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HOUSE CS FOR SENATE JOINT RESOLUTION NO. 22(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/13/14

Referred: Rules

Sponsor(s): SENATORS GIESSEL, Fairclough, Coghill, McGuire, Bishop, Gardner, Dunleavy, Micciche, Wielechowski, Ellis, Dyson, French, Stevens, Kelly, Meyer, Egan, Huggins

REPRESENTATIVES Kawasaki, Tuck, Keller, Reinbold, Hughes, Millett, Costello, Feige, Isaacson, Guttenberg, LeDoux, Josephson, Seaton, Pruitt

A RESOLUTION

1 **Opposing the warrantless collection of telephone call data by the National Security**
 2 **Agency.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the Fourth Amendment to the Constitution of the United States provides
 5 "The right of the people to be secure in their persons, houses, papers, and effects, against
 6 unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but
 7 upon probable cause, supported by oath or affirmation, and particularly describing the place to
 8 be searched, and the persons or things to be seized"; and

9 **WHEREAS** the Fifth Amendment to the Constitution of the United States provides
 10 "No person shall . . . be deprived of life, liberty, or property, without due process of law"; and

11 **WHEREAS**, on December 16, 2013, United States District Court Judge Richard Leon
 12 ruled that the National Security Agency's program, bulk collection, and querying of telephone
 13 record metadata are likely unconstitutional; and

14 **WHEREAS** the legislature objects to the dragnet approach to data collection allowed
 15 by the Foreign Intelligence Surveillance Court, a court that operates in secret and, under sec.
 16 215 of the USA PATRIOT Act, issues orders that perpetuate the warrantless collection of data

1 of nearly all Americans; and

2 **WHEREAS** the National Security Agency stores the date and time of calls, their
3 duration, and the participating telephone numbers of the calls of nearly all Americans in a
4 centralized database, which allows National Security Agency analysts to access not only those
5 numbers, but the numbers with which the numbers have been in contact, and, in turn, the
6 numbers in contact with those numbers; and

7 **WHEREAS** the Privacy and Civil Liberties Oversight Board, in its January 2014
8 report titled "Report on the Telephone Records Program Conducted under Section 215 of the
9 USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court,"
10 questions the legal basis for the National Security Agency's mass telephone call data
11 collection program; and

12 **WHEREAS**, when telephone call data of Americans is collected by the National
13 Security Agency, that data is not related to specific investigations of the Federal Bureau of
14 Investigation; and

15 **WHEREAS** orders issued by the Foreign Intelligence Surveillance Court at the
16 request of the federal government require telephone companies to provide new calling records
17 on a daily basis, a mandate not grounded in statute; and

18 **WHEREAS** sec. 215 of the USA PATRIOT Act is designed to enable the Federal
19 Bureau of Investigation to obtain records in the course of investigations, but the National
20 Security Agency's mass collection of the records is not consistent with that design; and

21 **WHEREAS** the Electronic Communications Privacy Act of 1986 prohibits telephone
22 companies from sharing consumer data with the government except in special circumstances,
23 and the Privacy and Civil Liberties Oversight Board concluded that the National Security
24 Agency's telephone call data collection program may violate the Act; and

25 **WHEREAS** the Privacy and Civil Liberties Oversight Board found that the National
26 Security Agency's telephone call data collection program has not prevented, discovered, or
27 identified terrorist attacks, plots, or suspects that threatened the security of the United States;
28 and

29 **WHEREAS** the widespread collection of telephone call data of Americans reveals
30 highly sensitive personal information; and

31 **WHEREAS** the legislature resolutely opposes the continuation of the National

1 Security Agency's warrantless data collection program; and

2 **WHEREAS** the legislature views the National Security Agency's storage in a central
3 database of the telephone call metadata of all Americans as an unconstitutional practice that
4 should be immediately suspended; and

5 **WHEREAS** the history of government coercion, persecution, and abuse of personal
6 information and human life in the twentieth century prompts the legislature to seek to protect
7 the liberty of future generations from an oppressive and tyrannical federal government; and

8 **WHEREAS** the fundamental rights of Americans to speak freely and associate with
9 others are threatened and are likely being diminished by the National Security Agency's mass
10 collection of telephone call data; and

11 **WHEREAS** the National Security Agency's mass collection of telephone call data
12 may intimidate or chill the freedom of expression of individuals and groups that disagree with
13 certain government policies or result in extreme scrutiny of those persons simply for opposing
14 those policies; and

15 **WHEREAS** the Foreign Intelligence Surveillance Court has deviated from its purpose
16 to authorize warrants for electronic surveillance relating only to a specific person, a specific
17 place, or a specific communications account or device; and

18 **WHEREAS** the Foreign Intelligence Surveillance Court operates in a secretive
19 manner that prevents the court from hearing public input regarding government requests to
20 conduct surveillance;

21 **BE IT RESOLVED** that the Alaska State Legislature urges the federal government to
22 end the mass telephone call data collection program conducted under sec. 215 of the USA
23 PATRIOT Act, because of its lack of a statutory foundation and because it raises serious
24 constitutional concerns under the Fourth and Fifth Amendments to the Constitution of the
25 United States; and be it

26 **FURTHER RESOLVED** that the Alaska State Legislature urges the federal
27 government to eliminate all stored metadata upon ending the mass telephone call data
28 collection program; and be it

29 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States
30 Congress to authorize the creation of a panel of private sector lawyers to serve as advocates
31 for the public before the Foreign Intelligence Surveillance Court to increase public knowledge

1 and oversight; and be it

2 **FURTHER RESOLVED** that the Alaska State Legislature urges judges of the
3 Foreign Intelligence Surveillance Court to write opinions in a manner that allows the
4 government to declassify and release the opinions to the public; and be it

5 **FURTHER RESOLVED** that the Alaska State Legislature urges the Foreign
6 Intelligence Surveillance Court to work to declassify past opinions and release those opinions
7 to the public; and be it

8 **FURTHER RESOLVED** that the Alaska State Legislature requests the United States
9 Attorney General and members of the intelligence and judiciary committees of the United
10 States Congress to inform the Alaska State Legislature of the federal government's activities
11 under the Foreign Intelligence Surveillance Act and provide the Alaska State Legislature with
12 copies of reports submitted under the Foreign Intelligence Surveillance Act; and be it

13 **FURTHER RESOLVED** that the Alaska State Legislature urges the Governor to
14 prohibit the use of state personnel and resources to assist the National Security Agency in its
15 collection of mass data on Alaskans without a specific search warrant; and be it

16 **FURTHER RESOLVED** that the Alaska State Legislature considers the National
17 Security Agency's unilateral collection of the telephone call data of all Americans a violation
18 of statute, an unconstitutional program, and a troubling overreach by the federal government;
19 the Alaska State Legislature has sworn to uphold both the Constitution of the United States
20 and the Constitution of the State of Alaska and will not assist the federal government by
21 facilitating programs that are tyrannical in nature, that subject Americans to unreasonable and
22 unwarranted searches, and that violate the fundamental principle of liberty; let this resolution
23 serve as a notice to this Administration and all future Administrations that Alaskans reject
24 surrendering their liberty in the name of an unconstitutional program.

25 **COPIES** of this resolution shall be sent to the Honorable Barack Obama, President of
26 the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and
27 President of the U.S. Senate; the Honorable John Boehner, Speaker of the U.S. House of
28 Representatives; the Honorable Harry Reid, Majority Leader of the U.S. Senate; the
29 Honorable Patrick J. Leahy, President pro tempore of the U.S. Senate; the Honorable Dianne
30 Feinstein, Chair, U.S. Senate Select Committee on Intelligence; the Honorable Saxby
31 Chambliss, Vice Chair, U.S. Senate Select Committee on Intelligence; the Honorable Mike

1 Rogers, Chair, U.S. House of Representatives Permanent Select Committee on Intelligence;
2 the Honorable C. A. Dutch Ruppertsburger, Ranking Member, U.S. House of Representatives
3 Permanent Select Committee on Intelligence; the Honorable Jeh Johnson, United States
4 Secretary of Homeland Security; the Honorable Sean Parnell, Governor of Alaska; General
5 Keith B. Alexander, United States Army, Director, National Security Agency; Richard H.
6 Ledgett, Jr., Deputy Director, National Security Agency; James B. Comey, Director, Federal
7 Bureau of Investigation; and the Honorable Lisa Murkowski and the Honorable Mark Begich,
8 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
9 delegation in Congress.