

RPTS CASWELL

DCMN ROSEN

MARKUP OF H.R. 1800, FISA SUNSETS REAUTHORIZATION ACT OF 2011

Thursday, May 12, 2011

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

The committee met, pursuant to call, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Chabot, Issa, Pence, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy, Ross, Adams, Quayle, Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson, Pierluisi, Quigley, Chu, Deutch, and Sanchez.

Staff Present: Sean McLaughlin, Chief of Staff; Allison Halatei, Deputy Chief of Staff/Parliamentarian; Arthur Radford Baker,

Counsel; Sarah Kish, Clerk; Jennifer Lackey, Clerk; Perry Apelbaum, Minority Staff Director; and Sam Sokol, Minority Counsel.

Chairman Smith. The Judiciary Committee will come to order.

Without objection, the Chair is authorized to declare recesses of the committee at any time.

The Clerk will call the roll to establish a quorum.

The Clerk. Mr. Smith.

Chairman Smith. Present.

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. Present.

The Clerk. Mr. Gallegly?

Mr. Gallegly. Present.

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. Present.

The Clerk. Mr. Chabot?

Mr. Chabot. Present.

The Clerk. Mr. Issa?

Mr. Issa. Present.

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. Present.

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Present.

The Clerk. Mr. Griffin?

Mr. Griffin. Present.

The Clerk. Mr. Marino?

Mr. Marino. Present.

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Present.

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

[No response.]

The Clerk. Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

Ms. Jackson Lee. Present.

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Here.

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

[No response.]

The Clerk. Mr. Franks.

Mr. Franks. Here.

Chairman Smith. Clerk will report.

The Clerk. Mr. Chairman, 13 members responded present.

Chairman Smith. A working quorum is present, so we will proceed.

Pursuant to notice, I now call up H.R. 1800 for purposes of markup.

The Clerk will report the bill.

[The information follows:]

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

The Clerk. H.R. 1800, to temporarily extend expiring privileges of the USA PATRIOT Improvement and Reauthorization Act.

Chairman Smith. Without objection, the bill will be considered as read. I will recognize myself for an opening statement, and then the ranking member.

The death of Osama bin Laden is a significant victory in America's death to combat terrorism. Even though bin Laden is dead, the terrorist threat we face is still very much alive. In the year since 9/11, al Qaeda has expanded and splintered into smaller groups and rogue terrorists around the world. It makes it harder for us to detect and deter plots against Americans both here, at home and abroad.

The PATRIOT Act has helped keep America safe for nearly a decade. Three important national security provisions of the Act are scheduled to expire at the end of this month. H.R. 1800 reauthorizes the expiring provisions of the PATRIOT Act.

Enacted in the wake of 9/11 to update our counterterrorism laws, the PATRIOT Act is an integral part of our offensive against terrorists and has proved effective at keeping America safe from terrorist attacks. Some argue that because we have gone without a major terrorist attack since September 11, we no longer need these tools.

But these provisions continue to play a vital role in America's counterterrorism efforts, not only to prevent another large-scale attack, but also to combat an increasing number of smaller terrorist plots.

Earlier this year, a 20-year-old student from Saudi Arabia was

arrested in the State of Texas for attempting to use weapons of mass destruction. Khalid al-Dosari attempted to purchase chemicals to construct a bomb against targets, including the Dallas residence of former President George W. Bush, several dams in Colorado and California, and the homes of three former military guards who served in Iraq.

A section 215 business records order was used to obtain information essential to this investigation.

This expiring provisions of the PATRIOT Act are both constitutional and common sense. There is no record of their having been misused by any law enforcement official or national security agency.

For example, the roving wiretap provision allows intelligence officials, after receiving approval from a Federal court, to conduct surveillance on terrorist suspects regardless of how many communication devices they use.

We know terrorists use many forms of communication to conceal their plots, including disposable cell phones. Roving wiretaps are nothing new. Domestic law enforcement agencies have had roving wiretaps for criminal investigations since 1986. If we can use roving wiretaps to track down a drug lord, why should we also use it to prevent a terrorist attack?

The business records provision allows the FBI to access tangible items, including business records, in foreign intelligence, international terrorism and espionage cases. Again, this provision

requires the approval of a Federal judge.

That means the FBI must prove to a Federal judge that the documents are needed as part of a legitimate national security investigation. These two provisions have been effectively used for the last 10 years without any evidence that they have been misused.

H.R. 1800 extends these two provisions for another 6 years. The third provision amends the legal definition of an agent of a foreign power to include a lone wolf terrorist. National security laws allow intelligence gathering on foreign governments, terrorist groups and their agents, but what about a foreign terrorist who either acts alone or could not be immediately tied to a terrorist organization?

The lone wolf definition simply brings our national security laws into the 21st century to allow our intelligence officials to answer the modern-day terrorist threat.

Since 9/11, we have seen terrorist tactics change. In addition to coordinated attacks by al Qaeda and other groups, we now face the threat of self-radicalized terrorists who are motivated by al Qaeda but may not be directly affiliated with such groups.

The lone wolf provision ensures that our laws cover would-be terrorists, not just those who have a current membership card in a terrorist organization. H.R. 1800 makes the lone wolf provision permanent.

Upon 9/11, we will mark the 10-year anniversary of the worst terrorist attack in U.S. history. America is fortunate not to have suffered another attack of such magnitude and devastation in the past

decade, but it is not because terrorists haven't tried.

There have been numerous attempts by terrorists to kill innocent Americans. We must be aware of the folly of complacency. We cannot afford to leave our Intelligence Community without the reliable resources it needs to dismantle terrorist organizations, identify threats from both groups and individuals and interrupt terrorist plots of all sizes.

I want to specifically thank my colleagues, Mr. Chabot, Mr. Issa, Mr. Gohmert, Mr. Poe and Mr. Chaffetz for participating in the process that led to this legislation, including sunsets for the business records and roving provisions.

Last week, Attorney General Eric Holder told this committee that he supports these provisions and encouraged Congress to reauthorize them for as long of a period of time as possible. H.R. 1800 accomplishes that goal.

That concludes my opening statement, and the gentleman from Michigan, the ranking member of the full committee, is recognized for his opening statement.

Mr. Conyers. Thank you. Chairman Smith and members of the committee, I want to commend the members on both sides of the aisle for the discussion that brings us here today.

It was actually a hearing on dispelling the myths, but in some respects, we may have created some myths, maybe even more myths than were dispelled, and I salute the discussion from members on both sides of the aisle in terms of a more frank discussion about this subject

than we have enjoyed earlier.

Now, my main concern is that we protect libraries and booksellers from having their records seized as is permitted now under the Act. It is identical to a bipartisan amendment offered during the budget process with Members on both sides of the aisle at an earlier stage on the floor, and 32 Republican Members, some from this committee, joined me in that discussion and support for that provision.

I also want to salute the committee in having a wide-ranging view -- of views from the witnesses yesterday on the PATRIOT Act. Conservative witnesses like our former colleague, Bob Barr; a constitutional authority, conservative, Bruce Fein, I think brought a deeper perspective to this hearing on the PATRIOT Act than we have enjoyed before.

And I heard good, probing questions coming from my colleagues, my conservative colleagues on this committee. Some of them explored the legal history of FISA, others questioned the past abuse of national security letters and some urged that we put new sunsets on national security letters.

This is a refreshing tone of thoughtful opinions, and I don't use the term "bipartisan" in nature, because, really, this kind of a subject does not yield to whether you are a Democrat or a Republican.

In some senses, it doesn't yield much to talking about whether you are a liberal or a conservative, and so we had some hearings. We now have before us the controversial lone wolf surveillance power. And the suggestion in the bill that is before us is that it be made

permanent.

Now, we never used it, so why do we need to make it permanent? If we do have it, and I would rather debate whether we should have it or not, but certainly not whether or not we should make it permanent or continue it for 3 or 4 more years.

And so this, I think, we have to look very carefully at whether we want to permanize a provision that has never been used. We are extend expiring powers for 6-1/2 years, far longer than the 4-year sunsets that were originally agreed to. And so there are a number of amendments, and I hope that we can continue the openness of a free discussion that we seem to be enjoying recently.

Now, there were some improvements made to the PATRIOT Act. For example, firearms, medical and other sensitive records received heightened protection under section 215. Some modest changes to the national security letters and gag orders also were included.

So will improvements to gag orders that allow citizens to meaningfully assert their rights be adopted? Will changes that the Intelligence Community has already signed off in public testimony before this committee be carefully considered and adopted? I sure hope so, and then we, of course, have got to deal with the measure already passed by the other body, and hope that we can come to some conclusion.

So I thank you, Mr. Chairman, for this time and I look forward to the discussion.

Chairman Smith. Thank you, Mr. Conyers, for your statement.

Without objection, other members' opening statements will be made

a part of the record.

We will now go to amendments, and I will recognize the ranking member, Mr. Conyers, for the first amendment.

Mr. Conyers. I have an amendment at the desk, Mr. Chairman, and ask that it be reported.

Chairman Smith. The Clerk will report the amendment.

The Clerk. Amendment to H.R. 1800 offered by Mr. Conyers. At the end of the bill, add the following new sections, prohibition on application for an order requiring the production of library and bookseller records.

Section 5 --

[The information follows:]

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

Chairman Smith. Without objection, the amendment will be considered as read and the gentleman from Michigan is recognized to explain the amendment.

Mr. Conyers. Mr. Chairman and my colleagues, this amendment would protect libraries and booksellers from having their records seized under section 215. It is identical to an amendment that I offered on the budgeting process and enjoyed strong bipartisan support, as I have indicated.

Now, of all the changes, it seems to me that this amendment protects the most fundamental of American values and makes this, in some way, to me, the most important amendment in terms of changes that we have to consider.

The right to be free from unreasonable government intrusion into our thought processes and how we feel and what we are thinking about. Now, once you start going over, crossing that line, I think that is the beginning of the unraveling of one of our most fundamental values.

Whatever the views of anyone here are about the merits of the PATRIOT Act, there should be, as unanimously as we can, an agreement that the government shouldn't be seizing library or bookstore records to determine what citizens are reading or thinking.

Freedom of thought is just simply too fundamental to our democracy, and I go back to the Supreme Court where Brandeis recognized the surpassing importance of the right to be left alone.

That is what this amendment is about, and what he said, "The most comprehensive of rights and the right most valued by civilized men.

The makers of our Constitution sought to protect Americans in their beliefs, in their thoughts, their emotions, and their sensations. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever means may be employed, must be deemed a violation of the Fourth Amendment."

And so I think that we can, on both sides of the aisle, support a statement like this that is critical to the adoption of this amendment. In the past, opponents of this basic protection have argued that it would create a terrorist safe haven, whatever that means, and nothing can be less accurate.

This amendment does not intrude upon sensitive surveillance into things like computer communications of terrorist suspects. That will not be interfered with if this amendment is adopted.

Even if it occurs on library premises, instead it provides only a very narrow protection for reading habits and intellectual privacy.

Furthermore, even the library and the bookstore records covered by this amendment are not immune from seizure in appropriate circumstances. In a real case of suspected terrorism, these records could be obtained through the regular criminal investigation process if the showing required by the regular criminal process can be made.

So, please, none of us should vote against protecting the intellectual liberty and freedom of thought that this amendment protects, and I urge your support and I yield back my time.

Chairman Smith. Thank you, Mr. Conyers.

I will recognize myself in opposition.

This amendment prohibits the use of the Section 215 FISA business records provision to request the production of library circulation records, library patron lists, book sales, records or book customer lists. In effect, it could make libraries and bookstores a safe haven for spies and terrorists. But in criminal investigations, law enforcement officers are able to pursue leads wherever they go, and grand jury subpoenas can be issued to libraries or bookstores.

In addition to high profile investigations, in which library records were obtained, the Crimes Subcommittee heard testimony recently at its March 9 hearing that a subpoena to a library regarding the mutilation of cattle was upheld by a State Supreme Court. If the mutilation of cattle can be investigated by going to a library, shouldn't we be able to investigate the mutilation of human beings by terrorists by seeking records at libraries and booksellers too?

Booksellers often sell more than books. Lawmaking materials can and have been purchased at places that also sell books. Why would we want to make it harder for law enforcement authorities to investigate leads that take them to these sellers? And it has already been established that some of the 9/11 hijackers used the Internet facilities of a library.

There is no evidence that this provision has been abused or misused, and there are already heightened protections, including approval levels and reporting requirements for library and bookstore business records.

I urge my colleagues to oppose this amendment, which could create

a safe zone for our adversaries and enemies to use.

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

Mr. Lungren. Would the gentleman yield for a moment?

Chairman Smith. Yes. I will yield to the gentleman from California, Mr. Lungren.

Mr. Lungren. Just adding to what the gentleman said, already in the current law, which we would extend Section 215 expressly provides that an investigation may not be conducted of a United States person solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

So much what Mr. Conyers was speaking of in terms of our concern about people just exercising simple First Amendment rights, are already protected under a provision we put in the law before. And it would seem that rather than have this broad-scale amendment that the gentleman presents that would, indeed, create a specific safe haven, we have already carefully calculated a protection against abuses by Federal authorities in the current law, which we extend under the gentleman from Wisconsin's bill.

Chairman Smith. Thank you, Mr. Lungren. I will yield back my time and recognize other members who wish to be heard on this amendment.

The gentleman from New York, Mr. Nadler, is recognized.

Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, this is a very important amendment. It passed on the House floor overwhelmingly once, it got 32 Republican votes, I think, on the floor last year.

The fact is that if there is probable cause to believe that someone

may be committing a crime, you can get, under the normal criminal procedures, you can get a search warrant. You can get a warrant to look at libraries or whatever.

All this is saying is that if you are talking about the most intimate private transactions a person makes, not with his wife, other than that, what library books does he read? What records does he listen to, things that will show a lot about this person. You should have to have some probable cause to look at that, which is the normal criminal process.

Under the current law, you can do it, you can get this information, invade this privacy simply by saying that it is relevant to an ongoing investigation, which is no standard at all. Anything could be almost -- almost anything could be relevant to an investigation. You should have to show some probable cause. After all, that is the whole basis of the Fourth Amendment, the whole basis of the Fourth Amendment was that the British officer should not be able to come in and seize anything.

Mr. Sensenbrenner. Would the gentleman yield?

Mr. Nadler. I will yield eventually. Should not be able to just have a writ of assistance saying give the king's officer whatever he wants. This pretty much goes back to that at least insofar, and certainly as far as libraries, it shouldn't do that.

Now in addition to which, under this bill, the fact that you went into -- see what someone is reading, could be kept secret forever, at least under criminal process eventually. Eventually, that becomes

public information and you can somewhat police the propriety of what the authorities are doing.

Now, if you can show probable cause, then you can get this information.

So I don't, and this only refers to library books, what you are reading, what you are listening to, not to the business records generally. I think it is a modest amendment, and it is necessary.

You know, in any war, or in any criminal proceeding or anything, you have to balance the legitimate investigative needs of government, of which there are substantial, with basic privacy rights. Because what are we protecting after all? We are protecting our liberties and our lives, obviously, but our liberties, and this strikes a decent balance.

I will yield now.

Mr. Lungren. Would the gentleman agree that under the language of which we are speaking, that is, continuing the 2005 reauthorization, we require the standard that it -- to be proven that a statement of fact showing there are reasonable grounds to believe that the tangible things sought are relevant to -- and referring back to the earlier part of the statute -- a foreign intelligence investigation, not any investigation. It has to be a foreign intelligence investigation.

Mr. Nadler. Well, reclaiming my time, yes.

Mr. Lungren. Okay. Well, you said any investigation. I mean, you --

Mr. Nadler. No, foreign intelligence investigation. Fine. It

doesn't change my argument.

Mr. Lungren. Well, it does.

Mr. Nadler. It doesn't change the argument. Yes, it is a foreign intelligence investigation. But the fact is the standard relevant to the investigation is far too low a standard. That is essentially what I am saying.

The normal standard is probable cause to believe that there is a criminal activity or something going on, probable cause. Now I am going to introduce an amendment that will be intermediate that simply says specific and articulable facts to believe. But simply saying relevant to an investigation, whether it is a foreign intelligence or bank robbery investigation, is not material. But relevant to an investigation, almost anything is relevant to an investigation. It doesn't limit it in any way really.

Yes, I will yield.

Mr. Lungren. Will the gentleman yield?

Mr. Nadler. Yes, I will yield.

Mr. Lungren. The point is, it is relevant to a foreign intelligence investigation because we have previously made the determination that a foreign intelligence investigation is of a different kind than a regular criminal investigation, and the evidence that would warrant this allowance of this, perhaps would be precedent to that which would be required in a criminal --

Mr. Nadler. Reclaiming my time. I don't know about precedent, but fact is that even for an intelligence investigation, which is a

serious investigation, obviously, as is a murder investigation in the criminal realm, you should have a standard, more than simply relevant to an investigation.

There has to be, there should be some real reason to believe that there is some misconduct or some involvement, not simply relevance. Some reason to believe that this individual -- now, the normal standard is probable cause to believe that he may have committed the crime.

The intermediate standard, which I am going to propose in my amendment, whenever we get to it, is specific and articulable facts to believe this, but not simply relevant to an investigation.

I will yield to the gentleman from Michigan.

Mr. Conyers. Well, I just wanted to hope that the members aren't taking this phrase a safe haven for doing anything seriously for espionage work.

This is basic Fourth Amendment. If the government, under this low standard that Mr. Nadler has described, is allowed to prevail here, anything you are thinking, listening to, reading, everything is going to be able to be acquired too easily. And all we are doing is tightening it up a little.

Mr. Nadler. Reclaiming my time.

Chairman Smith. The gentleman's time has expired.

Mr. Nadler. Could I have 30 seconds?

Chairman Smith. Without objection, the gentleman is grand an additional half minute.

Mr. Nadler. Thank you. I would simply point out, the arguments

I am making would apply on the standards would apply to any investigation. We are simply limiting it here to the libraries. We are not saying that you have to have specific and articulable facts or probable cause for most of the intelligence investigations -- though we probably should but we are not.

We are simply saying that when it comes to the most intimate details, what you read in the library, what records you listen to, the stuff that the government should have the greatest burden of proving before it can read your mind for that, we are saying that the standard should be a little tighter.

Mr. Sensenbrenner. Mr. Chairman.

Chairman Smith. The gentleman's time has expired. The gentleman from Wisconsin is recognized.

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

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, I am somewhat flabbergasted to hear the gentleman from New York say that this is basically a Fourth Amendment right. Fourth amendment doesn't apply to business records, because the targets' property or person is not being searched or seized, and I think this is pretty settled law.

I think if there is enough evidence to get a FISA order under section 215, that if somebody wanted to check a book out of a library on how to make a dirty bomb, the government ought to be able to take a look at that and find out who is doing that and who is interested in it.

And I can just say that there have been previous cases that have been mentioned, you know, where eBay and Amazon were the sellers of books that could have been used for bombs in Texas and recently in Michigan that were, in part, discovered because of a section 215 proceeding.

You know, eBay and Amazon, who are huge computer-selling sites that don't exclusively sell books, would end up being covered by this amendment. And how do you know that, if a book has been checked out, unless you are able to look at the records?

So this is kind of an oxymoron.

Mr. Nadler. Will the gentleman yield?

Mr. Sensenbrenner. When I am finished, I will be happy to yield.

And it really ought to be rejected. Now, I am happy to yield to the gentleman from New York.

Mr. Nadler. Thank you. I am somewhat struck by the remarks of the gentleman since by what you are saying, you think apparently there should be no standards at all, that with no showing whatsoever by the --

Mr. Sensenbrenner. Reclaiming my time, I didn't say that. There are standard section 215 standards that are higher than the standards that can be utilized for a grand jury subpoena. And if your amendment passes, then law enforcement will simply be forced to use grand jury subpoenas to get the information, and why shouldn't they have the extra protections that you get from going into the FISA court?

I yield back the balance of my time.

Chairman Smith. The gentleman yields back his time. The

gentleman from Virginia, Mr. Scott, is recognized.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, I first want to thank the gentleman from Wisconsin, the chair of the Subcommittee on Crime, Terrorism, and Homeland Security for holding extensive hearings. When this bill came up on the floor and was extended short term, he promised to have hearings, and he followed through on that, so that the members of the subcommittee have had the opportunity to really look into the details of this.

But the burden still remains on those who seek to restrict rights and allow spying on Americans, and they have to make a compelling case that the provisions are necessary and narrowly tailored to accomplish this purpose.

Now, what we heard yesterday was that there was only a nuanced difference from what is in the USA PATRIOT Act from present law and the ability to get information, and no compelling rationale to continue these provisions. Until such a case is made, I will continue to oppose the long-term extensions of the provisions, including business records, lone wolf and roving wiretaps.

But of particular concern is the lone wolf provision, which apparently has never been used. It raises questions about the appropriateness of having it on the books at all, much less making it permanent.

But the business records provision, as the gentleman from New York has said, only requires relevance, which is essentially no check and balance. Once you have articulated this is relevant to an

investigation, the court has no choice but to allow it. There is no oversight.

And this limitation, therefore, is about the only opportunity we have to limit, to place any limitation on those business records.

Now, furthermore, Mr. Chairman, it is pointed out that this is for foreign intelligence investigations. There is a huge difference from "foreign intelligence," which includes terrorism, but it also includes all kinds of other things that you can be looking into that have nothing to do with terrorism, and you could be just digging up dirt on people and on foreign agents -- and digging up dirt, gossip and everything else would be relevant to a foreign intelligence investigation.

If you are negotiating a trade deal with somebody and you can dig up some dirt on them, that might be helpful in the negotiations, which would make it relevant to a foreign intelligence investigation. If this had been limited to terrorism, that would be a different calculation, but this involves "foreign intelligence," which is virtually without limitation.

So I would support the amendment and hope that the committee approves it.

Chairman Smith. Thank you, Mr. Scott. The question is on the amendment. All those in favor say aye. Those opposed say no. In the opinion of the chair the noes have it and the amendment is not agreed to.

Mr. Conyers. Roll call vote.

Chairman Smith. A roll call vote has been and the Clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner, no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren, no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Chairman Smith. The gentleman from Virginia, Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from Indiana, Mr. Pence.

Mr. Pence. No.

The Clerk. The gentleman votes no.

Chairman Smith. The gentleman from North Carolina, Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentleman from Texas, Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Chairman Smith. The gentleman from California, Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr Gallegly votes no.

Chairman Smith. Are there any other members who wish to record their votes. If not, the Clerk will report.

The Clerk. Mr. Chairman, 10 members voted "aye" and 17 members voted "no."

Chairman Smith. The amendment is not agreed to. The gentlewoman from Texas, Ms. Jackson Lee, is recognized for the purpose of offering an amendment.

Ms. Jackson Lee. Thank you very much, Mr. Chairman. And I want to thank the ranking member of the full committee and the ranking member of the subcommittee as well as the chairman.

Let me, Mr. Chairman, I would like to offer, because I am going to a markup of which I am the ranking member, I would like to call up all of my amendments, amendment No. 9 and amendment No. 11; however,

I would like a separate vote, but I discuss them quickly.

I too want to express my appreciation that we have had hearings, and I think it is telling that Members on both sides of the aisle --

Mr. Sensenbrenner. [Presiding.] Without objection, the member's request to offer the amendments together is agreed to. Hearing none, so ordered.

Ms. Jackson Lee. Thank you, Mr. Chairman. I would just like a separate vote.

Mr. Sensenbrenner. The Clerk will report the amendments.

[The information follows:]

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

Ms. Jackson Lee. Amendment Nos. 9 and 11.

The Clerk. Amendment to H.R. 1800 offered by Ms. Jackson Lee.  
Strike section 2 and insert the following new section --

Ms. Jackson Lee. I ask that the amendment be considered as read.

Mr. Sensenbrenner. Without objection, and the gentlewoman is recognized for 5 minutes.

Ms. Jackson Lee. I thank you very much.

It is interesting that when we attempted to extend this legislation, members on both sides of the aisle raised the question. It means we are all lovers of the Constitution.

My amendment, number 3, extends the lone wolf roving tap and business records provisions for a 3-year period, and let me indicate to you why, it is because we are all Americans. The amendment would sunset all three provisions, the John Doe roving tap, business records, lone wolf until December 21, 2014, a total of 3 years.

And let me say to you that we are all gratified of the demise of Osama bin Laden, but it is on that very basis that I stand that we have made the point since 9/11 that we would not allow the terrorists to terrorize us and to dismantle the Constitution of which we view so sacredly.

H.R. 1800, as currently written, extends the roving wiretap and business records provisions until December 31, 2017, even beyond the potential next President of the United States, a total of 6 years, and makes the lone wolf provision permanent, leaving no President coming in the opportunity to review and change circumstances.

Extending the sunsets on these provisions for a shorter period of time allows Congress to exercise greater oversight. But allow me to just give you a word on Joe Losbaker and Stephanie Weiner, altogether, 25 FBI agents searched our home starting at 7 a.m., ending at 6:30.

These are two American citizens.

They seized our computers, our cell phones, bank statements, financial documents. They took notebooks and files from our lifetime political activism.

These are people who were peace activists.

They took artwork off the wall, our family photos. We watched as the bedrooms of our two sons were searched for an hour by these three agents wearing latex gloves. As they went through the house, mainly they were interested in any pieces of paper with a name and a phone number.

We are better than this. We can fight terrorism and value our values.

So I ask my colleagues to reasonably look at an extension for 3 years.

Then, on my amendment No. 11, is a very simple amendment. It requires the President to submit a report to relevant congressional committees on FISA court secrecy. Who are we if we cannot ask the President of the United States, in consultation with the Chief Justice, to issue a report to Congress to classify the described, the current degree of secrecy in the FISA system, whether it is necessary and

effective or if greater transparency and such operations will be possible without harm to national security.

We ask our President to do such many times, and I can't imagine that the Constitution is not deserving of protection.

The report would also contain recommendations on how to help the general public better understand the operations of the FISA court.

Lastly, the report would evaluate and consider the idea of increased issuance of court opinions to the public in a manner that would not harm national security. When it comes to intelligence investigations to protect against possible terrorist threats, it is understandable that some level of secrecy is useful, and in some situations, imperative.

However, complete secrecy may not be necessary to achieve the intended goals. Adding some transparency to this process, where possible, would help to ease some of the concerns that the people have regarding FISA court processes.

Let it be very clear, as one who engaged in issues dealing with classified questioning of witnesses, I will tell you that many Americans come forward voluntarily. We have a Nation that is involved and engaged and wanting to protect their fellow citizens. Where it is necessary to use FISA, and where it is necessary to deal with the PATRIOT Act provisions in particular, I believe Americans understand the utilization.

But let us be fair and find a balanced way in which to provide for an oversight, and also let us be fair in the extension, 6 years

is beyond the pale in terms of a fair assessment of the utilization of particular provisions that may intrude on American citizens as these two innocent individuals or individuals, Joe Losbaker and Stephanie Weiner, who are under investigation and who have lived their lives here in the United States and simply wanted to express themselves under the First Amendment. I ask my colleagues to support both amendment No. 11 and amendment No. 9.

Mr. Sensenbrenner. The gentlewoman's time has expired. The chair recognizes himself for 5 minutes.

I am opposed to both of these amendments. If there ever is a way to destroy foreign intelligence and counter espionage activity, the amendment No. 11 that the gentlewoman from Texas has proffered is certainly the way to do it.

I don't think that after all of the reporting that has been done in the 33 years that the FISA court has been operational, we need to have another opening up of the FISA court's activities.

This is a bill that does not attempt to change the jurisdiction or the operation of the FISA court, this is a bill that deals with powers that are given to law enforcement. And it seems to me that trying to open up the secrecy provisions is simply going to allow people who wish to plot to kill us or conduct espionage to be able to do so a little bit easier because they will know exactly what types of methods are employed.

And to require both the President, in consultation with the Chief Justice of the United States, in my opinion, is something that if it

is not a flat-out violation of the doctrine of separation of powers, it comes pretty darn close.

Now, with respect to the extension of the sunsets that the gentlewoman from Texas is talking about.

During my chairmanship of the committee, we had lots and lots of oversight hearings on the PATRIOT Act. And during the reauthorization in 2005 and 2006, the Constitution Subcommittee held hearings on every one of the expiring provisions of the PATRIOT Act.

Since January 3, when the 112th Congress was seated and began to work, the Crime Subcommittee, which I am honored to chair, has had three open hearings on various parts of the PATRIOT Act.

Just contrast that openness in the legislative process, and doing our oversight to what was not done during the 4 years that the Democrats controlled the House of Representatives, and I have tried to do all of this on a bipartisan basis.

The fact of the matter remains is neither the business records provisions nor the roving wiretap provisions have been declared unconstitutional by any Federal court in the country.

And as we know, the lone wolf terrorism provision has not been used. So I guess there is no litigation on that, which certainly should mean that we should make it permanent rather than having a short sunset, because hopefully we will never have to use the lone wolf terrorism provision.

But I would point out if this amendment passes, we will sunset the roving wiretap provision, and then we go back to the old law, which

became out of date as a result of all kinds of mobile telecommunications technology, starting with cell phones and now going into the various adaptations.

Now, if that is what the gentlewoman from Texas wants to do, so be it. I don't think that that is what this committee that is charged with balancing civil liberties concern and our obligation to keep the people of this country safe should be doing, and I would urge the committee to reject both parts of this amendment.

I yield back the balance of my time.

Mr. Nadler. Mr. Chairman.

Mr. Sensenbrenner. For what are purpose does the gentleman from New York seek recognition? The gentleman is recognized for 5 minutes.

Mr. Nadler. Thank you, Mr. Chairman.

I support the second of the two amendments, No. 11, requiring a report, and I fail to see in the remarks of the gentleman from Wisconsin any resemblance to this amendment.

The gentleman says this amendment would strip the secrecy and destroy the foreign intelligence of the United States. What does the amendment do? All it says is that the President shall submit to the appropriate congressional committees -- and this could be done in secrecy, confidentially or not, as the President should decide because it doesn't specify -- a report by the President to the appropriate congressional committees describing whether the current degree of secrecy is necessary and effective or if greater transparency and separations would be possible, in the opinion of whoever wrote the

report of the President, and containing recommendations on regarding how public understanding could be enhanced, period.

That doesn't strip secrecy. It doesn't endanger national security. It is the minimum that one would assume would be part of oversight by Congress. It simply says the President shall submit a report to the appropriate congressional committee saying whether the degree of secrecy is necessary or should be changed in the opinion of the President, and containing recommendations how public understanding could be enhanced.

Those recommendations could be as robust or as weak as the President, in consultation with the Chief Justice determined. It has nothing to do with weakening national security. The President could, if he wished, in consultation with the Chief Justice, say that the current degree of secrecy is required, maybe it should even be enhanced. It is up to him.

How could requiring the President to submit a report say the current degree of secrecy is right or should be changed endanger national security? It doesn't have to publicly go into details as to why it should be changed or anything else.

So I think this is minimal and, frankly, there is no relationship to the remarks of the gentleman from Wisconsin. I am not sure how useful such a report should be, because it could be, as the amendment allows it to be a very weak report. But certainly, it is the minimum we should require.

I support the amendment.

Ms. Jackson Lee. If the gentleman would yield.

Mr. Nadler. I yield to the gentlelady from Texas.

Ms. Jackson Lee. We attempted to be balanced and bipartisan, and we attempted to show sensitivity to the opposition of our opponents and sought not to overexert the reality of how much the courts or how the reports should be.

So in our attempt to be fair and balanced, we wouldn't consider it a weak as much as it is an obvious that should be supported, because who are we, other than those who are the monitors of the Constitution, along with the Supreme Court, we have the responsibility as well to be protective of the Constitution.

And as I indicated, both on amendment number 3 -- excuse me, amendment number 9, which does nothing but gives us 3 years to interact our oversight responsibilities for Congress, and I would hope that that is not overtly burdensome to look at this in 3 years. Who knows what climate we will be in, and particularly, as I indicated -- and I would ask unanimous consent to submit this letter into the record from Joe Losbaker And Stephanie Weiner.

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

[The information follows:]

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

Ms. Jackson Lee. Who have been subjected to a review. We don't know the ultimate outcome, but Americans are having this happening in their homes and businesses all over. Let's just have a balance where we have the oversight and the people that they have asked to represent them.

So I ask my colleagues again to support this fair, balanced amendment No. 9 and No. 11 to protect the Constitution of the United States.

Chairman Smith. The gentleman from California, Mr. Lungren, is recognized.

Mr. Lungren. Strike the requisite number of words.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Lungren. Mr. Chairman, in college I took logic, and one of the things we learned there was the non sequitur and we may have heard the mother of all non sequiturs here.

The gentlelady from Texas talks about some circumstance dealing with two American citizens. So far, as I can tell, it implicates neither the business records provision, the roving wiretap provision, and certainly not the lone wolf provision, but it does make for good emotion.

There has been absolutely no example given in any of the hearings we have of an abuse under these sections. And to bring in something that has nothing to do with it would lead the members of the public to believe that somehow actions that have been described in the letter the gentlelady had have anything to do with these three provisions.

There is no evidence of that whatsoever.

RPTS DOTZLER

DCMN ROSEN

[11:05 a.m.]

Mr. Lungren. With respect to the gentlelady's second provision, it is another example of another report populating the Federal Code emanating from this committee that does nothing. I would assume that members of this committee know what the current law is. Under the current law, the reporting requirements require the attorney general to report to the Congress and the committees that are mentioned in the gentlelady's amendment with copies of all decisions, orders or opinions of the FISA court.

We have the opportunity to do that. If the gentlelady is interested in looking at it, all she has to do is go over and look at them. If any member of this committee wants to look at it, all you have to do is go over and look at them. You don't need the Chief Justice of the Supreme Court to tell you to look at it. You don't need the President of the United States. What kind of nonsense is this? We somehow suggest this is going to protect the American people more because we ask for another report. If you want to do the job that you have taken the oath under the Constitution to do, go over and read the reports and make your own judgment as to whether or not we need these provisions in the law.

But for us to then just pass another study out of this committee that does absolutely nothing but allows us to say that we passed a study,

frankly, I think we ought to stop this nonsense. We have done enough of it in this committee, reporting out reports that lead to nothing.

If you want the information, all you have to do is go over and look. It is available to you today. It is available to me today. It is available to every member of this committee. If they want to go look at the work of the FISA court, they can look at the orders. They can look at the decision of the court themselves.

I don't know why we have to have this kind of report. At some point in time, we just have to stop this nonsense of asking for reports that do nothing but take time and don't give us anything when we can do the work if we wish to do the work.

I would hope to vote down this amendment overwhelmingly and get on to the serious business of this committee.

Ms. Jackson Lee. I call the question.

Chairman Smith. The question is on two amendments. We will vote first on amendment number 9 that extends the lone wolf roving wiretap and business records provisions until December 31, 2014.

All in favor of that amendment say aye. All opposed no. In the opinion of the chair the noes have. The amendment is not agreed to.

The second vote will be on amendment number 11 by Ms. Jackson Lee.

Ms. Jackson Lee. Mr. Chairman, I would like a roll call on No. 9 and No. 11.

Chairman Smith. We haven't voted yet on number 11.

Ms. Jackson Lee. Excuse me.

We are roll calling number 9 and No. 11?

Chairman Smith. Would the gentlelady like a recorded vote on both or just on one?

Ms. Jackson Lee. On both.

Chairman Smith. We haven't had a vote yet on 11. As soon as we do, we will have a recorded vote.

All in favor of number 11 say aye. All opposed say no. In the opinion of the chair the noes have it. In the opinion if the chair, the noes have it. The amendment is not agreed.

The clerk will call the roll first on No. 9.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner, no.

Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren, no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye, and 20 members voted nay.

Chairman Smith. Amendment No. 9 is not agreed to. The clerk will call the roll on No. 11.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.  
The Clerk. Mr. Sensenbrenner, no.  
Mr. Coble?  
Mr. Coble. No.  
The Clerk. Mr. Coble, no.  
Mr. Gallegly?  
Mr. Gallegly. No.  
The Clerk. Mr. Gallegly, no.  
Mr. Goodlatte?  
Mr. Goodlatte. No.  
The Clerk. Mr. Goodlatte, no.  
Mr. Lungren?  
Mr. Lungren. No.  
The Clerk. Mr. Lungren, no.  
Mr. Chabot?  
Mr. Chabot. No.  
The Clerk. Mr. Chabot, no.  
Mr. Issa?  
Mr. Issa. No.  
The Clerk. Mr. Issa, no.  
Mr. Pence?  
Mr. Pence. No.  
The Clerk. Mr. Pence, no.  
Mr. Forbes?  
Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 Members voted aye, 20 members voted nay.

Chairman Smith. Amendment number 11 is not agreed to.

The gentleman from New York, Mr. Nadler, is recognized to offer an amendment.

Mr. Nadler. I offer my amendment, No. 5.

Chairman Smith. The clerk will report the amendment.

[The information follows:]

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

The Clerk. Amendment to H.R. 1800 offered by Mr. Nadler of New York. At the end of bill add the following new section.

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

The gentleman from New York will be recognized to explain his amendment.

Mr. Nadler. Thank you, Mr. Chairman.

This amendment will provide the necessary safeguards to protect the personally identifiable information of patrons of libraries and booksellers from the documented abuses of section 215 orders issued under the PATRIOT Act.

It does not, and let me repeat that, it does not create a safe haven for terror suspects or for agents of foreign powers for any records in the possession of libraries or booksellers that pertain to foreign intelligence information not concerning a United States person to protect against international terrorists, or to investigate clandestine intelligence activities.

What it does require is that the government present "a statement of specific and articulable facts showing that there are reasonable grounds to believe that the records sought are relevant to an authorized investigation to obtain foreign intelligence information not concerning a United States person, or to protect against international terrorism or clandestine intelligence activities. "

The personally identifiable information must pertain to a foreign power, an agent of a foreign power, be relevant to the activities of

a suspected agent of a foreign power who is the subject of an authorized investigation, or pertain to an individual in contact with or known to be a suspected agent of a foreign power who is the subject of such authorized investigation.

If granted, the order must contain a statement of proposed minimization procedures in compliance with current law.

So what does all of that mean?

Under this amendment, the government may obtain personally identifiable information about what a person reads in books, digital media, and on the Internet provided it is part of an authorized investigation and that the government meets a clear standard. It allows legitimate investigations, but will screen out fishing expeditions.

The current standard requiring a statement of fact showing that there are reasonable grounds to be that the tangible things sought are relevant to an authorized investigation is widely recognized as too weak. We have too much of a record of the misuse of these orders simply to ignore it.

The new language would require that there be a statement of specific and articulable facts showing that there are reasonable grounds to believe that the records sought are relevant to an authorized investigation.

Of even greater concern is the extent to which, in the wrong hands, the existing vague standard can be abused secretly to spy on innocent Americans. Americans do not want the government looking into what they

read. It goes directly to our private views, our religious convictions, our health care concerns, the future of our families, what kind of hobbies we have, where we get our information from, and all manner of information about every facet of our lives and beliefs. That is the hallmark of a police state, and it is simply too dangerous a power for us to give government.

Legitimate uses, and I must say that we have heard a lot of rhetoric in the last year, especially since the election and before the election, about keeping government off our backs and about privacy and about small government. This is the essence of it. The legitimate use of section 215 to conduct foreign intelligence investigations and to make available information having to do with those authorized investigations will be maintained under this amendment.

The amendment creates an appropriate balance similar to a compromise crafted in the Senate. Most importantly, it will protect us from terrorism and from the prying eyes of Big Brother into the most personal aspect of our lives. Americans don't want a thought police. This amendment will help ensure that we don't give government the tools to become one.

Again, what it really does is to say that if you want to look at the personal library records of what somebody is reading or listening to, you have to have specific and articulable facts showing that there are reasonable grounds to believe that the records sought are relevant to an investigation, not simply as the current law states that you assert that the records are -- not simply that you have reasonable

grounds to believe that these things to be searched for are relevant to an authorized investigation, but you have some facts to give you reasonable grounds to believe that these records are relevant to an investigation. That is the key difference.

You either, under the current law, assert that there are reasonable grounds to believe that they are relevant to an investigation; or under this amendment, you have some specific and articulable facts to give you reasonable grounds to believe that they are relevant to an investigation.

We leave the same relevance standard, but we are saying you have to have some facts to show that these records may be relevant to an investigation. Some facts to show that you have reasonable grounds to believe that. That is all this amendment does, but it is crucial to make sure that there is some protection of the privacy of reading rights, which tells you a lot about people, about individuals, from the prying eyes from government.

Anybody who believes in limited government should certainly vote for this amendment.

I yield back.

Chairman Smith. Thank you, Mr. Nadler.

I recognize myself in opposition.

The amendment heightens the standard for the acquisition of records from libraries and booksellers. It would also limit the class of individuals whose records could be obtained to foreign powers, agents of foreign powers and their associates only. It is often

difficult to determine that an individual is an agent or an associate of a foreign power in the early stages of an investigation. We rely on the business records provision to do just that. Foreign agents are often identified only after an investigation is well underway. When an investigation is in its infancy, the 215 business records provision is very valuable.

There is no need to amend the use of business records orders for library and bookseller records. The authority has not been abused, and it certainly has not been used to monitor the library and bookstore activities of innocent Americans.

As part of the 2005 reauthorization, the business records provision already provides heightened protections for library and bookstore business records. Orders for these records which are issued by a court can only be accessed as part of a foreign intelligence international terrorism or clandestine intelligence investigation.

Applications for orders seeking library circulation records, library patron lists, book sales records and book customer lists can only be approved by three of the highest ranking individuals at the FBI -- the Director of the FBI, the Deputy Director of the FBI, and the Executive Assistant Director for National Security.

Additionally, there are reporting requirements to Congress, including the House Judiciary Committee, on the number of 215 orders that are granted, modified or denied for the production of library circulation records, library patron lists, book sale records, or book customer lists.

The business records provision currently protects the free speech rights of Americans by preventing the use of this provision solely on the basis of activities protected by the First Amendment.

We know that historically terrorists and spies have used libraries to plan and carry out activities that threaten our national security. There is simply no reason to again amend business record provisions for library and bookseller records based on speculation that these records are being exploited. The records obtained help identify those individuals who should be targets of an investigation.

So I urge my colleagues to deny this amendment.

The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. Conyers. I rise in strong support of the notion that Mr. Nadler has of compromising, to modify our amendment in which he has some limited standards that he wants to employ, and they are minimum standards. For all the danger that people see in this, I think, is a little bit unprovoked. Why all of us have to march over and read records, to say that there should be some standard in here that is a little bit better than the low standard that we have is something that I think is not being thoughtfully considered.

We make two changes in section 215. It is not a total ban on using 215 to obtain sensitive records. It requires a heightened showing, and it enhances minimization procedures. I don't think that is weakening the effect and the operation of the PATRIOT Act at all because from the very beginning, most people in the Congress have seen the need for heightened protection for bookseller and library records. These

records go to the heart of the Fourth Amendment, and I feel strongly that if my amendment was not successful, this would be a very important way to still show that the committee is very carefully watching what is going on here. It seems to me that it is pretty reasonable that we bring in the minimization rules. That is my case for urging the total support of the Nadler section 215 amendment. I urge its passage.

Chairman Smith. Thank you, Mr. Conyers.

The question is on the amendment. All in favor say aye. All opposed say nay. In the opinion of the chair, the noes have it.

Mr. Nadler. Record vote.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner, no.

Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren, no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Chairman Smith. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Chairman Smith. The gentleman from Arizona, Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye and 21 members

voted nay.

Chairman Smith. The amendment is not agreed to.

The gentleman from Georgia is recognized for the purpose of either offering one amendment or offering more than one amendment en bloc.

Mr. Johnson. Mr. Chairman, I have an amendment at the desk, and it will be impossible for me to do these en bloc.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 1800 offered by Mr. Johnson of Georgia, at the end of the bill, add the following new section: No collection of location information from personal electronic devices --

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman is recognized to explain his amendment.

[The information follows:]

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

Mr. Johnson. Thank you, Mr. Chairman.

My amendment would prohibit any of the extended authorities from being used to collect location information from personal electronic devices such as mobile phones, personal digital assistants, or personal computing devices on United States citizens who are not suspected of terrorist involvement.

Recent news reports have shed light on the extent that companies such as Apple and Google collect location information from smartphones. In fact, earlier this week, the Senate Judiciary Committee held a hearing on this very issue. Companies have been collecting information that show which wireless routers the phones are able to detect at a given time so that they are able to build databases of these so-called Wi-Fi locations for commercial purposes. Of course this also reveals the movements of the phones, and more importantly, their users.

There are important privacy issues at stake concerning the information collected and the extent to which the users of the phones are given the ability to opt out of this practice. This recent situation reminds us that smartphones and other personal electronic devices which have wireless or GPS capabilities may reveal to others private information about our whereabouts that we may not want to divulge. Users of such personal electronic devices did not expect that their use would reveal their movements and whereabouts. Congress must do its part to ensure that those in the private sector and government do not infringe on these privacy rights.

This amendment does not impact the ability of Federal law enforcement to engage in otherwise permissible actions to obtain information about the location of carrying or use of such electronic devices so long as the users are suspected of involvement in international terrorism or espionage. There is no doubt that smartphones and other such devices have made our lives more enjoyable and businesses more productive. However, they have also made our privacy rights more vulnerable. We cannot take such privacy rights for granted.

This amendment strikes the right balance between law enforcement and protecting the privacy rights and civil liberties of innocent Americans.

Thank you, Mr. Chairman.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Johnson.

The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. Gowdy. Thank you, Mr. Chairman. This amendment centers on an issue that has never been raised in the three recent hearings on the reauthorization of the PATRIOT Act. We have never discussed whether FISA provisions authorize the collection of location information of U.S. citizens not engaged in terrorist activities; and if so, whether this is being misused or abused by the government.

This is an attempt to exploit a privacy issue between consumers and certain cellular service providers, that issue being the provider's collection of location data to boost marketing, advertising, and

ultimately their bottom line.

How this issue is related to reauthorizing the lone wolf roving wiretap and business records provision is a difficult question to answer.

The rules and laws by which government obtains data collected by private industry are one thing; how private industry collects and stores data of its own accord is quite another. While both are subject to congressional oversight and regulation, this amendment seeks to improperly overlap one on the other. This is an issue for another time and place. This is the wrong forum to superimpose privacy issues not related to stopping terrorism onto the three expiring provisions of the PATRIOT Act. And for these reasons and others, I would implore my colleagues to vote no and defeat this amendment.

Chairman Smith. Thank you, Mr. Gowdy.

The question is on the amendment. Those in favor say aye. Those opposed say no.

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

The gentleman is recognized to offer his next amendment.

Mr. Johnson. Mr. Chairman, I have another amendment at the desk.

Chairman Smith. Number 14, I believe. The clerk will report the amendment.

[The information follows:]

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

The Clerk. Amendment to H.R. 1800 offered by Mr. Johnson of Georgia. At the end of the bill, add the following new section: Lone wolf terrorists as agents of foreign powers. Section 104 of the Foreign Intelligence --

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

The gentleman from Georgia is recognized to explain his amendment.

Mr. Johnson. Thank you, Mr. Chairman.

This amendment would require the attorney general to provide notice to relevant congressional committees of applications for lone wolf surveillance. It would also provide that the attorney general may only delegate the authority for proving lone wolf surveillance to the deputy attorney general. This limitation and approval of lone wolf surveillance and congressional oversight is necessary.

The standard for obtaining a warrant under the FISA Act are more secretive and less stringent than those associated with traditional criminal search warrants pursuant to the Fourth Amendment. These departures from traditional constitutional standards were originally justified on the basis that the target of the surveillance was an agent of a foreign power. The lone wolf provision undermines the original justification for FISA lower standards for obtaining warrants and allows law enforcement to use FISA surveillance against individuals acting alone by stripping away the prerequisite that FISA searches be targeted only against agents of foreign powers, the lone wolf

provisions raises serious constitutional concerns. More congressional oversight is needed.

In addition to limiting approval of the lone wolf application to the deputy attorney general, this amendment simply requires notice to the relevant congressional committees within 7 days of approval of an application for lone wolf surveillance.

The administration has stated that to date, this lone wolf provision has never been used. At the very least, Congress should be notified when this provision is used so we can evaluate the necessity for the provision.

I urge my colleagues to vote for this amendment. I thank the chairman.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Johnson.

The gentleman from Ohio, Mr. Chabot, is recognized for 5 minutes.

Mr. Chabot. Thank you, Mr. Chairman.

This amendment would place new approval requirements on lone wolf surveillance, and require special reporting on the use of lone wolf surveillance. Both proposals are unnecessary.

The lone wolf provision expanded FISA's definition of an agent of a foreign power to include non-U.S. persons who want to harm the United States through international terrorism but who are not necessarily linked to a particular foreign government or terrorist group.

Although the lone wolf provision has not been used by the

government to date, as the gentleman mentioned, the Department of Justice and the Intelligence Community have repeatedly made clear to Congress the importance of the provision. FBI Director Mueller recently testified before both this committee and the Senate Judiciary Committee about the recent increase in lone offenders, which have included terrorist attempts against Spokane, Washington; Portland, Oregon, Texas, and Washington, D.C. in the past few months alone. Director Mueller testified that he expects the FBI will need to use the lone wolf provision in the future and has called for its reauthorization.

This amendment is also problematic because it prevents the assistant attorney general for National Security from approving a surveillance application to the FISA court for a lone wolf terrorist. It seems odd the very person that the President nominated and the Senate confirmed to lead the national security division is no longer entrusted with this responsibility.

It also seems odd that under this amendment, the assistant attorney general of National Security would continue to be authorized to sign off on all other FISA surveillance applications except for those targeting a lone wolf. Changing the manner in which FISA applications to the court are approved by the Justice Department is a needless change that serves no operation of civil liberty purpose.

I strongly urge my colleagues to oppose this amendment.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Chabot.

The question is on the amendment. All in favor say aye. Opposed say no. In the opinion of the chair, the noes have it. The amendment is not agreed to.

Mr. Johnson is recognized to offer his next amendment.

Mr. Johnson. Thank you, Mr. Chairman. I have another amendment at the desk.

Chairman Smith. The clerk will report the amendment.

[The information follows:]

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

The Clerk. Amendment to H.R. 1800 offered by Mr. Johnson of Georgia. At the end of the bill add the following new section.  
Electronic surveillance.

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

The gentleman from Georgia is recognized to explain his amendment.

Mr. Johnson. Thank you, Mr. Chairman.

It would simply add two words to the FISA wiretap statute: With particularity. My amendment would make sure that roving wiretaps are conducted within the confines of the fourth amendment to the Constitution. Currently, section 206 of the PATRIOT Act permits the government to obtain intelligence surveillance orders that identify neither the person nor facility to be tapped. The Fourth Amendment states that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and person or things to be seized.

Roving wiretaps which do not require the government to specify the place to be tapped was designed to allow surveillance of a target who continually alludes government agents by constantly changing phones and e-mail address. While roving wiretaps are an important tool for the Intelligence Community, the PATRIOT Act fails to include specific checks and balances to protect innocent Americans from

unwarranted government surveillance. While the authority may provide for a description of the target, there is no requirement that the target be described with particularity. Because there is no particularity of location requirement as traditionally required by the Fourth Amendment, innocent citizens may become inadvertent targets of surveillance.

My amendment would fix this problem and simply require that where the FISA target's identity is not known, the surveillance application describe the target with particularity. Thus, my amendment would give law enforcement a tool that they need to fight terrorism while protecting the Fourth Amendment rights of innocent Americans.

I hope all of my colleagues join me in supporting this commonsense amendment.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Johnson.

The gentleman from Pennsylvania Mr. Marino is recognized.

Mr. Marino. Thank you, Mr. Chairman.

In this technological advanced era of cell phones, smartphones, voiceover, instant messaging, and e-mail, roving wiretaps are essential. FBI director Robert Mueller stated before the Senate Judiciary Committee on March 30, 2011: The roving wiretap provision has been used more than 190 times. It is limited in the sense that we have to show that the individual for whom we wish this authority is trying to avoid surveillance. And again, it is reviewed by the court before it is issued. We have had this capability on the criminal side

of the house for any number of years. It has been very helpful on national security.

Under current law, the government may apply for a FISA roving wiretap when a target is thought to be employing measures to frustrate an investigator's ability to track their communications. A roving wiretap allows the investigators to quickly begin listening to whatever new phone line or Internet account the target may be using without having to go back to a judge for a new order every time.

FISA requires the government to provide a description of the target and the electronic surveillance in cases where the identity of the target of the surveillance order is unknown. In both criminal and intelligence investigations, the true name or identity of the target is sometimes unknown by law enforcement officials or is not capable of description with particularity. Nevertheless, the target can be sufficiently described sometimes by code name or aliases. The very nature of terrorism, espionage and spying encourage if not require perpetrators to conceal their identities. The technology available today only serves to enhance their concealment capabilities. Even prior to the Internet when cell phones were considered advanced technology, criminal suspects as well as terrorists used code nicknames to thwart detection and to compartmentalize their illicit operations from other members of their organization.

Today, the FISA court must be satisfied that the target of a FISA roving wiretap is either identified or sufficiently described as a target of the proposed electronic surveillance. Adding a

particularity requirement is simply a solution in search of a problem. There is absolutely no evidence of any abuse, misuse or misapplication of the FISA provision allowing the target to be sufficiently described in cases where he cannot be identified. And more importantly, this amendment does not simply impose this requirement on roving wiretaps but on all FISA electronic surveillances. This amendment unnecessarily excludes terrorist suspects already intercepted who can be described as individual targets, including those who are actively thwarting electronic surveillance.

For these reasons, I strongly urge my colleagues to vote against this amendment.

Thank you, and I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Marino.

Mr. Conyers. Mr. Chairman.

Chairman Smith. The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. Conyers. I rise in strong support of this modest change that is offered by the gentleman from Georgia.

The PATRIOT Act amended FISA to permit John Doe roving wiretaps, wiretaps that identify neither the target of the surveillance nor the phone to be monitored. The Federal criminal wiretap law permits roving wiretaps as well, but it contains additional safeguards that FISA does not. For example, under criminal law, surveillance is allowed only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument

through which such communication will be or was transmitted. FISA, of course, contains no such requirement.

And so all Mr. Johnson is doing is adding two words to the wiretap statute, FISA. Before the court issues a warrant for electronic surveillance on a target whose identity is unknown, an agent must describe the target with particularity. And so this amendment addresses to me an important concern: the potential to conduct surveillance on individuals who will never be identified in court without making any changes to the current practice in law enforcement.

Now in practice, Federal law enforcement already uses this standard. In this hearing room on March 9, the assistant attorney general, Todd Hinnen, assured the committee that the Justice Department already provides the court sufficient detail to identify the target with particularity. That is in the record.

Now, this same amendment has already passed the Senate, introduced by both senators Durbin and Lee, a Democrat and a Republican, and is now a provision of the Senate reauthorization bill. And so I don't think it is asking too much for us to have these two words as described by Mr. Johnson be included in the House version.

I urge its careful consideration.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Conyers.

The gentleman from Arkansas, does he wish to be recognized?

Mr. Griffin. Yes, Mr. Chairman.

Chairman Smith. If so, he is recognized for 5 minutes.

Mr. Griffin. This amendment adds a particularity requirement in one of the requirements that must be met and approved by the FISA court for all electronic surveillance orders.

Current law allows the FISA court to issue an electronic surveillance order against an individual in situations where the identity of the individual may not be known. But the government can describe the surveillance target sufficiently to establish probable cause that he is an agent of a foreign power. This is not the roving portion of the statute. This applies to all FISA electronic surveillance. We know that drug dealers and gang members often use nicknames or aliases. It should come as no surprise that terrorists and spies do as well. It should also come as no surprise that it may be difficult or impossible to provide the true identity of those who engage in clandestine underground activities.

Congress already took this into consideration when drafting FISA to ensure that intelligence could be gathered on spies and terrorists even if they disguise their identities. If the Johnson amendment were to become law, the government would be required to describe the target with particularity in situations in which the identity of the target is unknown. This injects a new level of uncertainty into the FISA application and court order process as the Justice Department and the FISA court attempt to interpret the effect and meaning of this new requirement. It is reasonable to assume that the FISA court will interpret this particularity standard to require a greater factual showing than is required under the present description of a specific

target standard.

There has never been any allegation of abuse with respect to the use of the FISA if known standard in section 105(c)(1)(a). The provision has been working well since FISA's original enactment in 1978. In these limited situations in which the target's identity is unknown, the government is still required to provide and the court must specify a description of the target that satisfies the agent of a foreign power probable cause standard.

The constitutional particularity requirement is designed to prevent the use of a general warrant and to limit the scope of an actual physical search. The requirement for a description of the target prevents the FISA court order from becoming a general warrant and provides sufficient information to ensure that surveillance is conducted against the intended target.

All FISA surveillance orders, including roving wiretaps, are ordered by a judge after the attorney general has already approved the request and the court has found probable cause that the surveillance target in question is a foreign power or an agent of a foreign power. The myth of a John Doe roving wiretap is a statutory mirage resulting from the erroneous joining of two distinct statutory requirements in a way that has no basis in operational reality.

This amendment is simply a solution in search of a problem. I urge my colleagues to oppose it.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Griffin.

The question is on the amendment. All in favor say aye. Opposed say no.

In the opinion of the Chair, the noes have.

Mr. Johnson. Recorded vote.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner, no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren, no.

Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Cohen?

Mr. Cohen. Yes.

The Clerk. Mr. Cohen, yes.

Chairman Smith. Are there other members who wish to be recorded?

The gentleman from Iowa, Mr. King.

Mr. King. No.

The Clerk. Mr. King, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye and 18 members voted nay.

Chairman Smith. The amendment is not agreed to.

The gentlewoman from California, Ms. Chu, is recognized for an

amendment.

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

[The information follows:]

\*\*\*\*\* INSERT 2-5 \*\*\*\*\*

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 1800 offered by Ms. Chu. At the end of the bill, add the following new section.

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

The gentlewoman is recognized to explain her amendment.

Ms. Chu. Thank you, Mr. Chairman.

This is amendment number 16 and my amendment simply reasserts judicial review and the First Amendment of the PATRIOT Act, allowing innocent Americans the ability to challenge both the request for information and the gag order that prohibits them from talking about it.

Secrecy is, of course, essential when conduct being any intelligence investigation, but section 215 orders come armed with significant gag orders that bar the subject of the order from discussing it with anyone. In fact, you have to wait an entire year before you can challenge a gag order in court. An uninformed person might not even know they can challenge or how they would do so.

Judicial review is the essential mechanism that we arm citizens with to ensure that they can protect the rights, but under the PATRIOT Act it is practically impossible to bring these cases to court. This amendment has precedence. In 2008, the appeals court for the second circuit struck down the gag order requirements in national security letters as unconstitutional. They found the gag order provision violated the First Amendment. The court made clear that it is the

government, not the NCSL recipient, that has the burden to go to court and justify silencing NCSL recipients through the gag orders. They also invalidate a provision that allowed the AG to shut down court order review of a gag order and automatically agree that the argument for secrecy was conclusive.

My amendment simply implements this court decision in the 215 context. Section 215 orders are already too broad, allowing law enforcement to get requests for any tangible thing, such as a diary, health files, even medical samples from anyone who comes into contact with an individual under investigation.

Americans have a right to challenge these invasive fishing expeditions, and my amendment provides reasonable judicial review to ensure the government doesn't abuse its powerful tools.

I urge members to support it. Thank you.

Chairman Smith. Thank you, Ms. Chu.

The gentleman from Florida, Mr. Ross, is recognized.

Mr. Ross. Thank you, Mr. Chairman. I wish to speak against the amendment.

This amendment requires the government to notify recipients of section 215 business records orders of the procedures for contesting the nondisclosure requirements and permits the recipients to make such appeals immediately instead of after 1 year. Recipients of business record subpoenas are permitted to immediately challenge the production order. They are not, however, permitted to challenge the nondisclosure requirement for 1 year. This is intended to allow the

government, which usually issues section 215 orders at the beginning of the case, to fully develop their investigation before being asked to defend whether certain pieces of evidence or sources should be kept confidential. The ability to put all of the pieces in context naturally grows with time. This an appropriate balance that should be kept in place. Allowing recipients to immediately challenge nondisclosure orders simply adds layers of bureaucracy and paperwork on top of our already overburdened intelligence investigators, often at the earliest stages of an investigation when their focus and energies should be focused elsewhere.

For these reasons, I urge my colleagues to oppose the amendment.

Mr. Sensenbrenner. Would the gentleman yield?

Mr. Ross. Yes.

Mr. Sensenbrenner. I support the arguments made by the gentleman from Florida, but I do want to point out that most of the argument advanced by the author of this amendment talked about national security letters. National security letters are a form of administrative subpoena; and as a result, they do not go through the review at the top of the FBI that the section 215 orders do, and they are also not orders that are issued by a judge. So there are two layers of review prior to the issuance of a section 215 order which there is not with national security letters.

I would simply submit that the argument that is advanced by her on NSLs is not the same as 215 orders, and it is kind of like mixing apples and oranges, and apple-orange juice isn't very tasty, in my

opinion.

Chairman Smith. The gentleman from Michigan is recognized.

Mr. Conyers. Thank you, Mr. Chairman.

I rise in support of the Chu amendment. Let's agree that the amendment does ensure that citizens can bring court challenge to overly broad section 215 orders and requires that these orders include notice of how to bring a court challenge to both the order and the nondisclosure requirement or the gag order. It also eliminates the current requirement that a person wait a year after receiving a 215 before bringing such a challenge, and it removes the ability of the attorney general to conclusively certify that a gag order is needed. Instead, the executive must prove the need for the gag order in court.

Now, these are straightforward procedural changes. The amendment doesn't limit the kind of information the executive can get for a section 215 order. I think they are good improvements and common sense.

Why should one have to wait a year before challenging a gag order? That is the point of this. Why should the attorney general shut down the court review of a gag order by issuing a certification whether he thinks the gag order is needed?

Now, in 2008 in the Doe v. Mukasey case in the Second Circuit, the court struck down the gag order requirement in national security letters as unconstitutional. These improvements follow the court's ruling there and should strengthen section 215 orders in this instance.

Now, it has been indicated by the administration that these

changes pose no risks to the operational value of section 215, and I think that is accurate. I hope that this amendment is carefully considered.

I thank you for the time, Mr. Chairman.

Chairman Smith. Thank you, Mr. Conyers.

The question is on the amendment. All in favor say aye. All opposed say no. In the opinion of the chair, the noes have it. The amendment is not agreed to.

Ms. Chu. Mr. Chairman, I ask for a recorded vote. But I know you were trying to save time, so can we do the two amendments and have a recorded vote on both at once.

Chairman Smith. That is great. In that case, the gentlewoman is recognized for her second amendment.

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

Chairman Smith. The clerk will report the amendment.

The Clerk. At the end of the bill, add the following --

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

The gentlewoman is recognized to explain her amendment.

[The information follows:]

\*\*\*\*\* INSERT 2-6 \*\*\*\*\*

Ms. Chu. Mr. Chairman, this is amendment number 17. My amendment provides reasonable and important oversight by the inspector general and Justice Department into the PATRIOT Act provisions.

This amendment ensures that every year the IG does an audit on the use of section 215 and pen register and trap and trace, and it requires the attorney general to provide an unclassified report to Congress on the use of the powers under the PATRIOT Act.

This information is crucial to protect American civil liberties, provide adequate oversight and allow members of Congress to review and weigh the use of these law enforcement tools. We must shed some light on a process shrouded in secrecy. Take last year. The government asked for permission to conduct electronic surveillance or perform physical searches almost 1,600 times. That is up from 1,376 times in 2009. They made 96 applications for access to business records for foreign intelligence purposes. That is almost five times more than the year before where they asked only 21 times.

And what would be shocking to many Americans, the FBI used national security letters to get information on over 14,000 different U.S. person, over double the number of individuals they looked at the year before.

I am greatly concerned about the increase in government access to personal information without the proper checks and balances. I believe this means more innocent Americans will be getting scooped up into these broad powers without anyone knowing.

RPTS CASWELL

DCMN ROSEN

[12:05 p.m.]

Ms. Chu. As it is currently written, H.R. 1800 doesn't include provisions that require these types of audits from the Inspector General to Congress, nor do they require that unclassified reports be provided to the public.

But this type of audit has been done before. In fact, Congress used to require the IG to issue these reports and the agency did so for every year from 2003 to 2006.

But since then, the requirement has expired and today it is time to renew that requirement.

I ask the committee to support my amendment.

Chairman Smith. Thank you.

Mr. Issa. Mr. Chairman.

Chairman Smith. The gentleman from California, Mr. Issa.

Mr. Issa. Thank you, Mr. Chairman. I rise in opposition to the gentlelady's amendment, particularly the portion about delivering in an unclassified fashion.

As the chairman knows, there is no question that there need to be protections on uses of this type of material, and unfortunately, her amendment doesn't seek to have the kind of reporting that could ever be considered.

The gentlelady from Texas' earlier amendment at least sought to

have the appropriate committee.

So with that material defect, I would ask opposition and yield back.

Chairman Smith. Would the gentleman yield to the gentleman from Virginia?

Mr. Issa. I yield to the gentleman from Virginia.

Mr. Forbes. Thank you, Mr. Chairman. I also oppose this amendment. I appreciate the gentlelady's intent, but every day, our law enforcement community is challenged by the resourcefulness of those who want to do harm to our citizens, and it is important we strike the right balance but we don't want to continually find ways that we overburden them so they can't do that.

The USA PATRIOT Act already mandates extensive reporting requirements to Congress. Government must submit to Congress must semiannual reports on all FISA electronic surveillance, including the use of roving authority. The government must also submit to Congress an annual report on all business record orders, including the number of orders granted, modified or denied for the production of library records, book sales and firearms sales, records, tax returns, educational records and medical records containing information to identify a person.

In addition, Mr. Chairman, to the reporting requirements above on a semiannual basis, the government must submit to Congress a report setting forth the previous 6-month period, the aggregate number of persons targeted for electronic surveillance, physical searches, pen

registers and business records. The government also already has to report the number of individuals covered by the lone wolf definition, the number of times the Attorney General has authorized information obtained under FISA be used in criminal proceedings and copies of all decisions, orders or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review.

In April every year, the government has to submit to the administrative office of the United States Court and the Congress a report setting forth the number of total applications made for FISA orders and extension of orders and the total number of orders, extensions, granted, modified or denied.

We just don't need another reporting requirement placed upon the Justice Department that will detract from their operation and civil liberties responsibilities. These additional reporting requirements, beyond what is already mandated, are costly and serve little legislative purpose. And we also don't need the IG audits and intelligence assessments of 215 business records, section 215 business records, and FISA pen registers mandated by this amendment.

Critics of these provisions provide no evidence of any widespread or intentional misuse of these tools, tools that the FISA court approves and oversees. We have got more than enough oversight, Mr. Chairman, by all three branches of government of these three provisions to ensure their proper use. The additional mandates this amendment are just not necessary, and I urge my colleagues to oppose the amendment and I yield back to the gentleman.

Mr. Issa. Mr. Chairman, reclaiming my time, briefly, I will use this time to mention the two legislative amendments that I had offered, Issa 4 will not be necessary because after a thorough review of the existing reporting requirements and the historic reporting to the committees of jurisdiction, I find the amendment not needed.

Additionally, after consultation with the chairman and other members of the committee, I believe that the question of lone wolf need not be brought up in the reauthorization and so would ask that both of my amendments not be called and yield back.

Chairman Smith. Thank you, Mr. Issa.

Mr. Conyers. Mr. Chairman.

Chairman Smith. The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. Conyers. I recognize that this amendment is significant and worthy of being passed.

Now, to the question of it not being -- there is no requirement of secrecy in it. Anything that is secret should not be revealed to the public, so it isn't necessary that this whole thing be classified.

That which is unclassified should be made public. We do this constantly, and the bill requires audits of important parts of 215. It requires an overall assessment of how FISA works. We use audits already for pen registered devices.

And so the Inspector General is already conducting some of this work, and so this is no burden to anybody in the government, it endangers no parties in or outside of the government, nor does it endanger anybody

that is under surveillance or put them in a more vulnerable position. It is constitutionally sensible, and I don't think that its inclusion, the acceptance of this amendment, would not be detrimental in any respect.

I urge that it be supported, and I yield back.

Chairman Smith. Thank you, Mr. Conyers. It is my understanding that the gentlewoman from California is willing to have a vote on both amendments concurrently as a roll call vote; is that correct?

Ms. Chu. Yes, as a recorded vote.

Chairman Smith. We will do so and the clerk will call the roll on the amendments.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner, no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren, no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Mr. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 12 members voted aye; 19 members voted  
nay.

Chairman Smith. The amendments are not agreed to. It is my understanding that the gentleman from Illinois has an amendment, and if so --

Mr. Quigley. Yes, Mr. Chairman.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 1800 offered by Mr. Quigley of Illinois.

[The information follows:]

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

The Clerk. At the end of the bill, add the following new section, attorney general authority to deny transfer of firearms to terrorists.

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain his amendment.

Mr. Quigley. Thank you, Mr. Chairman.

My amendment would grant the Attorney General to deny the transfer of a firearm if the use of the very PATRIOT Act provisions we are discussing today leads the AG to believe that a prospective transferee of a firearm has engaged in or is suspected of engaging in terrorism.

This amendment is designed to achieve the same goal as bipartisan legislation now before Congress that would close what is commonly referred to as the terror gap in our background check system. Inexplicably, the FBI currently has no authority to block firearms sales to terrorist suspects. In any day and age, but especially after 9/11, it makes no sense that the Federal Government can't stop gun sales to some of the same people it thinks are too dangerous to get on a plane.

Terrorists have repeatedly bought guns and explosives on American soil. A 2009 GAO report shows that individuals on terror watchlists tried to buy guns and explosives 963 times during a 5-year period, February 2004 to February of 2009. On 865 occasions, 90 percent of the attempts, the FBI was unable to block gun and explosive sales to suspected terrorists.

As I mentioned, Federal legislation to close the terror gap has bipartisan support, as well as broad support from the American public.

For example, both the Bush administration's Justice Department and the Obama administration's Justice Department have supported legislation to close the terror gap.

I have before me a letter dated April 25, 2007, signed by Richard Hurling, an assistant attorney general during the Bush administration. The letter speaks of the importance of the Attorney General having the discretionary authority to deny transfers of firearms to individuals on the terror watchlists and endorses legislation to close the terror gap.

Moreover, just last November, Attorney General Eric Holder expressed the Obama administration's support of legislation to close the terror gap. Right now, Federal law prohibits nine categories of dangerous persons from purchasing or possessing firearms. Remarkably, individuals on the terror watchlist are not among those prohibited purchasers.

This is a loophole in our Federal law large enough to drive an explosive-filled truck through. We have already denied firearm purchase of those who are felons, fugitives, domestic violence abusers, those who renounce their U.S. citizenship and others who pose a danger to our citizens.

Why should we allow terrorists to obtain the very weapons they could try to use against us. And a sense of a timely basis, I read today's New York Times, May 12, 2011, Two men, who the authorities said intended to carry out a terrorist attack in New York City, who were arrested late Wednesday -- two law enforcement officials said with

knowledge of the matter -- the two men had sought to purchase hand grenades and guns and they were arrested after what law enforcement officials described as a sting operation, saying their aims appeared aspirational. They were attempting to attack a synagogue.

We know that extremists have, in the past, chosen the use of firearms as a way to attack our citizens. The Fort Hood shooting in 2009; in 2007, six terror suspects were arrested for plotting to attack Fort Dix.

If the Justice Department has reason to believe someone has engaged or is planning a terrorist attack, that person should not be allowed to purchase a gun. We are here today to try to resolve the question of how best to strike a proper balance between ensuring our national security and protecting our civil liberties.

Surely we cannot look our constituents in the eye and tell them in good faith that we have decided to enact public policy that restrains some of the civil liberties for their greater good, but that protects and preserves the liberties of suspected terrorists. I know we are smarter than that.

I yield back.

Chairman Smith. Thank you, Mr. Quigley, that name you mentioned, Richard Hurtling, sounds familiar to me, but I don't think he is here to defend himself. But I am sure he appreciates being cited.

The gentleman from Wisconsin, Mr. Sensenbrenner, is recognized.

Mr. Sensenbrenner. Mr. Chairman, I rise in opposition to the amendment.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Sensenbrenner. Mr. Chairman, after listening to the argument, I feel that in the waters around Chicago, there are red herring, as well as Asian carp and this is a red herring issue.

You know, first of all, people who are illegally or unlawfully in the United States or have nonimmigrant visas are generally not permitted to purchase firearms under existing law. And with this change that the gentleman from Illinois is proposing, the amendment in practice would target U.S. persons, because most of the non-U.S. persons are already ineligible.

The government already has the ability to access firearms sales records through the section 215 business record orders, which some in this committee have been trying to make impossible to use.

But I think, most importantly, it would put the Attorney General and the law enforcement community in a bind, because as somebody who is on a watchlist goes and tries to buy a firearm, they get tipped off when the transfer is denied. And they figure that something is up and that law enforcement may have a lead that they are about ready to do something pretty bad.

So I would say that this amendment is the tip-off potential terrorist of the fact that they are under surveillance amendment and should be rejected for that reason alone.

Also, there are no procedures and mechanisms in the gentleman's amendment to ensure that Second Amendment rights are protected.

Remember, in most cases, we are talking about U.S. persons,

meaning citizens and then green card holders. And if they end up being denied as a result of an Attorney General determination, there is no way that they can protect their Second Amendment rights if the Attorney General has made a mistake or have subsequently -- well, the person who is under surveillance ends up not being up to doing something wrong.

So this really is more of an attack on the Second Amendment as well as the tip-offs to somebody who is under surveillance.

And for all these reasons, we ought to reject it, and I yield back.

Chairman Smith. Thank you, Mr. Sensenbrenner. The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. Conyers. Mr. Chairman, first of all, this is a discretionary authority that Mr. Quigley wishes to confer upon the Attorney General.

The second thing is that the chairman of the Homeland Security Committee has the same measure in a bill pending before this committee right now.

I think that we should look at that. There is bipartisan support for the Quigley amendment, and I am not at all reassured that with all the extremists that have been able to obtain firearms, that we don't have to worry that because they may be under investigation they still may successfully obtain through purchase these weapons anyway.

I have got three instances here, I will put them in the record, that involve the use of firearms by extremists, the Fort Hood shooting in 2009, a person, last name Mohammed, opened fire at a military recruiting station in Little Rock. In 2007, six terror suspects were arrested for plotting to attack Fort Dix after trying to buy M-16s and

AK-47s from a government informant.

And so it seems to me it is important that this loophole be closed and that I think that adding this language to give discretionary authority to the Attorney General is no idle use of our time at all.

I yield to the gentleman from New York.

Mr. Nadler. I thank the gentleman for yielding.

Let me just say that no right is absolute or we certainly respect the Second Amendment. People have the right to fly, they have the right to travel. And yet we give the Attorney General the power to say that someone suspected of terrorism or from the good evidence cannot fly.

The same thing should go here. I don't think any of us would say that a person who is blind, legally blind, should be able to own a firearm -- or discharge a firearm. It just makes no sense from a public safety point of view.

To say that the Attorney General may prohibit someone who they have reason to believe is engaged in preparation for in aid of terrorism shouldn't be able to have a weapon with which to engage in that terrorism, has nothing to do with overnight rights which are generally for hunting or other things or in aid of a militia.

But the Attorney General should have the right to say someone can't own a gun if he is a terrorist as he can't fly.

Now, as to Mr. Sensenbrenner's argument that this would be a giveaway, well, the Attorney General doesn't have to use that discretion and by the same token, all restrictions that we have, like no-fly lists, would be giveaways under the same circumstances. And

that is why we give the discretion to the Attorney General to use it when and if they see fit.

By the same token, the ability of this police department or the FBI to arrest the suspected terrorist is a giveaway to the network. We don't say they can arrest somebody, we say they can arrest them when they think it is wise and prudent in the course of the investigation and protection against terrorism.

This is a simple anti-terrorist mechanism. It has nothing to do with the general right to bear arms any more than saying that a terrorist can't fly an airplane, for obvious reasons, has anything to do with the general right of travel.

So I think this is a commonsense amendment. We are to heed the commonsense urgings of the chairman of the Homeland Security Committee, where there is a similar bill. Forget this nonsense about it is a violation of the Second Amendment, it is not, and we ought to adopt the amendment.

Mr. Scott. Would the gentleman yield?

Mr. Nadler. I yield to the gentleman from -- well, it is the gentleman from Michigan's time, but he will yield to the gentleman from Virginia.

Mr. Conyers. I yield to Mr. Scott.

Mr. Scott. Thank you. Mr. Chairman, we already deny firearm purchases to those who are felons, fugitives, domestic violence abusers, those who renounce their U.S. citizenships and others who pose a danger. It seems to me that a known terrorist ought to also be on

this list.

In terms of being tipped off, if you try to take a plane, you get tipped off that you are on the no-fly list for some reason. So I think this is a reasonable amendment. We don't want terrorists to be able to buy AK-47s and other weapons of -- military assault weapons to further their terrorism, and I hope we would adopt the amendment.

I yield back to the gentleman from Michigan.

Chairman Smith. The gentleman from Michigan's time has expired. Does anyone else wish to be recognized? The gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. Thank you, Mr. Chairman. I appreciate the spirit of the amendment, but it does end up infringing on Second Amendment rights, and it does invoke a whole new avenue on that, people like retired major general from the United States Army that put his life on the line repeatedly would be one of those because he keeps coming up on the watchlist.

I mean, we have adequate safeguards, I believe, without infringing further in the Second Amendment rights.

But I especially wanted to thank you, Chairman Smith. You know, particularly, Judge Poe and I had concerns, I know we have seen that this has been ruled constitutional, we are talking about these provisions of the PATRIOT Act. And as we have had endless discussions and debates, much of this, or powers that are given to investigate organized crime that the government wished to use to pursue terrorists, in my first, in my freshman term, 2005 and 2006, we went through this

and we got sunsets placed, because we saw whether it was Attorney General Gonzales or Attorney General Holder, it is really difficult to get adequate accountability from an attorney general or Justice Department until they see one of the tools they need coming up on a sunset, then they seem to get much more reasonable in answering the appropriate questions and requests we have.

And so I very much appreciate, Chairman Smith, your willingness. I know you were reluctant, but your willingness to add the sunsets and bring them down to 6 years from where we were talking about originally, and I just believe that helps us get the oversight, it helps us have the leverage to force the Justice Department to provide this Congress with the accountability that it just seemed like we have too much trouble getting until we are about to take away one of the tools they think they need.

So thank you very much, Chairman Smith, I appreciate it.

Chairman Smith. Thank you, Mr. Gohmert, for those comments.

The question is on the amendment. Those in favor say aye. Those opposed say no. In the opinion of the chair, the nays have it.

Mr. Quigley. Mr. Chairman, I ask for a recorded vote.

Chairman Smith. A recorded voted has been requested and the clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.  
The Clerk. Mr. Sensenbrenner, no.  
Mr. Coble?  
Mr. Coble. No.  
The Clerk. Mr. Coble, no.  
Mr. Gallegly?  
Mr. Gallegly. No.  
The Clerk. Mr. Gallegly, no.  
The Clerk. Mr. Goodlatte?  
Mr. Goodlatte. No.  
The Clerk. Mr. Goodlatte, no.  
Mr. Lungren?  
Mr. Lungren. No.  
The Clerk. Mr. Lungren, no.  
Mr. Chabot?  
Mr. Chabot. No.  
The Clerk. Mr. Chabot, no.  
Mr. Issa?  
Mr. Issa. No.  
The Clerk. Mr. Issa, no.  
Mr. Pence?  
Mr. Pence. No.  
The Clerk. Mr. Pence, no.  
The Clerk. Mr. Forbes?  
Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

The Clerk. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Chairman Smith. Are there any other members who wish to be recorded? If not, the clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye, 21 members voted nay.

Chairman Smith. The amendment is not agreed to.

Are there any other amendments?

If not, a reporting quorum being present, the question is on reporting the bill favorably to the House. Those in favor say aye. Those opposed say no. The ayes have it. In the opinion of the chair -- a recorded vote has been requested and the clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. Aye.

The Clerk. Mr. Smith, aye.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner, aye.

Mr. Coble?

Mr. Coble. Aye.

The Clerk. Mr. Coble, aye.

Mr. Gallegly?

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly, aye.

Mr. Goodlatte?

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte, aye.

Mr. Lungren?

Mr. Lungren. Aye.

The Clerk. Mr. Lungren, aye.

Mr. Chabot?

Mr. Chabot. Aye.

The Clerk. Mr. Chabot, aye.

Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa, aye.

Mr. Pence?

Mr. Pence. Aye.

The Clerk. Mr. Pence, aye.

Mr. Forbes?

Mr. Forbes. Aye.

The Clerk. Mr. Forbes, aye.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks, aye.

The Clerk. Mr. Gohmert?

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert, aye.

Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan, aye.

Mr. Poe?

Mr. Poe. Aye.

The Clerk. Mr. Poe, aye.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, aye.

Mr. Marino?

Mr. Marino. Aye.

The Clerk. Mr. Marino, aye.

Mr. Gowdy?

Mr. Gowdy. Aye.

The Clerk. Mr. Gowdy, aye.

Mr. Ross?

Mr. Ross. Aye.

The Clerk. Mr. Ross, aye.

Mrs. Adams?

Mrs. Adams. Aye.

The Clerk. Mrs. Adams, aye.

Mr. Quayle?

Mr. Quayle. Aye.

The Clerk. Mr. Quayle, aye.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers, no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman, no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler, no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott, no.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. No.

The Clerk. Ms. Lofgren, no.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen, no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson, no.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu, no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch, no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez, no.

Chairman Smith. Are there any other members who wish to be recorded? If not, the clerk will report

Chairman Smith. Are there any other members who wish to be recorded?

The Clerk. Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters, no.

Chairman Smith. Clerk will report.

Mr. Cohen. No.

Chairman Smith. The Clerk will suspend. The gentleman from Tennessee.

Mr. Cohen. One last vote.

The Clerk. Mr. Cohen votes no.

Chairman Smith. Clerk will report.

Mr. Cohen. Thank you.

The Clerk. Mr. Chairman, 22 members voted aye, 13 members voted nay.

Chairman Smith. The ayes have it and the bill is ordered to be reported favorably.

Without objection, the bill will be reported, and the staff is authorized to make technical and conforming changes.

Members will have 2 days to submit their views.

I want to thank all members on both sides for their attendance today. There being no further business, we stand adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned.]