The committee met, pursuant to call, at 10:08 a.m., in Room 2141, Rayburn Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Staff present: Shelley Husband, Majority Staff Director; Branden Ritchie, Deputy Majority Staff Director and Chief Counsel; Caroline Lynch, Majority Chief Counsel, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; Jason Herring, FBI Detailee, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; Kelsey Williams, Majority Clerk; Perry Apelbaum, Minority Staff Director; Danielle Brown, Minority Parliamentarian; Aaron Hiller, Minority Counsel; and Maggie Lopatin, Minority Clerk.
Chairman Goodlatte. Good morning. Pursuant to notice, the Judiciary Committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time. And pursuant to notice, I now call up H.R. 2048 for purposes of markup and move that the committee report the bill favorably to the House.

The clerk will report the bill.

Ms. Williams. H.R. 2048, to reform the authorities of the Federal government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.

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

[The bill follows:]
Chairman Goodlatte. And I will begin by recognizing
myself for an opening statement.

The U.S. Congress is often stereotyped by the American
people as playing political games rather than legislating,
but today once again this committee will defy that stereotype
and demonstrate that members can work across the aisle to
reach an agreement and legislative responsibly. And once
again, this committee will prove that American liberty and
American security are not mutually exclusive, that we can
enhance civil liberty protections while preserving strong,
effective national security programs without compromising
either one.

Today the House Judiciary Committee will consider a
bipartisan proposal that is the culmination of months of
collaboration between members from both sides of the aisle
from both sides of the Capitol, the intelligence community,
civil liberties groups, and private industry to reform
certain national security programs operated under the Foreign
Intelligence Surveillance Court, or FISA.

I want to thank the sponsor of the USA Freedom Act,
Crime Subcommittee Chairman Sensenbrenner, for his dedication
to this important issue. And I am pleased to join him,
Ranking Member Conyers, Congressman Nadler, and 19 other members of this committee as an original co-sponsor of this important legislation.

Under current law, the FISA business records provision, often referred to as Section 215 of the PATRIOT Act, allows the government to access business records in foreign intelligence, international terrorism, and clandestine intelligence investigations. The 2013 unauthorized disclosures by Edward Snowden revealed to the American people that the National Security Agency is collecting bulk telephony metadata under Section 215.

Since the revelation of this program, many members of Congress and their constituents have expressed concern about how the program is operated and whether it poses a threat to American civil liberties and privacy. Last Congress, the House Judiciary Committee conducted aggressive oversight of this program. The committee conducted three full committee hearings, including a classified hearing with the intelligence community and a hearing to examine recommendations from the President's Review Group on Intelligence and Communications Technologies and the Private and Civil Liberties Oversight Board.
This oversight culminated in passage by the committee and the House of the USA Freedom Act last spring. The legislation before the committee today builds up on that legislation and goes beyond it to add additional privacy protections and national security tools. At the heart of this legislation is the reform of Section 215 to prohibit bulk collection of any business records. Bulk collection is also prohibited under the FISA pen register trap and trace device authority, and national security letter authorities.

The USA Freedom Act strengthens the definition of "specific selection term," the mechanism used to prohibit bulk collection, to ensure that government can collect the information it needs to further a national security investigation while also prohibiting large-scale indiscriminate collection. In place of the current bulk telephone metadata program, the USA Freedom Act creates a narrower, targeted program that allows the intelligence community to collect non-content call detail records held by the telephone companies, but only with the prior approval of the FISA Court. The records provided to the government in response to queries will be limited to two hops, and the government's handling of any records it acquires would be
governed by minimization procedures approved by the FISA Court.

The act codifies important procedures for recipients of national security letters to challenge nondisclosure requests in response to a 2008 2nd Circuit decision, and makes conforming changes to Section 215 in response to that decision. The USA Freedom Act improves upon the provision from last year's version of the bill creating a panel of experts to advise the FISA Court on matters of privacy and civil liberties, communications technology, and other technical or legal matters.

The bill requires declassification of all significant opinions of the FISA Court, and provides procedures for certified questions of law to the FISA Court for review and the Supreme Court. The act expands the mandatory government report contained in last year's bill requiring greater detail relating to U.S. persons and provides even more robust transparency reporting by America's technology companies.

The USA Freedom Act also contains several important national security enhancements, including closing loopholes that make it difficult for the government to track foreign terrorists and spies as they enter or leave the country,
clarifying the application of FISA to foreign targets who facilitate the international proliferation of weapons of mass destruction, increasing the maximum penalties for material support of a foreign terrorist organization, and extending the sunsets of the expiring PATRIOT Act provisions to December 2019. The USA Freedom Act ensures that critical FISA authorities will remain in place to protect our national security while also protecting our civil liberties so that we can regain the trust of the American people.

I urge my colleagues to support me in strong support for this common sense, bipartisan, and balanced legislation. And is now my pleasure to recognize the gentleman from Michigan, the ranking member of the committee, Mr. Conyers, for his opening statement.

Mr. Conyers. I thank you, Chairman Goodlatte, for your willingness to work with Mr. Sensenbrenner, Mr. Nadler, and myself to reintroduce a stronger version of the USA Freedom Act. You know, it was exactly almost 1 year ago this committee met to consider an earlier version of the USA Freedom Act. The earlier version, like the one we later considered on the House floor, and the version before us this morning was far from perfect. But this committee recognized
a year ago that the perfect should not be the enemy of the
good. We voted unanimously to support last year's measure,
and I plead with my colleagues for the same unanimous show of
support today.

Why must we make such a strong showing? Well, to begin
with, we must act decisively to end dragnet surveillance in
the United States. The ban on bulk collection in this bill
turns on the idea of a specific selection term. The
government may no longer ask for all records merely because
some of them may be relevant. From now on, they must instead
use a term that specifically identifies a person, account
entity, address, or personal device as the basis for
production. This bill improves on last year's effort by
further requiring that the selection term also limit the
scope of production as narrowly as possible. It also
explicitly prohibits the use of very broad terms like "area
code 202" or "Michigan" to satisfy this requirement.

For years, the government has misread the plain text of
Section 215 of the PATRIOT Act and other statutes to justify
surveillance programs that far exceed any authority granted
by Congress. A vote for this bill rejects that reading of
the law. It is necessary and proper that we do so today. We
must also act swiftly to adopt the many other reforms included in this legislation. In the nearly 40 years since the creation of the Foreign Intelligence Surveillance Court, the government has advanced its legal theories ex parte, in camera, and in secret. This bill corrects that practice because in this country there is no such thing as secret law.

The USA Freedom Act requires the government to declassify and publish all novel and significant opinions of the Court. The bill also creates a panel of experts to advise the Court on the protection of privacy and civil liberties, communications technology, and other legal and technical matters. In significant cases, the Court must either appoint such an expert or explain in writing why it has declined to do so.

These experts will provide an important check on the government and finally give the Court an opportunity to hear an opposing argument. These changes, along with robust reporting requirements for the government and flexible reporting options for private companies, mean that the public will know far more about how these surveillance authorities are actually used. This legislation makes many other timely changes, and although we will not consider every reform I had
hoped to include, this version of the USA Freedom Act is an obvious improvement over last year's product and a vast improvement over current law.

Finally, I urge my colleagues to support this bill and oppose all amendments being offered because the House Judiciary Committee must lead the Congress in these matters. The House looks to this committee first for a reason. We are the proper forum for a complex discussion about privacy and civil liberties. We believe that it is possible to have an open, honest conversation about the tools our government uses to keep us safe.

We believe that this conversation includes a serious look at whether these tools accord with our national values. We believe that public debate on core questions of privacy and free association not only builds confidence in our government, but lends credibility and resilience to a national security infrastructure that is built to last.

There will be members of the House and Senate who oppose this bill because it does not include reform to surveillance law we can imagine, and there will be others opposed who will oppose it because it includes any changes to existing surveillance programs. But here today in this committee we
will again strike the balance that leadership entails.

The underlying provisions of the PATRIOT Act expire in a matter of days. Die-hards from either end of the political spectrum will want us to march to the brink, Mr. Chairman. There is a better way. This bill represents a reasonable consensus. It makes substantive reforms. It ends dragnet surveillance, and it does so without diminishing our overall ability to protect this country. It has earned the support of both privacy advocates and the international community as well. In short, it beats brinksmanship by a long shot.

I thank you, Chairman Goodlatte, for your willingness to work with Mr. Sensenbrenner, and Mr. Nadler, and myself to reintroduce a stronger version of the USA Freedom Act. And I urge my colleagues to give this bill the fullest possible support. And I thank you.

Chairman Goodlatte. The chair thanks the gentleman, and is pleased to recognize the chairman of the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, the gentleman from Wisconsin, Mr. Sensenbrenner, and the chief sponsor of the legislation, for his opening statement.

Mr. Sensenbrenner. Thank you very much, Mr. Chairman. The USA Freedom Act ends bulk collection, increases
transparency, and stops secret laws. Right now as we speak, the NSA is collecting data on every call made to and from every American. The NSA claims the authority to do this is under Section 215 of the PATRIOT Act. I was the chairman of this committee on September 11th and the author of the PATRIOT Act. I can say in no uncertain terms that Congress did not intend to allow the bulk collection of Americans' records. The government's overbroad collection is based on a blatant misreading of the law.

Last Congress, I introduced the USA Freedom Act to reestablish a proper balance between privacy and security. After months of negotiations, the House passed an amended version of this bill with bipartisan support. Unfortunately, the bill narrowly failed a procedural vote in the Senate, so we are back today, and we have a deadline.

As chairman, I demanded that each of the new provisions in the PATRIOT Act contains a sunset so that they would automatically expire if Congress did not reauthorize them. Most of the provisions of the act proved noncontroversial and were made permanent. Three provisions -- Section 215, roving wire taps, and lone wolf -- remain subject to sunsets and will expire on June 1st.
Knowing what we know now, a clean reauthorization of these programs is an express vote in favor of bulk collection. Let me repeat that. A straight reauthorization with no changes is an express vote in favor of bulk collection on Americans. It says to the American people your government needs all your records to keep you safe. Members who travel home to their districts who have to look their constituents in the eye and say I believe that the government should collect all of your phone records, I will not cast that vote, and I hope none of my colleagues here today will as well.

Not only is it an affront to our civil liberties, but it does not make us safe. For years, the NSA has collected our phone records, yet it cannot point to a single attack that bulk collection has stopped. The threats we face are real, but it is how we stand up for our rights in the face of adversity that matters. The USA Freedom Act acknowledges the risks we face, and gives the government the tools that we need to fix them in a framework that is cognitive of the limits of government power, limits our founders had the presence of mind to build into our Constitution.

And beyond ending bulk collection, with what conceit can
we claim self-government if we concede to the President the
ability to make secret laws? And I want to address some of
my colleagues on this side of the aisle on that issue. Many
colleagues that share my distrust of the Obama
Administration's constant overreach cannot carve out this
glaring exception. Make no mistake. If the rule that we
impose is that the government must follow the rule of law,
except in cases of national security, then all matters of
importance to the Administration will suddenly take on that
hue. No president should be allowed to run the country by
himself without Congress, without the public. It is not for
the executive branch in its sole discretion to determine the
public good.

I admit this bill is not perfect, but it is often said
the perfect cannot be the enemy of the good. The bill ends
bulk collection. It ends secret laws. It increases
transparency of our intelligence community, and it does all
this without compromising national security. Many of the
provisions in the bill authorize intelligence gathering, but
they do it explicitly with a narrow scope and legislation
publicly debated in Congress.

The United States has the world's most well-trained and
capable antiterrorism apparatus in the world, and with ISIL
and others who detest our way of life, we need this
detailed counterterrorism infrastructure. I am not
aive to the threats facing our Nation, but bulk collection
is an affront to civil liberties, and it does not make us
safer. The USA Freedom Act is a pro-privacy, pro-national
security, pro-business bill that deserves all of our support.
I want to thank Chairman Goodlatte, Ranking Member
Conyers, and others for all their hard work and the staff for
so many hours. It is imperative that this committee and
finally the Congress support the USA Freedom Act and enact it
into law. The cost of inaction is dire. Thank you.
Chairman Goodlatte. The chair thanks the gentleman and
recognizes the gentleman from New York, a senior member of
the committee and ranking member on the Subcommittee on
Courts, Intellectual Property, and the Internet, for his
opening statement.
Mr. Nadler. Thank you, Mr. Chairman. In 1761, a
patriot named James Otis resigned as advocate general in the
Vice Admiralty Court of Colonial Massachusetts rather than
defend the Crown in a lawsuit challenging the legality of
writs of assistance and general warrants. These generalized
search warrants were used by British soldiers to enter American homes and search American property at will. At the time, the intrusion was justified by national security, the need to find smugglers and rebels.

In a speech he gave that winter, Otis called this violation of privacy "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law that ever was found in the English law book." In the audience that day was a young man named John Adams. He was deeply impressed by Otis' argument, and would recall the speech as "the first scene of the first act of opposition to the arbitrary claims of Great Britain."

When the founders drafted the 4th Amendment to the Constitution, this was the problem they were trying to solve. There were to be no general warrants or writs of assistance in the United States.

The government may have good reasons to want to intrude on our privacy. We rely on law enforcement and on the intelligence community to keep us safe from threats that pose a real and present danger to the United States. But before the government may search our homes, seize our persons, or intercept our communications, it must first make a showing of
individualized suspicion. In most instances, it must make this showing to a court. The intrusion it requests must be as targeted and as brief as circumstances allow. The 4th Amendment and liberty demand no less.

The USA Freedom Act represents a return to these basic principles. Most importantly, the bill prohibits the intelligence community from engaging in bulk data collection within the United States. This practice, the dragnet collection without a warrant of telephone records and internet metadata, is the contemporary equivalent of the writs of assistance that James Otis opposed and that the 4th Amendment was designed to outlaw.

These bulk collections have never complied with the Constitution and must be brought to an end without delay. The legal theories that justified these programs in the first place were developed and approved in secret, and that practice must also come to an end. The government's interpretation that the adjective "relevant" in Section 215 of the PATRIOT Act means "everything" is obviously wrong, could only have been advanced in secret, and cannot withstand the public scrutiny to which it is now subjected.

This bill requires the government to promptly declassify
and release each novel or significant opinion of the Foreign Intelligence Surveillance Court so that we will not have a body of secret law in this country. In the future, if the government advances a similarly dubious legal claim, there will be an advocate at the FISA Court to oppose the claim, and if the FISA Court nonetheless approves the claim, the public will know about it almost immediately, and the responsibility will lie with us to correct just as quickly.

This legislation also makes critical changes with respect to national security letter nondisclosure orders. National security letters are almost always accompanied by a gag order preventing the recipient from even mentioning the existence of the national security letter. Since 2008 when the 2nd Circuit found this practice to be unconstitutional, the government has taken incremental steps to address the problem. The USA Freedom Act finishes that job. The act limits the circumstances in which gag orders are appropriate in the first place. It gives NSL recipients an immediate opportunity to challenge these orders in court, and requires the government to give notice that this judicial redress is available.

Before I close, I want to be clear. Not every reform I
would have hoped to enact is included in this bill. We must do more to protect U.S. personal information collected under Section 702 of FISA. We must act to reform other authorities, many of them law enforcement rather than intelligence community authorities, to prevent indiscriminate circumstances -- indiscriminate searches and other circumstances. I will continue to fight for these reforms, among others, and I know that I will not be alone on this committee in taking up that challenge in the days to come. But I am grateful for the opportunity to take this first large step to restore the right of the people to be secure in their persons, houses, papers, and effects.

I thank Chairman Goodlatte, Chairman Sensenbrenner, and Ranking Member Conyers for their continued leadership on this legislation, and I urge my colleagues to support this bill.

I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

Are there any amendments to H.R. 2048?

Mr. King. Mr. Chairman?

Chairman Goodlatte. For what purpose does the gentleman from Iowa seek recognition?

Mr. King. Mr. Chairman, I have an amendment at the
Chairman Goodlatte. The clerk will report the amendment.

Ms. Williams. Amendment to H.R. 2048, offered by Mr. King of Iowa. At the appropriate place in the bill insert the following new section.

Chairman Goodlatte. Without objection, the amendment will be considered as read.

[The amendment of Mr. King follows:]
Chairman Goodlatte. And the gentleman is recognized for 5 minutes on his amendment.

Mr. King. Thank you, Mr. Chairman. I am grateful that we have an experienced committee here that has been through some of this before. And I wanted to point out that I, along with a number of members of the committee and perhaps most of the members of the committee, have gone into the secure room and read through the materials that are there in a classified setting that are the result of Edward Snowden's, and I will describe it, crime against the United States. And I am concerned about the compromising of our security.

The public seems to look at a single component of this, and that is data collection, the metadata collection, and the method of that data collection. I agree with the premise of this bill. The Federal government does not need to be collecting metadata. And I suggested in a previous hearing that it would be far superior if we would just simply contract with the telecoms to retain that data and then query that data by the order of a FISA Court with a warrant from a FISA Court rather than having all that within the hands of a specially-built facility with many, many terabytes of data collected that can peek into about anything.
We trust our telecoms. I have not heard any objection about that. People have the records of our bills. They are in the records of the telecommunications companies that serve our houses, our cell phones, et cetera, and that data is there. I want to make sure that that data that is comfortably in the control, I will say, within the comfort of the people in control of the telecoms, is accessible under a FISA warrant. And they may have business model reasons by which these telecoms would keep that data. They do for billing reasons primarily. And at the end of that life, they will dump that data.

It may be today, and I believe it is today. But if it is not, I believe it may be tomorrow or next year, a need to hold that data longer than the telecoms actually do. I want to leave that judgment to our intelligence community and make it clear that we allow the intelligence community to negotiate with our telecoms to retain the data so that it is available under a FISA warrant.

And the language of this amendment, there are two components that I need to emphasize. One is that the language is "may not shall consistent with the protection of classified information, intelligence sources, and methods,"
and privacy, and civil liberties." That is the constitutional protection that is there for our privacy. The first part is in this amendment. The second component of it is that the head of an element of the intelligence community may, not shall, but may enter into a voluntary agreement with a person to compensate such person, which would be the telecom entity, for retaining call detail records for a period.

That is as simple as this is. It may be implied in the bill. There may not be language that prohibits it in current statute. But the implications of this debate and the concern about the personal privacy that is driving this, without a lot of discussion about what has happened to our national security as a result of Snowden.

And, Mr. Chairman, I will tell you that I believe that our intelligence collection ability and our intelligence system in this country has been severely damaged by Edward Snowden in ways well beyond the scope of our discussion here today. And it will take a generation or more to recover and reconstruct some of the things that we were able to do. I do not want to give up that opportunity to protect us. I do not want to see another disaster on America.
And then I would just point out there is another piece that seems to be misunderstood by some of the telecoms themselves that this is voluntary. And so, under (b) it says, "Rule of construction. Nothing in this section may be construed to require any non-federal entity to enter into any agreement." Not only is it "may." It specifically states that no telecom is required, but if they can reach an agreement under this amendment, then we will be able to compensate them for the storage of that data so that it is available in the event that there is justification for a FISA warrant.

That is the King amendment. I think it is a common sense one, a logical one that may be well the amendment that protects us from attacks on the American people. I do not want to see the time come that there is an attack on the American people, and we look back at this debate in this Judiciary Committee today and think we really should have put this language into the bill.

And I know that different entities will read different things into the bill. They will read different things into my amendment. But when you have ambiguities that are there, it leaves it open for the pendulum to swing completely in one
direction, or the pendulum to swing perhaps in the other
direction. And I want to eliminate the ambiguities and make
sure that our intelligence community has the opportunity to
have access under a FISA warrant to the data and the
information that may, and hopefully is never required, to
keep us safe.
So I urge its adoption, and I yield back the balance of
my time.
Chairman Goodlatte. The chair thanks the gentleman, and
recognizes himself. The legislation before us today was
carefully and painstakingly negotiated not just amongst
members of this committee, but with our colleagues on the
House Intelligence Committee and the intelligence community.
The gentleman from Iowa's amendment is well intentioned,
and it is a means to further national security protections
beyond the robust protections in this bill, and I thank him
for that. But data retention issues are controversial, and
inclusion of this amendment will most certainly prevent
consideration of this bill on the House floor and in the
Senate.
H.R. 2048 is landmark legislation to protect privacy,
protect national security, and restore America's trust in
their government, and we must not approve amendments that
will be a poison pill to the success of these reforms. And
I, therefore, must oppose the amendment. I would say to the
gentleman that I would be happy outside of this legislation
to look for ways to continue to advance making sure that
there is the necessary cooperation, to make sure that
intelligence gathering organizations are able to do their
proper job, but I cannot support the amendment. And I yield
back.

The question occurs on the amendment offered by the
gentleman from Iowa.

All those favor, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the noes have it, and the
amendment is not agreed to.

Mr. King. Mr. Chairman, I would ask for a recorded
vote.

Chairman Goodlatte. The gentleman has requested a
recorded vote, and the clerk will call the roll.

Ms. Williams. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Williams. Mr. Goodlatte votes no.
Mr. Sensenbrenner?
Mr. Sensenbrenner. No.
Ms. Williams. Mr. Sensenbrenner votes no.
Mr. Smith?
[No response.]
Ms. Williams. Mr. Chabot?
[No response.]
Ms. Williams. Mr. Issa?
[No response.]
Ms. Williams. Mr. Forbes?
[No response.]
Ms. Williams. Mr. King?
Mr. King. Aye.
Mr. Williams. Mr. King votes aye.
Mr. Franks?
Mr. Franks. No.
Ms. Williams. Mr. Franks votes no.
Mr. Gohmert?
Mr. Gohmert. Aye.
Ms. Williams. Mr. Gohmert votes aye.
Mr. Jordan?
Mr. Jordan. Yes.
Ms. Williams. Mr. Jordan votes yes.

Mr. Poe?

Mr. Poe. Yes.

Ms. Williams. Mr. Poe votes yes.

Mr. Chaffetz?

[No response.]

Ms. Williams. Mr. Marino?

Mr. Marino. No.

Ms. Williams. Mr. Marino votes no.

Mr. Gowdy?

[No response.]

Ms. Williams. Mr. Labrador?

Mr. Labrador. No.

Ms. Williams. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Williams. Mr. Collins?

Mr. Collins. No.

Ms. Williams. Mr. Collins votes no.

Mr. DeSantis?

[No response.]

Ms. Williams. Ms. Walters?
607  Ms. Walters.  No.
608  Ms. Williams.  Ms. Walters votes no.
609  Mr. Buck?
610  Mr. Buck.  No.
611  Ms. Williams.  Mr. Buck votes no.
612  Mr. Ratcliffe?
613  [No response.]
614  Ms. Williams.  Mr. Trott?
615  Mr. Trott.  No.
616  Ms. Williams.  Mr. Trott votes no.
617  Mr. Bishop?
618  Mr. Bishop.  No.
619  Ms. Williams.  Mr. Bishop votes no.
620  Mr. Conyers?
621  Mr. Conyers.  No.
622  Ms. Williams.  Mr. Conyers votes no.
623  Mr. Nadler?
624  Mr. Nadler.  No.
625  Ms. Williams.  Mr. Nadler votes no.
626  Ms. Lofgren?
627  Ms. Lofgren.  No.
628  Ms. Williams.  Ms. Lofgren votes no.
Ms. Jackson Lee?

[No response.]

Ms. Williams. Mr. Cohen?

Mr. Cohen. No.

Ms. Williams. Mr. Cohen votes no.

Mr. Johnson?

[No response.]

Ms. Williams. Mr. Pierluisi?

[No response.]

Ms. Williams. Ms. Chu?

[No response.]

Ms. Williams. Mr. Deutch?

Mr. Deutch. No.

Ms. Williams. Mr. Deutch votes no.

Mr. Gutierrez?

[No response.]

Ms. Williams. Ms. Bass?


Mr. Richmond?

[No response.]

Ms. Williams. Ms. DelBene?
Ms. DelBene. No.

Ms. Williams. Ms. DelBene votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Williams. Mr. Jeffries votes no.

Mr. Cicilline?

Mr. Cicilline. No.

Ms. Williams. Mr. Cicilline votes no.

Mr. Peters?

Mr. Peters. No.

Ms. Williams. Mr. Peters votes no.

Chairman Goodlatte. The gentleman from California?

Mr. Issa. No.

Ms. Williams. Mr. Issa votes no.

Chairman Goodlatte. The gentleman from Virginia?

Mr. Forbes. No.

Ms. Williams. Mr. Forbes votes no.

Chairman Goodlatte. The gentleman from South Carolina?

Mr. Gowdy. No.

Ms. Williams. Mr. Gowdy votes no.

Chairman Goodlatte. The gentleman from Texas?

Mr. Ratcliffe. No.
Ms. Williams. Mr. Ratcliffe votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

[No response.]

Chairman Goodlatte. The clerk will report.

Ms. Williams. Mr. Chairman, 4 members voted aye, 24 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Are there further amendments? For what purpose does the gentleman from Texas seek recognition?

Mr. Poe. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Williams. Amendment to H.R. 2048, offered by Mr. Poe of Texas, at the appropriate place in the bill --

Chairman Goodlatte. Without objection, the amendment will be considered as read.

[The amendment of Mr. Poe follows:]

[The amendment of Mr. Poe follows:]
Chairman Goodlatte. And the gentleman is recognized for 5 minutes on his amendment.

Mr. Poe. I thank the chairman, and I also want to thank Chairman Sensenbrenner, Ranking Member Conyers, and Ranking Member Nadler for their work on this bill. The bill is clearly an improvement over current law, the law having been abused by the Federal government in its effort to search records of American citizens. This amendment makes this current bill before us even better to make sure the 4th Amendment applies in all areas.

The USA Freedom Act will be the one, if not only, opportunity for this committee to mark surveillance reform until December of 2017. Constituents in America demand that this committee take advantage of the opportunity we have to make reforms to our out of control surveillance system. It would be unfortunate for us to look back a year down the line and think we should have done more with this opportunity.

We found out due to the revelations from Edward Snowden that the scope of surveillance being conducted by our government is way beyond what anybody without direct access to classified programs could have imagined. Section 215 was being used for bulk metadata collection, surveillance of
whole entire zip codes, and phone carriers, for example. It went way far outside the scope of what Congress intended, but also what the Constitution permitted. The American public was rightfully shocked and disturbed about the disclosures and actions of our own government. I am glad there are protections in this bill to limit this kind of bulk data collection, but I think we can go a little further, and that is why I am introducing this amendment.

We have also learned that there is a data collection program authorized under Section 702 of FISA that is being abused by our government. This program is collecting actual communications, not just metadata. That is conversations and emails. The intent of this program is to target foreign nationals who are located outside the U.S. and who are acting as agents of foreign powers. However, in the scope of this collection, actual communications of American citizens are often captured. Sometimes these Americans may have committed no crime at all. The communication may be with nefarious intent, or some of them may have simply been calling their cousins.

In any event, under current law, the government can search the database on a fishing expedition and get those
communications created under this program, including searching for information about a U.S. citizen. This can be done without a warrant. That seems to violate the 4th Amendment of the Constitution to me. If there is true suspicion that it is a criminal activity of a United States person, then law enforcement should do what they are supposed to do, get a warrant under the 4th Amendment just like it does in other instances in the United States.

As a former judge for 22 years, I have signed thousands of warrants by law enforcement, and the basis? Probable cause. And I am not persuaded by the argument that we should pick and choose where the 4th Amendment applies. In fact, James Clapper, the director of the DNI, specifically stated that Section 702 searches for U.S. person identifiers actually does occur. And he went on to say in a March 2014 letter to Senator Wyden that "Congress chose not to limit this collection when it was last authorized. Therefore, it will continue." And I would like unanimous consent to introduce James Clapper's letter into the record, Mr. Chairman.

Chairman Goodlatte. Without objection, so ordered.

[The information follows:]
Mr. Poe. The meaning is clear. Unless we specifically limit searches of this data on American citizens, our intelligence agencies will continue to use it for this purpose, and they will continue to do it without a warrant. The warrantless search of American citizens' communications must not occur. Just because an American citizen's communications ends up in a database should not mean the 4th Amendment should be diminished.

The amendment also includes a section that specifically prohibits any Federal agency from requesting, or mandating, or intimidating that a manufacturer put a backdoor into their products that permit backdoor surveillance. This amendment is identical to the Massie-Lofgren amendment in last year's DoD appropriations bill, which passed the House 293 to 123, but it was ultimately stripped out. 21 members of this committee actually voted for that amendment when it was on the floor. Clearly a vast majority of Congress supports closing the backdoor.

I do not think we should say that we have to wait for another time down the road. The 4th Amendment is too important at this time for our democracy just to wait. We need to close these loopholes, and I urge this amendment be
passed. And I also want to thank Representatives Lofgren, Jordan, DelBene, Labrador, and Jeffries for supporting it. And I yield back, Mr. Chairman.

Mr. Conyers. Mr. Chairman?

Chairman Goodlatte. The chair thanks the gentleman, and recognizes the gentleman from Michigan for 5 minutes.

Mr. Conyers. Thank you, Mr. Chairman. I oppose this amendment because it is not part of the delicate compromise that Chairman Goodlatte, Representatives Sensenbrenner, Nadler, and myself reached with the House Intelligence Committee and House leadership. After months of negotiation, we agreed on legislation that we believe can pass the House, pass the Senate, and become law.

And so, I stand firmly behind this compromise legislation because it accomplishes significant positive reforms. It ends bulk collection. It creates a panel of experts to guide the Foreign Intelligence Surveillance Court, and mandates extensive government reporting. Moreover, this legislation is a vast improvement over last year's effort. The court receives clear instructions about declassifying its opinions. Companies have more flexibility in their disclosures to the public. The definition of "specific
selection term" around which the ban on bulk collection turns is stronger than in any previous bill.

But let me be clear. Any amendment to this compromise threatens to stop this legislation dead in its tracks. This is not mere speculation. House leadership had all but assured us that if the bill is amended, it will not be considered on the House floor. This means that a vote in favor of this amendment is in reality a vote to kill the bill, and all of the significant reforms that it would accomplish.

Make no mistake. I support the policy outlined in the amendment. The government should not have leeway to sidestep the 4th Amendment and Section 702 collections for information about United States persons without first showing probable cause. But that change should be addressed when Section 702 is up for reauthorization, and it will be up for reauthorization soon.

I cannot support an amendment, regardless of the merits of the underlying policy, that would endanger the historic passage of these sweeping and bipartisan reforms. And so, I urge my fellow members of this committee to oppose the amendment to secure our path to the floor and to show our
partners in the House that we have negotiated this bill in
good faith. Thank you, Mr. Chairman.
Chairman Goodlatte. For what purpose does the gentleman
from Wisconsin seek recognition?
Mr. Sensenbrenner. Mr. Chairman, I move to strike the
last word.
Chairman Goodlatte. The gentleman is recognized for 5
minutes.
Mr. Sensenbrenner. Mr. Chairman, if there ever was a
perfect being the enemy of the good amendment, this is it,
and when the perfect defeats the good, then bad prevails. As
the gentleman from Michigan, the ranking member has stated,
this is a poison pill amendment. Now, I did support this
amendment when it was offered last year as a part of the
appropriations bill on the House floor. I support the
policy. But there is a time and a place for everything.
This is not the time or the place to do this. The time and
the place to do this is when Section 702 comes up for
reauthorization.
What adoption of this amendment will do is take away all
leverage that this committee has relative to reforming the
PATRIOT Act and specifically Section 215 of the PATRIOT Act.
The gentleman from Michigan has stated, and I will reiterate, that if this amendment is adopted, you can kiss this bill goodbye. The reforms in this bill are too important to kiss goodbye.

I would implore the gentleman from Texas to forbear on this. The issue will be dealt with later. It will be dealt with when we have leverage to be able to force reforms of 702. This is not the time to blow it on 215 in the name of trying to force reforms in 702. I ask the members to vote against the amendment and yield back the balance of my time.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentlewoman from California seek recognition?

Ms. Lofgren. Mr. Chairman, actually before I say anything about the amendment, I want to thank the members of the committee --

Chairman Goodlatte. The gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Thank you, who have worked to improve this bill over last year. And I want to say I know everybody worked hard, but I would single out Mr. Sensenbrenner in particular for his tremendous effort not only this year, but
last year to improve this matter.

On the amendment, you know, we have said that the bill would end bulk collection, but without addressing 702 I do not think it is correct that we will be ending bulk collection. The amendment does two important things and, has been mentioned, was supported by 293 to 123 just last year. The backdoor amendment is important, and the warrant issue is important.

In a declassified FISA Court decision, the court stated that the NSA had been collecting substantially more U.S. person communications through its upstream collection program than originally the court had been led to believe. The upstream collection is where the NSA directly taps into internet cables to comb through all of the communications that flow through it looking for communications that match a certain criteria. And the court, again this is unclassified, found that the government is collecting tens of thousands of wholly domestic communications, probably more than 50,000 a year. This was 4 years ago. More telling is that there is no accurate estimate that could be given for the even larger number of communications collected where a U.S. person was a party.
Now, it should be noted that prior to 2011, the court had only approved 702 orders with a very same limitation prohibiting searching of U.S. persons without a warrant. As Mr. Poe has mentioned, the director of National Intelligence has confirmed that the government searches this vast amount of data, and this is not metadata. This is content, of telephone calls, content of emails, and other data, without individualized suspicion or probable cause. The director of the FBI has publicly confirmed they use this information to build criminal cases against U.S. persons without complying with the 4th Amendment.

The second door to be shut is about backdoors, and this is not a theoretical issue. Recently, the FBI has been publicly putting pressure on companies to introduce backdoors into their information systems. The NSA, according to leaked information, has said that they paid a private entity, probably without that entity's knowledge, to include a flawed encryption scheme as a default implementation. And because of this, we should have a blanket ban on agencies making or coercing private entities to alter their systems. Even if a backdoor is created with good intentions, it is only a matter of time before it is found and exploited by hackers. And we
should be making efforts to strengthen technology, not to weaken it.

Now, I want to be clear that while I do believe this bill makes meaningful reforms, it does not stop the bulk collection. And I understand and I do respect Mr. Sensenbrenner's effort and the comments made by the chair and ranking member. But the most egregious and widely reported violations of the 4th Amendment are occurring under 702 and executive order 12333, and most recently by the DEA's use of administrative subpoenas.

So I do pay attention to what Mr. Sensenbrenner says, but here is my question. How can it be when the House of Representatives has expressed its will on this very question by a vote of 293 to 123, that that is illegitimate, that somehow the Intelligence Committee or the leadership can say they know better than the Congress of the United States, who has voted to do this? I understand the interest in getting a deal, but in the end the votes of the House of Representatives should matter, and that is why I do think it is important in the dance of legislation to actually close bulk collection. Otherwise, we will see this bulk collection occurring for the next 2 years.
I understand, Mr. Sensenbrenner, that you agree on the policy matter. This is really a tactical issue before us. But I do think the will of the House should have stature in the Constitution, and, therefore, I very much support the amendment, and I appreciate Mr. Poe's leadership in the matter. And I yield back.

Chairman Goodlatte. For what purpose does the gentleman from California seek recognition?

Mr. Issa. I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Issa. Mr. Chairman, I join Chairman Sensenbrenner in opposing this amendment for exactly the same reasons. You have worked very hard, Chairman Sensenbrenner has worked very hard to get us a reform that makes a difference. I will not and cannot bring myself to say I do not support this amendment. I do. I would look forward to it being attached to each and every appropriations bill that comes down the pike. If I get an opportunity to vote for it on a bill that cannot be blown up by the House leadership and/or the Senate, I will vote for it, and I think that is what we need to do. I would note that before this President's end of term, we
will have 702 reauthorization, and we will have another
opportunity.

But I want for the members, and I happened to be the
junior-most member on the Republican side who was here on
9/11. I want to just remind us how we got here. Our country
was attacked. Mr. Sensenbrenner, working on a bipartisan
basis with Bob Barr, and Barney Frank, the NRA, and the ACLU,
tried to limit this original act, the PATRIOT Act, to be more
narrow and more structured. House leadership on a bipartisan
basis at that time did not buy it, and they rolled us. Mr.
Nadler remembers. We were rolled on the floor with the
original language that in a worried Nation seemed to make
sense.

Every chance we get, we need to carefully remove
excesses that were either in the legislation or that have
been used by presidents of both parties, and I remind us this
is a President of the other party. It was the same when it
was President Bush. They have done excesses. Nothing in the
law requires that they do the kind of bulk collection they
are doing. They are pushing to do it.

So do we have a bill before us today that will pass
through the House and the Senate and go to the President, and
the President will be obliged to sign it? Yes, we do. And I think that is important that we wrench back some liberty for the American people.

Zoe, given an opportunity, and I pledge to you including it in appropriations, regardless of what people think about it, on a must-pass bill. I look forward to offering this amendment with you, with Mr. Poe, and finding ways to do it. But at this time on this bill, I would ask all my colleagues on both sides, please take an opportunity to give leadership the ability to simply give Republican leaders in the Senate, Mr. Burr and McConnell, the ability to do a clean reauthorization whether for 5 years or 5 months. That is what I believe will happen if we do not move in a timely fashion a package deal that really does make changes.

Mr. Poe. Will the gentleman yield for a question?

Mr. Issa. Of course.

Mr. Poe. Would you just be clear about what this means to "blow up the deal?" Are you saying that the Senate does not believe in the 4th Amendment? Intel does not believe in that section of the 4th Amendment they were talking about?

Is it a political decision?

Mr. Issa. I think that is a great --
Mr. Poe. Just explain to me what "blow up the deal"
means.

Mr. Issa. And I will, and thank you. I appreciate the
question, reclaiming my time. When Chairman Burr, looking at
it from a pure intelligence standpoint in the Senate, and
Leader McConnell drafted and dropped a clean 5-year
reauthorization, what they are saying is we are at war. We
have terrorists. We need this. Let us continue doing it as
we are doing it, and trust us.

Mr. Poe, I do not trust them. I do not trust this
President. I did not trust the last President without real
verification. And when this committee has verified, we have
found they have come up short, even on the obligations within
the legislation. And I think that is where Chairman
Sensenbrenner has worked so hard is to realize that they have
used our legislation in unintended ways in the bulk
collection.

So do we get everything we want? Ted, we do not. Do we
get more than if we get a clean reauthorization or a series
of them over time, because we all know, and I think all of us
have been here long enough to know that it is hard to vote no
on a 6-month extension on something that is about to expire.
And that is what will happen is time after time they will do a no reform reauthorization if we do not come up with a consensus reform.

Now, again, I will say the same thing I did to my colleague from California. We can offer this on every appropriations. We can keep taking this and finding must pass legislation, and I pledge to vote as I did last Congress with you on your amendment. I just believe that this is not the right time and the right place to do it. And I got to tell you, I voted happily with you last year, but we did not make law last year, and this was part of the reason.

I thank the chairman for his indulgence and yield back.

Chairman Goodlatte. The gentleman's time has expired.

Ms. Lofgren. Could I ask unanimous consent?

Chairman Goodlatte. For what purpose --

Ms. Lofgren. I have a unanimous consent request.

Chairman Goodlatte. Briefly, yes.

Ms. Lofgren. I would like to place in the record a letter of support for this amendment by a wide group, including the ACLU, and Freedom Works, Mozilla, and Demand Progress.

Chairman Goodlatte. Without objection, the letter will
be made part a part of the record.

[The information follows:]
Chairman Goodlatte. For what purpose does the gentleman from New York seek recognition? Is the gentleman not seeking recognition? What purpose does the gentleman from Georgia -- I am sorry -- the gentleman from Tennessee. I am having a hard time seeing down there.

Mr. Cohen. Pick a State, any State.

[Laughter.]

Mr. Cohen. Thank you. Thank you, Mr. Chairman. Strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cohen. Who was on this group that negotiated this deal from our committee? Mr. Chairman?

Chairman Goodlatte. What is that?

Mr. Cohen. Who were the people on our committee who negotiated this deal?

Chairman Goodlatte. The chairman, the ranking member, the chairman of the Crime Subcommittee, the gentleman from New York, and their staffs.

Mr. Cohen. Let me ask you then, and any of you can answer. Was this subject matter or this specific amendment considered by the --
Chairman Goodlatte. This amendment was most definitely discussed and rejected, and this amendment in particular we have been assured if this amendment is attached to this bill, this bill is going nowhere. I think that is a travesty when we have ended bulk data collection, when we have created more transparency for the FISA Court, when we have done other things that promote protection of civil liberties, and some separate things that do not affect civil liberties, but do help strengthen national security, to lose that opportunity when we are facing a deadline here coming up very shortly.

So I am very much interested in the issue at hand. I respect the opinion of the gentleman from Texas and the gentlewoman from California. We will work on this. This has leverage behind it because there is an expiration date in 2017. But as has been pointed out by the gentleman from California, there will be other opportunities to attach these other things.

But this committee will exercise its jurisdiction on this and soon. We will hold a hearing on this, but we have got to get this bill, which primarily addresses Section 215, but makes other improvements, including, by the way, an improvement to Section 702. It creates greater transparency,
greater reporting requirements about Section 702. So when
that is adopted, we will be better informed.

Mr. Cohen. Let me ask, what was the main objection to
this? Did it come from the Senate? Did it come from the
House Intelligence Committee?
Chairman Goodlatte. It came from many sources.
Mr. Cohen. But we are not allowed to know where the
sources --
Chairman Goodlatte. I am not going to speak for others,
but this amendment is objected to by many in positions to
affect the future of this legislation.
Mr. Cohen. Thank you, Mr. Chairman. Ms. Lofgren, would
you yield for a moment? Would you respond to a question?
Ms. Lofgren. Sure.
Mr. Cohen. In balancing of all the interests at heart
with what improvements there are in this bill for civil
liberties as against the improvements that this amendment
would offer, how would you rate them on a scale?
Ms. Lofgren. Well, let me say I think that there are
many improvements in this bill, and I want to congratulate
the members who worked to gain those improvements. So there
is no question this bill is a vast improvement over current
law.

I will say this. From my point of view, not having been invited to be a participant in the negotiations, it astounds me that you have a vote of the full House on this direct question. The vote is 293 to 123 to approve these provisions, and somehow that is without merit or consideration. I find it hard to accept that. And I will say further that because of the scope of 702, I mean, our data is everywhere. Servers and your email data could be in Iceland. It is all over, and it is all being collected, including content. And the idea that this bill end bulk collection when 702 is not dealt with is a fantasy. And I thank the gentleman for --

Mr. Cohen. Thank you for your response to that. I yield back the balance of my time.

Mr. Jordan. Mr. Chairman?

Chairman Goodlatte. For what purpose does the gentleman from Ohio seek recognition?

Mr. Jordan. I think just speaking on the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Jordan. Thank you, Mr. Chairman. And I, too,
appreciate the work of the chairman. I know he has worked hard with a number of individuals and the former chairman of the committee. But only in Congress do we make things so complicated.

A vote for this amendment is not a vote to kill the bill. It is not a vote for a poison pill. It is not a vote to blow up the deal. It is a vote for the 4th Amendment, plain and simple. All the gentleman says in his amendment is if you are going to get information from American citizen, you need a warrant. Imagine that. Consistent with the 4th Amendment.

And if this committee, the Judiciary Committee, the committee most responsible for protecting the Bill of Rights, the Constitution, and fundamental liberties, if we cannot support this amendment, I just do not see it. And I understand all the arguments you are making, and they are all good in the process and everything else, but only in Congress does that trump. I mean, that should never trump the 4th Amendment.

The gentleman has a good amendment, and I would urge a yes vote.

Chairman Goodlatte. For what purpose does the gentleman
from New York seek recognition?

Mr. Nadler. Mr. Chairman, to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Nadler. Thank you, Mr. Chairman. I rise in opposition to this very good amendment. And I have to start by noting what Mr. Jordan said. Only in Congress, but we are in Congress.

[Laughter.]

Mr. Nadler. We are in Congress, and we must recognize the realities of legislating in Congress. Maybe it would be better if we were not, but that is a different question.

[Laughter.]

Mr. Nadler. But we are in Congress, and we have to recognize the realities of how that affects what we do and what we try to do. I totally agree also with the intent of this amendment. I agree that it is vital that we enact it as soon as possible. I voted for it last year on the floor. I will vote for it again.

But it will blow up the bill, and why would it blow up the bill? To be blunt, because the leadership of the House says it will. They will not permit this bill to the floor,
we are told by them, if this amendment is part of the bill.

We have no reason to disbelieve them, and they have the power to do what they say they will do. The Rules Committee can block this bill and undoubtedly will if this amendment is adopted. On the other hand, when you come to the appropriations bills, there are generally open rules, and we can pass this amendment to an appropriations bill, and we can then, if that does not work, take it up when Section 702 comes up for reauthorization.

This bill does end domestic bulk collection. It does not do everything it ought to do. It does everything we think we can get done, and that is the important thing. How will we justify insisting on a better bill at the cost of having no bill and having all the degradations of liberty that go on now continue to go on indefinitely?

The leadership in the Senate has already introduced a straight reauthorization to continue all this indefinitely, well, for whatever the term of the reauthorization is. I do not know what they have done. We are going to have to struggle against that. If we take this bill off the table, that struggle is clearly a losing struggle. This bill must be on the table. It will only be on the table if it gets out
of the Rules Committee, if it gets to the floor, if it
passes. If it gets to the floor, it will pass. But the
leadership of the House has the power to prevent it from
getting to the floor, and has told us they will exercise that
power if this amendment is in it.

I do not like that fact. I am not a great supporter of
the current leadership, as most people know. That is not the
point. It is a fact, and we are in Congress, and we have to
deal with the power relationships that exist in Congress, and
a number of facts are clear. One, this amendment, as much as
I approve of the substance, will cause the bill to not go
anywhere beyond this committee because the leadership has
told us so, and they will do that.

Two, this amendment should be, and I presume will be,
offered on the floor as an amendment to an appropriations
bill. It will get presumably a similar overwhelming vote as
it did last time, and hopefully we can perhaps threaten the
appropriations bill. And hopefully the power relationships
are different in that bill, and we can get it adopted into
law at that time. And if not, we can wait for Section 702
reauthorization.

But we have a much better shot there. We have no shot.
This amendment will not be enacted into law as a result of being put in this bill because this bill will not be enacted into law. So aside from feeling good momentarily, what do we accomplish by voting for this amendment today? We are here for a very practical purpose, and that is to protect American liberty as much as we can. The best opportunity now is to pass this bill, and for that we must defeat this amendment, and then seek to improve the situation after the bill is adopted or after it is adopted by the House at any rate, which will be next week or two weeks from now hopefully, by dealing with Section 702.

So reluctantly I urge the defeat of this amendment so that we can make the progress knowing that we are dealing with the realities of the day, not with the power relationships we might like to have. How do we justify the overwhelming opinion of the House not being adhered to? The power relationships, I do not justify it, but mandate it.

So I urge the defeat of this amendment now, and let us work to pass this amendment to an appropriations bill or to 702 when it comes up. But meanwhile, let us pass this bill to end domestic bulk surveillance and to improve American liberty now. I thank you, and I yield back.
Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Idaho seek recognition?

Mr. Labrador. To support the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Labrador. Thank you, Mr. Speaker. I am just going to state the obvious. As was previously stated, the obvious is that we are in Congress, but what is also obvious is that we are allowing the Intelligence Committee to have a veto over the will of the American people, and I think that is inappropriate. I think that is sad. And I think when you look at this issue, every person who has spoken against it is actually for the amendment. They are actually for the amendment.

So we are having a debate about whether we should have an amendment that everyone agrees to, everyone wants to adhere to, but we are not going to allow it because two groups are not allowing this amendment, the Intelligence Committee and the leadership of the Republican Party. I know how this amendment is going to end up. It is going to lose.

But I think it is a sad day for America when you have a
bipartisan amendment, when you have every member just about
of this committee that agrees that this is a good amendment,
and that it is only going to be defeated because you have a
handful of people that want to continue collecting data on
Americans, and that want to have no protections on the 4th
Amendment. I think that is sad, and I hope that we can all
vote for it, but I know how this is going to end up. Thank
you very much.

Ms. Jackson Lee. Mr. Chairman?

Chairman Goodlatte. For what purpose does the
gentlelady from Texas seek recognition?

Ms. Jackson Lee. Strike the last word, Mr. Chairman.

Chairman Goodlatte. The gentlewoman is recognized for 5
minutes.

Ms. Jackson Lee. I am going to agree with Mr. Labrador
and say he is absolutely right. We have a discussion among
friends, a discussion among colleagues, a discussion among
patriots, a discussion among civil libertarians. If we ever
had unity after 9/11 for those of you who were not here, this
committee came out in the waning moments of the horror of
9/11 and had one of the most protected or reasoned responses
to terrorism, which is that we were not going to terrorize
ourselves. We were not going to put in place amendments that would undermine the civil liberties, civil rights, and the Bill of Rights of the American people. But here is where we are that I would like to offer comments that probably walk right into Mr. Labrador's argument, but with a little twist. It is not because we disagree with this amendment that we should be shamed into voting for it. We agree with the amendment. We want everything in this bill. I am horrified at the idea of the collection of personal data without probable cause. If we are lawyers, and those who have adopted lawyering by being on this committee, and I will defend them. They are practicing without a license. But in any event, we welcome that. We welcome that. They stand on the grounds of probable cause. They understand the crux. There has been enough talk about probable cause to know that this is a vital amendment. But I would offer to say and the commitment that we will look to the merging of these bills, and we will stand on the premise of this legislation, this amendment, that this bill should not go forward to the President's desk without a recognition that there should not be a collection of data under 702
without first moving and showing probable cause, which is the 

essence of the amendment.

But we have secured a strong bipartisan bill. We know 

that it will get to the floor before the deadline. We know 

that it will get to the Senate. We know that the Senate has 

a bill that takes into consideration issues that we have 

great concern with. I might add that in this bill since we 

worked on it for any number of years, an amendment that I had 

that reduces further any temptation to resort to reverse 

targeting, which was an enormous issue after 9/11.

The targeting of innocent Americans who were engaged 

with someone who may be targeted overseas, and requiring the 

Administration to obtain a regular individualized FISA 

warrant whenever the real target of the surveillance is a 

person in the United States. In addition, I argued for a 

FISA Court advocate for the civil liberties of Americans. In 

this this bill we have a panel that will have to be utilized 

in certain circumstances.

So we are not going forward on this bill without the 

full recognition of the work that is captured in this 

amendment by two of our colleagues who we know are champions, 

and we join them as champions of civil liberties. But I
would only offer to say that this amendment, the passage of
such, would give us a difficult pathway and endanger the
passage of a number of sweeping changes. And I might add,
the change of the panel issue meaning a FISA Court with no
intervention. This bill has intervention.

It is not where I want it to be. I am hoping that we
will have some more movement. But it is a place that
establishes the freedom and the rights of Americans to be
protected in their personal data, to be protected from
unreasonable search and seizure in the 4th Amendment, and to
be able to be responsible by the Federal government, not
responsible, but held intact to hold the Federal government
intact on targeting Americans, innocent Americans, and to
take the message that we wanted to tell Americans after 9/11
that we would not terrorize ourselves after the heinous acts.
And as we look to ISIL, we will not allow them to terrorize
ourselves, and we will still provide Americans with the right
kind of protections.

So, Mr. Chairman, I do not even like to use the
terminology that this stops legislation. I simply want to
say that this is an amendment that we should look for its
recognition and incorporation. We should pass this
legislation for the elements of freedom that it has in it, the powerful freedom elements that it has in it, and the changes that it has made, and the protection of America's personal data and information, and the appropriate restraint under the 4th Amendment that we have now given to this process of providing the ability to protect our Nation. But at the same time, Mr. Chairman, it allows us to protect the rights of Americans and not kill the Bill of Rights or civil liberties. With that, I yield back.

Chairman Goodlatte. For what purpose does the gentleman from South Carolina seek recognition?

Mr. Gowdy. Move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Gowdy. Thank you, Mr. Chairman. Very briefly. I have been on this committee, I guess, almost 5 years. I do not know that I have ever not supported an amendment from the gentleman from Texas. He is right more often than not. In fact, he is right this time. Also I have tremendous sympathy and respect for the work that the chairman has done and the subcommittee chairman, because what we have here is a "Hobson's Choice." You oppose an amendment even though you
support it in order to avoid a law that you think ought to be remedied. It is a "Hobson's Choice." It is an impossible dilemma.

And I would just ask folks on both sides to understand that you can agree on the policy and disagree on the strategy by which you can achieve that policy, because what we do not want is the status quo. And with that and to prove that I support the gentleman from Texas in theory if actually not with my vote, I will yield him the remainder of my time.

Mr. Poe. I thank the lawyer from South Carolina for his yielding to the court as he always says.

[Laughter.]

Mr. Poe. Mr. Chairman, once again I want to reiterate what has been said by everybody. The work that has been done on the bill is excellent, but I want to comment on something Mr. Labrador commented on. We are it. The Judiciary Committee is it. We are the ones that are protecting or supposed to protect, and I think we do, that Constitution that we have. And we are not talking about postponing and appropriations amounts of money. We are not talking about postponing building a bridge. We are talking about postponing the 4th Amendment and letting it apply to American
citizens for at least 2 years.

This is our opportunity. If the politics says that the Intel Committee, this amendment may be so important to them that they do not like it that it will kill the deal, then maybe we need to reevaluate our position in that we ought to push forward for this amendment because it is the constitutional protection that we demand occur for American citizens. And we want it now, not postpone it down the road to live to fight another day. I have heard that phrase so long in this Congress for the last 10 years, "live to fight another day." Let us kick the can down the road, you know I think we have to do what we are supposed to do as a committee, and most of the members of the committee support this idea. They agree with the 4th Amendment. It ought to apply to American citizens under the circumstances. The Federal government is intrusive and abusive trying to tell companies that they want to get information, and the backdoor comments that Ms. Lofgren has talked about. We can prevent that. I think we should support the amendment. And then we should fight to keep this in the legislation and bring the legislation to the floor, and let the Intel Committee vote against the 4th Amendment if that is what they
really want to do. And as far as leadership goes, I think we ought to just bring it to the floor and politely make sure that the law, the Constitution, trumps politics, or we can let politics trump the Constitution. That is really the decision.

And the last comment I would make, the gentlelady from Texas said we should not be shamed into voting for this. I do not think we should be shamed into voting against this bill, vote for the bill. They should be ashamed of themselves because they are opposed to it over in Intel or leadership if that is the case. So I thank the gentleman from South Carolina, and I yield back my time to him.

Ms. Jackson Lee. Will the gentleman yield from South Carolina? Would the gentleman yield?

Mr. Gowdy. Certainly.

Ms. Jackson Lee. I thank the gentleman because that is my good friend from Texas, Judge Poe, and we as lawyers typically approach the court with great trepidation. Here is the point that I would make. He has touched a point that has all of us are torn in recognizing the heart of this amendment. On the contrast what I would say is it is a terrible decision when you have a bill that has an enormous
amount of protections that you do not want to see lost. And
as the 702 expiration is within a timeframe that we can use a
vehicle, and the Judiciary Committee can be the driving force
of that vehicle, to move this amendment then I would say that
we have constitutional protections in this bill. And I would
just simply hope that we recognize it is a sacrifice, but it
is a sacrifice that will not last long because we agree that
we will move on the 702 reform. I yield back.

Chairman Goodlatte. The time of the gentleman has
expired. For what purpose does the gentlewoman from
Washington seek recognition?

Ms. DelBene. I move to strike the last word.

Chairman Goodlatte. The gentlewoman is recognized.

Ms. DelBene. Thank you, Mr. Chair. And I want to thank
you, Mr. Chair, the ranking member, Mr. Sensenbrenner, all
those who worked so hard on the underlying bill, and I am co-
sponsor of the underlying bill. I am also a co-sponsor of
the amendment. During last year's debate on the USA Freedom
Act, it was apparent that the legislation had room for
improvement when it came to protecting Americans' privacy,
and we came together on a bipartisan basis and worked to
ensure that backdoors to surveillance did not remain, knowing
that these would thwart our overarching goals and what many
would agree the Constitution requires.

This year we have come together again to close a so-
called backdoor that could potentially permit the search of
government databases for information related to U.S.
citizens. Our amendment would shut the door conclusively by
prohibiting the search of government databases for
information pertaining to U.S. citizens without a warrant.
We cannot allow agencies like the FBI that have actually
admitted to such searches to distort the law in a way that
lets them freely bypass the 4th Amendment, and this amendment
would ensure such backdoor searches are unequivocally stopped
once and for all.

The second door this amendment would shut is intended to
make sure that the NSA and CIA cannot force companies to
build backdoors into their products. And as someone who has
had a long career in the technology industry, I find it
highly concerning that our own government would do anything
to intentionally weaken the security of devices. In an era
of the internet of things, now more than ever we need to
incentivize companies to make devices as secure for the
safety and privacy of their users as possible. And the fact
is that even if backdoors in this context are only meant for
government use in particular situations, today's hackers are
highly skilled and nimble and quick to find new ways to break
into even the most sensitive and protected networks. So we
should not allow this intentional weakening of devices to
happen on our watch.

We have broad bipartisan support for this policy. I
think it is important that we support it in this legislation.
I support the amendment, and I yield back.

Ms. Lofgren. Would the gentlelady yield?
Ms. DelBene. I yield to the gentlelady from California.
Ms. Lofgren. This has been a very, I think, useful
discussion, and I just want to throw something out here.
There is a way for the majority of the House to be heard
procedurally. And the last time we had a discharge petition
I think was in the 90s, and the only reason why that
succeeded was it was a bipartisan effort. Discharge
petitions are never supported by the majority, and I
understand why. It is generally used to make a point. You
have to defend your majority. I get all of that, but this
may be one of the circumstances where really this not a
partisan issue. This is an issue where a majority of
Democrats and a majority of Republicans voted on the floor to approve this very same thing.

And the idea that the Republican leadership or, for that matter, any leadership could thwart that is really inimical to a democratic society. It is a difficult issue to raise because it is difficult for members of the majority to buck their leadership, and I know that because we have been in the majority, too. I am not unsympathetic. But this is an issue not about Democrats and Republicans, but about right versus wrong, about the Constitution versus lawless behavior.

And I would like to at least throw that issue to my colleagues on the other side of the aisle who feel as strongly as I do that the 4th Amendment belongs in the collection of data about the U.S. And just mention once again that, you know, I do respect the work that has been done, but I think there is a reason why the Intel Committee is fighting and the intelligence community is fighting so hard against this, which is the 702 database collection is huge. That has been admitted publicly by the court and by the director, and to think that we are ending bulk collection without dealing with it is simply a fantasy. And it is not just metadata; it is content of American citizens being
collected without adherence to the 4th Amendment. I think we all agree it is a problem. We should do something about it, and I thank the gentlelady for yielding. Chairman Goodlatte. The chair thanks the gentlewoman. Are there any other members who wish to be heard on this? The gentleman from Texas, for what purpose do you seek recognition? Mr. Ratcliffe. Move to strike the last word. Chairman Goodlatte. The gentleman is recognized for 5 minutes. Mr. Ratcliffe. Thank you, Mr. Chairman. I very much appreciate the amendment offered by my friend and colleague from Texas, Judge Poe. And like everyone here, I certainly agree with its stated intent. In full disclosure to everyone, I am a former terrorism prosecutor that has used warrantless searches, and frankly have benefitted from them in a number of international and domestic terrorism cases. With that context, reforming Title 7 is something that I certainly want to explore, and I have been assured that this committee intends to do just that. This bill generally does not address Title 7 with the exception of including enhanced reporting requirements so
that we can ultimately make an informed decision on that issue. What is most important to me and my constituents, and I know most of the folks here, is protecting Americans' civil liberties, and so I share the concern of the gentleman from Wisconsin, Mr. Sensenbrenner, that if we move forward with this amendment on this bill, that we will be sacrificing civil liberties on the altar of perfection.

Because of what has already been stated, and for reasons which I do not understand, namely that House leadership will prevent this bill from going forward if we include this amendment now. You know, I ran for Congress to see how decisions were made behind the curtain here in Congress, and one thing I have learned in 100 days is there is more than one set of curtains.

[Laughter.]

Mr. Ratcliffe. So I do not understand why that decision has been made, but it has been made. That is a decision that I cannot change today, but we cannot afford to tank this bill. And so, I respectfully will oppose my friend's amendment, and yield back.

Chairman Goodlatte. Would the gentleman yield?

Mr. Ratcliffe. I would yield.
Chairman Goodlatte. I thank the gentleman for yielding. I think he has hit the nail on the head here. I want to assure every member of this committee two things. First of all, this bill is about protecting the 4th Amendment rights of American citizens. That is why we are doing this bill. And this committee has a responsibility to protect the 4th Amendment rights of U.S. citizens, and we will act on Section 702. And just like Section 215 faces a deadline in 31 days, Section 702 faces a deadline in the not too distant future. And we will not wait. We will not wait, Mr. Poe, until that deadline to take action. We will hold a hearing on this issue soon. We will move to address it. There will other opportunities to address it. But this bill is not the place to do it because this bill has a clear path to the floor to protect the rights of United States citizens under the 4th Amendment in a whole host of different ways. And it will have the opportunity to put the Senate in a position to accept it as well where many senators have introduced, on both sides of the aisle, the same bill, identical bill. We have an opportunity to move this through a very difficult process with a clear path. Do not support this amendment, not because the amendment does not have merit, but
because the amendment will indeed make the perfect the enemy of the good. We should support the underlying legislation, oppose this amendment. And I ask the clerk to call the roll.

Ms. Williams. Mr. Goodlatte?
Chairman Goodlatte. No.
Ms. Williams. Mr. Goodlatte votes no.
Mr. Sensenbrenner?
Mr. Sensenbrenner. No.
Ms. Williams. Mr. Sensenbrenner votes no.
Mr. Smith?
[No response.]
Ms. Williams. Mr. Chabot?
Mr. Chabot. No.
Ms. Williams. Mr. Chabot votes no.
Mr. Issa?
Mr. Issa. No.
Ms. Williams. Mr. Issa votes no.
Mr. Forbes?
Mr. Forbes. No.
Ms. Williams. Mr. Forbes votes no.
Mr. King?
[No response.]
Mr. Williams. Mr. Franks?

Mr. Franks. No.

Ms. Williams. Mr. Franks votes no.

Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Williams. Mr. Gohmert votes aye.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Williams. Mr. Jordan votes yes.

Mr. Poe?

Mr. Poe. Yes.

Ms. Williams. Mr. Poe votes yes.

Mr. Chaffetz?

Mr. Chaffetz. No.

Ms. Williams. Mr. Chaffetz votes no.

Mr. Marino?

Mr. Marino. No.

Ms. Williams. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Williams. Mr. Gowdy votes no.

Mr. Labrador?
Mr. Labrador. Yes.
Ms. Williams. Mr. Labrador votes yes.
Mr. Farenthold?
[No response.]
Ms. Williams. Mr. Collins?
[No response.]
Ms. Williams. Mr. DeSantis?
[No response.]
Ms. Williams. Ms. Walters?
Ms. Walters. No.
Ms. Williams. Ms. Walters votes no.
Mr. Buck?
Mr. Buck. Yes.
Ms. Williams. Mr. Buck votes yes.
Mr. Ratcliffe?
Mr. Ratcliffe. No.
Ms. Williams. Mr. Ratcliffe votes no.
Mr. Trott?
Mr. Trott. No.
Ms. Williams. Mr. Trott votes no.
Mr. Bishop?
[No response.]
Ms. Williams. Mr. Conyers?
Mr. Conyers. No.
Ms. Williams. Mr. Conyers votes no.
Mr. Nadler?
Mr. Nadler. No.
Ms. Williams. Mr. Nadler votes no.
Ms. Lofgren?
Ms. Lofgren. Aye.
Ms. Williams. Ms. Lofgren votes aye.
Ms. Jackson Lee?
Ms. Jackson Lee. No.
Ms. Williams. Ms. Jackson Lee votes no.
Mr. Cohen?
[No response.]
Ms. Williams. Mr. Johnson?
[No response.]
Ms. Williams. Mr. Pierluisi?
[No response.]
Ms. Williams. Ms. Chu?
Ms. Chu. No.
Ms. Williams. Ms. Chu votes no.
Mr. Deutch?
Mr. Deutch. No.
Ms. Williams. Mr. Deutch votes no.
Mr. Gutierrez?
[No response.]
Ms. Williams. Ms. Bass?
Mr. Richmond?
Mr. Richmond. No.
Ms. Williams. Mr. Richmond votes no.
Ms. DelBene?
Ms. DelBene. Aye.
Ms. Williams. Ms. DelBene votes aye.
Mr. Jeffries?
Mr. Jeffries. Aye.
Ms. Williams. Mr. Jeffries votes aye.
Mr. Cicilline?
Mr. Cicilline. Aye.
Ms. Williams. Mr. Cicilline votes aye.
Mr. Peters?
Mr. Peters. No.
Ms. Williams. Mr. Peters votes no.
Chairman Goodlatte. The gentleman from Tennessee?

Mr. Cohen. I will vote no.

Ms. Williams. Mr. Cohen votes no.

Chairman Goodlatte. The gentleman from Michigan?

Mr. Bishop. No.

Ms. Williams. Mr. Bishop votes no.

Chairman Goodlatte. The gentleman from Iowa?

Mr. King. No.

Ms. Williams. Mr. King votes no.

Chairman Goodlatte. The gentleman from Texas?

Mr. Smith. Mr. Chairman, I vote no.

Ms. Williams. Mr. Smith votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

[No response.]

Chairman Goodlatte. The clerk will report.

Ms. Williams. Mr. Chairman, 9 members voted aye, 24 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

For what purpose does the gentleman from Idaho seek recognition?

Mr. Labrador. Thank you, Mr. Chairman. To amend the
Chairman Goodlatte. The clerk will report the amendment.

Ms. Williams. Amendment to H.R. 2048, offered by Mr. Labrador of Idaho, in Subsection (i) of Section --

Chairman Goodlatte. Without objection, the amendment will be considered as read.

[The amendment of Mr. Labrador follows:]
Chairman Goodlatte. And the member is recognized for 5 minutes on his amendment.

Mr. Labrador. Thank you, Mr. Chairman. I guess today we can say that we are all violently agreeing on these amendments, but not really voting the same way. This amendment would simply clarify the meaning of "emergency authority" under Section 102 of the bill by more narrowly defining an emergency situation.

I want to be clear that I do not believe this amendment should blow up this bill. I do not see why it would blow up the bill. All it is doing is attempting to clarify the meaning of a term in the bill, which is an "emergency situation," as one that involves the potential for imminent death or bodily harm to any person.

Currently Section 102 gives the Attorney General the authority to determine if an emergency situation requires the production of tangible things before an order authorizing this production can be obtained. "Emergency situation" is an extremely broad term. This could grant the Attorney General unrestricted access to the collection of these items based on his or her own determinations, completely contradicting the restrictions for obtaining these items outline earlier in the
Offering a clear limited definition of what constitutes an emergency situation provides greater clarity and critical limits to the Attorney General's authority. In fact, the language, "threat of death or serious bodily harm to any person" is already used in the bill. First it is found in Sections 102 and 301 to create an exception for the Attorney General to use unlawfully obtained information as evidence without the consent of a United States person from whom the information was obtained. Second, we find it Section 701 to allow continued targeting of non-U.S. persons upon entry to the United States beyond the bill's permitted 72 hours.

This amendment is consistent with language already contained in the bill, and makes an important clarification to "emergency situation" to limit the Attorney General's ability to claim emergency authority for the production of tangible things. I believe this is an important amendment to ensure that emergency authority under this act is properly understood, and that the exceptions provided in this act do not exceed their original intent. And I think that we need to clarify the issue if we are going to move forward and claim that this bill is actually limiting the authority of
the United States.

I am joined by my colleagues Mr. Jordan, Mr. Poe, and Ms. Lofgren in support of this amendment, and urge my other colleagues to support this amendment as well.

Ms. Lofgren. Would the gentleman yield?

Mr. Labrador. Absolutely.

Ms. Lofgren. I would like to briefly speak in support of the gentleman's amendment, which I am proud to co-sponsor. I was on the committee, along with a number of others who are still on the committee, when the original PATRIOT Act was adopted. And I remember sitting in this very room, a bipartisan group of members, and staff, and the White House, and the like, sitting on that table, that witness table, crafting the legislation.

We found out much to our chagrin later that the terms in the bill that we thought were very clear were interpreted, as Mr. Sensenbrenner has noted, in a way that was not intended, and I think in clear contradiction with not only the legislative history, but the clear meaning of the law. The gentleman is right. The lack of specificity about this is an invitation for abuse, and given that he has used the exact same language that is found to define emergencies elsewhere
in the bill, I think it is a very sensible amendment. I
proud to support it, and I thank the gentleman for yielding.
Mr. Labrador. Thank you very much, and I yield back.
Mr. Sensenbrenner. Mr. Chairman?
Chairman Goodlatte. For what purpose does the gentleman
from Wisconsin seek recognition?
Mr. Sensenbrenner. Opposition to the amendment.
Chairman Goodlatte. The gentleman is recognized for 5
minutes.
Mr. Sensenbrenner. Mr. Chairman, there are sufficient
protections under the applicable section of the underlying
bill to take care of any excesses and grabbing of records
under an emergency situation. First of all, the approval of
business records is several levels higher than a U.S.
attorney in order to use the emergency clause of the bill.
In addition, an emergency FISA business records authorization
must still go to the FISA Court for approval within 7 days.
So in the Justice Department you have to be fairly high
up in the hierarchy to get approval for an emergency
situation. And even when an emergency clause is implemented,
the FISA Court has got to sign off on it within 7 days;
otherwise, the emergency declaration is null and void.
But there are certain instances in counterterrorism and counterintelligence investigations where investigators will need the emergency production of tangible things for foreign intelligence purposes before a court order can be obtained. And the limitation proposed in this amendment goes beyond even the requirements for the emergency electronic surveillance or emergency physical searches under FISA. So what the gentleman’s amendment has done is basically ratcheted up the Section 215 emergency provision to something that is much stricter than other emergency provisions under FISA, and that is why it should be defeated.

Now, finally, you know, he and I may have a difference of opinion on what blows up this bill, you know. Let me say that this all was considered during the negotiations that were going on. I think that there is an appropriate compromise to keep the dogs at bay that has continued in the emergency appropriations of this bill. And I am afraid that the amendment of the gentleman from Idaho can be described as a who let the dogs out amendment. And I yield back.

Chairman Goodlatte. Would the gentleman yield?

Mr. Sensenbrenner. I will reclaim my time.

Chairman Goodlatte. I thank the gentleman for yielding,
and I share his opposition to the amendment, as I know the ranking member does as well.

Mr. Sensenbrenner. I yield back now.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman by Idaho.

All those in favor, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the noes have it, and the amendment is not agreed to.

For what purpose does the gentleman from Ohio seek recognition? Well, the gentleman from Ohio is not here right now. For what purpose does the gentlewoman from California seek recognition?

Ms. Lofgren. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Williams. Amendment to H.R. 2048, offered by Ms. Lofgren of California, at the end of Title 6, insert the following.

Chairman Goodlatte. Without objection, the amendment shall be considered as read.
[The amendment of Ms. Lofgren follows]
Chairman Goodlatte. And the gentlewoman is recognized on her amendment for 5 minutes.

Ms. Lofgren. Mr. Chairman, this amendment does two things. It creates a whistleblower process for members of the intelligence community to report to the comptroller general, the Senate and House Intelligence Committees, or the Senate and House Judiciary Committees when there is a reasonable belief that an intelligence program violates the law or is being grossly mismanaged or abused. And, two, it protects whistleblowers who file complaints using the approved channels from retaliation.

Now, regardless of what you think Edward Snowden's intentions were or what you think about him, his public revelation of unlawful and unconstitutional use of surveillance authority was illegal, but it did not have to be. The 1999 Intelligence Authorization Act created the Intelligence Community Whistleblower Protection Act. Now, while that act did create more formal channels for Federal employees in the intelligence community to bring forward "urgent concerns" to their respective agency's inspector general or through a very bureaucratic process to the House and Senate Intelligence Committees, the act provided no
protection from retaliation from reporting waste, fraud, abuse, or criminal conduct, and has been seen by the whistleblower community as insufficient.


Mr. Chairman, the committee is not in order. Mr. Chairman, the committee is not in order.

Presidential Directive 19, which ostensibly provides Intelligence Committee employees with retaliation protection, but only in limited circumstances. The Brennan Center has noted that this directive has big gaps in coverage. It does not apply in cases where the head of an agency determines that an employee should be fired for national security reasons, but does not define that.

If disclosures through approved government channels prove unsuccessful, there is no provision for disclosure outside the agency or Intelligence Committees. Moreover, the matter does not cover contractors, which Edward Snowden was, and that is a very serious omission given the intelligence community's heavy reliance on contractors. This amendment closes all the gaps by providing real retaliation protections for both intelligence community employees and contractors.
Critically, this amendment provides two more pathways for whistleblowers to report wrongdoing, the Government Accountability Office and this very committee, the Judiciary Committee. As my colleagues are aware, our intelligence agencies that are involved in FISA-related activities often resist cooperating with this committee despite our clear jurisdiction over these programs. Further, the GAO and this committee's staff have personnel with requisite clearances, experience, and good judgment to properly handle legitimate whistleblower complaints in a responsible, but effective, manner.

We have heard many of our colleagues throughout the House complain about the lack of readily available information on these programs. And one reason for the paucity of that information is that Congress has generally not been aggressive in making channels available for whistleblowers to file complaints. This amendment would help change that.

I do not think I have to remind all the members of this committee about the value of the assistance we receive from the GAO, including on classified matters. Making GAO a safe legitimate venue for IC whistleblowers to report problems
with FISA can only help us avoid more Snowden-like incidents.

And whatever you may think of Mr. Snowden, I think we can all agree that having more and better whistleblower reporting and protection measures in place will reduce the chances of properly classified programs and information from being needlessly compromised.

I would note that although I am the sole author of this amendment, I crafted this amendment in consultation with members of the Republican Party who do not serve on this committee, members of the Liberty Caucus, who believe, as I do, that providing an adequate forum for whistleblowing will help prevent public disclosure of information such as Mr. Snowden did that has damaged the United States, and making sure that the Judiciary Committee is in a position to receive information of that nature is an important element.

So, Mr. Chairman, I recommend this amendment. I hope that we could have broad bipartisan support. And with that, I would yield back.

Chairman Goodlatte. The chair thanks the gentlewoman, and recognizes himself in opposition to the amendment. This amendment proposes whistleblower procedures for government employees or contractors of the intelligence community who
have knowledge of programs and activities authorized under FISA. Expanded whistleblower protections have been addressed recently by Congress. According to the Senate Intelligence Committee, the 2014 intelligence authorization bill included far reaching whistleblower protections for intelligence personnel. The bill prohibits firings, demotions, or other personnel actions against intelligence community employees as reprisal for legitimate whistleblower activities. It also prevents intelligence agency managers from revoking an employee's security clearance as a reprisal for legitimate whistleblower activities, and creates an appeal procedure for employees who believe they have faced such reprisal.

Whistleblower protections are generally the purview of the House Judiciary Committee. This amendment proposes reforms that are deserving of more careful consideration by the appropriate committees of jurisdiction. I believe the gentlewoman said that the actions of Mr. Snowden were illegal, but they did not need to be. Was that accurate? Ms. Lofgren. I think if had he had an opportunity, or at least I would like to believe, that he would have reported it to the Judiciary Committee. As a contractor he was not covered by whistleblower protections. And I think his
disclosures did actual damage to our country, but it is also
the only way we found out about some of the misconduct of our
own government.

Chairman Goodlatte. I think your observation is a fair
characterization of his actions. I would, however, say that
I cannot support this amendment in this context without
having a lot more careful study of this and consultation with
the Oversight and Government Reform Committee, which has
considerable jurisdiction, the chairman of which is a member
of this committee, not here right now. But I would recommend
that the members of the committee do not support this
amendment for that reason, but we certainly should refer to
others and work with others on examining whether our
whistleblower protections, including the changes made in the
2014 intelligence authorization bill, are sufficient moving
forward.

The question occurs on the amendment offered by the
gentlewoman from California.

All those in favor, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the noes have it, and the
amendment is not agreed to.
Members are advised that we had originally advised everyone that we would recess for lunch. We have either one or two amendments remaining, and if the members are willing to stay, we can address that amendment.

The chair recognizes the gentleman from Ohio.

Mr. Jordan. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Williams. Amendment to H.R. 2048, offered by Mr. Jordan of Ohio, at the end of Title 4, insert the following.

Chairman Goodlatte. Without objection, the amendment is considered as read.

[The amendment of Mr. Jordan follows:]
Chairman Goodlatte. And the gentleman is recognized for 5 minutes on his amendment.

Mr. Jordan. Mr. Chairman, thank you. The FISA Court meets in secret to review requests for surveillance. In its deliberations, the court only hears from one side, the government agency making the request. This amendment is about balance. The current process results in the court approving the vast majority of surveillance requests made by the government. In fact, since 1979 with the creation of the court, 33,949 requests, 12 denied. 12. No one argues the case of the opposition in the FISA Court. This important check on government power is part of the cornerstone of our system of government. It is done to ensure fairness.

As recent disclosures have shown, we need to have someone standing up in the FISA Court to argue the interests of individual privacy, individual liberty. We need someone scrutinizing the government's position to ensure that the government does not go unchallenged on such important matters as surveillance. In fact, Senator Wyden said, "The FISA Court is the most one-sided legal process in the United States. I do not know of any other legal system or court that really does not highlight anything except one point of
view." It is time for the court to hear both sides of the argument. It is time to create the office of constitutional advocate to give citizens a voice in the court. It is time for balance.

The amendment we are offering is identical to the text that Congressman Van Hollen and I introduced in the last Congress. It would create the office within the judicial branch. The text is similar to a Senate bill, also from last Congress, introduced by Senator Blumenthal and supported by 18 other United States senators.

The constitutional advocate would analyze requests for surveillance made to the FISA Court to ensure that they pass constitutional muster. Minimizing the scope of surveillance and data collection and retention, the advocate could appeal decisions on constitutional grounds and participate in the appeals process in the FISA Court of Review.

To guarantee that emergency requests for surveillance would not be delayed, the court could deny a request by the advocate to argue before them, and the advocate could appeal any such denials to the FISA Court of Review. The advocate would be an independent part of the judicial branch and would
not work for the president, cannot be fired by an executive branch official, and advocates would serve a three-year term, and could be reappointed.

This is important. The selection of the advocate would be made by the Chief Justice of the United States, the same guy who is picking the judges who serve on the FISA Court. He would choose from a list of no fewer than 5 candidates submitted by the Privacy and Civil Liberties Oversight Board. In putting together the list of candidates, the PCLOB would be charged with choosing individuals it believes would be "zealous and effective advocate in defense of civil liberties," and, of course, who have the relevant legal experience.

I recognize that the base bill includes a provision creating a friend of the court role within the FISA Court, special advocates who could participate in cases that involve a novel or significant interpretation of law. While this is a good step and a significant step, I believe that creating a more permanent office and tasking it with safeguarding our constitutional rights is a better way to go.

Obviously our intelligence agencies should have all the tools they need to help protect the Nation in the prevention
of terrorist acts, but these tools should be used in ways that are consistent with the protection of our basic civil liberties. I think this is a small step. I think this is a balanced step. And I would urge a yes vote.

Ms. Lofgren. Would the gentleman yield?

Mr. Jordan. I would be happy to yield to the gentlelady from California.

Ms. Lofgren. I would like to speak briefly in support of this amendment. This concept is one that has attracted broad bipartisan support both on the House and on the Senate side, and I think for a reason. It does nothing to open up the process. It still is completely secret. But at least there is a counter point of view that the court might be able to consider.

I believe that had this been in place, we might not have the kind of distortion that the court erred in on the original interpretation of the PATRIOT Act. And I would hope that something as modest, yet sensible, as this might be made a part of the measure. And I thank the gentleman for taking the lead in offering it, and appreciate the amendment.

Mr. Jordan. I thank the gentlelady for her comments and for her support of the amendment, and for her tireless
efforts on protecting civil liberties. With that, I yield back, Mr. Chairman.

Chairman Goodlatte. The chair thanks the gentleman.

Mr. Sensenbrenner. Mr. Chairman?

Chairman Goodlatte. And for what purpose does the gentleman from Wisconsin seek recognition?

Mr. Sensenbrenner. Opposition to the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, this amendment changes the way that opposition views can be given to the FISA Court. It does not change the fact that there will be opposition to the Justice Department given to the FISA Court. I agree with my friend from Ohio in no uncertain terms that the FISA Court listens to one side of the argument and then reaches an educated conclusion, and that is wrong because it turns judges into policy makers rather than arbiters of differing views of the law.

What the bill does is it has a group of amicus curiae that would be selected to present that opposition view to the FISA Court. The gentleman from Ohio proposes to have a permanent position with a whole bunch of staff on the
judicial branch's payroll to do exactly the same thing. Now, I think that the provisions in the bill are the way to have the most bang for the buck in terms of presenting constitutional and privacy questions to the FISA Court. We do not need the permanent bureaucracy appointed by the Chief Justice to do the same thing that the amicus curiae under the bill are supposed to do.

You know, I would just point out that you get into the whole issue of who gets to make the appointments. You know, the judges on the FISA Court are named by the Chief Justice. They are all Article 3 judges who have previously been nominated by the President and confirmed by the Senate. The proposal is to have this type of an advocate being appointed by the judicial branch. That poses constitutional questions under the appointments clause of the Constitution. There is no question of constitutionality in having the President appoint the panel of amicus curiae who would be able to present the same arguments as the constitutional advocate proposed by the gentleman from Ohio.

We all agree, I think, here that the FISA Court needs to listen to both sides. The question is how to do it in a constitutional manner, stopping the establishment of a
permanent bureaucracy called the constitutional advocate, but still getting the job done. I think that this amendment is flawed. It probably does blow up the deal, but that is not the reason principally why it ought to be voted down. It ought to be voted down for the reasons that I have stated. I yield back.

Chairman Goodlatte. Would the gentleman yield?

Mr. Sensenbrenner. Reclaiming my time, I yield to the chair.

Chairman Goodlatte. I thank the gentleman for yielding. I join him in opposition to the amendment, and I know that the gentleman from Michigan, the ranking member, does as well.

The question occurs on the amendment offered by the gentleman from Ohio.

All those in favor, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the noes have it, and the amendment is not agreed to.

Are there any further amendments to H.R. 2048?

[No response.]

Chairman Goodlatte. A reporting quorum being present,
the question is on the motion to report the bill, H.R. 2048, as amended, favorably to the House. Not as amended.

Those in favor, say aye.

Those opposed?

The ayes have it. The bill is --

Mr. Sensenbrenner. Mr. Chairman, may we have a roll call?

Chairman Goodlatte. A recorded vote is requested, and the clerk will call the roll.

Ms. Williams. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Williams. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

Ms. Williams. Mr. Sensenbrenner votes aye.

Mr. Smith?

[No response.]

Ms. Williams. Mr. Chabot?

Mr. Chabot. Aye.

Ms. Williams. Mr. Chabot votes aye.

Mr. Issa?

[No response.]
Ms. Williams. Mr. Forbes?
[No response.]
Ms. Williams. Mr. King?
[No response.]
Ms. Williams. Mr. Franks?
Mr. Franks. Aye.
Ms. Williams. Mr. Franks votes aye.
Mr. Gohmert?
[No response.]
Ms. Williams. Mr. Jordan?
Mr. Jordan. No.
Ms. Williams. Mr. Jordan votes no.
Mr. Poe?
Mr. Poe. No.
Ms. Williams. Mr. Poe votes no.
Mr. Chaffetz?
Mr. Chaffetz. Aye.
Ms. Williams. Mr. Chaffetz votes aye.
Mr. Marino?
Mr. Marino. Yes.
Ms. Williams. Mr. Marino votes yes.
Mr. Gowdy?
2218  [No response.]
2219  Ms. Williams. Mr. Labrador?
2220  [No response.]
2221  Ms. Williams. Mr. Parenthold?
2222  [No response.]
2223  Ms. Williams. Mr. Collins?
2224  Mr. Collins. Aye.
2225  Ms. Williams. Mr. Collins votes aye.
2226  Mr. DeSantis?
2227  Mr. DeSantis. Aye.
2228  Ms. Williams. Mr. DeSantis votes aye.
2229  Ms. Walters?
2230  Ms. Walters. Aye.
2231  Ms. Williams. Ms. Walters votes aye.
2232  Mr. Buck?
2233  [No response.]
2234  Ms. Williams. Mr. Ratcliffe?
2235  Mr. Ratcliffe. Yes.
2236  Ms. Williams. Mr. Ratcliffe votes yes.
2237  Mr. Trott?
2238  Mr. Trott. Yes.
2239  Ms. Williams. Mr. Trott votes yes.
Mr. Bishop?
Mr. Bishop. Yes.
Ms. Williams. Mr. Bishop votes yes.
Mr. Conyers?
Mr. Conyers. Aye.
Ms. Williams. Mr. Conyers votes aye.
Mr. Nadler?
Mr. Nadler. Aye.
Ms. Williams. Mr. Nadler votes aye.
Ms. Lofgren?
Ms. Lofgren. Aye.
Ms. Williams. Ms. Lofgren votes aye.
Ms. Jackson Lee?
[No response.]
Ms. Williams. Mr. Cohen?
Mr. Cohen. Aye.
Ms. Williams. Mr. Cohen votes aye.
Mr. Johnson?
[No response.]
Ms. Williams. Mr. Pierluisi?
[No response.]
Ms. Williams. Ms. Chu?
Ms. Williams. Ms. Chu votes aye.
Mr. Deutch?
Mr. Deutch. Aye.
Ms. Williams. Mr. Deutch votes aye.
Mr. Gutierrez?
[No response.]
Ms. Williams. Ms. Bass?
[No response.]
Ms. Williams. Mr. Richmond?
Mr. Richmond. Aye.
Ms. Williams. Mr. Richmond votes aye.
Ms. DelBene?
Ms. DelBene. Aye.
Ms. Williams. Ms. DelBene votes aye.
Mr. Jeffries?
Mr. Jeffries. Aye.
Ms. Williams. Mr. Jeffries votes aye.
Mr. Cicilline?
Mr. Cicilline. Aye.
Ms. Williams. Mr. Cicilline votes aye.
Mr. Peters?
Mr. Peters. Aye.

Ms. Williams. Mr. Peters votes aye.

Chairman Goodlatte. The gentleman from Virginia?

Mr. Forbes. Aye.

Ms. Williams. Mr. Forbes votes aye.

Chairman Goodlatte. Just to inform the members, since we told some that we adjourn at noon, we are going to try to pause here a little bit to let people get here who may not have, even though we gave them warning 10 minutes before noon that we were changing our approach.

The chair will stay to take the vote if members do not want to await with anticipation the final result.

[Laughter.]

Chairman Goodlatte. But we want to be fair to some members who might struggling to get here.

The gentleman from South Carolina?

Mr. Gowdy. Yes.

Ms. Williams. Mr. Gowdy votes yes.

Chairman Goodlatte. The clerk will report. The clerk will report.

Ms. Williams. Mr. Chairman, 25 members voted aye, 2 members voted no.
Chairman Goodlatte. The ayes have it. The bill is ordered reported favorably to the House. Members will have 2 days to submit views.

[The information follows:]
Chairman Goodlatte. And that concludes our business for today, and I thank all the members for the vigorous debate that we had. We thank them all for attending, and the markup is adjourned.

[Whereupon, at 12:12 p.m., the committee was adjourned.]