

**Despite Pleas by 100,000s of America's Brightest Independent Inventors and Small Businesses Across the Country, Congress Insists on Passing Legislation to Benefit the Large Multinationals and Wall Street Which Will Hurt American Jobs and Prosperity**

**By**

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The 'so-called' America Invents Act of 2011, (S.23),<sup>i</sup> which has been promoted to benefit a few multinational and Wall Street firms,<sup>ii</sup> is due to come up for a vote in the US Senate on Monday, February, 28.

This bill is opposed by America's small businesses, start-up entrepreneurs, independent inventors, technical professionals,...and even our Nation's recently-retired, top patent judge.<sup>iii</sup> It is a waste of this country's precious time and energy, and if enacted into law, it will hurt our country.

For the past 6 years,<sup>iv</sup> despite the fact that *small businesses create virtually all of America's jobs* and major corporations create virtually none,

"Two recent studies by the Kauffman Foundation and economists at the U.S. Census Bureau tell us that '*startups aren't everything when it comes to job growth. They're the only thing.*' Startups are responsible for all net job creation since 1977 and the U.S. patent system is key to startup formation."<sup>v</sup>

*your Congressmen and Senators have all but ignored small independent inventors in Congressional hearings on the issue of patent reform.*<sup>vi</sup> To date, despite numerous requests, while patents issued to US 'small entities' have steadily declined,<sup>vii</sup> there have been *no hearings whatsoever* before either House Committee on Small Business or the Senate Small Business and Entrepreneurship Committee on proposed 'so-called' patent reform legislation.

So much for promoting America's innovation, small business, and prosperity!

Can you imagine where our Country would be today without the great *independent* American inventors: Philo Farnsworth (television); Edwin Howard Armstrong (FM radio); Alexander Graham Bell (telephone); Thomas Edison (light bulb); Wright (sustained powered controlled flight); Chester Carlson (electro-photography, better

known as paper copying); Nikola Tesla (vacuum tube amplifier). We'd still be driving horses and buggies and using kerosene lamps!

Yet Congress wouldn't even think of calling these inventors to testify. They only call witnesses from GE, Intel, Goldman Sachs and Microsoft – *the ones who have actually destroyed America's jobs* in the past 15 years in America.

This 'so-called' Patent Reform (S. 23) legislation has *only* two purposes: first, to make it more difficult for small, independent inventors and businesses to receive and enforce patents for their inventions;<sup>viii ix</sup> and, second, to make it easier for large multinational corporations to obtain patents worldwide so they can ship even more jobs overseas.<sup>x</sup>

I think most Americans believe the big multinational corporations and Wall Street have done enough damage, and our economy is in enough trouble, thank you very much. Time and again, Congress has worked hand-in-glove with big multinational corporations and Wall Street in destroying our hard-working 'middle-class.' Have we learned nothing in the past 30 years: with NAFTA sucking jobs out of America and having our pockets picked by the WTO;<sup>xi</sup> with the deregulation and collapse of the savings and loan industry in the 80s;<sup>xii</sup> passage of 'inter-state banking' in the 90s which has allowed a mere handful of 'mega-banks' to drain \$ trillions deposits from local communities' economies;<sup>xiii</sup> deregulation that led to the collapse of ENRON;<sup>xiv</sup> and finally the total meltdown of the world economy because of our government's complicity<sup>xv</sup> in the fraud of a handful of Wall Street firms.

Our legislators have precipitated, and participated in, *every single one* of these financial disasters because they cater to an elite group of 'special interests.'

Please let your readers know where *the next wave of job losses* will be coming directly from,...your own Congressmen and Senators!

Average American citizens need to finally speak up and tell their Senators and Congressmen NOT TO PASS 'so-called' Patent Reform... instead pass legislation which will actually help, not hurt America.

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<sup>i</sup> S.23 "America Invents Act of 2011;" <http://www.ipo.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=28748>;

<sup>ii</sup> Letter from America's Small Businesses, Start-up Entrepreneurs, Independent Inventors, and Technical Professionals to Senate Majority Leader, Harry Reid, February 23, 2011; <http://www.patentbaristas.com/wp/wp-content/uploads/2011/02/Small-Biz-Inventors-Emp1.pdf>;

IEEE-USA Letter to Patrick Leahy, 15 February 2011; <http://www.ieeeusa.org/policy/policy/2011/021511a.pdf>;

National Small Business Association (NSBA) Letter to Senator Harry Reid, February 15, 2011; [http://www.nsba.biz/docs/patent\\_reform.pdf](http://www.nsba.biz/docs/patent_reform.pdf);

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Letter to Patrick Leahy and Charles Grassley, 15 February 2011 from Retired Chief CAFC Judge, Paul Michele and President of IFP&TE AFL-CIO; <http://www.ifpte.org/downloads/news/manager/41c.pdf>;

Patent Deform Act of 2011: Approved by Senate Committee, by Dale B. Halling, State of Innovation, Patents and Innovation Economics; <http://hallingblog.com/2011/02/08/patent-deform-act-of-2011-approved-by-senate-committee/>;

"The Patent Act Is A Cheat On Americans," by Phyllis Schlafly, Eagle Forum; <http://www.eagleforum.org/column/2007/oct07/07-10-31.html>;

Patent Reform: The Senate Makes Its Move, by Manus Cooney and Marla Grossman, American Continental Group, March 7, 2011; <http://ipwatchdog.com/2011/03/07/patent-reform-the-senate-makes-its-move/id=15688/>;

"The Rush to a First-to-File Patent System in the United States: Is a Globally Standardized Patent Reward System Really Beneficial to Patent Quality and Administrative Efficiency?" 7 Minn. J. L. Sci. & Tech. 757-775 (2006), by Brad Pedersen; <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=7+Minn.+J.L.+Sci.+%26+Tech.+757&srctype=smi&srcid=3B15&key=2b867160a53444a997b8704c51378664>;

"The debate over patent reform dates back to a 2004 National Academy of Science report that made several recommendations for modernizing the patent system and the PTO. Traditionally, changes to the patent code were relatively modest and were driven by established and esteemed patent-focused associations like IPO and AIPLA. But, in 2005, a powerful subsection of larger companies from the information technology industry ("IT") saw an opportunity to advance their interests and convinced Congress to include measures in patent reform legislation that would have rewritten the laws around how patents are enforced." Patent Reform: The Senate Makes Its Move, by Manus Cooney and Marla Grossman, American Continental Group, March 7, 2011; <http://ipwatchdog.com/2011/03/07/patent-reform-the-senate-makes-its-move/id=15688/>;

"The Patent Reform Act of 2007: Responding to Legitimate Needs or Special Interests? The 'Patent Fairness' Issue An Analysis," by Pat Choate, Ph.D. Manufacturing Policy Project A PUBLICATION OF THE U.S. BUSINESS AND INDUSTRY COUNCIL EDUCATIONAL FOUNDATION, WASHINGTON, DC 20006; <http://www.patentbaristas.com/wp/wp-content/uploads/2007/10/cpf-patent-reform-act-analysis-10-30-2007.pdf>;

Patents, Innovation and Jobs, A Congressional Briefing: "Harmonizing" The U.S. Patent System with Europe and Japan: The Effect on the Small Inventor, by Pat Choate, The U.S. Business and Industry Council, 2011; <http://docs.piausa.org/Choate/>;

"Patent Reform Act of 2007" is Bad for America's Citizens, Small Businesses and Economic Prosperity," March 2008, By Neil Thomas, Silver Spring, MD 20902, InternetPatents@gmail.com; <http://docs.piausa.org/>;

These large multinationals and banking interests have set up 'front organizations' with very nice-sounding names to try to disguise who is in fact pushing for this legislation and the real reasons behind it. They include:

Intellectual Property Owners Association; [http://www.ipo.org/AM/Template.cfm?Section=Corporate\\_and\\_Law\\_Members&Template=/CustomSource/MembershipListing/index.cfm&Type=CORP](http://www.ipo.org/AM/Template.cfm?Section=Corporate_and_Law_Members&Template=/CustomSource/MembershipListing/index.cfm&Type=CORP);

Coalition for Patent Fairness Membership; <http://www.patentfairness.org/learn/who/supporters/>;

Coalition for 21st Century Patent Reform; <http://www.patentsmatter.com/about/coalition.php>;

<sup>iii</sup> Letter from America's Small Businesses, Start-up Entrepreneurs, Independent Inventors, and Technical Professionals to Senate Majority Leader, Harry Reid, February 23, 2011; <http://www.patentbaristas.com/wp/wp-content/uploads/2011/02/Small-Biz-Inventors-Emp1.pdf>; IEEE-USA Letter to Patrick Leahy, 15 February 2011; <http://www.ieeeusa.org/policy/policy/2011/021511a.pdf>; National Small Business Association (NSBA) Letter to Senator Harry Reid, February 15, 2011; [http://www.nsba.biz/docs/patent\\_reform.pdf](http://www.nsba.biz/docs/patent_reform.pdf); Letter to Patrick Leahy and Charles Grassley, 15 February 2011 from Retired Chief CAFC Judge, Paul Michele and President of IFP&TE AFL-CIO; <http://www.ifpte.org/downloads/news/manager/41c.pdf>; Patent Deform Act of 2011: Approved by Senate Committee, by Dale B. Halling, State of Innovation, Patents and Innovation Economics; <http://hallingblog.com/2011/02/08/patent-deform-act-of-2011-approved-by-senate-committee/>; Letter from 31 Venture Capital Companies to Senators Leahy and Specter Nov 6, 2007; [http://www.innovationalliance.net/files/Venture\\_Capital\\_Patent\\_Reform\\_to\\_Senators\\_Leahy\\_and\\_Specter\\_Nov\\_07\[1\].pdf](http://www.innovationalliance.net/files/Venture_Capital_Patent_Reform_to_Senators_Leahy_and_Specter_Nov_07[1].pdf); Patents, Innovation and Jobs, A Congressional Briefing: "Harmonizing" The U.S. Patent System with Europe and Japan: The Effect on the Small Inventor, by Pat Choate, The U.S. Business and Industry Council, 2011;

<sup>iv</sup> Despite enormous efforts expended by the biggest IT firms and Wall Street only one bill in seven attempts has gotten through the House over the past 5 years. The previous Congressional attempts to reform the Patent Act and the fate of each bill are:

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111th Congress: S. 515 (Patent Reform Act of 2009: Dead);  
<http://www.govtrack.us/congress/bill.xpd?bill=s111-515>  
111th Congress: S. 610 (Patent Reform Act of 2009: Dead);  
<http://www.govtrack.us/congress/bill.xpd?bill=s111-610&tab=summary>  
111th Congress: H.R. 1260 (Patent Reform Act of 2009: Dead);  
<http://www.govtrack.us/congress/bill.xpd?bill=h111-1260>  
110th Congress: S. 1145 (Patent Reform Act of 2007: Dead);  
<http://www.govtrack.us/congress/bill.xpd?bill=s110-1145>  
110th Congress: S. 3600 (Patent Reform Act of 2008: Dead);  
<http://www.govtrack.us/congress/bill.xpd?bill=s110-3600>  
110th Congress: H.R. 1908 (Patent Reform Act of 2007: Passed House);  
<http://www.govtrack.us/congress/bill.xpd?bill=h110-1908>  
109th Congress: S. 3818 (Patent Reform Act of 2006: Dead);  
<http://www.govtrack.us/congress/bill.xpd?bill=s109-3818>

<sup>v</sup> IEEE-USA Letter to Patrick Leahy, 15 February 2011; <http://www.ieeeusa.org/policy/policy/2011/021511a.pdf>;  
citing The Importance of Startups in Job Creation and Job Destruction, by Tim Kane;  
[http://www.kauffman.org/uploadedFiles/firm\\_formation\\_importance\\_of\\_startups.pdf](http://www.kauffman.org/uploadedFiles/firm_formation_importance_of_startups.pdf); Who Creates Jobs? Small vs.  
Large vs. Young, by John C. Haltiwanger, Ron S. Jarmin & Javier Miranda; (<http://www.nber.org/papers/w16300>;

Small Businesses Responsible for Nearly All New Jobs" Inc.com, by Liz Webber August 16, 2007,  
<http://www.inc.com/news/articles/200708/data.html?partner=rss-alert>;  
U.S. Small Business Administration, Office of Advocacy;  
[http://www.sba.gov/sites/default/files/files/dyn\\_us\\_tot.pdf](http://www.sba.gov/sites/default/files/files/dyn_us_tot.pdf);

<sup>vi</sup> Patent Reform; Hearings on Patent Reform (109th, 110th, 111th Congresses) Witness Lists; IPOA;  
<http://www.ipo.org/AM/Template.cfm?Section=Home&template=/CM/ContentDisplay.cfm&ContentID=21553>; For  
sample of very mixed support and opposition to Patent Reform by Senate Judiciary Committee witnesses, see:  
Patent Reform Act of 2009 (S. 515) Senate Judiciary Committee Witness Testimony, Finnegan, Henderson,  
Farabow, Garrett & Dunner, LLP; <http://www.finnegan.com/2009PatentLawReform/>;

"The patent bill on which the full Senate will soon vote had a grand total of two hours of hearings in the 110th  
Congress and another two hours in the 111th Congress. Opponents of the legislation were neither invited nor  
allowed to testify. Neither were inventors or representatives of inventors, independent research institutes,  
university technology officials nor small entity businesses. In the opening days of the 112th Congress, even these  
token hearings were not held. The mark-up of the patent bill in the Senate consumed 58 minutes, and included  
time devoted to a review of a list of candidates for federal judgeships." E-mail Feb 24, 2011, Dan Leckrone , TPL  
Group, San Jose, CA; [www.tplgroup.net](http://www.tplgroup.net);

House Subcommittee on Intellectual Property, Competition and the Internet; Hearing on: "Crossing the Finish Line  
on Patent Reform - What Can and Should be Done;" Friday 2/11/2011; Witness List: David Simon, Chief Patent  
Counsel, Intel; Carl Horton, Chief Intellectual Property Counsel, General Electric; The Honorable Paul Michel,  
Former Chief Judge, U.S. Court of Appeals for Federal Circuit;  
[http://fnsq.net/transcript\\_fin.htm?id=20110211t2385&nquery=&query=&from=](http://fnsq.net/transcript_fin.htm?id=20110211t2385&nquery=&query=&from=); Note also that all three  
witnesses are affiliated with IPOA which is run by the large multinationals;  
[http://www.ipo.org/AM/Template.cfm?Section=Corporate\\_and\\_Law\\_Members&Template=/CustomSource/MembershipListing/index.cfm&Type=CORP](http://www.ipo.org/AM/Template.cfm?Section=Corporate_and_Law_Members&Template=/CustomSource/MembershipListing/index.cfm&Type=CORP)

Note: Although there has testimony by major universities, they do not necessarily represent the interests of  
independent inventors, sense universities typically have large budgets and staffs, and are often closely associated  
with and receive funding from major corporations for research, etc. Also, it is felt that patent legal practitioners,  
i.e. lawyers, do not necessarily represent independent inventors, sense they earn their livings from a costly patent  
application and enforcement process.

<sup>vii</sup> US patents issued to foreign inventors has surpassed US patents issued to US inventors; while patents issued to  
US 'small entities' have steadily declined by over 25% between 2001 and 2009, from 18.2% to 13.6%; <sup>viii</sup> and  
patents issued to 'individual' U.S. inventors have declined by over 50%, from 14.8% pre-1996 to an average  
7.11% from 2000-2009; while during the same periods patents issued to 'foreign corporations' have increased by  
50%. Source: USPTO All Technologies (Utility Patents) Report; PART A2- Table A2-2b, Breakout by Ownership  
Category Percent of Patents Granted as Distributed by Year of Patent Application. Granted: 01/01/1963 -  
12/31/2009; [http://www.uspto.gov/web/offices/ac/ido/oeip/taf/all\\_tech.htm#PartA2\\_2b](http://www.uspto.gov/web/offices/ac/ido/oeip/taf/all_tech.htm#PartA2_2b);

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viii "...expensive and lengthy interference proceedings that are often ineffective. Some have estimated that the average cost of an interference proceeding is \$600,000, which can present a substantial barrier to smaller players..;" H.R. 1908 — Patent Reform Act of 2007 (Rep. Berman, D-CA) PRELIMINARY ASSESSMENT, Republican Study Committee 9/4/07; [http://rsc.jordan.house.gov/UploadedFiles/lb\\_090707\\_patentreform.pdf](http://rsc.jordan.house.gov/UploadedFiles/lb_090707_patentreform.pdf);

For a discussion of the problems of 'post-grant review' and 'reexaminations see; THE FAILURE OF S.515 DRAFT BILL TO ADDRESS THE PGR PROBLEM, 2 March 2010, by Daniel E. Leckrone, The TPL Group; [http://www.tplgroup.net:8080/pdf/The\\_Failure\\_of\\_S515\\_Draft\\_Bill\\_Memo.pdf](http://www.tplgroup.net:8080/pdf/The_Failure_of_S515_Draft_Bill_Memo.pdf); Lighting Up America's "Innovation Assassin" Problem, March 28, 2010, By Dan Leckrone; Tech News Arizona; <http://technewsarizona.com/Article.aspx?d=20100328&t=1835>;

The Use and Abuse of Patent Reexamination Sham Petitioning Before the USPTO, by Raymond A. Mercado, April 26, 2010, Columbia Science and Technology Law Review, Vol. 12, pp. 93-159, 2011; [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1554061](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1554061);

Statement of JUDGE PAUL R. MICHEL (Ret.), Before the Subcommittee on Intellectual Property, Competition and the Internet, February 11, 2011; <http://www.tplgroup.net:8080/pdf/Statement%20of%20Judge%20Paul%20R%20%20Michel%20Ret%20020911.pdf>;

June 5, 2007 letter from F. James Sensenbrenner to The Honorable John Conyers, Chairman, House Committee on the Judiciary; [http://www.aai-usa.org/patent\\_reform/letters\\_to\\_congress/james\\_sensenbrenner\\_06\\_05\\_2007.html](http://www.aai-usa.org/patent_reform/letters_to_congress/james_sensenbrenner_06_05_2007.html);

<sup>ix</sup> There have been a series of recent court cases which will make it more difficult and expensive for patent holder to enforce and protect their 'discoveries.' "In the next decade...expect to see at least another two-fold increase in patent litigation...as a result of the greater ease with which an accused infringer can now file suit for declaratory judgment,...MedImmune Inc. v. Genentech Inc., 127 S. Ct. 764 (2007) ...an accused infringer may be more willing to sue for declaratory judgment of invalidity in light of the Supreme Court's KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007), which may make it easier to prove obviousness, and in light of eBay (eBay Inc v. MercExchange, 126 S. Ct. 1837), which makes it much more difficult...to obtain an injunction." Expect Twofold Increase in Patent Litigation, By Todd R. Miller, EE Times, 09/24/2007; <http://www.my-esm.com/showArticle.jhtml?articleID=202100936>;

In addition there is In re Seagate, 497 F. 3d 1360 (Fed. Cir. 2007) which will make 'willful' infringement more difficult to prove.

<sup>x</sup> IBM Lays Off 1000's in US While Offshoring 1000's of Jobs, MARCH 2, 2010; [http://open.salon.com/blog/mick\\_arran/2010/03/02/ibm\\_lays\\_off\\_1000s\\_in\\_us\\_while\\_offshoring\\_1000s\\_of\\_jobs](http://open.salon.com/blog/mick_arran/2010/03/02/ibm_lays_off_1000s_in_us_while_offshoring_1000s_of_jobs); Intel, HP chiefs praise offshore outsourcing, 22 Oct 2003, by Yvonne Guzman, News Editor, SearchCIO.com; <http://searchcio.techtarget.com/news/933144/Intel-HP-chiefs-praise-offshore-outsourcing>; Why the next phase of offshoring may interest you, By Howard Baldwin, Microsoft Corp.; <http://www.microsoft.com/midsizebusiness/business-goals/business-operations/offshore-outsourcing-benefits.msp>;

Microsoft to outsource legal work to CPA Global, February 18th, 2010; <http://coreadvisor.com/globalwise/2010/02/18/microsoft-to-outsource-legal-work-to-cpa-global/>; Ballmer Says Tax Would Move Microsoft Jobs Offshore (Update3), By Ryan J. Donmoyer, June 3, 2009, Bloomberg News; <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aAKluP7yIwJY>; Union says Microsoft work going offshore, Thursday, July 29, 2004, By TODD BISHOP, SEATTLE POST-INTELLIGENCER REPORTER; [http://www.seattlepi.com/business/184032\\_msftindia29.html](http://www.seattlepi.com/business/184032_msftindia29.html); Welch: GE Ex-CEO Blasts Outsourcing Opponents, 05-11-04, by Greg Levine, Forbes.com; <http://www.forbes.com/2004/05/11/0511autofacescan01.html>;

Offshoring: Spreading The Gospel, Outsourcing's inner circle has deep roots in GE and McKinsey. Here's how they caught the fever, MARCH 6, 2006; [http://www.businessweek.com/magazine/content/06\\_10/b3974074.htm](http://www.businessweek.com/magazine/content/06_10/b3974074.htm); "I don't have to hire one more person in the U.S.," says [Micron CEO] Appleton. "I don't have to invest one more dollar here--and we'll be just fine." What Spending Slowdown? Forget those antiquated government statistics. U.S. corporate investment is booming — just take a look overseas, By Michael Mandel, APRIL 23, 2007, Business Week; [http://www.businessweek.com/magazine/content/07\\_17/b4031048.htm](http://www.businessweek.com/magazine/content/07_17/b4031048.htm);

"Exporting America." U.S. companies either sending American jobs overseas, or choosing to employ cheap overseas labor, instead of American workers, Lou Dobbs, [www.CNN.com](http://www.CNN.com); <http://www.cnn.com/CNN/Programs/lou.dobbs.tonight/popups/exporting.america/content.html>;

In the Jaws of the Dragon: America's Fate in the Coming Era of Chinese Hegemony, by Eamonn Fingleton, New York: Thomas Dunne Books, 2008; <http://www.unsustainable.org/index.asp?navID=5>;

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- <sup>xi</sup> Jobs, Wages and Economic Outcomes Under the NAFTA-WTO Model, PublicCitizen.org; <http://www.citizen.org/Page.aspx?pid=2124>; NAFTA's Effect on United States Employment; [http://en.wikipedia.org/wiki/NAFTA%27s\\_effect\\_on\\_United\\_States\\_employment](http://en.wikipedia.org/wiki/NAFTA%27s_effect_on_United_States_employment); NAFTA's Decade of Job Losses; <http://legacy.usw.org/usw/program/content/839.php>;
- <sup>xii</sup> "Savings and Loan Crisis," Wikipedia; [http://en.wikipedia.org/wiki/Savings\\_and\\_loan\\_crisis](http://en.wikipedia.org/wiki/Savings_and_loan_crisis); "The Keating Five," Wikipedia; [http://en.wikipedia.org/wiki/Keating\\_Five](http://en.wikipedia.org/wiki/Keating_Five);
- <sup>xiii</sup> The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; <http://www.csbs.org/bankinglaw101/Wiki%20Pages/Riegle-Neal%20Interstate%20Banking%20and%20Branching%20Efficiency%20Act%20of%201994.aspx>;
- <sup>xiv</sup> Blind Faith: How Deregulation and Enron's Influence Over Government Looted Billions from Americans, December 2001, Public Citizen; [http://www.citizen.org/documents/Blind\\_Faith.PDF](http://www.citizen.org/documents/Blind_Faith.PDF);
- <sup>xv</sup> "Alan Greenspan, Brooksley Born, and The Warning." FRONTLINE; <http://video.pbs.org/video/1302794657>; THE FINANCIAL CRISIS INQUIRY REPORT, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, January 2011, U.S. Government Printing Office; [http://c0182732.cdn1.cloudfiles.rackspacecloud.com/fcic\\_final\\_report\\_full.pdf](http://c0182732.cdn1.cloudfiles.rackspacecloud.com/fcic_final_report_full.pdf);