



The Financial Reform Act:

A Windfall for Overcriminalization, A Case for Reform

On the same day NACDL released its joint report with The Heritage Foundation entitled: *Without Intent: How Congress is Eroding the Criminal Intent Requirement in Federal Law* (available at www.nacdl.org/withoutintent), which details how far federal criminal lawmaking has drifted from its traditional roots and documents the many causes and dangers of reckless overcriminalization, Congress was on the path to exacerbating this problem even further.

Passage of an over 2,315 page bill, containing at least two dozen criminal offenses, absent Judiciary Committee oversight is simply unacceptable. Worse, most of the bill's offenses are dangerously vague, put innocent actors at risk of criminal prosecution because they lack criminal intent requirements, and delegate criminal lawmaking authority to unelected bureaucrats.

This behavior is the epitome of overcriminalization, a troubling, now routine practice. The bill in question, the Dodd-Frank Wall Street Reform & Consumer Protection Act (H.R. 4173), colloquially the Financial Reform Act, received extensive debate—none of which concerned the power of government to take away an individual's personal freedom.

- **No Judiciary Committee Oversight** – Over half the offenses documented in *Without Intent* were denied the expert review of a Judiciary Committee. This bill, and all of its new criminal offenses, was also denied that review.
- **Proliferation of the Criminal Code Continues** – *Without Intent* documents the enactment of 36 non-violent and non-drug offenses in just one Congress. At least two dozen new criminal offenses would be enacted by this bill alone.
- **Inadequate Protection of Innocent Actors** – *Without Intent* demonstrates how Congress consistently fails to protect innocent actors engaged in everyday conduct—nearly sixty percent of the offenses studied by the report lack an adequate *mens rea*, or criminal intent, requirement. If enacted, a large majority of offenses identified in the Financial Reform Act would similarly endanger innocent actors.
- **Regulatory Criminalization – Prison Sentences by Fiat** – The *Without Intent* study found that Congress delegated its criminal lawmaking authority in one of every five enacted offenses studied. Virtually every offense identified in this bill includes regulatory criminalization—the turning over of the power to define criminally punishable conduct to unelected bureaucrats without any Congressional oversight.
- **Poor Legislative Draftsmanship** – *Without Intent* substantiates and makes clear the case against Congress's criminal lawmaking process. Congress consistently fails to produce clear, specific and focused legislation. The Financial Reform Act fails in exactly the same ways.

The problems inherent in the Financial Reform Act are not new or surprising. Rather, the bill is simply the latest attack on the fundamental principles of our system of criminal justice—fair notice and due process. The release of our joint *Without Intent* report is a critical milestone in the fight to reverse this dangerous trend. We have set forth our case for meaningful, common sense reform, which is supported by a coalition that transcends political affiliation and ideology. Yet the question still remains: Can Congress control its urge to overcriminalize?

For more information, please visit:

www.nacdl.org/whitecollar and www.nacdl.org/withoutintent

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