



February 9, 2016

The Honorable Ron Johnson
Chairman
Committee on Homeland Security & Governmental Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security & Governmental Affairs
U.S. Senate
Washington, D.C. 20510

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RE: S. 2517, Combat Terrorist Use of Social Media Act of 2016

Dear Chairman Johnson and Ranking Member Carper:

We are writing today to comment on S. 2517, the Combat Terrorist Use of Social Media Act of 2016, sponsored by Chairman Johnson, Senator Joni Ernst (R-IA), and Senator Cory Booker (D-NJ). It is our understanding that this measure will be substituted for H.R. 3654, a bill of the same name sponsored by Representative Ted Poe (R-TX), which passed the House in December, and marked up at tomorrow's Business Meeting of the Committee. We thank the bill sponsors for agreeing to make changes to the bill that would help ensure that the impact on civil rights and civil liberties will be weighed in considering strategies to fight terrorism through the use of social media. While we have concerns that the report to be issued pursuant to the bill would recommend actions that may sacrifice certain privacy and speech rights of law-abiding Americans, we take no position on the bill at the present time.

H. R. 3654 as passed by the House would call for the Administration to submit a report to Congress evaluating the use of social media by terrorist organizations and a strategy to counter that use. We oppose that measure because it ignores that any government involvement in the use of social media runs the significant risk of impacting the rights of individuals having nothing whatsoever to do with terrorism. There is no recognition that government efforts to restrict terrorists online might or even probably will impact wholly innocent users of those same internet tools. Their access to information could be impacted. Their willingness to engage online could be altered. Their privacy could be compromised. Without an acknowledgement of such potential impacts, any report to be issued or any strategy to be designed will necessarily omit an essential element: weighing the impact of countering terrorist organizations online on those having no connection to terrorist organizations.

The bill to be considered at Wednesday's meeting, to its credit, would mandate that the Administration consider the impact of efforts to curb terrorists' social media use on the civil liberties of non-terrorists. While we have no illusion that the ultimate report could create a strategy that includes some restrictions on the use of social media, we are pleased that there would be a public airing of the costs to be borne by society in exchange for taking on this fight. When our country is fully informed, not only about any value of such strategies in limiting terrorist recruitment, but of the impacts to Americans' speech, privacy, equal protection, and due process rights, we are much more likely to make better decisions about all these concerns.

We also appreciate the drafters' efforts to bring definitional precision to this area of study. The term 'radicalization' has never before been defined in federal statute. As such, it has been prone to many different and expansive interpretations. For many years our concern has been the conflation of First Amendment-protected beliefs and practices with involvement with terrorist violence. Former Senator Barry Goldwater said that "Extremism in the defense of liberty is no vice." Yet popular belief incorrectly holds that propensity to violence is an inherent characteristic of extremism. There is no perfect solution to the dilemma, but we think the definition of 'radicalization' would make it clear that the Administration's report should focus on a person's decision to become lawless and violent within the context of advancing political goals, not on a person's decision to simply adopt an ideology viewed as extreme in the absence of a commitment to use violence.

In short, we believe this bill is a solid improvement over the House-passed measure and we thank the bill sponsors and others on the committee who expressed a strong interest in addressing our concerns with the Senate's approach to this issue. While we continue to have reservations about the recommendations to come from the report, we also stand ready to play an active role in limiting the impact of any such recommendations on the rights of law-abiding social media users and we are hopeful that the members of the committee will also take note of those impacts.

If you have questions or comments, please contact Michael Macleod-Ball at mmacleod@aclu.org or 202-675-2309.

Sincerely,



Karin Johanson
Director
Washington Legislative Office



Michael W. Macleod-Ball
Chief of Staff/First Amendment Counsel

cc: Members of the Senate Committee on Homeland Security & Governmental Affairs