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

5 Thursday, April 30, 2015

6 House of Representatives

7 Committee on the Judiciary

8 Washington, D.C.

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

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

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

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

35 The clerk will report the bill.

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

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

45 [The bill follows:]

46

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

223 will again strike the balance that leadership entails.

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

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

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

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

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

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

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

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

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

288 And beyond ending bulk collection, with what conceit can

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

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

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

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

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

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

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

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

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

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

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

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

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

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

376 This bill requires the government to promptly declassify

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

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

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

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

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

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

417 Mr. King. Mr. Chairman?

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

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

421 desk.

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

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

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

429 [The amendment of Mr. King follows:]

430

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

552 All those favor, respond by saying aye.

553 Those opposed, no.

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

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

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

560 Ms. Williams. Mr. Goodlatte?

561 Chairman Goodlatte. No.

562 Ms. Williams. Mr. Goodlatte votes no.

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

585 Ms. Williams. Mr. Jordan votes yes.

586 Mr. Poe?

587 Mr. Poe. Yes.

588 Ms. Williams. Mr. Poe votes yes.

589 Mr. Chaffetz?

590 [No response.]

591 Ms. Williams. Mr. Marino?

592 Mr. Marino. No.

593 Ms. Williams. Mr. Marino votes no.

594 Mr. Gowdy?

595 [No response.]

596 Ms. Williams. Mr. Labrador?

597 Mr. Labrador. No.

598 Ms. Williams. Mr. Labrador votes no.

599 Mr. Farenthold?

600 [No response.]

601 Ms. Williams. Mr. Collins?

602 Mr. Collins. No.

603 Ms. Williams. Mr. Collins votes no.

604 Mr. DeSantis?

605 [No response.]

606 Ms. Williams. Ms. Walters?

607 Ms. Walters. No.

608 Ms. Williams. Ms. Walters votes no.

609 Mr. Buck?

610 Mr. Buck. No.

611 Ms. Williams. Mr. Buck votes no.

612 Mr. Ratcliffe?

613 [No response.]

614 Ms. Williams. Mr. Trott?

615 Mr. Trott. No.

616 Ms. Williams. Mr. Trott votes no.

617 Mr. Bishop?

618 Mr. Bishop. No.

619 Ms. Williams. Mr. Bishop votes no.

620 Mr. Conyers?

621 Mr. Conyers. No.

622 Ms. Williams. Mr. Conyers votes no.

623 Mr. Nadler?

624 Mr. Nadler. No.

625 Ms. Williams. Mr. Nadler votes no.

626 Ms. Lofgren?

627 Ms. Lofgren. No.

628 Ms. Williams. Ms. Lofgren votes no.

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

651 Ms. DelBene. No.

652 Ms. Williams. Ms. DelBene votes no.

653 Mr. Jeffries?

654 Mr. Jeffries. No.

655 Ms. Williams. Mr. Jeffries votes no.

656 Mr. Cicilline?

657 Mr. Cicilline. No.

658 Ms. Williams. Mr. Cicilline votes no.

659 Mr. Peters?

660 Mr. Peters. No.

661 Ms. Williams. Mr. Peters votes no.

662 Chairman Goodlatte. The gentleman from California?

663 Mr. Issa. No.

664 Ms. Williams. Mr. Issa votes no.

665 Chairman Goodlatte. The gentleman from Virginia?

666 Mr. Forbes. No.

667 Ms. Williams. Mr. Forbes votes no.

668 Chairman Goodlatte. The gentleman from South Carolina?

669 Mr. Gowdy. No.

670 Ms. Williams. Mr. Gowdy votes no.

671 Chairman Goodlatte. The gentleman from Texas?

672 Mr. Ratcliffe. No.

673 Ms. Williams. Mr. Ratcliffe votes no.

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

676 [No response.]

677 Chairman Goodlatte. The clerk will report.

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

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

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

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

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

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

690 [The amendment of Mr. Poe follows:]

691

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

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

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

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

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

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

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

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

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

756 Chairman Goodlatte. Without objection, so ordered.

757 [The information follows:]

758

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

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

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

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

784 Mr. Conyers. Mr. Chairman?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

869 last year to improve this matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

994 Mr. Issa. Of course.

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

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

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

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

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

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

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

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

1034 I thank the chairman for his indulgence and yield back.
1035 Chairman Goodlatte. The gentleman's time has expired.
1036 Ms. Lofgren. Could I ask unanimous consent?

1037 Chairman Goodlatte. For what purpose --

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

1039 Chairman Goodlatte. Briefly, yes.

1040 Ms. Lofgren. I would like to place in the record a
1041 letter of support for this amendment by a wide group,
1042 including the ACLU, and Freedom Works, Mozilla, and Demand
1043 Progress.

1044 Chairman Goodlatte. Without objection, the letter will

1045 be made part a part of the record.

1046 [The information follows:]

1047

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

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

1054 [Laughter.]

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

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

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

1061 Chairman Goodlatte. What is that?

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

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

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

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

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

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

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

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

1097 Chairman Goodlatte. It came from many sources.

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

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

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

1105 Ms. Lofgren. Sure.

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

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

1114 law.

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

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

1129 Mr. Jordan. Mr. Chairman?

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

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

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

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

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

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

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

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

1157 Chairman Goodlatte. For what purpose does the gentleman

1158 from New York seek recognition?

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

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

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

1166 [Laughter.]

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

1170 [Laughter.]

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

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

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

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

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

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

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

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

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

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

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

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

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

1249 Mr. Labrador. To support the amendment.

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

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

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

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

1276 Ms. Jackson Lee. Mr. Chairman?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1389 [Laughter.]

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

1400 citizens for at least 2 years.

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

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

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

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

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

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

1436 Mr. Gowdy. Certainly.

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

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

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

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

1456 Chairman Goodlatte. The gentlewoman is recognized.

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

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

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

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

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

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

1497 Ms. Lofgren. Would the gentlelady yield?

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

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

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

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

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

1532 collected without adherence to the 4th Amendment.

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

1535 Chairman Goodlatte. The chair thanks the gentlewoman.

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

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

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

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

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

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

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

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

1568 [Laughter.]

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

1574 Chairman Goodlatte. Would the gentleman yield?

1575 Mr. Ratcliffe. I would yield.

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

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

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

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

1601 Ms. Williams. Mr. Goodlatte?

1602 Chairman Goodlatte. No.

1603 Ms. Williams. Mr. Goodlatte votes no.

1604 Mr. Sensenbrenner?

1605 Mr. Sensenbrenner. No.

1606 Ms. Williams. Mr. Sensenbrenner votes no.

1607 Mr. Smith?

1608 [No response.]

1609 Ms. Williams. Mr. Chabot?

1610 Mr. Chabot. No.

1611 Ms. Williams. Mr. Chabot votes no.

1612 Mr. Issa?

1613 Mr. Issa. No.

1614 Ms. Williams. Mr. Issa votes no.

1615 Mr. Forbes?

1616 Mr. Forbes. No.

1617 Ms. Williams. Mr. Forbes votes no.

1618 Mr. King?

1619 [No response.]

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

1642 Mr. Labrador. Yes.

1643 Ms. Williams. Mr. Labrador votes yes.

1644 Mr. Farenthold?

1645 [No response.]

1646 Ms. Williams. Mr. Collins?

1647 [No response.]

1648 Ms. Williams. Mr. DeSantis?

1649 [No response.]

1650 Ms. Williams. Ms. Walters?

1651 Ms. Walters. No.

1652 Ms. Williams. Ms. Walters votes no.

1653 Mr. Buck?

1654 Mr. Buck. Yes.

1655 Ms. Williams. Mr. Buck votes yes.

1656 Mr. Ratcliffe?

1657 Mr. Ratcliffe. No.

1658 Ms. Williams. Mr. Ratcliffe votes no.

1659 Mr. Trott?

1660 Mr. Trott. No.

1661 Ms. Williams. Mr. Trott votes no.

1662 Mr. Bishop?

1663 [No response.]

1664 Ms. Williams. Mr. Conyers?

1665 Mr. Conyers. No.

1666 Ms. Williams. Mr. Conyers votes no.

1667 Mr. Nadler?

1668 Mr. Nadler. No.

1669 Ms. Williams. Mr. Nadler votes no.

1670 Ms. Lofgren?

1671 Ms. Lofgren. Aye.

1672 Ms. Williams. Ms. Lofgren votes aye.

1673 Ms. Jackson Lee?

1674 Ms. Jackson Lee. No.

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

1676 Mr. Cohen?

1677 [No response.]

1678 Ms. Williams. Mr. Johnson?

1679 [No response.]

1680 Ms. Williams. Mr. Pierluisi?

1681 [No response.]

1682 Ms. Williams. Ms. Chu?

1683 Ms. Chu. No.

1684 Ms. Williams. Ms. Chu votes no.

1685 Mr. Deutch?

1686 Mr. Deutch. No.

1687 Ms. Williams. Mr. Deutch votes no.

1688 Mr. Gutierrez?

1689 [No response.]

1690 Ms. Williams. Ms. Bass?

1691 Ms. Bass. No.

1692 Ms. Williams. Ms. Bass votes no.

1693 Mr. Richmond?

1694 Mr. Richmond. No.

1695 Ms. Williams. Mr. Richmond votes no.

1696 Ms. DelBene?

1697 Ms. DelBene. Aye.

1698 Ms. Williams. Ms. DelBene votes aye.

1699 Mr. Jeffries?

1700 Mr. Jeffries. Aye.

1701 Ms. Williams. Mr. Jeffries votes aye.

1702 Mr. Cicilline?

1703 Mr. Cicilline. Aye.

1704 Ms. Williams. Mr. Cicilline votes aye.

1705 Mr. Peters?

1706 Mr. Peters. No.

1707 Ms. Williams. Mr. Peters votes no.

1708 Chairman Goodlatte. The gentleman from Tennessee?

1709 Mr. Cohen. I will vote no.

1710 Ms. Williams. Mr. Cohen votes no.

1711 Chairman Goodlatte. The gentleman from Michigan?

1712 Mr. Bishop. No.

1713 Ms. Williams. Mr. Bishop votes no.

1714 Chairman Goodlatte. The gentleman from Iowa?

1715 Mr. King. No.

1716 Ms. Williams. Mr. King votes no.

1717 Chairman Goodlatte. The gentleman from Texas?

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

1719 Ms. Williams. Mr. Smith votes no.

1720 Chairman Goodlatte. Has every member voted who wishes

1721 to vote?

1722 [No response.]

1723 Chairman Goodlatte. The clerk will report.

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

1725 members voted no.

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

1727 For what purpose does the gentleman from Idaho seek

1728 recognition?

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

1730 bill.

1731 Chairman Goodlatte. The clerk will report the

1732 amendment.

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

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

1735 Chairman Goodlatte. Without objection, the amendment

1736 will be considered as read.

1737 [The amendment of Mr. Labrador follows:]

1738

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

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

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

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

1761 bill.

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

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

1783 the United States.

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

1787 Ms. Lofgren. Would the gentleman yield?

1788 Mr. Labrador. Absolutely.

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

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

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

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

1808 Mr. Sensenbrenner. Mr. Chairman?

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

1811 Mr. Sensenbrenner. Opposition to the amendment.

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

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

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

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

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

1846 Chairman Goodlatte. Would the gentleman yield?

1847 Mr. Sensenbrenner. I will reclaim my time.

1848 Chairman Goodlatte. I thank the gentleman for yielding,

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

1851 Mr. Sensenbrenner. I yield back now.

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

1854 All those in favor, respond by saying aye.

1855 Those opposed, no.

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

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

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

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

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

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

1871 [The amendment of Ms. Lofgren follows]

1872

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2001 All those in favor, respond by saying aye.

2002 Those opposed, no.

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

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

2009 The chair recognizes the gentleman from Ohio.

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

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

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

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

2018 [The amendment of Mr. Jordan follows:]

2019

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

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

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

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

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

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

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

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

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

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

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

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

2090 Ms. Lofgren. Would the gentleman yield?

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

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

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

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

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

2110 Chairman Goodlatte. The chair thanks the gentleman.

2111 Mr. Sensenbrenner. Mr. Chairman?

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

2114 Mr. Sensenbrenner. Opposition to the amendment.

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

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

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

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

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

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

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

2158 Chairman Goodlatte. Would the gentleman yield?

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

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

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

2167 All those in favor, respond by saying aye.

2168 Those opposed, no.

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

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

2172 [No response.]

2173 Chairman Goodlatte. A reporting quorum being present,

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

2176 Those in favor, say aye.

2177 Those opposed?

2178 The ayes have it. The bill is --

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

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

2183 Ms. Williams. Mr. Goodlatte?

2184 Chairman Goodlatte. Aye.

2185 Ms. Williams. Mr. Goodlatte votes aye.

2186 Mr. Sensenbrenner?

2187 Mr. Sensenbrenner. Aye.

2188 Ms. Williams. Mr. Sensenbrenner votes aye.

2189 Mr. Smith?

2190 [No response.]

2191 Ms. Williams. Mr. Chabot?

2192 Mr. Chabot. Aye.

2193 Ms. Williams. Mr. Chabot votes aye.

2194 Mr. Issa?

2195 [No response.]

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

2218 [No response.]

2219 Ms. Williams. Mr. Labrador?

2220 [No response.]

2221 Ms. Williams. Mr. Farenthold?

2222 [No response.]

2223 Ms. Williams. Mr. Collins?

2224 Mr. Collins. Aye.

2225 Ms. Williams. Mr. Collins votes aye.

2226 Mr. DeSantis?

2227 Mr. DeSantis. Aye.

2228 Ms. Williams. Mr. DeSantis votes aye.

2229 Ms. Walters?

2230 Ms. Walters. Aye.

2231 Ms. Williams. Ms. Walters votes aye.

2232 Mr. Buck?

2233 [No response.]

2234 Ms. Williams. Mr. Ratcliffe?

2235 Mr. Ratcliffe. Yes.

2236 Ms. Williams. Mr. Ratcliffe votes yes.

2237 Mr. Trott?

2238 Mr. Trott. Yes.

2239 Ms. Williams. Mr. Trott votes yes.

2240 Mr. Bishop?

2241 Mr. Bishop. Yes.

2242 Ms. Williams. Mr. Bishop votes yes.

2243 Mr. Conyers?

2244 Mr. Conyers. Aye.

2245 Ms. Williams. Mr. Conyers votes aye.

2246 Mr. Nadler?

2247 Mr. Nadler. Aye.

2248 Ms. Williams. Mr. Nadler votes aye.

2249 Ms. Lofgren?

2250 Ms. Lofgren. Aye.

2251 Ms. Williams. Ms. Lofgren votes aye.

2252 Ms. Jackson Lee?

2253 [No response.]

2254 Ms. Williams. Mr. Cohen?

2255 Mr. Cohen. Aye.

2256 Ms. Williams. Mr. Cohen votes aye.

2257 Mr. Johnson?

2258 [No response.]

2259 Ms. Williams. Mr. Pierluisi?

2260 [No response.]

2261 Ms. Williams. Ms. Chu?

2262 Ms. Chu. Aye.

2263 Ms. Williams. Ms. Chu votes aye.

2264 Mr. Deutch?

2265 Mr. Deutch. Aye.

2266 Ms. Williams. Mr. Deutch votes aye.

2267 Mr. Gutierrez?

2268 [No response.]

2269 Ms. Williams. Ms. Bass?

2270 [No response.]

2271 Ms. Williams. Mr. Richmond?

2272 Mr. Richmond. Aye.

2273 Ms. Williams. Mr. Richmond votes aye.

2274 Ms. DelBene?

2275 Ms. DelBene. Aye.

2276 Ms. Williams. Ms. DelBene votes aye.

2277 Mr. Jeffries?

2278 Mr. Jeffries. Aye.

2279 Ms. Williams. Mr. Jeffries votes aye.

2280 Mr. Cicilline?

2281 Mr. Cicilline. Aye.

2282 Ms. Williams. Mr. Cicilline votes aye.

2283 Mr. Peters?

2284 Mr. Peters. Aye.

2285 Ms. Williams. Mr. Peters votes aye.

2286 Chairman Goodlatte. The gentleman from Virginia?

2287 Mr. Forbes. Aye.

2288 Ms. Williams. Mr. Forbes votes aye.

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

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

2296 [Laughter.]

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

2299 The gentleman from South Carolina?

2300 Mr. Gowdy. Yes.

2301 Ms. Williams. Mr. Gowdy votes yes.

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

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

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

2309 [The information follows:]

2310

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

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