

1 ALDERSON REPORTING COMPANY

2 GREGORY ALTHAM

3 HJU214000

4 MARKUP OF H.R. 6215, TO AMEND THE TRADEMARK ACT OF 1946 TO
5 CORRECT AN ERROR IN THE PROVISIONS RELATING TO REMEDIES FOR
6 DILUTION;

7 H.R. 6189, THE REPORTING EFFICIENCY IMPROVEMENT ACT;

8 H.R. 4305, THE CHILD AND ELDERLY MISSING ALERT PROGRAM;

9 H.R. 6185, TO IMPROVE SECURITY AT STATE AND LOCAL
10 COURTHOUSES;

11 H.R. 2800, THE MISSING ALZHEIMER'S DISEASE PATIENT ALERT
12 PROGRAM REAUTHORIZATION ACT OF 2011;

13 H.R. 1775, THE STOLEN VALOR ACT OF 2011; AND

14 S. 285, FOR THE RELIEF OF SOPURUCHI CHUKWUEKE

15 Wednesday, August 1, 2012

16 House of Representatives

17 Committee on the Judiciary

18 Washington, D.C.

19 The committee met, pursuant to call, at 10:16 a.m., in
20 Room 2141, Rayburn Office Building, Hon. Lamar Smith
21 [chairman of the committee] presiding.

22 Present: Representatives Smith, Coble, Goodlatte,
23 Lungren, Chabot, Issa, Pence, Franks, Jordan, Chaffetz,
24 Griffin, Marino, Adams, Amodei, Conyers, Scott, Watt,
25 Lofgren, Waters, Johnson, Chu, Deutch, and Sanchez.

26 Staff present: Richard Hertling, Staff Director and
27 Chief Counsel; Travis Norton, General Counsel and
28 Parliamentarian; Kayla Munro, Clerk; Blaine Merritt, Chief
29 Counsel; John Hilton, Counsel; Sarah Allen, Counsel; Anthony
30 Angeli, Counsel; Art Baker, Counsel; George Fishman, Chief
31 Counsel; Perry Apelbaum, Minority Staff Director; Danielle
32 Brown, Parliamentarian; Jason Everett, Counsel; Aaron
33 Hiller, Counsel; Ashley McDonald, Counsel; Joe
34 Graupensperger, Counsel; and Tom Jawetz, Counsel.

35

36 Chairman Smith. The Judiciary Committee will come to
37 order.

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

40 Before we undertake any official business, I would like
41 to take a moment to recognize Art Baker, who has served as a
42 detailee from the FBI to the Crime Subcommittee for the last
43 2 years. Art will return to the FBI where he has served for
44 25 years, most recently in the Office of Congressional
45 Affairs at the end of this week. His contributions to the
46 subcommittee have been invaluable.

47 During his tenure, Art worked on a variety of hearings
48 and legislation. These include the Patriot Act, nuclear
49 treaty implementation, the Public Safety Officers Benefit
50 Program, and the Stolen Valor Act, just to name a few.

51 Art, we will miss you. Thank you for your great
52 service. And would stand up so we can recognize you?

53 [Applause.]

54 Chairman Smith. And we want to also recognize the
55 ranking member, Mr. Conyers.

56 Mr. Conyers. Mr. Chairman, we need Art Baker and the

57 FBI needs Art Baker. How did we lose?

58 [Laughter.]

59 Chairman Smith. Well, we won for 2 years. But, Art,
60 thank you again.

61 With the agreement of the ranking member, we will
62 proceed to mark up seven bills total. And pursuant to
63 notice, I now call up H.R. 6215 to amend the Trademark Act
64 of 1946, to correct an error in the provisions relating to
65 remedies for dilution for the purposes of markup. And the
66 clerk will report the bill.

67 Ms. Munro. H.R. 6215, to amend the Trademark Act of
68 1946 to correct an error in the provisions relating --

69 Chairman Smith. Without objection, the bill will be
70 considered as read and open for amendment at any point.

71 [The information follows:]

72

73 Chairman Smith. I will begin by recognizing myself for
74 an opening statement, then the ranking member.

75 The purpose of the Federal Trademark Dilution Act of
76 1995 is to protect famous trademarks for subsequent uses
77 that blur the distinctiveness of the mark, or tarnish, or
78 disparage it, even in the absence of the likelihood of
79 confusion.

80 Dilution does not rely upon the standard test of
81 infringement; that is, likelihood of confusion, deception,
82 or mistake. Rather it applies when the unauthorized use of
83 a famous mark reduces the public's perception that the mark
84 signifies something unique, singular, or particular. In
85 other words, dilution could result in the loss of the mark's
86 distinctiveness and possibly the owner's rights in it.

87 Congress enacted amendments to the original dilution
88 statute in 2006. Last year, two law professors discovered a
89 technical problem with one of the 2006 changes. During
90 Senate consideration of the House bill, the section that
91 provides a Federal registration defense to a dilution action
92 was reorganized. This produced an unexpected and unintended
93 change to the law.

94 As originally drafted in the House, the provision was
95 designed to encourage Federal registration of trademarks.
96 This is a worthy policy goal that prevents State laws from
97 interfering with federally protected marks and ensures that
98 registered marks are protected nationwide.

99 The House version prompted this goal and brought a State
100 action for dilution against a federally registered mark.
101 However, the Senate reformatted the House text in such a way
102 as to create a bar against State action for dilution, as
103 well as a State or Federal action based on a claim of actual
104 or likely damage or harm to the distinctiveness or
105 reputation of a mark. This means that Federal registration
106 defenses available to both State and Federal dilution
107 claims.

108 Congress could not have intended such an outcome. If
109 all dilution claims, including Federal claims, are barred by
110 registration, it becomes difficult to cancel a diluting mark
111 that is registered. This encourages illegitimate mark
112 holders to register diluting marks which forces legitimate
113 mark holders to expend greater resources to monitor
114 registrations as well as other marks being used in commerce.

115 And that is why we introduced H.R. 6215 to amend the
116 Federal Trademark Dilution Act. This bill simply reformats
117 the effective provision to clarify that Federal registration
118 only constitutes a complete bar to a State claim based on
119 dilution or actual or likely damage or harm to the
120 distinctiveness or reputation of a mark. The change applies
121 prospectively.

122 This bill ensures that the trademark community is
123 protected from those who look to use this loophole as a way
124 to disparage legitimate trademarks and cost their holders
125 time and money.

126 So I urge my colleagues to support H.R. 6215, and
127 recognize the ranking member, Mr. Conyers, for his opening
128 statement.

129 Mr. Conyers. Thank you, Chairman Smith, for a clear and
130 simple explanation of what we are doing in correcting the
131 error. No one on this side has any objections to this. And
132 the restructuring the bill provided that a person with a
133 federally-registered trademark gains complete immunity from
134 Federal dilution claims. And so this corrects it.

135 And with that, I will concur with your description,

136 support the bill, and yield back the balance of my time.

137 Chairman Smith. Thank you, Mr. Conyers.

138 And without objection, we will put into the record
139 letters of support for H.R. 6215 from the International
140 Trademark Association, the Intellectual Property Owners
141 Association, and the American Intellectual Property Law
142 Association.

143 [The information follows:]

144

145 Chairman Smith. A reporting quorum being present, the
146 question is on reporting the bill favorably to the House.

147 All in favor, say aye?

148 Opposed, no?

149 The ayes have it, and the bill is ordered reported
150 favorably. Members will have 2 days to submit their views.

151 [The information follows:]

152

153 Chairman Smith. Pursuant to notice, I now call up H.R.
154 6189, to eliminate unnecessary reporting requirements for
155 unfunded programs under the Office of Justice Programs for
156 purposes of markup. And the clerk will report the bill.

157 Ms. Munro. H.R. 6189, a bill to eliminate unnecessary
158 reporting requirements for unfunded programs under the
159 Office of Justice Programs, Section 1 --

160 Chairman Smith. Without objection, the bill will be
161 considered as read and open for amendment at any point.

162 [The information follows:]

163

164 Chairman Smith. Without objection, I will put my
165 opening statement into the record.

166 [The information follows:]

167

168 Chairman Smith. And recognize the ranking member for
169 his opening statement. And it is also the ranking member's
170 bill, and he sponsored it.

171 Mr. Conyers. Thank you, Chairman Smith. Under the
172 Government Performance and Results Modernization Act, the
173 Department of Justice conducts an annual review of statutory
174 reporting requirements that are outdated, duplicative, and
175 otherwise no longer useful to Congress.

176 After conducting that review, the Department recommends
177 that Congress eliminate the 2 reporting requirements as set
178 forth in H.R. 6189. One of these mandates stem from the DNA
179 Analysis Backlog Elimination Act, which requires the
180 Attorney General to report to Congress on various grants
181 made to States to perform DNA analysis. Given the fact that
182 Congress has not appropriated any funds for these grants
183 since 2003, this statutory reporting requirement has been
184 obsolete for nearly a decade.

185 The second reporting requirement is derived from the
186 Police Corps Act enacted in 1994. The director of that
187 corps is required to make annual reports to Congress on the
188 agency's progress. But no funds have been appropriated

189 since Fiscal Year 2005. So we simply remove these out of
190 date requirements because there is no activity for the
191 Justice Department and the Office of Justice Programs. And
192 they support this activity to end duplication.

193 I might add in closing that there are other reports that
194 we will be coming forward with that can be easily eliminated
195 and save time and effort as well.

196 With that, I urge support of the measure and yield back
197 my time.

198 Chairman Smith. Okay, thank you, Mr. Conyers.

199 A reporting quorum being present, the question is on
200 reporting the bill favorably to the House.

201 Those in favor, say aye?

202 Opposed, nay?

203 The ayes have it, and the bill is ordered reported
204 favorably. And members will have 2 days to submit their
205 views.

206 [The information follows:]

207

208 Chairman Smith. Pursuant to notice, I now call up H.R.
209 4305, the Child and Elderly Missing Alert Program, for
210 purposes of markup. And the clerk will report the bill.

211 Ms. Munro. H.R. 4305, a bill to authorize the Attorney
212 General to provide a grant --

213 Chairman Smith. Without objection, the bill is
214 considered as read.

215 [The information follows:]

216

217 Chairman Smith. And rather than recognize myself for an
218 opening statement, I will put my opening statement in the
219 record.

220 [The information follows:]

221

222 Chairman Smith. And recognize the gentleman from Ohio,
223 Mr. Chabot, for his opening statement. And he is the
224 sponsor of this legislation.

225 Mr. Chabot. I thank the chairman for yielding, and I
226 want to thank my colleague, Mr. Deutch, for being the
227 principle co-sponsor of this legislation. We appreciate his
228 leadership on this matter.

229 Every 40 seconds, a child in this country goes missing.
230 Throughout the United States, an average of 2,000 children
231 under the age of 18 are reporting missing each and every
232 day, and as many as 800,000 a year. In addition, healthcare
233 reports show 3 out of 5 Americans living with Alzheimer's
234 disease who wander from their current location.

235 The need to locate missing children and, in some
236 instances, seniors, particularly with Alzheimer's, in the
237 first hours of the disappearance is vital. Unfortunately,
238 most law enforcement agencies lack the appropriate resources
239 to knock on every door in the community in order to gather
240 valuable information. Further, although the amber and
241 silver alerts are oftentimes successful, there remains a
242 crucial lapse of time between when a child or elderly adult

243 is first reported missing and when one of these services can
244 be employed.

245 This important legislation would help rectify the
246 problem by utilizing targeted telephone and cellular alerts
247 within minutes of the report to residences and businesses in
248 the area where the person was last seen. This legislation
249 will assist Federal, State, and local law enforcement
250 agencies in the rapid recovery of missing children and
251 elderly persons while saving taxpayer dollars.

252 An automatic alert system would be free for local law
253 enforcement, saving thousands of dollars on a traditional
254 search, which could require as many as 10 officers on the
255 ground at any one time.

256 A recent success story in my district highlights the
257 value of a targeted telephone and cellular alert program.
258 On February 2012, a 9-year-old little girl was reported
259 missing from her home after she went to walk her dog and did
260 not return. A Sergeant Beavers contacted A Child is Missing
261 and provided the girl's description to be distributed via
262 telephone alert. Nearly 1,700 alert calls were made asking
263 that anyone with information contact the police.

264 According to the case follow-up report, after the alert
265 was activated, a number of phone calls were received
266 immediately, and some contained valuable tips. These tips
267 actually helped the police to locate the girl safely
268 approximately a half mile away from her home in less than an
269 hour after activation of the alert.

270 This type of privately-run program in partnership with
271 local law enforcement and the public exemplifies that
272 protection of our children is best accomplished through a
273 local community effort.

274 I urge my colleagues to support this bipartisan common
275 sense legislation. And I yield back.

276 Chairman Smith. Thank you, Mr. Chabot. The gentleman
277 from Michigan, the ranking member is recognized.

278 Mr. Conyers. Thank you, Chairman. I concur with the
279 explanation of Steve Chabot, and I commend him and the
280 ranking member of that subcommittee for the work they have
281 done.

282 What we essentially do is facilitate in this measure the
283 provision of targeted telephone alerts to residence and
284 business in the area where the person was last seen. It is

285 critical in these cases of missing persons that the first
286 hours of their disappearance be active with as much energy
287 and efficiency as possible, especially when it involves
288 abducted children or elderly adults.

289 So this is a bill in which all of us can come around to
290 support because it allows non-profits to become involved in
291 assisting with the search immediately after their
292 disappearance is noted.

293 I support the bill, and I have not found anyone on our
294 side that has any objections. I could yield to the ranking
295 member of the subcommittee if he wanted to.

296 Chairman Smith. I am going to put his opening
297 statement --

298 Mr. Conyers. Okay. Oh, and I wanted to put Bobby
299 Scott, the ranking member of the Subcommittee on Crime -- I
300 ask unanimous consent to make his statement a part of the
301 record. And I yield back my time.

302 Chairman Smith. Without objection.

303 [The information follows:]

304

305 Chairman Smith. And thank you, Mr. Conyers. Does the
306 gentleman from Ohio have a manager's amendment?

307 Mr. Chabot. I do have a manager's amendment at the desk
308 in the nature of a substitute.

309 Chairman Smith. The gentleman is recognized to offer
310 his amendment. And the clerk will report the amendment.

311 Ms. Munro. Amendment in the nature of a substitute to
312 H.R. 4305, offered by Mr. Chabot --

313 Mr. Chabot. I would ask unanimous consent that the
314 amendment be considered as read.

315 Chairman Smith. Without objection, the amendment will
316 be considered as read.

317 [The amendment of Mr. Chabot follows:]

318

319 Chairman Smith. But let me wait for it to be passed out
320 if it is going to be passed out. It is at everybody's desk
321 now? Okay, the gentleman from Ohio is recognized to explain
322 the manager's amendment.

323 Mr. Chabot. Yeah, I will be very brief, Mr. Chairman.
324 This makes a couple of very simple corrections to improve
325 the bill. The amendment no longer has narrow requisite
326 qualification such as years of existence in an organization.
327 It would allow more organizations to be eligible to apply,
328 and it makes a couple of technical corrections to streamline
329 the bill, but nothing major.

330 I yield back.

331 Chairman Smith. Thank you, Mr. Chabot. And I support
332 the manager's amendment as well.

333 The gentleman from Michigan, Mr. Conyers.

334 Mr. Conyers. We do on this side as well that have had a
335 chance to study it carefully in the last 3 minutes.

336 [Laughter.]

337 Chairman Smith. Thank you, Mr. Conyers.

338 Does the gentleman from Florida wish to be recognized on
339 this amendment?

340 Mr. Deutch. I do, Mr. Chairman.

341 Chairman Smith. The gentleman is recognized for 5
342 minutes.

343 Mr. Deutch. Mr. Chairman, I would like to speak in
344 support of the Child and Elderly Missing Alert Program Act,
345 of which I am a sponsor, as well as the manager's amendment
346 offered by my friend, Mr. Chabot of Ohio.

347 Every 40 seconds in this country, a child goes missing.
348 An average of 2,000 children under the age of 18 are
349 reported missing each day in the United States, with over
350 800,000 children reported missing each year. In addition,
351 5.4 million Americans are living with Alzheimer's disease.
352 And according to healthcare reports, 6 in 10 dementia
353 victims and 3 out of 5 people with Alzheimer's will wander
354 from their current location often in an effort to return
355 home, which in many cases is no longer their place of
356 residence.

357 The first hours in the disappearance of missing children
358 and seniors is vital. According to the Department of
359 Justice, among cases involving children who are abducted and
360 murdered, 74 percent were killed in the first 3 hours of

361 their disappearance. Half of elderly adults who wander from
362 their residences suffer serious injury or death if not found
363 within the first 24 hours.

364 That is why programs such as A Child Is Missing based in
365 South Florida plays such a vital role in preventing the
366 unthinkable and assisting Federal, State, and local law
367 enforcement in the rapid recovery and return of missing
368 children and seniors to their families.

369 Mr. Chairman, A Child Is Missing, which will be eligible
370 for the grant provided by this bill, is a nationwide non-
371 profit organization that is available and ready to respond
372 to law enforcement 24 hours a day when a child or senior
373 goes missing.

374 When a person is reported missing to the police, law
375 enforcement contacts A Child Is Missing for help. Within
376 minutes, the organization gathers and sends law enforcement
377 vital information, including the geographical information of
378 the search area and proceeds with a geo-targeted alert at a
379 rate of 1,000 calls per minute to the surrounding area. The
380 calls detail the missing person's description, last known
381 whereabouts, and pertinent information, and asks residents

382 to be on the lookout and report back any information.

383 As of last week, A Child Is Missing was credited with
384 its 1,158th successful recovery. Considering how important
385 a role this group and others like it play in the recovery of
386 children and seniors around the country, we owe it to them
387 to provide them with the proper funding to continue their
388 important work. And I urge my colleagues to support this
389 manager's amendment and this bill.

390 I thank you, and I yield back, Mr. Chairman.

391 Chairman Smith. Thank you, Mr. Deutch, both for your
392 comments and for your work on this issue as well.

393 The question is on the manager's amendment.

394 Those in favor, say aye?

395 Opposed, no?

396 In opinion of the chair, the ayes have it, and the
397 amendment is agreed to.

398 A reporting quorum being present, the question is on
399 reporting the bill, as amended, favorably to the House.

400 Those in favor, say aye?

401 Opposed, no?

402 The ayes have it, and the bill, as amended, is ordered

403 reported favorably.

404 Without objection, the bill will be reported in a single
405 amendment in the nature of a substitute incorporating the
406 amendment adopted. And staff is authorized to make
407 technical and conforming changes, and members will have 2
408 days to submit their views.

409 [The information follows:]

410

411 Chairman Smith. Pursuant to notice, I now call up H.R.
412 6185, the Local Courthouse Safety Act of 2012 for purposes
413 of markup. And the clerk will report the bill.

414 Ms. Munro. H.R. 6185, a bill to improve security at
415 State and local courthouses --

416 Chairman Smith. Without objection, the bill will be
417 considered as read.

418 [The information follows:]

419

420 Chairman Smith. And rather than recognize myself, I
421 will recognize the gentlewoman from Florida, Mrs. Adams, for
422 an opening statement.

423 Mrs. Adams. Thank you, Mr. Chairman. Today, August
424 1st, is a significant one. Twenty-nine years ago on August
425 1st, 1983, Thomas Provenzano was arrested for disorderly
426 conduct in Orlando, Florida. From that day forward, he
427 continued to follow and threaten to kill the officers who
428 arrested him. I suppose you could say it became an
429 obsession. Six months later on January 10th, 1984,
430 Provenzano arrived at the Orange County courthouse for his
431 disorderly conduct trial where he was heard to have said, "I
432 can't wait until those two policemen walk in. I'll show
433 them."

434 As he entered the courthouse, Provenzano was carrying a
435 red knapsack and wearing a jacket in which he had inside
436 pockets sewn in. A correctional officer, Mark Parker,
437 stopped him at the door and told him that he would leave the
438 knapsack outside or have it searched. So Provenzano took
439 his knapsack to his car. The knapsack, it was later
440 revealed, contained a gun stock for his .45 caliber assault

441 rifle and ammunition for a .38 caliber revolver.

442 Less than an hour later, Provenzano reentered the
443 courtroom, this time without a knapsack, but with his jacket
444 on. He approached the bench when his case was called, and
445 the judge instructed Bailiff Harry Dalton to search
446 Provenzano. As Provenzano reached into his jacket pocket,
447 Bailiff Dalton went to grab him. He was shot in the face.
448 Provenzano then chased and fired at least 2 shots at
449 Correctional Officer Parker.

450 Bailiff William Wilkerson, the bailiff in charge of the
451 courtroom next door, stepped into the hallway where the
452 shooting was taking place. Shortly thereafter, gunshots
453 were heard. Provenzano then ducked into a room and took a
454 barricade position with a shotgun pointing into the hall.
455 Corporal A.C. Jacobs of the Orange County Sheriff's Office
456 shot Provenzano through a window.

457 Provenzano had been armed with a .12 gauge shotgun, a
458 .45 caliber assault rifle, and a .38 caliber revolver all
459 loaded with live ammunition. Bailiff Wilkerson, a 60-year-
460 old veteran who retired from the Navy as lieutenant
461 commander, was killed by Thomas Provenzano that day.

462 Bailiff Dalton, a 53-year-old father of six, was left
463 paralyzed from the shooting. He died 7 years later.
464 Correctional Officer Mark Parker was 19 at the time of the
465 shooting. He survived the shooting, but was paralyzed from
466 his shoulders down and had to spend the rest of his life
467 confined to a wheelchair. Thomas Provenzano was executed by
468 the State of Florida on June 21st, 2000 by lethal injection.

469 I introduced the Local Courthouse Safety Act because the
470 things this bill does are important to me. I know the
471 families of Bailiff Dalton and Bailiff Wilkerson who lost
472 their lives as a result of the senseless violence that day
473 in the Orange County Courthouse. And I know the grief they
474 have had to live with all of these years. I am a friend of
475 the Parker family and remained friends with Officer Parker
476 until he passed about 3 years ago.

477 Even though it is nearly 30 years later, courthouse
478 shootings are still happening all over this country, and
479 innocent people are dying. In fact, I am told that since
480 September 2010, there has been about one shooting per month
481 on average at local courthouses. Those who are exercising
482 their constitutional right of seeking justice in a courtroom

483 should not have to fear for their safety, and neither should
484 our law enforcement officers, judges, or court personnel.
485 It is my hope that this bill will help to prevent horrific
486 incidents like this from happening in local courthouses.

487 I want to thank my colleagues on the committee for
488 recognizing that we need to take courthouse security
489 seriously, and for joining me in this bipartisan effort to
490 prevent violence in local courthouses across this country.
491 It is clear we agree on need to give sheriffs in local
492 courthouses access to training, equipment, and resources
493 they need to improve security.

494 So I urge support for the bill and yield back the
495 balance of my time.

496 Chairman Smith. Thank you, Mrs. Adams, for introducing
497 this bill to make America's courthouses safer.

498 The gentleman from Michigan, the ranking member, is
499 recognized for an opening statement.

500 Chairman Smith. Thank you. This is a good common sense
501 bill, as demonstrated by the broad range of support it
502 enjoys, including the National Sheriffs Association,
503 National Association for Court Management, the Conference of

504 Chief Justices, the conference of State Court
505 Administrators, American Judges Association, National Court
506 Reporters Association, and the Center for Judicial and
507 Executive Security.

508 I am pleased to co-sponsor this with my colleague, Sandy
509 Adams.

510 It is also important that bill expands the scope of the
511 grants awarded by the State Justice Institute to include the
512 improvement of the safety and security of State and local
513 courts. Nothing can be more important than people feeling
514 that it is safe and secure to come in seeking justice in our
515 judiciary system.

516 And the bill is particularly commendable because it
517 makes use of existing resources to help State and local
518 courthouses. It directs the General Services Administration
519 to make available, at no cost to State and local courts, the
520 security equipment needed to detect weapons, such as metal
521 detectors, wands, and baggage screening devices.

522 I urge support for the bill, and we on this side have
523 noticed no reasons to oppose this measure.

524 I yield back the balance of my time, Mr. Chairman.

525 Chairman Smith. Thank you, Mr. Conyers.

526 A reporting quorum being present, the question is on
527 reporting the bill favorably to the House.

528 Those in favor, say aye?

529 Opposed, no?

530 The ayes have it, and the bill is ordered reported
531 favorably. Members will have 2 days to submit their views.

532 [The information follows:]

533

534 Chairman Smith. The sponsor of H.R. 2800 is on her way
535 to the committee markup, so we will now go to H.R. 1775.
536 And pursuant to notice, I now call up H.R. 1775, the Stolen
537 Valor Act of 2011, for purposes of markup. And the clerk
538 will report the bill.

539 Ms. Munro. H.R. 1775, a bill to amend Title 18, United
540 States Code, to establish a criminal offense relating to
541 fraudulent claims about military service

542 Chairman Smith. Without objection, the bill will be
543 considered as read and open for amendment at any point.

544 [The information follows:]

545

546 Chairman Smith. And I will recognize myself for an
547 opening statement, and then the ranking member.

548 H.R. 1775, the Stolen Valor Act of 2011, was introduced
549 by our colleague from Nevada, Mr. Heck. I thank him for his
550 work on this issue to protect the integrity of military
551 decorations.

552 On a bombing mission over Germany in November 1944, 22-
553 year-old 2nd Lieutenant William E. Metzger, Jr. found
554 himself faced with a critical decision -- stay on a
555 seriously damaged aircraft or abandon his injured crewmates
556 and parachute to safety. Lieutenant Metzger chose the
557 former, the path of loyalty, courage, and patriotism.

558 Hit with anti-aircraft fire, 3 of the plane's engines
559 were damaged and the fourth was on fire. So was the
560 cockpit, and the radio had been destroyed. Two crewmates
561 were injured, one unconscious.

562 Despite all of this, the crew flew on to complete its
563 mission. When the plane reached Allied control territory,
564 Lieutenant Metzger told the crew to parachute to safety.
565 He, however, chose to remain with the unconscious crew
566 member and the pilot to try to land the plane. But at an

567 altitude of 100 feet, the plane exploded, crashed, and then
568 disintegrated. All 3 on board, including Lieutenant
569 Metzger, were killed.

570 On May 16th, 1945, 2nd Lieutenant Metzger was
571 posthumously awarded the Congressional Medal of Honor, a
572 symbol of his loyalty to his injured crew, his determination
573 to accomplish his mission, and his last act of bravery.

574 George Washington, as commander of the Continental Army,
575 created the first honorary badges of distinction for
576 military service. He cautioned that anyone with the
577 insolence to assume a badge that he did not earn would be
578 severely punished.

579 Nearly a century ago, Congress made it a crime to wear,
580 manufacture, or sell military decorations or medals without
581 authorization. In 2006, Congress enacted the Stolen Valor
582 Act in response to an escalation in the number of fraudulent
583 claims of receipt of military decorations, particularly the
584 Medal of Honor.

585 In June, the Supreme Court in *U.S. v. Alvarez* held that
586 the act inappropriately criminalized speech protected by the
587 1st Amendment. Simply put, even a lie about being awarded

588 the Medal of Honor, is protected speech. The Court was
589 quick to note that, "In periods of war and peace alike,
590 public recognition of valor and noble sacrifice by men and
591 women in uniform reinforces the pride and national resolve
592 that the military relies upon to fulfill its mission." The
593 Court also acknowledged that false claims about military
594 decorations, such as the Medal of Honor, demean the high
595 purpose of the award and may offend the true holders of the
596 medal.

597 "This harm does not overcome the high level of scrutiny
598 afforded protected speech." The Court added, however, that,
599 "Where false claims are made to effect a fraud or secure
600 monies or other valuable considerations, say offers of
601 employment, it is well established that the government may
602 restrict speech without affronting the 1st Amendment."

603 H.R. 1775, the Stolen Valor Act of 2011, clarifies the
604 law to prohibit false claims of receipt of the Medal of
605 Honor and other military decorations to carry out a fraud.
606 In a moment, our colleague, Mr. Griffin, will offer a
607 substitute amendment to further modify the bill in response
608 to the Alvarez decision.

609 This legislation reaffirms Congress' respect and
610 gratitude to the men and women of the armed forces. It
611 continues our longstanding commitment to protect the
612 prestige of military decorations awarded to honor the valor
613 and sacrifice of our military heroes. And it ensures that
614 those who seek to exploit these medals for fraudulent gain
615 are held accountable.

616 So again, I want to thank our colleague from Nevada, Mr.
617 Heck, for his leadership on this issue. And without
618 objection, the statement for the record by the sponsor of
619 H.R. 1775, Mr. Heck, will be included in the record.

620 [The information follows:]

621

622 Chairman Smith. I urge my colleagues to support the
623 bill and recognize the ranking member, Mr. Conyers, for an
624 opening statement.

625 Mr. Conyers. Thank you. I support H.R. 1775. I have
626 heard no criticism of it. And I thank the gentleman from
627 Arkansas' amendment, Tim Griffin's, will make it even
628 better.

629 It is a way to protect and honor our military medals and
630 decorations while also respecting the 1st Amendment. And so
631 with the adoption of the Griffin amendment, I support the
632 committee approval of this bill today. Ask unanimous
633 consent to insert my full statement in the record, and yield
634 back the balance of my time.

635 [The information follows:]

636

637 Chairman Smith. Thank you, Mr. Conyers. The gentleman
638 from Arkansas, Mr. Griffin, is recognized to offer an
639 amendment in the nature of a substitute.

640 Mr. Griffin. Mr. Chairman, I have an amendment at the
641 desk.

642 Chairman Smith. And the clerk will report the
643 amendment.

644 Ms. Munro. Amendment in the nature of a substitute to
645 H.R. 1775 --

646 Chairman Smith. Without objection, the amendment is
647 considered as read and will be considered as base text for
648 purposes of amendment.

649 [The amendment of Mr. Griffin follows:]

650

651 Chairman Smith. And the gentleman from Arkansas is
652 recognized to explain the amendment.

653 Mr. Griffin. Thank you, Mr. Chairman. And I also want
654 to thank the ranking member for his kind words.

655 This substitute amendment revises H.R. 1775, the Stolen
656 Valor Act of 2011, in response to the recent Supreme Court
657 decision in *U.S. v. Alvarez*. The Court instructed that
658 however despicable, a false claim about receiving a military
659 award is protected by the 1st Amendment. The Court has
660 never acknowledged false statements as a category of
661 unprotected speech deserving of no 1st Amendment protection.

662 Although the government's interest in protecting the
663 integrity of the Medal of Honor is beyond question, the
664 Court found that "There must be a direct causal link between
665 the restriction imposed and the injury to be prevented."
666 And degradation of the status of a military decoration or
667 emotional harm to its true recipients is not sufficient to
668 overcome the deference support to protect its speech under
669 the 1st Amendment.

670 But the Court goes on to point out that a false claim
671 about a military decoration or medal would be properly

672 prohibited when it is made in furtherance of a fraud. In
673 his concurrence, Justice Breyer identified several
674 modifications to create a more finely-tailored law,
675 including, number one, require knowledge of falsity, number
676 two, identify those medals Congress is most interest in
677 protecting, and, three, limit the statute to those lies most
678 likely to cause harm.

679 The substitute amendment incorporates all of these
680 recommendations. It rewrites Subsection (b) of Section 704
681 to make it a crime to fraudulently hold oneself out to be a
682 recipient of the Congressional Medal of Honor or other
683 enumerated military decorations with the intent to obtain
684 money, property, or other tangible benefit.

685 The term "fraudulently" incorporates the necessary
686 knowledge requirement. *Black's Law Dictionary* defines fraud
687 as a knowing misrepresentation of the truth or concealment
688 of a material fact to induce another to act to his or her
689 injury.

690 The amendment also adds an additional element of
691 specific intent, namely that the fraud was committed for the
692 purpose of obtaining money, property, or other tangible

693 benefit. The term "tangible benefit" is intended to cover
694 those valuable considerations beyond money or property, such
695 as offers of employment, which Justice Kennedy identified as
696 appropriately prohibited benefits to a fraud.

697 The amendment limits the application of the one-year
698 penalty to false claims involving the Medal of Honor and
699 those military decorations and medals listed in the statute,
700 such as the Navy Cross, Silver Star, and Purple Heart.

701 As Justice Breyer noted in his concurrence, not all
702 military awards are alike. Congress might determine that
703 some warrant greater protection than others. During oral
704 argument, Justice Kennedy and Justice Ginsberg challenged
705 the statute's prohibition on the unauthorized wearing of a
706 military medal. If one wears a military medal, even if he
707 or she is not the recipient of such medal, is it any less
708 expressive speech and any less protected than a false claim?

709 Although the Court does not affirmatively address this
710 issue in its ruling, it is clear from the argument that this
711 type of expressive conduct is very likely to enjoy 1st
712 Amendment protection. The amendment, therefore, strikes
713 wearers from Subsection (a) of Section 704. It does so with

714 the confidence of the act of fraudulently wearing a military
715 medal to obtain, money, property, or other tangible benefit
716 will continue to be prohibited under the revised Subsection
717 (b).

718 Lastly, the amendment adds combat badges to the list of
719 decorations and medals protected under the Stolen Valor Act.

720 I wish to thank the sponsor of H.R. 1775, Representative
721 Joe Heck from Nevada, for his leadership on this issue, as
722 well as Chairman Smith, and Ranking Member Scott, and
723 Ranking Member Conyers for their bipartisan cooperation to
724 respond quickly to the Alvarez decision so that we could
725 ensure that the Medal of Honor and other military awards are
726 protected from fraud.

727 I urge my colleagues to support the amendment, and I
728 yield back the balance of my time.

729 Chairman Smith. Thank you, Mr. Griffin. And I support
730 the amendment as well.

731 The ranking member, Mr. Conyers, is recognized.

732 Mr. Conyers. I support the amendment as well.

733 Mr. Scott. Mr. Chairman?

734 Chairman Smith. The gentleman from Virginia, Mr. Scott,

735 is recognized.

736 Mr. Scott. Mr. Chairman, I move to strike the last
737 word.

738 Chairman Smith. The gentleman is recognized for 5
739 minutes.

740 Mr. Scott. Mr. Chairman, I rise in support of this
741 amendment as an appropriately limited measure to
742 constitutionally prohibit anyone from seeking money,
743 property, or other tangible benefit by fraudulently
744 representing that they have been awarded a U.S. military
745 medal or decoration.

746 Our military personnel honor us with their sacrifices
747 and their services. Some make the ultimate sacrifice.
748 There are not enough words to thank them for what they do.
749 So when a member of our armed services commits a
750 particularly heroic act or engages in a dangerous course of
751 action, we often award them with a U.S. military medal or
752 decoration. They have earned a high honor from their
753 commanding officers and from the American people.

754 When someone falsely claims to have been awarded such an
755 honor, they offend us. However, the 1st Amendment protects

756 even the most offensive speech. And so in *U.S. v. Alvarez*,
757 which found the original Stolen Valor Act to be
758 constitutionally flawed, Justice Kennedy said, "Though few
759 may find the respondent's statements anything but
760 contemptible, his right to make those statements are
761 protected by the Constitution's guarantee of freedom of
762 speech and expression."

763 However, Justice Kennedy gave us clear guidance on how
764 to amend this statute while respecting the 1st Amendment.
765 He said, "Where false claims are made to effect a fraud or
766 secure monies or other valuable considerations, say offers
767 of employment, it is well established that the government
768 may restrict speech without affronting the 1st Amendment."

769 The Griffin amendment, therefore, only applies to
770 representations which are fraudulent and made with the
771 intent to obtain tangible benefits, which follows what the
772 Court told us to do to fix the statute.

773 I commend my colleague for developing this amendment in
774 consultation with the minority and for prohibiting as much
775 of the offensive fraud that the Constitution allows us to
776 do. I support the amendment and urge my colleagues to

777 support it and then to approve the bill.

778 I yield back.

779 Chairman Smith. Thank you, Mr. Scott.

780 And the question is on the Griffin substitute amendment.

781 Those in favor, say aye?

782 Opposed, no?

783 The ayes have it, and the amendment is agreed to.

784 A reporting quorum being present, the question is on

785 reporting the bill, as amended, favorably to the House.

786 Those in favor, say aye?

787 Opposed, no?

788 The ayes have it, and the bill, as amended, is ordered

789 reported favorably.

790 Without objection, the bill will be reported as a single

791 amendment in the nature of a substitute incorporating

792 amendments adopted. And staff is authorized to make

793 technical and conforming changes. Members will have 2 days

794 to submit their views.

795 [The information follows:]

796

797 Chairman Smith. Pursuant to notice, I now call up S.
798 285 for the relief of Sopuruchi Chukwueke for purposes of
799 markup. And the clerk will report the bill.

800 Ms. Munro. S. 285, an act for the relief of Sopuruchi
801 Chukwueke --

802 Chairman Smith. Without objection, the bill is
803 considered as read and open for amendment at any point.

804 [The information follows:]

805

806 Chairman Smith. I am going to, without objection, put
807 my opening statement in the record.

808 [The information follows:]

809

810 Chairman Smith. And recognize the gentleman from
811 Michigan for an opening statement.

812 Mr. Conyers. Thank you, Chairman Smith.

813 Last month the committee voted to report 6 private
814 immigration bills -- I introduced one of them -- for relief
815 to Bart Kumar, a promising young man from Detroit adopted by
816 a U.S. citizen. But because the adoption was not completed
817 before his 16th birthday, he was not afforded the
818 appropriate immigration status.

819 Late last week, all 6 committee reports were filed, and
820 the bills were placed on the private calendar, and I am
821 hopeful that when we return from the August recess, the
822 House will pass these bills and send them to the Senate to
823 be passed without delay.

824 I hope we also pass the bill we are considering today,
825 S. 285, a private immigration bill for relief of Sopuruchi
826 Victor Chukwueke. The italicized spelling is available for
827 anyone that may want it.

828 Victor is another impressive, inspirational young man
829 who has already contributed much to Detroit, and we hope one
830 day will contribute much to the world. Victor was born in

831 Nigeria with a genetic disorder, neurofibromatosis. As a
832 child, he developed large tumors that led to significant
833 deformities. Victor's mother tried her best to get him
834 proper medical care for this rare disease, but it was not
835 available in Nigeria.

836 He was eventually entrusted to the care of the Catholic
837 missionary nuns of the Daughters of Mary Mother of Mercy.
838 And in 2001, they arranged for a plastic surgeon in
839 Southfield, Michigan to perform surgery on Victor at no
840 cost. He entered the United States on a visitor's visa, has
841 been there ever since, and has undergone 7 major surgeries
842 to remove tumors and to reconstruct his face.

843 Victor's story is not only about his incredible needs,
844 but his story is also about his abilities. Arriving in the
845 United States, he learned English, obtained a GED, went on
846 to college, and received an associate degree, transferred to
847 Wayne State University for his bachelor's degree, graduated
848 in biochemistry and chemical biology, and had a GPA of 3.82,
849 making the dean's list, and served as commencement speaker
850 before graduating. He has been accepted to the University
851 of Toledo College of Medicine to fulfill his hopes of

852 becoming a doctor and provide medical care to underserved
853 populations.

854 I am proud to support the private bill initially offered
855 by senior Senator Carl Levin of Michigan for Victor, and I
856 urge my colleagues to join me in support of it as well.

857 I thank you, Mr. Chairman, and yield back my time.

858 Chairman Smith. Thank you, Mr. Conyers.

859 A reporting quorum being present, the question is on
860 reporting the bill favorably to the House.

861 Those in favor, say aye?

862 Opposed, no?

863 The ayes have it, and the bill is ordered reported
864 favorably, and members will have 2 days to submit their
865 views.

866 [The information follows:]

867

868 Chairman Smith. The sponsor of H.R. 2800, I understand
869 is on the way. We will proceed but then wait for her to
870 arrive for an opening statement.

871 Pursuant to notice, I now call up H.R. 2800 to amend the
872 Violent Crime Control and Law Enforcement Act of 1994 to
873 reauthorize the Missing Alzheimer's Patient Alert Program
874 for purposes of markup. And the clerk will report the bill.

875 Ms. Munro. H.R. 2800, a bill to amend the Violent Crime
876 Control and Law Enforcement Act of 1994 --

877 Chairman Smith. Without objection, the bill is
878 considered as read and open for amendment at any point.

879 [The information follows:]

880

881 Chairman Smith. I am going to, without objection, put
882 my opening statement into the record.

883 [The information follows:]

884

885 Chairman Smith. And want to thank Representative Waters
886 for introducing this bill. And we will recognize the
887 ranking member, Mr. Conyers, for his opening statement.

888 Mr. Conyers. Thank you, Mr. Chairman. I have not
889 received any notice of criticism about H.R. 2800 on this
890 side. What it does is reauthorize the Missing Alzheimer's
891 Disease Patient Alert Program, a program that is important
892 and provides critical services.

893 To begin with, Alzheimer's is the most common form of
894 dementia. It primarily consists of memory loss and impacts
895 other intellectual abilities serious enough to interfere
896 with daily life. Fortunately, no one in the 112th Congress
897 suffers from any of the indicia of this disease, and so we
898 are all in good enough shape to pass this bill without
899 problem.

900 According to the Alzheimer's Association, the disease
901 accounts to 50 to 80 percent of dementia cases. In
902 addition, there are vast numbers of Americans affected, and
903 the number is growing. It is estimated that 7.7 million
904 Americans will have Alzheimer's by 2030. And finally, it
905 addresses one of the greatest risks presented to this

906 disease, namely that patients become disoriented and wander
907 away from their families or homes.

908 I want to commend the gentlelady from Los Angeles, Ms.
909 Maxine Waters, for her alertness in crafting such a measure.
910 And I am sure that we can all support it. And I am pleased
911 now to yield back the balance of my time, and I thank the
912 chairman.

913 Chairman Smith. Thank you, Mr. Conyers. I want to
914 recognize the sponsor of the legislation, the gentlewoman
915 from California, Ms. Waters. And if she wanted to, she
916 could offer her manager's amendment now and then speak on
917 both the bill and the manager's amendment.

918 Ms. Waters. Well, thank you very much. I would like to
919 thank Chairman Lamar Smith for agreeing to mark up H.R.
920 2800, the Missing Alzheimer's Disease Patient Alert Program
921 Reauthorization Act. This bill reauthorizes a small, but
922 effective, program that assists local law enforcement and
923 protects vulnerable people with Alzheimer's disease.

924 I am going to offer the manager's amendment, and I am
925 very pleased at the work that was done with Chairman Smith.
926 And while we have \$5 million that is authorized, what, you

927 know, both the Senate side and everybody else could agree is
928 \$1 million per year, which is the amount appropriated in
929 Fiscal Year 2012. I appreciate the chairman's willingness
930 to work with me and find a way to move this bill forward.

931 Alzheimer's disease currently affects an estimated 5.3
932 million Americans, and that number will multiply in the
933 coming decades as our population ages. The Alzheimer's
934 Association estimates that 7.7 million Americans will have
935 Alzheimer's by the year 2030, and 11 to 16 million Americans
936 will have the disease by the year 2050.

937 I would like to, if I may, at this time offer the
938 manager's amendment that I have at the desk. Is that --

939 Chairman Smith. Thank you, Ms. Waters. And the clerk
940 will report the manager's amendment.

941 Ms. Munro. Amendment in the nature of a substitute to
942 H.R. 2800, offered by Ms. Waters --

943 Chairman Smith. Without objection, the amendment will
944 be considered as read.

945 [The amendment of Ms. Waters follows:]

946

947 Chairman Smith. And the gentlewoman from California is
948 recognized to explain the manager's amendment.

949 Ms. Waters. Once again, this manager's amendment was
950 negotiated with Chairman Smith, and I am grateful for the
951 support.

952 The manager's amendment authorized \$1 million per year
953 in appropriations for Fiscal Years 2013 through 2017. Even
954 though this is a reduction from the \$5 million authorization
955 level in the underlying bill, it will allow the program to
956 continue to operate at a funding year 2012 funding level.

957 The manager's amendment also includes language to ensure
958 that the program will continue to be operated as a
959 competitive grant program, and that preference will be given
960 to national non-profit organizations that have experienced
961 working with patients and families of patients with
962 Alzheimer's disease and related dementias.

963 The manager's amendment has been approved by both the
964 Alzheimer's Association and the Alzheimer's Foundation of
965 America. This program is extremely cost-effective, and
966 annual appropriation of \$1 million could easily result in
967 millions more in savings for the Federal government by

968 allowing more Alzheimer's patients to remain at home with
969 their families, thereby reducing nursing home utilization
970 and saving Medicare and Medicaid expenses.

971 I urge my colleagues to support the manager's amendment
972 and the underlying bill. And I yield back the balance of my
973 time.

974 Chairman Smith. Thank you, Ms. Waters. I support the
975 amendment and recognize the ranking member, Mr. Conyers, for
976 his comments.

977 Mr. Conyers. I likewise and urge its support.

978 Chairman Smith. The question is on the Waters manager's
979 amendment.

980 Those in favor, say aye?

981 Opposed, no?

982 In the opinion of the chair, the ayes have it, and the
983 amendment is agreed to.

984 Mr. Scott. Mr. Chairman.

985 Chairman Smith. The gentleman from Virginia, Mr. Scott,
986 is recognized.

987 Mr. Scott. I ask unanimous consent that my statement be
988 entered into the record at this point.

989 Chairman Smith. Without objection, the gentleman's
990 statement will be made a part of the record.

991 [The information follows:]

992

993 Chairman Smith. And a reporting quorum being present,
994 the question is on reporting the bill, as amended, favorably
995 to the House.

996 Those in favor, say aye?

997 Opposed, no?

998 The ayes have it, and the bill, as amended, is ordered
999 reported favorably.

1000 Chairman Smith. Without objection, the bill will be
1001 reported as a single amendment in the nature of a substitute
1002 incorporating amendments adopted. And staff is authorized
1003 to make technical and conforming changes. Members will have
1004 2 days to submit views.

1005 [The information follows:]

1006

1007 Chairman Smith. And without objection, staff is
1008 authorized to make technical and conforming changes to all
1009 the bills the committee ordered reported today.

1010 That concludes our business. I thank everyone for their
1011 attendance. And we have marked up 7 bills today. Three of
1012 them were bills that were sponsored by members of the
1013 minority, and so it has been a good day.

1014 We stand adjourned.

1015 Mr. Conyers. Thank you.

1016 [Whereupon, at 11:05 a.m., the committee was adjourned.]