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4 MARKUP OF H.R. 3992, TO ALLOW OTHERWISE ELIGIBLE ISRAELI
5 NATIONALS TO RECEIVE E-2 NONIMMIGRANT VISAS IF SIMILARLY
6 SITUATED UNITED STATES NATIONALS ARE ELIGIBLE FOR SIMILAR
7 NONIMMIGRANT STATUS IN ISRAEL; H.R. 4086, THE FOREIGN
8 CULTURAL EXCHANGE JURISDICTIONAL IMMUNITY CLARIFICATION ACT;
9 AND H.R. 511, TO AMEND TITLE 18, UNITED STATES CODE, TO
10 PROHIBIT THE IMPORTATION OF VARIOUS INURIOUS SPECIES OF
11 CONSTRICTOR SNAKES
12 Tuesday, February 28, 2012
13 House of Representatives
14 Committee on the Judiciary
15 Washington, D.C.

16 The committee met, pursuant to call, at 10:02 a.m., in

17 Room 2141, Rayburn Office Building, Hon. Lamar Smith
18 [chairman of the committee] presiding.

19 Present: Representatives Smith, Coble, Gallegly,
20 Goodlatte, Lungren, Chabot, King, Franks, Gohmert, Jordan,
21 Poe, Chaffetz, Griffin, Gowdy, Ross, Adams, Quayle, Amodei,
22 Conyers, Berman, Scott, Watt, Lofgren, Waters, Cohen,
23 Pierluisi, Quigley, Chu, Deutch, Sanchez, and Polis.

24 Staff present: Sean McLaughlin, Chief of Staff; George
25 Fishman, Counsel; Zach Somers, Counsel; Caroline Lynch,
26 Counsel; Travis Norton, Parliamentarian; Sarah Kish, Clerk;
27 Perry Apelbaum, Minority Staff Director; David Shahoulian,
28 Counsel; James Park, Counsel; and Ron LeGrand, Counsel.

29

30 Chairman Smith. The Judiciary Committee will come to
31 order.

32 Without objection, the chair is authorized to declare
33 recesses of the committee at any time.

34 And the clerk will call the roll to establish a quorum.

35 Ms. Kish. Mr. Smith?

36 Chairman Smith. Present.

37 Mr. Sensenbrenner?

38 Mr. Coble?

39 Mr. Gallegly?

40 Mr. Goodlatte?

41 Mr. Lungren?

42 Mr. Chabot?

43 Mr. Chabot. Here.

44 Ms. Kish. Mr. Issa?

45 Mr. Pence?

46 Mr. Forbes?

47 Mr. King?

48 Mr. Franks?

49 Mr. Franks. Here.

50 Ms. Kish. Mr. Gohmert?

51 Mr. Jordan?

52 Mr. Poe?

53 Mr. Chaffetz?

54 Mr. Griffin?

55 Mr. Marino?

56 Mr. Gowdy?

57 Mr. Gowdy. Present.

58 Ms. Kish. Mr. Ross?

59 Ms. Adams?

60 Mr. Quayle?

61 Mr. Quayle. Present.

62 Ms. Kish. Mr. Amodei?

63 Mr. Conyers?

64 Mr. Berman?

65 Mr. Berman. Present.

66 Ms. Kish. Mr. Nadler?

67 Mr. Scott?

68 Mr. Watt?

69 Ms. Lofgren?

70 Ms. Jackson Lee?

71 Ms. Waters?

72 Mr. Cohen?

73 Mr. Johnson?

74 Mr. Pierluisi?

75 Mr. Quigley?

76 Ms. Chu?

77 Mr. Deutch?

78 Ms. Sanchez?

79 Mr. Polis?

80 Chairman Smith. The gentleman from California, Mr.

81 Gallegly?

82 Mr. Gallegly. Present.

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

84 Mr. Poe. Present.

85 Chairman Smith. The gentleman from Utah, Mr. Chaffetz?

86 Mr. Chaffetz. Present.

87 Chairman Smith. The gentleman from Texas, Mr. Gohmert?

88 Mr. Gohmert. Here.

89 Chairman Smith. The gentleman from Tennessee, Mr.

90 Cohen.

91 Ms. Kish. Mr. Cohen.

92 Chairman Smith. The gentleman from Tennessee, Mr.

93 Cohen, is visibly present.

94 The gentleman from Texas, Mr. Gohmert.

95 Mr. Gohmert. Here.

96 Chairman Smith. The gentleman from Tennessee, Mr.

97 Cohen. Did he say -- has he already -- okay.

98 The gentleman from Illinois, Mr. Quigley?

99 Mr. Quigley. Here.

100 Chairman Smith. The gentleman from Iowa, Mr. King?

101 Mr. King Present.

102 Chairman Smith. Is that it? Okay.

103 The clerk will report. Oh, the gentleman from

104 California, Mr. Lungren.

105 Mr. Lungren. Present.

106 Chairman Smith. The clerk will report.

107 Ms. Kish. Mr. Chairman, 14 members responded present.

108 Chairman Smith. Okay. A working quorum is present.

109 Pursuant to notice, I now call up H.R. 3992 for purposes

110 of markup. And the clerk will report the bill.

111 Ms. Kish. H.R. 3992, to allow eligible Israeli

112 nationals --

113 Chairman Smith. Without objection, the bill will be

114 considered as read.

115 [The information follows:]

116

117 Chairman Smith. I will recognize myself for an opening
118 statement.

119 Today we consider H.R. 3992, legislation that was
120 introduced by our colleague, Howard Berman, that I co-
121 sponsored. The bill adds Israel to the list of countries
122 eligible for E-2 visas. E-2 visas are temporary visas
123 available to foreign investors.

124 A foreign national may be admitted initially for a
125 period of two years under an E-2 visa, and can apply for
126 extensions in two-year increments.

127 The U.S. has entered into treaties of commerce that
128 contain language similar to the E-2 visa since at least 1815
129 when we entered into a convention to regulate commerce with
130 the United Kingdom. Currently, the nationals of 76
131 countries are eligible for E-2 status, from Albania to the
132 Ukraine. In Fiscal Year 2010, 25,500 aliens, including
133 dependents, were granted E-2 visas.

134 In the past, countries became eligible for the E-2
135 program through treaties signed with the U.S. However, in
136 2003, the Judiciary Committee reached an understanding with
137 the U.S. Trade Representative that from now on, no

138 immigration provisions were to be included in future trade
139 agreement. As a result, specific legislation would be
140 required to add countries to the E-2 program.

141 In order to qualify for an E-2 visa, an investor has to
142 have a controlling interest in, and demonstrate that they
143 will develop and direct the enterprise. In addition, the
144 investor has to invest and put at risk a substantial amount
145 of capital. This is measured by a proportionality test:
146 the higher the cost of the business, the lower the
147 proportion of its total value the investment has to
148 represent.

149 In addition, the investment has to be large enough to
150 ensure the investor's financial commitment to the
151 enterprise, and that the investor will successfully develop
152 and direct it.

153 I urge my colleagues to support H.R. 3992. The
154 investments and business enterprises fostered by this bill
155 benefit the economies of both the United States and Israel.
156 And they also will create jobs and strengthen the already
157 strong relationship between Israel and the United States.

158 That concludes my opening statement. And the gentleman

159 from Michigan -- good morning -- the ranking member is
160 recognized for his opening statement.

161 Mr. Conyers. Thank you, Mr. Chairman. I strongly
162 support this legislation introduced by our senior member,
163 Howard Berman. And I am going to put my remarks in the
164 record and yield to him.

165 [The information follows:]

166

167 Mr. Berman. Well, thank you very much, Mr. Conyers. I
168 am honored to have the support of and the co-sponsorship of
169 the chairman of the committee, and the support of the
170 ranking member of the committee, and the co-sponsorship of
171 the ranking member of the Immigration Subcommittee, as well
172 as the chair of the House Foreign Affairs Committee on this
173 legislation. And I appreciate marking up this bill and
174 moving it quickly very much.

175 This bill will encourage Israeli business leaders to
176 further invest in the United States. It will lead to the
177 creation of jobs for American workers. The legislative
178 scope is narrow, but when so many Americans are looking for
179 jobs and families are struggling to make ends meet, every
180 little bit helps.

181 We should be doing everything we can. It is in our
182 interest to do everything we can to bring additional Israeli
183 innovations and technologies to the United States. Israel
184 is a global leader in security and defense technologies,
185 medicine, agriculture, high tech, and clean energy
186 advancements. Our Nation will benefit from bringing their
187 business to our shores.

188 Israel is one of our closest allies in the world,
189 already a significant investor in the U.S. economy. There
190 are hundreds of Israel companies present in the United
191 States, hundreds of U.S. companies present in Israel. The
192 E-2 treaty investor visas will enable the business
193 communities in both countries to increase their bilateral
194 investment flow.

195 Israel is currently America's 22nd largest goods trading
196 partner, with \$32 billion in total goods traded during 2010,
197 including goods exports totaling \$11.3 billion and imports
198 totaling \$21 billion.

199 Currently, there are over 75 countries. Actually, the
200 CRS says 78; the minority says 76. We think it is 79. But
201 these nations all are currently eligible for E-2 treaty
202 investor visas. These nations range from Albania, to Togo,
203 to the United Kingdom. This bill simply adds Israel to the
204 list.

205 The E-2 investor visa program will strengthen the U.S.-
206 Israeli relationship, boost the American middle class, help
207 grow the economies of both countries. And I would encourage
208 its passage in this economy and on the House floor.

209 And I thank you very much, Mr. Chairman, for sending the
210 bill and your support for it.

211 Chairman Smith. Thank you, Mr. Conyers. Thank you, Mr.
212 Berman.

213 The gentleman from California, Mr. Gallegly, the
214 chairman of the Immigration Subcommittee, is recognized.

215 Mr. Gallegly. Thank you, Mr. Chairman

216 Mr. Chairman, I support and am a co-sponsor of H.R.
217 3992, which allows Israeli citizens to apply for E-2 visas.

218 I would like to thank my friend and colleague, Howard
219 Berman, for his work on this issue and for introducing this
220 very important legislation.

221 E-2 visas are temporary visas issued to foreign
222 investors who come to the U.S. as executives or supervisors
223 in order to develop and manage their investments. We
224 currently issue E-2 visas to nationals from 77 other
225 countries, from large countries such as Germany, to smaller
226 countries such as Honduras. Expanding the E-2 visa program
227 to Israel will not only encourage more investment in the
228 U.S., but it will directly lead to the creation of new
229 businesses and the expansion of existing enterprises. This

230 will help grow our economy and create new jobs.

231 I urge my colleagues to join me in supporting 3992, and
232 yield back.

233 Chairman Smith. Thank you, Mr. Gallegly.

234 The gentlewoman from California, Ms. Lofgren, the
235 ranking member of the Immigration Subcommittee.

236 Ms. Lofgren. Thank you, Mr. Chairman. I ask unanimous
237 consent to put my full statement in the record.

238 [The information follows:]

239

240 Ms. Lofgren. And I would simply like to say
241 congratulations to Howard Berman for introducing this bill.
242 I am proud to co-sponsor it, as has been mentioned, by many
243 others. These visa arrangements, I think it is 79
244 countries, but inexplicably Israel, one of our closest and
245 dearest allies, is not on the list, and Mr. Berman's bill
246 would remedy that.

247 It would allow for the expansion of jobs here in
248 America. It would allow an engineer from Israel to
249 establish and run a startup software company in Silicon
250 Valley, or an Israeli research firm specializing in clinical
251 trials in the field of oncology to establish a subsidiary in
252 Maryland, or a wine maker and investor from Israel to buy
253 and manage a struggling winery in New York State.

254 All of this will revitalize business in America. It
255 will be good for us. It will be good for Israel. I am so
256 glad that former Chairman Berman of the Foreign Affairs
257 Committee has seen the need to do this. I praise the
258 current chairwoman for co-sponsoring, and certainly, Mr.
259 Smith, for you moving this quickly.

260 It is one of these opportunities where we can work in a

261 bipartisan way to show our support for Israel, but also our
262 support for the American economy.

263 And with that, I would yield back.

264 Chairman Smith. Thank you, Ms. Lofgren.

265 Are there any amendments?

266 If not, a reporting quorum being present, the question
267 is on reporting the bill favorably to the House.

268 All in favor, say aye?

269 [A chorus of ayes.]

270 Chairman Smith. Opposed, no?

271 [No response.]

272 Chairman Smith. The ayes have it, and the bill is
273 ordered reported favorably.

274 Without objection, the bill will be reported, and the
275 staff is authorized to make technical and conforming
276 changes.

277 Members will have two days to submit views.

278 [The information follows:]

279

280 Chairman Smith. Before we go on to the next bill, now
281 that we have a reporting quorum present, I wanted to make an
282 announcement.

283 Some of you all may be aware of it, some may not be
284 aware of it. But the chief counsel on the Republican side
285 of the Judiciary Committee staff, Sean McLaughlin, is
286 actually going to be leaving us, and his last day is
287 tomorrow. He is going to be joining the Podesta Group. And
288 that means we will hear about him for 12 months, and then
289 hear from him after that.

290 I wanted to also take a minute just to go in some detail
291 about Sean's career because I think it is impressive how
292 much public service he has given.

293 Sean first came to Capitol Hill in January 1999 with
294 Representative Tom Reynolds of New York and served as his
295 legislative director and counsel. In February 2001, he
296 became counsel for the Crime Subcommittee where he played a
297 key role in developing the USA Patriot Act. And he served
298 in that role until August 2003.

299 From August 2003 to January 2005, Sean served as deputy
300 assistant attorney general in the Office of Legislative

301 Affairs at the Department of Justice. He came back to the
302 Hill as deputy chief of staff and deputy general counsel in
303 January 2005, serving under Chairman Sensenbrenner until
304 January 2007.

305 From January 2007 through the beginning of this
306 Congress, Sean served as Republican staff director, and he
307 has served as chief of staff and general counsel to the
308 committee this entire Congress.

309 I want to compliment Sean on his diligence, on his
310 commitment, on his conscientiousness, and on his loyalty,
311 all sterling qualities that have been appreciated not only
312 by Republican members, but by Democratic members as well.
313 He will certainly be missed, and we wish him well.

314 Sean, thank you very much for all your public service.

315 [Applause.]

316 Chairman Smith. The gentleman from Michigan, Mr.
317 Conyers, is recognized.

318 Mr. Conyers. Thank you, Mr. Chairman. I join in the
319 good wishes to Sean McLaughlin. After eight years as chief
320 counsel and/or staff director on this committee, he has done
321 a great job.

322 His collegiality and working across party lines have
323 made this committee different from the impressions that
324 people have about the 112th Congress. And his
325 professionalism and expertise will be sorely missed.

326 We notice this erosion going -- Allison Halataei now
327 Sean McLaughlin. I mean, if you need referrals for
328 professional staffers, you should see my chief of staff.
329 Perry Applebaum would be happy to accommodate all you
330 gentleman and ladies on the other side.

331 Good luck, Sean, and thank you.

332 Chairman Smith. Thank you, Mr. Conyers.

333 Sean, I do not know if you want to say anything.

334 [Laughter.]

335 Chairman Smith. Wave goodbye. Okay. Thank you.

336 Pursuant to notice, I now call up H.R. 4086 for purposes
337 of markup. And the clerk will report the bill.

338 Ms. Kish. H.R. 4086, to amend Chapter 97 of Title 28,
339 United States Code, to clarify the exception to foreign
340 sovereignty immunity set forth --

341 Chairman Smith. Without objection, the bill will be
342 considered as read.

343 [The information follows:]

344

345 Chairman Smith. I will recognize myself for an opening
346 statement, and then the ranking member.

347 First, I want to thank Mr. Chabot for introducing this
348 legislation, and Mr. Conyers and Mr. Cohen for their support
349 as well.

350 This bill preserves the ability of U.S. museums and
351 educational institutions to continue to borrow foreign
352 government owned art work and cultural artifacts for
353 temporary exhibition or display.

354 The United States has long recognized the importance of
355 encouraging the cultural exchange of ideas through
356 exhibitions of art work loans from abroad. Cultural
357 exchanges produce substantial benefits to the educational
358 and cultural development of Americans.

359 I am going to ask unanimous consent to put the rest of
360 my statement in the record because I want to go directly to
361 the gentleman who is the sponsor of the legislation, Mr.
362 Chabot of Ohio, and yield the balance of my time to him.

363 [The information follows:]

364

365 Mr. Chabot. Thank you, Mr. Chairman, and I would first
366 to like to thank both you and Ranking Member Conyers, as
367 well as Mr. Cohen, for co-sponsoring this legislation. I
368 also look forward to the introduction of a companion bill in
369 the Senate by Senators Feinstein and Hatch.

370 The Foreign Cultural Exchange Jurisdictional Immunity
371 Clarification Act is a simple, even though the title of it
372 is not necessarily so, straightforward bill, which would
373 better clarify the relationship between the Immunity from
374 Seizure Act and the Foreign Sovereign Immunities Act.

375 Since 1965, the Immunity From Seizure Act has provided
376 the executive branch with authority to grant art work and
377 other objects of cultural significance immunity from seizure
378 by U.S. courts. Recognizing the artistic and diplomatic
379 benefits of exchanging art work and artifacts among nations,
380 the Immunity From Seizure Act was enacted to encourage the
381 undertaking of loan exhibitions with foreign museums.

382 However, the application of the Immunity From Seizure
383 Act to art work and cultural objects owned by foreign
384 governments is now being frustrated by the Foreign Sovereign
385 Immunities Act. A provision of the Foreign Sovereign

386 Immunities Act actually allows U.S. courts to have
387 jurisdiction over foreign governments when their art work is
388 temporarily imported into the U.S.

389 According to the American Association of Museum
390 Directors, this has led, in many instances, to foreign
391 governments declining to import art work and cultural
392 objects into the United States for temporary exhibitions.
393 In order to maintain the exchange of government-owned art
394 work and artifacts, Congress must simply clarify the
395 relationship between the two acts in question, which is what
396 this bill does.

397 As I say, this bill would do just that, ensuring that
398 museums, such as using my district as an example, the
399 Cincinnati Museum Center and the Cincinnati Art Museum, can
400 continue to make available to members of the community
401 international, cultural heritage, and art work. In order to
402 present first class exhibitions on a consistent basis, the
403 Cincinnati Museum Center, and the Cincinnati Art Museum, and
404 other similar museums across the country depend on foreign
405 loans. By enacting this legislation, we can remove a major
406 obstacle, a major impediment, to foreign loans and

407 exchanges.

408 I would urge my colleagues to support this legislation,
409 and I yield back the balance of my time.

410 Chairman Smith. Thank you, Mr. Chabot.

411 The gentleman from Michigan, Mr. Conyers, ranking member
412 of the full committee.

413 Mr. Conyers. Thank you, Chairman Smith. This is really
414 a narrow alignment to the expropriation exception to the
415 Foreign Sovereign Immunities Act. And, in brief, if enacted
416 it would immunize foreign states from lawsuits that seek
417 damages for art work that may already be immune from seizure
418 pursuant to a presidential determination.

419 The Foreign Sovereign Immunities bill was enacted in
420 1965, and the other bill was in 1976. So, the whole idea is
421 to make this explicit and understandable so that we can
422 foster mutual respect between our Nation and other nations,
423 especially where cultural works, art, and other kinds of
424 educational activities take place.

425 I think this is a very small adjustment, and I am
426 pleased to join Steve Chabot in supporting this measure.

427 And I would like to yield now to Steve Cohen of

428 Tennessee, who played a good role in this as well.

429 Mr. Cohen. Thank you. Thank you, Ranking Member and
430 Mr. Chairman. I do echo the support that Chairman Smith and
431 the Ranking Member have given to this, and Mr. Chabot, who
432 we tried to save the river boats years ago, and it is good
433 to join with you again in the support here of 4086, the
434 Foreign Cultural Exchange Jurisdictional Immunity
435 Verification Act.

436 This makes an important amendment to the expropriation
437 exception in this act, and ensures foreign states are immune
438 from suits for damages concerning the ownership of cultural
439 property when certain conditions are met. And they have
440 been outlined already. The expropriation exception remains
441 available to all claims concerning misappropriated cultural
442 property to which these factual circumstances, which have
443 been outlined, apply.

444 4086 ensures the expropriation exception remains
445 available for all Nazi era claims, appropriate in light of
446 the particularly concerted efforts of the Nazis to seize art
447 work and other cultural property from their victims.

448 Finally, all of the act's other exceptions to sovereign

449 immunity remain available to potential plaintiffs with
450 claims concerning the ownership of cultural property.

451 It is narrowly tailored to ensure that it provides for
452 just enough immunity to ensure foreign states to lend their
453 cultural property to our museums and universities for
454 temporary exhibits and display without protecting more than
455 we intend to protect.

456 There are people who may recoil at the idea of any bill
457 that grants any level of immunity to a foreign state when
458 ownership of a work of art or other cultural object is at
459 issue. But I would not support a bill that foreclosed all
460 possibilities of redress for such people. This bill does
461 not do that; it simply ensures that works that have already
462 granted immunity from seizure are also immune from suits for
463 damages, which is in keeping with the purpose and encourages
464 foreign countries to lend their works of arts to our
465 institutions and other museums.

466 They are up here this week, and I am a strong supporter
467 of museums. Thanks to museums for preserving our culture.
468 And I thank Representative Chabot, the chairman and the
469 ranking member, for their leadership, and urge the members

470 to report this bill in a bipartisan fashion, just as we
471 supported in a bipartisan fashion the Sensenbrenner bill,
472 which came so close to being in the STOCK Act, but did not
473 quite make it.

474 I yield back the remainder of my time.

475 Chairman Smith. Thank you, Mr. Cohen. Thank you, Mr.
476 Conyers.

477 Are there any amendments?

478 If not, a reporting quorum being present, the question
479 is on reporting the bill favorably to the House.

480 Those in favor, say aye?

481 [A chorus of ayes.]

482 Chairman Smith. Opposed, no?

483 [No response.]

484 Chairman Smith. The ayes have it, and the bill is
485 ordered reported favorably.

486 Without objection, the bill will be reported. Staff is
487 authorized to make technical and conforming changes.

488 Members will have two days to submit their views.

489 [The information follows:]

490

491 Chairman Smith. We will now go to our third and last
492 bill on the markup schedule today. Pursuant to notice, I
493 now call up H.R. 511 for purposes of markup. And the clerk
494 will report the bill.

495 Ms. Kish. H.R. 511, to amend Title 18, United States
496 Code, to prohibit the importation of various injurious
497 species of constrictor snakes.

498 Chairman Smith. Without objection, the bill will be
499 considered as read.

500 [The information follows:]

501

502 Chairman Smith. And I will begin by recognizing myself
503 and the ranking member for an opening statement.

504 H.R. 511, introduced by Mr. Rooney from Florida, amends
505 the Federal Criminal Code to prohibit the importation of
506 certain species of dangerous constrictor snakes into the
507 United States.

508 The problem of dangerous constrictor snakes has become a
509 growing concern in recent years. In the last 30 years, over
510 1 million of the species of snakes covered by this bill have
511 been imported into the United States. Between 1996 and 2006
512 alone, approximately 99,000 Burmese pythons were imported
513 into the United States. Pythons are often imported for use
514 as exotic pets, despite their known dangers.

515 The release or escape of these animals into the wild can
516 have harmful effects. According to media reports, at least
517 13 people have been killed by so-called pet pythons since
518 1980.

519 The State of Florida has been particularly affected by
520 these dangerous animals. Florida currently requires owners
521 of exotic pets to pay for annual possession permits, and the
522 animals must be identified via microchip. However, in spite

523 of these efforts to limit and track potentially dangerous
524 snakes, thousands of Burmese pythons have been reported in
525 and removed from Florida's natural wildlife areas.

526 The python outbreak is an issue of public health and an
527 environmental concern. According to a study published by
528 the U.S. Geological Survey this past January, the presence
529 of invasive Burmese pythons have led to steep declines in
530 mammals that naturally inhabit the Everglades National Park.
531 These snakes devour native mammal species, including birds
532 and even alligators. Last November, a 16-pound Burmese
533 python was found in the Everglades National Park after
534 swallowing a 76-pound deer.

535 In that same region, deer sightings have fallen 94
536 percent. Also, raccoon and possum sightings have fallen a
537 drastic 99 percent as well. Populations of smaller animals,
538 such as rabbits and foxes, have completely vanished from the
539 area.

540 These snakes have also tragically harmed young children.
541 In 2009, a 2-year-old Florida girl was strangled to death by
542 a 9-foot pet Burmese python that had escaped its aquarium in
543 her own home.

544 Interior Secretary Ken Salazar announced in January of
545 this year that the U.S. Fish and Wildlife Service had
546 finalized a rule that bans the importation and interstate
547 transportation of four species of constrictor snakes. H.R.
548 511 expands this list to include an additional five
549 threatening species, all of which the U.S. Geological Survey
550 has identified in the United States.

551 In 2009, the committee reported a similar bill by voice
552 vote. This bipartisan bill will help to ensure that these
553 animals do not continue to pose a threat to public safety.
554 So, I urge my colleagues to join me in support this
555 legislation.

556 The gentleman from Michigan, Mr. Conyers, is recognized
557 for an opening statement.

558 Mr. Conyers. Thank you, Chairman Smith. I will put my
559 statement in the record.

560 [The information follows:]

561

562 Mr. Conyers. I agree with your opening comments. I
563 yield to the ranking member of the Crime Subcommittee, Bobby
564 Scott of Virginia, the rest of my time.

565 Mr. Scott. Thank you, Mr. Speaker, and I apologize for
566 my voice.

567 Mr. Chairman, H.R. 511 has been introduced to amend
568 Title 18, U.S. Code Section 42(a)(1), which in its current
569 form prohibits the importation or shipment of injurious
570 mammals. The present law includes birds, fish, amphibian,
571 reptiles, and some snakes, or offspring or eggs of any of
572 the foregoing, which the Secretary of the Interior may
573 describe by regulation to be injurious to human beings, to
574 the interest of agriculture, horticulture, forestry, and the
575 wildlife resources of the United States.

576 H.R. 511 adds nine species of giant constrictor snakes,
577 including pythons, anacondas, and boa constrictors. These
578 snakes have been identified as injurious and posing medium
579 to high risk of becoming established in the wild in the
580 United States as invasive species and potentially
581 threatening public safety, native wildlife, and the
582 environment.

583 H.R. 511 was introduced by the gentleman from Florida,
584 Mr. Rooney, a member of this committee. And although no
585 hearings have been held on this legislation, similar bills,
586 H.R. 2811 and S. 373, were introduced by former
587 Representative Kendrick Meek and Senator Nelson of Florida,
588 respectively, during the 111th Congress.

589 H.R. 2811 was marked up in the Crimes Subcommittee and
590 reported favorably out of this committee with an amendment
591 by voice vote. Hearings were held on H.R. 2811 during the
592 111th Congress. H.R. 511 currently has 12 co-sponsors,
593 including 10 from Florida.

594 Last month, Secretary Salazar announced a final rule
595 restricting trade from four of these nine species. While
596 this is a good start, the restriction does not go far enough
597 to address the real problem. It is widely believed that
598 only by including some of these species, the pet trade will
599 simply shift to the other five unrestricted species. For
600 example, some of the pythons and boa constrictors, which
601 represent two-thirds of the trade, are not included in the
602 species restricted by the Secretary, and these species are
603 considered high risk species.

604 In a letter to members of this committee dated February
605 24th of this year, the Humane Society said that the
606 ecological havoc wrought by invasive species is worse than
607 anyone anticipated. A January 2012 report by researchers
608 found that the Burmese pythons, with little more than a
609 decade of colonizing in the Everglades, have wiped out 99
610 percent of raccoons, possums, and other small and medium-
611 sized animals, and 87 percent of bobcats.

612 Since 1980, 15 people have been killed by these snakes,
613 with pythons accounting for the largest share of the
614 attacks. This included a 2-year-old girl killed in Florida
615 in 2009. And in 2007, near my congressional district in
616 Virginia Beach, Virginia, a woman was found dead by
617 asphyxiation believed to be caused by a 13-foot python owned
618 by her and her Navy husband.

619 Fifteen deaths alone should be sufficient to limit their
620 continued importation and interstate transport. It is clear
621 that all too often, owners of these animals do not
622 understand that no matter how tame or friendly the snakes
623 appear to be, it is and always will be a wild animal, and,
624 as such, is subject to what appears to be unpredictable

625 behavior when, in fact, the behavior is natural for snakes.

626 While this bill addresses the importation and interstate
627 transportation of these animals, it does not fully address
628 the large number of these snakes already within our borders
629 that are being bred and sold domestically. This is a matter
630 that may require further consideration to gain better
631 control and monitoring of this problem.

632 However, I support the bill and encourage my colleagues
633 to do so.

634 Chairman Smith. Thank you, Mr. Conyers. Thank you, Mr.
635 Scott. Mr. Scott, sorry about your voice. Actually, I can
636 think of other markups when I wished you had lost your
637 voice, but --

638 [Laughter.]

639 Chairman Smith. But sorry you have to go through that.
640 Are there other members who wish to be heard?

641 The gentleman from California, Mr. Gallegly, is
642 recognized.

643 Mr. Gallegly. I would like to strike the last word.

644 Mr. Chairman, I rise in support of H.R. 511. As you
645 mentioned, large constrictor snakes have not only caused

646 serious harm to the Florida ecosystem, they have been
647 responsible for at least 15 deaths in the United States,
648 including the deaths of seven children, and recently, as
649 Bobby Scott mentioned, a 2-year-old Florida girl strangled
650 to death by a boa constrictor. Also, there was a gentleman,
651 an adult in Nebraska that was just strangled to death by a
652 boa constrictor.

653 In addition, these large non-native snakes have
654 attracted and killed numerous pets and native wild animals
655 in Florida and around the country. As the chairman said,
656 according to a January report from the National Academy of
657 Sciences, Burmese pythons have wiped out 99.3 percent of the
658 raccoons, 98.9 percent of the opossums, 87.5 percent of the
659 bobcats in Florida in a portion of the Florida Everglades.
660 They have also decimated Florida's cottontail rabbits and
661 foxes.

662 Of the over 1 million of these snakes that have been
663 imported to the United States, over 60 percent of them
664 happen to be boa constrictors. Although the bill bans
665 private interstate commerce in these snakes, there is an
666 exemption under existing law for snakes moved across State

667 lines for zoological, educational, medical, or scientific
668 purposes.

669 I urge my colleagues to support this common sense
670 legislation, and yield back to the chairman.

671 Chairman Smith. Thank you, Mr. Gallegly.

672 And without objection, the chairman of the Crimes
673 Subcommittee's statement, that is, Mr. Sensenbrenner's
674 statement, will be made a part of the record as well.

675 [The information follows:]

676

677 Chairman Smith. Are there any amendments?

678 The gentleman from Utah, Mr. Chaffetz, is recognized.

679 Mr. Chaffetz. Mr. Chairman, I have an amendment at the
680 desk.

681 Chairman Smith. The clerk will report the amendment.

682 Ms. Kish. Amendment to H.R. 511, offered by Mr.

683 Chaffetz of Utah, page 2, beginning on line 3, strike "of

684 the boa constrictors of the species, boa constrictors" --

685 Chairman Smith. Without objection, the amendment will
686 be considered as read.

687 [The amendment of Mr. Chaffetz follows:]

688

689 Chairman Smith. And the gentleman from Utah is
690 recognized to explain the amendment.

691 Mr. Chaffetz. Thank you, Mr. Chairman.

692 I rise, too, in support of this bill. I think it is
693 needed. I appreciate my colleague, Mr. Rooney, for his
694 leadership moving this forward. It is one of the deep
695 concerns of the Everglades and portions of Florida that are
696 deeply affected by this, and we have heard the number of
697 statistics and other things out there.

698 This amendment would simply exempt out boa constrictors,
699 and I think we should look at the information that is
700 provided to us by the Fish and Wildlife Service.

701 And also take into account that there are a number of
702 people who have owned snakes in this country. Now, I am not
703 particularly fond of this, but I can tell you, as a kid and
704 a child, I owned a little boa, and I enjoyed it, and I
705 thought it was good. It was a good experience for me.

706 There are 500,000 Americans who lawfully maintain
707 constrictor snakes, according to the Georgetown Economic
708 Services. Boa constrictors account for 70 percent of all
709 imports and 70 to 80 percent of all revenues generated by

710 these nine snake species.

711 Industry survey data indicate that more than 99 percent
712 of snake businesses are small businesses. And so, what we
713 are trying to do here with this amendment is simply exempt
714 out these boas that are not a threat to what is happening in
715 the Everglades.

716 So, Mr. Rooney, who is the sponsor of this bill, who is
717 passionate about this issue, has dove into this. He has
718 told me verbally that he is totally comfortable with this
719 amendment because this is not the problem. The main
720 problem, according to the January 23rd, 2012, the Fish and
721 Wildlife Service said in their questioning, which of the
722 nine species of constrictor snakes are definitely
723 reproducing in the wild of the United States? The Fish and
724 Wildlife Service responded, "Those confirmed breeding in the
725 wild in the United States or its territories include the
726 Burmese python and the Northern African python."

727 And they continue on. "We do not know of any free-
728 ranging, non-native large constrictor snakes that have
729 injured or killed anyone in the United States. Human
730 fatalities from non-venomous snakes in the wild are rare.

731 We agree that the preeminent issue is not one of public
732 safety because we know of no large constrictor snake attacks
733 in the United States from free-ranging snakes."

734 This is a small business issue for me. This is why I
735 think it is important. I know we get some giggles and
736 things when we start talking about a boa snake, but there
737 are hundreds of thousands of Americans who own these. There
738 are pet stores from across this country that sell these
739 snakes. And they are not the threat and the reason that we
740 are moving forward with this bill.

741 So, again, I support the bill. I just happen to believe
742 we should accept this amendment, as the author of the bill
743 also supports this amendment or is fine with this amendment.
744 And let us take into account those hundreds of thousands of
745 Americans who like these, they enjoy them, they consider
746 them as pets, they enjoy them. Even though many of us on
747 this dais may not, I think it is important we stand up for
748 them.

749 So, I encourage that we pass this amendment and support
750 the bill and pass it out because it is needed, particularly
751 for our friends in Florida.

752 I yield back.

753 Chairman Smith. Thank you, Mr. Chaffetz.

754 The gentleman from California, Mr. Berman.

755 Mr. Berman. Thank you, Mr. Chairman.

756 I rise in opposition to this amendment, and urge the
757 committee to reject the amendment.

758 Contrary to what my friend from Utah has just said, my
759 information points in a very different direction. The
760 United States Geological Survey report notes that boa
761 constrictors present a high risk of colonizing in the
762 ecosystem as an invasive species. They are already present
763 in South Florida. The USGS concluded the following: high
764 risk species are Burmese pythons, Northern and Southern
765 African pythons, and then boa constrictors," a phrase that
766 was left out in the argument in favor of this legislation.

767 These species, when established in the country, put
768 larger proportions of the United States mainland at risk,
769 constitute a greater ecological threat, are more commonly
770 traded in commerce.

771 Boa constrictors have already become an invasive species
772 in Aruba, and according to the Aruba Bird Life Conservation,

773 boa constrictors kill more than 17,000 island birds per
774 year.

775 Boa constrictors alone represent more than 55 percent of
776 all large constrictor snakes in the trade. They are deadly
777 snakes, contrary to what we have just heard. My information
778 is they have killed at least two people in the United
779 States, a 34-year-old Nebraska man, who was strangled to
780 death in 2010.

781 This legislation --

782 Mr. Chaffetz. Will the gentleman yield --

783 Mr. Berman. Yes.

784 Mr. Chaffetz. -- on that point?

785 Mr. Berman. Yes.

786 Mr. Chaffetz. How many people are killed by dogs or
787 cats or blinds or --

788 Mr. Berman. Well --

789 Mr. Chaffetz. These are animals. These are animals.
790 Spouses.

791 Mr. Berman. The gentleman had just finished concluding
792 that no one had been killed in the United States. I simply
793 raised --

794 Mr. Chaffetz. Would the gentleman yield?

795 Mr. Berman. Yes.

796 Mr. Chaffetz. That was according to the Fish and
797 Wildlife Service talking about free ranging. Now, the
798 particular instance where one was killed, my understanding
799 is a setting where they put a blanket over the lid of this,
800 and they were actually prosecuted for neglecting their 2-
801 year-old. It was not the fact that this snake was out
802 there, you know, out on the highways of Florida killing
803 people.

804 Mr. Berman. Well, if I may reclaim my time, I would
805 simply point out, my basis for opposing this is I have no
806 particular knowledge of the boa constrictor economy. It is,
807 I guess, not an underground economy, but it is an at the
808 ground economy.

809 [Laughter.]

810 Mr. Berman. And what I do know is that USGS refers to
811 them as a high risk of colonizing the ecosystem. We see
812 what has happened already with the pythons and what is going
813 on there, and the gentleman supports that legislation. I
814 would make the case, given the reports of what has already

815 happened, that excluding this from the bill makes this a
816 weaker bill than it should be, and I would urge my
817 colleagues to vote against the amendment.

818 And I would yield back my time.

819 Chairman Smith. Thank you, Mr. Berman.

820 Are there others who wish to be heard?

821 The gentleman from California, Mr. Gallegly.

822 Mr. Gallegly. Thank you, Mr. Chairman. As I mentioned
823 in my opening statement, the issue is that the overwhelming
824 majority of these reptiles that are imported to the United
825 States are boa constrictors.

826 The gentleman from Utah is a dear friend of mine who I
827 normally am with on most issues, but I have to respectfully
828 oppose the gentleman's amendment that would exempt boa
829 constrictors from the list of species that would be
830 prohibited from the importation to the United States.

831 In effect, this amendment would remove one of the main
832 species of snakes that is responsible for the devastation
833 that it taking place in Florida and increasingly in other
834 parts of the country.

835 A 2009 U.S. Geological Survey report concluded that boa

836 constrictors present a high risk of colonizing in the
837 ecosystem as an invasive species. This is a report that is
838 only a couple of years old. Of the 1.1 million constrictor
839 snakes imported into the U.S. in the past 20 years, more
840 than 618,000 are boa constrictors. This is a serious
841 problem because if a boa constrictor are released into the
842 environment, they are able to thrive in areas with warmer
843 climates, including Florida, Georgia, Texas, New Mexico,
844 Arizona, Hawaii, and Puerto Rico, and thank god, not
845 California.

846 Allowing this amendment would not allow the continued
847 trade in a dangerous species of reptiles, and I really
848 appeal to my colleagues to vote no on the amendment.

849 Chairman Smith. Thank you, Mr. Gallegly.

850 Are there other members who wish to be heard?

851 The gentleman from Florida, Mr. Deutch.

852 Mr. Deutch. I will slide down. Thank you.

853 As a co-sponsor, Mr. Chairman, of this legislation, and
854 like my friend, Mr. Rooney, a representative from South
855 Florida, I would like to voice my opposition to this
856 amendment. The fact is that the underlying bill includes

857 nine species that are identified in the U.S. Geological
858 Service study report as presenting the most significant risk
859 to our Nation's natural resources.

860 If we limit the trade ban to fewer than all nine,
861 specifically if we remove boa constrictors, the species that
862 represents more than half of the trade, the problems will
863 continue. And I do not want to have to come back after
864 further devastation is done to talk about the havoc that boa
865 constrictors have wreaked on the Everglades.

866 We already know, and Mr. Chaffetz acknowledged his
867 support for the bill, we already understand the devastation
868 that pythons have caused in the Everglades. We know what
869 they have done to what is a beautiful, a natural, and really
870 one of our treasured natural resources. We have an
871 opportunity to take action to help sustain the Everglades.

872 I have not had a chance to talk to Mr. Rooney about
873 this, but as a member who represents South Florida, as a
874 member who spends a good deal of time with advocates who try
875 desperately to take every measure, use every measure we can
876 to restore the Everglades and maintain the Everglades,
877 passing this amendment will be a step backward. And I would

878 respectfully ask my colleagues to vote against it.

879 Chairman Smith. Thank you, Mr. Deutch. Are there other
880 members who wish to be heard?

881 The gentleman from Virginia, Mr. Scott.

882 Mr. Scott. Mr. Chairman, I ask unanimous consent to
883 turn into the record a 6-page report of incidents --

884 Chairman Smith. Without objection, the 6-page report
885 will be made a part of the record.

886 [The information follows:]

887

888 Mr. Scott. Where these boa constrictors are being found
889 all over the country.

890 It is about half the problem. I would hope we would
891 reject the amendment and pass the bill.

892 Chairman Smith. Okay. Thank you, Mr. Scott.

893 Are there other members who wish to be heard?

894 Interesting discussion on an interesting amendment.

895 All in favor of the amendment, say aye.

896 [A chorus of ayes.]

897 Chairman Smith. All opposed to the amendment, say no.

898 [A chorus of noes.]

899 Chairman Smith. In the opinion of the chair, the noes
900 have it, and the amendment is not agreed to.

901 Are there any other amendments?

902 The gentleman from Texas, Mr. Gohmert, is recognized.

903 Mr. Gohmert. Thank you, Mr. Chairman. I have Gohmert
904 Number 2 at the desk.

905 Chairman Smith. The clerk will report the amendment.

906 Ms. Kish. Amendment to H.R. 511, offered by Mr. Gohmert
907 of Texas, page 1, line 5, strike Section 42(a)(1) and insert

908 (a) Section 42(a)(1). Page 2 --

909 Chairman Smith. Without objection, the amendment will
910 be considered as read.

911 [The amendment of Mr. Gohmert follows:]

912

913 Chairman Smith. And the gentleman from Texas is
914 recognize to explain his amendment.

915 Mr. Gohmert. Thank you, Mr. Chairman.

916 And we have had hearings on the issues of these snakes.
917 It does seem to be a problem in interstate commerce, and so
918 it does bear our consideration.

919 But one of the things that the Heritage Foundation has
920 actually joined forces with the ACLU on is over
921 criminalization. We have so many laws on the books for
922 which SWAT team, whether they be from the EPA or some other
923 government agency, can come swooping in, throw people to the
924 ground, handcuff them, and they do not even know what they
925 did.

926 Under the bills that exist now, simply knowing that you
927 were encouraging, aiding, assisting in bringing snakes that
928 it has been lawful to import is enough that you could have,
929 as we heard one fellow that was run off the road by the EPA
930 SWAT team, yanked out of his car, thrown to the ground.
931 This is the kind of stuff that should not have to happen.

932 It has been legal to import these. So, my amendment
933 simply changes or adds the requirement that it be willful.

934 The 18 U.S.C. 41, the section immediately before, guess
935 what? It says whoever, except in compliance with rules and
936 regulations promulgated by authority of law, hunts, traps,
937 captures, willfully disturbs. So, willful is there already,
938 and I am honored to call Ed Meese friend. I think the world
939 of him. He has a fantastic paper where he points out the
940 term "willful" is used today to describe a state of mind
941 characterized by an intentional violation of a known duty.

942 The Supreme Court itself in *Brian v. United States* says
943 the willfulness requirement does not carve out an exception
944 to the traditional rule, that ignorance of the law is no
945 excuse. Knowledge that the conduct is unlawful is all that
946 is required. That is what willful does. You have to know
947 you are violating the law, not know that you are doing the
948 act that knowingly requires.

949 So, I am just trying to keep from adding to the over
950 criminalization where innocent people, some truck driver,
951 somebody that helps load or unload that is getting a daily
952 wage, has no idea that he is committing anything unlawful,
953 that he will not be subjected to being thrown to the ground
954 and handcuffed by some overzealous SWAT team of some obscure

955 Federal agency.

956 So, I just want the word "willfully" in there so you at
957 least have to prove they knew there was a law that they were
958 violating. And, of course, circumstantial evidence can be
959 used to prove that, so this is not something that lets
960 people go free.

961 I just want to go after the real criminals and leave the
962 innocent people alone. That is why I make the amendment.

963 And with that, I yield back.

964 Chairman Smith. Thank you, Mr. Gohmert.

965 I am going to recognize myself in opposition to this
966 amendment, but I want to explain to members that Mr. Gohmert
967 intends to offer two amendments. This first one sets
968 "willfully" as the mens rea standard. The next amendment
969 sets "knowingly" as the mens rea statement. I support the
970 next amendment, but not this amendment for the following
971 reasons.

972 This amendment adds "willfully" as a mens rea
973 requirement for a violation of Section 42 of the Criminal
974 Code for the importation of interstate shipment of certain
975 injurious animals.

976 Federal courts generally imply a knowingly standard when
977 a statute itself does not specify the particular mental
978 state for an offense. The term "willfully" is often given
979 different meanings in different jurisdictions. It has been
980 used to mean intentional, an act done with a bad purpose, an
981 evil motive, or a purpose to disobey the law. The willfully
982 standard is inconsistent with other parts of this same
983 statute. Subsection (c) of Section 42 already uses the more
984 commonly accepted knowingly standard. Also, this standard
985 is inconsistent with the vast majority of criminal offenses
986 in the Federal Code.

987 For these reasons, I oppose this amendment. I urge my
988 colleagues to oppose it, but I also urge my colleagues to
989 support the next amendment that will be offered in regard to
990 the knowingly standard.

991 I will yield back the balance of my time. Are there
992 other members -- the gentleman from Virginia, Mr. Scott, is
993 recognized.

994 Mr. Scott. Mr. Chairman, criminal law usually presumes
995 violations of criminal law, including knowing and willful
996 violation. Unfortunately without the Gohmert amendment, the

997 section might be interpreted as a strict liability where
998 whether you know it or not you are guilty.

999 And so, I think the Gohmert amendment clarifies the law,
1000 conforms it to what everybody thinks criminal law is. And I
1001 would support it.

1002 Mr. Berman. Would the gentleman yield?

1003 Mr. Scott. I yield.

1004 Mr. Berman. Would the Gohmert second amendment that
1005 puts in a knowing standard not essentially meet that concern
1006 and be more consistent with most of our criminal statutes?

1007 Mr. Scott. Reclaiming my time, I think it would be
1008 better than nothing. The willful part of it, you have to
1009 actually be willfully violating a law. You can know that
1010 you are transporting something, but not know it is against
1011 the law.

1012 We had testimony that the guy imported some orchids.
1013 Well, he knew he was importing it; he just did not know that
1014 it was against the law. He was not willfully violating the
1015 law, and he ended up in prison over something that most
1016 people thought may have been a civil fine or may have been a
1017 warning. And he is sitting up in prison because he did not

1018 know that he was violating the law. He knew he was
1019 importing the orchids. But so, the willful part, I think,
1020 is a significant part of the violation.

1021 Mr. Berman. Would the gentleman yield?

1022 Mr. Scott. I yield.

1023 Mr. Berman. But a shipper who knowingly is importing
1024 these snakes -- I mean, the knowingly standard is in the
1025 current law. Without this bill, we would have a knowing
1026 standard for what is already prohibited.

1027 Willful now will not only change the nature of this
1028 bill, it will change the nature of the underlying law. It
1029 seems to me the shipper of these items, if he knows that
1030 these restricted snakes are being shipped, he has an
1031 obligation to know what the law is when he is a shipper. I
1032 think this allows a lot of people to avoid liability
1033 claiming, yes, I knew what I was carrying, but I did not
1034 know it violated the law, and, therefore, I was not
1035 willfully violating the law.

1036 Mr. Scott. Will the gentleman yield?

1037 Mr. Berman. In some ways, that is an extension of an
1038 ignorance of the law. It is an excuse.

1039 Mr. Gohmert. Will the gentleman yield?

1040 Mr. Scott. Reclaiming my time --

1041 Mr. Berman. I yield back.

1042 Mr. Scott. I would yield to the gentleman from Texas.

1043 Mr. Gohmert. Thank you, and I appreciate Mr. Berman's
1044 point. And actually my amendment that changes or that adds
1045 "knowingly," "knowingly" is already in there to some extent.
1046 I am not even going to offer that amendment now that I think
1047 about it, because let me just say. Knowingly is what we
1048 have in criminal statutes. If you murder somebody, we were
1049 never willing to accept that, oh, gee, I did not know it was
1050 against the law to murder somebody. Those crimes were so
1051 pronounced and so agreed upon that just knowing you were
1052 committing the act of murder or rape or something was
1053 enough. You did not have to prove that you knew there was a
1054 law.

1055 But we have extended that into so many areas that people
1056 do not know it is a violation, particularly as here where we
1057 are changing the law to add animals that shippers have known
1058 they could import before.

1059 And so, I think as we continue to add criminal laws that

1060 can get people locked up in jail, we need to be cognizant
1061 that we are allowing people who had no idea, they have done
1062 this before, it was not illegal. And now, like I say, the
1063 person that is hired by the shipper, they are not willfully
1064 violating the law.

1065 So, let me just say, this will be the only amendment I
1066 offer because I think it is most critical that if we are
1067 going to make these kind of violations be what subjects
1068 people to prison, they ought to know that we have changed
1069 the law before we send them.

1070 Thank you. I yield back to my friend.

1071 Mr. Scott. Reclaiming my time. And I would say to
1072 gentleman from California, that there is a concept of malum
1073 per se and malum prohibitum that if you are doing something
1074 -- murder, robbery, theft -- you know it is wrong, and so
1075 willful is easy. And something that is against the law just
1076 because it is against the law is not inherently a bad thing.

1077 You really ought to have to know that it was against the
1078 law before you get sent to jail for what you did. And this
1079 would clarify that. I yield.

1080 Mr. Berman. I appreciate the gentleman yielding, and I

1081 would ask unanimous consent --

1082 Chairman Smith. Without objection, the gentleman is
1083 recognized for an additional two minutes.

1084 Mr. Berman. I look at this in a somewhat different
1085 context. We are talking about importing and criminal
1086 violations for importation of certain goods. Importation,
1087 exporting. When the guy sells prohibited, sophisticated,
1088 highly controlled military technologies to a country on the
1089 terrorist list, should he be able to say, well, I knew I was
1090 selling them, but I did not know that our export control
1091 laws prohibited that? I can talk about a bunch of areas
1092 that if we applied this standard there, all kinds of people
1093 would be able to avoid criminal liability for some very bad
1094 stuff.

1095 I do think, and I would agree with the chair. I would
1096 support the knowing standard.

1097 Mr. Gohmert. Will the gentleman yield?

1098 Mr. Berman. Yes.

1099 Mr. Gohmert. Actually --

1100 Mr. Berman. I mean, it is not my time to yield. I am
1101 sorry.

1102 Mr. Gohmert. But actually you also have to take this
1103 into consideration with the Federal law that says if you
1104 aid, encourage, assist in any way, you are as guilty of the
1105 primary crime as the principle. And so, that does that the
1106 guy that lifts the box, or carries this out, the guy on the
1107 runway that helps unload something. All he has to know is
1108 there are snakes in there. He does not have to know it is a
1109 crime. And he is as guilty, and he can be taken down by one
1110 of our new SWAT teams.

1111 I yield back.

1112 Mr. Scott. Reclaiming my time. And I would say to the
1113 gentleman from California, that some things are just
1114 inherently dangerous, and you are on notice that you need to
1115 check. Some of the things are not that way, and I think
1116 importing dangerous snakes would be something that you would
1117 be on notice that you need to check whether or not you are
1118 doing it illegally or not.

1119 Like I said, going back to the thing about orchids. The
1120 gentleman that ended up in jail had no reason to believe
1121 that importing some orchids was against the law. In this
1122 case, I think it is going to be fairly clear that if you are

1123 importing snakes inherently dangerous to people's lives,
1124 that you ought to be on notice that some of the stuff is
1125 illegal.

1126 I yield back.

1127 Chairman Smith. Okay. The gentleman from South
1128 Carolina, Mr. Gowdy, is recognized.

1129 Mr. Gowdy. Thank you, Mr. Chairman. And I want to tell
1130 His Honor Judge Gohmert, I agree with you about the over
1131 criminalization. Actually you did not say it. You can also
1132 make an argument it would federalize things that should not
1133 be federalized.

1134 But I look at it from a prosecutorial perspective. How
1135 can prosecutors prove that someone knew something was
1136 against the law? The only way it strikes me you can do that
1137 is for them to have been previously arrested for it. I
1138 mean, I am looking at it practically.

1139 The AUSA's who have to enforce the laws that we
1140 prosecute, how do you prove that someone, how do you prove
1141 that they knew it was against the law? Notice how, though?
1142 I mean, well then, that would give them two bites at the
1143 apple. The first time would be warned that it was wrong,

1144 and the second time to be prosecuted for it.

1145 Mr. Gohmert. Would the gentleman yield?

1146 Mr. Gowdy. Sure.

1147 Mr. Gohmert. I know some prosecutors have never had to
1148 prove that element apparently. It is not hard to prove they
1149 got notice, and then it puts an affirmative defense to say I
1150 did not read this important notice that I got. But, you
1151 know, it is what the government can do. It publishes
1152 notice. We do it all the time. And then, especially a
1153 shipper, the kind of people that Mr. Berman were talking
1154 about, they have been given notice, and it is not hard to
1155 show that people got notice, and if they did not read it,
1156 they are awfully incompetent, and juries buy that. And it
1157 is not hard to prove.

1158 We give public notice to things all the time, but the
1159 alternative is locking people up when all they were were day
1160 laborers, and they had no idea. It is not hard to prove
1161 notice. The Federal government gives notice all the time.

1162 Mr. Gowdy. I can tell you from firsthand experience it
1163 is a little harder to prove what was in somebody's mind,
1164 which is why the law does not require us to prove it. I do

1165 not have to prove a specific intent to murder someone. I
1166 have to prove a specific intent to commit the act that led
1167 to someone's death.

1168 So, my point is this. If we are going to have certain
1169 categories of crime where you have to be put on notice and
1170 others where we just assume everybody knows it is against
1171 the law, I am just looking at it from a practical -- I am
1172 not disagreeing with your underlying contention. I am just
1173 asking from a practical standpoint how do prosecutors prove
1174 it the first time.

1175 Mr. Gohmert. Will the gentleman yield?

1176 Mr. Gowdy. Yes.

1177 Mr. Gohmert. In civil cases, you have to prove notice
1178 constantly. The SEC, other groups, constantly have to prove
1179 notice. It is not a big deal. You show the government gave
1180 notice.

1181 But as we keep adding criminalization and prison to
1182 issues that are not, I mean, to matters that are not
1183 generally known to be crimes, if you do not have the willful
1184 intent, then you are participating, as Ed Meese keeps
1185 pointing out, in sending people that should not go to

1186 prison. We have hearings on these folks who get hurt
1187 because we want to show we are really tough on crime. This
1188 is not the place.

1189 We need to require there being knowledge when it is not
1190 in and of itself clear that something is against the law.
1191 Theft, fraud, lying, cheating, stealing, murder, those kind
1192 of things, you know they are not right. But failing to put
1193 a sticker on the airplane with a line through it, or the
1194 orchids, or shipping lobsters in packages, this is the same
1195 kind of deal. People that pick up the box, because we have
1196 the law of principles, if you put "knowingly," -- well,
1197 yeah, they knew they were moving snakes, but they have done
1198 it for years. If you do not add "willful," you are going to
1199 contribute to people being arrested that should never have
1200 been.

1201 I appreciate the gentleman yielding.

1202 Mr. Gowdy. Thank you. I yield back, Mr. Chairman.

1203 Chairman Smith. Thank you, Mr. Gowdy. Are there other
1204 members who wish to be heard?

1205 The gentleman from North Carolina, Mr. Watt.

1206 Mr. Watt. Thank you, Mr. Chairman. I want to make

1207 three observations.

1208 First of all, this is a great discussion for a Judiciary
1209 Committee to be having, and the kind of discussion that I
1210 think the Judiciary Committee was intended to have all the
1211 time, no partisan divides, just substantive divides, people
1212 are falling where they may.

1213 Second, it reminds me of one of the reasons I was happy
1214 I got out of the practice of law and on to this committee
1215 where we can have a discussion of this kind. And I am glad
1216 we are having a serious discussion about it.

1217 Third, on the merits of this particular issue, I think I
1218 am going to come down with Gowdy and Berman as opposed to
1219 Gohmert and Scott. I know that is unusual, but Gohmert and
1220 Scott is unusual. Yeah, he has reminded me that Gohmert and
1221 Scott is unusual. Probably Watt and Gowdy is unusual, too.

1222 But I think this is one of those cases where you are not
1223 dealing with orchids, you are dealing with dangerous
1224 instrumentalities. And I really do not want people to get
1225 off claiming that they did not know. I mean, they should
1226 have known. There are some cases where you just ought to
1227 investigate, and it seems to me that inserting a willful

1228 standard here shifts the burden from the party that the
1229 burden ought to be on.

1230 I just think a shipper ought to be presumed to know the
1231 -- now it gets a little closer if the guy that is being
1232 prosecuted is the guy that is out working on the platform,
1233 does not have any real knowledge of this. But I think he
1234 can come in and affirmatively protect himself, and the law
1235 is going to take that into account.

1236 So, I think on balance, I am going to come down on the
1237 side of Gowdy/Berman rather than Scott/Gohmert.

1238 I will yield to my friend, Mr. Scott, if he is still
1239 speaking to me.

1240 [Laughter.]

1241 Mr. Scott. Thank you. The problem with the guy on the
1242 dock is he knows exactly what he is doing. He is helping
1243 with the shipping. He just does not know that it was
1244 illegal, so that is why you need "willful." And the
1245 gentleman from South Carolina as a prosecutor has always had
1246 problems trying to show intent because if it is a murder, he
1247 has also got to show it was not an accident. You knew you
1248 were doing something, but it could have been an accident.

1249 So, knowing and willing are part of the criminal law.

1250 Mr. Berman. Will the gentleman yield?

1251 Mr. Watt. I will yield to --

1252 Mr. Berman. I think that is the case, as well as the
1253 last comments made by the ranking member of the Crime
1254 Subcommittee.

1255 I also make the case there should be a knowing standard
1256 in here, but not a willful standard. And that is the
1257 amendment I think that I wish Mr. Gohmert was planning to
1258 pursue because that is an amendment I think I clearly
1259 support. It is the willingness.

1260 It is just what Mr. Gowdy said. The shipper, we should
1261 expect him to know that when he is shipping this kind of a
1262 species, he has an obligation. He knows what he is doing,
1263 and he has an obligation to know whether or not it violates
1264 the law. The guy unloading it, if he does not even know
1265 what is in the box, he should not be subject to criminal
1266 liability. A knowing standard protects him. The willful
1267 standard insulates the guy who is directly facilitating the
1268 violation of the law.

1269 So, I argue for the amendment that he is not offering,

1270 not the amendment he is offering.

1271 Chairman Smith. The gentleman's time has expired.

1272 Without objection, the gentleman is recognized for an
1273 additional minute.

1274 Mr. Watt. I ask for an additional minute and yield to
1275 Mr. Scott.

1276 Chairman Smith. That is the gentleman from North
1277 Carolina, Mr. Watt.

1278 Mr. Scott. And what I think we may be doing is trying
1279 the case. In this case, of course it is willing because you
1280 can hardly see it any other way. You are drawing the
1281 conclusion that if "willing" is in here, you would be able
1282 to prove it because he knew it.

1283 In terms of the guy on the dock, if he has got a box and
1284 can see the snakes squirreling around, he knows exactly what
1285 he is doing. He is just not willingly violating the law.

1286 I yield back.

1287 Mr. Watt. I yield back.

1288 Chairman Smith. The gentleman yields back his time.

1289 Are there other members who wish to be --

1290 Mr. Deutch. Mr. Chairman?

1291 Chairman Smith. The gentleman from Florida, Mr. Deutch,
1292 is recognized.

1293 Mr. Deutch. Thank you.

1294 Mr. Chairman, this has been, I think, a very interesting
1295 debate and discussion. I would just urge my colleagues to
1296 circle back and take a look at really what we are doing
1297 here. We are simply amending existing law. We are amending
1298 existing law to clarify that these types of animals that
1299 would do, that have done, and will do great harm to various
1300 ecosystems in our country, including specifically the
1301 Everglades, would be added to a list.

1302 And the law as it exists currently says that the
1303 Secretary of the Interior is going to prescribe requirements
1304 and issue permits as he may deem necessary for the
1305 transportation of wild animals and birds. And it shall be
1306 unlawful for any person, including any importer, knowingly
1307 to cause or permit any wild animal or bird to be transported
1308 to the United States or district thereof.

1309 The fact is, we are not talking about someone who is
1310 going to be carrying a package that contains some widgets to
1311 move from one place to another. There is a long established

1312 -- long established -- set of requirements for how to
1313 transport wild animals. All we are doing here is saying
1314 that these specific animals should be added to the list, and
1315 should be added to a list that the people who transport
1316 these and the manner in which they transport them has long
1317 been understood.

1318 It has been long been understood that there are rules,
1319 that there are laws that prescribe the trade in certain
1320 types of animals. And so, I am not sure that it is
1321 necessary to talk about creating some new standard when the
1322 law has worked sufficiently now for years as it relates to a
1323 whole host of other animals.

1324 Mr. Gohmert. Will the gentleman yield?

1325 Mr. Deutch. I will.

1326 Mr. Gohmert. You make my point. It has been long known
1327 and long understood what could be transported and what could
1328 not. We are changing that long understanding --

1329 Mr. Deutch. Reclaiming my time. Reclaiming my time.
1330 To the contrary, I think I actually made the point that I
1331 intended to make, which is that those who transport these
1332 animals understand that there are requirements that have to

1333 be met; that just as there was a notice sent out from the
1334 Secretary, again there will be a notice sent out
1335 specifically on these animals.

1336 If you happen to live in Florida, the fact is that you
1337 will know this because it has been in every newspaper
1338 repeatedly because of the impact that it has had on the
1339 environment and on the lives of Floridians.

1340 So, I think we are making more of this than we need to.
1341 This is -- this is a very specific type of trade that is
1342 already regulated. They understand it is regulated. All we
1343 are doing is adding these important types of animals, these
1344 dangerous types of animals, to a list.

1345 I do not believe that there is a need to change the
1346 standard that has worked well in this industry for years.
1347 And I would urge my colleagues to oppose this amendment.

1348 Chairman Smith. Okay. Thank you, Mr. Deutch.

1349 The question is on the amendment.

1350 All in favor of the Gohmert amendment, say aye?

1351 [A chorus of ayes.]

1352 Chairman Smith. All opposed, no?

1353 [A chorus of noes.]

1354 Chairman Smith. In the opinion of the chair, the noes
1355 have it, and the amendment is not agreed to.

1356 Mr. Gohmert. I would ask for a recorded vote.

1357 Chairman Smith. A recorded has been requested, and the
1358 clerk will call the roll.

1359 Ms. Kish. Mr. Smith?

1360 Chairman Smith. No.

1361 Ms. Kish. Mr. Smith votes no.

1362 Mr. Sensenbrenner?

1363 [No response.]

1364 Ms. Kish. Mr. Coble?

1365 [No response.]

1366 Ms. Kish. Mr. Gallegly?

1367 [No response.]

1368 Ms. Kish. Mr. Goodlatte?

1369 [No response.]

1370 Ms. Kish. Mr. Lungren?

1371 Mr. Lungren. Aye.

1372 Ms. Kish. Mr. Lungren votes aye.

1373 Mr. Chabot?

1374 Mr. Chabot. Aye.

1375 Ms. Kish. Mr. Chabot votes aye.

1376 Mr. Issa?

1377 [No response.]

1378 Ms. Kish. Mr. Pence?

1379 [No response.]

1380 Ms. Kish. Mr. Forbes?

1381 [No response.]

1382 Ms. Kish. Mr. King?

1383 [No response.]

1384 Ms. Kish. Mr. Franks?

1385 Mr. Franks. Aye.

1386 Ms. Kish. Mr. Franks votes aye.

1387 Mr. Gohmert?

1388 Mr. Gohmert. Aye.

1389 Ms. Kish. Mr. Gohmert votes aye.

1390 Mr. Jordan?

1391 Mr. Jordan. Aye.

1392 Ms. Kish. Mr. Jordan votes aye.

1393 Mr. Poe?

1394 [No response.]

1395 Ms. Kish. Mr. Chaffetz?

1396 Mr. Chaffetz. No.

1397 Ms. Kish. Mr. Chaffetz votes no.

1398 Mr. Griffin?

1399 [No response.]

1400 Ms. Kish. Mr. Marino?

1401 [No response.]

1402 Ms. Kish. Mr. Gowdy?

1403 Mr. Gowdy. No.

1404 Ms. Kish. Mr. Gowdy votes no.

1405 Mr. Ross?

1406 Mr. Ross. No.

1407 Ms. Kish. Mr. Ross votes no.

1408 Ms. Adams?

1409 Ms. Adams. No.

1410 Ms. Kish. Ms. Adams votes no.

1411 Mr. Quayle?

1412 Mr. Quayle. Aye.

1413 Ms. Kish. Mr. Quayle votes aye.

1414 Mr. Amodei?

1415 [No response.]

1416 Ms. Kish. Mr. Conyers?

1417 Mr. Conyers. Aye.

1418 Ms. Kish. Mr. Conyers votes aye.

1419 Mr. Berman?

1420 Mr. Berman. No.

1421 Ms. Kish. Mr. Berman votes no.

1422 Mr. Nadler?

1423 [No response.]

1424 Ms. Kish. Mr. Scott?

1425 Mr. Scott. Aye.

1426 Ms. Kish. Mr. Scott votes aye.

1427 Mr. Watt?

1428 Mr. Watt. No.

1429 Ms. Kish. Mr. Watt votes no.

1430 Ms. Lofgren?

1431 Ms. Lofgren. No.

1432 Ms. Kish. Ms. Lofgren votes no.

1433 Ms. Jackson Lee?

1434 [No response.]

1435 Ms. Kish. Ms. Waters?

1436 Ms. Waters. No.

1437 Ms. Kish. Ms. Waters votes no.

1438 Mr. Cohen?

1439 Mr. Cohen. No.

1440 Ms. Kish. Mr. Cohen votes no.

1441 Mr. Johnson?

1442 [No response.]

1443 Ms. Kish. Mr. Pierluisi?

1444 Mr. Pierluisi. No.

1445 Ms. Kish. Mr. Pierluisi votes no.

1446 Mr. Quigley?

1447 Mr. Quigley. No.

1448 Ms. Kish. Mr. Quigley votes no.

1449 Ms. Chu?

1450 Ms. Chu. No.

1451 Ms. Kish. Ms. Chu votes no.

1452 Mr. Deutch?

1453 Mr. Deutch. No.

1454 Ms. Kish. Mr. Deutch votes no.

1455 Ms. Sanchez?

1456 Ms. Sanchez. No.

1457 Ms. Kish. Ms. Sanchez votes no.

1458 Mr. Polis?

1459 [No response.]

1460 Chairman Smith. Are there other members who wish to be
1461 recorded?

1462 The gentleman from Texas.

1463 Mr. Poe. No.

1464 Ms. Kish. Mr. Poe votes no.

1465 Mr. Poe. Yes.

1466 Ms. Kish. Mr. Poe votes yes.

1467 Chairman Smith. Right the first time.

1468 [Laughter.]

1469 The gentleman from Virginia.

1470 Mr. Goodlatte. Aye.

1471 Ms. Kish. Mr. Goodlatte votes aye.

1472 Chairman Smith. The gentleman from Iowa.

1473 Mr. King. Aye.

1474 Ms. Kish. Mr. King votes aye.

1475 Chairman Smith. The gentleman from North Carolina.

1476 Mr. Coble. Aye.

1477 Ms. Kish. Mr. Coble votes aye.

1478 Chairman Smith. The gentleman from Michigan.

1479 Mr. Conyers. I voted.

1480 Ms. Kish. Mr. Conyers votes no.

1481 Chairman Smith. Are there other members who wish to be
1482 recorded?

1483 The gentleman from Arkansas.

1484 Mr. Griffin. No.

1485 Ms. Kish. Mr. Griffin votes no.

1486 Chairman Smith. The clerk will report.

1487 Ms. Kish. Mr. Chairman, 11 members voted aye, 17
1488 members voted nay.

1489 Chairman Smith. A majority having voted against the
1490 amendment, the amendment is not agreed to.

1491 Does the gentleman from Texas wish to offer Gohmert
1492 Number 1? Okay.

1493 I have an amendment at the desk, formerly Gohmert
1494 Amendment Number 1.

1495 [Laughter.]

1496 Ms. Kish. Amendment to H.R. 511, offered by Mr. Smith
1497 of Texas, page 1 --

1498 Chairman Smith. And the clerk will report the
1499 amendment, yes.

1500 Ms. Kish. -- page 1, line 5, strike Section 42(a)(1)

1501 and insert (a) --

1502 Chairman Smith. Without objection, the amendment is

1503 considered as read.

1504 [The amendment of Mr. Smith follows:]

1505

1506 Chairman Smith. And I will recognize myself to explain
1507 the amendment.

1508 We have pretty much discussed the issue at hand, but
1509 this amendment adds "knowingly" as the mens rea requirement
1510 for a violation of Section 42 of the Criminal Code, the
1511 importation or interstate shipment of certain injurious
1512 animals.

1513 Federal courts generally imply a knowingly standard when
1514 a statute itself does not specify the particular mental
1515 state for an offense.

1516 The insertion of the knowingly standard is consistent
1517 with other parts of the Criminal Code. It is also
1518 consistent with other parts of this particular statute.
1519 Subsection (c) of Section 42 already uses the knowingly
1520 standard. This would make it consistent. It makes sense to
1521 expressly adopt this standard to the criminal offense in
1522 Section 42.

1523 Are there other members who wish to be heard on the
1524 amendment?

1525 If not, all in favor of the amendment, say aye?

1526 [A chorus of ayes.]

1527 Chairman Smith. All opposed, nay?

1528 [No response.]

1529 Chairman Smith. In the opinion of the chair, the ayes
1530 have it, and the amendment is agreed to.

1531 Are there other amendments?

1532 The gentleman from Florida, Mr. Ross.

1533 Mr. Ross. Thank you, Mr. Chairman. I have an amendment
1534 at the desk.

1535 Chairman Smith. The clerk will report the amendment.

1536 Ms. Kish. Amendment to H.R. 511, offered by Mr. Ross of
1537 Florida, page 1, line 5, strike Section 42(a)(1) and insert
1538 (a) --

1539 Chairman Smith. Without objection, the amendment is
1540 considered as read.

1541 [The amendment of Mr. Ross follows:]

1542

1543 Chairman Smith. And the gentleman is recognized to
1544 explain his amendment.

1545 Mr. Ross. Thank you, Mr. Chairman.

1546 Mr. Chairman, this amendment will complement the intent
1547 of the underlying legislation to prevent further infestation
1548 of non-native animals into the Everglades, while ensuring
1549 that those closest to the problem and those most
1550 knowledgeable to take action are allowed to do so.

1551 For example, in the event of a natural disaster, such as
1552 a hurricane, which has a tendency to hit Florida every so
1553 often, the removal of these animals or the transportation of
1554 them would be at risk. As we know, a lot of these
1555 infestations have come because of natural disasters, as well
1556 as private pet ownership.

1557 This amendment would allow for the Florida Fish and
1558 Wildlife Commission to continue their pet amnesty program.
1559 It would allow exhibitors that are not for personal use to
1560 be called in to remove these snakes in the event of a
1561 natural disaster.

1562 It in no way allows for the continued private pet
1563 ownership, and, therefore, I believe would address

1564 unintended consequences of the underlying legislation. And
1565 the sponsor, Mr. Rooney, does concur in my amendment.

1566 I yield back.

1567 Chairman Smith. Thank you, Mr. Ross.

1568 I will recognize myself in support of the amendment.

1569 This amendment exempts certain specific entities from
1570 the prohibition on the importation or interstate shipment of
1571 certain non-indigenous snakes.

1572 First, to allow zoos and circuses to continue to import
1573 or ship snakes as part of their operations, this amendment
1574 exempts exhibitors, as that term is defined under the Animal
1575 Welfare Act's regulations. The term "exhibitor" includes
1576 carnivals, circuses, animal acts, zoos, and educational
1577 exhibits, whether operated for profit or not.

1578 The amendment also exempts State fish and wildlife
1579 agencies as that term is defined in Title 50 of the Code of
1580 Federal Regulations. These agencies are allowed to continue
1581 programs in which they may transport these snakes to zoos or
1582 other wildlife facilities outside the State.

1583 This amendment ensures that those with a special need to
1584 import or transport these snakes will be able to do so. I

1585 urge my colleagues to support the amendment as well.

1586 Are there other members who wish to be heard on this
1587 amendment?

1588 Mr. Deutch. Mr. Chairman?

1589 Chairman Smith. The gentleman from Florida, Mr. Deutch,
1590 is recognized.

1591 Mr. Deutch. Thank you. Sorry. Thank you, Mr.
1592 Chairman.

1593 Mr. Chairman, could I ask you just to read who is
1594 included again, please?

1595 Chairman Smith. The gentleman from Florida asked me or
1596 Mr. Ross to read what again?

1597 Mr. Deutch. You had just listed the groups, the
1598 exhibitors.

1599 Chairman Smith. Okay. Yeah, let me go through the
1600 definition of the term "exhibitor." The amendment exempts
1601 exhibitors as that term is defined under the Animal Welfare
1602 Act's regulations. The term "exhibitor" includes carnivals,
1603 circuses, zoos, educational exhibits, whether operated for a
1604 profit or not.

1605 Mr. Deutch. Then, Mr. Chairman, I have to oppose this

1606 amendment. If the amendment were limited to the association
1607 zoos and aquariums, which are accredited zoos, then there
1608 are resources and plans, as I understand it, to dispose of
1609 these animals.

1610 The way that exhibitors is defined here, it includes
1611 carnivals and roadside menageries. They do not have the
1612 resources to handle these, and it is that concern that if we
1613 carve out carnivals, if we carve out these roadside fairs,
1614 it is all the more likely that we are going to wind up
1615 seeing these creatures, again, dumped into the Everglades,
1616 dumped into the natural environment.

1617 This is a grave concern. I appreciate what my colleague
1618 from Florida is trying to do. I think this amendment,
1619 however, goes too far, and for that reason I would urge my
1620 colleagues to oppose it.

1621 Chairman Smith. I would yield for a minute.

1622 I am just told by counsel that the Animal Welfare Act
1623 requires all exhibitors to be licensed. The gentleman from
1624 Florida just mentioned that some of these might not be
1625 licensed, and I just wanted to clarify that all the examples
1626 of the word "exhibitor," in fact, are licensed.

1627 Mr. Deutch. Reclaiming my time. The issue, and if I
1628 spoke to the license, the issue is not the licensor. I am
1629 sorry, Mr. Chairman, if that is the impression I gave you.
1630 The issue is instead how these animals will be handled by
1631 these dangerous and invasive animals, by whether these
1632 carnivals and these other sorts of shows and exhibits will
1633 handle these dangerous and invasive animals correctly,
1634 particularly at the end of their run wherever it takes
1635 place.

1636 The Lacey Act, which combats trafficking illegal
1637 wildlife, fish, and plants, which is the basis for this
1638 whole discussion, already has an exemption procedure to
1639 cover the legitimate importation or transport by either
1640 States or permit holders, but it is controlled by the
1641 Secretary. It is monitored rather than being a complete
1642 exemption without any oversight at all.

1643 I think that there already is a way to address these
1644 concerns in current law, and that they will be able to
1645 continue to have what they need. But there will be the
1646 necessary oversight that otherwise would not exist and that
1647 otherwise would jeopardize ecosystems like the Everglades.

1648 And I respectfully ask my colleagues to oppose this
1649 amendment.

1650 Mr. Gallegly. Mr. Chairman? Mr. Chairman, can I have a
1651 short colloquy?

1652 Chairman Smith. The gentleman from California, Mr.
1653 Gallegly.

1654 Mr. Gallegly. I would just asked if I could --

1655 Chairman Smith. He is recognized for five minutes.

1656 Mr. Gallegly. -- follow up with Mr. Ross for just a
1657 minute.

1658 My only concern, and it gets back to what Mr. Deutch
1659 referred to, and I want to support your amendment. I am
1660 having a concern. How can you assure me that these reptiles
1661 will not be turned loose into the Everglades or anywhere
1662 into the wild after they no longer have provided the
1663 function for the one that is displaying them?

1664 Mr. Ross. Mr. Chairman, if I might, I think it is also
1665 important to define exactly what exhibitor does not include.
1666 And according to the Animal Welfare Act, it does not include
1667 retail pet stores, horse and dog races, organizations
1668 sponsoring, and all persons participating in State and

1669 county fairs, livestock shows, rodeos, field trials, horsing
1670 events, pure bred dog and cat shows, and any other fair or
1671 exhibitions intended to advance agriculture, arts, and
1672 sciences that may be determined by the Secretary.

1673 Mr. Gallegly, to your point, however, I do not believe
1674 that there is any law that this Congress could pass that
1675 would be a total abolition or bar to the release of any
1676 snakes into the Everglades. I think the best that we can do
1677 is make sure that we go after those actors that are bad,
1678 that we go after what has been the source of the problem, in
1679 my opinion, has been the importation for personal use.

1680 I think those who have done it in furtherance of their
1681 business or their studies have been the ones who have
1682 protected the Everglades from release. Granted there have
1683 been bad actors. Granted there will always be bad actors.
1684 But I think we also have to understand that in Florida
1685 especially, when we have an infestation, how are we going to
1686 remove these snakes? How are we going to prepare for a
1687 natural disaster other than who are you going to call? You
1688 are going to call the experts, and those experts have to be
1689 those people that are licensed to handle these snakes that

1690 include the Florida Fish and Wildlife Commission that has an
1691 amnesty program for non-native pets that would be, quite
1692 frankly, prohibited under this present legislation.

1693 And so, while I cannot give you a complete assurance
1694 that we would prevent the continued infestation, I can say
1695 that under this legislation, it would go great lengths to
1696 prevent the infestation that we have seen over the years,
1697 and hopefully allow for more removal by those that are
1698 qualified to do it through the licensing machine.

1699 Mr. Gallegly. Let me ask if, in fact, you did have a
1700 removal by Fish and Wildlife --

1701 Mr. Ross. Right.

1702 Mr. Gallegly. -- whatever the agency is, what would
1703 they do with the reptile?

1704 Mr. Ross. They could import them to facilities across
1705 State lines that utilize them for scientific purposes. They
1706 could --

1707 Mr. Gallegly. No, but my question is, would they ever
1708 release them into the wild?

1709 Mr. Ross. No. No. And Florida law already prohibits
1710 that. Florida law already prohibits a laundry list of non-

1711 native animals --

1712 Mr. Gallegly. Well, that was my concern.

1713 Mr. Ross. Yes.

1714 Mr. Gallegly. What do they do with them when they have
1715 a problem. They do not just release them.

1716 Mr. Ross. No, sir.

1717 Mr. Gallegly. I yield back.

1718 Mr. Scott. Mr. Chairman?

1719 Chairman Smith. The gentleman yields back his time.

1720 And the gentleman from Virginia, Mr. Scott, is recognized.

1721 Mr. Scott. Mr. Chairman, I agree with the intent of the
1722 amendment, but I have the same concerns as the gentleman
1723 from Florida and several of the others with the exhibitor.

1724 I would ask the gentleman from Florida, as I understand
1725 it, the exhibitor has to be approved by the Secretary.

1726 Mr. Ross. The Secretary of the Interior, correct.

1727 Mr. Scott. And with that understanding, is the
1728 gentleman willing to work with the Secretary to see if the
1729 definition needs further refinement?

1730 Mr. Ross. Of course I am, without a doubt.

1731 Mr. Scott. With that understanding, Mr. Chairman, I

1732 yield back.

1733 Chairman Smith. Okay. The gentleman yields back his
1734 time.

1735 Are there other members who speak?

1736 The gentleman from California, Mr. Berman.

1737 Mr. Berman. I just have to ask Mr. Ross, the gentleman
1738 from Florida, one question. If this amendment were to pass
1739 as currently written, a licensed exhibitor -- I guess you
1740 say they are licensed by Department of Interior. Where does
1741 the monitoring and oversight of snakes come from? It is not
1742 in the USDA now, so if your amendment is passed, I am told
1743 that if a licensed exhibitor were licensed to handle tigers,
1744 bears, and pythons, USDA would only be, if this amendment
1745 passes, USDA will only be able to examine the tigers and
1746 bears for evidence of improper handling and care, not the
1747 pythons. And is that a logical way to go?

1748 Mr. Ross. Mr. Berman, the Animal Welfare Act will stay
1749 intact under this legislation. They will still be charged
1750 with the enforcement of this. This strictly affects the
1751 importation and transportation of the snakes.

1752 Mr. Berman. When you say "they," who is they, Interior?

1753 Mr. Ross. Department of Agriculture.

1754 Mr. Berman. But right now, the Department of
1755 Agriculture has jurisdiction over, and the example I am
1756 giving is tigers and bears.

1757 Mr. Ross. Right. Right.

1758 Mr. Berman. But if your amendment passes, they will not
1759 have jurisdiction over the exhibitors of the snakes that are
1760 covered here, particularly the pythons, the boa
1761 constrictors.

1762 Mr. Ross. Mr. Berman, as I understand it, the
1763 Department of Agriculture under the Animal Welfare Act
1764 regulates the importation and sale of all animals, not just
1765 lions and tigers.

1766 Mr. Berman. But you are exempting the exhibitors --

1767 Mr. Ross. Who are recognized under the Department of
1768 Interior as exhibitors.

1769 Mr. Berman. But the --

1770 Mr. Ross. And I think maybe this is what --

1771 Mr. Berman. Interior licenses. USDA investigates. But
1772 it looks to me like you are carving out the snakes from
1773 USDA's ability to investigate the licensed exhibitors of the

1774 snakes --

1775 Mr. Ross. That is not --

1776 Mr. Berman. -- as opposed to the tigers and the bears.

1777 Mr. Ross. No. That is not the intent of the amendment.

1778 Mr. Berman. Well, maybe we could look at that --

1779 Mr. Ross. And I think that is one of the things we --

1780 yes.

1781 Mr. Berman. I yield.

1782 Chairman Smith. The gentleman yield back his time.

1783 Are there other members who wish to be heard?

1784 Ms. Chu. Mr. Chairman?

1785 Chairman Smith. The gentlewoman from California, Ms.

1786 Chu.

1787 Ms. Chu. Yes, I would like to yield my time to the

1788 gentleman from Florida, Mr. Deutch.

1789 Mr. Deutch. I thank my friend.

1790 I just have a couple of questions for my friend from

1791 Florida because I am confused. I am just confused about

1792 what the requirements are, both based on the chairman's

1793 description and on something that you just said.

1794 My understanding of the amendment is that the language

1795 of the amendment says that Subsection (a)(1) shall not apply
1796 to a State fish and wildlife agency or an exhibitor in the
1797 case of importation or shipment of these animals. And then
1798 exhibitor has the meaning given in the definitions. And
1799 exhibitor, as the chairman read earlier, means any person,
1800 public or private, exhibiting any animals which were
1801 purchased in commerce. The term includes carnival,
1802 circuses, animal acts, zoos, and educational exhibits
1803 exhibiting such animals whether operated for profit or not.

1804 I do not see where in either the definition or your
1805 amendment where an approval has to be given first. It looks
1806 to me like, as Mr. Berman suggested, that the amendment
1807 simply gives these exhibitors the ability, anyone who
1808 qualifies under that definition, the ability to bring in and
1809 use these snakes without the approval of anyone.

1810 Mr. Ross. And if I might respond.

1811 Mr. Deutch. Please.

1812 Mr. Ross. And to clarify that, the Animal Welfare Act
1813 does require that those who exhibit animals to the public
1814 must obtain a license with USDA. That would still be
1815 required under my amendment.

1816 What we are allowing to have happen is that those who
1817 are in the business of being exhibitors as defined will
1818 continue to be so. But as an exhibitor, they will still be
1819 licensed by the Animal Welfare Act, and still be within the
1820 jurisdiction of the USDA under that license.

1821 Mr. Deutch. Again, just for clarification, the Lacey
1822 Act already includes an exemption process for the
1823 importation of these. So, I am confused because I think we
1824 are talking about apples and oranges. We are talking about
1825 exhibitors who have a license to do whatever they do, and
1826 then we are talking about a statute that specifically says
1827 you cannot bring in certain types of animals period. But
1828 then also has a carve out that requires all sorts of
1829 monitoring that is not otherwise required by exhibitors.
1830 And if we simply refer to exhibitors, I am afraid we are not
1831 going to have that --

1832 Mr. Ross. But I think we are codifying that in my
1833 amendment, that those particular exhibitors are exempted
1834 from the importation and transportation of these particular
1835 species.

1836 Mr. Deutch. Well, Mr. Chairman, unless there is some

1837 greater insight, I look forward to working with my friend
1838 from Florida as we go forward, but I am going to have to
1839 oppose the amendment because I do not believe that it does
1840 that. I think it provides a blanket carve out. But we will
1841 look forward to those discussions.

1842 I yield back.

1843 Chairman Smith. The gentlewoman has yielded back her
1844 time.

1845 Are there other members who wish to be heard?

1846 If not, the vote is on the Ross amendment.

1847 All in favor, say aye?

1848 [A chorus of ayes.]

1849 Chairman Smith. Opposed, nay?

1850 [A chorus of noes.]

1851 Chairman Smith. In the opinion of the chair, the ayes
1852 have it, and the amendment is agreed to.

1853 Are there any other amendments?

1854 If not, a reporting quorum being present, the question
1855 is on reporting the bill, as amended, favorably to the
1856 House.

1857 Those in favor, say aye?

1858 [A chorus of ayes.]

1859 Chairman Smith. Opposed, no?

1860 [A chorus of noes.]

1861 Chairman Smith. The ayes have it, and the bill, as
1862 amended, is reported favorably.

1863 Without objection, the bill will be reported as a single
1864 amendment in the nature of a substitute incorporating the
1865 amendment adopted.

1866 Staff is authorized to make technical and conforming
1867 changes.

1868 Members will have two days to submit views.

1869 [The information follows:]

1870

1871 Chairman Smith. Thank all the members for their
1872 presence today and for marking up these three pieces of
1873 legislation.

1874 We stand adjourned.

1875 [Whereupon, at 11:45 a.m., the committee was adjourned.]