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MARKUP OF:

H.R. 3361, USA FREEDOM ACT

Wednesday, May 7, 2014

House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 1:16 p.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Sensenbrenner, Smith of Texas, Chabot, Bachus, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Holding, Collins, DeSantis, Smith of Missouri, Conyers, Nadler, Scott, Lofgren, Jackson Lee, Cohen, Johnson, Pierluisi, Chu, Deutch, Gutierrez, DelBene, Garcia, Jeffries, and Cicilline.

Staff Present: Shelley Husband, Staff Director; Branden

Ritchie, Deputy Staff Director/Chief Counsel; Allison Halataei, Parliamentarian; Kelsey Deterding, Clerk; Caroline Lynch, Counsel; Sam Ramer, Counsel; Perry Apelbaum, Minority Staff Director; Danielle Brown, Minority Parliamentarian; and Aaron Hiller, Minority Counsel.

Chairman Goodlatte. Good afternoon. The Judiciary Committee will come to order.

And, without objection, the chair is authorized to declare a recess at any time.

Pursuant to notice, I now call up H.R. 3361 for purposes of markup and move that the committee report the bill favorably to the House.

The clerk will report the bill.

Ms. Deterding. H.R. 3361. To reform the authorities of the Federal government to require the production of certain business records, conduct electronic --

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

[The information follows:]

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

Today the House Judiciary Committee will consider a bipartisan proposal that is the culmination of months of oversight and collaboration between members from both sides of the aisle to reform certain national security programs operated under the Foreign Intelligence Surveillance Act, or FISA, over which this committee has primary jurisdiction. I want to thank the sponsor of the USA FREEDOM Act, Crime Subcommittee Chairman Sensenbrenner, for his dedication to this important issue. And I also want to take a moment and thank him and Ranking Member Conyers, Mr. Nadler, and Mr. Scott for working with me to prepare the bipartisan substitute that we will consider in just a few moments.

The FISA business records provision, often referred to as section 215 of the Patriot Act, allows the government to access business records in foreign intelligence, international terrorism, and clandestine intelligence operations investigations. Last year's unauthorized disclosure by Edward Snowden revealed to the American people that the National Security Agency as part of its mission to protect the United States from terrorist attacks, had been collecting bulk telephony metadata under section 215.

Since the unauthorized public release of this program, many members of Congress and their constituents have expressed concern about how the program is operated and whether it poses a threat to American civil liberties and privacy.

The leaks by Edward Snowden also revealed a classified program operated pursuant to the FISA Amendments Act of 2008, which was enacted to maintain the NSA's ability to gather intelligence on foreign targets overseas. Over the past year, the House Judiciary Committee has conducted aggressive oversight of these programs.

In July 2013, the committee held a public hearing at which we heard from officials with the Justice Department, the director of National Intelligence, the NSA, and the FBI and civil liberties groups. In September 2013, the committee held a classified hearing where members were afforded the opportunity to further probe these programs with officials from DOJ, ODNI, NSA, and the FBI.

And in February of this year, the committee held a comprehensive hearing to examine the various recommendations to reform these programs offered by the President's Review Group on Intelligence and Communications Technologies and the Privacy and Civil Liberties Oversight Board.

In January of this year, the president announced his desire to end the bulk collection of telephone metadata. In March, President Obama outlined his proposal to allow access to non-content telephone records held by telephone companies. Absent an emergency situation, the government would obtain the records only pursuant to individual orders from the FISA court. The records provided to the government in response to queries would only be within two hops of the selection term being used, and the Government's handling of any records it acquires would be governed by minimization procedures approved by the

court.

President Obama also correctly acknowledged that reforms to these programs must be implemented through legislation passed by Congress. The House Judiciary Committee is taking the first important step towards this goal today. The terrorist threat is real and ongoing, and we must always be cognisant of the threats we face.

We cannot prevent terrorist attacks unless we can first identify and then intercept the terrorists. At the same time, Congress must ensure that the laws we have enacted are executed in a manner that protects our national security while also protecting our civil liberties so that we can regain the trust of the American people. I am confident that today the committee will do just that.

It is now my pleasure to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. Conyers. Thank you, Chairman Goodlatte.

Members of the committee, it is not an accident that the House Judiciary Committee is the committee of primary jurisdiction with respect to the legal architecture of the government surveillance. We are for the most part lawyers, and I must immediately single out the people that have played such important roles in this. Chairman Goodlatte, former Chairman Sensenbrenner, the gentleman from New York, Jerrold Nadler, and of course the gentleman from Virginia, Bobby Scott.

We ask these difficult questions because we are the proper forum for a complex discussion about privacy and civil liberties. Moreover,

to the maximum extent possible, this committee has always worked to hold the debate in public where we and the officials we call before us can be held accountable to each other and to our constituents.

We believe it is possible to have an open, honest conversation about the tools our government uses to keep us safe. We believe that this conversation includes a serious look at whether these tools accord with our national values.

We believe that public debate on core questions of privacy and free association, not only builds confidence in our government but lends credibility and resilience to the national security infrastructure that is built to last and for a number of reasons I believe that the USA FREEDOM Act, H.R. 3361, is the proper outcome of just that sort of open debate.

Above all else, the USA FREEDOM Act represents the consensus view that all domestic bulk collection must end. In the aftermath of the attacks of September 11th, 2001, without notice to the courts or Congress, our government seized for itself, the authority to conduct broad surveillance on its own citizens without warrant or individualized suspicion.

Over the years since, these programs have gained an imprimatur of legality. Let me be clear: Dragnet surveillance of the United States citizens is not legal nor is it necessary. In my view, it never has been and with the passage of the USA FREEDOM Act, this position will be made explicit.

This view has gained the support of 149 cosponsors, evenly divided

between Democrats and Republicans. More than 40 organizations representing civil liberties groups and technology groups, across the political spectrum, continue to call for the passage of H.R. 3361. The technology and telecommunications sectors also back this bill, largely because it enables companies to be more transparent to their consumers but also because comprehensive surveillance reform is good for their bottom line.

The USA FREEDOM Act takes all of these interests into account. Although the Manager's Amendment we will consider today, is a less-than-perfect compromise, and that is not unusual, it makes important, vital, substantive changes that will work to restore confidence in the intelligence community.

My conclusion is that these reasonable reforms, are both appropriate and consistent with our commitment to the right of the people to be secure in their persons, houses, papers, and effects.

And so therefore I urge the members of this committee to support H.R. 3361.

And I yield back the balance of my time. Thank you.

Chairman Goodlatte. The chair thanks the gentleman.

And I now recognize Mr. Sensenbrenner to offer his substitute amendment.

Mr. Sensenbrenner. Mr. Chairman, I have an amendment in the nature of a substitute at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment in the nature of a substitute to H.R.

3361 offered by Mr. Sensenbrenner of Wisconsin. Strike "all" after the enactment --

Mr. Sensenbrenner. Mr. Chairman, I ask unanimous consent that the bill be considered as read and open for amendment at any point.

Chairman Goodlatte. Without objection, the amendment in the nature of a substitute is considered as read.

[The amendment of Mr. Sensenbrenner follows:]

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Chairman Goodlatte. And Mr. Sensenbrenner is recognized to explain his amendment.

Mr. Sensenbrenner. Thank you very much, Mr. Chairman.

I want to thank the members of the committee for coming together to reach this agreement, particularly Chairman Goodlatte for his steady, responsible leadership, Ranking Member Conyers, and Congressman Nadler, Scott, and Forbes for their passion and considerable expertise.

It is no secret that Congress has gotten more divisive. So it is gratifying and even nostalgic to me to see this committee come together to address one of the most challenging and important issues facing our country.

I remember this committee similarly cooperating after September 11th. I was chairman of the committee at the time of these horrific attacks. We were asked in short order to fundamentally restructure how the government operated to protect our national security. The intensity of the debate exceeded anything I have experienced in my career. Then Speaker Dennis Hastert was under considerable pressure to bring a bill to the floor quickly.

As with today's debate, the leadership threatened to bypass the committee's jurisdiction. I pleaded for patience and asked him to have faith in the Judiciary Committee. To his credit, he agreed and gave me a month to broker a deal. The committee banded together and passed the USA PATRIOT Act with unanimous bipartisan support and I would add that it was from representatives like Maxine Waters to the left and

Bob Barr on the right. All of them voted "aye" on the Judiciary Committee's product. I believe that the committee's actions made the country safer while protecting cherished civil liberties that distinguish us from our enemies.

We are here today, however, because the government has misapplied the law that we passed. The administration's interpretation of section 215 is wrong. Under current law, the government can acquire tangible things that they are relevant to an authorized terrorism investigation. In a feat of legal and verbal gymnastics, the administration convinced the FISA court that because some records in the universe of every phone call Americans make or receive are relevant to counterterrorism, the entire universe of those calls must be relevant. That decision opened the floodgate to a practice of bulk collection that was never before possible, let alone legal, in our country's history.

After the revelations of abuse surfaced last summer, I knew that Congress have to act to protect the civil liberties of innocent Americans. As a result, in October of last year, I introduced the USA FREEDOM Act with Senate Judiciary Chairman Patrick Leahy of Vermont.

Since the bill's introduction, I have worked with members of Congress in both chambers from across the political spectrum. We have had input from privacy groups, legal experts, tech companies, allied governments, and the American people. The result is a very strong compromise that the committee will vote on today.

Today's bill unequivocally ends bulk collections across all the

NSA authorities and under national security letters. Let me repeat: There is no bulk collection that is legal by the NSA or under national security letters, should this bill be enacted into law.

It creates a new process for the collection of call detail records pursuant to the administration's proposal. For counterterrorism purposes only, the government can use a specific selection term to get detailed records when it has a reasonable articulable suspicion that the selection term is associated with a foreign power or an agent of a foreign power.

The bill also prohibits the government from intentionally targeting Americans under section 702 of FISA and codifies procedures to minimize the retention and dissemination of nonpublic information about U.S. persons, which are citizens and permanent resident aliens.

To increase transparency and to ensure that FISA -- the FIS properly weighs privacy protections, the presiding judges of the FISA court will designate five individuals who are eligible to serve as amicus curiae to the court. This is intended to serve the same purpose as a special advocate. These individuals will be experts in privacy and civil liberties, intelligence collection, telecommunications, and in any other area of law that may lend legal or technical expertise to the court.

Further, the attorney general must conduct a declassification review of every decision, order, or opinion of the FISA court that includes a significant construction or interpretation of law.

It also aligns the sunset of the three sunset provisions under

the Patriot Act with the sunset of the FISA Amendment Act on December 31st, 2017, which will allow the committee the opportunity to conduct proper oversight and to verify the law as being properly interpreted and applied.

The bottom line is that the amended FREEDOM Act makes it crystal clear that Congress does not endorse bulk collection and ensures American civil liberties are protected.

On a technical note, today's amendment includes a few changes from the bill noticed on Monday. The chairman has agreed to these changes with the concurrence of the ranking member. They include, first, adding a definition of "specific selection term" to strengthen the prohibition on bulk collection. Striking the long title of the bill. Making technical changes to the emergency authority provisions of section 215, including the lone-wolf provisions in the revised sunsets and, finally, clarifying that the administration's collection of call data -- call detail records is limited to two hops from the original target.

I urge my colleagues to support this amendment. It is a good compromise. I would plead to some of my colleagues not to make the perfect the enemy of the good. I think this bill can go all the way to the President's desk and be signed into law, and I strongly urge the support of it.

Chairman Goodlatte. Chair thanks the gentleman.

Who seeks recognition? For what purpose does the gentleman from New York seek recognition?

Mr. Nadler. Strike the last word.

Chairman Goodlatte. Gentleman is recognized.

Mr. Nadler. Thank you, Mr. Chairman.

Mr. Chairman, I happily join my colleagues, Mr. Sensenbrenner, Mr. Conyers, Mr. Scott, and Mr. Forbes in offering this Manager's Amendment which provides the first real chance in more than a decade to place real legislative limits on sweeping, unwarranted, and I believe, unlawful government surveillance. Since the 9/11 terrorist attacks, the United States government has aggressively expanded surveillance in and outside the United States at a high cost to individual liberty and privacy. Americans have been subjected to warrantless wiretapping, national security letters have been issued without proper authorization, and claiming an emergency where none existed and the National Security Agency has collected, warehoused, and searched the daily phone records of everyday Americans who have absolutely no ties to terrorism.

Today we have chance to roll back some of the changes made through the USA PATRIOT Act and the FISA Amendments Act that were allowed to give rise to many of these abuses. We should seize this chance.

First and most critically, the Manager's Amendment ends bulk collection or dragnet surveillance under section 215 of the USA PATRIOT Act, and ensures that the government cannot use its national security letter authority or pen registers and trace devices for bulk collection either. As Mr. Sensenbrenner says, this bill ends bulk collection, or dragnet surveillance.

Under section 215, which allows collection of tangible things, quote, "relevant to an authorized national security investigation", the NSA has been collecting and warehousing telephone metadata. This metadata reveals all numbers dialed, all incoming phone numbers, and call duration. While not providing the actual words spoken, this information still reveals highly personal and sensitive information that can paint a detailed picture of one's personal, professional, and political associations and activities.

Congress never intended to authorize this type of unchecked, sweeping surveillance of our citizens. Instead, by authorizing collection of relevant records, we required a reasonable relationship between the collection of records and persons actually being investigated for or suspected of terrorism.

This relevant standard was effectively written out of the statute when the FISA court accepted the government's argument that the entire universe of call records are relevant because it allows a later search for calls associated with actual terror suspects.

The Manager's Amendment fixes this problem by expressly banning bulk collection and by requiring the government to include a specific selection term, a term that identifies a specific person, entity, or account to be used as the basis for requesting a court order authorizing the collection of any information.

This restores meaning to the term "relevant" by requiring the government to establish that the records sought are tied to an authorized foreign intelligence investigation and pertain to a

specific person or instrument.

At the same time, the Manager's Amendment codifies the President's telephone metadata reform proposal. As requested, it allows the government to obtain a court order authorizing it to obtain the telephone metadata records that it needs from phone companies in specific cases. The companies, not the government, keep the underlying records, which can only be searched using specific selection terms designed to return only those records that are relevant to a real terrorism investigation. This new program is limited to call detail records; it does not extend to any other tangible things.

These changes are very significant. As are the adjustments to FISA section 702, which allows the NSA to obtain data, including email, chat, photos, video, and stored data for persons located outside the United States. Section 702 inevitably and unquestionably results in the collection of wholly domestic communications and information to, from, or about, United States persons.

Among other things, the Manager's Amendment entirely prohibits the retention and dissemination of wholly domestic communications and prohibits the government from using information acquired in violation of court-approved targeting or minimization procedures.

The amendment does not give us everything we want or need, but it is a very significant step in the right direction. I applaud Chairman Goodlatte and Representative Sensenbrenner for their leadership and willingness to work with us to make this happen.

As the committee of primary jurisdiction for the USA PATRIOT Act

and FISA Amendments Act, this committee has long taken the lead and held responsibility for ensuring that our national security needs do not trump our core constitutional freedoms.

Over the past decade, under the leadership of four chairmen with diverse political views, the members of this committee have vigorously debated the proper balance between our safety and our civil liberties. Reporting the substitute amendment to the House with robust bipartisan support will send a clear signal that we are serious about protecting our people's privacy and civil liberties as well as their security.

And I also join Mr. Sensenbrenner in urging that we support this bill, which admittedly is not perfect, but which is the first, best, and perhaps only chance in a decade to begin to right the balance between national security and civil liberties and to restore the civil liberties which the improper interpretation by the FISA court and by the administration, by both administrations, Bush and Obama, of the USA PATRIOT Act and of the FISA Amendments Act have inflicted upon us. This is our chance. We have to seize it. And I urge everyone to vote for this amendment, for this Manager's Amendment, and for the bill.

And I thank you and I yield back the balance of my time.

Chairman Goodlatte. Chair thanks the gentleman.

And recognizes himself in support of the gentleman substitute.

I thank the gentleman from Wisconsin for offering this substitute amendment on behalf of myself, Ranking Member Conyers, Mr. Nadler, Mr. Scott, and Mr. Forbes.

This amendment achieves our collective goal of ending bulk

collection and storage of telephone metadata by the government. The amendment also eliminates bulk collection of all tangible things under section 215.

It preserves the individual use of section 215 under the existing relevancy standard for all business records while providing a new narrowly tailored mechanism, similar to that outlined by President Obama earlier this year, that allows the government to request telephone records held by the companies using FISA-court-approved queries.

Under this amendment, the FISA court, rather than the government, will be required to make a finding that reasonable, articulable suspicion exists before an individual's telephone records may be accessed on a prospective basis, except in the case of a national security emergency.

The amendment also prohibits bulk collection of records under the FISA Pen Register, Trap and Trace statute and the National Security Ledger statutes.

The substitute amendment enhances civil liberty and privacy protections for Americans by codifying amicus curiae authority with the FISA court for applications involving a novel or significant interpretation of FISA.

The amendment adds additional public reporting on annual FISA orders and expands existing reports to Congress and codifies existing minimization procedures under the FISA Amendments Act to reiterate Congress' intent in protecting the communications of Americans.

This is an appropriate approach that I support, an approach that will allow the government to protect the country and at the same time reflect our country's fundamental respect for civil liberties. I encourage my colleagues to join me in support of this amendment.

And the chair now recognizes the gentleman from Michigan, Mr. Conyers.

Mr. Conyers. Thank you, Chairman Goodlatte and members of the committee.

This substitute, this Manager's Amendment, the Sensenbrenner Manager's Amendment, remains by far the most important step taken to roll back the government surveillance of United States citizens since the passage of the Foreign Intelligence Surveillance Act of 1978. This committee now stands poised to end domestic bulk collection across the board. The ban applies to section 215 of the Patriot Act, the FISA Pen Register authority, and the entire suite of National Security Letter statute.

In addition, we strengthen protections on U.S. person information collected under section 702. We enhance reporting and transparency requirements with respect to the use of each of these authorities and we create a panel of civil liberties and privacy advocates from which the foreign intelligence surveillance court may draw expertise and perspective in future decisions.

And so within this framework, we work to accommodate the administration's request for a limited telephone metadata program. Of course, this program may be used only for counterterrorism purposes.

It will require a case-by-case judicial determination of reasonable articulable suspicion before the government acquires a single call detail record.

In his January 17th remarks at the Department of Justice, President Obama, observed that critics are right to point out that without proper safeguards, this type of program could be used to yield more information about our private lives and open the door to more intrusive bulk collection programs in the future. We agree, we built those safeguards into this proposal and with the additional reporting declassification and transparency requirements also laid out in this bill, we believe the government would be both ill-advised and hard pressed to attempt to expand this new authority beyond our narrow attempt.

I believe that we have arrived at a compromise that represents the legitimate consensus of the Congress and the support of the American people. But, there is certainly more work to do. For example, in future hearings, we should take more time to examine the mechanics of collection under section 702. I am not convinced that we are doing all that we can to safeguard our privacy under that authority.

We should also address the reach of surveillance under Executive Order 12333. And in particular, how that type of surveillance affects United States persons, both at home and abroad. But today, I hope and believe that we will be able to come together to pass the meaningful changes outlined in this bill.

I thank the chairman, the former chairman, Mr. Sensenbrenner, and

Mr. Nadler of New York and Mr. Scott of Virginia for their determination to see this bill through.

And so I am proud to urge my colleagues to support the Manager's Amendment.

And I yield back, Mr. Chairman.

Chairman Goodlatte. Chair thanks the gentleman.

For what purpose does the gentleman from Iowa seek recognition?

Mr. King. Mr. Chairman, I have an amendment to the amendment in the nature of a substitute at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment to the amendment in the nature of a substitute to H.R. --

Mr. King. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

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

[The amendment of Mr. King follows:]

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

Mr. King. Thank you, Mr. Chairman. First I want to commend the people that have worked so hard on this underlying bill.

And the subject in the focus and the topic has been to protect the civil liberties of Americans by ending the bulk collection of metadata. I listened to the gentleman from Wisconsin's remarks. He said this bill ends bulk collection across the NSA. I agree with that statement.

I listened to the gentleman from Michigan's statement just now and he said we are poised to end domestic bulk collection across the board.

I would ask that the gentleman from Michigan would consider a little amendment to that. "Bulk collection across the board by government." Because I would submit that bulk collection will continue. It will continue by the private telephone companies.

And, in fact, for national security, this Manager's Amendment, or the amendment to the amendment, actually relies upon the private sector to store the data that might be queried under the FISA warrant.

And, as I have gone to hearing after hearing on this topic, both classified and unclassified. I have sat in the SCIF and read the material that was classified and available to me that are the result of the Snowden actions.

And as I look at this bill, I compliment the people that worked on it the whole weekend. I would like to have had a little opportunity

to weigh in on the final product before we got to this point. But I ask this question: Does it protect the civil liberties of Americans to the extent that is our intent?

And I agree that it does protect the civil liberties of Americans. What it doesn't do, and I will ask this next question: That is, does it make us safer? And the answer to that is no one has mentioned how it might make us safer.

I will conclude that, in fact, that it makes us less safe. Because that window to query data under a FISA warrant now is not 5 years, as requested by the intelligence community, but 18 months, as directed by an FCC regulation.

And if we are going to rely upon the FCC to regulate our telecommunications companies to make sure they are storing 18 months of data, I would suggest that is a precarious place for us to place our national security.

So I offer this amendment, Mr. Chairman, and to the committee. This is an amendment that is something that I have brought up multiple times throughout these hearings that we have had. And it does this: It allows for the intelligence community to negotiate with the telecommunications companies so that the telecommunications companies can agree to retain that information in private hands for a longer period of time. It is not specific as to the length of time. It does not provide for any bulk data to go into the possession of government. It preserves the principles of the underlying bill and the manager -- and the amendment in the nature of a substitute, and it

provides for the safety and security of America.

So we should have two things in mind here today. One of them is, protect the civil liberties of Americans; the second one is, not to diminish our national security. In fact, protect the national security that exists today.

I would submit to this committee that if this amendment goes on and becomes part of law, we are not as safe as we would be otherwise.

And with my amendment, we are much safer than we would be otherwise. But neither are we sacrificing any of the civil liberties protections that are part of this underlying bill and the purpose and the intent of coming before this committee.

So if, as I may here assert it in a moment, if it is suggested that the authority to negotiate with telecoms already exists, my question then would be, why then would anyone oppose my amendment?

This is a careful, carefully worded, well thought out amendment. It protects our civil liberties, and it protects the data collection that might be negotiated by our intelligence communities that would be stored in private sector hands, not public, and it would still require a FISA warrant in order to query that data.

If we fail to do this and the telecommunications companies decide to dump data, they could dump the data in a shorter period of time than 18 months. The FCC is not going to probably catch that, but we would allow the intelligence community to negotiate with them so that the private sector companies would hold that data for a longer period of time to provide for the national security necessary.

And I would also suggest that had this been proposed to the negotiators over the weekend that likely would be part of this bill.

I would urge my amendment's adoption and yield back the balance of my time.

Chairman Goodlatte. The chair thanks the gentleman. Recognize himself in opposition to the amendment.

And I must say I appreciate the gentleman's interest and work on this issue. The amendment, however, offered by the gentleman from Iowa makes changes to the substitute amendment that would allow the government to enter into a contract with a company to retain data to the purposes of this act.

There is nothing in current law that would ban any company from entering into a contract with the government to retain data for longer purposes, nor is there anything in the substitute amendment that would prohibit such a thing from occurring as well.

But the notion that private companies should retain records for a longer period of time than they do currently, in their normal course of business was specifically not contemplated by President Obama when he announced in January his desire to end bulk collection by the government.

President Obama specifically said, the bulk records should stay in the hands of phone companies, which would not be required to retain the data for any longer than they normally would.

All the members involved with drafting this substitute have considered and rejected such a concept. Record retention by the

communications companies does not necessarily assuage civil liberty and privacy concerns and could expose these records to data breaches by cyber hackers.

For these reasons, I cannot support this amendment, although I will again reiterate that there is nothing in current law or in this legislation that would prohibit any private company from entering into such negotiations or the government from entering into such negotiations if they both found it mutually desirable to do so.

So, with respect to the gentleman, I appreciate his concern about the issue. It is a legitimate issue that has been carefully considered, but I come down on the opposite side of whether or not I could support his amendment. I must oppose it.

Mr. Conyers. Mr. Chairman?

Chairman Goodlatte. What purpose does the gentleman from Michigan seek recognition?

Mr. Conyers. Strike the requisite number of words.

Chairman Goodlatte. Gentleman is recognized for 5 minutes.

Mr. Conyers. Thank you.

Members of the committee, the problem that the King amendment presents, from my point of view, is that at no point has this administration asked for a data retention mandate. In fact, the President has said explicitly that these records should remain at telephone companies for the length of time they currently do today.

And, secondly, we designed section 215 of the PATRIOT Act to cover business records kept voluntarily and in the normal course of business.

Mandating that companies go to the expense and effort to retain this information for extended periods of time would mean that the companies are no longer doing so in the ordinary course of business.

And so, I think the gentleman is well intentioned, and he said some good things in general about the measure before us. And for that reason, I would hope that this amendment is not successful.

And I yield back the balance of my time.

Chairman Goodlatte. What purpose does gentleman from Texas seek recognition?

Mr. Gohmert. I ask to strike the last word.

Chairman Goodlatte. Gentleman is recognized for 5 minutes.

Mr. Gohmert. Thank you, Mr. Chairman.

And I certainly appreciate the chairman's comments and those of our friend, Mr. Conyers.

One of the reasons that some of us heard that the government had made the intrusive grabs that they had is, gee, the phone companies don't keep this stuff very long, necessarily, and we got to make sure we have it when we need it and so, I am one of the cosponsors of the underlying bill. I have real concerns about some of the changes made in the Manager's Amendment, but applaud my friend, Mr. Sensenbrenner from Wisconsin, from the fantastic work that was done on the bill that I cosponsored.

But I have had the debate with CIA, CIA attorney and other attorneys for some of our intelligence entities who seem to think that, gee, if a private company has information, then why shouldn't the

government?

And it is easily explained. Private companies like AT&T, Verizon, and others, they don't have the authority to go down and put you in jail if they are upset with you and that is why it is important that the government not be the repository for every single phone call log from every single phone in America. That should be in a private entity's hands.

And I applaud my friend from Iowa, making an effort saying let's make it possible for negotiation to occur so that these companies that would actually incur a burden by keeping the data longer, go ahead and let them negotiate so they keep it longer so it is in private hands and not in the hands of the government under some excuse, they have got to get it before it goes away. That way, if probable cause or some other cause that is utilized in the bill is established, then you could still have the data available; it's not just wiped out because it was beyond 18 months.

So I appreciate the amendment. Urge support for it. And would yield any remaining time to my friend from Iowa.

Mr. King. I thank the gentleman from Texas for yielding.

And in response to some of the remarks that I have heard, first of all, the response by Mr. Conyers that implies that my amendment is a mandate. It is not a mandate. It allows for the intelligence community to negotiate with the private sector. If those two entities reach an agreement, they have a contractual agreement, which is certainly open and above board. But it is not a mandate.

I notice that we are relying, our national security, we are relying on an FCC regulation for 18 months of storage data in the private sector, which is our only window to get a FISA warrant to query that data and that is kind of a tenuous place to be. We don't have a mandate in the bill that the private companies hold that even for 18 months, and so we are subject to a regulation that could change and it is only an 18-month deal.

I would suggest instead that this is an open contractual agreement, not a mandate. I didn't hear a reason to oppose my amendment. The one that seemed to be the underlying reason was it wasn't part of the agreement going in today and I didn't have that opportunity and didn't know the bill was coming up until 12:30 on Monday.

But I ask the question: Does this bill, does it protect the civil liberties that are the intention of it? I agree, it does. Does it protect our national security? Less so. I don't think anyone could analyze this bill and conclude otherwise, that we are less secure if this become law because we lose 3 and a half years of access to data that in many cases currently exists.

And so I would, again, I would urge adoption of my amendment. It is one that is, I believe, well thought out, it is careful, it is not a mandate. It protects our national security, it protects our civil liberties. That is in absolutely keeping with the theme here, even though I seem to be the only one that is bringing up the national security side here and the risk that we have.

And my State was not attacked by terrorists. I am thankful for that. It was a tragedy to see that happen. I don't want to see that happen again and I think that we have to be considering the national security side of this.

There is no downside to the amendment. It is all upside, and the upside is a national security without diminishing the civil liberties protection that we are all here designed to protect.

And so with that, I would yield back the gentleman from Texas or the balance of his time, whichever is the preference of the chair.

Chairman Goodlatte. Chair thanks the gentleman.

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

Mr. Nadler. Strike the last word.

Chairman Goodlatte. Gentleman is recognized for 5 minutes.

Mr. Nadler. Mr. Chairman, I disagree with the gentleman from Iowa. There is no upside to this amendment. There may be a downside.

As was pointed out, this amendment does not give the intelligence agencies any authority they don't already have. And not as a result of this bill. But they can negotiate under current law with the phone company and if they want to, they can make a deal and they can pay them, as the amendment would authorize, to retain records for a term of years. They can already do that. This amendment adds nothing and, therefore, adds nothing to our security.

What it does, however, is it goes against what we ought to be doing. It is not an important amendment because it doesn't really do

anything, as I said, but it goes in the wrong direction and it goes in the wrong direction as follows: What it really says is that for the sake of security, all the privacy of American citizens ought to be held for the government's use for as long a term as the government may agree with the phone company.

All telephone metadata. Now, telephone metadata. Who I am calling, who you are calling, how long we are talking. Am I talking to my psychiatrist? Am I calling my mistress, if I had one. Am I calling --

You know, all that information. Steve Colbert had fun with that when I was on his program once. All the information, am I calling right-wingers? Am I calling left-wingers? All that information is telephone metadata. You can learn a lot from metadata about a person and invade his privacy tremendously.

Now, it is inevitable, the phone company has to keep that record for a certain period of time for billing purposes, basically. But it is not inevitable that the government ought to have that or have use of that or that they should keep it for longer than they decide they need to for their purpose of billing for the inevitable purpose of the use of the instrument.

And this amendment says they really ought to. It doesn't mandate it, I agree. It is better to that extent. But it says they really ought to keep it. All this private data ought to be at the disposal ultimately of the government. Which is the entire purpose of the amendment.

I don't agree. Again, it is not mandatory, so it is not the worst amendment in the world. But it goes in the wrong direction and it goes against the spirit of what we are trying to say, which is, that the government doesn't own all your personal data. The government doesn't have a right to any of your personal data, frankly, unless it shows some relevance, which is what we are establishing here in this bill, some relevance to a terrorism investigation, to the satisfaction of a court, and it gets a court order.

That that is what we are trying to do in this bill. This goes against the spirit of the bill. Doesn't really help national security in any way, but it does harm security -- I'm sorry, it does harm privacy and, therefore, it goes against the spirit of the bill, it goes against the Manager's Amendment, it goes against what we are trying to do, and I urge my colleagues to vote against this amendment.

I yield back.

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

Ms. Lofgren. To strike the last word.

Chairman Goodlatte. Gentlewoman is recognized for 5 minutes.

Ms. Lofgren. First I want to, before saying anything further, express my appreciation to all of the members who worked on this.

But most particularly to the former chairman, Mr. Sensenbrenner, who I think has taken this whole issue so seriously. I know the hours that he has worked to try and improve this situation. I think, although I am going to have some amendments that I think might improve the

Manager's Amendment, to proceed without giving Congressman Sensenbrenner the tremendous thanks that he deserves would not be proper. I do very much appreciate, along with others, but especially Mr. Sensenbrenner's effort on this.

As to the King amendment, I similarly oppose the amendment. Mr. Nadler has pointed out that this is unnecessary, but I would like to raise another issue. After the leaks of the records and the information about surveillance surfaced in the press, there were a lot of things that happened. Americans became very irate about their privacy. People in other countries became irate about their privacy and we are concerned about that as defenders of the constitution, we are concerned about that as people who love liberty. But there is another issue, which is its impact on American business.

Now, right now, companies around the world are using surveillance to try and get a competitive edge against American companies by suggesting to utilize American technology, is to open yourself up to privacy violations.

I think the mere existence of this amendment actually further aggregates that problem by making it even more possible for competitors to say, look, if you buy an American phone, if you have service from an American company, your privacy is at risk.

And so I think that is an additional reason not to support this amendment. I understand the gentleman from Iowa is trying to make this a better situation, but I think actually it goes in the other direction.

And with that I would yield back, Mr. Chairman. Thank you for

recognizing me.

Mr. Sensenbrenner. Mr. Chairman?

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

Mr. Sensenbrenner. Opposition to the amendment.

Chairman Goodlatte. Gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, I oppose the amendment. You know, I believe that the gentleman from Iowa is very well intentioned in this and I want to emphasize the fact that again, that there is nothing in this bill that prohibits the intelligence community from making a deal and signing a contract with any of the phone companies.

My fear is, is with the adoption of the King amendment the phone companies are going to kind of be under the gun if they don't want to do this. And they would probably have to disclose some proprietary information on how much they would charge the government for holding on to the records for a longer period of time.

The groups that were involved in these discussions did not want to have language like this. The President has said that he doesn't want to have language like this and it seems to me that the argument that the gentleman from Iowa is making is why don't we give them specific authority to do this, I think really tilts to the scale and that the phone companies would end up being coerced if they were approached by the government, would have a hard time saying no.

So for all these reasons, I would hope that this amendment would be rejected.

And yield back.

Chairman Goodlatte. Question occurs on the amendment offered by the gentleman from Iowa. All those in favor respond by saying aye. Aye. Those opposed, no. No. Opinion of the chair, the noes have it. The amendment is not agreed to.

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

Chairman Goodlatte. Recorded vote is requested. And clerk will call the roll.

Ms. Deterding. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Deterding. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Deterding. Mr. Sensenbrenner votes no.

Mr. Coble?

[No response.]

Ms. Deterding. Mr. Smith of Texas?

Mr. Smith of Texas. Aye.

Ms. Deterding. Mr. Smith, of Texas votes aye.

Mr. Chabot?

Mr. Chabot. No.

Ms. Deterding. Mr. Chabot votes no.

Mr. Bachus?

Mr. Bachus. No.

Ms. Deterding. Mr. Bachus votes no.

Mr. Issa?

[No response.]

Ms. Deterding. Mr. Forbes?

[No response.]

Ms. Deterding. Mr. King?

Mr. King. Aye.

Ms. Deterding. Mr. King votes aye.

Mr. Franks?

[No response.]

Ms. Deterding. Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Deterding. Mr. Gohmert votes aye.

Mr. Jordan?

[No response.]

Ms. Deterding. Mr. Poe?

[No response.]

Ms. Deterding. Mr. Chaffetz?

[No response.]

Ms. Deterding. Mr. Marino?

Mr. Marino. No.

Ms. Deterding. Mr. Marino votes no.

Mr. Gowdy?

[No response.]

Ms. Deterding. Mr. Labrador?

Mr. Labrador. No.

Ms. Deterding. Mr. Labrador votes no.

Mr. Farenthold?

Mr. Farenthold. No.

Ms. Deterding. Mr. Farenthold votes no.

Mr. Holding?

Mr. Holding. Aye.

Ms. Deterding. Mr. Holding votes aye.

Mr. Collins?

Mr. Collins. No.

Ms. Deterding. Mr. Collins votes no.

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Deterding. Mr. DeSantis votes no.

Mr. Smith of Missouri?

Mr. Smith of Missouri. No.

Ms. Deterding. Mr. Smith of Missouri votes no.

Mr. Conyers?

Mr. Conyers. No.

Ms. Deterding. Mr. Conyers votes no.

Mr. Nadler?

Mr. Nadler. No.

Ms. Deterding. Mr. Nadler votes no.

Mr. Scott?

[No Response.]

Ms. Deterding. Ms. Lofgren?

Ms. Lofgren. No.

Ms. Deterding. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Deterding. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

[No response.]

Ms. Deterding. Mr. Pierluisi?

Mr. Pierluisi. No.

Ms. Deterding. Mr. Pierluisi votes no.

Ms. Chu?

Ms. Chu. No.

Ms. Deterding. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

Ms. Deterding. Mr. Deutch votes no.

Mr. Gutierrez?

Mr. Gutierrez. No.

Ms. Deterding. Mr. Gutierrez votes no.

Ms. Bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Ms. DelBene?

Ms. DelBene. No.

Ms. Deterding. Ms. DelBene votes no.

Mr. Garcia?

Mr. Garcia. No.

Ms. Deterding. Mr. Garcia votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Deterding. Mr. Jeffries votes no.

Mr. Cicillini?

Mr. Cicillini. No.

Ms. Deterding. Mr. Cicillini votes no.

Chairman Goodlatte. The gentleman from Virginia.

Mr. Scott. No.

Ms. Deterding. Mr. Scott votes no.

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

Clerk will report. Wait, got one more. The gentleman from Tennessee.

Mr. Cohen. No.

Ms. Deterding. Mr. Cohen votes no.

Chairman Goodlatte. The clerk will report.

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

Chairman Goodlatte. And the amendment is not agreed to.

For what purpose does the gentlewoman from Washington seek

recognition?

Ms. DelBene. I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment to the amendment in the nature of the a substitute to H.R. 3361 offered by Ms. DelBene, Mr. Goodlatte, and Mr. Sensenbrenner. At the appropriate place in title --

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

[The amendment of Ms. DelBene, Mr. Goodlatte, and Mr. Sensenbrenner follows:]

\*\*\*\*\* INSERT 1-4 \*\*\*\*\*

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

Ms. DeBene. Thank you, Mr. Chairman.

I want to thank you and Ranking Member Conyers for your willingness to work to make progress on this issue.

Any of the bulk collection of Americans' phone records and making sure that other surveillance authorities cannot be used in a similar way, are critical priorities and I am pleased that these have been addressed in the Manager's Amendment. But I am not satisfied with a bill that does not fully tackle transparency and include provisions that would enable greater reporting by companies of information about the government requests they receive. Greater transparency will help inform Congress and the public and help hold our government accountable.

In January, Attorney General Holder and Director of National Intelligence James Clapper announced that the administration was taking action to allow more detailed disclosures about the number of national security orders and requests issued to communications providers and the number of customer accounts targeted under those orders and requests.

In their statement announcing this agreement, they stated that the administration had determined that the public interest in disclosing this information now outweighs the national security concerns that required its classification.

My position is that even greater disclosure is warranted in order

to restore the credibility and trust of the American public in our government.

I cosponsored Representative Lofgren's Surveillance Order Reporting Act that was included in the original USA FREEDOM Act. I will continue to say that I think the language providing for disclosure in that bill takes a much stronger step and makes a great deal of sense. I don't believe there is a good argument against that bill, but I want to find middle ground and seek compromise on this issue.

This amendment, which I thank Chairman Goodlatte and Ranking Member Conyers for joining me on, will be a step in a positive direction and is a far better course of action than leaving this issue out of the bill entirely.

The intent of the amendment is to offer additional disclosure flexibility to companies beyond what was included in the January agreement that major technology companies entered into with the administration.

So I urge my colleagues to support this amendment, and I yield back.

Ms. Lofgren. Would the gentlelady yield?

Ms. DelBene. Yes.

Ms. Lofgren. I thank the gentlelady for yielding and thank her also for being an original cosponsor of my surveillance reporting bill.

I had actually planned to offer an amendment that had bands of 0 to 100. But in view of the agreement on this amendment, I am not going to offer that today.

However, I would hope, Mr. Chairman, that we will have an opportunity to discuss between now and the floor the possibility of having smaller bands. I have been unpersuaded by the defense agencies and the intelligence agencies of why that is problematic. It would be enormously helpful to technology companies who live in my district and in Ms. DelBene's district, to be able to tell the truth about what is happening.

And I would further add this: It also serves a purpose for this committee. The technology companies are to some extent the canary in the mine for us and if we are able to learn because of the transparency provisions the scope of what is occurring, that would be of great interest to the committee itself.

I want to commend the gentlelady from Washington for the granularity that she has included in this amendment. I think that is really very important. And I do --

Mr. Conyers. Would the gentlelady --

Mr. Gohmert. Would the gentlelady yield?

Ms. Lofgren. Well, I don't have the time. Ms. DelBene has the time.

Ms. DelBene. I will yield.

Mr. King. I appreciate you yielding. I appreciate the amendment. I am fully supportive and appreciate your work in doing this.

Thank you.

RPTS HUMISTON

DCMN CRYSTAL

[2:16 p.m.]

Mr. Conyers. I think this amendment would allow companies to report with greater detail on their cooperation with government requests for business records and other information, and so I am happy to support it. Thank you.

Ms. DelBene. Thank you, Mr. Chair. I yield back.

Mr. Sensenbrenner. [Presiding] The chair recognizes himself for 5 minutes in support of the amendment.

I am pleased to join the gentlewoman from Washington, Ms. DelBene, in offering this amendment. The amendment authorizes companies to biennially publicly report requests for information they receive under FISA and national security letter authorities. American technology companies are experiencing a lack of customer trust and loss of international business as a result of the Snowden leaks, based upon the fear that information about their customers is readily and routinely turned over to the American Government. Since the leaks, companies have sought permission to publicly report national security requests from the government to inform and hopefully assuage the concerns of their American and foreign customers.

In January of this year, several companies entered into a settlement with the Justice Department which permits the companies to report certain aggregate FISA and NSL requests. This amendment

codifies that settlement with several modifications to allow for even greater transparency to the American people about their privacy and the extent of the Intelligence Community's work while protecting national security. I support this amendment and I urge my colleagues to do the same.

Ms. DelBene. Will the chairman yield?

Mr. Sensenbrenner. I yield to the gentlewoman from Washington.

Ms. DelBene. Thank you, Mr. Chairman. I want to thank you for all of your work and commitment on this issue overall, and I would appreciate your continuing to work with me to make more improvements on this bill. I hope we can all agree that we are willing to make technical changes to ensure that companies currently reporting under the terms of the current settlement aren't in any way impacted in the wrong direction if we discover there are changes that need to be made.

Also, I would like to have us work together to consider going further, particularly if the DOJ at a future time determines that it is in the public interest to allow companies to provide further details and to move those ranges in a downward direction, as Ms. Lofgren referred to, that our legislation doesn't prevent them from doing that.

Mr. Sensenbrenner. Well, reclaiming my time, I certainly agree with what the gentlewoman from Washington and the gentlewoman from California have stated. Codifying this with your amendment will force the DOJ to come and talk to us, which has not been the case in many other issues that have come before this committee.

Ms. Jackson Lee. Mr. Chairman?

Mr. Sensenbrenner. I yield to the gentlewoman from Texas.

Ms. Jackson Lee. Let me indicate my support for this amendment. And I want to point out the obvious is that there are two markups this week. And I think as I look at this legislation it answers two questions that are very important to the American people: transparency and privacy. And I am particularly grateful for the section in the bill that requires a report of what was required, meaning what did you have to comply with. That is the meat of the initiative, from my perspective, or the amendment, is tell us what you actually had to do. And then the provision that deals with a number of categories which will be part of the response.

I think this is clearly an addition that helps both the industry know just what is required of them, but more importantly is a very viable amendment that gives information to the public. I think it is a good balance, and I thank the gentlelady and her cosponsors for this amendment. I think it adds to our language as well. And with that, I yield back.

Mr. Sensenbrenner. I yield back the balance of my time.

For what purpose does the gentleman from Georgia seek recognition?

Mr. Collins. Strike the last word, Mr. Chairman.

Mr. Sensenbrenner. Gentleman is recognized for 5 minutes.

Mr. Collins. Thank you, Mr. Chairman.

I just wanted to also agree and support Ms. DelBene's amendment. I think it does give us a great start. I appreciate her hard work on

this. Of course, I was also a sponsor of Ms. Lofgren's amendment. I believe that, and it is my hope that the chairman and others will continue to look at this. As we come to the floor, I would like to see more transparency and I am a strong supporter of that.

This is something that needs to be taken care of. I just wanted to rise in support of that, the gentlelady from Washington's amendment, and also what was left out of the final product was Ms. Lofgren's, and I would like to see it put back. But we have worked together on several things. This is where we can definitely come together and find these agreements, and I do appreciate it.

With that, yield back.

Mr. Sensenbrenner. The question is on agreeing to the amendment to the amendment in the nature of a substitute offered by the gentlewoman from Washington, Ms. DelBene.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment to the amendment in the nature of a substitute is agreed to.

Are there further amendments?

Ms. Lofgren. Mr. Chairman?

Mr. Sensenbrenner. For what purpose does the gentlewoman from California seek recognition?

Ms. Lofgren. If Mr. Scott has an amendment, I would defer to him since he is the ranking member of the subcommittee.

Mr. Scott. Strike the last word.

Ms. Lofgren. Oh, you are striking the last word?

Mr. Scott. Mr. Chairman?

Mr. Sensenbrenner. For what purpose does the gentleman from Virginia seek recognition?

Mr. Scott. Mr. Chairman, move to strike the last word.

Mr. Sensenbrenner. The gentleman is recognized for 5 minutes.

Mr. Scott. Mr. Chairman, I join my colleagues from Virginia, Mr. Goodlatte and Mr. Forbes, yourself, Mr. Conyers and Mr. Nadler in proposing the substitute. And I commend my colleagues for working together to develop a bipartisan approach to addressing shortcomings in our foreign intelligence surveillance statutes.

As recent revelations about the way some of these statutes have been used have come to light, members of this committee, which has primary jurisdiction over these statutes, studied these issues, proposed solutions, and worked together to find a way forward. The substitute amendment addresses abuses and answers privacy protections, provides more rigorous review of questions of legal interpretation, and increases transparency so our citizens will know what is being decided and done in their name.

When we enacted Section 215 of the USA PATRIOT Act, which requires the government to show that business records sought are relevant to investigations to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, no one believed that we were permitting the government to collect information on every

single phone call made past, present, and even into the future.

While the President has taken steps to mitigate the government's bulk collection of telephone metadata through executive action, this amendment in the nature of a substitute will ensure that the statute may not be interpreted in the future to allow such bulk collection to take place again for these or any other type of business records. Without codification, any future President could return to the policies that we are expressly forbidding today. The amendment would also change other surveillance statutes to ensure that they are not being manipulated to allow bulk collection similar to what we are banning under Section 215.

And note that we permit acquisition of business records under these relaxed standards, because the information sought relates to terrorism or foreign intelligence. Of course, we would not allow these standards to apply to the collection of information for domestic law enforcement purposes, just as the use of information gathered under Section 215 should not be used for domestic law enforcement investigations.

While much of the initial attention after the Snowden disclosures focused on mass collection of telephone metadata, the sponsors of this amendment have also worked together to propose significant reforms to Section 702 of the Foreign Intelligence Act. This statute is designed to permit the acquisition of communications of non-U.S. persons reasonably believed to be outside of the United States.

However, as confirmed by recent disclosures about government

surveillance practices, it has become apparent that at times the government has engaged in inappropriate collection of U.S. communications. Accordingly, the substitute amendment clarifies that the government may not intentionally intercept the communications of a person if a purpose of the acquisition is to target a person reasonably believed to be in the United States.

Also with respect to Section 702, because of concerns about the government's inadvertent collection of wholly domestic communications, the amendment codifies the prohibition of retention and dissemination of any purely domestic communications which are inadvertently acquired under Section 702 authorities.

In addition to these and other changes to surveillance authorities, the amendment will provide greater assurances about the review of significant legal questions relating to these authorities. The substitute provides for the appointment of individuals to serve as *amicus curiae* in appropriate cases so that the only parties participating will not be just the judge, who is listening to the government side of a case. As a result, the public should have greater confidence in the process of reviewing these cases.

I also note, Mr. Chairman, that foreign intelligence information gathered using extraordinary measures we are discussing today only becomes useful when shared by those who can act on it. The recent complaints about the Boston Marathon case involved complaints that the available information had not been widely disseminated. Wide dissemination of it means that we are not just talking about information

sitting on a computer, but information about U.S. persons may sometimes be shared with officials who are friends and neighbors about those whom the information is collected. Therefore, we must insist on crafting these authorities narrowly to protect against over-collection and inappropriate dissemination of private information.

In conclusion, Mr. Chairman, I support this amendment because it represents a significant step forward in public confidence in our government surveillance practices. While the administration has offered to change some of its procedures and the FISA court has taken steps to address concerns that have arisen about certain practices over the years, the best course, as I have said, is to trust but codify. I therefore urge the adoption of this amendment and the passage of the bill.

Mr. Sensenbrenner. Gentleman's time has expired.

For what purpose does the gentlewoman from California again seek recognition?

Ms. Lofgren. Thank you very much, Mr. Chairman. I have an amendment at the desk.

Mr. Sensenbrenner. Clerk will report the amendment.

Ms. Lofgren. Lofgren 1.

Ms. Deterding. Amendment to the amendment in the nature of a substitute to H.R. 3361 offered by Ms. Lofgren of California. Page 3, line 3 --

Ms. Lofgren. I ask unanimous consent that the amendment be considered as read.

Mr. Sensenbrenner. Without objection.

[The amendment of Ms. Lofgren follows:]

\*\*\*\*\* INSERT 2-1 \*\*\*\*\*

Mr. Sensenbrenner. And the gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Mr. Chairman, under current law Section 215 allows for the collection of phone metadata if there are reasonable grounds to believe that the information being sought is relevant to an authorized investigation. And as we have learned, much to our regret, that phrasing has been used to engage in bulk collection of business records.

The original USA Freedom Act, which you authored, Mr. Chairman, and which I cosponsored, used a standard of "relevant and material" to an authorized investigation. That language was a huge improvement and may well have ended bulk collection, but we have seen that the creative interpretation of language has led the Nation to places that we were in some cases surprised to find ourselves.

The manager's amendment more directly attempts to limit bulk collection, although the requests are still subject to two hops and it increases the standard to one of reasonable articulable facts. However, I believe that this standard is insufficient. As you will recall, when we had a hearing here in the Judiciary Committee, the Department of Justice confirmed on the record under oath that business records would include virtually anything held by a third party. That February 4th hearing with Deputy Attorney General James Cole confirmed that such business records would include every photo taken by an ATM machine, the location data of where all phone calls were made, all credit card transactions, all cookies, all Internet searches, all

pictures captured by CCTV cameras, all would be in the same legal posture as phone metadata.

And as we have learned further, in some cases from testimony by computer science professor Felton in the Senate Judiciary Committee, metadata actually can provide more information about an individual than content itself. In fact, former NSA General Counsel Stuart Baker said, and I quote, "Metadata absolutely tells you everything about somebody's life. If you have enough metadata, you don't really need content."

Now, the Fourth Amendment requires probable cause to get information about Americans, and it seems to me that we should ask for a standard of probable cause when seeking information that will tell us everything about an American. You know, when the Fourth Amendment was written, the Founders thought about a letter in a desk drawer. Now the metadata that could be collected under the standard in the amendment would tell us much more than what a letter in your desk drawer would do.

My amendment would first require that before the government can obtain metadata, it would show probable cause that the information obtained is for an intelligence operation not involving a U.S. person, or relevant to an ongoing investigation to protect against terrorism. We would need to get a warrant. Of course, there is an exception for emergencies, as is provided for in law, but I do think that we ought to stand up for the protections of the Fourth Amendment in the age of big data, and I offer this effort to do so.

And with that, Mr. Chairman, I would yield back.

Mr. Sensenbrenner. The chair recognizes himself for 5 minutes in opposition to the amendment.

This amendment, which is offered by the gentlewoman from California, would require the government to have probable cause when seeking any order under Section 215. Under a longstanding constitutional precedent, requests for noncontent third-party business records, such as those eligible to be obtained under Section 215, do not require a showing of probable cause, because they do not constitute a search under the Fourth Amendment. Section 215 orders are similar to grand jury and administrative subpoenas in that they can only be used to request business records and cannot be used to acquire the content of communications. Section 215 goes beyond criminal and investigation subpoenas by requiring that the government obtain an order from the FISA court before it can request the information, meaning that there is an additional burden to get a FISA order under Section 215 than the criminal orders.

The amendment would raise a routine request for information to the level of a search warrant. We must remain cognizant that our country still faces significant national security threats and the government should be able to investigate and respond to these threats effectively.

I would add that the reasonable suspicion standard was put in the PATRIOT Act. While there are problems with the PATRIOT Act, which is what brings us here today, reasonable suspicion was not one of those problems. I would fear that this may blow up the fast-tracked passage

that this bill appears to be having.

And for all these reasons, I oppose the gentlewoman's amendment. And yield back the balance of my time.

The gentleman from New York, for what purpose do you seek recognition?

Mr. Nadler. To speak on the amendment.

Mr. Sensenbrenner. The gentleman is recognized for 5 minutes.

Mr. Nadler. Mr. Chairman, I, too, rise in opposition to this amendment, and I do so for two different reasons.

If you look at the history of the PATRIOT Act, the PATRIOT Act that this committee reported, as the gentleman from Wisconsin recalled, was reported unanimously. That bill, however, was then changed before it got to the floor, and many of us opposed the changed bill. One of the reasons we opposed the changed bill, aside from the fact that we hadn't had a chance to really go through it in any detail at that point, but one of the substantive reasons was we thought that the standard was too loose, that the relevant standard should be higher. And we thought so at the time. I still think that it would be nice if the relevant standard were higher. But the fact is we never sought probable cause, because the gentleman is correct that the addition of probable cause to Section 215 would go far beyond any reforms contemplated in the original text of the USA Freedom Act and far beyond what those of us who opposed the PATRIOT Act at the time wanted then.

Although we are unanimous in our criticism of the NSA's bulk collection program, the consensus has always been that Section 215 must

be preserved for traditional Section 215 orders where the FBI demonstrates true relevance to the court on a case-by-case basis. This amendment would have immediate and drastic consequences to the FBI's use of this investigate tool, and we do have to have a balance of civil liberties and national security. And I think I have never in the last dozen years argued on the side of national security on that balance, but I think here we have to.

Section 215 is designed to cover business records held by a third party. Business records held by a third party have never been granted traditional Fourth Amendment protection, because they have never been considered a search, and have therefore never required probable cause.

So the government has unquestionably reached beyond the intended scope of Section 215, and we are going to correct that today, but this amendment would go even beyond what those of us who opposed the PATRIOT Act at the time thought we ought to do then. That is the first reason for opposing the amendment.

The second reason is that just mentioned by the chairman, and that is that after a dozen years we finally, finally have a chance to rein back the government's abuse and to end bulk collection, to end dragnet surveillance. We finally have a bill that can actually pass. And this amendment would probably upset that ability to pass a bill.

So I will quote what Benjamin Franklin said to the constitutional convention. He said, I consent, sir, to this Constitution, because I expect no better and because I am not sure that it is not the best.

I do not expect that we can get a better bill than we have now,

perhaps in some respects, but I am not sure it is not the best we can get, and I certainly do not want to jeopardize the ability to get what we have in this bill with the manager's amendment, which is a tremendous achievement for reconstituting liberty and privacy in this country. This amendment would jeopardize that, and I don't think we can afford that risk, and I therefore oppose the amendment.

Ms. Lofgren. Would the gentleman yield?

Mr. Nadler. Sure.

Ms. Lofgren. I thank the gentleman for yielding. And I understand especially the comment made that we do want to get the improvements represented in this bill enacted into law, and I don't disagree with that.

However, as to the issue of business records, in 2001, when we worked together on the PATRIOT Act and when the committee unanimously reported the bill, big data did not exist in the same way it does today. I believe -- and I suspect my amendment will not pass -- but I do believe that this committee and this Congress is going to have to come to grips with that standard and what it means for personal privacy in the digital age.

Mr. Nadler. Reclaiming my time.

Ms. Lofgren. I would yield.

Mr. Nadler. I agree with the gentlelady. I agree with the gentlelady. I think you can make a good case that this bill does not go far enough in protecting that and we should work to improve that. But a probable cause standard I think goes too far and it is too blunt

an instrument, and now is not the time to do that, to jeopardize this bill. I do think we want to further protect the privacy of data held in the cloud and further protect the ability of American high tech companies to go abroad and say we are not jeopardizing your privacy. I don't think a probable cause standard in this bill at this time will accomplish that and it just jeopardizes the bill. But I think we ought to work toward that end, because I don't think this bill accomplishes everything that has to be accomplished, but it is probably the best we can do now.

I yield back.

Chairman Goodlatte. [Presiding] For what purpose does the gentleman from Virginia seek recognition?

Mr. Scott. To strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Scott. Mr. Chairman, I oppose the amendment, but I think that the amendment points out a real problem even with the original USA PATRIOT Act. We have relaxed standards, and I think the relaxed standards for getting information are appropriate when you are trying to protect the Nation from terrorist attacks. But Section 215 covers a lot more than terrorist attacks. It says foreign intelligence. That is not even spying, that could be a trade deal, things that are not dangerous to anybody. And I think the relaxed standards may be inappropriate for those situations, but unfortunately either you accept the amendment and cover everything or you cover nothing.

I think these relaxed standards where you can get information a

lot easier to protect the country from terrorism are appropriate, but inappropriate when applied to a lot of other situations. So I am going to oppose the amendment, but I would hope that we would notice that the present law is overbroad and gives a relaxed standard on information for things that are totally inappropriate.

Does the gentlelady need any time? I yield.

Ms. Lofgren. I thank the gentleman for further yielding.

I do believe that the entire issue of ancient doctrines and the Fourth Amendment are going to need to be dealt with by this Congress and ultimately, perhaps if we drop the ball, by the Supreme Court, because if the Fourth Amendment is going to actually provide protection to modern Americans it is going to have to deal with the issue of how big data can tell someone everything there is to know about that person. And I think modern Americans should have the benefit of the Fourth Amendment.

I realize the point being made, and I am not insensitive to that point, that we have a bill here that does good, and we don't want to blow it up. But I do think that this hopefully will be the opening discussion of what protections are going to be afforded to modern Americans under the Fourth Amendment.

And with that, I yield back.

Mr. Scott. Reclaiming my time.

And, Mr. Chairman, one of the complications that was created was created when we allowed all the sharing of information. When you have got foreign intelligence information, it doesn't stay over in foreign

intelligence. Once you started passing it all over town so everybody else could see it, you create an incentive to go use foreign intelligence relaxed standards to get the information in the first place. There was no incentive before the USA PATRIOT Act because you couldn't do anything with it outside of the foreign intelligence community, and so with no incentive it kind of took care of itself. Once you allowed the sharing, particularly since more is involved than just terrorism, you have this problem, and I hope we will notice that as we go forward.

I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

For what purpose does the gentleman from Rhode Island seek recognition?

Mr. Cicilline. Mr. Chairman, I move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cicilline. Mr. Chairman, I want to begin by congratulating you and Ranking Member Conyers for your tremendous work on reaching this substantive bipartisan agreement. I also want to recognize the hard work of Mr. Sensenbrenner, Mr. Nadler, Mr. Forbes, and Mr. Scott,

all of whom were critical partners in arriving at this amended version of the USA Freedom Act.

This bill includes critical reforms of the government surveillance authorities and it is certainly a positive step forward compared with current law. Most importantly, this bill ends bulk collection under Section 215, it carefully establishes a new elevated standard to ensure any data collected under Section 215 authority is used to collect data for a specific selection term. Furthermore, it ensures that a judicial review is required before data is collected in nonemergency cases and it guarantees that collection authority is actually contingent on the government presenting a reasonable articulable suspicion.

Under this amended bill, the days of bulk collection of metadata for individuals who don't even meet a standard of suspicion according to a judicial process are over. Instead, a more targeted, thoughtful approach to counterterrorism will exist. As I said, these are important steps forward, and I am very proud to support the committee's work in this area.

At the same time, I want to make clear that I believe our work on this issue is not complete. As I have said previously, I have real concerns about the use of national security letters and their authority to get at some of the same information as the data collected under Section 215. Importantly, I am encouraged that this bill elevates national security letters collection authority to the same new standard of Section 215, effectively ending the government's ability to use

national security letter authority for bulk collection of data.

Still, I believe we must work to better reform this process. In particular, we should adopt the judicial review standards for NSLs outlined by the President's Review Group in December. I still strongly believe a national security letter should be issued only upon a judicial finding that the information sought is relevant to an authorized investigation.

I am also very pleased that the gentlelady from Washington's amendment passed and that this now includes important language on transparency and information that companies can publicly report or disclose regarding the extent to which national security letters are used by the government. This was badly needed transparency, and I commend the gentlelady from Washington for including this amendment. I am confident that our committee will continue to work diligently to come to an agreement on these items, and I think today's markup proves that as a group we are committed to working on a bipartisan basis to solve important problems related to government surveillance.

To close, I want to once again congratulate the committee on coming to an agreement that is clearly a positive step forward. This bill is a strong effort. It helps protect Americans' privacy and curtail the National Security Agency's authority to collect data in bulk. I am proud to support our committee's effort and look forward to continuing our work together to defend civil liberties and the right to privacy, while keeping Americans safe.

I thank the chairman and yield back.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentlewoman from Texas seek recognition?

Ms. Jackson Lee. I move to strike the last word.

Chairman Goodlatte. The gentlewoman is recognized for 5 minutes.

Ms. Jackson Lee. I thank the chair.

As I think I indicated earlier, in my earlier conversation, we are in the midst of a markup that also includes another committee who has a great interest in this area. I am, however, glad that the mark on this legislation, H.R. 3361, the U.S. Freedom Act, intertwines very closely and carefully those vendors who heretofore were the holders of what we called mega data, resulting in the opportunity for Mr. Snowden to take his voice around the world and in essence undermine the intelligence efforts of this Nation, but open the eyes of Americans on the question of mega data, privacy and transparency, and security.

I believe that this legislation strikes the appropriate balance, that it recognizes that Americans do have the right to privacy. There was a justifiable concern on the part of the public and a large percentage of members of this body that the extent and scale that the NSA data collection operation occurred exceeded by orders of magnitude anything previously authorized or contemplated under the business section provision 215. For many of us who were here who helped draft the PATRIOT Act, that is and was not the intent, and so there was a question of the invasion of privacy and a threat to civil liberties.

To quell the growing controversy, Director of the National Intelligence declassified and released limited information about this program. According to the DNI, the information required under this program did not include the content of any communications or the identity of any subscriber. The DNI stated the only type of information acquired under the court's order is telephone mega data.

However, we saw that there was a great importance in introducing legislation. And again I thank Mr. Conyers, Mr. Goodlatte, Mr. Sensenbrenner, and other cosponsors, and the Judiciary Committee, in fact, for recognizing the importance of qualifying and modifying the USA PATRIOT Act as it has been interpreted.

I introduced H.R. 2440, the FISA Court in the Sunshine Act of 2013. The bill would require the Attorney General to disclose each decision, order, or opinion of a FISA foreign intelligence surveillance court, allowing Americans to know how broad of a legal authority the government is claiming under the PATRIOT Act and the Foreign Intelligence Surveillance Act to conduct the surveillance needed to keep Americans safe.

I am pleased that these requirements are incorporated in substantial part as Section 402 and 604 of the USA Freedom Act. And section 402 requires the Attorney General to conduct a declassification review of each decision, order, or opinion of the FISA court -- again, a significant move forward for privacy and transparency. 604 requires the Attorney General to provide to this committee and other relevant committees within 45 days of each decision, order, or opinion that

includes a significant construction or interpretation a copy of each such decision and a brief statement of the relevant background.

I also am pleased that the bill before us contains an explicit prohibition on bulk collection of tangible things pursuant to Section 215.

In my remaining time, I think it is important that we discuss Section 301 of the bill, which contains a prohibition against reverse targeting, which became law when the Jackson Lee amendment was included in H.R. 3773, the RESTORE Act of 2007. Reverse targeting can be harsh and, in my perception, unconstitutional, a concept well known to members of this committee but not so well understood by those less steeped in the arena of arcane law of electronic surveillance. It is a practice where the government targets foreigners without a warrant while its actual purpose is to collect information on U.S. persons.

One of the main concern of libertarians and classical conservatives, as well as progressive and civil liberty organizations, is giving expanded authority to the executive branch, was the understandable temptation of national security agencies to engage in reverse targeting may be difficult to resist in the absence of strong safeguards.

Again let me say that over the years we have worked on this issue with a number of amendments, a number of legislative initiatives out of this committee. I think this USA Freedom Act captures the body of understanding by Americans. We have the right to freedom, we have the right to privacy, transparency, and, yes, we have a right to be

protected from those who would want to do us harm. This is the right balance. And I will look forward to continuing as we move in this markup to assess the opportunities for further involvement before this legislation goes to the floor. But I do think that this is going to make an important statement in answer to the American people and providing for the security of this Nation.

With that, I yield back.

Chairman Goodlatte. The chair thanks the gentlewoman.

For what purpose does the gentlewoman from California seek recognition?

Ms. Lofgren. I have an amendment at the desk, Lofgren number 3.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment to the amendment in the nature of a substitute to H.R. 336 --

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

[The amendment of Ms. Lofgren follows:]

\*\*\*\*\* INSERT 2-2 \*\*\*\*\*

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

Ms. Lofgren. Mr. Chairman, my concern about the manager's amendment and its treatment of the reforms in 702 is pretty serious. I have a couple of amendments I will offer on that, but I will say that the biggest disappointment I have about the manager's amendment is that it took the meaningful reform in Mr. Sensenbrenner's bill that I cosponsored and watered it down significantly.

This amendment would return the highly lauded requirement that a warrant would be needed to search the 702 database for the communications of U.S. persons. Now, under current law NSA can search the communications they collect on U.S. persons without a warrant. The bill that Mr. Sensenbrenner introduced had stripped the old USA Freedom Act, the manager's amendment stripped out the new requirements that were in the bill.

And I will tell you why I think this is important. We were all concerned about bulk collection of Americans. And I think if we leave this loophole in the manager's amendment we are going to be right back where we are today with the same problem, and let me just give you an example. You have to believe that the object of your search is not a U.S. person. Well, what is the basis for that belief? Could it be that you are a provider of email services and 55 percent of your account holders live outside the United States? I think arguably you could use that as a basis for believing it was more probable than not that these were non-U.S. persons.

If there is no requirement -- and I will get into with my next amendment the definitional problem of what you can be looking for -- you actually could end up with the same broad-based database of U.S. persons using Section 702 as we are trying to stop under Section 215. I do think that if you are searching for this database that has been lawfully collected for information about United States citizens, you ought to meet a warrant requirement. I think that is required under the Fourth Amendment and it should be provided for in this statute, and I would recommend to my colleagues that we make this fix on the manager's amendment. The bill itself that Mr. Sensenbrenner wrote was far superior.

And with that, I would yield back.

Chairman Goodlatte. The chair thanks the gentlewoman, and recognizes himself in opposition to the amendment.

This amendment seeks to alter the substitute amendment's changes to Section 702 of FISA. The amendments to Section 702 made by the substitute reflect the bipartisan agreement carefully negotiated by myself, the sponsor of the USA Freedom Act, Mr. Sensenbrenner, Ranking Member Conyers, Mr. Nadler, Mr. Scott, and Mr. Forbes.

The substitute amendment reiterates Congress' original intent in enacting the FISA amendment's act that this authority designed to allow the government to target a person reasonably believed to be outside the United States cannot be used to reverse target a U.S. person. In addition, the bipartisan substitute amendment reiterates Congress' intent that Section 702 does not apply to wholly domestic

communications. The substitute preserves the provision from the bill, as introduced, instructing that should information be collected concerning a U.S. person under Section 702, despite a finding by the FISA court that a certification was deficient, such information cannot be used.

There have been careful, detailed negotiations between members on both sides of the aisle on the committee to craft this substitute amendment. The amendment proposed by the gentlewoman from California will disrupt this bipartisan agreement, and accordingly, I oppose the amendment.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Gohmert. Mr. Chairman.

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

Mr. Gohmert. I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment to the amendment in the nature of a substitute to H.R. 3361 offered by Mr. Gohmert. Page 17, after Section 109, insert the following. Section 110 clandestine intelligence activities (a) Section 501(a)(1)(50 USC 1861(a)(1) --

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

[The amendment of Mr. Gohmert follows:]

\*\*\*\*\* INSERT 2-3 \*\*\*\*\*

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

Mr. Gohmert. Thank you, Mr. Chairman.

And I do appreciate the incredible amount of work that was done by those negotiating this agreement, but what makes the committee structure in Congress strong is when the committee itself gets to participate, gets to look for little nuances that make a bill better.

Remembering my freshman term in 2005 and 2006 when we took up a renewal of the PATRIOT Act, we had a lot of discussions behind the scenes with administration officials, Justice Department, intelligence, people from the White House. We talked to a lot of people. And a question that I asked back at the time, though we were told repeatedly that this only pertains to getting information about someone or from someone who is either a foreign agent engaged in foreign intelligence or has contact with a foreign agent or a foreign government. And, in fact, we were so assured of that, that I had made the statement in debate that, gee, if any of my Democratic friends want to avoid their telephone data being gathered, all they have got to do is make sure that any foreign terrorist doesn't call them on that phone. That seemed to pretty much summarize what we were told. You had to have that contact.

But I kept asking the question, because like in (50 USC 1861), under subparagraph a, this allows them to get the production of tangible things for an investigation to obtain foreign intelligence, records, papers, foreign intelligence information not concerning a United States person. Well, that gave us a lot of comfort. That is only for

somebody who is not a United States person. Or, here is the second one, to protect against international terrorism. I thought, well, that is good, that supports just what the Bush administration people were saying, you have got to have a relationship with a foreign country, foreign terrorist.

But then there was this other clause after the disjunctive "or," and that is, or clandestine intelligence activities. And I asked the question more than once in our private meetings, well, you said this only had to do with foreign contact, foreign governments, foreign intelligence activities, or contact with foreign agents, foreign governments. And I was assured, look, international, foreign, it is throughout the document, everybody knows this has to do with foreign contacts. But I was still troubled, but was assured not to worry.

Well, I worry now, because they have obtained data on American citizens who did not have contact with foreign terrorists or foreign governments, and they still got the data. And we know from our history that Robert Kennedy, J. Edgar Hoover authorized all kinds of surveillance, inappropriate, I would submit, of Martin Luther King, Jr.

Look, we don't need another time where somebody under a vague term like clandestine intelligence activities, heaven help you if you look over a fence into a government secured area. You just engaged in clandestine intelligence activity.

Look, this is so broad, so vague, you could drive a truck through this for anyone wanting information on American citizens. And that

is also true in 18 USC 1842, where it says, to obtain foreign intelligence information -- that makes me feel better -- not concerning a United States person -- oh, good, it is got to be someone not a U.S. person -- or to protect against international terrorism -- international, good -- or clandestine intelligence activities. Same thing down in part C, it is to protect against international terrorism or clandestine intelligence activities.

My amendment makes clear what we were promised in 2005 and 2006. This has to do with foreign intelligence, foreign terrorism. We have plenty of law enforcement to go after domestic terrorists, domestic criminals. We have got all kinds of criminal laws to address that. That is why I would like to get rid of the vaguery here by making it specifically pertain to foreign entities.

And with that, I yield back.

Ms. Lofgren. Would the gentleman yield?

Mr. Gohmert. Yeah. I yield what time I have got left.

Ms. Lofgren. I support the gentlemen's amendment. I think it makes it clear. And it reminded me as you were speaking that when we had -- you know, we have tried as a committee to get information from our intelligence agencies, and the chairman had another thing he had to attend to, and you were chairing the last classified briefing. Obviously we can't discuss what was said, but I do recall we had specific questions, and those questions were not answered.

Mr. Gohmert. They were not.

Ms. Lofgren. And I would ask unanimous consent for an additional

30 seconds.

Chairman Goodlatte. Without objection, the gentleman from Texas is recognized for an additional 30 seconds.

Ms. Lofgren. And, in fact, they promised to get back to us, and I am still waiting for the answer to that question that was posed last year when you were chairing the classified briefing. So I do think we have to be very precise here, because we are not provided information, whether it is in public or in the classified briefings.

And I thank the gentleman for yielding.

Mr. Gohmert. I thank the gentlelady.

Thank you. I yield back.

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

Mr. Sensenbrenner. In opposition to the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, the amendment goes well beyond the scope of the underlying bill and the substitute amendment to fundamentally change the longstanding authority for the government to gather intelligence on those who engage in clandestine intelligence activities.

The purpose of the bill and the substitute is to reform the use of this authority as it pertains to bulk collection, not to reform the underlying law. The word "clandestine" is one that is commonly and routinely used and understood to mean spying. This term is used throughout FISA in the national security letter statutes, and

importantly is limited in each of these statutes by prohibiting a clandestine intelligence investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

FISA was enacted in part to authorize the United States to protect itself against those who choose to engage in spying or espionage against it and to empower it to gather intelligence from within the United States to meet this important national security goal.

I was around here during the cleanup of the mess that the COINTELPRO fiasco occurred. This is why the Church Commission was appointed. And the definitions that have been referred to in FISA were as a result of something that was carefully crafted to prevent a repeat of COINTELPRO while protecting the American public. For those reasons, I oppose the amendment.

And I yield back the balance of my time.

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

Mr. Poe. Move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Poe. I thank the chairman. I thank Chairman Sensenbrenner and the bipartisan manner in which this bill has been brought to the committee.

I, too, am concerned about the lack of specificity in the legislation. I support the gentleman's amendment. I think we are here today because the government, NSA specifically, has interpreted

this act in the most favorable way to seizing the information they want. And that is why we are here. Since we must assume that is the way they will interpret all legislation, this amendment makes it more specific to deal with foreign governments and foreign nationals. Otherwise, to me, it is too vague. The gentleman used the phrase of peeping over the fence. The legislation clandestine intelligence activities reminds me of the old Soviet law that thou shalt not engage in anti-Soviet activities. That means different things to different folks. It did under the Soviet regime, and I think this can also be interpreted to mean different things to different folks in our government.

Make it specific, make it apply to foreign governments, foreign nationals, protect the integrity of American citizens. And I would support the gentleman's amendment on getting rid of the vagueness, be specific, because the government operates under the presumption that they will interpret the law the most favorable way to seize the evidence, and that concerns me.

And I will yield back.

Chairman Goodlatte. Question occurs on the amendment offered by the gentleman from Texas.

All those in favor, respond by saying aye.

Those opposed, no.

In the opinion of the chair, the noes have it, the amendment is not --

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

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

Ms. Deterding. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Deterding. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Deterding. Mr. Sensenbrenner votes no.

Mr. Coble?

[No response.]

Ms. Deterding. Mr. Smith of Texas?

[No response.]

Ms. Deterding. Mr. Chabot?

Mr. Chabot. No.

Ms. Deterding. Mr. Chabot votes no.

Mr. Bachus?

[No response.]

Ms. Deterding. Mr. Issa?

[No response.]

Ms. Deterding. Mr. Forbes?

[No response.]

Ms. Deterding. Mr. King?

[No response.]

Ms. Deterding. Mr. Franks?

[No response.]

Ms. Deterding. Mr. Gohmert?

Mr. Gohmert. Aye.

Ms. Deterding. Mr. Gohmert votes aye.

Mr. Jordan?

Mr. Jordan. Yes.

Ms. Deterding. Mr. Jordan votes aye.

Mr. Poe?

Mr. Poe. Yes.

Ms. Deterding. Mr. Poe votes aye.

Mr. Chaffetz?

[No response.]

Ms. Deterding. Mr. Marino?

Mr. Marino. No.

Ms. Deterding. Mr. Marino votes no.

Mr. Gowdy?

[No response.]

Ms. Deterding. Mr. Labrador?

[No response.]

Ms. Deterding. Mr. Farenthold?

Mr. Farenthold. Aye.

Ms. Deterding. Mr. Farenthold votes aye.

Mr. Holding?

Mr. Holding. No.

Ms. Deterding. Mr. Holding votes no.

Mr. Collins?

[No response.]

Ms. Deterding. Mr. DeSantis?

[No response.]

Ms. Deterding. Mr. Smith of Missouri?

[No response.]

Ms. Deterding. Mr. Conyers?

Mr. Conyers. No.

Ms. Deterding. Mr. Conyers votes no.

Mr. Nadler?

Mr. Nadler. No.

Ms. Deterding. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

Ms. Deterding. Mr. Scott votes no.

Ms. Lofgren?

Ms. Lofgren. Aye.

Ms. Deterding. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Deterding. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

[No response.]

Ms. Deterding. Mr. Pierluisi?

Mr. Pierluisi. No.

Ms. Deterding. Mr. Pierluisi votes no.

Ms. Chu?

Ms. Chu. No.

Ms. Deterding. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

Ms. Deterding. Mr. Deutch votes no.

Mr. Gutierrez?

[No response.]

Ms. Deterding. Ms. Bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Ms. DelBene?

Ms. DelBene. No.

Ms. Deterding. Ms. DelBene votes no.

Mr. Garcia?

[No response.]

Ms. Deterding. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Deterding. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Deterding. Mr. Cicilline votes aye.

Mr. Bachus. Mr. Bachus votes no.

Ms. Deterding. Mr. Bachus votes no.

Chairman Goodlatte. Gentleman from Iowa.

Mr. King. Aye.

Ms. Deterding. Mr. King votes aye.

Chairman Goodlatte. The gentleman from Idaho.

Mr. Labrador. Aye.

Ms. Deterding. Mr. Labrador votes aye.

Chairman Goodlatte. Are there members who have not voted who wish to vote? The gentleman from Florida.

Mr. Garcia. Aye.

Ms. Deterding. Mr. Garcia votes aye.

Chairman Goodlatte. The gentlewoman from Texas?

Ms. Jackson Lee. How am I recorded?

Ms. Deterding. Ms. Jackson Lee votes no.

Ms. Jackson Lee. Changing my vote to aye.

Ms. Deterding. Ms. Jackson Lee votes aye.

Chairman Goodlatte. Gentlemen from Puerto Rico.

Mr. Pierluisi. How am I recorded?

Ms. Deterding. Mr. Pierluisi votes no.

Mr. Pierluisi. I change my vote to aye.

Ms. Deterding. Mr. Pierluisi votes aye.

Chairman Goodlatte. Is there any member who voted who wishes to vote? The gentleman from Missouri.

Mr. Smith of Missouri. Aye.

Ms. Deterding. Mr. Smith of Missouri votes aye.

Chairman Goodlatte. The clerk will report.

Ms. Deterding. Mr. Chairman --

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

How many am I recorded?

Ms. Deterding. Mr. Goodlatte votes no.

Chairman Goodlatte. I change my vote to aye.

Ms. Deterding. Mr. Goodlatte votes aye.

Mr.  Holding. How am I recorded, Mr. Chairman?

Ms. Deterding. Mr. Holding votes no.

Mr.  Holding. Thank you.

Chairman Goodlatte. How is the gentleman from New York recorded?

Ms. Deterding. Mr. Nadler votes no.

Mr. Nadler. Thank you.

Chairman Goodlatte. The clerk will report.

Ms. Deterding. Mr. Chairman, 14 members voted aye, 11 members voted no.

Chairman Goodlatte. And the amendment is agreed to.

For what purpose does the gentlewoman from California seek recognition?

Ms. Lofgren. I have an amendment at the desk, amendment number 4.

Chairman Goodlatte. The clerk will report.

Ms. Deterding. Amendment to the amendment in the nature of a substitute to H.R. 3361 offered by Ms. Lofgren of California. After the last section in Title III add the following section: SEC. 30X. Limiting the collection of U.S. persons' communications to only those that include the target of an authorized investigation. 50 USC 1881a(b) is amended by --

Ms. Lofgren. Mr. Chairman, I ask unanimous consent that the amendment be --

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

[The amendment of Ms. Lofgren follows:]

\*\*\*\*\* INSERT 2-4 \*\*\*\*\*

Chairman Goodlatte. And the gentlewoman from California is recognized for 5 minutes on her amendment.

Ms. Lofgren. Mr. Chairman, I believe that this amendment fixes a loophole that was created by the FISA court in its November 2011 decision that is now in the public arena. The amendment clarifies that the government can only use selectors to collect information to or from the target of an authorized investigation.

Under the current law, as blessed by the FISA court, NSA is using 702 authority to collect communications that are to, from, or even about a foreign intelligence target so long as these communications are believed not to be wholly between U.S. persons.

Now, the USA Freedom Act did not address this loophole, and actually the original PATRIOT Act did not either, this is a court-constructed document, but it allows false positives, and intentional use of vague about criteria could be used to lead to massive collection of U.S. persons' communication.

This amendment would prevent that adverse outcome by limiting the selectors to target and collect communications only when one of the parties to that communication is the target of an authorized investigation.

I know that all of us have worked in good faith on this bill, and again I want to give great credit to the chair and ranking of the subcommittees of jurisdiction, and especially, as I said earlier, to Mr. Sensenbrenner for his leadership.

RPTS JANSEN

DCMN HUMKE

[3:14 p.m.]

Ms. Lofgren. But I do think that we don't want to end up in the same situation a few years from now as we are today, finding out that we have failed to define terms and have allowed for the kind of unwarranted bulk collection that we are seeking to end today. I think my amendment, if adopted, would prevent that from occurring.

And with that, I would yield back.

Mr. Sensenbrenner. [Presiding.] The chair recognizes himself for 5 minutes in opposition to the amendment.

I believe that the changes in the minimization statute in Section 02 in the substitute which was not in the original bill already deal with this issue and I don't think the amendment is necessary and I think it is harmful to the bill as a whole.

Section 702 as amended by the substitute prevents reverse targeting. I think we are all against that and I think that that should be sufficient to prevent this from happening.

But reading the amendment of the gentlewoman from California, it limits the collection of U.S. person's communication to only those that include the target of the authorized investigation. Okay. Say there is a section 215 order that is aimed at a target, it goes two hops and on the second hop, there is a U.S. person who is not at the time of the second hop a target of an authorized investigation.

What this amendment does is limits adding that person to a target of an authorized investigation and going the two hops from that. Now, a lot of these conspiracies are more than two hops. But I don't think that if there is a reasonable suspicion that if it goes for more than two hops that we ought to preclude, finding out who those people are talking to in the furtherance of their plot.

So for those reasons, I urge the rejection of the gentlewoman's amendment and again I would repeat that the codification of the minimization procedures in section 02 deals with that subject.

Yield back the balance of my time.

Mr. Sensenbrenner. Question is on the agreeing to the amendment offered by the gentlewoman from California. The amendment in the nature of a substitute. Those in favor will say aye. Aye. Opposed, no. Noes appear to have it. The noes have it and the amendment is not agreed to.

Are there further amendments?

Gentlewoman from California.

Ms. Lofgren. I have an amendment at the desk, amendment number 6.

Mr. Sensenbrenner. Clerk will report the amendment.

Ms. Deterding. Amendment to the amendment in the nature of a substitute to H.R. 3361, offered by Ms. Lofgren of California.

After --

Mr. Sensenbrenner. Without objection, the amendment is considered as read.

[The amendment of Ms. Lofgren follows:]

\*\*\*\*\* INSERT 3-1 \*\*\*\*\*

Mr. Sensenbrenner. And the gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Thank you, Mr. Chairman.

This amendment would correct a problem that some of us have discussed since the -- for many years, which is the definition of "foreign intelligence information."

Under current law, the definition of "foreign intelligence information" is simply too broad. It has an expansive definition that includes foreign affairs, not just serious spying and terrorism and things that would do us harm. This is a similar issue to that raised by our colleague from Texas. I think the use of "foreign affairs" potentially invites abusive practices, using "foreign affairs" as an excuse to collect communications of U.S. persons, and it furthermore encourages the use of 702 authority to spy on friendly nations rather than focusing on foreign powers or agents that mean to do us harm.

The original and amended USA FREEDOM Act, failed to address this loophole, and this amendment would fix the definition of "foreign intelligence information" by removing "foreign affairs" from the definition of "foreign intelligence information" to prevent such misuse and ensures that the foreign intelligence gathered under FISA and/or 702 in particular is only for counterterrorism, proliferation of weapons of mass destruction with consents, or to protect the armed forces.

I think it is a necessary and useful amendment, and I would urge its adoption.

Mr. Sensenbrenner. The chair recognizes himself for 5 minutes in opposition to the amendment.

What the amendment would do is to fundamentally change all of FISA, not just that part of FISA that relates to counterterrorism activities and this can have consequences for foreign intelligence surveillance across all spectrums.

I think that we have had a problem in dealing with excesses by the NSA relative to counterterrorism activities, particularly those authorized by the PATRIOT Act. I certainly would not want to hamper the ability of the government, and I am not talking just about the NSA, but everybody in the government, to deal with non-terrorist spying that occurs and to be able to surveil those who are engaged in non-terrorist spying, whether it is for a foreign government or elsewhere, but also to allow the courts to define what is necessary to the national defense of the security of the United States.

I think you would get a different definition from every judge that that went before and we will be back here trying to figure out how to sort that out in a few years. For those reasons, I would urge the rejection of the amendment.

Yield back the balance of my time.

Question is on agreeing to the amendment of the gentlewoman from California, Ms. Lofgren, in the nature of a substitute.

Those in favor will say aye. Aye. Opposed, no. No. The noes appear to have it. The noes have it.

Are there further amendments?

For what purpose does the gentlewoman from California seek recognition?

Ms. Lofgren. I have an amendment at the desk, amendment number 8 and this is the last amendment I will offer.

Mr. Sensenbrenner. Okay. The clerk will report the amendment.

Mr. Deterding. Amendment to the amendment in the nature of --

Ms. Lofgren. Ask unanimous consent that the amendment be considered as read.

Mr. Sensenbrenner. Without objection.

Gentlewoman is recognized for 5 minutes.

Ms. Lofgren. Mr. Chairman, I believe that this amendment fixes, at least I hope, an error that was created in the Manager's Amendment that I cannot believe was intended.

As you know, we have specified that the content is not included in business records. This amendment clarifies that business records do not include the content of communication. We specified that in the new section about call detail records. But the specification that content was not included somehow got dropped out of the Business Records section that was included in your original bill, but it didn't make it into the Manager's Amendment.

I think this amendment clarifies the ambiguity that could be created. And I hope it was not intentional. I do hope that we can adopt this, what I think is more of a clerical correction.

And I would yield back, Mr. Chairman.

Mr. Sensenbrenner. I thank the gentlewoman.

We have a series of votes in the House floor. Pursuant to the earlier order of the committee, the chair will recess the committee until immediately after the votes on the House floor.

Members should return to this Markup posthaste, without delay, and without tarrying either on the floor or elsewhere.

Without objection, the committee is recessed.

[Recess.]

Chairman Goodlatte. [Presiding.] The committee will reconvene.

When the committee recessed, the amendment offered by the gentlewoman from California was under consideration.

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

Ms. Lofgren. Mr. Chairman?

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

Ms. Lofgren. It is my understanding, if I may, that since this is I think primarily a clerical error that it could be fixed at a later time and that, therefore, if there is a commitment to try and work through the clerical error, I would like to withdraw.

Chairman Goodlatte. This is a new development for me.

Ms. Lofgren. Right.

Chairman Goodlatte. To hear that it is a clerical error. If indeed it is, I am happy to work with the gentlewoman to, A, find out if that is the case, and, B, if it is, then fix it but --

Ms. Lofgren. I understand. I wouldn't want you to make a

commitment that you are unsure of.

But the issue really, if I may, relates to, under the call section, it made clear that content was not included. That was part of Mr. Sensenbrenner's underlying bill. Not specifying that content is not included for other business records might be the ambiguity that, in fact, content was included in other business records. I can't believe that isn't the intent.

On the other hand, I understand there was substantial negotiations between two committees that are important and so if we could work through this, I would withdraw the amendment.

Chairman Goodlatte. Without objection, the gentlewoman's amendment is withdrawn, and I will work with you to determine what the nature of that is.

Ms. Lofgren. Thank you.

Chairman Goodlatte. I now move that the committee reconsider the vote taken on the Gohmert amendment.

All those in favor of the motion to reconsider the Gohmert amendment respond by saying aye. Aye. Those opposed, no. No.

In the opinion of the chair, the ayes have it. The motion to reconsider is adopted and the Gohmert amendment is pending.

The question is on adopting the Gohmert amendment. All those in favor will respond by saying aye. Aye. Those opposed, no. No. In the opinion of the chair, the noes have it, and the amendment is not agreed to.

Are there any further amendments to the amendment?

If not, the question is on the Sensenbrenner amendment in the nature of a substitute to H.R. 3361. Those in favor will respond by saying aye. Aye. Those opposed, no.

In the opinion of the chair, the ayes have it, and the amendment is agreed to.

A reporting quorum being present, the question is on the motion to report the bill, H.R. 3361 as amended favorably, to the House. Those in favor will respond by saying aye. Aye. Those opposed, no.

The ayes have it.

For what purpose does the gentleman from Wisconsin wish to be recognized?

Mr. Sensenbrenner. Mr. Chairman, I ask for a roll call.

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

Ms. Deterding. Mr. Goodlatte?

Mr. Goodlatte. Aye.

Ms. Deterding. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

Ms. Deterding. Mr. Sensenbrenner votes aye.

Mr. Coble?

[No response.]

Ms. Deterding. Mr. Smith of Texas?

Mr. Smith of Texas. Aye.

Ms. Deterding. Mr. Smith of Texas votes aye.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Deterding. Mr. Chabot votes aye.

Mr. Bachus?

Mr. Bachus. Aye.

Ms. Deterding. Mr. Bachus votes aye.

Ms. Deterding. Mr. Issa?

[No response.]

Ms. Deterding. Mr. Forbes?

[No response.]

Ms. Deterding. Mr. King?

[No response.]

Ms. Deterding. Mr. Franks?

Mr. Franks. Aye.

Ms. Deterding. Mr. Franks votes aye.

Mr. Gohmert?

[No response]

Ms. Deterding. Mr. Jordan?

[No response.]

Ms. Deterding. Mr. Poe?

Mr. Poe. Yes.

Ms. Deterding. Mr. Poe votes aye.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

Ms. Deterding. Mr. Chaffetz votes aye.

Mr. Marino?

Mr. Marino. Yes.

Ms. Deterding. Mr. Marino votes aye.

Mr. Gowdy?

Mr. Gowdy. Yes.

Ms. Deterding. Mr. Gowdy votes aye.

Mr. Labrador?

Mr. Labrador. Yes.

Ms. Deterding. Mr. Labrador votes aye.

Mr. Farenthold?

Mr. Farenthold. Aye.

Ms. Deterding. Mr. Farenthold votes aye.

Mr. Holding?

Mr. Holding. Aye.

Ms. Deterding. Mr. Holding votes aye.

Mr. Collins?

Mr. Collins. Aye.

Ms. Deterding. Mr. Collins votes aye.

Mr. DeSantis?

Mr. DeSantis. Aye.

Ms. Deterding. Mr. DeSantis votes aye.

Mr. Smith of Missouri?

Mr. Smith of Missouri. Aye.

Ms. Deterding. Mr. Smith, of Missouri votes aye.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Deterding. Mr. Conyers votes aye.

Mr. Nadler?

Mr. Nadler. Aye.

Ms. Deterding. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

Ms. Deterding. Mr. Scott votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

Ms. Deterding. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Deterding. Ms. Jackson Lee votes aye.

Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

Mr. Johnson. Aye.

Ms. Deterding. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

Ms. Deterding. Mr. Pierluisi votes aye.

Ms. Chu?

Ms. Chu. Aye.

Ms. Deterding. Ms. Chu votes aye.

Mr. Deutch?

Mr. Deutch. Aye.

Ms. Deterding. Mr. Deutch votes aye.

Mr. Gutierrez?

Mr. Gutierrez. Aye.

Ms. Deterding. Mr. Gutierrez votes aye.

Ms. Bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Ms. DelBene?

Ms. DelBene. Aye.

Ms. Deterding. Ms. DelBene votes aye.

Mr. Garcia?

[No response.]

Ms. Deterding. Mr. Jeffries?

[No response.]

Ms. Deterding. Mr. Cicilinni?

Mr. Cicilinni. Aye.

Ms. Deterding. Mr. Cicilinni votes aye.

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

The gentleman from Iowa.

Mr. King. Aye.

Ms. Deterding. Mr. King votes aye.

Chairman Goodlatte. Has everyone voted who wishes to vote?

Mr. Bachus. Aye.

Chairman Goodlatte. The gentleman from Alabama.

Mr. Bachus. Aye.

Ms. Deterding. Mr. Bachus votes aye.

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

Mr. Nadler. For the second time today, how am I recorded?

Chairman Goodlatte. How is the gentleman from New York recorded?

Ms. Deterding. Mr. Nadler votes aye.

Mr. Nadler. That is quite correct.

Chairman Goodlatte. Has every member voted wishes to vote? The clerk will report.

Mr. Deterding. Mr. Chairman --

Chairman Goodlatte. Clerk will suspend. The gentleman from New York?

Mr. Jeffries. Aye.

Ms. Deterding. Mr. Jeffries votes aye.

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

Mr. Deterding. Mr. Chairman, 30 members voted aye, zero members vote no.

Chairman Goodlatte. And the --

Ms. Jackson Lee. Mr. Chairman?

Chairman Goodlatte. Let me --

Ms. Jackson Lee. How am I recorded?

Chairman Goodlatte. The gentlewoman from Texas.

Ms. Jackson Lee. How am I recorded?

Ms. Deterding. Ms. Jackson Lee votes aye.

Chairman Goodlatte. Without objection, the roll will remain open so the --

Chair recognize the gentleman from Tennessee. Gentleman from Tennessee.

Mr. Cohen. I tried to vote by phone, but they wouldn't --

Chairman Goodlatte. Just vote.

Mr. Cohen. Aye.

Ms. Deterding. Mr. Cohen votes aye.

Chairman Goodlatte. You don't know the trouble we went to for you.

Clerk will report.

Ms. Deterding. Mr. Chairman, 31 members voted aye, zero members voted no.

Chairman Goodlatte. The ayes have it, and the bill as amended is ordered reported favorably to the House.

Members will have 2 days to submit views.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Chairman Goodlatte. Without objection the bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments and staff is authorized to make technical and conforming changes.

Ms. Lofgren. Mr. Chairman, may I ask unanimous consent that the vote record be reopened so this member can add his --

Chairman Goodlatte. Without objection, the vote record will open for the purpose of recognize the gentleman from Florida.

Mr. Garcia. Yes.

Ms. Deterding. Mr. Garcia votes yes.

Chairman Goodlatte. The clerk will report for the third time.

Ms. Deterding. Mr. Chairman, 32 members voted aye, zero members voted no.

Chairman Goodlatte. And the ayes have it. The bill as amended ordered reported favorably. And everything I said earlier still stands.

[Whereupon, at 4:30 p.m., the committee was adjourned.]