Card Thrives on Web, N.Y. Times, June 21, 2005, at A1.

In addition to the security of personal information data that Federal agencies acquire from information resellers and others, a related concern pertains to the accuracy of such information, especially when it is acquired from the private sector. In the absence of data quality, an American may be mistakenly denied a job, subjected to additional screening at an airport, or, even worse, erroneously placed on a criminal or terrorist watch list.

Reacting to these problematic events and concerns, House Judiciary Committee Chairman F. James Sensenbrenner, Jr., Ranking Member John Conyers, Jr., Constitution Subcommittee Chairman Steve Chabot, and Subcommittee Ranking Member Jerrold Nadler requested the GAO to "investigate issues arising from the Federal government's reliance on and contributions to commercially available databases to provide information for use by law enforcement and in other important domestic functions."[58] In response to this request and similar requests received from other Members of Congress and Committees,[59] GAO prepared a comprehensive draft report with recommendations for legislative action.

The Subcommittee, together with the Subcommittee on the Constitution, held a joint oversight hearing on "Personal Information Acquired by the Government from Information Resellers: Is There Need for Improvement?" on April 4, 2006. Witnesses at the hearing included: Linda D. Koontz, Director for Information Management Issues, GAO; Maureen Cooney, Acting Chief Privacy Officer, U.S. Department of Homeland Security; Professor Peter P. Swire from the Moritz College of Law of the Ohio State University; and Stuart K. Pratt, President and Chief Executive Officer of the Consumer Data Industry Association. The hearing provided an opportunity for the Subcommittees to have GAO present its findings and recommendations as well as allow representatives from the public and private sector to comment on the report.

Reauthorization of the Department of Justice: Executive Office for United States Attorneys, Civil Division, Environment and Natural Resources Division, Executive Office for United States Trustees, and Office of the Solicitor General

Summary.—The Subcommittee has oversight jurisdiction over five components of the Justice Department (DOJ): Executive Office for United States Attorneys, Civil Division, Environment and Natural Resources Division, Executive Office for United States Trustees, and Office of the Solicitor General.

The United States Attorneys serve as the nation's principal litigators under the direction of the Attorney General. They are stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. United States At-

[58] Letter from F. James Sensenbrenner, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, et al. to David M. Walker, Comptroller General of the United States, U.S. Government Accountability Office, at 1 (Mar. 9, 2005) (on file with the Commercial and Admin. Law and Constitution Subcommittees).

[59] Joining Senator Bill Nelson (D–FL) as requesters were three members of the House Committee on Homeland Security: Ranking Member Bennie G. Thompson (D–MS), Intelligence, Information Sharing, and Terrorism Assessment Subcommittee Ranking Member Zoe Lofgren (D–CA), and Economic Security, Infrastructure Protection, and Cybersecurity Subcommittee Ranking Member Loretta Sanchez (D–CA). U.S. Government Accountability Office, Draft Report: Privacy-Opportunities Exist for Agencies and Resellers to More Fully Adhere to Key Principles, GAO–06–421, at 72–73 (Apr. 2006).

torneys are appointed by, and serve at the discretion of, the President of the United States, with advice and consent of the United States Senate. Each United States Attorney is the chief Federal law enforcement officer of the United States within his or her particular jurisdiction.

One of six litigating divisions within DOJ, the Civil Division represents the United States, its departments and agencies, Members of Congress, Cabinet officers, the Federal judiciary, other Federal employees, and the people of the United States. The Civil Division is comprised of seven branches: Commercial Litigation, Federal Programs, Torts, Office of Immigration Litigation, Office of Consumer Litigation, Office of Management Programs, and Appellate Staff. The Division litigates cases in Federal, state, and foreign courts.

During the first 50 years since its establishment in 1909, the primary focus of the Environment and Natural Resource Division was litigating Federal lands, water, and Indian disputes. As the nation grew and developed, the Division's areas of responsibility expanded to include litigation concerning the protection, use, and development of national natural resources and public lands, wildlife protection, Indian rights and claims, cleanup of national hazardous waste sites, the acquisition of private property for federal use, and defense of environmental challenges to government programs and activities. The Division is composed of the following sections: Environmental Crimes; Environmental Enforcement; Environmental Defense; Natural Resources; Wildlife and Marine Resources; General Litigation; Indian Resources; Land Acquisition; Law & Policy; and Appellate.

The United States Trustee Program is responsible for overseeing the administration of bankruptcy cases and private trustees. The Program is overseen by the Executive Office for United States Trustees, which provides policy and management direction to United States Trustees. The Program operates through a system of 21 regions. Specific responsibilities of the United States Trustees include appointing and supervising private trustees who administer Chapter 7, 12, and 13 bankruptcy estates; taking legal action to enforce the requirements of the Bankruptcy Code and to ferret out fraud and abuse; referring matters for investigation and criminal prosecution when appropriate; ensuring that bankruptcy estates are administered promptly and efficiently, and that professional fees are reasonable; appointing and convening creditors' committees in Chapter 11 business reorganization cases; and reviewing disclosure statements and retention applications for professional persons retained to represent certain interested parties in bankruptcy cases.

The major function of the Office of the Solicitor General (OSG) is to supervise and conduct government litigation in the United States Supreme Court. Virtually all such litigation is channeled through the OSG and is actively conducted by the Office. The United States is typically involved in approximately two-thirds of cases that the United States Supreme Court decides on the merits each year. The OSG determines the cases in which Supreme Court review will be sought by the government and the positions the government will take before the Court. The OSG's staff attorneys par-

ticipate in preparing petitions, briefs, and other papers filed by the government in its Supreme Court litigation. Those cases not argued by the Solicitor General personally are assigned either to an attorney in the Office or to another government attorney. Another function of the OSG is to review all cases decided adversely to the government in the lower courts to determine whether they should be appealed and, if so, what position should be taken. The Solicitor General also determines whether the government will participate as an amicus curiae, or intervene, in cases in any appellate court.

The Subcommittee conducts an oversight hearing on the DOJ components within its jurisdiction generally on an annual basis. On April 26, 2006, the Subcommittee conducted a hearing on these components. The hearing provided an opportunity for the Subcommittee to consider issues pertinent to proposed legislation reauthorizing the DOJ and the Administration's pending Fiscal Year 2007 budgetary request. Witnesses appearing on behalf of DOJ at the hearing included: Michael Battle, Director, Executive Office for United States Attorneys; Peter D. Keisler, Assistant Attorney General, Civil Division; Matthew J. McKeown, Principal Deputy Assistant Attorney General for the Environment and Natural Resources Division on behalf of Assistant Attorney General Sue Ellen Wooldridge; and Clifford J. White, III, Acting Director, Executive Office for United States Trustees.

Privacy in the hands of the Government: The Privacy Officer for the Department of Homeland Security and the Privacy Officer for the Department of Justice

Summary.—The Privacy Act of 1974 regulates how Federal agencies may use personal information they collect from individuals.[60] These agencies are generally prohibited from disclosing personally identifiable information to other Federal or state agencies or to any other person,[61] subject to certain specified exceptions.[62] An agency that releases such information in violation of the Privacy Act may be sued for damages sustained by an individual as a result of such violation, under certain circumstances.[63] In addition, the Privacy Act grants individuals the right to have agency records maintained on themselves corrected upon a showing that such records are inaccurate, irrelevant, out-of-date, or incomplete.[64]

Technological developments have increasingly facilitated the collection and dissemination of personally identifiable information and have correspondingly increased the potential for misuse of such in-

[60] 5 U.S.C. § 552a (2002). According to one treatise, the Privacy Act "gives individuals greater control over gathering, dissemination, and ensuring accuracy of information collected about themselves by agencies" and that its "main purpose" is to "forbid disclosure unless it is required by the Freedom of Information Act." Admin. Conf. of the U.S., Fed. Admin. Proc. Sourcebook—Statutes and Related Materials 863 (2d ed. 1992).

[61] 5 U.S.C. § 552a(b) (2002). The types of information that may not be disclosed include medical, educational, criminal, financial, and employment records. 5 U.S.C. § 552a(a)(4) (2002).

[62] The Privacy Act, for example, excepts disclosures that constitute a "routine use" of such information by an agency that "is compatible with the purpose for which it was collected." 5 U.S.C. § 552a(d) (2002). It also permits disclosure for law enforcement purposes, in response to a Congressional request, pursuant to court order, for the purpose of carrying out a census, or to a consumer reporting agency. 5 U.S.C. § 552a(b) (2002).

[63] 5 U.S.C. § 552a(g)(4) (2002).

[64] 5 U.S.C. § 552a(d) (2002).

formation.[65] Compliance with the Privacy Act by Federal agencies, however, remains "uneven," according to the GAO.[66]

Since the September 11, 2001 terrorist attacks, Congress has sought to balance two competing goals: keeping the nation secure and protecting the privacy rights of our Nation's citizens. The desire to achieve and maintain this balance was reflected in the debate concerning the creation of the Department of Homeland Security (DHS). In 2002, the Subcommittee held a hearing on various privacy and administrative law issues presented by the anticipated creation of DHS.[67] Among the matters considered were issues concerning how this new agency would ensure the privacy of personally identifiable information as it "establishes necessary databases that coordinate with other agencies of the Government."[68] Concerns were expressed on a bipartisan basis about the agency's ability to collect, manage, share, and secure personally identifiable information.[69]

During the course of the hearing, it became apparent that DHS would benefit from the formal appointment of an individual responsible for privacy issues who would be accountable to Congress. In response to such persuasive testimony, the legislation establishing DHS was subsequently amended on a bipartisan basis to require the appointment of a privacy officer.[70] This legislation, the Homeland Security Act of 2002, was signed into law on November 25, 2002.[71]

Since its establishment, the DHS Privacy Officer has spearheaded various privacy initiatives. These include the creation of a Data Privacy and Integrity Advisory Committee, which "advises the Secretary of the Department of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that affect individual privacy, as well as data integrity and data interoperability and other privacy related issues."[72] In 2006, for example, the Advisory Committee issued a report setting forth a "recommended framework for analyzing programs, technologies, and applications in light of their effects on privacy and related interests."[73]

Based on the apparent success of the DHS Privacy Officer, the Subcommittee proposed the designation of a senior official in DOJ to execute similar responsibilities. This provision was included in legislation reauthorizing the Justice Department, enacted into law

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[65] The Federal Trade Commission, for example, reported that the number of identity theft complaints it received in 2002 nearly doubled from the previous year and that identity theft is the Commission's "most widely reported consumer crime since the agency started issuing reports three years ago." Jennifer 8. Lee, Identity Theft Complaints Double in '02, N.Y. Times, Jan. 23, 2003, at 1.

[66] U.S. Government Accountability Office, Privacy Act: OMB Leadership Needed To Improve Agency Compliance, GAO–03–304, at 1 (June 2003).

[67] Administrative Law, Adjudicatory Issues, and Privacy Ramifications of Creating a Department of Homeland Security: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, 107th Congress (2002).

[68] Id. at 2.

[69] See, e.g., id. at 4 (statements of Rep. Mark Green (R–WI) and Rep. Maxine Waters (D–CA)).

[70] H. Rep. No. 107–609, at 9–10 (2002).

[71] Pub. L. No. 107–296, § 222, 116 Stat. 2135, 2155 (2002).

[72] U.S. Department of Homeland Security Organization—Department Structure: Privacy Office—DHS Data Privacy and Integrity Advisory Committee, at http://www.dhs.gov/dhspublic/interapp/editorial/editorial___0512.xml.

[73] Report of the Department of Homeland Security Data Privacy and Integrity Advisory Committee—Framework for Privacy Analysis of Programs, Technologies, and Applications, at 1 (Mar. 7, 2006).

in 2006 as the Violence Against Women and Department of Justice Reauthorization Act of 2005.[74]

On May 17, 2006, the Subcommittee held an oversight hearing on "Privacy in the Hands of the Government: The Privacy Officer for the Department of Homeland Security and the Privacy Officer for the Department of Justice." Witnesses at the hearing included: Maureen Cooney, Acting Chief Privacy Officer at DHS; Jane Horvath, DOJ Chief Privacy and Civil Liberties Officer; Professor Sally Katzen of George Mason University School of Law; and Linda Koontz, Director of Information Management Issues at GAO. The hearing provided the Subcommittee an opportunity to review the work and performance of the principal individuals charged with protecting our citizens' privacy at DHS and DOJ.

State taxation of Interstate Telecommunications Services

Summary.—Over the past 30 years, there has been a drastic change in the communications industry, including the divestiture of the monopoly AT&T into seven regional operation companies, the deregulation of the industry beginning with the enactment of the Telecommunications Act of 1996, the extraordinary innovation in technology and the numerous mergers of companies throughout the technology industries. This move from a monopoly to a competitive market has been encouraged by the Federal and State governments. State tax policies, on the other hand, have not changed at the same rate as the industry's evolution.

The states' tax policies regarding the telecommunication industry began to develop in the early 1900s when there was a monopoly for these services. The States and localities, in exchange for permitting a monopoly, levied industry-specific taxes to compensate the local governments for the company's use of public resources. The companies were allowed to recoup these taxes by including them into their commercial rates and passing them through to the customers.[75]

In 1998, pursuant to the Internet Tax Freedom Act, Congress created the Advisory Commission on Electronic Commerce ("ACEC") and directed it to conduct a comprehensive study of the current system of taxation as it related to the Internet and electronic commerce.[76] Specifically, ACEC was instructed to examine "ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services."[77] ACEC recognized four areas of Federal, State and local telecommunications taxation worthy of close examination: (1) the 3% federal excise tax; (2) State and local property taxes levied on telecommunications service providers; (3) State and local taxes on telecommunications service providers' business inputs; and (4) State and local transaction taxes on telecommunications.[78]

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[74] Pub. L. No. 109–162, § 1174, 119 Stat. 2960, 3124–25 (2006).

[75] Telecommunications Tax Policies: Implications for the Digital Age, National Governors' Association (Feb. 2000).

[76] Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105–277, Title XI, 112 Stat. 2681 (1999).

[77] Id. at § 1102(g)(2)(F).

[78] Advisory Commission on Electronic Commerce, Report to Congress 26 (April 2000) available at http://www.ecommercecommission.org/acec____report.pdf.

During the same period, the National Governors' Association and the National Council of State Legislators called for similar reviews and reforms of the State tax policies regarding telecommunications[79]. Since these events, there has been little change in the State and local telecommunications tax laws.[80]

The tax structure for the telecom industry is marked by different taxes levied by different government entities. This has resulted in taxes and fees that culminate in making the telecommunications industry one of the highest taxed major industries, just below alcohol, gas and tobacco.[81] Unlike the taxes on alcohol and tobacco, which are partially to discourage the use of those products and considered "sin" taxes, States generally do not want to discourage the use of, or growth of, the communications industry. As the industry becomes more competitive, it is no longer a safe assumption that any taxes levied on the telecommunications industry will be able to be passed through to the consumer or that it will not effect the consumer's actions.[82]

In 2004, the average State and local effective tax rate nationwide on telecommunications services was 14.17%.[83] This is more than double the effective tax rate for general businesses nationally. The State and localities each levy a number of different taxes and fees that culminate in the effective rate. These taxes burden the consumers and can constitute over 20% of their telecommunications bill.[84] These taxes also tend to be regressive, thus affecting lower income customers to a greater degree than medium and higher income customers.[85]

The Subcommittee held a hearing on June 13, 2006 to look at the burdens placed on consumers by the State and local taxes placed

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[79] Telecommunications Tax Policies: Implications for the Digital Age, National Governors' Association (Feb. 2000). This report suggested that States take eight specific steps to achieve tax reform:

1. Examine state telecommunications services.
2. Clarify definitions of telecommunications services.
3. Shift from a gross receipts tax to a corporate net income tax.
4. Expand the definition of services under sales and use taxes.
5. Extend the sales and use tax exemption for manufacturing to equipment used to provide telecommunications services.
6. Equalize assessment rations in real and personal property taxes.
7. Examine local telecommunications taxes and fees.
8. Promote administrative simplicity.

The National Council of State Legislators ("NCSL") drafted and agreed to a resolution on Telecommunications Tax Reform in 2000. This resolution included six items on which they encouraged States to work with localities and telecommunications providers to simplify and modernize the telecommunications tax system. See Resolution on Telecommunication Tax Reform, unanimously adopted by the full NCSL Executive Committee (July 2004), available at http://www.ncsl.org/programs/fiscal/teltaxreform.htm.

[80] Over the last six years, only a few States have addressed reform. In 2006, the Virginia General Assembly passed a major reform of their communications laws. This included a reduction in the tax rate on telecommunications services from 29.77% to 5%, extending that tax to include all areas of communications, including Voice Over the Internet Protocol (VOIP) and satellite, and reduced the number of returns by having the state collect the taxes, instead of each locality. Kentucky and Missouri have also recently addressed rate reforms.

[81] Telecommunications Tax Policies: Implications for the Digital Age, National Governors' Association, at 7 (Feb. 2000).

[82] Id. at 8.

[83] Council on State Taxation, 2004 State Study and Report on Telecommunications Taxes [2004 COST Study]. This amount varies from state to state, from 27.31% in Maryland to 3.97% in Nevada. See id. at Table of Effective State, Local & Federal Telecommunications Taxes by State, 2004.

[84] Sean Parnell, "State Taxes Hit Telecom Services Doubly Hard", Budget & Tax News, August 1, 2005.

[85] Joseph J. Cordes, Repealing the Telecom Excise Tax: An Economic Primer, at 5 (April 2000). The Tax Foundation, Federal Excise Tax Collections by Income Class (2001), http://www.taxfoundation.org./tasdata/show/525.html.

on communication service, the types and number of different taxes levied on communication services, the effect these taxes have on the marketplace, and how the States and localities are currently addressing this issue of over taxation.

At the hearing Members heard from Steven Rauschenberger, Illinois State Senator and President of the National Conference of State Legislators; Scott Mackey, a Economist with Kimbell Sherman Ellis; David Quam, the Legislative Director for the National Governors Association; and Stephen Kranz, Counsel for the Council on State Taxation.

The 60th Anniversary of the Administrative Procedure Act: Where do we go from here?

Summary.—As this year marked the 60th anniversary of the Administrative Procedure Act (APA),[86] the Subcommittee determined that this event provided a timely opportunity to consider whether the Act sufficiently addresses current issues and challenges presented by administrative law, process and procedure. Enacted in 1946, the APA establishes minimum procedures to be followed by Federal administrative agencies when they conduct business that affects the public and requires judicial review of certain administrative acts. Many agency actions, however, are not subject to the APA. As one academic noted, "[T]he American administrative system, by evolution and design, is characterized by a considerable degree of informality, agency discretion and procedural flexibility."[87]

Witnesses who testified at the July 25, 2006, hearing included: Professor Bill West who discussed the results of his study of how agencies develop proposed rules. A former chair of ACUS, Professor Marshall Breger of The Catholic University of America—Columbus School of Law, described the benefits of ACUS. Professor M. Elizabeth Magill from the University of Virginia School of Law, explained why there is a need for empirical research in the area of administrative law, process and procedure. Professor Cary Coglianese provided an update on certain developments in the area of e-rulemaking.

Administrative Law, Process and Procedure Project for the 21st Century

On November 14, 2006, the Subcommittee conducted an oversight hearing on the Administrative Law, Process and Procedure Project for the 21st Century. A description of the Project appears earlier in this section. Witnesses from the American Law Division of the Congressional Research Service who testified about the Project at the hearing were the following: Morton Rosenberg, Specialist in American Public Law; Curtis Copeland, Specialist in American National Government; and T.J. Halstead, Legislative Attorney.

This hearing was the seventh that the Subcommittee conducted as part of the Project. These hearings included oversight hearings held in the 108th Congress on the reauthorization of the ACUS at

[86] 5 U.S.C. §§ 551–59, 701–06, 1305, 3105, 3344, 5372, 7521 (2000).

[87] Gary J. Edles, Lessons from the Administrative Conference of the United States, 2 European Pub. L. 571, 572 (1996).

which Justices Antonin Scalia and Stephen Breyer testified.[88] As elsewhere noted in this Activities Report, the Subcommittee held a hearing that focused on the Congressional Review Act in light of that Act's tenth anniversary.[89] In addition, the Subcommittee held a hearing on how the Regulatory Flexibility Act (RFA)[90] has been implemented since its enactment in 1980 and whether proposed legislation could adequately address perceived weaknesses in the RFA.[91]

In addition to conducting hearings, the Subcommittee cosponsored three symposia as part of the Project. The first symposium, held in December 2005, was on Federal E-Government Initiatives. This program, chaired by Professor Coglianese of the University of Pennsylvania Law School, examined the Executive Branch's efforts to implement e-rulemaking across the Federal government. A particular focus of this program was on the ongoing development of a government-wide Federal Docket Management System (FDMS). Presentations at the symposium were given by government managers involved in the development of the FDMS, as well as by academic researchers studying e-rulemaking. Representatives from various agencies, including OMB, the U.S. Environmental Protection Agency, and the GAO, discussed the current progress of e-rulemaking. In addition, academics reported on current and prospective research endeavors dealing with certain aspects of e-rulemaking. The program offered a structured dialogue that addressed the challenges and opportunities for implementing e-rulemaking, the outcomes achieved by e-rulemaking to date, and strategies that could be used in the future to improve the rulemaking process through application of information technology.

The second symposium, held at American University, examined the role of science in the rulemaking process.[92] The symposium consisted of four panels: OMB's recent initiatives on regulatory science, science and the judicial review of rulemaking, science advisory panels and rulemaking, and government agencies' science capabilities.

The third symposium, held on September 11, 2006, considered Congressional, Presidential and Judiciary review of agency rulemaking. This program, hosted by CRS, also examined conflicting claims of legal authority over rulemaking by the Congressional and Executive branches.

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[88] Reauthorization of the Administrative Conference of the United States: Hearings Before the Subcomm. on Comm. and Admin. Law of the H. Comm. on the Judiciary, 108th Cong. (2004).

[89] Tenth Anniversary of the Congressional Review Act: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 109th Cong. (2006).

[90] Pub. L. No. 96–354, Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601–612).

[91] The Regulatory Flexibility Improvements Act: Hearing on H.R. 682 Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 109th Cong. (2006). The GAO has on numerous occasions cited various deficiencies with the RFA. See. e.g., SBBEFA Compliance—Is It the Same Old Story?: Hearing Before the H. Comm. on Small Business, 107th Cong. 51 (2002) (statement of Victor Rezendes, Managing Director—Strategic Issues Team, U.S. Government Accountability Office); Regulatory Flexibility Act—Status of Director—Strategic Issues Team, U.S. Government Accountability Office); Regulatory Flexibility Act—Status of Agencies' Compliance: Hearing Before the S. Comm. on Small Business, 104th Cong. 51 (1995) (statement of Johnny C. Finch, Assistant Comptroller General—General Government Division, U.S. Government Accountability Office); U.S. Government Accountability Office, Regulatory Flexibility Act: Status of Agencies' Compliance, GAO/GGD–94–105 (Apr. 27, 1994); U.S. Government Accountability Office, Regulatory Flexibility Act: Inherent Weaknesses May Limit Its Usefulness for Small Governments, GAO/HRD–91–16 (Jan. 11, 1991).

[92] http://www.american.edu/rulemaking/news/index.htm (symposium transcript).

As part of the Project, several studies were also conducted. One study, conducted by Professor Bill West from Texas A&M University, examines the role of public participation before notice and comment. The second study focused on court challenges to agency rulemakings. Professor Jody Freeman of Harvard Law School conducted an independent analysis of a database consisting of every case involving administrative agencies that were appealed to the U.S. Court of Appeals for all 12 circuits over a ten-year period. The third study, which is being conducted by Professor Stuart Brettschneider of the Maxwell School of Public Administration of Syracuse University, will determine how many science advisory committees currently exist, how their members are selected, how issues of neutrality and conflicts of interest are resolved, and how issues are selected for review, among other matters.

On December 7, 2006, the Subcommittee reported favorably the Interim Report on the Administrative Law, Process, and Procedure Project for the 21st Century without amendment.

The arbitration process of the National Football League Players Association

The Subcommittee has jurisdiction over title 9 of the United States Code, which deals with arbitration. That title was adopted nearly 60 years ago in an effort to alleviate pressure on the federal courts by encouraging parties to arbitrate and settle differences before they reach the stage of active litigation. In order to facilitate settlements by arbitration, the title provides a strong presumption that courts will enforce determinations arrived at under this process. Though avenues for judicial review of arbitration determinations exist and have been utilized by parties, the title itself has been rarely amended.

Arbitration has been considered by the Subcommittee during previous Congresses, most notably during the 106th Congress when it considered the "Fairness and Voluntary Arbitration Act," legislation dealing with the arbitration procedure employed by agreement to resolve disputes between automobile manufacturers and their sales franchisees. In that situation, a principal item of contention was that franchisees were forced into contracts of adhesion that required them to agree to arbitrators who, because of their relationship to the manufacturers, were not perceived to be neutral. Ultimately, legislation providing a more even playing field between the manufacturers and the franchisees in resolving disputes through arbitration was passed by the Congress and signed into law.[93]

The Subcommittee has on other occasions exercised its jurisdiction in this area. On June 25, 1999, for instance, it held an oversight hearing entitled, "Franchising: the Franchise Relationship, Mutual Rights and Obligations of Franchisees and Franchisors, and Assessing the Need for More Regulation." The Subcommittee also considered legislation restricting certain activities of sports agents when it held a hearing on and reported H.R. 361, "The

[93] Pub. L. No. 107–273 (2001), 116 Stat. 1758, 1835 (2001) (codified at 15 U.S.C. § 1226 (2000)).

Sports Agent Responsibility and Trust Act" during the 108th Congress, which was enacted into law in 2004.[94]

On December 7, 2006, the Subcommittee held an oversight hearing on the arbitration process utilized by the National Football League Players Association (NFLPA or Association). Pursuant to the collective bargaining agreement between the National Football League (NFL or League) and the Association, the NFLPA is recognized as the exclusive bargaining agent for the athletes and gives it the authority and responsibility to control and discipline sports agents who represent the athletes in contract negotiations with respective franchises within the League. Under this agreement, the NFL Management Council and its football franchises agree to negotiate player contracts only with an agent certified by the NFLPA. Under the collective bargaining agreement, however, the NFLPA may not decertify an agent without permitting that agent to exhaust his opportunity to appeal the decertification to a neutral arbitrator pursuant to its agent regulation system."

The purpose of the hearing was to examine certain issues presented with respect to the NFLPA arbitration process as applied to sports agents. Witnesses at the hearing included: LaVar Arrington, a linebacker with the New York Giants; Richard Berthelson, General Counsel, NFLPA; Professor Richard Karcher, Director of the Florida Coastal School of Law Center for Law and Sports; and Larry Friedman, Esquire, Managing Director, Friedman and Feiger, LLP. The hearing considered such issues as the following: (1) the fairness of the arbitration process employed by the NFLPA; (2) whether this process ensures the arbitrator's neutrality; (3) whether adequate opportunity for judicial review exists; (4) whether the process comports with the intent underlying the Federal Arbitration Act and, if not, what might be a proper legislative response.

OTHER SUBCOMMITTEE OVERSIGHT ACTIVITIES

False Claims Act and the Department of Justice's qui tam caseload

Summary.—In April 2005, Judiciary Chairman Sensenbrenner and Senator Charles F. Grassley (R–IA) requested that the Government Accountability Office (GAO) conduct a study on the False Claims Act and the Department of Justice's (DOJ) qui tam caseload.

The False Claims Act (FCA) is one of the government's primary weapons to fight fraud against the government. The Act requires penalties and damages to be paid by any individual or business that deliberately submits or causes the submission of fraudulent claims to the United States. All parties engaged in the legal suit are entitled to any money the government may recover. According to GAO, since Congress amended the FCA in 1986, the government has won recoveries of over $15 billion from fiscal years 1987 through 2005.

With regard to the request to provide information on FCA litigation, the report addressed existing Department of Justice policies and statutory guidance regarding the relationship between the government and relators in prosecuting qui tam cases.

[94] Pub. L. No. 108–304, 118 Stat. 1124 (2004).

To determine what statutory guidance and DOJ policies exist, GAO reviewed applicable laws, regulations, and DOJ policies regarding the relationship between the government and relators in prosecuting qui tam cases. GAO interviewed DOJ and other Federal officials and private practice attorneys involved in qui tam litigation. To provide information on DOJ's qui tam caseload, it obtained DOJ's qui tam database on closed unsealed qui tam cases for fiscal years 1987 through 2005 and conducted computerized analyses of certain data fields. To assess the reliability of the data, it discussed the data collection methods for ensuring data quality with responsible officials and reviewed the data for reasonableness.

GAO report highlights

Statistics on the number and types of cases filed are as follows:

1. From the fiscal years 1987 through 2005, the number of qui tam FCA cases increased as a proportion of total FCA cases.
2. The median FCA recovery in a qui tam case was $784,597, of which the median relator share was $123,885.
3. Health care and procurement fraud cases constituted approximately 79 percent of all qui tam cases pursued by the DOJ.
4. 2,490 closed and unsealed qui tam cases that GAO analyzed were filed in 92 U.S. district courts.
5. Recoveries and relator share amounts were greater in cases where DOJ intervened than in cases where DOJ declined to intervene.

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

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MARK GREEN, Wisconsin
TOM FEENEY, Florida
STEVE CHABOT, Ohio
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SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ANTHONY D. WEINER, New York

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	249
Legislation on which hearings were held	38
Legislation reported favorably to the full Committee	13
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	6
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	3
Legislation pending before the full Committee	4
Legislation reported to the House	15
Legislation discharged from the Committee	0
Legislation pending in the House	2
Legislation passed by the House	12
Legislation pending in the Senate	7
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	7
Legislation enacted into Public Law as part of other legislation	5
Days of legislative hearings	21
Days of oversight hearings	24

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Crime, Terrorism, and Homeland Security has jurisdiction over the Federal Criminal Code, drug enforcement, sentencing, parole and pardons, internal and homeland security, Federal Rules of Criminal Procedure, prisons, criminal law enforcement, and other appropriate matters as referred by the Chairman, and relevant oversight.

LEGISLATIVE ACTIVITIES

H.R. 32, the "Stop Counterfeiting in Manufactured Goods Act"

Summary.—The proliferation of counterfeit products in recent years creates not only a threat to legitimate businesses, but also to the consumer. Many of the products that are falsely labeled are labeled with brand names or trademarks that consumers know and trust. The mislabeling of often inferior products creates a false sense of security for consumers. Additionally, some of the counterfeited products, such as prescription or over-the-counter medica-

tions, could have serious health consequences if they are used by an unsuspecting consumer.

FBI and customs and border agents estimate sales of counterfeit goods are lining the pockets of criminal organizations to the tune of about $500 billion in sales per year. By the middle of fiscal year 2003, the Department of Homeland Security already had reported 3,117 seizures of counterfeit branded goods including cigarettes, books, apparel, handbags, toys and electronic games with an estimated street value of about $38 million—up 42 percent from last year.

For the fiscal 2003 midyear report the top five offending countries of origin are the People's Republic of China ($26.7 million), Hong Kong ($1.9 million), Mexico ($1.6 million), South Korea ($1.4 million) and Malaysia ($1 million). The International AntiCounterfeiting Coalition, (IACC) estimates that counterfeiting results in more than $200 billion a year in lost jobs, taxes and sales. Fortune 500 companies spend an average of between $2 million and $4 million a year each to fight counterfeiters.

In addition to counterfeiting general retail products, which cause huge economic losses to manufacturers, many counterfeiters are engaged in the sales of products which may present real threats to the health and safety of consumers such as counterfeit prescription medications or automobile parts.

The Food and Drug Administration (FDA) indicates that although the prevalence of counterfeit pharmaceuticals is hard to determine, estimates suggest that upwards of 10% of drugs worldwide are counterfeit, and in some countries more than 50% of the drug supply is made up of counterfeit drugs. Counterfeit drugs may include products without the active ingredient, with an insufficient quantity of the active ingredient, with the wrong active ingredient, or with fake packaging.

The FDA website indicates that counterfeit drugs can have serious consequences for consumers. According to the FDA, patients who receive counterfeit medications may experience unexpected side effects, allergic reactions, or a worsening of their medical condition. Additionally, the FDA has found that a number of counterfeits do not contain any active ingredients, and instead contain inert substances, which do not provide the patient any treatment benefit.

The Automobile Manufacturers Association indicates that counterfeit auto parts is a $12 billion problem globally—$3 billion in the U.S. alone. In terms of lost jobs, the Department of Commerce estimates that the U.S. auto industry could hire over 200,000 more workers if the counterfeit auto parts trade disappeared. In addition to the economic losses and loss of jobs for American workers, consumers safety is also at risk by counterfeit automobile parts. The U.S. automobile industry has reported a number of incidences of brake failure caused by brake pads manufactured from wood chips.

According to the FBI's Financial Institution Fraud Unit, counterfeit products cheat the U.S. of tax revenues, adds to the national trade deficit, subjects consumers to health and safety risks, and leaves consumers without any legal recourse when they are financially or physically injured by counterfeit products. The FBI has identified counterfeit products not only in pharmaceuticals and

automobile parts, but also in such products as airplane parts, baby formulas and children's toys.

On March 17, 2005, the Subcommittee on Crime, Terrorism and Homeland Security held a hearing on combating trafficking in counterfeit products where the Subcommittee received testimony indicating that commerce in and distribution of, packaging, labels, tags, containers, and documentation, bearing the registered trademarks of manufacturers of genuine goods or the registered certification marks of product testing organizations often occurs separately from the goods themselves, involving different persons, and that the packaging, labels, or tags bearing the registered mark is often matched with the goods downstream and applied to products or services that are not manufactured by the owner of the mark. The products and services to which these labels, tags, documents, containers, packaging and the like bearing registered marks are applied to unbranded products that do not meet the product qualities or the safety or performance requirements of the manufacturer of genuine product or the product testing and certification organization, and that these products can be unsafe to users and consumers who are deceived.

H.R. 32 tightens the law which makes it a crime to traffic in such products (18 U.S.C. §2320). H.R. 32, the "Stop Counterfeiting in Manufactured Goods Act" would expand Title 18 provisions, which make it a crime to traffic in counterfeit products. Under this legislation, section 2320 of Title 18 would be expanded to include penalties for those who traffic in counterfeit labels, symbols, or packaging of any type knowing a counterfeit mark has been applied.

Additionally, this legislation would require the forfeiture of any property derived, directly or indirectly, from the proceeds of the violation as well as any property used, or intended to be used in relation to the offense. This legislation also specifies that restitution must be paid to the owner of the mark that was counterfeited.

An amendment in the nature of a substitute to H.R. 32, was adopted by the full committee to include specific language clarifying that repackaging activities conducted without intent to deceive or confuse are not subject to the criminal prosecution established under this legislation.

Legislative History.—H.R. 32 was introduced on January 4, 2005, and referred to the Committee on Judiciary. The Subcommittee on Crime, Terrorism, and Homeland Security held a hearing and markup of the legislation on March 17, 2005. The Committee on Judiciary ordered the bill, H.R. 32, favorably reported, with amendment, on April 13, 2005. The legislation was considered by the House of Representatives under suspension of the rules and passed on a voice vote on May 23, 2005. On February 15, 2006, the legislation passed the Senate by unanimous consent with an amendment. On March 7, 2006, the House of Representatives voted to suspend the rules and pass H.R. 32, as amended by the Senate, on a voice vote. The President signed this bill into law on March 16, 2006. (Pub. L. 109–181)

H.R. 95, the "Dru Sjodin National Sex Offender Public Database Act of 2005"

Summary.—Congressman Paul E. Gillmor introduced H.R. 95 on January 4, 2005. The bill directs the Attorney General to: (1) make publicly available in a registry via the Internet, from information contained in the National Sex Offender Registry, specified information about sexually violent predators and persons convicted of a sexually violent offense or a criminal offense against a minor, who are required to register with a minimally sufficient State sexual offender registration program; and (2) allow registry users to identity offenders who are currently residing within a radius of the location indicated by the user. Requires registry information to include the offender's name, address, date of birth, physical description, and photograph, the nature and date of commission of the offense, and the date on which the person is released from prison or placed on parole, supervised release, or probation

The bill requires that (1) any State that provides for a civil commitment proceeding to notify the State attorney general of the impending release of a sexually violent predator or a person has been deemed to be at high-risk for recommitting any sexually violent offense or criminal offense against a minor; (2) the State attorney general to consider instituting a civil commitment proceeding; and (3) each State to intensively monitor, for at least a year, any such person who has been unconditionally released by the State and who has not been civilly committed. Failure by states to implement requirements of the Act makes them ineligible to receive 25 percent of funds that would otherwise be allocated to it under the Violent Crime Control and Law Enforcement Act of 1994.

Legislative History.—On January 4, 2005, H.R. 95 was referred to the Committee on the Judiciary. On March 2, 2005, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 95 on June 9, 2005. Similar provisions were included in H.R. 4472. No further action has been taken.

H.R. 244, the "Save Our Children: Stop the Violent Predators Against Children DNA Act of 2005"

Summary.—Congresswoman Sheila Jackson-Lee introduced H.R. 244 on January 6, 2005. H.R. 244 directs the Attorney General to establish and maintain a database solely for collecting DNA (deoxyribonucleic acid) information with respect to violent predators against children. The bill (1) authorizes Federal, State, and local agencies and other entities to submit DNA information for the database and to compare DNA information within the database, (2) directs the Attorney General to make grants to States to improve programs to decrease recidivism of such predators, (3) requires the maximum sentence to be imposed for a crime of violence, including a sex crime, against an individual under age 18 that would, in and of itself, establish the offender as such a predator, without regard to any mitigating circumstance that would otherwise apply.

Legislative History.—On January 6, 2005, H.R. 244 was referred to the Committee on the Judiciary. On March 2, 2005, it was referred to the Subcommittee on Crime, Terrorism, and Homeland

Security. The Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 244 on June 9, 2005. Similar provisions were included in H.R. 4472. No further action has been taken.

H.R. 764, to Require the Attorney General to Establish a Federal Register of Cases of Child Abuse or Neglect

Summary.—Congresswoman Sue W. Kelly introduced H.R. 764 on February 10, 2005. H.R. 764 directs the Attorney General to create a national register of cases of child abuse or neglect (abuse), with the information in the register supplied by States or political subdivisions. Requires the register to collect information on children reported as abused in a central electronic database.

Legislative History.—On February 10, 2005, H.R. 764 was referred to the Committee on the Judiciary. On March 4, 2005, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 764 on June 9, 2005. Similar provisions were included in H.R. 4472. No further action has been taken.

H.R. 817, the "Animal Fighting Prohibition Enforcement Act of 2005"

Summary.—Dog fighting is prohibited in all 50 states and cockfighting is outlawed in most states under specific laws prohibiting it or general prohibitions against animal fighting. In a few states, the practice is not specifically outlawed; however, general animal cruelty statutes may be interpreted to outlaw such activities.[1] Virginia prohibits profiting or gambling on a "cockfight", but does not specifically prohibit the activity. In two states, "cockfighting" is legal.[2] Dogfighting is legal in American Samoa and Guam. "Cockfighting" is legal in American Samoa, Guam, Puerto Rico and the Virgin Islands.

In 1976, Congress passed a law to ban the sponsor or exhibit of animals that were moved in interstate or foreign commerce in an animal fighting venture. The law also made it illegal to buy, sell, deliver, or transport an animal in interstate or foreign commerce for participation in an animal fighting venture. Additionally, Congress banned the use of the U.S. mail or any other instrument of interstate or foreign commerce to promote an animal fight. With respect to fighting ventures involving live birds, the law specifically included only those states that banned fighting ventures. Violations of this law were made punishable by up to a $5,000 fine and 1 year imprisonment, or both.

On May 13, 2002, Congress enacted amendments to the Animal Welfare Act, which took effect on May 14, 2003. The changes made it a crime, regardless of state law, for exhibiting, sponsoring, selling, buying, transporting, delivering, or receiving a bird or other animal in interstate or foreign commerce for the purposes of participation in an animal fighting venture such as cockfighting or dogfighting, according to Section 26 of the Act. For states where

[1] Arkansas, Georgia, Hawaii, Kentucky and Virginia have general cruelty to animal statutes that do not specify "cockfighting" as prohibited.

[2] New Mexico and Louisiana specifically exempt "cockfighting" as prohibited activity.

fighting among live birds is allowed under the law, the Act only prohibited the sponsor or exhibit of a bird for fighting purposes if the person knew that the bird was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce. The change in the Animal Welfare Act closed a loophole that allowed shipment of birds from a state where cockfighting is illegal to a state where it is legal. The change in the Act also increased the possible fines for violations from $5,000 to $15,000.

H.R. 817 is intended to strengthen the prohibitions against animal fighting ventures within the United States. H.R. 817 would establish stricter penalties for animal fighting than those that currently exist under Title 7 of the U.S. Code. In effect, H.R. 817 would establish criminal penalties for the buying, selling, or the transporting of animals for participation in animal fighting ventures. These new prohibitions would be placed in Chapter 3 of Title 18, U.S. Code.

Although the possible fines were increased in 2003, the possible term of imprisonment of the Animal Welfare Act dealing with animal fighting has not been updated since the original enactment of 1976. H.R. 817, the Animal Fighting Prohibition Enforcement Act of 2005, intends to address the modern problems associated with animal fighting ventures. The Act establishes criminal penalties under Title 18; authorizing jail time of up to two (2) years for violations of federal animal fighting law, rather than the misdemeanor penalty (up to one year) which currently exists under Title 7.

Legislative History.—H.R. 817 was introduced by Representative Mark Green on February 15, 2005. The legislation was referred to the Committee on Judiciary and the Committee on Agriculture. Hearings on H.R. 817 were held at the Subcommittee on Crime, Terrorism, and Homeland Security on May 18, 2005.

H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005"

Summary.—Gang violence in America is a growing problem. While national figures have shown a decline in violent crime generally, the proportion of violent crimes committed by gang members has increased. In 2003, juvenile gang members committed over 800 murders across the nation. Gangs have been directly linked to illegal drug trafficking, human trafficking, identification documentation falsification, violent maimings, assault and murder, and the increased use of firearms to commit deadly crimes.

While the data in the preliminary report has not been grouped by age at this time, a number of localities have pointed to a increase in juvenile delinquency. A growing concern among many in the criminal justice field is that as many convicts finish the long prison terms handed down in the 1990's, are released into society, and begin to integrate with the younger criminal element, crime will continue to spike.

In response to gang violence, Congressman J. Randy Forbes introduced H.R. 1279 on March 14, 2005. This bill seeks to build on strategies that work, including: (1) mandatory-minimum penalties for crimes of violence to incapacitate violent gang members and to gain leverage from less culpable gang members in order to secure cooperation of insiders to solve gang crimes and prosecute higher-

ups in the organization; (2) joint task forces of Federal, State and local law enforcement and prosecutors that will join Federal resources with local intelligence in order to target the most serious gangs in a community; (3) the promotion of intelligence sharing among Federal, State and local law enforcement agencies; and (4) limited juvenile justice reform to ensure that violent juvenile gang members are prosecuted for acts of violence.

Legislative History.—On March 14, 2005, H.R. 1279 was referred to the Committee on the Judiciary. On April 4, 2005, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. A legislative hearing on H.R. 1279 was held on April 5, 2005. Testimony was received from four witnesses, representing the United States Department of Justice, the National District Attorney's Association, Michelle Guess, a victim of gang violence, and Professor Robert Shepard, University of Richmond Law School, Richmond, Virginia, with additional material submitted by various organizations. On April 12, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 1279, by a vote of 5 to 3, with one member voting present, a quorum being present. On April 20, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 1279 with an amendment by a recorded vote of 16 to 11, a quorum being present. The bill was placed on the Union Calendar No. 35 on May 5, and on May 11 passed the House by the Yeas and Nays 279–144. The following day, H.R. 1279 was received in the Senate, read twice, and referred to the Committee on the Judiciary. No further action was taken on this bill.

H.R. 1355, the "Child Predator Act of 2005"

Summary.—Congressman Ted Poe introduced H.R. 1355 on March 16, 2006. This bill amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act to: (1) expand the definition of "criminal offense against a victim who is a minor" to include every offense, whether Federal, State, local, tribal, foreign, or otherwise, that involves one or more of specified characteristics (such as kidnapping or sexual conduct), when committed against a minor; and (2) define "child predator" as a person who is convicted of such an offense that is sexual in nature, where the minor is age 13 or younger. The bill also requires states to establish a registry for sex offenders and for the Federal Bureau of Investigation to disclose to the public, on a free-access Internet site, all information collected regarding each child predator, including a recent photograph.

Legislative History.—On March 16, 2005, H.R. 1355 was referred to the Committee on the Judiciary. On April 4, 2005, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee held a hearing on H.R. 1355 on June 9, 2005. Most of H.R. 1355 was incorporated into the text of H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 1384, the "Firearm Commerce Modernization Act"

Summary.—Congressman Phil Gingrey (R–GA) introduced H.R. 1384 on March 17, 2005. H.R. 1384 provides for the interstate sale

of hand guns, subject to the same requirements for legality that currently exist for the interstate sale of long-guns, that is: the sale must be in person; the sale must be legal in the state of the selling Federal firearm licensee ("FFL"), and in the state of the gun purchaser; and the sale must comply with all Federal laws, including the purchaser passing a background check.

Currently handguns are treated differently than long-guns; handguns must be shipped by the FFL in the state of purchase to another FFL in the purchaser's state of residence, and then transferred by that FFL to the purchaser. The shipment of firearms by common carrier comes with the attendant risk of loss or theft. This outdated provision regarding handguns now blocks or delays many legal sales to law-abiding citizens.

The bill eliminates the need to involve an FFL in the purchaser's state of residence. FFLs are provided with a publication from the BATFE, containing all Federal and state gun laws, and the current background check systems are more effective in blocking unlawful sales than the checks envisioned in 1968. If an FFL is not certain that a sale will be legal in both states and under Federal law, then the FFL does not have to complete the transaction.

Legislative History.—On Wednesday, May 3, 2006, the Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 1384. This hearing focused on the need to update and modify existing law regarding the interstate sale of firearms. Testifying before the Subcommittee were (1) the Honorable Phil Gingrey, Member of Congress, Georgia, 11th District; (2) the Honorable Steve King, Member of Congress, Iowa, 5th District; and (3) the Honorable Carolyn McCarthy, Member of Congress, New York, 4th District. The Subcommittee, via voice vote, reported the bill favorably to the full committee on May 18, 2006. On Wednesday, September 6, 2006, the Committee on the Judiciary conducted a markup on H.R. 1384, and reported the bill favorably.

H.R. 1400, the "Securing Aircraft Cockpits Against Lasers Act of 2005"

Summary.—On March 17, 2005, Rep. Ric Keller (R–FL) introduced H.R. 1400, the "Securing Aircraft Cockpits Against Lasers Act of 2005," to address the growing problem of individuals intentionally aiming lasers at the cockpits of aircraft, particularly at the critical stages of take-off and landing. This practice constitutes a threat to aviation security and passenger safety. H.R. 1400 adds a section following 18 U.S.C. Sec. 38 to impose criminal penalties upon any individual who knowingly aims a laser pointer at an aircraft within the special aircraft jurisdiction of the United States. The criminal penalties include fines of up to $250,000 and imprisonment of up to five years.

Legislative History.—The bill was reported (Amended) by the Committee on Judiciary on October 18, 2005. It was passed by the House on December 7, 2005. It was amended and passed by the Senate on December 22, 2005.

H.R. 1415, the "NICS Improvement Act of 2005"

Summary.—Congresswoman Carolyn McCarthy (D–NY) introduced H.R. 1415 on March 17, 2005. H.R. 1415 provides money and

incentives for the states to update and automate their records regarding criminal dispositions, mental illness determinations, restraining orders and domestic violence misdemeanor convictions so those records can easily be included in and searched by National Instant Criminal Background Check System ("NICS"). These funds are intended to ensure that law-abiding citizens can purchase weapons and that prohibited persons cannot.

The integrity and accuracy of the NICS system depends on states providing updated and accurate records in electronic format. NICS is operated by the FBI, and is used to conduct background checks of firearms purchasers before they are permitted to buy a firearm. When an individual enters any gun dealership to purchase a firearm, the dealer calls the NICS Call Center, a state-of-the-art computer facility in Clarksburg, West Virginia, or uses the new NICS E-Check online system to conduct the background check.

Legislative History.—On Wednesday, May 3, 2006, the Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 1415. This hearing focused on the need to assist states to ensure that they provide complete, accurate and updated data to NICS. Testifying before the Subcommittee was the sponsor of the bill, the Honorable Carolyn McCarthy, Member of Congress, New York, 4th District. The Honorable John Dingell, Member of Congress, Michigan, 15th District, submitted written testimony regarding H.R. 1415. The Subcommittee, via voice vote, reported the bill favorably to the full committee on May 18, 2006. On Wednesday, September 6, 2006, the Committee on the Judiciary conducted a markup on H.R. 1415.

H.R. 1505, the "Jessica Lunsford Act"

Summary.—Congresswoman Ginny Brown-Waite introduced H.R. 1505 on April 6, 2005. This bill amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act to direct that State procedures include a process under which the State mails a nonforwardable verification form at least twice a year to the last known address of the person required to register as a sexually violent offender, to be returned within ten days after receipt, with failure to return the form within the period allowed punishable in the same manner as a failure to register.

Legislative History.—On April 6, 2005, H.R. 1505 was referred to the Committee on the Judiciary. On May 10, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 1505 on June 9, 2005. Similar provisions were included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 1528, the "Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005"

Summary.—Chairman F. James Sensenbrenner, Jr. introduced H.R. 1528 on April 6, 2005. This legislation strengthens the laws regarding trafficking to minors and creating enhanced criminal penalties for individuals who traffic drugs near a drug treatment facility. It provides sound statutory reforms of what are currently

"feel-good," but ineffective drug laws designed to protect children (drug free school zones and prohibitions of distributing drugs to minors). These provisions are rarely prosecuted for the simple reason that they carry no effective period of incarceration (one year mandatory minimum in most cases).

Legislative History.—On April 6, 2005, H.R. 1528 was referred to the Committee on the Judiciary. On April 11, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee held a hearing on this bill on April 12, and on that same day forwarded the bill to the Full Committee by the Yeas and Nays 6–1. No further action was taken on this bill.

H.R. 1704, the "Second Chance Act of 2005"

Summary.—Congressman Rob Portman introduced the Second Chance Act of 2005 on April 19, 2005. Over a period of two years, $146 million in Federal funding would be authorized to implement H.R. 1704 with the goal of increasing the success of prisoners at the Federal, state, and local levels reentering society following incarceration.

The Second Chance Act of 2005 amends the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize existing demonstration projects and reform existing programs to include greater use of graduated sanctions that ensure compliance by adult and juvenile offenders.

The bill authorizes the U.S. Attorney General to make a grant to provide for the establishment of a National Adult and Juvenile Offender Reentry Resource Center. It directs the Attorney General to establish an interagency task force on Federal programs regarding offender reentry, and authorizes the National Institute of Justice and the Bureau of Justice Statistics to conduct scientifically valid research on offender reentry.

Included among the bill's provisions for improving reentry services are (1) establishing a Reentry Task Force, (2) expanding the use of educational testing services and mentors; (3) encouraging transitional housing programs; (4) offering a continuum of drug treatment services; (5) encouraging continued relationships between offenders and family members while offenders are incarcerated; and (6) issuing grants for successful family-based drug treatment programs. Additionally, H.R. 1704 introduces the incentive of a grant program for States and local communities to increase in-prison drug treatment programs—a key inclusion, considering only 10 percent of drug addicts receive drug treatment while incarcerated.

Legislative History.—On April 10, 2005, H.R. 1704 was referred to the House Committee on the Judiciary. On May 10, 2005, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. A legislative hearing was held on November 3, 2005, with the following witnesses testifying before the Subcommittee: The Honorable Robert L. Ehrlich, Jr., Governor, State of Maryland; The Honorable Chris Cannon, Member of Congress, 3rd District, Utah; The Honorable Danny K. Davis, Member of Congress, 7th District, Illinois; and The Honorable Stephanie Tubbs Jones, Member of Congress, 11th District, Ohio. A second legislative hearing took place on February 8, 2006, entitled "Second Chance Act (Part II):

An Examination of Drug Treatment Programs Needed to Ensure Successful Reentry," with four witnesses testifying: Dr. Nora Volkow, Director, National Institute on Drug Abuse; Ken Batten, Director, Office of Substance Abuse Services, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; Ms. Pamela Rodriguez, Executive Vice President, Treatment Alternatives for Safe Communities (TASC, Inc.); and Ms. Lorna Hogan, Associate Director of Sacred Authority, The Rebecca Project for Human Rights. A Subcommittee markup session was held for H.R. 1704 on February 15, where the bill was forwarded to Full Committee by voice vote. The full committee considered H.R. 1704 on July 12, July 19 and July 26, 2006. The bill was favorably reported by voice vote on July 26, 2006. No further actions were taken on H.R. 1704 during the 109th Congress.

H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005"

Summary.—Congressman Louie Gohmert introduced H.R. 1751 on April 21, 2005. H.R. 1751 is a comprehensive measure designed to improve the security and protection of judges, law enforcement, prosecutors, and other personnel following several high profile violent attacks that resulted in death or serious injury.

Federal, State and local judges and law enforcement have suffered from rising threats and deadly attacks against courthouse personnel- prosecutors, witnesses, defense counsel and others have also come under more regular and violent assault. According to the Administrative Office of United States Courts, there are almost 700 threats a year made against Federal judges, and in numerous cases Federal judges have had security details assigned to them for fear of attack by members of terrorist associates, violent gangs, drug organizations and disgruntled litigants.

At the State and local level, there is no comprehensive data or incident reports. Two States, Missouri and Massachusetts, have gathered data that shows an increasing trend of violence against courts and court personnel. For the years 2003 and 2004, in Massachusetts, assaults and disturbances, medical emergencies, and weapons/contraband seized constituted the majority of incidents reported (72.12 percent) for the 2004 reporting period. There were 295 assaults and 30 threats against judges or courthouse employees. In Missouri, for 2001, 74 percent of reporting courts indicated that their court had experienced at least one security incident during the reporting period. Of the five most frequent types of security incidents, four involved a level of violence or threat of violence.

The legislation enhances criminal penalties for assaults and killings of Federal, State and local judges, witnesses, law enforcement officers, courthouse personnel and their family members; provides grants to State and local courts to improve security services, and improves the ability of the U.S. Marshals to protect the Federal judiciary.

The bill also prohibits public disclosure—on the Internet and other public sources—of personal information about judges, law enforcement, victims and witnesses, to protect Federal judges and prosecutors from organized efforts to harass and intimidate them through false filings of liens and other encumbrances against per-

sonal property, and improves coordination between the U.S. Marshals and Federal judges. H.R. 1751 also contains security measures for Federal prosecutors handling dangerous trials against terrorists, drug organizations and other organized crime figures.

Legislative History.—On April 21, 2005, H.R. 1751 was referred to the Committee on the Judiciary. On April 26, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. A legislative hearing on H.R. 1751 was held on April 26, 2005. Testimony was received from four witnesses: Judge Jane Roth, Chairwoman of Judicial Conference Committee on Facilities; Judge Cynthia Kent, 114th Judicial District of Texas; United States Attorney Paul McNulty, Eastern District of Virginia; and United States Marshal John Clark, Eastern District of Virginia. On June 30, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 1751 as amended by a voice vote, a quorum being present. On October 27, 2005, the full committee met in open session and ordered favorably reported the bill H.R. 1751 as amended by a recorded vote of 26 to 5, a quorum being present. The bill was placed on the Union Calendar No. 148 on November 7, 2005, and was brought before the Committee of the Whole on November 9, 2005, where it passed by the Yeas and Nays 375–45. The following day, H.R. 1751 was received in the Senate, read twice, and referred to the Committee on the Judiciary. There have been no further actions to date.

H.R. 2318, the "Protection Against Sexual Exploitation of Children Act of 2005"

Summary.—Congressman Mark Green (R–WI) introduced the Protection Against Sexual Exploitation of Children Act of 2005 on May 12, 2005. H.R. 2318 amends the Federal criminal code to increase mandatory minimum terms of imprisonment for sexual offenses against children, including: (1) aggravated sexual abuse of children; (2) abusive sexual contact with children under age 12; (3) sexual abuse of children under age 12 resulting in death; (4) sexual exploitation of children; (5) activities relating to material involving the sexual exploitation of children; (6) activities relating to material constituting or containing child pornography; (7) using misleading domain names to direct children to harmful material on the Internet; and (8) production of sexually explicit depictions of children; and (9) conduct relating to child prostitution.

H.R. 2318 also includes the definition of a "Federal sex offense" for purposes of provisions regarding mandatory life imprisonment for repeat sex offenses against children.

Legislative History.—On May 12, 2005, H.R. 2318 was referred to the Committee on the Judiciary. On June 3, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security, where a legislative hearing was held on June 7. Similar provisions were included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 2388, the "Prevention and Deterrence of Crimes Against Children Act of 2005"

Summary.—Congressman Mark Green (R–WI) introduced the Prevention and Deterrence of Crimes Against Children Act of 2005 on May 17, 2005. H.R. 2388 rewrites provisions of the Federal criminal code regarding penalties for crimes against children to require a person convicted of a Federal crime of violence against an individual under age 18 to be sentenced to (1) death or life imprisonment if the crime results in the death of a person under age 18; (2) life or at least 30 years imprisonment if the crime is a kidnaping, sexual assault, or maiming, or results in serious bodily injury; (3) life or at least 20 years imprisonment if the crime results in bodily injury; (4) life or at least 15 years imprisonment if a dangerous weapon was used during and in relation to the crime; and (5) life or at least ten years imprisonment in any other case.

H.R. 2388 denies a court, justice, or judge jurisdiction to consider claims relating to the judgment or sentence in an application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court for a crime that involved the killing of a person under age 18. The bill is applicable to pending cases as well as proceedings.

Legislative History.—On May 17, 2005 H.R. 2388 was referred to the Committee on the Judiciary. On June 3, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security, where a legislative hearing was held on June 7. Similar provisions were included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 2423, the "Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Act"

Summary.—Congressman Mark Foley introduced H.R. 2423 on May 18, 2005. H.R. 2423 repeals existing provisions governing state registration programs for persons convicted of a criminal offense against a minor or of a sexually violent offense and directs the Attorney General to carry out a Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification program under which a "covered individual" (an individual convicted of a listed offense against a minor) shall, for that individual's life, provide to the Attorney General specified information, including any change of address and employer. The bill also lists exceptions and sets penalties for violations.

Legislative History.—On May 18, 2005, H.R. 2423 was referred to the Committee on the Judiciary. On June 3, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee held a hearing on H.R. 2423 on June 9, 2005. Similar provisions were included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 2796, the "DNA Fingerprinting Act of 2005"

Summary.—Congressman Mark Green (R–WI) introduced the DNA Fingerprinting Act of 2005 on June 8, 2005. H.R. 2796 amends the DNA Identification Act of 1994 to expand the scope of

DNA samples to be included in the Combined DNA Index System (CODIS). It repeals exclusions from CODIS of (1) DNA profiles from arrestees who have not been charged in an indictment or information with a crime; and (2) DNA samples that are voluntarily submitted solely for elimination purposes. It also appeals provisions regarding (1) requirements for expungement of DNA analysis from CODIS in cases where the convictions are overturned; and (2) authority for any person who is authorized to access CODIS for purposes of including DNA information to access it to carry out a one-time keyboard search.

Additionally, this bill amends the DNA Analysis Backlog Elimination Act of 2000 to authorize the Attorney General to (1) collect DNA samples from individuals who are arrested or detained under U.S. authority; (2) delegate this function within the Department of Justice; and (3) authorize and direct any other U.S. agency that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General.

Legislative History.—On June 8, 2005, H.R. 2796 was referred to the Committee on the Judiciary and then to the Subcommittee on Crime, Terrorism, and Homeland Security. A legislative hearing was held on June 9, 2005. Similar provisions were included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 2797, the "Amie Zyla Act of 2005"

Summary.—Congressman Mark Green (R–WI) introduced the Amie Zyla Act of 2005 on June 8, 2005. H.R. 2797 amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act to extend registration requirements to any person adjudicated as a juvenile delinquent for conduct that would be an offense requiring registration if committed by an adult.

Legislative History.—On June 8, 2005, H.R. 2797 was referred to the Committee on the Judiciary and then to the Subcommittee on Crime, Terrorism, and Homeland Security. A legislative hearing was held on June 9. Similar provisions were included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act," which was signed into law on July 27, 2006 (Pub. L. 109–248).

H.R. 2965, the "Federal Prison Industries Competition in Contracting Act of 2006"

Summary.—The Federal Bureau of Prisons (BOP) is responsible for the custody and care of more than 181,000 Federal offenders. Approximately 85 percent of these inmates are confined in Bureau-operated correctional facilities or detention centers. Prisoners who are physically able to work must labor in some capacity five days a week. The Federal Prison Industries (FPI), a government corporation that operates the BOP's correctional program, employs inmates in the Federal prison population to manufacture goods for and provide services to Federal agencies. About 20 percent of inmates work in FPI factories. They generally work in factory operations, such as metals, furniture, electronics, textiles, and graphic arts. FPI work assignments pay from 23 cents to $1.15 per hour.

Although FPI is precluded from selling its goods in the commercial market under 18 U.S.C. section 1761, the BOP has taken the position that the language prohibiting interstate transport of goods does not prohibit it from selling services in the commercial market. Many private companies and small businesses have trouble competing with the advantages the prison industry enjoys, such as a guaranteed market for its products and reduced costs for labor and capital.

In FY 2004, FPI operated 102 factories in 71 correctional facilities marketing products and services in approximately 150 broad classes under the trade name UNICOR. In FY 1998, FPI had total sales of $534.2 million and employed 20,200 inmates (18.3%). In FY 2004 employed 19,337 inmates, with a total sales of $802.7 million and a profit of $120.4 million. Federal agencies are required by law, under 18 U.S.C. §4124, to purchase FPI products if a product is available that meets the agencies' requirements and does not exceed current market prices. This provision in the law, deemed "mandatory source preference," does not specify how the current market price should be determined. The General Accounting Office (GAO) concluded in a 1998 report to Congress that "the only limitation on FPI's price is that it may not exceed the upper end of the current market price range."

The "mandatory source preference" given FPI is viewed as an exception to the Federal Acquisition Regulation standards established for a "fair and reasonable price." Thus, agencies are required to purchase products from FPI regardless of whether FPI provides the agency with a price it considers reasonable or factually supports the price it offered. Recent changes in the law at 10 U.S.C. § 2410n allow agency contracting officers to determine if a product offered by FPI is "comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery." These changes do not eliminate the "mandatory source preference". If a contracting officer finds that FPI's offered product is not comparable, then the purchase is to be made using competitive procedures. There is no need to obtain a so-called "waiver" from FPI prior to making the purchase. Section 2410n only requires that FPI be accorded the same right to compete as any other eligible offeror, but does not grant to FPI any preferential status in the competitive process.

H.R. 2965 would fundamentally alter the 1934 authorizing statute of Federal Prison Industries ("FPI") requiring that FPI compete for its business opportunities and no longer be able to take them on a sole-source basis. Currently, all Federal agencies must purchase products offered by FPI, which is commonly referred as FPI's "mandatory source" status. FPI, rather than the buying agency, determines if FPI's offered product and delivery schedule meets the mission needs of the buying agency. FPI, rather than the buying agency, determines the reasonableness of FPI's offered price.

This bill would gradually phase out the exclusive right of FPI, deemed "mandatory source," to sell goods on an exclusively noncompetitive basis to federal agencies by October 1, 2011. The bill also changes the manner in which FPI sells its products and services to the various Federal departments and agencies. During the phase-out period, FPI would be required to provide the agencies

with a product that meets its needs at a "fair and reasonable price" in a timely manner.

Today, FPI's offered price meets the "current market" price standard if it does not exceed the highest price offered to the Government for a comparable item, even if no actual sales have been made at that price. Under the Federal Acquisition Regulations (FAR), a federal manager must obtain FPI's unilateral permission to even solicit competitive offers from the private sector in an effort to obtain "best value" for the taxpayer dollars entrusted to such manager's care.

This legislation establishes new competitive procedures for government procurement of products or services that are offered for sale by FPI. H.R. 2965 requires that FPI sales to its Federal agency customers be made through contracts won on a competitive basis, for both products and services. Like other suppliers to the Federal Government, FPI would be required to fulfill its contractual obligations in a timely manner.

To enable FPI to adjust to the requirement that it obtain contracts on a competitive basis, H.R. 2965 provides FPI with a five-year transitional period to adjust from its sole-source dealings with its currently captive Federal agency customers. Under this phase-out authority, Federal agencies could continue to contract with FPI on a noncompetitive basis through October 1, 2011, subject to annually declining caps on the use of the preferential contracting authority. During the phase-out period, FPI would be required to provide a buying agency with a product that meets the buying agency's needs, when needed, at a "fair and reasonable price."

To assure that the loss of a contract by FPI does not endanger the safety of a Federal Correctional Institution (FCI), H.R. 2965 contains a provision that permits the Attorney General to authorize a sole source contract award to prevent idleness "that could reasonably be expected to significantly endanger the safe and effective administration" of the FPI at which the work required by the contract is scheduled to be performed. To prevent abuse of this sole-source authority by FPI, the provision requires that the Attorney General's decision to authorize the sole source contract award be supported by findings by the FCI's warden.

H.R. 2965 does not alter a broad array of advantages that FPI enjoys with respect to private sector firms. The great majority of inmates working for FPI will continue to be paid at rates below the minimum wage. FPI factory space is provided by the host FCI, and is constructed at taxpayer expense. Similarly, FPI receives its utilities from the host FCI. As a Government corporation, FPI may receive industrial equipment excess without cost from other Departments and agencies, including the substantial quantities of industrial equipment returned to the Department of Defense by its contractors. FPI has had a $20 million line-of-credit from the U.S. Treasury on an interest-free basis since 1988.

In addition to requiring that FPI compete for its Federal agency sales, H.R. 2965 improves the process by which FPI's Board of Directors considers proposals from FPI's career management staff to authorize production expansion. For the first time, it extends the public participation and Board approval procedures to expansion

proposals relating to services as well as expansion proposals relating to products.

The legislation also substantially modifies the structure of FPI's Board of Directors. Currently, the FPI Board of Directors is composed of six-members, appointed by the President. H.R. 2965 replaces the current Board with an eleven-member Board, with three members representing business, three members representing labor, one member with special expertise in inmate rehabilitation techniques, one member representing victims of crime, one member representing inmate workers, and two additional members "whose background and expertise the President deems appropriate."

The legislation includes provisions that substantially expand alternative rehabilitative opportunities for more Federal inmates to better prepare them for a successful return to society. The legislation also seeks to provide increased opportunities to participate in programs providing fundamental remedial education as well as modern hands-on vocational and apprenticeship training. Additionally, the legislation authorizes alternative inmate work opportunities in support of non-profit, community service organizations. For example, FPI workers can provide services to build or recondition for donation to nonprofit organizations to assist low income individuals who would have difficulty purchasing these products on their own.

H.R. 2965 also includes a demonstration project to test the cognitive abilities and perceptual skills of Federal inmates to maximize rehabilitation efforts and reduce recidivism. Finally, H.R. 2965 adds a new Section 13 "Transitional Personnel Management Authority" to provide some relief to correctional officers, whose staff positions are no longer funded from appropriations to the Federal Bureau of Prisons, but through non-appropriated funds, completely dependent upon revenue from FPI "sales."

The legislation, as amended by the Committee, includes provisions, which were developed over a six-month period with representatives of the Attorney General. All of the provisions are acceptable to the broad array of business organizations and labor unions participating in the Federal Prison Industries Competition in Contracting Coalition. The changes are additions to the text of H.R. 2965 as introduced.

The legislation, as amended, creates a new Work-Based Employment Preparation Program under which private-sector firms can enter into agreements with FPI to prepare inmates for re-entry through real-world work coupled with structured apprenticeship-like training. The byproducts of these work-based training programs, both the production of products or the furnishing of services may be sold in the commercial market. To avoid unfair competition with non-inmate workers, and the firms that employ them, the products of the Work-Based Employment Training Program would be restricted to products or services for which there is no domestic production. The Secretary of Labor, in consultation with the Attorney General, is directed to issue an inmate training wage under the authority of the Fair Labor Standards Act, which would be less than the Federal Minimum Wage. H.R. 2965 includes a sense of Congress that the wage set by the Secretary should be no less than

50% of the Federal minimum wage under the Federal Labor Standards Act.

H.R. 2965, as amended, is designed to further facilitate a successful transition by FPI from simply taking contracts pursuant to its status as a mandatory source and winning contracts competitively. The legislation adopted by the Committee includes a provision that would allow FPI to be listed as providing goods and services comparable to private-sector firms holding contracts under Multiple Award Schedules (MAS) Program administered by the General Services Administration, although Government corporations are ineligible to be a MAS Program contract holders. This will enable FPI to keep its offering clearly in the view of the Federal buyer.

H.R. 2965 requires Federal buyers to solicit offers from FPI, an advantage not enjoyed by private-sector firms who must find their Federal contract opportunities. The legislation, as amended, also requires that a solicitation shal be made to FPI first if the product or service to be acquired would otherwise be furnished by a contractor outside the United States.

The legislation, as amended, also gives FPI authority to file agency bid protests, if FPI feels the Federal buyer has not evaluated fairly FPI's offer. No other Government corporation has this authority. FPI is authorized to perform a Government contract won competitively although the FPI Board of Directors has not authorized FPI to produce such a new product or service. Additionally, under the legislation as adopted the unique costs of dealing with an inmate population may be considered in offers for cost-reimbursement contracts by FPI.

During the five-year period of transition to competition, the legislation adopted by the Committee permits the FPI Board of Directors to allow FPI to take more than a reasonable share of the market for an authorized product or service, if needed to maintain inmate employment. To avoid an displacement of current inmate workers, H.R. 2965, as amended, "grandfathers" all of FPI's current agreements with private-sector firms that result in the introduction of inmate-furnished services in the commercial market. Thereafter, the firms can apply to participate in the Work-based Employment Preparation Program. H.R. 2965, as introduced, already grandfathers state or local prison industry programs to complete their existing agreements. Thereafter, they can continue their programs under the PIE (Prison Industry Enhancement) Program, which has provided entry into the commercial market for state or local prison-made products or inmate-furnished services, since 1979.

Legislative History.—This legislation was introduced on June 17, 2005, and referred to the Committee on Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. A hearing on the legislation was held at the Subcommittee on July 1, 2005. Testimony was received from four witnesses, representing four organizations, with additional material submitted by numerous individuals and organizations. On July 12, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 2965, with an amendment, by voice vote, a quorum being present. On September 14, 2006, the House passed H.R. 2965 by a vote of 362–57.

H.R. 3035, the "Streamlined Procedures Act of 2005"

Summary.—The Streamlined Procedures Act of 2005 was introduced by Congressman Daniel Lungren (R–CA) on June 22, 2005, for the purpose of amending the Federal judicial code to revise the law and procedures for habeas corpus petitions. It eliminates delays and unnecessary litigation, adopting a simple, clear standard for allowing all claims to either go forward in Federal court or be dismissed, without the need for additional years of litigation in State court.

H.R. 3035 denies or restricts the jurisdiction of Federal courts to hear habeas corpus petitions that: (1) have been procedurally barred in a state court; (2) are based upon errors in sentences or sentencing ruled as harmless error by a state court; (3) pertain to capital cases; or (4) challenge the exercise of a States's executive clemency or pardon power.

It amends deadlines for filing appeals to Federal courts of State habeas corpus decisions and limits the ability of habeas corpus petitioners to amend petitions or modify or add additional claims. H.R. 3035 requires requests for financial support for petitioners in a habeas corpus proceeding to be decided by a judge other than the judge presiding over such proceeding. Additionally, it requires any amount of financial support authorized by a judge to be publicly disclosed.

Legislative History.—H.R. 3035 was referred to the Committee on the Judiciary on June 22, 2005. On the 27th, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security where legislative hearings were held on June 30th and November 10th. Individuals who submitted testimony for the first hearing included Mr. Barry Sabin, Chief of the Counterterrorism Section for the Criminal Division at the U.S. Department of Justice; The Honorable Joshua K. Marquis, District Attorney for Clatsop County, Oregon; Mr. Ron Eisenberg, Deputy District Attorney for Philadelphia, Pennsylvania; and Mr. Bernard E. Harcourt, Professor of Law and Faculty Director of Academic Affairs at the University of Chicago. For the second hearing, the following witnesses testified before the Subcommittee: Mr. Tom Dolgenos, Chief of the Federal Litigation Unit in the Philadelphia District Attorney's Office; Mr. Kent Cattani, Chief Counsel of the Capital Litigation Section of the Arizona Attorney General's Office; Ms. Mary Ann Hughes, a crime victim from Chino Hills, California; and Ms. Ruth Friedman, a solo practitioner in Washington, DC. There have been no further actions concerning this bill.

H.R. 3132, the "Children's Safety Act of 2005"

Summary.—Chairman F. James Sensenbrenner, Jr. introduced H.R. 3132 on June 30, 2005. H.R. 3132 is a comprehensive bill to address the growing epidemic of sexual violence against children through renewing and strengthening existing laws intended to protect children.

Statistics show that 1 in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent are reported to authorities. This problem is exacerbated by the number of children who are solicited online—according to the Department of Justice 1 in 5 children (10 to 17 years old) receive unwanted sex-

ual solicitations online. Moreover, sex offenders have significant recidivism rates. In a 2001 report, The Center for Sex Offender Management found that sexual offense recidivism rates are underreported and that the number of subsequent sex offenses revealed through unofficial sources was 2.4 times higher than the number that was recorded in official reports. Research using information generated through polygraph examinations on a sample of imprisoned sex offenders with fewer than two known victims (on average), found that these offenders actually had an average of 110 victims and 318 offenses. Another polygraph study found a sample of imprisoned sex offenders to have extensive criminal histories, committing sex crimes for an average of 16 years before being caught.

Recent events have underscored gaps and problems with existing Federal and state laws, as well as implementation of sex offender registration and notification programs. There is a wide disparity among the state programs in the registration requirements and notification obligations for sex offenders. Given the transient nature of sex offenders and the inability of the States to track these offenders, it is conservatively estimated that approximately 20 percent of 400,000 sex offenders are "lost" under state sex offender registry programs. In addition, there is a disparity among state programs as to the existence of Internet availability of relevant sex offender information, and the specific types of information included in such web sites. Recently, the Justice Department announced that it has begun implementing a public, national sex offender registry, linking together the State registries into one national website, starting with the linking of 22 State Internet web sites for search purposes.

H.R. 3132 includes much-needed reforms of the Sex Offender and Registration program by (1) expanding the coverage of registration and notification requirements to a larger number of sex offenders; (2) increasing the duration of registration requirements for sex offenders; (3) requiring States to provide Internet availability of sex offender information; (4) ensuring timely registration by sex offenders and verification; (5) requiring sex offenders to register in person and on a regular basis, and to provide detailed personal information whenever they move to a new area to live, attend school or work; (6) requiring a State to notify the Attorney General, law enforcement agencies, schools, housing agencies and development, background check agencies, social service agencies and volunteer organizations in the area where a sex offender may live, work or attend school; (7) authorizing demonstration programs for new electronic monitoring programs (e.g. anklets and GPS monitoring which will require examination of multi-jurisdictional monitoring procedures); (8) creating a new National Sex Offender Registry; (9) creating a new Federal crime punishable by a five year mandatory minimum when a sex offender fails to register; and (10) authorizing the U.S. Marshals to apprehend sex offenders who fail to register and increases grants to States to apprehend sex offenders who are in violation of the registration requirements.

The bill also revises laws relating to the use of DNA evidence, increases penalties for violent crimes committed against children and sexual exploitation of children; streamlines habeas review of State death sentences imposed against child killers; and protects

foster children by: (1) requiring States to complete background checks using national criminal history databases before approving a foster or adoptive parent placement, and to check child abuse registries; (2) authorizing child welfare agencies to obtain read-only access to national criminal history databases; (3) requiring sex offenders to submit to searches as a condition of supervised release or probation; and (4) establishing procedures for civil commitment of Federal sex offenders who are dangerous to others because of serious mental illness, abnormality or disorder.

Legislative History.—On June 30, 2005, H.R. 3132 was referred to the Committee on the Judiciary. On July 27, it was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The Committee's Subcommittee on Crime, Terrorism and Homeland Security held a series of three hearings on child crime issues related to H.R. 3132, on June 7 and 9, 2005. The first hearing focused on Rep. Mark Green's legislative proposals, H.R. 2138, "The Prevention and Deterrence of Violence Against Children's Act," and H.R. 2188, "The Protection Against Sexual Exploitation of Children Act." Testimony was received from four witnesses, representing the United States Department of Justice, the Attorney General from the State of Florida, Ms. Carol Fornoff, the mother of Christy Ann Fornoff, who was murdered in 1984, and a representative from the Federal Public Defender in Montana. The second hearing, on June 9, 2005, focused on legislative proposals relating to child safety. Testimony was received from the Honorable Mark Foley, from the 16th Congressional District in the State of Florida, the Honorable Ted Poe, from the 2nd Congressional District in the State of Texas, the Honorable Ginny Brown-Waite, from the 5th Congressional District in the State of Florida, and the Honorable Earl Pomeroy, who serves At Large in the State of North Dakota. The third hearing, which took place later that same day, focused on protecting children from sexual predators and violent criminals. Testimony was received from a representative from the United States Department of Justice; Ernie Allen, President of the National Center for Missing and Exploited Children; Amie Zyla, a child victim of sexual assault by a convicted sex offender; and Dr. Fred Berlin, Associate Professor in the Department of Psychiatry at the Johns Hopkins University School of Medicine. On June 30, 2005, H.R. 3132 was referred to the Committee on the Judiciary, where on July 27 it was both marked up and ordered to be reported by the Yeas and Nays: 22–4. The bill was brought before the Committee of the Whole House on September 14, where it passed by the Yeas and Nays: 371–52. The following day, H.R. 3132 was received in the Senate, read twice, and referred to the Committee on the Judiciary. There have been no further actions to date.

H.R. 3889, the "Methamphetamine Epidemic Elimination Act"

Summary.—Congressman Mark E. Souder introduced H.R. 3889 on September 22, 2005. H.R. 3889 was introduced to provide better management of legal precursor chemicals that are frequently diverted for the production of methamphetamine and to provide tools to Federal, state, and local law enforcement. Methamphetamine is highly addictive and takes a tremendous physical and mental toll on an addict.

Production of methamphetamine can occur on a large or small scale. A key component of the narcotic is a common cold remedy, pseudoephedrine (PSE). Diversion of PSE for the purpose of producing methamphetamine occurs from any point from the manufacturing and wholesale of the drug all the way to the point of purchase by a consumer. Because methamphetamine can be made in large or small quantities, producers range from large international drug cartels operating out of "superlabs" to small "mom and pop" producers that can operate in an area as small as an automobile trunk.

The amount of money needed to produce methamphetamine is minimal. Most of the ingredients are easily obtainable and producers frequently steal those ingredients that they cannot afford. Addicts will frequently band together in collectives to pool ingredients in order to ensure that there are enough to produce the drug. Little knowledge is needed to make the drug, though the process is highly volatile and produces large quantities of toxic byproducts that are toxic to humans and the environment.

Because of the diverse sources of methamphetamine, any strategy to try and stem the production of the drug has to address both the large-scale production of the drug by established cartels and the small-scale production by small groups of users or individuals. H.R. 3889 is designed to provide a multifaceted solution to these problems by (1) placing restrictions on the amount of the precursor chemical PSE that can be sold at retail in order to stem methamphetamine production by smaller producers, (2) authorizing the establishment of import and manufacturing quotas, (3) increasing penalties for trafficking precursor chemicals with the intent to manufacture, and (4) modifying the amount of methamphetamine needed for the application of "kingpin" enhancements.

Legislative History.—On September 26, 2005, H.R. 3889 was referred to the Subcommittee on Crime, Terrorism, and Homeland Security. A legislative hearing was held on September 27, with the following witnesses testifying before the Subcommittee: The Honorable Mark Souder, Member of Congress, 3rd District, Indiana; the Honorable Mark Kennedy, Member of Congress, 6th District, Minnesota; Mr. Joseph T. Rannazzisi, Deputy Chief, Office of Enforcement Operations, U.S. Drug Enforcement Administration; and Dr. Barry M. Lester, Professor of Psychiatry & Human Behavior and Pediatrics, Brown University Medical School. A Subcommittee markup session was held for H.R. 3889 on November 3, 2005, where it was forwarded to Full Committee by the Yeas and Nays: 8–2. The bill was reported at a Full Committee markup on November 9 by the Yeas and Nays: 31–0. H.R. 3889 was placed on Union Calendar No. 167 on November 17, and was later included in H.R. 3199, the USA PATRIOT Improvement and Reauthorization Act of 2005.

H.R. 4132 the "Law Enforcement Cooperation Act of 2006"

Summary.—Congressman William Delahunt (D–MA) introduced H.R. 4132 on October 25, 2005. H.R. 4132 amends the Federal criminal code to prescribe penalties to be imposed on any officer or employee of the Federal Bureau of Investigation (FBI) who obtains information that a confidential informant or other individual has

committed a serious violent felony (as defined in section 3559 of title 18) that violates State or local law and who knowingly and intentionally fails to promptly inform the chief State law enforcement officer and local prosecuting official. An offense under this section is punishable by a fine or imprisonment up to five years, or both. The FBI is required to notify the Attorney General that an officer or employee has provided information under this section.

In September 2005, the Department of Justice Office of the Inspector General (OIG) released a report entitled, "The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines" (the Report). OIG examined four areas of FBI's compliance with the Attorney General's Investigative Guidelines (Guidelines). The four areas examined were: Confidential Informants; Undercover Operations; General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations; and Consensual Monitoring. In the Report, the OIG reviewed the FBI's implementation of the revised Investigative Guidelines with two main objectives: (1) to assess the FBI's compliance with the revised guidelines; and (2) to evaluate the procedures that the FBI employed to ensure that the revised Guidelines were properly implemented. The most significant problems cited were failures to comply with the Confidential Informant Guidelines. In fact, the OIG identified one or more Guideline violations in 87 percent of the confidential informant files examined.

The Report issued by the OIG was the culmination of an exhaustive review regarding various issues of compliance with the Guidelines. The Guidelines were adopted in 1976, with revisions added periodically at the behest of the then-Attorney General, and were adopted in place of statutory recourse for the FBI and other Federal Law Enforcement Agencies. The latest revision of the Attorney General's Guidelines, the Ashcroft Guidelines, were adopted without the customary Congressional consultation. In the past the Attorney General and FBI Leadership have uniformly agreed that the Guidelines were necessary and desirable, and that the FBI's adherence to the Guidelines were the reason why the FBI should not be subjected to a general legislative charter or to statutory control. However, failure to adequately comply with the Guidelines brings into question whether legislative alternatives may be necessary.

Although the Report looked at the general compliance by the FBI with several portions of the Guidelines, the relevant portion for the purposes of this legislation is that addressing the Bureau's effectiveness regarding Agent relationships with Confidential Informants (CIs), an area that the Report identified as the most problematic.

Twelve FBI offices of various sizes were selected and a random sampling of between 9 to 11 CI files from each office (for a total of 120) were selected in order to ascertain compliance levels. In addition, various personnel from the FBI and U.S. Attorney's offices were interviewed to supplement and explain the results of the file analysis. The OIG determined that there existed at least one compliance error in 87 percent of the files examined. As an explanation for this finding, personnel from field offices, as well as personnel from FBI Headquarters, indicated that the Guidelines are too cumbersome and, as such, discourage agents from adhering to the

Guidelines. Similarly, a majority of the Special Agents in Charge (SAC) indicated that while they believed the Guidelines are realistic, the accompanying paperwork is too cumbersome. These complaints about and failure to adhere to the Guidelines is an apparent departure from previous feedback about the priority placed on adherence to the Guidelines, as indicated by former FBI Director William Webster who stated that the Guidelines were "scrupulously observed" in regard to handling informants.

Furthermore, the OIG found significant problems in the FBI's compliance with the Guidelines occurring primarily in the areas of: suitability reviews; cautioning of informants about the limits of their activities; the authorization of otherwise illegal activity; documentation and notice of unauthorized illegal activity by informants; and the deactivation of informants.

Legislative History.—On July 12, 2006, the Judiciary Committee held a legislative markup, reporting the bill favorably as amended by voice vote (H. Rept. 109–564). No further action was taken in the 109th Congress.

H.R. 4239, the "Animal Enterprise Terrorism Act"

Summary.—In recent years, there has been an increase in the number and severity of crimes of violence and intimidation animal rights activists groups have been employing to disrupt the business of anyone engaged in any enterprise that uses or sells animals or animal products. There has also been a trend by these groups to attack not only employees for companies doing such research, but also those with any type of remote link to such research. These activities have been used to target employees of private companies, banks, underwriters, insurance companies, investors, university research facilities and even the New York Stock Exchange.

Tactics employed by the fringe activists include threatening letters, emails and phone calls; repeated organized protests at employees homes; and blanketing home neighborhoods with flyers referring to a specific company employee or researcher as a puppy killer or pedophile. Activists have been tied to phone calls in the middle of the night from the "morgue" claiming a relative has been killed and the employee should come identify the body immediately. Some of the more violent activities include acts of arson; acid poured on cars at peoples homes; sending razor blades in the mail; and spray painting defamatory language on people's homes. In the United Kingdom, where many of these groups originate, activists have been linked to the beating of a company CEO; explosives devices sent to the home of employees; and pipe bombs attached to employees cars. Underground networks of these groups advocate for these types of activities and applaud individuals who employ these tactics.

H.R. 4239 would expand the reach of the Federal criminal laws to specifically address the use of force, violence or threats against not only the animal enterprise organizations, but also those who do business with them. Specifically, the legislation would prohibit the intentional damaging of property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise and make it a criminal act to intentionally place a person in reasonable fear of death or serious bodily injury to that person

or their family because of their relationship with an animal enterprise. The legislation further provides for increased penalties for these activities and makes crimes under 18 U.S.C. 43 eligible for an application for an order allowing interception of wire or oral communications under 18 U.S.C. 2516.

Finally, the legislation expands the definition of "economic damage" for purposes of this section to include loss of property, the costs incurred because of a lost experiment, and lost profits. It also includes a definition of the term "economic disruption," to mean losses or increased costs resulting from threats, acts of violence, property damage, trespass, harassment, or intimidation against a person or entity on account of their relationship with an animal enterprise. This does not include lawful boycott.

Since the bill has been introduced, the Committee has been approached by a couple of groups with concerns about ensuring First Amendment protections are included for lawful protests, boycotts, and other activities. The legislation was not intended to infringe on these rights in any way. Accordingly, a manager's amendment clarifying that those rights will continue to be protected was drafted.

The amendment in the nature of a substitute addresses concerns regarding lawful protests that were raised during the hearing and by outside groups. The amendment in the nature of a substitute includes a rule of construction to that clarifies that nothing in the bill shall be construed to prohibit any expressive conduct protected by the First Amendment. Additionally, the amendment ensures that mere civil disobedience activities that are nonetheless illegal shall not be prosecuted as a felony; instead these activities will be treated as misdemeanors.

Legislative History.—H.R. 4239 was introduced on November 4, 2005. A hearing was held at the Subcommittee on Crime, Terrorism, and Homeland Security on May 23, 2006. No further actions have occurred.

H.R. 4472, the "Adam Walsh Child Protection and Safety Act of 2006"

Summary.—Chairman F. James Sensenbrenner, Jr. introduced H.R. 4472 on December 8, 2005. The legislation was a compilation of several violent crime reduction bills including H.R. 1751, the "Secure Access to Justice and Court Security Act of 2005"; H.R. 3132, the "Children's Safety Act of 2005"; and H.R. 5749, the "Internet Stopping Adults Facilitating the Exploitation of Today's Youth (SAFETY) Act."

Legislative History.—On December 8, 2005, H.R. 4472 was referred to the Committee on the Judiciary. The Committee's Subcommittee on Crime, Terrorism and Homeland Security held a series of three hearings on child crime issues related to H.R. 4472, on April 5 and 26, and June 7 and 9, 2005. On March 8, 2006, H.R. 4472 was considered under suspension of the rules and passed by voice vote. On July 20, the bill was amended and passed by the Senate. The House voted to suspend the rules and agree to the Senate amendments by voice vote on July 25. The President signed H.R. 4472 on July 27, and it became Public Law 109–248.

H.R. 4703, "To provide meaningful civil remedies for victims of the sexual exploitation of children"

Summary.—Congressman Phil Gingrey (R–GA) introduced H.R. 4703 on February 7, 2006. H.R. 4703 amends section 2255 of Title 18, providing a Federal private right of action to victims of Federal sexual offenses, to clarify that victims of sexual offenses may sue under this section either as a minor or as an adult. The bill increases from $50,000 to $150,000 the minimum amount of damages a victim shall be deemed to have sustained.

Legislative History.—H.R. 4703 was included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act of 2006", which passed the House on July 25, 2006, and became Public Law 109–248 on July 27, 2006.

H.R. 4777, the "Internet Gambling Prohibition Act"

Summary.—Congressman Bob Goodlatte (R–VA) introduced H.R. 4777 on February 16, 2006. H.R. 4777 clarifies the Wire Act to prohibit not only sports betting, but traditional gambling, such as online poker, blackjack and roulette. The bill also updates the Wire Act, passed in 1961, to cover more Internet technologies, such as wireless infrastructures that increasingly make up the Internet. Finally, the bill outlaws the transmission of electronic funds to pay for gambling bets; grants Federal, state and local law enforcement the ability to seek injunctions to prevent the transmission of those funds; and increases the penalties for all violations of the Wire Act from a maximum of two years to a maximum of five years.

Gambling on the Internet has increasingly become an extremely lucrative business. The explosive growth of this industry, has seen an increase both in gambling websites available, and in industry revenues. Internet gambling is now estimated to be a $12 billion industry, with approximately $6 billion coming from bettors based in the U.S. It has been reported that there are as many as 2,300 gambling sites.

Legislative History.—On April 5, 2006, the Subcommittee on Crime, Terrorism and Homeland Security conducted a legislative hearing on H.R. 4777. Testifying before the Subcommittee were (1) the Honorable Bob Goodlatte, 6th Congressional District of Virginia, Member of Congress; (2) Mr. Bruce Ohr, Chief, Organized Crime and Racketeering Section, DOJ; (3) Mr. John Kindt, Professor, University of Illinois; (4) Mr. Sam Vallandingham, Vice President, the First State Bank, West Virginia. The Subcommittee, via voice vote, reported the bill favorably to the full committee on May 3, 2006. On Thursday, May 25, 2006, the Committee on the Judiciary conducted a markup on H.R. 4777. Thereafter, H.R. 4777 was merged with and into H.R. 4411 the Unlawful Internet Gambling Enforcement Act of 2006, introduced by Congressman Jim Leach (R–IA). On July 11, 2006, the merged version of H.R. 4411 which contained the portions of H.R. 4777 as reported by the Committee on the Judiciary, passed the House 317–93.

H.R. 4894, the "Schools Safely Acquiring Faculty Excellence (SAFE) Act of 2006"

Summary.—Congressman Jon Porter (R–NV) introduced H.R. 4894 on March 7, 2006. H.R. 4894 directs the Attorney General to

conduct fingerprint-based background checks through the national crime information databases at the request of schools or educational agencies for employees, prospective employees, and volunteers who interact with children.

Despite improvements in hiring practices of prospective teachers, including widespread use of background checks, people with criminal histories still fall through the cracks. Today, all states require some form of background check for school employees. However, the type of background check varies from state to state and even among school districts. Some states require only a state police check while others require both a state and an FBI check. Who is checked and how often also varies.

In 1998, Congress adopted the National Crime Prevention and Privacy Compact Act establishing an infrastructure by which states can exchange criminal records for non-criminal justice purposes such as background checks of school employees. However, to date, only twenty-five states and the FBI have ratified the Compact.

The FBI's Integrated Automated Fingerprint Identification System (IAFIS) is a national fingerprint and criminal history system. The Interstate Identification Index (III) segment of IAFIS is the national system designed to provide automated criminal history information to participating states. Forty states currently participate in the III program.

Two flaws persist with current background check systems. First, not all state criminal records appear under these systems and second, the current process is cumbersome and does not provide a timely response. Use of the current systems is particularly cumbersome in fast-growing school districts that are under tremendous pressure to quickly fill additional teaching positions. H.R. 4894 provides states direct access to federal databases for background checks of current and prospective school employees and volunteers.

The Schools SAFE Act included in H.R. 4472 additionally authorizes the Attorney General to conduct fingerprint-based background checks upon request from state child welfare agencies for prospective foster or adoptive parents or for purposes of investigating incidents of abuse or neglect of a minor.

Legislative History.—On May 24, 2006, the Judiciary Committee held a legislative markup, reporting the bill favorably as amended by voice vote (H. Rept. 109–497). H.R. 4894 passed the House on June 13, 2006, and was included in H.R. 4472, the "Adam Walsh Child Protection and Safety Act of 2006", which passed the House on July 25, 2006, and became Public Law 109–248 on July 27, 2006.

H.R. 5005 the "Firearms Corrections and Improvements Act"

Summary.—Congressman Lamar Smith (R–TX) introduced H.R. 5005 on March 16, 2006. H.R. 5005 updates and clarifies various sections of the Gun Control Act, 18. U.S.C. Ch. 44. The bill has generally received wide support from the BATFE; the Department of Justice, the Fraternal Order of Police, and the National Rifle Association. For the most part, H.R. 5005 implements a number of low-controversy "house-keeping" changes to the Gun Control Act. However, mayors from the nation's large cities voiced opposition to Sections 7 regarding the dual reporting requirement of multiple

handgun sales, and Section 9 regarding trace data. Proponents of Sections 7 and 9 argue that those sections are necessary to protect the right to privacy of individual gun purchasers, Federal firearm licensees, and law enforcement personnel.

Legislative History.—On March 28, 2006, the Subcommittee on Crime, Terrorism and Homeland Security conducted a legislative hearing on H.R. 5005. Testifying before the Subcommittee were (1) Ms. Audrey Stucko, Deputy Assistant Director, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms and Explosives; (2) Mr. Richard Gardiner, Attorney-at-Law, Fairfax, VA; and (3) the Honorable Michael Bloomberg, Mayor, New York City. The Subcommittee, via voice vote, reported the bill favorably to the full committee on May 18, 2006. On Wednesday, September 6, 2006, the Committee on the Judiciary conducted a markup on H.R. 5005.

H.R. 5040, the "Death Penalty Reform Act of 2006"

Summary.—Congressman Louie Gohmert (R–TX) introduced the Death Penalty Reform Act of 2006, which amends the Federal criminal code to modify substantive law and procedures relating to the death penalty, on March 29, 2006.

Capital punishment continues to spark significant debate across the country. The Committee has made significant efforts to ensure that capital punishment is implemented fairly against the truly guilty. We now have in place greater safeguards and technologies to ensure accuracy at the most important phase of a prosecution—the trial. In addition to public safety and just punishment of the guilty, our death penalty system vindicates the rights of victims and their families—a group whose interests are often minimized or ignored.

The Death Penalty Reform Act further improves notice requirements, improves procedures for presenting evidence of mental retardation or mitigating factors, improves juror selection and retention, clarifies assignment of capital counsel, and provides uniformity in implementing death sentences. It adds certain crimes that result in death, including obstruction of justice, as aggravating factors in death penalty deliberations, and defines "mentally retarded" for death penalty purposes. Additionally, H.R. 5040 repeals the prohibition against executing a person who is mentally retarded, and grants the government an unlimited right to rehearings of a finding of mental incapacity in death penalty cases.

Legislative History.—H.R. 5040 was referred to the Committee on the Judiciary then to the Subcommittee on Crime, Terrorism, and Homeland Security on the same day—March 29, 2006. On March 30, Subcommittee hearings were held at which the following individuals testified: Ms. Margaret P. Griffey, Chief of the Capital Case Unit's Criminal Division at the U.S. Department of Justice; Mr. Robert Steinbuch, Professor of Law at the University of Arkansas; Mr. Kent Scheidegger, Legal Director and General Counsel at the Criminal Justice Legal Foundation; and Mr. David Bruck, Director of the Virginia Capital Case Clearinghouse and Clinical Professor of Law at Washington & Lee School of Law. No further action was taken during the 109th Congress.

H.R. 5092, the "The Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006"

Summary.—Congressman Howard Coble (R–NC) and Robert Scott (D–VA) introduced H.R. 5092 on April 5, 2006. H.R. 5092 was introduced as a bipartisan attempt to address issues raised during three oversight hearings conducted at the beginning of 2006, by the Subcommittee on Crime, Terrorism and Homeland Security, regarding the investigation and enforcement activities of the BATFE. The bill addresses a number of issues relating to the BATFE's enforcement authority, including authorization of civil penalties (e.g. fines and suspensions); creation of independent administrative law judges to hear enforcement cases; definition of serious and non-serious violations; clarification of requisite intent for civil violations; the establishment of investigative guidelines; Department of Justice, Inspector Generals' investigation of the BATFE gun show enforcement; limitation on BATFE authorities; and clarification of several enforcement regulations.

The oversight hearings held by the Subcommittee raised serious concerns over the BATFE's: Allocation of resources; investigation techniques, including questionable stops, searches and seizures of firearm purchasers and Federal firearm licensees ("FFL"); and the lack of consistent law enforcement policies and procedures among the BATFE's field offices and central management. The hearings revealed the need for: (1) A graduated penalty system in Title 18 U.S.C. Section 923, which includes civil penalties, based on the degree of risk of harm that the FFL's violation poses to others; (2) establishing a system of neutral administrative law judges to review the licensing decisions of the BATFE; (3) establishing investigative guidelines similar to those of the Federal Bureau of Investigation and Drug Enforcement Agency; and (4) other modifications to the Federal laws to ensure that American citizens receive due process of the law.

Legislative History.—The bill was introduced by Representative Coble and Representative Scott on April 5, 2006, and has over 110 cosponsors. Earlier this year, the Subcommittee on Crime, Terrorism and Homeland Security conducted three oversight hearings regarding the BATFE's investigation and enforcement activities; this bill addresses concerns raised at those hearings. The Subcommittee, via voice vote, reported the bill favorably to the full committee on May 3, 2006. On Wednesday, September 6, 2006, the Committee on the Judiciary conducted a markup on H.R. 5092, and reported the bill favorably.

H.R. 5219 the "Judicial Transparency and Ethics Enhancement Act of 2006"

Summary.—Chairman F. James Sensenbrenner, Jr. (R–WI) introduced H.R. 5219 on April 27, 2006. H.R. 5219 provides for the detection and prevention of inappropriate conduct in the Federal judiciary through establishment of the Office of Inspector General for the Judicial Branch. The Inspector General is appointed by the Chief Justice of the United States to conduct investigations of matters relating to the Judicial Branch (other than the Supreme Court) including possible misconduct of judges and proceedings under Chapter 16 of Title 28, United States Code, that may require

oversight or other action by Congress; to conduct and supervise audits and investigations; to prevent and detect waste, fraud and abuse; and to recommend changes in laws or regulations governing the Judicial Branch.

The powers of the Inspector General are: (1) To make investigations and reports; (2) to obtain information or assistance from any Federal, State or local agency, or other entity, or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial council of circuits, the administrative office of United States courts, and the United States Sentencing Commission; (3) to require, by subpoena or otherwise, the attendance for the taking of testimony of any witnesses and the production of any documents, which shall be enforceable by civil action; (4) to administer or to take an oath or affirmation from any person; (5) to employ officers and employees; (6) to obtain all necessary services; and (7) to enter into contracts or other arrangements to obtain services as needed.

The Inspector General is required: (1) to provide the Chief Justice and Congress with an annual report on the Inspector General's operations; (2) to make prompt reports to the Chief Justice and to Congress on matters which may require further action; and (3) to refer to the Department of Justice any matter that may constitute a criminal violation.

Any employee in the Judicial Branch who provides information to the Inspector General would receive whistleblower protection to protect against retaliation or firing.

Legislative History.—On June 29, 2006, the Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 5219. Witnesses who testified at the hearing were the Honorable Charles Grassley, Republican Senator from Iowa; Professor Ronald D. Rotunda, George Mason University School of Law; Professor Arthur Hellman, University of Pittsburgh School of Law; and Professor Charles Geyh, Indiana University School of Law at Bloomington. On September 27, 2006, the House Judiciary Committee favorably reported the bill, H.R. 5219, by a vote of 20–6.

H.R. 5825, the "Electronic Surveillance Modernization Act"

Summary.—Representative Heather Wilson, Chairman Sensenbrenner, and Select Committee on Intelligence Chairman Hoekstra, and others introduced H.R. 5825, the "Electronic Surveillance Modernization Act," on July 18, 2006. This bill would strengthen oversight of the executive branch and enhance accountability by requiring the Government to provide more information to the courts and to each Member of the House and Senate Intelligence Committees; would modernize and simplify the process for getting a FISA warrant and clarify its scope and applicability; would update FISA to account for technology changes in 21st Century communications; would clarify the authority of our intelligence agencies in the event of an attack on the United States; and would clarify the President's authority and the Congress' oversight of surveillance programs. The testimony presented at two hearings before the Subcommittee on Crime, Terrorism, and Homeland Security, demonstrated that the FISA process must be streamlined and technology-neutral.

Legislative History.—The Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security held two hearings on H.R. 5825 on the 6th and 12th of September 2006. The witnesses who testified at the first hearing on the 6th were: Mr. Steve Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice; Mr. Robert L. Deitz, General Counsel, National Security Agency; Mr. Robert Alt, Fellow, Legal and International Affairs, The John M. Ashbrook Center for Public Affairs, Ashland University; and Mr. Jim Dempsey, Policy Director, Center for Democracy and Technology. At the second hearing on the 12th, the following individuals testified: Mr. John Eisenberg, Deputy Assistant Attorney General Office of Legal Counsel, U.S. Department of Justice, Mr. Vito Potenza, Acting General Counsel National Security Agency; Ms. Kate Martin, Director, Center for National Security Studies; and Mr. Bruce Fein, Principal, Bruce Fein and Associates. On September 20, 2006, the Committee met in open session and ordered favorably reported the bill, H.R. 5825, with an amendment, by roll call vote with 20 ayes and 16 nays, a quorum being present. The bill was reported to the House on November 29, 2001 (H. Rept. 109–630, Part II). The House passed the bill on September 28, 2006, by a recorded vote (Roll No. 502) of 232 yeas to 191 nays. No further action was taken on the bill, H.R. 3209, during the 109th Congress.

H.R. 5304, the "Preventing Harassment through Outbound Number Enforcement Act, PHONE Act"

Summary.—Congressman Tim Murphy (R–PA) introduced H.R. 5304 on May 4, 2006. H.R. 5304 creates a new Federal criminal code which prohibits a person from engaging in the practice known as "spoofing," which is the use of incorrect, fake or fraudulent caller identification "caller ID" to hide their identity in order to facilitate a fraudulent telephone call to the recipient. Caller ID spoofing involves masking one's own phone number and identifying information with another phone number and identifying information. Call recipients divulge personal and private information to the caller, under the mistaken belief that the caller is a legitimate caller (e.g a bank, credit card company or court of law). The bill imposes a fine and or a prison term of up to five years for violations. However, the legislation does not affect legally available blocking of caller ID technology or lawfully authorized activities of law enforcement or intelligence agencies. This legislation is intended to help protect consumers from harassment, identity theft, and other crimes.

Legislative History.—On Wednesday, November 15, 2006, the Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 5304. The hearing focused on the need to broaden the scope of current law to deter telephone fraud and to better protect consumers' and their personally identifiable data from fraudulent telephone use. Further, the hearing focused on the need to increase the tools available to the Department of Justice to prosecute and protect against criminals that use fake telephone and caller identification to commit crime. Testifying before the Subcommittee were the Honorable Timothy Murphy, Representative, Pennsylvania's 18th Congressional District; Mr. Barry Sabin, Dep-

uty Assistant Attorney General, Criminal Division, United States Department of Justice; Mr. James Martin, President and Founder, 60-Plus Association; and Mr. Phil Kiko, Chief of Staff and General Counsel, U.S. House of Representatives, Committee on the Judiciary. On December 8, 2006, the bill was considered under suspended rules and passed by voice vote on December 9, 2006.

H.R. 5535, the "Prevention of Civil RICO Abuse Act of 2006"

Summary.—Chairman F. James Sensenbrenner, Jr. (R–WI) introduced H.R. 5535 on June 6, 2006. H.R. 5535 clarifies that a foreign government may not sue under the civil remedy of the Racketeer-Influenced and Corrupt Organizations (RICO) statute.

Section 1964 of Title 18 provides civil remedies for violations of the criminal provisions of RICO. Subsection (a) provides for equitable relief while subsection (c) provides for treble damages. The House Judiciary Committee's Report that accompanied adoption of the civil remedies provision stated that it "authorizes civil treble damage suits on the part of private parties who are injured." Courts have interpreted the civil RICO statute to bar the U.S. government as a plaintiff in treble damage suits.

However, in recent years, foreign governments have begun seeking civil RICO damages against American companies in U.S. courts despite the lack of evidence that Congress ever intended to provide such standing to foreign governments. The first lawsuit came in 2000. Since then, over 30 foreign governments, including Canada, Columbia, Equador, and ten European Community countries, have filed civil RICO suits seeking billions of dollars in taxes and tariffs alleging loss from smuggled goods. Most of these cases have been dismissed pursuant to the "revenue rule," which prohibits a court from enforcing a foreign sovereign's revenue statutes.

In one case currently pending before the Eastern District of New York, the Columbian government and 15 Columbian states are attempting to circumvent the revenue rule by characterizing their damages as "commercial" losses instead of tax revenue. American companies are already expending ample time and financial resources defending these suits. Should the Columbian case survive dismissal, it will dramatically increase the costs to American companies and consumers.

Legislative History.—On July 19, 2006, the Judiciary Committee held a legislative markup, reporting the bill favorably (as amended) by a recorded vote of 17–8. No committee report was filed and no further action was taken in the 109th Congress.

H.R. 5673, the "Criminal Restitution Improvement Act of 2006"

Summary.—Congressman Steve Chabot (R–OH) introduced H.R. 5673 on June 22, 2006. H.R. 5673 makes restitution mandatory for all Federal crimes and improves the procedures for collecting Federal restitution.

Crime victims suffer tremendous loss at the hands of their assailants. In addition to physical and emotional trauma, victims suffer financial loss, including medical expenses, lost earnings, and property damage. Annual losses for crime victims have been estimated at $105 billion.

Restitution is intended to hold offenders accountable to their victims for their conduct while attempting to make the victims whole again by compensating their financial losses. At the Federal level, however, as much as 87% of criminal debt (restitution and fines) is uncollected each year. According to a 2001 GAO study, the amount of outstanding criminal debt has ballooned from $269 million to over $13 billion.

Restitution is currently collected by the Financial Litigation Units (FLUs) of the United States Attorneys Offices. The GAO identified four factors impacting debt collection that fall outside the FLU's control: (1) the nature of debt collection from incarcerated offenders, deported offenders, or offenders with minimal earning capacity; (2) the statutory requirement that the court assess restitution regardless of the offender's ability to pay; (3) limitations on collection due to court-ordered payment schedules; and (4) state laws that limit the types of property that can be seized or amount of wages that can be garnished.

GAO identified two factors within the FLU's control that, if remedied, would improve criminal debt collection: (1) an inadequate collection process; and (2) a lack of coordination between the entities involved in restitution (the court, the FLU, the probation officer, the prosecuting attorney).

H.R. 5673 makes restitution mandatory for all Federal offenses in which an identifiable victim suffers pecuniary loss. The bill also makes several changes to the current restitution statute to improve collection of outstanding restitution, including (1) directing the court to order restitution due in full immediately, (2) making installment payments discretionary rather than mandatory, (3) authorizing the Attorney General to collect restitution above the installment payment amount, (4) prohibiting early termination from probation or supervised release if restitution is outstanding, and (5) authorizing extension of probation or supervised release if restitution is outstanding.

Legislative History.—On June 13, 2006, the Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 5673. Witnesses who testified at the hearing were Professor Doug Beloof, Director, National Crime Victim Law Institute, Lewis and Clark Law School; Mr. Dan Levey, President, Parents of Murdered Children, Inc.; and Mr. Jim Felman, Partner, Kynes, Markman, and Felman, P.A., and Co-Chair, Committee on Corrections and Sentencing, American Bar Association.

H.R. 5749 the "Internet Stopping Adults Facilitating the Exploitation of Today's Youth Act (SAFETY) of 2006"

Summary.—Congressman Mark Foley (R–FL) introduced H.R. 5749 on July 10, 2006. H.R. 5749 provides additional prosecution tools to combat Internet child pornography and child exploitation. In recent years, Internet child pornography has evolved from a need-driven industry in which pornographic images are shared amongst pedophiles to a commercial enterprise worth billions of dollars annually. Unethical business people are capitalizing off of the Internet's virtual marketplace by establishing child pornography websites where the user pays a monthly fee to view and download child pornography images.

These child porn "subscriptions" can be purchased using a major credit card or through an emerging tool known as a virtual payment system. Unlike credit card companies, which require the merchant to provide accurate personal information such as name, address, and social security number, virtual payments systems are essentially anonymous. Subscribers can provide fictitious personal information and no credit card or social security number is required, making them virtually untraceable. The key to combating the commercial child pornography industry is to cut it off at its source—money.

Legislative History.—H.R. 5749 was referred to the Judiciary Committee on July 10, 2006. Portions of the bill were included in H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006, which passed the House on July 25, 2006, and became Public Law 109–248 on July 27, 2006.

H.R. 5939, the "Criminal Terrorism Improvements Act of 2006"

Summary.—Congressman Daniel E. Lungren (R–CA) introduced H.R. 5939 on July 27, 2006. H.R. 5939 provides increased penalties, including up to life in prison or death, for terrorist offenses that result in the death of another person. H.R. 5939 also provides that any person convicted of a "Federal crime of terrorism" is ineligible to receive any benefits from the Federal Government for any term of years or for life.

Since September 11, 2001, Federal and State officials have worked diligently to prevent further terrorist attacks on U.S. soil. Despite some changes to the law to increase penalties after the deadly terrorist attacks, a jury still cannot consider a sentence of death or life imprisonment for terrorists in many cases even when the attack resulted in death.

Existing law does not consistently provide adequate maximum penalties for fatal acts of terrorism. For example, in a case in which a terrorist caused massive loss of life by sabotaging a national defense installation, sabotaging a nuclear facility, or destroying an energy facility, there would be no possibility of imposing the death penalty under the statutes defining these offenses because they contain no death penalty authorizations. In contrast, dozens of other Federal violent crime provisions authorize up to life imprisonment or the death penalty in cases where victims are killed. There are also cross-cutting provisions which authorize these sanctions for specified classes of offenses whenever death results, such as 18 U.S.C. § 2245, which provides that a person who, in the course of a sexual abuse offense, "engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life."

Current law allows Federal courts to deny Federal benefits to persons who have been convicted of drug-trafficking or drug-possession crimes. 21 U.S.C. § 862. As a result, these convicts can be prohibited, for periods of up to life, from receiving grants, contracts, loans, professional licenses, or commercial licenses that are provided by a Federal agency or out of appropriated funds. But despite the fact that terrorism is at least as dangerous to the our national security as drug offenses, presently there is no legal authority to

deny Federal benefits to persons who have been convicted of terrorism crimes.

Legislative History.—The bill was referred to the House Judiciary Committee on July 27, 2006. No further action has occurred.

H.R. 6254, the "Sentencing Fairness and Equity Restoration Act of 2006"

Summary.—Chairman F. James Sensenbrenner, Jr. (R–WI) introduced H.R. 6254 on September 29, 2006. H.R. 6254 proposes a legislative fix to the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), which invalidated the mandatory sentencing requirement of the Sentencing Guidelines (18 U.S.C. section 3553(b)(1)), and struck down the de novo standard for appellate review of any downward departures in 18 U.S.C. Section 3742(e), which was enacted as part of the PROTECT Act in 2003.

The Booker court ruled that the Sixth Amendment applies to the Federal Sentencing Guidelines and noted that the Sixth Amendment implications hinged on the mandatory nature of the Guidelines, which are dependent on judicial fact-finding. Id. at 232. In a separate opinion, the Court excised the provision in section 3553(b) that instructed the court to "impose a sentence of the kind, and within the range" provided by the Guidelines.

H.R. 6254 replaces the mandatory provision excised by the Court with a requirement that the court adhere only to the minimum of the guideline range established by the Sentencing Commission. This requirement, however, is not mandatory because the court may still depart from the minimum of the range in certain instances. The bill also reaffirms Congress' intent in the Sentencing Reform Act of 1984 that the maximum sentence a judge may impose is the statutory maximum rather than the Guideline maximum. The Booker Court reasoned that because section 3553(b)(1) required courts to adhere to the sentencing guidelines, the "maximum" sentence authorized by law was, in fact, the Guideline maximum and not the statutory maximum. Amended section 3553(b)(1) removes the mandatory requirement from the sentencing statute. Thus, the court is not bound by the Guideline maximum and may impose a sentence up to the maximum authorized by statute.

H.R. 6254 also amends section 3742(e) of Title 18 to re-establish the de novo appellate review standard for downward departures. In Booker, the Court excised the de novo appellate review standard, which was enacted as part of the PROTECT Act, based upon its rationale that this section "contains critical cross-references to the (now excised) § 3553(b)(1) and consequently must be severed and excised for similar reasons." Id. at 247. The Court, however, provides no nexus between the de novo appellate standard of review and the Sixth Amendment right to a jury for sentencing. Moreover, having excised the mandatory sentencing provision in § 3553(b)(1), the cross-reference to that section in § 3742(e) carries no Sixth Amendment implications. Section 3742(e) merely outlines the criteria appellate courts must use to review sentences. The bill reasserts Congress' intent to reign in the increasing rate of reduced sentences, particularly for sexual offenses, expressed in the PROTECT Act. Pursuant to the bill, the appellate courts will continue to review sentences below the minimum of the range de novo while

maintaining *Booker's* reasonableness standard for all other sentencing appeals.

A significant result of the Booker decision is the spike in downward departures for substantial assistance imposed by the courts in the absence of a government motion. Substantial assistance motions are filed in instances where the defendant has provided the government with information relating to another investigation or prosecution. In reviewing this increase in sua sponte departures, the committee has learned that the government's standards for these motions vary from district to district, creating the potential for disparate treatment of similarly situated defendants.

H.R. 6254, therefore, directs the Attorney General to implement a uniform policy for departure motions for substantial assistance, including the definition of substantial assistance in the investigation, the process for determining whether departure is warranted, and the criteria for determining the extent of departure. The bill instructs the Attorney General to report the policy to Congress within 180 days of enactment of this Act.

Finally, the bill amends section 994(w) of Title 28, which governs the reporting requirements of the federal district courts to the U.S. Sentencing Commission. This amendment simply clarifies that the reporting required by this section is to be completed by the judicial branch and may not be delegated to the executive branch.

Legislative History.—The Subcommittee on Crime, Terrorism, and Homeland Security held two oversight hearings on the Booker decision on February 10, 2005, and March 16, 2006.

OVERSIGHT ACTIVITIES

List of oversight hearings

Implications of the Booker/Fanfan Decision for the Federal Sentencing Guidelines, February 10, 2005 (Serial No. 109–1).

Department of Homeland Security to Examine the Security of the Nation's Seaports and the Cargo Entering Those Ports, March 15, 2005 (Serial No. 109–38).

Responding to Organized Crimes Against Manufacturers and Retailers, March 17, 2005 (Serial No. 109–36).

Department of Justice to Examine the Use of Section 218 of the USA PATRIOT Act, April 14, 2005.

Implementation of the USA PATRIOT Act: Effect of Sections 203(b) and (d) on Information Sharing, April 19, 2005 (Serial No. 109–15).

Implementation of the USA PATRIOT Act: Sections of the Act that Address Crime, Terrorism, and the Age of Technology, Sections 209, 217, and 220, April 21, 2005 (Serial No. 109–18).

Implementation of the USA PATRIOT Act: Sections of the Act that Address the Foreign Intelligence Surveillance Act (FISA). (Part I), April 26, 2005 (Serial No. 109–17).

Implementation of the USA PATRIOT Act: Sections of the Act that Address the Foreign Intelligence Surveillance Act (FISA). (Part II), April 28, 2005 (Serial No. 109–17).

Implementation of the USA PATRIOT Act: Section 218, Foreign Intelligence Information ("The Wall"), April 28, 2005 (Serial No. 109–16).

Implementation of the USA PATRIOT Act: Sections 201, 202, 223 of the Act that Address Criminal Wiretaps, and Section 213 of the Act that Addresses Delayed Notice, May 3, 2005 (Serial No. 109–20).

Implementation of the USA PATRIOT Act: Section 212—Emergency Disclosure of Electronic Communications to Protect Life and Limb, May 5, 2005 (Serial No. 109–14).

Implementation of the USA PATRIOT Act: Prohibition of Material Support Under Sections 805 of the USA PATRIOT Act and 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004, May 10, 2005 (Serial No. 109–13).

Implementation of the USA PATRIOT Act: Sections 505 and 804, May 26, 2005 (Serial No. 109–19).

Protecting our Nation's Children from Sexual Predators and Violent Criminals: What Needs to be Done? June 9, 2005 (Serial No. 109–31).

Offender Re-entry: What is Needed to Provide Criminal Offenders With a Real Second Chance? November 3, 2005 (Serial No.109–65).

Weak Bilateral Law Enforcement Presence at the U.S.-Mexico Border: Territorial Integrity and Safety Issues for American Citizens, November 17, 2005 (Serial No. 109–90). (Held jointly with the Subcommittee on Immigration, Border Security and Claims).

Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Part I: Gun Show Enforcement, February 15, 2006 (Serial No. 109–123)

Victims and the Criminal Justice System: How to Protect, Compensate, and Vindicate the Interests of Victims, February 16, 2006, (Serial No.109–87).

Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Part II: Gun Show Enforcement, February 28, 2006 (Serial No. 109–123).

Outgunned and Outmanned: Local Law Enforcement Confronts Violence Along the Southern Border, March 2, 2006 (Serial No. 109–85). (Held jointly with the Subcommittee on Immigration, Border Security and Claims).

White Collar Enforcement: Attorney-Client Privilege and Corporate Waivers, March 7, 2006 (Serial No. 109–112).

United States v. Booker: One Year Later—Chaos or Status Quo? March 16, 2006, (Serial No. 109–121).

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE): Reforming Licensing and Enforcement Authorities, March 28, 2006 (Serial No. 109–121).

The Need for European Assistance to Columbia in the Fight Against Illicit Drugs, September 21, 2006, (Serial No. 109–148).

Oversight issues

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Facilities Oversight

On August 17, 2005, committee staff toured ATF's new laboratory in Ammendale, Maryland. The tour included the explosives and arson labs, and a live burn demonstration inside one of the facility's burn cells. Following the tour of the laboratory, committee

staff traveled to the Federal Law Enforcement Training Center in Glynco, GA to see how ATF trains agents.

Federal Air Marshals service

On September 28, 2004, the Committee sent a letter to Thomas D. Quinn, Director of the Federal Air Marshals Service (FAMS) regarding alleged security gaps in air travel. In their letter, they asked the FAMS to respond to a number of detailed questions by October 15, 2004. On October 20, 2004, Director Quinn responded with 29 pages of information and several classified secret documents, which were placed in a separate folder.

Committee staff reviewed the files and began to independently interview rank-and-file Federal Air Marshals from various FAMS field offices across the country. Over 30 Federal Air Marshals from the Washington, Boston, Chicago, Atlanta, Los Angeles, Las Vegas, Houston, and Dallas field offices were interviewed in person, via telephone, or by email correspondence. Every Federal Air Marshal interviewed indicated that there are ways in which the service needs improving. An overwhelming majority of the interviewed Air Marshals stated that most concerns centered around threats created by the Service's own policies to preserving anonymity and safety. Most also indicated a reluctance to approach supervisors with these concerns for fear of retaliation that included being given difficult scheduling assignments and being required to wash FAMS vehicles and paint office walls. Many of those interviewed said that they initially tried to voice their concerns to FAMS supervisors but were told that there would be no changes.

Following the investigation the Committee released an investigative report on May 25, 2006 entitled Plane Clothes: Lack of Anonymity at the Federal Air Marshal Service Compromises Aviation and National Security. In the months following the release of the report, committee staff worked closely with FAMS management to ensure that policy modifications would be made to better ensure the anonymity of FAMS. On August 24, 2006, new policy modifications were announced by FAMS management to help achieve this goal. Additionally, FAMS management made a commitment to review and modify any other policy that compromises anonymity.

United States Secret Service Mission oversight

From July 5th through 9th, 2005, subcommittee staff went to Las Vegas, NV and San Francisco, CA to examine the United States Secret Service's investigative efforts to detect and prevent electronic crimes, including identity theft, network intrusions and denial-of-service attacks. The trip also highlighted the partnerships being utilized by the Secret Service with local law enforcement and the private sector in order to combat electronic crimes. Through these partnerships, the Secret Service has developed Electronic Crimes Task Forces across the nation.

Terrorist travel

On August 10, 2005, subcommittee staff met with Kelly Moore, one of the five principal authors of 9/11 and Terrorist Travel, a Staff Report on the National Commission on Terrorist Attacks upon the United States. She briefed staff about terrorist mobility, border

security, how the 9/11 hijackers penetrated our border security, how other terrorists in the past operated. Additionally, she shared her thoughts on what can be done to better detect terrorists when they travel.

The Federal Bureau of Investigation's Community Outreach Program

Following the highly publicized incident of two NFL players getting intoxicated and into a fight at a Federal Bureau of Investigation's "liaison day," subcommittee staff received a briefing on December 14, 2005 relating to the FBI's Community Outreach Program. The Community Outreach Program focuses its efforts on the community, the schools and the work-place. The FBI's goal is to assist our communities in the education of crimes, drugs, gangs, and violence. This program highly supports the investigative mission of the FBI by providing and developing programs that help reduce societal problems. Typical activities within this program include adopt-a-school programs, mentoring programs, and citizen's academies. During the briefing, the FBI indicated that it was a highly successful program and that the Chicago incident was an aberration and the incident was under internal investigation.

Transportation Security Administration

Subcommittee staff requested and received a series of briefings relating to the mission of the Transportation Security Administration (TSA). These briefings included TSA's decision to amend its prohibited items list to allow small scissors and tools on board an airplane, the use of Federal Air Marshals to patrol and monitor train, bus, and ferry depots, and the implementation of the Screening of Passengers by Observation Techniques ("SPOT") to screen possible terrorist and/or illegal behavior.

Drug Enforcement Administration's regulation enforcement against small distributers

Subcommittee staff met with the Drug Enforcement Agency (DEA) on August 15, 2006 to discuss DEA's regulation enforcement against small distributers. Specifically, the subcommittee was concerned that DEA was engaging in a pattern of heavy handed tactics against small and medium sized distributers of List 1 chemicals despite a lack of evidence of non-compliance with DEA regulations. The subcommittee was also concerned that DEA was lacking an expedient timetable for publishing proposed regulations to implement the Combat Meth Act.

COPS program

On May 10, 2003, the Committee on the Judiciary requested that the General Accounting Office (GAO) do an analysis of data provided to the Committee by the Department of Justice regarding the Community Oriented Policing Services (COPS) program. The data was provided to GAO on May 13, 2003. Due to time constraints, the GAO indicated that it could not provide an official analysis. Accordingly, in a letter to David M. Walker, Comptroller General of the United States, dated June 2, 2003, the Chairman extended the deadline for the request to June 3, 2003 to ensure that an official

document could be provided. Additionally, the Committee requested that GAO do an independent study of the COPS Program's effect on crime, including consideration of other Federal, state, and local programs or policies that are also focused on reducing crime.

On November 11, 2003, staff from the GAO met with staff from the Judiciary Committee regarding this issue. In a letter dated January 8, 2004, the GAO notified the Committee that a separate design phase would be necessary to assess the relationship between COPS funding and crime while considering the effects of other such programs. The GAO estimated that the design phase would be completed by March 31, 2004.

The Committee staff met with GAO over the next year to discuss the design phase and progress of the study of the effect of COPS. The Committee worked with the GAO to ensure that any study on the effects of COPS grants also took into consideration funds that were provided by other Federal grant programs to state and local governments to combat local crime.

On June 3, 2005, the GAO provided the Committee with an interim report on the effect of the COPS program and other grant programs administered by the Department of Justice on local crime rates. The GAO completed its study on October 14, 2005. The GAO concluded that "while COPS expenditures led to increases in sworn police officers above levels that would have been expected without these expenditures and through the increases in sworn officers led to declines in crime, we conclude that COPS grants were not the major cause of the decline in crime from 1994 through 2001."

This information was utilized by the Committee in reforming the COPS grant program to allow flexibility in the use of funds by state and local governments to ensure funds were directed as needed.

Border kidnaping and violence

On July 19, 2005, subcommittee staff received a briefing from the Federal Bureau and Investigation (FBI) and the Department of State on a rash of kidnaping incidents along the Texas/Mexico border, particularly in the region of Laredo, TX. The FBI and Department of State detailed the methods used by the government to adequately warn U.S. citizens about the violence, ensure that the violence does not spill onto U.S. territory, and effectively protect border integrity. On November 3, 2005, subcommittee staff met with representatives of the Immigration and Customs Enforcement (ICE) to discuss Operation Black Jack. Operation Black Jack is an interagency effort coordinated by ICE, launched to combat violence and drug smuggling activities in the Laredo region. These briefings lead to the "Weak Bilateral Law Enforcement Presence at the U.S.-Mexico Border: Territorial Integrity and Safety Issues for American Citizens" hearing on November 17, 2005.

U.S. Marshals service

From March 20–22, 2006, majority and minority staff visited the New York/New Jersey Regional Fugitive Task Force (RFTF). The NY/NJ RFTF is the "flagship" of the regional fugitive task force offices, and has been involved in many fugitive apprehension initiatives since its inception in May 2002. The NY/NJ RFTF also bene-

fits from a fully-operational Regional Technical Operations Center in Morristown, NJ, which includes both electronic and air surveillance capabilities.

Staff visited both the Manhattan headquarters and the Newark main office, met with the United States Marshals of the Southern District of New York, Eastern District of New York, and District of New Jersey. Staff also received briefings on many of the RFTF's significant initiatives and participated in a ride-along with teams of Federal, state, and local partners to witness the RFTF in action.

Staff were provided with briefings on the operations of the USMS Financial Surveillance Unit, Operation Safe Surrender, the USMS Camden Initiative, and the Technical Operations Group. Staff were able to observe the equipment used for electronic surveillance and air surveillance.

In addition to the fugitive apprehension ride-along in New York, Committee staff participated in fugitive apprehensions in the Washington, DC region. In August of 2006, staff also visited the U.S. Marshals Electronic Surveillance Unit to review technology and operations utilized in electronic surveillance for fugitive apprehensive.

Finally, in May 2006, the subcommittee requested that the Marshals provide a briefing on Operation FALCON II. At the briefing, Judiciary staff reviewed technology and procedures used by the U.S. Marshals to track down fugitives.

The Federal Bureau of Investigation's use of confidential informants

In February 2004, the House Committee on the Judiciary, pursuant to its oversight responsibilities, resumed a review of the Federal Bureau of Investigation's (FBI) Confidential Informant program initially begun by the House Committee on Government Reform, including its guidelines, policies, and practices.

While the Government Reform investigation highlighted the problems in the Boston field office, the House Committee on the Judiciary delved into the FBI's development of confidential informants and whether or not the Boston field office was representative of general problems existing throughout the agency's confidential informant program. The Committee also examined the reforms promised to the Committee on Government Reform by Director Robert Mueller in November of 2003, as well as a review of compliance with the Confidential Informant Guidelines, revised in January 2001, that among other things, established the Confidential Informant Review Committee.

To pursue its oversight investigation, the Committee conducted numerous meetings and sent correspondence to various State and Federal agencies, including the Department of Justice, inquiring into the FBI's use of confidential informants.

In September 2005, the Department of Justice Office of the Inspector General (OIG) released a report entitled, "The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines" (the Report). The four areas reviewed concerning FBI's compliance with the Guidelines were: Confidential Informants; Undercover Operations; General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations; and Consensual Monitoring. In the Report, the OIG reviewed the FBI's imple-

mentation of the revised Investigative Guidelines with two main objectives: (1) to assess the FBI's compliance with the revised guidelines; and (2) to evaluate the procedures that the FBI employed to ensure that the revised Guidelines were properly implemented. The most significant problems cited were failures to comply with the Confidential Informant Guidelines. In fact, the OIG identified one or more Guidelines violations in 87 percent of the confidential informant files examined. The subcommittee worked with the Department of Justice and FBI to examine these shortcomings.

Federal Bureau of Investigation's relaxing of drug standards for certain employees

After it came to the subcommittee's attention that the Federal Bureau of Investigation (FBI) was considering relaxing its hiring standards regarding prior drug use for certain classifications of employees, a letter was sent on November 16, 2005 to the FBI asking for clarification on this issue Because the FBI has a long history of investigating, prosecuting, and attempting to prevent drug crimes, the subcommittee was concerned that a new policy reflecting a more permissive standard relating to drug use drastically reduces the FBI's efforts in these areas. The FBI responded on January 6, 2005 clarifying the policy shift.

SUBCOMMITTEE ON THE CONSTITUTION

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JERROLD NADLER, New York
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ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
CHRIS VAN HOLLEN, Maryland

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	139
Legislation on which hearings were held	7
Legislation reported favorably to the full Committee	2
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	7
Legislation pending before the full Committee	2
Legislation reported to the House	6
Legislation discharged from the Committee	0
Legislation pending in the House	0
Legislation failed passage by the House	0
Legislation passed by the House	12
Legislation pending in the Senate	4
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	1
Days of legislative hearings	7
Days of oversight hearings	22

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on the Constitution has jurisdiction over the following subject matters: constitutional amendments, constitutional rights, federal civil rights laws, ethics in government, other appropriate matters as referred by the Chairman, and relevant oversight.

LEGISLATIVE ACTIVITIES

H. Res. 97, Expressing the sense of the House of Representatives that judicial determinations regarding the meaning of the Constitution of the United States should not be based on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution of the United States.

Summary.—H. Res. 97 provides that "it is the sense of the House of Representatives that judicial interpretations regarding the meaning of the Constitution of the United States should not be based in whole or in part on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pro-

nouncements inform an understanding of the original meaning of the Constitution of the United States." In several recent cases, the U.S. Supreme Court has cited decisions by foreign courts and treaties not ratified by this country to support its interpretations of the United States Constitution.

Legislative History.—H. Res. 97 was introduced by Rep. Tom Feeney on February 15, 2005. On July 19, 2005, the Constitution Subcommittee held a hearing on H. Res. 97 at which testimony was received from the following witnesses: Mr. Viet D. Dinh, Professor, Georgetown University Law Center; Mr. M. Edward Whelan, III, President, Ethics and Public Policy Center; Mr. Nicholas Q. Rosenkranz, Professor, Georgetown University Law Center; Ms. Sarah Cleveland, Professor, University of Texas School of Law. The following material was submitted for the hearing record: Prepared Statement of the Honorable Tom Feeney, a Representative in Congress from the State of Florida; Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia; Prepared Statement of Public Citizen's Global Trade Watch. On September 29, 2005, the Constitution Subcommittee ordered favorably reported H. Res. 97 by a vote of 8 to 3.

H. Con. Res. 335, Honoring and praising the National Association for the Advancement of Color People on the occasion of its 97th Anniversary.

Summary.—H. Con. Res. 335 honors and praises the NAACP on the occasion of its 97th Anniversary. The NAACP was founded in 1909 and since that time has been at the forefront of all of the struggles for racial justice. Through members, such as Rosa Parks, who ignited a national movement, and former Supreme Court Justice Thurgood Marshall, whose leadership led to the landmark legal victory, Brown v. Board of Education, the NAACP has been a force through which our nation has undergone significant change.

Legislative History.—H. Con. Res. 335 was introduced by Representative Al Green on February 8, 2006, and was subsequently referred to the House Judiciary Committee and the Subcommittee on the Constitution. Chairman Sensenbrenner moved to suspend the rules and the resolution passed the House by voice vote on March 1, 2006. The resolution was agreed to without amendment and with a preamble by unanimous consent in the Senate on May 10, 2006.

H.R. 748—Child Interstate Abortion Notification Act

Summary.—H.R. 748, the "Child Interstate Abortion Notification Act" (CIANA) has two primary purposes: to protect the health and safety of young girls by preventing valid and constitutional state parental involvement laws from being circumvented and to protect the right of parents to be involved in the medical decisions of their minor daughters. To achieve these purposes, H.R. 748 makes it a federal offense to knowingly transport a minor across a state line, with the intent that she obtain an abortion, in circumvention of a state's parental consent or parental notification law. H.R. 748 also requires that a parent, or if necessary a legal guardian, be notified pursuant to a state parental involvement law or a default federal parental notification rule when a minor crosses state lines to obtain

an abortion. A violation of H.R. 748 is a Class One misdemeanor, carrying a fine of up to $100,000 and incarceration of up to one year. H.R. 748 supports state laws that provide parents with the necessary information to fulfill their obligation to care for their minor children, and it affirms the common-sense notion that parents have the legal right to be involved in medical decisions relating to their minor children when those decisions involve interstate abortions.

Legislative History.—H.R. 748, the "Child Interstate Abortion Notification Act" (CIANA), was introduced on February 10, 2005, by Rep. Ileana Ros-Lehtinen. The Subcommittee on the Constitution held a hearing on H.R. 748 on March 3, 2005, at which testimony was received from the following witnesses: Ms. Marcia Carroll, Victim, Lancaster, Pennsylvania; Professor Richard Myers, Professor of Law, Ave Maria School of Law, Ann Arbor, MI; Dr. Warren Seigel, FAAP, FSAM, Director of Adolescent Medicine, Chairman of Pediatrics, Coney Island Hospital; Professor Teresa S. Collett, Professor of Law, University of St. Thomas School of Law, Minneapolis, MN. The following materials were submitted for the hearing record: Prepared Statement of the Honorable Steve Chabot, Representative from Ohio's 1st district, and Chairman of the Subcommittee on Constitution; Prepared Statement of the Honorable Jerrold Nadler, Representative from New York's 8th district, and Ranking Member of the Subcommittee on the Constitution; Prepared Statement of the Honorable Steve King, Representative from Iowa's 5th district; Prepared Statement of the Honorable Ileana Ros-Lehtinen, Representative from Florida's 18th district; Prepared Statement of Dr. John C. Harrison, Professor of Law, University of Virginia; abortion form for Ashley Carroll, signed by her doctor, Dr. Kaji, and materials related to Dr. Kaji and Brigham clinics submitted by Chairman Steve Chabot. On March 17, 2005, the Subcommittee on the Constitution forwarded H.R. 748 (as amended) to the House Judiciary Committee by a voice vote. On April 13, 2005, the House Judiciary Committee reported out the bill (as amended) by a vote of 20 to 13. On April 27, 2005, H.R. 748 (as amended) passed the House by a vote of 270 to 157.

S. 403—Child Custody Protection Act

Summary.—S. 403, the "Child Custody Protection Act" (CCPA) as received from the Senate and the "Child Interstate Abortion Notification Act" as amended by the House, has two primary purposes: to protect the health and safety of young girls by preventing valid and constitutional state parental involvement laws from being circumvented and to protect the right of parents to be involved in the medical decisions of their minor daughters. To achieve these purposes, S. 403 makes it a federal offense to knowingly transport a minor across a state line, with the intent that she obtain an abortion, in circumvention of a state's parental consent or parental notification law. As amended by the House, S. 403 also requires that a parent, or if necessary a legal guardian, be notified pursuant to a state parental involvement law or a default federal parental notification rule when a minor crosses state lines to obtain an abortion. A violation of S. 403 is a Class One misdemeanor, carrying a fine of up to $100,000 and incarceration of up to one year.

S. 403 supports state laws that provide parents with the necessary information to fulfill their obligation to care for their minor children, and it affirms the common-sense notion that parents have the legal right to be involved in medical decisions relating to their minor children when those decisions involve interstate abortions.

Legislative History.—S. 403 was introduced by Sen. John Ensign on February 16, 2005, and passed the Senate on July 25, 2006, by a vote of 65 to 34. It was received in the House that same day. As received in the House, S. 403, the "Child Custody Protection Act" makes it a federal offense to knowingly transport a minor across a state line, with the intent that she obtain an abortion, in circumvention of a state's parental consent or parental notification law. The House substituted into S. 403 language nearly identical to H.R. 748, the "Child Interstate Abortion Notification Act," which the House passed (as amended) on April 27, 2005, by a vote of 270 to 157. The House substitute to S. 403 includes technical and conforming changes that further improve the legislation. It contains two clarifying provisions adopted in the other body to prevent a parent who has committed incest from being able to obtain money damages from someone who might transport a minor across State lines to obtain an abortion and makes it a Federal crime for someone who has committed incest to transport a minor across a State line with the intent that the minor obtain an abortion. In addition, the substitute contains an exception to the notification requirement if a parent is physically present when the minor obtains the abortion and makes clear that the parental notification need not be provided by the abortion provider personally but may also be provided by an agent of the abortion provider. The substitute also contains a technical change to the definition of "abortion" that excludes treatment for potentially dangerous pregnancies and creates a new "medical emergency exception" to ensure the bill will withstand any constitutional challenge. The substitute makes clear that its provisions apply when State lines are crossed to enter into any foreign nation or an Indian tribe. Finally, the substitute changes the effective date so that the Act and its amendments shall take effect 45 days after the date of enactment of the Act. The House passed S. 403, as amended, on September 26, 2006, by a vote of 264 to 153. Cloture on a motion to concur to the House amendment failed in the Senate on September 29, 2006, by a vote of 57 to 42.

H.R. 2679, the Public Expression of Religion Act of 2005

Summary.—H.R. 2679 (as amended) amends 42 U.S.C. §§1983 and 1988 to limit the available remedies to injunctive and declarative relief and to disallow attorney's fees awards to prevailing parties in Establishment Clause cases. 42 U.S.C. §1983 is the federal statute that allows people to sue State and local governments for alleged constitutional violations of their individual rights. 42 U.S.C. §1988 is the federal fee-shifting statute that allows prevailing plaintiffs in lawsuits filed under §1983 to be awarded attorney's fees from the defendant. H.R. 2679 will prevent the legal extortion that currently requires State and local governments, and the federal government, to accede to demands for the removal of religious text and imagery when such removal is not compelled by the Constitution.

Legislative History.—H.R. 2679 was introduced by Rep. John Hostettler on May 26, 2005. On June 22, 2006, the Constitution Subcommittee held a hearing on H.R. 2679 at which testimony was received from the following witnesses: Mr. Rees Lloyd, Commander, District 21, The American Legion; Mr. Mathew D. Staver, Founder and Chairman, Liberty Counsel, Interim Dean, Liberty University School of Law; Mr. Marc Stern, General Counsel, American Jewish Congress; Professor Patrick Garry, Associate Professor of Law, University of South Dakota School of Law. The following materials were submitted for the hearing record: Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Member, Subcommittee on the Constitution; Additional Information submitted by Mathew D. Staver, Founder and Chairman, Liberty Counsel, Interim Dean, Liberty University School of Law; Additional Information submitted by Marc Stern, General Counsel, American Jewish Congress; Prepared Statement of the Alliance Defense Fund concerning H.R. 2679, the "Public Expression of Religion Act of 2005"; Prepared Statement of Steven W. Fitschen, President, The National Legal Foundation; and the following letters inserted into the record by the Honorable Robert C. Scott—Letter from Ruth Flower, Legislative Director, Friends Committee on National Legislation, to The Honorable Steve Chabot, dated June 19, 2006; Letter from Wade Henderson, Executive Director, and Nancy Zirkin, Deputy Director, Leadership Conference on Civil Rights, to Members of the Judiciary Committee, dated June 21, 2006; Letter from Caroline Fredrickson, Director, American Civil Liberties Union, dated June 22, 2006; Letter from the American Civil Liberties Union, et. al., dated June 22, 2006; Letter from the Reverend Barry W. Lynn, Executive Director, Americans United for Separation of Church and State, to Chairman Chabot and Ranking Member Nadler, dated June 22, 2006. The Committee on the Judiciary held a markup of H.R. 2679 on July 26 and September 7, 2006, reporting the bill favorably with an amendment by a voice vote on September 7, 2006. The House passed H.R. 2679, as amended, on September 26, 2006, by a vote of 244 to 173. No further action was taken on the bill in the Senate.

H.R. 4128, The Private Property Rights Protection Act

Summary.—H.R. 4128 responds to the Supreme Court's notorious June 23, 2005 decision in Kelo v. City of New London, in which it held that "economic development" can be a "public use" under the Fifth Amendment's Takings Clause. In doing so, the Supreme Court allowed the government to take perfectly fine private property from one small homeowner and give it to a large corporation for a private research facility. H.R. 4128 enhances the penalty for states and localities that abuse their eminent domain power in that way by denying states or localities that commit such abuse all federal economic development funds for a period of two years. H.R. 4128 also includes an express private right of action to make certain that those suffering injuries from a violation of the bill will be allowed access to state or federal court to enforce its provisions. It also includes a fee-shifting provision—identical to those in other civil rights laws—that allows a prevailing property owner attorney

and expert fees as part of the costs of bringing the litigation to enforce the bill's provisions. Under H.R. 4128, States and localities will have the clear opportunity to cure any violation before they lose any federal economic development funds by either returning or replacing the improperly taken property. H.R. 4128 also includes carefully crafted refinements of the definition of "economic development" that specifically allow the types of takings that, prior to the Kelo decision, had achieved a consensus as to their appropriateness. These exceptions include exceptions for the transfer of property to public ownership, to common carriers and public utilities, and for related things like pipelines. The bill also makes reasonable exceptions for the taking of land that is being used in a way that constitutes an immediate threat to public health and safety and the redeveloping of "brownfields" sites in which contamination or the threat of contamination prevents their private development. The bill also makes exceptions for the merely incidental use of a public building by a private entity, such as a small privately run gift shop on the ground floor in a public hospital, for the acquisition of abandoned property, and for clearing defective chains of title in which no one can be said to really own the property in the first place. Finally, H.R. 4128 would not become effective until the start of the first fiscal year following the enactment of the legislation, in order to provide states and localities with sufficient lead time within which to prepare to come into compliance with the legislation. And H.R. 4128 would not apply to any project for which condemnation proceedings had begun prior to enactment.

Legislative History.—H.R. 4128 was introduced by Rep. Sensenbrenner on October 25, 2005. A hearing on the issues surrounding this legislation was held in the House Subcommittee on the Constitution on September 22, 2005, at which the following witnesses appeared: Ms. Dana Berliner, Senior Attorney, Institute for Justice; Mr. Michael Cristofaro, Resident, New London, Connecticut; Mr. Hilary O. Shelton, Director, NAACP, Washington Bureau; Mr. Bart Peterson, Mayor, Indianapolis, Indiana. On October 31, 2005, H.R. 4128 was ordered reported (as amended) by the House Judiciary Committee by a vote of 27 to 3. On November 3, 2005, H.R. 4128 passed the House by a vote of 376 to 38.

H.R. 4772, The Private Property Rights Implementation Act

Summary.—H.R. 4772 would override several judicially created prudential rules that currently prohibit most property owners from getting into federal court with a federal claim under the Takings Clause of the Constitution. H.R. 4772 would do so by preventing a federal court from refusing to hear a case in which only federal claims are alleged. If a matter of state law is unresolved, then the federal district court may certify the question of state law to the highest appellate court of that state. After the state appellate court resolves the question certified to it, the federal district court shall proceed with resolving the merits of the federal claim. H.R. 4772 would also clarify when a constitutional takings claim is "ripe" and therefore ready for federal adjudication. Under the bill, only after land use reviews at the application, waiver, and administrative appeal levels would a property owner have a "ripe" federal constitutional claim for adjudication by a federal court. H.R. 4772 would

also clarify the rights of property owners raising certain types of constitutional claims by doing the following: clarifying that conditions or exactions that are imposed upon a property owner in order to receive a permit must be roughly proportional to the impact the development might have; clarifying the so-called "denominator question" in cases concerning subdivided lots by requiring that federal courts look at the impact of a takings claim on each individual lot that is recognized as a separate independent property unit under state law; and by clarifying that the standard for due process claims in a takings case is an "arbitrary and capricious" standard.

Legislative History.—H.R. 4772 was introduced by Rep. Chabot on February 16, 2006. The Subcommittee held a hearing on this legislation on June 8th, 2006. The following witnesses appeared at the hearing: Mr. Joseph Trauth, Partner, Keating, Muething & Klekamp, PLL; Mr. Franklin Kottschade, representing the National Association of Home Builders; Daniel L. Siegel, Supervising Deputy Attorney General, Office Attorney General, California, Land Law Section; Mr. Steven Eagle, Professor of Law, George Mason Law School. On July 12, 2006, H.R. 4772 was ordered reported (as amended) by the House Judiciary Committee by voice vote. H.R. 4772 was brought up on the Suspension Calendar on September 26, 2006, but failed to obtain the requisite two-thirds majority by a vote of 234–172. H.R. 4772 was brought up under a rule on September 29, 2006, and it passed the House by a vote of 231–181. No further action was taken on the bill in the Senate.

H.R. 4975, the 527 Reform Act of 2006

Summary.—H.R. 4975 provides for increased disclosure of efforts by paid lobbyists to influence the decision-making process and actions of Federal legislative and executive branch officials while protecting the constitutional right of the people to petition the government for a redress of their grievances. The Act is designed to strengthen public confidence in government by expanding the scope of disclosure under the Lobbying Disclosure Act of 1995. It also creates a more effective and equitable system for administering and enforcing these disclosure requirements.

Legislative History.—Rep. David Dreier introduced H.R. 4975 on March 16, 2006, and the bill was referred to the Committee on the Judiciary, as well as the Committees on House Administration, Rules, Government Reform, and Standards of Official Conduct. On April 4, 2006, the Subcommittee on the Constitution held a hearing on H.R. 4975 at which the following individuals testified: Mr. Kenneth A. Gross, Partner, Skadden, Arps, Slate, Meagher & Flom LLP; Mr. John Graham, President and CEO of the American Society of Association Executives; the Honorable Chellie Pingree, President and CEO, Common Cause; and the Honorable Bradley A. Smith, Professor of Law, Capital University Law School, on behalf of Center for Competitive Politics. On April 5, 2006, the Committee on the Judiciary held a markup on the bill and reported it favorably, with amendment, by a recorded vote of 18 to 16. On April 6, 2006, the Committee on House Administration held a markup on the bill and reported it favorably without amendment by a vote of 5 to 2. On April 5, 2006, the Committee on Rules held a markup on H.R. 4975 and reported it favorable, with amendment, by voice

vote. On April 6, 2006, the Committee on Government Reform held a markup on the bill and reported it favorably, with amendment, by voice vote. The Committee on Standards of Official Conduct discharged the bill without further consideration. The House of Representatives considered H.R. 4975 on May 3, 2006, and passed the bill by a vote of 217 to 213.

H.R. 5575, the Pigford Claims Remedy Act of 2006

Summary.—H.R. 5575, the Pigford Claims Remedy Act of 2006, provides a mechanism for the determination on the merits of the claims of claimants who met the class criteria in a civil action relating to racial discrimination by the Department of Agriculture, but who were denied that determination. H.R. 5575 is intended to remedy the flaws in the administration of the Pigford v. Glickman Consent Decree that unintentionally left more than 75,000 late claim petitioners out of the Pigford Consent Decree. H.R. 5575 provides those farmers who filed late claim petitions with the Pigford Court-appointed arbitrator and who were denied entry into the Consent Decree with a new cause of action in Federal court if the late claim petitioner can prove that she or he meets the class definition set forth in the Consent Decree and has a discrimination complaint as defined by the Consent Decree. H.R. 5575 is the product of the Subcommittee on the Constitution's work over the last two years, which included two oversight hearings held on September 28, 2004 and November 18, 2004, respectively and one field briefing conducted in Cincinnati, Ohio on February 28, 2005. In addition to the oversight hearings and field briefing, Chairman Sensenbrenner and Mr. Chabot, together with Ranking Member Conyers, Judiciary Committee Member Bobby Scott, Representative Towns, and Representative Thompson, requested a GAO study into the administration of the Pigford Consent Decree. The GAO report, which was released on April 4, 2006, made no findings or recommendations but described the administrative process set forth by the Consent Decree.

Legislative History.—H.R. 5575, was introduced by House Judiciary Subcommittee on the Constitution Chairman Steve Chabot on June 9, 2006.

H.R. 5388, the District of Columbia Fair and Equal House Voting Rights Act of 2006

Summary.—H.R. 5388, the "District of Columbia Fair and Equal House Voting Rights Act of 2006" was introduced by Rep. Tom Davis and Del. Eleanor Holmes Norton in a bipartisan effort to give citizens of the District of Columbia direct representation in the House of Representatives. The legislation has two main features. First, it treats the District as a congressional district for the purpose of granting full House representation. Second, it permanently increases the size of the House by two members, and allocates the second seat to Utah, which was the state that was next in line to receive additional representation after the 2000 census.

Legislative History.—Rep. Davis introduced H.R. 5388 on May 16, 2006, and the bill was referred to the Committee on the Judiciary and to the Subcommittee on the Constitution, as well as to the Committee on Government Reform. On May 16, 2006, the Com-

mittee on Government Reform held a markup on the bill and ordered it reported favorably, without amendment, by a vote of 29 to 4. On September 14, 2006, the Subcommittee on the Constitution held a legislative hearing on the bill at which testimony was received from the Honorable Jon M. Huntsman, Jr., Governor of Utah; Dr. John Fortier, Research Fellow, American Enterprise Institute; Mr. Adam Charnes, Partner, Kilpatrick Stockton, LLP; and Professor Jonathan Turley, the J.B. & Maurice C. Shapiro Professor of Public Interest Law at George Washington University Law School. No further action on H.R. 5388 was taken.

H.R. 6258, the Americans with Disabilities Act Restoration Act of 2006.

Summary.—H.R. 6258, The Americans with Disabilities Act Restoration Act of 2006, amends the definition of disability currently set forth in the Americans with Disabilities Act 1990 (ADA) and makes other conforming amendments necessary to reconcile the new definition with the remaining provisions contained in the ADA. The amendments are necessary to address certain Supreme Court decisions that have significantly limited the reach of the ADA's protections. H.R. 6258 restores the ADA to its original purpose, which is to provide a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," in order to ensure that all Americans, including those individuals with actual, recorded, or perceived physical and mental impairments, experience the full rights of citizenship as guaranteed and protected by the Constitution.

Legislative History.—H.R. 6258, was introduced by Chairman Sensenbrenner, together with Mr. Hoyer, on September 29, 2006. Earlier in the month, the Subcommittee held a hearing on this legislation, titled "The Americans with Disabilities Act: Sixteen Years Later."

OVERSIGHT ACTIVITIES

SUMMARY OF OVERSIGHT PLAN

The Oversight Plan for the Constitution Subcommittee for the 109th Congress includes the following issues: the death penalty; the United States Commission on Civil Rights; the Civil Rights Division, U.S. Department of Justice; the Community Relations Service; Congressional authority under the Commerce Clause; the Office of Government Ethics; gender discrimination; property rights; religious liberty; abortion; civil liberties in the war on terrorism; DNA technologies; racial profiling; the consent decree in Pigford v. Glickman; the Freedom of Access to Clinic Entrances (FACE) Act; marriage; NCAA Due Process; the protections afforded an individual's right to bear arms under the Second Amendment; the role the United States Constitution plays in the development of potential newly-formed democratic constitutions; and the possibility of expanding eligibility for the Office of the President to include foreign-born citizens.

Oversight list of hearings

U.S. Department of Justice Civil Rights Division: A Review of the Civil Rights Division for the Purpose of the Reauthorization of the U.S. Department of Justice. March 10, 2005. (Serial No. 109–45).

Fiscal and Management Practices of the United States Commission on Civil Rights. March 17, 2005. (Serial No. 109–22).

Economic Development and the Dormant Commerce Clause: the Lessons of Cuno v. Daimler Chrysler and Its Effect on State Taxation Affecting Interstate Commerce." May 24, 2005. (Serial No. 109–27).

Can Congress Create a Race-Based Government? The Constitutionality of H.R. 309/S. 147. July 19, 2005. (Serial No. 109–37).

The Supreme Court's Kelo Decision and Potential Congressional Responses. September 22, 2005. (Serial No. 109–60).

Voting Rights Act: To Examine the Impact and Effectiveness of the Act. October 18, 2005. (Serial No. 109–70).

Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act. October 20, 2005. (Serial No. 109–68).

Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose. October 25, 2005. (Serial No. 109–79).

Voting Rights Act: The Continuing Need for Section 5. October 25, 2005. (Serial No. 109–75).

Voting Rights Act: Section 5—Preclearance Standards. November 1, 2005. (Serial No. 109–69).

Pain of the Unborn. November 1, 2005. (Serial No. 109–57).

Voting Rights Act: Section 203—Bilingual Election Requirements (Part I). November 8, 2005. (Serial No. 109–83).

Voting Rights Act: Section 5—Judicial Evolution of the Retrogression Standard. November 9, 2005. (Serial No. 109–74).

Voting Rights Act: Section 203—Bilingual Election Requirements (Part II). November 9, 2005. (Serial No. 109–78).

Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Programs. November 15, 2005. (Serial No. 109–77).

Scope and Myths of Roe v. Wade. March 2, 2006. (Serial No. 109–84).

Voting Rights Act: Evidence of Continued Need. March 8, 2006. (Serial No. 109–103).

Personal Information Acquired by the Government from Information Resellers: Is There Need for Improvement? April 4, 2006. (Serial No. 109–98).

The Constitution and the Line Item Veto. April 27, 2006. (Serial No. 109–102).

The Implementation of the Crime Victims' Rights Provisions of the Justice for All Act. June 21, 2006 (Serial No. 109–144).

The Americans with Disabilities Act of 1990: Sixteen Years Later. September 13, 2006 (Serial No. 109–146).

Field briefing examining the current state of Civil Rights within the United States Department of Agriculture

A field briefing was held in Cincinnati, Ohio on February 28, 2005, to examine the current state of civil rights within the United States Department of Agriculture (USDA) in light of the 1999 Pigford v. Glickman Settlement. In particular, the briefing exam-

ined the status of civil rights violations that the settlement was intended to address and the changes the USDA has implemented to prevent future civil rights violations from occurring. Attending the field briefing was the Honorable Vernon Parker, Assistant Secretary of the Department of Agriculture for Civil Rights; Mr. John Boyd, President, National Black Farmer Association; Mr. George Hildebrant, Jr., President, Kansas Black Farmer Association; and Mr. Charlie Winburn, Commissioner, Ohio Civil Rights Commission.

Assistant Secretary Parker discussed, among other things, the steps the USDA Office of Civil Rights (OCR) had taken to assist minority farmers, including holding listening sessions across the country. Assistant Secretary Parker discussed the current grievance process in place within USDA's OCR that was designed to resolve minority farmer complaints on a more timely basis.

Mr. Hildebrant discussed, among other things, the plight of black farmers and the need for additional help from USDA and the Farm Service Agency (FSA), the agency that is responsible for administering the loan programs, to protect black farmers.

Mr. Boyd discussed the history of black farmers, the ineffectiveness of the Pigford v. Glickman Consent Decree, and the need for Congress to intervene on behalf of black farmers.

Mr. Winburn discussed the possible role for States' Civil Rights Commissions working with minority farmers to ensure that discrimination does not continue to occur.

Oversight hearing on the "U.S. Department of Justice Civil Rights Division: A review of the Civil Rights Division for the purpose of reauthorization of the U.S. Department of Justice"

The Subcommittee held its first oversight hearing over the U.S. Department of Justice's Civil Rights Division of the 109th Congress on March 10, 2005. Testifying at the hearing was the Honorable Alexander Acosta, Assistant Attorney General, Civil Rights Division, Department of Justice. Assistant Attorney General Acosta presented testimony to the Subcommittee on the following issues: section 14141 of the 1994 Violent Crime and Law Enforcement Act (investigating the patterns and practices of violations of federally protected rights by law enforcement officers and evaluating the progress made by the City of Cincinnati Police Department under the Memorandum of Understanding with the Department of Justice); the Help America Vote Act ("HAVA") and its accessibility requirements to assist disabled voters; the Prison Rape Elimination Act; the Human Trafficking and Protection Act of 2000 and the progress made by the Administration since it began its trafficking initiative; Executive Order 13166 (Administration requirements that guidance be issued to assist recipients who administer federally funded programs); efforts to prosecute voting irregularities and fraud; preclearance of voting changes under Section 5 of the Voting Rights Act; investigations and prosecutions of discrimination in places of public accommodation, housing, and employment; enforcement of Title VII of the Civil Rights Act of 1964 as it relates to exemptions for religious organizations; enforcement of the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA); and the Civil Rights Division's progress toward terminating existing school

desegregation consent decrees and court orders issued during the 1960s and 1970s.

Oversight hearing on the "Fiscal and Management Practices of the United States Commission on Civil Rights"

The Subcommittee on the Constitution continued its oversight of the United States Commission on Civil Rights (USCCR) by holding an oversight hearing on March 17, 2005, on the "Fiscal and Management Practices of the United States Commission on Civil Rights." Testifying at the hearing was Mr. Russell G. Redenbaugh, Commissioner, United States Commission on Civil Rights; Mr. Kenneth Marcus, Staff Director, United States Commission on Civil Rights; Mr. Michael Yaki, Commissioner, United States Commission on Civil Rights; and Mr. George Harbison, Director of Human Resources and Acting Chief of Budget and Finance, United States Commission on Civil Rights.

Commissioner Redenbaugh announced his resignation from the USCCR at the outset of the hearing. Chief among the reasons for his resignation was the lack of purpose and process guiding the management of the USCCR. Commissioner Redenbaugh testified that USCCR considers itself immune from accountability and oversight, such that the USCCR is unable to reform itself.

Commissioner Yaki disagreed with Commissioner Redenbaugh's assessment that the USCCR was beyond assistance. Commissioner Yaki testified, among other things, that he believed that the USCCR has played a role in "provoking debate, discussion, and made policymakers stand up and take notice," such that the USCCR still has a public mission to perform and should continue to exist. Commissioner Yaki testified that the USCCR was currently working to implement all of the GAO recommendations necessary to reform the agency.

Staff Director Marcus testified that the USCCR was working under new leadership and was committed to reform. Staff Director Marcus testified that in the few short months since his arrival the USCCR had moved to implement some of the GAO recommendations. In addition, Staff Director Marcus testified that the USCCR was working to put together working groups on reform and project planning in order to more effectively study and recommend ways to better the management of the USCCR and the quality and credibility of its work product.

Mr. Harbison presented testimony on his responsibilities at the USCCR as Chief of Budget & Finance. In particular, Mr. Harbison testified to the financial and management practices and processes utilized by the former USCCR leadership, including the successful attempts by past leadership to move all financial and management responsibilities with the Office of the Staff Director.

In addition to its oversight hearing, the Subcommittee continued to monitor the activities of the USCCR throughout 2005 and 2006 in a number of different ways. First, the Subcommittee Chairman conducted an interview with former Staff Director Les Jin on June 27, 2005, to better ascertain the financial practices adhered to by the USCCR leadership during the years 1996–2004, which led to the USCCR's current financial difficulties. This meeting was held in place of issuing a subpoena compelling the appearance of former

Staff Director Les Jin before the Subcommittee. In addition, since late November 2005, the Subcommittee has monitored the development of the USCCR's strategic plan. On November 14, 2005, the Subcommittee expressed concerns to the USCCR about the draft strategic plan being circulated and made recommendations to the USCCR on ways to strengthen its plan. A follow-up letter was sent to the USCCR on December 19, 2005, inquiring on the progress made by the USCCR in revising the strategic plan. On January 23, 2006, Subcommittee staff met with representatives from GAO and the USCCR to facilitate the creation of an effective strategic plan. Despite continued follow-up as recently as July 31, 2006, the USCCR has yet to submit a strategic plan to the Subcommittee.

In addition to the Committee's oversight activities, GAO was tasked with its third and final investigation into the management operations and practices of the USCCR in April 2005. On June 1, 2006, GAO issued its third report, titled "The U.S. Commission on Civil Rights: The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees," which addressed the following areas of concern: (1) the adequacy of the USCCR's policies for ensuring the quality of its work; and (2) the role of the USCCR's State Advisory Committees (SACs) in contributing to its work. GAO concluded that policies were lacking within the USCCR to ensure the credibility of its work.

Joint oversight hearing on "Economic Development and the Dormant Commerce Clause: the lessons of Cuno v. Daimler Chrysler and its effect on State taxation affecting interstate commerce"

On May 24, 2005, the House Subcommittee on the Constitution and the Subcommittee on Commercial and Administrative Law conducted a joint oversight hearing on "Economic Development and the Dormant Commerce Clause: the Lessons of Cuno v. DaimlerChrysler and Its Effect on State Taxation Affecting Interstate Commerce." In Cuno v. DaimlerChrysler, Inc., the Sixth Circuit held that portions of Ohio's tax code were unconstitutional on the grounds that they violated the Dormant Commerce Clause.[1] At issue was Ohio's franchise tax credit for companies that chose to "[purchase] new manufacturing machinery and equipment during the qualifying period, provided that the new manufacturing machinery and equipment are installed in [Ohio]."[2] Under the terms of the tax credit and a related property tax exemption,[3] DaimlerChrysler was to obtain approximately $280 million in tax relief over ten years for investing approximately $1.2 billion in a new vehicle assembly plant that would generate approximately 5,000 new jobs in Toledo, Ohio.[4]

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[1] *Cuno* v. *DaimlerChrysler, Inc.*, 386 F.3d 738 (6th Cir. 2004), vacated in part by *DaimlerChrysler Corp.* v. *Cuno*, 126 S.Ct. 1854 (2006).

[2] Ohio Rev. Code Ann. § 5733.33(B)(1).

[3] The property tax exemption was upheld against challenges under the Dormant Commerce Clause and the Equal Protection clause of the Ohio Constitution. Cuno, 386 F.3d at 748–49.

[4] Id. at 741; see also Gregory Castanias, National Movement Against Economic-Development Incentives Makes Inroads in the Sixth Circuit and Raises Questions About Similar Incentives Elsewhere, Mondaq Bus. Briefing, Feb. 7, 2005, available at http://www.mondaq.com/article.asp?articleid=30851&searchresults=1.

The purpose of the hearing was to explore the scope of the Dormant Commerce Clause vis-à-vis state tax credits, and the implications of the Sixth Circuit's decision in Cuno v. DaimlerChrysler on that body of law. The hearing also examined Congress' ability to pass legislation that renders such State statutory schemes lawful and examine the impact these tax credits have on promoting business development in economically depressed areas.

The following witnesses appeared at the hearing: the Honorable Bruce Johnson, Lieutenant Governor of the State of Ohio; Ms. Michele R. Kuhrt, Director of Taxes and Financial Administration for Lincoln Electric; Professor Walter Hellerstein, Francis Shackelford Distinguished Professor of Taxation Law, University of Georgia School of Law; and Professor Edward A. Zelinsky, Benjamin N. Cardozo School of Law, Yeshiva University, New York, New York.

Lieutenant Governor Johnson testified that economic development incentives, like those at issue in the Cuno case, are necessary for states to compete against other states and foreign nations to attract businesses to the area. He further testified that if these incentives are held unconstitutional, Ohio will lose jobs and income to other countries.

Ms. Kuhrt testified that economic incentives play an important role in determining where her company, Lincoln Electric, chooses to open new operations. She testified that Ohio's investment credits were the deciding factor in her company's decision to expand its operations outside of Cleveland. Those expansions created 481 new jobs, and, in her opinion, the new tax revenue generated from those new employees would significantly compensate the state of Ohio for the one-time incentives that the state gave Lincoln Electric, thus making it a wise business decision for the state.

Professor Hellerstein testified that the Sixth Circuit's opinion in Cuno was not unusual in the sense that courts had invalidated a number of state tax schemes on Dormant Commerce Clause grounds. Professor Hellerstein also testified that courts' interpretations of the Dormant Commerce Clause have been "difficult to discern." For that reason, Professor Hellerstein testified that the Congress could and should address the validity of the tax incentives at issue in Cuno under Congress' affirmative Commerce Clause authority.

Professor Zelinsky testified that the Sixth Circuit decided Cuno wrongly on the grounds that there was no principled way to distinguish between the state tax incentives that the Court had struck down as opposed to the property tax incentives that it had upheld. Professor Zelinsky also supported the view that Congress should overturn Cuno legislatively.

Oversight hearing on "Can Congress Create a Race-Based Government? The Constitutionality of H.R. 309/S. 147"

On July 19, 2005, the Subcommittee on the Constitution held an oversight hearing examining whether Congress has the authority to create a raced-based government. In particular, the Subcommittee examined the constitutionality of H.R. 309, and its companion S. 147, the Native Hawaiian Government Reorganization Act of 2005. Witnesses presenting testimony to the Subcommittee

included: the Honorable Mark Bennett, Attorney General, State of Hawaii; Mr. Shannen Coffin, Former Deputy Assistant Attorney General for Federal Programs, Department of Justice and current law partner, Steptoe & Johnson, LLP; Mr. H. William Burgess, retired attorney and grassroots advocate for Aloha for All, Inc.; and Mr. Bruce Fein, constitutional law expert and former Assistant Director, Office of Legal Policy, Department of Justice.

Attorney General Bennett testified on the constitutionality of H.R. 309 and the benefits that a Native Hawaiian government would bring to the Native Hawaiian people. Attorney General Bennett testified that since 1910 Congress has passed more than 160 pieces of legislation recognizing the special status of Native Hawaiians and that H.R. 309 provides a political status to Native Hawaiians that is no different from the status afforded to Native Americans.

Mr. Coffin testified, among other things, that the Supreme Court has noted that the use of race and ancestry to distinguish citizens is subject to strict scrutiny, and such legislation will be upheld only if it is narrowly tailored to achieve a compelling state interest. Mr. Coffin also referenced the Supreme Court's decision in Rice v. Cayetano, in which the Court rejected similar legislation enacted by the State of Hawaii. In Cayetano, the Supreme Court declined to apply the tribal concept, which has been the basis of recognizing Native American tribes as quasi-sovereign entities.

Mr. Burgess presented testimony on the history of Hawaii and the historical differences between the assimilation of Native Hawaiians into western civilization and the existence of Native Americans as autonomous quasi-sovereign governing entities prior to the discovery and cultivation of American society. In particular, Mr. Burgess reminded the Subcommittee that upon admittance to the Union, the State of Hawaii considered itself "the melting pot of many racial and national origins from which has been produced a common nationality, a common patriotism, a common faith in freedom and in the institutions of America."

Mr. Fein testified, among other things, that Congress does not have the affirmative power to create a race-based government, where none existed before. Mr. Fein noted the differences between the treaties negotiated with Native American tribes both prior to and after the Constitution was ratified and the treaties negotiated between the United States and the Kingdom of Hawaii finding that the treaties ratified with the Kingdom of Hawaii were replicas of the treaties ratified with France and Britain (i.e., the treaties recognized the Kingdom as a foreign nation).

Oversight hearing on "The Supreme Court's Kelo Decision and Potential Congressional Responses"

On September 22, 2005, the Subcommittee on the Constitution held on oversight hearing on "The Supreme Court's Kelo Decision and Potential Congressional Responses." Witnesses included: Ms. Dana Berliner, Senior Attorney, Institute for Justice; Mr. Michael Cristofaro, Resident, New London, Connecticut; Mr. Hilary O. Shelton, Director, NAACP, Washington Bureau; and Mr. Bart Peterson, Mayor, City of Indianapolis, Indiana.

Ms. Berliner testified, among other things, that eminent domain affects real people. Real people lose the homes they love and watch as they are replaced with condominiums. Real people lose the businesses they count on to put food on the table and watch as they are replaced with shopping malls. And all this happens because localities find condos and malls preferable to modest homes and small businesses. Federal law currently allows expending federal funds to support condemnations for the benefit of private developers. By doing so, it encourages this abuse nationwide. Using eminent domain so that another, richer, better-connected person may live or work on the land you used to own tells Americans that their hopes, dreams and hard work do not matter as much as money and political influence. The use of eminent domain for private development has no place in a country built on traditions of independence, hard work, and the protection of property rights.

Mr. Cristofaro testified, among other things, that Congress needs to send a strong message to municipalities that tear down working class neighborhoods to replace them with office buildings or a big-box retailer: if you do so, you will not receive federal tax dollars for economic development. By doing this, Congress would be protecting families like Mr. Cristofaro's who simply want to keep the homes they love.

Mr. Shelton testified, among other things, that the Supreme Court's decision in Kelo v. City of New London will prove to be especially harmful to African Americans and other racial and ethnic minority Americans. By allowing pure economic development motives to constitute public use for eminent domain purposes, state and local governments will now infringe on the property rights of those with less economic and political power with more regularity. These groups, all low-income Americans, and a disparate number of African Americans and other racial and ethnic minority Americans, are the least able to bear this burden.

Mr. Peterson testified, among other things, that economic development is a public use. By subjecting development projects to public debate and by planning these projects with the public welfare in mind, eminent domain allows cities and their citizens to develop the community in a way that is transparent and beneficial for all. Municipal leaders have a responsibility to engage in public conversation about eminent domain that can help dispel inaccuracies and stereotypes. There is, however, a delicate balance between minimizing the burdens on individuals and maximizing benefits to the community. The art of compromise is essential to going forward.

Oversight hearing on the "Voting Rights Act: To Examine the Impact and Effectiveness of the Act"

On October 18, 2005, the Subcommittee held the first of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The first hearing examined the impact of the VRA on minority voters and its effectiveness in stopping discrimination over the last 41 years. The Subcommittee took testimony from four witnesses including: the Honorable Jack Kemp, former Secretary of Housing and Urban Development and former Member of the House of Representatives; the Honorable Marc Morial, President and CEO, National Urban

League, Ms. Ann Marie Tallman, President and General Counsel, Mexican American Legal Defense and Education Fund; and the Honorable Joe Rogers, Former Lieutenant Governor, State of Colorado.

Secretary Kemp testified that the right to vote and to participate in the political process is the most fundamental right of our democratic system of government. Secretary Kemp testified that the VRA is the most important civil rights legislation that the nation has ever enacted in the past 40 years and if it is not reauthorized local and State jurisdictions will more easily be able to discrimination against minority voters.

Mr. Morial testified, among other things, on the impact that the VRA has had on him, his family, and his hometown of New Orleans, Louisiana. Mr. Morial testified that the State of Louisiana did not have an African American representative until 1967, despite the fact that African Americans made up almost a third of the population. The VRA enabled his father to become the first serving elected African American in 1967 since reconstruction. Mr. Morial emphasized that without the VRA it would have been highly unlikely that he, his father, or any of the many other African American elected officials would be where they are today.

Ms. Tallman testified, among other things, that the VRA has done more than any other law to ensure that the nation moved beyond discriminatory election laws that have tarnished the electoral process. However, Ms. Tallman emphasized that the VRA is still needed. Ms. Tallman testified that the VRA has facilitated the participation of Latinos/Latinas in the electoral process at all levels of government. In addition to the benefits of Section 5—preclearance, Ms. Tallman emphasized the need to continue Section 203, the bilingual assistance provisions, which have assisted the more than 4.3 million voting age citizens who are limited English proficient and in need of assistance.

Lieutenant Governor Rogers testified, among other things, on the work that was being conducted by the National Commission on the Voting Rights Act (Commission), which was established by the Lawyers' Committee For Civil Rights Under Law for the sole purpose of examining the effectiveness and continuing needs for the Voting Rights Act. Lieutenant Governor Rogers discussed the hearings being conducted by the Commission and the evidence received by the Commission to date. Lieutenant Governor Rogers told the Subcommittee that according to the evidence presented, discrimination in voting appears to be significant, although progress has been made. In addition, Rogers testified that racially polarized voting continues to plague elections throughout the country and although Section 2, a permanent provision, is effective, Section 5 remains a necessary provision to ensure that discriminatory voting procedures are not implemented in the first place.

Oversight hearing on the "Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act"

On October 20, 2005, the Subcommittee on the Constitution held the second of ten hearings examining the Voting Rights Act of 1965 (VRA). The second hearing examined the coverage formula, which

is set forth in Section 4(b) of the VRA and is used to identify States and jurisdictions for coverage, and the bailout process that covered states and jurisdictions are able utilize to terminate coverage. Testifying at the hearing was: the Honorable Michael Steele, Lieutenant Governor, the State of Maryland; Mr. Jose Garza, Voting Rights Attorney, League of United Latin American Citizens (LULAC); Mr. Armand Derfner, voting rights attorney, Derfner, Altman & Wilborn; and Mr. J. Gerald Hebert, Former Acting Chief, Civil Rights Division, Department of Justice.

Lieutenant Governor Steele testified, among other things, on the impact that the VRA and Section 5's preclearance requirements have had on non-covered jurisdictions, particularly illustrating to non-covered jurisdictions the types of election practices and redistricting plans that the Department of Justice and District Court for the District of Columbia find to be discriminatory.

Mr. Garza presented the record that LULAC had compiled to date, through its litigation efforts, on the history of discrimination against Latinos in the voting process. In particular, Mr. Garza testified that many of the same discriminatory practices that occurred against African Americans in the South were used against Mexican Americans in the State of Texas. Mr. Garza emphasized that these practices were not only used in 1954 and 1964 but were also used in 1984. As a result, the need for Section 5 continues, especially in the State of Texas.

Mr. Derfner testified, among other things, to the importance of the VRA and the importance of Section 4, which sets forth the formula for coverage. Mr. Derfner discussed the importance of: (1) enacting Section 4 in order to prohibit the problems that Congress could identify (i.e., literacy tests and other devices); as well as (2) enacting the provisions Section 4 triggers, such as Section 5 and Sections 6 through 8, in order to address problems that Congress could not yet identify. Under this structure, Mr. Derfner testified the VRA remains an effective tool to protecting minority voters.

Mr. Hebert testified on the effectiveness of the current bailout process. Mr. Hebert testified that the ten-year time frame in which a jurisdiction must demonstrate a clean record in order to terminate coverage (i.e., that it has not had a test or device in place, no final judgements, no objections, no examiners, compliance with all voting requirements, and constructive efforts to integrate the minority community into the electoral process) continues to be an appropriate process and easy to meet if a jurisdiction is serious about bailout. Moreover, Mr. Hebert emphasized that the effectiveness of the bailout provision is central to demonstrating the constitutionality of the VRA.

Oversight hearing on the "Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose"

On October 25, 2005, the Subcommittee on the Constitution held the third of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing focused on Section 5 of the Voting Rights Act and the effectiveness of the preclearance requirement in stopping and deterring discriminatory voting changes from being enacted. Testifying at the hearing was: the Honorable Bradley Schlozman, Acting Assistant Attorney General, Civil Rights Division, Depart-

ment of Justice; Mr. Edward Blum, Visiting Fellow, American Enterprise Institute; Ms. Anita Earls, Director of Advocacy, Center for Civil Rights; Ms. Nina Perales, Regional Counsel, Mexican American Legal Defense and Education Fund.

Assistant Attorney General Schlozman provided an overview of the Department of Justice's role in administering Section 5. In particular, Assistant Attorney General Schlozman presented testimony that the Department of Justice receives between 4,000–6,000 submissions annually from covered jurisdictions, in which redistricting plans comprise a small part. Assistant Attorney Schlozman testified that the Department of Justice's role in the administrative process is to review voting changes to ensure that they are not retrogressive within the 60-day period set forth by Section 5.

Mr. Blum testified, among other things, that American society has reached a point where the VRA is no longer necessary. Mr. Blum testified that a study commissioned by the American Enterprise Institute (AEI) demonstrated that minority registration and turnout exceeded that of white voters in the covered State of Georgia and minority and white candidates receive comparable support from minority and white voters to such an extent that Section 5 is no longer needed to protect minority voters. Moreover, if problems continue to exist all over the country, Mr. Blum testified that limiting preclearance requirements to just a few States and jurisdictions was not sound policy.

Ms. Earls testified, among other things, that the original purpose of Section 5 has not been fully served. In particular, Ms. Earls testified that the lingering effects of past intentional discrimination continue today and are illustrated by the continued prevalence of racially polarized voting, cracking and packing of minority voters when drawing district lines, and the implementation of methods to dismantle single-member districts. Ms. Earls emphasized that Section 5 was intended to remedy nearly 100 years of discrimination in which certain jurisdictions undermined the decision of Federal courts and enforcement efforts of the Federal government. Ms. Earls testified that the discriminatory practices of the past continued to be enacted by local and State governments such that Section 5 is still needed. In addition, Ms. Earls testified on the important deterrent effect that Section 5 has on preventing discriminatory voting changes from coming to fruition.

Ms. Perales testified, among other things, on the importance of Section 5 in Texas and other parts of the Southwest. Ms. Perales presented testimony on the history of discrimination experienced by Latinos in Texas and the Southwest, particularly at the local level. Ms. Perales testified that since 1975, there have been 196 objections interposed by the Department of Justice in Texas. Most of the objections were to voting changes enacted at the local level. Ms. Perales also testified on the impact that the 2003 Supreme Court decision in Georgia v. Ashcroft had on the ability of Section 5 to protect minority voters. In particular, Ms. Perales testified that the existence of racially polarized in elections makes it virtually impossible for minority voters to have any sort of influence on the outcome of an election or the representative who is ultimately elected.

Oversight hearing on the "Voting Rights Act: The Continuing Need for Section 5"

On October 25, 2005, the Subcommittee on the Constitution held the fourth of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing focused on Section 5's preclearance requirement, including examining the standard for evaluating Section 5 preclearance submissions as set forth by the Supreme Court in Beer v. United States. Testifying at the hearing was Mr. Laughlin McDonald, Executive Director, Voting Rights Project, ACLU; Mr. Robert Hunter, Jr., Voting Rights Attorney and Former Chairman of the North Carolina Board of Elections, Hunter, Higgins, Elum, and Benjamin, PLLC; Mr. Ronald Keith Gaddie, Professor of Political Science, University of Oklahoma; and Dr. Richard Engstrom, Professor of Political Science and African Studies, University of New Orleans.

Mr. McDonald presented testimony on the continued need for Section 5. Mr. McDonald indicated that there is abundant modern-day evidence demonstrating that Section 5 is still needed. Mr. McDonald testified that the need for Section 5 was most demonstrably found in Indian Country, where there are hundreds of examples of efforts to discriminate against Native Americans in the electoral process.

Mr. Hunter testified that in his experience as a voting rights practitioner three recent Supreme Court decisions, Bossier I, Bossier II, and Georgia v. Ashcroft, had modified the purpose and effect prongs of Section 5. Mr. Hunter indicated that Congress needed to focus on the communities that had been historically disenfranchised and the impact that such discriminatory voting laws would have on these voters if Section 5 was not reauthorized.

Professor Gaddie testified on the research that he had been conducting with his colleague Professor Charles Bullock on behalf of American Enterprise Institute (AEI). Professor Gaddie indicated that his study demonstrated significant progress among minority participants in the political process. This progress is revealed in increased registration and turnout rates among racial and language minority citizens. Professor Gaddie testified that these increased rates of participation suggest that Section 5 may have outlived its usefulness.

Dr. Engstrom testified that Section 5 is a fundamental protection against minority vote dilution in covered jurisdictions. Dr. Engstrom described vote dilution as a second generation barrier to voting experienced by minorities. (First generation barriers involve those techniques and practices that directly prevent minorities from casting ballots). Dr. Engstrom testified that vote dilution is impacted by racially polarized voting, which is a prominent feature of elections in the South. Dr. Engstrom testified that racially polarized voting continues today, thus demonstrating the continued need for Section 5.

Oversight hearing on "Pain of the Unborn"

On November 1, 2005, the Subcommittee on the Constitution held an oversight hearing on "Pain of the Unborn." The witnesses included: Dr. Sunny Anand, Director, Pain Neurobiology Laboratory, Arkansas Children's Hospital Research Institute, and Pro-

fessor of Pediatrics, Anesthesiology, Pharmacology, and Neurobiology, University of Arkansas College of Medicine; Dr. Jean Wright, Professor and Chair of Pediatrics, Mercer School of Medicine; Dr. Arthur Caplan, Director, Center for Bioethics, and Chair, Department of Medical Ethics, University of Pennsylvania; Ms. Teresa S. Collett, Professor of Law, University of St. Thomas School of Law.

Dr. Sunny Anand testified, among other things, that a study concluding that fetal perception of pain is unlikely before 29 to 30 weeks of human gestation was flawed "because [the authors] ignore a large body of research related to pain processing in the brain, present a faulty scientific rationale and use inconsistent methodology for their systematic review."

Dr. Jean Wright testified, among other things, that viability has been pushed back to 23–24 weeks for some infants, that there is a disconnect between the treatment of pain in the neonate and pain in the fetus, and that treating the mother for pain is not enough for the child.

Dr. Arthur Caplan testified, among other things, that there "is an enormous body of evidence which shows that the presumption of medical consensus does not exist about the question of when a fetus becomes pain-capable" and that "mandating the specific nature of what must be communicated to a woman considering an abortion or any other medical procedure is an unwise interference with the practice of medicine by Congress."

Professor Teresa S. Collett testified, among other things, that the issue of at what point the unborn experience pain is an important one that should inform medical practice and that the most recent abortion textbook for medical schools advises that women seeking abortions be given information about fetal pain.

Oversight hearing on the "Voting Rights Act: Section 5—Preclearance Standards"

On November 1, 2005, the Subcommittee on the Constitution held the fifth of ten oversight hearings on the Voting Rights Act. The hearing continued to focus on Section 5's preclearance requirement that a voting change submission can only be precleared if it does not have the purpose or effect of denying or abridging a citizen's right to vote on account of race, color, or language minority status, with a particular focus on the impact of the Supreme Court's decision in Reno v. Bossier Parish (Bossier II). Witnesses presenting testimony to the Subcommittee included: Professor Mark Posner, Adjunct Professor, American University, Washington College of Law, and Former attorney, Civil Rights Division, Department of Justice; Ms. Brenda Wright, Managing Attorney, National Voting Rights Institute; Mr. Roger Clegg, Vice President and General Counsel, Center for Equal Opportunity and Former Assistant to the Solicitor General, Department of Justice; and Mr. Jerome A. Gray, State Field Director, Alabama Democratic Conference.

Professor Posner presented testimony describing the need for Congress to reauthorize Section 5 as well as legislatively reverse the interpretation of Section 5's purpose prong by the Supreme Court in Bossier II as part of its reauthorization effort. Professor Posner indicated that Section 5's purpose prong had been consist-

ently interpreted as preventing changes made with a discriminatory purpose from being precleared under Section 5 for nearly 34 years. According to Professor Posner, the Supreme Court in Bossier II misconstrued the purpose prong allowing almost any voting change made with a racial motive to be precleared, contrary to Congress's original intent.

Ms. Wright testified, among other things, that a successful reauthorization must include restoring Section 5 to prevent voting changes made with a discriminatory purpose from being precleared. Ms. Wright testified that through the 1970s and 1980s it was clear that the purpose and effect prongs contained in Section 5 were independent of each other until the Bossier II case. Under the current Supreme Court interpretation, Ms. Wright testified that those jurisdictions that had never adopted a majority-minority district were free to continue to intentionally draw minorities out of a redistricting map. These actions, Ms. Wright testified, are contrary to the original purpose of Section 5.

Mr. Clegg testified, among other things, that the Bossier II decision is correct and that in the larger discussion of reauthorization, Section 5 and the other expiring provisions should not be reauthorized. Mr. Clegg testified that if Congress decides to overturn Bossier II it runs the risk of having Section 5 struck down as unconstitutional, as Justice Scalia alluded in his Bossier II opinion.

Mr. Gray testified, among other things, on the impact that the VRA has had on the State of Alabama. In particular, Mr. Gray testified to the benefits of Section 5 in deterring jurisdictions from enacting discriminatory voting changes. Mr. Gray testified that Section 5's preclearance requirement has worked to integrate minority voters more fully into the voting process, as covered jurisdictions seek the input of minority voters early in the process to ensure that voting changes are not retrogressive.

Oversight hearing on the "Voting Rights Act: Section 203—Bilingual Election Requirements"

On November 8, 2005, the Subcommittee on the Constitution held the sixth of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing was the first of two examining the effectiveness of Section 203, the bilingual election assistance provisions, added to the VRA in 1975. Testifying at the hearing was the Honorable Bradley Schlozman, Acting Assistant Attorney General, Civil Rights Division, Department of Justice; Ms. Margaret Fung, Executive Director, Asian American Legal Defense and Education Fund; Ms. Linda Chavez, President, One Nation Indivisible, Inc.; and Ms. Rebecca Vigil-Giron, Secretary of State, State of New Mexico.

Assistant Attorney General Schlozman provided an overview of the Department of Justice's efforts to enforce Section 203's bilingual assistance requirements. Assistant Attorney General Schlozman testified that the Civil Rights Division has undertaken the most extensive Section 203 and Section 4(f)(4) enforcement effort in the history of the Department of Justice. Assistant Attorney General Schlozman testified that notice and detailed information on compliance requirements were sent by the Department to each of the covered jurisdictions. In addition, the Department initiated

in-person meetings with officials from newly covered jurisdictions. Since 2001, the Department has filed more Sections 4(f) and 203 cases than were filed in the previous 26 years.

Ms. Fung testified to Section 203's success, particularly since the 10,000 threshold was inserted into Section 203's coverage formula in 1992. Ms. Fung testified that Section 203's assistance has enabled hundreds of thousands of language minority citizens, particularly Asian Americans, to participate in the political process and was instrumental in the election of New York City's first Asian American city councilman and first Asian American Member of the New York State Assembly.

Ms. Chavez testified, among other things, that Section 203 should not be extended. Ms. Chavez testified that Section 203's requirements are wasteful, expensive, and are not widely used. Morever, Ms. Chavez testified that Section 203's requirements facilitate voter fraud. Ms. Chavez testified that many civil rights groups, including the U.S. Commission on Civil Rights, the Attorney General, and the Leadership Conference on Civil Rights were opposed to extending the VRA to cover Hispanic and other language minority citizens in 1975.

Ms. Vigil-Giron provided testimony on the State of New Mexico's experience in providing bilingual election assistance to language minority voters. Ms. Vigil-Giron testified that Section 203 is the legal foundation for many Native American and Hispanic citizens when exercising their right to vote. Native Americans make up 10 percent of the total population of New Mexico and Hispanics make up 42 percent, many of which do not speak English. Ms. Vigil-Giron testified that the increased turnout rates among Native Americans and Hispanics would not have occurred if not for the VRA.

Oversight hearing on the "Voting Rights Act: The Judicial Evolution of the Retrogression Standard"

On November 9, 2005, the Subcommittee on the Constitution held the seventh of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing focused on Section 5's preclearance requirement and the impact of the Supreme Court's decision in Georgia v. Ashcroft on the preclearance standard. Witnesses testifying before the Subcommittee included: Mr. Theodore Shaw, President and Director-Counsel, NAACP, Legal Defense and Education Fund, Inc.; Ms. Anne Lewis, voting rights attorney, Strickland Brockington Lewis, LLP; Georgia State Representative Tyrone Brooks, President, Georgia Association of Black Elected Officials; and Mr. Laughlin McDonald, Executive Director, Voting Rights Project, ACLU.

Mr. Shaw testified, among other things, that Section 5's ability for minorities to elect their candidates of choice standard has been at the core of the VRA. Mr. Shaw testified that an assessment of the minority community's ability to elect occurs most frequently in the context of single member districts and racially polarized voting. Mr. Shaw testified that the retrogression standard set forth by the Supreme Court in Beer v. United States was the standard adopted by the Courts and Congress for the last 30 years. Mr. Shaw testified that the Supreme Court's decision in Georgia v. Ashcroft weak-

ened this standard by allowing covered jurisdictions to make a choice between keeping districts where minorities can elect their candidate of choice or dispersing minority voters to increase minority influence among other candidates. Mr. Shaw testified that Congress needed to restore Section 5 to the standard set forth in Beer as part of its reauthorization efforts.

Ms. Lewis testified, among other things, that the standard for preclearing voting changes was significantly weakened by the Supreme Court's decision in Georgia v. Ashcroft and leaves the standard impossible to apply.

Mr. Brooks testified on the importance of Section 5 to minority voters in Georgia and the continued need for Section 5 as long as racially polarized voting plagues elections. Mr. Brooks testified on the need for States to maintain majority-minority districts, indicating influence districts, such as those identified by the Supreme Court in Georgia v. Ashcroft, can never be a substitute for majority-minority districts.

Mr. McDonald testified, among other things, that the Supreme Court in Georgia v. Ashcroft took the Section 5 standard and turned it into a subjective and abstract standard. In particular, Mr. McDonald testified that the minority influence theory espoused by Supreme Court in Georgia v. Ashcroft is nothing more than a guise for diluting minority voting strength and the decision runs counter to Congress's original intent in enacting Section 5. Mr. McDonald advocated that any Reauthorization of Section 5 must also include language that restores Section 5 to its original purpose.

Oversight hearing on the "Voting Rights Act: Section 203—Bilingual Election Requirements (Part II)"

On November 9 and 10, 2005, the Subcommittee held the eighth of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing was the second of two hearings focusing on the effectiveness of Section 203, the bilingual election assistance provision. Testimony was taken from the following witnesses: Ms. Jacqueline Johnson, Executive Director, National Congress of American Indians; Mr. K.C. McAlpin, Executive Director, ProEnglish; Mr. James Tucker, Attorney, Ogletree Deakins, P.C., Adjunct Professor, Barrett Honors College of Arizona State University, Phoenix, Arizona; and Mr. Juan Cartagena, General Counsel, Community Service Society.

Ms. Johnson testified, among other things, on the benefit of Section 203 to Indian Country over the last 31 years. Ms. Johnson testified that Section 203 has facilitated numerous enforcement filings that have worked to ensure that Native Americans have access to the ballot box. Ms. Johnson testified that in many Native communities tribal business is conducted exclusively in the native language. Thus, many native people, especially elders, need assistance when exercising their right to vote.

Mr. McAlpin testified, among other things, that Section 203 is a costly, unfunded mandate that functions as a tax on English-speaking Americans. Mr. McAlpin testified that Section 203 is not necessary since naturalization laws require candidates to understand and speak English as part of the naturalization process. Moreover, Mr. McAlpin testified that Section 203 is an affront to the millions

of English-speaking immigrants and undermines our national unity. Mr. McAlpin testified that Section 203 increases the risk of election fraud by facilitating the concealment of illegal activity.

Mr. Tucker testified, among other things, that Section 203 remains a critical provision to the VRA. Mr. Tucker testified to the constitutionality of Section 203 and Section 4(f)(4), citing the Supreme Court's decision in Katzenbach v. Morgan as the basis for the two Sections. In particular, Mr. Tucker testified that the Supreme Court, in Katzenbach, held that it was entirely appropriate for Congress to "question whether a denial of a right being so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English or furthering the goal of an intelligent exercise of the franchise." Mr. Tucker further testified that a recent study of the jurisdictions covered by Section 203 revealed that the high costs of administering Section 203's requirements had not materialized and that most election officials support Section 203's requirements.

Mr. Cartagena testified, among other things, that Section 203 continues to be a viable and needed provision in 2005. Mr. Cartagena testified that the full participation of Latino-language minority citizens has yet to be achieved. Moreover, Mr. Cartagena testified that jurisdictions continue to be unwilling to provide full assistance to language minority citizens, thus demonstrating the continued need for enforcement and oversight by the Department of Justice. Mr. Cartagena testified that 75% of the Latinos in the country speak a language other than English at home, with more than 41% speaking English less than very well and 23% not speaking English at all, thus demonstrating the need for Section 203's assistance.

Oversight hearing on the "Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program"

On November 15, 2005, the Subcommittee on the Constitution held the ninth of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing focused on the effectiveness of Sections 6 and 8 of the VRA, the Federal examiner and Federal observer provisions. Testimony was taken from three witnesses including: Ms. Nancy Randa, Deputy Associate Director, Human Resources and Services, U.S. Office of Personnel Management; Ms. Penny Pew, Apache County Elections Director, State of Arizona; and Mr. Barry Weinberg, Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Section, Department of Justice.

Ms. Randa testified, among other things, on the role of OPM in assigning Federal examiners and observers to monitor elections in covered jurisdictions certified for monitoring. Ms. Randa testified that since 1965 OPM has assigned more than 26,000 observers to a total of 21 States. Ms. Randa testified that in the last ten years more observers have been deployed to protect language minority citizens. Ms. Randa testified that observers serve as neutral monitors, witnesses who do not intervene but watch, listen, and record events in polling locations. Ms. Randa testified that no voters have been added to the Federal voter registration list since 1983 and no challenges have been made to the voter list in 30 years, diminishing the need for both Federal registrars and hearing officers.

Ms. Pew provided testimony on the role Federal observers have played in elections in Apache County, Arizona. Ms. Pew testified that the Federal observer program has functioned as a check and balance in Apache County's translator program. Federal observers are able to witness poll workers and interpreters assisting voters. Observers witness the process and note events that occur throughout the voting process. Ms. Pew testified that the information relayed by Federal observers enables election officials to know instantaneously of situations that can be rectified immediately or may need further investigation.

Mr. Weinberg testified, among other things, on the Department of Justice's role in the Federal examiner and observer program. Mr. Weinberg testified that the Federal examiner provisions are archaic, cumbersome, outdated, and no longer serve a purpose. Mr. Weinberg testified that Federal observers continue to be necessary, serving an important law enforcement function. Mr. Weinberg testified that Federal observers are the only Federal officials allowed inside polling locations and are able to witness events that other Federal officials are not. Mr. Weinberg described Federal observers as the eyes and ears of the Justice Department in polling locations and testified on the need to keep this Federal oversight for an additional 25 years.

Oversight of detention facilities located in Guantanamo Bay, Cuba

Members of the House Judiciary Committee, including Subcommittee Chairman Chabot, Subcommittee Ranking Member Nadler, and Representative Gohmert, and Subcommittee counsel traveled to Guantanamo Bay, Cuba (GTMO) on January 16, 2006, to continue the Judiciary Committee's oversight responsibilities on the treatment of military detainees being held at GTMO. The trip is the third made by Members of the Judiciary Committee, since 2002, to review GTMO operations. Earlier bipartisan trips were made by Members of the Committee and counsel on May 4, 2003, which included Subcommittee Chairman Coble and Representatives Schiff and Hart, and on February 8, 2002, by Chairman Sensenbrenner. In addition to monitoring interrogations and the living conditions of military detainees, the trip provided Members of the Judiciary Committee with an opportunity to discuss the impact of: (1) the June 2004 Supreme Court decision, Rasul v. Bush,[5] on GTMO operations and (2) the Treatment of Detainees Act of 2005 included in both the FY06 Department of Defense Appropriations Act and National Defense Authorization Act of 2006.

Oversight hearing on "The Scope and Myths of Roe v. Wade"

On Thursday, March 2, 2006, the Subcommittee on the Constitution conducted an oversight hearing on "The Scope and Myths of Roe v. Wade." The witnesses included: Ms. Cinny Roy, Founder and Director, Eve Center; Dr. Karen O'Connor, Professor, American University; Ms. Helen M. Alvaré, Associate Professor of Law, Columbus School of Law, Catholic University of America; Ms. Kellyanne Conway, President and Chief Executive Officer, the polling company™, inc.

[5] See *Rasul* v. *Bush*, 124 S. Ct. 2686 (2004).

Ms. Cinny Roy testified, among other things, as to myths surrounding elective abortion and the negative impact of abortion on women, who she counsels for a variety of issues, including pregnancy loss due to abortion.

Ms. Kellyanne Conway testified, among other things, that "[t]he methodology and phraseology of public opinion polling on abortion should be as carefully considered as the results." She further testified that "[i]n cases where the American public is given a fair chance to voice their opinions on the complex considerations associated with this issue, it is evident that most Americans do not support abortion on demand and the broad provisions outlined in Roe v. Wade."

Dr. Karen O'Connor testified, among other things, as to abortion regulations prior to Roe v. Wade, the constitutional underpinnings of Roe v. Wade, and Roe's implications for American women.

Professor Helen Alvaré testified, among other things, that Roe v. Wade has been a pernicious influence with respect to families generally, but especially for children. According to Professor Alvaré, Roe championed the notion that individual wants are more important than the common good of the family and elevated the constitutional status of sexual license without preserving the traditional ties between sexual freedom and marriage or family.

The following material was submitted for the hearing record: Appendix to the Testimony of Professor Helen M. Alvaré: "Abortion in young women and subsequent mental health." Journal of Child Psychology and Psychiatry 47:1 (2006), pp 16–24; Affidavits compiled by The Justice Foundation from women who have had abortions, inserted by Congressman Franks during the hearing; "Confession of an Ex-Abortionist," Dr. Bernard Nathanson, inserted into the Record by Congressman King; Statement Submitted for the Record by Nancy Keenan, President, NARAL Pro-Choice America; Statement Submitted for the Record by Vicki Saporta, President & CEO, National Abortion Federation.

Oversight hearing on the "Voting Rights Act: Evidence of Continued Need"

On March 8, 2006, the Subcommittee on the Constitution held the tenth of ten oversight hearings on the Voting Rights Act of 1965 (VRA). The hearing focused on the evidence complied by outside organizations on the ongoing efforts to discriminate against minority voters and the continued need for the VRA for an additional 25 years. Testimony was taken from four witnesses including: the Honorable Bill Lann Lee, Chairman, National Commission on the Voting Rights Act; Ms. Nadine Strossen, President, American Civil Liberties Union and Professor of Law, New York Law School; Mr. Wade Henderson, Executive Director; Leadership Conference on Civil Rights; and the Honorable Joe Rogers, Commissioner, National Commission on the Voting Rights Act.

Mr. Lee testified, among other things, on the evidence compiled by the National Commission on the Voting Rights Act (Commission) and the Commission's findings. Mr. Lee described some of the Commission's findings such as the number of objections interposed by the Department of Justice and the U.S. District Court for the District of Columbia since 1982 to more than 1,100 voting changes

contained in more than 650 section 5 submissions. In addition, Mr. Lee testified that covered jurisdictions withdrew an additional 200 submissions from Section 5 review since 1982.

Ms. Strossen provided testimony on the ACLU's involvement in voting rights litigation since 1982. Ms. Strossen testified that the ACLU has brought or participated in 293 voting rights cases in 31 States since 1982. Ms. Strossen testified that the ACLU's involvement in these cases demonstrates: (1) discrimination is still pervasive in covered jurisdictions and (2) there is a continued need for the VRA for an additional 25 years.

Mr. Henderson provided testimony on the series of State reports commissioned by the LCCR investigating the effectiveness of the VRA over the last 25 years in Alabama, Alaska, Arizona, California, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia. Mr. Henderson testified that the States were selected as a representative sampling, both geographically and demographically, of the jurisdictions covered in whole or in part by the VRA. Mr. Henderson testified that the reports released to date reveal the impact that the VRA has had on minority voters over the last 40 years and since the VRA was last renewed in 1982. Moreover, Mr. Henderson testified that discrimination continues to exist in these jurisdictions, thus demonstrating the need to continue the expiring provisions for an additional 25 years.

Mr. Rogers provided testimony, among other things, on the work of the National Commission on the Voting Rights Act. Mr. Rogers' testimony supported and corroborated testimony provided by fellow Commissioner, Mr. Lee. Mr. Rogers provided specific examples from Mississippi and California to demonstrate how the VRA has been effective in protecting minority voters. In addition, Mr. Rogers provided specific examples of how Section 203 benefits language minority voters and the role that Federal observers have played over the last 25 years to protect minority voters in polling locations.

Joint oversight hearing on "Personal Information Acquired by the Government from Information Resellers: Is There Need for Improvement"

On April 4, 2006, the Subcommittee on the Constitution held a joint oversight hearing with the Commercial and Administrative Law Subcommittee on "Personal Information Acquired by the Government from Information Resellers: Is There Need for Improvement." The hearing provided GAO the opportunity to present the results of its year long investigation into the privacy practices adhered to by the Federal government when utilizing information obtained through data brokers. The GAO report was issued in response to a request made by Chairman Sensenbrenner, together with Ranking Member Conyers, Mr. Chabot, and Mr. Nadler, in April 2005 that GAO investigate the Federal Government's involvement and reliance on data as it relates to fulfilling our Federal Government's top priorities, such as our Nation's law enforcement and antiterrorism efforts, and performing other critical domestic functions such as effectively distributing benefits. Testifying at the hearing was Ms. Linda D. Koontz, Director, Information Manage-

ment Issues, GAO; Ms. Maureen Cooney, Acting Chief Privacy Officer, U.S. Department of Homeland Security; Mr. Peter Swire, William O'Neill Professor of Law, Moritz College of Law, the Ohio State University, Visiting Senior Fellow, Center for American Progress; and Mr. Stuart Pratt, President and CEO, Consumer Data Industry Association.

Ms. Koontz testified, among other things, on GAO's findings on agency and reseller privacy policies and practices, which GAO had evaluated against the Fair Information Practices (FIPs), a set of widely accepted principles for protecting the privacy and security of personal information. Ms. Koontz testified that the FIPs are the basis of privacy laws in many countries and are the foundation of the Privacy Act and are not legally binding either on Federal agencies or resellers. Ms. Koontz testified that GAO found some inconsistencies among agencies. While agencies did take steps to address the privacy and security of the information acquired from resellers, their handling of this information did not always fully reflect the FIPs.

Ms. Cooney testified, among other things, on the steps taken by the Department of Homeland Security (DHS) to protect the privacy of personal information. Ms. Cooney testified that the primary oversight mechanism used by the DHS Privacy Office to ensure the protection of personal information is the privacy impact assessment (PIA). Ms. Cooney testified on the important role PIAs play in demonstrating the transparency of the Department's activities. Ms. Cooney testified that PIAs compel the consideration of privacy issues when implementing regulations or new programs, including the use of information obtained from commercial data brokers.

Professor Swire testified, among other things, that the Federal government is still learning how to best incorporate private databases into the activities of the Federal government. In particular, Mr. Swire testified that while DHS has set up a structure to protect the privacy of information acquired through commercial data brokers, there are large gaps in oversight throughout the executive branch, which use information acquired through commercial data brokers. Professor Swire recommended that a study be conducted by the National Academy of Sciences to look into how privacy and information sharing can coexist, especially as information becomes increasingly necessary to fight terrorism.

Mr. Pratt testified, among other things, on the concerns that the commercial data broker industry has with the GAO report. In particular, Mr. Pratt testified that the report does not adequately describe the value and effectiveness of the information provided by commercial data brokers to Federal agencies. Moreover, Mr. Pratt testified that the report does not adequately describe the current legal structure in place to regulate commercial data brokers to ensure that only accurate and needed information is obtained and used by the Federal government.

The information obtained during the April 4, 2006, hearing led Mr. Chabot, together with Mr. Nadler, Mr. Cannon, and Mr. Watt, to request that GAO conduct a follow-up investigation reviewing the effectiveness of the DHS privacy office in protecting privacy issues and whether it is fulfilling its statutory mandate. This re-

quest was made of GAO on May 25, 2006, with the report expected to be completed sometime in 2007.

Oversight hearing on "The Constitution and the Line Item Veto"

The Subcommittee on the Constitution conducted an oversight hearing on "The Constitution and the Line Item Veto" on April 27, 2006. The Subcommittee heard testimony from Representative Paul Ryan (WI–1), sponsor of H.R. 4890, the "Legislative Line Item Veto Act of 2006"; Representative Mark R. Kennedy (MN–6), sponsor of H.J. Res. 71, a constitutional amendment providing the president with a line item veto; Ms. Cristina Martin Firvida, Senior Counsel at the National Women's Law Center; and Mr. Charles J. Cooper, Partner, Coopers & Kirk.

The purpose of the hearing was to explore how a line item veto, whether statutory or a constitutional amendment, interacts with the constitutionally defined separation of powers.

Representative Paul Ryan testified that the amount of pork barrel spending by Congress has increased annually. He further testified that one way to address the issue is to give the President the power to rescind certain line items of spending through a line item veto. However, since the original Line Item Veto Act[6] was held unconstitutional by the United States Supreme Court in Clinton v. City of New York[7], Representative Ryan introduced a bill that would give the president enhanced rescission authority, as opposed to a true line item veto. Representative Ryan testified that his bill would give the President the ability to put a temporary hold on spending that he found wasteful and to send a rescission request for that spending to Congress, which Congress would then have to act on in an expedited fashion. He further testified that he felt that H.R. 4890 was constitutional because any such rescission request would have to be passed by both Houses of Congress and signed by the president, pursuant to the Presentment Clause. However, he further testified that he would be willing to work with Members to address any separation of powers or other constitutional concerns that they may have with the bill.

Representative Kennedy testified that he was supportive of Representative Ryan's efforts to address Congress' profligate spending through a legislative line item veto. However, he testified that his measure, H.J. Res. 71, was certain to be constitutional because it would be a constitutional amendment. Further, his amendment would allow the President to cancel any item of direct spending, subject to Congress' ability to override such a veto. He testified that this approach would be an even stronger deterrent on Congress' wasteful spending.

Ms. Firvida testified that she had serious constitutional concerns regarding H.R. 4890. While she acknowledged that H.R. 4890 may have addressed the issues raised by the Supreme Court in Clinton, she stated that the bill would potentially shift the balance of powers between the legislative and executive branches in a way that the Supreme Court might find problematic. Specifically, she raised the possibility that, as introduced, nothing in H.R. 4890 prevented

[6] Pub. L. 104–130 (1996).
[7] 524 U.S. 417, 439 (1998).

the President from filing sequential sequestrations of items of spending in an bill, thereby allowing a President to subvert Congress' intent by not spending funds even if Congress had specifically rejected the president's rescission request. She further testified that line item vetoes are not effective tools against wasteful spending because they apply only to a small portion of the federal budget.

Mr. Cooper testified that as the lead counsel in the constitutional challenge on Line Item Veto Act, it was his view that H.R. 4890 was constitutional. Specifically, he thought that the bill addressed the presentment clause challenges that proved problematic with the earlier bill. He further testified that the concerns raised by Ms. Firvida could be addressed legislatively, and that any presidential abuse of the legislative line item veto could be attacked in a court on as case-by-case basis as opposed to holding the whole statute unconstitutional.

The House of Representatives passed H.R. 4890 by a vote of 247 to 172 on June 22, 2006.

Oversight hearing on "The Implementation of the Crime Victims" Rights Provisions of the Justice for All Act"

On June 21, 2006, the Subcommittee on the Constitution conducted an oversight hearing on the Implementation of the Crime Victims Rights Provisions of the Justice for All Act. The following witnesses appeared at the hearing: Mrs. Debra Culberson, Victim, Blanchester, Ohio; Ms. Mary Lou Leary, Executive Director of the National Center for Victims of Crime; Professor Julie Goldscheid, Associate Professor at City University of New York Law School; and Ms. Margaret Garvin, Director of Programs for the National Crime Victim Law Institute.

The purpose of the hearing was to explore how the crime victims's rights provisions of the Justice for All Act,[8] and specifically the provisions of the Crime Victims Rights Act (CVRA), are being implemented by the Department of Justice and the courts. The hearing explored the effectiveness of the enforcement provisions, specifically the writ of mandamus, in guaranteeing crime victims' rights. The hearing also explored whether there have been any difficulties in enforcing any of the enumerated rights in the bill. Finally, the hearing addressed the implementation of the new regulations that the Department of Justice put in place to ensure compliance with the CVRA.

Mrs. Culberson testified that her daughter, Carrie, was murdered by an ex-boyfriend, and that her body was never recovered. Mrs. Culberson spoke of the difficulty of not being able to bury her daughter and wondering whether her daughter's remains are located on a shelf in a coroner's office. She testified that she had be working with Representative Chabot to create or enhance programs to identify unidentified human remains, including a provision in the Justice for All Act.

Ms. Leary testified that the CVRA greatly enhanced the role of victims in the federal criminal justice system. According to Ms. Leary, one member of the National Center for Victims of Crime

[8] Pub. L. 108–711 (2004).

told her that "in her more than 30 years of experience in law enforcement and victim services, 'the Justice for All Act is . . . the best piece of legislation to help crime victims.'" She testified that challenges still remain for victims and that Congress should work to ensure that the crime victims notification system works in a timely manner, and that Congress should appropriate all funds that it has authorized in the Justice for All Act and other victims rights legislation.

Professor Goldscheid testified that the Justice for All Act was an important piece of victims rights legislation. However, she urged Congress not to neglect other victims provisions, such as the Victims of Crime Act and the Violence Against Women Act. Like Ms. Leary, she urged Congress to fully appropriate the funds authorized under the Justice for All Act, the Victims of Crime Act, and the Violence Against Women Act.

Ms. Garvin testified that the Crime Victims Rights Act gave victims, for the first time, an enforceable set of rights in federal court. Ms. Garvin said, however, that some judges have been reticent to enforce the provisions of the Act. Specifically, she referred to a judge in the Northern District of Alabama who had referred to the Act as the "new, mushy 'feel good' statute."[9] On the other hand, the United States Court of Appeals for the Ninth Circuit had recently held that victims have an affirmative right to speak in open court at sentencing.[10] She testified that the Ninth Circuit had also recently adopted new rules to ensure that victims received expedited appellate consideration of their claims as contemplated under the Act.

Oversight hearing on "The Americans with Disabilities Act: Sixteen Years Later"

On September 13, 2006, the Subcommittee on the Constitution held an oversight hearing that examined the progress made by disabled Americans under the Americans with Disabilities Act of 2006 over the last sixteen years, the impact that certain Supreme Court decisions has had on the interpretation of the ADA's requirements, the enforcement record of the Department of Justice and the Equal Employment Opportunity Commission (EEOC), the unintended impact that the ADA has had on businesses, and other evolving issues such as internet accessibility requirements. Testifying at the hearing was the Honorable Tony Coelho, former Member of the House of Representatives; the Honorable Naomi C. Earp, Chair, Equal Employment Opportunity Commission; Mr. Harry Horner, small business owner, Julian, California; and Mr. Robert. L. Burgdorf, ADA legal advocate. In addition to the testimony presented during the hearing, written follow-up questions were submitted to each of the witnesses on September 21, 2006.

Mr. Coelho testified, among other things, on the purpose of the ADA, the progress made by disabled Americans under the ADA over the last 16 years, as well as the limitations that have been placed on the ADA's reach by the Supreme Court.

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[9] *United States* v. *Holland*, 380 F.Supp.2d 1264, 1278 (N.D. Ala. 2005).

[10] *Kenna* v. *United States District Court for the Central District of California*, 435 F.3d 1011 (9th Cir. 2006).

Ms. Earp testified, among other things, on the enforcement efforts of the EEOC, the guidance provided to private employers, and technical assistance issued to both affected individuals and covered entities regarding the ADA's protections and requirements.

Mr. Horner testified, among other things, on his experiences as a small business owner subject to the ADA's requirements. In particular, Mr. Horner described to the Committee the uncertainty many businesses face with respect to what is required under the ADA and the lack of guidance provided.

Mr. Burgdorf testified, among other things, on the impact that the ADA has had on disabled citizens, the impact that certain Supreme Court decisions have had on the ADA, and amendments needed to the ADA to restore it to its full strength.

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