

May 16, 2012

The Honorable F. James Sensenbrenner
Chairman, Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

RE: H.R. 2168, the Geolocational Privacy and Surveillance Act

Dear Chairman Sensenbrenner,

We write on behalf of the thousands of law enforcement professionals our organizations represent to offer comments on H.R. 2168, the GPS Act. We have serious concerns about the potential impact that the GPS Act as written would have on our ability to protect the citizens we serve. Briefly, here are some of our concerns:

- the broadly written language would significantly lengthen the investigative timeline in a wide range of investigations by requiring a warrant to be issued where a subpoena or administrative process is currently sufficient;
- emergency provisions in the bill are not specific enough to prevent problems of access to critical evidence in times of highest need;
- in the absence of a demonstrated pattern of abuse or misuse of location evidence by law enforcement it is not clear what problem this bill addresses;
- the bill does not address the major issue of service provider responsiveness to legitimate law enforcement process requests;
- the Supreme Court clearly signaled in the Jones decision that it is likely to take up related cases, and until the Court more fully develops constitutional protections for location evidence we urge Congress to not act to restrict law enforcement access to such evidence.

We urge the committee to carefully consider the insights of the highly-trained practitioners who develop and utilize location evidence to solve crimes and save lives before acting on any legislation. If our ability to access and utilize this information on a timely basis is significantly limited, as we read the GPS Act to do, it may be some of the most vulnerable among us who will bear the cost.

We are always mindful of our responsibility as guardians of a free society to minimize unnecessary intrusions into citizens' privacy. One doesn't have to look very far these days to find articles expressing concern about the amount of location evidence obtained by law enforcement and private companies. Notably absent from the public discourse, however, has been any discussion of the countless cases where location evidence has been used to rescue abducted children, identify and prosecute sexual predators, and capture dangerous fugitives. Equally

absent is any indication of a pattern of abuse by the professionals who use this information on a regular basis. This compels us to ask: what problem is the Act meant to solve?

Location records constitute a critical source of evidence in an ever-expanding range of investigations. The present balance of judicial supervision and law enforcement efficiency is an appropriate one and has existed for some time. That balance should not be abandoned without a demonstrated need for an increase in privacy, and a demonstrated pattern of abuse — neither of which have been shown to exist. We believe the GPS Act is drafted so broadly that the bill could be read to require a search warrant to gather many forms of information that can currently be obtained by subpoena. Such a standard would hamper law enforcement's ability to quickly and efficiently obtain the information that could save lives. Law enforcement must be able to work critical investigations without undue delay; therefore, legal reforms should *contract* the investigative timeline at the same time they protect privacy and promote innovation. We believe the proposed GPS Act could lead to a *lengthening* of the investigative timeline, with adverse consequences for crime victims and public safety overall.

Location evidence is used to good effect in many instances where law enforcement may not have generated probable cause sufficient to satisfy the warrant requirement. Further, the time required to generate a search warrant and have it signed, even in cases where probable cause exists, may hamper law enforcement's efforts to move quickly in an investigation. This is particularly true in quickly-evolving, high-volume cases like child abductions, where every second counts and every possible lead must be explored. Of course, if Congress chooses to elevate the standard for location evidence to probable cause, law enforcement will adapt. Such a change would extend the investigative timeline and decrease the number of leads law enforcement can pursue in a given time period, however, and in some cases, prevent officers from obtaining records that would be helpful. The human cost of these changes should not be discounted.

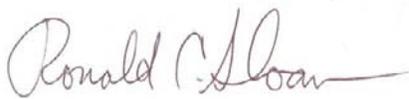
Any discussion of law enforcement use of location evidence, and communications records generally, would be incomplete without some consideration of the practical obstacles that law enforcement currently faces in obtaining this evidence from service providers, irrespective of the legal standards. Whatever level of process is ultimately deemed appropriate, the undersigned organizations urge the Committee to take steps to guarantee that law enforcement is able to access the required communications records — including location information — once that process is obtained. The emergency exceptions outlined in §2602(f) of the GPS Act may seem to provide the necessary recourse, for example, but if there is no statutory mandate for a service provider to turn over the records, and no time frame for compliance, we may effectively be denied the information we need, whatever the level of legal process. The law should provide a framework that will enable the rapid transfer of information when needed, and properly incentivize service providers to respond rapidly to process calling for critical location information.

As a final point, we note that the United States Supreme Court has recently expressed a great deal of interest in defining the protections offered by the Constitution in this area. In particular, the recent Jones decision demonstrates a clear trend towards further delineation of privacy protections with respect to location evidence.

The undersigned organizations believe that the GPS Act's broad prohibition on law enforcement's use of location evidence without a warrant will significantly erode our access to location evidence and our efficiency in obtaining it. In the absence of any demonstrated problem with the current framework, and given the expectation that the Supreme Court will more fully develop constitutional protections for location evidence soon, we believe legislative action at this time would be premature. We urge the members of the Committee to consider the impact on law enforcement's ability to conduct effective and efficient investigations carefully before making any adjustment to the existing law. What seems like an acceptable change in abstract discourse may seem less so when a child is missing, and every second counts.

Thank you for your attention to our concerns. We look forward to working with you on this most important issue.

Sincerely,



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Director, Colorado Bureau of Investigation



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