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MARKUP OF H.R. 5949, THE FISA AMENDMENTS ACT

REAUTHORIZATION ACT OF 2012

Tuesday, June 19, 2012

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

The committee met, pursuant to call, at 1:00 p.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

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

Staff Present: Richard Hertling, Staff Director and Chief Counsel; Travis Norton, Parliamentarian; Sarah Kish, Clerk; Sam Ramer,

Counsel; Caroline Lynch, Counsel; Perry Apelbaum, Minority Staff Director; Danielle Brown, Parliamentarian; and Aaron Hiller, Minority Counsel.

Chairman Smith. The Judiciary Committee will come to order and the clerk will call the roll to establish a working quorum or whether a working quorum is present.

The Clerk. Mr. Smith?

Mr. Smith. Present.

The Clerk. Mr. Sensenbrenner?

Mr. Coble?

Mr. Gallegly?

Mr. Goodlatte?

Mr. Lungren?

Mr. Chabot?

Mr. Issa?

Mr. Pence?

Mr. Forbes?

Mr. King?

Mr. Franks?

Mr. Franks. Here.

The Clerk. Mr. Gohmert?

Mr. Jordan?

Mr. Poe?

Mr. Chaffetz?

Mr. Chaffetz. Present.

The Clerk. Mr. Griffin?

Mr. Marino?

Mr. Gowdy?

Mr. Ross?

Mrs. Adams?

Mr. Quayle?

Mr. Amodei?

Mr. Conyers?

Mr. Berman?

Mr. Nadler?

Mr. Scott?

Mr. Watt?

Ms. Lofgren?

Ms. Jackson Lee?

Ms. Waters?

Mr. Cohen?

Mr. Johnson?

Mr. Pierluisi?

Mr. Quigley?

Mr. Quigley. Here.

The Clerk. Ms. Chu?

Mr. Deutch?

Ms. Sanchez?

Mr. Polis?

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

Mr. Lungren. Here.

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

Mr. Gallegly. Here.

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

Mr. Coble. Present.

Chairman Smith. And the gentleman from Michigan, Mr. Conyers?

Mr. Conyers. Present.

Chairman Smith. The gentleman from South Carolina, Mr. Gowdy?

Mr. Gowdy. Here.

Chairman Smith. The gentlewoman from California, Ms. Lofgren?

Ms. Lofgren. Here.

Chairman Smith. The gentleman from Virginia, Mr. Scott?

Mr. Scott. Here.

Chairman Smith. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. Present.

Chairman Smith. The gentlewoman from California, Ms. Chu?

Ms. Chu. Present.

Chairman Smith. Without objection, the chair is authorized to declare recesses of the committee at any time and the clerk will report.

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

Chairman Smith. We have a working quorum so we will proceed. And pursuant to notice, I now call up H.R. 5949 for purposes of markup. The clerk will report the bill.

[The bill follows:]

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

The Clerk. H.R. 5949, to extend the FISA amendment --

Chairman Smith. Without objection, the bill will be considered as read and open for amendment at any point. I will begin by recognizing myself for an opening statement, then the ranking member, then the chairman and ranking member of the relevant subcommittee.

America and its allies face continuous national security threats from foreign nations and terrorist organizations. Foreign agents from other nations continue to spy on the United States. Recent news reports indicate that China engages in ongoing efforts to probe our software defenses and steal valuable intellectual property worth billions of dollars. And al Qaeda recently attempted to design clothing with explosives that would bypass our detectors at airports.

Our national security agencies must be able to conduct surveillance of foreign terrorists and others so we can stop them before they disable our defenses or kill innocent Americans. We need to ensure that the Intelligence Community can gather all of the information they need to protect our property and our lives. In 1978, Congress enacted the Foreign Intelligence Surveillance Act to provide procedures for the domestic collection of foreign intelligence. But advances in technology over the last 40 years changed how overseas communications are transmitted. These technological advances also changed how FISA was interpreted to apply to the collection of intelligence against foreign targets.

In 2008, Congress passed the FISA Amendments Act to reaffirm Congress' longstanding intent that a court order is not required when

a non-U.S. person outside the U.S. is targeted. This bipartisan law protects our ability to defend ourselves and still guarantees the civil liberties of the American people. The Act permits our agencies to target foreign persons reasonably believed to be located outside of the U.S. The Act requires prior FISA court approval of all government surveillance that uses these powers, including court approval of the government's targeting and minimization procedures. Under the FISA Amendments Act, the government cannot conduct any surveillance overseas without authorization. The government cannot target individuals unless there is a reasonable belief they are not in the United States. The government cannot intentionally acquire communications when the sender and recipient are both in the United States. The government cannot reverse target individuals overseas in order to monitor those in the United States.

And for the first time in history, the government must obtain a court order from the FISA court to target Americans outside the United States. Previously, the government could target an American outside the United States based on a certification by the Attorney General under executive order 12333. This law will expire at the end of this year unless Congress reauthorizes it.

The Obama administration has identified reauthorization of the FISA Amendments Act as the top legislative priority of the Intelligence Community and requests Congress to extend the law for 5 years. H.R. 5949 is bipartisan legislation to do just that; extend the FISA Amendments Act to December 31, 2017. Foreign terrorists continue to

search for new ways to attack America. Other nations seek strategic advantage and attempt to steal sensitive information from our military and private sector industries. They are committed to the destruction of our country, and their methods of communication constantly evolve. We have a duty to ensure that the Intelligence Community can gather the information they need to protect our country.

This bipartisan bill ensures that our country will be able to monitor threats to our safety and way of life without sacrificing the civil liberties of American citizens. I urge my colleagues to support me in support of this bill, which as I mentioned, is also supported by the administration and also supported by the Senate Intelligence Committee on an overwhelming vote.

That concludes my opening statement. And the gentleman from Michigan, Mr. Conyers, is recognized for his opening statement.

[The statement of Chairman Smith follows:]

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

Mr. Conyers. Thank you, Chairman Smith, for holding this markup and open session. This meeting may be the only time this legislation will be discussed in public before we consider it on the House floor, and we all take that responsibility seriously. Before us today is a bill that would extend the expiration of the Foreign Intelligence Surveillance Act, Amendments Act from December 31, 2012 to December 31, 2017. Now, I oppose the long-term extension because the public does not yet have an adequate understanding of the extent of any adverse impact this Act has had on the privacy of American citizens, and neither the Act nor the bill provide proper safeguards to ensure adequate and effective oversight.

The heart of the Foreign Intelligence Surveillance Act amendment is section 702, which authorizes the government to intercept communications of people who are reasonably believed to be foreign persons outside of the United States. On its face, the statute includes protections for American citizens who may be on the other end of these communications. But section 702 does not require the government to obtain a warrant.

So without more information about how the executive branch uses this authority, we can't confirm that the privacy of U.S. citizens is adequately protected. So without more information about how the executive branch uses this authority, we are unable to confirm that the privacy of our citizens is adequately protected. These concerns are not theoretical. In 2009, The New York Times reported that the National Security Agency had engaged in the "over-collection of

American communications in situations not permitted by law." Although the government assures us that this problem was an accident and has been corrected, the report does not inspire confidence in the program. More recently, the Office of the Director of National Intelligence in a July 26, 2011 letter to Senators Ron Wyden and Mark Udall stated that it was not reasonably possible to determine how many U.S. persons have had their communications intercepted under this law. We had hoped that the Inspectors General of the Intelligence Community and the Department of Justice would have been able to make a better estimate of the impact or some estimate of this law on the privacy of the United States citizens.

Unfortunately, the inspector general of the Intelligence Community in a letter this week to both the Senators simply deferred the nonanswer previously provided by the Office of the Director of National Intelligence. The public deserves better, and it is our responsibility to demand more information in the public record if the government will not provide it.

Fortunately my colleagues have prepared a series of amendments that will address many of these basic oversight needs. For example, if we require the government to provide us with unclassified reports, public summaries of key Foreign Intelligence Surveillance Act court opinions and an honest accounting of the number of Americans who have been affected by these programs, we will have gone a long way toward the responsible exercise of our oversight role. These amendments do not affect the underlying authorities and we can make all of these

changes without compromising national security.

So shortly I will offer a commonsense amendment shortening the sunset of this authority from December 31, 2017 to June 1, 2015. And I will discuss in later detail when I offer my amendment, meaningful oversight means revisiting the authorities before the winter of 2017.

Members of the committee, we cannot allow an entire presidential administration to pass before we discuss these authorities again in the 115th Congress. My amendment would have the added benefit of sensing the sunset with three expiring FISA provisions created by the USA PATRIOT Act.

In conclusion, the government can and must do a better job to our questions about privacy and civil liberties, and the government can do so without any risk to national security. And I have no doubt that these expiring authorities are important to the executive branch, but we must act prudentially and carefully, and to the extent possible publicly as we move forward. We can't let this opportunity pass without demanding reasonable meaningful public oversight of a highly controversial law. I thank the chairman for the extended time that he let me have.

Chairman Smith. Thank you, Mr. Conyers.

[The statement of Mr. Conyers follows:]

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

Chairman Smith. Without objection, the statement of the chairman of the Crime Subcommittee, Mr. Sensenbrenner of Wisconsin, will be made a part of the record.

[The statement of Mr. Sensenbrenner follows:]

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

Chairman Smith. Does the gentleman from Virginia, Mr. Scott, have an opening statement? Without objection, the opening statement of the gentleman from Virginia, Mr. Scott will be made a part of the record as well.

[The statement of Mr. Scott follows:]

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

Chairman Smith. Are there any amendments?

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

Chairman Smith. The gentleman from Michigan Mr. Conyers is recognized for the purposes of offering an amendment and the clerk will report the amendment.

The Clerk. Amendment to H.R. 5949 offered by Mr. Conyers of Michigan, page 2 line 2 strike December 31, 2017 and insert June 1, 2015.

[The amendment of Mr. Conyers follows:]

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

Mr. Conyers. I ask unanimous consent the amendment be considered as read.

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

Mr. Conyers. I thank the chairman. The purpose of this amendment, of course, is to amend the sunset provision of December 31, 2017 to June 1, 2015. In effect, the amendment shortens the length of the reauthorization from 5-1/2 years to 3 years. The Judiciary Committee has jurisdiction over the Foreign Intelligence Surveillance Act because it is our responsibility to make certain that the executive branch uses these authorities carefully and lawfully.

There is simply no reason to abdicate this responsibility for 5 entire years. An entire presidential administration will pass between now and December 31, 2017, and it is unacceptable for us and the Congress to turn a blind eye to the government's use of these programs between now and then. This change also has the effect of sensing these authorities with the three sunset provisions of the USA PATRIOT Act. Section 215, the business records roving wiretap and the never-used lone wolf provision all expire on June 1, 2015.

Number two, like the FISA Amendments Act these provisions amend the FISA Act to give the government extraordinary power to act without a warrant. My amendment will give us the opportunity to consider the entire package of controversial provisions all at once instead of a piecemeal over the course of the next 5 years. If you will accept no

other changes in this bill, I plead with you to accept this amendment which leaves the wiretapping authorities in place, and simply requires us to revisit these programs sooner. Thank you, Mr. Chairman. I return any unused time.

Chairman Smith. Thank you, Mr. Conyers. I am going to recognize myself in opposition to the amendment. But let me say to members that because there are votes being held on the House floor, I don't expect to vote on this amendment until we return immediately after the series of two votes. I am going to go on and give my statement and recognize others if we have time to speak on this amendment, but we don't expect a vote until after we return.

This amendment reduces the reauthorization period of the FISA Amendments Act from 5 years to 3 years. President Obama has asked Congress to pass a 5-year extension and the Democratic-controlled Senate Intelligence Committee has reported out a 5-year extension. The 3-year reauthorization proposed by this amendment is shorter than the original 4-year authorization of the original FISA Amendments Act. A shorter extension will not result in more oversight by Congress. The House and Senate Judiciary and Intelligence Committees already receive an abundant number of reports from the Intelligence Community. Every 60 days, the Justice Department and Director of National Intelligence conduct on-site reviews of surveillance conducted pursuant to the FISA Amendments Act. In addition, the Attorney General and the Director of National Intelligence conduct detailed assessments of compliance with court approved targeting and minimization procedures and provide

these assessments to Congress twice every year.

The administration also is now required to submit to the Judiciary and Intelligence Committees a copy of any FISA court order, opinion, or decision and the accompanying pleadings, briefs and other memoranda of law that relate to a significant construction or interpretation of any provision of FISA.

In preparation for this markup, the Subcommittee on Crime, Terrorism and Homeland Security held a hearing on the reauthorization of the Act. The committee also provided members a classified briefing with Justice Department and Intelligence Community officials. There is no need to join reauthorization of the FISA Amendments Act with reauthorization of the PATRIOT Act. These are two separate laws that authorize two different intelligence activities. The PATRIOT Act authorizes a collection of foreign intelligence against targets located inside the United States. The FISA Amendments Act authorizes collection of foreign intelligence against targets located outside the United States.

A shorter extension period could also jeopardize national security operations that sometimes last for several years. We need stability and certainty in this vital area of national security. The administration recommends a 5-year extension of these authorities, and I believe this is a reasonable period of reauthorization. I urge my colleagues to oppose this amendment.

Are there other members who wish to be heard on this amendment? If not, the committee will stand in recess and we will vote immediately

on this amendment when we return.

[Recess.]

Chairman Smith. The Judiciary Committee will come to order. The question is on the Conyers amendment. All in favor say aye. Opposed no. And the clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. Yes.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

[No response.]

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

[No response.]

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

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Chairman Smith. The gentleman from Wisconsin.

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Chairman Smith. The gentleman from Virginia.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. And the other gentleman from Virginia, Mr.

Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from Ohio.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. And the gentleman from Indiana.

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Chairman Smith. And the clerk will report. And the gentleman from Texas, Mr. Gohmert?

Mr. Gohmert. Yes.

The Clerk. Mr. Gohmert votes yes.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 12 members voted aye, 12 members voted

nay.

Chairman Smith. And the majority having not voted in favor of the amendment, the amendment is not agreed to. Are there other amendments?

Mr. Nadler. Yes.

Chairman Smith. The gentleman from New York, Mr. Nadler is recognized for the purpose of offering an amendment.

Mr. Nadler. Mr. Chairman I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

[The amendment of Mr. Nadler follows:]

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

The Clerk. Amendment to H.R. 5949 offered by Mr. Nadler. At the end of the bill add the following new section. Public release of unclassified summaries of significant foreign intelligence surveillance court decisions. (A) in general. Not later than 180 days after the date of the enactment of this act the attorney general shall make publicly available an unclassified summary of each decision --

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

Mr. Nadler. Thank you, Mr. Chairman. This amendment requires the Attorney General to make publicly available a summary of each decision of the FISA court and the FISA court of review that includes a significant construction or interpretation of section 702 with appropriate security redactions and editing if necessary.

Our oversight responsibilities are incomplete without a public discussion of the court opinions that shape the government's use of this authority. We do not need to know every classified detail to better understand the legal principles at play when the court considers targeting minimization procedures. Public scrutiny of these opinions might be of significant benefit to the administration, any administration. A sign that the court performs meaningful oversight of the executive branch would only increase public confidence in these programs.

It also would help develop and help the public understand the

development of the common law and of the court interpretations. One of the hallmarks of the American system is that we pass statutes, the courts interpret them, and we see how the courts interpret them and what they do and maybe we decide we ought to amend the statute, maybe we don't, but we know what is going on. Here the court decisions are in secret. But my amendment says where possible, where you don't have to keep something secret, we should release the opinions publicly so that Congress and the public can know what is going on, can see what the courts are doing, can see the development of legal doctrine.

At the end of the Crime Subcommittee markup in response to a question about making more information about the FAA available to the public, Chairman Sensenbrenner stated, "My guess is that rather than playing the numbers game either with the actual targets or the people who are incidentally surveilled, perhaps decisions of the FISA court, particularly the review of the FISA court appropriately redacted, would be able to give us the answer to that question. I have always been one that disfavored disclosure."

Mr. Sensenbrenner was right. If the FISA court is just a rubber stamp of the executive branch, the public should know. And if the court really does provide meaningful oversight and meaningful supervision and meaningful limitations on the executive branch, the public should know that too. This amendment is an easy fix. Limited disclosure would allow the public to better understand the full scope of the law as the FISA court understands it and the full scope of the government's use of section 702. Limited disclosure would also allow the Congress

to understand how the law is being used. And as long as the appropriate redactions and security procedures -- security redactions are made before the decisions are made public, there is no downside to this whatsoever, and it more fully comports the practice to the normal American practice of court decisions being public, of the development of a common law, of the public and the Congress being able to see how the law is being interpreted and used so that we can change it if we wish.

This comports with our normal practice. There is no downside to it because of the security provisions provided in the amendment. And I urge my colleagues to adopt the amendment. And I yield back.

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

Mr. Lungren. Mr. Chairman, I rise in opposition of the amendment. Mr. Chairman, while the gentleman suggests that these would be carefully redacted, the fact of the matter is this amendment would declassify the rulings of the FISA court that are sent to the four congressional committees that have jurisdiction over this law. Let us be clear, four committees of the House and the Senate have jurisdiction over this law. We are able to review the rulings of the court, we are able to review the pleadings of the court, we are able to look at this, yes, in a classified setting. Just a couple of weeks ago, we had a classified briefing for any member to ask any question they wished with respect to this. There were several of us who attended, but more members did not attend.

The oversight that is given to this committee, the Intelligence Committee and our companion committees on the Senate side is the oversight that is the result of bipartisan compromise legislation in the past that tried to determine exactly how you find that balance between what this is, which is foreign intelligence operations, and the traditional sense of courts in this country. This is not a traditional court. This is the FISA court. It is set up for a specific purpose. Declassification of these court rulings may be interesting, but I doubt they would be instructive since most of the FISA court rulings issued under the traditional FISA are on individual targets and the redaction that would take place would make probably more questions in the public domain than it would give answers.

The FISA court rulings, even in redacted, would not provide the appropriate context or information to allow people to accurately judge the issues at stake, and you would have, perhaps, even greater suspicion than exists now. Many of these legal rulings are bound up in the facts of collection, both the method by which the collections are conducted and the targets of the surveillance. Without appropriate redaction, this amendment would reveal details that would provide our enemies with a roadmap to evasion.

Congress, as I said, gets copies of these materials to conduct appropriate oversight. In fact, we expanded the types of materials that must be submitted to this committee and the other three committees in our FISA Amendments Act of 2008. Now in addition to the significant court rulings, we also receive the pleadings and other materials that

relate to the FISA court decisions.

I just am -- I am troubled by the suggestion that we don't have oversight. That is a suggestion that those of us on the appropriate four committees are not exercising this oversight. If that is the case, then perhaps we should change the members of the committee. This is the difficult decision of how you protect the secrets of the United States, the ability of the United States to deal with foreign intelligence, and at the same time, have appropriate oversight by another branch of government, actually two branches of government, the legislative branch and the judicial branch.

And so I would suggest that this amendment is not appropriate. I have yet to find any substantive claim that abuses have taken place, that we have not provided the appropriate oversight and that the information that has been reviewable by members of this committee would lead to the conclusion --

Mr. Nadler. Would the gentleman yield?

Mr. Lungren. I will be happy to yield to my friend from New York, yes.

Mr. Nadler. Thank you. The gentleman has misstated the amendment. The amendment would declassify nothing. The amendment states that the Attorney General shall prepare a summary of an unclassified summary which means he will make sure that nothing in these summaries is classified.

Ms. Lofgren. Well, if I reclaim my time, the rulings themselves are classified now. So by virtue of the fact that you would require

the attorney general to provide a summary of the rulings you would, in effect, be demanding a declassification of that which is now classified.

Mr. Nadler. Well, would the gentleman yield?

Mr. Lungren. Sure.

Mr. Nadler. There is a process for declassification, but the fact is that you would be creating, the Attorney General would be creating a new document, an unclassified document, that would be a summary only of those decisions that include a significant construction or interpretation of section 702.

Mr. Lungren. Reclaiming my time. I understand what the gentleman is saying. But in effect, you would be requiring the Attorney General to declassify the rulings, that is, the decision for some summary or otherwise you are going to have a summary that says nothing. I mean, these are very difficult cases involving the national security interest of the United States. And I believe the Congress in the past, particularly with the amendments that we developed in 2008, has threaded that needle such that there is appropriate oversight, but at the same time, we do not reveal sources and methods and actual decisions with respect to the kinds of operations that are going on.

Now, I understand the world of classification is a little fuzzy these days, but I happen to think it is particularly important. And even though I might have some real criticisms of someone, whoever has violated what I consider the responsibility you have to maintain classifications with respect to certain programs of this government,

nonetheless in this particular case, I support the administration's point of view that we ought to do that which is necessary to protect these intelligence gathering entities and the intelligence gathering specifics.

And again, I say the oversight exists with respect to the legislative branch and the judicial branch, and I believe there is no evidence that has been presented to this committee in a classified or unclassified setting which suggests that this is necessary. And with that, I yield back the balance of my time.

Chairman Smith. The gentleman from Virginia, Mr. Scott, is recognized.

Mr. Scott. Thank you, Mr. Chairman. I move to strike the last word. Mr. Chairman, the amendment does not suggest that Congress doesn't have oversight, the amendment is designed to ensure that the public has access to at least the legal rulings being made on issues such as when is a warrant necessary and when is it not necessary, so that they can see whether or not Congress is performing its oversight responsibilities. Any classified information can be redacted, but the public really can't perform its role of overseeing Congress to make sure that we are being vigilant if they don't know what is going on.

Trust us, we have seen it, it is totally inaccurate -- inadequate. And I would hope that we would allow the public to have as much information as they can so that they can ascertain whether or not the laws are as they should be and access to the legal rulings, that court could be making legal rulings that would offend people. And just

because Congress said, well, it is all right with us, trust us, we have seen it, that is not enough.

To the extent that it is consistent with the release of classified information -- of information, excuse me, that is not classified, the public has a right to know and should know. And that is what this amendment does.

Mr. Lungren. Would the gentleman yield?

Mr. Scott. I yield.

Mr. Lungren. Has the gentleman reviewed any rulings of the court that would fall within the ambit of this amendment that offends the gentleman?

Mr. Scott. Well, sure. All the rulings, when they make a ruling of when a warrant is allowed, when it is not allowed, whether or not you need -- what information you need, what standards you need.

Mr. Lungren. So you have been offended by all of those that you have reviewed?

Mr. Scott. No. What I am saying is the public ought to have access to the same information. There is nothing classified about the fact that you only need probable cause or you need compelling evidence or you need what standard is being used to ascertain.

Mr. Lungren. Will the gentleman yield?

Mr. Scott. I yield.

Mr. Lungren. Even the amendment says we cannot give the public the information we have. The amendment assumes that there is going to be or there will be redactions that go to the essence of the facts

of the cases. And so even under this amendment they would not get what the gentleman has just stated.

Mr. Scott. Reclaiming my time. Yes, you could. The legal ruling and what the standards are of when warrants are being allowed and when United States citizens can be spied on and when they can't, those legal rulings, to the extent that classified information will not be released, there is no reason why the public can't know that they are being spied on. I yield to the gentleman from New York.

Mr. Nadler. Thank you. The fact -- I thank the gentleman for yielding. The fact is that when the court makes a decision that involves the construction or interpretation of what we meant in the section, the public ought to know that without knowing the specific facts of intelligence gathering and so forth. The Attorney General is directed by the amendment to prepare an unclassified summary. To the extent that there may be -- and he can't refer in that to classified information unless the declassification procedures have been exercised.

So this doesn't release classified information unless someone went through the proper declassification procedures. It directs the Attorney General to release an unclassified summary of each decision that interprets the law, which may very well be possible without any reference to classified information.

And again, as the gentleman from Virginia correctly stated, the public has the right to know how the law is being interpreted and what the standards are for warrants and so forth to the extent possible.

And whether we do a good job or not, our constituents are entitled to know that. And nowhere in American law do we have a secret body of law that grows up with precedent saying this is permissible and that isn't. We shouldn't have that here either. We should protect classified information about who is collecting information or what information is being collected or the method of collecting it. But the decisions as to the standards for warrants and things like that ought to be known so that we can react to them if necessary, so that the public can react to our activity or inactivity if necessary, and that is just standard practice. And that can be done completely while protecting classified information as this amendment does. I yield to the gentleman from Michigan.

Mr. Conyers. Mr. Chairman, this Nadler amendment is a very reasonable attempt to advise and inform the public more of what goes on within the realm of an unclassified summary, particularly with reference to the construction and interpretation of section 702. I urge my members, our members on both sides of the aisle to support this amendment.

Chairman Smith. The gentleman's time has expired. The question is on the amendment. All in favor say aye. Opposed nay. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Pass.

The Clerk. Mr. Sensenbrenner, pass.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

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

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

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

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

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

Mr. Poe. Yes.

The Clerk. Mr. Poe votes yes.

Chairman Smith. The gentleman from Ohio, Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. The gentleman from Iowa, Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Chairman Smith. The gentleman from Tennessee, Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Chairman Smith. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. Nadler. Mr. Chairman, how am I recorded?

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

The Clerk. Mr. Nadler has voted aye.

Chairman Smith. And the gentleman from Wisconsin?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Chairman Smith. The gentleman from California, Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye, 17 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to. Are there other amendments?

The gentleman from Virginia, Mr. Scott, is recognized.

Mr. Scott. Mr. Chairman, I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

[The amendment of Mr. Scott follows:]

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

The Clerk. Amendment to H.R. 5949 offered by Mr. Scott. Add at the end of the bill the following new section. Form of assessments of procedures targeting certain persons located outside of the United States.

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman from Virginia, Mr. Scott, is recognized.

Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you for holding the markup in public. Too often discussion about these authorities -- too often we discuss these in secret, and I appreciate even this limited opportunity to debate FISA amendments in public. Even if I were personally satisfied with my access to classified information, I would still feel that it is important that the public have better assurance than trust me for Members of Congress when it comes to oversight of foreign intelligence surveillance.

The Foreign Intelligence Surveillance Act was passed in 1978 to curb abuses in the collection and use of intelligence information, foreign and domestic. Under the provisions of FISA, the standard for the collection of foreign intelligence requires the government to show only that there is probable cause to believe that the target is an agent of a foreign power and that foreign intelligence gathering is a significant purpose of the collection.

Now, when foreign intelligence collection is not the primary purpose of the collection, just significant purpose, we are left to wonder what the primary purpose of the action might be. But the FISA

Amendments Act of 2008 went a step further authorizing the government to my collect massive amounts of information about foreign persons reasonably believed to be outside the United States without a warrant. It also requires the executive branch to design targeting procedures which limit the scope of the collection before the government acts and minimization procedures which limit the use of information about U.S. persons after the government accidentally collects it.

Foreign intelligence surveillance court reviews the procedures for legal sufficiency. The Intelligence Community reports that it adheres to both the letter and the spirit of the law, but with nearly all of this oversight conducted in secret, the public has no choice but to just take the government at its word.

Now, we can do better. The amendment that I am offering is a modest step towards meaningful public oversight of these authorities. Under the bill, the executive branch is subject to three reporting requirements: Semi-annual reports on the use and effectiveness of targeting and minimization procedures; periodic assessments of the use of these authorities; and annual accounting of the intelligence gathered in the reports disseminated by the Intelligence Community.

RPTS MCCONNELL

DCMN BURRELL

[2:50 p.m.]

Mr. Scott. My amendment would simply require that these reports come to us in unclassified form. If sensitive classified information is a necessary portion of a complete report, then that information, the classified information, can be reported separately to those who can view the classified information. Americans have the right to feel free and secure in their persons, belongings, and activities from unwarranted government intrusion. Under present law the government provides virtually no information about the use, about its use of Foreign Intelligence Act to the public.

My amendment would change that and require the executive branch to at least to provide at least some assurance that it uses these authorities narrowly, responsibly, and exclusively for foreign intelligence gathering purposes. We can make this change without risk to the national security, because the amendment specifically allows the classified information to be reported separately if necessary. We may hear complaints that the public reporting requirements may be too burdensome for the government and that we are required to make life too difficult for them, but this amendment does not call for additional reporting. It only requires the release of some of that information to the public.

But in any event, even if it does make it a little marginally more

difficult for the executive branch to do its job, it should be hard to spy on Americans. So I hope the colleagues will support the amendment to add some public defense to our civil liberties.

I yield back.

Mr. Sensenbrenner. [Presiding.] For what purpose does the gentleman from California seek recognition?

Mr. Lungren. To strike the requisite number of words.

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

Mr. Lungren. Thank you very much, Mr. Chairman. Unfortunately, I think this amendment would require the United States to share sensitive intelligence with our enemies, and given what we are going through right now with certain stories about the inability for us to keep secrets, it doesn't seem that we need an amendment to do that.

I happen to think Congress should be more concerned that current classification policies are in force, not watered down to the possible detriment of our national security.

Once again, I have asked what specific evidence has been presented that leads anyone to the conclusion that we are, quote/unquote, spying on Americans, that there is this somehow conspiracy to try and find out information about Americans under the auspices of FISA. Obviously, we can't talk about what happened in classified settings, but I would just say that I am unaware of any evidence that would suggest that those conclusions are in fact valid.

To raise it suggests that somehow we are hiding something from the American people. Well, yes, there is a secret. Yes, it is secret

because we are talking about foreign intelligence. Foreign intelligence. We have had a bipartisan approach in the past with several Congresses to set up the mechanism by which we have operations that allow us to achieve the goal that I would hope most Americans would have, that we gain foreign intelligence, intelligence about foreign governments, foreign organizations, foreigners whose interests are not the same as those of the United States.

In effect, this amendment would order the executive branch to declassify sensitive details about our foreign intelligence operations or have such redactions that the summaries that you are talking about would be of no use to the public. As the gentleman admitted, the Congress has no authority under the Constitution to declassify or order the executive branch to declassify any information. So what are we doing with this amendment? Promising the public that they are going to get something which will be unsatisfying when they get it.

The implementation of this act, let's remember, which includes Section 702 certifications and the targeting and minimization procedures mentioned by the gentleman, are already subject to extensive review by each branch of government. They must be preapproved by the FISA court. Preapproved by the FISA court. They are audited by the executive branch. I know there are people that say well that is asking the same people to audit what they are doing. That is not true. The way it is set up, you have others within the agencies that audit and review what is being done by those who operate the programs.

And then it is required under the statutes already in existence,

the ones that we would, in fact, reauthorize with the legislation under consideration, they are reported and subject to review by the Congress. Now, there is an old expression, if it ain't broke, don't fix it. There has been no evidence presented, none, that there is some effort to undermine the constitutional rights of American citizens.

Mr. Conyers. Would the gentlemen yield?

Mr. Lungren. Yes, I will be happy to yield.

Mr. Conyers. Thank you very much. I refer you, because you keep repeating this, New York Times, April 16, 2009. I will put it in the record. Officials say U.S. wiretaps exceeded the law. The officials say that.

Mr. Lungren. Well, I appreciate what the gentleman is saying.

Mr. Sensenbrenner. Without objection, the material referred to by the gentleman from Michigan will be put in the record.

[The New York Times article follows:]

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

Mr. Conyers. Thank you.

Mr. Lungren. And I realize that in some quarters the best way to find classified information is to read the front page of the New York Times. I don't happen to think that is a benefit to this country. But this is not 2009. This is 2012.

We have the amendments that we adopted that have gone into effect. We have had the oversight since that time. And again, I would say since that time I have seen nothing to suggest that there has been a violation of the law, a violation of the Constitution, an undermining of the rights of American citizens.

And I don't question the sincerity of those who offer this, those who have a disagreement with me on this. All I am saying is we have a carefully constructed balance that has been passed in this Congress. This is a relatively simple reauthorization, and therefore I would ask my colleagues to not vote in support of this amendment.

Mr. Sensenbrenner. The gentleman's time has expired.

Mr. Conyers. Mr. Chairman.

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

Mr. Conyers. I rise in support of the amendment.

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

Mr. Conyers. Thank you. I am impressed with the attempt at fairness by the gentleman from California. He doesn't impugn our motives at least, but he makes a lot of statements that are contrary to the information that we have collected. One is a letter from the

Office of the Director of National Intelligence, Kathleen Turner, Director of Legislative Affairs, and here is one part of it. "While it is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority of FAA, I would direct you to the classified reports that have been provided to Congress under 702."

This is a response from Senators Wyden and Udall, and what we are saying, without letting the New York Times determine our opinions on classified information, is that the National Security Agency intercepted private email messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress last year. Government officials said in recent interviews.

And so I ask unanimous consent, Mr. Chairman, to include also the letters from the Office of the Director of National Intelligence to Senators Ron Wyden and Mark Udall.

Mr. Sensenbrenner. Without objection.

[The letter follows:]

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

Mr. Conyers. And I return my time.

Mr. Sensenbrenner. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott.

All those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. Scott. Roll call vote.

Mr. Sensenbrenner. Okay, roll call will be ordered. Those in favor of the amendment will vote as your names are called, vote aye. Those opposed, no. And the clerk will call the roll.

The Clerk. Mr. Smith?

[No response.]

The Clerk. Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

[No response.]

Chairman Smith. [Presiding.] The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

The Chairman. The gentleman from Iowa, Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

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

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. And how am I recorded?

The Clerk. Not recorded.

Chairman Smith. I vote no.

The Clerk. Mr. Smith votes no.

The Chairman. And the gentleman from North Carolina, Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Chairman Smith. Okay, the clerk will report.

The Clerk. Mr. Chairman, 10 members voted aye, 19 members vote nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to.

The gentlewoman from Texas, Miss Jackson Lee is recognized. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5949 offered by Ms. Jackson Lee. At the end of the bill add the following new section: Report on the implementation of the FISA Amendments Act of 2008. A, requirement for report, not later than 1 year --

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

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

[The amendment of Ms. Jackson Lee follows:]

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

Ms. Jackson Lee. Mr. Chairman, we have been having a series of hearings in the Intellectual Property Subcommittee and this full committee on the question of privacy. I recognize that this amendment is in the backdrop of FISA, which deals with the securing of this Nation. Interestingly enough, I just came from the Homeland Security Subcommittee, ranking member on the Transportation Security Committee, so I recognize the importance of intelligence and the work of those who are attempting to secure this Nation. This amendment combines a respect for both elements. The amendment asks a report on the implementation of the amendments made by the FISA Amendments Act of 2008. It is an important aspect, element, to this particular legislation, H.R. 5949, because this bill is an important bill with broad national security implications.

My amendment simply requests that the report include an assessment of the impact of Section 702 of the FISA and the privacy of persons inside the United States. Even with court-approved targeting and minimization procedures in place, the government can and does intercept the communications of U.S. citizens. It does so without a particularized warrant or a showing of probable cause. This approach to electronic surveillance raises concerns under the Fourth Amendment which prohibits unreasonable searches, warrantless eavesdropping, and use of general warrants. The Fourth Amendment states: "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath

or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Those of us who have read warrants at local levels and have seen law enforcement come in to attest to the reasoning in a criminal situation, understand what used to be yesteryear, which is when officers came in from their undercover operations and literally had to go before a court or a judge to prove the need.

We are in different times. Because many United States entities, example reporters, lawyers, religious groups, and human rights organizations, frequently communication with overseas persons are likely targets of 702, the FAA also raises First Amendment questions about the chilling effect of electronic surveillance. And I would say that those may be innocent communications. There is little in the public record about how the government implements the FAA, but what little there is reveals substantial violation of the law.

The New York Times reported in 2009, April, that the National Security Agency intercepted private email messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress and engaged in over collection of domestic communications of Americans which was significant.

My amendment answers the question of those who are getting ready to offer a thought, if you will, about security. It provides that the IG could give an estimate if it is not possible to fully determine the numbers. But this information I think is important. It responds to the idea that though heavily redacted, the document suggests, in this

previous securing through the New York Times article of these messages, the document suggests that the government is not always able to determine whether a target is a U.S. person and therefore entitled to heightened protection.

They also confirm violations of both the targeting and minimization procedures that are supposed to protect Americans' privacy. It also asks for how many people located in the United States have had the content of their communications acquired and if that content was reviewed under Section 702. If it is not feasible, my amendment, as I said, requests a commonsense accommodation of an estimate, transparency. The government must publicly explain how it is using the Act, how often they have abused it, or used it, and how many communications of Americans have been swept up in the NSA's blanket surveillance under the Act.

The Jackson Lee amendment also asks for a review of the Inspector General of incidents of noncompliance, focusing on any types of noncompliance incidents which have recurred, and the impact of such noncompliance on the privacy of persons inside the United States. Even surveillance within the four corners of the law could substantially violate Americans' Fourth Amendment right to privacy. FAA permits the bulk, suspicionless collection of electronic communications coming into and going out of the United States so long as no specific U.S. person or persons in the United States is intentionally targeted. While the Foreign Intelligence Surveillance Court considers and approves the targeting and minimization procedures used by FAA

interceptions, those applications are for year-long programs that do not identify the people or places to be tapped, but instead identify categories of foreign intelligence targets to be surveilled.

Our amendment also requests that the report include any significant instances in which an element of the intelligence community may have complied with the letter of the law but not with the spirit and intent of Section 702 and the impact of such noncompliance on the privacy of persons inside the United States.

I can only say that we are a nation strengthened because we have provisions to protect our homeland and that we juxtapose those provisions along with the sacred right of privacy and the protection of the Bill of Rights and the Constitution. I would hope that my amendment will be taken in that spirit, and that it does not intrude into the process of security, but simply provides another, if you will, layer of intent to ensure the privacy and the integrity of the process.

The government may not intentionally target a U.S. person reasonably believed to be located outside the United States.

I ask my colleagues to support this amendment.

Chairman Smith. Thank you, Miss Jackson Lee. I will recognize myself in opposition to the amendment.

This amendment requires the Inspectors General of the Justice Department and the intelligence community to conduct audits of how our national security agencies carry out the FISA Amendments Act. The Inspectors General already have the ability under the FISA Amendments Act to conduct compliance audits of the agencies. In fact, the Justice

Department Inspector General is currently carrying out just such an audit.

In addition to the existing IG audit, the Attorney General and the Director of National Intelligence assess compliance issues and provide reports to Congress twice every year, and the head of each agency conducts annual reviews and reports to Congress.

The Office of the Director of National Intelligence has informed Congress that it is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the FISA Amendments Act.

This amendment is based upon the false belief that the FISA Amendments Act threatens the privacy of persons inside the United States. But this is not true. The Act addresses the collection of intelligence from non-U.S. persons outside the United States. It has specific provisions built in to ensure that the civil liberty interests of Americans are protected both here and abroad.

The FISA Amendments Act already requires significant oversight by all three branches of government, which includes an Inspectors General audit provision. Additional oversight is not necessary or appropriate. The Senate Intelligence Committee rejected this amendment on a bipartisan vote of 13 to 2.

I urge my colleagues to oppose this amendment. I yield back the balance of my time.

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

The gentleman from North Carolina, Mr. Watt, is recognized.

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

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Watt. I yield.

Ms. Jackson Lee. The gentleman yielded and I thank you so very much.

Mr. Chairman, the very sentence that you said, that this is not for individuals inside the United States, and the premise of my amendment is that it, in essence, captures citizens inside the United States for whatever reason communicating with those outside the United States. It is an informational amendment, and I respect the rebuttal of the chairman but what I would argue is that the American people deserve transparency. That is the intent of this amendment, plain and simple. And it provides a, if you will, back out by suggesting that the IG could give an estimate, and I think that that is a fair compromise as an alternative to be able to add the -- I don't want to use the term "purity" -- but the response to many who feel very concerned about the fast moving technology, the fast moving utilization of these amendments, and the eagerness of our respective communities, rightly so, to secure the homeland and in essence lasso in innocent persons either receiving such communications or in the circle of the communication.

Let me also, Mr. Chairman, indicate that if I had been present, I was in a hearing, I would have voted aye on the Conyers amendment; aye on the Nadler amendment, and aye on the Scott amendment. Did I miss any other amendments?

The Clerk. No.

Ms. Jackson Lee. And so I would ask unanimous consent that my response to those amendments, Mr. Chairman, be unanimously put into the record at the appropriate time.

Chairman Smith. Without objection.

Ms. Jackson Lee. And I conclude on my argument for support of my amendment, is that we have the oversight responsibility even in these tough times. I don't believe this is an onerous response to protecting the privacy of American citizens, and I would ask my colleagues to support the amendment.

I yield back. I yield back to the gentleman. Thank you.

Mr. Watt. I yield back, Mr. Chairman.

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

Mr. Lungren. Thank you very much, Mr. Chairman. I rise in opposition to the gentlelady's amendment.

As was stated there by the chairman of the committee, there is already an authorization for the Inspector Generals of the Department of Justice and Inspector General of each element of the intelligence community to carry out reports that, in essence, give us the information suggested here.

One change, however, I see the gentlelady's amendment would require the Inspector Generals to make an assessment of the impact that implementation of Section 702 has had on the privacy of persons inside the United States. With all due respect, that is our judgment to make.

Our judgment is to make -- our responsibility is to make a judgment as to whether there has been any impact on the privacy of persons inside the United States. We have the ability to look at the reports that are required of the Inspector General of the Department of Justice and each element of the intelligence community. We are the ones that have the reports that we put into context with these assessments given to us by the Inspector General of the Justice Department and the various intelligence elements. And at the classified briefings that we have had, one would have the opportunity to ask questions that get to the specificity of what the gentlelady is indicating here, but in a classified setting. And Members of Congress have the ability to do that who serve on the Intelligence Committee or serve on this committee. And once again, I would just say I think we have struck the proper balance in terms of protecting the national security interest of the United States with respect to foreign intelligence, and at the same time protecting the privacy interests that are implicit in the rights recognized in our Constitution. There has not been a suggestion that with any classified briefings there was a failure of Members to have an opportunity to ask nor a failure of the executive branch to respond.

And so once again, I would hope that we understand that information to make an assessment on the privacy of persons inside the United States is available to Members of Congress on this committee and the Intelligence Committee, but done in a way that protects the national security interests of the United States in the arena of foreign intelligence.

Ms. Jackson Lee. Will the gentleman yield?

Mr. Lungren. I would be happy to yield to the gentlelady from Texas.

Ms. Jackson Lee. I want to thank the gentleman for that, and we have both a practical and philosophical difference of opinion. You have indicated that the information is available to Members and you are absolutely right. Individual Members can utilize their time and do just as you have indicated.

This amendment is in the spirit of privacy and transparency, and it asks a larger question. We rely upon IGs for a number of practical actions. In this instance, I am asking them to provide the data that Members of Congress can make a global assessment on the numbers of Americans. And frankly, Americans don't have that ability, and individual Members may be looking for an individual narrow perspective when I think this is a global question of whether or not we are from the Texas terminology, lassoing in, corralling in individuals inside the country based upon communications being made internationally. So I thank the gentleman for his comments and his kindness in yielding to me. I yield back.

Mr. Lungren. I thank the gentlelady. Although I am not from Texas, I am from a part of California where we know a little bit about lassoing, and I just hope that we are not running after the wrong bull in this particular circumstance.

With that, I would yield back the balance of my time.

Chairman Smith. The gentleman yields back the balance of his

time.

Mr. Conyers. Mr. Chairman.

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

Mr. Conyers. I rise in support of the amendment. You know, we keep saying that all you have to do is ask and you will be given a response. But the letter that I have had put in the record earlier from Senators Wyden and Udall to the Office of the Director of National Intelligence says: "While it is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the FAA authority, I would direct you to classified reports."

Well, that is exactly what the gentlelady is trying to do, is to put this question in the hands of the Inspector Generals of the Department of Justice and the Department of Intelligence, so that we can get better answers than this. And so for that reason, I urge support of this amendment, and return my time.

Chairman Smith. Thank you, Mr. Conyers.

The question is on the amendment.

All in favor say aye.

Opposed, no.

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

Ms. Jackson Lee. Mr. Chairman, I would like a recorded vote.

Chairman Smith. Recorded vote has been requested and the clerk

will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

[No response.]

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

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

The Chairman. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from Virginia, Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

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

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

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

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

The Chairman. How is the gentleman from Texas recorded? How is  
Mr. Deutch recorded?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Chairman Smith. Okay, and the clerk will report.

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

nay.

The Chairman. The majority having voted against the amendment, the amendment is not agreed to.

To the best of my knowledge, that concludes our consideration of amendments, but I would like to recognize the gentlewoman from California, Ms. Lofgren, for 5 minutes for a statement.

Ms. Lofgren. I thank you, Mr. Chairman. I will strike the last word. I had prepared an amendment but I am not going to offer the amendment, not because it isn't worthy, but because although the discussion of the need for the amendment does not require in any way a discussion of classified material, I fear that people opposed to the amendment might feel the need to discuss classified information, requiring that we adjourn, and I do not believe based on the votes today that the amendment would have any chance of being approved.

You know, Section 702 of the Act makes it clear that we should abide by the Fourth Amendment, and it requires the FISA court, based on probable cause to -- it requires an order to intentionally target U.S. persons. It also prohibits reverse targeting. It also requires minimization. But what the statute does not require is a warrant to search a database that is acquired in compliance with Section 702. And I think that is a defect in the statute that cannot be cured by practice, or that we could learn about in a classified briefing because we are here writing laws.

Administrations come and go. Attorney Generals come and go. Directors of National Security come and go, but the Congress is the

one writing the statute. And I think that we ought to make sure that a warrant is required should there ever be a database that is lawfully acquired pursuant to Section 702 that might include U.S. citizens that could be searched because that, the minimization requirements do not protect against that, and there is nothing in the statute that protects Americans in such a case.

I think that the lack of this protection is a fatal defect in the Act, and I think it is important, and I know that we are all consistent, but I had concerns about this when under the Bush administration I voted against the Act, and the fact that we have a different President now doesn't solve the problem with the statute. Because, as I say, Presidents come and go, but the statute is defective in this regard.

So I will not be supporting this act, and I will spare the committee the need to recess into closed session to discuss why they don't think it is a good idea. But I think that the statute, as I say, is deficient in this regard.

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

Chairman Smith. Thank you, Ms. Lofgren. The gentleman from North Carolina, Mr. Watt, is recognized.

Mr. Watt. Thank you, Mr. Chairman. I move to strike the last word.

The Chairman. The gentleman is recognized for 5 minutes.

Mr. Watt. Mr. Chairman, I don't have an amendment. I want to speak for a moment in opposition to the bill, however. When we do these reauthorizations it gives us the opportunity to reflect on how we got

here, and I always try to take that opportunity, and that is what I am trying to do this time, in this 5 minutes.

I remember very well in the days and weeks following 9/11 this committee came together on a bipartisan basis, all with the recognition that our world had changed as a result of what happened on 9/11. And we tried to fashion a bill, the PATRIOT Act it was called, I think, that took into account the fact that the world had, in fact, changed, yet took into account the values that our country is based on, privacy, liberty, individual rights to be free from invasions of our own government, and that coming together was under the leadership of then Chairman Sensenbrenner, and we reported out a PATRIOT Act to the full House on a very, very strong bipartisan basis. And I supported it because I thought we had found the appropriate balance that took into account what had happened on 9/11, yet took into account our responsibilities to the American people to protect their privacy and their liberty. And unfortunately, the Rules Committee took our bill and rewrote it and unfortunately, they rewrote it in such a way that I could not support it. And since then, I have voted against every PATRIOT Act, and I have voted against every FISA Amendment Act that has come before us because I did not think they adjusted appropriately the relationship.

We were told at that time that -- and one of the reasons we put into the law the sunset provision in this regular reauthorization, is that as times changed we would get back to a different balance. And I dare say that well, maybe there are people in here that think that

we are more at risk than we were in the days and weeks after 9/11. I don't believe we are as a country. Yet, regularly now, we are asked to reauthorize all of these intrusive measures that really substantially put at risk the liberties that our Constitution provides. And at that point, I become either a Republican or a Libertarian, and I have to express myself because I think we have gone too far.

So I can't support a bill that I didn't vote for -- I can't support the extension of a bill that I didn't vote for in the first place when I think actually we are less at risk now than we were when I voted against it in the first place. So I just have to put that, as we come to each of these reauthorizations, on the record as to why I am where I am. I just think those of us who -- and this is not about whether there is a Republican President or administration or a Democratic administration. This is about our citizens' relationship with our government. And I think that is an important relationship that this committee, in particular, has a special responsibility to safeguard.

And with that, I will have to cast my vote against this bill. I will be consistent with the votes that I have cast on December 14th, 2005; July 21, 2005; March 7, 2006; August 4, 2007; June 20, 2008; and February 14th, 2011.

I understand that consistency, they say, is the hobgoblin of small minds. On this issue my mind is small. And I think the need for the passage of this bill is less compelling today than it was when we addressed it in the aftermath of 9/11.

I yield back.

Chairman Smith. Thank you, Mr. Watt. A reporting quorum being present, the question is on reporting the bill favorably to the House.

Those in favor, say aye.

Opposed, no.

In the opinion of the chair, the ayes have it and the bill is ordered reported favorably.

Mr. Watt. I ask for a recorded vote.

The Chairman. Recorded vote has been requested and the clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte?

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Lungren?

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Chabot?

Mr. Chabot. Aye.

The Clerk. Mr. Chabot votes aye.

Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence?

Mr. Pence. Aye.

The Clerk. Mr. Pence votes aye.

Mr. Forbes?

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King?

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan?

Mr. Jordan. Aye.

The Clerk. Mr. Jordan votes aye.

Mr. Poe?

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. Aye.

The Clerk. Mr. Marino votes aye.

Mr. Gowdy?

Mr. Gowdy. Aye.

The Clerk. Mr. Gowdy votes aye.

Mr. Ross?

Mr. Ross. Aye.

The Clerk. Mr. Ross votes aye.

Mrs. Adams?

Mrs. Adams. Aye.

The Clerk. Mrs. Adams votes aye.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei.

Mr. Amodei. Aye.

The Clerk. Mr. Amodei votes aye.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu votes no.

Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

[No response.]

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

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

The Chairman. The gentlewoman from California, Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Chairman Smith. Okay, the gentleman from California, Mr.

Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Chairman Smith. Are there other members who wish to cast their vote or change their vote?

Okay. The clerk will report.

The Clerk. Mr. Chairman, 23 members voted aye, 11 members voted nay.

Chairman Smith. Thank you. The ayes have it and the bill is ordered reported favorably. Without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating any amendments adopted, and staff is authorized to make technical and conforming changes. Members will have 2 days to submit their views.

That concludes the Judiciary Committee's business for the day. We stand adjourned.

[Whereupon, at 3:34 p.m., the committee was adjourned.]