

**Paul C. Broun
Member of Congress**

**Testimony on “H.R. 4171, the Freedom from
Over-Criminalization and Unjust Seizures Act of 2012”
May 8, 2012**

I would like to thank Chairman Fleming and Ranking Member Sablan for allowing this hearing today on H.R. 4171, the Freedom from Over-Criminalization and Unjust Seizures (or FOCUS) Act of 2012. I would also like to welcome Senator Rand Paul, my friend and author of the Senate companion bill, S. 2062, to testify with me today on the need for this critical legislation.

When the Lacey Act was signed into law in 1900, it was primarily designed as a measure to preserve wild game and to make poaching a federal crime. As originally enacted, it imposed a maximum penalty of \$200 for a violation, and did not contain any provisions for arrest or imprisonment as it does today.

Over the years, and most recently through changes in 1981 and 2008, the Lacey Act has become the poster child for how the federal government abuses its power and has developed a system of sweeping criminalization. The Lacey Act is no longer about conservation. American citizens now face prosecution based upon foreign laws and regulations that are concerned only with labor-management relations, with minimum wage rules, or with tax laws, and that can be ambiguous in nature. U.S. importers have been turned into policemen, who are responsible for knowing a myriad of foreign laws that are simply impossible to keep track of. Even worse, importers face the threat of criminal prosecution regardless of whether they intended to violate a foreign law and regardless of the reasonableness of their actions.

As a practical matter, the Lacey Act delegates lawmaking authority to foreign governments and foreign government officials who are neither legally accountable in U.S. courts nor politically accountable to the U.S. electorate. This delegation of Congressional power to foreign governments and foreign officials raises serious questions under Article I of the U.S. Constitution. It also makes little sense as a matter of federal criminal justice policy. Furthermore, it allows U.S. officials to apply foreign laws in cases where the accused might not even be aware of the law they allegedly violated.

One of the most glaring abuses of the Lacey Act took place in the case brought against David McNab and Abner Schoenwetter, businessmen who were sentenced to 97 months in prison for supposedly violating Honduran fishing regulations. What crimes did they commit deserving of such a harsh sentence? They imported lobsters that had been transported in plastic bags instead of cardboard boxes, as required by Honduran law. Additionally, some of the lobster’s tails had fallen short of the minimum length spelled out in Honduran law. Even more disturbing, the government of Honduras told U.S. authorities that these regulations were not even valid in Honduras. These men were found guilty based on a Honduran law that technically wasn’t even a valid law. Yet, the Justice Department still went forward with the case, and the Eleventh Circuit Federal Court of Appeals upheld the convictions.

Most recently and infamously, this past August, armed federal agents raided the Gibson Guitar Corporation because of the type of wood that the company used to manufacture its guitars. The government seized more than a million dollars in property, shut the factory down, and has yet to even file formal charges or drop the case. Gibson Guitar has been a responsible corporate citizen throughout its existence and supports conservation. The company deserves better treatment from the federal government than it has received to date.

Yet, Gibson's case points to a larger issue faced by virtually all American importers. It is often impossible for importers to know that certain products may violate the Lacey Act and may therefore subject them to prosecution simply because of the composition of materials in those imports. Even worse, foreign producers are often not even held accountable for violating their own country's laws. It is troubling that our government holds U.S. importers responsible for foreign laws – but the countries enacting these laws could care less about enforcing them.

I do not believe that Members of Congress intended to delegate congressional power to foreign governments or to over-criminalize innocent importers for minor violations of foreign laws when they passed this legislation. Unfortunately, that is where we stand today with the Lacey Act.

The FOCUS Act removes every mention of foreign law from the Lacey Act. It does so to protect the constitutional rights of our citizens. The FOCUS Act also strikes the provision allowing a federal prison sentence of up to 5 years, and reduces the maximum fine from \$500,000 to \$200,000. In addition, violations with a market value of less than \$350 would be subject to a maximum penalty of \$10,000.

I believe that passage of the FOCUS Act would go a long way toward correcting many of the abuses that have occurred. Our bill is a common-sense step to protect law-abiding businesses and American citizens from foreign laws and over-criminalization. Again, thank you for allowing me to testify today and I look forward to your questions.