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4 MARKUP OF H. RES. 646, RESOLUTION OF INQUIRY DIRECTING THE
5 ATTORNEY GENERAL TO TURN OVER EMAILS RELATED TO LOIS LERNER;
6 AND H.R. 744, THE STOP IDENTITY THEFT ACT OF 2013
7 Wednesday, July 16, 2014
8 House of Representatives
9 Committee on the Judiciary
10 Washington, D.C.

11 The committee met, pursuant to call, at 10:35 a.m., in
12 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
13 [chairman of the committee] presiding.

14 Present: Representatives Goodlatte, Sensenbrenner,
15 Coble, Smith of Texas, Chabot, Issa, Forbes, King, Franks,
16 Gohmert, Jordan, Chaffetz, Marino, Gowdy, Labrador,
17 Farenthold, Holding, Collins, Smith of Missouri, Conyers,

18 Scott, Lofgren, Jackson Lee, Cohen, Johnson, Pierluisi, Chu,
19 Deutch, Richmond, DelBene, Garcia, and Cicilline.

20 Staff Present: Shelley Husband, Majority Staff
21 Director; Branden Ritchie, Majority Deputy Staff
22 Director/Chief Counsel; Allison Halataei, Majority
23 Parliamentarian; Kelsey Deterding, Clerk; Caroline Lynch,
24 Majority Counsel; Robert Parmiter, Majority Counsel; Perry
25 Apelbaum, Minority Staff Director; Danielle Brown, Minority
26 Parliamentarian; Joe Graupensperger, Minority Counsel;
27 Vanessa Chen, Minority Counsel; and Aaron Hiller, Minority
28 Counsel.

29

30 Chairman Goodlatte. The Judiciary Committee will come
31 to order. And without objection, the chair is authorized to
32 declare a recess at any time.

33 Pursuant to notice, I now call up House Resolution 646
34 for purposes of markup and move that the committee report the
35 resolution without recommendation to the House. The clerk
36 will report the resolution.

37 Ms. Deterding. H. Res. 646, directing the Attorney
38 General to transmit to the House of Representatives --

39 Chairman Goodlatte. Without objection, the resolution
40 is considered as read and open for amendment at any point.

41 [The information follows:]

42

43 Chairman Goodlatte. And I will begin by recognizing
44 myself for an opening statement.

45 On May 10, 2013, the Internal Revenue Service admitted
46 to inappropriately targeting conservative groups for extra
47 scrutiny in connection with their application for tax exempt
48 status. President Obama denounced this behavior as
49 outrageous and unacceptable and pledged that the
50 administration would find out exactly what happened and would
51 make sure wrongdoers were held fully accountable.

52 In testimony before this committee on May 15, 2013,
53 Attorney General Holder promised me and the members of this
54 committee that the Justice Department would conduct a
55 dispassionate investigation into the IRS's admitted targeting
56 of conservative groups. He said this will not be about
57 parties. This will not be about ideological persuasions, and
58 anyone who has broken the law will be held accountable.

59 Emails between Lois Lerner and the Justice Department's
60 Election Crimes Branch show that the IRS in October 2010 sent
61 1.1 million pages of nonprofit tax return data, including
62 confidential taxpayer information, to the FBI potentially in
63 violation of Federal law. In April this year, emails were
64 revealed showing that Ms. Lerner was in contact with the

65 Justice Department in May 2103 around the same time Attorney
66 General Holder was promising this committee that he would
67 investigate about whether tax exempt groups could be
68 criminally prosecuted for lying about political activity.

69 For example, in an email dated May 8, 2013, Ms. Lerner
70 recounted a phone conversation she had with the head of the
71 Election Crimes Branch who wanted to know who at IRS the DOJ
72 folks could talk to about Senator Whitehouse's idea that DOJ
73 could piece together false statement cases about applicants
74 who lied on their tax forms. In response to that email, the
75 IRS Commissioner's former Chief of Staff -- there are a lot
76 "formers" here because they have all resigned. The former
77 Chief of Staff said, "I think we should do it."

78 The emails clearly show that Ms. Lerner was in contact
79 with the Justice Department about prosecuting the same
80 organizations the IRS had been targeting for overtly
81 political reasons and under pressure from at least one
82 Democratic Senator. The emails show that, despite the
83 Attorney General's pledge to conduct a dispassionate
84 investigation, the Obama-Holder Justice Department may have
85 been complicit in the targeting of conservative groups and is
86 clearly suffering from a conflict of interest in this matter.

87 It is for that later reason that the House passed a
88 resolution last month calling upon the Attorney General to
89 appoint a special counsel to investigate this matter. On
90 June 27th, Ways and Means Chairman Dave Camp and I sent a
91 follow-up letter to Attorney General Holder, demanding that
92 he appoint a special counsel. So far, we have received no
93 response.

94 The stonewalling from the Obama administration continues
95 with respect to the Lerner emails. On May 8, 2014, more than
96 a year after the investigation began, the IRS finally agreed
97 to turn over to the Ways and Means Committee all emails
98 belonging to Ms. Lerner.

99 However, on June 13, 2014, the IRS announced it had lost
100 an untold number of emails belonging to Ms. Lerner. The lost
101 emails covered the period between January 1, 2009, and April
102 2011, a period when the IRS targeting of conservative group
103 was occurring regularly.

104 While congressional investigators are in possession of
105 some Lerner emails from this time period, those only include
106 emails written to or from other IRS employees. Any emails to
107 or from Ms. Lerner from people outside the IRS, including the
108 Justice Department, are allegedly lost.

109 The time period of this revelation could not be more
110 convenient for those who are seeking to cover up this
111 scandal. In fact, it doesn't even pass the laugh test. The
112 Obama administration would have the American people believe
113 that emails between a central figure in the IRS targeting
114 scandal and other executive agencies, including the Executive
115 Office of the President, have simply disappeared into thin
116 air.

117 Congress cannot complete a full and fair investigation
118 of the matter because a key piece of potential evidence,
119 which may establish a link between the IRS and other senior
120 Obama administration officials, has been "recycled." How
121 convenient.

122 Unfortunately, it is all too typical. The Obama
123 administration has repeatedly demonstrated its unwillingness
124 to work with congressional investigators to ensure we all
125 know the full story behind the IRS's targeting of
126 conservative groups. Their attempt to pull the wool over the
127 American people's eyes speaks volumes.

128 Despite all of this, on June 11, 2014, FBI Director
129 James Comey testified that the FBI is currently conducting "a
130 very active investigation" of the IRS targeting matter. When

131 I asked him to explain how that view squares with the
132 President's infamous quote "not even a smidgeon of
133 corruption" comment, the Director said, "I don't care about
134 anyone else's characterization of it. There is an
135 investigation because there was a reasonable basis to believe
136 that crimes had been committed. So we are conducting an
137 investigation."

138 In addition, we know that our colleagues on the Ways and
139 Means and Oversight Committees are conducting their own very
140 active investigations into the IRS targeting of conservative
141 groups. It is critical that all of these investigations
142 continue in order to uncover the truth and hold the
143 wrongdoers accountable.

144 The committee has before it a privileged resolution of
145 inquiry, H. Res. 646, which directs the Attorney General to
146 produce to Congress all email between DOJ personnel and Lois
147 Lerner for the period between January 2009 and April 2011.

148 In light of Director Comey's testimony before this
149 committee about the FBI's continuing investigation, as well
150 as Congress' ongoing investigations into this matter, I
151 believe it is prudent that the committee allow those
152 investigations to proceed in a manner that does not diminish

153 their legitimacy. I, therefore, urge my colleagues to join
154 me in reporting this resolution without recommendation.

155 At this time, it is my pleasure to recognize the ranking
156 member of the committee, the gentleman from Michigan, Mr.
157 Conyers, for his opening statement.

158 Mr. Conyers. Thank you, Chairman Goodlatte.

159 Members of the House Judiciary Committee, Resolution 646
160 directs the administration to transmit to the House of
161 Representatives copies of any emails in the possession of the
162 Department of Justice that were transmitted to or from the
163 email accounts of former Internal Revenue Service Director
164 Lois Lerner between January 2009 and April 2011.

165 This measure is clearly unnecessary and would have no
166 effect at all on the administration's obligation to produce
167 documents to Congress. I urge my colleagues to dispose of it
168 accordingly.

169 On May 14th of 2013, Treasury Inspector General reported
170 that the IRS had used inappropriate criteria to screen
171 certain applications for tax exempt status. Since then, the
172 House Committee on Oversight and Government Reform has been
173 engaged in a vigorous investigation of the matter.

174 That committee has conducted at least 39 transcribed

175 interviews with IRS and Treasury Department officials and
176 received over half a million documents from the same. The
177 resolution before us today adds nothing to that effort. It
178 is based on a false premise and would completely lack the
179 force of law.

180 There is no compelling reason to use today's meeting of
181 the House Judiciary Committee as yet another forum to sling
182 insults at Mrs. Lerner. I would simply observe that there is
183 no evidence whatsoever that the missing emails in question
184 were lost deliberately, only innuendo. None of it
185 substantiated, much of it for apparent political gain. We
186 can, and should, do better than that.

187 The House Judiciary Committee, over the course of its
188 long history of determined, but deliberate oversight of the
189 executive branch, has done better than that under the
190 leadership of chairmen from both parties. So I urge, in
191 closing, my colleagues to act in a manner consistent with
192 that reputation and to dispose of this resolution
193 immediately.

194 And so, Mr. Chairman, I yield back.

195 Chairman Goodlatte. Thank you, Mr. Conyers.

196 Are there any amendments to House Resolution 646?

197 Ms. Jackson Lee. Mr. Chairman?

198 Chairman Goodlatte. For what purpose does the
199 gentlewoman from Texas seek recognition?

200 Ms. Jackson Lee. I would like to strike the last word.

201 Chairman Goodlatte. The gentlewoman is recognized for 5
202 minutes.

203 Ms. Jackson Lee. Mr. Chairman, I will join with my
204 colleagues to recognize this legislation for the good
205 intentions that it has, but I do want to comment on a long
206 litany of issues that this committee should, hopefully, have
207 the opportunity to address. Mr. Chairman, I have said this
208 often -- issues dealing with immigration reform, voting
209 rights.

210 And as I have reviewed some of the documentation by some
211 of our very able leaders on other committees, next-door
212 committees -- when I say next-door committee, the Oversight
213 Committee -- there have been major documents and review and
214 hearings on this question of emails. And it has shown no
215 evidence of any political motivation in the IRS screening of
216 tax exempt applicants, and I certainly have seen no evidence
217 of attributing any untoward behavior.

218 If this helps us to move forward, I hope that that is

219 the case. That is what the American people would like to
220 see, our taxpayers spent effectively and constructively on
221 their behalf. But I hope that our committee will also have
222 the opportunity to look at other issues that we can bring
223 before -- even before the August work recess or even before
224 and during October.

225 So I rise with great concern on this legislation, and I
226 would indicate that emails of this vastness go way before the
227 issue in question. And I know that we should be diligent and
228 studious regarding using resources to gather emails from Ms.
229 Lerner and others for the American people. They want action,
230 and they also, I think, believe that when something has been
231 reviewed, and reviewed and assessed, that we are in good
232 stead and we have done our duty.

233 With that, I yield back.

234 Ms. Jackson Lee. The chair thanks the gentlewoman.

235 Are there any amendments to House Resolution 646?

236 [No response.]

237 Chairman Goodlatte. Hearing none and a reporting quorum
238 being present, the question is on the motion to report the
239 resolution, House Resolution 646, without recommendation to
240 the House.

241 Those in favor will say aye.

242 Those opposed, no.

243 In the opinion of the chair, the ayes have it, and the
244 resolution is ordered reported without recommendation.

245 Pursuant to notice, I now call up H.R. 744 for purposes
246 of markup and move that the committee report the bill
247 favorably to the House. The clerk will report the bill.

248 Ms. Deterding. H.R. 744, to provide effective criminal
249 prosecutions for certain identity thefts and for other
250 purposes.

251 Chairman Goodlatte. Without objection, the bill is
252 considered as read and open for amendment at any point.

253 [The information follows:]

254

255 Chairman Goodlatte. And I will begin by recognizing
256 myself for an opening statement.

257 Tax return identity theft is a rapidly growing crime in
258 the United States. This latest form of identity theft is
259 committed when an individual uses the Social Security number
260 and other personal identifying information of another
261 individual to file a false tax return with the IRS or
262 fraudulently claim someone as a dependent in order to receive
263 a fraudulent tax refund.

264 Criminals file a fraudulent return before the taxpayer
265 files a legitimate return. Often the fraud is not detected
266 until an individual files a tax return that is rejected by
267 the IRS because someone else has already falsely filed the
268 claim and claimed their return.

269 The criminals then receive the refund, sometimes by
270 check, but often through a convenient, but hard to trace
271 prepaid debit card. In one instance, identity thieves
272 established a fake job placement company and used the
273 information they learned from 300 victims to obtain more than
274 \$450,000 in returns from the IRS.

275 The IRS detected 580,000 fake returns among the 2013
276 returns alone for which the IRS would have paid over \$3.6

277 billion in fraudulent claims had the claims not been
278 identified as fraudulent. In fiscal year 2013, the IRS
279 initiated nearly 1,500 identity theft-related criminal
280 investigations, an increase of 66 percent over investigations
281 initiated in fiscal year 2012.

282 Tax fraud is a very real problem, and Congress should do
283 all it can to protect law-abiding citizens from this costly
284 crime. H.R. 744, the STOP Identity Theft Act of 2013, is
285 bipartisan legislation sponsored by Congresswoman Debbie
286 Wasserman Schultz and former Judiciary Committee chairman
287 Lamar Smith to strengthen criminal penalties for tax return
288 identity theft.

289 H.R. 744 increases the maximum penalty for Federal
290 identity theft offenses committed during and in relation to
291 felony tax fraud and clarifies that in addition to
292 individuals, businesses and organizations can be considered
293 victims of Federal identity theft offenses. H.R. 744
294 encourages the Justice Department to dedicate additional
295 resources, including the use of investigative task forces, to
296 address tax return identity theft and coordinate
297 investigations with State and local law enforcement agencies.

298 Similar legislation passed this committee and the full

299 House by voice vote in the last Congress. I commend the
300 sponsors, Ms. Wasserman Schultz and former Chairman Smith,
301 for their dedication to this important issue, and I urge my
302 colleagues to join me in reporting H.R. 744 favorably from
303 the committee.

304 I now recognize our ranking member, the gentleman from
305 Michigan, Mr. Conyers, for his opening statement.

306 Mr. Conyers. Thank you, Chairman Goodlatte.

307 Members of the committee, this is a bill to address the
308 problem of identity theft used to perpetrate a specific type
309 of fraud against the Government and against individual
310 citizens. As we examine this bill, there are several
311 prominent issues to keep in mind.

312 We must recognize that identity fraud is a costly
313 problem that affects many Americans. For example, about 8.1
314 million Americans in 2010 were reportedly victims of identity
315 fraud. The cost of this fraud was an astounding \$37 billion.

316 For one specific type of identity theft, tax return
317 fraud through identity theft, the IRS estimates that it paid
318 as much as \$5.2 billion in fraudulent refunds in 2010. This
319 type of fraud places a heavy burden on the individual victims
320 who must undertake efforts to work with the IRS to correct

321 the record and obtain refunds they are owed but which were
322 stolen by the identity thieves.

323 H.R. 744, the measure before us now, is designed to
324 address this serious crime. The bill encourages the
325 Department of Justice to undertake a series of meaningful
326 efforts that requires DOJ to pursue more prosecutions of tax
327 return identity theft and expands the use of the Federal
328 identity theft statute to cases of tax fraud. In addition,
329 the bill requires the department to report on the incidence
330 of tax return identity theft and enforcement efforts.

331 These provisions of the bill reflect the increased need
332 to focus additional resources to fight this growing problem.
333 However, I must raise one serious concern with the bill.
334 H.R. 744 would expand the scope of both the identity theft
335 statute and the aggravated identity theft statute in order to
336 protect organizations. This creates an unfortunate and
337 serious problem with mandatory minimum sentencing.

338 Specifically, the aggravated identity theft statute
339 provides mandatory minimum sentences, and more defendants
340 would be subjected to mandatory minimum sentences by
341 extending the coverage of the statute to organizations. Now
342 as we have discussed in this committee many times, mandatory

343 minimum sentencing laws require automatic prison terms for
344 those convicted of certain crimes without allowing the judge
345 to take the facts and circumstances of the crime or the
346 defendant in the particular case into account.

347 While those who commit crimes facilitated by identity
348 theft should be appropriately punished, expanding mandatory
349 minimum sentencing is not the correct course of action. And
350 I look forward to the amendment to be offered by our
351 colleague from Virginia and ranking member of the Crime
352 Subcommittee, Bobby Scott, to ensure the bill does not expand
353 mandatory minimums.

354 The amendment will still allow the offense of aggravated
355 identity theft perpetrated against organizations to be
356 punished at a higher level but will leave the sentencing
357 determination in the hands of the judge. With this change,
358 we will correct this flaw, and I urge my colleagues to
359 carefully consider the suggestion of supporting the Scott
360 amendment.

361 And I look forward to discussing these issues so that we
362 may take appropriate steps to deal with the growing problem
363 of tax return identity theft.

364 I thank the chairman, and I yield back the balance of my

365 time.

366 Ms. Jackson Lee. Would the gentleman yield?

367 Mr. Conyers. Oh, wait a minute. Could I yield to
368 Sheila Jackson Lee if I have any left?

369 Chairman Goodlatte. By all means.

370 Mr. Conyers. Thank you. I yield to you.

371 Ms. Jackson Lee. Thank you. I associate myself with
372 the gentleman's remarks.

373 I have another hearing that I am presiding over as the
374 ranking member, and I would also ask unanimous consent to
375 submit into the record "No Evidence of White House
376 Involvement on Political Motivation on IRS Screening of Taxes
377 and Applicants," May 6, 2014. I ask unanimous consent.

378 Chairman Goodlatte. The -- we will at the conclusion of
379 this bill, because I neglected, give members 2 additional
380 days to submit additional documentation to the record. So,
381 on that basis, without objection, your request will be
382 granted.

383 [The information follows:]

384

385 Ms. Jackson Lee. You are very kind, Mr. Chairman.

386 And I thank the ranking member for yielding.

387 Thank you very much.

388 Chairman Goodlatte. Thank you.

389 And now I would like to recognize the sponsor of the
390 legislation, former chairman of the committee, the gentleman
391 from Texas, Mr. Smith, for his opening statement.

392 Mr. Smith of Texas. Thank you, Mr. Chairman.

393 And also thank you for bringing up this bill today.

394 H.R. 744, the STOP Identity Theft Act, is a bicameral,
395 bipartisan solution to curb the rapidly increasing problem of
396 tax return identity theft. I am an original cosponsor of
397 this bill with Congresswoman Debbie Wasserman Schultz, a
398 former member of this committee.

399 The STOP Identity Theft Act increases criminal penalties
400 for tax return ID theft. The bill also broadens the
401 definition of identity theft victims to include businesses
402 and nonprofit organizations.

403 In recent years, tax thieves have received billions of
404 dollars in fraudulent tax refunds. These criminals have
405 become proficient in stealing identity information and Social
406 Security numbers to file false tax returns with the IRS,

407 often before the legitimate taxpayer files a return.

408 It is only after a tax return is rejected that the
409 victim learns that their identity has been stolen and their
410 tax return wrongfully pocketed. H.R. 744 is crucial to deter
411 the number of individuals and families who are victimized by
412 tax ID thieves. Tax theft lost -- excuse me, identity theft
413 costs victims in both money and time spent to restore their
414 identities.

415 The committee previously adopted this bill by voice vote
416 in 2012, as did the full House. And this past February, the
417 Senate Judiciary Committee passed a companion bill to the
418 STOP Identity Theft Act by Senators Klobuchar and Sessions.

419 So I urge my colleagues again to join me in support of
420 H.R. 744 to protect American taxpayers.

421 Mr. Chairman, thank you again for marking up this
422 legislation, and I will yield back my time.

423 Chairman Goodlatte. The chair thanks the gentleman and
424 is now pleased to recognize the ranking member of the
425 Subcommittee on Crime, Terrorism, Homeland Security, and
426 Investigations, the gentleman from Virginia, Mr. Scott, for
427 his opening statement.

428 Mr. Scott. Thank you, Mr. Chairman.

429 Mr. Chairman, tax return identity theft is a serious and
430 growing problem. Last Congress, the Crime Subcommittee held
431 a hearing in which we learned how individuals are victimized
432 by those who file false returns using their names and Social
433 Security numbers of the victims.

434 When someone has a false return filed in their name,
435 they often have to engage in an arduous process of setting
436 the record straight with the IRS and suffering long delays
437 before obtaining their refund that they may actually be due.

438 In other instances, perpetrators sometimes benefit by
439 falsely claiming that a deceased child of another is a
440 dependent on their own forms. The actual parents of the
441 deceased children are then subjected to additional grief and
442 burden of clearing things up with the IRS.

443 While the problem is real, I must question the need for
444 the bill. Federal prosecutors already bring charges against
445 perpetrators of this type of crime using various statutes,
446 including the mail and wire fraud statutes and sometimes even
447 the statutes we are amending today.

448 And so, Mr. Chairman, there are already statutory
449 prohibitions against fraud that cover all of the acts
450 addressed in this bill. The question is whether we need a

451 new provision of fraud against the IRS added to the criminal
452 code.

453 With the bipartisan focus on overcriminalization, I am
454 particularly concerned about enacting duplicative criminal
455 provisions. That is why I believe that Section 2 of the bill
456 gets to the heart of the matter and should be the real focus
457 of the bill. Section 2 encourages the Department of Justice,
458 using task forces, to bring its resources to bear on the
459 problem of tax return identity theft.

460 Mr. Chairman, subsequent to the hearing we conducted in
461 the last Congress, this committee approved a bill that is
462 very similar to the one we are considering today. That bill
463 raised serious concerns related to mandatory minimum
464 sentencing.

465 The prior bill proposed to add tax return fraud as a
466 predicate offense under the aggravated identity theft
467 statute, when that statute includes mandatory minimum
468 sentences. H.R. 744, the current version of the bill, avoids
469 that particular mandatory minimum sentencing concern by
470 instead amending the portion of the identity theft statute
471 that does not have a mandatory minimum provision.

472 But unfortunately, a new part of the bill, in fact, does

473 trigger new mandatory minimums. The current bill amends both
474 the basic identity theft statute and the aggravated identity
475 theft statute so that organizations, not just individuals,
476 may be covered as victims.

477 Expanding the scope of victims under the aggravated
478 identity theft statute thus also expands the scope of
479 mandatory minimum penalties under that particular statute.

480 As we heard at our recent hearing on
481 overcriminalization, we heard how wasteful and
482 counterproductive mandatory minimums are. And the first step
483 in eliminating mandatory minimums is to follow the rule of
484 holes. That is, when you find yourself in a hole, the first
485 thing you should do is stop digging.

486 If we expect to eliminate mandatory minimums, the first
487 step is to stop passing new ones. Therefore, I will offer an
488 amendment to address this problem by preventing the expansion
489 of the scope for mandatory minimums under the aggravated
490 identity theft statute.

491 With this change, the goals of this provision could be
492 accomplished, even give judges wider latitude than they now
493 have. I look forward to offering my amendment and the
494 discussion of the bill, and I yield back.

495 Chairman Goodlatte. The chair thanks the gentleman.
496 Without objection, all other opening statements will be
497 made a part of the record.
498 [The information follows:]
499

500 Chairman Goodlatte. And the bill is open for
501 amendments. Are there any amendments to H.R. 744? For what
502 purpose does the gentleman from Texas seek recognition?

503 Mr. Smith of Texas. Mr. Chairman, I have an amendment
504 at the desk.

505 Chairman Goodlatte. The clerk will report the
506 amendment.

507 Ms. Deterding. Amendment to H.R. 744, offered by Mr.
508 Smith of Texas. Page 3, beginning on line 20 --

509 Chairman Goodlatte. Without objection, the amendment is
510 considered as read.

511 [The amendment of Mr. Smith of Texas follows:]

512

513 Chairman Goodlatte. And the gentleman is recognized for
514 5 minutes on his amendment.

515 Mr. Smith of Texas. Thank you, Mr. Chairman.

516 This amendment clarifies the reporting requirement in
517 Section 5 of the bill. It requires the Department of Justice
518 to report to Congress on tax return identity theft trends,
519 recommendations for additional tools to combat tax identity
520 theft, and the implementation of 2010 inspector general
521 recommendations to deter identity theft.

522 The amendment moves this reporting from a general
523 Government-wide notification to the White House Office of
524 Management and Budget to a one-time targeted report to the
525 House and Senate Judiciary Committees. This approach enables
526 the authorizing committees to better conduct effective
527 oversight of tax identity theft prosecution.

528 So I urge my colleagues to adopt this amendment.

529 Chairman Goodlatte. Would the gentleman yield?

530 Mr. Smith of Texas. And I will yield to the chairman of
531 the committee.

532 Chairman Goodlatte. At your behest, I will support the
533 gentleman's amendment, and I hope the other members of the
534 committee will as well.

535 Mr. Smith of Texas. Thank you, Mr. Chairman.

536 Chairman Goodlatte. For what purpose does the gentleman
537 from Michigan seek recognition?

538 Mr. Conyers. Strike the requisite number of words.

539 Chairman Goodlatte. The gentleman is recognized for 5
540 minutes.

541 Mr. Conyers. I, too, support the Smith amendment. I
542 think it streamlines the requirement in Section 5. It is a
543 good amendment to ensure that the Department of Justice
544 reports to Congress, and I urge its support.

545 And I yield back.

546 Chairman Goodlatte. For what purpose does the gentleman
547 from Virginia seek recognition?

548 Mr. Scott. Move to strike the last word.

549 Chairman Goodlatte. The gentleman is recognized for 5
550 minutes.

551 Mr. Scott. Mr. Chairman, I also support this amendment.
552 The amendment streamlines the requirement in Section 5 that
553 the Department of Justice report -- make this report. More
554 research and a bona fide analysis is always helpful.

555 And so, I support the amendment. In fact, it would have
556 actually been helpful to get this report before we considered

557 the bill. But since that is not possible, we will get it
558 after we consider the bill.

559 I yield back.

560 Chairman Goodlatte. The chair thanks the gentleman.

561 The question occurs on the amendment offered by the
562 gentleman from Texas, Mr. Smith.

563 All those in favor, respond by saying aye.

564 Those opposed, no.

565 In the opinion of the chair, the ayes have it, and the
566 amendment is agreed to.

567 Are there further amendments to H.R. 744? For what
568 purpose does the gentleman from Virginia seek recognition?

569 Mr. Scott. Mr. Chairman, I have an amendment at the
570 desk.

571 Chairman Goodlatte. The clerk will report the
572 amendment.

573 Ms. Deterding. Amendment to H.R. 744, offered by Mr.
574 Scott of Virginia. Page 3, beginning on line --

575 Chairman Goodlatte. Without objection, the amendment is
576 considered as read.

577 [The amendment of Mr. Scott follows:]

578

579 Chairman Goodlatte. And the gentleman is recognized for
580 5 minutes on his amendment.

581 Mr. Scott. Thank you, Mr. Chairman.

582 Mr. Chairman, while I have concerns about the overall
583 need for the bill, given that prosecutors already have the
584 ability to bring charges against those who engage in tax
585 return identity theft under present law, I will offer this
586 amendment to deal with a specific objection to a provision
587 that expands mandatory minimum sentencing.

588 Section 3 of H.R. 744 amends both the basic identity
589 theft statute and the aggravated identity theft statute so
590 that organizations, not just individuals, may be covered as
591 victims under these laws. Expanding the scope of victims
592 under the aggravated identity theft statute thus also expands
593 the scope of mandatory penalties under the statute Section
594 1028A of Title 18.

595 The penalty for aggravated identity theft is a mandatory
596 term of imprisonment of exactly 2 years or for an offense
597 related to terrorism exactly 5 years. In seeking to address
598 the problem, the bill unfortunately creates another one.
599 While I oppose the expansion of mandatory minimum sentences,
600 I do not oppose the imposition of appropriate sentences for

601 this offense, as warranted under the circumstances of each
602 case.

603 With respect to the proposed expansion of coverage of
604 aggravated identity theft statute to organizations, my
605 amendment would, therefore, allow the imposition of sentences
606 up to 4 and 10 years, which doubles the current mandatory
607 sentences of exactly 2 and 5 years.

608 As a result, judges would have the flexibility to impose
609 even greater sentences when warranted. But they would not be
610 required to impose the mandatory sentences when it is not
611 warranted.

612 My amendment reflects sound sentencing policy.
613 Mandatory minimums have been studied extensively, and the
614 Judicial Council and others have frequently reminded us that
615 mandatory minimums have been found to distort rational
616 sentencing patterns, to discriminate against minorities, to
617 waste the taxpayers' money, and to often require judges to
618 impose sentences that violate common sense.

619 Mr. Chairman, the expansion of new mandatory minimum
620 sentences in the bill is, therefore, problematic. When we
621 hear that mandatory minimums are proposed, we hear that this
622 is not a new mandatory minimum, it is just adding a new crime

623 to a statute that already has a mandatory minimum or it is
624 just one more. But that is how all the mandatory minimums
625 got in the code, one at a time, each part of an otherwise
626 worthy bill.

627 The only way to stop -- the only way to eliminate
628 mandatory minimums is to first stop passing new ones. That
629 is what my amendment would do. And I would, therefore, urge
630 the committee to adopt the amendment.

631 Chairman Goodlatte. The chair thanks the gentleman.

632 For what purpose does the gentleman from Texas seek
633 recognition?

634 Mr. Smith of Texas. Mr. Chairman, I oppose the
635 amendment.

636 Chairman Goodlatte. The gentleman is recognized for 5
637 minutes.

638 Mr. Smith of Texas. Thank you, Mr. Chairman.

639 This amendment assigns different penalties for
640 aggravated identity theft committed against businesses and
641 not-for-profit organizations than currently exist for the
642 same offense committed against an individual victim. Section
643 3 of H.R. 744 makes a technical clarification to the identity
644 theft and aggravated identity theft statutes to ensure that

645 these statutes apply to identity thefts committed against
646 organizations.

647 Not-for-profit organizations, and businesses are not
648 immune to identity theft schemes. Nor should they be immune
649 from the protections afforded victims in our Federal criminal
650 law.

651 Aggravated identity thefts are those committed in
652 furtherance of specific enumerated felonies, and those who
653 are found guilty of aggravated identity theft should be held
654 accountable, as required by the law, regardless of whether
655 their victim was an individual or an organization.

656 So I oppose the amendment and urge my colleagues to
657 oppose it as well. Yield back the balance of my time.

658 Mr. Conyers. Mr. Chairman?

659 Chairman Goodlatte. For what purpose does the gentleman
660 from Michigan seek recognition?

661 Mr. Conyers. I rise as in support of the amendment.

662 Chairman Goodlatte. The gentleman is recognized for 5
663 minutes.

664 Mr. Conyers. Thank you.

665 Members of the committee, the amendment offered by my
666 colleague Bobby Scott deals with the problem that by

667 expanding the aggravated identity theft statute in this way,
668 the bill would, therefore, also expand application of its
669 mandatory sentences. And what he does is take a better
670 course by preventing this expansion of mandatory minimums and
671 instead providing for possible sentences of up to 4 or 10
672 years, which are even higher than the sentences in the
673 current statute, but whose imposition is appropriately left
674 to the judge's discretion.

675 This approach is better because, as we have discussed
676 before on the committee, the expansion of mandatory minimum
677 sentences is unjust and unwise. Studies of mandatory
678 minimums conclude without exception that they fail to reduce
679 crime, that they waste taxpayer money, and that they often
680 require the imposition of sentences that violate common
681 sense.

682 Mandatory minimum sentences contribute to our national
683 crisis of over-incarceration. Judges applying the sentencing
684 guidelines should set sentences appropriate for each case
685 depending on the unique facts of each case.

686 The committee's bipartisan task force on
687 overcriminalization is examining a range of issues related to
688 our criminal justice system, including penalties and

689 mandatory minimum sentences. So we should not expand
690 mandatory minimum sentences while the issue is still under
691 review.

692 And so, I urge my colleagues to vote in favor of the
693 Scott amendment, which is necessary to correct a flaw in the
694 bill. And I yield back the balance of my time.

695 Thank you.

696 Chairman Goodlatte. The chair thanks the gentleman.

697 The question occurs on the amendment offered by the
698 gentleman from Virginia.

699 All those in favor, respond by saying aye.

700 Those opposed, no.

701 In the opinion of the chair, the noes have it, and the
702 amendment is not agreed to.

703 For what purpose does the gentleman from Virginia seek
704 recognition? The gentleman requests a recorded vote, and the
705 clerk will call the roll.

706 Ms. Deterding. Mr. Goodlatte?

707 Chairman Goodlatte. No.

708 Ms. Deterding. Mr. Goodlatte votes no.

709 Mr. Sensenbrenner?

710 Mr. Sensenbrenner. No.

711 Ms. Deterding. Mr. Sensenbrenner votes no.
712 Mr. Coble?
713 Mr. Coble. No.
714 Ms. Deterding. Mr. Coble votes no.
715 Mr. Smith of Texas?
716 Mr. Smith of Texas. No.
717 Ms. Deterding. Mr. Smith of Texas votes no.
718 Mr. Chabot?
719 Mr. Chabot. No.
720 Ms. Deterding. Mr. Chabot votes no.
721 Mr. Bachus?
722 [No response.]
723 Ms. Deterding. Mr. Issa?
724 [No response.]
725 Ms. Deterding. Mr. Forbes?
726 [No response.]
727 Ms. Deterding. Mr. King?
728 Mr. King. No.
729 Ms. Deterding. Mr. King votes no.
730 Mr. Franks?
731 Mr. Franks. No.
732 Ms. Deterding. Mr. Franks votes no.

733 Mr. Gohmert?

734 Mr. Gohmert. No.

735 Ms. Deterding. Mr. Gohmert votes no.

736 Mr. Jordan?

737 Mr. Jordan. No.

738 Ms. Deterding. Mr. Jordan votes no.

739 Mr. Poe?

740 [No response.]

741 Ms. Deterding. Mr. Chaffetz?

742 Mr. Chaffetz. No.

743 Ms. Deterding. Mr. Chaffetz votes no.

744 Mr. Marino?

745 Mr. Marino. No.

746 Ms. Deterding. Mr. Marino votes no.

747 Mr. Gowdy?

748 Mr. Gowdy. No.

749 Ms. Deterding. Mr. Gowdy votes no.

750 Mr. Labrador?

751 Mr. Labrador. Aye.

752 Ms. Deterding. Mr. Labrador votes aye.

753 Mr. Farenthold?

754 [No response.]

755 Ms. Deterding. Mr. Holding?
756 [No response.]
757 Ms. Deterding. Mr. Collins?
758 Mr. Collins. No.
759 Ms. Deterding. Mr. Collins votes no.
760 Mr. DeSantis?
761 [No response.]
762 Ms. Deterding. Mr. Smith of Missouri? Mr. Smith of
763 Missouri?
764 Mr. Smith of Missouri. Yes.
765 Ms. Deterding. Mr. Smith of Missouri votes aye.
766 Mr. Conyers?
767 Mr. Conyers. Aye.
768 Ms. Deterding. Mr. Conyers votes aye.
769 Mr. Nadler?
770 [No response.]
771 Ms. Deterding. Mr. Scott?
772 Mr. Scott. Aye.
773 Ms. Deterding. Mr. Scott votes aye.
774 Ms. Lofgren?
775 Ms. Lofgren. Aye.
776 Ms. Deterding. Ms. Lofgren votes aye.

777 Ms. Jackson Lee?
778 [No response.]
779 Ms. Deterding. Mr. Cohen?
780 [No response.]
781 Ms. Deterding. Mr. Johnson?
782 [No response.]
783 Ms. Deterding. Mr. Pierluisi?
784 [No response.]
785 Ms. Deterding. Ms. Chu?
786 Ms. Chu. Aye.
787 Ms. Deterding. Ms. Chu votes aye.
788 Mr. Deutch?
789 Mr. Deutch. Aye.
790 Ms. Deterding. Mr. Deutch votes aye.
791 Mr. Gutierrez?
792 [No response.]
793 Ms. Deterding. Ms. Bass?
794 [No response.]
795 Ms. Deterding. Mr. Richmond?
796 Mr. Richmond. Aye.
797 Ms. Deterding. Mr. Richmond votes aye.
798 Ms. DelBene?

799 Ms. DelBene. Aye.

800 Ms. Deterding. Ms. DelBene votes aye.

801 Mr. Garcia?

802 [No response.]

803 Ms. Deterding. Mr. Jeffries?

804 [No response.]

805 Ms. Deterding. Mr. Cicilline?

806 Mr. Cicilline. Aye.

807 Ms. Deterding. Mr. Cicilline votes aye.

808 Chairman Goodlatte. The gentleman from Georgia?

809 Mr. Johnson. Aye.

810 Ms. Deterding. Mr. Johnson votes aye.

811 Chairman Goodlatte. The gentleman from Missouri?

812 Mr. Smith of Missouri. Mr. Chairman, how am I recorded?

813 Ms. Deterding. Mr. Smith votes aye.

814 Mr. Smith of Missouri. Would you make that a no?

815 Ms. Deterding. Mr. Smith of Missouri votes no.

816 Chairman Goodlatte. The gentleman from North Carolina?

817 Mr. Holding. No.

818 Ms. Deterding. Mr. Holding votes no.

819 Chairman Goodlatte. The gentleman from California?

820 Mr. Issa. I vote no.

821 Ms. Deterding. Mr. Issa votes no.

822 Chairman Goodlatte. Has every Member voted who wishes
823 to vote?

824 Chairman Goodlatte. The gentleman from Tennessee?

825 Mr. Cohen. No. Yes.

826 [Laughter.]

827 Ms. Deterding. Mr. Cohen votes aye.

828 Chairman Goodlatte. Whatever you say. Has every Member
829 voted who wishes to vote?

830 [No response.]

831 [Pause.]

832 Chairman Goodlatte. The gentleman from Puerto Rico?

833 Mr. Pierluisi. Aye.

834 Ms. Deterding. Mr. Pierluisi votes aye.

835 Chairman Goodlatte. The clerk will report.

836 Ms. Deterding. Mr. Chairman, 12 Members voted aye; 16
837 Members voted no.

838 Chairman Goodlatte. And the amendment is not agreed to.
839 Are there any other amendments?

840 [No response.]

841 Chairman Goodlatte. A reporting quorum being present,
842 the question is on the motion to report the bill, H.R. 744,

843 as amended, favorably to the House.

844 Those in favor will say aye.

845 Those opposed, no.

846 In the opinion of the chair, the ayes have it, and the
847 bill, as amended, is reported -- ordered reported favorably.
848 Members will have 2 days to submit views.

849 Without objection, the bill will be reported as a single
850 amendment in the nature of a substitute, incorporating all
851 adopted amendments, and staff is authorized to make
852 technical, conforming changes.

853 And without objection, Members will have 2 days to
854 submit views on H. Res. 646, as noted earlier.

855 This concludes our business today. I thank all the
856 Members for their participation, and the meeting is
857 adjourned.

858 [Whereupon, at 11:17 a.m., the committee was adjourned.]