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House Oversight and Government Reform:

Subcommittee on Government Operations

Hearing On:

*“Reviewing the Unintended Consequences of the Foreign Account Tax
Compliance Act”*

Statement of Senator Rand Paul (R-KY)

April 26, 2017

Chairman Meadows, Ranking Member Connolly, thank you for inviting me to this hearing on the unintended consequences of the Foreign Account Tax Compliance Act and for allowing the American people an opportunity to hear how FATCA undermines their privacy through the bulk collection of their foreign financial records.

I oppose FATCA for 2 reasons: First, it violates our privacy rights, and second, the compliance costs likely exceed the revenue it brings in.

Regarding privacy, the Fourth Amendment prevents the government from seizing or searching a person's, house or papers, including their financial records, unless the warrant shows individualized suspicion and probable cause. This protection was included in the Bill of Rights in response to general warrants used by the British against American colonists, and was a central reason for our revolution.

FATCA undermines the very heart of this privacy right. It forces foreign financial institutions to hand over US citizens' personal financial records without a warrant or probable cause.

FATCA also violates the Fourth Amendment by demanding all data on all Americans with overseas accounts. The demand is not individualized, but collected as bulk data without specifying suspicion or cause.

The government is using the heavy hand of the IRS to tell foreign financial institutions that they must hand over the records of US citizens, and if they dare to defy the government they will be hit with a crippling tax penalty that no business could survive.

This turns the Fourth Amendment on its head. It presumes every American with money overseas is a criminal, with no proof or even suspicion of criminal activity.

You are guilty until proven innocent. These are not the principles on which our country was founded, and we should not stand for it today.

This is not just my concern. In January, the IRS's own Taxpayer Advocate raised the same concern in her annual report, saying FATCA's "operative assumption appears to be that all such taxpayers should be suspected of fraudulent activity, unless proven otherwise."

No one should be deceived that the data being collected by the IRS is harmless either. In addition to having to report the name, address, and taxpayer identification number of each account holder, the government requires financial firms to report the account number, the account balance or value at the end of the reporting period and the inflows and outflows from the account.

Comparable information is not required to be disclosed regarding domestic accounts of U.S. citizens.

The government has no business asking for or knowing this information about its citizens and certainly not without a reason to believe the person is doing something wrong.

FATCA, essentially, gives the IRS all your overseas financial records without going through any court to decide if the government has a right to see your documents.

FATCA seems to be a solution in search of a problem. The Taxpayer Advocate finds “a lack of comprehensive statistical data establishing the existence of widespread noncompliance or fraud” by taxpayers with foreign accounts, and “the vast majority of these taxpayers actually appear to be substantially more compliant than a comparable portion of the overall US taxpayer population”.

My biggest concern about FATCA is that treats all 9 million Americans living abroad as guilty until proven innocent. FATCA acts as if the Bill of Rights does not apply to citizens living abroad.

After FATCA was passed, some foreign banks refused to do business with Americans and even cancelled their accounts to avoid the red tape and possible draconian penalties.

Individual Americans are not the only ones bearing the burden either. Estimates of initial costs for compliance reach into the tens of billions of dollars globally. And ongoing compliance for US companies costs more than \$160 million per year.

In addition, FATCA had led to foreign countries seeking information on their citizens residing in the US. Indeed, over 60 countries have already signed reciprocal intergovernmental agreements, called IGAs.

The IGAs allow bilateral exchange of financial data. Meaning, we will spy on foreigners' US bank accounts and aid and abet foreign governments in invading their citizens' privacy.

This may mean sending financial information to countries who are known human rights abusers, such as Saudi Arabia, China, and Tunisia. One can imagine the risk to political dissidents who have come to American to escape oppression.

These bilateral agreements have not received Senate ratification or other congressional approval, and they are not authorized by any existing treaty. Their constitutionality is currently being challenged in court.

My hope is this hearing will shed some light on this abusive law and lead to a demand for action. Chairman Meadows and I have sponsored a

bill to correct this injustice and repeal FATCA. Congress should pass
our bill this year and put an end to this madness.