



June 2, 2015

RE: Polis and Poe Amendment to H.R. 2578, the House Commerce, Justice, and Science (CJS) Appropriations

Dear Representative,

On behalf of the American Civil Liberties Union, please find attached our vote recommendations for the following amendments to H.R. 2578, the House CJS Appropriations bill:

- Representative Polis' amendment, which seeks to prevent the use of funds on efforts to collect records in bulk under Department of Justice's administrative subpoena statute (21 U.S.C. 876).
- Representative Poe's amendment, which prohibits the use of funds by the Department of Justice to mandate or request that developers build weaknesses into their products to facilitate surveillance, excluding activities authorized under the Communications Assistance for Law Enforcement Act (CALEA). The amendment is currently co-sponsored by Reps Lofgren, Massie, Conyers, Amash, Polis, Farenthold, and Nadler.

Votes on these amendments are expected today or tomorrow. **The ACLU urges a YES vote on the Polis and Poe amendments.** The ACLU will be scoring this vote.

Please call Legislative Counsel Neema Singh Guliani with any questions at (202) 675 2322.

Regards,

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Acting Director

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ACLU Recommends a YES vote on the Polis Amendment to H.R. 2578

The Polis' amendment limits the government's ability to use funds to abuse the administrative subpoena statute (21 U.S.C. 876), by engaging in bulk collection that is contrary to the law.

- Until 2013, the Drug Enforcement Agency (DEA) reportedly operated a program under the administrative subpoena statute, where they collected Americans' international call records in bulk.¹
 - Such collection is contrary to a recent federal court of appeals decision. The court ruled that the term "relevant," which appears in the administrative subpoena statute, does not authorize the government to engage in nationwide or bulk collection of call records.
- The Polis amendment would limit collection to items identified by a specific term, which must specifically identify an individual, account, address or personal device.
- The amendment would also require that the term used to identify the amendment limit "to the greatest extent reasonably practicable" the scope of the records sought.

ACLU Recommends a YES vote on the Poe Amendment to H.R. 2578

The Poe amendment enhances security and civil liberties by prohibiting the use of funds on efforts to request or mandate that companies weaken the security of their products to facilitate surveillance, excluding activities authorized under the Communications Assistance for Law Enforcement Act (CALEA).

- In the wake of efforts of private companies, such as Apple, to strengthen the security of their products, the Department of Justice has publicly sought authority to require that private companies build vulnerabilities into their products to facilitate government surveillance.
 - The adoption of these encryption technologies has yielded significant benefit to consumers, businesses, and government agencies, providing enhanced protection from the ever-increasing threat posed by cyber criminals and foreign governments.
- Efforts to require companies to build "backdoors" and other vulnerabilities into products harm national security and privacy.
 - As technical experts have repeatedly said, it is impossible to build law enforcement access into products that cannot also be exploited by criminals, hackers, and malicious foreign government.

¹ Brad Heath, *U.S. Secretly Tracked Billions of Calls for Decades*, USA TODAY (Apr. 8, 2015, 10:36 AM), <http://www.usatoday.com/story/news/2015/04/07/dea-bulk-telephone-surveillance-operation/70808616/>

- Such proposals place an improper burden on private entities to build the government's surveillance infrastructure, and are unnecessary given current law enforcement access to electronic information.

The ACLU urges members to vote in support of the Polis and Poe amendments to H.R. 2578.

For more information, please contact Neema Guliani Legislative Counsel, at (202) 675-2322 or nguliani@aclu.org.