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4 FULL COMMITTEE MARKUP OF H.R. 1981, THE PROTECTING CHILDREN
5 FROM INTERNET PORNOGRAPHERS ACT OF 2011; H.R. 1433, THE
6 PRIVATE PROPERTY RIGHTS PROTECTION ACT OF 2011; H.R. 2633,
7 THE APPEAL TIME CLARIFICATION ACT OF 2011; H.R. 83, THE
8 BULLYING PREVENTION AND INTERVENTION ACT OF 2011; AND H.R.
9 2189, THE DEATH IN CUSTODY REPORTING ACT OF 2011
10 Thursday, July 28, 2011
11 House of Representatives
12 Committee on the Judiciary
13 Washington, D.C.

14 The committee met, pursuant to call, at 11:08 a.m., in
15 Room 2141, Rayburn House Office Building, Hon. Lamar Smith
16 [chairman of the committee] presiding.

17 Present: Representatives Smith, Sensenbrenner, Coble,
18 Gallegly, Goodlatte, Lungren, Chabot, Issa, Forbes, King,
19 Franks, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy, Ross,
20 Adams, Conyers, Berman, Nadler, Scott, Watt, Lofgren,

21 Jackson Lee, Waters, Cohen, Johnson, Pierluisi, Quigley,
22 Chu, and Deutch.

23 Staff Present: Sean McLaughlin, Majority Chief of
24 Staff; Allison Halatei, Majority Deputy Chief of
25 Staff/Parliamentarian; Sarah Kish, Clerk; Caroline Lynch,
26 Majority Counsel; Zach Somers, Majority Counsel; Jennifer
27 Lackey, Clerk; Perry Apelbaum, Minority Staff Director;
28 Keenan Keller, Minority Counsel; and Liliana Coronado,
29 Minority Counsel.

30

31 Chairman Smith. The Judiciary Committee will resume
32 its markup, and the clerk will call the roll.

33 Ms. Kish. Mr. Smith?

34 Chairman Smith. Present.

35 Ms. Kish. Mr. Sensenbrenner?

36 Mr. Sensenbrenner. Here.

37 Ms. Kish. Mr. Coble?

38 Mr. Gallegly?

39 Mr. Goodlatte?

40 Mr. Lungren?

41 Mr. Chabot?

42 Mr. Issa?

43 Mr. Pence?

44 Mr. Forbes?

45 Mr. King?

46 Mr. Franks?

47 Mr. Gohmert?

48 Mr. Jordan?

49 Mr. Poe?

50 Mr. Chaffetz?

51 Mr. Chaffetz. Present.

52 Ms. Kish. Mr. Griffin?

53 Mr. Marino?

54 Mr. Gowdy?

55 Mr. Ross?

56 Mrs. Adams?
57 Mr. Quayle?
58 Mr. Conyers?
59 Mr. Berman?
60 Mr. Nadler?
61 Mr. Scott?
62 Mr. Scott. Present.
63 Ms. Kish. Mr. Watt?
64 Mr. Watt. Present.
65 Ms. Kish. Ms. Lofgren?
66 Ms. Lofgren. Here.
67 Ms. Kish. Ms. Jackson Lee?
68 Ms. Waters?
69 Mr. Cohen?
70 Mr. Johnson?
71 Mr. Pierluisi?
72 Mr. Quigley?
73 Mr. Quigley. Here.
74 Ms. Chu?
75 Mr. Deutch?
76 Ms. Sanchez?
77 Mr. Nadler?
78 Mr. Nadler. Here.
79 Chairman Smith. The gentleman from Arizona, Mr.
80 Franks?

81 Mr. Franks. Here.

82 [Pause.]

83 Ms. Kish. Mr. Griffin?

84 Mr. Griffin. Here.

85 Chairman Smith. The gentleman from Michigan?

86 Mr. Conyers. Present.

87 [Pause.]

88 Ms. Kish. Ms. Jackson Lee?

89 Ms. Jackson Lee. Present.

90 Ms. Kish. Mr. Coble?

91 Mr. Coble. Here.

92 Chairman Smith. The clerk will report.

93 Ms. Kish. Mr. Chairman, 13 Members responded present.

94 Chairman Smith. A working quorum is present. So we
95 will proceed and go to the next amendment to the underlying
96 bill, which is an amendment that will be offered by the
97 gentleman from Wisconsin, Mr. Sensenbrenner. And he is so
98 recognized.

99 Mr. Sensenbrenner. Thank you.

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

101 Chairman Smith. The clerk will report the amendment.

102 Ms. Kish. Amendment to H.R. 1981 offered by Mr.

103 Sensenbrenner of Wisconsin. Strike Section 7 and

104 redesignate succeeding sections accordingly. Strike Section

105 10 as so redesignated.

106 [The information follows:]

107

108 Chairman Smith. The gentleman from Wisconsin is
109 recognized to explain the amendment.

110 Mr. Sensenbrenner. Mr. Chairman, this amendment I
111 think goes to the heart of whether we should have separation
112 of powers and checks and balances on what law enforcement
113 can do. The amendment strikes the two sections that relate
114 to administrative subpoena powers.

115 I would remind the Members that when we debated both
116 the PATRIOT Act and the PATRIOT Act reauthorization, the
117 Justice Department asked for administrative subpoena powers
118 both times. Both times, both houses of Congress, led by
119 this committee and our counterpart over in the Senate,
120 rejected that.

121 And the Justice Department then decided to utilize
122 national security letters to administratively and without
123 judicial review, to get the information that they needed.
124 The abuses in the PATRIOT Act were as a result of national
125 security letters, which were not authorized or created by
126 the PATRIOT Act itself.

127 And in 2005 and later this year, this committee spent
128 a considerable amount of time putting in civil liberties
129 protections on the national security letters, which were
130 never a part of the original PATRIOT Act.

131 An administrative subpoena allows an executive branch
132 agency to issue a request for documents or testimony without

133 prior approval from a grand jury, court, or other judicial
134 entity. And there are not the types of reviews of
135 administrative subpoenas contained in this legislation that
136 are currently the law relative national security letters.

137 And it seems to me that if we are doing a normal
138 criminal investigation into child pornography or anything
139 else, there should be judicial review, which would mean a
140 criminal search warrant or a grand jury subpoena where
141 someone who is a recipient of that type of demand would be
142 able to go to court if the demand was irrelevant or
143 overreaching.

144 We must balance the needs of law enforcement without
145 side-stepping our Constitution's fundamental checks and
146 balances. And this is going to be the key vote on whether
147 or not to do this.

148 And while I agree that we need to crack down on child
149 pornography, giving administrative subpoena power in this
150 bill will open up the same type of can of worms that
151 national security letters did in the PATRIOT Act. And I
152 think it is much better for this committee to advance the
153 bill in a more prudent manner, and the only way to do that
154 is to adopt this amendment.

155 And I yield back the balance of my time.

156 Chairman Smith. Thank you, Mr. Sensenbrenner.

157 And I will recognize myself in opposition.

158 This amendment strikes the administrative subpoena
159 sections of H.R. 1981, which provide the U.S. Marshals
160 Service with administrative subpoena authority to apprehend
161 unregistered sex offenders. The Adam Walsh Act mandated
162 that the U.S. marshals apprehend both State and Federal
163 fugitive sex offenders.

164 The U.S. marshals were also given primary Federal
165 responsibility for investigating violations of the Adam
166 Walsh Act sex offender registration requirements and are
167 responsible for identifying and locating sex offenders who
168 are relocated as a result of a major disaster.

169 The U.S. marshals have aggressively undertaken these
170 important functions that help enforce the Adam Walsh Act.
171 In 2010 alone, the U.S. marshals apprehended over 11,000 sex
172 offenders, initiated over 3,000 investigations of Adam Walsh
173 Act violations, and issued over 400 warrants for sex
174 offender registration violations.

175 Despite this hard work, there remains a lot for the
176 marshals to do. At least 100,000 fugitive sex offenders now
177 roam the country in violation of their registration and
178 notification requirements. H.R. 1981 gives the U.S.
179 marshals limited administrative subpoena authority to locate
180 and apprehend these fugitives that seek to harm our
181 children.

182 Under current law, grand jury subpoenas cannot be used

183 for fugitive matters. Likewise, current administrative
184 subpoena authority can only be used for child exploitation
185 investigations, not fugitive apprehension. So the marshals
186 must make a request to a U.S. attorney's office for an All
187 Writs Act order before they can receive records relevant to
188 fugitive apprehension.

189 The All Writs Act process is incredibly burdensome and
190 time consuming, which can be a disaster when trying to
191 locate fugitives who are attempt to evade law enforcement.
192 The time it takes to have an All Writs Act order processed
193 and signed by a judge, which can sometimes take months,
194 gives a fugitive the time to move their location again.
195 Administrative subpoenas are critically necessary for this
196 very reason.

197 The provisions of H.R. 1981 are narrow. They only
198 apply to the U.S. marshals and only for the apprehension of
199 fugitive sex offenders.

200 These fugitive cases have already received several
201 layers of judicial review. First, the fugitive must have
202 been convicted by proof beyond a reasonable doubt of a
203 qualifying sex offense that required registration. Then a
204 judge must have issued a warrant for the individual's arrest
205 based on a showing of probable cause. The opportunities for
206 abuse of this authority just do not exist.

207 The Adam Walsh Act's sex offender registry provisions

208 were intended to keep our children safe from heinous crimes
209 by limiting sex offenders' ability to move around the
210 country unnoticed. The administrative subpoena provisions
211 of H.R. 1981 provide a crucial tool in this fight.

212 So I strongly urge my colleagues to oppose this
213 amendment, as well intended as it is.

214 Mr. Scott. Mr. Chairman, would you yield for a
215 question?

216 Chairman Smith. I will be happy to yield to the
217 gentleman from Virginia.

218 Mr. Scott. I thought I heard you say you needed -- in
219 response to a warrant that has been issued. Could you
220 explain why you would even need a subpoena if you have a
221 warrant?

222 Mr. Conyers. You don't.

223 Chairman Smith. To try to respond to the gentleman's
224 question, the warrant is for the arrest of the individual.
225 The warrant does not give you access to the necessary
226 records.

227 I will yield back the balance of my time.

228 Are there other Members who wish to be recognized?
229 The gentleman from Michigan, the ranking member, Mr.
230 Conyers?

231 Mr. Conyers. Thank you, Chairman Smith.

232 This has been an interesting bill and the discussion

233 that follows from it because there isn't anyone in the
234 committee or in the Congress that doesn't want to protect
235 children from child pornographers. And so, it is very
236 difficult for some Members to oppose provisions of the bill
237 and the bill themselves.

238 And I must say I have noticed a number of members on
239 the committee have been joining the former Chairman
240 Sensenbrenner in opposing parts of this bill and all of this
241 bill. You can't -- it is hard to be in Congress and be seen
242 as opposing an anti-pornography bill. But the problem is,
243 is that the bill doesn't protect children from pornography.
244 That is the problem that we are operating on, and we are
245 trying to clean it up.

246 What we are doing here is creating a database for all
247 Americans, and it goes way beyond the issue of child
248 pornography. And we are now expanding the administrative
249 subpoena to United States marshals. Well, we are all
250 friends with marshals, but United States marshals have been
251 trying to get this power for years, and we have always
252 declined to give it to them.

253 And so, I join Mr. Sensenbrenner in opposing this
254 provision for the following reasons. Any legislation that
255 grants authority to issue subpoenas without judicial
256 approval has to be much more carefully considered than we
257 have given it in this measure here. But if you are against

258 child pornography, you have got to go along with it, even if
259 it doesn't make sense. You don't have much choice, do you?

260 Well, we do have some choice, and we are not going
261 along with it. For decades, the marshals have tried to get
262 this power. And now under the child pornography bill, they
263 are going to get it if we let them. And then we are giving,
264 of all things, the power to the marshals, this extraordinary
265 authority in cases where it is most likely to be unnecessary
266 -- the investigation of unregistered sex offenders.

267 We all note they are published, their names. It is a
268 matter of public record. So why do they have to have it?
269 And it puts the marshals on the same level as the Secret
270 Service when confronted with a threat against the President.

271 This authority would be used to investigate
272 noncompliant people of the sex offender registry. So I hope
273 that we will gather support enough to reject this provision
274 in this bill. The bill is mislabeled. This is not
275 protecting children from Internet pornography. It is
276 creating a database for everybody in this country for a lot
277 of other purposes that I am very worried about.

278 And I yield back my time. Thank you.

279 Mr. Lungren. Mr. Chairman? Mr. Chairman?

280 Chairman Smith. Thank you, Mr. Conyers.

281 The gentleman from California, Mr. Lungren, is
282 recognized.

283 Mr. Lungren. Thank you very much, Mr. Chairman.

284 I would like to speak about this amendment. When I
285 first heard the concern raised by my friend from Wisconsin
286 about the administrative subpoena powers, I was somewhat
287 concerned about why we had it in this bill and what the
288 purpose was. But I think it ought to be made very clear
289 what we are talking about.

290 The Congress passed, the President signed the Adam
291 Walsh Child Protection and Safety Act in 2006. It was an
292 act to require the Federal Government to assist
293 jurisdictions in locating and apprehending sex offenders who
294 had failed to comply with the registration requirements.

295 Now the registration requirements themselves and the
296 public knowledge of the registration was a controversial
297 issue 15 years ago. There were those who suggested we were
298 invading the privacy rights of those who had committed
299 crimes and served their time, and it was unfair to require
300 them to register. And it was certainly unfair to have
301 information conveyed to the public about them.

302 But we have moved past that. There is a general
303 consensus in this country that registries actually assist in
304 the protection of children and others who would be subject
305 to victimization by those who are sex offenders.

306 The only way those lists really work is if they are
307 required to remain current. And the way you require them to

308 remain current is that you have sufficient penalties for
309 those who fail to continue to make sure that their
310 registration is updated. And so, in 2006, the Congress and
311 the President decided that there was additional assistance
312 needed by the Federal Government.

313 I guess you could argue about whether the marshals
314 were the appropriate ones to be involved in this, but we
315 defined essentially these individuals as fugitives because
316 they were, in fact, fugitives from their requirement to
317 properly register. And since, of course, they can not only
318 cross city lines, county lines, and State boundaries, there
319 was, I think, reason, justifiable reason for the Federal
320 Government to be involved.

321 The responsibility for assisting or carrying out this
322 function on the Federal level was given to the marshals. So
323 why would we now say that the administrative subpoena
324 authority should be granted to them in this bill?

325 Well, first of all, it is restricted to this purpose,
326 as I understand it, unless someone can suggest I am wrong.
327 And so, I would just suggest to the gentleman from Michigan
328 that we have a difference of opinion. This is a direct part
329 of the bill which will protect children and other
330 prospective victims of sexual predators.

331 Secondly, it is my understanding that since we
332 understand or we know the identification of the individuals

333 involved -- that is, these are people who are registered sex
334 offenders who have failed to remain current with it -- these
335 subpoena powers, administrative subpoenas are not being used
336 to identify individuals on some serendipitous manner. We
337 already know who these people are.

338 The purpose of the administrative subpoenas, as I
339 understand them, as constructed and restrained in this
340 provision in law, is to allow the Marshals Service to get
341 hotel or car rental records or credit card receipts or other
342 kinds of information that would indicate where these people
343 are. That is how you apprehend a fugitive. You have got to
344 find out where they are. You have got to have information.

345 So it is not somehow invading their privacy. This has
346 nothing to do with data retention. This has to do with the
347 provision of the bill that has been put in here for a
348 limited purpose, unless I am wrong. This is how I
349 understand the bill.

350 And so, all the complaints that others have registered
351 about other parts of the bill, it seems to me, do not
352 pertain in this particular instance. This is a limited
353 provision dealing with administrative subpoenas for a
354 specific purpose, to wit, to help the marshals implement the
355 obligation of law that we gave them in 2006.

356 And I would yield to the chairman of the full
357 committee to correct me if I am wrong in this.

358 Chairman Smith. If the gentleman would yield? The
359 gentleman is absolutely correct. It is very narrowly
360 targeted just for fugitive sex offenders, as the gentleman
361 implied correctly.

362 Mr. Lungren. So I would hope we would at least debate
363 this amendment on that grounds. This doesn't have anything
364 to do with data retention. This doesn't have to do with
365 other types of things. This is the only restricted
366 application to be given to the marshals to utilize this for
367 the purpose of apprehension of fugitive sex offenders.

368 And in that case, I would be required to oppose the
369 amendment and hope that we would at least allow this to
370 stand as part of this bill. And I yield back the balance of
371 my time.

372 Chairman Smith. Thank you, Mr. Lungren.

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

375 Mr. Watt. Thank you, Mr. Chairman.

376 I worked pretty hard yesterday to stay out of this
377 debate, feeling that I had been abused enough. But Mr.
378 Lungren is pulling my chain and made me come out.

379 I was the only Member of the House that voted against
380 Megan's Law, 433 to 1. And I have the unique distinction of
381 having the Republican Party spend over \$1 million trying to
382 defeat me as a result of that vote.

383 I thought surely the Supreme Court would declare it
384 unconstitutional. It was the first time since we had
385 required the Japanese to register that we had required
386 anybody to register in this country. The Supreme Court
387 decided that it was not unconstitutional. I then voted to
388 fund the registry because the Supreme Court is the final
389 word on constitutionality.

390 But one of the other concerns I expressed at that time
391 is exactly what is happening now in this bill. You take one
392 step, and it becomes a justification for another step, and
393 that becomes a justification for one more little, tiny step.

394 And then, all of a sudden, the very thing that a lot
395 of your party members fear, the fear that the people on the
396 far right and the people on the far left fear the most,
397 Government is easily in people's lives without any real
398 checks and balances, the same thing that Mr. Sensenbrenner
399 has spoken about.

400 So, first of all, I don't think this bill is limited
401 in the way that the chair has indicated that it is limited.
402 But even if I did, this would be the next step, as you just
403 said, beyond what we did in Megan's Law. And right after
404 this, there would be another step. You know, a little, tiny
405 step.

406 And you know, we made a little, tiny step in the
407 PATRIOT Act, and we made a little, tiny step here and a

408 little, tiny step there. And all of a sudden, the
409 Government, without any real restraints, has the ability to
410 do exactly what we fear a big, bad government can do and
411 often does and often abuses, unfortunately.

412 So there are limits to what we ought to allow the
413 Government to do, and this bill is a far, far piece beyond
414 what I think we ought to allow the Government to do. So I
415 am going to go back into my shell and try to be quiet again.

416 But I mean, there is something to be said for being
417 concerned about this little, tiny step. I have said it
418 before, and every time we take one of these little, tiny
419 steps to give this Government in a democratic society more
420 and more and more power, we sacrifice our individual
421 liberties, our privacy.

422 And we do it in the name of something good, yes. I
423 don't think there is any question that all of us are
424 concerned about child pornography. But it will always be --
425 I don't think there is any doubt that people are concerned
426 about terrorism. I don't think there is any doubt that
427 people are concerned about security on airplanes.

428 All of those are important things to counteract. But
429 every time we take one of those little, tiny steps in the
430 name of something else good, we do it at our own individual
431 expense, and we sacrifice what I think was an important
432 principle on which this Nation was founded.

433 So, with that, I yield back. I support Mr.
434 Sensenbrenner's amendment strongly.

435 Chairman Smith. Thank you, Mr. Watt.

436 The gentlewoman from California, Ms. Chu?

437 Ms. Chu. Mr. Chair, I move to strike the last word.

438 Chairman Smith. The gentlewoman is recognized for 5
439 minutes.

440 Ms. Chu. I would like to yield to the gentleman from
441 Michigan, Mr. Conyers.

442 Mr. Conyers. Thank you, Ms. Chu.

443 What we are discussing is why can't the U.S. marshals
444 go to the court to get a subpoena? And what we are saying
445 in the Sensenbrenner Amendment is they already can do that.
446 So we don't have to give them this extraordinary
447 administrative subpoena power.

448 Now note what we have now is a subpoena authority
449 solely for the purpose of investigating unregistered sex
450 offenders. That is what the bill said, but this is a bill
451 that is worried about child pornographers. Ladies and
452 gentlemen, that is two different things.

453 We are now extending this way beyond child pornography
454 cases to all sex offenders, and I think that is what is the
455 objective of the Sensenbrenner Amendment. The
456 administrative subpoena power would not be limited to child
457 pornography cases because of the provision that I have just

458 read to you. So we are going overboard.

459 And of course, who isn't against child pornographers?

460 But the marshals don't need this power. Is there some

461 rational reason that the marshals can't use the subpoena

462 power they already have? And the answer is, no, they can.

463 And that is why I am against the amendment, and I really

464 hope we will --

465 Mr. Scott. Would the gentleman yield?

466 Mr. Conyers. That is why I am for the amendment and

467 against the bill. And I hope the committee will find a

468 majority to support this amendment, please.

469 And I turn back the balance of my time.

470 Chairman Smith. Does the gentlewoman from California

471 yield back the balance of her time?

472 Ms. Chu. I yield back the balance of my time.

473 Chairman Smith. Thank you.

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

475 Mr. Scott. Thank you, Mr. Chairman.

476 This amendment strikes the section of H.R. 1981 that

477 gives the authority to issue administrative subpoenas to the

478 U.S. Marshals Service. Now any legislation that would grant

479 authority to issue subpoenas without any judicial approval

480 should be carefully and thoroughly considered.

481 That judicial approval is routine. It is always

482 granted, but it is an important step in our criminal justice

483 process.

484 Now, for decades, Federal law enforcement agencies,
485 such as the U.S. marshals, have sought general
486 administrative subpoena power, and Congress has repeatedly
487 rejected it out of concern that that authority is totally
488 unchecked. This bill would provide the U.S. marshals with
489 extraordinary power in routine cases, in cases where it is
490 most likely to be unnecessary -- investigation of
491 unregistered sex offenders who are showing no evidence of
492 any criminal activity.

493 It would give the U.S. marshals more power than the
494 Secret Service is confronted with, with a direct threat
495 against the President because the Secret Service has
496 administrative authority only in cases where there is an
497 imminent threat, imminent threat. This would be allowed in
498 just routine cases, that authority.

499 Now, as the chairman has indicated, if you have got a
500 warrant for their arrest, while you are in court, you can
501 just ask for a warrant for data. I mean, it is no more
502 aggravation. You can get that warrant or ask for a
503 subpoena.

504 But this authority would be used to investigate
505 noncompliant people on the sex offender registry. Now we
506 have got to question, first of all, the need for all that
507 work.

508 Earlier this year on a hearing on the Sex Offender
509 Notification Act, we received testimony from the Department
510 of Justice that there is no difference in the crime rate for
511 those who are compliant with their registration requirements
512 versus those who are not. Let me say that again. Whether
513 you are compliant or not, there is no difference in your
514 crime rate.

515 And so, whether -- in fact, one witness, without
516 contradiction, said that the registration itself would
517 increase the crime rate, particularly for juveniles. That
518 requiring somebody to register and put on that registry
519 would cause more problems than the registration would cure.

520 Mr. Lungren. Would the gentleman yield?

521 Mr. Scott. I yield.

522 Mr. Lungren. In what context was that said?

523 Mr. Scott. Because they said if you put a juvenile on
524 a sex offender registry, their future is so messed up
525 because they can't get a job. They can't go anywhere, that
526 their future is so messed up that they are more likely to
527 commit crimes in the future than if they didn't have to go
528 through that process.

529 Mr. Lungren. That is with respect to juveniles. What
530 about with respect to adults?

531 Mr. Scott. Well, with adults, the Department of
532 Justice said the evidence is inconclusive.

533 Mr. Lungren. Oh, I thought you said that they said
534 that there was no difference. But now you are telling us
535 they said it was inconclusive?

536 Mr. Scott. It is no different. If you have to
537 register, compliant or noncompliant doesn't make any
538 difference. Whether registration itself makes any
539 difference, they can't figure it out.

540 Mr. Lungren. Well, the gentleman said that this was
541 directed at those who have not committed a crime. It is a
542 crime not to register.

543 Mr. Scott. Well, and there is no evidence that they
544 are about to commit another crime. This is just tracking
545 down people because they are noncompliant --

546 Mr. Lungren. So you disagree with Megan's Law?

547 Mr. Scott. I am checking the record now. I don't
548 think the gentleman from North Carolina was the only one.

549 [Laughter.]

550 Mr. Watt. I will stipulate that he was absent that
551 day.

552 Mr. Lungren. If the gentleman will yield?

553 Mr. Scott. I would yield.

554 Mr. Lungren. You might recall the whole reason for
555 Megan's Law was the presence of convicted sex offenders
556 across the street from schools, which made them -- which
557 made children very much available to them. And the basis

558 for restricting the presence of registered sex offenders or
559 those who have committed prior sex crimes, to keep them away
560 from places that are populated by children.

561 The very basis of it is the registration system and
562 the enforceability of the registration system. That is why
563 we are talking about this. And the best information we have
564 is that somewhere around 100,000 of the 650,000 nationwide
565 have failed to either register or maintain registration for
566 proper information.

567 Mr. Scott. Reclaiming my time, the gentleman is
568 absolutely right, and the Department of Justice has looked
569 at those who are not in compliance, compared it to those who
570 are compliant, and found no difference in the future crime
571 rate.

572 Mr. Lungren. Well, if the gentleman will yield? I
573 can show them victims of sex offenders who refused to
574 register and, therefore, got access to children --

575 Mr. Scott. You can also show victims of --

576 Mr. Lungren. -- by schools and by parks where
577 children are kept.

578 Mr. Scott. Reclaiming my time, you can also show
579 victims of first offenders, committing an offense to begin
580 with.

581 Mr. Chairman, can I have an additional minute, without
582 objection?

583 Chairman Smith. The gentleman from Virginia's time
584 has expired.

585 The vote is on the Sensenbrenner --

586 Ms. Lofgren. Mr. Chairman, I move to strike the last
587 word.

588 Chairman Smith. The gentlewoman from California, Ms.
589 Lofgren, is recognized.

590 Ms. Lofgren. And I yield to the gentleman from
591 Virginia.

592 Mr. Scott. Thank you. I thank the gentlelady from
593 California.

594 The Department of Justice said that although you can
595 find anecdotes, the fact of the matter is that whether you
596 are compliant or not made no difference statistically in
597 whether or not you would be -- commit a crime. And the U.S.
598 marshals in routine cases would be using this when there is
599 no difference in whether or not they would commit a crime or
600 not.

601 And it is worth noting that all individuals who are
602 required to register, not all of them have molested
603 children. And a recent case that received great media
604 attention highlights the types of cases that cover
605 registrations.

606 Two teenage boys were required to register as sex
607 offenders for passing gas on another teenager because they

608 did it with their buttocks exposed. They are registered sex
609 offenders. This is what we are talking about.

610 Now we must keep in mind that today, the deadline --
611 today, we are celebrating today. There is a deadline for
612 jurisdictions, many jurisdictions to comply with SONA. Only
613 seven States have bothered to do so. States are opting to
614 lose Federal funding rather than spend great sums of money
615 to institute registration schemes that the Justice
616 Department has concluded do very little, if anything, to
617 further public safety.

618 And it is against this controversial background that
619 the registration does any good at all that the U.S. Marshals
620 Services are seeking to obtain administrative subpoena
621 power, even though States are finding better ways to monitor
622 their sex offenders.

623 I would oppose any extension of the administrative
624 subpoena power without judicial oversight. There is no
625 evidence that the extra judicial power is essential.

626 And I have a copy of the testimony for DOJ where I
627 asked, "Does the fact that there is a registry reduce
628 recidivism?" And the response from the Department of
629 Justice is, "I would have to get back to you on those
630 studies."

631 "Are there any studies to show whether or not someone
632 who is compliant on the registry versus someone who is not

633 compliant on the registry is more or less likely to offend?
634 In other words, the list of 100,000 that you have referred
635 to, that the department is chasing down and incarcerating,
636 is that list more likely to -- those on that list more
637 likely to offend than those on the registry that are in
638 compliance?" And the answer was "no."

639 I said, "No, there is no difference?" Answer, "That
640 is correct. They are not shown to be more likely or less
641 likely."

642 And then I just made sure to clarify. "The fact that
643 you are not in compliance does not mean that you are more
644 likely to offend than if you are out of compliance. That is
645 the finding of the studies?" Answer, "That is one study,
646 yes, sir."

647 I ask unanimous consent that this transcript be placed
648 in the record.

649 Ms. Lofgren. Reclaiming my time --

650 Chairman Smith. Without objection, the transcript
651 will be made a part of the record.

652 [The information follows:]

653

654 Ms. Lofgren. Reclaiming my time, I would just like to
655 note that I supported Megan's Law, and I support
656 registration.

657 As a mother, I know that the offenders are online, and
658 myself and the other mothers in the neighborhood want to
659 know where the offenders are so we can keep our kids away
660 from them. I think that is -- I disagree. I respect my
661 colleagues, but I disagree with them.

662 But I still support the gentleman from Wisconsin's
663 amendment. It is not hard to get a subpoena. You can get
664 it over the telephone. And I think that the rule of law and
665 due process can yield justice and that the gentleman from
666 Wisconsin's amendment is a good one -- from someone, a
667 mother who supports registration of sex offenders.

668 And with that, I would yield back my time.

669 Chairman Smith. Thank you, Ms. Lofgren.

670 The gentleman from Utah, Mr. Chaffetz, is recognized.

671 Mr. Chaffetz. Thank you, Mr. Chairman.

672 I will yield to the gentleman from California, Mr.
673 Lungren.

674 Mr. Lungren. I thank the gentleman for yielding.

675 First of all, under current law, for whatever reason,
676 in order to obtain records relevant to fugitive
677 apprehension, the marshals must make the request of a U.S.
678 attorney for an All Writs Act order because, for whatever

679 reason under current law, grand jury subpoenas cannot be
680 used for fugitive apprehension. That is what we are talking
681 about here.

682 I am told that it takes an average of 2 months to get
683 an All Writs order. I do not know why. I am informed that
684 that is the case. If you are trying to locate a fugitive,
685 it is very difficult to be effective if you have to wait 2
686 months.

687 Now, on the underlying proposition, as one of those
688 who wrote Megan's Law in the State of California, I
689 absolutely disagree with the gentleman from Virginia and the
690 gentleman from North Carolina that this is not an effective
691 law. Ask anybody in law enforcement.

692 Mr. Watt. Would the gentleman yield?

693 Mr. Lungren. Ask anybody in law enforcement if they
694 have a child case involving a sexual assault, a missing
695 child, the first thing they do is to look at the list of
696 those who are prior sex offenders. And where do you look?
697 You look at the registration.

698 You are more effective if the registration is up to
699 date than you are if it is not up to date. That is
700 incontrovertible to suggest otherwise.

701 Mr. Watt. Would the gentleman yield? Would the
702 gentleman yield just briefly for a clarification?

703 Mr. Lungren. Well, sure. Go ahead.

704 Mr. Chaffetz. Sure. Absolutely.

705 Mr. Watt. Let me just clarify. I am not arguing
706 whether -- I mean, you said you disagreed with me. I voted
707 against Megan's Law, but I voted to fund Megan's Law since
708 then.

709 Mr. Lungren. Okay. All right.

710 Mr. Watt. I don't think that is the argument. I
711 don't know how this segued into an argument about whether
712 Megan's Law was good or bad. That is really not what this
713 is about. This is a step beyond Megan's Law.

714 Mr. Chaffetz. Well, reclaiming my time, I yield to
715 the gentleman from California.

716 Mr. Lungren. The point is if you do believe that
717 Megan's Law -- if there is a basis for Megan's Law and if
718 you do believe that it is an effective tool, both to protect
719 our children and also to allow us to find the perpetrators
720 of crime after a crime, if you believe that it has some
721 function there, then the question is, is appropriate to use
722 an administrative subpoena for that limited purpose? That
723 is the question before us.

724 Now I understand if you believe it is not. But to
725 suggestion that it is a question of the right of privacy is,
726 frankly, in my estimation a little beyond the point.

727 We are talking about a fugitive sex offender. You
728 have to already have been convicted by proof beyond a

729 reasonable doubt for a sex offense that requires you to
730 register as a sex offender, and that is not all sex
731 offenses. Third, that you have failed to comply with
732 registration requirements and that a State or Federal arrest
733 warrant has been issued.

734 After you have those four things, then you have the
735 situation in which this provision of this bill would allow
736 the Marshals Service to have the administrative subpoena.
737 So it is not casting the net widely against everybody. It
738 is not going after a data bank of individuals who have no
739 connection with the criminal process. It is to a very
740 limited audience.

741 Now you may believe that that limited audience is an
742 inappropriate one, and I understand. There are a few people
743 who voted against Megan's Law. But I think the consensus is
744 it is an appropriate law, and it is an effective law.

745 So let's at least limit the discussion to what this
746 provision in this bill is. It is an administrative subpoena
747 authority given to the Marshals Service for the apprehension
748 of sex offender fugitives, sex offender fugitives. That is
749 those who fail to comply with registration requirements.

750 And I thank the gentleman for his courtesy.

751 Mr. Chaffetz. Reclaiming my time, I yield back.

752 Chairman Smith. Thank you, Mr. Lungren.

753 Thank you, Mr. Chaffetz.

754 Mr. Johnson. Move to strike the last word.

755 Chairman Smith. The gentleman from Georgia, Mr.
756 Johnson, is recognized.

757 Mr. Johnson. I will yield to the gentleman from North
758 Carolina.

759 Mr. Watt. I want to make this perfectly clear. If
760 the gentleman is saying that my argument is about privacy, I
761 did mention privacy. But you remind me of people when they
762 are arguing a case and they don't want to argue the real
763 issue, then it is all about everything other than the real
764 issue.

765 I did say something about privacy, but this is not
766 about privacy. It is about due process. It really is. And
767 it is about the steps that you have to go through for the
768 Government to intrude in your life, and it is about checks
769 and balances. And that is really what this amendment and
770 where the bill steps across the line.

771 So if you want to argue about Megan's Law, I mean, you
772 are the one that started this argument about Megan's Law. I
773 was just being honest about who voted for it and who voted
774 against it.

775 I did vote against it because I thought -- you know, I
776 took the same oath that you took at the beginning to uphold
777 this Constitution that we read at the beginning of this
778 session of Congress. And I thought the Supreme Court would

779 declare Megan's Law unconstitutional. But the Supreme Court
780 did not. I have voted to fund Megan's Law since then. I
781 moved on.

782 But this is not about Megan's Law, and it is not
783 directly about privacy. This is about the steps that you
784 take beyond Megan's Law. And one of the concerns that I
785 expressed at that time was these little incremental steps
786 that we take in the name of good, positive reasons.

787 You know, there is always a good, positive reason. It
788 is I am concerned about terrorism. I am concerned about
789 pornography. I am concerned about child abuse. It is
790 always a good cause. But we do it every time at the expense
791 of personal liberties, and that is what for me this is
792 about.

793 So I just wanted to clear that up. I am not
794 redebating Megan's Law. You all already spent over \$1
795 million against me on that. It is a chapter in my life I
796 could forget about without any reservations. You know, I
797 was accused of being a child molester myself for voting
798 against Megan's Law, you know? So I have gone through that
799 phase.

800 But this is not about that. And for you to change the
801 subject, as you have, means that you don't really want to
802 debate the real subject.

803 Mr. Lungren. Well, will the gentleman yield on that

804 point?

805 Mr. Watt. I will.

806 Mr. Lungren. The only point I am trying to make is if
807 you are going to have a Megan's Law work, you have to have
808 good information. The good information is based on
809 registration so you know the location of the individuals.

810 Mr. Johnson. Okay, reclaiming my time --

811 Mr. Lungren. To the extent people violate that, you
812 can't do it. That is the only reason Megan's Law comes into
813 play.

814 Mr. Johnson. Reclaiming my time, I yield to Mr. Scott
815 from Virginia.

816 Mr. Scott. Thank you.

817 We keep hearing, Mr. Chairman, about the arrest
818 warrant already being issued. Maybe it is not in the bill,
819 but in the cross references, on page 4, line 13, it says,
820 "Issue administrative subpoenas in accordance with Section
821 3486 Title 18 solely for the purpose of investigating
822 unregistered sex offenders, as defined as such in 3486."

823 Maybe it is somewhere else, but not in the bill. But
824 I don't see any requirement before they can start using
825 these administrative subpoenas all over the place that an
826 arrest warrant be issued first. Is there something I am
827 missing?

828 Mr. Johnson. Reclaiming my time, I will yield to the

829 gentleman from Michigan, Mr. Conyers.

830 Mr. Conyers. This is getting more and more
831 interesting. But here is what it boils down to me. The
832 provision that Sensenbrenner is trying to take out deals
833 with investigating unregistered sex offenders. But the bill
834 is about child pornographers.

835 Good God, don't you get it? All sex offenders are not
836 child pornographers. And that is why this amendment has got
837 to come out.

838 Mr. Johnson. I yield the --

839 Chairman Smith. The gentleman yields back his time?

840 Mr. Johnson. Well, is there someone who wants to
841 answer Mr. Scott's question?

842 Chairman Smith. What was the question?

843 Mr. Johnson. I yield the balance of my time.

844 Chairman Smith. Yes, I am told that the Marshals
845 Service needs a warrant to arrest anyone. And furthermore,
846 just to clarify one more thing, the gentleman is correct.
847 This is targeted at sex offenders, which includes a great
848 number of individuals who molest and otherwise abuse
849 children.

850 Mr. Scott. A lot of people that didn't.

851 Mr. Watt. And a lot of people who didn't.

852 Chairman Smith. I am happy if we go after the sex
853 offenders, even though it is targeted at child

854 pornographers.

855 The gentleman's time has expired.

856 The vote is on the Sensenbrenner Amendment. All in
857 favor, say aye.

858 [A chorus of ayes.]

859 Chairman Smith. Opposed, no.

860 [A chorus of nays.]

861 Chairman Smith. In the opinion of the chair, the nays
862 have it.

863 Mr. Sensenbrenner. Roll call, Mr. Chairman?

864 Chairman Smith. Roll call vote has been requested,
865 and the clerk will call the roll.

866 Ms. Kish. Mr. Smith?

867 Chairman Smith. No.

868 Ms. Kish. Mr. Smith votes no.

869 Mr. Sensenbrenner?

870 Mr. Sensenbrenner. Aye.

871 Ms. Kish. Mr. Sensenbrenner votes aye.

872 Mr. Coble?

873 Mr. Coble. No.

874 Ms. Kish. Mr. Coble votes no.

875 Mr. Gallegly?

876 Mr. Gallegly. No.

877 Ms. Kish. Mr. Gallegly votes no.

878 Mr. Goodlatte?

879 Mr. Goodlatte. No.
880 Ms. Kish. Mr. Goodlatte votes no.
881 Mr. Lungren?
882 Mr. Lungren. No.
883 Ms. Kish. Mr. Lungren votes no.
884 Mr. Chabot?
885 [No response.]
886 Ms. Kish. Mr. Issa?
887 Mr. Issa. No.
888 Ms. Kish. Mr. Issa votes no.
889 Mr. Pence?
890 [No response.]
891 Ms. Kish. Mr. Forbes?
892 [No response.]
893 Ms. Kish. Mr. King?
894 Mr. King. No.
895 Ms. Kish. Mr. King votes no.
896 Mr. Franks?
897 Mr. Franks. No.
898 Ms. Kish. Mr. Franks votes no.
899 Mr. Gohmert?
900 [No response.]
901 Ms. Kish. Mr. Jordan?
902 [No response.]
903 Ms. Kish. Mr. Poe?

904 [No response.]
905 Ms. Kish. Mr. Chaffetz?
906 Mr. Chaffetz. No.
907 Ms. Kish. Mr. Chaffetz votes no.
908 Mr. Griffin?
909 Mr. Griffin. No.
910 Ms. Kish. Mr. Griffin votes no.
911 Mr. Marino?
912 Mr. Marino. No.
913 Ms. Kish. Mr. Marino votes no.
914 Mr. Gowdy?
915 [No response.]
916 Ms. Kish. Mr. Ross?
917 Mr. Ross. No.
918 Ms. Kish. Mr. Ross votes no.
919 Mrs. Adams?
920 [No response.]
921 Ms. Kish. Mr. Quayle?
922 [No response.]
923 Ms. Kish. Mr. Conyers?
924 Mr. Conyers. Aye.
925 Ms. Kish. Mr. Conyers votes aye.
926 Mr. Berman?
927 [No response.]
928 Ms. Kish. Mr. Nadler?

929 Mr. Nadler. Aye.
930 Ms. Kish. Mr. Nadler votes aye.
931 Mr. Scott?
932 Mr. Scott. Aye.
933 Ms. Kish. Mr. Scott votes aye.
934 Mr. Watt?
935 Mr. Watt. Aye.
936 Ms. Kish. Mr. Watt votes aye.
937 Ms. Lofgren?
938 Ms. Lofgren. Aye.
939 Ms. Kish. Ms. Lofgren votes aye.
940 Ms. Jackson Lee?
941 Ms. Jackson Lee. No.
942 Ms. Kish. Ms. Jackson Lee votes no.
943 Ms. Waters?
944 [No response.]
945 Ms. Kish. Mr. Cohen?
946 Mr. Cohen. Aye.
947 Ms. Kish. Mr. Cohen votes aye.
948 Mr. Johnson?
949 Mr. Johnson. Aye.
950 Ms. Kish. Mr. Johnson votes aye.
951 Mr. Pierluisi?
952 [No response.]
953 Ms. Kish. Mr. Quigley?

954 Mr. Quigley. No.

955 Ms. Kish. Mr. Quigley votes no.

956 Ms. Chu?

957 [No response.]

958 Ms. Kish. Mr. Deutch?

959 Mr. Deutch. No.

960 Ms. Kish. Mr. Deutch votes no.

961 Ms. Sanchez?

962 [No response.]

963 Chairman Smith. The gentleman from Virginia, Mr.

964 Forbes?

965 Mr. Forbes. No.

966 Ms. Kish. Mr. Forbes votes no.

967 Chairman Smith. The gentleman from South Carolina,

968 Mr. Gowdy?

969 Mr. Gowdy. No.

970 Ms. Kish. Mr. Gowdy votes no.

971 Chairman Smith. The gentleman from California, Mr.

972 Berman?

973 Mr. Berman. Aye.

974 Ms. Kish. Mr. Berman votes aye.

975 Chairman Smith. Are there other Members who wish to

976 be recorded on this amendment?

977 The gentlewoman from California, Ms. Waters?

978 Ms. Waters. Aye.

979 Ms. Kish. Ms. Waters votes aye.

980 Chairman Smith. The clerk will report.

981 Ms. Kish. Mr. Chairman, 10 Members voted aye; 17
982 Members voted nay.

983 Chairman Smith. A majority having voted against the
984 amendment, the amendment is not agreed to.

985 We will go to the next amendment. The gentlewoman
986 from Texas, Ms. Jackson Lee, is recognized for her
987 amendment.

988 Ms. Jackson Lee. Mr. Chairman, I have Amendments
989 Number 4 and 5, and I would like to ask unanimous consent
990 that they be taken en bloc.

991 Chairman Smith. Without objection, the amendments
992 will be considered en bloc, and the clerk will report the
993 amendments.

994 Ms. Kish. Amendment to H.R. 1981 offered by Ms.
995 Jackson Lee of Texas. Page 3, after line 17, insert the
996 following.

997 Chairman Smith. Without objection, the amendments
998 will be considered as read.

999 [The information follows:]

1000

1001 Chairman Smith. And the gentlewoman from Texas is
1002 recognized to explain her amendments.

1003 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

1004 I think the discussions on the individual rights of
1005 Americans is a crucial discussion and the responsibility of
1006 this body. And I respect my colleagues who have raised, I
1007 think, very important issues on this particular legislation.

1008 I would almost make the argument, on the other hand,
1009 that in some instances, child pornography -- meaning
1010 pornography specifically dealing with children -- and the
1011 attacks on children have reached an epidemic level. Even in
1012 the very publicized cases across the Nation, you will hear
1013 suggestions of sexual activity between a parent and child,
1014 leading that child to live a very uneven life as an adult.
1015 It has a major impact.

1016 We noted over the past couple of years a certain
1017 religion was plagued with the issue of the abuse of
1018 children. So it finds and raises its ugly head in many,
1019 many places.

1020 I believe it is important then to address this
1021 question in the most balanced way that we can. I cited
1022 yesterday a study of convicted Internet offenders that
1023 suggests that 85 percent of the offenders said they had
1024 committed acts of sexual abuse against minors ranging from
1025 inappropriate touching to rape.

1026 In the Washington Examiner in 2011, it noted that
1027 child pornography cases have risen dramatically in the D.C.
1028 area and across the Nation. The Bureau of Justice
1029 Statistics states the number of child porn cases filed
1030 nationally rose from 481 in 1999 to 2,069 in 2009, and that
1031 probably does not include the cases, obviously cases that
1032 were never prosecuted. And that is why I think this
1033 legislation is important.

1034 Department of Justice identified victims of child
1035 pornography of 62 percent female, 25 percent were members of
1036 the offender's family, 28 percent were between the ages of 6
1037 and 11, and 13 percent were below the age of 6.

1038 My Amendment Number 4 asks the Attorney General, in
1039 the spirit of a balanced perspective, not later than 2 years
1040 after the date of the enactment of this act shall complete a
1041 study of providers affected by Section 2703(h), but
1042 specifically to address the question of privacy standards
1043 and considerations implemented by those providers as they
1044 comply with the requirements of this legislation in
1045 containing data; the frequency of any reported breaches of
1046 data retained pursuant to this legislation. And the
1047 Attorney General shall, upon completion of the study, report
1048 the results of the study to Congress.

1049 And if there are abuses, we should act. There is no
1050 doubt that the protection of children should be in

1051 conjunction, of course, with the idea of recognizing the
1052 rights of individuals. But child pornography is horrific,
1053 and the long-lasting results of those children who may be
1054 impacted have been documented and noted by psychologists and
1055 psychiatrists.

1056 My fifth amendment indicates that it is the sense of
1057 Congress to encourage electronic communication service
1058 providers to give prompt notice to their customers in the
1059 event of a breach of the data retained pursuant to Section
1060 2703(h) of Title 18 of the United States Code in order that
1061 those affected can take the necessary steps to protect
1062 themselves from potential misuse of private information.

1063 I would ask unanimous consent to edit the amendment
1064 that indicates "effected." The leg. counsel wrote
1065 "effected," and I believe it should be with an "a."

1066 Chairman Smith. Okay. Without objection, we will
1067 make that correction.

1068 Ms. Jackson Lee. And let me conclude, Mr. Chairman,
1069 in suggesting that thoughtful consideration has been given,
1070 I believe, to the legislation, and I thank you and my
1071 colleague Debbie Wasserman Schultz for the continued effort
1072 in this area. And those who have joined you in this
1073 legislation realize that there are steep challenges, and the
1074 importance of the protection of the data that is collected
1075 is important.

1076 The Attorney General can provide us with definitive
1077 study and data so that we can act as a body to improve any
1078 fractures in the maintenance of that data. In addition, I
1079 think the providers, who are now working in a new climate
1080 and are sensitive to the new climate are protecting the
1081 privacy of their users, would not in any way have any doubt
1082 or problem with the idea of providing additional
1083 information.

1084 So although the bill does not include its own privacy
1085 stipulation standards, the drafters of this bill have, I
1086 think, engaged sufficiently to try to balance the needs of
1087 the children of this Nation and also those whose privacy is
1088 of paramount importance to us.

1089 Let me also suggest that even though this is not a
1090 human trafficking legislative initiative, the epidemic of
1091 human trafficking is without comparison. And Texas in
1092 particular has been the crossroads of human trafficking.
1093 And many of us realize that that includes children.

1094 Many times the human trafficker or the child that is
1095 trafficked is never, ever found. Or in the instance of the
1096 young woman in California that was held for 21 plus years,
1097 abused by a notorious offender. And the tragedy of that
1098 case was the many times that the Government visited that
1099 home and never discovered that child and now young woman.

1100 I would ask my colleagues to consider these

1101 amendments. I believe that they work to try to bring the
1102 balance on both issues, the issues dealing with privacy or
1103 what we should do going forward to ensure that we respect
1104 the privacy of individuals, our citizens, and yet also
1105 provide the notice that they deserve if there is ever a
1106 breach in the collection of the data that is being secured.

1107 With that, I yield back my time and ask for a support
1108 of amendments Jackson Lee 4 and 5.

1109 Chairman Smith. Thank you, Ms. Jackson Lee.

1110 I will recognize myself in support of the en bloc
1111 amendments. And let me comment first on Amendment Number 4.

1112 This amendment directs the Attorney General to study
1113 and report to Congress the privacy measures employed by
1114 providers and the frequency of any breaches of data retained
1115 under this legislation. We all agree that the information
1116 retained by providers should be protected from data breaches
1117 to ensure customer privacy. Providers have a vested
1118 interest in protecting their customers' information.

1119 Congresswoman Wasserman Schultz and I included a
1120 provision in H.R. 1981 to express the sense of Congress that
1121 customer records should be stored securely to protect
1122 customer privacy and prevent breaches of their records. So
1123 I support this amendment and urge my colleagues to do the
1124 same.

1125 In regard to Amendment Number 5, in the last decade,

1126 the Internet has begun to fulfill its promise of
1127 revolutionizing American society. While commerce has
1128 certainly been changed, what is truly remarkable is the way
1129 the Internet has been adapted to expand the social lives of
1130 Americans.

1131 The advent of the smartphone and the use of digital
1132 photography has enabled Americans to communicate and
1133 interact in ways we had never seen before. Financial and
1134 personal data is streamed throughout the electronic world,
1135 and criminals seek to gain access to it every day. This
1136 committee is dedicated to protecting American consumers from
1137 data breaches while enabling them to continue to use the
1138 Internet.

1139 This amendment of the gentlewoman from Texas
1140 accurately captures the sense of the Congress that
1141 electronic service providers should have an open dialogue
1142 with their customers. While they are not Government
1143 agencies, they do hold our personal information. So it is
1144 only fair so that those providers give prompt notice to
1145 consumers of an unfortunate data breach so that customers
1146 can take steps to protect themselves.

1147 We will have more discussions about how best to do
1148 this, but this amendment fairly states that Congress wants
1149 companies to report cyber attacks on customer information so
1150 that law enforcement agencies can respond to criminal acts

1151 in the cyber world.

1152 I appreciate the gentlewoman from Texas offering these
1153 amendments. I encourage my colleagues to support them, and
1154 the vote is on the en bloc amendments.

1155 Ms. Jackson Lee. Mr. Chairman?

1156 Chairman Smith. The gentlewoman from Texas?

1157 Ms. Jackson Lee. Parliamentary inquiry, please?

1158 Chairman Smith. Will the gentlewoman state her
1159 parliamentary inquiry?

1160 Ms. Jackson Lee. I thank the gentleman for supporting
1161 the amendment.

1162 I am also supporting Mr. Conyers -- which one is it?

1163 Excuse me.

1164 [Pause.]

1165 Ms. Jackson Lee. Mr. Chairman, I am sorry. I am
1166 supporting Mr. Conyers's amendment -- refiled Amendment
1167 Number 4, and I want to make sure that his amendment and
1168 consideration and support by the committee would not be
1169 mutually exclusive on the amendment that I have just
1170 presently offered.

1171 Chairman Smith. Voting on the gentlewoman's en bloc
1172 amendments will not prohibit us from taking up another
1173 amendment, if it is appropriate to do so. I would like to
1174 vote on her en bloc amendments.

1175 Ms. Jackson Lee. But what I am suggesting, because I

1176 know the both of us would like as strong and positive a bill
1177 as possible. I am supporting Mr. Conyers's amendment, and
1178 so I would hope that it could be an amendment that would be
1179 supported.

1180 Chairman Smith. If the gentlewoman is asking if they
1181 cancel each other out, they do not.

1182 Ms. Jackson Lee. Yes. They do not cancel each other
1183 out? I mean, so he would have standing --

1184 Chairman Smith. If the gentlewoman was asking whether
1185 Mr. Conyers can still offer his Amendment Number 4, the
1186 answer is yes.

1187 Ms. Jackson Lee. Whether you will support the
1188 amendment, that my amendment will not keep -- will not be a
1189 substitute for his, Mr. Chairman.

1190 Chairman Smith. That is correct. But one can support
1191 your amendment and not necessarily support Mr. Conyers's
1192 amendment.

1193 [Laughter.]

1194 Chairman Smith. They are separate amendments, and his
1195 is much broader.

1196 Ms. Jackson Lee. Would my withdrawing it make it
1197 easier for you to support his amendment?

1198 Chairman Smith. Not necessarily.

1199 [Laughter.]

1200 Ms. Jackson Lee. Well, I would encourage you, Mr.

1201 Chairman. I believe he has a vital and not as broad
1202 amendment, but very astute amendment.

1203 Chairman Smith. We will deal with Mr. Conyers's
1204 amendment at the appropriate time.

1205 Meanwhile, let's vote on the gentlewoman from Texas's
1206 en bloc amendments. All in favor, say aye.

1207 [A chorus of ayes.]

1208 Chairman Smith. Opposed, no.

1209 [No response.]

1210 Chairman Smith. The en bloc amendments are agreed to.

1211 Let me say to the members of the committee, it is my
1212 intent to take a lunch break after we consider one more
1213 amendment, and that is the amendment of the gentlewoman from
1214 California, Ms. Lofgren. And we will be taking a break
1215 after we finish that amendment until after the series of
1216 first votes.

1217 We will now move on, and the gentlewoman from
1218 California is recognized.

1219 Ms. Lofgren. Mr. Chairman, I have an amendment at the
1220 desk.

1221 Chairman Smith. The clerk will report the amendment.

1222 Ms. Kish. Amendment to H.R. 1981 offered by Ms.
1223 Lofgren. Strike Section 4 and redesignate succeeding
1224 sections accordingly.

1225 Chairman Smith. Without objection, the amendment will

1226 be considered as read.

1227 [The information follows:]

1228

1229 Chairman Smith. And the gentlewoman is recognized for
1230 5 minutes to explain her amendment.

1231 Ms. Lofgren. Mr. Chairman, my amendment strikes the
1232 data retention mandate from the bill. The mandate requires
1233 Internet service providers to collect and maintain a
1234 complete year-long log of identifying information for every
1235 single one of their users. It is a data bank of every
1236 digital act by every American.

1237 This sweeping requirement really turns the basic
1238 premise of American criminal justice on its head. In our
1239 current system, law enforcement targets specific individuals
1240 with requests for information based on evidence or suspicion
1241 that they have committed a crime, and in many contexts, the
1242 Fourth Amendment protects personal information from
1243 disclosure unless and until the Government has sufficient
1244 cause to get a court-approved warrant.

1245 Unfortunately, this bill uses an end run around this
1246 principle by requiring third parties to retain personal data
1247 about nearly every American and then allowing Government to
1248 demand that information through administrative subpoenas
1249 issued by law enforcement without court approval.

1250 Now existing law already requires ISPs to preserve
1251 data on specific users already under investigation based on
1252 a simple law enforcement request. Current law also compels
1253 ISPs to report suspected cases of child pornography

1254 automatically to the National Center for Missing and
1255 Exploited Children, and I think that is a good thing.

1256 And in fact, as we heard at a hearing on an unrelated
1257 topic, many of our technology companies have developed
1258 terrific tools to identify child pornography in transit and
1259 are working actively to find and to apprehend the child
1260 pornographers. When this happens, we include the disclosure
1261 of data necessary to identify the suspected perpetrator,
1262 including a log of their assigned IP addresses.

1263 Now this targeted approach, data preservation as
1264 opposed to mass data retention, is the right one, and it
1265 gives law enforcement the tools to investigate child
1266 pornographers without violating the privacy rights of every
1267 single American who uses the Internet.

1268 Now even if you don't agree with this overall view,
1269 our discussion today has made clear that the data retention
1270 mandate as written has many significant defects and warrants
1271 further consideration before we advance it to the floor.

1272 I yesterday had a series of questions about the
1273 manager's amendment, and I understand the chairman's answer.
1274 And I am sure it was an answer given in good faith. But I
1275 would note that a good faith answer does not contradict the
1276 plain language of a statute.

1277 And if you look at page 2 of the manager's amendment,
1278 line 4, it refers to Subsection (c)(2) of the section, and

1279 Subsection (c) (2) of the section references Title 18 of the
1280 U.S. Code 2703(c) (2). And that section of the law requires
1281 the provider of electronic communication to provide to the
1282 Government entity the name, the address, local and long
1283 distance telephone connection records, length of service,
1284 subscriber number identity, means and source of payment,
1285 including credit card or bank account numbers.

1286 This is an entirely new mandate for every ISP in the
1287 United States. And it is a tremendous burden if every
1288 single American's Web browsing is going to be connected to
1289 this huge mandate.

1290 Now thousands of small Internet service providers --
1291 hotels who charge a fee, airports that charge a fee, some
1292 airlines that charge a fee -- will have to engage in not
1293 only retaining the data that will allow us to find out where
1294 every single American visited Web sites and their IP
1295 addresses, but it will also require the compilation of this
1296 new information.

1297 Ironically enough, the bill itself eliminates free
1298 provision of service. And so, even if the effort is to
1299 catch child pornographers, along with several hundred
1300 million other Americans, we have created a safe haven spot
1301 for child pornographers, and that is to go to the free
1302 sites, if you go to a cafe where you don't have to pay a fee
1303 to use it.

1304 So we are really saying to the child pornographers, go
1305 to the library, go to Starbucks, and do your dirty business
1306 there. So this is an imposition on the Internet. It will
1307 slow the deployment of broadband because of the
1308 configuration costs.

1309 And I will tell you that, as a technical matter, most
1310 of the providers of Internet service do not have the
1311 capacity to actually comply with this mandate. It is the
1312 wrong approach.

1313 I will say this, and in closing, I would like to ask
1314 unanimous consent to place in the record two letters in
1315 opposition to Section 4 of H.R. 1981. The first is from a
1316 coalition of consumer, civil liberty, and privacy
1317 organizations, including the American Library Association,
1318 the ACLU, and the Consumer Federation of America. And the
1319 second letter is from conservative organizations, including
1320 TechFreedom, the Competitive Enterprise Institute, and
1321 Americans for Tax Reform. Yes, it appears Grover Norquist
1322 is against this provision in the bill as well.

1323 I urge my colleagues to support this amendment.

1324 Chairman Smith. That should pick up some Democratic
1325 votes.

1326 [Laughter.]

1327 Ms. Lofgren. And I yield back.

1328 Chairman Smith. Without objection, the letters will

1329 be made a part of the record.

1330 [The information follows:]

1331

1332 Chairman Smith. And the gentlewoman's time has
1333 expired.

1334 I will recognize myself in opposition to the
1335 amendment.

1336 I oppose this amendment striking Section 4 of H.R.
1337 1981, which directs Internet service providers to retain
1338 only Internet protocol addresses to assist State and Federal
1339 law enforcement officials with child pornography and other
1340 Internet investigations.

1341 IP addresses are the equivalent of phone numbers in
1342 today's digital world. For close to a century, telephone
1343 companies have been required to retain records of phone
1344 calls and produce this information for law enforcement
1345 officials in appropriate situations. This common-sense
1346 legislation would simply bring Internet service providers in
1347 line with the retention requirements currently placed on
1348 telephone companies.

1349 The data retention provision gives us the ability to
1350 win the fight against online child exploitation and other
1351 crimes. While the Internet has revolutionized modern-day
1352 communications, it has also revolutionized modern-day crime
1353 and crime fighting.

1354 A growing number of crimes are committed or
1355 facilitated through electronic communication. Often the
1356 only mechanism for identifying criminals on the Internet is

1357 for investigators to trace an IP address back to the
1358 Internet provider, who can link the IP address to a customer
1359 and provide investigators with the criminal's true identity.

1360 However, not all crimes are identified immediately,
1361 particularly child exploitation crimes. It is common for
1362 law enforcement officials not to become aware of child
1363 exploitation or pornography offenses until months after they
1364 are committed. Because of this lag and because ISPs
1365 regularly purge the addresses necessary to make the
1366 connection between an IP address and an actual person,
1367 investigations are often stymied when law enforcement agents
1368 cannot identify the suspect.

1369 Without this necessary information, law enforcement
1370 officials are required to end an investigation, allowing the
1371 criminal to walk free and often to continue to victimize the
1372 child.

1373 The Department of Justice has testified about the need
1374 for data retention. In January, a DOJ official told this
1375 committee, "The problem of investigations being stymied by a
1376 lack of data retention is growing worse."

1377 The manager's amendment significantly narrows the
1378 scope of this retention requirement by shortening the period
1379 that ISPs must retain information to 1 year and limiting
1380 access to law enforcement. Striking the data retention
1381 provision entirely would keep our law enforcement officials

1382 in the dark ages while criminals continue to surge in the
1383 digital age.

1384 So I urge my colleagues to oppose this amendment.

1385 Are there other Members who wish to speak on the
1386 amendment? The gentleman from Michigan, Mr. Conyers, is
1387 recognized first, then the gentleman from Virginia.

1388 Mr. Conyers. Thank you, Chairman Smith.

1389 Now that Grover Norquist has supported the more
1390 progressive views that abound in the Congress, I am happy to
1391 align myself with him. I have been advised that he also
1392 opposes mandatory sentences. What else? Mandatory minimum
1393 sentences. And it is important that we mention these more
1394 bipartisan comings together when they occur.

1395 But, look, folks. There are only four things wrong
1396 with this bill. One, it doesn't really protect children
1397 from pornographers. Two, the Federal criminal sanctions for
1398 civil violations that subcommittee chairman Scott opposes is
1399 another reason to oppose this bill. Three, the expansion of
1400 administrative subpoenas to marshals who only have to pick
1401 up the phone to call the judge to get a subpoena issued
1402 right on the spot is another thing wrong.

1403 But the worst thing is an attempt by the gentlelady
1404 from California, Ms. Lofgren, to eliminate the creation of a
1405 database for everybody in the United States of America.

1406 Now I am really beginning to wonder about the

1407 rationality of some of the thinking that is going on around
1408 here. Of course, we are against child pornographers. We
1409 have repeated that over and over and over again. But -- and
1410 one more time.

1411 But creating a database for all Americans? How can
1412 we, in broad daylight before luncheon or drinks, contemplate
1413 opposing an amendment that takes this out? I just really --
1414 there are few things that remain puzzling to me in the
1415 Congress, but this is one of them.

1416 A data retention mandate is a big step in the wrong
1417 direction and shifts away from American values of freedom.
1418 And for all the States rights people, as Mr. Watt keeps
1419 repeating, don't you sense some Government intrusion that is
1420 totally overarching in this attempt. There is far too
1421 little information that this mandate will provide the
1422 benefits that are claimed.

1423 And so, I hope --

1424 Chairman Smith. Would the gentleman yield briefly?

1425 Mr. Conyers. Of course.

1426 Chairman Smith. The gentleman from Michigan has
1427 asserted several times today that this bill does not protect
1428 children from child pornography. I would just like to
1429 repeat that the Department of Justice, various law
1430 enforcement organizations, and various child advocacy
1431 organizations all disagree with that statement.

1432 Now they may all be wrong, and the gentleman from
1433 Michigan might be right, but I wouldn't bet on it.

1434 Ms. Lofgren. Would the gentleman yield?

1435 Chairman Smith. And I will yield back to the
1436 gentleman from Michigan, who has the time.

1437 Mr. Conyers. I yield to Ms. Lofgren.

1438 Ms. Lofgren. I would just like to note that the
1439 ability to get information about every American with an
1440 administrative subpoena without a court order is something
1441 that Federal law enforcement has wanted for a long time. We
1442 have resisted that because it is the ultimate expansion of
1443 big brother. It is not the kind of America that we took an
1444 oath to support.

1445 And I just wanted to add a further comment that in
1446 addition to protecting against a huge overreach and big
1447 brother being in our business and every American's business,
1448 although the manager's amendment says that the information
1449 retained can't be compelled by any person or entity that is
1450 not a governmental entity, the National Network to End
1451 Domestic Violence opposes this bill because they understand
1452 that civil litigants can go in discovery and get courts to
1453 get this information, exposing information that would be a
1454 tremendous threat to domestic violence victims.

1455 And I note recently a woman and her children were
1456 murdered in California by a husband who found out where she

1457 was through a telephone record. So this is not just a
1458 theoretical. This is a serious issue.

1459 And I thank the gentleman for yielding.

1460 Chairman Smith. The gentleman's time has expired.

1461 Are there other Members --

1462 Mr. Conyers. I need a couple more minutes, Chairman
1463 Smith.

1464 Chairman Smith. Without objection, the gentleman from
1465 Michigan is recognized for another minute.

1466 Mr. Conyers. Thank you very much. All right. But I
1467 yielded to you, and you took more than a minute.

1468 Chairman Smith. The gentleman is recognized for an
1469 additional 2 minutes, without objection.

1470 Mr. Conyers. Thank you very much, sir.

1471 Now, look, to have me told that the Department of
1472 Justice likes this bill and that I ought to like it, too,
1473 doesn't cut any water with me whatsoever. The Department of
1474 Justice has been trying to get administrative subpoena
1475 authority for years, and everybody on this committee knows
1476 it.

1477 But there are no studies. As Mr. Watt has quoted from
1478 discussions with the DOJ, they don't have any evidence that
1479 there will be more prosecutions or even arrests. And so,
1480 that is totally irrelevant of whether they want it or not.

1481 I would rather stick with Grover Norquist, the Cato

1482 Institute, the Digital Liberty, Americans for Tax Reform,
1483 the TechFreedom, and the Competitive Enterprise Institute
1484 any day in the week.

1485 And I yield back my time.

1486 Mr. Lungren. Mr. Chairman, are we talking about the
1487 Boehner plan, or are we talking about the --

1488 [Laughter.]

1489 Chairman Smith. Does anyone else wish to be
1490 recognized on this? The gentleman from Virginia, Mr. Scott?
1491 Mr. Scott. Thank you, Mr. Chairman.

1492 Mr. Chairman, this amendment would strike Section 4 of
1493 H.R. 1981, as amended by the manager's amendment, which
1494 would mandate that all Internet service providers retain a
1495 log of the IP addresses, subscriber information, and
1496 apparently credit card information for all of its customers
1497 for 12 months.

1498 Now it is indisputable that the vast majority of the
1499 230 million Americans using the Internet are innocent, law-
1500 abiding citizens. A data retention mandate on all citizens
1501 is a substantial step in the wrong direction and a shift
1502 away from the fundamental idea that we should be free from
1503 Government intrusion and have the presumption of innocence.

1504 Now all this data retention isn't free. Small
1505 companies, which represent about 12 percent of the
1506 customers, are expected to pay \$25 million or more a year to

1507 comply with this mandate.

1508 Now frequent reference has been made to telephone
1509 records. But the telephone records do not contain
1510 information on all telephone calls, just the long distance
1511 calls, and that information is already kept. So there is no
1512 additional expense. The information is there.

1513 Now there has been no comprehensive, empirical-based
1514 study to document the need for the data retention mandate.
1515 We don't know even if this is necessary. What we do know is
1516 that some Internet crime against children task forces have
1517 reported to the GAO that they are getting what they need
1518 from ISPs 80 percent of the time already.

1519 Now, remember, they get 100,000 tips. They only
1520 pursue 2,000 cases, and they are getting 80 percent of what
1521 they need. Getting information isn't the problem. It is
1522 processing it. And the other 20 percent, they usually get
1523 the information through some other means.

1524 Now we also know that there is a difference between
1525 preservation of data and the retention of data required in
1526 this law. For somebody suspected of wrongdoing, you can get
1527 the preservation of data. Preservation includes everything
1528 -- the email, the content, the photos, everything. Whereas
1529 retention, retained data is just the IP address and maybe
1530 the credit card information. That would be the preservation
1531 is targeted to those who actually need to be targeted. The

1532 retention just retains information on everybody.

1533 Now we shouldn't impose costly regulatory burdens on
1534 industry without knowing that it is actually going to do
1535 some good. And there are consequences, both unintended and
1536 intended, of the data retention mandate that are too
1537 numerous to name. We won't know all of what the problems
1538 are until, I guess, this is imposed.

1539 But we know this information is not going to be
1540 restricted to just child pornography cases. We already know
1541 that -- you already argued against my little amendment that
1542 would have restricted it to child pornography. And we know
1543 that this information can be used for marketing,
1544 intellectual property cases, divorces, other crimes.

1545 And if crime prevention is the goal, all this
1546 information is going to be teed up for hackers. They got
1547 the credit card information sitting right there. So if you
1548 are trying to reduce crime, you are really going in the
1549 wrong direction.

1550 The gentlelady from California has mentioned the
1551 National Network to End Domestic Violence and mentioned
1552 civil litigation. In criminal litigation, in addition to
1553 that, if you are the defendant in the case, you can subpoena
1554 whatever you think might be helpful, and the victim's
1555 telephone records or the Internet records would be subject
1556 to subpoena. And you can browse through that to find out

1557 all kinds of little information.

1558 That is not going to be particularly helpful. That
1559 would be going in the wrong direction and would subject the
1560 victims of crime to additional vulnerability.

1561 For these reasons, I support striking Section 4 of the
1562 bill in its entirety. There are simply too many problems.
1563 And if we want to do something about this, we should
1564 actually be not be doing data retention, but to fund the FBI
1565 to go through the data that they already have.

1566 I would thank the gentlelady for her amendment and
1567 hope --

1568 Chairman Smith. Okay. Would the gentleman yield very
1569 briefly?

1570 Mr. Scott. I will yield.

1571 Chairman Smith. I just want to point out the
1572 gentleman's list might have been a little bit too expansive.
1573 Once again, this bill can only be used be used by
1574 governmental entities. I don't expect that, therefore, it
1575 could be used in the case of civil actions like divorces
1576 that --

1577 Ms. Lofgren. Would the gentleman yield? Is the court
1578 a governmental entity?

1579 Chairman Smith. Okay.

1580 Mr. Scott. Thank you. Well, no, no. The question
1581 was, is the court a governmental agency?

1582 Chairman Smith. Oh, the answer is no.

1583 Mr. Scott. Excuse me?

1584 [Laughter.]

1585 Mr. Scott. Say that again.

1586 Chairman Smith. Yes.

1587 Mr. Scott. The court is not a governmental agency?

1588 Ms. Lofgren. A Federal court is not a governmental
1589 entity?

1590 [Laughter.]

1591 Mr. Scott. Nice try, Mr. Chairman.

1592 Ms. Lofgren. Good luck.

1593 Chairman Smith. The gentleman from North Carolina is
1594 recognized.

1595 Mr. Watt. Thank you, Mr. Chairman.

1596 I don't want to prolong this. I just want to make two
1597 quick points. One, Ms. Lofgren and yourself keep
1598 referencing this section that says access to a record or
1599 information required to be retained under this subsection
1600 may not be compelled by any person or other entity that is
1601 not a governmental entity.

1602 It seems to me that that is the essence of the concern
1603 that we are raising because if we are talking about big
1604 brother, we are talking exactly about a governmental entity.
1605 It is the Government that we are concerned about having
1606 these records and requiring their retention. That is the

1607 first point.

1608 The second point that I want to make is a more
1609 practical point, although I support all of the points that
1610 my colleagues have made in opposition to this amendment.
1611 And that is that we have been working pretty vigorously with
1612 the ISPs to try to come up with cooperative ways for them to
1613 be of assistance to law enforcement and us and private
1614 businesses to combat the piracy and knock-offs and various
1615 things that are taking place.

1616 I think we, by imposing this additional burden on
1617 ISPs, may be minimizing our ability to effectively work with
1618 them on some other areas that are very important to us. So
1619 I just wanted to point that out. It doesn't rise to the
1620 level of concern that some of my colleagues have raised, but
1621 as a practical matter, I think that we should be concerned
1622 about that.

1623 Ms. Lofgren. Would the gentleman yield?

1624 Mr. Watt. Yes, I will.

1625 Ms. Lofgren. I would note also that I talked last
1626 night to the former general counsel of the Judiciary
1627 Committee Alan Parker, many remember him, and he was raising
1628 the issue of ICE, which is a governmental entity, is
1629 asserting broad jurisdiction over a whole variety of things
1630 on the Internet because it is international and customs.
1631 And that coupled with this, I mean, it would be a massive,

1632 massive expansion in the issue that Mr. Watt has just
1633 mentioned that I think would be very, very troubling to
1634 those who value civil liberties.

1635 Mr. Watt. That is a very important point, and if Mr.
1636 Goodlatte were here, I think he would confirm that we had an
1637 extensive hearing in which we were stunned at the reach that
1638 ICE is asserting it has the authority to go. And every
1639 member of our subcommittee had concerns about that extended
1640 reach.

1641 This is all in the context of trying to come up with
1642 some ways where ISPs can cooperate with businesses to try to
1643 stop duplication of fashion design, pharmaceuticals,
1644 automobile parts. I mean, piracy is everywhere in all of
1645 these areas.

1646 And to the extent we impose this massive burden, data
1647 retention burden, I think we surely will meet some greater
1648 resistance in achieving some of the other objectives we are
1649 trying to achieve.

1650 So, with that, Mr. Chairman, I will yield back the
1651 balance of my time.

1652 Chairman Smith. Thank you, Mr. Watt.

1653 The question is on the Lofgren Amendment. All in
1654 favor, say aye.

1655 [A chorus of ayes.]

1656 Chairman Smith. Opposed, nay.

1657 [A chorus of nays.]

1658 Chairman Smith. In the opinion of the chair, the nays
1659 have it, and the amendment is not agreed to.

1660 Ms. Lofgren. I would like a recorded vote on that,
1661 Mr. Chairman.

1662 Chairman Smith. A recorded vote has been requested,
1663 and the clerk will call the roll.

1664 Ms. Kish. Mr. Smith?

1665 Chairman Smith. No.

1666 Ms. Kish. Mr. Smith votes no.

1667 Mr. Sensenbrenner?

1668 [No response.]

1669 Ms. Kish. Mr. Coble?

1670 [No response.]

1671 Ms. Kish. Mr. Gallegly?

1672 Mr. Gallegly. No.

1673 Ms. Kish. Mr. Gallegly votes no.

1674 Mr. Goodlatte?

1675 Mr. Goodlatte. No.

1676 Ms. Kish. Mr. Goodlatte votes no.

1677 Mr. Lungren?

1678 Mr. Lungren. No.

1679 Ms. Kish. Mr. Lungren votes no.

1680 Mr. Chabot?

1681 [No response.]

1682 Ms. Kish. Mr. Issa?
1683 [No response.]
1684 Ms. Kish. Mr. Pence?
1685 [No response.]
1686 Ms. Kish. Mr. Forbes?
1687 [No response.]
1688 Ms. Kish. Mr. King?
1689 Mr. King. No.
1690 Ms. Kish. Mr. King votes no.
1691 Mr. Franks?
1692 Mr. Franks. No.
1693 Ms. Kish. Mr. Franks votes no.
1694 Mr. Gohmert?
1695 [No response.]
1696 Ms. Kish. Mr. Jordan?
1697 [No response.]
1698 Ms. Kish. Mr. Poe?
1699 [No response.]
1700 Ms. Kish. Mr. Chaffetz?
1701 Mr. Chaffetz. Yes.
1702 Ms. Kish. Mr. Chaffetz votes yes.
1703 Mr. Griffin?
1704 Mr. Griffin. No.
1705 Ms. Kish. Mr. Griffin votes no.
1706 Mr. Marino?

1707 Mr. Marino. No.

1708 Ms. Kish. Mr. Marino votes no.

1709 Mr. Gowdy?

1710 Mr. Gowdy. No.

1711 Ms. Kish. Mr. Gowdy votes no.

1712 Mr. Ross?

1713 [No response.]

1714 Ms. Kish. Mrs. Adams?

1715 [No response.]

1716 Ms. Kish. Mr. Quayle?

1717 [No response.]

1718 Ms. Kish. Mr. Conyers?

1719 Mr. Conyers. Aye.

1720 Ms. Kish. Mr. Conyers votes aye.

1721 Mr. Berman?

1722 Mr. Berman. No.

1723 Ms. Kish. Mr. Berman votes no.

1724 Mr. Nadler?

1725 [No response.]

1726 Ms. Kish. Mr. Scott?

1727 Mr. Scott. Aye.

1728 Ms. Kish. Mr. Scott votes aye.

1729 Mr. Watt?

1730 Mr. Watt. Aye.

1731 Ms. Kish. Mr. Watt votes aye.

1732 Ms. Lofgren?
1733 Ms. Lofgren. Aye.
1734 Ms. Kish. Ms. Lofgren votes aye.
1735 Ms. Jackson Lee?
1736 [No response.]
1737 Ms. Kish. Ms. Waters?
1738 [No response.]
1739 Ms. Kish. Mr. Cohen?
1740 [No response.]
1741 Ms. Kish. Mr. Johnson?
1742 Mr. Johnson. Aye.
1743 Ms. Kish. Mr. Johnson votes aye.
1744 Mr. Pierluisi?
1745 Mr. Pierluisi. No.
1746 Ms. Kish. Mr. Pierluisi votes no.
1747 Mr. Quigley?
1748 Mr. Quigley. No.
1749 Ms. Kish. Mr. Quigley votes no.
1750 Ms. Chu?
1751 [No response.]
1752 Ms. Kish. Mr. Deutch?
1753 Mr. Deutch. No.
1754 Ms. Kish. Mr. Deutch votes no.
1755 Ms. Sanchez?
1756 [No response.]

1757 Chairman Smith. The gentleman from Virginia, Mr.
1758 Forbes?
1759 Mr. Forbes. No.
1760 Ms. Kish. Mr. Forbes votes no.
1761 Chairman Smith. The gentleman from Wisconsin, Mr.
1762 Sensenbrenner?
1763 Mr. Sensenbrenner. Aye.
1764 Ms. Kish. Mr. Sensenbrenner votes aye.
1765 Chairman Smith. The gentlewoman from North Carolina?
1766 Mr. Coble. No.
1767 Ms. Kish. Mr. Coble votes no.
1768 Chairman Smith. The gentlewoman from California, Ms.
1769 Waters?
1770 Ms. Waters. Aye.
1771 Ms. Kish. Ms. Waters votes aye.
1772 Chairman Smith. The clerk will report.
1773 Ms. Kish. Mr. Chairman, 8 Members voted aye; 15
1774 Members voted nay.
1775 Chairman Smith. A majority having voted against the
1776 amendment, the amendment is not agreed to.
1777 The Judiciary Committee will stand in recess until
1778 immediately after the first set of votes, which we expect
1779 about 1:15 p.m.
1780 [Whereupon, at 12:47 p.m., the committee recessed, to
1781 reconvene at 1:15 p.m., the same day.]

1782 Chairman Smith. The Judiciary Committee will
1783 reconvene our markup, and the clerk will call the roll.
1784 Ms. Kish. Mr. Smith?
1785 Chairman Smith. Present.
1786 Ms. Kish. Mr. Sensenbrenner?
1787 Mr. Coble?
1788 Mr. Gallegly?
1789 Mr. Goodlatte?
1790 Mr. Lungren?
1791 Mr. Chabot?
1792 Mr. Issa?
1793 Mr. Pence?
1794 Mr. Forbes?
1795 Mr. King?
1796 Mr. Franks?
1797 Mr. Gohmert?
1798 Mr. Jordan?
1799 Mr. Poe?
1800 Mr. Chaffetz?
1801 Mr. Griffin?
1802 Mr. Marino?
1803 Mr. Gowdy?
1804 Mr. Ross?
1805 Ms. Adams?
1806 Ms. Adams. Here.

1807 Ms. Kish. Mr. Quayle?
1808 Mr. Conyers?
1809 Mr. Berman?
1810 Mr. Nadler?
1811 Mr. Scott?
1812 Mr. Scott. Here.
1813 Ms. Kish. Mr. Watt?
1814 Ms. Lofgren?
1815 Ms. Jackson Lee?
1816 Ms. Waters?
1817 Mr. Cohen?
1818 Mr. Cohen. Here.
1819 Mr. Johnson?
1820 Mr. Pierluisi?
1821 Mr. Quigley?
1822 Ms. Chu?
1823 Mr. Deutch?
1824 Ms. Sanchez?
1825 Mr. Marino?
1826 Mr. Marino. Here.
1827 Ms. Kish. Mr. King?
1828 Mr. King. Here.
1829 Ms. Kish. Ms. Lofgren?
1830 Ms. Lofgren. Here.
1831 Ms. Kish. Mr. Chaffetz?

1832 Mr. Chaffetz. Here.

1833 Ms. Kish. Mr. Chabot?

1834 Mr. Chabot. Here.

1835 Chairman Smith. Did you get the gentleman from Utah?

1836 Ms. Kish. Yes.

1837 Mr. Cohen. Mr. Chairman, I hope you have taken note
1838 of the people who were here and diligent, prompt, and
1839 interested in your bill.

1840 Chairman Smith. The gentleman from Tennessee should
1841 be reassured that most of the people were will get extra
1842 credit.

1843 Mr. Cohen. And milk and cookies after a nap?

1844 Chairman Smith. And in fact, I have for the gentleman
1845 right now, as a slight reward, a miniature Musketeer, which
1846 I will pass that on.

1847 [Laughter.]

1848 Mr. Cohen. Wow. It pays to be early.

1849 Mr. Chabot. Mr. Chairman, I like Musketeers, too.

1850 Chairman Smith. Steve Chabot has also earned one. We
1851 will pass it along. It only travels on its stomach, and so
1852 do members of the Judiciary Committee.

1853 Ms. Kish. Mr. Gowdy?

1854 Mr. Gowdy. Here.

1855 Ms. Kish. Mr. Quigley?

1856 Mr. Quigley. Here.

1857 Chairman Smith. The gentleman from Puerto Rico?

1858 Ms. Kish. Mr. Watt?

1859 Mr. Watt. Present.

1860 Chairman Smith. The clerk will report.

1861 Ms. Kish. Mr. Chairman, 13 members responded present.

1862 Chairman Smith. We have a working quorum present, so
1863 we will proceed.

1864 And the gentleman from Virginia, Mr. Scott, has the
1865 next amendment, and he is recognized to offer that one.

1866 Mr. Scott. Mr. Chairman, I have an amendment at the
1867 desk.

1868 Chairman Smith. The clerk will report the amendment.

1869 Ms. Kish. Amendment to H.R. 1981 offered by Mr. Scott
1870 of Virginia.

1871 At the end, add the following: "Authorization for
1872 additional resources to investigate and prosecute child
1873 exploitation crimes. In addition to any other authorization
1874 of appropriations in other laws there are authorized to be
1875 appropriated for fiscal year 2012" --

1876 Chairman Smith. Without objection, the amendment will
1877 be considered as read.

1878 [The information follows:]

1879

1880 Chairman Smith. And the gentleman is recognized to
1881 explain the amendment.

1882 Mr. Scott. Thank you, Mr. Chairman.

1883 Mr. Chairman, this amendment authorizes \$45 million in
1884 funds for 200 FBI agents, 30 U.S. prosecutors, and 20 public
1885 defenders to investigate and prosecute child exploitation
1886 crimes.

1887 The most obvious flaw in H.R. 1981 is its failure to
1888 raise additional resources for the investigation and
1889 prosecution of child predators when we know that one of the
1890 major frustrations of law enforcement and advocates is they
1891 do not have sufficient resources to pursue hundreds of
1892 thousands of cases of abuse already identified.

1893 Specifically, the GAO reported that there are delays
1894 in conducting forensic analysis of computers that have
1895 created a backlog of tens of thousands of cases. Increased
1896 resources in this area could eliminate such problems, and
1897 H.R. 1918 makes no effort to address the challenges of the
1898 forensic laboratory backlog.

1899 And, Mr. Chairman, just a reminder that the Department
1900 of Justice gets about 100,000 tips every year and only makes
1901 about 2,250 cases. So the problem isn't getting
1902 information. The problem is processing information they
1903 got.

1904 So it would be prudent to provide greater resources to

1905 hire more investigators, so that these investigations are
1906 prioritized and handled, and which would thereby avoid
1907 necessary delays in issuing subpoenas to ISPs.

1908 This amendment would be more cost effective than
1909 requiring providers to maintain voluminous amounts of data,
1910 particularly if it turned out that the government would bear
1911 the costs.

1912 Simply put, the data retention mandate in H.R. 1981 is
1913 not a solution. Without addressing the underlying problem
1914 with investigations, the data retained will likely just sit
1915 there in the database and be unused. When the problem is
1916 finding the needles in the haystacks of information already
1917 identified and available, the priority should not be adding
1918 more hay.

1919 Mr. Chairman, I would hope we adopt the amendment, and
1920 I yield back.

1921 Chairman Smith. Thank you, Mr. Scott.

1922 And I recognize myself in opposition.

1923 This amendment authorizes \$45 million a year for 200
1924 additional FBI agents, 30 additional Federal prosecutors,
1925 and 20 additional Federal public defenders to work on child
1926 exploitation cases.

1927 I support providing as many resources as reasonably
1928 possible to fight these despicable crimes against our
1929 Nation's children. I cannot, however, support this

1930 amendment.

1931 This amendment does not provide any offset for the new
1932 spending that it authorizes, despite a requirement in the
1933 112th Congress that all new funding be fully offset. This
1934 amendment proposes \$45 million a year, and not just for
1935 fiscal year 2012, but for every fiscal year after that. So
1936 there is no time limit on the authorization, and, thus, no
1937 limit on the spending authorized.

1938 I appreciate the gentleman's interest in focusing
1939 Federal resources on child exploitation cases and hope that
1940 he will also support the underlying bill, which provides law
1941 enforcement with the tools they need to work child
1942 exploitation cases efficiently and effectively.

1943 But I cannot support this unchecked level of spending
1944 that fails to comply with our cut-go rule.

1945 I urge my colleagues to oppose the amendment.

1946 Are there other members who wish to be heard on the
1947 amendment?

1948 If not, all in favor of the amendment say aye.

1949 [A chorus of ayes.]

1950 Chairman Smith. All opposed to the amendment, say no.

1951 [A chorus of nays.]

1952 Chairman Smith. In the opinion of the Chair, the noes
1953 have it. The amendment is not agreed to.

1954 Mr. Scott. Mr. Chairman, I would ask for a recorded

1955 vote. If the Chair wants to roll the votes, that would --
1956 Chairman Smith. The gentleman has requested a
1957 recorded vote. And I appreciate the gentleman's offer to
1958 roll the votes, but I think we will go on and have one.
1959 The clerk will call the roll.
1960 Ms. Kish. Mr. Smith?
1961 Chairman Smith. No.
1962 Ms. Kish. Mr. Smith votes no.
1963 Mr. Sensenbrenner?
1964 Mr. Sensenbrenner. No.
1965 Ms. Kish. Mr. Sensenbrenner votes no.
1966 Mr. Coble?
1967 [No response.]
1968 Ms. Kish. Mr. Gallegly?
1969 [No response.]
1970 Ms. Kish. Mr. Goodlatte?
1971 [No response.]
1972 Ms. Kish. Mr. Lungren?
1973 [No response.]
1974 Ms. Kish. Mr. Chabot?
1975 Mr. Chabot. No.
1976 Ms. Kish. Mr. Chabot votes no.
1977 Mr. Issa?
1978 [No response.]
1979 Ms. Kish. Mr. Pence?

1980 [No response.]
1981 Ms. Kish. Mr. Forbes?
1982 [No response.]
1983 Ms. Kish. Mr. King?
1984 Mr. King. No.
1985 Ms. Kish. Mr. King votes no.
1986 Mr. Franks?
1987 [No response.]
1988 Ms. Kish. Mr. Gohmert?
1989 [No response.]
1990 Ms. Kish. Mr. Jordan?
1991 [No response.]
1992 Ms. Kish. Mr. Poe?
1993 [No response.]
1994 Ms. Kish. Mr. Chaffetz?
1995 Mr. Chaffetz. Aye.
1996 Ms. Kish. Mr. Chaffetz votes aye.
1997 Mr. Griffin?
1998 Mr. Griffin. No.
1999 Ms. Kish. Mr. Griffin votes no.
2000 Mr. Marino?
2001 Mr. Marino. No.
2002 Ms. Kish. Mr. Marino votes no.
2003 Mr. Gowdy?
2004 Mr. Gowdy. No.

2005 Ms. Kish. Mr. Gowdy votes no.
2006 Mr. Ross?
2007 [No response.]
2008 Ms. Kish. Ms. Adams?
2009 Ms. Adams. No.
2010 Ms. Kish. Ms. Adams votes no.
2011 Mr. Quayle?
2012 [No response.]
2013 Ms. Kish. Mr. Conyers?
2014 Mr. Conyers. Aye.
2015 Ms. Kish. Mr. Conyers votes aye.
2016 Mr. Berman?
2017 [No response.]
2018 Ms. Kish. Mr. Nadler?
2019 Mr. Nadler. Aye.
2020 Ms. Kish. Mr. Nadler votes aye.
2021 Mr. Scott?
2022 Mr. Scott. Aye.
2023 Ms. Kish. Mr. Scott votes aye.
2024 Mr. Watt?
2025 Mr. Watt. Aye.
2026 Ms. Kish. Mr. Watt votes aye.
2027 Ms. Lofgren?
2028 Ms. Lofgren. Aye.
2029 Ms. Kish. Ms. Lofgren votes aye.

2030 Ms. Jackson Lee?

2031 [No response.]

2032 Ms. Kish. Ms. Waters?

2033 [No response.]

2034 Ms. Kish. Mr. Cohen?

2035 Mr. Cohen. No.

2036 Ms. Kish. Mr. Cohen votes no.

2037 Mr. Johnson?

2038 [No response.]

2039 Ms. Kish. Mr. Pierluisi?

2040 Mr. Pierluisi. No.

2041 Ms. Kish. Mr. Pierluisi votes no.

2042 Mr. Quigley?

2043 Mr. Quigley. Aye.

2044 Ms. Kish. Mr. Quigley votes aye.

2045 Ms. Chu?

2046 [No response.]

2047 Ms. Kish. Mr. Deutch?

2048 [No response.]

2049 Ms. Kish. Ms. Sanchez?

2050 [No response.]

2051 Chairman Smith. The gentleman from Virginia, Mr.

2052 Forbes?

2053 Mr. Forbes. No.

2054 Ms. Kish. Mr. Forbes votes no.

2055 Chairman Smith. Are there other members who wish to
2056 record their votes?

2057 If not, the clerk will report.

2058 Ms. Kish. Mr. Chairman, seven members voted aye; 11
2059 members voted nay.

2060 Chairman Smith. The majority having voted against the
2061 amendment, the amendment is not agreed to.

2062 We will now go to the next amendment offered by the
2063 gentlewoman from California, Ms. Lofgren.

2064 Ms. Lofgren. Thank you, Mr. Chairman.

2065 I have an amendment at the desk.

2066 Chairman Smith. The clerk will report the amendment.

2067 Ms. Kish. Amendment to H.R. 1981 offered by Ms.
2068 Lofgren.

2069 Page 3 line 12, strike the close quotation mark and
2070 the period which follows. Page 3, after line 12, insert the
2071 following: "Reporting requirement" --

2072 Chairman Smith. Without objection, the amendment will
2073 be considered as read.

2074 [The information follows:]

2075

2076 Chairman Smith. And the gentlewoman is recognized to
2077 explain her amendment.

2078 Ms. Lofgren. Thank you, Mr. Chairman.

2079 This amendment would add a reporting requirement for
2080 the demands that government makes to Internet service
2081 providers for the IP addresses of their users' data that is
2082 retained pursuant to this bill.

2083 The amendment would give ISPs 30 days to send notice
2084 of each demand to the Administrative Office of the United
2085 States Courts, including information about who is making the
2086 demand, what they are demanding, and how much it will cost.

2087 Based on this information, the director of the
2088 Administrative Office will publish an annual report with
2089 aggregate statistics about these government demands for the
2090 data of Internet users. The report will be similar to the
2091 annual wiretap report that the Administrative Office
2092 compiles on the volume and nature of government wiretap
2093 applications.

2094 As we know, the Administrative Office is part of the
2095 judicial branch, and as such, it can serve as a trusted
2096 repository and an objective source for information about how
2097 the government is making use of the new, sweeping data
2098 retention mandate that would be created by this bill.

2099 History has made clear that we need this independent
2100 monitor of surveillance activities. We can't simply trust

2101 the executive branch and the Department of Justice to be
2102 fully transparent about their own investigative activities.

2103 And the remarks of the gentleman from Wisconsin about
2104 the National Security Letters is just one example of that
2105 kind of behavior.

2106 Based on our discussion today, it is clear that this
2107 legislation creates significant risks to the privacy of
2108 every Internet user, not just those who are suspected of
2109 committing horrible crimes against children.

2110 The sweeping new data retention mandate created by the
2111 bill also raises the possibility of government overreach and
2112 abuse far beyond what is necessary to stop child
2113 exploitation. At a minimum, both Congress and the public
2114 must have a way to know how often the government is
2115 demanding Internet user data, and whether those demands are
2116 being put to other uses besides the focus of our discussion
2117 here today, to wit, child pornography.

2118 This amendment would guarantee a minimum of
2119 transparency for a major expansion of law enforcement
2120 surveillance powers.

2121 I would urge my colleagues to support the amendment,
2122 and I yield back the balance of my time.

2123 Chairman Smith. Thank you, Ms. Lofgren.

2124 I will recognize myself in opposition.

2125 This amendment requires electronic providers to report

2126 detailed information about the data requests that they
2127 receive from law enforcement agencies, and the costs
2128 associated with complying with those requests, to the
2129 Administrative Office of the U.S. Courts.

2130 Law enforcement investigations are often secret at
2131 their inception. However, this amendment would make it more
2132 difficult to go after child pornographers. As police
2133 officers and prosecutors begin to track down a murderer,
2134 they do not announce whom they are pursuing and what tactics
2135 they are using to capture them.

2136 Whitey Bulger successfully evaded capture for decades,
2137 apparently because he had information about the direction of
2138 the investigation.

2139 If this information were to lead to a suspect, he
2140 could flee, destroy evidence, and even become a greater
2141 threat to the community. And the vital element of surprise
2142 would be wasted.

2143 Furthermore, this amendment would create a legal
2144 conflict. Law enforcement agencies usually request ISP data
2145 through the use of grand jury subpoenas. Under rule 6(e)(2)
2146 of the Federal Rules of Criminal Procedure, grand jury
2147 proceedings are secret. This rule exists not only to enable
2148 law enforcement officials to pursue criminals, but also to
2149 protect the names and reputation of citizens who are never
2150 indicted.

2151 Directing that every grand jury request be reported in
2152 detail within 30 days to the Administrative Office of the
2153 Courts risks exposure of sensitive grand jury material in
2154 violation of Federal Rules of Criminal Procedure, and could
2155 ruin the reputations of innocent Americans.

2156 Placing this reporting requirement on providers is
2157 odd, as well. The subpoenas or court orders used to request
2158 information do not belong to the providers. They belong to
2159 the Federal, State, or local government conducting the
2160 investigation.

2161 In other instances, where Congress has imposed a
2162 reporting requirement on the use of an investigative tool,
2163 such as criminal wiretaps, the burden is placed on the
2164 Justice Department, not the providers complying with wiretap
2165 warrants.

2166 We want providers to respond to requests for this
2167 data, not generate reports on how they respond.

2168 So I urge my colleagues to reject the amendment.

2169 Are there other members who wish to be heard on the
2170 amendment?

2171 The gentleman from Virginia, Mr. Scott?

2172 Mr. Scott. Thank you, Mr. Chairman.

2173 This amendment requires ISPs to report to the
2174 Administrative Office of the Courts the type of request, the
2175 date of the request, and the cost of complying with the

2176 request. The AOC will report this information in summary
2177 form to Congress on annual basis. That is summary form in
2178 aggregate, not individually identifiable information.

2179 One of the biggest concerns here is that the lack of
2180 data on the requests that law enforcement is making on ISPs.
2181 This reporting requirement will fill that gap and provide
2182 useful information about the nature, timing, and costs of
2183 these requests, and the type of investigations in which it
2184 is being used.

2185 Law enforcement has indicated in all of our hearings
2186 that it needs the data for child pornography and other child
2187 exploitation cases. This requirement would allow us to see
2188 if that is in fact the case, for which this data is being
2189 sought.

2190 It will allow us to see whether the bill would have
2191 the same effect as the USA PATRIOT Act has, when we were
2192 told that sneak-and-peek power was needed for anti-terrorism
2193 cases. Now because of reporting, we know that out of 763
2194 requests in fiscal year 2008, 3 out of 763 involved
2195 terrorism cases. Sixty-five percent of them were for all
2196 kinds of drug cases.

2197 And so if we are going to impose tens of millions of
2198 dollars in costs on ISPs, we should at least know what they
2199 are paying for.

2200 The Lofgren amendment would provide a mechanism for

2201 determining whether H.R. 1981 suffers from the same problems
2202 after it is implemented.

2203 And I yield to the gentlelady from --

2204 Ms. Lofgren. I thank the gentleman for yielding.

2205 I would just like to note, in response to the
2206 chairman's objections, we have discovered and reassured
2207 ourselves that the Administrative Office of the Courts is
2208 not subject to FOIA.

2209 What is suggested in the amendment is that only
2210 aggregate information would be reported. There would be no
2211 personally identifiable information.

2212 Chairman Smith. Would the gentlewoman yield?

2213 Ms. Lofgren. I would.

2214 Chairman Smith. I am looking at the language in her
2215 amendment, and it doesn't say anything about summary or
2216 aggregate. It says just the opposite.

2217 Starting on line 11, it says, "Notification shall
2218 include the identity of the requesting governmental entity
2219 and a copy of the demand." That will include more than just
2220 a summary. That would be the individual information.

2221 Mr. Scott. Yes, reclaiming my time, but the report
2222 that the AOC would make would be in the aggregate --

2223 Ms. Lofgren. Right.

2224 Mr. Scott. -- the information available.

2225 I yield to the gentlelady from California.

2226 Ms. Lofgren. Yes, and that is going to the court, but
2227 it is not what is being reported to the public.

2228 And if I can continue, I would note further that to
2229 say that this should be a DOJ responsibility misses the
2230 point. The fact is that any government agency could,
2231 through an administrative warrant, get this information. It
2232 could be the IRS. It could be the ATF. You know, it is not
2233 just -- it could be any of those agencies that will go and
2234 get all of the information about what websites an American,
2235 who presumably has done nothing wrong, necessarily, has
2236 visited.

2237 So I think that if we want to know whether this is
2238 actually being used for the fight against child pornography,
2239 or whether it is being used by the ATF for the purchase of
2240 guns, I think that we would want to know that. And this is
2241 one way to find out.

2242 And I thank the gentleman for yielding to me.

2243 Mr. Scott. Thank you, Mr. Chairman. I yield back.

2244 Chairman Smith. Thank you, Mr. Scott.

2245 Are there other individuals who wish to be heard?

2246 The vote is on the amendment, the Lofgren amendment.

2247 All in favor say aye.

2248 [A chorus of ayes.]

2249 Chairman Smith. Opposed, nay.

2250 [A chorus of nays.]

2251 Chairman Smith. The nays have it.

2252 Ms. Lofgren. I would like a recorded vote, Mr.

2253 Chairman.

2254 Chairman Smith. A recorded vote has been asked for.

2255 And the clerk will call the roll.

2256 Ms. Kish. Mr. Smith?

2257 Chairman Smith. No.

2258 Ms. Kish. Mr. Smith votes no.

2259 Mr. Sensenbrenner?

2260 Mr. Sensenbrenner. Aye.

2261 Ms. Kish. Mr. Sensenbrenner votes aye.

2262 Mr. Coble?

2263 Mr. Coble. No.

2264 Ms. Kish. Mr. Coble votes no.

2265 Mr. Gallegly?

2266 Mr. Gallegly. No.

2267 Ms. Kish. Mr. Gallegly votes no.

2268 Mr. Goodlatte?

2269 [No response.]

2270 Ms. Kish. Mr. Lungren?

2271 [No response.]

2272 Ms. Kish. Mr. Chabot?

2273 [No response.]

2274 Ms. Kish. Mr. Issa?

2275 [No response.]

2276 Ms. Kish. Mr. Pence?
2277 [No response.]
2278 Ms. Kish. Mr. Chabot?
2279 Mr. Chabot. No.
2280 Ms. Kish. Mr. Chabot votes no.
2281 Mr. Pence?
2282 [No response.]
2283 Ms. Kish. Mr. Forbes?
2284 Mr. Forbes. No.
2285 Ms. Kish. Mr. Forbes votes no.
2286 Mr. King?
2287 Mr. King. No.
2288 Ms. Kish. Mr. King votes no.
2289 Mr. Franks?
2290 [No response.]
2291 Ms. Kish. Mr. Gohmert?
2292 [No response.]
2293 Ms. Kish. Mr. Jordan?
2294 [No response.]
2295 Ms. Kish. Mr. Poe?
2296 [No response.]
2297 Ms. Kish. Mr. Chaffetz?
2298 Mr. Chaffetz. No.
2299 Ms. Kish. Mr. Chaffetz votes no.
2300 Mr. Griffin?

2301 Mr. Griffin. No.

2302 Ms. Kish. Mr. Griffin votes no.

2303 Mr. Marino?

2304 Mr. Marino. No.

2305 Ms. Kish. Mr. Marino votes no.

2306 Mr. Gowdy?

2307 Mr. Gowdy. No.

2308 Ms. Kish. Mr. Gowdy votes no.

2309 Mr. Ross?

2310 [No response.]

2311 Ms. Kish. Ms. Adams?

2312 Ms. Adams. No.

2313 Ms. Kish. Ms. Adams votes no.

2314 Mr. Quayle?

2315 [No response.]

2316 Ms. Kish. Mr. Conyers?

2317 [No response.]

2318 Ms. Kish. Mr. Berman?

2319 [No response.]

2320 Ms. Kish. Mr. Nadler?

2321 Mr. Nadler. Aye.

2322 Ms. Kish. Mr. Nadler votes aye.

2323 Mr. Scott?

2324 Mr. Scott. Aye.

2325 Ms. Kish. Mr. Scott votes aye.

2326 Mr. Watt?
2327 Mr. Watt. Aye.
2328 Ms. Kish. Mr. Watt votes aye.
2329 Ms. Lofgren?
2330 Ms. Lofgren. Aye.
2331 Ms. Kish. Ms. Lofgren votes aye.
2332 Ms. Jackson Lee?
2333 [No response.]
2334 Ms. Kish. Ms. Waters?
2335 [No response.]
2336 Ms. Kish. Mr. Cohen?
2337 Mr. Cohen. Aye.
2338 Ms. Kish. Mr. Cohen votes aye.
2339 Mr. Johnson?
2340 [No response.]
2341 Ms. Kish. Mr. Pierluisi?
2342 Mr. Pierluisi. No.
2343 Ms. Kish. Mr. Pierluisi votes no.
2344 Mr. Quigley?
2345 Mr. Quigley. No.
2346 Ms. Kish. Mr. Quigley votes no.
2347 Ms. Chu?
2348 [No response.]
2349 Ms. Kish. Mr. Deutch?
2350 [No response.]

2351 Ms. Kish. Ms. Sanchez?
2352 [No response.]
2353 Chairman Smith. The gentleman from California, Mr.
2354 Berman?
2355 Mr. Berman. Aye.
2356 Ms. Kish. Mr. Berman votes aye.
2357 Chairman Smith. The gentleman from California, Mr.
2358 Issa?
2359 Mr. Issa. Aye.
2360 Ms. Kish. Mr. Issa votes aye.
2361 Chairman Smith. The gentleman from Virginia, Mr.
2362 Goodlatte?
2363 Mr. Goodlatte. No.
2364 Ms. Kish. Mr. Goodlatte votes no.
2365 Chairman Smith. The gentleman from California, Mr.
2366 Lungren?
2367 Mr. Lungren. Aye.
2368 Ms. Kish. Mr. Lungren votes aye.
2369 Mr. Conyers?
2370 Mr. Conyers. Aye.
2371 Ms. Kish. Mr. Conyers votes aye.
2372 Chairman Smith. The gentleman from California?
2373 Mr. Lungren. How am I recorded?
2374 Ms. Kish. Mr. Lungren has voted aye.
2375 Mr. Lungren. I vote no.

2376 Ms. Kish. Mr. Lungren votes no.
2377 Chairman Smith. The clerk will report.
2378 Ms. Kish. Mr. Chairman, nine members voted aye; 15
2379 members voted nay.
2380 Chairman Smith. The majority having voted against the
2381 amendment, the amendment is not agreed to.
2382 We will now go to another amendment by the gentlewoman
2383 from California, Ms. Lofgren.
2384 Ms. Lofgren. Mr. Chairman, I have an amendment at the
2385 desk.
2386 Chairman Smith. The clerk will report the amendment.
2387 Ms. Kish. Amendment to H.R. 1981 offered by Ms. Zoe
2388 Lofgren of California.
2389 Strike section 5 and insert the following: "Section
2390 5. No cause of action against a provider disclosing
2391 information under Chapter 121 of Title 18, United States
2392 Code. The provision of information, facilities" --
2393 Chairman Smith. Without objection, the amendment will
2394 be considered as read.
2395 [The information follows:]
2396

2397 Chairman Smith. The gentlewoman is recognized to
2398 explain her amendment.

2399 Ms. Lofgren. Mr. Chairman, under current law the
2400 Electronic Communications Privacy Act already provides a
2401 limited safe harbor from civil liability for service
2402 providers that collect and disclose user data pursuant to
2403 its provisions.

2404 In particular, section 2707 of Title 18 provides, "a
2405 complete defense to any civil or criminal action brought
2406 under this chapter or any other law," when service providers
2407 are relying in good faith on statutory authorizations, court
2408 orders, or proper law enforcement demands.

2409 This amendment would ensure that this limited immunity
2410 under the Electronic Communications Privacy Act would remain
2411 unchanged and apply to the new data retention mandate
2412 created under this bill.

2413 Under the amendment, service providers could not be
2414 held liable for the mere act of retaining the required log
2415 of IP addresses and customer information, or for responding
2416 to lawful government demands for the information.

2417 But the amendment would replace the existing section 5
2418 and 6 of H.R. 1981. These provisions, as currently drafted,
2419 rewrite the safe harbors in existing law in an ambiguous
2420 fashion. In particular, the new language in section 2707(e)
2421 could result in a dramatic expansion of immunity for any

2422 liability related to the information retained under this
2423 bill.

2424 At a hearing on H.R. 1981 a few weeks ago, the
2425 Subcommittee on Crime heard testimony that the bill might
2426 create blanket immunity for any consequences that follow
2427 from the retention of IP addresses or other records
2428 necessary under section 4. This could include a situation
2429 in which an ISP is negligent in protecting the retained data
2430 of their customers from hackers or from other of
2431 unauthorized data breaches. If service providers are immune
2432 from lawsuits for such negligence, they will have far less
2433 of an incentive to secure the data.

2434 It is not clear whether the authors of this bill
2435 intended for this result, but it likely would be the result.
2436 If they do not intend this dramatic expansion in immunity
2437 for service providers, then there is no reason not to
2438 support the amendment.

2439 It preserves and consistently applies the immunity
2440 under existing law without the risk of ambiguity or
2441 expansion. Whether or not personal information is retained
2442 pursuant to a government mandate, we all know that
2443 unauthorized disclosures can inflict serious harm on
2444 personal privacy. In such situations, customers must have
2445 legal recourse so that service providers have proper
2446 incentives to safeguard sensitive data and to fully comply

2447 with all privacy laws.

2448 And at a time when we as a country are debating the
2449 need to preserve our data, to make sure that we are not the
2450 victim of breaches of our financial information and the
2451 like, this bill would certainly make the release of
2452 unauthorized data more likely instead of less likely, which
2453 is why we should return to the underlying statute that has
2454 been road-tested and seems to work.

2455 So I would urge my colleagues to support the
2456 amendment, and I would yield back.

2457 Chairman Smith. Thank you, Ms. Lofgren.

2458 I will recognize myself in opposition.

2459 I do agree with my colleague from California that
2460 providers retaining data pursuant to this legislation should
2461 be afforded the same protections for this that they have
2462 under current law.

2463 The Electronic Communications Privacy Act, commonly
2464 referred to as ECPA, currently provides liability
2465 protections to service providers complying in good faith
2466 with statutory authorization or requests to disclose
2467 information. Section 5 and 6 of this legislation simply
2468 amend these long-standing provisions to ensure that these
2469 protections extend to the new data retention requirements
2470 created by the bill.

2471 However, this amendment strikes those sections, and

2472 inserts language of only congressional intent in their
2473 place. This language is inadequate to achieve this goal,
2474 and so should be rejected.

2475 ECPA restricts both government and private access to
2476 electronic and computer records. The law does allow law
2477 enforcement agencies to request certain information
2478 obtainable from only service providers, ranging from
2479 subscriber information to telephone or e-mail content.

2480 ECPA requires providers to comply with these law
2481 enforcement requests and other mandates currently placed on
2482 the providers under the law. Congress rightly chose to
2483 provide limited liability protection to providers when
2484 complying with subpoenas, wiretaps, or statutory mandates.

2485 Sexual predators inherently cloak their identities to
2486 avoid detection and thwart law enforcement efforts. In
2487 order to unmask these predators, H.R. 1981 requires
2488 providers to supply law enforcement agents with the
2489 information they need to obstruct and stop pornographers and
2490 protect children.

2491 It also amends the existing liability statutes to
2492 include this new mandate.

2493 While it appears the principles underlying the
2494 legislation in this amendment are the same, the amendment
2495 fails to give those principles any teeth by statutorily
2496 amending ECPA. The language in this legislation does give

2497 concrete and statutory effect to limiting the liability of
2498 service providers acting in good faith.

2499 Although I am satisfied with the amendment's and the
2500 person who is offering the amendment's expression of our
2501 intent, I urge my colleagues to oppose the amendment's text
2502 as it is currently written.

2503 And I will yield back the balance of my time.

2504 Are there other -- the gentleman from Virginia, Mr.
2505 Scott, is recognized.

2506 Mr. Scott. Thank you, Mr. Chairman.

2507 I yield to the gentlelady from California.

2508 Ms. Lofgren. Thank you, Mr. Scott, for yielding.

2509 I am mystified by the chairman's comment that there
2510 would be an intent only, because, in fact, the language of
2511 the amendment makes clear, and I will read it, "A record or
2512 information contained in a log made under section 2703(h) of
2513 Title 18, U.S. Code, shall be, for the purposes of section
2514 2707(e) of that title, deemed to be a record or information
2515 to which 2703(c) applies."

2516 So this is not an intent or good will. This supplants
2517 the provision in the bill with existing law.

2518 Now the gentleman may disagree with that, and
2519 obviously he does. But it is clear what we are trying to do
2520 here.

2521 And I would further note that this is not just

2522 information that is -- the information to be collected is
2523 from every Internet user. It is not just child
2524 pornographers. It is everybody who goes online is going to
2525 have their data held.

2526 And so to suggest that the only breach will be
2527 breaches of privacy for people who are doing despicable
2528 deeds would be not correct, unless the chairman believes
2529 that everybody who is online is doing despicable deeds, a
2530 premise that I do not share.

2531 We have, increasingly, in our modern era, placed
2532 sensitive information into the ether, into the Internet, and
2533 our financial information, other personal information.
2534 Breaches, as we know, can have a very adverse impact on an
2535 individual's life. And this is not just wrongdoers. This
2536 is all Americans.

2537 We have seen that the more data that is held, the more
2538 breaches are likely to occur. This will attract hackers.

2539 And to say to ISPs that you need to do less to secure
2540 your data, because you have complete immunity, is exactly
2541 going in the wrong direction.

2542 So I think the chairman's understanding of the
2543 amendment is incorrect. I understand he is not going to
2544 accept it. I know I likely will not convince him.

2545 But I think it is important to make his points, that
2546 is a risky thing for every American, and those at risk are

2547 not just child pornographers, but every American who is on
2548 the Internet.

2549 And I --

2550 Mr. Conyers. Will the gentlelady yield?

2551 Ms. Lofgren. Well, the time is Mr. Scott's. I am
2552 sure he will yield. I yield back to Mr. Scott.

2553 Mr. Scott. I yield.

2554 Mr. Conyers. Thank you, Mr. Scott.

2555 I think everyone, including the chairman of the
2556 committee, realizes that it is not clear that without this
2557 amendment, we may be expanding the existing immunity.

2558 Is that agreed to by everybody, including the
2559 chairman?

2560 Chairman Smith. We are making sure the existing
2561 immunity is clear and has teeth in it. Such teeth, I think,
2562 might be extracted by this amendment.

2563 Mr. Conyers. You think that this would limit the
2564 immunity?

2565 Chairman Smith. That is correct.

2566 Mr. Conyers. Okay, he thinks -- Ms. Lofgren, the
2567 chairman thinks that this would limit immunity. And it is
2568 my impression your amendment would make sure that the
2569 immunity isn't mistakenly expanded.

2570 Mr. Scott. Yield to the gentlelady from California.

2571 Ms. Lofgren. Thank you for yielding.

2572 There is a whole scheme under existing law that
2573 provides for limited liability. There is case law on it,
2574 and it has worked to incentivize the holders of data to take
2575 some steps to prevent discharge of that sensitive
2576 information.

2577 Mr. Conyers. Is your answer, yes?

2578 Ms. Lofgren. So I think it would protect existing
2579 law, because I think if you read the underlying bill, it is
2580 a broad expansion of immunity to ISPs and the holders of
2581 data.

2582 And I thank the gentleman for yielding.

2583 Chairman Smith. The gentleman's time has expired.

2584 The vote is on the amendment.

2585 All in favor say aye.

2586 [A chorus of ayes.]

2587 Chairman Smith. Opposed, nay.

2588 [A chorus of nays.]

2589 Chairman Smith. The noes have it, in the opinion of
2590 the Chair. And the amendment is not --

2591 Ms. Lofgren. I would like a recorded vote, Mr.

2592 Chairman.

2593 Chairman Smith. A recorded vote has been requested,
2594 and the clerk will call the roll.

2595 Ms. Kish. Mr. Smith?

2596 Chairman Smith. No.

2597 Ms. Kish. Mr. Smith votes no.
2598 Mr. Sensenbrenner?
2599 Mr. Sensenbrenner. No.
2600 Ms. Kish. Mr. Sensenbrenner votes no.
2601 Mr. Coble?
2602 [No response.]
2603 Ms. Kish. Mr. Gallegly?
2604 [No response.]
2605 Ms. Kish. Mr. Goodlatte?
2606 [No response.]
2607 Ms. Kish. Mr. Lungren?
2608 Mr. Lungren. No.
2609 Ms. Kish. Mr. Lungren votes no.
2610 Mr. Chabot?
2611 Mr. Chabot. No.
2612 Ms. Kish. Mr. Chabot votes no.
2613 Mr. Issa?
2614 Mr. Issa. No.
2615 Ms. Kish. Mr. Issa votes no.
2616 Mr. Pence?
2617 [No response.]
2618 Ms. Kish. Mr. Forbes?
2619 [No response.]
2620 Ms. Kish. Mr. King?
2621 Mr. King. No.

2622 Ms. Kish. Mr. King votes no.
2623 Mr. Franks?
2624 Mr. Franks. No.
2625 Ms. Kish. Mr. Franks votes no.
2626 Mr. Gohmert?
2627 [No response.]
2628 Ms. Kish. Mr. Jordan?
2629 [No response.]
2630 Ms. Kish. Mr. Poe?
2631 [No response.]
2632 Ms. Kish. Mr. Chaffetz?
2633 Mr. Chaffetz. No.
2634 Ms. Kish. Mr. Chaffetz votes no.
2635 Mr. Griffin?
2636 Mr. Griffin. No.
2637 Ms. Kish. Mr. Griffin votes no.
2638 Mr. Marino?
2639 Mr. Marino. No.
2640 Ms. Kish. Mr. Marino votes no.
2641 Mr. Gowdy?
2642 Mr. Gowdy. No.
2643 Ms. Kish. Mr. Gowdy votes no.
2644 Mr. Ross?
2645 Mr. Ross. No.
2646 Ms. Kish. Mr. Ross votes no.

2647 Ms. Adams?
2648 Ms. Adams. No.
2649 Ms. Kish. Ms. Adams votes no.
2650 Mr. Quayle?
2651 [No response.]
2652 Ms. Kish. Mr. Conyers?
2653 Mr. Conyers. Aye.
2654 Ms. Kish. Mr. Conyers votes aye.
2655 Mr. Berman?
2656 [No response.]
2657 Ms. Kish. Mr. Nadler?
2658 Mr. Nadler. Aye.
2659 Ms. Kish. Mr. Nadler votes aye.
2660 Mr. Scott?
2661 Mr. Scott. Aye.
2662 Ms. Kish. Mr. Scott votes aye.
2663 Mr. Watt?
2664 Mr. Watt. Aye.
2665 Ms. Kish. Mr. Watt votes aye.
2666 Ms. Lofgren?
2667 Ms. Lofgren. Aye.
2668 Ms. Kish. Ms. Lofgren votes aye.
2669 Ms. Jackson Lee?
2670 Ms. Jackson Lee. Aye.
2671 Ms. Kish. Ms. Jackson Lee votes aye.

2672 Ms. Waters?

2673 [No response.]

2674 Ms. Kish. Mr. Cohen?

2675 Mr. Cohen. Aye.

2676 Ms. Kish. Mr. Cohen votes aye.

2677 Mr. Johnson?

2678 [No response.]

2679 Ms. Kish. Mr. Pierluisi?

2680 Mr. Pierluisi. No.

2681 Ms. Kish. Mr. Pierluisi votes no.

2682 Mr. Quigley?

2683 Mr. Quigley. No.

2684 Ms. Kish. Mr. Quigley votes no.

2685 Ms. Chu?

2686 [No response.]

2687 Ms. Kish. Mr. Deutch?

2688 [No response.]

2689 Ms. Kish. Ms. Sanchez?

2690 [No response.]

2691 Chairman Smith. Are there other members who wish to

2692 record their votes?

2693 The gentleman from Virginia, Mr. Goodlatte?

2694 Mr. Goodlatte. No.

2695 Ms. Kish. Mr. Goodlatte votes no.

2696 Chairman Smith. The gentleman from California, Mr.

2697 Gallegly?

2698 Mr. Gallegly. No.

2699 Ms. Kish. Mr. Gallegly votes no.

2700 Chairman Smith. The gentleman from Virginia, Mr.

2701 Forbes?

2702 Mr. Forbes. No.

2703 Ms. Kish. Mr. Forbes votes no.

2704 Chairman Smith. The clerk will report.

2705 Ms. Kish. Mr. Chairman, seven members voted aye; 18

2706 members voted nay.

2707 Chairman Smith. The majority having voted against the

2708 amendment, the amendment is not agreed to.

2709 Let me give all members a sense of where we are going

2710 and how long we are going to be continuing this markup this

2711 afternoon.

2712 We have two more amendments on our list of amendments.

2713 I understand there may be two more, in addition to those

2714 amendments.

2715 After this bill is finished, which I hope will not be

2716 too long, we will go to opening statements on the Private

2717 Property Rights Protection Act, but not take up any

2718 amendments today.

2719 And then we will adjourn until Monday, assuming we are

2720 in session on Monday, and continue marking up --

2721 Mr. Sensenbrenner. Will the chairman yield?

2722 Chairman Smith. -- the Private Property Rights
2723 Protection Act then.

2724 The gentleman from Wisconsin?

2725 Mr. Sensenbrenner. I have noticed that the Private
2726 Property Rights Protection Act, under the roster, no
2727 amendments are anticipated.

2728 Chairman Smith. I should have said if there are any
2729 amendments, we will take them up. I am not aware of any --
2730 yes, I am. I am aware of one.

2731 Mr. Sensenbrenner. Thank you.

2732 Mr. Quigley. Mr. Chairman?

2733 Chairman Smith. The gentleman from Illinois?

2734 Mr. Quigley. I am sorry, I wasn't necessarily paying
2735 attention to that last part. Does that mean you are not
2736 taking the final vote on this bill today?

2737 Chairman Smith. No, I hope to get through the bill
2738 currently under consideration today. And then we will go to
2739 opening statements on the Private Property Rights Protection
2740 Act, and then continue that --

2741 Mr. Quigley. So you will take the final vote from the
2742 committee on the bill we are working on right now?

2743 Chairman Smith. That is correct.

2744 Mr. Quigley. Very good.

2745 Mr. Conyers. Mr. Chairman?

2746 Chairman Smith. The gentleman from Michigan?

2747 Mr. Conyers. Thank you.

2748 In the event that we are here over the weekend, can we
2749 get Monday and Tuesday off before we start back up again?

2750 What do you mean what do I mean by that?

2751 [Laughter.]

2752 Mr. Conyers. I mean just what I said.

2753 Chairman Smith. You would like to mark up on Saturday
2754 and Sunday?

2755 Mr. Conyers. No, I said in the event that we are
2756 here, can we get 2 days off next week?

2757 Chairman Smith. No. We are giving you 2 days off on
2758 the weekend, Mr. Chairman.

2759 Mr. Conyers. But if we don't get off, then what?

2760 Chairman Smith. We will mark up Monday.

2761 Mr. Conyers. You're a big help.

2762 [Laughter.]

2763 Mr. Conyers. You're really a big help.

2764 Chairman Smith. Listen, no markup on Saturday and
2765 Sunday I think is giving you a lot.

2766 We will go to the amendment offered by Mr. Scott.

2767 Just to clarify for members, Mr. Quigley asked a good
2768 question. Why aren't we -- not why aren't we marking up

2769 tomorrow, but, well, why aren't we marking up tomorrow? The

2770 reason is, we are considering, we believe, to balanced

2771 budgets on the House floor. The cumulative debate on those

2772 two balanced budgets will be at least 4 to 5 hours, so --

2773 Mr. Nadler. Mr. Chairman?

2774 Chairman Smith. I don't think we will have time to
2775 mark up tomorrow, even though I do like the idea of every
2776 day being Judiciary day.

2777 The gentleman from New York?

2778 Mr. Nadler. A slight clarification: I don't think we
2779 are considering on the floor tomorrow two balanced budgets.
2780 We are considering two balanced budget amendments. They
2781 are very different.

2782 Chairman Smith. I didn't say balanced budget
2783 amendments. I should have.

2784 Thank you for that clarification. Maybe that is
2785 wishful thinking.

2786 Back to the gentleman from Virginia, Mr. Scott, for
2787 his amendment.

2788 Mr. Scott. I have an amendment at the desk, Mr.
2789 Chairman, No. 11.

2790 Chairman Smith. The clerk will report the amendment.

2791 Ms. Kish. Amendment to H.R. 1981 offered by Mr.
2792 Scott.

2793 Strike section 7 and re-designate succeeding sections
2794 accordingly. Amend section --

2795 Chairman Smith. Without objection, the amendment will
2796 be considered as read.

2797 [The information follows:]

2798

2799 Chairman Smith. And the gentleman is recognized to
2800 explain the amendment.

2801 Mr. Scott. Thank you, Mr. Chairman.

2802 This amendment strikes the sections in the bill that
2803 give authority to issue administrative subpoenas to the U.S.
2804 Marshals Service, and replaces them with administrative
2805 subpoena power to the Attorney General to investigate
2806 unregistered sex offenders where the offense giving rise to
2807 the child registration requirement was an offense against a
2808 child.

2809 This amendment will address law enforcement's need to
2810 obtain information quickly in certain cases, with an
2811 expansion of extrajudicial administrative subpoena authority
2812 the Attorney General already has in child exploitation
2813 cases, consistent with the way that authority has already
2814 been structured in the code.

2815 Currently, section 3486 grants the Attorney General
2816 administrative subpoena authority in the investigation of a
2817 Federal offense involving sexual exploitation or abuse of
2818 children. This amendment would extend that authority to
2819 unregistered sex offenders where the underlying offense was
2820 an offense against a child.

2821 By continuing to rest the power to issue
2822 administrative subpoenas in the Attorney General, it will
2823 ensure that this power is used discreetly and only when

2824 circumstances warrant it.

2825 It would also be consistent with the current statutory
2826 scheme in section 3486.

2827 I see no compelling reason to create a special
2828 authority for the U.S. Marshals, particularly when the
2829 research tells us that the probable use of the subpoenas,
2830 tracking down those on the registry that are noncompliant,
2831 when the research and the testimony before us is that there
2832 is no difference in the recidivism between sex offenders who
2833 are compliant with their registration and those who are not.

2834 I yield back.

2835 Chairman Smith. Thank you, Mr. Scott.

2836 I recognize myself in opposition.

2837 I oppose this amendment striking the administrative
2838 subpoena sections of the bill, which grant the U.S. Marshals
2839 Service administrative subpoena authority in cases dealing
2840 with fugitive sex offenders.

2841 In their place, this amendment adds violations of 18
2842 USC section 2250 to a list of crimes for which the Attorney
2843 General can authorize administrative subpoena power on an ad
2844 hoc basis.

2845 First, I am pleased to see that my colleague Mr. Scott
2846 now agrees that the U.S. Marshals should have the authority
2847 to issue administrative subpoenas. This amendment, however,
2848 simply does not go far enough.

2849 The Adam Walsh Act designated the Marshals as the
2850 primary Federal law enforcement agency responsible for
2851 apprehending both State and Federal fugitive sex offenders,
2852 investigating violations of the Adam Walsh Act's sex
2853 offender registration requirements, and identifying and
2854 locating sex offenders who are relocated as a result of a
2855 major disaster.

2856 This is a major undertaking. In just 2010, the
2857 Marshals apprehended over 11,000 fugitive sex offenders. By
2858 nature, fugitive apprehension cases involve an individual
2859 who is highly motivated to slip through the cracks and avoid
2860 detention.

2861 Because of this, the Marshals must be able to quickly
2862 access relevant information, including third-party records
2863 regarding car rentals, airplane tickets, hotel rooms, and
2864 the like.

2865 H.R. 1981 as written gives the Marshals operational
2866 access to the tool needed to access such records in a
2867 reasonable amount of time. By contrast, this amendment
2868 requires the Marshals to request administrative subpoena
2869 authority from the Attorney General on a case-by-case basis.

2870 This will slow down the process and greatly diminish
2871 the Marshall's ability to use administrative subpoenas.

2872 It is worth stressing that the administrative subpoena
2873 provisions of H.R. 1981 are very narrow. They only apply to

2874 the U.S. Marshals Service and only for the apprehension of
2875 fugitive sex offenders.

2876 These provisions should not be further narrowed so as
2877 to render them useless, as this amendment might do.

2878 So I urge my colleagues to oppose the amendment.

2879 I yield back the balance of my time.

2880 Mr. Conyers. Mr. Chairman?

2881 Chairman Smith. The gentleman from Michigan is
2882 recognized.

2883 Mr. Conyers. I rise in support of the Scott
2884 amendment.

2885 What I wanted to do is begin by complimenting Bobby
2886 Scott, the former Chair of the Subcommittee on Crime, for
2887 fashioning a more modest way, in view of the fact that we
2888 were unable to eliminate the section entirely. And I think
2889 it is quite creative and practical to allow the Attorney
2890 General the subpoena authority when an investigation is
2891 being conducted involving abuse or sexual exploitation of a
2892 child.

2893 And this is a great middle course. I don't think it
2894 is going to be too bulky or problematic or time-consuming
2895 for us to do it this way.

2896 It is also consistent with the existing current
2897 statutory scheme, and it is a great amendment. It hits
2898 middle ground. And I think that the committee will do well

2899 by adopting this brilliantly crafted amendment.

2900 And I support it. And I yield back the balance of my
2901 time.

2902 Chairman Smith. Thank you, Mr. Conyers.

2903 The question is on the amendment.

2904 All in favor say aye.

2905 [A chorus of ayes.]

2906 Chairman Smith. Opposed, nay.

2907 [A chorus of nays.]

2908 Chairman Smith. In the opinion of the Chair, the noes
2909 have it, and the amendment is not agreed to.

2910 The next amendment is going to be offered, I believe,
2911 by the gentleman from Michigan, Mr. Conyers.

2912 Mr. Conyers. I have an amendment at the desk. I
2913 asked that it be reported.

2914 Chairman Smith. The clerk will report the amendment.

2915 Ms. Kish. Amendment to H.R. 1981 offered by Mr.
2916 Conyers.

2917 Add at the end the following: "Breaches of databases.
2918 A provider required to maintain a log of temporarily
2919 assigned network addresses under the amendment made by
2920 section 4 shall, not later than 30 days after a security
2921 breach of any database in which the log is kept, one, inform
2922 appropriate Federal and law-enforcement agencies of the date
2923 and all other available information pertaining to the

2924 breach; and, two, notify any individual whose identifying
2925 personal information may have been acquired or accessed
2926 during that breach, and include in that notice the date, if
2927 known, of the breach."

2928 Mr. Conyers. All right.

2929 Chairman Smith. The gentleman from Michigan is
2930 recognized to explain his amendment.

2931 Mr. Conyers. Thank you, Mr. Chairman.

2932 And based on our very brief discussion, I want to
2933 announce that it is my intention to withdraw this amendment,
2934 under the assurances that the chairman and I will work on
2935 it.

2936 But what this amendment does is a direct result -- is
2937 this today's paper that this appeared in? -- in today's
2938 paper, in South Korea, they had hacking into computer
2939 databases, and they did exactly what my amendment does:
2940 notify law enforcement, one; notify the consumer, the
2941 victim, number two.

2942 And where is this newspaper? Oh gosh, this is the
2943 Wall Street Journal, excuse me, that it appeared in. But,
2944 "Hackers Breach South Korean Database."

2945 And what they are doing is they notify the law
2946 enforcement and they notify the victim. And that is what my
2947 amendment does.

2948 And I would be happy to withdraw it, knowing that we

2949 will be able to discuss it further with the chairman and
2950 perhaps reach an accommodation.

2951 I thank the Chair, and I withdraw the amendment.

2952 Chairman Smith. Okay. Thank you, Mr. Conyers, for
2953 withdrawing that amendment.

2954 I would like to recognize myself just to make some
2955 comments and for the record, as well.

2956 This amendment requires Internet providers who retain
2957 records under this legislation to report security breaches
2958 in any databases where the information is stored. I support
2959 legislation requiring data breach notifications.

2960 The ranking member and I cosponsored the Privacy and
2961 Cybercrime Enforcement Act of 2007 in the 110th Congress,
2962 which established data breach reporting requirements and
2963 imposed penalties on those providers who did not report
2964 security breaches of personally identifiable information.

2965 What we have learned from our work on this issue is
2966 that any requirement to mandate data breach reporting is of
2967 paramount concern to Internet providers. But it also
2968 involves banks, credit card companies, phone companies, and
2969 computer companies, all of whom are subject to cyber-
2970 attacks.

2971 Data breach legislation is currently being considered
2972 by the Energy and Commerce Committee. It addresses
2973 notification requirements for breaches of all types of

2974 personal data across multiple industries.

2975 In addition, the Administration has recently released
2976 its own cyber-crime initiative, which includes strong data
2977 breach reporting requirements. We should study this
2978 proposal closely and work with the Administration and our
2979 colleagues on the other committees to draft an effective
2980 data breach provision.

2981 So I thank Mr. Conyers for his interest in the
2982 subject, and --

2983 Mr. Conyers. Will the gentleman yield?

2984 Chairman Smith. I will be happy to yield.

2985 Mr. Conyers. I am glad that you mentioned that, that
2986 there other parts of the Congress, as well as the
2987 Administration, looking at that, at the same issue.

2988 Of course, the jurisdiction of the Judiciary Committee
2989 is superior to all of those.

2990 Chairman Smith. It is always superior. You are
2991 right, Mr. Conyers.

2992 Appreciate the gentleman withdrawing his amendment.
2993 We will continue to work together on that issue.

2994 Are there other amendments?

2995 Ms. Lofgren. I have an amendment.

2996 Chairman Smith. The gentlewoman from California is
2997 recognized.

2998 Ms. Lofgren. I have an amendment at the desk, No. 38.

2999 Chairman Smith. The clerk will report the amendment.

3000 Ms. Kish. Amendment to H.R. 1981 offered by Mrs. Zoe

3001 Lofgren of California.

3002 Page 3, after line 12, insert the following: "Rule of

3003 construction" --

3004 Chairman Smith. Without objection, the amendment is

3005 considered as read.

3006 [The information follows:]

3007

3008 Chairman Smith. And the gentlewoman is recognized to
3009 explain the amendment.

3010 Ms. Lofgren. Thank you, Mr. Chairman.

3011 This amendment would clarify the scope of the data
3012 retention mandate in section 4.

3013 The retention mandate in the bill assumes that IP
3014 addresses can generally be traced back to individual users.
3015 However, that is not always the case. There are certain
3016 types of Internet service providers, especially wireless
3017 providers, that can't always associate IP addresses with
3018 individual users.

3019 For example, wireless providers may assign dozens or
3020 even hundreds of different IP addresses to a single user in
3021 a single hour. For example, with a smart phone, such as
3022 this.

3023 And the present system may not allow the personal
3024 identification of each of these addresses at every moment.

3025 Now the chairman had indicated earlier that the
3026 section on line 4, page 2, of his manager's amendment,
3027 referring to the underlying U.S. Code, really didn't require
3028 the collection of additional information. So my amendment
3029 clarifies that in these situations, the data retention
3030 mandate in the bill does not require ISPs to associate any
3031 information, including IP addresses, with particular users
3032 if their current systems do not already make such

3033 associations.

3034 If this bill requires otherwise, it would force ISPs
3035 to collect a far wider scope of information about the online
3036 activities of each and every one of its users, in order to
3037 guarantee that IP addresses can always be traced back to
3038 identifiable persons.

3039 And I am hoping that the chairman will answer a
3040 question here, about whether or not he intends this as a
3041 requirement under the bill. If an ISP cannot associate all
3042 of its IP addresses with individual users through its
3043 current operations, would the bill require the collection of
3044 information sufficient to enable this?

3045 The chairman had indicated that the answer was no when
3046 I asked these questions yesterday. This amendment would
3047 clarify that ISPs would not be required to collect any of
3048 the personal data listed in Title 18, section 2703(c)(2), if
3049 they do not already collect that information in the ordinary
3050 course of business.

3051 Now if the chairman's "no" of yesterday was correct,
3052 this amendment should be accepted by him today.

3053 And with that, I would yield back.

3054 Chairman Smith. Thank you, Ms. Lofgren.

3055 I recognize myself in opposition.

3056 I ought to admit a bias against last-minute
3057 amendments, because I am never sure what the unintended

3058 consequences might be, but I oppose this amendment for other
3059 reasons.

3060 I oppose the amendment prohibiting this law from
3061 requiring that Internet service providers collect personal
3062 information from subscribers. This amendment is a solution
3063 looking for a problem.

3064 Nowhere in subsection (h) are the service providers
3065 required to retain personal information linked to IP
3066 addresses. Personal information is already retained by
3067 Internet service providers. It is a necessary requirement
3068 for them to do business.

3069 If they did not personal information of their
3070 subscribers, such as names and addresses, the Internet
3071 service providers would have no way to bill for monthly
3072 services.

3073 Under subsection 2703(c)(2), the provider is required
3074 only to disclose the information they already retain. By
3075 requiring the providers to disclose the information they
3076 already collect, law enforcement officials can obtain, by
3077 proper process, information that can lead to the capture of
3078 criminals.

3079 This law does not require that the Internet service
3080 providers retain personal information under (c)(2). The
3081 businesses already do so in the course of operating their
3082 business model.

3083 This amendment needlessly confuses the issue by
3084 suggesting that the Government is requiring the ISPs to
3085 gather personal information on its subscribers. That is not
3086 the case under current law, nor would it be the case under
3087 this law.

3088 Simply put, this amendment would threaten the entire
3089 data retention program by using confusing and meaningless
3090 language as a wrench in our legal system, which would create
3091 uncertainty for the Internet providers themselves.

3092 So I urge my colleagues to oppose this amendment.

3093 Are there other members who wish to be heard?

3094 The gentleman from Utah, Mr. Chaffetz.

3095 Mr. Chaffetz. Mr. Chairman, I would like to support
3096 for this amendment.

3097 I do find it to be consistent with what I had heard
3098 earlier in this discussion. As you know, I am an opponent
3099 of this legislation. I don't think a government-mandated
3100 data retention base for the long period that we were talking
3101 about is wise or consistent with what our country and
3102 Federal Government should be doing.

3103 But I can find numerous examples, legitimate examples,
3104 of where these IP addresses would be -- for instance, you
3105 take a laptop or a wireless device to an airport. How many
3106 different places can we name that are promoting free Wi-Fi
3107 services or free Internet connections?

3108 I just can't imagine that this would be objectionable,
3109 if that is truly the intent of this bill.

3110 So I think it is consistent with what was said before.
3111 I support this amendment.

3112 And again, I oppose the overall bill, but I think the
3113 gentlewoman is right in clarifying this rule of construction
3114 as she has in this amendment.

3115 Ms. Lofgren. Will the gentleman yield?

3116 Mr. Chaffetz. Yes.

3117 Ms. Lofgren. I thank the gentleman for yielding. And
3118 I thank him for his support of the amendment.

3119 Going back to the manager's amendment, on line 4,
3120 there is a reference to subsection (c)(2) of the section,
3121 which directs us back to Title 18, which lists a whole
3122 variety of information that needs to be collected now, from
3123 the name and address, and credit card information, bank
3124 account numbers, and the like.

3125 Yesterday, the chairman said it was not his intent
3126 that all of that information needed to be collected. But at
3127 best, it is ambiguous.

3128 This would clarify what he said was, in fact, what he
3129 meant with the amendment. And as the gentleman has pointed
3130 out, there are plenty of circumstances where this
3131 information is not collected.

3132 For example, if you go into the United Airlines Red

3133 Room and you buy an hour of time, they don't have that
3134 information about you. Are they now going to collect it?
3135 Or some of the coffee shops, you get free Wi-Fi, but
3136 only if you buy a cup of coffee. They don't have that
3137 information about you.

3138 So unless we clarify this, I have got now to wonder
3139 what the real intention is here. This is a massive mandate
3140 to collect far more intrusive information about Internet
3141 users in a whole variety of situations that I think is
3142 really not in keeping with our free society.

3143 And I thank the gentleman for yielding to me.

3144 Mr. Chaffetz. Reclaiming my time.

3145 I guess that my comfort level, Mr. Chairman, is
3146 dealing with lines 6 and 7 of this, where it simply says
3147 that the provider does not already associate or collect for
3148 business reasons.

3149 That seems like a reasonable standard here. I don't
3150 think that is piercing the envelope already. It is just
3151 simply clarifying that the provider does not already
3152 associate or collect for business reasons.

3153 Chairman Smith. The gentleman yields back his time.

3154 The vote is on the Lofgren amendment.

3155 All in favor say aye.

3156 [A chorus of ayes.]

3157 Chairman Smith. Opposed, nay.

3158 [A chorus of nays.]

3159 Chairman Smith. A weak "no" has it.

3160 Ms. Lofgren. I would ask for a recorded vote.

3161 Chairman Smith. And the clerk will call the roll.

3162 Ms. Kish. Mr. Smith?

3163 Chairman Smith. No.

3164 Ms. Kish. Mr. Smith votes no.

3165 Mr. Sensenbrenner?

3166 Mr. Sensenbrenner. Aye.

3167 Ms. Kish. Mr. Sensenbrenner votes aye.

3168 Mr. Coble?

3169 [No response.]

3170 Ms. Kish. Mr. Gallegly?

3171 Mr. Gallegly. No.

3172 Ms. Kish. Mr. Gallegly votes no.

3173 Mr. Goodlatte?

3174 [No response.]

3175 Ms. Kish. Mr. Lungren?

3176 [No response.]

3177 Ms. Kish. Mr. Chabot?

3178 Mr. Chabot. No.

3179 Ms. Kish. Mr. Chabot votes no.

3180 Mr. Issa?

3181 [No response.]

3182 Ms. Kish. Mr. Pence?

3183 [No response.]
3184 Ms. Kish. Mr. Forbes?
3185 Mr. Forbes. No.
3186 Ms. Kish. Mr. Forbes votes no.
3187 Mr. King?
3188 Mr. King. No.
3189 Ms. Kish. Mr. King votes no.
3190 Mr. Franks?
3191 Mr. Franks. No.
3192 Ms. Kish. Mr. Franks votes no.
3193 Mr. Gohmert?
3194 [No response.]
3195 Ms. Kish. Mr. Jordan?
3196 [No response.]
3197 Ms. Kish. Mr. Poe?
3198 [No response.]
3199 Ms. Kish. Mr. Chaffetz?
3200 Mr. Chaffetz. Aye.
3201 Ms. Kish. Mr. Chaffetz votes aye.
3202 Mr. Griffin?
3203 Mr. Griffin. No.
3204 Ms. Kish. Mr. Griffin votes no.
3205 Mr. Marino?
3206 Mr. Marino. No.
3207 Ms. Kish. Mr. Marino votes no.

3208 Mr. Gowdy?
3209 Mr. Gowdy. No.
3210 Ms. Kish. Mr. Gowdy votes no.
3211 Mr. Ross?
3212 Mr. Ross. No.
3213 Ms. Kish. Mr. Ross votes no.
3214 Ms. Adams?
3215 Ms. Adams. No.
3216 Ms. Kish. Ms. Adams votes no.
3217 Mr. Quayle?
3218 [No response.]
3219 Ms. Kish. Mr. Conyers?
3220 Mr. Conyers. Aye.
3221 Ms. Kish. Mr. Conyers votes aye.
3222 Mr. Berman?
3223 [No response.]
3224 Ms. Kish. Mr. Nadler?
3225 Mr. Nadler. Aye.
3226 Ms. Kish. Mr. Nadler votes aye.
3227 Mr. Scott?
3228 Mr. Scott. Aye.
3229 Ms. Kish. Mr. Scott votes aye.
3230 Mr. Watt?
3231 Mr. Watt. Aye.
3232 Ms. Kish. Mr. Watt votes aye.

3233 Ms. Lofgren?

3234 Ms. Lofgren. Aye.

3235 Ms. Kish. Ms. Lofgren votes aye.

3236 Ms. Jackson Lee?

3237 [No response.]

3238 Ms. Kish. Ms. Waters?

3239 [No response.]

3240 Ms. Kish. Mr. Cohen?

3241 [No response.]

3242 Ms. Kish. Mr. Johnson?

3243 [No response.]

3244 Ms. Kish. Mr. Pierluisi?

3245 Mr. Pierluisi. No.

3246 Ms. Kish. Mr. Pierluisi votes no.

3247 Mr. Quigley?

3248 Mr. Quigley. No.

3249 Ms. Kish. Mr. Quigley votes no.

3250 Ms. Chu?

3251 [No response.]

3252 Ms. Kish. Mr. Deutch?

3253 [No response.]

3254 Ms. Kish. Ms. Sanchez?

3255 [No response.]

3256 Chairman Smith. The gentleman from California?

3257 Mr. Lungren. No.

3258 Ms. Kish. Mr. Lungren votes no.
3259 Chairman Smith. The gentleman from Virginia?
3260 Mr. Goodlatte. No.
3261 Ms. Kish. Mr. Goodlatte votes no.
3262 Chairman Smith. The gentleman from North Carolina,
3263 Mr. Coble?
3264 Mr. Coble. No.
3265 Ms. Kish. Mr. Coble votes no.
3266 Chairman Smith. Are there other members who wish to
3267 be recorded?
3268 The clerk will report.
3269 Ms. Kish. Mr. Chairman, seven members voted aye; 16
3270 members voted nay.
3271 Chairman Smith. The majority having voted against the
3272 amendment, the amendment is not agreed to.
3273 Are there any other amendments?
3274 The gentlewoman from California, Ms. Lofgren?
3275 Ms. Lofgren. Mr. Chairman, I have been amendment at
3276 the desk, No. 36.
3277 Chairman Smith. And the clerk will report the
3278 amendment.
3279 Ms. Kish. Amendment to H.R. 1981 offered by Ms. Zoe
3280 Lofgren of California.
3281 On the first page beginning in line 4, strike "this
3282 act" and all that follows through the end of line 5, and

3283 insert: "This act may be cited as the 'Keep Every
3284 American's Digital Data for Submission to the Federal
3285 Government Without a Warrant Act of 2011.'"

3286 Chairman Smith. The gentlewoman from California is
3287 recognized to try to explain her amendment.

3288 Ms. Lofgren. Mr. Chairman, as we indicated earlier in
3289 the debate on this bill, this massive expansion of the data
3290 retention requirement is something that the FBI has wanted
3291 for a long time, and it really has very little to do with
3292 child pornography.

3293 It is a well-known pattern, and I certainly don't
3294 accuse the authors of this, but certainly the Federal
3295 Government, in its sometimes insatiable urge to gain more
3296 control over the individual liberties of American
3297 individuals, will use the most heinous crime as the excuse
3298 for that expansion of power. And in fact, that is what has
3299 occurred in this case.

3300 No one supports abusing children. There are vile and
3301 despicable things on the Internet, where children are
3302 maliciously and horribly abused.

3303 And so to use that vile activity as kind of the
3304 stalking horse for this massive expansion of Federal power
3305 is what is going on here.

3306 I think it is important that we actually say what we
3307 are doing here. And what we are doing, in fact, is

3308 requiring ISPs to keep the digital data of every American
3309 that will be submitted to the Federal Government without a
3310 warrant whenever we ask. That is outrageous. That is an
3311 outrageous expansion of power for the Federal Government.

3312 I think we ought to say what we are doing, rather than
3313 pretend this is just about child pornography.

3314 And that is why I offer this amendment to change the
3315 title of the bill.

3316 And I yield back.

3317 Chairman Smith. Recognizing myself in opposition to
3318 simply say that, in my judgment, regrettably, the amendment
3319 trivializes the important subject of trying to reduce child
3320 pornography on the Internet, and it should be opposed.

3321 Mr. Nadler. Mr. Chairman?

3322 Mr. Scott. Mr. Chairman?

3323 Mr. Nadler. Mr. Chairman?

3324 Chairman Smith. The gentleman from New York, Mr.
3325 Nadler, is recognized.

3326 Mr. Nadler. Mr. Chairman, I think this is a very
3327 serious amendment. I congratulate the gentlelady on it.
3328 And I don't think it trivializes either the bill or the
3329 issue at all.

3330 In fact, it highlights the main issue.

3331 Just as with sneak-and-peek, which was justified -- I
3332 think it was part of the PATRIOT Act for terrorism, but is

3333 rarely used for terrorism. It is used in all sorts of other
3334 things.

3335 Here we are using the excuse of child pornography,
3336 which is a heinous crime, et cetera, to expand the power of
3337 the Federal Government against the privacy rights of
3338 individuals across the board almost -- not almost, generally
3339 across the board online.

3340 Amendments were brought up earlier in the
3341 consideration of this bill to narrow the scope of the bill
3342 to when you are dealing, perhaps, with a child pornography
3343 case, and those amendments were opposed and defeated. So
3344 the intent of the sponsors in the majority here is clearly
3345 that, and the effect of the bill, is clearly to require
3346 everyone, or to require all ISPs, to retain all ISP
3347 addresses for a year with regard to anything, so that
3348 Federal law enforcement agencies looking at any crime, or
3349 perhaps no crime, can access them.

3350 It is far broader and has, really, very little to do
3351 with child pornography.

3352 Now, the bill could have been titled "the child
3353 pornography act," or it could have been titled "the bank
3354 robbery act," or it could have been entitled "the planning
3355 for terrorism act," or it could have been entitled "the
3356 planning for jaywalking act," or any almost any crime, but
3357 because it encompasses everything.

3358 This title in this amendment, which says the "Keep
3359 Every American's Digital Data for Submission to the Federal
3360 Government Without a Warrant Act," exactly describes the
3361 bill.

3362 Now if it were written by someone more sympathetic to
3363 the bill, maybe it would have said the "retention of digital
3364 data act." But this very much explains exactly what the
3365 bill does, and it embarrassingly, perhaps, for the bill's
3366 supporters, points out the implication of the bill, rather
3367 than the advertising points for the bill.

3368 So I think it is a very serious amendment, and I would
3369 urge its adoption.

3370 I yield back.

3371 Mr. Scott. Mr. Chairman?

3372 Chairman Smith. The gentleman yields back the time.

3373 The gentleman from Virginia, Mr. Scott?

3374 Mr. Scott. Mr. Chairman, the title of a bill should
3375 alert the public of the substance of the legislation. If
3376 there is anything trivial going on, it is the title that is
3377 in the bill right now without this amendment.

3378 I think it is clear to everybody that no meaningful
3379 portion of the information retained will be used for
3380 anything to do with child pornography. We already have
3381 100,000 tips a year, 2,200 cases.

3382 And you defeated an amendment that actually would have

3383 done something. It would have provided some prosecutors to
3384 actually pursue some of those cases. So if you are
3385 interested in child pornography, you should have passed that
3386 amendment, so you could have had some dedicated FBI officers
3387 chasing after these people. But, no, you defeated that
3388 amendment.

3389 But this amendment demonstrates that you will be
3390 keeping massive amounts of data. It also alerts people that
3391 this data will be available without a warrant, and I think
3392 this much more accurately describes what is going on, and
3393 the trivializing to suggest that this has anything to do
3394 with child pornography, that is the trivialization.

3395 So I would hope that we would adopt the amendment and
3396 alert the public of the substance of this legislation. And
3397 I will yield to the gentleman from Michigan.

3398 Mr. Conyers. Thank you, Mr. Scott.

3399 I just wanted to observe that we owe a great debt of
3400 gratitude to Zoe Lofgren for bringing this aspect of the
3401 bill forward, as she has tried to in several ways and across
3402 some amendments.

3403 And I say that I'm particularly in her debt because
3404 Zoe Lofgren is a strict constructionist in terms of what we
3405 do with people who violate the law. I mean, and she has
3406 been sensitive throughout our discussion, Mr. Chairman,
3407 about the huge government intrusion that is implicated in us

3408 opening up, through subpoena power that the FBI and the
3409 marshals have been trying to acquire for years, and this
3410 committee has prevented that from occurring, and we are
3411 doing it in this bill, and I am hoping that when we get to
3412 conference on this, that we can all revisit this in as
3413 careful a fashion as possible. Thank you.

3414 Chairman Smith. Does the gentleman yield back time?

3415 Mr. Scott. I yield back.

3416 Chairman Smith. A reporting quorum being present, the
3417 question is on reporting the bill as amended.

3418 Ms. Lofgren. What about the amendment, Mr. Chairman?

3419 Chairman Smith. I'm sorry. It would seem to be
3420 trivial.

3421 The vote is on the amendment. All in favor, say aye.

3422 [Chorus of ayes.]

3423 Chairman Smith. Opposed, nay?

3424 [Chorus of nays.]

3425 Chairman Smith. In the opinion of the Chair, the no's
3426 have it. Record vote --

3427 Mr. Conyers. Sir?

3428 Chairman Smith. A recorded vote has been requested,
3429 and the clerk will call the roll.

3430 Ms. Kish. Mr. Smith?

3431 Chairman Smith. No.

3432 Ms. Kish. Mr. Smith votes no.

3433 Mr. Sensenbrenner?
3434 Mr. Sensenbrenner. No.
3435 Ms. Kish. Mr. Sensenbrenner votes no.
3436 Mr. Coble?
3437 Mr. Coble. No.
3438 Ms. Kish. Mr. Coble votes no.
3439 Mr. Gallegly?
3440 [No response.]
3441 Ms. Kish. Mr. Goodlatte?
3442 [No response.]
3443 Ms. Kish. Mr. Lungren?
3444 [No response.]
3445 Ms. Kish. Mr. Chabot?
3446 Mr. Chabot. No.
3447 Ms. Kish. Mr. Chabot votes no.
3448 Mr. Issa?
3449 Ms. Issa. Yes.
3450 Ms. Kish. Mr. Issa votes yes.
3451 Mr. Pence?
3452 [No response.]
3453 Ms. Kish. Mr. Forbes?
3454 Mr. Forbes. No.
3455 Ms. Kish. Mr. Forbes votes no.
3456 Mr. King?
3457 [No response.]

3458 Ms. Kish. Mr. Franks?
3459 Mr. Franks. No.
3460 Ms. Kish. Mr. Franks votes no.
3461 Mr. Gohmert?
3462 [No response.]
3463 Ms. Kish. Mr. Jordan?
3464 [No response.]
3465 Ms. Kish. Mr. Poe?
3466 [No response.]
3467 Ms. Kish. Mr. Chaffetz?
3468 Mr. Chaffetz. Aye.
3469 Ms. Kish. Mr. Chaffetz votes aye.
3470 Mr. Griffin?
3471 [No response.]
3472 Ms. Kish. Mr. Marino?
3473 Mr. Marino. No.
3474 Ms. Kish. Mr. Marino votes no.
3475 Mr. Gowdy?
3476 Mr. Gowdy. No.
3477 Ms. Kish. Mr. Gowdy votes no.
3478 Mr. Ross?
3479 Mr. Ross. No.
3480 Ms. Kish. Mr. Ross votes no.
3481 Ms. Adams?
3482 Ms. Adams. No.

3483 Ms. Kish. Ms. Adams votes no.
3484 Mr. Quayle?
3485 [No response.]
3486 Ms. Kish. Mr. Conyers?
3487 Mr. Conyers. Aye.
3488 Ms. Kish. Mr. Conyers votes aye.
3489 Mr. Berman?
3490 [No response.]
3491 Ms. Kish. Mr. Nadler?
3492 Mr. Nadler. Aye. Aye.
3493 Ms. Kish. Mr. Nadler votes aye.
3494 Mr. Scott?
3495 Mr. Scott. Aye.
3496 Ms. Kish. Mr. Scott votes aye.
3497 Mr. Watt?
3498 Mr. Watt. Double aye.
3499 Ms. Kish. Mr. Watt votes aye.
3500 Ms. Lofgren?
3501 Ms. Lofgren. Aye.
3502 Ms. Kish. Ms. Lofgren votes aye.
3503 Ms. Jackson Lee?
3504 Ms. Jackson Lee. No.
3505 Ms. Kish. Ms. Jackson Lee votes no.
3506 Ms. Waters?
3507 [No response.]

3508 Ms. Kish. Mr. Cohen?
3509 [No response.]
3510 Ms. Kish. Mr. Johnson?
3511 Mr. Johnson. Yes.
3512 Ms. Kish. Mr. Johnson votes yes.
3513 Mr. Pierluisi?
3514 Mr. Pierluisi. No.
3515 Ms. Kish. Mr. Pierluisi votes no.
3516 Mr. Quigley?
3517 Mr. Quigley. No.
3518 Ms. Kish. Mr. Quigley votes no.
3519 Ms. Chu?
3520 [No response.]
3521 Ms. Kish. Mr. Deutch?
3522 Mr. Deutch. No.
3523 Ms. Kish. Mr. Deutch votes no.
3524 Ms. Sanchez?
3525 [No response.]
3526 Chairman Smith. The gentleman from California, Mr.
3527 Issa?
3528 Mr. Issa. I've already voted.
3529 Chairman Smith. Oh, excuse me.
3530 The gentleman from California, Mr. Gallegly?
3531 Mr. Gallegly. No.
3532 Ms. Kish. Mr. Gallegly votes no.

3533 Chairman Smith. The gentleman from California, Mr.
3534 Lungren?
3535 Mr. Lungren. No.
3536 Ms. Kish. Mr. Lungren votes no.
3537 Chairman Smith. The gentleman from Virginia, Mr.
3538 Goodlatte?
3539 Mr. Goodlatte. No.
3540 Ms. Kish. Mr. Goodlatte votes no.
3541 Chairman Smith. The gentleman from Utah has voted.
3542 The gentleman from Iowa?
3543 Mr. King. No.
3544 Ms. Kish. Mr. King votes no.
3545 Ms. Waters?
3546 Chairman Smith. The gentlewoman from California, Ms.
3547 Waters?
3548 Ms. Waters. Aye.
3549 Ms. Kish. Ms. Waters votes aye.
3550 Chairman Smith. The clerk will report.
3551 Ms. Kish. Mr. Chairman, 9 members voted aye, 18
3552 members voted nay.
3553 Chairman Smith. The majority having voted against the
3554 amendment, the amendment is not agreed to.
3555 Now, a reporting quorum being present, the question is
3556 on reporting the bill as amended favorably to the House.
3557 Those in favor, say aye.

3558 [A chorus of ayes.]
3559 Chairman Smith. Those opposed, no.
3560 [A chorus of nays.]
3561 Chairman Smith. The ayes have it and the bill as
3562 amended is ordered reported favorably.
3563 A roll call has been requested, and the clerk will
3564 call the roll.
3565 Ms. Kish. Mr. Smith?
3566 Chairman Smith. Aye.
3567 Ms. Kish. Mr. Smith votes aye.
3568 Mr. Sensenbrenner?
3569 Mr. Sensenbrenner. No.
3570 Ms. Kish. Mr. Sensenbrenner votes no.
3571 Mr. Coble?
3572 Mr. Coble. Aye.
3573 Ms. Kish. Mr. Coble votes aye.
3574 Mr. Gallegly?
3575 Mr. Gallegly. Aye.
3576 Ms. Kish. Mr. Gallegly votes aye.
3577 Mr. Goodlatte?
3578 Mr. Goodlatte. Aye.
3579 Ms. Kish. Mr. Goodlatte votes aye.
3580 Mr. Lungren?
3581 Mr. Lungren. Aye.
3582 Ms. Kish. Mr. Lungren votes aye.

3583 Mr. Chabot?

3584 Mr. Chabot. Aye.

3585 Ms. Kish. Mr. Chabot votes aye.

3586 Mr. Issa?

3587 Ms. Issa. No.

3588 Ms. Kish. Mr. Issa votes no.

3589 Mr. Pence?

3590 [No response.]

3591 Ms. Kish. Mr. Forbes?

3592 Mr. Forbes. Aye.

3593 Ms. Kish. Mr. Forbes votes aye.

3594 Mr. King?

3595 Mr. King. Aye.

3596 Ms. Kish. Mr. King votes aye.

3597 Mr. Franks?

3598 Mr. Franks. Aye.

3599 Ms. Kish. Mr. Franks votes aye.

3600 Mr. Gohmert?

3601 [No response.]

3602 Ms. Kish. Mr. Jordan?

3603 [No response.]

3604 Ms. Kish. Mr. Poe?

3605 [No response.]

3606 Ms. Kish. Mr. Chaffetz?

3607 Mr. Chaffetz. No.

3608 Ms. Kish. Mr. Chaffetz votes no.
3609 Mr. Griffin?
3610 Mr. Griffin. Yes.
3611 Ms. Kish. Mr. Griffin votes yes.
3612 Mr. Marino?
3613 Mr. Marino. Yes.
3614 Ms. Kish. Mr. Marino votes yes.
3615 Mr. Gowdy?
3616 Mr. Gowdy. Yes.
3617 Ms. Kish. Mr. Gowdy votes yes.
3618 Mr. Ross?
3619 Mr. Ross. Aye.
3620 Ms. Kish. Mr. Ross votes aye.
3621 Ms. Adams?
3622 Ms. Adams. Aye.
3623 Ms. Kish. Ms. Adams votes aye.
3624 Mr. Quayle?
3625 [No response.]
3626 Ms. Kish. Mr. Conyers?
3627 Mr. Conyers. No.
3628 Ms. Kish. Mr. Conyers votes no.
3629 Mr. Berman?
3630 Mr. Berman. Aye.
3631 Ms. Kish. Mr. Berman votes aye.
3632 Mr. Nadler?

3633 Mr. Nadler. No.

3634 Ms. Kish. Mr. Nadler votes no.

3635 Mr. Scott?

3636 Mr. Scott. No.

3637 Ms. Kish. Mr. Scott votes no.

3638 Mr. Watt?

3639 Mr. Watt. No.

3640 Ms. Kish. Mr. Watt votes no.

3641 Ms. Lofgren?

3642 Ms. Lofgren. No.

3643 Ms. Kish. Ms. Lofgren votes no.

3644 Ms. Jackson Lee?

3645 Ms. Jackson Lee. Aye.

3646 Ms. Kish. Ms. Jackson Lee votes aye.

3647 Ms. Waters?

3648 Ms. Waters. No.

3649 Ms. Kish. Ms. Waters votes no.

3650 Mr. Cohen?

3651 [No response.]

3652 Ms. Kish. Mr. Johnson?

3653 Mr. Johnson. No.

3654 Ms. Kish. Mr. Johnson votes no.

3655 Mr. Pierluisi?

3656 Mr. Pierluisi. Aye.

3657 Ms. Kish. Mr. Pierluisi votes aye.

3658 Mr. Quigley?

3659 Mr. Quigley. Aye.

3660 Ms. Kish. Mr. Quigley votes aye.

3661 Ms. Chu?

3662 [No response.]

3663 Ms. Kish. Mr. Deutch?

3664 Mr. Deutch. Aye.

3665 Ms. Kish. Mr. Deutch votes aye.

3666 Ms. Sanchez?

3667 [No response.]

3668 Chairman Smith. The gentleman from California, Mr.

3669 Lungren, has he voted? Okay.

3670 I know Mr. Marino has.

3671 Are there other members who wish to record their

3672 votes?

3673 [No response.]

3674 Chairman Smith. Okay. The clerk will report.

3675 Ms. Kish. Mr. Chairman, 19 members voted aye, 10

3676 members voted nay.

3677 Chairman Smith. The members having voted in favor of

3678 the bill, the bill is agreed to, and without objection, the

3679 bill will be reported as a single amendment in the nature of

3680 a substitute, incorporating amendments adopted, and the

3681 staff is authorized to make technical and conforming

3682 changes. Members will have two days to submit views.

3683 I thank all members for being here and being a part of
3684 this debate on such an important piece of legislation
3685 regardless of how you voted.

3686 We are now going to move to H.R. 1433, the Private
3687 Property Rights Bill. As I mentioned earlier to members, we
3688 will only have opening statements on this bill today.

3689 Pursuant to notice, I now call up H.R. 1433 for
3690 purposes of markup. The clerk will report the bill.

3691 Ms. Kish. H.R. 1433. To protect private property
3692 rights. Be it enacted by the Senate and the House of
3693 Representatives of the United States --

3694 Chairman Smith. Without objection, the bill will be
3695 considered as read.

3696 [The information follows:]

3697

3698 Chairman Smith. I am going to recognize the gentleman
3699 from Wisconsin, Mr. Sensenbrenner, for an opening statement,
3700 and then the Ranking Member for an opening statement.

3701 Mr. Sensenbrenner. Mr. Chairman, I don't think
3702 anybody is going to remember my opening statement since
3703 everybody is headed toward the door. I would ask unanimous
3704 consent that my opening statement be inserted in the record
3705 at this point.

3706 Chairman Smith. Without objection, the gentleman's
3707 opening statement will be made a part of the record.

3708 [The statement of Mr. Sensenbrenner follows:]
3709

3710 Chairman Smith. The gentleman from Michigan, the
3711 Ranking Member of the committee, is recognized.

3712 Mr. Conyers. Mr. Chairman, in light of what my dear
3713 friend from Wisconsin has done, I would ask that the doors
3714 be bolted until I give my opening statement.

3715 [Laughter.]

3716 Mr. Conyers. There has got to be some description of
3717 what we are starting off here.

3718 H.R. 1433 is entitled "The Private Property Rights
3719 Protection Act." The Supreme Court's ruling in Kelo v. City
3720 of New London in the year 2005 opened the floodgates for
3721 state legislative activity across the country and in this
3722 Congress. When this bill, the Private Property Rights
3723 Protection Act, was introduced in the year 2005, I'm pleased
3724 to say I was an original co-sponsor.

3725 Like more than two dozen individuals and organizations
3726 that filed amicus briefs with the United States Supreme
3727 Court in support of the homeowners in Kelo, including the
3728 NAACP, the Southern Christian Leadership Conference and
3729 others, I was concerned about how the practice of
3730 condemnation for economic development purposes has impacted
3731 minority communities.

3732 In other words, eminent domain is used all the time
3733 when a government entity, a municipality, a county, city,
3734 state, or Federal wants to take property, and usually it is

3735 in the areas that may be less than up to standard, and it
3736 frequently impacts on minority communities.

3737 And in the amicus brief, the NAACP said that eminent
3738 domain is sometimes used to target poor, elderly, and people
3739 of color, and that is what makes this bill so important.

3740 In this current era of gentrification and urban
3741 renewal efforts, these populations continue to suffer
3742 disproportionately. Even well cared for properties owned by
3743 minority and elderly residents risk being replaced by
3744 casinos, hotels, super stores, and office parks.

3745 The financial gain that comes with replacing low
3746 property tax value areas with high property tax value is
3747 very attractive for cities that are broke or in default or
3748 states that need money. It is a great way, an easy way to
3749 turn low income tax property into high income tax property.

3750 So this is an important bill.

3751 The condemnations in predominantly minority
3752 neighborhoods are often easier to accomplish elsewhere
3753 because as well, the community may not have the political
3754 clout, it may not have the economic clout to get the lawyers
3755 to contest this kind of activity, and increasingly
3756 governments across this country are taking property for
3757 public use in the name of economic development, or anything
3758 else they care to call it.

3759 Under this guise, private property is being taken and

3760 transferred to another private owner, so long as the new
3761 owner will use the property in a way that brings in more tax
3762 revenue to the municipality.

3763 In Detroit, we have faced the same kinds of issues
3764 that arose in this case, the taking through eminent domain
3765 of private property for the higher, so-called higher
3766 economic purpose of casino development; in the Poletown
3767 case, where an attempt was made to replace an entire
3768 community with a factory.

3769 Justice O'Connor articulated it best when she wrote
3770 this in her dissent: "Nothing is to prevent the state from
3771 replacing any Motel 6 with a Ritz Carlton, any home with a
3772 shopping mall, any farm with a factory. And so absent a
3773 more narrowly defined public use requirement, the takings
3774 power will continue to be abused and our most vulnerable
3775 citizens will be disproportionately affected and harmed."

3776 Many of us share Justice O'Connor's sentiment and feel
3777 that the Kelo case may run the risk of trampling the
3778 constitutional guarantees provided in the 5th Amendment's
3779 taking clause that private property shall not be taken for
3780 public use without just compensation. That's a
3781 constitutional guarantee.

3782 And we should also remember the importance of the use
3783 of eminent domain for public purposes as contemplated by the
3784 Constitution. Striking the proper balance is the goal that

3785 we are working toward, and that is what I hope we will all
3786 have in mind when we take up this bill on Monday or
3787 Wednesday of next week.

3788 At our subcommittee hearing on the bill, it was
3789 expressed the concern that I have about the necessity of
3790 Federal action after more than 40 states have adopted reform
3791 legislation addressing the eminent domain abuse issue.
3792 Several states have adopted regulatory regimes with rules
3793 more strict than this legislation. With the passage of
3794 time, I am even more persuaded that the states should retain
3795 the latitude to interpret their constitutions in a manner
3796 consistent with local interests rather than relying on a
3797 one-size-fits-all Federal regulatory scheme.

3798 I also have concerns about exceptions to the economic
3799 development that are defined in the bill. Most of these
3800 exceptions are projects that have historically displaced
3801 minority communities: freeways, highways, roads, hospitals,
3802 airports, pipelines. And in the Washington Post this week,
3803 there was just such a story about a historically African
3804 American community in Fairfax County, Virginia, that is
3805 battling for its existence because of the expansion of a
3806 local hospital.

3807 Now, granting such broad exceptions in the bill would
3808 ignore the concerns raised by civil rights groups in their
3809 Supreme Court briefs, and the punitive nature of the bill

3810 puts at risk the very funding that minority communities so
3811 desperately need for their continued growth and economic
3812 development, which is usually behind the average kinds of
3813 growth and development anyway.

3814 So I conclude, instead of placing a prohibition on the
3815 use of Federal funds, or the activities of a jurisdiction
3816 receiving Federal funds, the bill imposes a post hoc penalty
3817 on the loss of all Federal economic development funds for
3818 two years. So I hope we can find a way to mitigate these
3819 concerns and pass meaningful legislation while avoiding a
3820 proposal that would tie the hands of the states and further
3821 disadvantage the minority communities we have discussed.

3822 I thank you for your patience and time, Mr. Chairman.
3823 I yield back my time.

3824 Mr. Franks. [Presiding] And I thank the gentleman.
3825 Private property rights are the cornerstone of our
3826 entire economy. Oftentimes, there are many comments about
3827 the right to live, to be free, and to pursue our dreams in
3828 our Declaration. But if we could give three rights that the
3829 Constitution outlines very specifically, it would be the
3830 right to live, the right to freedom, and the right to
3831 private property.

3832 The Private Property Rights Protection Act prohibits
3833 states and localities that receive Federal economic
3834 development funds from using eminent domain to take private

3835 property for economic development purposes.

3836 States and localities that use eminent domain for
3837 private economic development are ineligible to receive
3838 Federal economic development funds for two fiscal years
3839 under this legislation.

3840 These protections are desperately needed. Every day,
3841 cities and states in search of more lucrative tax bases take
3842 property from homeowners, small businesses, churches, and
3843 farmers, and give it to large corporations for private
3844 development. Unfortunately but predictably, it is usually
3845 the most vulnerable who suffer from the economic development
3846 takings.

3847 As Justice Thomas observed in his dissenting opinion
3848 in *Kelo*, "Extending the concept of public purpose to
3849 encompass any economically beneficial goal guarantees that
3850 these losses will fall disproportionately on poor
3851 communities. These communities are not only systematically
3852 less likely to put their lands to the highest use and best
3853 social use, but they are also the least politically
3854 powerful. The differential standard this court has adopted
3855 for this, the public use clause, encourages those citizens
3856 with disproportionate influence and power and political
3857 process, including large corporations and development firms,
3858 to victimize the weak."

3859 Countless examples of eminent domain abuse exist,

3860 including in National City, California, a local community
3861 center for at-risk youth currently threatened with
3862 condemnation to make way for luxury condominiums.

3863 In Brooklyn, New York, 333 residents, 33 businesses,
3864 and a home shelter were threatened with condemnation so a
3865 private developer could build a basketball arena and 16
3866 office towers.

3867 In Mt. Holly, New Jersey, township officials have been
3868 using the threat of eminent domain to buy up and tear down
3869 over 300 row homes in a predominantly African American and
3870 Hispanic community in order to transfer the land to a
3871 private developer to build luxury townhomes and apartments.

3872 And in Rosa Parks' old community in Montgomery,
3873 Alabama, minority homeowners are being forced out of their
3874 homes for economic development purposes.

3875 In none of these cases were the homes and buildings
3876 blighted or causing harm to the surrounding community. They
3877 are being taken simply because in someone's view, the
3878 current owner is not putting the property to its most
3879 beneficial use. We must put an end to this practice and
3880 restore the property rights protections that were erased
3881 from the Constitution by the Kelo decision, and I certainly
3882 urge my colleagues to support this bipartisan legislation.

3883 And now I recognize Mr. Nadler, the gentleman from New
3884 York, for his statement.

3885 Mr. Nadler. Thank you, Mr. Chairman.

3886 Mr. Chairman, for once the Supreme Court defers to the
3887 elected officials, and Congress cries foul. The power of
3888 eminent domain is an extraordinary one and should be used
3889 rarely and with great care. All too often, it has been
3890 abused for private gain or to benefit one community at the
3891 expense of another.

3892 It is, however, an important tool making possible
3893 transportation networks, irrigation projects, and other
3894 public purposes. To some extent, all of these projects are
3895 economic development projects. Members of Congress are
3896 always trying to get these projects for our districts, and
3897 certainly the economic benefit to our constituents is always
3898 a consideration.

3899 Has this bill joined the appropriate line between
3900 permissible and impermissible uses of eminent domain? I
3901 think that is one of the questions we really need to
3902 consider.

3903 We all know the easy cases. As the majority in Kelo
3904 said, "The city would no doubt be forbidden from taking
3905 Petitioner's land for the purpose of conferring a private
3906 benefit on a particular private party, nor would the city be
3907 allowed to take property under the mere pretext of a public
3908 purpose when its actual purpose was to bestow a private
3909 benefit."

3910 But which projects are appropriate and which are not
3911 can sometimes be a difficult call. Historically, eminent
3912 domain has been used to destroy communities for projects
3913 having nothing to do with economic development, at least as
3914 defined in this bill. For example, highways have cut
3915 through neighborhoods, destroying them. Some of these
3916 communities are in my district and have yet to recover from
3917 the wrecker's ball. And yet that would still be permitted
3918 by this bill. Other projects might have a genuine public
3919 purpose and yet be prohibited. The rhyme or reason of this
3920 bill is not clear.

3921 I believe, as I did in 2005 when we last considered
3922 this bill, that this bill is the wrong approach to a very
3923 serious issue. This bill would permit many of the abuses
3924 and injustices of the past to continue by excluding from its
3925 coverage many of the projects that caused those abuses,
3926 including pipelines, transmission lines, and railroads. It
3927 would, for example, allow the Keystone Pipeline to cut
3928 through the heartland of America and condemn property all
3929 along its route.

3930 It would allow highways to cut through communities,
3931 and would allow all the other public projects that have
3932 historically fallen most heavily on the poor and the
3933 powerless.

3934 As Hilary Shelton of the NAACP testified when we last

3935 considered this legislation, "These projects are just as
3936 burdensome as projects that include private development."
3937 The bill allows the use of eminent domain to give property
3938 to a private party "such as a common carrier that makes the
3939 property available for use by the general public as a
3940 right." Does that mean a stadium? The gentleman referred
3941 to a stadium in Brooklyn before, a stadium I opposed. But a
3942 stadium is privately owned. It is "available for use by the
3943 general public as a right," at least as much as a railroad.
3944 You can buy a seat. Apparently under this bill, that
3945 stadium, the use of eminent domain for that stadium would
3946 still be permitted.

3947 Does it mean a shopping center? Apparently you don't
3948 even need a ticket. So a shopping center would probably
3949 still be permitted under this bill.

3950 The World Trade Center, on the other hand, could not
3951 have been built under this law. It was publicly owned but
3952 was predominantly leased for office space and retail use.
3953 Neither could Lincoln Center. Affordable housing like the
3954 Hope Six or the Fable Nehemiah Program, a faith-based
3955 affordable housing program in Brooklyn, could never have
3956 gone forward. But public housing, completely owned and
3957 constructed by the Federal or city government, could use
3958 eminent domain. But public-private partnerships developed
3959 by government for the use of affordable housing, which is

3960 generally considered a step beyond public housing, would not
3961 be okay. So we could construct government-owned public
3962 housing using eminent domain, but we could not use public-
3963 private partnerships to involve the private sector in the
3964 construction of affordable housing.

3965 Since 2005, there have been new developments that call
3966 into question whether Congress should even act at this
3967 point. In response to the Kelo decision, states have moved
3968 aggressively to reconsider and amend their own eminent
3969 domain laws. More than 40 states have acted. States have
3970 considered carefully the implications of this decision and
3971 the needs of their citizens. I question whether Congress
3972 should now come charging in and presume to sit as a national
3973 zoning board, arrogating to our Federal Government the right
3974 to decide which states have gotten the balance right and
3975 deciding which projects are or are not appropriate.

3976 The lawsuits authorized by this bill and the vagueness
3977 of the bill's definitions would cast a cloud over legitimate
3978 projects. It's particularly troublesome that a property
3979 owner or tenant would have seven years after the
3980 condemnation before the litigation and appeals even begin.
3981 Did the Trial Lawyers Association write this bill?

3982 The local government would risk all of its economic
3983 development funding for two years, even for unrelated
3984 projects, and face bankruptcy if it guesses wrong about a

3985 project. Even if a jurisdiction did not use eminent domain
3986 at all, the cloud that this bill would cast over the
3987 possibility of some future taking would be enough to destroy
3988 their ability to float bonds at any time, because the way
3989 this bill is structured, if a state or local government
3990 tried to issue a bond backed by, among other things, Federal
3991 funds due to it, they probably couldn't do that because
3992 those Federal funds might be blocked years later if they
3993 guessed wrong about a project.

3994 Mr. Chairman, this legislation goes well beyond the
3995 hypothetical taking of a Motel 6 to build a Ritz Carlton
3996 which, despite dire warnings at the time of the Kelo
3997 decision, never happened. It threatens communities with
3998 bankruptcy without necessarily protecting the most
3999 vulnerable populations. It comes after years of state
4000 action in which states have decided which approach would
4001 satisfy their concerns and protect their citizens best.

4002 I look forward to our markup, and I hope that if we do
4003 report a bill, we can work together to make it more precise
4004 and more balanced.

4005 I yield back the balance of my time.

4006 Mr. Franks. [Presiding] I thank the gentleman.

4007 I would now recognize the gentle lady from California.

4008 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

4009 I strongly support H.R. 1433, and I love previous efforts to

4010 legislatively remedy the Supreme Court's unconstitutional
4011 expansion of government authority in the Kelo case. I am
4012 delighted to have worked again with Congressman
4013 Sensenbrenner in reintroducing the Private Property
4014 Protection Act.

4015 I understand this is an issue that is not as divided
4016 along party lines. This issue tends to span the range of
4017 varying opinions on urban redevelopment and whether state
4018 and local government should have unfettered authority to use
4019 Federal economic development funds to force people out of
4020 their homes and communities in order to make room for golf
4021 resorts or other commercial developments.

4022 Few policies have done more to destroy community and
4023 opportunity for minorities than eminent domain. Some 3 to 4
4024 million Americans, most of them ethnic minorities, have been
4025 forcibly displaced from their homes as a result of urban
4026 renewal takings since World War II. Eminent domain has
4027 always had an outsized impact on the constitutional rights
4028 of minorities, but most of the public did not notice until
4029 the U.S. Supreme Court 2005 ruling in Kelo v. City of New
4030 London.

4031 In June 2005, the Supreme Court issued a 5-4 decision
4032 in Kelo v. City of New London in which it held that economic
4033 development can be a public use under the 5th Amendment's
4034 takings clause, justifying the government's taking of

4035 private property. However, many charge that Kelo gives
4036 government a blank check to redistribute land from the poor
4037 and middle class to the wealthy.

4038 As the dissent in that case pointed out, to reason as
4039 the court does that the incidental public benefits resulting
4040 from subsequent ordinary use of private property render
4041 economic development takings for public use is to wash out
4042 any distinction between private and public use of property.
4043 The beneficiaries are likely to be those citizens with
4044 disproportionate influence and power in the political
4045 process, including large corporations and development firms.

4046 As for the victims, the government now has license to
4047 transfer property from those with fewer resources to those
4048 with more. The founders cannot have intended this perverse
4049 result.

4050 Few protested the Kelo ruling more ardently than the
4051 National Association for the Advancement of Colored People,
4052 that is the NAACP. In an amicus brief filed in the case, it
4053 argued that the burden of eminent domain has and will
4054 continue to fall disproportionately upon racial and ethnic
4055 minorities, the elderly, and economically disadvantaged.
4056 Unfettered eminent domain authority, the NAACP concluded, is
4057 a license for government to coerce individuals on behalf of
4058 society's strongest interests.

4059 In the years since Kelo, 42 states, including Alabama,

4060 have enacted new laws limiting eminent domain power, but
4061 many of the new laws contain loopholes that make them easy
4062 to circumvent. Some 19 states have forbidden takings for
4063 economic development but continue to permit the exact same
4064 kinds of condemnations under the guise of alleviating
4065 blight. "Blight" can be defined so broadly that it renders
4066 the term meaningless. Virtually any property that the
4067 government wants can be declared blight. This is one of the
4068 most important things to recognize about eminent domain
4069 abuse. The government rarely admits that it is taking
4070 property for reasons such as economic development. Instead,
4071 it comes up with some other justification.

4072 Mr. Chairman, even Governor Jerry Brown of California
4073 has conceded to potential eminent domain abuses within state
4074 as he recently signed two bills that could potentially close
4075 all of our state's 400 redevelopment agencies. In
4076 California, redevelopment law has allowed cities to keep a
4077 certain percentage of increases in property tax to finance
4078 projects that remove blight or create jobs. Governor Brown
4079 and others have criticized redevelopment as sometimes being
4080 wasteful.

4081 In Sacramento, for example, redevelopment money was
4082 used to finance a bar that features women swimming through
4083 water as mermaids, Duran noted. Elsewhere, the money has
4084 been used to build golf courses. The Institute for Justice

4085 has cataloged nearly 200 projects across California that
4086 have threatened or used eminent domain for private.

4087 Within each of these projects, countless homes,
4088 businesses, churches and families have been impacted. The
4089 redevelopment agencies have helped to run California's debt
4090 and abuse eminent domain by transferring private property to
4091 large developers promising to build tax-generating
4092 businesses.

4093 Although the majority of states have passed laws to
4094 update and/or clarify when eminent domain is appropriate,
4095 the low bar set by Kelo, coupled with state and localities'
4096 abuse of condemnation procedures, leaves very little
4097 protection for homeowners and communities across the country
4098 who continue to be uprooted at the behest of private
4099 developers.

4100 We must pass this legislation that will afford
4101 communities and individuals some protection and recourse for
4102 eminent domain abuses. I strongly urge my colleagues to
4103 support H.R. 1433, and I yield back the balance of my time.

4104 Mr. Franks. I thank the gentlewoman, and I now
4105 recognize Mr. Johnson for two minutes.

4106 Mr. Johnson. Thank you, Mr. Chairman.

4107 The Supreme Court decision, a 5-4 decision in Kelo v.
4108 City of New London, memorializes a reverse Robin Hood
4109 scheme, take from the poor and give to the rich.

4110 In the Kelo case, it used to be said that a man's home
4111 is his castle when I was growing up. Now it's a man and a
4112 woman's home, a man and/or a woman's home is his or her
4113 castle. In Kelo, Ms. Kelo, a female, a homeowner of
4114 property that was not blighted, fought the condemnation of
4115 her property so that it could be used by a private developer
4116 to further economic development in her area. That developer
4117 promised that 3,000-plus jobs would be created and \$1.2
4118 million in additional tax revenues would accrue to the City
4119 of New London if this property were taken and developed in
4120 accordance with the developer's plans.

4121 She fought it all the way to the U.S. Supreme Court,
4122 which ruled that under the 5th Amendment's takings clause,
4123 that taking for public use, a public use could be defined as
4124 general benefits that a community enjoyed from economic
4125 growth. And so that qualified as a public use.

4126 And so that entitles a government, local government,
4127 state or Federal, to take the property, does not even have
4128 to be blighted, of an owner, of a private owner and give it
4129 to another private owner for purposes of economic
4130 development. Of course, they would have to pay adequate
4131 compensation.

4132 But this is fundamentally wrong to establish this
4133 reverse Robin Hood scenario and subject citizens who
4134 oftentimes the only thing they own is their home, and it may

4135 have been in a family for generations. And they are then
4136 forced by the government to leave that land.

4137 And ironically, after Ms. Kelo, after her home was
4138 taken, the developer was unable to obtain financing, and her
4139 home had already been bulldozed, and it just left an empty
4140 lot.

4141 This is wrong, and this should not be something that
4142 our government sanctions. And so therefore I'm in support
4143 of H.R. 1433, the Private Property Rights Protection Act of
4144 2011, and I will yield back.

4145 Mr. Franks. And I thank the gentleman, and I thank
4146 the members for their indulgence.

4147 There being no further business before this committee,
4148 we are adjourned.

4149 [Whereupon, at 5:06 p.m., the committee was
4150 adjourned.]