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Congress of the United States
House of Representatives
Washington, DC 20515-4702

August 2, 2013

Ranking Member C.A. Dutch Ruppertsberger
House Permanent Select Committee on Intelligence
Capitol Visitor Center HVC-304
Washington, D.C. 20515

Dear Ranking Member Ruppertsberger:

Thank you for the opportunity to weigh in on the current issues relating to the National Security Agency (NSA) surveillance programs, and how to move forward in Congress. Since the disclosure of these programs became public over two months ago, the American people and Members of Congress, including myself, are demanding the government be more transparent in how these programs ensure national security and protect Americans' civil liberties.

During debate on the 2014 Defense Appropriations bill, I joined a majority of our colleagues in voting against the Amash amendment that would have taken an all-or-nothing approach in addressing some of the NSA surveillance programs. Although I agree with the desire to curb the inappropriate dragnet usage of these authorities, Congress deserves more than 15 minutes of debate on the role of these programs.

When Congress first learned about how the Bush administration was implementing PATRIOT Act Sec. 215 programs in 2006, Americans were shocked that these operations were occurring without adequate oversight from Congress and without a legal check on power by the courts. We subsequently acted to curb the abuses of these programs by adding additional institutional checks, and by adding more oversight by the courts and Congress. Understanding the national security benefit of these programs, Congress' reform goals centered on three principles: limiting the scope of these programs to target foreign sources of intelligence, increasing the transparency and oversight of these programs, and ensuring accountability of these programs to help curb abuses.

Based on recent revelations, it is clear that we need to go further to ensure the application of these three important principles.

As Congress continues to debate these programs in the next few weeks and months, I want to bring to your attention to various pieces of legislation that should be considered for inclusion in this year's Intelligence Authorization Act:

H.R. 2736 – the Government Surveillance Transparency Act of 2013 (Rep. Larsen). I introduced this bill to increase the degree of transparency that technology and telecommunications firms have in disclosing user information to the government. Many of these firms currently publish transparency reports detailing the amount and type of government requests they receive for user data. However, as mandated by law, those reports cannot include requests from the FISA court. My bill would allow those companies that receive FISA court orders or directives to regularly report these statistics, ensuring greater privacy and security of their users' data.

H.R. 2475 – the End Secret Law Act of 2013 (Rep. Schiff). This bill requires the FISA court to publically disclose specific opinions that contain significant interpretations or construction of statutes and authorities. This bill also aims to protect the manner in which intelligence is gathered, specifically protecting the sources and methods used to gain information. This bill allows the Attorney General to make public a declassified summary if a FISA court opinion cannot be fully declassified. If even a summary cannot be produced, the Department of Justice (DOJ) is required to report on the number of opinions that will remain classified.

H.R. 2761 – Presidential Appointment of FISA Court Judges Act (Rep. Schiff). This bill would require the Presidential appointment and Senate confirmation of FISA court judges. By going through the nominations process, the American people can be informed of how potential FISA court judges interpret the law, and how they would perform their oversight responsibilities.

In addition to these pieces of legislation, Congress should also act to greater define Reasonable Articulate Suspicion (RAS) standards. RAS standards are important in establishing the legal burden of proof before FISA courts and we should make sure that this burden of proof is widely understood. Every 30 days, the NSA shares with the FISA court how the standards are being applied. Congress is also regularly briefed on these standards. Where appropriate, these reports should be available to the public as well.

Similarly, Congress should address the lax threshold that is currently used to define “foreignness” when determining which data NSA analysts can and cannot pursue. As reported, the NSA has determined that a source is foreign-based on a 51 percent certainty threshold. If this is the case, these standards would be unacceptable and would fail to meet the intent of Congress when we agreed to these programs.

Finally, Congress should ensure that the rights of the public are protected and promoted in front of the FISA court. There is currently no counterweight to the government's arguments before the FISA court. Recognizing that the FISA court does place modest restrictions on the DOJ, the FISA court alone should not be expected as an arbiter to also do the job of public advocate. In fact, based on recent reports, it seems the FISA court has acted as a rubber stamp for the executive branch. By ensuring a public advocate is present at FISA court proceedings, the American people will be better represented and protected from potential abuses.

The issues and legislation I mentioned above are not a comprehensive list, and while they do not reflect all the options, they reflect my priorities on how to move forward.

Thank you again for allowing me to weigh in on the NSA surveillance programs. I look forward to working with you and our colleagues on the Intelligence Committee in the coming weeks as we seek to strike a better balance between security and liberty.

Sincerely,

A handwritten signature in blue ink that reads "Rick Larsen". The signature is written in a cursive style with a long, sweeping tail on the letter "n".

Rick Larsen
Member of Congress