



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION
1100 CONNECTICUT AVE, NW, SUITE 900
WASHINGTON, DC 20036
www.fleoa.org

**STATEMENT
OF
JOHN R. RAMSEY
NATIONAL VICE PRESIDENT
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION**

**REGARDING A HEARING ON
“GEOLOCATIONAL PRIVACY AND SURVEILLANCE ACT”
IN REFERENCE TO H.R. 2168**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND
SECURITY**

Thursday, May 17, 2012 @ 10:00 am

Chairman Sensenbrenner, Vice-Chairman Gohmert, and distinguished Members of the Committee:

I would like to thank you for the opportunity to testify today. I appear before you today in my official capacity as the National Vice President of the Federal Law Enforcement Officers Association (FLEOA). On behalf of the 26,000 members of the FLEOA, I am voicing our concerns with H.R. 2168. The proposed legislation will impact all Federal law enforcement. Geolocational surveillance is an invaluable tool to combat domestic and international crime and terrorism, in addition to rendering aide in exigent circumstances, such as child exploitation cases.

Geolocational communication services focuses on historical information and potential real-time information. This issue should not be confused with real-time conversations and/or Title III intercepts. However, as the proposed legislation stands, geolocational information has been given an overly broad definition and application. As written, one could easily interpret pen registers, On-Star, and EZ-Passes as “geolocational information”. What we are focused on in this situation is wireless communication information currently obtained through a court order signed by a United States Judge. These are not witch hunts as some may allude to. Information obtained with these court orders provides law enforcement with historical data, as well as possible location information, which becomes important when determining whether the need rises to the level of a court order or a warrant.

While conducting everyday on-going criminal investigations, court orders issued to communication companies may provide law enforcement with geolocation information. This information can be critical when it comes to potentially unlocking the evidence that may lead to the apprehension of a murderer or rapist. If law enforcement wants to know the “content” of a target’s conversation, the most protected type of communication, we know that current Federal law and Supreme Court rulings require the issuance of a warrant, as in the case with Government-owned location devices and Title III intercepts. The difference in this situation is that the Government does not own nor are they attaching the locational device to a person. With the current exceptions built into the proposed legislation, at least law enforcement has some leeway with regards to abductions and other exigent circumstances.

In order to better understand the intricacies of this issue, we need to take a closer look at “geolocational information”. With a court order, law enforcement may have the opportunity at seeing who a killer or rapist called, in the past, by requesting historical data/records from a communication company. With a court order, pen registers may provide law enforcement with phone numbers, including the area codes, which may identify where a call was placed from, such as a specific state and/or city, similar to cell-tower information. With a court order, law enforcement may be able to see where the killer or rapist bought gas or used an ATM, by requesting historical information from a financial institution. Currently, with a court order, law enforcement may request the possible location of a cellular device from a communication company via cell-tower or cell-site information, which enables law enforcement to potentially infer a general area where a particular call originated, not a precise location. Cell-site information only gives an approximate location at best, versus a precise or exact location like GPS devices. Cell phones are not Government-owned locational beacons. The Government did not attach a GPS device to someone’s personal cellular phone, unlike Government-owned GPS devices attached to vehicles. I would like to stress that all of these scenarios, information gathered does not contain the “content” of a conversation.

Law enforcement is permitted to gather information using court orders, a legal document or proclamation signed by a United States Judge in which the court orders a person to perform a specific act, or in some circumstances, prohibits them from performing a specific act. What is the next step? Are we going to do away with grand jury subpoenas and move to the issuance of search warrants for companies to disclose corporate and financial records? Law enforcement can request a subpoena and obtain employment records, medical records, and other personal and private information of individuals that are targets of criminal investigations. Who are we protecting with this legislation? The innocent or the criminals? FLEOA takes the position that the innocent were and are not targets of criminal investigations. FLEOA is also not suggesting that criminals, or those suspected of criminal wrong doing, have less constitutional rights than a law abiding citizen. But do we really want to slow down the apprehension of murderers and rapists so they can build their trophy wall by increasing the amount of legal documents necessary to gather information? Law enforcement should not be further hindered during their

investigation of time sensitive cases that involve the threat of serious bodily harm or death by imposing additional legal hurdles may very well jeopardize the lives of countless innocent Americans.

This legislation is a pale attempt to build on the 2012 *Jones* decision rendered by the U.S. Supreme Court. The Supreme Court did not extend the *Jones* decision to cellular phones. Law enforcement is not seeking the “content” of a conversation, nor are we trying to step on someone’s expectation of privacy. We are simply looking at corporate records, just like financial records, to which a legally authorized subpoena or court order will suffice. When a person places a phone call, the “content” of the call is protected, not the parking lot, sidewalk or location from which it was placed. The proposed legislation would, under Rule 41 of the Federal Rules of Criminal Procedure, make “content” and “geolocational information”, such as cell-site and EZ-Pass, rise to the same standard. FLEOA would opine that these two types of information do not enjoy the same level of expectation of privacy.

While our membership respects the constitutional rights of all citizens, we do not want to see the United States adopt unnecessary legislation. If our country’s laws allow for the disclosure of corporate records pursuant to legally authorized court orders or subpoenas, the same standard should apply to all corporate records, to include communication companies. Geolocation communication information/records should be treated no differently. We hope your committee understands FLEOA’s concern with the proposed legislation and respects our position.

I would like to thank the Committee Members for your continued support of law enforcement and its mission and for this opportunity to testify today. I will be happy to answer any questions that you may have at this time.