

Eli Baumwell, Policy Director
SCR 4 Public Hearing Remarks

Good Morning Mr. Chairman and Delegates.

My name is Eli Baumwell, I'm the Policy Director of the ACLU of West Virginia. The ACLU has a significant interest in House Bill 4176, but a nuanced position.

I am here to speak against codifying the Fusion Center contemplated in House Bill 4176, while supporting the amendments made in the Committee on Veterans' Affairs and Homeland Security that add important oversight and civil liberties protections.

Let me make it clear that we oppose fusion centers. They blur the lines between law enforcement and military operations, they have ambiguous lines of authority and rules that allow for policy shopping – using different agencies with different missions and policies to allow for the greatest amount of power, they lack oversight, and they engage in significant data mining.

Fusion centers enable the government to spy on us. I know – the security experts in the room will have a riveting semantic debate about intelligence gathering versus, surveillance, versus investigations. The reality is – we already live under more surveillance in the form of cameras, license plate readers, cell phone tracking and so on than ever before. And it's not just that -- most of us at this point are familiar with how unnerving it is to realize how much information Facebook or Google has about us, and how complete a picture about us they can draw. And these are services that you have to deliberately avail yourselves of. Just imagine all that meta data being collected on you with the power and authority of the government behind it. Semantics notwithstanding, the average person on the street would understand that to be spying.

According to the language of the bill one only has to find a “reasonable suspicion” of “criminal activity” for the fusion center to be able to keep information for up to 5 years. That's a lower standard that it takes to get a warrant. And criminal activity is not limited. I have no doubt that right now the fusion center is focused on worthy issues like terrorism, large scale drug trafficking, and human trafficking. But missions tend to creep. For example – could employees of non-profits (Policy directors, for example) – find themselves the subject of a fusion center investigation, should there be even the mere suspicion that they were part of a “criminal

conspiracy” involving “impeding the operations” of “critical infrastructure?”

This isn't hyperbolic what-ifs. Fusion centers have gotten it wrong. A foreigner with an expired visa who was caught speeding and shoplifting was added to a fusion center. In another case, an investigation was opened on guys fishing because it wasn't a typical fishing spot. In yet another case, a motorcycle club was investigated for handing out information on how to act when encountering police (I told you this hits close to home).

Now – all of that being said, I know we have had a fusion center for the last decade. It has operated by executive order. Which means it could also be ended with the stroke of a governor's pen.

And I have to give credit to the Committee on Veterans' Affairs and Homeland Security. The amended bill provides considerably more oversight and protection than is currently in law. What I would ask is that the bill be amended so that the fusion center is not codified – rather it is permitted to exist at the discretion of the governor. And we enshrine these protections into law so long as it does exist.