

1 NATIONAL CAPITOL CONTRACTING
2 RPTS AVERETT
3 HJU312000

4 MARKUP OF H.R. 3989
5 Wednesday, November 8, 2017
6 House of Representatives,
7 Committee on the Judiciary,
8 Washington, D.C.

9 The committee met, pursuant to call, at 10:00 a.m., in
10 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
11 [chairman of the committee] presiding.

12 Present: Representatives Goodlatte, Sensenbrenner,
13 Smith, Chabot, Issa, King, Franks, Gohmert, Jordan, Poe,
14 Marino, Gowdy, Labrador, Farenthold, Collins, DeSantis,
15 Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs,
16 Rutherford, Handel, Conyers, Nadler, Lofgren, Jackson Lee,
17 Cohen, Johnson of Georgia, Deutch, Richmond, Jeffries,
18 Cicilline, Swalwell, Lieu, Raskin, Jayapal, and Schneider.

19 Staff Present: Shelley Husband, Staff Director; Branden
20 Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian

21 and General Counsel; Bobby Parmiter, Chief Counsel,
22 Subcommittee on Crime, Terrorism, Homeland Security, and
23 Investigations; Ryan Breitenbach, Counsel, Subcommittee on
24 Crime, Terrorism, Homeland Security, and Investigations;
25 Alley Adcock, Clerk; Aaron Hiller, Minority Chief Oversight
26 Counsel; Danielle Brown, Minority Chief Legislative Counsel
27 and Parliamentarian; Joe Graupensperger, Minority Counsel;
28 Arya Hariharan, Minority Counsel; Rachel Calanni, Minority
29 Professional Staff Member; Monalisa Dugue, Minority Deputy
30 Chief Counsel; Perry Apelbaum, Minority Chief Counsel and
31 Staff Director; David Greengrass, Minority Counsel; and
32 Matthew Morgan, Minority Counsel.

33 Chairman Goodlatte. The Judiciary Committee will come
34 to order, and without objection, the chair is authorized to
35 declare a recess at any time.

36 Pursuant to notice, I now call up H.R. 3989 for
37 purposes of markup, and move that the committee report the
38 bill favorably to the House. The clerk will report the
39 bill.

40 Ms. Adcock. To amend the Foreign Intelligence
41 Surveillance Act of 1978 to clarify and improve the
42 procedures and accountability for authorizing certain
43 acquisitions of foreign intelligence, to extend title VII of
44 such Act to ensure that the barriers to sharing critical
45 foreign intelligence among the intelligence community that
46 existed before September 11, 2001, are not re-imposed, and
47 for other purposes.

48 [The bill follows:]

49 ***** INSERT 1 *****

50 Chairman Goodlatte. Without objection, the bill is
51 considered as read and open for amendment at any time, and I
52 will begin by recognizing myself for an opening statement.

53 Good morning. Today we mark up the USA Liberty Act,
54 H.R. 3989, a bill that reauthorizes, among other provisions,
55 section 702 of the Foreign Intelligence Surveillance Act, or
56 FISA. Congress first passed this law in 2008 and then
57 reauthorized it again in 2012. At its core, section 702
58 permits the Attorney General and the Director of National
59 Intelligence to jointly authorize the targeting of non-U.S.
60 persons reasonably believed to be located outside the United
61 States to acquire foreign intelligence.

62 The section 702 authority is commonly understood to be
63 our Nation's most critical national security surveillance
64 tool. It comprises approximately 25 percent of the National
65 Security Agency's electronic collection, offering insight
66 into terrorist communications, providing valuable foreign
67 intelligence to our policymakers, and giving an operational
68 advantage to our men and women on the battlefield.

69 In short, we must reauthorize this law to ensure that
70 our country's intelligence apparatus continues to be the
71 best in the world at protecting the people of our own
72 country and helping to protect our cherished allies in the
73 global battle against terrorism.

74 Notwithstanding the law's importance, it is undisputed

75 that section 702 results in the incidental collection of
76 communications of U.S. persons. While it is already illegal
77 to target a U.S. person under section 702 authority, the
78 nature of the international communications infrastructure
79 and the fact that actual targets of 702 surveillance do
80 communicate with U.S. persons make it impossible for all
81 U.S. person communications to be avoided or filtered.

82 In fact, the term "incidental collection" is used to
83 describe the collection of U.S. person communications under
84 702 rather than, for instance, "unwanted collection,"
85 because if we have targeted an ISIS leader overseas, and a
86 terrorist cell in the U.S. then communicates with that ISIS
87 leader overseas, it is necessary to read those
88 communications in order to block a terrorist attack on
89 innocent Americans.

90 Nevertheless, section 702 surveillance does pick up
91 innocent Americans' communications, too. And so, Ranking
92 Member Conyers and I set about reforming this law to ensure
93 that civil liberties are protected throughout all steps of
94 the 702 paradigm. At the point of collection, following the
95 incorporation of 702 collection into U.S. databases, and
96 when the contents of 702 collection are searched for
97 evidence of crimes.

98 Despite the fact that 702 acquisitions must be
99 conducted in a manner consistent with the Fourth Amendment,

100 and every court that has considered the issue has found that
101 702 adheres to the Constitution, there are valid reasons why
102 I and many members of this committee have called for reforms
103 to ensure that this national security authority is not
104 improperly used to circumvent traditional privacy
105 protections in routine criminal investigations. This is
106 where the bulk of our energies have been focused in
107 drafting.

108 The USA Liberty Act for the first time will restrict
109 access to the content of 702-acquired communications when
110 the purpose for seeking such content is to return evidence
111 of routine crimes. We do this by subjecting the executive
112 branch to the highest legal investigative standard possible,
113 probable cause, before agents or analysts can access the
114 content of 702-acquired communications for routine criminal
115 purposes.

116 Federal court oversight is also provided by our bill
117 through a requirement to obtain a court order, otherwise
118 known as a search warrant, in the criminal context before
119 the government can look at any communications content
120 acquired under 702 if the purpose of the access is to gain
121 insight into a routine crime.

122 Therefore, unless an agent is seeking evidence of
123 foreign intelligence, like a terrorist plot, a probable
124 cause-based order will be required before any access to the

125 content of 702-acquired communications is authorized,
126 subject to limited exceptions.

127 I have also heard concerns from members of this
128 committee about the lack of prosecutions of leakers of
129 classified information. I agree this is a major problem.
130 The Department of Justice should be devoting significant
131 energy and resources toward investigating these leaks and
132 bringing offenders to justice.

133 Importantly, the USA Liberty Act contains strong
134 reforms to increase accountability, transparency, and
135 criminal liability when laws are broken and someone publicly
136 leaks classified information. Specifically, the bill
137 requires agencies to document all unmasking requests, and
138 requires the agencies to retain that information so that if
139 leaks arise Congress can audit the records to root out
140 leakers if DOJ fails to act.

141 The bill also includes new reporting requirements on
142 the number of U.S. persons who have been swept up in section
143 702 collection. Furthermore, the bill increases the maximum
144 penalty for those who improperly remove and mishandle
145 classified information from 1 year to 5 years.

146 Finally, I would like to say something about the
147 current political climate in which we operate. The American
148 people expect that any surveillance measure be structured in
149 a way that both protects them from international threats and

150 ensures their communications' privacy is secured from
151 unfounded government intrusion. We on this committee agree,
152 and have carefully crafted this bill to ensure that both our
153 national security and our civil liberties are protected,
154 because government power always has the potential for abuse.

155 While I understand that some will want us to restrict
156 this surveillance authority further, and others disagree
157 with any restrictions on our intelligence authorities, the
158 ultimate goal here is to reauthorize a very important
159 program with meaningful and responsible reforms.

160 If we do not protect this careful compromise, all sides
161 of this debate risk losing. It is the case at this moment,
162 more than at any time I recall, that we must not risk
163 submitting to the old adage of making the perfect be the
164 enemy of the good.

165 FISA section 702 is set to expire at the end of the
166 year, and the USA Liberty Act is the best legislative
167 solution to preserve this important national security tool,
168 while also providing for much-needed reforms to protect our
169 valued civil liberties. I urge the committee to support
170 this meaningful and responsible legislation.

171 Thank you to Ranking Member Conyers and his staff for
172 their leadership; to the chairman of the Crime, Terrorism,
173 Homeland Security, and Investigation Subcommittee, Mr.
174 Sensenbrenner, for his guidance and historic leadership on

175 surveillance matters; and to the ranking member of the
176 subcommittee, Ms. Jackson Lee, for her leadership on these
177 important issues.

178 I also want to thank all the original cosponsors of
179 this legislation for their commitment to passing a bill that
180 achieves a critical balance for national security and civil
181 liberties protections.

182 Thank you, and I now yield to the ranking member, Mr.
183 Conyers, for his opening statement.

184 [The prepared statement of Chairman Goodlatte follows:]

185 ***** COMMITTEE INSERT *****

186 Mr. Conyers. Thank you, Chairman Goodlatte, and I join
187 you in congratulating all the persons you named here that
188 have worked on the bill.

189 There are many in the civil liberties community who
190 fear that this measure, H.R. 3989, does not accomplish every
191 reform we had hoped to see. They are concerned that the
192 government has used the Foreign Intelligence Surveillance
193 Act in ways that Congress had never contemplated, and that
194 the public would never tolerate. But there are others that
195 fear the bill goes too far. For the most part, these
196 critics are patriots, charged with keeping us safe, and
197 whose greatest fear is somehow falling short in that
198 responsibility.

199 To those in the civil liberties community, I would
200 point to all of the good work done in this bill. For years,
201 our members have expressed concern that information
202 collected under section 702 is repurposed for criminal
203 investigations and other projects that have nothing
204 whatsoever to do with national security. This measure
205 before us will end that practice. If a law enforcement
206 agency wants access to this information, they must first
207 obtain a warrant based on individualized suspicion and
208 probable cause.

209 We have also, for years, opposed the so-called "about"
210 collection, the gathering of communications that simply

211 mention foreign targets, both because Congress never
212 intended for section 702 to be used that way and because it
213 swept in so much unrelated content. Twice the FISA court
214 has taken a hard look at the "about" collection; twice the
215 court found it deficient on Fourth Amendment grounds, taking
216 the government to task for an institutional lack of candor
217 that allowed deficiencies to persist for years without
218 correction.

219 In this March, faced with the prospect of losing
220 section 702 altogether, the NSA voluntarily ended the
221 practice. Our bill would prohibit that type of surveillance
222 by law.

223 The bill creates a new regime of transparency and
224 accountability. It encourages the court to appoint an
225 amicus to its annual hearings section on section 702,
226 someone to push back against the government's more creative
227 legal arguments. Any agency that has access to section 702
228 information must publish their minimization procedures.

229 The government will owe both Congress and the public a
230 never-before-seen level of detail about how they use the
231 statute. Have we accomplished every reform I had hoped to
232 see? No, I am afraid we have not, but this legislation
233 represents real, achievable, and substantive reform.

234 I am proud of this work. And Chairman Goodlatte and I
235 will fight to protect this package of reforms as it makes

236 its way to the floor. To the men and women of the
237 intelligence community, I would point to the extraordinary
238 links we have taken to ensure that you have the tools you
239 need to analyze foreign intelligence information. I know
240 that many are uncomfortable with the prospect of reform, any
241 reform, not because they want to spy on Americans, but
242 because they want to protect us from real and present
243 threats to our country.

244 But there is a reason that it falls to this committee
245 and not to the intelligence committees or the agencies
246 themselves to build the legal framework for these powerful
247 surveillance authorities. In this room, a step or two
248 removed from the urgency of every threat that comes across
249 the screen, we can have an honest conversation about how
250 these authorities accord with our values, and that is
251 precisely what has happened here.

252 For months we have examined section 702 in a sober and
253 serious light. We have heard from government agents, legal
254 experts, technology and communication companies, and the
255 best of members in the civil society. At the end of our
256 discussion, we have reached consensus that section 702
257 should be reauthorized, but if, and only if, it can be
258 brought better in line with values like privacy,
259 transparency, and due process, which brings me to my
260 concluding thought.

261 When we discuss powers and programs like these, it can
262 be tempting to frame the discussion as a balancing act
263 between security and privacy. I find often that framing a
264 false choice. The central thesis of the USA Liberty Act is
265 that we can have both security and privacy. We can give the
266 government the tools it needs and do so in a way that better
267 respects our core values. We proved that we could do so in
268 the last Congress, when we worked to pass the USA Freedom
269 Act. We will do so again, I hope, today.

270 And I want to thank the chairman and those that have
271 supported us for their leadership on this issue. And I want
272 to thank you each of the original cosponsors of this bill,
273 Democrats and Republicans alike, for lending their support
274 to this important project. I urge my colleagues to support
275 the legislation and I thank the chairman and yield back the
276 balance of my time.

277 [The prepared statement of Mr. Conyers follows:]

278 ***** COMMITTEE INSERT *****

279 Chairman Goodlatte. Thank you, Mr. Conyers. And I
280 would now like to recognize the chairman of the Subcommittee
281 on Crime, Terrorism, Homeland Security, and Investigations,
282 Mr. Sensenbrenner of Wisconsin, for his opening statement.

283 Mr. Sensenbrenner. Thank you, Mr. Chairman. Congress
284 created section 702 authority to address an intelligence
285 collection gap that resulted from changes in technology in
286 the years after FISA became law in 1978. Section 702
287 permits the government to conduct targeted surveillance of
288 foreign individuals reasonably believed to be located
289 outside the United States. This statute is necessary
290 because a significant share of world's communications pass
291 through the United States, even when they begin or end
292 overseas.

293 Section 702 has been described as one of the most
294 efficient and vital programs to protect our national
295 security. The Privacy and Civil Liberties Oversight Board,
296 called PCLOB, similarly found that the information the
297 program collects has been valuable and effective in
298 protecting the Nation's security and producing useful
299 foreign intelligence. This is not to say that reforms are
300 not needed.

301 Section 702 surveillance programs incidentally collect
302 information about U.S. persons. Reforms are needed to
303 better safeguard American civil liberties, and new

304 protections and transparency requirements are needed to
305 ensure the government's use of section 702 aligns with
306 principles of privacy and due process. I am proud to be an
307 original cosponsor of the USA Liberty Act of 2017. This
308 carefully crafted bipartisan legislation represents the type
309 of commonsense compromise that our country needs and
310 deserves.

311 It balances privacy and security by requiring greater
312 oversight, transparency, and accountability of the
313 government surveillance programs, while limiting the
314 incidental collection of Americans' communications and
315 requiring a court order to query data. It also puts in
316 place a 6-year sunset provision, allowing Congress to
317 reexamine the legislation as our society and everything that
318 threatens it continues to evolve.

319 Legislation makes several other key changes, ending the
320 so-called "about" collection; creating a presumption that a
321 court-appointed expert will be present in the annual
322 recertification hearings before the FISA Corp; additional
323 whistleblower protections; and increased penalties for
324 knowingly mishandling classified information. While some
325 have advocated for a clean and permanent reauthorization of
326 702, I believe this would amount to a dereliction of duty by
327 Congress, and it would limit its ability to respond to the
328 changing demands of the technological world.

329 By maintaining FISA's sunset, lawmakers are able to
330 review actions taken by government agencies and to ensure
331 that citizens' constitutional rights are being upheld, as
332 well as to make any necessary reforms to the law. That is
333 what we have done with the Patriot Act several times. It
334 has worked well then, and it should be applied here.

335 The USA Liberty Act will bring much-needed reform on
336 how the Federal Government collects information gathering
337 for foreign intelligence, counterterrorism, and criminal
338 purposes. The legislation builds off the success of the USA
339 Freedom Act by finding the appropriate balance between
340 privacy and national security.

341 I thank the chairman, Ranking Members Conyers, and
342 Jackson Lee, for their hard work, and I urge my colleagues
343 to support the bill and yield back the balance of my time.

344 [The prepared statement of Mr. Sensenbrenner follows:]

345 ***** COMMITTEE INSERT *****

346 Chairman Goodlatte. Thank you, Mr. Sensenbrenner. I
347 would now like to recognize the ranking member of the
348 Subcommittee on Crime, Terrorism, Homeland Security, and
349 Investigations, Ms. Jackson Lee of Texas, for her opening
350 statement.

351 Ms. Jackson Lee. Thank you very much, Mr. Chairman,
352 and thank you to the ranking member, and the ranking member
353 of the subcommittee, and all of those who contributed to
354 really answering the concerns, clearly, of those who deserve
355 and desire to be secure, but as well, the very strong
356 component of privacy advocates and champions that I believe
357 should not be ignored.

358 And I believe that this effort has been one to
359 specifically ensure that the concerns of privacy, as I have
360 had concerns, starting from 2008 and also starting earlier,
361 after September 11, 2001, that we in fact do not allow the
362 terrorists to terrorize our own constitutional privileges.

363 Section 702 is part of the FISA Amendments Act, FAA,
364 and a successor to the Bush administration's unlawful,
365 warrantless wiretapping program that ended in 2007. The FAA
366 prohibits the intentional targeting of persons in the United
367 States -- although it did -- the FAA had been in place for
368 only a few months when the New York Times reported the NSA
369 had over-collected domestic communications, a practice
370 described as significant and systematic, even if

371 unintentional.

372 And so, as we move toward this section 702, and the
373 chairman and ranking member work together with many of us, I
374 want to make it very clear that I still stand shoulder to
375 shoulder in protecting Americans against terrorism, but
376 shoulder to shoulder against the constitutionalists and
377 those who believe in our rights of privacy.

378 Some of accuse the government of engaging in deliberate
379 reverse targeting, and I believe there is language that we
380 got in in 2008 that prohibits that reverse targeting, and it
381 should be particularly attentive for us to ensure that even
382 if it is used under the guise of a domestic threat, that the
383 American people are protected from reverse targeting.

384 I introduced H.R. 66, the FISA Court in the Sunshine
385 Act, to adhere to privacy concerns. It was bipartisan
386 legislation that would bring much-needed transparency
387 without compromising national security to the decisions,
388 orders, and opinions of the Foreign Intelligence
389 Surveillance Court, the FISA Court.

390 Specifically, the bill requires the Attorney General to
391 disclose each decision, order, or opinion of a foreign
392 intelligence court, allowing Americans to know how broad of
393 a legal authority government is claiming under the Patriot
394 Act and Foreign Intelligence Surveillance Act to conduct the
395 surveillance to keep Americans safe.

396 I look forward to that level of transparency as we move
397 this legislation forward, but I am supporting H.R. 3989 with
398 a few offerings that I will make as amendments. It is a
399 bipartisan measure, a great start in remedying some of the
400 problems. This bill reauthorizes the 702 against a new
401 backdrop that focuses on privacy protections. The
402 government will require a warrant to access or disseminate
403 the content of its collection where the purpose of
404 collecting such information is not a foreign intelligence
405 analysis.

406 Again, this is very important. The government will
407 require or have to have a warrant to access or disseminate
408 the content of its collection where the purpose of
409 collecting such information is not from foreign intelligence
410 analysis.

411 Third, and germane to circumstances like the
412 government's new assessment of Black identity extremists,
413 for example, where information is sought for the purpose of
414 criminal investigation a warrant will be required. I intend
415 to raise concerns, but I want to express the position of
416 "good job" in being concerned about the very important
417 issues of privacy and protection of the rights of the
418 American citizen, and that 702 comes many light years from
419 when we began this process after 9/11. That is the role of
420 the Judiciary Committee. We are the arbiters of the

421 Constitution; we do hold it in our hands; and the American
422 people look to us to uphold the Constitution.

423 Mr. Conyers. Would the gentlelady yield?

424 Ms. Jackson Lee. I would be happy to yield to the
425 gentleman.

426 Mr. Conyers. I want to thank the gentlelady, and I
427 want her to know that at least one of her proposals I am
428 prepared to accept. And I congratulate her on her
429 thoroughness and diligence in helping us make this a better
430 bill. Thank you.

431 Ms. Jackson Lee. I thank the gentleman, and with that,
432 I thank him, the ranking member, and the chairman for their
433 work together. I thank this committee. With that, I am
434 happy to yield back. Thank you.

435 [The prepared statement of Ms. Jackson Lee follows:]

436 ***** COMMITTEE INSERT *****

437 Chairman Goodlatte. Thank you, Ms. Jackson Lee.

438 Mr. Conyers. Mr. Chairman, I have an amendment.

439 Chairman Goodlatte. I have got one first. I now

440 recognize myself for purposes of offering an amendment in

441 the nature of a substitute, and the clerk will report the

442 amendment.

443 Ms. Adcock. Amendment in the nature of a substitute to

444 H.R. 3989, offered by Mr. Goodlatte of Virginia. Strike all

445 after the --

446 [The amendment of Chairman Goodlatte follows:]

447 ***** INSERT 2 *****

448 Chairman Goodlatte. Without objection, the amendment
449 will be considered as read, and I will recognize myself to
450 explain the amendment.

451 The amendment in the nature of a substitute make
452 several changes to the introduced version of the bill, many
453 of which I alluded to in my opening statement. These
454 changes were made in response to comments and concerns
455 raised by members of this committee, privacy and civil
456 liberties advocacy groups, and the intelligence community.
457 I believe this substitute amendment is representative of
458 this committee's ongoing effort to carefully craft a
459 bipartisan, responsible compromise.

460 Among the changes in the substitute are the following.
461 The substitute permits access to 702-acquired
462 communications, both content and metadata, only in response
463 to two types of queries, ones reasonably designed to return
464 foreign intelligence information and those for evidence of a
465 crime. This codifies the current purposes for querying.

466 The substitute further clarifies that the Foreign
467 Intelligence Surveillance Court must make an independent
468 determination of probable cause before issuing an order
469 allowing the Attorney General to view contents of 702-
470 acquired communications in circumstances where an order is
471 required.

472 It removes the prohibition on metadata being used as

473 the sole basis for establishing probable cause to view
474 content, but adds a prohibition on accessing particular
475 metadata if a probable cause order would be required to view
476 such metadata in a criminal investigation.

477 The substitute also makes several changes to the bill's
478 underlying probable cause construct for purposes of clarity.
479 First, it amends the foreign intelligence information
480 exception to cover access to communications other than in
481 response to a query -- that is, real-time access by the NSA
482 -- and clarifies what querying for foreign intelligence
483 information includes.

484 Second, it modifies the emergency exception to clarify
485 circumstances under which the exception can be used and the
486 procedures the Attorney General must follow when using the
487 exception.

488 Finally, it adds a new exception to cover limited
489 circumstances where a selector queried for any purpose
490 results in hits within a 702 database. If the Attorney
491 General reasonably determines that the person identified by
492 the queried term is, or is communicating with, one, a person
493 reasonably believed to be engaged in international
494 terrorism; or, two, a person reasonably believed to be
495 acting for or in furtherance of the goals or objectives of
496 an international terrorist or international terrorist
497 organization, the contents may be viewed without an order.

498 The purpose of this exception is to cover tips where the FBI
499 cannot articulate a foreign intelligence purpose for the
500 query, but there are hits in the 702 database.

501 The substitute maintains the end of "about" collection,
502 but adds an annual reporting requirement which will ensure
503 that the issue does not remain dormant for 6 years and will
504 promote vigorous congressional oversight and debate.

505 I thank my colleague from Michigan, the ranking member,
506 for his work on this substitute amendment and his
507 partnership in this effort. I urge my colleagues to support
508 this amendment.

509 For what purpose does the gentleman from Michigan seek
510 recognition?

511 Mr. Conyers. I move to strike the last word.

512 Chairman Goodlatte. The gentleman is recognized for 5
513 minutes.

514 Mr. Conyers. You are right, Mr. Chairman. You and I
515 and our staffs have worked together on this substitute
516 amendment, and I am prepared to support it. And I thank you
517 and yield back the balance of my time.

518 Chairman Goodlatte. Thank you. For what purpose does
519 the gentlemen from New York seek recognition?

520 Mr. Nadler. I move to strike the last word.

521 Chairman Goodlatte. The gentleman is recognized for 5
522 minutes.

523 Mr. Nadler. Thank you. Mr. Chairman, I rise to
524 support the USA Liberty Act, and I am proud to be an
525 original cosponsor of this legislation. I want to thank
526 Chairman Goodlatte and Ranking Member Conyers for working in
527 good faith on the USA Liberty Act, a bill to reform
528 government surveillance under section 702 of the FISA Act.
529 And I want to thank the chairman and the ranking member for
530 the substitute amendment in the nature of a substitute.

531 This bill is really a continuation of our work together
532 on the USA Freedom Act, where we took major steps to end
533 bulk collection of information by the government and
534 promised to work together to reform the 702 program as well.
535 The bill we have here today is a fulfillment of that
536 promise.

537 The USA Liberty Act is an attempt to strike the
538 appropriate balance, giving our intelligence agencies the
539 tools they need to keep us safe, while making sure
540 individual liberty and privacy rights are protected. There
541 are many good aspects of this bill, but there are three main
542 provisions that I want to stress.

543 First, the bill institutes a requirement for a warrant
544 based on probable cause in order for criminal investigators
545 to query the information obtained by the 702 program. This
546 is a key improvement. For the first time, we will require
547 the government to have a warrant before obtaining

548 information on U.S. persons for criminal investigations.
549 Second, the bill prohibits "about" collection. "About"
550 collection lead to the gathering of much more information
551 than just to and from details of communication, therefore
552 this legislation significantly curbs the amount of
553 incidental information that can be searched.

554 I understand that the agencies have already limited
555 "about" collection in response to court orders, but we are
556 now enshrining that prohibition in law to guarantee this
557 information remains off-limits.

558 Third, the bill has a sunset. We are not simply giving
559 the government unlimited power to surveil U.S. persons
560 indefinitely. This is a temporary program with reporting
561 requirements and the promise of oversight that comes as a
562 result of the provisions that have a sunset. And that leads
563 me to my final point, which is the institution of real
564 transparency and accountability.

565 The legislation we have drafted creates critical
566 operational norms for the 702 program. These procedures
567 make the program more accountable, more transparent, and
568 ultimately more effective in striking the critical balance
569 between national security needs and the individual's
570 constitutional rights. What we have produced so far is a
571 compromise. We have welcomed and we very much appreciate
572 the input of the intelligence and civil liberties

573 communities and their suggestions for reform, and many of
574 their suggestions have been incorporated in the bill and in
575 the amendment in the nature of a substitute.

576 I find some of the additional suggested edits
577 compelling, particularly when it comes to requiring a
578 warrant for back-door searches, but the question before us
579 today is, what is the proper balance, and what can we pass?
580 How much change can we bring to the program and still get it
581 to pass the House and Senate and be signed into law? I
582 believe this bill is about as far as we can take it in terms
583 of the ability to pass a bill into law, and I support it for
584 that reason. I yield back the balance of my time.

585 Mr. Conyers. Would the gentleman yield?

586 Mr. Nadler. Sure, yes, I will yield.

587 Mr. Conyers. I wanted to merely congratulate the
588 gentleman, who led us into, I think, an important series of
589 improvements to the measure, and I thank him for his
590 contribution.

591 Mr. Nadler. Would the gentleman yield? I thank the
592 gentleman, and I yield back the balance of my time.

593 Mr. Raskin. Would the gentleman yield?

594 Mr. Nadler. Sure.

595 Mr. Raskin. Just for a quick question.

596 Mr. Nadler. I will not yield back the balance of my
597 time. I yield to the gentleman.

598 Mr. Raskin. Would you explain your point about the
599 imposition of a warrant requirement? In what context is
600 warrant requirement required, and in what context is it not?
601 Just so we are clear on that.

602 Mr. Nadler. Well, you have one united database, which
603 they have constructed over the years. It is a giant
604 database. You have a hit; you have a license plate number
605 of some car there seems to be casing the White House or --
606 and the hit may be a name of a person, it may be a license
607 plate number, it may be a phone number that comes up in
608 various different things.

609 You enter that -- I do not know what you call it -- you
610 enter that phone number or license plate number or name of a
611 person or something into the database to see what there is.
612 And the guy who is entering it may be an FBI agent, or a
613 CIA, or whoever. You get back the notation that there are
614 700 different fields in which this phone number appears, 10
615 of which are section 702.

616 You were notified by this search that there are, you
617 know, a hundred hits, a hundred different data fields where
618 this appears, and X number of them are 702. You can look at
619 any of the others, but if you want to query the 702 data, if
620 you want to see what information, what content there is in
621 that data field where this phone number appeared, you need a
622 warrant. If it is for criminal purposes, you need a

623 warrant. If it is national security, you do not need a
624 warrant, but if it is not national security, it is criminal,
625 at that point you need the warrant.

626 Now, some people say you should require the warrant
627 before you even query all the data fields.

628 Chairman Goodlatte. Without objection, the gentleman
629 is recognized for an additional 1 minute to wrap up. We
630 will have plenty of time to discuss --

631 Mr. Nadler. Okay. We will be discussing this more
632 later. But that is not in the bill. What the bill says is
633 if you want to access any 702 information for non-national
634 security purposes, you have got to get a warrant at that
635 point. I yield back.

636 Chairman Goodlatte. The time of the gentleman has
637 expired. For what purpose does the gentlewoman from
638 California seek recognition?

639 Ms. Lofgren. I move to strike the last word.

640 Chairman Goodlatte. The gentlewoman is recognized for
641 5 minutes.

642 Ms. Lofgren. I appreciate the hard work that members
643 of the committee have put into this bill, but regret to
644 observe that the measure still falls short of what I believe
645 is required by the Constitution.

646 You know, when you talk about incidental collections it
647 is hard to know in a public setting, or to discuss in a

648 public setting, what that is. But we were all in a
649 classified briefing where Admiral Rogers described the
650 scope. I will not repeat what he said since it was
651 classified; I will just say this is a significant issue. It
652 is a significant issue.

653 And to think that we would permit queries of this
654 substantial database of Americans collected "incidentally"
655 without a warrant for foreign intelligence purposes, which
656 is very broad, is inconsistent with the Fourth Amendment of
657 the Constitution, and it needs a remedy.

658 I know that Mr. Poe will be offering an amendment
659 later, and we will have an opportunity to discuss that, but
660 it is worth noting that "foreign intelligence purposes" is
661 very broad. It could include trade agreements, other
662 issues. It is a truckload-size exception to the warrant
663 requirement.

664 And some believe, and I think this is significant, that
665 this codification of the exception actually brings us back.
666 It is a step backward from current law. The ACLU has
667 advised us that this would codify warrantless searches of
668 American communication for foreign intelligence purposes and
669 when there is any communication with an individual
670 suspected, and that this would therefore give less weight to
671 Americans' constitutional rights when the government claims
672 a foreign intelligence or national security purpose, that

673 this codification could be used to justify lowering the
674 level of protection for Americans' privacies in a host of
675 other contexts.

676 So, I do think, although I do not doubt the intentions
677 of the members of the committee who have worked on this,
678 that we have created a measure that actually takes us a step
679 backwards in the protection of constitutional rights, and I
680 have grave concerns about that.

681 I want to talk also about the warrant issue. We do not
682 know very much about what the FBI is doing because they have
683 refused to give us information. We have asked formally; the
684 committee has asked formally no less than three times over
685 the past year and a half to provide us with an estimate of
686 the number of persons' communications that are being
687 collected under 702.

688 We got an inkling of that in the classified briefing,
689 but the only hard number we have is that the FBI claimed it
690 received and reviewed a grand total of one query that was
691 designed to return evidence of a crime unrelated to foreign
692 intelligence.

693 Well, what that would mean, I assume, is that the FBI
694 considered every other query a foreign intelligence query,
695 which under this proposed act could be performed without a
696 warrant and statutorily protected.

697 You know, we have been at this for some time, and the

698 last time we were reviewing 702, Mr. Chairman, the argument
699 was made that we had to agree to a bill that fell short of
700 what the Constitution required because there was some sort
701 of deal. I do not believe that that exists. The intel
702 committee opposes the Liberty Act; the Intelligence
703 Committee and agencies are not on board; the Administration
704 is opposed; and none of the civil liberties groups who help
705 us in defending the Constitution support this bill.

706 When we last revisited it, everybody on the committee
707 said they agreed with the need for a warrant for the query
708 of U.S. persons' information on the so-called incidental
709 database. Everyone said they were for it substantively, but
710 procedurally, it was a problem.

711 It is time to stop that. It is time to put the
712 Constitution first, and I do not think this bill, however
713 pursued in good faith, accomplishes what the Constitution
714 requires. And I think it is important to state that here at
715 the outset. And Mr. Chairman, I yield back the balance of
716 my time.

717 Chairman Goodlatte. The chair thanks the gentlewoman.
718 Are there any amendments to H.R. 3989? For what purpose
719 does the gentleman from Michigan seek recognition?

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

722 Chairman Goodlatte. The clerk will report the

723 amendment.

724 Ms. Adcock. Amendment to the amendment in the nature
725 of a substitute to H.R. 3989, offered by Mr. Conyers of
726 Michigan.

727 [The amendment of Mr. Conyers follows:]

728 ***** COMMITTEE INSERT *****

729 Chairman Goodlatte. Without objection, the amendment
730 will be considered as read and the gentleman is recognized
731 for 5 minutes on his amendment.

732 Mr. Conyers. Thank you, Mr. Chairman. I am always
733 impressed by the logic of the gentlewoman from California
734 and still am, but I think this is a perfectly sound
735 amendment. And over the past year we have met regularly
736 with agencies that have access to section 702 information.

737 Over the past few weeks in particular, we have worked
738 extraordinarily hard to accommodate concerns expressed by
739 the Department of Justice and the Director of National
740 Intelligence, and even though some in the administration
741 still refused to engage with us on this legislation, some of
742 their criticism suggests that they may not have carefully
743 studied the bill that they oppose.

744 Nevertheless, we have agreed to help the government
745 with one of their key concerns, specifically a situation
746 where the FBI can see that a suspect is talking to a known
747 terrorist but lacks the information necessary to develop
748 probable cause.

749 Now, I know the chairman of this committee has spoken
750 at length with the Director of the FBI about this fact
751 pattern, and I can agree to mitigate that concern. However,
752 I believe that this new provision, as circulated in the
753 underlying text, requires improvement, and my amendment

754 would make several key changes.

755 First, it tightens the definitions in this part of the
756 bill, the provision that should be aimed clearly at persons
757 engaged in international terrorism as defined by law.

758 Secondly, it corrects a drafting error that we believe could
759 have been exploited to sweep in far too many cases that we
760 intend to be covered not by the exception, but by the rule,
761 namely a warrant based on probable cause. Thirdly, it
762 brings the government's use of this new exception under the
763 supervision of the Foreign Intelligence Surveillance Court.

764 If the Attorney General gets the facts wrong and the
765 subject of the investigation was not in fact talking to a
766 known terrorist, the government should not be able to use
767 the information they find in the section 702 database.

768 And finally, my amendment builds in a new reporting
769 requirement -- or requirements, plural -- so that we can see
770 how often the government uses both this provision and the
771 emergency exception that has been part of this bill for some
772 time.

773 I thank the chairman for working with me on the
774 language of this amendment, and I hope our work on this
775 provision signals to our friends and to our critics that we
776 will continue to work to improve this legislation as it
777 makes its way to the floor.

778 And so, I ask my colleagues to support the amendment,

779 as well as the underlying bill, and I yield back the balance
780 of my time.

781 Chairman Goodlatte. The chair thanks the gentleman.
782 The chair recognizes himself in support of the amendment. I
783 first want to thank Mr. Conyers for offering this amendment,
784 which I very strongly support. This amendment makes a small
785 but important clarifying change to the substitute to fix
786 some well-intended but potentially over-broad language.

787 It accomplishes our mutual goal of ensuring that H.R.
788 3989 will allow the government to pursue individuals who are
789 reasonably believed to be engaged in material support of
790 terrorism as that term is defined in Federal law. By making
791 this change, the amendment resolves some ambiguity in the
792 underlying substitute.

793 This is a good amendment. I appreciate my friend
794 offering it and thank him for his partnership and good faith
795 over the last several months as we have collaboratively
796 worked through this and other issues, and I urge my
797 colleagues to support this amendment as well.

798 The question occurs on the amendment to the amendment
799 in the nature substitute offered by the gentleman from
800 Michigan.

801 All those in favor, respond by saying aye.

802 Those opposed, no.

803 The ayes have it and the amendment is agreed to.

804 For what purpose does the gentleman from Texas seek
805 recognition?

806 Mr. Poe. Chairman, I have an amendment at the desk.
807 Chairman Goodlatte. The clerk will report the
808 amendment.

809 Ms. Adcock. Amendment to the amendment in the nature
810 of substitute to H.R. 3989, offered by Mr. Poe of Texas.
811 Page 3, strike lines 15 and all that follows through page
812 10, line 9, and insert the following --

813 [The amendment of Mr. Poe follows:]

814 ***** COMMITTEE INSERT *****

815 Chairman Goodlatte. Without objection, the amendment
816 is considered as read and the gentleman is recognized for 5
817 minutes on his amendment.

818 Mr. Poe. I thank the chairman. I also want to thank
819 members of the committee on both sides -- Ms. Lofgren, Mr.
820 Jordan, Mr. Biggs, Mr. Labrador, Ms. Jayapal, Mr. Jeffries -
821 - for also supporting this amendment.

822 As the gentlelady from California, Ms. Lofgren,
823 mentioned -- a little history -- when we met to pass the
824 U.S. Freedom Act this amendment came up and it was discussed
825 that this was not the time to get this done. And if I
826 recall, every member that spoke supported the amendment to
827 reform 702 in the manner that I will speak about.

828 I do want to say I appreciate the chairman being very
829 conscientious about hearing concerns from myself and others
830 about this amendment and adding it to it, and also the
831 chairman's concern about making sure that the Fourth
832 Amendment is protected. And we have to protect it. This
833 committee's the one.

834 No offense to the intel community or law enforcement
835 community, but it has been experience that they will push
836 the law as far as they can to get the information that they
837 want.

838 I was a prosecutor for 8 years and 22 years as a judge
839 in Texas, doing only criminal cases. I saw and signed a lot

840 of warrants, and there were warrants I would not sign. But
841 the Fourth Amendment makes us different than, I think, any
842 country on earth because of the historical reasons.

843 And so, this amendment is very specific. It goes back
844 to what Ms. Lofgren talked about a few minutes ago on the
845 query information that is seized. So, we step back, and we
846 see the purpose of FISA and 702. It is to go after the bad
847 guys, the terrorists, the people who want to do us harm.

848 And it is good that we go after them and seize their
849 information and let law enforcement prosecute them. We are
850 not talking about those people; we are talking about the
851 incidental data that is seized by government.

852 "Papers," I think, would be probably the best term
853 under the Fourth Amendment, or "effects." It is seized by
854 government not on purpose, but incidental to going after the
855 bad guys. So, we separate the foreign terrorist and
856 terrorism from this data.

857 So, before government can go and look at the data to
858 see what is in it, then they must get a warrant. The
859 difference being in this amendment to the chairman's
860 amendment is -- under this legislation that is proposed
861 before us, not the amendment -- allows government to query
862 the information, look around in there to see how many hits
863 they get, and then have to get a warrant after that.

864 This amendment says, "No, government cannot go in there

865 and phish to see if phish are there." Government must get a
866 warrant based on probable cause, signed by a judge, to query
867 the information, and they get that warrant based upon
868 probable cause that they establish, law enforcement has
869 established through their law enforcement background.

870 It prevents government from going around and searching
871 in the query, looking around how many hits they get on an
872 individual. And the amendment says, "U.S. person" is the
873 definition -- does not say U.S. citizen; it says U.S. person
874 -- and that is where this line is drawn.

875 And that is where I think it is important that we on
876 the Judiciary Committee, while we have this only opportunity
877 to fix FISA and 702, that we make sure that that information
878 that is incidental, before they go looking around to see if
879 there is a hit on Bubba and then try to figure out -- then
880 get probable cause based on this hit, that they have to have
881 probable cause before they go into that information looking
882 for any type of criminal conduct here of that U.S. person.

883 It is the incidental that concerns me, because the
884 purpose of FISA is to go after terrorists, and go after
885 them. Get them; capture them; bring them to a court. But
886 we are not talking about that situation.

887 So, it is a fine line, but I think it is the line to
888 prevent government intrusion into information that they do
889 not have a right to go into without a warrant signed by a

890 judge. Emergency exception; the Attorney General makes that
891 determination, says there is an emergency exception to go
892 into that information. Fine, the Attorney General can make
893 that exception and then state his reasons in the next 7
894 days.

895 It is good. We need to have exceptions. We have
896 exceptions under law. But I think it is paramount that on
897 this issue we protect the Fourth Amendment and not try to be
898 into scare tactics by law enforcement that we have got to
899 have this information. The Justice Department does not
900 support the amendment, probably a good reason why we should
901 support the amendment. I yield back to the chairman. Thank
902 you.

903 Ms. Lofgren. Mr. Chairman?

904 Chairman Goodlatte. The chair thanks the gentleman.

905 Mr. Conyers. Mr. Chairman?

906 Chairman Goodlatte. For what purpose does the
907 gentleman from Michigan seek recognition?

908 Mr. Conyers. I rise in opposition to this amendment.

909 Chairman Goodlatte. The gentleman is recognized for 5
910 minutes.

911 Mr. Conyers. Mr. Chairman and members, although I
912 support the underlying policy, I must urge my colleagues to
913 vote against the amendment. And I cannot say enough about
914 how important it is that the gentleman from Texas, Mr. Poe,

915 and the gentlewoman from California, Ms. Lofgren, to have
916 staked out this ground. Their work sends an important
917 signal to our colleagues about the consensus in this room.
918 But I reluctantly oppose the amendment for two reasons.

919 First, the amendment as drafted almost certainly cannot
920 be implemented. Specifically, the FBI does not determine
921 whether or not a license plate or a phone number or an email
922 address belongs to a United States person before an agent
923 searches its holdings. And I do believe that this is a
924 drafting problem. There are other ways to condition of
925 section 702 information, as we have in the underlying bill.

926 Now, secondly, and even more important, we have been
927 assured in explicit terms that if we adopt this amendment
928 today leadership will not permit this bill to proceed to the
929 House floor. As the chairman of the committee has stated,
930 we cannot let the perfect be the enemy of the good. We have
931 an opportunity to enact some meaningful reform. The
932 alternative is no reform.

933 And after all the work that we have put in, I do not
934 want this amendment to endanger the underlying legislation,
935 and so I oppose the amendment and urge its defeat.

936 Chairman Goodlatte. The chair recognizes himself. I
937 oppose this amendment, but I appreciate the gentleman's
938 concerns which gave rise to this amendment, and for his
939 steadfast support for civil liberties protections. From the

940 beginning of the process of developing this legislation we
941 have heard repeatedly the concern of using section 702, a
942 national security tool, to advance criminal prosecutions of
943 routine crimes.

944 Our bill effectively deals with this issue by allowing
945 queries to be conducted, but requiring a warrant to view
946 content in certain circumstances, such as when the purpose
947 of the query is to return evidence of a crime.

948 By contrast, this amendment would require a warrant for
949 any query of section 702 information about a United States
950 person. This is unworkable and quite frankly could be very
951 dangerous. Today, when FBI agents run a query they do not
952 know whether the queried term belongs to a U.S. person and
953 often cannot know because of the myriad ways that are used
954 to obfuscate the true operator, an owner of an email address
955 or phone number.

956 Imposing a requirement on the FBI to ensure that an
957 email address they receive as part of a tip is used by a
958 known U.S. person would grind to a halt FBI's ability to
959 proactively thwart terrorist attacks in national security
960 situations.

961 Moreover, by requiring a determination of probable
962 cause prior to the query, this amendment would ensure that
963 the FBI as well as other agencies would never query 702
964 information again in certain circumstances. For example,

965 there is no way that an investigator would have probable
966 cause simply by virtue of an anonymous tip about a terrorist
967 plot or after finding an email address or phone number on a
968 scrap of paper in someone's pocket. That is why the query
969 stage cannot be burdened.

970 We have taken pains in this legislation to ensure that
971 criminal investigators can perform a query, but must obtain
972 a probable cause-based order to view content when looking
973 for evidence of a crime. Again, we have required agents to
974 meet the most privacy-enhancing investigative standard in
975 our legal system, probable cause, before gaining access to
976 this information.

977 Finally, and perhaps most importantly, this amendment
978 would cross a line I am unwilling to cross in that it would
979 re-erect the rock between criminal and national security
980 queries at the FBI. This is not an exaggeration. The
981 amendment would require a warrant for queries of 702-
982 acquired information. Which means, in effect, that the FBI
983 would be required to segregate the 702 database from all
984 other FBI databases.

985 In the drafting of this bill we took pains to ensure
986 such silo-ing of information would never happen again,
987 because that is exactly what led to the 9/11 attacks.
988 Sixteen years after that horrific day, we cannot recreate
989 the conditions that allowed it to occur. To adopt this

990 amendment would be to destroy this legislation.

991 Let me be clear for my colleagues: if this amendment
992 passes, this bill will never be considered on the House
993 floor. This means that a vote in favor of this amendment is
994 in reality a vote to kill H.R. 3989 and all of the
995 significant positive reforms the bill would accomplish, so I
996 urge my colleagues to oppose the amendment.

997 For what purpose the gentlewoman from California seek
998 recognition?

999 Ms. Lofgren. I move to strike the last word.

1000 Chairman Goodlatte. The gentlewoman is recognized for
1001 5 minutes.

1002 Ms. Lofgren. Mr. Chairman, I am the coauthor of this
1003 amendment with Congressman Poe, and I just wanted to thank
1004 Representative Poe for the leadership that he has taken on
1005 this issue. We all read this morning that Mr. Poe has
1006 announced his retirement, and I for one will miss him a
1007 great deal. He is the co-chair of the Fourth Amendment
1008 caucus here in the House; I join him in that.

1009 And I will not go through the amendment; he has already
1010 adequately outlined what is in it, and I think it is very
1011 carefully crafted. If you look at the first page, line 9;
1012 8, 9, and 10, it is about persons reasonably believed to be
1013 a U.S. person. I think the concerns expressed on the
1014 drafting are erroneous.

1015 I would like to put into the record three letters: one,
1016 a letter opposing the Liberty Act unless this amendment is
1017 passed from 27 civil liberties groups, both right and left;
1018 a letter of support for the Poe-Loftgren amendment signed by
1019 43 civil liberties organizations, including the Liberty
1020 Coalition, the Constitution Project, and the American Civil
1021 Liberties Union -- this is a left-right coalition of people
1022 who stand up for the Constitution -- as well as a letter
1023 from the ACLU and the Constitution Project that goes into
1024 the elements of the bill that actually make the current
1025 situation worse than the status quo unless the Poe-Loftgren
1026 amendment is adopted.

1027 I would just like to note that we have heard this
1028 before, that unless we do something that is short of our
1029 obligation under the Constitution, nothing will happen. I
1030 am through with that. The Congress of the United States has
1031 the responsibility to protect and defend the Constitution of
1032 the United States.

1033 We take that oath when we become Members of Congress on
1034 the first day that we are sworn in. All of us -- yeah, with
1035 a few exceptions -- but the vast majority of this committee
1036 has voted for essentially this amendment on the
1037 appropriation bills multiple times. I think it is time for
1038 the will of the body to stand up for the Fourth Amendment.

1039 I do not believe that, when all is said and done, we

1040 will not prevail, because I have had so many members of
1041 Congress come up to me on both sides of the aisle and say
1042 they are done with allowing this warrantless search of
1043 American information.

1044 I think in the end we do not have a deal with the Intel
1045 Committee. The intel agencies do not support this effort to
1046 impose the Fourth Amendment on their searches. I
1047 understand. I do not disparage the intel community. We
1048 value the work that they do. Their primary job is to go
1049 after bad guys who are foreigners, and I thank them for
1050 that. That is not inconsistent with the job we have, which
1051 is to defend the Constitution of the United States, while
1052 they do that.

1053 So, I just want to say thanks to Mr. Poe for his
1054 effort. I ask, Mr. Chairman, once again if we could have
1055 unanimous consent to put these letters into the record.

1056 Chairman Goodlatte. Without objection, they will be
1057 made a part of the record.

1058 [The information follows:]

1059 ***** COMMITTEE INSERT *****

1060 Ms. Lofgren. And I ask that we take a stand here. I,
1061 frankly, think that without this amendment I would take the
1062 advice of these civil liberties and constitutional experts
1063 to actually not support this bill. I think it is a step
1064 backwards from where we are today by codifying the
1065 warrantless searches in the national security area.

1066 And again, I thank Mr. Poe not only for this bill, but
1067 for his long history of standing up for what he thinks is
1068 right and his willingness to work with anybody who loves the
1069 Constitution as much as he does. And with that, Mr.
1070 Chairman, I yield back.

1071 Mr. Sensenbrenner. Mr. Chairman?

1072 Chairman Goodlatte. For what purpose does the
1073 gentleman from Wisconsin seek recognition?

1074 Mr. Sensenbrenner. Mr. Chairman, I rise in opposition
1075 to the amendment.

1076 Chairman Goodlatte. The gentleman is recognized for 5
1077 minutes.

1078 Mr. Sensenbrenner. Mr. Chairman, I think everybody on
1079 this committee supports the Fourth Amendment. The Fourth
1080 Amendment was not put in the Constitution by James Madison
1081 when he drafted the Bill of Rights to frustrate all
1082 investigations. And in terms of what is being proposed by
1083 my distinguished friends from Texas and California, this
1084 will completely frustrate, you know, the operation of

1085 section 702 and here is why.

1086 There are two different standards. To get a criminal
1087 search warrant under the Fourth Amendment, you have to show
1088 probable cause to the magistrate that issues the warrant.
1089 However, under a terrorism or national security
1090 investigation, all you need to do is to show reasonable
1091 suspicion, and there is a big gap between reasonable
1092 suspicion on one hand and probable cause on the other.

1093 Now, practically everybody in this room and in the
1094 United States and in many other parts of the world have got
1095 cellphones. I would submit that without any backup
1096 evidence, that probably every terrorist has got a cellphone,
1097 too, because that is a great way to communicate quickly.

1098 Now, if a cellphone number pops up in the course of a
1099 702 investigation, there is no way of knowing whether or not
1100 the owner of that cellphone number is a U.S. person or not.
1101 So, effectively, in order to query that, the FBI or the NSA
1102 or whoever wants to do the querying has got to show probable
1103 cause and get a warrant.

1104 Now, what is going to happen is that the gap that I
1105 have just described between reasonable suspicion and
1106 probable cause is so wide that a lot of terrorist
1107 investigations would end up falling into that gap, you know,
1108 simply because you have to operate under the assumption that
1109 there is a query that is going to be made to a cellphone

1110 that is owned by a U.S. person.

1111 Now, I think in order to bridge that gap, the
1112 underlying substitute amendment that has been offered by the
1113 gentleman from Virginia, the chairman of our committee, has
1114 struck a reasonable compromise.

1115 We do not want to use 702 information in ordinary
1116 criminal investigations. I think if we had a vote that it
1117 would be unanimous in this committee. Other committees
1118 would probably disagree, but it would be unanimous in this
1119 committee.

1120 So we have to figure out how to bridge the gap that I
1121 have described a couple of times here already, you know, in
1122 a way to require warrants for criminal investigations, which
1123 need a higher standard of probable cause, and to keep the
1124 reasonable suspicion standard for national security and
1125 antiterrorism investigations. This amendment destroys that.

1126 I think it makes the entire section 702 of the
1127 Intelligence Act unworkable and ineffective, and that is
1128 why, with all due respect, the Poe-Lofgren amendment ought
1129 to be defeated, and I yield back the balance of my time.

1130 Chairman Goodlatte. The chair thanks the gentleman.
1131 For what purpose does the gentleman from New York seek
1132 recognition?

1133 Mr. Nadler. I move to strike the last word.

1134 Chairman Goodlatte. The gentleman is recognized for 5

1135 minutes.

1136 Mr. Nadler. Mr. Chairman, I rise in opposition to this
1137 amendment, though I wish I did not have to. I want to
1138 commend Mr. Poe and Ms. Lofgren for their leadership in this
1139 area. For years, they have consistently led the charge to
1140 roll back the excesses of the intelligence community.

1141 Many people on the committee support the underlying
1142 policy. In an ideal world, the government would know
1143 whether or not they were searching for a U.S. person and we
1144 would require a warrant for each of those searches.

1145 Unfortunately, that does not work, because when you only
1146 have a phone number or a license plate, you do not know
1147 whether this is a U.S. person; you do not know anything.

1148 All you know is that the phone number was found in a
1149 suspicious place, or the license plate is on a car going in
1150 circles around the White House or around some military
1151 installation, and you need to query the database. So, at
1152 that point, you do not know whether the search term belongs
1153 to a U.S. person, nor is it clear that they could ever know
1154 whether a particular phone number belongs to a U.S. person
1155 or not.

1156 The practical effect of this amendment would be that
1157 whole agencies would lose access to all 702 information, and
1158 I am not certain that is the right policy outcome. The way
1159 to fix that problem is by taking another approach, which the

1160 bill does. Because the bill has the rule turn on the
1161 purpose of the search, which we know. Is it for foreign
1162 intelligence, or is it for criminal or what?

1163 As opposed to turning on the identity associated with
1164 the search term, which we do not know, is the only practical
1165 way of dealing with that. Now, the underlying legislation
1166 represents real, substantive achievable reform. We should
1167 not allow this amendment to jeopardize that reform, even
1168 though we can sympathize with the underlying policy.

1169 Now, we are told by some people that this is a step
1170 backwards, that it is a violation of the Fourth Amendment.
1171 That is simply not true. Every court that has ruled has
1172 ruled that section 702 information can be used, can even be
1173 used in criminal investigations, and is not a violation of
1174 the Fourth Amendment, since it was gathered legally. This
1175 bill goes back from that.

1176 This bill says, even though the information was
1177 gathered legally, you cannot use it in any criminal
1178 investigation. You can only use it for terrorism and
1179 defining intelligence operations. And you make that
1180 determination the first time you query the database to find
1181 out "What do we know about this phone number?" More to the
1182 point, "Where did we get this phone number? Where did we
1183 get this license plate?" If it came through 702, gone, you
1184 cannot use it. You got to get a warrant.

1185 That is really the earliest stage of the investigation,
1186 where you can make that determination; that is practicable.
1187 And it puts a limitation that the courts have not put yet.
1188 The courts have ruled that you can use that information now
1189 for criminal investigation purposes without violating the
1190 Fourth Amendment. This bill says, "No, you cannot." That
1191 is a step forward in protecting the purpose of the Fourth
1192 Amendment.

1193 Now, we are also told that we should not compromise
1194 here. I am frankly very afraid of what happens if we do not
1195 compromise. Yes, we have been told by the Republican
1196 leadership that this bill will not go to the floor if this
1197 amendment passes. It is true, we do not have the assurance
1198 from Republican leadership that we had when we debated the
1199 USA Freedom Act 2 years ago. But that does not mean we
1200 should sabotage the legislation.

1201 What I am really afraid of is that we pass a bill out
1202 of this committee that is unacceptable to the Republican
1203 leadership in this fundamental way, they will be true to
1204 their word and it will not go to the floor. What will then
1205 happen? Well, a lot of people, myself included, have voted
1206 against section 702 renewal in the context of an
1207 appropriation bill.

1208 But we all know that it is a lot easier to vote against
1209 something in an amendment in an appropriation bill than when

1210 you have the bill on the floor. And more to the point, what
1211 I am really afraid of is that if we do not have this bill,
1212 renew section 207, with appropriate limitations, we will
1213 find out at the last minute, when we are about to pass the
1214 C.R. which has whatever budget deals are being made, but the
1215 C.R. that will prevent the government shutdown, that "Oh,
1216 there is a provision of the C.R. that extends section 702
1217 forever."

1218 And at that point, it will be unstoppable, in all
1219 likelihood. So, we have the opportunity now to have a
1220 choice. Oppose this amendment -- and perhaps support some
1221 other amendments; I do not know, we will see -- but oppose
1222 this amendment so it does not kill the bill, pass the bill,
1223 and achieve substantial reform, or no reform at all.

1224 I will take what we can get today after months and
1225 years of negotiation and continue to work for the rest. But
1226 in order to do that, we must defeat this amendment. I will
1227 vote against it. I urge my colleagues to do the same,
1228 bearing in mind that it is not true that this is a step
1229 going back from the Fourth Amendment, since every court has
1230 ruled that you can use this information for any purpose now
1231 without a warrant; this imposes a warrant requirement.

1232 And also bearing in mind that some of the groups that
1233 the gentlelady from California mentioned, as saying that
1234 this bill is not perfect, that they wish it were better in

1235 this respect, have not urged us to vote against the bill.

1236 They have not come out against the bill. I yield back.

1237 Ms. Lofgren. Does the gentleman yield?

1238 Mr. Nadler. I will yield.

1239 Chairman Goodlatte. The time of the gentleman has
1240 expired.

1241 Mr. Nadler. I withdraw my yield.

1242 Chairman Goodlatte. For what purpose does the
1243 gentleman from Texas seek recognition?

1244 Mr. Gohmert. I speak in favor of the amendment.

1245 Chairman Goodlatte. The gentleman is recognized for 5
1246 minutes.

1247 Mr. Gohmert. Thank you. And I do want to applaud of
1248 the efforts of the chairman of the committee in making noble
1249 efforts toward reform. This is an awful lot of power for
1250 any governmental entity to have. I know we were assured
1251 during the Patriot Act, the Patriot Act's re-authorization
1252 after I got here, that certain things would be done and not
1253 done. And it turned out we were lied to. And so, we made
1254 changes in the Patriot Act when it came up, for its own
1255 sake, yet again.

1256 I mean, what we are trying to prevent by Judge Poe's
1257 and Ms. Lofgren's amendment is exactly what we understand
1258 has been happening. Somebody knows the cell phone number of
1259 an American citizen, and they want to do a phishing

1260 expedition. So, they enter that person's cell number just
1261 to see what is out there, or there are some hits. And then,
1262 the fact that there are some hits, use that to get further
1263 warrants to go after the individual.

1264 It was entirely a phishing expedition. We have the
1265 people in here and ask them to give us the information on
1266 how many times that has been done, that you just stuck in an
1267 American citizen's cell phone number to do queries, just to
1268 see what is out there. And we have not gotten that
1269 information.

1270 And, you know, when you are trying a case, you know,
1271 was a judge, and one party has all the information, and they
1272 refuse to disclose it, then as a judge, you are often
1273 allowed to instruct the jury. Since that information was
1274 not produced and they have access to it, and they are the
1275 only ones that do, you may consider it as proved that that
1276 evidence did not support that party's position.

1277 And I think that applies here. If they thought it
1278 helped the case, they would bring it forward, all the times
1279 they have just done queries and phishing expeditions. But
1280 since they have not brought it forward, then that seems to
1281 be a clear indication they know it will hurt the passage of
1282 their power, to just have this net out there to gather this
1283 information.

1284 We also saw, with the appointment that was set up for

1285 Donald Trump Jr., supposedly to help the Trump campaign, he
1286 gets there, it is worthless. But by having set him up in
1287 such a way that he met with a Russian lobbyist that Loretta
1288 Lynch had just personally approved her getting around the
1289 visa situation.

1290 Well, he just met with a person, a foreign person of
1291 interest, and therefore it catches him in this net for calls
1292 that he would make. His phone number is there, at the
1293 meeting with the Russian lobbyist, even though nothing
1294 happened at the meeting other than evidence was created.
1295 "Gee, there was a meeting, this Russian is suspicious.
1296 Therefore, we can start going after Donald Trump Jr."

1297 This 702 clearly has been manipulated. People know
1298 American cell numbers. That is not that hard to find for
1299 nongovernment officials. It certainly would be easy to find
1300 for our intelligence officials. And so, they know who they
1301 are looking at. They know when they make the query about
1302 contacts.

1303 And I know we had brought up previously that, "Well,
1304 gee, if you came forward and this person was getting flying
1305 instructions but only cared about takeoff and did not care
1306 about landing, well you bring that information to me in the
1307 capacity of judge" -- I previously was. I would sign that
1308 warrant in a heartbeat. Only wants to know about taking
1309 off? There is information out there that there is going to

1310 be planes flown into buildings? Yeah, here is your warrant.

1311 You go get everything you can find on that individual.

1312 So, I just think the Fourth Amendment was there for a
1313 reason. The Founders knew that there would be times when
1314 there would be developments in communications. But the
1315 standard needs to remain the same. If you are going to do
1316 phishing expeditions, those are not authorized. If you are
1317 going to do legitimate searches, then get a warrant. It is
1318 not that hard of a thing to get. So, I appreciate Ms.
1319 Lofgren and Judge Poe's effort and I support it.

1320 Ms. Jackson Lee. Mr. Chairman?

1321 Chairman Goodlatte. For what purpose does the
1322 gentlewoman from Texas seek recognition?

1323 Ms. Jackson Lee. Strike the last word.

1324 Chairman Goodlatte. The gentlewoman is recognized for
1325 5 minutes.

1326 Ms. Jackson Lee. Let me make a statement of fact that
1327 someone can challenge, but I would offer to say that 201 or
1328 202, the members of this committee are rabid supporters of
1329 the Fourth Amendment committed to the basic premise of
1330 opposition to unreasonable search and seizure.

1331 With that in mind, I am a cosponsor of the underlying
1332 legislation and would like not to have my cake and eat it
1333 too, but to not be assessed as an anti-Fourth Amendment or
1334 viewing the Fourth Amendment as a weaker amendment than

1335 those who might be proposing this amendment. I will say
1336 that, with respect to the chairman and the ranking member,
1337 because I know, as I perceive, all of us who engaged in this
1338 discussion could have gone further in this legislation.

1339 So, I will put on the record that I resent being held
1340 hostage by leadership that does not know the intensity of
1341 the work and the responsibilities of the Judiciary
1342 Committee, sometimes not given the respect and the knowledge
1343 of its power that it deserves. But we know the work that we
1344 do.

1345 I am troubled by the complication of the amendment and
1346 the issue of a warrant for information unbeknownst to the
1347 FBI agent of who it might be. But there is something
1348 valuable about a warrant which is a stop-measure for
1349 reflection, as to whether or not constitutional provisions
1350 are being violated. I know that this will be carried to a
1351 vote.

1352 I frankly believe that this amendment, if it does not
1353 prevail, that we have to address this question head-on,
1354 before we go to the floor. And there needs to be the kind
1355 of discussion, because I feel empathy for this amendment by
1356 a lot of members.

1357 And the issue of complication by individual FBI agents
1358 or by the body politic of the FBI clearly is a point to be
1359 considered. The FBI has to do its job. But either through

1360 the history books or through personal knowledge, I am aware
1361 of the job done on the Black Panthers. We are well-aware of
1362 the recent release of files dealing with Dr. Martin Luther
1363 King. I have personal knowledge of that, because I have
1364 served on the Select Committee on Assassinations that
1365 reviewed and reinvestigated the assassinations of both
1366 President Kennedy and Dr. King.

1367 And therefore, as a sidebar, the FBI's efforts on
1368 COINTELPRO against an American citizen were nothing to be
1369 proud of. Saying that, of course, I recognize the sacrifice
1370 that agents make to protect this Nation and to protect the
1371 general public. Now we have come full circle with other
1372 documents that I will discuss later in an amendment that I
1373 will offer, that also reflects upon what can proceed without
1374 the proper restraints on law enforcement against U.S.
1375 citizens, under the pretense of securing this Nation.

1376 So, I am --

1377 Mr. Conyers. Would the gentlelady yield?

1378 Ms. Jackson Lee. I will be happy to yield to the
1379 gentleman.

1380 Mr. Conyers. I am trying to assume that the gentlelady
1381 is not going to support the amendment. Or can I assume
1382 that?

1383 Ms. Jackson Lee. Well, the gentleman can assume that I
1384 am perplexed, but will be working to join in moving the bill

1385 forward.

1386 Mr. Conyers. Well, what I want to do is, without
1387 getting too nosy in advance, is --

1388 Ms. Jackson Lee. You are not, Mr. Ranking Member.

1389 Mr. Conyers. I want to agree with you that we ought to
1390 have further inquiry, and I thought that was a good idea.
1391 And I want you to know that me, and perhaps others here,
1392 would think that that would be worthwhile. We cannot go
1393 into all of these things in the detail that we want, under
1394 the time limitations that we face. But I thank the
1395 gentlelady for her response.

1396 Ms. Jackson Lee. Well, if I could reclaim just a
1397 moment; I see the time is out, Mr. Chairman. I think you
1398 have captured the essence of where I was going. And so, I
1399 would like us to pursue this before we get to the floor,
1400 because the gentleman from Texas and the gentlelady from
1401 California raises issues that are particularly repugnant to
1402 me intellectually and also emotionally. With that I yield.

1403 Chairman Goodlatte. If the gentlewoman would yield. I
1404 would be more than happy to continue to work with all
1405 members of the committee. We are never saying that the bill
1406 cannot be improved, but I cannot support this amendment as
1407 it is written.

1408 Ms. Jackson Lee. I thank the gentleman. I have
1409 indicated my comments. And with that, I yield back.

1410 Mr. Jordan. Mr. Chairman?

1411 Chairman Goodlatte. For what purpose does the
1412 gentleman from Ohio seek recognition?

1413 Mr. Jordan. Speak in favor of the gentleman's
1414 amendment.

1415 Chairman Goodlatte. The gentleman is recognized for 5
1416 minutes.

1417 Mr. Jordan. Earlier, the ranking member, Mr. Chairman,
1418 the ranking member said this committee cannot let perfect be
1419 the enemy of the good. I would argue what this committee
1420 cannot do is water down the Fourth Amendment. Read the
1421 gentleman's amendment. Read the first paragraph. "No
1422 officer, employee of the United States may conduct a query."

1423 Now, always remember, "query" is a fancy way of saying
1424 "search." They already got the information. So, it should
1425 say, "No officer, employee of the United States may conduct
1426 a search of information acquired about a particular person
1427 reasonably believed to be a United States person without an
1428 order of the judge." Real simple. You cannot do a search
1429 without a warrant. That is all he is saying.

1430 And you got to think about the context we find
1431 ourselves living in today. I mean, I think Edward Snowden
1432 was a traitor, but we learned valuable info about what was
1433 going on in our intelligence community from that individual.
1434 Think about what happened a few years ago when the Internal

1435 Revenue Service targeted people for their political beliefs.
1436 Think about the fact we have an unprecedented record rate of
1437 unmasking of names in the previous administration, and now
1438 we are not going to strengthen this and abide by the Fourth
1439 Amendment?

1440 This is the Judiciary. We are not the Intelligence
1441 Committee. We are the Judiciary Committee, charged with one
1442 thing and one thing only: defend the constitution, respect
1443 the constitution, adhere to the amendments in that great
1444 document, particularly today, the Fourth Amendment.

1445 This is a darn good amendment. It has been offered
1446 several times. Ten years ago, when I got here, I would have
1447 been with the chairman. I was with the chairman's position.
1448 I was with the ranking member's position 10 years -- but in
1449 that 10-year time, lots of things have changed. And this
1450 committee and the country have learned all kinds of things
1451 we did not know before. We did not know that.

1452 We need this amendment in this legislation so that when
1453 it moves forward, we can adequately protect our country as
1454 best we can, but we can do it in a way that is consistent
1455 with the Fourth Amendment and consistent with the
1456 constitution. I hope everyone votes for this thing, and we
1457 send a strong bill to the full House.

1458 And with that, I yield back.

1459 Chairman Goodlatte. The question occurs on the

1460 amendment offered by the gentleman from Texas.

1461 Mr. Lieu. Mr. Chairman?

1462 Chairman Goodlatte. For what purpose does the
1463 gentleman from California seek recognition?

1464 Mr. Lieu. I move to strike the last word.

1465 Chairman Goodlatte. The gentleman is recognized for 5
1466 minutes.

1467 Mr. Lieu. Let me first thank Chairman Goodlatte and
1468 Ranking Member Conyers for their hard work on this bill.
1469 They clearly made an unconstitutional process better. But
1470 let me explain why I am going to support the amendment by
1471 Representative Poe and Lofgren.

1472 It has to do with why we are here. So, section 702 was
1473 designed to allow the extraordinary resources of our
1474 intelligence community to go after foreign nationals on
1475 foreign soil. It was never designed to go after U.S.
1476 persons. And why is that? Because U.S. persons are
1477 protected by the Constitution of the United States.

1478 And when our intelligence professionals -- who I know
1479 are doing a great job and doing their best -- before they
1480 could become intelligence professionals, they had to do one
1481 thing. They had to take an oath. And that oath was not to
1482 their agency, or to the administration, or to a political
1483 party. It was an oath to the Constitution of the United
1484 States.

1485 So if there is a program -- no matter how effective it
1486 is -- if it is unconstitutional, they cannot run it: full
1487 stop, end of story. And when you look at section 702, it
1488 was designed to go after bad guys on foreign soil, foreign
1489 nationals.

1490 The reason we are even here discussing all this,
1491 because the intelligence community unfortunately perverted
1492 the statute to go after U.S. persons. And what this
1493 amendment does is it stops that perversion of the intent and
1494 actual language of section 702. And when people say that
1495 this amendment is not workable, I do not know what they are
1496 reading. They must just miss the first page.

1497 This amendment does not even apply unless the
1498 intelligence agent believes that a particular person is
1499 reasonably believed to be a United States person. That
1500 means, if they just have a cell phone number, they do that
1501 search, because there is no reasonable belief that that is a
1502 U.S. person. If they just have a license plate, they do
1503 that search.

1504 So, everything you are hearing about the Intelligence
1505 Committee, and people would say this is unworkable, they are
1506 just wrong. They have not read the very language of this
1507 amendment. And ultimately, it is very important that we
1508 stand up for the constitution. That is why we are here.
1509 That is the oath we took. I am going to support this

1510 amendment.

1511 Chairman Goodlatte. The question occurs on the
1512 amendment offered by the gentleman from Texas.

1513 All those in favor, respond by saying aye.

1514 Those opposed, no.

1515 In the opinion of the chair, the noes have it and the
1516 amendment is not agreed to.

1517 Ms. Lofgren. May we have a recorded vote, Mr.

1518 Chairman?

1519 Chairman Goodlatte. A recorded vote is requested and
1520 the clerk will call the roll.

1521 Ms. Adcock. Mr. Goodlatte?

1522 Chairman Goodlatte. No.

1523 Ms. Adcock. Mr. Goodlatte votes no.

1524 Mr. Sensenbrenner?

1525 Mr. Sensenbrenner. No.

1526 Ms. Adcock. Mr. Sensenbrenner votes no.

1527 Mr. Smith?

1528 [No response.]

1529 Mr. Chabot?

1530 Mr. Chabot. No.

1531 Ms. Adcock. Mr. Chabot votes no.

1532 Mr. Issa?

1533 [No response.]

1534 Mr. King?

1535 Mr. King. No.

1536 Ms. Adcock. Mr. King votes no.

1537 Mr. Franks?

1538 Mr. Franks. No.

1539 Ms. Adcock. Mr. Franks votes no.

1540 Mr. Gohmert?

1541 Mr. Gohmert. Yes.

1542 Ms. Adcock. Mr. Gohmert votes yes.

1543 Mr. Jordan?

1544 Mr. Jordan. Yes.

1545 Ms. Adcock. Mr. Jordan votes yes.

1546 Mr. Poe?

1547 Mr. Poe. Yes.

1548 Ms. Adcock. Mr. Poe votes yes.

1549 Mr. Marino?

1550 Mr. Marino. No.

1551 Ms. Adcock. Mr. Marino votes no.

1552 Mr. Gowdy?

1553 [No response.]

1554 Mr. Labrador?

1555 Mr. Labrador. Yes.

1556 Ms. Adcock. Mr. Labrador votes yes.

1557 Mr. Farenthold?

1558 [No response.]

1559 Mr. Collins?

1560 Mr. Collins. No.

1561 Ms. Adcock. Mr. Collins votes no.

1562 Mr. DeSantis?

1563 Mr. DeSantis. No.

1564 Ms. Adcock. Mr. DeSantis votes no.

1565 Mr. Buck?

1566 [No response.]

1567 Mr. Ratcliffe?

1568 Mr. Ratcliffe. No.

1569 Ms. Adcock. Mr. Ratcliffe votes no.

1570 Mrs. Roby?

1571 Mrs. Roby. No.

1572 Ms. Adcock. Mrs. Roby votes no.

1573 Mr. Gaetz?

1574 Mr. Gaetz. No.

1575 Ms. Adcock. Mr. Gaetz votes no.

1576 Mr. Johnson of Louisiana?

1577 Mr. Johnson of Louisiana. No.

1578 Ms. Adcock. Mr. Johnson votes no.

1579 Mr. Biggs?

1580 Mr. Biggs. Yes.

1581 Ms. Adcock. Mr. Biggs votes yes.

1582 Mr. Rutherford?

1583 Mr. Rutherford. No.

1584 Ms. Adcock. Mr. Rutherford votes no.

1585 Mrs. Handel?
1586 Mrs. Handel. No.
1587 Ms. Adcock. Ms. Handel votes no.
1588 Mr. Conyers?
1589 Mr. Conyers. No.
1590 Ms. Adcock. Mr. Conyers votes no.
1591 Mr. Nadler?
1592 Mr. Nadler. No.
1593 Ms. Adcock. Mr. Nadler votes no.
1594 Ms. Lofgren?
1595 Ms. Lofgren. Aye.
1596 Ms. Adcock. Ms. Lofgren votes aye.
1597 Ms. Jackson Lee?
1598 Ms. Jackson Lee. No.
1599 Ms. Adcock. Ms. Jackson Lee votes no.
1600 Mr. Cohen?
1601 Mr. Cohen. Aye.
1602 Ms. Adcock. Mr. Cohen votes aye.
1603 Mr. Johnson of Georgia?
1604 Mr. Johnson of Georgia. No.
1605 Ms. Adcock. Mr. Johnson votes no.
1606 Mr. Deutch?
1607 Mr. Deutch. Aye.
1608 Ms. Adcock. Mr. Deutch votes aye.
1609 Mr. Gutierrez?

1610 [No response.]

1611 Ms. Bass?

1612 [No response.]

1613 Mr. Richmond?

1614 [No response.]

1615 Mr. Jeffries?

1616 [No response.]

1617 Mr. Cicilline?

1618 Mr. Cicilline. No.

1619 Ms. Adcock. Mr. Cicilline votes no.

1620 Mr. Swalwell?

1621 [No response.]

1622 Mr. Lieu?

1623 Mr. Lieu. Aye.

1624 Ms. Adcock. Mr. Lieu votes aye.

1625 Mr. Raskin?

1626 Mr. Raskin. Aye.

1627 Ms. Adcock. Mr. Raskin votes aye.

1628 Ms. Jayapal?

1629 Ms. Jayapal. Aye.

1630 Ms. Adcock. Ms. Jayapal votes aye.

1631 Mr. Schneider?

1632 Mr. Schneider. No.

1633 Ms. Adcock. Mr. Schneider votes no.

1634 Chairman Goodlatte. Has every member voted who wishes

1635 to vote? The gentleman from California?

1636 Mr. Issa. No.

1637 Ms. Adcock. Mr. Issa votes no.

1638 Chairman Goodlatte. The gentleman from Texas, Mr.

1639 Smith?

1640 Mr. Smith. No.

1641 Ms. Adcock. Mr. Smith votes no.

1642 Chairman Goodlatte. Has every member voted who wishes

1643 to vote?

1644 Mr. Cicilline. Mr. Chairman, I would like to --

1645 Chairman Goodlatte. For what purpose does the

1646 gentleman from Rhode Island seek recognition?

1647 Mr. Cicilline. I would like to record as an aye.

1648 Ms. Adcock. Mr. Cicilline votes aye.

1649 Chairman Goodlatte. The clerk will report.

1650 Ms. Adcock. Mr. Chairman, 12 members voted aye, 21

1651 members voted no.

1652 Chairman Goodlatte. And the amendment is not agreed

1653 to. Are there further amendments to H.R. 3989?

1654 Ms. Jackson Lee. I have an amendment at the desk.

1655 Chairman Goodlatte. The clerk will report the

1656 amendment offered by the gentlewoman from Texas.

1657 Ms. Adcock. Amendment to the amendment in the nature

1658 of a substitute to H.R. 3989, offered by Ms. Jackson Lee of

1659 Texas. On page 43, strike the period at the end of section

1660 209 --

1661 [The amendment of Ms. Jackson Lee follows:]

1662 ***** COMMITTEE INSERT *****

1663 Chairman Goodlatte. Without objection, the amendment
1664 is considered as read and the gentlewoman is recognized for
1665 5 minutes on her amendment.

1666 Ms. Jackson Lee. Mr. Chairman, over the last months,
1667 since the 2016 election, we have had documented affirmation
1668 that Russians colluded to impact the 2016 election.

1669 My amendment modifies the sense of Congress in section
1670 305 to prohibit the sharing any information with any foreign
1671 government that has been determined by the intelligence
1672 community to have actively interfered in or attempted to
1673 subvert an election for President of the United States.

1674 My argument is that this is a document dealing with the
1675 issue of intelligence and intelligence gathering, and the
1676 protection of the American people. I believe that this
1677 language reinforces the importance of not promoting and
1678 advocating for, and sharing with, documented foreign
1679 entities that have actively engaged with private
1680 individuals, with governmental individuals, with individuals
1681 in that foreign county, with efforts to penetrate systems of
1682 government that would include the electoral process, that
1683 they should have intelligence that is used to protect our
1684 Nation shared under these particular circumstances.

1685 There has to be some barrier or bar, if the intent of
1686 these individuals -- foreign entities -- were to subvert or
1687 interfere in an election by the President of the United

1688 States. And I would ask my colleagues to support the
1689 amendment.

1690 Chairman Goodlatte. The chair recognizes himself in
1691 opposition to the amendment. I thank the gentlewoman for
1692 offering the amendment, and I thank her for her work on this
1693 issue. However, I cannot support this amendment, which
1694 would attempt to inject partisanship into what has been
1695 heretofore a bipartisan and collaborative product.

1696 The amendment would prohibit information sharing with
1697 any foreign government that has been determined by the
1698 intelligence community to have actively interfered in or
1699 attempted to subvert an election for President of the United
1700 States.

1701 There are lots of problems with the implementation of
1702 that, if it were to be adopted. But leaving that aside,
1703 this is, of course, an attempt to inject the ongoing matter
1704 of the alleged Russian interference in the 2016 presidential
1705 election into this bill. And I note that the amendment does
1706 not prohibit information sharing with hostile foreign
1707 governments, only those who have interfered in elections.
1708 So, I must oppose the amendment and urge my colleagues to do
1709 the same.

1710 The question occurs on the amendment offered by the
1711 gentlewoman from Texas.

1712 All those in favor, respond by saying aye.

1713 All those opposed, no.

1714 In the opinion of the chair, the noes have it and the
1715 amendment is not agreed to. Are there further amendments to
1716 H.R. 39 --

1717 Ms. Jackson Lee. I have an amendment at the desk.
1718 Number two.

1719 Chairman Goodlatte. The clerk will report Amendment
1720 No. 2 of the gentlewoman from Texas.

1721 Ms. Adcock. Amendment to the amendment in the nature
1722 of a substitute to H.R. 3989, offered by Ms. Jackson Lee of
1723 Texas. On page 22, line 4, strike the comment and all that
1724 follows, up to the semi-colon --

1725 [The amendment of Ms. Jackson Lee follows:]

1726 ***** COMMITTEE INSERT *****

1727 Chairman Goodlatte. Without objection, the amendment
1728 is considered as read and the gentlewoman is recognized for
1729 5 minutes on her amendment.

1730 Ms. Jackson Lee. Under the present bill in its current
1731 form, the appointment of an amicus curiae may be dispensed
1732 with whenever the FISA court determines that such
1733 appointment is unnecessary.

1734 My amendment directly addresses one of the criticisms
1735 raised by privacy groups opposed to the USA Liberty Act,
1736 like the Electronic Frontier Foundation that has put forward
1737 an analysis of this issue.

1738 As I indicated, I introduced H.R. 66, the FISA Court
1739 and the Sunshine Act, and it was bipartisan legislation
1740 which would have required the Attorney General to disclose
1741 each decision, order, or opinion or a foreign intelligence
1742 surveillance court, allowing Americans to know how broad of
1743 a legal authority the court is claiming under the Patriot
1744 Act, and Foreign Intelligence Surveillance Act, to conduct
1745 the surveillance needed to keep Americans safe.

1746 I am pleased that we have made some strides, but I
1747 cannot imagine that if we require the appointment of and
1748 individual to serve as an amicus curiae, but under this
1749 bill, the current form, the appointment of amicus curiae may
1750 be dispensed with whenever the FISA court determines that
1751 such appointment is unnecessary.

1752 There should be no reason to require the appointment of
1753 an individual to serve as an amicus curiae since amicus
1754 curiae is an invaluable part of the FISA court proceedings.
1755 In this instance, I believe, because the FISA court is
1756 closed and private, some protection of the opposition -- or
1757 in essence, the defendant, and that is opposing the actions
1758 of the government -- should be represented.

1759 Some aspects of the privacy elements of the American
1760 people should be represented. This can be done and
1761 protected by having the requirement of an amicus curiae in
1762 these cases, not giving the independent decision to a FISA
1763 court when they perceive it to be unnecessary. And it
1764 relates to whether or not we are mandating a third branch of
1765 government.

1766 This is a statute that comes as law which I have heard
1767 in many Federal courts and appeals court, it is what the
1768 Congress tells us to do in terms of the particular statute
1769 that is passed. So, I believe that this is a legitimate
1770 amendment to protect the privacy interests of those that are
1771 not present in these secret proceedings of the FISA court
1772 which should be secret. With that, I yield back asking for
1773 support of the Jackson Lee Amendment.

1774 Chairman Goodlatte. The chair thanks the gentlewoman
1775 and does look forward to supporting one of her amendments,
1776 but this is not this one. The chair recognizes himself in

1777 opposition to it.

1778 I do thank the gentlewoman for her offering it, and I
1779 do understand her concern. But as I and others have
1780 repeatedly stated, this legislation represents a bipartisan
1781 compromise in which we have taken into consideration the
1782 views of a myriad of parties, including the Administrative
1783 Office of the Courts and the intelligence community.

1784 The section the amendment seeks to change provides
1785 flexibility in the appointment of an amicus curiae to
1786 represent privacy and civil liberties interests. This
1787 amendment would eliminate that flexibility and require that
1788 an amicus be appointed in all cases, including where the
1789 court is considering matters that are identical matters to
1790 matters previously considered.

1791 The underlying legislation requires the court to
1792 appoint an amicus or document why it decided not to. That
1793 is reasonable and appropriate, and affords needed discretion
1794 to the court to consider what is needed in a given
1795 situation. The amendment would remove that flexibility, and
1796 therefore, I must oppose it.

1797 A question occurs on the amendment offered by the --
1798 Mr. Johnson of Georgia. Mr. Chairman?
1799 Chairman Goodlatte. For what purpose does the
1800 gentleman from Georgia seek recognition?

1801 Mr. Johnson of Georgia. I move to strike the last

1802 word.

1803 Chairman Goodlatte. The gentleman is recognized for 5
1804 minutes.

1805 Mr. Johnson of Georgia. I yield to the gentlelady from
1806 Texas.

1807 Ms. Jackson Lee. I thank you. Mr. Chairman, I
1808 appreciate both the dilemma and the concern. This is one
1809 that really strikes me as not offensive to any investigative
1810 entity. It is the court, and it is the court that should
1811 welcome an amicus curiae in their proceedings that are
1812 closed that would protect privacy rights of the entity that
1813 is being challenged. It would not be public. It would be
1814 in those proceedings. Those proceedings are, in fact,
1815 closed and private for the security of this Nation.

1816 And I do believe this is an amendment worth considering
1817 and worth making the point to the individuals who have
1818 supported our bipartisan effort that this is done in the
1819 spirit of bipartisanship. But in any event, I ask my
1820 colleagues to support the Jackson Lee Amendment.

1821 Chairman Goodlatte. Would the gentleman yield?

1822 Mr. Johnson of Georgia. I will yield.

1823 Chairman Goodlatte. I appreciate the gentleman
1824 yielding, and I would say to the gentlewoman I appreciate
1825 her concern. This bill actually does make an advance here
1826 with a default provision regarding an amicus, but the court

1827 still has to have this discretion. There is a
1828 constitutional separation of powers issue here with regard
1829 to whether we can mandate that a court has to hear advice
1830 from somebody outside as we do this.

1831 So, to me, given the large number of cases that are
1832 very duplicative in terms of the constitutional
1833 considerations and legal precedence, it makes more sense for
1834 us to say you have to appoint one unless you document why
1835 they have not a need to have the amicus in a particular
1836 case, which I suspect would happen in many cases because
1837 there are many very, very similar fact patterns that they
1838 would be considering.

1839 So, if the gentlewoman would withdraw the amendment, I
1840 am happy to work with her to consider how to move forward.
1841 But I cannot support the amendment.

1842 Ms. Jackson Lee. Will the gentleman yield?

1843 Chairman Goodlatte. I would be happy to yield. It is
1844 the gentleman from Georgia's time.

1845 Mr. Johnson of Georgia. I yield.

1846 Ms. Jackson Lee. I thank the gentleman from Georgia.
1847 It is that important to me, Mr. Chairman, and I would take
1848 up the serious offer that I hope is being offered to clarify
1849 or provide the edification to the language in the bill
1850 because I think the singular authority of the court to be
1851 able to say, "No amicus at this time," leaves me with

1852 discomfort. And I would prefer a greater clarification of
1853 either responding back as to why the amicus is not selected
1854 in each case.

1855 And I guess I hear the constitutional argument of the
1856 three branches of government, but we pass statutes all the
1857 time that the court adheres to as law. And so, we are not
1858 telling the court about its decision. What we are doing as
1859 we create article III courts is that we are saying that a
1860 component of the court in the FISA courts for example,
1861 should be an amicus curiae representative.

1862 So, with that, I hope strong position, I ask unanimous
1863 consent to withdraw the amendment to work with the committee
1864 before this bill goes to the floor. And I hope it will not
1865 be on the floor tomorrow.

1866 Chairman Goodlatte. Would the gentleman from Georgia
1867 yield?

1868 Mr. Johnson of Georgia. I will.

1869 Chairman Goodlatte. I thank the gentleman, and I would
1870 like the bill considered rapidly. But I am pretty sure I
1871 can assure the gentlewoman it will not be considered
1872 tomorrow; and, therefore, we should have time to work on
1873 this. And I will be happy to work with the gentlewoman to
1874 do what can be done to address her concerns. I cannot
1875 guarantee what can be done. And I thank the gentleman.
1876 Does the gentleman yield back?

1877 Mr. Johnson of Georgia. I will yield back.

1878 Chairman Goodlatte. Thank you.

1879 Ms. Jackson Lee. Thank you.

1880 Chairman Goodlatte. And without objection, the
1881 amendment is withdrawn. Are there further amendments to
1882 H.R. 3989?

1883 Ms. Jackson Lee. I have an amendment at the desk.

1884 Chairman Goodlatte. The gentlewoman is recognized.

1885 The clerk will report the third amendment from the
1886 gentlewoman from Texas.

1887 Ms. Adcock. Amendment to the amendment in the nature
1888 of a substitute to H.R. 3989 offered by Ms. Jackson Lee of
1889 Texas.

1890 [The amendment of Ms. Jackson Lee follows:]

1891 ***** COMMITTEE INSERT *****

1892 Chairman Goodlatte. Without objection, the amendment
1893 is considered as read, and the gentlewoman is recognized for
1894 5 minutes on her amendment.

1895 Ms. Jackson Lee. Thank you so very much. As the bill
1896 is currently drafted, the ANS states that the authority
1897 conferred by 702 authority is meant to shield the United
1898 States and by extension the allies of the United States from
1899 security threats, both at home and abroad.

1900 My amendment number three makes clear that the
1901 authority conferred by section 702 is to be used for the
1902 limited but critically important purpose of protecting the
1903 United States and its people from security threats posed by
1904 foreign countries and foreign nationals and organizations
1905 acting under the control or supervision or in the
1906 furtherance of the aims of a foreign state or actor. And
1907 that is not domestic as the language indicates.

1908 The problem with this formulation of section 702
1909 authority is not tied to defending or defeating security
1910 threats posed by foreign actors or persons in the U.S.
1911 acting in pursuance of the objectives or ideology of foreign
1912 state or actor.

1913 Rather, it states 702 may be used to defend against
1914 security threats that may be wholly domestic in formation,
1915 operation, and control. Defining security threat this
1916 broadly raises the concern that overzealous actors may be

1917 tempted to deem a domestic, nonviolent group engaging in
1918 direct civil action, Black Lives Matter, to be labeled as a
1919 threat.

1920 For example, the document that is The Black Identity
1921 Extremist, likely motivated to deal with issues that some of
1922 us take special concern with, but it also deals with many
1923 groups that many of us certainly do not adhere to their
1924 views. I do not believe that 702 should be in the eye of
1925 the storm for groups that you disagree with their particular
1926 positions.

1927 The document that I hold in my hand was created on
1928 August 3, 2017, and as you read through it, it seems to me
1929 dealing with Black identify extremist, the terminology that
1930 really is, of recent, vintage. It goes back to the
1931 targeting as I said earlier of Black Panthers, of Dr. Martin
1932 Luther King, of civil rights activists, and I frankly
1933 believe that this is quite challenging to have in the
1934 language that would you view as domestic threats that 702
1935 would be engaged. And there are ways of dealing with
1936 domestic entities, and I believe that is appropriate.

1937 This bill deals with foreign entities subjecting their
1938 violence or their efforts at undermining the people of the
1939 United States. The people of the United States should have
1940 their First Amendment rights, their rights to activism,
1941 access, association, and speech. And it should not be

1942 undermined by section 702.

1943 Mr. Conyers. Would the gentlelady yield?

1944 Ms. Jackson Lee. I would be happy to yield.

1945 Mr. Conyers. I want to support this amendment. I

1946 think it is carefully crafted in view of some of the

1947 discussion that has gone on before, and I urge my colleagues

1948 to support it as well. I thank the gentlelady for yielding.

1949 Ms. Jackson Lee. I thank the gentleman. Concluding my

1950 remarks, I ask --

1951 Chairman Goodlatte. Would the gentlewoman yield?

1952 Ms. Jackson Lee. I would be happy to yield.

1953 Chairman Goodlatte. She is batting very well here

1954 because I think this is a good clarifying amendment, and I

1955 am prepared to support it.

1956 Ms. Jackson Lee. I thank the chairman and the ranking

1957 member. With that, I ask my colleagues to support the

1958 Jackson Lee Amendment, and will yield back. Thank you.

1959 Chairman Goodlatte. The chair thanks the gentlewoman.

1960 The question is on the amendment offered by the gentlewoman

1961 from Texas.

1962 All those in favor respond by saying aye.

1963 Those opposed, no.

1964 The amendment is agreed to. Are there further

1965 amendments to H.R. 3989?

1966 For what purpose does the gentleman from Texas, Mr.

1967 Farenthold, seek recognition?

1968 Mr. Farenthold. Mr. Chairman, I have an amendment at
1969 the table, Farenthold No. 1.

1970 Chairman Goodlatte. The clerk will report the
1971 amendment.

1972 Ms. Adcock. Amendment to the amendment in the nature
1973 of a substitute to H.R. 3989 offered by Mr. Farenthold of
1974 Texas. Add at the appropriate --

1975 [The amendment of Mr. Farenthold follows:]

1976 ***** COMMITTEE INSERT *****

1977 Chairman Goodlatte. Without objection, the amendment
1978 is considered as read, and the gentleman is recognized for 5
1979 minutes on his amendment.

1980 Mr. Farenthold. Thank you, Mr. Chairman. My amendment
1981 attempts to fill a hole in the USA Liberty Act, namely the
1982 absence of an enforceable criminal penalty for conduct that
1983 violates the Act's new section 702-J requirements for access
1984 and dissemination of collections of communications.

1985 Section 109-A2 of the Foreign Intelligence Surveillance
1986 Act establishes a criminal penalty for disclosing or using
1987 information obtained under the color of law by electronic
1988 surveillance where the person knows or has reason to know
1989 that "the information was obtained through surveillance not
1990 authorized" under section 702 or for any other express
1991 statutory authority.

1992 The problem is that the information has to have been
1993 gathered through unauthorized surveillance before section
1994 109-A2 can trigger. So, these criminal sanctions would not
1995 apply to a rogue intelligence community agent who starts
1996 making unauthorized queries on the vast stores of
1997 information that government holds on ordinary, everyday
1998 Americans.

1999 And this is not just a theoretical possibility. In
2000 2013, it was revealed that at least a dozen NSA employees
2001 were caught spying on their current or former spouses and

2002 lovers including an employee who back in 2005 queried six
2003 email addresses of his American ex-girlfriend.

2004 According to a 2013 article in Reuters on this
2005 extremely disturbing situation, several of these employees
2006 resigned or retired before they were disciplined, and others
2007 were demoted, given extra days of duty, had their pay cut,
2008 or had their access to the database revoked.

2009 I am glad that some of these offenders were
2010 disciplined, but we really need to have some serious
2011 criminal sanctions in place to deal with this kind of
2012 abusive and completely unjustified intrusion into Americans'
2013 private lives. Therefore, the first thing my amendment will
2014 do is add a new paragraph A3 to section 109 of FISA
2015 explicitly providing that a person is guilty of a criminal
2016 offense if he or she engages in unauthorized querying in
2017 violation of the new section 702-J.

2018 Second, the amendment identifies a special class of
2019 acts for which higher maximum terms of imprisonment are
2020 available. My goal is to specifically deter the abuses that
2021 occurred at the NSA. So, my amendment establishes a higher
2022 maximum penalty of 15 years imprisonment or a fine under
2023 title 18 for those who use the surveillance data to spy on
2024 those to whom they are personally acquainted.

2025 For example, a neighbor or a romantic connection or who
2026 demonstrate a pattern or practice of conduct that violates

2027 paragraphs 109-A2 and 3.

2028 Third, I am concerned that the DOJ and FISC may be
2029 letting violators off with just a slap on the wrist.
2030 Therefore, my amendment expresses the sense of Congress that
2031 the DOJ should use section 109 of FISA to vigorously
2032 prosecute those who engage in conduct that violates section
2033 109-A. Though FISK proceedings are not very transparent to
2034 the public, several redacted opinions have been made
2035 available through FOIA to prove that conduct that violates
2036 109-A2 has occurred.

2037 One such example is a 2015 opinion and order that FISK
2038 detailed a disturbing incident in which the NSA had as late
2039 as 2010 retained unlawfully collected surveillance
2040 information in a database. By May 2011, the court had found
2041 that the unauthorized collection did not fall within section
2042 109-A2 narrow exceptions. So, we are trying to close some
2043 of these loopholes and put some criminal penalties.

2044 So finally, in order to inject some more transparency
2045 into the process, my amendment also requires the Attorney
2046 General to annually submit a report to the House and Senate
2047 Judiciary Committees and Congressional Intelligence
2048 Committees on offenses under section 109-A2 and A3.

2049 This report would include the number of cases
2050 investigated by the A.G., the number of individuals charged
2051 with offenses, and the final disposition of each case at the

2052 FISC. And finally, before I would end, I would like to add
2053 into the record the Reuters report and the sections of the
2054 redacted FISC court opinion. And I will yield back.

2055 [The information follows:]

2056 ***** COMMITTEE INSERT *****

2057 Chairman Goodlatte. The chair thanks the gentleman and
2058 recognizes himself. I appreciate the gentleman's amendment
2059 that attempts to criminalize the querying of section 702
2060 acquired data to find information on boyfriends,
2061 girlfriends, other personal information that they have no
2062 business going in there to look at.

2063 If any analyst, however, queries 702 data for these
2064 purposes, it is already against established minimization
2065 procedures that are approved by the FISA court. And
2066 moreover, under current law, the only permissible uses for
2067 702 acquired information for the NSA and CIA is for foreign
2068 intelligence purposes.

2069 That means that if someone were to impermissibly look
2070 at 702 acquired data to learn anything salacious that might
2071 exist on those whom they know, that is absolutely against
2072 the law and contrary to all approved minimization procedures
2073 enshrined in agency current practice and you have a statute
2074 that I think already makes this -- the Computer Fraud and
2075 Abuse Act, 18 U.S.C., section 1030, when one intentionally
2076 accesses a computer without authorization or exceeds
2077 authorized access and thereby obtains -- and it has a long
2078 list of things that could be obtained which would encompass
2079 what the gentleman is seeking, and that is a crime.

2080 So, for those reasons, I would either ask the gentleman
2081 to withdraw the amendment and work with us if he finds that

2082 there is something that could be done to enhance that or I
2083 would unfortunately oppose the amendment because I think his
2084 motives are in the right place.

2085 Mr. Farenthold. Would the gentleman yield?

2086 Chairman Goodlatte. I would be happy to yield to the
2087 gentleman.

2088 Mr. Farenthold. My concern is in the cases that were
2089 already discovered, there was basically a slap on the wrist.
2090 And I think that the amount of data that the government has,
2091 there needs to be something more than a slap on the wrist.
2092 None of these folks were prosecuted under that statute,
2093 though they may have been demoted or losing their job.

2094 Chairman Goodlatte. If the gentleman would continue to
2095 yield, I very much appreciate the objective. And in fact, I
2096 agree with the gentleman's sentiment. But it has never
2097 occurred under section 702. There is no evidence that in
2098 any circumstance that such occurred with regard to this
2099 statute.

2100 So, in that regard, I am happy to work with the
2101 gentleman. But I do not want to add one layer of criminal
2102 law on top of another that already exists. I would like to
2103 work with the gentleman to encourage the enforcement of the
2104 existing law. Who seeks recognition? The gentleman from
2105 Rhode Island.

2106 Mr. Cicilline. Yes. I move to strike the last word.

2107 Chairman Goodlatte. The gentleman is recognized for 5
2108 minutes.

2109 Mr. Cicilline. I just want to suggest, based on the
2110 chairman's comments, whether the gentleman would consider a
2111 friendly amendment, because I do think the reporting
2112 requirements that are on page 2, lines 14 to 25 are
2113 important and the sense of Congress is important. So, maybe
2114 the gentleman would consider striking the first section on
2115 the penalties since it seems already provided. But keep
2116 that reporting requirement and the sense of Congress that I
2117 think was a great addition to the bill.

2118 Mr. Farenthold. Any part of this I can get, I am for.
2119 But I do not think we can do a third level amendment.
2120 Somebody would have to do a different amendment under the
2121 rules.

2122 Mr. Cicilline. Would the chairman be amenable to that?

2123 Chairman Goodlatte. I would be amenable to working
2124 with both gentleman to see if there is anything to be done
2125 moving to the floor, but I do not support the amendment in
2126 its current form. And I do not think we can do a good job
2127 of amending it the way the gentleman wants to without that
2128 discussion.

2129 Mr. Cicilline. I will endeavor to do that with Mr.
2130 Farenthold while we consider the next amendment. Thank you,
2131 Mr. Chairman.

2132 Chairman Goodlatte. For what purpose does the
2133 gentleman from Texas seek recognition?

2134 Mr. Gohmert. I move to strike the last word.

2135 Chairman Goodlatte. The gentleman is recognized for 5
2136 minutes.

2137 Mr. Gohmert. I appreciate Mr. Farenthold bringing this
2138 amendment. I had one that would make it a specific crime as
2139 well.

2140 One of the problems we have, we are actually acting in
2141 the dark to try to protect the national security but at the
2142 same time try to protect the constitutional protections.
2143 And, you know, the people seeking to have this enormous
2144 power to spy on everybody because let's face it, if you just
2145 brush up against somebody they are monitoring, then that
2146 could be used to say ah-ha and could trigger these kinds of
2147 things -- a wrong number.

2148 But the people seeking this enormous power are the only
2149 ones that have the information that would show that mistakes
2150 have been made or intentional queries have been made that
2151 were inappropriate.

2152 We are really at a disadvantage here. We are being
2153 asked to reauthorize this incredible power that breaches
2154 constitutional protections for American citizens. It does.
2155 We are making a way around it by saying well, but if we do
2156 not know it is an American citizen, and they are captured in

2157 the net that is going after foreign intelligence folks, but
2158 we found out it does not have to be foreign intelligence
2159 people. It can be an ambassador. It can be a diplomat that
2160 has never been involved in any alleged impropriety, but that
2161 contact could be enough.

2162 So, it is just a little unnerving the people wanting
2163 the enormous power are the ones that have the information
2164 that would make this group, this committee, refuse to give
2165 them the power. They just have not disclosed all the
2166 information we have asked for that would allow us to make
2167 that determination.

2168 So, in absence of the power to make that determination
2169 because they have the information, and they have not
2170 disclosed it, I think we need a criminal penalty here.
2171 Slaps on the wrist are just not going to do it. There needs
2172 to be a specific crime that involves this so that when
2173 people make inappropriate queries or disseminations, they
2174 know they are looking at time in prison for doing so. That
2175 seems like a reasonable protection that we can add with the
2176 Constitution.

2177 Chairman Goodlatte. Would the gentleman yield?

2178 Mr. Gohmert. Yes, sir.

2179 Chairman Goodlatte. I appreciate the gentleman
2180 yielding. The fact of the matter is there is a statute
2181 right now that could make the people doing exactly what you

2182 are concerned about -- and I share your concern -- subject
2183 to criminal penalties. And the reality is that to the
2184 extent we know, it has not happened. So, I would rather
2185 direct my attention to pursuing the obtaining of a
2186 prosecution under the existing law than creating a new law
2187 that is also not enforced.

2188 Mr. Gohmert. Reclaiming my time, I appreciate that.
2189 But the statute to which reference is made would provide
2190 defenses that would not be available under the law that Mr.
2191 Farenthold is proposing. Making a false statement, well,
2192 there is not enough requirements in the statements in my
2193 mind that have to be made where they would end up making a
2194 false statement. They can just make a query and no false
2195 statement made. Just make the query, and they might fall
2196 outside the parameters of laws that are already on the
2197 books. This makes it specific. You do this wrong, and
2198 there is a crime.

2199 Chairman Goodlatte. If the gentleman would yield
2200 further?

2201 Mr. Gohmert. I do. I yield the remainder of my time.

2202 Chairman Goodlatte. Again, I thank the gentleman, and
2203 I share his concern. My recommendation would be the
2204 gentleman from Texas, Mr. Farenthold, withdraw it. I would
2205 be happy to work with him, Mr. Cicilline, and other members
2206 on seeing whether there is something that needs to be done

2207 to tighten up this situation.

2208 Mr. Farenthold. I think the best pathway to success is
2209 to work with you on that, but I do think we have an issue of
2210 the fox guarding the henhouse. So, I will ask unanimous
2211 consent to withdraw and work with the chairman on our way to
2212 the floor.

2213 Chairman Goodlatte. The chair thanks the gentleman.
2214 Without objection, the amendment is withdrawn. Are there
2215 further amendments to H.R. 3989?

2216 Mr. Poe. Mr. Chairman? I move to strike the last
2217 word, Mr. Chairman.

2218 Chairman Goodlatte. The gentleman from Texas is
2219 recognized for 5 minutes.

2220 Mr. Poe. I know the gentleman from Texas, Mr.
2221 Farenthold, has withdrawn his amendment. I hope we can
2222 resolve this. I just want to reiterate what has already
2223 been said by Mr. Farenthold and Judge Gohmert.

2224 Government must have rules before they can invade our
2225 privacy. One of those rules is get a Fourth Amendment
2226 warrant. We have been through this already. But if a
2227 government violates the rules, if government commits a crime
2228 to go look for a crime, that is a real bad thing. And
2229 government must be punished for doing that. We have the
2230 exclusionary rule as part of that punishment, but I think
2231 criminal penalties against the individuals who violate that

2232 sacred right that we determine is a right of privacy should
2233 be held accountable as well.

2234 So, I support the gentleman's amendment. I know it has
2235 been withdrawn. I look forward to working with the
2236 committee to hold people accountable that I do not believe
2237 are being held accountable for what they are doing in
2238 violation of the right of privacy. I yield back.

2239 Chairman Goodlatte. The chair thanks the gentleman.

2240 Mr. Cicilline. I have an amendment at the desk.

2241 Chairman Goodlatte. For what purpose does the
2242 gentleman from Rhode Island seek recognition.

2243 Mr. Cicilline. Mr. Chairman, I have an amendment at
2244 the desk.

2245 Chairman Goodlatte. The clerk will report the
2246 amendment.

2247 Ms. Adcock. Amendment to the amendment in the nature
2248 of a substitute to H.R. 3989 offered by Mr. Cicilline. Add
2249 at the appropriate place --

2250 [The amendment of Mr. Cicilline follows:]

2251 ***** COMMITTEE INSERT *****

2252 Chairman Goodlatte. Without objection, the amendment
2253 is concerned as read, and the gentleman is recognized for 5
2254 minutes on his amendment.

2255 Mr. Cicilline. Mr. Chairman, I hope that this
2256 amendment will reinforce the effort Mr. Farenthold just
2257 engaged in. This is an amendment which simply reasserts
2258 that nothing in the Act should be construed to limit the
2259 application of effective criminal penalties with respect to
2260 any provisions relating to the unauthorized access or use of
2261 information required under 702 or the unauthorized
2262 disclosure of a United States person's information acquired
2263 under said section.

2264 So, it is a section that will add a rule of
2265 construction regarding criminal penalties for unauthorized
2266 use, and I think it just sort of reasserts Congressional
2267 intention that those provisions relating to the unauthorized
2268 disclosure or use of this information subjects the
2269 individuals to criminal penalties. And with that, I yield
2270 back.

2271 Chairman Goodlatte. For what purpose does the
2272 gentleman from Texas seek recognition?

2273 Mr. Gohmert. I move to strike the last word regarding
2274 this amendment.

2275 Chairman Goodlatte. The gentleman is recognized for 5
2276 minutes.

2277 Mr. Gohmert. I appreciate my friend, Mr. Cicilline,
2278 bringing this amendment. I note that down in line nine, it
2279 references section 1924, which is good to reference. But I
2280 was wondering if the gentleman might be open to a friendly
2281 amendment to add section 1001, which is the provision
2282 regarding false statements being made to gain action and
2283 also section 1030 with regard to a criminal penalty for
2284 computer fraud and abuse.

2285 As I applaud Mr. Cicilline's efforts to put some pucker
2286 in the agents that may be tempted to misuse the information
2287 that is there, I would just yield to the gentleman to see if
2288 those might be two sections that we could add in a friendly
2289 manner.

2290 Mr. Cicilline. I thank the gentleman for his
2291 suggestion, and I would be happy to add those two sections
2292 to my amendment.

2293 Mr. Gohmert. Then, Mr. Chairman, I appreciate Mr.
2294 Cicilline's bringing this amendment and with those two
2295 provisions added to 1924, I think it extremely appropriate.
2296 And I would support the gentleman's amendment.

2297 Chairman Goodlatte. This requires unanimous consent.

2298 Mr. Gohmert. Could I ask unanimous consent to add
2299 those two sections with the gentleman's consent?

2300 Chairman Goodlatte. Unanimous consent has been
2301 requested. Without objection, those two provisions are

2302 added to the amendment to the amendment offered by the

2303 gentleman from Rhode Island.

2304 [The information follows:]

2305 ***** COMMITTEE INSERT *****

2306 Chairman Goodlatte. And the chair supports the
2307 amendment as amended by unanimous consent of the gentleman
2308 from Rhode Island. A question occurs the amendment offered
2309 by the gentleman from Rhode Island.

2310 All those in favor, respond by saying aye.

2311 Those opposed, no.

2312 The ayes have it, and the amendment is agreed to.

2313 Are there further amendments to H.R. 3989?

2314 Mr. Swalwell. Mr. Chairman, I have an amendment at the
2315 desk.

2316 Chairman Goodlatte. The clerk will report the
2317 amendment offered by the gentleman from California, Mr.
2318 Swalwell.

2319 Ms. Adcock. Amendment to the amendment in the nature
2320 of a substitute to H.R. 3989 offered by Mr. Swalwell of
2321 California. In section 202 --

2322 [The amendment of Mr. Swalwell follows:]

2323 ***** COMMITTEE INSERT *****

2324 Chairman Goodlatte. Without objection, the amendment
2325 is considered as read, and the gentleman is recognized for 5
2326 minutes on his amendment.

2327 Mr. Swalwell. Thank you, Mr. Chairman. My amendment
2328 would restore the ability of the Privacy and Civil Liberties
2329 Oversight Board, or PCLOB, to gain access to information on
2330 covert actions. I firmly believe that we have no higher
2331 obligation as members of Congress than to keep our
2332 constituents safe.

2333 Unfortunately, during times of danger, we often focus
2334 on this part of the job and forget about the importance of
2335 maintaining our most basic values. We give too much power
2336 to the government infringing on Americans' privacies in a
2337 misguided belief in the heat of the moment that we need to
2338 do so. This we cannot do. For if safety comes at the
2339 expense of our most basic values, we would be letting those
2340 win who wish to do us harm.

2341 I recognize this is a hard task reaching the right
2342 balance between protecting civil liberties and ensuring our
2343 safety. It is something we have struggled to do throughout
2344 our history.

2345 Mr. Chairman, this amendment though, to help in this
2346 struggle, would ensure that there is always some entity
2347 looking out for Americans' privacy even during times of
2348 danger. The 911 Commission proposed the creation of a board

2349 within the executive branch with such a mission. This idea
2350 became known what is now called PCLOB, again the Privacy and
2351 Civil Liberties Oversight Board. PCLOB has two tasks
2352 according to its authorizing statute.

2353 They are to review certain actions to fight terrorism
2354 of the executive branch, and to ensure that they are
2355 protective of civil liberties, and to safeguard civil
2356 liberties in the implementation of laws and policies design
2357 to keep us safe from terrorism.

2358 It is frustrating, then, that in 2015, the Congress
2359 stripped the PCLOB of the authority to review covert
2360 actions. There is no justification for this action, and the
2361 PCLOB there is no evidence that it mishandled classified
2362 information or revealed some secret action to our enemies.
2363 And covert activities are one of the most in need of
2364 oversight by a body like PCLOB. They are hidden from the
2365 public's view and done without any public scrutiny. The
2366 PCLOB was created to step in for just such activities and
2367 make sure the civil liberties perspective was kept in mind.

2368 I understand some members on the majority side were
2369 upset by comments made by a former PCLOB chairperson, and
2370 that may have inspired the PCLOB being stripped of its
2371 covert activities oversight, but neutering the PCLOB in this
2372 way is not the answer. The underlying bill improves the
2373 usefulness of the PCLOB. My amendment adds one more

2374 improvement by restoring its access to information on covert
2375 activities so it can continue its proper oversight role. I
2376 urge all members to support my amendment, and I yield back
2377 the balance of my time.

2378 Chairman Goodlatte. The chair thanks the gentleman for
2379 offering the amendment and recognizes himself in opposition
2380 to the amendment. The amendment would strike a rule of
2381 construction from the underlying law. The paragraph to be
2382 struck begins by stating that, "Nothing shall be construed"
2383 to allow access to covert actions.

2384 In other words, there is nothing in the underlying law
2385 that gives the PCLOB access to covert actions. I do not
2386 think we should reopen this issue at this time in this
2387 manner. So, I must oppose the gentleman's amendment.

2388 For what purpose does the gentleman from New York seek
2389 recognition?

2390 Mr. Nadler. Thank you, Mr. Chairman. I rise in
2391 support of the amendment. I think it is an amendment that
2392 makes sense in its own terms. It increases the privacy in
2393 the bill, and it should not upset the general balance of the
2394 bill. And accordingly, I support it.

2395 Chairman Goodlatte. All right. A question occurs on
2396 the amendment offered by the gentleman from California. All
2397 those in favor, respond by saying aye. Those opposed, no.
2398 In the opinion of the chair, the noes have it.

2399 Mr. Swalwell. May I have a recorded vote?
2400 Chairman Goodlatte. A recorded vote is requested, and
2401 the clerk will call the roll.
2402 Ms. Adcock. Mr. Goodlatte?
2403 Chairman Goodlatte. No.
2404 Ms. Adcock. Mr. Goodlatte votes no.
2405 Mr. Sensenbrenner?
2406 [No response.]
2407 Mr. Smith?
2408 [No response.]
2409 Mr. Chabot?
2410 [No response.]
2411 Mr. Issa?
2412 [No response.]
2413 Mr. King?
2414 Mr. King. No.
2415 Ms. Adcock. Mr. King votes no.
2416 Mr. Franks?
2417 [No response.]
2418 Mr. Gohmert.
2419 Mr. Gohmert. No.
2420 Ms. Adcock. Mr. Gohmert votes no.
2421 Mr. Jordan?
2422 Ms. Adcock. Mr. Jordan votes no.
2423 Mr. Poe?

2424 [No response.]

2425 Mr. Marino?

2426 Mr. Marino. No.

2427 Ms. Adcock. Mr. Marino votes no.

2428 Mr. Gowdy?

2429 [No response.]

2430 Mr. Labrador?

2431 [No response.]

2432 Mr. Farenthold?

2433 Mr. Farenthold. No.

2434 Ms. Adcock. Mr. Farenthold votes no.

2435 Mr. Collins?

2436 Mr. Collins. No.

2437 Ms. Adcock. Mr. Collins votes no.

2438 Mr. DeSantis?

2439 [No response.]

2440 Mr. Buck?

2441 [No response.]

2442 Mr. Ratcliffe?

2443 Mr. Ratcliffe. No.

2444 Ms. Adcock. Mr. Ratcliffe votes no.

2445 Ms. Roby?

2446 [No response.]

2447 Mr. Gates?

2448 [No response.]

2449 Mr. Johnson of Louisiana?
2450 [No response.]
2451 Mr. Biggs?
2452 Mr. Biggs. No.
2453 Ms. Adcock. Mr. Biggs votes no.
2454 Mr. Rutherford?
2455 [No response.]
2456 Mrs. Handel?
2457 Mrs. Handel. No.
2458 Ms. Adcock. Mrs. Handel votes no.
2459 Mr. Conyers?
2460 Mr. Conyers. Aye.
2461 Ms. Adcock. Mr. Conyers votes aye.
2462 Mr. Nadler?
2463 Mr. Nadler. Aye.
2464 Ms. Adcock. Mr. Nadler votes aye.
2465 Ms. Lofgren?
2466 Ms. Lofgren. Aye.
2467 Ms. Adcock. Ms. Lofgren votes aye.
2468 Ms. Jackson Lee?
2469 Ms. Jackson Lee. Aye.
2470 Ms. Adcock. Ms. Jackson Lee votes aye.
2471 Mr. Cohen
2472 [No response.]
2473 Mr. Johnson of Georgia?

2474 Mr. Johnson of Georgia. Aye.
2475 Ms. Adcock. Mr. Johnson votes aye.
2476 Mr. Deutch?
2477 [No response.]
2478 Mr. Gutierrez?
2479 [No response.]
2480 Ms. Bass?
2481 [No response.]
2482 Mr. Richmond?
2483 [No response.]
2484 Mr. Jeffries?
2485 [No response.]
2486 Mr. Cicilline?
2487 [No response.]
2488 Mr. Swalwell?
2489 Mr. Swalwell. Aye.
2490 Ms. Adcock. Mr. Swalwell votes aye.
2491 Mr. Lieu?
2492 Mr. Lieu. Aye.
2493 Ms. Adcock. Mr. Lieu votes aye.
2494 Mr. Raskin?
2495 [No response.]
2496 Ms. Jayapal?
2497 [No response.]
2498 Mr. Schneider?

2499 Mr. Schneider. Aye.

2500 Ms. Adcock. Mr. Schneider votes aye.

2501 Chairman Goodlatte. The gentleman from Wisconsin?

2502 Ms. Adcock. Mr. Sensenbrenner votes no.

2503 Chairman Goodlatte. The gentleman from Arizona?

2504 Ms. Adcock. Mr. Franks votes no.

2505 Chairman Goodlatte. The gentleman from Texas?

2506 Ms. Adcock. Mr. Poe votes no.

2507 Chairman Goodlatte. The gentleman from Florida?

2508 Ms. Adcock. Mr. Gaetz votes no.

2509 Chairman Goodlatte. The gentleman from Idaho?

2510 Mr. Labrador. No.

2511 Chairman Goodlatte. The gentleman from Louisiana?

2512 Mr. Richmond. No.

2513 Chairman Goodlatte. Has every member voted? The

2514 gentleman from Ohio?

2515 Mr. Jordan. No.

2516 Chairman Goodlatte. Has every member voted who wishes

2517 to vote? The clerk will report. While we are waiting on

2518 the clerk, the chair would advise the members that we have a

2519 vote on the floor with about 5 minutes remaining, and we

2520 will reconvene immediately after this series of votes.

2521 Ms. Adcock. Mr. Chairman, 8 members voted aye; 17

2522 members voted no.

2523 Chairman Goodlatte. The amendment is not agreed to,

2524 and the committee will stand recess.

2525 [Recess.]

2526 Chairman Goodlatte. The committee will reconvene.

2527 When the committee recessed, we were considering amendments
2528 to H.R. 3989. Are there further amendments?

2529 Mr. Swalwell. Mr. Chairman, I have an amendment at the
2530 desk.

2531 Chairman Goodlatte. The clerk will report the
2532 amendment of the gentleman from California.

2533 Ms. Adcock. Amendment to the amendment in the nature
2534 of a substitute to H.R. 3989 offered by Mr. Swalwell of
2535 California. Add at the appropriate --

2536 [The amendment of Mr. Swalwell follows:]

2537

2538 ***** COMMITTEE INSERT *****

2539

2540

2541

2542

2543

2544

2545

2546

2547

2548

2549 Chairman Goodlatte. Without objection, the amendment
2550 is considered read, and the gentleman is recognized for 5
2551 minutes on his amendment.

2552 Mr. Swalwell. Thank you, Mr. Chairman. My amendment
2553 would require that the Director of National Intelligence
2554 fully and currently keep the Gang of Eight informed if the
2555 intelligence community reviews information acquired under
2556 section 702 which may be reasonably be interpreted to show
2557 possible interference in a U.S. election. Mr. Chairman, it
2558 is not disputed by our intelligence committees or our
2559 intelligence community or most leaders in the United States
2560 that Russia interfered in our election and that there were
2561 significant gaps in understanding their capabilities and
2562 that the U.S. Government response was not sufficient.

2563 My amendment would allow the Gang of Eight to
2564 immediately be notified so that Article I, the legislative
2565 branch, would be apprised of any attacks that were underway
2566 allowing Congressional leaders to understand the nature of
2567 the attacks and how they would affect our democracy. I
2568 think it has already been clear that in this past election,
2569 we were not only vulnerable to an attack like this, but that
2570 our enemies have capabilities to carry out similar attacks
2571 again.

2572 It is also not disputed that it is indeed under section
2573 702 that much of the information that we would learn very

2574 early on about an enemy's attack against our country or an
2575 effort to undermine our democracy would be learned under
2576 section 702 collection. So, this is an effort to make sure
2577 that the legislative branch is informed and kept up to date
2578 and allows Congress to assert our role to protect our great
2579 democracy. With that, Mr. Chairman, I will yield back.

2580 Chairman Goodlatte. The chair thanks the gentleman and
2581 recognizes himself. I oppose the amendment. This
2582 amendment, like an earlier amendment, seeks to inject
2583 partisanship into what has thus far been a bipartisan
2584 process. The amendment would require the intelligence
2585 community to inform Congress of any instance in which the
2586 intelligence community reviews information acquired under
2587 section 702-A that may be reasonably interpreted to show
2588 possible interference or attempted interference by a foreign
2589 power or agent of a foreign power in a Federal, State, or
2590 local election of the United States.

2591 Once again, this amendment seeks to inject the
2592 allegations of Russian interference in the 2016 election and
2593 its process. Moreover, the language it uses is far too
2594 broadly worded. "Any instance in which information could be
2595 reasonably interpreted to show possible interference" could
2596 mean anything, including situations where no reasonable
2597 person would conclude that interference had occurred. So, I
2598 must oppose the amendment, and I urge my colleagues to do

2599 the same.

2600 Mr. Nadler. Mr. Chairman?

2601 Chairman Goodlatte. For what purpose does the
2602 gentleman from New York seek recognition?

2603 Mr. Nadler. I move to strike the last word.

2604 Chairman Goodlatte. The gentleman is recognized for 5
2605 minutes.

2606 Mr. Nadler. Mr. Chairman, I support the amendment. It
2607 does not seek to put partisanship into the bill. It does
2608 not look back to 2016. Now, it is true that our
2609 intelligence agencies tell us the Russians intervened in our
2610 election last year. Very nice. We could all debate that or
2611 discuss that. But this amendment does not discuss that or
2612 debate that or deal with that.

2613 Our intelligence agencies tell us that the Russians may
2614 try to do similar things in future elections. Now,
2615 certainly it is in all our interests, regardless of
2616 partisanship -- Democrats, Republicans, whatever -- to
2617 safeguard the integrity of our elections in the future. And
2618 all this amendment says is that if the DNI -- the Director
2619 of National Intelligence -- gets information from 702 that a
2620 foreign power in the future is seeking to intervene in our
2621 election -- maybe to help Democrats, maybe to help
2622 Republicans, maybe just to sew chaos, whatever the case may
2623 be -- they should tell the Gang of Eight, the leadership of

2624 the House and Senate. And it is simply a question of the
2625 fact if the leadership of the House and Senate should be
2626 apprised of things like this in the future.

2627 Now, it is true that the allegations about the past
2628 refer to the Russians trying to help Trump, but that is not
2629 what this amendment is about. Maybe it informs the
2630 judgement behind worrying about the future, but this
2631 amendment simply says that in the future when information is
2632 acquired about some foreign power -- be it Russia or China
2633 or Denmark, for that matter -- trying to interfere in our
2634 elections, the leadership of the House and Senate should
2635 know and be informed. That is all it says. I do not see
2636 how anybody could think that that is intrusive or unworkable
2637 or not desirable. And I support the amendment.

2638 Chairman Goodlatte. For what purpose does the
2639 gentleman from Rhode Island seek recognition?

2640 Mr. Cicilline. I move to strike the last word.

2641 Chairman Goodlatte. The gentleman is recognized for 5
2642 minutes.

2643 Mr. Cicilline. I, too, rise in support of the
2644 amendment, and I just ask the gentleman from California
2645 whether he would accept a friendly amendment that would
2646 simply add after "United States, except if such an official
2647 is implicated in any manner in the suspected or attempted
2648 interference." End of statement.

2649 Mr. Swalwell. Would the gentleman yield?

2650 Mr. Cicilline. I am happy to yield.

2651 Mr. Swalwell. I would accept that thoughtful and, I
2652 think, helpful amendment. And I would also just say that
2653 Mr. Chairman, this is not seeking to look backward except to
2654 understand and appreciate that our election systems are
2655 under attack and that 702 is a form to capture any
2656 conversations or communications that our enemies may be
2657 having about an attack and that Congress should be notified
2658 as early as possible. So, why would we not want to know?
2659 Why would we not want our Congressional leaders to know that
2660 an enemy is attacking us? I think this shows the American
2661 people a lesson learned from the last attack and can
2662 strengthen our abilities to defend against a future one. I
2663 yield back.

2664 Mr. Cicilline. Thank you. Reclaiming my time, and
2665 with that Mr. Chairman, I strongly support this amendment.
2666 I would say that, again, I find it particularly sad that
2667 protecting the integrity of our elections would be
2668 interpreted or heard as a partisan effort. I think that
2669 everyone on this committee -- Republicans and Democrats --
2670 took an oath to uphold our Constitution and to defend our
2671 democracy. That is not a Republican or a Democratic issue.

2672 We ought to be able to say in a loud and clear voice --
2673 both as Republicans and Democrats, but, more importantly, as

2674 Americans -- that we will ensure that if, in fact, there is
2675 information to believe that an effort is underway to
2676 interfere or to attempt to interfere by a foreign power in a
2677 Federal, State, or local election, that it makes sense that
2678 the leaders of the Congress of United States be advised of
2679 that.

2680 I mean, there is no more sacred responsibility that we
2681 have than to protect this democracy and to be sure that
2682 those who are privileged enough to serve in the Congress of
2683 the United States have the ability to respond to such
2684 efforts by a foreign government to interfere with our
2685 elections. That is the place where the voices of the
2686 American people are heard through our election process, and
2687 the idea that we would think that it was partisan to require
2688 the disclosure of that information of an attempt by a
2689 foreign government to interfere in our elections shows me
2690 sadly how far we have gone off the track.

2691 This should not be a partisan issue. Every single
2692 American expects that the Congress of the United States will
2693 stand in a united way against any such effort, and alerting
2694 the leadership of the Congress so that they can respond to -
2695 - both legislatively, administratively -- this is a sacred
2696 responsibility. I think it is an excellent amendment. I
2697 urge my colleagues to support it, and as Mr. Swalwell --

2698 Ms. Jackson Lee. Will the gentleman yield?

2699 Mr. Cicilline. I am happy to yield. I was just going
2700 to say as Mr. Swalwell said, this is forward-looking. This
2701 is not backward-looking. This is about making sure we learn
2702 from the past and incorporate those lessons in good public
2703 policy, which this amendment does. And with that, I yield
2704 to the gentlelady from Texas.

2705 Ms. Jackson Lee. A question to the proponent of the
2706 amendment: is there a reason why you do not include the
2707 chairman and ranking member of the judiciary committees in
2708 the House and the Senate?

2709 Mr. Swalwell. Would the gentlelady yield back to Mr.
2710 Cicilline, and he could yield to me?

2711 Ms. Jackson Lee. He has the time. He has the time.

2712 Mr. Swalwell. I thank the gentlelady for her question,
2713 and it is just to keep what the protocol of the Gang of
2714 Eight being the receiving committee of individuals, that
2715 would be the majority and minority leaders of the Senate,
2716 the speaker of the house, the minority leader of the House
2717 and the chairs and ranking members of the Intelligence
2718 Committee. So, just keeping a structure that is already in
2719 place.

2720 And with that, I would ask just to be technically
2721 correct, Mr. Chairman, that we have unanimous consent to
2722 amend the amendment with the language that the gentleman
2723 from Rhode Island recommended.

2724 Chairman Goodlatte. Would the gentleman from Rhode
2725 Island yield?

2726 Mr. Cicilline. Yes, of course.

2727 Chairman Goodlatte. I thank the gentleman for
2728 yielding. First of all, the gentleman's amendment to the
2729 amendment to the amendment requires unanimous consent. I do
2730 not object to perfecting the amendment as the gentleman
2731 desired, but I still strongly object to the underlying
2732 amendment to the amendment because this is injecting a
2733 partisan issue in a bipartisan piece of legislation. But
2734 more importantly, there are a lot of things that the
2735 Congress could instruct the intelligence community to tell
2736 the Group of Eight, and there is nothing to stop the
2737 intelligence community from informing the Group of Eight
2738 right now. So, I do not see the need to have this added to
2739 this legislation.

2740 Mr. Swalwell. Would the gentleman yield?

2741 Chairman Goodlatte. It is the gentleman from Rhode
2742 Island's time.

2743 Mr. Swalwell. Sorry. Mr. Chairman, I would welcome if
2744 you want to share with us right now what you perceive as
2745 partisan, and I would strike that if that is a problem.

2746 Chairman Goodlatte. I think the overall issue here,
2747 given the fact there are a lot of other things that the
2748 Congress might desire to be informed by the intelligence

2749 community, and given the fact that we have an ongoing
2750 investigation regarding the subject that the gentleman is
2751 interested in, that in and of itself is enough for me.

2752 Mr. Swalwell. And Mr. Chairman, I appreciate that.
2753 And I would just argue that we are marking up 702, that 702
2754 information could gather election interference, and that we
2755 would want the Gang of Eight to know about that. And I
2756 yield back.

2757 Chairman Goodlatte. I appreciate the gentleman's
2758 position. Does the gentleman yield back?

2759 Mr. Raskin. Mr. Chairman?

2760 Chairman Goodlatte. For what purpose does the
2761 gentleman from Maryland seek recognition?

2762 Mr. Raskin. I move to strike the last word.

2763 Chairman Goodlatte. The gentleman is recognized for 5
2764 minutes.

2765 Mr. Raskin. Thank you, Mr. Chairman. I want to rise
2766 in very strong favor of Mr. Swalwell's amendment and commend
2767 him for introducing it. All it says is that the Director of
2768 the National Intelligence shall notify Congress in the event
2769 that there is evidence of interference in U.S. elections at
2770 the Federal, State, or local level. I can only regard with
2771 some amazement the suggestion that this partisan
2772 legislation. Nothing in it mentions a political party. It
2773 invokes the Director of National Intelligence who is not a

2774 partisan actor, and then it requires notification of the
2775 speaker and the minority leader of the House and ranking
2776 minority members and chairman of Congressional Intelligence
2777 Committee and the majority and minority leaders of the
2778 Senate. So, it is scrupulously bipartisan or nonpartisan in
2779 terms of how it works.

2780 The Intelligence Committee, without regard to what
2781 happened in 2016, are telling us that they believe it is
2782 very likely that Russia, China, or other countries will
2783 attempt to interfere in our next election in 2018, a year
2784 away, or 2020. That is a matter of critical urgency and
2785 importance for all of the American people that we have
2786 foreign powers attempting to disrupt and undermine the
2787 sovereignty of the American people. And I cannot imagine
2788 why that would be characterized as a partisan issue, as a
2789 partisan problem. If anything, this goes to the question of
2790 the separation of powers and our ability to successfully
2791 vindicate the interests that characterize the legislative
2792 branch.

2793 Article I section 4 gives us, Congress, the power to
2794 regulate the time, place, and manner of elections. We are
2795 responsible for the integrity of elections which are the
2796 transmission belt for the popular will in American
2797 democracy. So, I think that this is absolutely critical,
2798 and I also just remain baffled by the suggestion that there

2799 is anything partisan here.

2800 Now, if what we mean is that people's support for this
2801 might break down along party lines, well then everything we
2802 do is partisan, and we would not be able to vote on any
2803 legislation. But I would hope this would be one thing --

2804 Chairman Goodlatte. Would the gentleman yield?

2805 Mr. Raskin. Yes, by all means.

2806 Chairman Goodlatte. I did not say we could not vote on
2807 it. I just said I did not support it.

2808 Mr. Raskin. No, no. I was certainly not accusing you
2809 of saying that Mr. Swalwell would be denied a vote. But
2810 what I am saying is that if we characterize any legislation
2811 that has a different partisan valance among the parties as
2812 partisan in nature, then it would disqualify all
2813 legislation. All legislation would be discredited, but I
2814 think that this is the reason why we do not impute motives
2815 to people when we talk about legislation in Congress because
2816 we try to deal with the legislation in terms of its
2817 objective characteristics.

2818 And I guess I would just say if you read the
2819 legislation, there is nothing remotely partisan about it.
2820 And it is something I think that should unify us. It could
2821 create a rare moment of bipartisan commonality and unity
2822 that we would want to know as the United States Congress if
2823 there were efforts to undermine elections. After the

2824 elections took place in 2016, there was notification given
2825 to, I think, two dozen or 20 State secretaries of state or
2826 election registrars that there had been attempts to hack
2827 into their system. That is a matter of fact, and that is
2828 something that we should be able to do before an election
2829 rather than part of some kind of ex post facto post mortem
2830 when it is all over. So, I hope that everybody takes a
2831 serious look at this, not view it as just some kind of
2832 partisan claptrap.

2833 Ms. Jackson Lee. Would the gentleman yield?

2834 Mr. Raskin. By all means.

2835 Ms. Jackson Lee. You have enormously convincing
2836 arguments. I think the amendment certainly has a good
2837 intent. If your history serves you well, in 2016 I assume
2838 the Gang of Eight received information that Congress did not
2839 receive, and nothing was done. So, my opposition to the
2840 amendment is that I believe it should be presented to the
2841 members of Congress in a classified session because nothing
2842 was done when the Gang of Eight got the information
2843 regarding 2016. So, I am opposed to the amendment.

2844 I am also opposed to the amendment because we are in
2845 the Judiciary Committee, and the Judiciary Committee is not
2846 included in this amendment. And frankly, I believe that
2847 jurisdictionally, we should be included in this amendment.
2848 So, I yield back.

2849 Mr. Raskin. Reclaiming my time, thank you very much.
2850 You make an excellent point. It is not my amendment, and I
2851 would --

2852 Ms. Jackson Lee. No, it is not. But I wanted to be on
2853 the record when I vote no. Thank you.

2854 Mr. Raskin. I appreciate it, and I would happily yield
2855 to Mr. Swalwell to address that point. I do not know if you
2856 heard the congresswoman's point simply that the Judiciary
2857 Committee itself should be notified; but in addition, every
2858 member of Congress should be put on notice if this happens.
2859 And I am just curious as to your reaction to that.

2860 Mr. Swalwell. Thank you to the gentlelady again for
2861 her concern, and I just believe that the first step when raw
2862 intelligence comes across the intelligence community's desk
2863 is to analyze it and then give it to the Gang of Eight. And
2864 then I believe it is their job to ultimately disseminate it
2865 as quickly as possible to members of Congress. But I think
2866 the first step we should take is at least to give the access
2867 to our Congressional leaders. And again, this is just a
2868 lesson learned. We are marking up 702 now, and an election
2869 is imminent a year from today. I yield back, Mr. Chairman.

2870 Chairman Goodlatte. Without objection, the friendly
2871 amendment of the gentleman from Rhode Island is made to the
2872 gentleman's amendment. And the question occurs on the
2873 gentleman from California's amendment to the substitute

2874 amendment.

2875 All those in favor, respond by saying aye.

2876 Those opposed, no.

2877 In the opinion of the chair, the noes have it.

2878 Mr. Swalwell. May I have a recorded vote?

2879 Chairman Goodlatte. A recorded vote is requested, and

2880 the clerk will call the roll.

2881 Ms. Adcock. Mr. Goodlatte?

2882 Chairman Goodlatte. No.

2883 Ms. Adcock. Mr. Goodlatte votes no.

2884 Mr. Sensenbrenner?

2885 Mr. Sensenbrenner. No.

2886 Ms. Adcock. Mr. Sensenbrenner votes no.

2887 Mr. Smith?

2888 Mr. Smith. No.

2889 Ms. Adcock. Mr. Smith votes no.

2890 Mr. Chabot?

2891 [No response.]

2892 Mr. Issa?

2893 Mr. Issa. No.

2894 Ms. Adcock. Mr. Issa votes no.

2895 Mr. King?

2896 [No response.]

2897 Mr. Franks?

2898 [No response.]

2899 Mr. Gohmert?
2900 Mr. Gohmert. No.
2901 Ms. Adcock. Mr. Gohmert votes no.
2902 Mr. Jordan?
2903 Mr. Jordan. No.
2904 Ms. Adcock. Mr. Jordan votes no.
2905 Mr. Poe?
2906 [No response.]
2907 Mr. Marino?
2908 Mr. Marino. No.
2909 Ms. Adcock. Mr. Marino votes no.
2910 Mr. Gowdy?
2911 Mr. Gowdy. No.
2912 Ms. Adcock. Mr. Gowdy votes no.
2913 Mr. Labrador?
2914 Mr. Labrador. No.
2915 Ms. Adcock. Mr. Labrador votes no.
2916 Mr. Farenthold. No.
2917 Ms. Adcock. Mr. Farenthold votes no.
2918 Mr. Collins?
2919 Mr. Collins. No.
2920 Ms. Adcock. Mr. Collins votes no.
2921 Mr. DeSantis?
2922 [No response.]
2923 Mr. Buck?

2924 [No response.]

2925 Mr. Ratcliffe?

2926 Mr. Ratcliffe. No.

2927 Ms. Adcock. Mr. Ratcliffe votes no.

2928 Mrs. Roby?

2929 Mrs. Roby. No.

2930 Ms. Adcock. Mrs. Roby votes no.

2931 Mr. Gaetz?

2932 Mr. Gaetz. No.

2933 Ms. Adcock. Mr. Gaetz votes no.

2934 Mr. Johnson of Louisiana?

2935 [No response.]

2936 Mr. Biggs?

2937 Mr. Biggs. No.

2938 Ms. Adcock. Mr. Biggs votes no.

2939 Mr. Rutherford?

2940 Mr. Rutherford. No.

2941 Ms. Adcock. Mr. Rutherford votes no.

2942 Mrs. Handel?

2943 Mrs. Handel. No.

2944 Ms. Adcock. Mrs. Handel votes no.

2945 Mr. Conyers?

2946 [No response.]

2947 Mr. Nadler?

2948 Mr. Nadler. Aye.

2949 Ms. Adcock. Mr. Nadler votes aye.
2950 Ms. Lofgren?
2951 Ms. Lofgren. Aye.
2952 Ms. Adcock. Ms. Lofgren votes aye.
2953 Ms. Jackson Lee?
2954 Ms. Jackson Lee. No.
2955 Ms. Adcock. Ms. Jackson Lee votes no.
2956 Mr. Cohen?
2957 [No response.]
2958 Mr. Johnson of Georgia?
2959 [No response.]
2960 Mr. Deutch?
2961 Mr. Deutch. Aye.
2962 Ms. Adcock. Mr. Deutch votes aye.
2963 Mr. Gutierrez?
2964 [No response.]
2965 Ms. Bass?
2966 [No response.]
2967 Mr. Richmond?
2968 Mr. Richmond. Aye.
2969 Ms. Adcock. Mr. Richmond votes aye.
2970 Mr. Jeffries?
2971 Mr. Jeffries. Aye.
2972 Ms. Adcock. Mr. Jeffries votes aye.
2973 Mr. Cicilline?

2974 Mr. Cicilline. Aye.

2975 Ms. Adcock. Mr. Cicilline votes aye.

2976 Mr. Swalwell?

2977 Mr. Swalwell. Aye.

2978 Ms. Adcock. Mr. Swalwell votes aye.

2979 Mr. Lieu?

2980 Mr. Lieu. Aye.

2981 Ms. Adcock. Mr. Lieu votes aye.

2982 Mr. Raskin?

2983 Mr. Raskin. Aye.

2984 Ms. Adcock. Mr. Raskin votes aye.

2985 Ms. Jayapal?

2986 [No response.]

2987 Mr. Schneider?

2988 Mr. Schneider. Aye.

2989 Ms. Adcock. Mr. Schneider votes aye.

2990 Chairman Goodlatte. The gentleman from Ohio, Mr.

2991 Chabot?

2992 Ms. Adcock. Not recorded.

2993 Mr. Chabot. No.

2994 Ms. Adcock. Mr. Chabot votes no.

2995 Chairman Goodlatte. The gentleman from Iowa?

2996 Mr. King. No.

2997 Ms. Adcock. Mr. King votes no.

2998 Chairman Goodlatte. The gentleman from Louisiana?

2999 Mr. Johnson of Louisiana. No.

3000 Ms. Adcock. Mr. Johnson votes no.

3001 Chairman Goodlatte. The gentleman from Michigan?

3002 Mr. Conyers. Mr. Chairman, I change my vote to aye.

3003 Ms. Adcock. Mr. Conyers votes aye.

3004 Chairman Goodlatte. Has every member voted who wishes
3005 to vote? The clerk will report.

3006 Ms. Adcock. Mr. Chairman, 11 members voted aye, 21
3007 members voted no.

3008 Chairman Goodlatte. And the amendment is not agreed
3009 to. Are there further amendments to H.R. 3989?

3010 Mr. Swalwell. Mr. Chairman?

3011 Chairman Goodlatte. For what purpose does the
3012 gentleman from California seek recognition?

3013 Mr. Swalwell. Thank you, Mr. Chairman. I have an
3014 amendment at the desk.

3015 Chairman Goodlatte. The clerk will report the
3016 amendment.

3017 Ms. Adcock. Amendment to the amendment in the nature
3018 of a substitute to H.R. 3989 offered by Mr. Swalwell of
3019 California. In section 1 --

3020 [The amendment of Mr. Swalwell follows:]

3021 ***** COMMITTEE INSERT *****

3022 Chairman Goodlatte. Without objection, the amendment
3023 is considered as read, and the gentleman is recognized for 5
3024 minutes on his amendment.

3025 Mr. Swalwell. Thank you, Mr. Chairman. My amendment
3026 would strengthen the bill's commitment to the privacy and
3027 civil liberties of non-U.S. persons. Our work today to
3028 reform intelligence gathering under section 702 is generally
3029 focused on protecting the rights of U.S. persons. However,
3030 we cannot ignore the damage that prior intelligence breaches
3031 have caused to our perception and standing in the world and
3032 the effect that that has had on U.S. persons' and U.S.
3033 businesses' ability to conduct international commerce.

3034 However, section 109 addresses the important issue of
3035 how we treat non-U.S. persons, and I seek to build on that.
3036 Americans believe strongly in their right to be free from
3037 improper government intrusion. They recognize though that
3038 this important American ideal does not stop at our shores.
3039 All people around the world are entitled to this freedom.
3040 It is important we state in this bill as clearly as possible
3041 our commitment to privacy.

3042 Following the revelations of Edward Snowden, the belief
3043 of other countries in our commitment to this principle was
3044 shaken. Other countries have become concerned about the
3045 privacy practices and civil liberties protections offered
3046 their citizens under U.S. law. Whether one believes their

3047 concerns are valid or not, this perception has had a direct
3048 and negative impact, particularly on U.S. high-tech firms.
3049 Companies lost contracts, sales, and opportunities for
3050 growth.

3051 A June 2015 Information Technology and Innovation
3052 Foundation report characterized foreign firms as shunning
3053 U.S. companies with losses to our economy well in excess of
3054 \$35 billion. During this time, the court of justice of the
3055 European Union also found the main agreement governing data
3056 flows between the U.S. and E.U. to be not sufficiently
3057 protective of civil liberties. While this has been replaced
3058 by a more detailed agreement privacy shield, we should take
3059 every opportunity to reiterate as clearly as possible our
3060 commitment to privacy for all.

3061 My amendment would do this in two ways. First, it
3062 would add language to the bill which echoes Presidential
3063 Policy Directive, also known as PPD28, in which President
3064 Obama provided direction on how we would collect signals
3065 intelligence. PPD28 provides that we will take into account
3066 the legitimate privacy and civil liberties concerns of U.S.
3067 citizens and other nations as we collect signals
3068 intelligence. Similarly, my amendment would add the idea
3069 that it is the sense of Congress that targeting non-U.S.
3070 persons must be done in a manner consistent with privacy and
3071 civil liberties principles.

3072 Second, the court of justice of the European Union
3073 through its decisions has made clear that for the E.U.,
3074 policies infringing on someone's personal privacy must be
3075 based on clear and precise rules and applied only insofar as
3076 strictly necessary. My amendment would add a similar
3077 concept to the underlying bill. Specifically, it would
3078 change section 109 to express the sense of Congress that any
3079 targeting of non-U.S. persons must be done in a manner
3080 consistent with specific purposes provided by law.

3081 I appreciate the authors of the bill including section
3082 109 through which Congress can reiterate its commitment to
3083 respecting the civil liberties of everyone, including non-
3084 U.S. persons. My amendment would improve that sentiment so
3085 as to reassure our allies and help our businesses here in
3086 the United States avoid being hamstrung in their attempts to
3087 compete by a concern over U.S. policies. I urge all members
3088 to support my amendment, and I yield back the balance of my
3089 time.

3090 Mr. Sensenbrenner. Mr. Chairman?

3091 Chairman Goodlatte. For what purpose does the
3092 gentleman from Wisconsin seek recognition?

3093 Mr. Sensenbrenner. In opposition to the amendment.

3094 Chairman Goodlatte. The gentleman is recognized for 5
3095 minutes.

3096 Mr. Sensenbrenner. Mr. Chairman, I do not know if the

3097 gentleman from California wishes to export our Bill of
3098 Rights to countries that do not have a bill of rights in
3099 their own constitution or to turn over the definition of
3100 what constitutes privacy to the European Court of Justice or
3101 another agency of the European Union. Both of those notions
3102 are wrong. I think that what is happening here may be with
3103 the best of intentions is actually going to reopen a lot of
3104 very delicate negotiations, both in terms of the safe
3105 harbor, which was struck down by the European Court of
3106 Justice, and the privacy shield that was negotiated between
3107 the Obama administration and the E.U.

3108 And I honestly think that basically what this amendment
3109 does is to tear up all of the agreements that have been
3110 made, not by the current administration because the old ones
3111 are in place, to be able to protect transatlantic commerce
3112 in particular. I think while this amendment is very well-
3113 intentioned, it is going to end up hurting the people that
3114 the gentleman from California intends to help and should be
3115 rejected for that purpose.

3116 Chairman Goodlatte. Would the gentleman yield?

3117 Mr. Swalwell. Would the gentleman yield?

3118 Mr. Sensenbrenner. I yield to the chairman.

3119 Chairman Goodlatte. I thank the gentleman for
3120 yielding, and I join him in opposing the amendment. The
3121 amendment would affect one of the sections in the underlying

3122 bill that expresses the sense of Congress. The only
3123 discernable difference this amendment offers is to add to
3124 Congressional intent the idea that 702 targeting of non-
3125 United States persons should be administered consistent with
3126 privacy and civil liberties principles. It is unclear what
3127 privacy and civil liberties principles would apply to a non-
3128 U.S. person.

3129 The many protections that the U.S. Constitution affords
3130 U.S. citizens do not extend to non-U.S. persons located
3131 abroad. That is the essence of section 702 collection. It
3132 would be improper for Congress to suggest that the current
3133 targeting procedures are somehow deficient by not accounting
3134 for privacy and civil liberties of non-U.S. persons.

3135 Moreover, section 109 already states that the
3136 acquisition of communications must be conducted within the
3137 bounds of treaties and agreements to which the U.S. is a
3138 party and to which the gentleman from Wisconsin just
3139 referenced. I think we are getting into deep water here;
3140 and, therefore, I must oppose an amendment that could
3141 disrupt all kinds of negotiations that have gone on in the
3142 past and will go on in the future with what may be well-
3143 intentioned, but I do not think is constructive to our
3144 purpose here of protecting the civil liberties of U.S.
3145 citizens while continuing an important intelligence
3146 gathering tool.

3147 Mr. Swalwell. Would the gentleman from Wisconsin
3148 yield?

3149 Mr. Sensenbrenner. I yield to the gentleman from
3150 California.

3151 Mr. Swalwell. Thank you, and I appreciate the
3152 gentleman of Wisconsin's perspective on this. And I just
3153 would point out to the gentleman I was partially inspired by
3154 this by a letter that you had sent back in December of 2016
3155 to President Obama during the transition where you
3156 encouraged him to retain Presidential Policy Directive 28,
3157 and I would hope that the gentleman and I could work on
3158 making sure that the sense of that Presidential Policy
3159 Directive is kept and that, again, our businesses are not
3160 punished here at home because of it.

3161 Mr. Sensenbrenner. Well, the privacy shield which
3162 protects our businesses here at home was dependent upon
3163 Presidential Policy Directive 28, you know, hence the reason
3164 I sent the letter to President Obama. And I have expressed
3165 similar sentiments to members of the Trump Administration.
3166 I think that the fact that with PPD28 and the privacy
3167 shield, we have done what we can do on this. And I would
3168 reiterate the fact that adopting the gentleman from
3169 California's amendment would probably rip up the privacy
3170 shield and get us back to square one. That is a danger that
3171 I do not want to run, and maybe with this information, I had

3172 hoped that the gentleman from California would withdraw his
3173 amendment. And I yield back.

3174 Chairman Goodlatte. The question occurs on the
3175 amendment offered by the gentleman from California.

3176 All those in favor, respond by saying aye.

3177 Those opposed, no.

3178 In the opinion of the chair, the noes have it, and the
3179 amendment is not agreed to.

3180 Are there further amendments to H.R. 3989? For what
3181 purpose does the gentleman from Texas seek recognition?

3182 Mr. Farenthold. I have an amendment at the desk.

3183 Chairman Goodlatte. The clerk will report the
3184 amendment.

3185 Ms. Adcock. Amendment to the amendment in the nature
3186 of a substitute to H.R. 3989 offered by Mr. Farenthold of
3187 Texas. Add at the appropriate place the following new
3188 section --

3189 [The amendment of Mr. Farenthold follows:]

3190 ***** COMMITTEE INSERT *****

3191 Chairman Goodlatte. Without objection, the amendment
3192 is considered as read, and the gentleman is recognized for 5
3193 minutes on his amendment.

3194 Mr. Farenthold. Thank you, Mr. Chairman. My amendment
3195 would take the bill that I have filed, the Wrongful
3196 Unmasking Prevention Act, H.R. 3585, and make it part of the
3197 USA Liberty Act. We know the government collects and holds
3198 huge stores of information on ordinary citizens through
3199 FISA. So, when the government unmask the identity of
3200 someone whose identity was previously masked in a
3201 disseminated intelligence report, it can drastically affect
3202 that person's life and violate his or her privacy. This is
3203 especially concerning when it is done for political
3204 purposes. This amendment would ensure that our citizens are
3205 protected from unjustified unmasking.

3206 My amendment does two things. First, it establishes a
3207 maximum penalty of 10 years imprisonment for anyone who
3208 knowingly makes an unmasking request for a reason other than
3209 those to understand foreign intelligence information, to
3210 assess the important of foreign intelligence information, or
3211 to determine whether the classified information at issue is
3212 evidence of a crime which has been, is being, or is about to
3213 be committed so long as the person making the unmasking
3214 request has articulated in writing that a reasonable
3215 suspicion exists that a specific crime is suspected and that

3216 crime is also specified in writing.

3217 This amendment relies on the USA Liberty Act's
3218 definition of unmask which may be a little narrower than my
3219 bill, but it is a reasonable compromise, I am willing to
3220 make to have consistency in the terminology throughout the
3221 bill.

3222 The second thing my amendment does it establishes a
3223 maximum penalty of 10 years' imprisonment for anyone who
3224 intentionally knowingly, or negligently discloses classified
3225 information acquired, pursuant to FISA, to a person unless
3226 that person is authorized to receive such information for
3227 the reason of understanding foreign intelligence
3228 information, assessing the importance of foreign
3229 intelligence information, or determining whether the
3230 classified information at issue is evidence of a crime which
3231 is being or is about to be committed. And there you have
3232 it.

3233 Quite frankly this amendment was designed to make sure
3234 that the mass of information that is available through our
3235 intelligence community is not used for improper purposes.
3236 With the NSA and the amount of information that can be
3237 determined through that, it would make the Watergate
3238 burglars redundant. There is so much information there. We
3239 want to make sure that they are adequate penalties in place.

3240 Mr. Swalwell. Will the gentleman yield?

3241 Mr. Farenthold. I will.

3242 Mr. Swalwell. Thank you. And I appreciate the
3243 gentleman yielding, and I would just ask, is this with
3244 respect to any specific case where unlawful unmasking has
3245 occurred that you could just eliminate this?

3246 Mr. Farenthold. We have no evidence that any has
3247 occurred, or we would have cited it. With the number of
3248 people in high, politically appointed positions that have
3249 access to this information now, it is a concern that I think
3250 is a problem that is bound to rear its ugly head.

3251 Mr. Swalwell. Thank you, the gentleman, for yielding.
3252 I yield back.

3253 Mr. Farenthold. And I will yield back.

3254 Mr. Conyers. Mr. Chairman?

3255 Chairman Goodlatte. For what purpose does the
3256 gentleman from Michigan to seek recognition?

3257 Mr. Conyers. I rise in opposition to the amendment.

3258 Chairman Goodlatte. The gentleman is recognized for 5
3259 minutes.

3260 Mr. Conyers. Thank you. Members of the committee, an
3261 extended debate about the unmasking problem, such as it is,
3262 seems a bit out of place in this discussion. First,
3263 unmasking and section 702 are two entirely different topics.
3264 Unmasking deals with how the intelligence community handles
3265 information about United States persons in finished

3266 intelligence reports; 702 is one of many surveillance
3267 authorities that bring raw intelligence into the NSA, to
3268 begin with.

3269 Secondly, it is counterproductive for us to have a
3270 debate about this topic on which we are clearly divided and
3271 disagree on the facts when the legislation in front of us is
3272 a product of bipartisan consensus. I take the gentleman's
3273 broader point, which I think is related to the power of
3274 incidental collection.

3275 Section 702 is aimed overseas, but obviously sweeps in
3276 massive amounts of information about United States people.
3277 In the wrong hands, and sometimes even in the right hands,
3278 that information can be tremendously powerful and damaging
3279 to any of us. Nevertheless, this bill is not the proper
3280 forum for a debate about former National Security Advisor
3281 Susan Rice nor is it the proper forum for a debate about
3282 former National Security Advisor Michael Flynn. We can have
3283 that debate next week when the Attorney General is here, if
3284 you choose.

3285 I cannot accept this amendment. It should not be a
3286 part of this legislation, and I know that the chairman will
3287 negotiations, and so I urge my colleagues to oppose the
3288 proposal. And I thank the chairman and yield back.

3289 Chairman Goodlatte. The chair thanks the gentleman,
3290 and the chair recognize himself. I thank the gentleman from

3291 Texas for offering this amendment and I appreciate his
3292 concerns about unmasking. In fact, the underlying bill
3293 addresses this very issue by requiring agencies to maintain
3294 unmasking requests that are auditable by Congress,
3295 specifically this committee. This is a matter better suited
3296 for congressional oversight than creating a crime for
3297 unmasking.

3298 Furthermore, the vast majority of unmasking requests
3299 are made for important, legitimate national security
3300 reasons. To criminalize this practice would have a chilling
3301 effect on our Nation's ability to ascertain valuable foreign
3302 intelligence information. Under current FISA law, unmasking
3303 may only be requested to understand foreign intelligence
3304 information or evidence of a crime. It is already illegal
3305 for a government official to disclose any unmasked
3306 information. The activity covered by the amendment is
3307 already illegal under 18 U.S.C. 10-30, the Computer Fraud
3308 Abuse Act. If one were to access unmasked information
3309 without authorization, that person is breaking the law.

3310 We just adopted an amendment on this very subject on
3311 behalf of Mr. Cicilline and Mr. Gohmert, and I would point
3312 out to the members that when we talk about all the people
3313 who can do this unmasking, according to the testimony of the
3314 head of the NSA, only 20 people in the entire government can
3315 approve an unmasking. So, for all those reasons I must

3316 oppose this amendment and urge my colleagues to do the same.

3317 The question occurs on the amendment offered by the

3318 gentleman from Texas. All those in favor, respond by saying

3319 aye.

3320 All those opposed, no.

3321 In the opinion of the chair, the noes have it and the

3322 amendment is not agreed to.

3323 Are there further amendments to H.R. 3989? For what

3324 purpose does the gentleman from California seek recognition?

3325 Mr. Lieu. I have an amendment at the desk.

3326 Chairman Goodlatte. The clerk will report the

3327 amendment.

3328 Ms. Adcock. Amendment to the amendment in the nature

3329 of a substitute to H.R. 3989, offered on Mr. Lieu of

3330 California. Add at the appropriate --

3331 [The amendment of Mr. Lieu follows:]

3332 ***** COMMITTEE INSERT *****

3333 Chairman Goodlatte. Without objection, the amendment
3334 is considered as read and the gentleman is recognized for 5
3335 minutes on his amendment.

3336 Mr. Lieu. Thank you, Mr. Chair. The amendment
3337 requires the Attorney General and the Director of National
3338 Intelligence to make public within 180 days of any internal
3339 guidance on or unclassified summary of the practice of the
3340 dissemination of communications collected under section 702
3341 from the Intelligence Committee to the FBI or from the
3342 national security branch of the FBI to the criminal
3343 investigative division of the FBI.

3344 So, let me explain why I am doing this amendment.
3345 Under current law, or even if this bill were to pass, you
3346 would still have the situation where an NSA agent could go
3347 query the database for foreign intelligence purposes and
3348 then, while that person is looking around, discover that,
3349 "Hey, this person also likes to smoke marijuana on Friday
3350 evenings." The NSA agent can then take that information,
3351 give it to the FBI, and the FBI can prosecute the U.S.
3352 person for smoking marijuana on Friday evenings. Just keep
3353 in mind, our Attorney General has this weird obsession with
3354 marijuana, so this is not out of the question. And what
3355 this simply does, it says, "Okay, we want you to provide
3356 what the guidance is on whether you can do that or not."
3357 So, what the Intelligence Committee will say is, "No, no,

3358 no, no, we would never go ahead and give a tip the FBI about
3359 marijuana. They would be more serious crimes." So, they
3360 got an internal memo; we just do not know what it says. And
3361 so, this simply says, "Please make it public," and that is
3362 all it does. And it is a very simple amendment.

3363 Chairman Goodlatte. I am sorry, I was talking to
3364 somebody else.

3365 Mr. Lieu. I yield back.

3366 Chairman Goodlatte. Okay, thank you. The chair
3367 recognizes himself I appreciate the gentleman from
3368 California offering this amendment, and I understand what he
3369 is asking. Though I cannot support the amendment today, if
3370 the gentleman would withdraw his amendment I am happy to
3371 work collaboratively with him to achieve the goal by some
3372 means, including via committee oversight. And I would be
3373 happy to yield to the gentleman if that --

3374 Mr. Lieu. If I could ask a question --

3375 Chairman Goodlatte. Yes.

3376 Mr. Lieu. If it turns out that the Department of
3377 Justice does not oppose this amendment, would you also be
3378 open to having it go in prior to a floor vote?

3379 Chairman Goodlatte. I am happy to work with the
3380 gentleman, and I believe that it is responsible to consult
3381 with the Justice Department and the wider intelligence
3382 community before we were to make such an amendment. So, I

3383 do not want to draw any conclusions about the amendment as
3384 written, but I am certainly willing to work with the
3385 gentleman, and information about their position on it would
3386 inform exactly what I would be willing to do in the form of
3387 an amendment.

3388 Mr. Lieu. Okay, that is fair. So, I will withdraw the
3389 amendment and look forward to working with you.

3390 Chairman Goodlatte. All right. Without objection, the
3391 amendment is withdrawn, and I look forward to working with
3392 the gentleman.

3393 Are there further amendments to H.R. 3989? So, the
3394 question occurs on the amendment in the nature of a
3395 substitute. All those in favor, respond by saying aye.

3396 Those opposed, no.

3397 In the opinion of the chair, the ayes have it and the
3398 amendment in the nature of a substitute is agreed to. A
3399 reporting quorum being present, the question is on the
3400 motion to report the bill H.R. 3989 as amended favorably to
3401 the house. Those in favor will respond by saying aye.

3402 Those opposed, no.

3403 The ayes have it and the bill is ordered reported
3404 favorably.

3405 Ms. Lofgren. Mr. Chairman, are we not going to have
3406 recorded vote on that?

3407 Chairman Goodlatte. A recorded vote has been requested

3408 and the clerk will call the roll.

3409 Ms. Adcock. Mr. Goodlatte?

3410 Chairman Goodlatte. Aye.

3411 Ms. Adcock. Mr. Goodlatte votes aye.

3412 Mr. Sensenbrenner?

3413 Mr. Sensenbrenner. Aye.

3414 Ms. Adcock. Mr. Sensenbrenner votes aye.

3415 Mr. Smith?

3416 Mr. Smith. Aye.

3417 Ms. Adcock. Mr. Smith votes aye.

3418 Mr. Chabot?

3419 Mr. Chabot. Aye.

3420 Ms. Adcock. Mr. Chabot votes aye.

3421 Mr. Issa?

3422 [No response.]

3423 Mr. King?

3424 [No response.]

3425 Mr. Franks?

3426 Mr. Franks. Yes.

3427 Ms. Adcock. Mr. Franks votes yes.

3428 Mr. Gohmert?

3429 [No response.]

3430 Mr. Jordan?

3431 Mr. Jordan. No.

3432 Ms. Adcock. Mr. Jordan votes no.

3433 Mr. Poe?

3434 [No response.]

3435 Mr. Marino?

3436 [No response.]

3437 Mr. Gowdy?

3438 Mr. Gowdy. Yes.

3439 Ms. Adcock. Mr. Gowdy votes yes.

3440 Mr. Labrador?

3441 Mr. Labrador. No.

3442 Ms. Adcock. Mr. Labrador votes no.

3443 Mr. Farenthold?

3444 Mr. Farenthold. Aye.

3445 Ms. Adcock. Mr. Farenthold votes aye.

3446 Mr. Collins?

3447 Mr. Collins. Yes.

3448 Ms. Adcock. Mr. Collins votes yes.

3449 Mr. DeSantis?

3450 [No response.]

3451 Mr. Buck?

3452 [No response.]

3453 Mr. Ratcliffe?

3454 [No response.]

3455 Mrs. Roby?

3456 Mrs. Roby. Aye.

3457 Ms. Adcock. Mrs. Roby votes aye.

3458 Mr. Gaetz?

3459 Mr. Gaetz. Yes.

3460 Ms. Adcock. Mr. Gaetz votes yes.

3461 Mr. Johnson of Louisiana?

3462 Mr. Johnson of Louisiana. Yes.

3463 Ms. Adcock. Mr. Johnson votes yes.

3464 Mr. Biggs?

3465 Mr. Biggs. No.

3466 Ms. Adcock. Mr. Biggs votes no.

3467 Mr. Rutherford?

3468 Mr. Rutherford. Yes.

3469 Ms. Adcock. Mr. Rutherford votes yes.

3470 Mrs. Handel?

3471 Mrs. Handel. Yes.

3472 Ms. Adcock. Mrs. Handel votes yes.

3473 Mr. Conyers?

3474 Mr. Conyers. Aye.

3475 Ms. Adcock. Mr. Conyers votes aye.

3476 Mr. Nadler?

3477 Mr. Nadler. Aye.

3478 Ms. Adcock. Mr. Nadler votes aye.

3479 Ms. Lofgren?

3480 Ms. Lofgren. No.

3481 Ms. Adcock. Ms. Lofgren votes no.

3482 Ms. Jackson Lee?

3483 Ms. Jackson Lee. Aye.

3484 Ms. Adcock. Ms. Jackson Lee votes aye.

3485 Mr. Cohen?

3486 [No response.]

3487 Mr. Johnson of Georgia?

3488 [No response.]

3489 Mr. Deutch?

3490 Mr. Deutch. Aye.

3491 Ms. Adcock. Mr. Deutch votes aye.

3492 Mr. Gutierrez?

3493 [No response.]

3494 Ms. Bass?

3495 [No response.]

3496 Mr. Richmond?

3497 Mr. Richmond. Aye.

3498 Ms. Adcock. Mr. Richmond votes aye.

3499 Mr. Jeffries?

3500 Mr. Jeffries. No.

3501 Ms. Adcock. Mr. Jeffries votes no.

3502 Mr. Cicilline?

3503 Mr. Cicilline. Aye.

3504 Ms. Adcock. Mr. Cicilline votes aye.

3505 Mr. Swalwell?

3506 Mr. Swalwell. No.

3507 Ms. Adcock. Mr. Swalwell votes no.

3508 Mr. Lieu?

3509 Mr. Lieu. Aye.

3510 Ms. Adcock. Mr. Lieu votes aye.

3511 Mr. Raskin?

3512 Mr. Raskin. Aye.

3513 Ms. Adcock. Mr. Raskin votes aye.

3514 Ms. Jayapal?

3515 Ms. Jayapal. Aye.

3516 Ms. Adcock. Ms. Jayapal votes aye.

3517 Mr. Schneider?

3518 Mr. Schneider. Aye.

3519 Ms. Adcock. Mr. Schneider votes aye.

3520 Chairman Goodlatte. The gentleman from California --

3521 Mr. Issa. Aye.

3522 Chairman Goodlatte. -- to my immediate right.

3523 Ms. Adcock. Mr. Issa votes aye.

3524 Chairman Goodlatte. The gentleman from Iowa.

3525 Mr. King. Aye.

3526 Ms. Adcock. Mr. King votes aye.

3527 Chairman Goodlatte. I think Mr. King has already

3528 voted. The gentleman from Texas, Mr. Gohmert.

3529 Mr. Gohmert. No.

3530 Ms. Adcock. Mr. Gohmert votes no.

3531 Chairman Goodlatte. The gentleman from Texas, Mr.

3532 Ratcliffe.

3533 Mr. Ratcliffe. No.

3534 Ms. Adcock. Mr. Ratcliffe votes no.

3535 Chairman Goodlatte. The gentleman from Georgia, Mr.

3536 Johnson.

3537 Mr. Johnson of Georgia. Aye.

3538 Ms. Adcock. Mr. Johnson votes aye.

3539 Chairman Goodlatte. The gentleman from Pennsylvania.

3540 Mr. Marino. Yes.

3541 Ms. Adcock. Mr. Marino votes yes.

3542 Chairman Goodlatte. Has every member voted who wishes

3543 to vote? The clerk will report.

3544 Ms. Adcock. Mr. Chairman, 27 members voted aye, 8

3545 members voted no.

3546 Chairman Goodlatte. And the ayes have it and the bill

3547 is ordered reported favorably to the House. Members will

3548 have 2 days to submit views. Without objection, the bill

3549 will be reported as a single amendment in the nature of a

3550 substitute incorporating all adopted amendments, and staff

3551 is authorized to make technical and conforming changes.

3552 Mr. Issa. Mr. Chairman?

3553 Chairman Goodlatte. For what purpose does the

3554 gentleman from California seek recognition?

3555 Mr. Issa. Mr. Chairman, we previously noticed the H-1

3556 bill for today, but there are ongoing negotiations we think

3557 will make the bipartisan bill even better, and would like to

3558 delay it till the next markup.

3559 Chairman Goodlatte. That was the chair's intention, so
3560 the chair is happy to honor that request.

3561 Mr. Issa. Thank you.

3562 Chairman Goodlatte. I want to thank all the members of
3563 the committee for this very energetic and intelligent debate
3564 on this very important subject. This concludes our business
3565 for today. Thanks to all our members for attending. The
3566 markup is adjourned.

3567 [Whereupon, at 2:51 p.m., the committee was adjourned.]