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RPTS HUGILL

DCMN NORMAN

LEGISLATIVE HEARING ON H.R. 4501,
GUARANTEE OF A LEGITIMATE DEAL ACT,
AND H.R. 2480, TRUTH IN FUR LABELING ACT
THURSDAY, MAY 13, 2010
House of Representatives,
Subcommittee on Commerce, Trade and
Consumer Protection,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 1:27 p.m. , in Room 2322, Rayburn House Office Building, Hon. John Barrow [member of the subcommittee] presiding.

Present: Representatives Weiner, Barrow, Whitfield, Scalise, and Latta.

Also Present: Representative Moran of Virginia.

Staff Present: Michelle Ash, Chief Counsel; Timothy

Robinson, Counsel; Will Cusey, Special Assistant; Peter Ketcham-Colwill, Special Assistant; Sarah Fisher, Special Assistant; Daniel Hekier, Intern; Brian McCullough, Minority Senior Professional Staff; Shannon Weinberg, Minority Counsel; Sam Costello, Minority Legislative Assistant; and Robert Frisby, Minority FTC Detailee.

Mr. Barrow. [Presiding.] The subcommittee on Commerce, Trade, and Consumer Protection will now come to order.

Today the subcommittee will consider two bills, H.R. 4501, the Guarantee of a Legitimate Deal Act, introduced by Representative Weiner; and H.R. 2480, the Truth in Fur Labeling Act, introduced by Representatives Moran and Bono Mack.

Before I move forward with the hearing, I would like to ask unanimous consent that the record be left open for 10 legislative days so that members may be able to revise and extend their remarks. Without objection, Mr. Moran will sit in as a member of the subcommittee for purposes of this hearing.

Today the subcommittee will hear testimony on two important bills to protect and inform consumers. The first bill we will consider is H.R. 4501, the Guarantee of a Legitimate Deal Act of 2010, introduced by Representative Weiner on January 21, 2009, to acquire certain policies from businesses that purchase precious metals from consumers and solicit such transactions through an Internet Web site.

The bill would require online purchasers of precious metals to wait until receiving an affirmative acceptance of the amount offered before melting down a consumer's jewelry. Online purchasers of precious metals will be required to promptly return jewelry to the consumer if the consumer declines the amount offered.

In addition, the bill will set a standard for the amount of insurance provided by online purchasers of precious metals on shipments of jewelry or precious metals.

With our second panel, we will consider H.R. 2480, the Truth in Fur Labeling Act, introduced by Representatives Moran and Bono Mack, on May 18, 2000. The bill would amend the Fur Products Labeling Act to require all fur apparel to have labels, not just those products valued at over \$150. It would also instruct the Federal Trade Commission to update its fur products' name guide. H.R. 2480 is a bipartisan bill and currently has 165 cosponsors. A companion bill, S. 1076, had been introduced in the Senate.

[The information follows:]

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Mr. Barrow. At this time I will recognize the ranking member, Mr. Whitfield, for 5 minutes to make an opening statement.

Mr. Whitfield. Mr. Chairman, thank you very much. And I want to thank the witnesses for being with us today.

As has been said, this is a hearing on H.R. 2480, the Truth in Fur Labeling Act. I am one of the cosponsors of that legislation -- and I believe there are 165 cosponsors as of today -- introduced by Mr. Moran and Mrs. Bono Mack. This legislation would amend the Fur Products Labeling Act to provide the elimination of a current examination; also would call for a review by the Federal Trade Commission of its fur guidelines book and authority to revise such guidelines as appropriate. It also provides authority for the States to enact their own labeling requirements.

I do have some concerns about the effectiveness of a Federal law if the States can require different labeling requirements because of the problems in interstate commerce that that sometimes causes, but I do look forward to the testimony from all the interested parties today.

H.R. 4501, the Guarantee of a Legitimate Deal Act. The intent of this legislation is to protect consumers who sell precious metals to Internet-based purchasers. The most common complaints are usually regarding the amount of cash value the consumer receives and whether or not they have the ability to

reject the offer and get their items back if they decide to cancel the transaction, and how easily is that accomplished?

I also have a few questions about whether or not this legislation is broad enough and should it apply only to Internet-based precious metal purchasers or should it go beyond that?

So I look forward to the testimony today on this legislation, and I yield back the balance of my time.

Mr. Barrow. I thank the gentleman from Kentucky for yielding.

[The information follows:]

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Mr. Barrow. And the chair at this time recognizes Mr. Weiner of New York for the purpose of making an opening statement.

Mr. Weiner. Thank you, Mr. Chairman. I appreciate the witnesses and I appreciate my colleagues for being here.

Today we're going to have a hearing that was prompted by the toxic combination of two things; that is, the downturn in the economy and the ignorance of consumers about what their rights are and what they can expect reasonably when they are trying to sell their gold. It was prompted by complaints and concerns about the largest company in the industry, Cash4Gold.

Cash4Gold pays about between 11 and 29 percent of the market price for gold, effectively ripping off consumers. Their return policies are deceptive and put all of the cards in the hands of the business and none in the hands of consumers.

For example, if you don't accept an offer within 12 days, it is considered accepted, the gold is melted down and you lose your right. Obviously, consumers have no way to know when that 12 days begins or ends.

We also know that, for example, their return policies are also stacked against consumers in a way that can only be called fraudulent. A consumer that ensures their gold when it is mailed finds that it is not insured when it is returned. And the United States Postal Service recently conducted an investigation that found over 1,300 losses associated with Cash4Gold, and when they

looked at each and every one of them, they concluded that there were no irregularities on the part of the Postal Service, leading them and me and the regular consumer to conclude that losing their customers' gold is part of their business model.

Now, we invited the CEO of the company to come here, and he was told that he could not, because he was speaking at a conference in San Diego. In fact, a brief look at the Internet, which we do have access to here at the Energy and Commerce Committee, showed that he did not speak today; he spoke yesterday. A grand total of 76 different flight options were available to him to be able to get here for as little as \$169.

When asked if they would offer anyone else that would explain some of these policies that led to investigations in so many States and so many disgruntled consumers, they said no. There apparently is no one that can speak for that company, even though they have a public relations director who, until recently, was a federally registered lobbyist.

Now, this is not just a random problem that we have. This is an orchestrated effort by some businesses to take advantage, as I said, of consumers. When asked about these complaints -- and there have been many of them -- the Better Business Bureau gives them a C-minus, which is not very good, Mr. Chairman. They explained that, Oh, these are just our competitors trying to cause problems.

We're going to find out today that, in fact, it's Cash4Gold

causing many problems for consumers.

Thank you, Mr. Chairman.

Mr. Barrow. I thank the gentleman.

[The information follows:]

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Mr. Barrow. And at this time the chair would recognize the gentleman from Ohio for purposes of making an opening statement for 3 minutes, Mr. Latta.

Mr. Latta. Thank you very much, Mr. Chairman and Ranking Member Whitfield. Thanks very much for holding this hearing today to discuss the issues surrounding the fraud with Internet-based companies that appraise and purchase jewelry directly from consumers through the mail.

I also look forward to hearing from our witnesses regarding H.R. 2480, the Truth in Fur Labeling Act.

As with any bills that pass Congress we need to make sure that our small businesses and consumers are protected, but we must also look at the unintended consequences and make the necessary corrections that might occur. The Federal Government cannot continue to force more bureaucratic mandates on businesses and consumers, further hindering economic growth and job creation.

In regards to H.R. 2480, I have spoken with citizens from Ohio who have very great concerns about the fur labeling bill and the intentions behind it. You know, we all have to make sure that we're truthful in our labeling, but we also have to be careful about the consequences that may occur.

Being from Ohio, we've recently passed what was called Issue 2 in 2009, which created the Ohio Livestock Care Standards Board, because agriculture is the number one contributor to Ohio's

economy and Ohio farmers have cared for flocks and herds for generations and provided people across this country with safe quality and affordable food.

If Issue 2 had not been passed in the State of Ohio, and again looking at what could happen as we look at these pieces of legislation, what could happen is the amendments that could have come up, if they had been adopted, someone -- the State of California would have put great burden on the hardworking farmers across the State of Ohio and would have driven up costs for eggs, meat, and dairy products.

So there are very many unintended consequences that can happen, and we have to take these into consideration when passing this legislation.

With that, I look forward to hearing from both panels this afternoon, Mr. Chairman, and I yield back. Thank you very much.

[The information follows:]

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Mr. Barrow. The chair thanks the gentleman for yielding.

At this time the chair will recognize, for purposes of making an opening statement for not more than 3 minutes, the gentleman from Louisiana, Mr. Scalise.

Mr. Scalise. Thank you, Mr. Chairman. I appreciate your holding this hearing.

Today we're examining two bills, H.R. 4501, the Guarantee of a Legitimate Deal Act; and H.R. 2480, the Truth in Fur Labeling Act.

First, I would like to discuss the GOLD Act. I am sure we've all seen the advertisements and commercials for the mail-in-gold industry, which include assurances that consumers will get fairly compensated and will encounter a smooth transaction. Unfortunately, reports have shown that this is not always the case. Some consumers have been taken advantage of and have been outright deceived.

The GOLD Act seeks to address these issues by regulating Internet-based companies that appraise and purchase jewelry directly from consumers through the mail. There are a few issues with the bill that I think need to be discussed today, such as the fact that this bill is only limited to online companies. I hope this and other issues can be sorted out through today's hearing.

The next bill, the Truth in Fur Labeling Act, seeks to improve the accuracy of fur labeling. Current law requires that

fur product labels include certain information such as the name of the animal that produced the fur, whether the product is real fur, and the country of origin of any imported fur used in the product.

Unfortunately, we've seen a few bad actors in the industry that have not abided by these rules. I believe that consumers are entitled to accurate and meaningful information regarding the fur products they purchase, and our subcommittee must ensure that transparency and accuracy exist in the marketplace.

Mr. Chairman, I look forward to hearing from our witnesses on these bills, particularly on whether these bills are needed for the goals both to be achieved, or whether the FTC has the necessary authority to implement their provisions.

This subcommittee must continue to ensure that consumers are protected, which means that we must debate and pass quality legislation. But I believe that we must also place our focus on the greater issues at hand. As our unemployment rate hovers near 10 percent and our national debt continues to grow, I think most Americans would much rather us focus this committee's efforts on trying to find ways to improve the job outlook in the private sector; and, instead, all they see is more bad policies that focus on growing the Federal workforce at the expense of our small businesses.

While government jobs and government spending continue to grow exponentially, families and small businesses in our districts are cutting back. While this Congress refuses to pass a balanced

budget or, for that matter, any budget, American families are having to tighten their belts and make tough decisions on how to keep their household budgets fiscally responsible and manageable. I hope we finally start focusing on those problems.

Thank you and I yield back.

Mr. Barrow. I thank the gentleman for yielding.

[The information follows:]

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Mr. Barrow. We now move on to the introduction of the witnesses for our first panel, but before I make the introductions I would like to thank all of the witnesses for taking time out of their busy schedules to appear before us today.

First on my left is seated Mr. James Kohm, the Associate Director of the Division of Enforcement with the Bureau of Consumer Protection at the Federal Trade Commission. Next is Mr. Charles Bell, who is Programs Director at the Consumers Union. And on my right is Ms. Cecilia Gardner, who is the President and CEO of the Jewelers Vigilance Committee.

It's the practice of this subcommittee to swear in all witnesses. So I'd ask you to please stand and raise your right hand.

[Witnesses sworn.]

Mr. Barrow. Please let the record reflect that the witnesses have each answered in the affirmative.

STATEMENTS OF JAMES A. KOHM, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; CHARLES BELL, PROGRAMS DIRECTOR, CONSUMERS UNION; CECILIA L. GARDNER, ESQ., PRESIDENT AND CEO, JEWELERS VIGILANCE COMMITTEE

Mr. Barrow. Mr. Kohm, you're now recognized for 5 minutes for the purposes of making an opening statement.

STATEMENT OF JAMES A. KOHM

Mr. Kohm. Thank you very much. Chairman Barrow, Ranking Member Whitfield, and members of the committee, my name is James Kohm. I am the Director of the Division --

Mr. Barrow. Mr. Kohm, there's a microphone in front of you and what I'd ask you to do is bring it close to you. You can move it around, manipulate it so it comes closer. It's a directional mike. And make sure it's turned on.

Mr. Kohm. Okay. It's on. Thank you. I apologize.

Chairman Barrow, Ranking Member Whitfield, and members of the committee, my name is James Kohm. I am the Associate Director of the Division of Enforcement in the Federal Trade Commission's Bureau of Consumer Protection. Let me begin by noting that the views expressed in my written testimony represent those of the Commission, while my oral testimony and responses to your questions reflect only my own views and not necessarily those of the Commission or any particular commissioner.

Unfortunately, an increasing number of fraudulent operators have recently sought to take advantage of the economic downturn by preying on consumers in economic distress. The Commission is

meeting this challenge by spearheading multiple law enforcement sweeps against operations that prey on financially strapped consumers.

Most recently, the Federal Trade Commission announced Operation Bottom Dollar, a multiagency crackdown on organizations that fleeced unemployed consumers by taking their money in exchange for jobs or job placement opportunities that simply did not exist.

Additionally, since October of 2008, the Commission has led four other law enforcement sweeps focused on protecting consumers from foreclosure rescue scams, job opportunity scams, deceptive get-rich-quick schemes, bogus government grant schemes, phony debt reduction service schemes, and credit repair scams.

Today I appreciate the opportunity to discuss H.R. 4501, the Guarantee of a Legitimate Deal Act, a bill that also would protect consumers from unscrupulous marketers during this economic downturn. Most of the Commission's complaints about "cash for gold" companies relate to violations of the do-not-call rule. However, the Commission has received a growing number of complaints from consumers who send their gold jewelry or other items to companies and then were dissatisfied with the payments they received in exchange. When the consumers called to get their gold back, the companies told them that they'd already melted the gold and there was nothing they could do for them.

The Commission has also received several complaints about

lost jewelry that was returned without adequate insurance.

The legislation before the committee would address both these concerns. Specifically, the bill would require online purchasers to afford consumers a right to consider and reject a specific monetary offer before a merchant melts or otherwise liquidates their precious metals, and would require purchasers to adequately insure items they ship to consumers who decline their offers.

Additionally, the legislation gives the Commission civil penalty authority to ensure that the FTC can effectively enforce the law.

The Commission, however, has three suggested corrections that should help effectuate the purpose of the legislation:

First, the bill is currently limited to Internet sales. The same practice that led to the legislation, however, could be accomplished through telemarketing, direct mail, or television or radio ads. The committee therefore may want to consider not limiting the coverage to a single marketing avenue.

Second, if the committee decides to limit the bill's coverage to Internet sales, we would suggest a slight amendment to ensure that all such sales are actually covered. Specifically, the bill covers those who maintain an Internet Web site. An unscrupulous marketer may argue that it's not covered because a third-party Web hosting company maintains their site. The committee can resolve this issue by changing the "maintain" language in the manner outlined in the Commission's written testimony.

Finally, the Commission recommends that the committee modify the bill to clarify that purchasers of precious metals must make a firm offer to purchase the items for a specific price. Otherwise an unscrupulous marketer could claim that its vague offer to pay a good price or the best price is accepted when consumers ship their items, thereby avoiding the intent of the law altogether.

Thank you for providing the Commission an opportunity to appear before the committee today to address this important issue. I will be happy to answer any of your questions.

Mr. Barrow. Thank you Mr. Kohm.

[The prepared statement of Mr. Kohn follows:]

***** INSERT 1-1 *****

Mr. Barrow Mr. Bell, you're now recognized for purposes of making an opening statement.

STATEMENT OF CHARLES BELL

Mr. Bell. Chairman Barrow, Ranking Member Whitfield and members of the committee, my name is Charles Bell. I am Programs Director for Consumers Union, based in Yonkers, New York. Thank you so much for the opportunity to testify today on ways to protect consumers who respond to Internet and TV offers to exchange precious metals for cash payments through the mail. We commend you for holding this hearing to focus attention on ways to protect consumers and encourage a safer marketplace.

Consumers Union is the independent nonprofit publisher of Consumer Reports, ConsumerReports.org, and the Consumerist.com blog, which empower consumers by informing and entertaining them about the top consumer issues of the day. And as part of our work, we regularly research and report on deceptive practices and misleading practices that affect consumers. We report on scams and frauds, both to alert consumers so they can protect themselves, and to alert law enforcement agencies and policymakers so they take action to directly curtail and stop these unethical, deceptive, or fraudulent practices.

Over the last several years, Consumer Reports has researched

and reported about consumer problems related to cash for precious metals services which we think are worthy of your attention by your subcommittee.

Beginning in 2008, the Consumerist.com blog published a series of articles and blog posts regarding cash for precious metals services, including an in-depth investigative article entitled "The Article that Cash4Gold Doesn't Want You to Read," on September 2, 2009, which is attached to our testimony. And through research and investigative reporting, the Consumerist uncovered a range of questionable practices that raised concerns that consumers are being misled or shortchanged by such services, many of which are heavily promoted through TV ads and Internet.

Our overriding concern is that when financial circumstances lead consumers to make the difficult decision to part with their gold, silver, or other precious metals, items that may have both economic and sentimental value, they should be guaranteed a fair process.

A 2009 study by Consumer Reports, which we discuss in our testimony, found that cash for precious metals services paid between 11 percent and 29 percent of the day's market price for gold, while local jewelers and pawn shops offered significantly higher amounts. Based upon our research and the negative experiences of a significant number of consumers, we believe that additional consumer protections are very much needed to create fair rules of the road for online cash-for-metal services.

We generally do not recommend that consumers use such heavily advertised services because the high expenses that these companies spend for marketing make it unlikely that consumers will receive fair economic value for their jewelry or other items, and in general we think consumers would be better off to take their jewelry or other items to several local jewelers or pawn shops for appraisal and to solicit competing offers from reputable companies or third-party buyers.

At the same time, however, we believe that consumers who do decide to use online services need to have a fair chance to negotiate a better offer and to promptly obtain the safe return of their gold or precious metal, with appropriate insurance if they decline that offer.

And so we would emphasize that consumers who choose to use heavily advertised services will still be at risk of receiving lower prices, but at least they will have a fair chance to protect their interests and obtain a favorable offer within a prescribed period after submitting the items for appraisal.

H.R. 4501, introduced by Representative Anthony Weiner, contains strong pro-consumer provisions that would strengthen consumer rights IN online cash-for-metals transactions and create fair rules of the road to prevent understandings and complaints. The bill would make it a crime to melt or permanently destroy any proffered items of jewelry or precious metal before the purchaser has received an affirmative acceptance of the offer from the

consumer.

H.R. 4501 would also require a fair return period for consumers who submit precious metals for sale through the mail or other delivery services. If consumers decide to reject the offered price, they should be guaranteed the swift return of their jewelry and proper insurance during shipment.

And as discussed, H.R. 4501 would also give the FTC strong enforcement powers to ensure that these companies act favorably and do not engage in deceptive marketing and sales practices. These commonsense protections are consistent with both common sense and what customers have a right to expect from this relatively unique type of business.

As mentioned above, the remote, relatively anonymous nature of the online mail-in cash-for-metals transaction introduces new types of risks or uncertainty for the consumer. H.R. 4501 creates fair rules of the road to help address and minimize these risks and clarify the channels of communication so both the consumer and the purchaser have appropriate rules and protocols to follow to minimize bad outcomes.

For these reasons Consumers Union strongly supports H.R. 4501 and urges its swift passage by the Congress.

Thank you very much for the opportunity to testify here today about this critically important issue, and we thank you for your efforts to protect consumers in these tough economic times and look forward to working with you as you move forward in addressing

these issues.

Mr. Barrow. Thank you, Mr. Bell.

[The prepared statement of Mr. Bell follows:]

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Mr. Barrow. The chair now recognizes Ms. Gardner for up to 5 minutes for purposes of making an opening statement.

STATEMENT OF CECILIA L. GARDNER

Ms. Gardner. Thank you, Mr. Chairman, and thank you to both yourself and to Ranking Member Whitfield for inviting me here today. It's a pleasure to be here with you.

My name is Cecilia Gardner and I am the President, CEO and General Counsel of the Jewelers Vigilance Committee, known as the JVC, not the electronics company. I am here today representing the organization and its members. It is a not-for-profit trade association in the national jewelry industry.

We were formed in 1912 to provide self-regulation within the industry and to facilitate compliance with the laws that affect the jewelry trade through supplying information on our Web site, presenting seminars, publications, newsletters, articles and trade publications; and we also serve the industry by receiving complaints regarding jewelry transactions and mediating disputes between consumers and jewelers that arise and -- or between businesses.

Our members include retailers, suppliers, manufacturers, wholesalers and gold-buying companies. I raise this because I want to remind the committee -- the subcommittee -- that this is

an industry of small business. These are family -- for the most part, family-owned small businesses who of late have been struggling with the economic downturn.

You can imagine how it has impacted the economic life of a retail jewelry store. Jewelers at all levels of the industry have been hurt by the economic crisis of the last years, and that same crisis has driven up the cost of precious metals, creating a consumer interest in selling gold primarily in the form of unwanted jewelry.

Many companies have weathered the drop in jewelry demand and managed to stay in business by buying gold from their customers and then selling it to refiners. New companies and business models have arisen, including gold-buying parties in homes and Web sites, that invite consumers to mail in their gold in exchange for money. For the most part, the purchase and sale of gold has been a benefit both to the industry and to consumers alike.

We have had in our organization since 2008 a special category of membership for gold buyers, and we advise the industry on the laws and regulations that govern the practice of buying gold from consumers. This includes anti-money laundering requirements pursuant to the USA PATRIOT Act, as well as State and local laws regarding permits for second-hand dealers, and, finally, regulations that address antifencing laws which vary from jurisdiction to jurisdiction, but generally require that gold buyers obtain identification from sellers, keep purchased gold on

their premises for a specific length of time, and maintain accurate records.

We have received various complaints regarding the function of gold, the activity of gold buying. And the most frequent complaint that we get is that the amount of money paid for the gold is insufficient. It's too low. Since these prices and the offer is not regulated, it's a free, open market, there is really very little we can do if the complaint just centers around the price that was paid for the gold.

Another complaint that we often receive, frankly, is that consumers mail in the gold to a company that they found online, and then the company simply disappears. This is an outright theft, a fraud, and we very often turn those complaints over to law enforcement for action.

The JVC supports the goal of appropriate consumer protection in all aspects of the jewelry industry, and our interests are completely aligned with any effort to maintain a fair marketplace and to prevent consumer exploitation.

To that end, we have reviewed the Guarantee of a Legitimate Deal Act of 2009, and our members fully support it. I also heard here today some suggested broadening of the coverage of the bill and we would agree -- we would support the broadening in the sense that it would apply to purchasers who receive mailed-in gold.

I also should note for the committee that there are places in the United States where there is simply no alternative to -- to

mailing in the gold. There are places in the United States where there just is no easily accessible bricks-and-mortar pawn shop or jewelry store or refiner that is willing to purchase the gold from a consumer. So the mail-in function is something that probably will still find a market in the United States.

Consumers should be presented with a good-faith offer and not a fait accompli in the nature of a check for jewelry that has already been destroyed. All of the provisions of the bill that we read, the legislation that we see in this bill, seems equally fair and sensible. Consumers should be ensured that they are not going to be delayed in their efforts to further shop their jewelry or harmed by inadequate insurance on a lost return, and this legislation requires that care be taken in the online purchase of gold, without creating an undue burden on the buyer. One of our main --

Mr. Barrow. Ms. Gardner, in the interest of the time of the other witnesses and the committee, can you please bring your statement to a close so we can move on to the examination of --

Ms. Gardner. I will. I just want to mention that many of our members who buy gold online or in the mail often wait until their check is negotiated before they melt the gold, therefore protecting the consumer in that way.

So thank you for the opportunity and I am sorry to have gone over my time.

Mr. Barrow. Not at all. Thank you, Ms. Gardner.

[The prepared statement of Ms. Gardner follows:]

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Mr. Barrow. The committee now proceeds to an examination of the witnesses by members of the committee. The chair recognizes himself for 5 minutes for purposes of questioning the witnesses. In the interest of a more thorough and sifting examination of all of the issues raised by the legislation, the chair is happy to yield his 5 minutes to the sponsor and the author of this legislation, Mr. Weiner. Mr. Weiner, you're recognized for 5 minutes.

Mr. Weiner. Thank you, Mr. Chairman. I thank all the witnesses for their testimony, particularly Ms. Gardner with whom I have some history. We got to know each other some years ago as our paths crossed in political life, and I am a big fan of her husband as well, and I thank her for her service to the citizens of New York.

Let me understand a little bit about the role that you're here in, Ms. Gardner. The Jewelers Vigilant Committee, does it include as a member -- does it have as a member Green Bullion, the company Green Bullion, or Cash4Gold, the business -- the active name of Cash4Gold, which is Green Bullion? Is that a member organization of yours?

Ms. Gardner. Cash4Gold is in fact a member of the JVC, yes.

Mr. Weiner. What does it take to be kicked out? Is there a standard -- are there standards of conduct that are insisted upon? I mean, I see some of your members are Movado Group and GE Money

and Patek Phillipe and Rolex, and in there is Cash4Gold, a company that the post office says is stealing people's stuff; that a review of the witnesses to your right say is giving people as little as 11 percent of the market price for gold. Is there a code of conduct that members of JVC agree to comply with?

Ms. Gardner. Yes, there is. There is a 4-page document of due process procedural steps in order to institute and succeed to remove a member from the rolls of membership at the JVC.

Mr. Weiner. If you would you provide the committee with that document --

Ms. Gardner. Certainly.

Mr. Weiner. -- it would be very helpful to us.

[The information follows:]

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Mr. Weiner. Can I ask, in your experience in representing the organization as its general counsel, has there been another -- is there another entity that has 300-some-odd complaints against it from the Better Business Bureau?

Ms. Gardner. Yes.

Mr. Weiner. Could you tell me which ones?

Ms. Gardner. No.

Mr. Weiner. For the purpose of future hearings, please provide that for me.

[The information follows:]

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Mr. Weiner. Are there other members of your organization that have lost their accreditation of the Better Business Bureau and told they can't use their indicia in their advertising anymore?

Ms. Gardner. I am not aware of that.

Mr. Weiner. Are there any other organizations, to your knowledge, that are members of your organization that have behaved in the general way that Cash4Gold has, melting down gold or with an arbitrary amount of time -- you said in your testimony, most of your members don't do that. Do you know of others that do? Is that a common practice in your industry to melt down gold before there has been an affirmative acceptance of an offer by a customer?

Ms. Gardner. In the industry we have not received very many complaints of that nature. In fact, we haven't received any.

Mr. Weiner. So Cash4Gold would be the only one?

Ms. Gardner. To be honest, Congressman, we haven't received any complaints about Cash4Gold on that basis.

Mr. Weiner. On what basis have you received the most complaints about Cash4Gold?

Ms. Gardner. That they don't pay very much for the gold.

Mr. Weiner. And do your other members who are -- many of whom I see don't engage in mail order. They are actual physical places where you can go and take your gold. If you were going to

give advice to consumers on where they can get the best service, where they can get the most accurate reflection, would you recommend -- would your organization recommend that it's either/or; that you get an equal value if you mail it in than if you bring it into a pawn shop or bring it into a jeweler?

Ms. Gardner. We don't recommend to consumers anything other than go to a reputable jeweler. We -- we recognize that, given the complex marketplace for gold in the United States, that there are outlets where a consumer can get better prices than if they mail it into a mail-in buyer of gold. But not everybody has access to those better outlets. Certainly a refiner, a direct refiner, would give you a better deal.

Mr. Weiner. When you have access to a deal or not, when you have access to alternatives or not, sometimes, Ms. Gardner, a bad deal and a rip-off is just a rip-off? Like sometimes if it's the only place you choose or you have five other options and you choose that one, a rip-off is a rip-off.

When someone is getting 11 percent, which is what Consumer Reports found in its research, it's hard to interpret that absence of choice being a justification for a rip-off like that, wouldn't you agree?

Ms. Gardner. I don't know how you're defining "rip-off." I mean --

Mr. Weiner. Well, let's start with 11 percent. Is that a rip-off, 11 percent --

Ms. Gardner. It's a lousy deal.

Mr. Weiner. -- 11 percent of the day's market price for gold, a lousy deal --

Ms. Gardner. That is a lousy offer.

Mr. Weiner. -- or as we might say in Brooklyn, a rip-off. So the question is --

Ms. Gardner. I am not from Brooklyn.

Mr. Weiner. We can't have everything, Ms. Gardner. But the point is --

Ms. Gardner. I lived there for a while.

Mr. Weiner. But the point is the same; is that whether or not there are many choices, no choices, one choice, a rip-off is a rip-off. And Cash4Gold is engaged in systematic ripping off of consumers. And what troubles me is your organization seems to be giving them a cloak of legitimacy. And I am going to take a look at the document that you suggested that you have, to see if they -- if they don't qualify for being kicked out, I don't know who does.

Thank you, Mr. Chairman.

Mr. Barrow. I thank the gentleman for yielding.

I am pleased to recognize the gentleman from Kentucky for purposes of questioning for up to 5 minutes. Mr. Whitfield.

Mr. Whitfield. Thank you, Mr. Chairman.

Thank you all for your testimony. It's my understanding that all of you support the concept of this legislation; is that

correct?

Mr. Kohm. That's correct.

Mr. Bell. Yes, that's correct.

Ms. Gardner. Yes, that's correct.

Mr. Whitfield. Okay. And all of you would agree that it could be improved by, one, making it a little bit more broad than just an entity that hosts a Web site in order to take care of direct mail and marketing and so forth; is that correct?

Mr. Kohm. That's correct for the FTC, Congressman.

Mr. Bell. Yes. We would support the measures discussed by Mr. Kohm as well. We think that would be a good enlargement of the scope of the legislation.

Ms. Gardner. I have not discussed this particular concept of broadening, since I've only heard it here today in this room. You know, obviously I speak for the board of the JVC and its members. I would have to go back, but I don't see why that wouldn't make sense.

Mr. Whitfield. Well, I think all of us agree that this is good legislation, and working with Mr. Weiner to make it even more effective, I am sure he would be supportive of that as well.

And all of you also want to require a step that the seller would have to affirm the offer from the purchaser before the meltdown; is that correct?

Mr. Kohm. That's correct. We think that there should be an offer for a specific price that's accepted before there's any

meltdown.

Mr. Whitfield. And all of you agree with that?

Mr. Bell. Yes.

Mr. Whitfield. And then all of you do believe that the insurance issue is something that needs to be addressed; if the material is mailed back that there must be adequate insurance in case it's lost?

Mr. Kohm. That's correct.

Mr. Bell. Yes.

Mr. Whitfield. Now, do we -- I am sorry, Ms. Gardner.

Ms. Gardner. Yes.

Mr. Whitfield. Okay. Do we need to be concerned about the definition of "precious metals," or does that need to be addressed?

Mr. Kohm. Congressman, that doesn't seem to us to need to be addressed. We'd have to see how that played out in the marketplace.

Mr. Whitfield. Well, I want to thank you. You all have given us some very good suggestions and I think it's a good piece of legislation.

I yield back the balance of my time.

Mr. Barrow. I thank the gentleman for yielding.

The chair now recognizes Mr. Weiner of New York for purposes of asking his allotted 5 minutes of questioning.

Mr. Weiner. Thank you, Mr. Chairman. I don't think I'll use

the full 5 minutes. The fact is most of the questions that remain to be addressed should be addressed to Cash4Gold directly. They've made a decision not to attend this hearing. They've made a decision not to attend this hearing under the pretense of something better to do. And I probably, if I were they, would choose to avoid this hearing as well, because I think it's further attention being called to the fact that the way they function is truly exploitive of consumers.

I think that we are in a circular kind of situation that consumers can find themselves caught up in. First, you've got many advertisements tied to many news reports that how this is the moment to buy gold, gold is going up. They then -- those news reports get mated with TV commercials very often, right after those same news reports that say, find your gold, send it to us, and we will give you a good price. Once they do that, the experience of the consumer goes downhill from there.

Imagine that. They are finding that in large numbers, the gold is being -- they're getting paltry offers, and then if they have the wherewithal to ask for that gold back, they're finding, lo and behold, that it's already been melted down because the 12-day limit that they had started ticking the moment that their gold arrived, or the time it was mailed. No one really knows. It's not very clear from the literature.

Then if they're lucky enough to have reached someone and they said, Okay, we will send it back to you, shockingly we're finding

that the Postal Service is getting all kinds of complaints about lost gold coming from Cash4Gold, 1,300 loss claims, so many so that the Postal Service does an investigation and finds that -- they draw the conclusion that Cash4Gold didn't send it back. It didn't get lost. They just chose not to. They find if they insure it sending it to Cash4Gold, they happen to not insure it coming back, so then suddenly the consumer is out.

When asked about these things, their defenders, and Ms. Gardner is among them, say, Look, there's lots of different ways to deal with gold. We provide something that others don't. What they provide is a rip-off.

That is why I hope that we have an opportunity to have Cash4Gold come back and answer some of these questions. I have a feeling that barring a subpoena, which is probably something they are going to see visited upon them in Florida and other States around the country that are beginning these investigations, they probably will choose not to.

They operate in that dark shadow, that corner of our economy where people prey upon the most vulnerable. And I think that after this hearing, I believe that some of the legitimate members of the Jewelers Vigilance Committee will say, You know what? We're tired of mopping up for these guys. These guys are an embarrassment. These guys are not doing a service for consumers. They're using our organization to help cleanse their good name, and our skillful, talented witness, who has a history of consumer

protection, to help defend what essentially is indefensible.

So we're going to pass this. We're going to try to take the counsel of Mr. Whitfield and others and some of the witnesses and broaden it further, and we're going to continue the investigation. But we're not going to allow a bad economy, people desperate for a few extra dollars, to think that if they put their jewelry in an envelope, it's not effectively the same as putting money in the envelope and just mailing it away.

I want to thank the chairman. I want to thank this committee for holding this hearing. I have received assurances from the chairman of the full committee and the chairman of the subcommittee that we don't take kindly to the idea of witnesses pretending to be hiding somewhere rather than testifying before this committee, and so I am sure we will be revisiting it. Thank you.

Mr. Barrow. I thank the gentleman for yielding. There being no other members of the committee present for purposes of questioning the members of the first panel, the chair will excuse the members of the first panel with the thanks of the chair.

Mr. Barrow. Now I would like to call up the witnesses for our second panel. All right, I think we're ready to proceed with the witnesses for the second panel.

Since Mr. Kohm has been kind enough to stay with us, I will move on to introduce the rest of the members of this panel. Seated to Mr. Kohm's left is Mr. Michael Markarian, the Chief Operating Officer of the Humane Society of the United States. On Mr. Markarian's left is Mr. Keith Kaplan, who is Executive Director of the Fur Information Council of America.

As stated earlier, it's the practice of this subcommittee to swear all witnesses. Since Mr. Kohm was sworn in on the first panel, he's still under oath and there's no need for him to be sworn again. So I will ask Mr. Markarian and Mr. Kaplan to please rise and raise your right hand.

[Witnesses sworn.]

Mr. Barrow. The record will reflect that each of the witnesses has answered in the affirmative.

STATEMENTS OF JAMES A. KOHM, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; MICHAEL MARKARIAN, CHIEF OPERATING OFFICER, THE HUMANE SOCIETY OF THE UNITED STATES; AND KEITH KAPLAN, EXECUTIVE DIRECTOR, FUR INFORMATION COUNCIL OF AMERICA

Mr. Barrow. Mr. Kohm, you're now recognized for 5 minutes for purposes of making an opening statement.

Mr. Kohm. Thank you, Chairman Barrow, Ranking Member Whitfield, and members of the committee. For the record, my name is --

Mr. Barrow. Mr. Kohm, if you'll excuse me, as a courtesy to a member who is sitting by unanimous consent today, I would like to give Mr. Moran the opportunity to make an opening statement, and then I will recognize you for the purposes of making your opening statement and the other witnesses, if that's okay with you.

Mr. Kohm. Absolutely.

Mr. Barrow. Thank you. The gentleman from Virginia is recognized for purposes of making an opening statement not longer than 5 minutes. Mr. Moran.

Mr. Moran of Virginia. Thank you, Mr. Chairman. I thank Mr. Whitfield as well, the ranking member on this subcommittee. I appreciate the opportunity to make an opening statement on a bill that I think is well deserving of action by this subcommittee.

The Fur Products Labeling Act, enacted in 1951, required labels of fur products that indicated the name of the animal whose fur was being used and the country of origin. The law, however, allowed for the exemption of products containing a de minimis amount of fur. Since 1998 the definition of "de minimis" has been

set by the Federal Trade Commission at \$150.

In today's marketplace, with fur trim products rivaling full-length fur garments in total sales, this exemption -- in fact, this interpretation exempts a significant percentage of fur products. More than one out of every eight fur products that are purchased create a situation where the consumer must rely exclusively on information provided by sales staff or product displays, neither of which may necessarily be reliable so as to guide the consumer's purchasing decision.

This lack of clear and consistent information poses serious problems for consumers who may have allergies to fur, particularly to fur collars, which is oftentimes where that fur is located on a garment. They may have ethical objections to fur, or they may have concern about the animals, such as dogs and cats that supply that fur.

The Truth in Fur Labeling Act that we are bringing up before the subcommittee today would correct this problem by removing the de minimis exemption and requiring labels on all fur products, regardless of value, Mr. Chairman.

Now, let me head off any anticipated criticism. This is not a solution in search of a problem. That's oftentimes a criticism that is labeled at -- that is thrown at much legislation. This is not the case. The Humane Society of the United States, as we know, a very credible national organization, as well as a number of other national organizations and media outlets, have conducted

investigations documenting the confusion that has been created by retail personnel and consumers who buy fur products that lack labels.

The Humane Society, in fact, have found that in a number of stores, 100 percent of supposedly faux fur was actually animal fur. Too often retailers don't know what they're selling and consumers don't know what they're buying, and that's what needs to change.

I am pleased that there is a representative of the Fur Manufacturers and Retailers here to testify today. I have read your testimony and I appreciate the fact that the Fur Information Council of America supports the underlying purpose of this bill: to ensure consumers have the requisite knowledge to make informed choices consistent with their medical beliefs and their ethical beliefs as well. I should say, their medical needs and their ethical beliefs.

I understand that FICA does have some concerns about section 4 that simply restates current policy that currently allows States to enact fur-labeling requirements in addition to the FTC standards. I think those concerns are, in fact, legitimate; and I'd be glad to work with FICA and the committee to address this provision in order to ensure that the larger public interest is served, because it is not intrinsic to the purpose of the legislation. In fact, it simply restates current policy, as I say.

More than anything else, this is a consumer protection issue. I think the testimony will show that the right policy for consumers is to remove the small-value exemption and require all products containing fur to carry an accurate label.

Again I want to thank you, Mr. Chairman, and the entire subcommittee for deciding to hold this hearing, and I look forward to working with all of you to advance what I know you will find to be commonsense legislation that I hope we can advance as expeditiously as possible. And I thank you very much for your indulgence, Mr. Chairman. Thank you.

Mr. Barrow. On the contrary, I thank the gentleman from Virginia for his opening statement and I thank him for his leadership on this issue.

[The information follows:]

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

Mr. Barrow. Mr. Kohm, it is again your turn to make an opening statement, this time on the Truth in Fur Labeling Act.

STATEMENT OF JAMES A. KOHM

Mr. Kohm. Thank you, Chairman Barrow, Ranking Member Whitfield, and members of the committee. For the record again, my name is James Kohm. I am the Associate Director of the Division of Enforcement in the Federal Trade Commission's Bureau of Consumer Protection.

Let me again note that the views expressed in my written testimony represent those of the Commission, while my oral testimony and responses to your questions reflect only my own views and are not necessarily those of the Commission or any particular commissioner.

I appreciate the opportunity today to discuss H.R. 2480, which would effectively require the Commission to rescind the fur rules exemption for garments with relatively small fur value. Without this de minimis exemption, manufacturers will be required to label all fur products, regardless of the fur's value, with the animal name, country of origin, fur treatment, a registered identification number, as well as other information that is material to consumers' purchasing decisions.

The Commission supports this legislation based on changes in

the marketplace. In 1952 the Commission exercised its authority under the Fur Products Labeling Act to exempt products containing a relatively small value of fur. At that time, fur garments generally represented a large investment, and consumers were primarily concerned that they received the value that they were paying for; in other words, that they actually received the type and quality of fur they purchased.

However, when the value -- when the value of the fur was small, for example, low-cost fur used in small quantities for trim, consumers' need for this information was greatly reduced. The Commission periodically reviews all its rules and guides to ensure that they remain relevant and appropriate in a changing marketplace.

The fur rules last underwent such a review in 1998. At that time, the Fur Information Council of America submitted the only comment regarding the de minimis exemption, seeking to increase the amount of the exemption based on inflation. No other commenters suggested -- no commenters suggested repealing the exemption at that time.

The marketplace, however, now appears to have changed significantly. Many consumers remain concerned about the quality of the fur products they purchase, but there appears to be an increasing number of consumers who, for a variety of reasons, would prefer not to purchase real fur, or who object to certain types of fur even in small amounts.

Accurate labeling of all garments containing fur, regardless of the fur's value, would help these consumers make informed purchasing decisions. Given this change, the Commission plans to explore rescinding its de minimis exemption for fur labeling during its currently scheduled 2011 fur rule review.

However, the FTC could only effectuate such a change after establishing such a record and weighing the cost and benefits of eliminating the exemption. If enacted, H.R. 2480 would remove the Commission's authority to promulgate a de minimis exemption, thereby providing the most efficient and expeditious means of helping those consumers who wish to avoid fur products or certain types of fur, while maintaining the labeling framework for those consumers concerned about the type and value of their fur purchases.

It goes without saying that if this legislation is enacted, the Commission would move quickly to revise the fur rules to comport with the new legal framework.

Thank you for providing the Commission an opportunity to appear before the committee today to discuss the Truth in Fur Labeling Act. I will be happy to answer any of your questions.

Mr. Barrow. Thank you, Mr. Kohm.

[The information follows:]

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

Mr. Barrow. Mr. Markarian, you're now recognized for 5 minutes for purposes of making an opening statement.

STATEMENT OF MICHAEL MARKARIAN

Mr. Markarian. Thank you, Mr. Chairman and Mr. Ranking Member, and members of the subcommittee for holding this hearing on this important issue and for inviting the Humane Society of the United States here to testify. I want to thank Congressman Moran for his tremendous leadership on this issue, as well as Congresswoman Bono Mack and other members of the subcommittee who are cosponsors of H.R. 2480.

We at the Humane Society of the United States strongly support this legislation, which we essentially view as a much-needed upgrading or updating of the Fur Products Labeling Act, which was passed nearly 60 years ago and needs to be updated to reflect the present market realities.

As we heard, when the Fur Products Labeling Act was passed in the early 1950s, there was an exemption in the law for a small quantity or value of fur, and in the last six decades the industry has really changed quite remarkably in a number of ways. There has been an increased use in fur trim where people are no longer just seeking full-length fur coats or other garments, but they're seeking parka jackets and sweaters and vests and hats and gloves

that are trimmed with small amounts of fur.

We've also seen an increase in the quality of the synthetic furs which are closer resembling real fur, and it makes it more difficult for people to distinguish between real fur and fake fur.

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Mr. Markarian. We have also seen manufacturing techniques where real animal fur is dyed or sheared. If people see the fur trim on a jacket that is pink or blue or orange, they may not associate it with an animal, and they may not understand whether it's real animal fur or faux fur.

And as the exemption is currently set at \$150, which applies to the value of the fur material on the jacket, it allows for massive quantities of animal fur to be used without being labeled. And based on approximate pelt prices after tanning and dressing, the fur from 30 rabbits could be used at \$5 each per pelt, without requiring labeling; 25 ermines at \$6 each; 15 muskrats at \$10 each. The list goes on and on and on. And many animals -- the pelts from many animals could be used and fall under that \$150 threshold.

So we believe that this is creating major confusion in the marketplace because people simply don't know what they are getting. And the Humane Society of the United States has tested dozens of jackets, many of which were advertised as fake fur, and we found that they contained real animal fur.

We brought two posters to show the committee just two of these examples. I wanted to point them out to you. The one on the left is a Rocawear jacket, which was purchased at a store

called Demo. You can see the blowup of the label. It says that it's polyester material; it says that it was made in China, but it does not say anything about the fur trim. We had that fur tested in a laboratory and concluded that it was fur from a raccoon dog species.

The second example is a Burberry jacket which was purchased online from the saks.com Web site. It was advertised online as faux fur. And you can see when the consumer receives the jacket in the mail, they look at the label. It talks about cotton, it talks about polyester, it talks about some of the other materials, but it does not say anything about the fur material. We had that jacket tested and concluded that the fur trim was rabbit fur. And when we disassembled the trim, it looked like it was two individual rabbit pelts -- and you can see a little bit how they're sewn together in the middle of the garment.

But if those rabbit pelts were valued at \$5 each and there's \$10 worth of fur trim on that jacket -- a jacket which costs hundreds of dollars -- it fell below the exemption and did not require labeling.

So we believe that if you don't have a label on the individual garment, there is so much room for consumers to be confused, and even for sales clerks in department stores to be confused, because they're not furriers, they're not experts in the material. But these are folks who work at department stores, they have inventory cycling through, they have customers trying on

jackets and returning them to the wrong racks, and it's very easy for people not to know what the garments are made of unless there is a label attached to the individual garment.

And we've, frankly, found sales clerks guessing in department stores. When they don't have a label on the jacket and consumers ask, What do you think this is made of, they say, It's not real fur, it's fake. If it's real fur, they would say real fur. Another clerk said I really don't think it's real fur. Another said it's goose down, so it's warm; it would say raccoon or rabbit, whatever. It doesn't say, I believe it's acrylic, fake fur; I believe it's fake.

There is too much room for confusion, Mr. Chairman. We believe this is a limited bill which gives consumers the opportunity to make informed choices. It doesn't restrict the trade in any fur, it doesn't restrict the methods of producing fur, it gives consumers the information that they need.

We thank you for your time and look forward to working with the committee on this bill.

Mr. Barrow. Thank you, Mr. Markarian.

[The prepared statement of Mr. Markarian follows:]

***** INSERT 2-1 *****

Mr. Barrow. Mr. Kaplan, you are now recognized for 5 minutes for the purpose of making an opening statement.

STATEMENT OF KEITH KAPLAN

Mr. Kaplan. Thank you, Chairman Barrow, Ranking Member Whitfield, and members of the subcommittee. Thank you for inviting me to testify before you today.

My name is Keith Kaplan, and I am the Executive Director of the Fur Information Council of America. We represent the interests of over 1,100 fur retailers, fur manufacturers, fur wholesalers, and fur designers, most of whom are in fact small businesses.

I am pleased to be here today to present our views on H.R. 2480, the Truth in Fur Labeling Act.

As has been stated, the fur industry is already covered by stringent labeling requirements under the Fur Products Labeling Act. Enacted in 1951, this act and the regulations implemented by the FTC require that fur product labeling provide a depth of information about the product, including the correct name of the fur type, whether the fur is bleached, dyed, or naturally colored, and the country of origin, as well as other relevant information. Similar information must be provided in connection with any and all advertising and marketing of fur products. This information

provides consumers the detail they need to make educated decisions regarding their purchase of a fur product.

Our industry has supported and continues to support the principles of transparency and dissemination of accurate information that underlie this law, and FICA's members are committed to compliance with the detailed requirements of this regulation. As evidence, I would like to submit labels from both single-unit and multi-unit retailers operating in a number of States, and ask that they be submitted for the record.

[The information follows:]

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

Mr. Kaplan. Throughout the fur industry, our members understand the consequences of a failure to comply, and have exhibited this through nearly 60 years of practice. In the event of any infraction, the FTC's enforcement authority in this area is far-reaching and the legal tools available to it are significant. Historically, the agency has never shied away from using these tools to protect the consumer, and such has been the case within our industry.

Consistent with our support for the principle of consumer transparency, we support the removal of the small value exemption of the Fur Products Labeling Act, with the result that all fur products would now carry the same comprehensive labeling.

However, Mr. Chairman, we do have significant concerns with section 4 of the bill that's been presented which confers on States, or, for that matter, any political subdivision such as counties or towns, the right to adopt or enforce their own labeling requirements for fur products that would likely differ from or be more restrictive than existing Federal law.

This provision, which would impact the sale of all fur products, would undermine the purpose of the current Federal statutory regime which has protected consumers for almost 60 years. Indeed, the additional information that may result from local requirements opens the door to extensive consumer confusion and the potential for labeling to become a vehicle of harassment

in its own right.

Imagine in your own backyard that you visited Macy's in downtown Washington, D.C. where you find or your wife finds a fur garment you would like to purchase. Not having your size, the salesperson locates the same garment in the correct size at the Towson, Maryland store and they send it over to the Washington, D.C. store. When you arrive to pick up your coat, it looks identical, but the descriptive label now reads quite differently. This is the kind of confusion that would be created by section 4.

We're also concerned that the FTC's jurisdiction and expertise will be undermined by local jurisdictions acting at the behest of anti-fur advocates whose only interest is to confuse consumers by disseminating false and misleading information, thereby denying customers the opportunity to really make informed choices.

We have already seen examples of this in recent efforts by the HSUS, to link the use of Asiatic raccoon -- a legitimately traded fur product for over a century -- to domestic dog in an attempt to destroy the marketability of this product. In New York last year, legislators passed a bill removing the small-value exemption and requiring that all product carrier labels specify it as real or faux fur.

Amidst confusion over the exact requirements and specifications of this label on real fur products, our representatives approached the New York State Attorney General's

Office. In the end, the Office informed us they could provide no further direction on this issue. Without further direction, our retailers were forced to create and affix their own real-fur labels, at considerable time and expense without any perceived benefit to the consumer. In fact, consumers are asking retailers today why this real fur designation now appears on an item they already understand as mink.

Allowing States and local jurisdictions to enact their own fur-labeling regulations will likely lead to a significant increase in similar activities across all 50 States by well-funded, anti-fur advocates.

The primary purpose of the Fur Products Labeling Act was to facilitate consumer comparisons among similar products, providing consumers with all the relevant detail they would require to make educated, informed, and confident decisions before purchasing: apples-to-apples across all 50 States. Divergent State requirements might seriously undermine this and could lead to significant confusion among both consumers and retailers.

Mr. Chairman and members of the committee, in your consideration of this bill, I reinforce our support for the removal of the small-value exemption, consistent with our belief that consumers are entitled to complete, accurate, and meaningful information to guide their purchase decisions. But I urge you to please strike section 4 from this bill to ensure that consumers remain protected from misleading, inaccurate, or confusing

labeling that may adversely affect their purchasing decision process.

Thank you for your attention. I welcome any questions you might have.

Mr. Barrow. Thank you, Mr. Kaplan.

[The prepared statement of Mr. Kaplan follows:]

***** INSERT 2-2 *****

Mr. Barrow. We now proceed to an examination of the witnesses by the members of the committee. The chair recognizes himself for the purpose of questioning for up to 5 minutes.

Mr. Markarian, let's begin with you. I want to get some idea of the scope and size of the universe of items that are covered by this proposed legislation. I want to talk about the significance of this.

With regard to all of the items that would be covered, either those that just have a little fur in them or those that consist entirely of fur, are there any major categories of items that you can think of that would be covered by this proposed change? For example, are they mostly gloves with fur lining, or fur-trim hooded jackets? What are we talking about here?

Mr. Markarian. Mr. Chairman, thank you for the question.

The Fur Products Labeling Act applies to wearing apparel, so any clothing item that's made of fur. According to data that was in the Federal Register last February, the FTC estimated that 1,019,054 fur garments and fur-trimmed garments and fur accessories were sold in the United States. About 87 percent of those already require the labeling standard. Only 13 percent fell below the \$150 threshold, so they had fur material that was below a \$150 value. Thirteen percent of all fur garments sold in the U.S. did not require the labeling.

So, essentially seven out of eight fur garments that are sold

in this country already require the labeling standard, the standard that's been in place for almost 60 years. And this legislation would bring the other one out of eight garments into that same system, so there would be a consistent standard across the board.

And with this one example I showed, the Burberry jacket, the jacket itself cost about \$800, but the value of the fur trim we estimate was well below the \$150 threshold, so that type of jacket would not require labeling at this current time.

Mr. Barrow. Thank you.

As was the chair's practice in the case of the former panel, I am pleased to yield the balance of my time to the author and sponsor of this legislation, Mr. Moran.

Mr. Moran of Virginia. Chairman Barrow, I cannot thank you enough. I appreciate your giving me this opportunity.

I understand that of the 13 percent we're talking about of fur products that are either unlabeled or inaccurately labeled, virtually all of them either come from China or Russia; a few, perhaps, from Finland.

What I would like to do, perhaps I could ask the gentleman representing the Fur Information Council, are you aware of any American manufacturers who are attaching this unlabeled or mislabeled fur as trimming on any garments, or is this primarily foreign manufacturers who are shipping them here from China or whatever?

Mr. Kaplan. I am not aware, sir. The labeling is attached to the garment at the retail level, not at the manufacturing level.

Mr. Moran of Virginia. I understand that; except that, of those garments, my information is that none of the fur that isn't labeled or inaccurately labeled, none of that is coming from the United States. It doesn't affect any domestic producers of fur.

Mr. Kaplan. I can't comment on that with certainty.

Mr. Moran of Virginia. Do any of the witnesses know that, whether we would be affecting any American manufacturer?

Mr. Kohm. I do not, Congressman.

Mr. Moran of Virginia. Mr. Markarian.

Mr. Markarian. Congressman, any garment that had fur material that was valued at less than \$150 would require a label. So whether it's made in the United States or abroad, it would have to meet that same standard.

Our concern is that it's more difficult for consumers to tell what the product might be, especially if it's coming from China, where dogs and cats were killed for their fur. We did an investigation on that in the 1990s, and Congress banned dog and cat fur in 2000. But without a label on the garment, it may be easier for those garments to slip into the country undetected. And with an accurate and consistent label on the garment itself, consumers will have more confidence that they know what they're buying.

Mr. Moran of Virginia. Well, that's only partially what I was getting at. I appreciate the answer. I know we have mink farms here and we have other fur products that are grown locally, but I'm not aware that any of the fur that is being used for this purpose is actually being supplied by any American suppliers.

I have a couple other questions with regard to section 4, but I don't need to take the subcommittee's time now. I know that the chair and Mr. Whitfield would like to ask questions, too. Thank you very much, Mr. Chairman.

Mr. Barrow. I thank the gentleman. He will have another opportunity to raise questions with the witnesses before the end of the hearing.

The chair is now pleased to recognize the gentleman from Kentucky, the ranking member, for the purpose of questioning the witnesses for up to 5 minutes. Mr. Whitfield.

Mr. Whitfield. Thank you all for your testimony.

My understanding, it sounds like from your testimony, is that everyone supports this legislation in concept, right, Mr. Kohm? Right, Mr. Markarian? Right, Mr. Kaplan?

Mr. Kohm. Correct.

Mr. Whitfield. And the only area of potential for Mr. Kaplan relates to the preemption issue, correct?

Mr. Kaplan. Yes, section 4.

Mr. Whitfield. Okay. Now, Mr. Moran and Ms. Bono Mack are the primary authors of this legislation. And so from my

perspective, I think it would be good to have Federal preemption myself, because when you're involved in interstate commerce, it is very difficult to try to meet the different standards from different States. But that's something that we can all explore and go from there on that.

It is sort of disturbing to me -- I was looking at some of this material that some of the major companies in the U.S., retailers, are selling things like domestic dog fur as faux fur and wolf as faux fur and raccoon dog as faux fur, and so forth. And of course, we do have a Federal law now that prohibits the use of domestic dogs and cats for fur purposes, it's my understanding. But to help me better understand this, the Fur Products Labeling Act, is it the responsibility of the retailer to put this label in, or is it the manufacturer? And if the fur is coming from China, how do you verify what that fur really is? Could someone help me understand that better?

Mr. Kohm. Well, it is the retailers' responsibility to have an accurate label on their fur products.

Mr. Whitfield. Okay. So under the Fur Products Labeling Act, it is the retailer's responsibility. Okay.

So when the manufacturer purchases this fur from China, then what kind of verification do they receive from China as to precisely what it is?

Mr. Markarian. Well, essentially, if it's the 13 percent that do not require labeling under the current law, they're

trusting whatever the manufacturer tells them, or they're making their own guesses about what the product might be.

We think it would better protect retailers if there is a labeling requirement, because then they would have more information on the garment itself about what type of fur was used in that jacket.

Mr. Whitfield. But if it's the other 87 percent, Mr. Markarian, how do you verify that the fur is what it's supposed to be?

Mr. Markarian. My understanding is the retailers are operating in good faith that the label that's on the garment is accurate. And if they have reason to believe that it's inaccurate, if they get a complaint from a customer they suspect that something that says it is faux fur is really animal fur, then they may look into it further and make corrections. Many of the retailers did make corrections in their stores when we brought these issues to their attention, and they wanted to make sure that they were getting it right.

Mr. Whitfield. But the manufacturers would be importing these furs into the country; is that right, Mr. Kaplan?

Mr. Kaplan. Yes. And I have to make clear, I speak for the 1,100 retailers and manufacturers and designers who primarily are a bit of a different universe. You will find, if you go into our retailer stores, that virtually all the product is labeled. Virtually all of the product is of a value, although some is not.

But they have incurred this practice for over 60 years; they're used to the practice, it's not burdensome to them.

Mr. Whitfield. And I just want to make sure that you support this legislation, except this preemption is a problem.

Mr. Kaplan. With the exception of section 4, correct.

Mr. Whitfield. And just another question out of curiosity, because I don't know a lot about this. But is there a difference between an Asiatic raccoon and a raccoon dog, or are they one and the same?

Mr. Markarian. It's different terms for the same species. This is a species of animal that's native to Asia. It's a member of the canine family. The Fur Products Name Guide lists the species as Asiatic raccoon. We believe that that name may be out of date. There is more scientific literature that uses the term "raccoon dog," and we hope that that that is something the agency will take a look at.

Mr. Whitfield. That is why this legislation asks the agency to revisit this whole issue.

Mr. Kohm. That's correct, Congressman. And this is an issue that the agency would revisit anyway in its 2011 rule review.

Mr. Whitfield. Thank you, Mr. Chairman.

Mr. Barrow. I thank the gentleman for yielding.

As an acting member of this subcommittee, under a unanimous consent agreement, I am pleased to recognize Mr. Moran for 5 minutes for questioning.

Mr. Moran of Virginia. Again, thank you so much, Mr. Chairman.

With regard to section 4 that is under contention, it was our intent simply to restate what we understood to be existing law. If the committee chooses, they may want to consider simply leaving it silent and not addressing that because we're not trying to change State law, we are simply trying to pass this legislation.

But with regard to other State laws, I don't know how they differ. I don't know why the problem -- personally, it's probably ignorance on my part -- but is it that New York and New Jersey and Massachusetts, Wisconsin, and Delaware have more restrictive labeling requirements?

And if that's the case, I would like to ask the gentleman from the Council, do you comply with that? Is it a problem? I would think if you have to comply in New York, then that's the biggest market, so you would have to comply everywhere consistently.

Mr. Kaplan. Within the six States that have passed fur-labeling laws in the past 2 years, the focus of those laws, the sole focus has been the removal of the small-value exemption. And once again, as an industry trade association, we were in support of and worked with the legislators, in fact, on the language of those bills.

New York is the exception. They also had the additional caveat of the real-fur label. And as I indicated in my testimony,

this had led to some degree of confusion. We've gone to the Attorney General's Office to ask them about compliance. It's an issue that they can't even respond on. And the net effect has been confusion to consumers looking at a product they know to be real fur and not understanding why suddenly this additional label appeared; and it's burdensome to the retailers simply because they don't know really what the label is supposed to look like for compliance purposes. And the Office of the Attorney General has not been able to tell us.

Mr. Moran of Virginia. Sounds like a New York problem. Maybe Mr. Weiner could clarify that.

But would the FTC be able to clarify that, perhaps?

Mr. Kohm. Well, I'm not able to clarify what the rules are in New York --

Mr. Moran of Virginia. No, I understand; but in terms of the implementation of this.

Mr. Kohm. Well, with regard to section 4, you are correct, Congressman, that the Fur Labeling Act and the fur rules are silent as to preemption. And what that means as a legal matter is that States can pass laws as long as they don't conflict with the Federal law. So they can pass additional protections. If the provision were stricken, that would be consistent with the rest of the Fur Labeling Act. As it is, it's consistent as well.

Mr. Moran of Virginia. Okay. So we're not necessarily imposing anything additional -- any additional requirement. It's

simply restating what we understand to be the law.

Could you suggest what the Federal Trade Commission has done to implement the Fur Products Labeling Act, what actions you've taken to identify, correct, or prevent false advertising? I have a suspicion that FTC, over the last few years, has been less than aggressive, perhaps, particularly with regard to the situation we're talking about with the faux fur being mislabeled.

Mr. Kohm. Well, Congressman, the FTC, as you know, is a small agency with a very large mandate, and we have to deploy our resources to get the biggest bang for the buck. In this area we've been able to work with retailers, and we've done so publicly with a number of retailers -- Macy's, Neiman Marcus, Saks, and a number of others -- and found that they had relatively small problems; in other words, there were small numbers of coats. They were very willing to work with us and improve their supply chain so that they weren't having problems. And we've issued public closing letters to make sure that the industry knows what the problem is. And we have been able to address those concerns in a less resource-intensive way in that manner.

Mr. Moran of Virginia. Well, that was very articulately put. I think you're suggesting it's largely a matter of prioritization of limited resources, but you've done what you could with the major retailers.

Mr. Kohm. Everything is priority in resources, Congressman.

Mr. Moran of Virginia. I understand. But just to sum up,

obviously Mr. Markarian is aggressively in support of this because it is consistent with an issue that the Humane Society has identified and been working on for some years. The Federal Trade Commission does support it, and the Fur Information Council does not have a problem with it is what I gather.

Mr. Kaplan. With the exception of section 4.

Mr. Moran of Virginia. I understand. Which is a restatement of current law.

Well, Mr. Chairman, thank you very much. Thank you for your indulgence, thanks for having the hearing, and thank you for your leadership.

Mr. Barrow. I thank the gentleman.

This concludes the time allowed for questioning the witnesses by members present.

The chair will note that Mr. Kaplan asked to include a letter in the record of these proceedings, and without objection, it is so ordered.

[The information follows:]

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

Mr. Barrow. The chair also asks unanimous consent to have a letter from Cash4Gold to be inserted into the record.

Without objection, it is so ordered.

[The information follows:]

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

Mr. Barrow. I would like to thank all the witnesses for their testimony and for being here with us today.

There being no further business for the subcommittee, the subcommittee stands adjourned.

[Whereupon, at 2:47 p.m., the subcommittee was adjourned.]