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THE CONSUMER PROTECTION AND RECOVERY ACT:

RETURNING MONEY TO DEFRAUDED CONSUMERS

TUESDAY, APRIL 28, 2021

House of Representatives,

Subcommittee on Consumer Protection and Commerce,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 1:01 p.m., via Webex, Hon. Jan Schakowsky [chairwoman of the subcommittee] presiding.

Present: Representatives Schakowsky, Rush, Castor, Trahan, McNerney, Clarke, Cardenas, Dingell, Kelly, Soto, Rice, Craig, Fletcher, Pallone (ex officio), Bilirakis, Upton, Latta, Guthrie, Bucshon, Dunn, Pence, Lesko, and Armstrong.

Staff Present: Jeff Carroll, Staff Director; Lisa Goldman, Senior Counsel; Waverly Gordon, General Counsel; Daneil Greene, Professional Staff Member; Tiffany Guarascio, Deputy Staff Director; Perry Hamilton, Deputy Chief Clerk; Alex Hoehn-Saric, Chief

Counsel, Communications and Consumer Protection; Ed Kaczmariski, Policy Analyst; Zach Kahan, Deputy Director Outreach and Member Service; Mackenzie Kuhl, Press Assistant; David Miller, Counsel; Kaitlyn Peel, Digital Director; Tim Robinson, Chief Counsel; Chloe Rodriguez, Deputy Chief Clerk; Andre Souvall, Director of Communications, Outreach and Member Services; Sydney Terry, Policy Coordinator; C.J. Young, Deputy Communications Director; Anna Yu, Professional Staff Member; Sarah Burke, Minority Deputy Staff Director; Nate Hodson, Minority Staff Director; Peter Kielty, Minority General Counsel; Bijan Koohmaraie, Minority Chief Counsel; Tim Kurth, Minority Chief Counsel, CPC; and Michael Taggart, Minority Policy Director.

Ms. Schakowsky. The Subcommittee on Consumer Protection and Commerce will now come to order.

Did you hear that? Okay.

Today, we will be holding a hearing entitled "The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers." Due to the COVID-19 public health emergency, today's hearing is being held remotely.

All members and witnesses will be participating via video conference. As part of our hearing, microphones will be on mute for the purpose of eliminating inadvertent background noise, like my dogs and maybe yours. And, members and witnesses, you will need to unmute your microphone each time you wish to speak.

Additionally, members will be need to be visible on the screen in order to be recognized.

Documents for the record can be sent to Ed Kaczmarek at the email address that we have provided to your staff. All documents will be entered into the record at the conclusion of the hearing.

Now normally I would begin with an opening statement of 5 minutes, but because the chairman of the full committee has a conflict and in deference to him, I am going to recognize Frank Pallone, the chairman of the full committee, for 5 minutes to give his opening statement.

The Chairman. Well, thank you, Madam Chairwoman, and I apologize for going before you, but I have to speak to one of our caucuses any minute, so thank you.

Let me say that, last Thursday, as you all know, the Supreme Court ruled that the Federal Trade Commission may no longer use its primary tool to get Americans their money back from fraudsters and scammers. And this strikes at the very heart of the FTC's mission to protect and provide relief to consumers.

The FTC, we know, lost the case, but it is the American people that will suffer. And what my colleagues and I have been saying for over a year was a problem is now unfortunately an emergency. And certainly Chairwoman Schakowsky has been on the forefront of telling us that we need to do something.

The FTC used section 13(b) for over 40 years to sue in court to get consumers the money stolen from them and to force fraudsters to give up illegal profits, and for over 40 years, it was effective in providing relief. In my home State of New Jersey, the FTC has sent \$37.5 million to over 167,000 residents since July of 2018.

And New Jersey is not unique. The FTC has helped return stolen money and provided other equitable relief to millions of constituents every year. Hardworking Americans can feed their families, pay for rent, buy clothes for their kids because the FTC used this section 13(b) to return money that was defrauded. And over 200,000 consumers, including many veterans and servicemembers scammed by University of Phoenix and DeVry were relieved from underserved and burdensome student debt because of the FTC when it used 13(b).

But if we don't take any action, the FTC's ability to provide that kind of help to our consumers is no longer possible because of the Supreme Court's decision. So that is why the FTC unanimously requested Congress to ensure to continue to seek the mandatory relief for consumers under 13(b) as soon as circuit courts first questioned this authority in 2019, and that is when Chair Schakowsky and every Democratic Member joined with Vice Chair Cardenas to support The Consumer Protection and Recovery Act that we are considering today.

And there are no adequate substitutes in the current law that can simply replace what the FTC lost. The remaining authority of the FTC is too weak and, where available, will take too long for meaningful relief for our constituents. Vice Chair Cardenas' bill

restores the minimum authorities necessary for an effective enforcement regime.

Now, some have argued that we need to take this opportunity to reconsider the scope of the FTC's authority and even weaken it, but I don't agree with that. I think they should have greater authority to go after scammers, and simply getting stolen money returned or a court order preventing further illegal activity is insufficient in my opinion.

I want to basically stress how important it is that we do this quickly, and Tony's Consumer Protection Recovery Act, you know, does what I think needs to be done. And I hope our colleagues on both sides of the aisle will work with us to pass this bill quickly.

I mean, obviously, there is always opportunity for input. I am not saying that we have to report out the bill exactly the way it is, but I do think it sets a really good example for what we need to do because it puts consumers first.

So, with that, I would like to yield the remaining of my time to the vice chair and the sponsor of the bill, Mr. Cardenas.

[The prepared statement of The Chairman follows:]

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Mr. Cardenas. Thank you very much, Chairman Pallone.

And thank you so much, Chairwoman Schakowsky, for having this important hearing.

And I also want to thank all of my colleagues for your amazing questions that are going to come forth so that we can deliberate, as legislatures do. So we can set the record straight, and create laws that, in this case, protect the American consumer.

And I think it is important that the Federal Trade Commission's, FTC, authority be returned so that they can help return money to defrauded individuals across this country.

In many of our districts we have seen our constituents inundated with COVID-19 scammers attempting to prey on their fears and financial insecurities. If the scams were successful, the FTC would have been able to step in, use its 13(b) authority to stop these bad actors, and put money back into the pockets of hardworking Americans.

Since July of 2018, almost a million people in my State of California have received nearly \$172 million in redress under 13(b).

For 40 years, the courts uniformly held that the FTC could obtain equitable monetary relief under section 13(b). Last Thursday, the Supreme Court held it could not.

It is hard to imagine a more pressing issue for Congress to fix than the leading Federal consumer protection agency losing its most effective weapon to help people during an unprecedented public health crisis.

The Consumer Protection and Recovery Act seeks to reaffirm this authority so the agency can continue to make consumers whole again.

And, with that, I yield back. Thank you, Madam Chair.

[The prepared statement of Mr. Cardenas follows:]

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Ms. Schakowsky. I thank the gentleman for yielding back, and now I recognize Mr. Bilirakis, the ranking member of the subcommittee, for 5 minutes for an opening statement.

Mr. Bilirakis. Thank you very much, Madam Chair. I appreciate it.

Good afternoon. Welcome to today's subcommittee legislative hearing. I want to thank the witnesses for being here today.

Acting Chair Slaughter, I appreciate you and the entire Commission's tireless efforts of fighting against scams and fraud during the COVID-19 pandemic, especially those targeting our most vulnerable constituents.

As you know, this committee worked in a bipartisan success, as you know, last year, to provide your agency first offense penalty authorities on COVID-19 scams and fraud. So I can assure you, we all take a hard line when it comes to bad actors.

Despite this, Madam Chair, again, Madam Chair, I know your side is aware of several irregularities on how this hearing has been approached and how the minority rights have been disregarded. This contrasts with a unanimous Supreme Court decision last year -- excuse me -- last week, where we saw all nine Justices, across the philosophical spectrum, unambiguously communicate that this is not about siding with fraudsters but actually about respecting the law.

If we are to find a balanced solution to addressing FTC authorities, we must work in good faith and in a bipartisan manner to do so.

In the Court's decision, the nine Justices all agreed the FTC clearly exceeded its 13(b) authority to seek monetary relief. The Court also detailed the other avenues, apart from 13(b), the FTC can currently use for restitution and disgorgement. In light of this, it is important to engage in a thoughtful conversation about the additional authorities that may be required to act quickly against fraudsters.

We also have a responsibility to consider how powers are targeted, transparent, and focus on getting redress for, again, for our victims. However, we won't get to hear all those options unfortunately today.

The other FTC Commissioners can review and approve the written testimony prepared for the hearing, but the oral statement by the Acting Chair and answers to our questions will reflect her own opinions. While I certainly value her insight -- and I certainly do again -- we will not have the benefit of counterpoints or how we focus on legislation, on this particular legislation which we vote, all of us want to work together on.

We all understand the urgency, but we need to get this right. And excluding the views of experts in this field is a disservice to the consumers we are trying to protect.

In addition, I and several of my colleagues introduced legislation to factor into this review, such as H.R. 2672, the FTC REPORTS Act, that I introduced last week. This commonsense legislation would require FTC to submit a report to Congress that includes all FTC enforcement actions involving allegations of fraud against our senior citizens.

My bill moved through committee unanimously previously, and I am disappointed it and the other reform bills are not included on the docket today.

Republicans all agree seeking financial restitution for victims is essential. I want to repeat that. Republicans all agree seeking financial restitution for victims is essential. But there is a history of regulatory overreach we must consider and how that impacts our business sectors as we rebound from the COVID-19 pandemic.

I am pleased that we can hear from Professor Howard Beales on how to avoid the FTC's abuses of power we saw in previous decades. If this legislation moves forward, in my opinion, I am hopeful my Democratic -- as it moves forward -- I am hopeful my Democratic friends work with us to establish guardrails to ensure due process remains a foundational principle for the protection of America's and, again, Americans' legal rights.

Today is also an opportunity to highlight the need to act on a national privacy standard, and I know most of you agree with this.

Acting Chair Slaughter, I understand you announced a centralized rulemaking process, and you and other Commissioners expressed support to establish privacy rulemakings through this process.

While I appreciate the nudge to get us to act, I do worry that privacy rulemaking will still conflict with State laws that may lead to even more confusion on this topic. This committee must work together to establish a preemptive national privacy standard that protects all Americans.

Madam Chair, I am hopeful you and the majority will engage with us on FTC updates and to work in a bipartisan fashion to pass FTC reform language, including 13(b) clarity and a national privacy standard that allows for greater transparency, economic analysis, due process, and equitable restitution for victims.

And I know you will, Madam Chair. So thank you very much for giving us the opportunity, and I yield back the balance of my time. I don't have any time.

[The prepared statement of Mr. Bilirakis follows:]

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Ms. Schakowsky. I thank the gentleman. That is okay. I thank the gentleman for yielding back, and I do want to assure you that legislation that you have proposed and ideas that you have will be completely considered as well.

But today is a special day of urgency, and I now -- inadvertent -- okay. And now I yield myself 5 minutes for an opening statement.

So today the subcommittee acts urgently to ensure that the Federal Trade Commission can put money back into the pockets of consumers who have been victims of fraud or scams. And this authority, as has already been mentioned, was stripped away from the FTC last week by a decision of the United States Supreme Court. Really only criminals and scammers benefit from this decision, while consumers are the losers.

However, the Supreme Court has essentially invited us to fix this, so we are here today to right this wrong. Only we can restore the FTC's most important consumer protection tool. For decades, as you have heard, more than four decades, the FTC has used section 13(b) of the Federal Trade Commission Act to get money back for consumers harmed by unfair and deceptive practices.

Companies that commit violations of the FTC Act could be made to not only stop committing bad acts but to pay back the money that they use to dupe -- the money that they actually duped or stole from their customers.

Since just 2018, the Federal Trade Commission has recovered over \$1 billion for 6.8 million American consumers. One of their largest recent cases was against the multilevel marketing scheme Herbalife. That resulted in a total relief, the amount of money that was returned, of nearly \$200 million for more than 260,000 people who had been lured into running Herbalife businesses by deceptive earning claims.

Since 2018, the Commission has put more than \$49 million back into the pockets of over 255,000 Illinois residents, my State. None of this relief would have happened

without the use of section 13(b).

While some will argue that the FTC has other tools, like section 19, for example, those require years of process, and by the time the cases are concluded, the money is long gone, leaving consumers out in the cold.

We must make consumers whole when they have been victimized. That is why we are moving forward today with legislation to restore the FTC's authority.

The Consumer Protection and Recovery Act, introduced by our vice chair, Tony Cardenas, with the support of every member -- Democratic member -- of this subcommittee confirms the authority that the FTC has to seek equitable relief, including monetary relief for consumers in Federal court.

Now, let me be clear. This is not the only reform that I would like to see, but it is the most important one right now. Understanding what the loss of security of 13(b) means for consumers is really inestimable, and we want to work with our colleagues -- we absolutely do -- to act quickly, to address the immediate need.

Vice Chairman Cardenas' legislation is necessary and urgent, and it is an important step that Congress must take to protect American consumers. It is in our court.

As the stress of the pandemic makes consumers even more vulnerable right now to new scammers and fraudsters, we shall not allow criminals to victimize the American public with impunity. They must pay, literally, what they owe.

So I am hoping that my colleagues will work with us to put consumers first. I want to thank the witnesses that are here today joining us, and now, I guess I was going to introduce the next speakers. But now, actually, I am going to -- oh, I know what it was. Here it is.

The ranking member of the full committee has a conflict as well, and so the chair now recognizes Mr. Armstrong for 5 minutes for an opening statement. Mr. Armstrong,

it is yours.

[The prepared statement of Ms. Schakowsky follows:]

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Mr. Armstrong. Thank you, Madam Chair. As has been mentioned, the Supreme Court ruled last week on the Federal Trade Commission's use of 13(b) authorities. The Court's unanimous decision delivered by Justice Breyer was clear. Section 13(b), as written, does not authorize the FTC to seek monetary relief.

Today we are going to hear from acting -- and welcome -- Acting FTC Chair Rebecca Slaughter, and I have no doubt she will advocate for her position on how to amend 13(b). Acting Chair Slaughter has been quoted in an April 22 statement that says: In AMG, the Supreme Court ruled in favor of scam artists and dishonest corporations.

Americans are losing faith and trust in our institutions, and a big part of the reason is due to unnecessary, political rhetoric that villainizes a person for that institution. Perhaps no institution has been subject to such unnecessary rhetoric as the Supreme Court.

Reasonable legal scholars across the spectrum can agree that this unanimous Supreme Court decision was actually the right legal decision. It may not be the policy outcome you or I want, but that is not the Supreme Court's job.

The Court's role, as stated in *Marbury v. Madison*, is simply to say what the law is. And I would suggest there are more productive ways to advocate for policy preferences.

And I am troubled that the other FTC Commissioners are not here today. Just last week, Senator Cantwell allowed for all four current Commissioners to testify before the Senate Commerce Committee. Surely this committee would benefit from the testimony of all of the Commissioners.

This committee will also be denied the opportunity to hear other FTC reform proposals. Six bills by our members were ready and shared with the majority in time to be noticed as part of this hearing. These bills have passed out of this committee in

previous forums.

However, all were rejected for consideration today, and this is part of a pattern. The minority is told that we do not have enough legislation ready for floor consideration. Yet our bills are never considered during the committee process. It is a catch-22 that seems convenient for partisan ends.

Similar concerns extend to other parts of the committee process. Despite two panels for this hearing, the minority was allowed only one witness. The good news is that that minority-invited witness is Professor Howard Beales, who previously led the FTC's Bureau of Consumer Protection.

He is widely regarded as an FTC expert. The Supreme Court has cited his work by him and former FTC Chairman Tim Muris in its decision last week. And he also has a history lesson for us. His work, cited by the Court, states that: "In the 1970s, the Commission embarked on a vast enterprise to transform entire industries," and continues with, "The Commission issued a rule a month," over a 15-month period.

This should sound familiar. Advance a few decades, and we have a recent announcement on a centralizing FTC rulemaking authority within the Office of General Counsel. This will move authority away from the issuance experts and the economic analysis that are central to FTC actions.

Interestingly, the statement on the new rulemaking effort tied its purpose to the Supreme Court challenge to 13(b).

Beyond the multiple process fouls, we are also bypassing the opportunity for substantive reforms. Senator Wicker rightly identified last Congress that privacy reform and a 13(b) amendment could be a part of the same legislative fix. I was pleased to hear Mr. Cardenas, the sponsor of the bill before us, cite the worker proposal at our COVID scams hearing earlier this year.

I was also pleased with the bipartisan efforts to move privacy legislation forward during the first half of last Congress. Those efforts were obviously sidelined by COVID. Yet while we delayed, State legislatures are continuing to enact privacy legislation.

And I know that we are not that far apart, and I ask that the committee, that we can finish that job.

And in all due respect to the acting chair, it is neither her duty nor our request regarding the proper strategy and outcome. That is our job. This committee must work together to solve these issues.

Let's enact real FTC reform that reflects a bipartisan legislative accomplishment for this committee. The American people deserve a landmark consumer protection bill that meets the needs of the 21st century. Thank you, and I yield back.

[The prepared statement of Mr. Armstrong follows:]

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Ms. Schakowsky. I thank the gentleman, and I just want to make the comment that having a Chair or a sole Commissioner to speak on a panel, to testify before Congress, alone, is not unusual. When Republicans were in charge of Congress, it was normal procedure. I don't want to get into a fight about it, that is for sure, but I just want to say that we have done this many times before on both sides of the aisle.

And at this point, I now would like to introduce our witness for our first panel of today's hearing, Honorable Rebecca Slaughter, who is the acting chair of the Federal Trade Commission. We want to thank you so much for being our witness, and now I would like to yield to you for 5 minutes of your opening statement.

STATEMENT OF THE HONORABLE REBECCA SLAUGHTER
ACTING CHAIRWOMAN, FEDERAL TRADE COMMISSION

Ms. Slaughter. Thank you very much, Chair Schakowsky, Ranking Member Bilirakis, and members of the subcommittee for inviting me here today. Late last week, as you know, the Supreme Court ruled in AMG that the Federal Trade Commission cannot go to Federal court to return money to those from whom it was illegally taken.

The Federal court path, now foreclosed, had been used for 40 years to make your injured constituents whole. This path was utilized and supported on a bipartisan basis, throughout Republican and Democratic administrations, and upheld by eight different Circuit Courts of Appeals. Having it cut off is a devastating outcome for consumers and honest businesses.

As reflected in the joint written testimony submitted for this hearing, there is unanimous, bipartisan support at the Commission for a fix to 13(b).

Just days before the AMG decision came down, Mr. Cardenas introduced clear and straightforward legislation that would affirm Congress' intent that the FTC be able to go to Federal court to stop bad conduct, disgorge ill-gotten gains, and provide restitution.

I cannot emphasize enough the importance of quick congressional action on this legislation. I will focus my remarks today on the consequences for the public and the markets absent the swift passage of this bill.

The Supreme Court's ruling eliminates the Commission's primary and best tool to seek monetary remedies when a company violates the FTC Act. This tool, referred to by its statutory provision, section 13(b), enabled the FTC to provide billions of dollars of relief, \$11.2 billion in the last 5 years alone in a broad range of matters.

Let me just give you a few examples of cases in which we were able to provide refunds to consumers solely through our now defunct 13(b) authority.

In addition to the Herbalife case which Chair Schakowsky mentioned, there is Amazon Flex. In January of this year, Amazon agreed to return \$61.7 million dollars in tips to drivers in its Flex program from whom it illegally withheld that compensation.

In the University of Phoenix case, we returned \$49 million to over 146 consumers nationwide, including \$1.3 million to Illinois consumers and \$3 million to Florida consumers, to resolve allegations of deceptive claims regarding job placement.

And in Volkswagen, \$9.5 billion was returned to consumers nationwide to resolve the company's deceptive marketing of 550,000 clean diesel Volkswagens and Audis.

Right now, the Commission has 24 active Federal court cases that rely exclusively on 13(b) for a monetary remedy, representing \$2.4 billion that should be returned to injured consumers.

On the consumer protection side, these matters include cases addressing false or unsubstantiated COVID-19 cures, a pyramid scheme, and a scam that used fake apartment listings to trick people into buying credit monitoring services with recurring charges.

On the competition side, affected cases include the Martin Shkreli matter in which defendants raised the price of a lifesaving drug from \$17.50 to \$750; and the sham patent litigation case, AbbVie, in which the district court awarded \$493 million in restitution to consumers harmed by inflated drug prices.

The significant direct harm to consumers from congressional inaction is obvious enough, but there are additional indirect harms to consumers and to law-abiding businesses. The loss of 13(b) will result in emboldened defendants with little incentive to agree to return money to consumers or even to provisions requiring them to change

their behavior in meaningful ways.

This will mean more litigation at higher cost for taxpayers, resulting in less protection for consumers and more profit for law-breakers, all at the expense of honest businesses trying to compete against companies that engage in unfair, deceptive, and anticompetitive conduct.

The Supreme Court's opinion left the policy questions about the FTC's authority to provide more effective and efficient monetary relief up to Congress. The policy goals that animated our 13(b) program are: incentivize companies to comply with the law and return money to harmed consumers when they don't.

I respectfully request that Congress act quickly to provide clear authority to the Commission to achieve these goals.

Finally, a word about the FTC's other authorities. We will use them all to pursue law violations where we can, but without congressional action, none of these options will come close to protecting consumers and incentivizing compliance as much as our lost 13(b) authority. I hope you will move swiftly to restore it. Thank you, and I look forward to answering your questions.

[The prepared statement of Ms. Slaughter follows:]

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Ms. Schakowsky. Thank you very, very much, and thank you for sticking to the 5 minutes for a very concise and, I thought, very effective presentation.

So we have concluded our witness' opening statement for our first panel, and at this time, I will move to member questions. Each member will have 5 minutes to ask the questions of our witness.

And I know you have done this before, but the 5 minutes includes your answer.

I will start by recognizing myself for 5 minutes.

So, even before the Supreme Court decided on Thursday, the uncertainty in the law surrounding section 13(b) was already hurting the Commission's enforcement efforts and draining the Commission's limited resources.

On October 20th, all five FTC Commissioners -- Republicans and Democrats -- sent a letter, urging Congress to act quickly to reaffirm section 13(b). I repeat that. All of you had sent us a message to reinstate 13(b) to recover ill-gotten gains for consumers.

The letter warned that the defendants were using delay tactics in ongoing litigation, hoping that another Circuit would reverse its precedent, et cetera.

So I wanted to ask you now, what is happening to the cases the FTC was pursuing under its 13(b) authority?

Ms. Slaughter. Thank you for the question. Honestly, it is a big problem. I mean, our ability to get monetary relief in those cases -- and I mentioned that we have 24 cases pending in Federal courts right now that rely entirely on 13(b) for monetary relief -- the money in question in those cases will not be on the table through the Federal court path. And that is a huge problem that not only jeopardizes our ability to provide relief for consumers in those cases; it disincentivizes the parties, and parties in other cases, in other cases from entering into settlements with us in any case.

Ms. Schakowsky. So can you estimate how much money consumers will lose out

of just these cases that you have pending right now and that are under investigation?

Ms. Slaughter. Yeah. In the cases that we have already filed -- there are, as I said, 24 cases, with about \$2.4 billion at stake.

Ms. Schakowsky. Based on past experience, can you estimate how much money will not be able to be returned to defrauded Americans over, let's say, the next 5 years, if the FTC authority is not reinstated?

Ms. Slaughter. Well, I think the best evidence for the next 5 years is the last 5 years, and over the last 5 years, we were able to return \$11.2 billion to consumers, and we won't be able to do that going forward.

Ms. Schakowsky. And will the legislation that has been introduced by Vice Chairman Cardenas, does it effectively restore the FTC's 13(b) authority?

Ms. Slaughter. Yes. I think it is clear, commonsense, reasonable legislation that puts us right back where we, on a bipartisan basis, understood ourselves to be until the Seventh Circuit reversed its own precedent 2 years ago in the CBC case.

Ms. Schakowsky. And let me just ask you kind of open-ended, how will such a restoration of authority benefit consumers and businesses as well?

Ms. Slaughter. Thanks. I think that is a really important question. So restoring the authority not only allows us to make consumers whole if they have been injured, it also protects honest businesses who need to compete against companies that may be engaging in unfair, deceptive, and anticompetitive practices to give themselves a leg up. So we want honest businesses to be there on a level playing field.

The other way it affects small businesses in particular is that small victims are often -- small businesses are often the victims of scams and illegal conduct, and so we use 13(b) to return money to them, not just to individual consumers.

Ms. Schakowsky. Can you give us an example, a specific example, of perhaps the

type of enforcement matter that the Commission may not be able to pursue because of this Court decision? I have 20 seconds.

Ms. Slaughter. Sure. Sorry. So I think I mentioned some of the matters that are really important like the University of Phoenix case, which targeted veterans and Spanish-speaking consumers. When I mentioned small businesses, just this week, we filed a potential settlement against a company that preyed on small businesses. So I think the examples are endless, and I am happy to provide a long list for you for the record.

[The information follows:]

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Ms. Schakowsky. Thank you so much. I appreciate that.

And now I will recognize the ranking member of the subcommittee, Mr. Bilirakis, for 5 minutes to ask his questions.

Mr. Bilirakis. Thank you, Madam Chair, I appreciate it very much.

Given we did not have the other Commissioners here today, I would like to ask that the transcript -- it is really an unofficial transcript from Senator Cantwell's hearing -- be entered to the record, Madam Chair, please.

Ms. Schakowsky. Without objection, it will be entered at the end of the hearing.

[The information follows:]

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Mr. Bilirakis. Thank you, Madam Chair.

Acting Chair Slaughter, the Commission is an entity we rely on for objective technical assistance when it comes to legislation we are considering. You have identified the unanimous Supreme Court decision as needing an immediate congressional response.

This means both parties need to work together just as they did last year -- and we did a great job last year under your leadership, Madam Chair -- to provide FTC first offense civil penalty authority on COVID-19 scams and fraud. Will you promise that you will provide us technical assistance on the legislation before us that reflects the support of all the other Commissioners?

Ms. Slaughter. Well, we are always happy to provide technical assistance, and that technical assistance is provided by our technical experts within the agency. It is, I think, never by practice of the Commission, technical assistance, it is reviewed by all of the Commission. And I don't think it would be practical for you for it to be reviewed that way.

Mr. Bilirakis. Representing all technical assistance representing all Commissioners, correct?

Ms. Slaughter. Well, again, I think the technical assistance program that the Commission has, to which we are very committed, is to make sure that we give you the technical input of the folks who are going to be implementing whatever law Congress passes. And we will absolutely continue to do that.

We don't, and never have, run all of our technical assistance by all the Commissioners. We didn't when I was in the minority. It is just not something the Commission has done, and I don't think it would be practical to do so because I don't think we will be able to get you that feedback on a timely basis. But I know all of my

colleagues are always happy to share all of their own views if they are asked.

Mr. Bilirakis. So I would love to hear from your colleagues on that. On the topic of privacy, are you aware that Republicans in Congress have supported increasing FTC rulemaking authority, as well as agency funding, and continue coordination with State attorneys general so that we have a strong national privacy protections? While we have national privacy protections, we need them to protect all Americans. If you could answer that briefly, I would appreciate it.

Ms. Slaughter. Yes. I am aware there is a robust debate around privacy legislation.

Mr. Bilirakis. Thank you. I want to make it clear that I support going after bad actors -- and all Republicans on the committee and I know Democrats as well -- bad actors that seek to harm Americans.

However, I am concerned that if we expand your current authority to allow the FTC to retroactively go after past behavior, up to 10 years -- so we are expanding it by at least 5 years -- then the Commission will not pursue those currently committing harm.

If Congress expands the FTC's authority, how will you prioritize going after those who are actively committing harm versus those who committed harm in the past? And this is a very important question, so if you could answer that for me, I would really appreciate it.

Ms. Slaughter. Thank you. Well, I think our priority always is, and necessarily must be, current bad acts and preventing future bad acts. So that is the first way I would answer.

The second way is, under the 13(b) authority that we had understood for the last 40 years, I don't think there was any statute of limitations. The legislation Mr. Cardenas has offered introduces one for the first time, and I think that that is a fair compromise,

but it is always in the interest of the Commission and the consumers that we protect to prioritize ongoing bad conduct in order to best protect your constituents.

Mr. Bilirakis. What is the current practice? How far back do you all go currently, the FTC, even though you said there is nothing in legislation currently?

Ms. Slaughter. I am trying to -- I don't think I have a great answer to that off the top of my head. I am happy to get you more for the record, but certainly we investigate conduct when we hear complaints and try to bring cases as quickly as possible. That is in our interest and in consumers' interest too.

The longer time elapses between bad conduct and our ability to bring a case, the harder it is to hold bad actors responsible, the harder it is to find consumers to provide redress. So I think we have a shared interest in moving as quickly as possible. The only people who don't have an interest in us moving quickly are the bad actors themselves who tend to drag out investigations and delay.

Mr. Bilirakis. Okay. We need to prioritize the current ones because they are going after our constituents. Well, thank you very much. I appreciate it.

I yield back, Madam Chair.

Ms. Schakowsky. The gentleman yields back, and the chair recognizes, if he is here, Mr. Pallone, chairman of the full committee, for 5 minutes of questions.

Are you here, Frank?

Okay. Then I am going to call on Representative Kathy Castor for her 5 minutes of questions.

Ms. Castor. Well, thank you very much, Chair Schakowsky, for calling this very important hearing.

And to Acting Chair Slaughter, thank you for testifying today.

It is important to move Congressman Cardenas' Consumer Protection and

Recovery Act right away, and I am proud to be a cosponsor of the bill.

Acting Chair Slaughter, the Federal Trade Commission has relied on section 13(b) of the FTC Act to secure billions of dollars in relief for consumers all across America. You have testified to that. You have been at this for many years. Thank you very much for your service.

In Florida, just over the last 3 years, the FTC has used this authority to recover over \$81 million to approximately over 500,000 Florida residents who were defrauded by some fraudster or criminal.

This specific FTC authority has been especially critical during the coronavirus pandemic. We have all seen criminals prey on our vulnerable neighbors, and many have had stolen funds that are intended for different uses under the CARES Act and the American Rescue Plan. So we have got to make sure that America's lead consumer protection agency has all of the tools necessary to protect our neighbors.

And I agree with you that, if Congress does not act expeditiously, we are going to see a lot more fraudsters, more deception out there. I guarantee you they have been following this and are going to try to get away with as much as they can.

And, as Chair Schakowsky mentioned, in October of last year, all of the Commissioners of the FTC -- Democrats and Republicans -- wrote us a bipartisan letter asking us to make clear that the Commission can bring actions in Federal court, under section 13(b), even if conduct is no longer ongoing or impending when the suit is filed, and then can obtain monetary relief, including restitution and disgorgement, if successful.

Very quickly, Acting Chair Slaughter, does this bill do that?

Ms. Slaughter. Yes, it does.

Ms. Castor. Does this bill do more than that?

Ms. Slaughter. No, it does not.

Ms. Castor. Yeah. That is why this bill should be a bipartisan slam-dunk. It is a targeted approach to do exactly what all of the Commissioners have suggested the Congress do.

Now, with the Supreme Court decision, time is of the essence to move it, so I know that we need to move forward on this. I want to -- let's see if I have a little time.

Okay. I want to ask you one other question. Under section 5 of the FTC Act, the FTC cannot obtain civil penalties for first violations, correct?

Ms. Slaughter. Yes, that is correct. We have to have a company under order first.

Ms. Castor. And civil penalties are only brought when a company violates a rule or violates an order, correct?

Ms. Slaughter. Yes, that is correct.

Ms. Castor. So, if the FTC were provided first offense civil penalty authority, in addition to reaffirming section 13(b) in The Consumer Protection and Recovery Act, what would this allow the Commission to do?

Ms. Slaughter. Civil penalty authority can be very effective for us to incentivize companies to comply with the law because they will have to pay an actual penalty beyond just disgorgement or restitution if they violate the law, but it is important, as you note, that penalties are different from restitution. They don't go back to wronged consumers under the current law. They go into the Treasury, and so they are good from an incentive perspective, but they aren't helpful to make consumers whole.

Ms. Castor. And I saw that in March you announced the creation of a new Rulemaking Group within the FTC's Office of General Counsel. Under section 18 of the FTC Act, the Commission had what is known as Magnuson-Moss rulemaking. It is different from the typical APA rulemaking because it sets up a more burdensome process.

What barriers does section 18 of the FTC Act have that are not included in normal APA rulemaking, and what would APA rulemaking authority allow the Commission to do?

Ms. Slaughter. Section 18 sets up more process in terms of hearings, opportunity for notice, participation. Section 18 rules tend to take substantially longer to get from the starting point over the finish line. And so, to the extent that we want to send a clear message to businesses about what behavior is out of bounds and a clear message to consumers about the way that they are protected, APA is definitely a more efficient way to get there than section 18.

Ms. Castor. I agree. Thank you. I yield back.

Ms. Schakowsky. Okay.

The gentlewoman yields back.

And now, Fred Upton, you are recognized for 5 minutes for questions.

Mr. Upton. Well, thank you, Madam Chair.

I appreciate everyone being here, as we are all back in our districts in places around the country.

Acting Secretary, I have just a couple of questions. I know that in the hearing last week in the Senate, the U.S. Chamber submitted a letter highlighting their concerns of the current 13(b) proposals.

And, during that hearing, Senator Wicker requested all four Commissioners to weigh in on the letter. Now, I know it has just been a couple days, and I would doubt that any response has been prepared and submitted, but do you know what the status of that request is?

And as a backup to that, should Congress wait until we have them respond before pursuing legislation? What are your thoughts?

Ms. Slaughter. Thank you. So, when Senator Wicker asked about that letter at

the time, he had literally just handed it to me --

Mr. Upton. Yeah, I know.

Ms. Slaughter. -- so I haven't had a chance to review it. But I have, in the intervening week, had a chance to take a look at it, and I can tell you, from my perspective, I take a lot of exception to a lot of the arguments that are made within the letter and the policy views that it advances.

I would strongly urge you not to wait for any more formal response. Although I am, of course, happy to provide one for the record for you because the fact is that the cases that we have that are active now, the money that is at stake and the consumers that are harmed, are being harmed on an ongoing basis, and we really need to get them relief sooner and not wait any longer than is absolutely necessary to get that done.

Mr. Upton. Well, I just know, you know, sometimes the legislative process is slow -- hearings, markups, subcommittee, full committee, House floor -- usually weeks at a time, and it would help us, as we prepare for this, versus having unanswered questions, knowing that, in the Senate, where it really is 50/50, they are going to probably want to wait as well. So any effort that you can do to put a little gasoline on the fire and get a response back, I know, would be appreciated by all sides.

The last question I have is, do you believe that the changes under consideration may contrast with existing means of monetary recovery under section 5 and 19 of the FTC Act?

Ms. Slaughter. Yeah. Thank you. It is a really good question. The Supreme Court opinion suggested that because we had section 19, we didn't need monetary relief under section 5. And, respectfully, as a matter of policy, I disagree with that. And I think it is worth understanding just how much more burdensome the process is to get money back to consumers under section 19.

So, in order to recovery money for section 19, which is limited to dishonest and fraudulent activity, which is a pretty high standard and wouldn't cover some of our important consumer protection or any of our competition cases, we would have to first do a full administrative litigation in part 3 for the section 5 claim and then go to a district court to request the money back. And there is a 3-year statute of limitations on returning that money.

The time it takes to go through that entire process when we have used it before can be, I think, as little as 7 years, but as much as 12 years or more, and our ability to find consumers after that 12 years is elapsed and get money back to them is really, really limited and inhibited.

And, moreover, in the intervening 12 years, the consumers have lost the benefit of that money that was gone from them. Contrast with an immediate asset freeze in Federal court as we were getting under 13(b), that is a much more efficient and effective way to protect consumers.

Mr. Upton. Okay. Well, thank you, and I yield back.

Ms. Schakowsky. The gentleman yields back, and now I call on Lori Trahan for 5 minutes for her questions.

Mrs. Trahan. Thank you, Chairwoman Schakowsky, for convening today's important and timely hearing. You know, one of the subcommittee's top priorities recently has been to hold the large social media platforms accountable for the ways they harm consumers by mistreating user data and amplifying destructive content.

You know, Facebook has gotten away with far too much because of its size and market dominance. Fortunately, the FTC brought an antitrust case against Facebook in December.

But my understanding is that Facebook is now relying on two recent court

decisions to argue, and I quote, that the FTC lacks statutory authority to maintain this suit. Section 13(b) of the Federal Trade Commission Act, the sole claimed source of the FTC's authority here, authorizes the FTC to proceed in Federal district court only to stop ongoing or imminent violations of the law. It does not authorize actions to remedy past conduct.

Well, you know, it is not clear to me where this argument might end. Could a defendant simply stop violating the law after the FTC sues them and get the whole case dismissed? This seems problematic to say the least.

Acting Chair Slaughter, does The Consumer Protection and Recovery Act, which I am proud to cosponsor, make clear the FTC can obtain relief under 13(b) for consumers when defendants have violated the law and not have to demonstrate that they are still violating or will be violating the law again?

Ms. Schakowsky. Great question.

Ms. Slaughter. Yes, it does.

Mrs. Trahan. So, you know, many experts believe that Facebook and Google will likely overcharge advertisers on their platforms due in part to their dominance in the first-party digital advertising space.

Unfortunately, digital advertising is an incredibly opaque market, and I am planning to introduce a bill that begins to address this issue. But even if the FTC had the evidence to make a clear case that Facebook and Google improperly overcharge for digital advertising, my understanding is that, because of the Supreme Court ruling last week, an advertiser, including our small businesses, would not be able to receive monetary relief for being overcharged.

Is my understanding correct that in this hypothetical situation, the FTC could not prevent Google and Facebook from keeping ill-gotten earnings obtained through

anticompetitive conduct?

Ms. Slaughter. I want to be really careful to not comment on any specific fact pattern, but, yes, it is absolutely true that, under the Court decision, the FTC couldn't recoup ill-gotten gains in Federal court in a competition case.

Mrs. Trahan. Well, Acting Chair Slaughter, I want to thank you for your work in protecting small business innovation and consumers.

You know, as our economy begins to recover after a devastating pandemic, the work of the FTC is of utmost importance, and I hope we can pass H.R. 2668, so that the FTC can hold companies accountable.

Thank you again, and I yield back.

Ms. Schakowsky. The gentlewoman yields back.

And next it is Bob Latta's turn for 5 minutes.

RPTR SINKFIELD

EDTR HOFSTAD

[1:58 p.m.]

Mr. Latta. Thank you very much, Madam Chair. Appreciate today's hearing, and also appreciate the Acting Chair to be with us today. It is very important as we work on protecting our consumers and identifying ways to undo the damage caused by fraud and counterfeiting online.

As we discuss the issues before us, the committee should also be considering additional overdue reforms. One such issue is looking for ways that we can work to restore WHOIS access to our law enforcement entities, like the FTC and others. WHOIS information or domain registration information informs us who is behind a website registration. This information had been publicly available prior to the implementation of the European Union's GDPR.

Last year, I reached out to the FTC to ask them about the impact of the loss of the WHOIS information and the data, especially on their consumer protection efforts. In their response, they said, before GDPR took effect in May of 2018, the FTC and other consumer protection law enforcement agencies routinely relied on publicly available registration information about domain names in the WHOIS database to investigate wrongdoing and combat fraud. The FTC uses this information to help identify wrongdoers and their locations, alter conduct, and preserve money to return to defrauded victims.

Restoring WHOIS access is critical, and consumer protection is a key piece of the intent of today's discussion. I want to work with my colleagues on both sides of the aisle to identify ways that we can restore access to this valuable resource.

Madam Chair, I would also like to submit that letter for the record today.

Ms. Schakowsky. Without objection, that will be inserted at the end of the hearing.

[The information follows:]

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

Mr. Latta. Well, thank you very much, Madam Chair.

Protecting Americans from becoming the victims of scams and holding scammers accountable should not be a partisan issue. The FTC must have the tools available to pursue bad actors and achieve equitable restitution for victims of scams, but we also must be careful not to create unintended consequences when expanding the FTC's authority.

Acting Chair Slaughter, in February, you spoke about the need for a Federal privacy law and the exacerbated data risks in light of the COVID-19 public health emergency. How would clear Federal privacy laws streamline current FTC enforcement actions?

Ms. Slaughter. Thank you.

I think a Federal privacy law with strong protections for consumers would be enormously helpful, because, right now, most of our Federal privacy program, with the exception of our COPPA work, is conducted entirely under Section 5 authority to prevent unfair or deceptive action practices, and that is an imperfect tool that we are using as best we can to address privacy.

Mr. Latta. Thank you.

You know, shifting gears, the FTC also has the authority on deceptive acts and also practices at the core of your mission. This committee is working together to move forward on legislation that will set a framework for the commercialization of autonomous vehicles. Given that serious work, I am concerned when terms are used in this sector that do not accurately represent a vehicle's current capability.

Are you aware that the terms "autopilot" or "self-driving" capability are currently being utilized when, in fact, there are no commercially available AVs on the road today?

Ms. Slaughter. That sounds reflective of what I have read about.

Mr. Latta. Well, it is really important, as we go forward, that we make sure that we have this done. Because, when you look around the world with other countries as they advance on their AV technology, that we don't want the United States to be left behind. And so we really have to make sure that we have the United States leading on this issue and on the legislation we have to get out there.

And, with that, Madam Chair, I will yield back my last 45 seconds.

Ms. Schakowsky. I thank you for those.

And now I call on Jerry McNerney for 5 minutes for his questions.

Mr. McNerney. Well, I thank the chairwoman.

And I thank Chairwoman Slaughter for your work on the Commission.

Ms. Slaughter, Volkswagen sold vehicles that were rigged to pass emissions tests. The vehicles were advertised and sold as clean diesel, but this was clearly not true. The FTC proved that Volkswagen tricked consumers into believing the cars were low-emission and environmentally friendly.

How did the agency use section 13(b) authority in this case to get redress for consumers? And why wouldn't the agency have been able to use other authorities to obtain redress as quickly as it did?

Ms. Slaughter. Thank you.

Volkswagen is a terrific case to illustrate the importance of our 13(b) authority. 13(b) was the tool that allowed us to negotiate a settlement with Volkswagen that returned \$9.5 billion to consumers who were misled [inaudible] clean diesel --

Mr. McNerney. Let me interrupt.

Chairwoman, there is quite a bit of interference here. Could we see if there is a way to clean up the --

Ms. Schakowsky. I wanted to see if any of our tech people can help clear it up.

It is the --

Ms. Slaughter. I can elaborate. I am sorry. I am not sure if you were also asking about the other tools. If we had used --

Mr. McNerney. Ms. Slaughter, you are still breaking up.

Ms. Schakowsky. Yeah, you are still breaking up. You are still breaking up.

Uh-oh. I think she can't hear either.

I don't know -- can you hear us? Commissioner, can you hear us? Because you are breaking up right now.

I wonder if any of the tech people have a suggestion?

Mr. Cardenas. Madam Chair?

Ms. Schakowsky. Yes.

Mr. Cardenas. I have a suggestion. On one of the committee hearings, when I started to speak, my device was using data even though I had access to data or the internet, and when I switched off the data and it went strictly internet, immediately the signal got better.

Ms. Slaughter. Are you having trouble hearing me?

Mr. McNerney. Yes.

Ms. Schakowsky. It was breaking up. Right. We are.

Mr. Cardenas. Can I make a suggestion, Chairwoman Slaughter, if you can hear me? This is Congressman Cardenas.

If your device allows you to use data or the internet and you have access to both where you are at, try to switch off the data and force it to only use the internet. It worked for me on one of the hearings.

Ms. Schakowsky. And could you hear him? Can you hear us?

Mr. McNerney. She is muted.

Ms. Schakowsky. Oh, she is muted.

Can you unmute, and let's hear it?

Acting Chair Slaughter, can you hear us? Can you unmute?

Ms. Clarke. Madam Chair, I think that her broadband is giving her difficulty, because she is not moving, which indicates that it is buffering. So I think it is a broadband issue.

Mr. Armstrong. Maybe she is just holding really still.

Ms. Schakowsky. So I think what we are going to do right now is call for a 5-minute recess, and then we will try to resume.

Ms. Slaughter. Now, I can.

Ms. Schakowsky. Wait. Are you there?

No.

Okay. Let's do that.

Ms. Slaughter. Can you hear me? Can you hear me now?

Ms. Schakowsky. Say a whole sentence. Try it now.

Ms. Slaughter. I switched devices. Is that better?

Ms. Schakowsky. Oh, yeah, it is fine.

Okay. Never mind that 5-minute break. We are going to go on.

Ms. Slaughter. I came into my office so I could be wired to the ethernet, and it is 2021, so we still just have to pick.

Ms. Schakowsky. You know, technology. Okay. So we were in --

Mr. Armstrong. We have the hearing with the FCC next week.

Ms. Schakowsky. We were in the middle of Jerry McNerney's questions.

And we can return to you, Jerry.

Mr. McNerney. Thank you. Thank you, Chairwoman.

And, Ms. Slaughter, thank you for holding in here. My question was about using section 13(b) for the Volkswagen case and how hard would it have been to do those relief without section 13(b).

Ms. Slaughter. Thank you. I gave such a great answer that you didn't get to hear because apparently it was all broken up.

What I was saying is that 13(b) was the authority we used in the Volkswagen case. It is a perfect example of a case where 13(b) was what allowed us to be able to go to Federal court but also to negotiate the settlement with Volkswagen that returned \$9.5 billion to consumers over the misrepresentations in the sale of 550,000 clean diesel VWs and Audis.

If we had had to recover money using the section 19 process, I am just thinking through what that might have looked like. We would have had to go into our administrative court, first go through a full litigation there, then the district court to ask them to provide redress for consumers. We would certainly still be in that litigation now and might be for another several years, instead of having been several years beyond returning money to consumers who were defrauded.

Mr. McNerney. Thank you. That is pretty stark.

My congressional district includes parts of the San Joaquin Valley. Air pollution is a major problem in the valley, and the region has some of the poorest air quality in the country. Additionally, a large portion of my constituents are low-income. My district includes the city of Stockton, which had one of the highest numbers of foreclosures during the financial crisis of 2010.

So, in districts like mine, where there is poor health quality and a high percentage of population is low-income, why was the FTC's enforced monetary relief so important?

Ms. Slaughter. Thank you. I think you are pointing out exactly why returning

money to consumers matters. It is often taken from people who most need it, and that is why we really value our ability to get it back, not just to get civil penalties, which, like I said, are valuable in incentivizing compliance from companies, but, at the end of the day, what we want to do is make your injured constituents whole. Section 13(b) is the way we can do that.

Mr. McNerney. Well, thank you.

Do you think that this case and the nearly \$9.5 billion monetary relief that was awarded to consumers deterred other companies from engaging in similar practices?

Ms. Slaughter. Yes, I think having money on the line is an incredibly important part of the deterrence effect of our enforcement. We don't want companies to violate the law to begin with. We don't want them to hurt your constituents in the first place. And so, if our enforcement efforts don't have meaningful deterrent effect, then their reach is really, really limited.

Mr. McNerney. Well, in general, why is section 13(b) so important then in seeking monetary relief to discourage unfair and deceptive practices?

Ms. Slaughter. Thank you. Because it is a tool that puts money on the line for companies. That is money that can go back to consumers in the form of redress, but it also, as Mr. Cardenas's legislation makes clear, gets taken from law-breaking companies in the form of disgorgement of the ill-gotten gains. We do not want companies to keep the profits of law-breaking. We should want them to have to give up those profits. Otherwise, they just have an incentive to violate the law.

Mr. McNerney. So, in general terms, again, returning money to consumers that were defrauded, why is the FTC's authority under section 13(b) so critical in addition to these other paths? And I know it is a little repetitive, but I just want to hear it again.

Ms. Slaughter. I am happy to say it as many times as I can, because it is that

important.

13(b) is the most efficient and most effective way for us to return money to consumers who have lost it and to stop companies from breaking the law to begin with and to disgorge ill-gotten gains. Those are all really important policy goals, and 13(b) has been the best and most effective tool for us to achieve them.

Mr. McNerney. Well, great.

Since 2018, almost 1 million consumers in California have received monetary relief as a result of the cases that the Commission brought under section 13(b). I want to make sure that my constituents are able to get the relief they deserve when they have been defrauded, and that is why I am a proud cosponsor of this legislation. And we need to move quickly to pass it.

And I yield back.

Ms. Schakowsky. The gentleman yields back.

And now I recognize Neal Dunn for 5 minutes for his questions.

Mr. Dunn. Thank you very much, Madam Chair.

Professor Beales, I am going to ask you a question, so you might warm up your camera there.

I think we can all agree that recovering losses and compensation for harms from the perpetrators of some of these actions that are heard before the FTC is entirely appropriate. And I associate myself with, you know, the cases that were described by my colleague from California immediately before this.

There are, however, a number of actions taken based on complaints by the FTC that have no significant harm or no harm at all or loss at all or insignificant ones. Many of these findings by the FTC are based on very subjective opinions by experts who actually disagree among themselves.

And I think these opinions, these findings and the FTC actions and guidance that gets issued from them cannot reasonably be expected to be known in advance to even the most legitimate and proactive companies, especially in the rapidly evolving realm of cyber activities, artificial intelligence, autonomous vehicles, et cetera.

The prospect of fines totaling millions or even billions of dollars would have a chilling effect on innovation. And I would like Professor Beales to address that, if you would, sir.

I just saw you on there. Professor Beales?

Dr. Beales. Chairwoman Schakowsky, I am happy to do that if that is appropriate, but I am not actually the witness on this panel. So I am at your pleasure.

Mr. Dunn. So I may have misunderstood that. I had your testimony, so I assumed you were a witness.

Madam Chair --

Ms. Schakowsky. He is a witness, but --

Dr. Beales. I am on the next panel.

Ms. Schakowsky. He is --

Mr. Dunn. Okay.

Ms. Schakowsky. On the next panel, he is a witness. So we will get to your question.

Mr. Dunn. Go ahead.

Ms. Schakowsky. No, he can't answer now.

Mr. Dunn. He can, yeah.

Go ahead. Professor Beales?

Ms. Schakowsky. No, he cannot.

Mr. Dunn. Oh, he cannot. Oh, okay.

Well, I think I made my point there, you know. I think that -- I am all for the 13(b) being reestablished, but with some guardrails on it, so that we understand who is going to be subject to these, you know, sometimes very high fines and very chilling things -- things they cannot anticipate in advance.

With that, Madam Chair, I yield back.

Mr. Pence. Would the gentleman yield to me?

Mr. Dunn. Yes.

I would like to yield to my colleague, Mr. Greg Pence.

Ms. Schakowsky. Mr. Pence, you are recognized for the remainder of the time of Mr. Dunn.

Did you want that time?

Okay. Otherwise -- yes? No?

Otherwise --

Mr. Dunn. You are still muted, Greg.

Mr. Pence. All right. Let's try that.

Ms. Schakowsky. You have about 2 minutes.

Mr. Pence. Thank you, Chair Schakowsky and Ranking Member Bilirakis, for holding this important hearing today.

To date, the FTC has returned more than \$25 million to Hoosiers that have fallen victim to deceptive scams and fraud. While it is important that we maintain the FTC's ability to award restitution to consumers that have been defrauded, I agree with Republican Leader Bilirakis that this conversation would be better suited for a broader consumer privacy and FTC reform discussion.

In addition, as we consider this proposal, we should incorporate sufficient guardrails to protect against unintended consequences. I hope that we can come

together to find common ground on a broad range of FTC reform policies to best protect consumers in Indiana and, of course, across the country.

Acting Chairwoman Slaughter, thank you for being here today.

You recently announced a new rulemaking group within the FTC's Office of the General Counsel. I am concerned that this new plan will create a more centralized rulemaking process at the FTC. In order to best protect consumers, I want to make sure that the Commission prioritizes input from each of the Commissioners as well as the Bureau of Economic Analysis.

Two questions. Can you commit to incorporating feedback from the other Commissioners and bureaus? And, two, will each potential new rule include an economic analysis to determine if there are any unintended consequences that could be derived from the rule?

Ms. Slaughter. Thank you for the question.

First, let me say, I think the value of rules is actually reflected in what you and some of your colleagues have talked about today, which is providing clear notice to businesses and to consumers about what is within the bounds of the law and what is not. Rules cannot change what is illegal. They cannot reach conduct and make things illegal that wouldn't be covered by the law. But they can provide clarity. And I think that that is really important for honest businesses who want to comply.

So that is the first thing I would say.

The second thing I would say is, absolutely, input from other Commissioners, input from our bureaus, input from the subject-matter experts has always been and will always be a very important part of the Commission's work, whether it is on rules, of which we have many already that we enforce, or on particular cases. So that has been important and will continue to be important and is, in fact, baked into Commission process.

Mr. Pence. Okay. Thank you.

Thank you, Madam Chair. I yield.

Ms. Schakowsky. The gentleman yields back.

Now I call on Congresswoman Yvette Clarke for 5 minutes of questions.

Ms. Clarke. Thank you, Chairwoman Schakowsky and Ranking Member Bilirakis, for holding today's hearing on this critical piece of legislation.

This is critical. The FTC's 13(b) cases are vital to protecting communities of color from not only dishonest business practices but also abhorrent and illegal racial discrimination.

Last year, the FTC bought a case under 13(b) against a New York City car dealership, Bronx Honda. The complaint detailed that Bronx Honda ordered its salespeople to charge higher financing markups and fees to Black and Latino customers. The company's general manager told employees that these groups should be targeted due to their limited education and that they should avoid the same practices with their White customers.

Thanks to 13(b), the FTC was able to step in and send \$1.5 million to the victims of this car dealership's illegal financing and sales practices, in addition to putting an end to these abusive markups for Black and Latino customers.

Acting Chairwoman Slaughter, can you talk about how the dealership, in this instance, might have gotten away with this abhorrent conduct had it not been for 13(b)? And can you describe how difficult or impossible this case would have been without 13(b)?

Ms. Slaughter. Thank you, Congresswoman.

As a native New Yorker, I cared a lot about this case. It was extremely important to me for exactly the reasons that you point out, that the population that was targeted by

the illegal conduct in this case were the Black and Latino constituents in New York who were ending up paying more money for their cars.

In this case, like in many cases, our 13(b) authority is what incentivizes companies to engage in settlement negotiations with us, push forward to stop their bad conduct, hopefully will incentivize other businesses not to engage in that bad conduct to begin with. And bringing cases like that is enormously important for the Commission and for the constituents we serve.

Ms. Clarke. And if you didn't have 13(b) authority, how would that have been difficult or even impossible for you to have brought this case?

Ms. Slaughter. So my memory in Bronx Honda is that we had a couple of other counts in addition to 13(b). We had the Truth and Lending Act and ECOA. But 13(b) does remain our primary authority to get monetary redress for consumers. And so, if we can't do that, even if perhaps we could have gotten civil penalties under some other authority, we wouldn't be able to return money to the consumers who were hurt. And, at the end of the day, that is an extremely important service that we provide.

Ms. Clarke. Thank you.

I am particularly concerned about the disproportionate impact of scams on vulnerable communities, communities who have already been struggling with the combined impacts of COVID-19 and economic crisis and the deep, systemic inequities that are pervasive throughout our civil society.

According to the FTC's own research, folks who are Black and Latino are more likely than their White peers to be victims of fraud. And yet data suggests that there is also a serious underreporting of fraud from communities of color. Back in 2014, the FTC launched its Every Community initiative to address these underlying disparities when it comes to fraud.

Acting Chairwoman Slaughter, when the FTC has secured refund checks for consumers under section 13(b), can you explain how the FTC makes sure those checks get to the victims in Black and Latino communities even if they aren't necessarily the ones reporting the fraud?

Ms. Slaughter. Thank you.

I think it is really important to note that we don't just return money to people who have reported fraud. In cases where we use our 13(b) authority, we get information from the defendants about who their customers were and who suffered losses as a result, and then we directly send money back to those people in almost all of our cases, whether that is in the form of electronic payments or mailed checks. We do the best we can, using all of the information we have available, to identify who the affected consumers are and what the best way is to get money directly to them.

Ms. Clarke. So why is passing the Consumer Protection and Recovery Act important to tackling fraud in Black and Latino communities? And if Congress fails to act on this legislation, what message does this send to scammers that target communities of color?

Ms. Slaughter. I think it is critically important to pass this legislation in order to give us the tools to efficiently and effectively disgorge ill-gotten gains and return money to consumers. And because we know, exactly as you testified, that an enormous number of scams prey on communities of color and especially Black and Latino communities, but also veterans, also military consumers, also older Americans -- these are the consumers who most need our help, and, without 13(b), we are not going to be able to return money to them in any kind of an efficient or effective way.

Ms. Clarke. Thank you, Madam Chair. I yield back.

Ms. Schakowsky. Thank you.

The gentlelady yields back.

And now I yield to Debbie Lesko for 5 minutes for her questions.

Are you here, Debbie?

Let's see. Not at the moment. So -- Debbie, are you there? Okay.

So, Kelly Armstrong, you are recognized for 5 minutes for questions.

Mr. Armstrong. Thank you, Madam Chair.

Retroactivity is not favored by the law. The ex post facto clause espouses this principle in criminal contexts, but we have judicial estoppel, laches, all different, I mean, various degrees on this, and it is based on fairness. Laws produce expectation and reliance, and people conform to their conduct accordingly. In any 13(b) reform bill, I think it is our duty to address the retroactivity question. If we fail to do so, we can expect continued uncertainty in litigation.

Acting Commissioner Slaughter, you said in your testimony that there are approximately 24 pending cases in Federal court alleging section 13(b) violations. And the Supreme Court has repeatedly affirmed a presumption against retroactivity unless there is a clear statutory test. The Landgraf test holds that, if a statute does not address retroactivity, the court should determine whether retroactivity would alter vested rights, create new obligations, impose a new duty, or attach a new disability.

It is possible that if Congress enacts a law to provide the FTC the ability to seek monetary relief under 13(b) and does not address retroactivity, the FTC will argue that retroactivity applies. The FTC would argue that it had such authority for decades under case law and that the conduct at issue occurred under the case law prior to the AMG Capital decision.

The FTC would argue that defendant's conduct occurred with their reliance based on the regime where 13(b) carried the threat of monetary relief. For the record, I think

such an argument would be incorrect. Whatever monetary liability is previously attached under section 13(b), AMG Capital probably wipes that slate clean.

At this present moment, however brief it may be, section 13(b) carries no threat of equitable relief. Congressional authorization of such monetary relief under 13(b) would impose a new reliance that would reaffirm Landgraf's presumption against retroactivity.

This new reality creates due-process considerations that cannot be overcome unless Congress explicitly addresses and authorizes retroactivity. Mr. Cardenas's bill does not explicitly address retroactivity. The only provision somewhat related is on page 4, starting at line 9, which seems to provide a 10-year statute of limitations.

I am worried about this ambiguity. And I think it is our responsibility as a committee and as Congress to adequately address the retroactivity question. I don't think we should, as a policy reason, leave it up to the courts.

And then I just -- I have one question Ms. Slaughter, because I was reading a Law Review article, and in that article it said there are roughly 75 pending Federal cases addressing section 13(b), and in your testimony you said there are about 24. And I am wondering if -- either my article is just old or we are talking about different cases. Because I didn't think it was that old.

Ms. Slaughter. Thank you. I actually heard a similar number at the Senate Commerce hearing this morning and can get back to you on the record on what the discrepancy is. The 24 reflects our inventory that we have done since the Supreme Court decision came down about what [inaudible] on 13(b). So it could be the discrepancy is either a difference in time because the caseload varies or because the cases of 13(b) plus other authority [inaudible].

Mr. Armstrong. Thank you. And we are going to dig into it, too, in my office,

too, because it is a big difference, and, I mean, it could be for various different reasons.

Thank you. I yield back.

Ms. Schakowsky. Thank you.

And now the sponsor of the bill under consideration, or under discussion anyway, today, the vice chair of the subcommittee, Tony Cardenas.

You are up for 5 minutes of questions.

Mr. Cardenas. Thank you, Madam Chair, once again, and also Ranking Member Bilirakis for having this important hearing.

And this is an opportunity for the American people to understand the balance of power and authority in this country, with the three branches of government. And here we have a law that was interpreted by the courts, and now we go back to the legislature, where we make laws. And, therefore, I think this is a perfect opportunity for us to exercise our responsibility as the legislative branch.

And, also, if you don't mind, Madam Chair, I think there was a little bit of noise going on, or misinterpretation, about the next witness panel, Mr. Beales, which -- he is going to have a great opportunity to answer any questions. I didn't want any of our viewers to think that he was thwarted or can't answer any questions. It will happen in the next panel.

So, with that, I have a question for our panelist, the Acting Chairwoman of the FTC.

Consumers who are harmed deserve fast, meaningful redress, and that means, at the very least, getting their money back. It simply cannot be profitable to defraud consumers until the FTC notices it. Right now, the message to wrongdoers is that they are free to pocket the money they have stolen from consumers ever since last week. Meaningful consumer recovery cannot be theoretical. It needs to be firmly established

in the law.

I have also heard some in the business community express due-process concerns if the FTC has the authority to obtain monetary relief for consumers under section 13(b). I personally have had some meetings with some of these individuals who have those concerns. No one wants to prevent people from defending themselves, especially when asset freezes or other court orders really can devastate legitimate small businesses. As a former small-business owner myself, I appreciate this concern fully.

So, in addition to the fact that all the proceedings under section 13(b) under this legislation happen in Federal court before a neutral Federal judge, can you speak to the checks and balances in the FTC enforcement process that ensures due process for the accused, Acting Chair Slaughter?

Ms. Slaughter. Thank you so much for that question, because I agree with you that due process is enormously important to us. We take our law enforcement authority very seriously, and we want to execute it fairly. And so we have a number of procedures in place within the FTC to make sure that that is the case.

So investigations happen; companies are given an opportunity to respond, to engage with the staff. Before any complaint is filed, companies have an opportunity to meet with the Bureau Director and, if they want, with the Commission and for each commissioner to hear out the arguments that the company makes.

And then the Commission itself has to vote, and the vote has to carry with a majority, on any particular enforcement action and on any settlement. So, whether we are going to court and asking for money or we are agreeing with the defendant to settle for money, that has to be subject to a Commission vote. And that is a really important protection.

Mr. Cardenas. Thank you.

I have heard some argue that the FTC will be just fine without section 13(b) authority in this bill, because the Commission can simply use section 19 of the FTC Act to seek consumer redress.

I just want to go through, especially for our consumer viewers, go a little bit through a question-and-answer with you, if you don't mind. I would like to explore the mechanics of section 19 with you.

How long does it take for an administrative order to be entered under section 19?

Ms. Slaughter. A fully litigated administrative order could take years -- 3 to 5, let's say.

Mr. Cardenas. Okay. And under 13(b) process, it is less lengthy?

Ms. Slaughter. Under 13(b), we would go directly to Federal court. So we wouldn't have to do the administrative process and then a Federal court proceeding to get money. We would go right to Federal court to seek the money.

Mr. Cardenas. So, in layperson's terms, when you say "to seek the money," basically, the court is the one that gives you the thumbs-up or thumbs-down to continue to proceed in that action, correct?

Ms. Slaughter. Yes. And that is another really important due-process protection. The FTC can't order fines or order restitution unilaterally. We have to seek it from a judge. And the remedies are equitable, which means they have to be fair to both sides.

Mr. Cardenas. Okay.

Under section 19 -- well, I am almost out of time, and I just wanted to thank you, Acting Chairwoman Slaughter, for testifying today. And I am sure that we are going to have other opportunities for us to get written information back and forth from the FTC, not just from you but from other Commissioners, et cetera. So I am very glad that we

do have a fair and thorough process before us.

With that, my time is up, and I yield back. Thank you, Madam Chairwoman.

Ms. Schakowsky. The gentleman yields back.

And now I recognize Debbie Dingell, if she is here, for 5 minutes. Yes, there you are.

Mrs. Dingell. Thank you, Madam Chair. And thank for you having this hearing. And I really want to thank my colleague from California, Representative Cardenas, for leading this. And this subject is so important, and his leadership is really making a difference.

And thank you, Chair Slaughter, for being here with us today.

I am going to stay on section 19. There are significant limitations to the FTC using section 19 of the FTC Act to seek consumer redress. Chief among them is that section 19 of the FTC Act has a 3-year statute of limitations. Oftentimes, we do not even learn about unlawful conduct until many years later. Consumers who were the victims of deception should be entitled to refunds even if the deception isn't discovered until after it stops.

So my first question, Chair Slaughter: How would a 3-year statute of limitations impact the FTC's ability to go after unlawful conduct and recover money for victims?

Ms. Slaughter. Thank you for the question.

I think you are absolutely right that a 3-year statute of limitations would be a huge impediment to enforcement for us. It incentivizes defendants to drag out investigations. It is a problem where, as you pointed out, we haven't even discovered harm until well into that period of time.

And I think the other thing for those who are particularly concerned about due process that I worry about is that a 3-year statute of limitations forces us to rush to the

courthouse door in order to -- or to the administrative courthouse door in order to file an action because we are mindful of that clock. And I would rather we have the opportunity to do a thorough investigation to really understand the magnitude of the harm, the justifications the company provides, and the 3-year clock is an impediment to that.

Mrs. Dingell. Thank you for that.

I am proud to be an original cosponsor of the Consumer Protection and Recovery Act, which would restore the agency's authority to get money back to consumers who have been scammed. This bill adds a 10-year statute of limitations on a court's ability to award monetary relief in section 13(b) cases, which my colleague was talking about a minute ago. The statute of limitations should allay any concerns that the FTC will seek monetary relief in cases involving [inaudible].

But even with the 10-year statute of limitations, this doesn't mean Congress can take its time now in fixing 13(b). As you well know, scammers and fraudsters often disappear, leaving no money for consumers to recover.

Chair Slaughter, does the inclusion of a 10-year statute of limitations make it any less urgent for Congress to pass this legislation?

Ms. Slaughter. No, absolutely not. I mean, I think as I reflected earlier, Section 5 hasn't had a statute of limitations. This would be a new statute of limitations that it imposes.

And I think it is a reasonable imposition compared to what we have had because of the urgency to pass this legislation right now. As I mentioned, we have \$2.4 billion in consumer redress that is at stake in our currently pending cases, and that is gone if Congress doesn't act.

Mrs. Dingell. So, if we delay, I mean, you have talked about how you can't get it

back. What does it do to your real ability to get money back to consumers who have been -- excuse my language, everybody -- screwed?

Ms. Slaughter. I think it really hobbles us to not have this authority. I think the thing to think about is, not only will we not be able to get that money that is pending back to consumers or in new cases, it will also disincentivize businesses from entering into settlements with us to begin with, which means we are going to have to do more litigation, which is higher cost for taxpayers that provides less benefit for consumers. It is more profit for lawbreakers. And all of that is at the expense of the honest businesses who are trying to compete against companies who engage in unfair, deceptive, and anticompetitive conduct.

Mrs. Dingell. Thank you.

I am almost out of time, so thank you, Acting Chairwoman Slaughter, for being here, to all those that are working it, and I look forward to working with all my colleagues on this. And I yield back.

Ms. Schakowsky. The gentlelady yields back.

And now I recognize Robin Kelly, my colleague from Illinois, for 5 minutes.

Ms. Kelly. Thank you, Madam Chair Schakowsky, for holding this important and timely hearing.

And thank you, Ranking Member Bilirakis.

Seniors are especially vulnerable to scams and fraud. According to the most recent report from the FTC, older adults reported more than \$440 million in losses from fraud in 2019. And older consumers who report losing money reported much higher individual losses than younger consumers.

It is hard to recover these losses, but the FTC's efforts have helped many seniors get some compensation. According to the FTC's 2020 "Protecting Older Consumers"

report, the Commission filed 10 new actions last year against entities for deceptively pitching products that would purposely treat or cure medical concerns that disproportionately affect older adults.

The report also notes the FTC's success in getting money back to consumers. This includes \$2.7 million in redress for over 8,000 consumers defrauded by a timeshare resale scheme; \$441,000 in refunds to more than 27,000 consumers who purchased purported cognitive improvement supplements; and \$16 million to more than 27,000 consumers who lost money to a debt relief scheme that took tens of millions of dollars from financially strapped consumers, including the elderly.

These represent just a few examples of the FTC getting money back for consumers in cases that disproportionately affected older Americans. Protecting older consumers in the marketplace has always been one of the FTC's top priorities. The Supreme Court decision has now deprived the FTC of its best tool to get money back quickly to seniors who have been scammed.

We all need to work together to protect senior citizens from scams before they fall victim and suffer monetary losses.

Acting Chair Slaughter, when seniors are scammed, they tend to report much higher individual losses. Can you explain why this is and why it can be especially difficult for seniors to recover when they have been scammed?

Ms. Slaughter. Thank you. It is a great question. And I think that looking out for elder populations who are targeted with fraud is a high priority and has been a high priority for the FTC.

I think the reason they report higher losses may often be because they have, you know, maybe more access to income than younger consumers, and maybe the types of scams that target them. We see seniors as targets of scams that involve tech support,

including pain treatment scams, and disease and pain claims.

And I just want to take the moment to point out that, when we talk about the timeframe that it would take for section 19 cases to be brought, as opposed to the short timeframe for 13(b), if we had to go through a 10-year process to get money back in a section 19 case, think about what that means for a senior who is suffering a loss. That 10 years is really significant and really material, and I don't want to have to tell them that they are going to have to wait that long to recover money that they have lost.

Ms. Kelly. Well, I know that is one reason seniors will be especially hurt by the recent Supreme Court decision. And what are other reasons?

Ms. Slaughter. Well, I think it is not just the time; it is harder for us to get money back at all. Section 19 makes it harder to get asset freezes. The burden of proof is higher. The process is longer. And without the ability to go to Federal court and stop bad conduct immediately and recoup money to return to consumers, we are at a real disadvantage and, more importantly, those seniors are at a real disadvantage compared to the scammers.

Ms. Kelly. And how will this new legislation help seniors recover from being defrauded?

Ms. Slaughter. This new legislation restores the understanding of the FTC Act that had been validated by eight circuit courts of appeals and in place over the last 40 years. And that is the tool that we have used to return money to seniors, and it is a really important tool.

Ms. Kelly. And without this act would the FTC be as well-positioned to help seniors who have been defrauded? If not, why not?

Ms. Slaughter. No. We would be substantially less well-positioned -- we would be substantially worse off in our efforts to help seniors who have been defrauded,

because we wouldn't have that efficient and effective tool to stop bad conduct in Federal court and return money to seniors who have suffered losses.

Ms. Kelly. Thank you so much.

And, again, thank you, Madam Chair, for having this hearing. I yield back.

Ms. Schakowsky. The gentlewoman yields back.

And now, Kathleen Rice, I recognize you for 5 minutes for questions.

Miss Rice. Thank you, Madam Chair.

And thank you, Ms. Slaughter, for being here with us today. This is really very informative.

You know, there are some who would say that the Consumer Protection and Recovery Act, Mr. Cardenas's bill, would expand the FTC's authority in a way that would threaten industry. Can you address that claim? Because I don't understand where that kind of claim comes from.

Ms. Slaughter. I could try to address it. I have to tell you, I don't really understand it either, because I firmly believe that 13(b) has been the tool that allows us to go after illegal conduct by dishonest businesses and scam artists, and, to me, that helps honest businesses who want to comply with the law and want to be able to compete on a level playing field.

So I can't really explain it for you, but I think it is an argument I don't find particularly persuasive.

Miss Rice. So I don't know if this is an obnoxious question, but do you lose a lot of cases?

Ms. Slaughter. You know, honestly, we do lose some cases, and I think that that is an important thing to remember, because we do not have the ability to get monetary redress by fiat. We cannot issue fines on our own. We have to go to a Federal court,

and we have to convince a judge not only the conduct is illegal but that redress or disgorgement is appropriate and that the remedies that we are seeking are equitable. Or, at least, this is how it is under 13(b).

So I think it is really important. I think we take seriously the responsibility to follow the facts and follow the law and bring cases where we have reason to believe that the law has been violated, but there are important checks in this system on the FTC, especially in the form of judicial review. And I think that that would stay under the bill Mr. Cardenas has proposed.

Miss Rice. And just to be clear, how are cases -- are cases referred to you? Are you the originator of cases? Do you hear things? I mean, you are not out there just targeting willy-nilly, you know, small businesses all over the country to try to put them out of business.

Ms. Slaughter. No, absolutely not. And I think we try to prioritize the worst conduct. We collect complaints through our consumer complaint system. We monitor public reporting. We work with State attorneys general and local authorities and advocacy groups to identify violations of the law, to investigate them thoroughly and carefully, to propose complaints and potential remedies, and then to move forward.

Miss Rice. Again, I think it is -- the other -- very quickly, I have 2 minutes left -- I just want to ask you about a very vulnerable group, veterans.

In 2016 and 2019, the FTC settled cases, as I am sure you are aware, against DeVry University and the University of Phoenix, respectively. And, as we now know, these for-profit colleges were targeting veterans for their Post-9/11 GI Bill benefits and ending up saddling them with student loan debt without providing the career opportunities that they promised.

Now, in my home State of New York, 5,283 people who were defrauded by DeVry

University were able to get back over \$2 million, and 3,784 people who were defrauded by the University of Phoenix were able to get back over \$1.2 million in these settlements, thanks to the work of the FTC. So that is what it looks like to protect people from unfair or deceptive practices, especially vulnerable groups of people like veterans.

Can you just talk about other cases where veterans have received redress thanks to the FTC taking action under its 13(b) authority?

Ms. Slaughter. Sure. And I am happy to get you a longer list of cases for the record, but I know we have seen cases where veterans are targeted with business opportunity schemes and with, sort of, lead-generation efforts, in part because of the difficulty of adjusting from military life to civilian life, because of the ways veterans move around so much, and because they need to get into the economy. I think that scammers see this.

I heard someone earlier mention that crisis is a moment of opportunity for scam artists, and that is true of any challenge. We have seen it in COVID-19. We see it in the way scammers target vulnerable populations. And that is exactly why it is so important to us to be able to protect those people who most need our help.

Miss Rice. Yes, critical. I mean, your authority under section 13(b) is so critical to helping -- you know, we talked about seniors before. Veterans, the veteran community is particularly vulnerable.

So thank you so much for joining us here today.

And, Madam Chairman, I yield back.

Ms. Schakowsky. The gentlewoman yields back.

And now I recognize Congresswoman Angie Craig for 5 minutes of questions.

Ms. Craig. Well, thank you so much, Madam Chair, for yielding. And thanks, in particular, to my colleague Representative Cardenas for his work on this bill and for all of

our panelists for being here today.

Acting Chair Slaughter, I want to ask you briefly about a case that involves the great work of our Minnesota attorney general, Keith Ellison, and your agency, where you worked together to stipulate an order with Manhattan Beach Ventures to help protect student loan borrowers.

As you may recall, this company deceptively promoted payment-reduction programs to consumers looking for help with their student loans. The FTC determined in September 2019 that Manhattan Beach Ventures had been charging borrowers up to \$1,400 under the premise that this money went toward their students loans and falsely promised that their services would permanently lower or even eliminate consumers' loan payments or balances.

Our AG took special notice of this case because Manhattan Beach was directing those borrowers into financing this fee through a high-interest loan with a third-party financier, Equitable Acceptance Corporation, a company based in Minnesota.

The outcome of this case is yet another example of why we need strong 13(b) authority. The agency imposed a \$4.2 million judgment on Manhattan Beach and \$28 million on the Equitable Acceptance Corporation, along with other pro-consumer actions against these two companies.

As I understand it, the agency is currently reviewing the customer data now to determine restitution for individual borrowers.

Acting Chair Slaughter, can you give me any sort of status update on this case or commit to ensuring that the agency prioritizes this customer review to help get this money back to defrauded borrowers as soon as possible?

Ms. Slaughter. Thank you so much for the question. And as you said that, I realized I should have answered to Congresswoman Rice that student loans to end

payday lending are another example of areas that really target veterans and military consumers.

I can absolutely commit to you that we will prioritize that work. And I am happy to get you more details on the status for the record.

Ms. Craig. Well, I appreciate that. And, obviously, Congresswoman Rice brought up some incredibly important points about protecting our Nation's veterans. And I appreciate all the work that you are doing.

And, Madam Chair, I yield back.

Ms. Schakowsky. The gentlewoman yields back.

And now I am recognizing Congresswoman Lizzie Fletcher for 5 minutes for her questions.

Are you here, Lizzie?

Mrs. Fletcher. Yes. Thank you, Chairwoman Schakowsky. And thanks to you and Ranking Member Bilirakis for convening today's hearing.

Chairwoman Slaughter, thank you for your testimony today. It has been very helpful, very useful. And as we are getting to the end of the hearing, we have already covered a lot of ground, but I want to follow up on a couple of issues.

I agree with Mr. Cardenas's point that this is a great opportunity to see how our government functions, and I want to bring it back to why we are here. We are here to address the finding of the Supreme Court in the AMG Capital case. And that is where Justice Breyer, writing for a unanimous Court, said the question before the Court was whether the statutory language authorizes the FTC to seek and the Court to award equitable monetary relief, like restitution or disgorgement, and the Court concluded it did not.

And so that has created the problem that we are here to address, and it forms the

basis of, I think, the very simple legislation before us, H.R. 2668, the Consumer Protection and Recovery Act, which I was glad to cosponsor and which answers the question the Court asks by making clear that it is the intent of Congress to provide these remedies to the FTC.

Some of my colleagues have raised concerns today and mentioned that they want to address these issues in a bigger bill that covers other issues. But it appears to me that the issue that was before the Court is the issue before this committee, and it is narrowly tailored to address what has become now an urgent concern, to effectively maintain the status quo on enforcement actions.

So, you know, I would like to hear, as we have just a few minutes left, a response to what Congresswoman Rice touched on as well, this concern about predictability for businesses that we have heard from some of the people on this hearing today; that, in fact, what we are talking about is maintaining the status quo. It is making clear Congress's intent and really making it clear for businesses to operate.

And I think you have touched on this a little bit, but just, in framing the question, I will say, you know, we heard at a hearing earlier this year that section 13(b) really is critical to keeping a level playing field for businesses. And if, you know, we don't have the tools to regulate what is happening and to seek disgorgement of ill-gotten gains, to make sure that there are monetary penalties brought about after a court case, that that really takes away from businesses that are playing by the rules and also, you know, causes consumers to question the legitimacy of the entire market and lose trust.

So can you just talk, with the time we have left, about how this bill, the Consumer Protection and Recovery Act, will ensure, really, a healthy marketplace and clarity for those businesses by returning and making clear our intent of the Congress to provide these remedies to the FTC?

Ms. Slaughter. Thank you so much for the question.

I think you are absolutely right. I think 13(b) restoration is really largely about protecting honest businesses and making sure that they can compete fairly against a level playing field of companies who are also behaving honestly. If some business is getting ahead by lying to its consumers or deceiving them or taking money unfairly, that not only hurts those consumers; it disadvantages the honest businesses who are following the law. So I think that that part is really important.

The other way I think it protects businesses that is important is that small businesses can be the victims of scams too. And so 13(b) has been used and we will continue to use it, if we get the authority restored, to protect small businesses and to return to them money that was illegally taken from them.

Mrs. Fletcher. Thanks.

And that is great segue to the last question I have in the time that I have left. But you mentioned that the section 13(b) enforcement has resulted in more than \$11 billion in refunds to consumers during just the past 5 years. And in my home State of Texas, more than 670,000 consumers have received more than \$100 million in refunds in just the past few years.

What is the estimated loss to consumers over the next, say, 5 years if Congress doesn't, in fact, reinstate the FTC section 13(b) authority?

RPTR MOLNAR

EDTR HOFSTAD

[2:57 p.m.]

Ms. Slaughter. Thanks.

Well, it is really hard to predict the next 5 years with any specificity. I said earlier that I think the best measure of the next 5 years is the last 5 years, which you pointed out is \$11.2 billion.

But I would amend that only to say that I don't think we have seen evidence that conduct is getting better. I think, to the contrary, we have seen evidence that conduct is getting worse. And particularly in the pandemic, we have seen complaints go way up. So I would say that 11.2 would be more like the baseline, and it is probably more than that, given what we know about the markets.

Mrs. Fletcher. Well, thank you, Chairwoman Slaughter, for your testimony today.

And thank you, Chairwoman Schakowsky, for holding the hearing. I yield back.

Ms. Schakowsky. And the gentlelady yields back.

And last but not least for panel one -- I remind you that we have a second panel coming -- I yield 5 minutes to Darren Soto for his questions.

Mr. Soto. Thank you, Chair Schakowsky.

We know scams in the modern era are coming in all sorts of forms -- robocalls, fake websites, emails, social media, text scams. They are focusing on our veterans, our seniors, poor Americans, communities of color, persons with disabilities, and other vulnerable communities.

And we have seen the coronavirus pandemic just exacerbate the type of fertile ground for these scams to take hold, whether it is stimulus checks, vaccine claims, people

claiming to help with paycheck protection loans. We have heard about fake testing kits, treatment scams, unsubstantiated disinfectant claims, and, even worse than all, cure claims.

In Miami, we saw a scam where a company created a Miracle Mineral Solution. It contained bleach. And they made over a million dollars selling this bleach product to tens of thousands of consumers and promising to cure COVID and other illnesses. Can you imagine if this Miracle Mineral Solution scam -- if this company could keep that money? That would be outrageous.

And, of course, that is why we are here today. We are appreciative of the FTC for netting over \$482 million for 1.6 million seniors and other consumers, for victims of fraud, illegal business practices, and the like.

We saw that this section 13(b) power was settled law for over 40 years, but then the Seventh Circuit, the Third Circuit came up with new rulings, and 48 million Americans now are unable to get monetary redress under 13(b).

I want to thank Tony Cardenas -- Tony Cardenas -- my fellow E&C brother, for co-introducing this bill along with many of us, including myself, the Consumer Protection and Recovery Act. It amends the 13(b) FTC to explicitly state that the FTC has the ability for both injunctive and monetary equitable relief so that we can require bad actors to repay these ill-begotten gains.

And I am encouraged by the bipartisan comments from today. We can do this in a bipartisan way. We did it with robocalls and with new violations.

Acting Chairwoman Slaughter, we see these scams run rampant in Spanish, in Hispanic communities. And as we look to pass this bill solidifying your 13(b) authority, what is the current monitoring of scams in Spanish and your ability to use this 13(b) authority to be able to stop some of these in-Spanish scams?

Ms. Slaughter. Thank you. I think it is a really good point. Spanish-speaking communities are among those where we have seen disproportionate numbers of scams and where it is particularly important for us to be able to return money to consumers who have been harmed. One that comes to mind in the course of the pandemic was a business opportunity scam that particularly targeted Latino women.

And so it is important not only for us to stop those scams but to be able to get money back to people who are hurt by those scams. And if we don't have the ability to get the money back, it is harder for us to stop the scams to begin with and there is less incentive for other potential scam artists to stay out of the scam business to begin with.

Mr. Soto. And what about foreign scams? We have a very international, very diverse community in Florida. And we have scammings coming from every continent other than Antarctica, and we certainly want to make sure they are being held accountable.

What is the limits of what FTC can do under 13(b), should we be able to pass it, to help with some of these foreign scams?

Ms. Slaughter. So I think it is a fact-specific question, because it depends on, are the defendants within our jurisdiction or without our jurisdiction? Do we have cooperation agreements with foreign jurisdictions where they may be located?

It is certainly harder to deal with foreign scams, but that doesn't mean it is not a priority. We work very hard to identify the source of the scam and work with whatever authorities are available -- local, international, Federal partners, and other levels -- to target the bad behavior and put a stop to it.

Mr. Soto. Thanks so much.

I yield back.

Ms. Schakowsky. Well, the gentleman yields back, and that concludes our first

panel.

I want to give a hardy thank you, hardy because that was 2 full hours of being questioned. And we appreciate your availability to us in answering all the questions from all of our members that asked them. So thank you very, very much.

I will now introduce our witnesses for the second panel. And I am hoping to see them click on so we can see their faces. I see --

Mr. Cardenas. Chairwoman Slaughter?

Ms. Schakowsky. Tony, did you want to say something to --

Mr. Cardenas. Thank you, Chairwoman Slaughter. That is all. Thank you.

Ms. Schakowsky. Yeah. We appreciate you so very, very much.

So let me introduce the next panel.

We have Anna Laitin -- am I saying that right?

Ms. Laitin. Yes. Thank you.

Ms. Schakowsky. -- director of financial fairness and legislation strategy at Consumer Reports; Dr. J. Howard Beales, who is professor emeritus of strategic management and public policy at George Washington University; and Ted Mermin, who is executive director of the Center for Consumer Law and Economic Justice at the University of California, Berkeley School of Law.

We want to thank our witnesses. We look forward to hearing your testimony.

And why don't we begin, then, with Ms. Laitin?

You are recognized now for 5 minutes for an opening statement.

STATEMENTS OF ANNA LAITIN, DIRECTOR, FINANCIAL FAIRNESS AND LEGISLATIVE STRATEGY, CONSUMER REPORTS; J. HOWARD BEALES, PH.D., PROFESSOR EMERITUS OF STRATEGIC MANAGEMENT AND PUBLIC POLICY, GEORGE WASHINGTON UNIVERSITY; AND TED MERMIN, EXECUTIVE DIRECTOR, CENTER FOR CONSUMER LAW AND ECONOMIC JUSTICE, AND LECTURER, UNIVERSITY OF CALIFORNIA, BERKELEY SCHOOL OF LAW

STATEMENT OF ANNA LAITIN

Ms. Laitin. Thank you, Chair Schakowsky and Ranking Member Bilirakis and members of the committee, for inviting Consumer Reports to testify on this important legislation and the vital role of the Federal Trade Commission in protecting consumers in the marketplace.

As a former member of the staff of this subcommittee, it is particularly nice to be back, if only virtually.

The FTC is an essential consumer protection entity. It is charged with protecting consumers from unfair and deceptive acts and practices, both online and off-. This includes, as we have been discussing, scammers peddling bogus coronavirus cures, fake online reviews, deceptive data collection practices, fraudulent lenders exploiting small businesses, and more -- all in a marketplace that is growing larger, more complicated, and harder for consumers to navigate each year. And, increasingly, it is having to do it with both hands tied behind its back, underfunded and under-resourced.

Last week, the Supreme Court stripped the FTC of its most effective means to recover ill-gotten profits from scam artists and fraudsters and return the money to the victims of those scams. For more than 40 years, the FTC has relied on section 13(b) of

the FTC Act to stop unfairness and deception in the marketplace, prevent wrongdoers from benefiting from their behavior, and repay the victims of the fraud. Unless Congress acts to amend the FTC Act to ensure that the Commission can appropriately address illegal behavior, scam artists and fraudsters will feel empowered to engage in more wrongdoing.

The facts of the case decided by the Supreme Court last week highlight the urgent need for a legislative fix to the FTC Act. AMG Services was a fraudulent payday lending company. It bilked millions of struggling low-income Americans out of their hard-earned money by imposing undisclosed charges and hidden fees on small-dollar loans, sometimes inflating the cost to more than three times the amount borrowed.

The victims were people in financial need who went to a payday lender, a borrower of last resort. They were lied to and, due to those lies, lost more money. More than 5 million people who were looking for a lifeline instead got fleeced.

As a result of the FTC's enforcement action, AMG was required to pay disgorgement in the amount of \$1.3 billion to be returned to the individuals who were defrauded. To date, nearly 1.2 million people across the country have received checks from the FTC, averaging \$235 each.

As this case worked its way through the courts, nobody argued that AMG Services was a model company or that it did anything other than scam and defraud its customers. What AMG Services argued and what the Supreme Court decided last week was that the FTC can stop the fraud but it does not have authority to take any further steps. It cannot recover those funds from AMG Services and return them to the customers who were defrauded.

This is clearly an unjust outcome that Congress cannot let stand. No company should be able to hold onto money that it obtained illegally. And people who are lied to

and defrauded should be able to get their money back. They should never be left holding the bag.

The FTC's other options for obtaining restitution are nowhere near as effective as Section 13 has been or as effective as the FTC and the Americans that it serves need it to be. This is a problem that Congress can fix. There is no reason for the FTC to twist itself in knots and use unwieldy authorities to achieve justice when a simple change to the FTC Act can restore the Commission's authority.

The Consumer Protection and Recovery Act, introduced by Representative Cardenas, would amend the FTC Act to restore the authorities that the Commission has successfully operated under for more than 40 years. It would enable the Commission to pursue fraudulent and deceptive actors and to return money to the people they harmed. And it would end any debate about the proper role for the FTC in achieving relief for consumers.

Importantly, this bill extends the 13(b) authorities for equitable remedies to all violations of the FTC Act and does not create artificial delineations for the types of illegal acts that should qualify. The FTC has authority to enforce against unfair and deceptive acts and practices as well as unfair methods of competition. It should have authority to seek equitable remedies in all cases under its jurisdiction -- disgorgement of ill-gotten gains and restitution for consumer losses.

It is a simple matter: If a business makes money from violating the FTC Act, it should not be able to keep that money.

In conclusion, this hearing raises a simple question: Should companies be able to profit from lies and deception in the marketplace? The answer is as simple as the question: No.

While the Supreme Court decided last week the text of section 13(b) does not

allow for that, it in no way ruled on this commonsense question. This leaves the question in your hands.

In order to continue to effectively monitor the marketplace and stop fraudulent and illegal activity, the FTC needs this authority restored. The Consumer Protection and Recovery Act would do just that, and we urge you to act quickly to enact it into law.

We urge the committee to go further, as well, and to recognize the FTC is being asked to do far more than it realistically can with its existing staff and resources. In order to build a marketplace that works for consumers, for small businesses, and for honest companies that can't compete against those that are willing to break the law, we need an FTC with sufficient capacity and penalty authority to provide truly effective deterrence.

We look forward to working with this committee to further strengthen this important consumer protection authority.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Laitin follows:]

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

Ms. Schakowsky. Well, thank you.

The gentlewoman yields back, and let me now thank her and recognize Dr. Beales.

You are now recognized for 5 minutes.

STATEMENT OF J. HOWARD BEALES, PH.D.

Dr. Beales. Thank you for the opportunity to testify today. I am Howard Beales, an emeritus professor at George Washington School of Business. I spent most of my career either at or writing about the FTC, most recently as the Director of the Bureau of Consumer Protection early in this century.

Since 1981, attacking fraud in Federal court has been the foundation of the FTC's consumer protection enforcement. The FTC files a case under 13(b) seeking an ex parte asset freeze -- and that is really the key to 13(b) -- and resolves the matter in the same forum with a permanent injunction and monetary relief for consumers.

Faced with egregious frauds, eight circuit courts of appeals blessed the program. Fraud cases saw an expansive measure of injury -- total sales of product. Sensible in the context of worthless products promoted through fraud, that measure is completely unreasonable when applied to a new, tangential claim of benefits for a long-established product. The Commission has yet to develop a reasonable approach to assessing injury in this situation.

As the Supreme Court has noted, success led to expanded use of 13(b), both in antitrust and consumer protection. Used in complex cases of advertising substantiation, the potential consequences of a violation went from an administrative cease-and-desist order to the total sales of the product. Eight years ago, I co-authored an article warning that this unwarranted overreach could jeopardize the fraud program itself.

Unfortunately, that is exactly what happened in the Supreme Court last week.

Congress should answer two key questions in legislation: When can the Commission get monetary relief? And what procedures should it use to do so? Congress should provide specific answers to those questions, not leave them to the Commission's unlimited discretion.

Regarding monetary relief, the original vision of the FTC was to provide guidance for appropriate marketplace conduct. Because the statutory prohibition was deliberately vague, the only remedy available was a cease-and-desist order. This choice was wise because, with uncertain standards, the risk of monetary sanctions could chill lawful conduct that actually benefits consumers. That uncertainty remains.

When I was Bureau Director, for example, we took the then-novel position that lax information security practices could be illegal. Significant monetary penalties for failing to anticipate that legal innovation would have been inappropriate.

Nevertheless, some areas are clear. Fraud involves business conduct about which there is no legal uncertainty. Section 19 also allows monetary relief where a reasonable person would know the conduct was dishonest or fraudulent. The early 13(b) cases respected this standard, and it remains appropriate.

Fraudulent or dishonest conduct should be subject to monetary sanctions. Conduct where reasonable people may disagree about whether a violation even exists should not. Aggressive penalties applied to practices of uncertain legality will likely lead to excessive caution that can harm consumers.

For example, the FTC's advertising substantiation cases often turn on disagreements among scientific experts about the evidence to support a particular claim. The history of claims about the relationship between diet and health illustrates the problem. Such claims were illegal under FDA rules in 1984 when Kellogg began a

campaign for All Bran promoting the National Cancer Institute's recommendation that diets higher in fiber could reduce the risk of cancer. If such claims are wrong, consumers may give up a better-tasting cereal. Mistakenly prohibiting such claims or deterring them because of the risk of severe penalties would deprive consumers of information that may save lives. If total sales of All Bran are at risk from the date the claim first appeared, the FTC starting point for equitable relief, that would be a severe financial penalty indeed.

Today, claims that masks can help reduce the risk of COVID are useful to consumers. Typically, however, the FTC wants randomized, double-blind, clinical trials to support health-related claims. Such evidence does not exist for masks, and there was almost no evidence of any sort a year ago when the claims mattered most. If total sales revenue is at risk, few are likely to make claims.

In addition, the Commission should seek to complement, not compete with, monetary remedies available to private plaintiffs. This is especially relevant in antitrust, where the class-action bar routinely follows government findings of a violation with lawsuits seeking monetary relief. The same is increasingly true of consumer protection cases against legitimate companies. Money is available, and private class actions can and do pursue financial relief. There is no reason for the FTC to supplant these cases.

Regarding procedures, with fraud, section 19 process is unworkable. It would require three separate proceedings -- a preliminary injunction to obtain an asset freeze, an administrative proceeding to determine a violation, and separate district court proceeding to recovery money. A district court judge would have to freeze assets and supervise the receiver without having any control over the ultimate disposition of the case. Judges will probably decline to do so, but then there will be no money left for consumers.

The section 19 process is eminently workable when cases involve legitimate companies, however. Most such cases settle, and whether the pleadings cite section 13(b) or section 19 does not matter. The Volkswagen case and the Herbalife case that you heard about this morning, or earlier today, are examples. Those cases would have been consent agreements still; they just would have cited a different section of the statute.

To conclude, Congress should authorize the Commission to pursue equitable relief under 13(b), subject to the substantive standard set forth in section 19. Congress should set the standards for when money is appropriate rather than granting the agency unlimited discretion.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Beales follows:]

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

Ms. Schakowsky. Thank you, Dr. Beales.

And now I would call on Mr. Mermin for his 5 minutes of presentation.

STATEMENT OF TED MERMIN

Mr. Mermin. Thank you very much, Chair Schakowsky, Ranking Member Bilirakis, and members of the subcommittee. My name is Ted Mermin. I direct the Center for Consumer Law and Economic Justice at the Berkeley Law School, but the thoughts I share today are my own.

Today, I am here today as a concerned citizen. We need the FTC. But the agency that is supposed to be protecting all of us from scammers and con artists and hackers and tech barons no longer has the tools and the resources it needs to do its job. Last Thursday's decision by the Supreme Court means that the FTC is now unable to perform its most important consumer protection function -- getting money back to the people it has been taken from illegally.

Fortunately, Congress can fix the problem. The Consumer Protection and Recovery Act represents a significant and now absolutely urgent step towards retooling the FTC. It is one step, because I hope that this committee will, perhaps later this year, take on the full task of giving the FTC what it needs to handle not only the current emergency but also the next one. We need to make sure that a 21st-century FTC has tools to take on 21st-century problems.

Now, I want to emphasize that I look at the FTC from the outside -- outside the agency and outside the Beltway. Some of my proudest years were spent as a deputy attorney general in a State AG's office. We worked with the FTC. But we also wondered why the FTC was so under-resourced and why it couldn't do many of the things

that State AGs take for granted.

For example, in consumer protection cases, State AGs rely on three kinds of relief in almost every case: first, getting people their money back; second, ensuring that the business that acted unlawfully is under court order not to do it again; third, requiring the payment of civil penalties to give the business and its competitors an incentive not to engage in that activity.

It never made sense to us that the FTC mostly couldn't require civil money penalties and, in some courts, couldn't get an injunctive order simply because the illegal conduct had ended.

And, last week, well, the AMG v. FTC ruling is going to disrupt, as we have heard today, every case the FTC has pending. On Friday, for example, a judge in Arizona appointed by President Trump, who had granted an asset freeze against a pure pyramid scheme, suggested he was going to lift the order because it was aimed at consumer redress.

The FTC needs new resources. The agency has many fewer employees than comparable agencies that cover industries responsible for much smaller segments of the economy. And it has lost almost 40 percent of its positions in the last four decades, while the GDP of this Nation grew by 750 percent. That makes no sense.

Praise, kudos to this committee for making sure, in bipartisan fashion, that the Appropriations Act last December included more resources and COVID-related civil penalty authority to the FTC. But that expires with the pandemic. This committee can make it permanent so that the FTC can handle emergencies when they arise and not on a one-by-one, after-the-fact basis.

The need for public enforcement capacity is acute. Most Americans can't afford to hire their own lawyers, and mandatory arbitration and restrictions on class actions

have drastically reduced the availability of private redress. Public enforcement has become the last line of defense in market protection.

The CPRA is a direct and a modest fix. The alternative cannot respond to the speed and ingenuity of fraudsters. The requirement for a complete administrative proceeding before an action can be brought under section 19 is unworkable.

I think members of this committee, along with the American public, have come to rely on the FTC to safeguard us during the pandemic. Perhaps this agency that is dedicated to getting our money back, to stopping scams, and to ensuring our privacy has earned our trust.

I have many colleagues who work at the FTC. You could not find a more dedicated, capable group of people. They don't cut corners. They do things the right way. They are public servants in the truest sense.

I believe we can agree today that a currently under-equipped FTC needs to be able to do more to protect American consumers, not less. State AGs have had the authority proposed in the CPRA, and more, for decades. The political process and the court system have apparently managed to keep the AGs in line.

This committee meets at a perilous historical moment. The chief protector of American consumers has been sent to the sideline just when we are experiencing a heightened threat.

Members, swift action to restore the FTC's traditional authority means that, when constituents contact your office and tell your staff that they have lost their life savings to a work-at-home scam or their identity has been stolen and someone has opened accounts in their name or they spent their stimulus payment on a sham cure for COVID for their grandmother who is on a respirator, there will still be an agency to refer them to.

No one wants that staffer to have to add, "Well, we could have sent you to the

FTC, but they don't actually have the power to get you your money back anymore."

Inaction or delay will mean no recovery for millions of wronged American consumers.

The time to pass The Consumer Protection and Recovery Act is now.

Thank you.

[The prepared statement of Mr. Mermin follows:]

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

Ms. Schakowsky. Thank you.

Okay. So we have now concluded witnesses' opening statements for the second panel. At this time, we will move to member questions. Each member will have 5 minutes to ask questions for our witnesses, and I will start by recognizing myself for 5 minutes.

I feel like I need to begin by restating something that I had asked before, a fact I had mentioned before. In October of 2020, all five FTC Commissioners, Republicans and Democrats, sent a letter urgently to Congress to act quickly to reaffirm section 13(b) and preserve the FTC's ability to recover ill-gotten gains for consumers. So that was the FTC itself, in a bipartisan way, that was asking us to act, and I certainly agree that we ought to do that.

Fraudsters and scammers have profited immensely from the fear and anxiety that we have seen come along with the COVID-19 pandemic. Since the beginning of the pandemic, consumers have reported losing more than \$400 million just on pandemic-related fraud. As we all struggle with the devastating consequences of the COVID-19 pandemic, we shouldn't also have to worry about scammers and fraudsters taking advantage of it.

So I am very proud of the bipartisan COVID Consumer Protection Act that passed. This was a new act which was included in the 2021 omnibus giving the FTC authority to seek civil penalties for scammers. And I was pleased to see that the Federal Trade Commission brought its first case under this new law against a business's deceptive marketing of a product containing vitamin D and zinc as scientific proof to treat and/or prevent COVID.

So my question is this: Under the COVID-19 -- this is for Mr. Mermin. Under the COVID-19 Consumer Protection Act, the FTC can fine companies who violate the law

for up to \$43,792 per violation. When the FTC fines companies using this authority, where does that money go?

Mr. Mermin. That money currently returns to the U.S. Treasury. And that is one way of addressing things.

I would say, perhaps -- I don't think it is a matter for this bill, but if in a bill later this year this committee were to think of perhaps setting up a civil penalty fund or a consumer redress fund that would allow the FTC to get money back to people who were scammed by a fly-by-night company and there might be a large judgment that the FTC obtained but none of that money was available actually to get back to consumers, well, if you set up a fund that disgorgement or penalties from another case might be able to be paid into, then those consumers could be made whole.

Ms. Schakowsky. I think it is important just to note that the COVID-19 Consumer Protection Act actually does not right now provide the authority for monetary reward.

Ms. Laitin, I thank you very much for your testimony. What I wanted to ask you: Now that the Supreme Court has rejected the FTC's ability to get money back into the pocket of consumers under section 13(b), what are the FTC options for getting money back to consumers who have been defrauded in the COVID-19 case like this one, like the one we were talking about.

Ms. Laitin. They are extremely limited, if nonexistent, right now. Thank you, Chair, for the question.

This is the issue at hand right now, that the FTC had this authority for 40 years. Whether we agree or disagree with the Supreme Court doesn't matter anymore. The question you all have to deal with is, the Supreme Court decided that the text does not allow the FTC to get this consumer redress. So it is up to Congress to be able to restore this authority to the FTC so they can continue doing the work they have done previously.

And if they can't get that redress back to consumers, then we are talking about people who -- as in Mr. Mermin's example, if somebody spent their stimulus check on a false cure for COVID, they will not see that money again.

Ms. Schakowsky. Right.

So would the Consumer Protection and Recovery Act provide the kind of authority, and the sufficient authority, to the FTC to enable the FTC to recover the illegal profits and get them back to consumers, in your view?

Let me ask both Mr. Mermin and Ms. Laitin.

Mr. Mermin. Yes, I believe it would.

Ms. Schakowsky. Okay.

Actually, Dr. Beales as well. I mean, just a "yes" or "no."

Dr. Beales. It certainly would. It does more than that, but it certainly does that.

Ms. Schakowsky. Okay.

And Ms. Laitin?

Ms. Laitin. Yes, it absolutely does that.

Ms. Schakowsky. And if you could just describe -- I talked about it as the most powerful tool that the FTC really has to redress the grievances and the losses of consumers. Would you speak to that?

Let's start with Mr. Mermin.

Mr. Mermin. It is certainly a powerful tool. I think it is an enormously important tool from the point of view of consumers themselves. If you haven't ever had -- I recommend having it -- the experience of seeing someone who got money back that they never expected to see again, that is what government is supposed to do for people. And it really, I think, emphasizes why that is the most important authority that

the FTC does have.

Ms. Schakowsky. You know what? I didn't realize that I have gone over my time. And, being the chair, I should really be setting an example. So I will have to yield back and now turn it over to the ranking member of the subcommittee, Gus Bilirakis.

Congressman Bilirakis, it is your turn.

Mr. Bilirakis. Thank you, Madam Chair. I appreciate it very much.

And I thank everyone for their patience today, but this is a very important issue.

Professor Beales, it is not often that we have someone before us who was cited in a Supreme Court decision just a few days ago. You have a wealth of knowledge, and I am hopeful that the members of this committee can benefit from your insights.

And I know we only have 5 minutes here. Can you give us a very brief background of the FTC's past misuse of the rulemaking process that we should keep in mind as we move forward on expanding FTC authority?

Dr. Beales. Well, when the FTC launched rulemaking in the 1970s, it proposed a rule a month at one period, and it did so without really thinking through the legal theories of why there was a violation and without really thinking through what kind of evidence it would need in order to prove or disprove those theories.

The result was enormous rulemaking records that didn't have any relevant evidence to address the merits of whether the rule should be adopted or not, and most of those rules came to nothing. They were huge amounts of resources. The reason that the FTC is so much smaller than it was in 1981 is that it is no longer wasting all those resources on rulemakings.

But that is what happened to a lot of them.

Mr. Bilirakis. Thank you very much.

Reclaiming my time, again, for Professor Beales, I am concerned that this

legislation may incentivize the FTC to seek redress without allowing due process to commerce. Do you agree with this concern?

And is there a way we can streamline the efficiency of the FTC while at same time protecting the right to due process?

Dr. Beales. I actually think the standard of section 19 does that fairly well -- not the process of section 19, but the standard, that the FTC should be able to get money when the conduct is something that a reasonable person would have known was dishonest or fraudulent.

Other than that, the FTC should resolve whether this practice is legal or not, and it should make people conform to the legal practice. But there shouldn't be financial sanctions for that.

I don't think there is a due-process problem in fraud. I think the standards for fraud are well-recognized.

Mr. Bilirakis. Thank you, sir.

My next question. You authored a piece last year entitled, "section 13(b) of the FTC Act at the Supreme Court: The Middle Ground." Can you elaborate on where you think the middle ground is?

And since we didn't have Republican Commissioners here today, is there anything you care to respond to -- well, respond to Acting Chair Slaughter's testimony? I know you were actually present during the time she testified. So, if you could give me an answer to that as well, please.

Dr. Beales. Sure. As to what Chairman Slaughter had to say, I think my main point is that a lot of the cases that were significant sources of monetary relief, like Volkswagen and Herbalife and Amazon, those were all consent agreements. And, in a consent agreement, the section 19 process works fine. You have a settlement that

resolves both the administrative matter and the district court matter. And the only difference is, it is citing different statutory authority. The FTC will still be able to get money in those cases, and I don't see any real complication.

The middle ground that we talked about is -- and I think the FTC could have defended its use of Section 13 this way -- is to use Section 13 against fraud but not against legitimate companies where the legality of the practices is not well-established, or the illegality of the practices is not well-established.

And that is essentially what we argued for in that article, and that is essentially what I am recommending today: the Section 13 process, but the section 19 standards for when you can get money.

Mr. Bilirakis. Thank you.

Let me ask a question of the full panel, if that is okay, quickly. If you could amend the current piece of legislation that we are -- well, we are not marking up today, but we are hearing today -- how would you do so?

Why don't we go through the panel, quickly.

Dr. Beales. In section 13(b), I would insert language that cites the standards of section 19. And I think that is pretty much the only change that would be needed.

Mr. Bilirakis. Okay.

Anyone else?

Mr. Mermin. I don't think that that amendment is necessary. And I am happy to explain why in response to a later question, because I see the time is up.

Mr. Bilirakis. But you don't have any other suggestions, sir, as to how to make the bill better?

Mr. Mermin. For this particular bill, with respect to restitution and disgorgement, I think it is well-written as it is. I think there are other issues that the

committee can take up, I hope relatively soon.

Mr. Bilirakis. And the chair plans to do that, I believe. All right.

Anyone else? Thank you very much, if not.

Thank you. I yield back.

Ms. Laitin. Thank you. I just --

Mr. Bilirakis. Oh. Please.

Ms. Laitin. I can answer quickly and just say, I agree that I think the bill works as it is written, and I also have concerns about the amendment that has been suggested.

If it was open for -- if I thought it could fly through, I have lots of ideas on how to strengthen the FTC, but I think that waits for another day.

Ms. Schakowsky. Okay.

And the gentleman yields back.

Next we have Congresswoman Kathy Castor for 5 minutes of questions.

Ms. Castor. Yeah. Thank you, Madam Chair.

I will go to Professor Mermin to finish his thought there on why he disagreed with the proposed amendment from Professor Beales.

Mr. Mermin. Thank you very much, Congresswoman.

I think that there are a few things to keep in mind here. And I speak, again, from the perspective of State AGs.

There is flexibility that needs to be built into unfair and deceptive practices laws, and there also needs to be flexibility built into the way that money is returned to consumers. We need the FTC to be prepared for the cases that come up that we can't even imagine what they would look like now.

If there are situations, as Professor Beales mentioned, where it would be inappropriate to get the money back, well, then that is something that the Commission

itself can get involved in discussing and courts can get involved in discussing. We have certainly seen, as we saw with the Supreme Court last week, no hesitation on the part of courts to limit the FTC when they believe that it has stepped over the line.

But flexibility in getting money back to consumers, as is in the current draft of the bill, is vital.

Ms. Castor. Thank you very much for that.

You know, I thought it was so interesting that both you and Ms. Laitin, in your testimony, also called on Congress and the FTC to do more to hold Big Tech accountable. I think you referred to them as the Big Tech barons or something like that. Because it is clear now that companies like Facebook and Google seem to think that it is better for their business model to -- that they can break the law and just, if there is a fine, it is the cost of doing business. But that has to change. That just cannot be the way that we operate.

For example, in 2019, the FTC entered into a settlement with Facebook, but it fell incredibly short. Even though it sounds like a lot of money, when it comes to Facebook, it is not. It was a \$5 billion penalty.

And you know what happened? Facebook's stock value went up. They didn't have to rein in its user surveillance or make any significant changes to its business model. The FTC actually granted immunity provisions for Facebook's top executives. And I just think that is not going to lead to protection of the consumer, and we know that Congress has to do more, and hopefully we will.

But do you see a role here for the Consumer Protection and Recovery Act on first-offense civil penalty authority and rulemaking authority that would allow the FTC to rein in Big Tech?

Ms. Laitin. I don't know who you were pointing that question at, but I am happy

to start.

Ms. Castor. I will start -- yeah, go ahead, Ms. Laitin, and then I will go to Mr. Mermin.

Ms. Laitin. I would say two things.

First, section 13(b) has been used by the FTC in some of their cases against the tech companies, and it is an important tool. And having the ability to seek disgorgement strengthens their hand and enables them to do more to go after these companies. As the Acting Chair noted, not having that ability weakens their negotiation.

But, yes, I think in order to truly have the impact that Congress and so many on this committee want them to have with respect to Big Tech, the ability to get civil penalties and to set rules in a meaningful way is also incredibly important. But the 13(b) fix will help a great deal.

Ms. Castor. Mr. Mermin?

Mr. Mermin. I certainly agree.

And just to emphasize something that my friend Professor Beales said, the problem -- I mean, yes, the settlements that have been achieved are impressive in their numbers, but you don't get a settlement if you don't have the ability to get the money in the first place. And as that judge in Arizona has just indicated, he probably wouldn't have granted that asset freeze.

So not having 13(b) authority undermines everything that the FTC is trying to do.

Ms. Castor. Well, thank you very much.

I will yield back at this time. Thank you, Madam Chair.

Ms. Schakowsky. The gentlewoman yields back.

And now I recognize Fred Upton for 5 minutes.

Are you there, Fred?

Okay. It looks like he is not.

Then, Bob Latta, it will be your turn for 5 minutes.

Mr. Latta. Well, thanks again, Madam Chair, for today's hearing.

And thanks to our witnesses for being with us today. I greatly appreciate it.

Dr. Beales, in your testimony, you reference a triple hybrid procedure when dealing with illegitimate companies in fraud cases. Would you elaborate about how 13(b) reforms may differently impact legitimate companies and illegitimate bad actors?

Dr. Beales. 13(b) is essential to go after the fraudulent actors because those cases really need to start with an asset freeze. If you don't get an asset freeze at the beginning, the fraudsters will either spend the money or hide it, and there won't be anything left for consumers.

The procedure that we are left with as a result of the Supreme Court decision is the triple hybrid: going for an asset freeze, which, as Mr. Mermin notes, you may not get; then an administrative proceeding to resolve liability; and then a separate proceeding to get money. And when you get to the end of that, there is not going to be any money.

For legitimate companies, the Volkswagen example, they are going to be there. You don't need an asset freeze; you are not going to get an asset freeze. You have the authority to get money if you can say that the conduct is fraudulent or dishonest, and that is pretty easy in the Volkswagen case; you are just citing a different statutory authority. There is not any difference in the substantive posture in the negotiation. The Commission is saying, we have the authority to get money and you are going to have to pay.

But that only works for legitimate companies. It doesn't work for the fraudsters.

Mr. Latta. All right. Well, thank you.

Dr. Beales, also, the Bureau of Economics has published a detailed analysis of how it calculates remedies. It also frequently weighs in on FTC settlements and cases with calculations of what the likely injury and proper redress would be.

What principles does it apply in such opinions that could guide Congress in modifying 13(b)?

Dr. Beales. I think the basic principle of damages is -- there are two ways people get injured by deceptive claims. One is, there may be a price premium that everybody pays because they think the product has a feature that it doesn't, and that price premium is an injury. And the second source of injury is that some people buy the product who would not have bought it otherwise.

In the case of fraud, virtually all of the sales are because of the deceptive claim, and total sales are an appropriate measure of the injury to consumers.

That is not true if you have an established product that has been around for years -- All Bran, for example, that starts claiming that diets high in fiber may reduce the risk of cancer. If you decide that claim is deceptive, well, most of those people were going to buy All Bran anyway. All Bran's total sales are not the right measure of injury.

The Bureau of Economics recognizes that. The Commission's starting point, however, in every negotiation I have seen is, we are entitled to your total revenue and let's bargain from there.

Mr. Latta. Okay.

Let me follow up with this. Why is it important that the FTC's monetary remedies be offset by the value that a consumer receives from the product or the service at issue?

Dr. Beales. Because, otherwise, we risk excessive caution in places where the law is in dispute, where reasonable scientific experts disagree -- about whether you

should or should not take vitamin D to reduce COVID risks, for example. We ought to recognize the value of that information to consumers, and we don't want a penalty that is so high that it discourages providing important information.

Mr. Latta. And not picking on you, just with my last 45 seconds, what methodologies are appropriate for calculating monetary remedies under the dishonest or fraudulent standard? And should these be written into the Act?

Dr. Beales. I think the same approach is conceptually right. There is a price premium for a feature it doesn't have, and there are people who buy the product who wouldn't have otherwise, and the question is, what is the mix of those.

I would be reluctant about writing them into the act, because I think it is hard to do without creating a recipe for how to avoid recoverable damages. But I think those are principles that would develop once there is actually litigation about how to do this.

Mr. Latta. Well, thank you very much.

Madam Chair, I yield back.

Ms. Schakowsky. The gentleman yields back.

And now I recognize Congresswoman Lori Trahan for her 5 minutes.

Mrs. Trahan. Well, thank you, Chairwoman Schakowsky.

I want to discuss a case the FTC brought in 2005 against Direct Marketing Concepts, a company based in my home State of Massachusetts. DMC ran infomercials for a range of supplements, including Supreme Greens. Their ads claimed that the supplement could treat, cure, and prevent cancer and cause dramatic weight loss, all while being safe for consumption by pregnant women and even children.

These claims simply had no evidence behind them, no peer-reviewed research, no FDA approval. They misled and they harmed consumers. And yet DMC had no problem featuring a woman who claimed to lose 81 pounds after taking Supreme Greens

for 8 months -- a story that simply wasn't true.

The cost to consumers for a 1-month supply of Supreme Greens ranged between \$32 and \$50, plus shipping and handling. That is a lot of money for a product that does not work and, more importantly, that could be harmful to our children and mothers.

Fortunately, the FTC was able to use their 13(b) authority to order these scammers to cede \$70 million of ill-gotten money and return that money to defrauded consumers.

Now, if this case were brought today, my understanding is that the FTC could only ask Direct Marketing Concepts to stop selling Supreme Greens, a forward-looking behavioral restriction, but could not seek monetary remedy for consumers that were harmed.

Mr. Mermin, is this correct? And, if so, in a case like this, does the FTC possess other enforcement tools that could practically provide actual monetary relief to real people?

Mr. Mermin. Thank you for the question.

I think that it does not in any realistic way. As Professor Beales has mentioned, for a fraud case like that, the remedies of section 19 are just going to be inadequate. And I would say that they are inadequate in any case.

I do want to mention one further thing just about Supreme Greens. Let's just say that, instead of whatever the material was, that they had been sending oatmeal. Could they then say, "Well, you can't recover all the money that was taken from you because we gave you the benefit of a package of oatmeal, and so please subtract that"? I don't think that that is the way that we want to do business.

Mrs. Trahan. Well, I agree.

And this case is just one of many. In fact, over 100,000 Massachusetts residents

have received refunds in the last 2-1/2 years totaling over \$18 million as a result of section 13(b) cases. And it speaks to the importance of an effective FTC.

Mr. Mermin, in your testimony, you explain that the FTC has lost almost 40 percent of its positions in the past 40 years while the GDP grew by 750 percent.

You know, given your experience as an enforcer at the State level, can you speak to the importance of properly funding the FTC? What would it mean for the American people in today's economy?

Mr. Mermin. I think it would mean a much safer marketplace. And I think that that is what we ultimately need.

That decline is a decline in the FTC's budget over time. It is not just rulemaking, of course; it is across the board. And it has meant a relative lack of leadership.

This is the Nation's leading consumer protection agency, and it should be in that position with respect to the States, with respect to localities -- who have greater enforcement authority right now and tools available to them than the FTC does. And I think that making sure that those tools are available and that the FTC is fully funded, as former Commissioner Kovacic noted in a recent hearing, is essential.

Mrs. Trahan. Well, thank you for that, Mr. Mermin.

And thank you to all the panelists for your time and your testimony today.

I yield back, Madam Chair.

Ms. Schakowsky. The gentlewoman yields back.

And now I recognize Kelly Armstrong for his 5 minutes for questions.

Mr. Armstrong. Thank you, Madam Chair.

Mr. Beales, the 2003 policy statement -- which I believe you think should be reinstated. Is that correct?

Dr. Beales. At this point, it probably needs to be codified, if you are going to

extend 13(b) to antitrust cases. But, yeah, at the least, it should be reinstated.

Mr. Armstrong. And that is what leads me to my question. It suggests the Commission should only seek monetary equitable remedy when there is a reasonable basis to calculate the amount of disgorgement or restitution.

And at last month's Big Tech CEO hearing, I asked about the consideration of non-price factors, like privacy and innovation, in antitrust analysis and actually got several of the members of that hearing to agree that those should be factored in. But non-price factors are obviously less quantifiable than price.

As Congress considers enacting comprehensive data privacy legislation, what would you suggest is the most reasonable basis, or is there one, to calculate that type of restitution?

Dr. Beales. I think, in places where calculating damages is very difficult, if you really want penalties, I think civil penalties is a more sensible approach.

On the consumer protection side, I think on information security cases, for example, civil penalties would make a lot of sense for exactly that reason. It is very hard to figure out what the injury is from a particular data breach.

Mr. Armstrong. And I think this is a question we are going to look at moving forward with these companies, right, is, I mean -- and particularly in antitrust analysis. The consumers and their customers aren't always the same thing. But I also think it is one of the most significant questions, if not the FTC, but Congress is going to have to wrestle with moving forward.

Dr. Beales. No, I agree with that. It is a difficult question.

Mr. Armstrong. Yeah. I should have put a question mark after the end of my statement. I appreciate it.

And, with that, I will yield back, Madam Chair.

Ms. Schakowsky. The gentleman yields back.

And now I recognize Jerry McNerney, Congressman McNerney, for 5 minutes.

Mr. McNerney. Well, I thank the chairwoman.

And I thank the witnesses for hanging in there today.

Mr. Mermin, your comparison of the FTC and the AGs was instructive, so I want to thank you for that.

My congressional district has a large low-income population -- and it is close to Cal -- including parts of Contra Costa, San Joaquin, and Sacramento counties. The cities of Antioch and Stockton are the major cities in my district.

Why is it so important for low-income consumers for Congress to pass quickly the Consumer Protection and Recovery Act?

Mr. Mermin. Thank you very much, Congressman, and I know your district well.

Mr. McNerney. Good.

Mr. Mermin. Low-income communities, communities of color, seniors, veterans, students -- these are folks who, generally speaking, do not have access to attorneys.

I wish that the private sector and the private bar were as robust. As was mentioned earlier, I am afraid they are not. And I am afraid that there are structural impediments to that. The mandatory arbitration clauses, the restrictions on class actions, these have dried up those kinds of cases enormously.

And that means that there is a tremendous reliance right now on the public sector, on public enforcement agencies, to do that job and to get money back to consumers, especially low-income consumers, especially communities of color, from whom it has been taken.

Mr. McNerney. Thank you. Thank you.

Ms. Laitin, in your testimony, you noted that not having a section 13(b) type of

authority poses a big risk for the Commission's ability to -- and I am quoting you -- rein in Big Tech companies that have taken advantage of their market power to crowd out small businesses and exploit consumer data.

So I am following up on Ms. Castor's questions. Could you please expand on your meaning and further discuss what that means for consumers?

Ms. Laitin. Absolutely. Thank you for the question.

The FTC has brought some cases against large tech companies, not as many as many, I know, members of this committee and elsewhere would like to see. I think there is an interest in them being more aggressive. But where they have brought cases, they have relied on section 13(b).

And without the ability to get disgorgement and restitution, those cases are largely meaningless and will be very difficult for the FTC to use to aggressively enforce against these companies. So all of that is needed.

And I want to make the point, Mr. Beales has talked about this fraud distinction, of fraudulent, dishonest behavior. That is a tough line to draw. And I think if that was put into statute, that could create problems for things like enforcement against the tech companies. Are they being fraudulent, or are they just lying to their customers? Where is the line? And should that line be drawn in statute, or should we let the courts draw that line and work it out over time?

The FTC has used 13(b) to enforce against unfair and deceptive acts and practices and unfair methods of competition. Leaving it like it is now and giving them that opportunity to work it out in the courts and figure out where restitution is appropriate and where it is not makes more sense than drawing artificial lines in statute.

RPTR SINKFIELD

EDTR HOFSTAD

[3:57 p.m.]

Mr. McNerney. So not having this authority will lead these companies to taking greater advantage of consumers. Would --

Ms. Laitin. Absolutely.

Mr. McNerney. -- that be true?

Ms. Laitin. Absolutely.

Mr. McNerney. Thank you. I agree.

Mr. Mermin, in your written testimony, you note that it will take years for our economy to recover for the pandemic and that, in the meantime, scams, robocalls, data breaches resulting in identity theft, and unfair and deceptive practices will proliferate.

How has the pandemic left lower-income consumers even more vulnerable?

And why can't we afford to delay restoring the FTC's authority?

Mr. Mermin. These are folks who are more likely to have lost jobs, less likely to be able to work from home, more likely to have family members who got sick or who passed away. And you can imagine, with hospital bills, medical bills, with the various expenses that have arisen, that it is especially low-income folks who have felt the brunt of the pandemic and of the recession.

And there is going to be a tail for that. We need a robust FTC to be able to protect those folks and all of us from predators.

Mr. McNerney. Well, as I said at the end of my first-panel questioning, this is important to my constituents. I want to make sure we get this legislation passed to protect my constituents as soon as we can.

Thank you. I yield back.

Ms. Schakowsky. The gentleman yields back.

And now I recognize Congresswoman Yvette Clarke for 5 minutes.

Ms. Clarke. Thank you once again, Madam Chairwoman.

And let me thank our panelists for your testimony here today.

You know, the company at the center of the Supreme Court case last week was AMG, and it was a payday lender that preyed on those living paycheck to paycheck. They charged interest rates as much as 700 percent and sometimes as high as 1,000 percent and collected millions of dollars in undisclosed and inflated fees.

They took advantage of at least 5 million consumers from 1997 to 2013, including 250,000 people in my home State of New York. The record \$1.3 billion judgment against AMG speaks to just how many consumers were victimized in this case.

Ms. Laitin, according to one recent survey, 63 percent of all Americans have been living paycheck to paycheck since the beginning of the COVID-19 pandemic. Can you tell me how refund checks from the FTC to victims of AMG's unlawful conduct might make a difference for these people?

Ms. Laitin. Absolutely. And thank you for the question.

The economy has been absolutely brutal for the past year, and Americans are hurting, and they are looking for assistance. And what AMG offered their customers was a loan that folks thought would help them -- it would help them get out of trouble and help them restore themselves back to financial security. And they got the opposite.

And by the FTC enforcing against AMG and getting these checks, that means people are able to get their money back and be back at least where they were when it started, although probably not as well, because they took a hit from that loan.

But it is so important to get people their money back. Enforcing against these folks and getting civil penalties is important, but returning money to the people who were

harmed is vital to help these folks get back on their feet and to enable them to participate in the economy.

Ms. Clarke. And what message does the Supreme Court's decision now send to payday lenders who are thinking about violating the law?

Ms. Laitin. It is an interesting question. They are certainly probably feeling a little more free, which is why this is so important.

You know, the thing to recall, though, is the Supreme Court said nothing about whether AMG should be allowed to keep its money or if restitution should be made. What they said was that the FTC doesn't, under the language of the statute, have the authority. So, on the policy question of whether AMG should be required to give that money back, they didn't speak on that. And that is your job, is to speak on that piece.

Ms. Clarke. So, Mr. Mermin, to date, the FTC has issued almost 1.2 million checks, totaling more than \$505 million, to borrowers defrauded by this massive AMG payday lending scheme. In the wake of the Supreme Court decision, would you say that victims of scammers and fraudsters would be more likely or less likely to get their money back, even if the FTC still goes after the criminals?

Mr. Mermin. I am afraid they would be much less likely to get their money back.

Ms. Clarke. And would passing the Consumer and Protection and Recovery Act help to address this?

Mr. Mermin. It certainly would.

Ms. Clarke. So millions of Americans are struggling right now to make ends meet. They are struggling to provide food for their families, keep a roof over their heads, and pay medical bills. Putting money back in people's pockets who have been defrauded or scammed seems like a no-brainer to me, and I hope we act expeditiously to pass this legislation into law.

So, Madam Chair, I want to thank you for holding this hearing. My colleague Tony Cardenas, thank you for your leadership. And I yield back the balance of my time.

Ms. Schakowsky. The gentlelady yields back.

And now it is my honor, as we wind down this hearing, to call on the author of the legislation that, in most people's view, it seems, would address the problem of getting money back in people's pockets -- the problem of not getting money back in people's pockets, and that would be the vice chair of this subcommittee, Tony Cardenas.

Mr. Cardenas. Thank you, Madam Chairwoman. And thank you for carefully and accurately explaining how, Republican and Democrat, we agree that the legislature should act and then, where we disagree, on many of the details. But I am glad that we are having this hearing so that we can have an opportunity to hear those details -- but not just us -- making sure that our constituents, the American people, hear this deliberation and hopefully will be paying attention and understand how important it is that the FTC be restored its authority under 13(b).

It is no mystery that Latino, Black, and Asian-owned small businesses have been hit hardest by the COVID-19 pandemic. The numbers are real, and they are there. In addition to struggling to access pandemic relief, they are also vulnerable to predatory lenders and other scammers that are increasingly targeting small businesses.

In other words, a small business may be victimized by bad actors, much like individual consumers. So the FTC's ability to get monetary relief for victims is just as critical for small businesses as it is for individuals as well, especially during the strain of this pandemic.

That is why I stress that the Consumer Protection and Recovery Act specifically provides section 13(b) authority for the FTC to recover for small businesses, not just for individuals.

So this question I have for Mr. Mermin or Ms. Laitin: Historically, how has section 13(b) been used to get money back to small businesses who have been scammed or defrauded?

Mr. Mermin. I can give you certainly one example, the A1 Janitorial Services case that the FTC decided -- or brought in recent years. These were small businesses that were being falsely invoiced for services that had never been provided, for supplies that had never been provided.

And you are exactly right that, in many cases, a small business looks a lot like a consumer. It could indeed be an individual. And I think it is entirely appropriate to make sure that the FTC can effectively recover money for small businesses as well.

Ms. Laitin. I will jump in as well. Thank you for the question.

Yes, FTC definitely looks out for small businesses as well. And, in fact, last week, I believe the same day that the Supreme Court made its decision, they announced a settlement with Yellowstone Capital, a company that provided merchant cash advances, a kind of financial product for small businesses, that was charged -- they had enormous problems with predatory practices and cost these small businesses a lot of money. It is a \$9.8 million settlement.

Still looking to see what happens with that settlement following the Supreme Court case. Certainly hopeful that those small businesses will get their money back, but I don't know that we know that for sure.

Mr. Cardenas. Thank you.

And I apologize, I am going to ask you to speculate a little bit, but I think that the question is pretty clear. Who tends, on any given day, to have access to more lawyers? Would you assume it would be the FTC or it would be a big company, like Facebook for example?

Mr. Mermin. I think it is -- I will judge from my time in the AG's office and my knowledge of the FTC. I think that total number of lawyers available is going to be much larger for industry. It is essentially unlimited.

Mr. Cardenas. Thank you.

And, Ms. Laitin, it is no secret that in many counties across the country they have statistics on what the average income of a household is, and in some counties it might be as low as \$30,000. In many counties, like Los Angeles, it is probably closer to \$50,000, \$60,000, et cetera.

Now, when it comes to hiring lawyers because you have been defrauded, how many families, like, in those categories could honestly afford to hire a lawyer? Is it a high percentage or a very low percentage? Or would many households just kind of throw up their hands, with tears in their eyes, and possibly say, "I just can't do anything about, I guess I have been defrauded, and I have to walk away"?

Ms. Laitin. Unfortunately, it is probably a small number. And especially -- you know, it is very costly to hire a lawyer, and if they have already lost money, that may be farther than they want to go.

Mr. Cardenas. Uh-huh. Especially when it comes to most seniors, right, Ms. Laitin? Seniors tend to, on average, across America, have less disposable income, right? Correct?

Ms. Laitin. Correct.

Mr. Cardenas. And the reason why I think 13(b) is so critical is because we are talking about protecting Americans across the board. And the most common denominator in America is most American households, most American seniors, most veterans, et cetera, after being defrauded, are really not in a position to go after and protect themselves and get their money back. And that is why the FTC is there.

In this great country of America, thank God we have a Federal Trade Commission like the FTC. And 13(b) is a critical part of making sure that we have an efficient and effective opportunity to protect the American people and to restore some justice in their lives.

So, with that, Madam Chair, I yield back.

Ms. Schakowsky. The gentleman yields back.

And I believe hanging in there to be last but not least, Lizzie Fletcher, you still here?

Well, she was. Okay.

Well, I want to really give a big thank you to our witnesses over the day.

And, by the way, Mr. Bilirakis, if you want to make any kind of a closing thank you, that would be good too.

I want to thank our Acting FTC Chair, Rebecca Slaughter, for the time that she gave to us; to Dr. Beales, Mr. Mermin, and Ms. Laitin for the enlightenment that you provided us and for hanging in there. I know it has been a long day, and I appreciate it so very, very much.

Gus, did you want to say anything?

Mr. Bilirakis. Well, I just wanted to thank you again, Madam Chair, for holding this hearing.

And, Tony, well said at the end. And, hopefully, we can find some middle ground and get this done as soon as possible, because I know how important section 13(b) is and how important the FTC is to our constituents. So I appreciate you filing the bill, and let's work on this and get it done right and get it through the United States Senate.

Well, thank you very much, and we will see you next week. I yield back.

Ms. Schakowsky. Okay. Thank you, Gus.

And thank you, Tony.

Mr. Cardenas. Madam Chair?

Ms. Schakowsky. Yes.

Mr. Cardenas. If you don't mind, as the leader author of the bill, I just want to thank all of my colleagues for the respectful manner in which we have been debating today and putting out before the people of America our concerns and our agreements and disagreements on how we can move this legislation forward.

And I just want to give a special thanks to a class act, Gus Bilirakis. Thank you so much for being so generous with your understanding of our ability to agree and disagree and continue to always want to work together. So thank you, Gus.

And, Madam Chair, thank you for this opportunity to legislate this bill.

Mr. Bilirakis. I think, like you said, Tony, you know, we are all here for the same goal, to protect our constituents. So thank you, sir.

And thank you, Madam Chair. I yield back.

Mr. Cardenas. And to all the witnesses, thank you so, so much.

Ms. Schakowsky. Thank you.

Before we close, I request unanimous consent to enter the following documents into the record.

I will excuse our witnesses right now. You don't have to stay for this part. But, once again, just a great thank you. And I am sure we will be in touch with you as we move forward with the Consumer Protection and Recovery Act and other things that deal with the Federal Trade Commission. And your expertise is really appreciated.

So I am going to begin reading the letters and communications that we have gotten.

And let me also, though, remind members that, pursuant to committee rules, they

have 10 business days to submit additional questions for the record to be answered by the witnesses who have appeared.

[The information follows:]

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

Ms. Schakowsky. So the letters include a letter of support from 32 public interest groups; a letter from Veterans Education Success endorsing H.R. 2668; an article from The New York Times; an article from The Washington Post; a letter from the Chamber of Commerce; a research paper from Beales and Muris titled, "Striking the Proper Balance: Redress Under section 13(b) of the FTC Act"; a research paper from Beales and Muris entitled, "Choice or Consequences: Protecting Privacy in Commercial Information"; a research paper from Beales and Muris titled, "Privacy and Consumer Control"; a research paper from Beales and Muris and Mundel -- I guess it is Beales, Muris, Mundel -- titled, "section 13(b) of the Federal Trade Commission at the Supreme Court: The Middle Ground"; a Supreme Court opinion; an unofficial transcription of a Senate committee -- that is April 20 of 2021 -- FTC hearing; and a letter from the Federal Trade Commission to Representative Latta.

That is it. And so, without objection, so ordered. Those will be added.

[The information follows:]

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

Ms. Schakowsky. At this time, the subcommittee is adjourned.

[Whereupon, at 4:16 p.m., the subcommittee was adjourned.]