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107TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
107–468

CHILD SEX CRIMES WIRETAPPING ACT OF 2002

MAY 16, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1877]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1877) to amend title 18, United States Code, to provide that certain sexual crimes against children are predicate crimes for the interception of communications, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Sex Crimes Wiretapping Act of 2002".

SEC. 2. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEXUAL CRIMES AGAINST CHILDREN.

(a) IN GENERAL.—Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by striking "2251 and 2252" and inserting "2251, 2251A, 2252, and 2252A"; and

(2) by inserting "section 2423(b) (relating to travel with intent to engage in a sexual act with a juvenile)," after "motor vehicle parts),".

(b) TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY.—Section 2516(1) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (q);

(2) by inserting after paragraph (q) the following:

"(r) a violation of section 2422 (relating to coercion and enticement) and section 2423(a) (relating to transportation of minors) of this title, if, in connection with that violation, the intended sexual activity would constitute a felony violation of chapter 109A or 110, including a felony violation of chapter 109A or 110 if the sexual activity occurred, or was intended to occur, within the special maritime and territorial jurisdiction of the United States, regardless of where it actually occurred or was intended to occur; or"; and

(3) by redesignating paragraph (r) as paragraph (s).

PURPOSE AND SUMMARY

H.R. 1877 will assist law enforcement officials in investigating certain sex crimes that may involve children. The bill will amend 18 U.S.C. § 2516 to authorize the interception of wire, oral, or electronic communications in the investigation of: (1) the selling and buying of a child for sexual exploitation under 18 U.S.C. § 2251A; (2) child pornography under 18 U.S.C. § 2252A; (3) the coercion and enticement to engage in prostitution or other illegal sexual activity under 18 U.S.C. § 2422; and (4) the transportation of minors to engage in prostitution or other illegal sexual activity and travel with intent to engage in a sexual act with a juvenile under 18 U.S.C. § 2423.

BACKGROUND AND NEED FOR THE LEGISLATION

WIRETAP AUTHORITY AND LIMITATIONS

Congress enacted title III of the Omnibus Crime Control and Safe Streets Act of 1968 [1], as amended, that outlines what is and is not permissible with regard to wiretapping and electronic eavesdropping.[2] Title III restrictions go beyond Fourth Amendment constitutional protections and include a statutory suppression rule to exclude evidence that was collected in violation of title III.[3] Except under limited circumstances, it is unlawful to intercept oral, wire and electronic communications.[4] Accordingly under the act, Federal and State law enforcement may use wiretaps and electronic surveillance under strict limitations.[5] Congress created these procedures to allow limited law enforcement access to private communications and communication records for investigations while protecting Fourth Amendment rights. In addition to these restrictions, Congress has only provided authority to use a wiretap in investiga-

[1] 18 U.S.C. §§ 2510–2520.

[2] Charles Doyle & Gina Stevens, Congressional Research Service, Library of Congress, Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping, at 6 (2001).

[3] 18 U.S.C. § 2510–2520.

[4] 18 U.S.C. § 2511.

[5] 18 U.S.C. § 2518.

tions of specifically enumerated crimes, commonly called "wiretap predicates."[6]

H.R. 1877 ADDS NEW PREDICATES BUT DOES NOT AFFECT THE PROCEDURES ON WIRETAP USE

H.R. 1877 would add four new wiretap predicates under section 2516 of title 18 that relate to sexual exploitation crimes against children. This bill in no way changes the strict limitations on how and when wiretaps may be used.

18 U.S.C. § 2516 requires that the Department of Justice authorize all applications for Federal wiretaps[7] and the principal prosecuting attorney of any State or any political subdivision must apply for wiretaps to a State court judge of competent jurisdiction as defined in 18 U.S.C. § 2510.[8]

18 U.S.C. § 2518 also sets strict procedures for the use of a wiretap. Section 2518(1) requires the application to be made under written oath or affirmation to a judge of competent jurisdiction. Section 2518(1)(b) requires that the application set forth, among other things, "a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued . . ." These facts should include, among other things, the "details as to the particular offense that has been, is being, or is about to be committed" and "the identity of the person, if known, committing the offense and whose communications are to be intercepted."[9]

Section 2518(3) also includes requirements that the Judge believe (1) "there is *probable cause for belief* that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of [title 18];" (2) there is *probable cause for belief* that particular communications concerning that offense will be obtained through such interception; and (3) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.[10] Additionally, law enforcement is required "to minimize the interception of communications not otherwise subject to interception [that is non-criminal conversations] under this chapter, and must terminate upon attainment of the authorized objective."[11]

THE NEED FOR ADDING FOUR NEW WIRETAP PREDICATES

While some crimes involving the sexual exploitation of children are already wiretap predicates, others are not. H.R. 1877 would close the gap in this key investigative tool used to protect children. The interception of communications through the use of wiretaps significantly enhances law enforcement ability to prevent the sexual exploitation of children. The goal of H.R. 1877 is to provide law enforcement with the tools necessary to prevent the ultimate harm planned for the targeted children.

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[6] 18 U.S.C. § 2516.

[7] 18 U.S.C. 2516 (1)("The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application. . . .")

[8] 18 U.S.C. § 2516(2).

[9] 18 U.S.C. § 2518(1)(b).

[10] 18 U.S.C. § 2518 (emphasis added).

[11] 18 U.S.C. § 2518(5).

Many of the witnesses who testified on cybercrime issues before the Subcommittee on Crime, which was recently renamed the Subcommittee on Crime, Terrorism, and Homeland Security, have also specifically warned the Subcommittee about the increasing threat of predators to children due to the increased use of computers and the Internet. Computer technology and 24 million children using the Internet has afforded child molesters with easy access to potential victims and new opportunities to carry out their depraved crimes.

The FBI has testified that computer technology is becoming the technique of choice for pedophiles and other sex predators and these unthinkable crimes are becoming more and more prevalent. Many of these crimes begin on the Internet—where predators engage children in conversations within "chat rooms" or send pornography to them to lower their natural defenses to the advances of adults. Through these acts, a predator attempts to entice the child to travel to meet them, or offer to travel themselves to meet the child, with the intent to engage in sexual activities with the child. Often such Internet conversations are continued on the telephone.

On May 24, 2001, before the Subcommittee, the Deputy Attorney General for Criminal Justice of the State of Texas testified:

> Unfortunately, one of the biggest problems is that computer criminals are targeting the most vulnerable of our society—children. While the Internet has revolutionized the ways in which the world communicates, there is an equally awesome dark side. According to the Federal Bureau of Investigation, child pornography was virtually extinct prior to the advent of the Internet. However, with increased Internet usage in America and the world there has been an alarming increase in child pornography cases. According to the U.S. Postal Service, 40 percent of the offenders who have been arrested with child pornography downloaded from the Internet have sexually assaulted minors. The National Center for Missing and Exploited Children and the Crimes Against Children Research Center's June 2000 report entitled ONLINE VICTIMIZATION: A REPORT ON THE NATION'S YOUTH presents startling and disturbing results. Based on interviews with a nationally representative sample of 1,501 youths ages 10 to 17 who use the Internet regularly, the report found:
>
> - Approximately one in five children received a sexual solicitation or approach over the Internet in the last year.
> - One in thirty-three received an aggressive sexual solicitation—a solicitor who asked to meet them somewhere; called them on the telephone; sent them paper mail, money, or gifts.
> - One in four children had an unwanted exposure on the Internet to pictures of naked people or people having sex in the last year.
> - One in seventeen children was threatened or harassed.
> - Approximately one quarter of the children who reported these incidents were distressed by them.
> - The interviewed children reported less than 10 percent of the sexual solicitations and only 3 percent of the unwanted expo-

sure episodes to law enforcement, the Internet Service Provider, or a hotline.

- Only about 25 percent of the youth sexually solicited or approached told a parent and only 40 percent of those who experienced unwanted exposure to sexual material told a parent.
- Only 17 percent of youth and approximately 10 percent of parents could name a specific authority (such as the FBI CyberTipline, or an Internet service provider) to which they could make a report, although more said they had "heard of" such places.
- In households with Internet access, one third of parents said they had filtering or blocking software on their computer at the time they were interviewed.[12]

At that hearing, the Chairman for the National District Attorneys' Association testified that "[n]othing is as truly revolting and heartbreaking as to get into hidden files on a computer disk only to find movies and still photos of a small child being brutalized, degraded and scarred for life. The demand for these images is an international scandal, which starts each time with one child who needs the protection of local police and prosecutors." [13]

At the second cybercrime hearing on June 12, 2001, the Assistant Attorney General of the Criminal Division of the U.S. Department of Justice testified that "one of the most disturbing facets of cybercrime is the exploitation and abuse of children, whether through distribution of child pornography over the Internet or through the horrific conduct of sexual predators who operate online." [14]

In 2000, a U.S. Customs Service representative testified before the Subcommittee that the U.S. Customs Service has seen a dramatic rise in child exploitation investigations. During fiscal year 1999, its investigations increased 36 percent and in 2000 it rose an alarming 81 percent. The U.S. Customs Service also found a growing trend that those who download child pornography tend to molest children. Often those who trade in child pornography also arrange and travel to meet minors.

Additionally, the growth in international travel has helped to exploit children throughout the world. The "[t]rafficking in people, especially women and children, for prostitution and forced labor is one of the fastest growing areas of international criminal activity." [15] Conservative estimates hold the scope of the problem to involve more than 700,000 victims per year world-wide.[16] The chil-

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[12] Fighting Cyber Crime—Hearing 1 of 3: Efforts by State and Local Officials, Subcommittee on Crime, Committee on the Judiciary (May 24, 2001) statement of Deputy Attorney General McCaul, Criminal Justice, State of Texas citing (David Finklehor, Kimberly J. Mitchell, & Janis Wolak, Online Victimization: A Report on the Nation's Youth (The National Center For Missing and Exploited Children 2000) (June 2000)).

[13] Fighting Cyber Crime—Hearing 1 of 3: Efforts by State and Local Officials, Subcommittee on Crime, Committee on the Judiciary (May 24, 2001).

[14] Fighting Cyber Crime—Hearing 2 of 3: Efforts by Federal Law Enforcement Officials, Subcommittee on Crime, Committee on the Judiciary (June 12, 2001).

[15] Francis T. Miko & Grace Parks, Congressional Research Service, Library of Congress, Trafficking in Women and Children: The U.S. and International Response at 3 (2002).

[16] Francis T. Miko & Grace Parks, Congressional Research Service, Library of Congress, Trafficking in Women and Children: The U.S. and International Response at 3 (2002).

dren and women are forced into prostitution, the sex tourism industry and other sexually exploitative criminal markets.

The Federal crimes that punish the acts which sex predators commonly use to entice children into engaging in sex with them are not currently wiretap predicates. Yet many times, some aspect of the interaction between the predator and the child will occur over the telephone. If law enforcement is unable to monitor the predator's conversation with the child they are put at a disadvantage in their effort to apprehend the predator before he meets with and physically harms the child. H.R. 1877 would fill this gap in the investigative resources available to law enforcement during these investigations.

Under current law, law enforcement officials are authorized to seek court-authorized wiretaps when the investigation indicates a violation of certain limited statutory provisions dealing with the exploitation of children. Current law, however, does not authorize the use of court-authorized wiretaps to investigate cases involving the selling and buying of a child for sexual exploitation under 18 U.S.C. § 2251A; "child pornography" under 18 U.S.C. § 2252A; coercion or enticement into prostitution or other illegal sexual activities under 18 U.S.C. § 2422; and the transportation of minors to engage in prostitution or other illegal activities and travel with intent to engage in a sexual act with a juvenile under 18 U.S.C. § 2423. Law enforcement is therefore at a disadvantage in gathering evidence leading to the apprehension of these predators before they physically harm their victims. The bill will add these four crimes as new wiretap predicates.

The Committee believes that law enforcement officials should be given every appropriate tool with which to protect children from those who seek to harm them. Accordingly, the Committee favorably reports this bill.

HEARINGS

The Committee's Subcommittee on Crime held one hearing on H.R. 1877, the "Child Sex Crimes Wiretapping Act of 2001," on June 21, 2001. Testimony was received from three witnesses: the Honorable Nancy Johnson (R-Conn.); Deputy Assistant Director Francis A. Gallagher of Criminal Investigative Division of the Federal Bureau of Investigation; and James Wardwell, Detective Bureau of the New Britain Police Department, New Britain, Connecticut.

COMMITTEE CONSIDERATION

On June 21, 2001, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 1877, as amended, by a voice vote, a quorum being present. On April 24, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 1877 without amendment by 20–4 vote, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment was offered by Mr. Scott on the addition of wiretap authority for law enforcement officials investigating violations of 18 U.S.C. § 2422. Mr. Scott's amendment would have re-

quired that wiretap authority for section 2422 would only be allowed in cases involving a minor. The amendment failed by voice vote.

2. An amendment was offered by Mr. Scott to require law enforcement to prove that the child pornography contained visual depictions that were of an identifiable child. The amendment failed by a rollcall vote of 6–15.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Bryant			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Graham			
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart			
Mr. Flake		X	
Mr. Pence			
Mr. Conyers			
Mr. Frank			
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	6	15	

3. Final passage. The motion to report favorably the bill H.R. 1877 was adopted. The motion was agreed to by a rollcall vote of 20–4.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Bryant			
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Graham			
Mr. Bachus			
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart			
Mr. Flake	X		
Mr. Pence			
Mr. Conyers		X	
Mr. Frank			
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman	X		
Total	20	4	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

The bill is intended to fill the gap in the investigative resources available to law enforcement and to assist law enforcement in preventing sex predators who target children from inflicting additional harm on children.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1877, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 30, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1877, the Child Sex Crimes Wiretapping Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1877—Child Sex Crimes Wiretapping Act of 2001.

CBO estimates that implementing H.R. 1877 would not result in any significant cost to the Federal Government. Enacting H.R. 1877 could affect direct spending and receipts; therefore, pay-as-you-go procedures would apply to the bill, but CBO estimates that any such effects would not be significant. H.R. 1877 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

H.R. 1877 would add certain sexual crimes against children to the list of offenses for which wiretaps and other interceptions of communications can be authorized. Implementing the bill could result in more successful investigations and prosecutions in cases involving such crimes. CBO expects that any increase in costs for law enforcement, court proceedings, or prison operations would not be significant because of the small number of cases likely to be affected. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1877 could be subject to criminal fines, the Federal Government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending would be negligible because of the small number of cases involved.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SEC. 1. SHORT TITLE.

Section 1 of the bill states the short title of the act as the "Child Sex Crimes Wiretapping Act of 2002."

SEC. 2. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEX CRIMES AGAINST CHILDREN.

Section 2 of the bill adds four sections of title 18 to the list of wiretap predicates in section 2516 of title 18 of the United States Code. While some crimes involving the sexual exploitation of children are already wiretap predicates, the Committee recognizes that the few that are not should be included as wiretap predicates. The bill would authorize the interception of wire, oral, or electronic communications in the investigation of the selling and buying of a child for sexual exploitation under title 18 U.S.C. § 2251A, "child pornography" under 18 U.S.C. § 2252A, coercion and enticement to engage in prostitution or other illegal sexual activity under 18 U.S.C. § 2422, and transportation of minors to engage in prostitution or other illegal sexual activity and travel with intent to engage in a sexual act with a juvenile under 18 U.S.C. § 2423.

The Committee believes that these crimes against children are just as serious as the crimes that are already wiretap predicates and that law enforcement must have adequate investigative tools in these cases as well. Law enforcement need this important tool to counter the proliferation of sexual exploitation crimes against children.

The Committee is aware of the United States Supreme Court's April 16, 2002 *Ashcroft* v. *Free Speech Coalition* [17] decision regarding the definition of child pornography in 18 U.S.C. 2256(8). In that decision, the Supreme Court held that the portions of the definition of child pornography that prohibited completely computer generated visual depictions of children or visual depictions of young adults that were advertised to be children engaging in sexually explicit activity were overbroad and unconstitutional. The Supreme Court did not rule that section 2252A, which covers computer generated pictures that contain real children was unconstitutional. That provision of the law was not challenged or considered by the Court.

As it currently stands after the *Ashcroft* decision, a pedofile or child pornographer cannot be charged with violating the child pornography laws if the child pornography was wholly generated from a computer. This means that the prosecutor will have to prove that the material is a real child. It will be the job of law enforcement to determine whether child pornography contains real children or computer generated children to prosecute child pornographers and child molesters. Wiretaps will assist law enforcement in making this determination. Accordingly, the Supreme Court decision makes the need for court authorized wiretaps for these crimes all the more necessary.

It is the Committee's view that the law should not make it more difficult for police to fight child pornography and sexual exploitation crimes against children than to fight other crimes. After the

[17] 535 U.S.__, 122 S. Ct. 1389 (2002).

Ashcroft decision, it is even more important that Congress enact this legislation.

Section 2 also limits the wiretap predicates for 18 U.S.C. §§ 2422 and 2423(a) to activities that constitute felonies and Federal crimes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

* * * * * * *

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * * * *

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness gen-

erally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections [2251 and 2252] *2251, 2251A, 2252, and 2252A* (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), *section 2423(b) (relating to travel with intent to engage in a sexual act with a juvenile),* section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

* * * * * * *

(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); [or]

(r) a violation of section 2422 (relating to coercion and enticement) and section 2423(a) (relating to transportation of minors) of this title, if, in connection with that violation, the intended sexual activity would constitute a felony violation of chapter 109A or 110, including a felony violation of chapter 109A or 110 if the sexual activity occurred, or was intended to occur, within the special maritime and territorial jurisdiction of the United States, regardless of where it actually occurred or was intended to occur; or

[(r)**]** *(s)* any conspiracy to commit any offense described in any subparagraph of this paragraph.

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, APRIL 24, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order.

[Intervening business.]

The next item on the agenda is H.R. 1877, the "Child Sex Crimes Wiretapping Act of 2001."

[The bill, H.R. 1877, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 1877

To amend title 18, United States Code, to provide that certain sexual crimes against children are predicate crimes for the interception of communications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2001

Mrs. JOHNSON of Connecticut (for herself, Mrs. MALONEY of New York, Mr. GREEN of Wisconsin, Mr. SHOWS, Mr. ENGLISH, Ms. NORTON, and Ms. HART) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to provide that certain sexual crimes against children are predicate crimes for the interception of communications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Sex Crimes Wiretapping Act of 2001''.

SEC. 2. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEXUAL CRIMES AGAINST CHILDREN.

(a) CHILD PORNOGRAPHY.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting ''section 2252A (relating to material constituting or containing child pornography),'' after ''2252 (sexual exploitation of children),''.

(b) TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY.—Section 2516(1) of title 18, United States Code, as amended by section 3 of this Act, is amended—

(1) by striking ''or'' at the end of paragraph (o);

(2) by inserting after paragraph (o) the following:

''(p) a violation of section 2422 (relating to coercion and enticement) or section 2423 (relating to transportation of minors) of this title, if, in connection with that violation, the sexual activity for which a person may be charged with a criminal offense would constitute a felony offense under chapter 109A or 110, if that activity took place within the special maritime and territorial jurisdiction of the United States; or''; and

(3) by redesignating paragraph (p) as paragraph (q).

SEC. 3. TECHNICAL AMENDMENT ELIMINATING DUPLICATIVE PROVISION.

Section 2516(1) of title 18, United States Code, is amended—

(1) by striking the first paragraph (p); and

(2) by inserting ''or'' at the end of paragraph (o).

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Smith, Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. SMITH. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 1877 with the single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

[The amendment follows:]

SUBCOMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1877

S6301

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Sex Crimes Wiretapping Act of 2001''.

SEC. 2. AUTHORIZATION OF INTERCEPTION OF COMMUNICATIONS IN THE INVESTIGATION OF SEXUAL CRIMES AGAINST CHILDREN.

(a) IN GENERAL.—Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by striking ''2251 and 2252'' and inserting ''2251, 2251A, 2252, and 2252A''; and

(2) by inserting ''section 2423(b) (relating to travel with intent to engage in a sexual act with a juvenile),'' after ''motor vehicle parts),''.

(b) TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY.—Section 2516(1) of title 18, United States Code, is amended—

(1) by striking ''or'' at the end of paragraph (o);

(2) by inserting after paragraph (o) the following:

''(p) a violation of section 2422 (relating to coercion and enticement) and section 2423(a) (relating to transportation of minors) of this title, if, in connection with that violation, the intended sexual activity would constitute a felony violation of chapter 109A or 110, including a felony violation of chapter 109A or 110 if the sexual activity occurred, or was intended to occur, within the special maritime and territorial jurisdiction of the United States, regardless of where it actually occurred or was intended to occur; or''.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. The Subcommittee amendment in the nature of a substitute which the Members have before them will be considered as read and open for amendment at any point and be considered as the original text for purposes of amendment.

The Chair recognizes the gentleman from Texas for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, H.R. 1877, the "Child Sex Crimes Wiretapping Act of 2001," protects our Nation's most vulnerable children. It was introduced by our colleague from Connecticut, Nancy Johnson. While the Supreme Court's recent decision affects the underlying definition of child pornography, it does not alter the necessity for this legislation. If anything, it strengthens the need for this bill.

Wiretapping may be the only way for law enforcement officials to determine whether an actual child is depicted in the materials before they take their case to court.

Last year, the Subcommittee on Crime heard testimony on the need for H.R. 1877. This bill will assist law enforcement officials in investigating certain sex crimes that usually involve children. Because of advances in computer technology, as well as 24 million children who regularly use the Internet, child molesters have easy access to potential victims and new opportunities to ply their trade.

The FBI has testified that computer technology is becoming the technique of choice and that those types of crimes are increasing.

In 2000, the U.S. Customs Service testified before the Subcommittee on Crime that it has seen a dramatic rise in child exploitation investigations. During fiscal year 1999, its investigations increased 36 percent, and in 2000 they rose an alarming 81 percent.

The American Medical Association released a study last summer on children who regularly use the Internet. The study found that nearly 1 in 5 children surveyed received an unwanted sexual solicitation online in the last year, yet few reported the action to police. We cannot ignore this growing problem.

Law enforcement officials must have the tools necessary to deal with these crimes. Often, child molesters use the Internet to make initial contact with a child. They then convince the child to go offline and use a telephone to set up meetings with the children.

Current Federal criminal law authorizes law enforcement officials to wiretap some child sexual exploitation crimes but not others. The interception of oral communications through wiretaps significantly enhances investigations. H.R. 1877 will eliminate this gap in our criminal law. This bill will provide Federal law enforcement officials with a consistent application of the laws regarding its investigations.

The bill adds four crimes that deal with child pornography: the enticement of children to engage in illicit sex; the transportation of children to engage in sex; and selling and purchasing children for sexual exploitation.

I urge my colleagues to support this bill and yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Thank you, Mr. Chairman. I am pleased to join you in this markup of H.R. 1877, the "Child Sex Crimes Wiretapping Act." While I'm pleased that some of the limitations we developed when the bill was considered in the last Congress were retained in the bill, I believe that the present bill still represents an unnecessary expansion of Federal wiretap authority, a procedure so invasive of the rights of citizens in a free society that it can only be made available for use under circumstances specifically approved by Congress.

Current congressionally approved wiretap authority dates back to the 1968 crime bill. The primary intent of the law was to permit a limited use of electronic surveillance of organized syndicates, but as a tool—but only as a tool of last resort even under those circumstances. Since that time, the act has been amended over a dozen times to meet the demand by law enforcement for more power over citizens—over private activities of citizens. Now we have over 50 predicate crimes for which wiretap authority may be obtained.

Once a wiretap or bug is in place, it captures all conversations, innocent as well as criminal. Estimates I've seen indicate that more than 80 percent of the information obtained by wiretaps is innocent information, often involving family members and others who are not even the target of the investigation.

In 1980, when the crime rate was substantially higher than it has been in recent years, 81 Federal wiretaps were issued. In 1999, 601 Federal wiretaps were issued. Moreover, all the activities covered by the current bill would involve activities which are State crimes where there is State wiretap authority. The fact that a few States have chosen not to authorize wiretaps and the limited number of State wiretaps that are authorized compared to the number of Federal wiretaps attests to the level of concern citizens have in giving law enforcement such power over their private conversations.

Approximately 98 percent of all criminal prosecutions are conducted at the State level. Moreover, the total annual number of all State wiretaps is approximately the same as the Federal wiretaps, 749 State wiretaps, 601 Federal in 1999.

So, Mr. Chairman it's clear that much of the more serious activity for which the proponents of the legislation are seeking to justify wiretap extensions are already covered by wiretap authority under State laws.

Mr. Chairman, there is one specific problem with the legislation that has occurred just in the last couple of days, and that is, with the recent Supreme Court decision regarding computer-generated images of children not being the same as real children, that part of the wiretap authority needs to be revisited.

So, Mr. Chairman, while we want to vigorously enforce laws against child abuse and exploitation, I do not believe the case is made for the level of extension of wiretap authority sought in H.R. 1877. If we're going to extend it to the provisions listed in the bill, we should do so only to the extent necessary to get to the purported objects of the bill, prosecuting sex crimes against children, so I've prepared several amendments that I'll offer during the markup to make sure we limit it to authority involving actual crimes.

Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members may insert opening statements in the record at this point.

Are there amendments? The gentleman from New York.

Mr. NADLER. I don't have an amendment. I have a question.

Chairman SENSENBRENNER. The gentleman strikes the last word and recognized for 5 minutes.

Mr. NADLER. I just have a simple question. The bill, I think, would enable—would grant wiretap authority to determine—to investigate alleged crimes in the nature of electronic portrayals of child sex, and that underlying predicate felony was declared unconstitutional by the Supreme Court. Has the bill been changed to reflect that?

Chairman SENSENBRENNER. The gentleman from Texas?

Mr. SMITH. Mr. Chairman, let me consult with staff here for a second.

[Pause.]

Mr. SMITH. Mr. Chairman, to respond to the gentleman from New York, it's our understanding that Section 2252A——

Mr. NADLER. I can't hear the gentleman.

Mr. SMITH. I'm sorry?

Mr. NADLER. I said I couldn't hear you.

Mr. SMITH. Okay. To respond to the gentleman from New York, it's our understanding that Section 2252A covers morphed images that might include partially computer-generated but partial use of an actual child and, therefore, is still constitutional.

Mr. NADLER. But it would not cover——

Mr. SMITH. In other words, as long as a real child's involved, it's going to be constitutional. The Supreme Court, as the gentleman——

Mr. NADLER. It would not cover a purely computer-generated—investigation of a purely computer-generated image?

Mr. SMITH. That's correct.

Chairman SENSENBRENNER. Are there amendments?

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. Does the gentleman from Virginia have an amendment? The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1877 offered by Mr. Scott. Page 2, line 4, after the parentheses, insert "against a minor."

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1877 OFFERED BY MR. SCOTT

Page 2, line 4, after the parentheses, insert "against a minor".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this limits the wiretap authority to the title of the bill that it would be to help assist prosecutions of those who commit crimes against minors. Not all offenses under those sections include a minor, even attempted acts such as attempted to—attempting to entice someone to travel by bus to engage in an illegal sexual act would be covered. No basis has been suggested for why a wiretap is necessary in these cases, so I would urge my colleagues to support the amendment which would limit the use of wiretap authority to those involving minors.

I yield back.

Chairman SENSENBRENNER. The gentleman from Texas?

Mr. SMITH. Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, while this amendment does not adversely affect investigations for sexual exploitation of a minor, it could inhibit investigations of such crimes as a sex slave trade, and the gentleman from Virginia may not be aware of that.

According to a March 2002 Congressional Research Service report, "The trafficking in people for prostitution and forced labor is one of the fastest growing areas of international criminal activity and one that is of increasing concern to the U.S. and the international community. The overwhelming majority of those trafficks are women and children. More than 700,000 people are believed to be trafficked each year worldwide, some 50,000 to the United States. Trafficking is now considered the third largest source of profits for organized crime behind only drugs and weapons, generating billions of dollars annually."

Mr. Chairman, trafficking victims are raped, starved, forced into drug use, and denied medical care. Law enforcement officials must be given every tool available, including wiretapping, to investigate and stop this trafficking. In addition, the current list of crimes that law enforcement is allowed to investigate with wiretaps do not have qualifiers. Under this amendment, some crimes in Section 2422 qualify and others do not. We need to have some consistency.

If the underlying law is too broad, then we should examine that, but we should not hamper law enforcement officials by narrowing the criminal code.

Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. Strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. I would like to speak in support of the gentleman from Virginia's amendment. It's easy to expand wiretapping authority, and certainly since 9/11 we've been doing a considerable amount of that.

This is the kind of legislation that would try and, I suppose, signal to the public that we're getting tough on people who would exploit children and that we're going to do something about a certain kind of computer imaging that could be harmful to children at the same time that we go through these lightweight attempts to prove

how we're protecting children. We have the greatest scandal in this country going on right now in the Catholic Church. Everybody is mute. I haven't heard anybody say one word. Have you found a way to expand wiretapping into an area where thousands of children have been harmed and the numbers are rising each day, and they are over at the Vatican trying to decide whether or not they should be reporting what they know and when they know it? The Pope and the cardinals are in a big discussion, the moral authorities of the world are in a big discussion about whether or not they should support sex crimes that are being committed by people of the cloth.

Give me a break. This is not real. This is absolutely not real.

Mr. SMITH. Would the gentlewoman yield for a minute?

Ms. WATERS. No, I don't think so. This is my day to just kind of let it all out. No, I will not yield. I simply want to draw to the attention of those who come in with these kinds of bills that you're just taking up everybody's time. The Supreme Court has ruled on this. And I don't know how much more wiretapping you can do, but let's get real and get at what we can do to make a Federal crime molestation of children who place their—the parents and the children place their trust in people that are supposed to be of high moral authority. If you want to get real about protecting children, let's do something real, and let's not continue to come in with this kind of legislation that causes us to sit here for hours pretending that we are in some kind of serious debate about protecting children again. You don't even give recognition to the fact that the Supreme Court just said this is silly, don't do this, it's unconstitutional.

Again, I guess this is election year, and this kind of stuff plays well in Timbuktu somewhere. But——

Mr. SCOTT. Will the gentlelady yield?

Ms. WATERS.—let's not do this—no, I don't want to yield. Let me just finish, even to my colleague.

I am profoundly disturbed about what is happening to children and what we have learned about what is happening in the Catholic Church. Those of us who are strict constructionists of law, et cetera, can say but those are not Federal crimes, it's up to the States to decide about reporting.

Well, no. When we want to, we forget about States' rights. We find ways to federalize everything that we want to federalize. If the gentleman wants to withdraw this namby-pamby little piece of nothing legislation and talk about some real federalizing of crimes against children, I want to work with you. I want to be law and order on this. I want to be as conservative as you can get. Who would want to take me up on that offer? If you don't, let's just stop this farce.

Now I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment——

Ms. JACKSON LEE. Mr. Chairman?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt?

Mr. WATT. I move to strike the last word and yield to Mr. Scott.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. I thank the gentleman for yielding. I just want to say that the gentleman from Texas talked about some very serious offenses, but the sections we're talking about also include illegal but consensual acts of prostitution. That is not the kind of offense for which you ought to authorize a Federal wiretap. If States want to get into that, that would be a State decision, but not Federal, making a Federal case. We want to limit Federal wiretapping to serious cases, and this amendment would at least limit it to those against a minor which would focus on serious offenses and not on things that the Federal Government ought not be using wiretap authority and Federal investigations for.

I thank the gentleman for yielding.

Mr. WATT. Reclaiming my time, I certainly agree with Mr. Scott and think we should pass his amendment, and I yield back the balance of my——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me acknowledge the concern, I think the legitimate concern, of many of the groups who have stood in the doorway of protecting the privacy and civil liberties of the people of this Nation and that we should pride ourselves and the underlying purpose and instructions of the Fourth Amendment, the right to reasonable search and seizure.

I think the amendment of the gentleman, for those who may be supportive of this legislation—I happen to be one of those. I am completely cognizant of sometimes the hypocrisy of what we do here and the difficulty of balancing the rights of individuals to try to make sense out of some kind of legislation. I believe there should be a Federal statement on the heinousness of sex crimes with children and as it relates to the new electronic tool.

But what his legislation does, for those who are serious about only referring this to children, it qualifies the language to ensure that it deals with a minor because that's who we're trying to protect, minors that may be solicited, minors who get on Greyhound buses, minors who are picked up by people like one of the constituents of mine who was picked up by a lady that drove in from Detroit and got him halfway out of the State on the basis of electronic communication and other type activity.

So I think that a reasonable attempt by Mr. Scott—I know his opposition, and I respect him for it. This is a very good amendment that confines us to what many of us would like to be confined to, and that is protecting children.

I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1877 offered by Mr. Scott. Page 1, line 10, after "2252A," insert "violations involving an identifiable minor."

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1877 OFFERED BY MR. SCOTT

Page 1, line 10, after "2252A", insert "violations involving an identifiable minor".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. SCOTT. Mr. Chairman, this amendment is fairly straightforward. We're trying to limit the wiretap—Federal wiretap authority to very serious crimes for which you need probable cause of a very serious crime to get a wiretap. Last week, the Supreme Court said that one of the code sections as a predicate to getting a wiretap isn't even a crime. This would limit the wiretap authority to at least those violations which constitute a crime. Otherwise, without this amendment, you will be allowing wiretap authority not only on frivolous crimes—not serious crimes, but you've got wiretap authority when it isn't even a crime. I would hope that this amendment would be adopted.

I yield back.

Chairman SENSENBRENNER. The gentleman from Texas?

Mr. SMITH. Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognize.

Mr. SMITH. Mr. Chairman, this amendment would require law enforcement officials to prove that the image is a real child and not computer-generated prior to using the investigative tool of a wiretap to help make that very determination.

This amendment would change Section 2252A covering the transporting, transmission, mailing, receiving, and distribution of child pornography. A wiretap is an investigative tool that requires law enforcement officials to demonstrate probable cause that a crime is being or is about to be committed. Under the law, law enforcement officials are authorized to use a wiretap to intercept wire, oral, or electronic communications that may provide evidence of a crime under 18 U.S.C.

After the Supreme Court case last week, a child pornographer cannot be charged with violating the child pornography laws if the child pornography was wholly generated by a computer. This means that the prosecutor will have to prove a real child is in-

volved. Law enforcement officials must prove that there is probable cause to suspect that an ongoing crime or that the suspect is about to commit a crime. A wiretap is authorized when an interception of a wire, oral, or electronic communication may provide or has provided evidence of a predicate crime. A wiretap is an investigative tool used by law enforcement to collect evidence and prevent future crimes.

Why would we want to make it more difficult for police to fight child pornography than to fight other crimes? We cannot expect law enforcement personnel to prove the case before gathering the evidence. If law enforcement has a wiretap on a suspected child pornographer and that pornographer states that he is only using computer-generated images, the police would have to shut down the wiretap.

After the Supreme Court case, it is even more important that we do not pass this amendment. Law enforcement officials must determine whether child pornography uses real children or computer-generated children before prosecuting child pornographers. Wiretaps will assist law enforcement in making this very determination.

Mr. Chairman, I yield back.

Chairman SENSENBRENNER. The question is on the——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. Just briefly, it seems to me that we are treading in an area that the Supreme Court just recently gave us some guidance, and it seems to me that Mr. Scott's amendment seeks to make the underlying bill comply with the recent Supreme Court decision. So perhaps I could give Mr. Scott—yield to Mr. Scott to comment on implications of this in light of the recent Supreme Court decision in this area.

Mr. SCOTT. Thank you. I thank the gentleman for yielding. The gentleman from Texas I think has indicated that you can't even allege probable cause that a crime is being committed before you want to go on a fishing expedition. You're using a section that has been found not to even be a crime, and you're going to use that section to authorize a Federal wiretap to go searching around to see if you can see whether crimes are being committed.

The predicate that we usually require is that you've got probable cause that a crime is being committed. This—without this amendment, you're getting a wiretap because you think people are doing something you don't like them to do that isn't even a crime. And so we wanted—we are trying to limit Federal wiretap authority to serious crimes. Here you have a situation where the Supreme Court just told you this week that what is alleged in that section isn't even a crime, and you're still trying to use it to get a Federal wiretap, and I think that violates the——

Mr. SMITH. Would the gentleman yield?

Mr. SCOTT.—entire principle of limiting wiretap authority to serious crimes.

Mr. WATT. I'll yield if you can explain to me how you can authorize a wiretap using as a predicate for the—for the wiretap a law

which the Supreme Court has now said is unconstitutional. How can you do that?

Mr. SMITH. Let me make two points, and I'll——

Mr. WATT. I'll yield to the gentleman.

Mr. SMITH.—directly to your question. The first point is that I know the gentleman from Virginia used the word, I think, "fishing" and "searching." But we're not changing probable cause. You still have to have probable cause before you can get a——

Mr. WATT. For what, though? If you don't have an underlying——

Mr. SMITH. Right, and in this case——

Mr. WATT. If you don't have an underlying criminal violation and the Supreme Court has said this is not a criminal violation, how can you be on anything other than a fishing expedition?

Mr. SMITH. A couple of responses, if the gentleman will continue to yield.

Mr. WATT. I'll yield.

Mr. SMITH. First of all, I'm sure you're familiar with the Supreme Court decision. It did not declare 2252A unconstitutional. If anything, it clarified for us the need for us to make sure that a real child, an actual child is involved in the crime.

Mr. WATT. But isn't that exactly what Mr. Scott's amendment does?

Mr. SMITH. What it does——

Mr. WATT. Isn't that exactly what his amendment does? It says "involving an identifiable minor."

Mr. SMITH. I'd like to respond if the gentleman would let me. What Mr. Scott's amendment does is to prevent us from finding out—because we can't use the wiretap after probable cause, it prevents us from finding out whether a real child has been used or not. It makes it much difficult to prosecute child pornography as defined by the Supreme Court. I don't understand why we would want to make it more difficult to determine whether a child pornographer is using a real child or not. That's all we're——

Mr. WATT. It's not—I don't——

Mr. SMITH.—talking about using the wiretap for.

Mr. WATT.—think it's a question of whether we want to make it more or less. We must act within the confines of the law. We can't just sit here in the Judiciary Committee, of all places, and say we would like for it to be less difficult for police. It's our responsibility to act within the confines of the law, and this amendment seems to me to make us act within those confines.

Now, we may not like that. I'd be the first to grant you, you may not think that that's—you probably don't like the Supreme Court's decision, but the Supreme Court has ruled on this——

Mr. SMITH. This isn't——

Mr. WATT.—there is no other court above the United States Supreme Court in this country——

Mr. SMITH. If the gentleman will yield, this is not an attempt to get around the Supreme Court decision by any means at all. It's actually an attempt to live within the Supreme Court decision and be able to determine whether or not the image generated has used a real child or has been computer-generated. We're also not trying to change probable cause. All we're doing is expanding the number of crimes that can be detected by using a wiretap.

Chairman SENSENBRENNER. The gentleman's time——
Mr. SMITH. We're not changing the probable cause itself.
Chairman SENSENBRENNER.—has expired. The question is on the second amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no.
The noes appear to have it——
Mr. SCOTT. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from Virginia?
Mr. SCOTT. I'd ask for a recorded vote.
Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the Scott amendment will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Bryant?
[No response.]
The CLERK. Mr. Chabot?
[No response.]
The CLERK. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
[No response.]
The CLERK. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?

[No response.]
The CLERK. Mr. Berman?
Mr. BERMAN. Pass.
The CLERK. Mr. Berman, pass. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members who wish to cast and change their votes? The gentleman from Florida, Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will——

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 6 ayes and 15 nays.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments? If not, the question is on the Subcommittee amendment in the nature of a substitute. All those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to. The Chair notes the presence of a reporting quorum.

The question occurs on the motion to report the bill H.R. 1877 favorably——

Mr. SMITH. I'd like a recorded vote, Mr. Chairman.

Chairman SENSENBRENNER.—as amended by the nature of a substitute. Those in favor will say aye? Opposed, no?

The aye appears to have it. The aye has——

Mr. SMITH. Mr. Chairman, I'd like a recorded vote.

Chairman SENSENBRENNER. And a recorded vote is ordered. Those in favor of reporting H.R. 1877 favorably will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas, aye. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Bryant?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Barr?

Mr. BARR. Aye.

The CLERK. Mr. Barr, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

[No response.]

The CLERK. Mr. Graham?

[No response.]

The CLERK. Mr. Bachus?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Ms. Hart?
[No response.]
The CLERK. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Pence?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there Members in the room who wish to cast or change their votes? The gentleman from Florida, Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report—Mr. Goodlatte? Mr. Goodlatte just walked into the room. The gentleman from Virginia?

Mr. GOODLATTE. Aye.

Mr. ISSA. Mr. Chairman, how am I recorded?

Chairman SENSENBRENNER. How is the gentleman from California, Mr. Issa, recorded?

The CLERK. Mr. Issa, you're recorded as an aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The clerk will try again.

The CLERK. Mr. Chairman, there are 20 ayes and 4 nays.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

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