

Senator Dick Durbin--Statement for the Record
Senate Judiciary Committee Hearing on USA Freedom Act Reauthorization
Wednesday, November 6, 2019

Sixteen years ago, I first introduced the SAFE Act, bipartisan legislation to reform the USA PATRIOT Act. The SAFE Act would have required that the government could only use Section 215 of the PATRIOT Act to obtain records that were related to a suspected terrorist. When I and others first raised concerns that Section 215 could be used to obtain the sensitive personal information of innocent Americans without any connection to a suspected terrorist or spy, then-Attorney General Ashcroft told this Committee that we were scaring the American people with “phantoms of lost liberties.”

In 2005, when the PATRIOT Act was up for reauthorization, I worked across the aisle to negotiate a new standard for Section 215 orders. Under this standard, the FBI would have had broad authority to obtain any information that is related to a suspected terrorist or spy. But innocent Americans with no connection to a suspect would have been protected. The language would have ended the bulk collection program, but despite the Republican-controlled Senate’s unanimous approval of this reform, the Bush administration objected and it was removed in the conference committee.

In 2009, when the PATRIOT Act was next up for authorization, I again offered an amendment to end the bulk collection program. When my amendment was defeated, I said:

The real reason for resisting this obvious common-sense modification of Section 215 is cloaked in secrecy. Someday the cloak will be lifted and future generations will ask whether our actions today meet the test of a democratic society—transparency, accountability and fidelity to the rule of law and our Constitution.

Sure enough, in 2013, the cloak was lifted, and we learned that the National Security Agency had obtained the phone records of millions of innocent Americans with no connection to terrorism.

In 2015, we came together to enact the bipartisan USA FREEDOM Act, a package of the most significant reforms to government surveillance powers since the PATRIOT Act. The USA Freedom Act ended the bulk collection of American’s phone records. It aimed to curb intelligence community abuses, and to add transparency and oversight of government surveillance tools.

The opportunity to enact those reforms would not have existed without the sunsets in the PATRIOT Act.

The lessons of the past 18 years demonstrate the power—and peril—of the surveillance tools held by the government. Congress has the responsibility to not only equip the government with the tools it needs to protect our country, but to also ensure that those tools are consistent with the Constitution’s guarantees.

Saying “trust us” is not going to cut it. Abuses like these are precisely why we included sunsets in the USA FREEDOM Act. Not even in the dark days after 9/11 did we think it appropriate to give the government perpetual secret surveillance authorities. The government’s request that we do so now by indefinitely reauthorizing the provisions set to expire in December is stunning.