

Statement of Rep. Bennie G. Thompson (D-MS)
Ranking Member, House Committee on Homeland Security

In Opposition to H.R. 3361, the USA FREEDOM Act

May 22, 2014

Today, I rise in reluctant opposition to HR 3361, the USA FREEDOM Act, which I cosponsored at introduction. I am troubled by the changes that were made to the bill behind closed doors that stripped key protections and open the door to bulk collection. The Privacy and Civil Liberties Oversight Board found the NSA's bulk collection of metadata to be illegal and called for it to be stopped. The legislation before us today includes language that raises the specter of the programs continuing in some limited form. This is not what the law or the American people demand.

I had intended to support the USA FREEDOM Act, which at introduction would have brought an end to the NSA's bulk metadata program, however, changes that were made to the measure, outside of the committee process, behind closed doors, at the insistence of the NSA undercut the bill. In its current form, the ban on bulk collection is watered down and potentially exploitable by proponents of these programs. In the original bill, the phrase "specific selection term" was narrowly-defined as "a term used to uniquely describe a person, entity or account." In the version before us today, that definition was significantly re-written to allow the list of potential selection terms to be so open-ended as to encompass whole area codes or zip codes. In effect, bulk collection could continue under this definition.

I am also troubled that H.R. 3361 no longer includes language to establish an independent public advocate. Such a position is essential to give voice to ordinary Americans in the Foreign Intelligence Surveillance Court (FISC), which sets the legal parameters for NSA surveillance. The absence of such a position means that the FISC will continue to hear only from the government. There would be no one to stand up before the court and challenge the government's legal positions on what surveillance is permissible and represent the American public, whose data is being collected.

The arguments for ending the NSA's bulk metadata programs are strong one. Since it came to light last year that the NSA had assembled a database that includes calls made by nearly every American since 2007, many of us have asked tough questions about whether it was constitutional or even effective as a counterterrorism tool. A January 2014 Pew Research poll found that 70 percent of Americans believe they should not have to give up their privacy in order to be safe from terrorism with a majority expressing disapproval of the NSA surveillance program outright. The record on the effectiveness of these programs is scant. Before his recent retirement, NSA Director General Keith Alexander testified before Congress that these bulk collection programs foiled "one or perhaps two" terrorist plots against the United States but provided no further detail. The Director of National Intelligence, James Clapper, has stated that the number of prevented plots is not an appropriate metric to measure whether the programs are necessary or useful.

I had hoped we could come together and act on the recommendations of the independent Privacy and Civil Liberties Oversight Board (PCLOB) and end what the Board determined to be illegal programs. Unfortunately, what we have before us does not bring about the changes in the law that would be necessary. I appreciate that some of my colleagues will vote for this measure to move the ball forward and get the issue before the Senate. There's certainly a case to be made for such an approach but given that the proponents of these programs have repeatedly exploited ambiguities in the law to advance their own ambitions, I cannot stand by and let the measure pass, in its current form.

For these reasons, I reluctantly oppose H.R. 3361.