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4 MARKUP OF H.R. 2048, THE USA FREEDOM ACT

5 Thursday, April 30, 2015

6 House of Representatives

7 Committee on the Judiciary

8 Washington, D.C.

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

12       Present: Representatives Goodlatte, Sensenbrenner,  
13 Smith, Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan,  
14 Poe, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Collins,  
15 DeSantis, Walters, Buck, Ratcliffe, Trott, Bishop, Conyers,  
16 Nadler, Lofgren, Jackson Lee, Cohen, Chu, Deutch, Bass,  
17 Richmond, DelBene, Jeffries, Cicilline, and Peters.

18           Staff present: Shelley Husband, Majority Staff  
19 Director; Branden Ritchie, Deputy Majority Staff Director and  
20 Chief Counsel; Caroline Lynch, Majority Chief Counsel,  
21 Subcommittee on Crime, Terrorism, Homeland Security, and  
22 Investigations; Jason Herring, FBI Detailee, Subcommittee on  
23 Crime, Terrorism, Homeland Security, and Investigations;  
24 Kelsey Williams, Majority Clerk; Perry Apelbaum, Minority  
25 Staff Director; Danielle Brown, Minority Parliamentarian;  
26 Aaron Hiller, Minority Counsel; and Maggie Lopatin, Minority  
27 Clerk.  
28

29 Chairman Goodlatte. Good morning. Pursuant to notice,  
30 the Judiciary Committee will come to order. Without  
31 objection, the chair is authorized to declare a recess of the  
32 committee at any time. And pursuant to notice, I now call up  
33 H.R. 2048 for purposes of markup and move that the committee  
34 report the bill favorably to the House.

35 The clerk will report the bill.

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

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

45 [The bill follows:]

46

47 Chairman Goodlatte. And I will begin by recognizing  
48 myself for an opening statement.

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

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

66 I want to thank the sponsor of the USA Freedom Act,  
67 Crime Subcommittee Chairman Sensenbrenner, for his dedication  
68 to this important issue. And I am pleased to join him,

69 Ranking Member Conyers, Congressman Nadler, and 19 other  
70 members of this committee as an original co-sponsor of this  
71 important legislation.

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

80 Since the revelation of this program, many members of  
81 Congress and their constituents have expressed concern about  
82 how the program is operated and whether it poses a threat to  
83 American civil liberties and privacy. Last Congress, the  
84 House Judiciary Committee conducted aggressive oversight of  
85 this program. The committee conducted three full committee  
86 hearings, including a classified hearing with the  
87 intelligence community and a hearing to examine  
88 recommendations from the President's Review Group on  
89 Intelligence and Communications Technologies and the Private  
90 and Civil Liberties Oversight Board.

91           This oversight culminated in passage by the committee  
92 and the House of the USA Freedom Act last spring. The  
93 legislation before the committee today builds up on that  
94 legislation and goes beyond it to add additional privacy  
95 protections and national security tools. At the heart of  
96 this legislation is the reform of Section 215 to prohibit  
97 bulk collection of any business records. Bulk collection is  
98 also prohibited under the FISA pen register trap and trace  
99 device authority, and national security letter authorities.

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

113 governed by minimization procedures approved by the FISA  
114 Court.

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

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

131       The USA Freedom Act also contains several important  
132 national security enhancements, including closing loopholes  
133 that make it difficult for the government to track foreign  
134 terrorists and spies as they enter or leave the country,

135 clarifying the application of FISA to foreign targets who  
136 facilitate the international proliferation of weapons of mass  
137 destruction, increasing the maximum penalties for material  
138 support of a foreign terrorist organization, and extending  
139 the sunsets of the expiring PATRIOT Act provisions to  
140 December 2019. The USA Freedom Act ensures that critical  
141 FISA authorities will remain in place to protect our national  
142 security while also protecting our civil liberties so that we  
143 can regain the trust of the American people.

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

149 Mr. Conyers. I thank you, Chairman Goodlatte, for your  
150 willingness to work with Mr. Sensenbrenner, Mr. Nadler, and  
151 myself to reintroduce a stronger version of the USA Freedom  
152 Act. You know, it was exactly almost 1 year ago this  
153 committee met to consider an earlier version of the USA  
154 Freedom Act. The earlier version, like the one we later  
155 considered on the House floor, and the version before us this  
156 morning was far from perfect. But this committee recognized

157 a year ago that the perfect should not be the enemy of the  
158 good. We voted unanimously to support last year's measure,  
159 and I plead with my colleagues for the same unanimous show of  
160 support today.

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

174 For years, the government has misread the plain text of  
175 Section 215 of the PATRIOT Act and other statutes to justify  
176 surveillance programs that far exceed any authority granted  
177 by Congress. A vote for this bill rejects that reading of  
178 the law. It is necessary and proper that we do so today. We

179 must also act swiftly to adopt the many other reforms  
180 included in this legislation. In the nearly 40 years since  
181 the creation of the Foreign Intelligence Surveillance Court,  
182 the government has advanced its legal theories ex parte, in  
183 camera, and in secret. This bill corrects that practice  
184 because in this country there is no such thing as secret law.

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

193       These experts will provide an important check on the  
194 government and finally give the Court an opportunity to hear  
195 an opposing argument. These changes, along with robust  
196 reporting requirements for the government and flexible  
197 reporting options for private companies, mean that the public  
198 will know far more about how these surveillance authorities  
199 are actually used. This legislation makes many other timely  
200 changes, and although we will not consider every reform I had

201 hoped to include, this version of the USA Freedom Act is an  
202 obvious improvement over last year's product and a vast  
203 improvement over current law.

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

212 We believe that this conversation includes a serious  
213 look at whether these tools accord with our national values.  
214 We believe that public debate on core questions of privacy  
215 and free association not only builds confidence in our  
216 government, but lends credibility and resilience to a  
217 national security infrastructure that is built to last.  
218 There will be members of the House and Senate who oppose this  
219 bill because it does not include reform to surveillance law  
220 we can imagine, and there will be others opposed who will  
221 oppose it because it includes any changes to existing  
222 surveillance programs. But here today in this committee we

223 will again strike the balance that leadership entails.

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

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

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

243       Mr. Sensenbrenner. Thank you very much, Mr. Chairman.  
244 The USA Freedom Act ends bulk collection, increases

245 transparency, and stops secret laws. Right now as we speak,  
246 the NSA is collecting data on every call made to and from  
247 every American. The NSA claims the authority to do this is  
248 under Section 215 of the PATRIOT Act. I was the chairman of  
249 this committee on September 11th and the author of the  
250 PATRIOT Act. I can say in no uncertain terms that Congress  
251 did not intend to allow the bulk collection of Americans'  
252 records. The government's overbroad collection is based on a  
253 blatant misreading of the law.

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

260 As chairman, I demanded that each of the new provisions  
261 in the PATRIOT Act contains a sunset so that they would  
262 automatically expire if Congress did not reauthorize them.  
263 Most of the provisions of the act proved noncontroversial and  
264 were made permanent. Three provisions -- Section 215, roving  
265 wire taps, and lone wolf -- remain subject to sunsets and  
266 will expire on June 1st.

267           Knowing what we know now, a clean reauthorization of  
268 these programs is an express vote in favor of bulk  
269 collection. Let me repeat that. A straight reauthorization  
270 with no changes is an express vote in favor of bulk  
271 collection on Americans. It says to the American people your  
272 government needs all your records to keep you safe. Members  
273 who travel home to their districts who have to look their  
274 constituents in the eye and say I believe that the government  
275 should collect all of your phone records, I will not cast  
276 that vote, and I hope none of my colleagues here today will  
277 as well.

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

288           And beyond ending bulk collection, with what conceit can

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

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

310 The United States has the world's most well-trained and

311 capable antiterrorism apparatus in the world, and with ISIL  
312 and others who detest our way of life, we need this  
313 sophisticated counterterrorism infrastructure. I am not  
314 naïve to the threats facing our Nation, but bulk collection  
315 is an affront to civil liberties, and it does not make us  
316 safer. The USA Freedom Act is a pro-privacy, pro-national  
317 security, pro-business bill that deserves all of our support.

318 I want to thank Chairman Goodlatte, Ranking Member  
319 Conyers, and others for all their hard work and the staff for  
320 so many hours. It is imperative that this committee and  
321 finally the Congress support the USA Freedom Act and enact it  
322 into law. The cost of inaction is dire. Thank you.

323 Chairman Goodlatte. The chair thanks the gentleman and  
324 recognizes the gentleman from New York, a senior member of  
325 the committee and ranking member on the Subcommittee on  
326 Courts, Intellectual Property, and the Internet, for his  
327 opening statement.

328 Mr. Nadler. Thank you, Mr. Chairman. In 1761, a  
329 patriot named James Otis resigned as advocate general in the  
330 Vice Admiralty Court of Colonial Massachusetts rather than  
331 defend the Crown in a lawsuit challenging the legality of  
332 writs of assistance and general warrants. These generalized

333 search warrants were used by British soldiers to enter  
334 American homes and search American property at will. At the  
335 time, the intrusion was justified by national security, the  
336 need to find smugglers and rebels.

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

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

349 The government may have good reasons to want to intrude  
350 on our privacy. We rely on law enforcement and on the  
351 intelligence community to keep us safe from threats that pose  
352 a real and present danger to the United States. But before  
353 the government may search our homes, seize our persons, or  
354 intercept our communications, it must first make a showing of

355 individualized suspicion. In most instances, it must make  
356 this showing to a court. The intrusion it requests must be  
357 as targeted and as brief as circumstances allow. The 4th  
358 Amendment and liberty demand no less.

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

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

376       This bill requires the government to promptly declassify

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

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

398 Before I close, I want to be clear. Not every reform I

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

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

415 Chairman Goodlatte. The chair thanks the gentleman.  
416 Are there any amendments to H.R. 2048?

417 Mr. King. Mr. Chairman?

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

420 Mr. King. Mr. Chairman, I have an amendment at the

421 desk.

422 Chairman Goodlatte. The clerk will report the  
423 amendment.

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

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

429 [The amendment of Mr. King follows:]

430

431 Chairman Goodlatte. And the gentleman is recognized for  
432 5 minutes on his amendment.

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

442 The public seems to look at a single component of this,  
443 and that is data collection, the metadata collection, and the  
444 method of that data collection. I agree with the premise of  
445 this bill. The Federal government does not need to be  
446 collecting metadata. And I suggested in a previous hearing  
447 that it would be far superior if we would just simply  
448 contract with the telecoms to retain that data and then query  
449 that data by the order of a FISA Court with a warrant from a  
450 FISA Court rather than having all that within the hands of a  
451 specially-built facility with many, many terabytes of data  
452 collected that can peek into about anything.

453           We trust our telecoms. I have not heard any objection  
454 about that. People have the records of our bills. They are  
455 in the records of the telecommunications companies that serve  
456 our houses, our cell phones, et cetera, and that data is  
457 there. I want to make sure that that data that is  
458 comfortably in the control, I will say, within the comfort of  
459 the people in control of the telecoms, is accessible under a  
460 FISA warrant. And they may have business model reasons by  
461 which these telecoms would keep that data. They do for  
462 billing reasons primarily. And at the end of that life, they  
463 will dump that data.

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

471           And the language of this amendment, there are two  
472 components that I need to emphasize. One is that the  
473 language is "may not shall consistent with the protection of  
474 classified information, intelligence sources, and methods,

475 and privacy, and civil liberties." That is the  
476 constitutional protection that is there for our privacy. The  
477 first part is in this amendment. The second component of it  
478 is that the head of an element of the intelligence community  
479 may, not shall, but may enter into a voluntary agreement with  
480 a person to compensate such person, which would be the  
481 telecom entity, for retaining call detail records for a  
482 period.

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

489 And, Mr. Chairman, I will tell you that I believe that  
490 our intelligence collection ability and our intelligence  
491 system in this country has been severely damaged by Edward  
492 Snowden in ways well beyond the scope of our discussion here  
493 today. And it will take a generation or more to recover and  
494 reconstruct some of the things that we were able to do. I do  
495 not want to give up that opportunity to protect us. I do not  
496 want to see another disaster on America.

497           And then I would just point out there is another piece  
498 that seems to be misunderstood by some of the telecoms  
499 themselves that this is voluntary. And so, under (b) it  
500 says, "Rule of construction. Nothing in this section may be  
501 construed to require any non-federal entity to enter into any  
502 agreement." Not only is it "may." It specifically states  
503 that no telecom is required, but if they can reach an  
504 agreement under this amendment, then we will be able to  
505 compensate them for the storage of that data so that it is  
506 available in the event that there is justification for a FISA  
507 warrant.

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

515           And I know that different entities will read different  
516 things into the bill. They will read different things into  
517 my amendment. But when you have ambiguities that are there,  
518 it leaves it open for the pendulum to swing completely in one

519 direction, or the pendulum to swing perhaps in the other  
520 direction. And I want to eliminate the ambiguities and make  
521 sure that our intelligence community has the opportunity to  
522 have access under a FISA warrant to the data and the  
523 information that may, and hopefully is never required, to  
524 keep us safe.

525       So I urge its adoption, and I yield back the balance of  
526 my time.

527       Chairman Goodlatte. The chair thanks the gentleman, and  
528 recognizes himself. The legislation before us today was  
529 carefully and painstakingly negotiated not just amongst  
530 members of this committee, but with our colleagues on the  
531 House Intelligence Committee and the intelligence community.

532       The gentleman from Iowa's amendment is well intentioned,  
533 and it is a means to further national security protections  
534 beyond the robust protections in this bill, and I thank him  
535 for that. But data retention issues are controversial, and  
536 inclusion of this amendment will most certainly prevent  
537 consideration of this bill on the House floor and in the  
538 Senate.

539       H.R. 2048 is landmark legislation to protect privacy,  
540 protect national security, and restore America's trust in

541 their government, and we must not approve amendments that  
542 will be a poison pill to the success of these reforms. And  
543 I, therefore, must oppose the amendment. I would say to the  
544 gentleman that I would be happy outside of this legislation  
545 to look for ways to continue to advance making sure that  
546 there is the necessary cooperation, to make sure that  
547 intelligence gathering organizations are able to do their  
548 proper job, but I cannot support the amendment. And I yield  
549 back.

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

552 All those favor, respond by saying aye.

553 Those opposed, no.

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

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

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

560 Ms. Williams. Mr. Goodlatte?

561 Chairman Goodlatte. No.

562 Ms. Williams. Mr. Goodlatte votes no.

563 Mr. Sensenbrenner?  
564 Mr. Sensenbrenner. No.  
565 Ms. Williams. Mr. Sensenbrenner votes no.  
566 Mr. Smith?  
567 [No response.]  
568 Ms. Williams. Mr. Chabot?  
569 [No response.]  
570 Ms. Williams. Mr. Issa?  
571 [No response.]  
572 Ms. Williams. Mr. Forbes?  
573 [No response.]  
574 Ms. Williams. Mr. King?  
575 Mr. King. Aye.  
576 Mr. Williams. Mr. King votes aye.  
577 Mr. Franks?  
578 Mr. Franks. No.  
579 Ms. Williams. Mr. Franks votes no.  
580 Mr. Gohmert?  
581 Mr. Gohmert. Aye.  
582 Ms. Williams. Mr. Gohmert votes aye.  
583 Mr. Jordan?  
584 Mr. Jordan. Yes.

585 Ms. Williams. Mr. Jordan votes yes.

586 Mr. Poe?

587 Mr. Poe. Yes.

588 Ms. Williams. Mr. Poe votes yes.

589 Mr. Chaffetz?

590 [No response.]

591 Ms. Williams. Mr. Marino?

592 Mr. Marino. No.

593 Ms. Williams. Mr. Marino votes no.

594 Mr. Gowdy?

595 [No response.]

596 Ms. Williams. Mr. Labrador?

597 Mr. Labrador. No.

598 Ms. Williams. Mr. Labrador votes no.

599 Mr. Farenthold?

600 [No response.]

601 Ms. Williams. Mr. Collins?

602 Mr. Collins. No.

603 Ms. Williams. Mr. Collins votes no.

604 Mr. DeSantis?

605 [No response.]

606 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.

629 Ms. Jackson Lee?  
630 [No response.]  
631 Ms. Williams. Mr. Cohen?  
632 Mr. Cohen. No.  
633 Ms. Williams. Mr. Cohen votes no.  
634 Mr. Johnson?  
635 [No response.]  
636 Ms. Williams. Mr. Pierluisi?  
637 [No response.]  
638 Ms. Williams. Ms. Chu?  
639 [No response.]  
640 Ms. Williams. Mr. Deutch?  
641 Mr. Deutch. No.  
642 Ms. Williams. Mr. Deutch votes no.  
643 Mr. Gutierrez?  
644 [No response.]  
645 Ms. Williams. Ms. Bass?  
646 Ms. Bass. No.  
647 Ms. Williams. Ms. Bass votes no.  
648 Mr. Richmond?  
649 [No response.]  
650 Ms. Williams. Ms. DelBene?

651 Ms. DelBene. No.

652 Ms. Williams. Ms. DelBene votes no.

653 Mr. Jeffries?

654 Mr. Jeffries. No.

655 Ms. Williams. Mr. Jeffries votes no.

656 Mr. Cicilline?

657 Mr. Cicilline. No.

658 Ms. Williams. Mr. Cicilline votes no.

659 Mr. Peters?

660 Mr. Peters. No.

661 Ms. Williams. Mr. Peters votes no.

662 Chairman Goodlatte. The gentleman from California?

663 Mr. Issa. No.

664 Ms. Williams. Mr. Issa votes no.

665 Chairman Goodlatte. The gentleman from Virginia?

666 Mr. Forbes. No.

667 Ms. Williams. Mr. Forbes votes no.

668 Chairman Goodlatte. The gentleman from South Carolina?

669 Mr. Gowdy. No.

670 Ms. Williams. Mr. Gowdy votes no.

671 Chairman Goodlatte. The gentleman from Texas?

672 Mr. Ratcliffe. No.

673 Ms. Williams. Mr. Ratcliffe votes no.

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

676 [No response.]

677 Chairman Goodlatte. The clerk will report.

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

680 Chairman Goodlatte. And the amendment is not agreed to.  
681 Are there further amendments? For what purpose does the  
682 gentleman from Texas seek recognition?

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

684 Chairman Goodlatte. The clerk will report the  
685 amendment.

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

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

690 [The amendment of Mr. Poe follows:]

691

692 Chairman Goodlatte. And the gentleman is recognized for  
693 5 minutes on his amendment.

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

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

709 We found out due to the revelations from Edward Snowden  
710 that the scope of surveillance being conducted by our  
711 government is way beyond what anybody without direct access  
712 to classified programs could have imagined. Section 215 was  
713 being used for bulk metadata collection, surveillance of

714 whole entire zip codes, and phone carriers, for example. It  
715 went way far outside the scope of what Congress intended, but  
716 also what the Constitution permitted. The American public  
717 was rightfully shocked and disturbed about the disclosures  
718 and actions of our own government. I am glad there are  
719 protections in this bill to limit this kind of bulk data  
720 collection, but I think we can go a little further, and that  
721 is why I am introducing this amendment.

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

734       In any event, under current law, the government can  
735 search the database on a fishing expedition and get those

736 communications created under this program, including  
737 searching for information about a U.S. citizen. This can be  
738 done without a warrant. That seems to violate the 4th  
739 Amendment of the Constitution to me. If there is true  
740 suspicion that it is a criminal activity of a United States  
741 person, then law enforcement should do what they are supposed  
742 to do, get a warrant under the 4th Amendment just like it  
743 does in other instances in the United States.

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

756 Chairman Goodlatte. Without objection, so ordered.

757 [The information follows:]

758

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

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

777 I do not think we should say that we have to wait for  
778 another time down the road. The 4th Amendment is too  
779 important at this time for our democracy just to wait. We  
780 need to close these loopholes, and I urge this amendment be

781 passed. And I also want to thank Representatives Lofgren,  
782 Jordan, DelBene, Labrador, and Jeffries for supporting it.  
783 And I yield back, Mr. Chairman.

784 Mr. Conyers. Mr. Chairman?

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

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

794 And so, I stand firmly behind this compromise  
795 legislation because it accomplishes significant positive  
796 reforms. It ends bulk collection. It creates a panel of  
797 experts to guide the Foreign Intelligence Surveillance Court,  
798 and mandates extensive government reporting. Moreover, this  
799 legislation is a vast improvement over last year's effort.  
800 The court receives clear instructions about declassifying its  
801 opinions. Companies have more flexibility in their  
802 disclosures to the public. The definition of "specific

803 selection term" around which the ban on bulk collection turns  
804 is stronger than in any previous bill.

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

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

820 I cannot support an amendment, regardless of the merits  
821 of the underlying policy, that would endanger the historic  
822 passage of these sweeping and bipartisan reforms. And so, I  
823 urge my fellow members of this committee to oppose the  
824 amendment to secure our path to the floor and to show our

825 partners in the House that we have negotiated this bill in  
826 good faith. Thank you, Mr. Chairman.

827 Chairman Goodlatte. For what purpose does the gentleman  
828 from Wisconsin seek recognition?

829 Mr. Sensenbrenner. Mr. Chairman, I move to strike the  
830 last word.

831 Chairman Goodlatte. The gentleman is recognized for 5  
832 minutes.

833 Mr. Sensenbrenner. Mr. Chairman, if there ever was a  
834 perfect being the enemy of the good amendment, this is it,  
835 and when the perfect defeats the good, then bad prevails. As  
836 the gentleman from Michigan, the ranking member has stated,  
837 this is a poison pill amendment. Now, I did support this  
838 amendment when it was offered last year as a part of the  
839 appropriations bill on the House floor. I support the  
840 policy. But there is a time and a place for everything.  
841 This is not the time or the place to do this. The time and  
842 the place to do this is when Section 702 comes up for  
843 reauthorization.

844 What adoption of this amendment will do is take away all  
845 leverage that this committee has relative to reforming the  
846 PATRIOT Act and specifically Section 215 of the PATRIOT Act.

847 The gentleman from Michigan has stated, and I will reiterate,  
848 that if this amendment is adopted, you can kiss this bill  
849 goodbye. The reforms in this bill are too important to kiss  
850 goodbye.

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

857 Chairman Goodlatte. The chair thanks the gentleman.  
858 For what purpose does the gentlewoman from California seek  
859 recognition?

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

863 Chairman Goodlatte. The gentlewoman is recognized for 5  
864 minutes.

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

869 last year to improve this matter.

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

877 In a declassified FISA Court decision, the court stated  
878 that the NSA had been collecting substantially more U.S.  
879 person communications through its upstream collection program  
880 than originally the court had been led to believe. The  
881 upstream collection is where the NSA directly taps into  
882 internet cables to comb through all of the communications  
883 that flow through it looking for communications that match a  
884 certain criteria. And the court, again this is unclassified,  
885 found that the government is collecting tens of thousands of  
886 wholly domestic communications, probably more than 50,000 a  
887 year. This was 4 years ago. More telling is that there is  
888 no accurate estimate that could be given for the even larger  
889 number of communications collected where a U.S. person was a  
890 party.

891           Now, it should be noted that prior to 2011, the court  
892 had only approved 702 orders with a very same limitation  
893 prohibiting searching of U.S. persons without a warrant. As  
894 Mr. Poe has mentioned, the director of National Intelligence  
895 has confirmed that the government searches this vast amount  
896 of data, and this is not metadata. This is content, of  
897 telephone calls, content of emails, and other data, without  
898 individualized suspicion or probable cause. The director of  
899 the FBI has publicly confirmed they use this information to  
900 build criminal cases against U.S. persons without complying  
901 with the 4th Amendment.

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

913 should be making efforts to strengthen technology, not to  
914 weaken it.

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

923 So I do pay attention to what Mr. Sensenbrenner says,  
924 but here is my question. How can it be when the House of  
925 Representatives has expressed its will on this very question  
926 by a vote of 293 to 123, that that is illegitimate, that  
927 somehow the Intelligence Committee or the leadership can say  
928 they know better than the Congress of the United States, who  
929 has voted to do this? I understand the interest in getting a  
930 deal, but in the end the votes of the House of  
931 Representatives should matter, and that is why I do think it  
932 is important in the dance of legislation to actually close  
933 bulk collection. Otherwise, we will see this bulk collection  
934 occurring for the next 2 years.

935 I understand, Mr. Sensenbrenner, that you agree on the  
936 policy matter. This is really a tactical issue before us.  
937 But I do think the will of the House should have stature in  
938 the Constitution, and, therefore, I very much support the  
939 amendment, and I appreciate Mr. Poe's leadership in the  
940 matter. And I yield back.

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

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

944 Chairman Goodlatte. The gentleman is recognized for 5  
945 minutes.

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

957 will have 702 reauthorization, and we will have another  
958 opportunity.

959 But I want for the members, and I happened to be the  
960 junior-most member on the Republican side who was here on  
961 9/11. I want to just remind us how we got here. Our country  
962 was attacked. Mr. Sensenbrenner, working on a bipartisan  
963 basis with Bob Barr, and Barney Frank, the NRA, and the ACLU,  
964 tried to limit this original act, the PATRIOT Act, to be more  
965 narrow and more structured. House leadership on a bipartisan  
966 basis at that time did not buy it, and they rolled us. Mr.  
967 Nadler remembers. We were rolled on the floor with the  
968 original language that in a worried Nation seemed to make  
969 sense.

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

977 So do we have a bill before us today that will pass  
978 through the House and the Senate and go to the President, and

979 the President will be obliged to sign it? Yes, we do. And I  
980 think that is important that we wrench back some liberty for  
981 the American people.

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

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

994       Mr. Issa. Of course.

995       Mr. Poe. Would you just be clear about what this means  
996 to "blow up the deal?" Are you saying that the Senate does  
997 not believe in the 4th Amendment? Intel does not believe in  
998 that section of the 4th Amendment they were talking about?  
999 Is it a political decision?

1000       Mr. Issa. I think that is a great --

1001 Mr. Poe. Just explain to me what "blow up the deal"  
1002 means.

1003 Mr. Issa. And I will, and thank you. I appreciate the  
1004 question, reclaiming my time. When Chairman Burr, looking at  
1005 it from a pure intelligence standpoint in the Senate, and  
1006 Leader McConnell drafted and dropped a clean 5-year  
1007 reauthorization, what they are saying is we are at war. We  
1008 have terrorists. We need this. Let us continue doing it as  
1009 we are doing it, and trust us.

1010 Mr. Poe, I do not trust them. I do not trust this  
1011 President. I did not trust the last President without real  
1012 verification. And when this committee has verified, we have  
1013 found they have come up short, even on the obligations within  
1014 the legislation. And I think that is where Chairman  
1015 Sensenbrenner has worked so hard is to realize that they have  
1016 used our legislation in unintended ways in the bulk  
1017 collection.

1018 So do we get everything we want? Ted, we do not. Do we  
1019 get more than if we get a clean reauthorization or a series  
1020 of them over time, because we all know, and I think all of us  
1021 have been here long enough to know that it is hard to vote no  
1022 on a 6-month extension on something that is about to expire.

1023 And that is what will happen is time after time they will do  
1024 a no reform reauthorization if we do not come up with a  
1025 consensus reform.

1026 Now, again, I will say the same thing I did to my  
1027 colleague from California. We can offer this on every  
1028 appropriations. We can keep taking this and finding must  
1029 pass legislation, and I pledge to vote as I did last Congress  
1030 with you on your amendment. I just believe that this is not  
1031 the right time and the right place to do it. And I got to  
1032 tell you, I voted happily with you last year, but we did not  
1033 make law last year, and this was part of the reason.

1034 I thank the chairman for his indulgence and yield back.

1035 Chairman Goodlatte. The gentleman's time has expired.

1036 Ms. Lofgren. Could I ask unanimous consent?

1037 Chairman Goodlatte. For what purpose --

1038 Ms. Lofgren. I have a unanimous consent request.

1039 Chairman Goodlatte. Briefly, yes.

1040 Ms. Lofgren. I would like to place in the record a

1041 letter of support for this amendment by a wide group,

1042 including the ACLU, and Freedom Works, Mozilla, and Demand

1043 Progress.

1044 Chairman Goodlatte. Without objection, the letter will

1045 be made part a part of the record.

1046 [The information follows:]

1047

1048 Chairman Goodlatte. For what purpose does the gentleman  
1049 from New York seek recognition? Is the gentleman not seeking  
1050 recognition? What purpose does the gentleman from Georgia --  
1051 I am sorry -- the gentleman from Tennessee. I am having a  
1052 hard time seeing down there.

1053 Mr. Cohen. Pick a State, any State.

1054 [Laughter.]

1055 Mr. Cohen. Thank you. Thank you, Mr. Chairman. Strike  
1056 the last word.

1057 Chairman Goodlatte. The gentleman is recognized for 5  
1058 minutes.

1059 Mr. Cohen. Who was on this group that negotiated this  
1060 deal from our committee? Mr. Chairman?

1061 Chairman Goodlatte. What is that?

1062 Mr. Cohen. Who were the people on our committee who  
1063 negotiated this deal?

1064 Chairman Goodlatte. The chairman, the ranking member,  
1065 the chairman of the Crime Subcommittee, the gentleman from  
1066 New York, and their staffs.

1067 Mr. Cohen. Let me ask you then, and any of you can  
1068 answer. Was this subject matter or this specific amendment  
1069 considered by the --

1070 Chairman Goodlatte. This amendment was most definitely  
1071 discussed and rejected, and this amendment in particular we  
1072 have been assured if this amendment is attached to this bill,  
1073 this bill is going nowhere. I think that is a travesty when  
1074 we have ended bulk data collection, when we have created more  
1075 transparency for the FISA Court, when we have done other  
1076 things that promote protection of civil liberties, and some  
1077 separate things that do not affect civil liberties, but do  
1078 help strengthen national security, to lose that opportunity  
1079 when we are facing a deadline here coming up very shortly.

1080 So I am very much interested in the issue at hand. I  
1081 respect the opinion of the gentleman from Texas and the  
1082 gentlewoman from California. We will work on this. This has  
1083 leverage behind it because there is an expiration date in  
1084 2017. But as has been pointed out by the gentleman from  
1085 California, there will be other opportunities to attach these  
1086 other things.

1087 But this committee will exercise its jurisdiction on  
1088 this and soon. We will hold a hearing on this, but we have  
1089 got to get this bill, which primarily addresses Section 215,  
1090 but makes other improvements, including, by the way, an  
1091 improvement to Section 702. It creates greater transparency,

1092 greater reporting requirements about Section 702. So when  
1093 that is adopted, we will be better informed.

1094 Mr. Cohen. Let me ask, what was the main objection to  
1095 this? Did it come from the Senate? Did it come from the  
1096 House Intelligence Committee?

1097 Chairman Goodlatte. It came from many sources.

1098 Mr. Cohen. But we are not allowed to know where the  
1099 sources --

1100 Chairman Goodlatte. I am not going to speak for others,  
1101 but this amendment is objected to by many in positions to  
1102 affect the future of this legislation.

1103 Mr. Cohen. Thank you, Mr. Chairman. Ms. Lofgren, would  
1104 you yield for a moment? Would you respond to a question?

1105 Ms. Lofgren. Sure.

1106 Mr. Cohen. In balancing of all the interests at heart  
1107 with what improvements there are in this bill for civil  
1108 liberties as against the improvements that this amendment  
1109 would offer, how would you rate them on a scale?

1110 Ms. Lofgren. Well, let me say I think that there are  
1111 many improvements in this bill, and I want to congratulate  
1112 the members who worked to gain those improvements. So there  
1113 is no question this bill is a vast improvement over current

1114 law.

1115 I will say this. From my point of view, not having been  
1116 invited to be a participant in the negotiations, it astounds  
1117 me that you have a vote of the full House on this direct  
1118 question. The vote is 293 to 123 to approve these  
1119 provisions, and somehow that is without merit or  
1120 consideration. I find it hard to accept that. And I will  
1121 say further that because of the scope of 702, I mean, our  
1122 data is everywhere. Servers and your email data could be in  
1123 Iceland. It is all over, and it is all being collected,  
1124 including content. And the idea that this bill end bulk  
1125 collection when 702 is not dealt with is a fantasy. And I  
1126 thank the gentleman for --

1127 Mr. Cohen. Thank you for your response to that. I  
1128 yield back the balance of my time.

1129 Mr. Jordan. Mr. Chairman?

1130 Chairman Goodlatte. For what purpose does the gentleman  
1131 from Ohio seek recognition?

1132 Mr. Jordan. I think just speaking on the amendment.

1133 Chairman Goodlatte. The gentleman is recognized for 5  
1134 minutes.

1135 Mr. Jordan. Thank you, Mr. Chairman. And I, too,

1136 appreciate the work of the chairman. I know he has worked  
1137 hard with a number of individuals and the former chairman of  
1138 the committee. But only in Congress do we make things so  
1139 complicated.

1140 A vote for this amendment is not a vote to kill the  
1141 bill. It is not a vote for a poison pill. It is not a vote  
1142 to blow up the deal. It is a vote for the 4th Amendment,  
1143 plain and simple. All the gentleman says in his amendment is  
1144 if you are going to get information from American citizen,  
1145 you need a warrant. Imagine that. Consistent with the 4th  
1146 Amendment.

1147 And if this committee, the Judiciary Committee, the  
1148 committee most responsible for protecting the Bill of Rights,  
1149 the Constitution, and fundamental liberties, if we cannot  
1150 support this amendment, I just do not see it. And I  
1151 understand all the arguments you are making, and they are all  
1152 good in the process and everything else, but only in Congress  
1153 does that trump. I mean, that should never trump the 4th  
1154 Amendment.

1155 The gentleman has a good amendment, and I would urge a  
1156 yes vote.

1157 Chairman Goodlatte. For what purpose does the gentleman

1158 from New York seek recognition?

1159 Mr. Nadler. Mr. Chairman, to strike the last word.

1160 Chairman Goodlatte. The gentleman is recognized for 5  
1161 minutes.

1162 Mr. Nadler. Thank you, Mr. Chairman. I rise in  
1163 opposition to this very good amendment. And I have to start  
1164 by noting what Mr. Jordan said. Only in Congress, but we are  
1165 in Congress.

1166 [Laughter.]

1167 Mr. Nadler. We are in Congress, and we must recognize  
1168 the realities of legislating in Congress. Maybe it would be  
1169 better if we were not, but that is a different question.

1170 [Laughter.]

1171 Mr. Nadler. But we are in Congress, and we have to  
1172 recognize the realities of how that affects what we do and  
1173 what we try to do. I totally agree also with the intent of  
1174 this amendment. I agree that it is vital that we enact it as  
1175 soon as possible. I voted for it last year on the floor. I  
1176 will vote for it again.

1177 But it will blow up the bill, and why would it blow up  
1178 the bill? To be blunt, because the leadership of the House  
1179 says it will. They will not permit this bill to the floor,

1180 we are told by them, if this amendment is part of the bill.  
1181 We have no reason to disbelieve them, and they have the power  
1182 to do what they say they will do. The Rules Committee can  
1183 block this bill and undoubtedly will if this amendment is  
1184 adopted. On the other hand, when you come to the  
1185 appropriations bills, there are generally open rules, and we  
1186 can pass this amendment to an appropriations bill, and we can  
1187 then, if that does not work, take it up when Section 702  
1188 comes up for reauthorization.

1189       This bill does end domestic bulk collection. It does  
1190 not do everything it ought to do. It does everything we  
1191 think we can get done, and that is the important thing. How  
1192 will we justify insisting on a better bill at the cost of  
1193 having no bill and having all the degradations of liberty  
1194 that go on now continue to go on indefinitely?

1195       The leadership in the Senate has already introduced a  
1196 straight reauthorization to continue all this indefinitely,  
1197 well, for whatever the term of the reauthorization is. I do  
1198 not know what they have done. We are going to have to  
1199 struggle against that. If we take this bill off the table,  
1200 that struggle is clearly a losing struggle. This bill must  
1201 be on the table. It will only be on the table if it gets out

1202 of the Rules Committee, if it gets to the floor, if it  
1203 passes. If it gets to the floor, it will pass. But the  
1204 leadership of the House has the power to prevent it from  
1205 getting to the floor, and has told us they will exercise that  
1206 power if this amendment is in it.

1207 I do not like that fact. I am not a great supporter of  
1208 the current leadership, as most people know. That is not the  
1209 point. It is a fact, and we are in Congress, and we have to  
1210 deal with the power relationships that exist in Congress, and  
1211 a number of facts are clear. One, this amendment, as much as  
1212 I approve of the substance, will cause the bill to not go  
1213 anywhere beyond this committee because the leadership has  
1214 told us so, and they will do that.

1215 Two, this amendment should be, and I presume will be,  
1216 offered on the floor as an amendment to an appropriations  
1217 bill. It will get presumably a similar overwhelming vote as  
1218 it did last time, and hopefully we can perhaps threaten the  
1219 appropriations bill. And hopefully the power relationships  
1220 are different in that bill, and we can get it adopted into  
1221 law at that time. And if not, we can wait for Section 702  
1222 reauthorization.

1223 But we have a much better shot there. We have no shot.

1224 This amendment will not be enacted into law as a result of  
1225 being put in this bill because this bill will not be enacted  
1226 into law. So aside from feeling good momentarily, what do we  
1227 accomplish by voting for this amendment today? We are here  
1228 for a very practical purpose, and that is to protect American  
1229 liberty as much as we can. The best opportunity now is to  
1230 pass this bill, and for that we must defeat this amendment,  
1231 and then seek to improve the situation after the bill is  
1232 adopted or after it is adopted by the House at any rate,  
1233 which will be next week or two weeks from now hopefully, by  
1234 dealing with Section 702.

1235       So reluctantly I urge the defeat of this amendment so  
1236 that we can make the progress knowing that we are dealing  
1237 with the realities of the day, not with the power  
1238 relationships we might like to have. How do we justify the  
1239 overwhelming opinion of the House not being adhered to? The  
1240 power relationships, I do not justify it, but mandate it.

1241       So I urge the defeat of this amendment now, and let us  
1242 work to pass this amendment to an appropriations bill or to  
1243 702 when it comes up. But meanwhile, let us pass this bill  
1244 to end domestic bulk surveillance and to improve American  
1245 liberty now. I thank you, and I yield back.

1246 Chairman Goodlatte. The chair thanks the gentleman.  
1247 For what purpose does the gentleman from Idaho seek  
1248 recognition?

1249 Mr. Labrador. To support the amendment.

1250 Chairman Goodlatte. The gentleman is recognized for 5  
1251 minutes.

1252 Mr. Labrador. Thank you, Mr. Speaker. I am just going  
1253 to state the obvious. As was previously stated, the obvious  
1254 is that we are in Congress, but what is also obvious is that  
1255 we are allowing the Intelligence Committee to have a veto  
1256 over the will of the American people, and I think that is  
1257 inappropriate. I think that is sad. And I think when you  
1258 look at this issue, every person who has spoken against it is  
1259 actually for the amendment. They are actually for the  
1260 amendment.

1261 So we are having a debate about whether we should have  
1262 an amendment that everyone agrees to, everyone wants to  
1263 adhere to, but we are not going to allow it because two  
1264 groups are not allowing this amendment, the Intelligence  
1265 Committee and the leadership of the Republican Party. I know  
1266 how this amendment is going to end up. It is going to lose.  
1267 But I think it is a sad day for America when you have a

1268 bipartisan amendment, when you have every member just about  
1269 of this committee that agrees that this is a good amendment,  
1270 and that it is only going to be defeated because you have a  
1271 handful of people that want to continue collecting data on  
1272 Americans, and that want to have no protections on the 4th  
1273 Amendment. I think that is sad, and I hope that we can all  
1274 vote for it, but I know how this is going to end up. Thank  
1275 you very much.

1276 Ms. Jackson Lee. Mr. Chairman?

1277 Chairman Goodlatte. For what purpose does the  
1278 gentlelady from Texas seek recognition?

1279 Ms. Jackson Lee. Strike the last word, Mr. Chairman.

1280 Chairman Goodlatte. The gentlewoman is recognized for 5  
1281 minutes.

1282 Ms. Jackson Lee. I am going to agree with Mr. Labrador  
1283 and say he is absolutely right. We have a discussion among  
1284 friends, a discussion among colleagues, a discussion among  
1285 patriots, a discussion among civil libertarians. If we ever  
1286 had unity after 9/11 for those of you who were not here, this  
1287 committee came out in the waning moments of the horror of  
1288 9/11 and had one of the most protected or reasoned responses  
1289 to terrorism, which is that we were not going to terrorize

1290 ourselves. We were not going to put in place amendments that  
1291 would undermine the civil liberties, civil rights, and the  
1292 Bill of Rights of the American people.

1293 But here is where we are that I would like to offer  
1294 comments that probably walk right into Mr. Labrador's  
1295 argument, but with a little twist. It is not because we  
1296 disagree with this amendment that we should be shamed into  
1297 voting for it. We agree with the amendment. We want  
1298 everything in this bill. I am horrified at the idea of the  
1299 collection of personal data without probable cause. If we  
1300 are lawyers, and those who have adopted lawyering by being on  
1301 this committee, and I will defend them. They are practicing  
1302 without a license. But in any event, we welcome that. We  
1303 welcome that.

1304 They stand on the grounds of probable cause. They  
1305 understand the crux. There has been enough talk about  
1306 probable cause to know that this is a vital amendment. But I  
1307 would offer to say and the commitment that we will look to  
1308 the merging of these bills, and we will stand on the premise  
1309 of this legislation, this amendment, that this bill should  
1310 not go forward to the President's desk without a recognition  
1311 that there should not be a collection of data under 702

1312 without first moving and showing probable cause, which is the  
1313 essence of the amendment.

1314 But we have secured a strong bipartisan bill. We know  
1315 that it will get to the floor before the deadline. We know  
1316 that it will get to the Senate. We know that the Senate has  
1317 a bill that takes into consideration issues that we have  
1318 great concern with. I might add that in this bill since we  
1319 worked on it for any number of years, an amendment that I had  
1320 that reduces further any temptation to resort to reverse  
1321 targeting, which was an enormous issue after 9/11.

1322 The targeting of innocent Americans who were engaged  
1323 with someone who may be targeted overseas, and requiring the  
1324 Administration to obtain a regular individualized FISA  
1325 warrant whenever the real target of the surveillance is a  
1326 person in the United States. In addition, I argued for a  
1327 FISA Court advocate for the civil liberties of Americans. In  
1328 this this bill we have a panel that will have to be utilized  
1329 in certain circumstances.

1330 So we are not going forward on this bill without the  
1331 full recognition of the work that is captured in this  
1332 amendment by two of our colleagues who we know are champions,  
1333 and we join them as champions of civil liberties. But I

1334 would only offer to say that this amendment, the passage of  
1335 such, would give us a difficult pathway and endanger the  
1336 passage of a number of sweeping changes. And I might add,  
1337 the change of the panel issue meaning a FISA Court with no  
1338 intervention. This bill has intervention.

1339       It is not where I want it to be. I am hoping that we  
1340 will have some more movement. But it is a place that  
1341 establishes the freedom and the rights of Americans to be  
1342 protected in their personal data, to be protected from  
1343 unreasonable search and seizure in the 4th Amendment, and to  
1344 be able to be responsible by the Federal government, not  
1345 responsible, but held intact to hold the Federal government  
1346 intact on targeting Americans, innocent Americans, and to  
1347 take the message that we wanted to tell Americans after 9/11  
1348 that we would not terrorize ourselves after the heinous acts.  
1349 And as we look to ISIL, we will not allow them to terrorize  
1350 ourselves, and we will still provide Americans with the right  
1351 kind of protections.

1352       So, Mr. Chairman, I do not even like to use the  
1353 terminology that this stops legislation. I simply want to  
1354 say that this is an amendment that we should look for its  
1355 recognition and incorporation. We should pass this

1356 legislation for the elements of freedom that it has in it,  
1357 the powerful freedom elements that it has in it, and the  
1358 changes that it has made, and the protection of America's  
1359 personal data and information, and the appropriate restraint  
1360 under the 4th Amendment that we have now given to this  
1361 process of providing the ability to protect our Nation. But  
1362 at the same time, Mr. Chairman, it allows us to protect the  
1363 rights of Americans and not kill the Bill of Rights or civil  
1364 liberties. With that, I yield back.

1365 Chairman Goodlatte. For what purpose does the gentleman  
1366 from South Carolina seek recognition?

1367 Mr. Gowdy. Move to strike the last word.

1368 Chairman Goodlatte. The gentleman is recognized for 5  
1369 minutes.

1370 Mr. Gowdy. Thank you, Mr. Chairman. Very briefly. I  
1371 have been on this committee, I guess, almost 5 years. I do  
1372 not know that I have ever not supported an amendment from the  
1373 gentleman from Texas. He is right more often than not. In  
1374 fact, he is right this time. Also I have tremendous sympathy  
1375 and respect for the work that the chairman has done and the  
1376 subcommittee chairman, because what we have here is a  
1377 "Hobson's Choice." You oppose an amendment even though you

1378 support it in order to avoid a law that you think ought to be  
1379 remedied. It is a "Hobson's Choice." It is an impossible  
1380 dilemma.

1381 And I would just ask folks on both sides to understand  
1382 that you can agree on the policy and disagree on the strategy  
1383 by which you can achieve that policy, because what we do not  
1384 want is the status quo. And with that and to prove that I  
1385 support the gentleman from Texas in theory if actually not  
1386 with my vote, I will yield him the remainder of my time.

1387 Mr. Poe. I thank the lawyer from South Carolina for his  
1388 yielding to the court as he always says.

1389 [Laughter.]

1390 Mr. Poe. Mr. Chairman, once again I want to reiterate  
1391 what has been said by everybody. The work that has been done  
1392 on the bill is excellent, but I want to comment on something  
1393 Mr. Labrador commented on. We are it. The Judiciary  
1394 Committee is it. We are the ones that are protecting or  
1395 supposed to protect, and I think we do, that Constitution  
1396 that we have. And we are not talking about postponing and  
1397 appropriations amounts of money. We are not talking about  
1398 postponing building a bridge. We are talking about  
1399 postponing the 4th Amendment and letting it apply to American

1400 citizens for at least 2 years.

1401       This is our opportunity. If the politics says that the  
1402 Intel Committee, this amendment may be so important to them  
1403 that they do not like it that it will kill the deal, then  
1404 maybe we need to reevaluate our position in that we ought to  
1405 push forward for this amendment because it is the  
1406 constitutional protection that we demand occur for American  
1407 citizens. And we want it now, not postpone it down the road  
1408 to live to fight another day. I have heard that phrase so  
1409 long in this Congress for the last 10 years, "live to fight  
1410 another day." Let us kick the can down the road, you know

1411       I think we have to do what we are supposed to do as a  
1412 committee, and most of the members of the committee support  
1413 this idea. They agree with the 4th Amendment. It ought to  
1414 apply to American citizens under the circumstances. The  
1415 Federal government is intrusive and abusive trying to tell  
1416 companies that they want to get information, and the backdoor  
1417 comments that Ms. Lofgren has talked about. We can prevent  
1418 that. I think we should support the amendment.

1419       And then we should fight to keep this in the legislation  
1420 and bring the legislation to the floor, and let the Intel  
1421 Committee vote against the 4th Amendment if that is what they

1422 really want to do. And as far as leadership goes, I think we  
1423 ought to just bring it to the floor and politely make sure  
1424 that the law, the Constitution, trumps politics, or we can  
1425 let politics trump the Constitution. That is really the  
1426 decision.

1427 And the last comment I would make, the gentlelady from  
1428 Texas said we should not be shamed into voting for this. I  
1429 do not think we should be shamed into voting against this  
1430 bill, vote for the bill. They should be ashamed of  
1431 themselves because they are opposed to it over in Intel or  
1432 leadership if that is the case. So I thank the gentleman  
1433 from South Carolina, and I yield back my time to him.

1434 Ms. Jackson Lee. Will the gentleman yield from South  
1435 Carolina? Would the gentleman yield?

1436 Mr. Gowdy. Certainly.

1437 Ms. Jackson Lee. I thank the gentleman because that is  
1438 my good friend from Texas, Judge Poe, and we as lawyers  
1439 typically approach the court with great trepidation. Here is  
1440 the point that I would make. He has touched a point that has  
1441 all of us are torn in recognizing the heart of this  
1442 amendment. On the contrast what I would say is it is a  
1443 terrible decision when you have a bill that has an enormous

1444 amount of protections that you do not want to see lost. And  
1445 as the 702 expiration is within a timeframe that we can use a  
1446 vehicle, and the Judiciary Committee can be the driving force  
1447 of that vehicle, to move this amendment then I would say that  
1448 we have constitutional protections in this bill. And I would  
1449 just simply hope that we recognize it is a sacrifice, but it  
1450 is a sacrifice that will not last long because we agree that  
1451 we will move on the 702 reform. I yield back.

1452 Chairman Goodlatte. The time of the gentleman has  
1453 expired. For what purpose does the gentlewoman from  
1454 Washington seek recognition?

1455 Ms. DelBene. I move to strike the last word.

1456 Chairman Goodlatte. The gentlewoman is recognized.

1457 Ms. DelBene. Thank you, Mr. Chair. And I want to thank  
1458 you, Mr. Chair, the ranking member, Mr. Sensenbrenner, all  
1459 those who worked so hard on the underlying bill, and I am co-  
1460 sponsor of the underlying bill. I am also a co-sponsor of  
1461 the amendment. During last year's debate on the USA Freedom  
1462 Act, it was apparent that the legislation had room for  
1463 improvement when it came to protecting Americans' privacy,  
1464 and we came together on a bipartisan basis and worked to  
1465 ensure that backdoors to surveillance did not remain, knowing

1466 that these would thwart our overarching goals and what many  
1467 would agree the Constitution requires.

1468       This year we have come together again to close a so-  
1469 called backdoor that could potentially permit the search of  
1470 government databases for information related to U.S.  
1471 citizens. Our amendment would shut the door conclusively by  
1472 prohibiting the search of government databases for  
1473 information pertaining to U.S. citizens without a warrant.  
1474 We cannot allow agencies like the FBI that have actually  
1475 admitted to such searches to distort the law in a way that  
1476 lets them freely bypass the 4th Amendment, and this amendment  
1477 would ensure such backdoor searches are unequivocally stopped  
1478 once and for all.

1479       The second door this amendment would shut is intended to  
1480 make sure that the NSA and CIA cannot force companies to  
1481 build backdoors into their products. And as someone who has  
1482 had a long career in the technology industry, I find it  
1483 highly concerning that our own government would do anything  
1484 to intentionally weaken the security of devices. In an era  
1485 of the internet of things, now more than ever we need to  
1486 incentivize companies to make devices as secure for the  
1487 safety and privacy of their users as possible. And the fact

1488 is that even if backdoors in this context are only meant for  
1489 government use in particular situations, today's hackers are  
1490 highly skilled and nimble and quick to find new ways to break  
1491 into even the most sensitive and protected networks. So we  
1492 should not allow this intentional weakening of devices to  
1493 happen on our watch.

1494 We have broad bipartisan support for this policy. I  
1495 think it is important that we support it in this legislation.  
1496 I support the amendment, and I yield back.

1497 Ms. Lofgren. Would the gentlelady yield?

1498 Ms. DelBene. I yield to the gentlelady from California.

1499 Ms. Lofgren. This has been a very, I think, useful  
1500 discussion, and I just want to throw something out here.  
1501 There is a way for the majority of the House to be heard  
1502 procedurally. And the last time we had a discharge petition  
1503 I think was in the 90s, and the only reason why that  
1504 succeeded was it was a bipartisan effort. Discharge  
1505 petitions are never supported by the majority, and I  
1506 understand why. It is generally used to make a point. You  
1507 have to defend your majority. I get all of that, but this  
1508 may be one of the circumstances where really this not a  
1509 partisan issue. This is an issue where a majority of

1510 Democrats and a majority of Republicans voted on the floor to  
1511 approve this very same thing.

1512       And the idea that the Republican leadership or, for that  
1513 matter, any leadership could thwart that is really inimical  
1514 to a democratic society. It is a difficult issue to raise  
1515 because it is difficult for members of the majority to buck  
1516 their leadership, and I know that because we have been in the  
1517 majority, too. I am not unsympathetic. But this is an issue  
1518 not about Democrats and Republicans, but about right versus  
1519 wrong, about the Constitution versus lawless behavior.

1520       And I would like to at least throw that issue to my  
1521 colleagues on the other side of the aisle who feel as  
1522 strongly as I do that the 4th Amendment belongs in the  
1523 collection of data about the U.S. And just mention once  
1524 again that, you know, I do respect the work that has been  
1525 done, but I think there is a reason why the Intel Committee  
1526 is fighting and the intelligence community is fighting so  
1527 hard against this, which is the 702 database collection is  
1528 huge. That has been admitted publicly by the court and by  
1529 the director, and to think that we are ending bulk collection  
1530 without dealing with it is simply a fantasy. And it is not  
1531 just metadata; it is content of American citizens being

1532 collected without adherence to the 4th Amendment.

1533 I think we all agree it is a problem. We should do  
1534 something about it, and I thank the gentlelady for yielding.

1535 Chairman Goodlatte. The chair thanks the gentlewoman.

1536 Are there any other members who wish to be heard on this?

1537 The gentleman from Texas, for what purpose do you seek  
1538 recognition?

1539 Mr. Ratcliffe. Move to strike the last word.

1540 Chairman Goodlatte. The gentleman is recognized for 5  
1541 minutes.

1542 Mr. Ratcliffe. Thank you, Mr. Chairman. I very much  
1543 appreciate the amendment offered by my friend and colleague  
1544 from Texas, Judge Poe. And like everyone here, I certainly  
1545 agree with its stated intent. In full disclosure to  
1546 everyone, I am a former terrorism prosecutor that has used  
1547 warrantless searches, and frankly have benefitted from them  
1548 in a number of international and domestic terrorism cases.  
1549 With that context, reforming Title 7 is something that I  
1550 certainly want to explore, and I have been assured that this  
1551 committee intends to do just that.

1552 This bill generally does not address Title 7 with the  
1553 exception of including enhanced reporting requirements so

1554 that we can ultimately make an informed decision on that  
1555 issue. What is most important to me and my constituents, and  
1556 I know most of the folks here, is protecting Americans' civil  
1557 liberties, and so I share the concern of the gentleman from  
1558 Wisconsin, Mr. Sensenbrenner, that if we move forward with  
1559 this amendment on this bill, that we will be sacrificing  
1560 civil liberties on the altar of perfection.

1561 Because of what has already been stated, and for reasons  
1562 which I do not understand, namely that House leadership will  
1563 prevent this bill from going forward if we include this  
1564 amendment now. You know, I ran for Congress to see how  
1565 decisions were made behind the curtain here in Congress, and  
1566 one thing I have learned in 100 days is there is more than  
1567 one set of curtains.

1568 [Laughter.]

1569 Mr. Ratcliffe. So I do not understand why that decision  
1570 has been made, but it has been made. That is a decision that  
1571 I cannot change today, but we cannot afford to tank this  
1572 bill. And so, I respectfully will oppose my friend's  
1573 amendment, and yield back.

1574 Chairman Goodlatte. Would the gentleman yield?

1575 Mr. Ratcliffe. I would yield.

1576 Chairman Goodlatte. I thank the gentleman for yielding.  
1577 I think he has hit the nail on the head here. I want to  
1578 assure every member of this committee two things. First of  
1579 all, this bill is about protecting the 4th Amendment rights  
1580 of American citizens. That is why we are doing this bill.  
1581 And this committee has a responsibility to protect the 4th  
1582 Amendment rights of U.S. citizens, and we will act on Section  
1583 702. And just like Section 215 faces a deadline in 31 days,  
1584 Section 702 faces a deadline in the not too distant future.

1585 And we will not wait. We will not wait, Mr. Poe, until  
1586 that deadline to take action. We will hold a hearing on this  
1587 issue soon. We will move to address it. There will other  
1588 opportunities to address it. But this bill is not the place  
1589 to do it because this bill has a clear path to the floor to  
1590 protect the rights of United States citizens under the 4th  
1591 Amendment in a whole host of different ways. And it will  
1592 have the opportunity to put the Senate in a position to  
1593 accept it as well where many senators have introduced, on  
1594 both sides of the aisle, the same bill, identical bill.

1595 We have an opportunity to move this through a very  
1596 difficult process with a clear path. Do not support this  
1597 amendment, not because the amendment does not have merit, but

1598 because the amendment will indeed make the perfect the enemy  
1599 of the good. We should support the underlying legislation,  
1600 oppose this amendment. And I ask the clerk to call the roll.

1601 Ms. Williams. Mr. Goodlatte?

1602 Chairman Goodlatte. No.

1603 Ms. Williams. Mr. Goodlatte votes no.

1604 Mr. Sensenbrenner?

1605 Mr. Sensenbrenner. No.

1606 Ms. Williams. Mr. Sensenbrenner votes no.

1607 Mr. Smith?

1608 [No response.]

1609 Ms. Williams. Mr. Chabot?

1610 Mr. Chabot. No.

1611 Ms. Williams. Mr. Chabot votes no.

1612 Mr. Issa?

1613 Mr. Issa. No.

1614 Ms. Williams. Mr. Issa votes no.

1615 Mr. Forbes?

1616 Mr. Forbes. No.

1617 Ms. Williams. Mr. Forbes votes no.

1618 Mr. King?

1619 [No response.]

1620 Mr. Williams. Mr. Franks?  
1621 Mr. Franks. No.  
1622 Ms. Williams. Mr. Franks votes no.  
1623 Mr. Gohmert?  
1624 Mr. Gohmert. Aye.  
1625 Ms. Williams. Mr. Gohmert votes aye.  
1626 Mr. Jordan?  
1627 Mr. Jordan. Yes.  
1628 Ms. Williams. Mr. Jordan votes yes.  
1629 Mr. Poe?  
1630 Mr. Poe. Yes.  
1631 Ms. Williams. Mr. Poe votes yes.  
1632 Mr. Chaffetz?  
1633 Mr. Chaffetz. No.  
1634 Ms. Williams. Mr. Chaffetz votes no.  
1635 Mr. Marino?  
1636 Mr. Marino. No.  
1637 Ms. Williams. Mr. Marino votes no.  
1638 Mr. Gowdy?  
1639 Mr. Gowdy. No.  
1640 Ms. Williams. Mr. Gowdy votes no.  
1641 Mr. Labrador?

1642 Mr. Labrador. Yes.

1643 Ms. Williams. Mr. Labrador votes yes.

1644 Mr. Farenthold?

1645 [No response.]

1646 Ms. Williams. Mr. Collins?

1647 [No response.]

1648 Ms. Williams. Mr. DeSantis?

1649 [No response.]

1650 Ms. Williams. Ms. Walters?

1651 Ms. Walters. No.

1652 Ms. Williams. Ms. Walters votes no.

1653 Mr. Buck?

1654 Mr. Buck. Yes.

1655 Ms. Williams. Mr. Buck votes yes.

1656 Mr. Ratcliffe?

1657 Mr. Ratcliffe. No.

1658 Ms. Williams. Mr. Ratcliffe votes no.

1659 Mr. Trott?

1660 Mr. Trott. No.

1661 Ms. Williams. Mr. Trott votes no.

1662 Mr. Bishop?

1663 [No response.]

1664 Ms. Williams. Mr. Conyers?

1665 Mr. Conyers. No.

1666 Ms. Williams. Mr. Conyers votes no.

1667 Mr. Nadler?

1668 Mr. Nadler. No.

1669 Ms. Williams. Mr. Nadler votes no.

1670 Ms. Lofgren?

1671 Ms. Lofgren. Aye.

1672 Ms. Williams. Ms. Lofgren votes aye.

1673 Ms. Jackson Lee?

1674 Ms. Jackson Lee. No.

1675 Ms. Williams. Ms. Jackson Lee votes no.

1676 Mr. Cohen?

1677 [No response.]

1678 Ms. Williams. Mr. Johnson?

1679 [No response.]

1680 Ms. Williams. Mr. Pierluisi?

1681 [No response.]

1682 Ms. Williams. Ms. Chu?

1683 Ms. Chu. No.

1684 Ms. Williams. Ms. Chu votes no.

1685 Mr. Deutch?

1686 Mr. Deutch. No.

1687 Ms. Williams. Mr. Deutch votes no.

1688 Mr. Gutierrez?

1689 [No response.]

1690 Ms. Williams. Ms. Bass?

1691 Ms. Bass. No.

1692 Ms. Williams. Ms. Bass votes no.

1693 Mr. Richmond?

1694 Mr. Richmond. No.

1695 Ms. Williams. Mr. Richmond votes no.

1696 Ms. DelBene?

1697 Ms. DelBene. Aye.

1698 Ms. Williams. Ms. DelBene votes aye.

1699 Mr. Jeffries?

1700 Mr. Jeffries. Aye.

1701 Ms. Williams. Mr. Jeffries votes aye.

1702 Mr. Cicilline?

1703 Mr. Cicilline. Aye.

1704 Ms. Williams. Mr. Cicilline votes aye.

1705 Mr. Peters?

1706 Mr. Peters. No.

1707 Ms. Williams. Mr. Peters votes no.

1708 Chairman Goodlatte. The gentleman from Tennessee?

1709 Mr. Cohen. I will vote no.

1710 Ms. Williams. Mr. Cohen votes no.

1711 Chairman Goodlatte. The gentleman from Michigan?

1712 Mr. Bishop. No.

1713 Ms. Williams. Mr. Bishop votes no.

1714 Chairman Goodlatte. The gentleman from Iowa?

1715 Mr. King. No.

1716 Ms. Williams. Mr. King votes no.

1717 Chairman Goodlatte. The gentleman from Texas?

1718 Mr. Smith. Mr. Chairman, I vote no.

1719 Ms. Williams. Mr. Smith votes no.

1720 Chairman Goodlatte. Has every member voted who wishes

1721 to vote?

1722 [No response.]

1723 Chairman Goodlatte. The clerk will report.

1724 Ms. Williams. Mr. Chairman, 9 members voted aye, 24

1725 members voted no.

1726 Chairman Goodlatte. And the amendment is not agreed to.

1727 For what purpose does the gentleman from Idaho seek

1728 recognition?

1729 Mr. Labrador. Thank you, Mr. Chairman. To amend the

1730 bill.

1731 Chairman Goodlatte. The clerk will report the

1732 amendment.

1733 Ms. Williams. Amendment to H.R. 2048, offered by Mr.

1734 Labrador of Idaho, in Subsection (i) of Section --

1735 Chairman Goodlatte. Without objection, the amendment

1736 will be considered as read.

1737 [The amendment of Mr. Labrador follows:]

1738

1739 Chairman Goodlatte. And the member is recognized for 5  
1740 minutes on his amendment.

1741 Mr. Labrador. Thank you, Mr. Chairman. I guess today  
1742 we can say that we are all violently agreeing on these  
1743 amendments, but not really voting the same way. This  
1744 amendment would simply clarify the meaning of "emergency  
1745 authority" under Section 102 of the bill by more narrowly  
1746 defining an emergency situation.

1747 I want to be clear that I do not believe this amendment  
1748 should blow up this bill. I do not see why it would blow up  
1749 the bill. All it is doing is attempting to clarify the  
1750 meaning of a term in the bill, which is an "emergency  
1751 situation," as one that involves the potential for imminent  
1752 death or bodily harm to any person.

1753 Currently Section 102 gives the Attorney General the  
1754 authority to determine if an emergency situation requires the  
1755 production of tangible things before an order authorizing  
1756 this production can be obtained. "Emergency situation" is an  
1757 extremely broad term. This could grant the Attorney General  
1758 unrestricted access to the collection of these items based on  
1759 his or her own determinations, completely contradicting the  
1760 restrictions for obtaining these items outline earlier in the

1761 bill.

1762       Offering a clear limited definition of what constitutes  
1763 an emergency situation provides greater clarity and critical  
1764 limits to the Attorney General's authority. In fact, the  
1765 language, "threat of death or serious bodily harm to any  
1766 person" is already used in the bill. First it is found in  
1767 Sections 102 and 301 to create an exception for the Attorney  
1768 General to use unlawfully obtained information as evidence  
1769 without the consent of a United States person from whom the  
1770 information was obtained. Second, we find it Section 701 to  
1771 allow continued targeting of non-U.S. persons upon entry to  
1772 the United States beyond the bill's permitted 72 hours.

1773       This amendment is consistent with language already  
1774 contained in the bill, and makes an important clarification  
1775 to "emergency situation" to limit the Attorney General's  
1776 ability to claim emergency authority for the production of  
1777 tangible things. I believe this is an important amendment to  
1778 ensure that emergency authority under this act is properly  
1779 understood, and that the exceptions provided in this act do  
1780 not exceed their original intent. And I think that we need  
1781 to clarify the issue if we are going to move forward and  
1782 claim that this bill is actually limiting the authority of

1783 the United States.

1784 I am joined by my colleagues Mr. Jordan, Mr. Poe, and  
1785 Ms. Lofgren in support of this amendment, and urge my other  
1786 colleagues to support this amendment as well.

1787 Ms. Lofgren. Would the gentleman yield?

1788 Mr. Labrador. Absolutely.

1789 Ms. Lofgren. I would like to briefly speak in support  
1790 of the gentleman's amendment, which I am proud to co-sponsor.  
1791 I was on the committee, along with a number of others who are  
1792 still on the committee, when the original PATRIOT Act was  
1793 adopted. And I remember sitting in this very room, a  
1794 bipartisan group of members, and staff, and the White House,  
1795 and the like, sitting on that table, that witness table,  
1796 crafting the legislation.

1797 We found out much to our chagrin later that the terms in  
1798 the bill that we thought were very clear were interpreted, as  
1799 Mr. Sensenbrenner has noted, in a way that was not intended,  
1800 and I think in clear contradiction with not only the  
1801 legislative history, but the clear meaning of the law. The  
1802 gentleman is right. The lack of specificity about this is an  
1803 invitation for abuse, and given that he has used the exact  
1804 same language that is found to define emergencies elsewhere

1805 in the bill, I think it is a very sensible amendment. I  
1806 proud to support it, and I thank the gentleman for yielding.

1807 Mr. Labrador. Thank you very much, and I yield back.

1808 Mr. Sensenbrenner. Mr. Chairman?

1809 Chairman Goodlatte. For what purpose does the gentleman  
1810 from Wisconsin seek recognition?

1811 Mr. Sensenbrenner. Opposition to the amendment.

1812 Chairman Goodlatte. The gentleman is recognized for 5  
1813 minutes.

1814 Mr. Sensenbrenner. Mr. Chairman, there are sufficient  
1815 protections under the applicable section of the underlying  
1816 bill to take care of any excesses and grabbing of records  
1817 under an emergency situation. First of all, the approval of  
1818 business records is several levels higher than a U.S.  
1819 attorney in order to use the emergency clause of the bill.  
1820 In addition, an emergency FISA business records authorization  
1821 must still go to the FISA Court for approval within 7 days.

1822 So in the Justice Department you have to be fairly high  
1823 up in the hierarchy to get approval for an emergency  
1824 situation. And even when an emergency clause is implemented,  
1825 the FISA Court has got to sign off on it within 7 days;  
1826 otherwise, the emergency declaration is null and void.

1827           But there are certain instances in counterterrorism and  
1828 counterintelligence investigations where investigators will  
1829 need the emergency production of tangible things for foreign  
1830 intelligence purposes before a court order can be obtained.  
1831 And the limitation proposed in this amendment goes beyond  
1832 even the requirements for the emergency electronic  
1833 surveillance or emergency physical searches under FISA. So  
1834 what the gentleman's amendment has done is basically  
1835 ratcheted up the Section 215 emergency provision to something  
1836 that is much stricter than other emergency provisions under  
1837 FISA, and that is why it should be defeated.

1838           Now, finally, you know, he and I may have a difference  
1839 of opinion on what blows up this bill, you know. Let me say  
1840 that this all was considered during the negotiations that  
1841 were going on. I think that there is an appropriate  
1842 compromise to keep the dogs at bay that has continued in the  
1843 emergency appropriations of this bill. And I am afraid that  
1844 the amendment of the gentleman from Idaho can be described as  
1845 a who let the dogs out amendment. And I yield back.

1846           Chairman Goodlatte. Would the gentleman yield?

1847           Mr. Sensenbrenner. I will reclaim my time.

1848           Chairman Goodlatte. I thank the gentleman for yielding,

1849 and I share his opposition to the amendment, as I know the  
1850 ranking member does as well.

1851 Mr. Sensenbrenner. I yield back now.

1852 Chairman Goodlatte. The question occurs on the  
1853 amendment offered by the gentleman by Idaho.

1854 All those in favor, respond by saying aye.

1855 Those opposed, no.

1856 In the opinion of the chair, the noes have it, and the  
1857 amendment is not agreed to.

1858 For what purpose does the gentleman from Ohio seek  
1859 recognition? Well, the gentleman from Ohio is not here right  
1860 now. For what purpose does the gentlewoman from California  
1861 seek recognition?

1862 Ms. Lofgren. Mr. Chairman, I have an amendment at the  
1863 desk.

1864 Chairman Goodlatte. The clerk will report the  
1865 amendment.

1866 Ms. Williams. Amendment to H.R. 2048, offered by Ms.  
1867 Lofgren of California, at the end of Title 6, insert the  
1868 following.

1869 Chairman Goodlatte. Without objection, the amendment  
1870 shall be considered as read.

1871 [The amendment of Ms. Lofgren follows]

1872

1873 Chairman Goodlatte. And the gentlewoman is recognized  
1874 on her amendment for 5 minutes.

1875 Ms. Lofgren. Mr. Chairman, this amendment does two  
1876 things. It creates a whistleblower process for members of  
1877 the intelligence community to report to the comptroller  
1878 general, the Senate and House Intelligence Committees, or the  
1879 Senate and House Judiciary Committees when there is a  
1880 reasonable belief that an intelligence program violates the  
1881 law or is being grossly mismanaged or abused. And, two, it  
1882 protects whistleblowers who file complaints using the  
1883 approved channels from retaliation.

1884 Now, regardless of what you think Edward Snowden's  
1885 intentions were or what you think about him, his public  
1886 revelation of unlawful and unconstitutional use of  
1887 surveillance authority was illegal, but it did not have to  
1888 be. The 1999 Intelligence Authorization Act created the  
1889 Intelligence Community Whistleblower Protection Act. Now,  
1890 while that act did create more formal channels for Federal  
1891 employees in the intelligence community to bring forward  
1892 "urgent concerns" to their respective agency's inspector  
1893 general or through a very bureaucratic process to the House  
1894 and Senate Intelligence Committees, the act provided no

1895 protection from retaliation from reporting waste, fraud,  
1896 abuse, or criminal conduct, and has been seen by the  
1897 whistleblower community as insufficient.

1898 In 2012, President Obama issued Presidential Policy  
1899 Directive 19.

1900 Mr. Chairman, the committee is not in order. Mr.  
1901 Chairman, the committee is not in order.

1902 Presidential Directive 19, which ostensibly provides  
1903 Intelligence Committee employees with retaliation protection,  
1904 but only in limited circumstances. The Brennan Center has  
1905 noted that this directive has big gaps in coverage. It does  
1906 not apply in cases where the head of an agency determines  
1907 that an employee should be fired for national security  
1908 reasons, but does not define that.

1909 If disclosures through approved government channels  
1910 prove unsuccessful, there is no provision for disclosure  
1911 outside the agency or Intelligence Committees. Moreover, the  
1912 matter does not cover contractors, which Edward Snowden was,  
1913 and that is a very serious omission given the intelligence  
1914 community's heavy reliance on contractors. This amendment  
1915 closes all the gaps by providing real retaliation protections  
1916 for both intelligence community employees and contractors.

1917           Critically, this amendment provides two more pathways  
1918 for whistleblowers to report wrongdoing, the Government  
1919 Accountability Office and this very committee, the Judiciary  
1920 Committee. As my colleagues are aware, our intelligence  
1921 agencies that are involved in FISA-related activities often  
1922 resist cooperating with this committee despite our clear  
1923 jurisdiction over these programs. Further, the GAO and this  
1924 committee's staff have personnel with requisite clearances,  
1925 experience, and good judgment to properly handle legitimate  
1926 whistleblower complaints in a responsible, but effective,  
1927 manner.

1928           We have heard many of our colleagues throughout the  
1929 House complain about the lack of readily available  
1930 information on these programs. And one reason for the  
1931 paucity of that information is that Congress has generally  
1932 not been aggressive in making channels available for  
1933 whistleblowers to file complaints. This amendment would help  
1934 change that.

1935           I do not think I have to remind all the members of this  
1936 committee about the value of the assistance we receive from  
1937 the GAO, including on classified matters. Making GAO a safe  
1938 legitimate venue for IC whistleblowers to report problems

1939 with FISA can only help us avoid more Snowden-like incidents.  
1940 And whatever you may think of Mr. Snowden, I think we can all  
1941 agree that having more and better whistleblower reporting and  
1942 protection measures in place will reduce the chances or  
1943 properly classified programs and information from being  
1944 needlessly compromised.

1945 I would note that although I am the sole author of this  
1946 amendment, I crafted this amendment in consultation with  
1947 members of the Republican Party who do not serve on this  
1948 committee, members of the Liberty Caucus, who believe, as I  
1949 do, that providing an adequate forum for whistleblowing will  
1950 help prevent public disclosure of information such as Mr.  
1951 Snowden did that has damaged the United States, and making  
1952 sure that the Judiciary Committee is in a position to receive  
1953 information of that nature is an important element.

1954 So, Mr. Chairman, I recommend this amendment. I hope  
1955 that we could have broad bipartisan support. And with that,  
1956 I would yield back.

1957 Chairman Goodlatte. The chair thanks the gentlewoman,  
1958 and recognizes himself in opposition to the amendment. This  
1959 amendment proposes whistleblower procedures for government  
1960 employees or contractors of the intelligence community who

1961 have knowledge of programs and activities authorized under  
1962 FISA. Expanded whistleblower protections have been addressed  
1963 recently by Congress. According to the Senate Intelligence  
1964 Committee, the 2014 intelligence authorization bill included  
1965 far reaching whistleblower protections for intelligence  
1966 personnel. The bill prohibits firings, demotions, or other  
1967 personnel actions against intelligence community employees as  
1968 reprisal for legitimate whistleblower activities. It also  
1969 prevents intelligence agency managers from revoking an  
1970 employee's security clearance as a reprisal for legitimate  
1971 whistleblower activities, and creates an appeal procedure for  
1972 employees who believe they have faced such reprisal.

1973 Whistleblower protections are generally the purview of  
1974 the House Judiciary Committee. This amendment proposes  
1975 reforms that are deserving of more careful consideration by  
1976 the appropriate committees of jurisdiction. I believe the  
1977 gentlewoman said that the actions of Mr. Snowden were  
1978 illegal, but they did not need to be. Was that accurate?

1979 Ms. Lofgren. I think if had he had an opportunity, or  
1980 at least I would like to believe, that he would have reported  
1981 it to the Judiciary Committee. As a contractor he was not  
1982 covered by whistleblower protections. And I think his

1983 disclosures did actual damage to our country, but it is also  
1984 the only way we found out about some of the misconduct of our  
1985 own government.

1986 Chairman Goodlatte. I think your observation is a fair  
1987 characterization of his actions. I would, however, say that  
1988 I cannot support this amendment in this context without  
1989 having a lot more careful study of this and consultation with  
1990 the Oversight and Government Reform Committee, which has  
1991 considerable jurisdiction, the chairman of which is a member  
1992 of this committee, not here right now. But I would recommend  
1993 that the members of the committee do not support this  
1994 amendment for that reason, but we certainly should refer to  
1995 others and work with others on examining whether our  
1996 whistleblower protections, including the changes made in the  
1997 2014 intelligence authorization bill, are sufficient moving  
1998 forward.

1999 The question occurs on the amendment offered by the  
2000 gentlewoman from California.

2001 All those in favor, respond by saying aye.

2002 Those opposed, no.

2003 In the opinion of the chair, the noes have it, and the  
2004 amendment is not agreed to.

2005           Members are advised that we had originally advised  
2006 everyone that we would recess for lunch. We have either one  
2007 or two amendments remaining, and if the members are willing  
2008 to stay, we can address that amendment.

2009           The chair recognizes the gentleman from Ohio.

2010           Mr. Jordan. Mr. Chairman, I have an amendment at the  
2011 desk.

2012           Chairman Goodlatte. The clerk will report the  
2013 amendment.

2014           Ms. Williams. Amendment to H.R. 2048, offered by Mr.  
2015 Jordan of Ohio, at the end of Title 4, insert the following.

2016           Chairman Goodlatte. Without objection, the amendment is  
2017 considered as read.

2018           [The amendment of Mr. Jordan follows:]

2019

2020 Chairman Goodlatte. And the gentleman is recognized for  
2021 5 minutes on his amendment.

2022 Mr. Jordan. Mr. Chairman, thank you. The FISA Court  
2023 meets in secret to review requests for surveillance. In its  
2024 deliberations, the court only hears from one side, the  
2025 government agency making the request. This amendment is  
2026 about balance. The current process results in the court  
2027 approving the vast majority of surveillance requests made by  
2028 the government. In fact, since 1979 with the creation of the  
2029 court, 33,949 requests, 12 denied. 12. No one argues the  
2030 case of the opposition in the FISA Court. This important  
2031 check on government power is part of the cornerstone of our  
2032 system of government. It is done to ensure fairness.

2033 As recent disclosures have shown, we need to have  
2034 someone standing up in the FISA Court to argue the interests  
2035 of individual privacy, individual liberty. We need someone  
2036 scrutinizing the government's position to ensure that the  
2037 government does not go unchallenged on such important matters  
2038 as surveillance. In fact, Senator Wyden said, "The FISA  
2039 Court is the most one-sided legal process in the United  
2040 States. I do not know of any other legal system or court  
2041 that really does not highlight anything except one point of

2042 view." It is time for the court to hear both sides of the  
2043 argument. It is time to create the office of constitutional  
2044 advocate to give citizens a voice in the court. It is time  
2045 for balance.

2046 The amendment we are offering is identical to the text  
2047 that Congressman Van Hollen and I introduced in the last  
2048 Congress. It would create the office within the judicial  
2049 branch. The text is similar to a Senate bill, also from last  
2050 Congress, introduced by Senator Blumenthal and supported by  
2051 18 other United States senators.

2052 The constitutional advocate would analyze requests for  
2053 surveillance made to the FISA Court to ensure that that they  
2054 pass constitutional muster. Minimizing the scope of  
2055 surveillance and data collection and retention, the advocate  
2056 could appeal decisions on constitutional grounds and  
2057 participate in the appeals process in the FISA Court of  
2058 Review.

2059 To guarantee that emergency requests for surveillance  
2060 would not be delayed, the court could deny a request by the  
2061 advocate to argue before them, and the advocate could appeal  
2062 any such denials to the FISA Court of Review. The advocate  
2063 would be an independent part of the judicial branch and would

2064 not work for the president, cannot be fired by an executive  
2065 branch official, and advocates would serve a three-year term,  
2066 and could be reappointed.

2067       This is important. The selection of the advocate would  
2068 be made by the Chief Justice of the United States, the same  
2069 guy who is picking the judges who serve on the FISA Court.  
2070 He would choose from a list of no fewer than 5 candidates  
2071 submitted by the Privacy and Civil Liberties Oversight Board.  
2072 In putting together the list of candidates, the PCLOB would  
2073 be charged with choosing individuals it believes would be  
2074 "zealous and effective advocate in defense of civil  
2075 liberties," and, of course, who have the relevant legal  
2076 experience.

2077       I recognize that the base bill includes a provision  
2078 creating a friend of the court role within the FISA Court,  
2079 special advocates who could participate in cases that involve  
2080 a novel or significant interpretation of law. While this is  
2081 a good step and a significant step, I believe that creating a  
2082 more permanent office and tasking it with safeguarding our  
2083 constitutional rights is a better way to go.

2084       Obviously our intelligence agencies should have all the  
2085 tools they need to help protect the Nation in the prevention

2086 of terrorist acts, but these tools should be used in ways  
2087 that are consistent with the protection of our basic civil  
2088 liberties. I think this is a small step. I think this is a  
2089 balanced step. And I would urge a yes vote.

2090 Ms. Lofgren. Would the gentleman yield?

2091 Mr. Jordan. I would be happy to yield to the gentlelady  
2092 from California.

2093 Ms. Lofgren. I would like to speak briefly in support  
2094 of this amendment. This concept is one that has attracted  
2095 broad bipartisan support both on the House and on the Senate  
2096 side, and I think for a reason. It does nothing to open up  
2097 the process. It still is completely secret. But at least  
2098 there is a counter point of view that the court might be able  
2099 to consider.

2100 I believe that had this been in place, we might not have  
2101 the kind of distortion that the court erred in on the  
2102 original interpretation of the PATRIOT Act. And I would hope  
2103 that something as modest, yet sensible, as this might be made  
2104 a part of the measure. And I thank the gentleman for taking  
2105 the lead in offering it, and appreciate the amendment.

2106 Mr. Jordan. I thank the gentlelady for her comments and  
2107 for her support of the amendment, and for her tireless

2108 efforts on protecting civil liberties. With that, I yield  
2109 back, Mr. Chairman.

2110 Chairman Goodlatte. The chair thanks the gentleman.

2111 Mr. Sensenbrenner. Mr. Chairman?

2112 Chairman Goodlatte. And for what purpose does the  
2113 gentleman from Wisconsin seek recognition?

2114 Mr. Sensenbrenner. Opposition to the amendment.

2115 Chairman Goodlatte. The gentleman is recognized for 5  
2116 minutes.

2117 Mr. Sensenbrenner. Mr. Chairman, this amendment changes  
2118 the way that opposition views can be given to the FISA Court.  
2119 It does not change the fact that there will be opposition to  
2120 the Justice Department given to the FISA Court. I agree with  
2121 my friend from Ohio in no uncertain terms that the FISA Court  
2122 listens to one side of the argument and then reaches an  
2123 educated conclusion, and that is wrong because it turns  
2124 judges into policy makers rather than arbiters of differing  
2125 views of the law.

2126 What the bill does is it has a group of amicus curiae  
2127 that would be selected to present that opposition view to the  
2128 FISA Court. The gentleman from Ohio proposes to have a  
2129 permanent position with a whole bunch of staff on the

2130 judicial branch's payroll to do exactly the same thing. Now,  
2131 I think that the provisions in the bill are the way to have  
2132 the most bang for the buck in terms of presenting  
2133 constitutional and privacy questions to the FISA Court. We  
2134 do not need the permanent bureaucracy appointed by the Chief  
2135 Justice to do the same thing that the amicus curiae under the  
2136 bill are supposed to do.

2137       You know, I would just point out that you get into the  
2138 whole issue of who gets to make the appointments. You know,  
2139 the judges on the FISA Court are named by the Chief Justice.  
2140 They are all Article 3 judges who have previously been  
2141 nominated by the President and confirmed by the Senate. The  
2142 proposal is to have this type of an advocate being appointed  
2143 by the judicial branch. That poses constitutional questions  
2144 under the appointments clause of the Constitution. There is  
2145 no question of constitutionality in having the President  
2146 appoint the panel of amicus curiae who would be able to  
2147 present the same arguments as the constitutional advocate  
2148 proposed by the gentleman from Ohio.

2149       We all agree, I think, here that the FISA Court needs to  
2150 listen to both sides. The question is how to do it in a  
2151 constitutional manner, stopping the establishment of a

2152 permanent bureaucracy called the constitutional advocate, but  
2153 still getting the job done. I think that this amendment is  
2154 flawed. It probably does blow up the deal, but that is not  
2155 the reason principally why it ought to be voted down. It  
2156 ought to be voted down for the reasons that I have stated. I  
2157 yield back.

2158 Chairman Goodlatte. Would the gentleman yield?

2159 Mr. Sensenbrenner. Reclaiming my time, I yield to the  
2160 chair.

2161 Chairman Goodlatte. I thank the gentleman for yielding.  
2162 I join him in opposition to the amendment, and I know that  
2163 the gentleman from Michigan, the ranking member, does as  
2164 well.

2165 The question occurs on the amendment offered by the  
2166 gentleman from Ohio.

2167 All those in favor, respond by saying aye.

2168 Those opposed, no.

2169 In the opinion of the chair, the noes have it, and the  
2170 amendment is not agreed to.

2171 Are there any further amendments to H.R. 2048?

2172 [No response.]

2173 Chairman Goodlatte. A reporting quorum being present,

2174 the question is on the motion to report the bill, H.R. 2048,  
2175 as amended, favorably to the House. Not as amended.

2176 Those in favor, say aye.

2177 Those opposed?

2178 The ayes have it. The bill is --

2179 Mr. Sensenbrenner. Mr. Chairman, may we have a roll  
2180 call?

2181 Chairman Goodlatte. A recorded vote is requested, and  
2182 the clerk will call the roll.

2183 Ms. Williams. Mr. Goodlatte?

2184 Chairman Goodlatte. Aye.

2185 Ms. Williams. Mr. Goodlatte votes aye.

2186 Mr. Sensenbrenner?

2187 Mr. Sensenbrenner. Aye.

2188 Ms. Williams. Mr. Sensenbrenner votes aye.

2189 Mr. Smith?

2190 [No response.]

2191 Ms. Williams. Mr. Chabot?

2192 Mr. Chabot. Aye.

2193 Ms. Williams. Mr. Chabot votes aye.

2194 Mr. Issa?

2195 [No response.]

2196 Ms. Williams. Mr. Forbes?  
2197 [No response.]  
2198 Ms. Williams. Mr. King?  
2199 [No response.]  
2200 Ms. Williams. Mr. Franks?  
2201 Mr. Franks. Aye.  
2202 Ms. Williams. Mr. Franks votes aye.  
2203 Mr. Gohmert?  
2204 [No response.]  
2205 Ms. Williams. Mr. Jordan?  
2206 Mr. Jordan. No.  
2207 Ms. Williams. Mr. Jordan votes no.  
2208 Mr. Poe?  
2209 Mr. Poe. No.  
2210 Ms. Williams. Mr. Poe votes no.  
2211 Mr. Chaffetz?  
2212 Mr. Chaffetz. Aye.  
2213 Ms. Williams. Mr. Chaffetz votes aye.  
2214 Mr. Marino?  
2215 Mr. Marino. Yes.  
2216 Ms. Williams. Mr. Marino votes yes.  
2217 Mr. Gowdy?

2218 [No response.]

2219 Ms. Williams. Mr. Labrador?

2220 [No response.]

2221 Ms. Williams. Mr. Farenthold?

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.

2240 Mr. Bishop?

2241 Mr. Bishop. Yes.

2242 Ms. Williams. Mr. Bishop votes yes.

2243 Mr. Conyers?

2244 Mr. Conyers. Aye.

2245 Ms. Williams. Mr. Conyers votes aye.

2246 Mr. Nadler?

2247 Mr. Nadler. Aye.

2248 Ms. Williams. Mr. Nadler votes aye.

2249 Ms. Lofgren?

2250 Ms. Lofgren. Aye.

2251 Ms. Williams. Ms. Lofgren votes aye.

2252 Ms. Jackson Lee?

2253 [No response.]

2254 Ms. Williams. Mr. Cohen?

2255 Mr. Cohen. Aye.

2256 Ms. Williams. Mr. Cohen votes aye.

2257 Mr. Johnson?

2258 [No response.]

2259 Ms. Williams. Mr. Pierluisi?

2260 [No response.]

2261 Ms. Williams. Ms. Chu?

2262 Ms. Chu. Aye.

2263 Ms. Williams. Ms. Chu votes aye.

2264 Mr. Deutch?

2265 Mr. Deutch. Aye.

2266 Ms. Williams. Mr. Deutch votes aye.

2267 Mr. Gutierrez?

2268 [No response.]

2269 Ms. Williams. Ms. Bass?

2270 [No response.]

2271 Ms. Williams. Mr. Richmond?

2272 Mr. Richmond. Aye.

2273 Ms. Williams. Mr. Richmond votes aye.

2274 Ms. DelBene?

2275 Ms. DelBene. Aye.

2276 Ms. Williams. Ms. DelBene votes aye.

2277 Mr. Jeffries?

2278 Mr. Jeffries. Aye.

2279 Ms. Williams. Mr. Jeffries votes aye.

2280 Mr. Cicilline?

2281 Mr. Cicilline. Aye.

2282 Ms. Williams. Mr. Cicilline votes aye.

2283 Mr. Peters?

2284 Mr. Peters. Aye.

2285 Ms. Williams. Mr. Peters votes aye.

2286 Chairman Goodlatte. The gentleman from Virginia?

2287 Mr. Forbes. Aye.

2288 Ms. Williams. Mr. Forbes votes aye.

2289 Chairman Goodlatte. Just to inform the members, since  
2290 we told some that we adjourn at noon, we are going to try to  
2291 pause here a little bit to let people get here who may not  
2292 have, even though we gave them warning 10 minutes before noon  
2293 that we were changing our approach.

2294 The chair will stay to take the vote if members do not  
2295 want to await with anticipation the final result.

2296 [Laughter.]

2297 Chairman Goodlatte. But we want to be fair to some  
2298 members who might struggling to get here.

2299 The gentleman from South Carolina?

2300 Mr. Gowdy. Yes.

2301 Ms. Williams. Mr. Gowdy votes yes.

2302 Chairman Goodlatte. The clerk will report. The clerk  
2303 will report.

2304 Ms. Williams. Mr. Chairman, 25 members voted aye, 2  
2305 members voted no.

2306 Chairman Goodlatte. The ayes have it. The bill is  
2307 ordered reported favorably to the House. Members will have 2  
2308 days to submit views.

2309 [The information follows:]

2310

2311 Chairman Goodlatte. And that concludes our business for  
2312 today, and I thank all the members for the vigorous debate  
2313 that we had. We thank them all for attending, and the markup  
2314 is adjourned.

2315 [Whereupon, at 12:12 p.m., the committee was adjourned.]