

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, before I begin my comments on the USA FREEDOM Act, I am going to speak for a moment on a personal matter.

REMEMBERING BEAU BIDEN

Mr. President, Marcelle and I have known Beau Biden since he was a child. I am the longest serving Member of this Senate. When I came here, there was one Senator who was one term senior to me; that was JOE BIDEN. I knew of the tragedy his family had gone through, and I cherished the times, with his office right near mine, when his sons Beau and Hunter would be there with him. I watched them grow up. I saw Beau Biden become the epitome of what a State's attorney general should be. That is a model all attorneys general throughout the country could have followed. Progressive, worried about improving the law, improving peoples' lives—he did that.

I know how much we appreciated it when we would see him and Hallie at an event, when Marcelle and I would get a chance to talk with them. It was like picking up a conversation that had ended just a few minutes before.

I remember one thing especially about Beau. I was in Iraq during the war. It was a day when it was well over 100 degrees outside. I was being brought to a place where there was going to be a briefing, being zipped into this building. There were a number of soldiers wearing T-shirts, shorts, and sidearms playing ball outside in this 110-, 120-degree heat. As I went to the door, one of them turned around and gave me a big wave with his arm blocking his face. I was not sure who it was. I kind of waved back. Pretty soon, he came to the door. It was Beau Biden. I remember we gave each other a big hug. He was there as a captain in the Delaware Reserves. He was decorated for his service. We talked about what he was doing. He was praising the men and women who worked there. Nothing about anything he might be doing; he was praising everybody else. It was such a refreshing moment being with him, and it was so typical of who he was as a person.

I told him that I have a procedure that if I am in another country and I am with our military, that if there are Vermonters there, I always take their names and I ask them if they have family back home in Vermont. Most of them do. I get their phone number, and as soon as I get back, I call their mother or their father, their husband or their wife, brother or sister, whoever it might be, and say: I saw a member of your family; here is what they are doing; they look well, and all that.

So I told Beau, I said: Look, I have known you since you were a youngster. I will call your father as soon as I can and tell him you are behaving yourself, and you are doing a good job. We laughed at that.

Shortly thereafter, I got on the phone we had available to us to go

through the Whitehouse switchboard to reach the Vice President. Then I started to talk about the procedure I have, and JOE BIDEN started to laugh. He said: I just got an email from Beau that he had seen you there and that I should be expecting a call from you. We talked about what a great job Beau was doing. You could hear the pride in his father's voice. You could hear his pride. It was a pride that was deserved.

I remember JOE saying, when we were first here in the Senate—the two of us—he would be going home every night on the train. Why? Not as much even that the kids needed him, but he needed them.

Finally, when he met Jill, the boys were telling him: You should marry her.

So I grieve for them. Marcelle and I sat there and cried last night when we heard the news. I think, what a wonderful family. I think about a life cut too short—far too short.

Mr. President, I can and will say more later.

Mr. President, on the matter the distinguished Democratic leader was talking about, the USA FREEDOM Act, let's just take it up and pass it. Opponents of this bipartisan, commonsense legislation have run out of excuses. I see this as a manufactured crisis, and it is. This matter should have been taken up and voted on up or down a month ago. There is only one viable and responsible path remaining: Pass the USA FREEDOM Act that passed overwhelmingly in the House of Representatives. Pass it and send it to the President's desk and he will sign it. If we do not pass it, then those parts of the PATRIOT Act that most of us agree on are going to expire at midnight.

The irony of it is that the USA FREEDOM Act of 2015 is a carefully crafted, bipartisan compromise that both protects Americans' privacy and keeps this country safe. Before they were talking about, we are going to keep the country safe but Americans' privacy—not so much. This is a bill that does both.

The legislation would end the NSA's bulk collection of Americans' phone records. It adds significant new reforms to limit government surveillance. It increases transparency and also promotes greater accountability and oversight—something the original PATRIOT Act did not have.

The bill is the product of countless hours of painstaking negotiations with key Members—both Republicans and Democrats—in the House and the Senate, men and women I respect so much because they want to do what is best for the country. We have negotiated with the NSA, the FBI, the Justice Department, privacy and civil liberties groups, the technology industry, and other key stakeholders. We brought everybody together. When we began, we wondered if that would be possible. We did it. That is why the USA FREEDOM Act has such strong support, including

from groups as diverse as the National Rifle Association and the Center for American Progress.

This broad consensus is what we saw by the overwhelming support it received in the House. They passed the USA FREEDOM Act by a vote of 338 to 88. Some in this country say that no branch of government could have a vote that strong to say the Sun rises in the east. Certainly there has been no major piece of legislation in years where we have seen a vote such as that—338 to 88.

But now a minority in the Senate has now twice blocked the USA FREEDOM Act from even getting a debate on the Senate floor. We were sent here not to vote maybe but to vote yes or no.

Last November, even though we had had all kinds of committee hearings on this, we heard complaints that there had not been enough of a committee process on the bill and that the Senate should wait to address Section 215 under the new Republican leadership. So the Republican leader led a successful filibuster against a bill which still had a majority of Members in this body voting for it. But what has happened in this Congress? Not a single public hearing on this issue; no committee process. And then last weekend, the Senate was blocked from even debating the House-passed bill and considering amendments.

Opponents of reform have failed to introduce any legislative alternative to the bipartisan USA FREEDOM Act, the bill which reforms many problems of the PATRIOT Act. They have come up with no legislative alternative other than a clean extension, which we know has no chance of becoming law. Of course, it makes no difference because at midnight it stops being the law.

The time for excuses and inaction has passed. The American people and the intelligence community professionals who strive to protect them deserve better.

We have a few hours remaining to work things out and pass the USA FREEDOM Act, but there is no room for error. There is very little time. Again, I said it is a manufactured crisis. The deadline to act is midnight tonight. The House will not return to the Capitol until tomorrow, after the deadline has passed. We could talk about passing a 100-year extension if we wanted; it makes no difference because the time will have passed. So if the Senate does not pass the House-passed USA FREEDOM Act or if we amend it in any way, the authorities are going to expire.

I have said repeatedly—and my co-sponsor of the USA FREEDOM Act, Senator LEE, agrees with me—that we would like to have a debate on our bill and consider amendments. Because opponents of reform have run out the clock and jammed the Senate, we are not left with very much time.

Let's get this done today. If we pass the USA FREEDOM Act, the President could sign it tonight and the intelligence community could move forward

with the certainty it needs to protect the American people.

Some may argue that if you had a short-term extension—which, of course, we do not have—they have said: Well, maybe we could work out some kind of a compromise bill. But let there be no misunderstanding: The USA FREEDOM Act is a solid, carefully negotiated compromise. For all those Senators on either side of the aisle who have not spent the hours and hours and hours, as Senator LEE and I and our staffs have spent, maybe they do not know the work that went into this—again, how you get groups from the left to the right supporting it.

It would be irresponsible to kick the can down the road once again, relying on the false hope that the House will agree to pass a short-term extension—something they said they will not do—and that we will somehow be able to agree on a half-baked alternative that has yet to be introduced in either body and most assuredly would not pass the House.

So do not be fooled or tempted by the promise of a short-term extension. That would guarantee nothing. Well, wait a minute. I take that back. Passing a short-term extension does guarantee something: It guarantees the expiration of these authorities at midnight tonight. It guarantees more uncertainty, more litigation, more risk for the intelligence community, and a repeat of the chaotic brinksmanship later on down the road with another manufactured crisis.

I know there are some who worry that the bill does not go far enough when it comes to reform. Well, then where were they in coming up with a better idea? If this passes, the USA FREEDOM Act would be the most significant set of reforms to government surveillance since the PATRIOT Act was enacted. The reason we are here to even debate it is that then-majority leader Dick Armey in the House and I put in sunset provisions. So we will have to show responsibility and vote, as the House did by a 4-to-1 margin.

Our bill—Senator LEE's and my bill—would not just end the NSA's bulk collection under Section 215, it would add new transparency and oversight reforms to other surveillance authorities, and it would be a solid foundation upon which we could build our future reform efforts.

I have been in the Senate for more than 40 years. I have learned that when there is a chance to make real progress, we ought to seize it. But I also know we cannot let this be the end of our fight for greater privacy protections, transparency, and accountability. I remain committed to fighting that fight on behalf of Vermonters and all Americans.

So the choices before us this evening are clear: Either let these authorities expire completely or pass the USA FREEDOM Act. There is no more time for political maneuvering or fearmongering or scare tactics. It is

time for us to do our jobs—to debate and then to vote. Don't duck the vote. Vote up or down on the bill the House gave us. Stand up and be counted either for or against it. As Senators, let's have the courage to do that.

The USA FREEDOM Act is a reasonable, responsible way forward, and we should pass it tonight. But don't duck behind not doing anything and pretend that is a solution. I don't think there is a single American, Republican or Democrat, who would believe that was a responsible solution.

Mr. President, I yield the floor.

Ms. MIKULSKI. Mr. President, I am back here during an unprecedented Sunday session hoping we can avoid a totally unnecessary disaster tonight; hoping we will do what is right for the country: Pass the USA FREEDOM Act today. Right now.

I will let others speak to the merits of the USA FREEDOM Act. It is our best opportunity to protect the Nation while balancing between privacy and constitutional surveillance.

I do support reforming the Patriot Act, but I do not support unilateral disarmament of our Nation's need to know what bad guys with predatory intent are planning against the United States of America.

But my comments today are not about standing up for the USA FREEDOM Act.

I am here to stand up for the men and women working for the NSA, FBI, and other intelligence agencies essential to protecting our country against terrorist attacks—whether it is a “lone wolf” or state sponsored. These dedicated, patriotic intelligence professionals want to operate under rule of law that is constitutional, legal, and authorized.

They are ready to do their jobs, but Congress needs to do our job and pass a bill that is constitutional, legal, and authorized.

Ever since Edward Snowden made his allegations, the men and women of our intelligence agencies have been vilified as if they were the enemy. They thought they were doing their jobs protecting us against the enemy.

Let me tell you—the men and women of the NSA, FBI, and our other intelligence agencies are patriots who have been wrongly vilified by those who don't bother to inform themselves about our national security structures and the vital functions they perform.

Now a special word about the NSA, which is headquartered in my home State of Maryland. The 30,000 men and women in the NSA serve in silence—without public accolades. They protect us from cyber attacks. They protect us against terrorist attacks. They support our warfighters. They are Ph.D.'s and scientists. They are linguists, cyber geeks, and whiz kids—the treasured human capital of this Nation.

Remember that section 215 is such a small aspect of what the NSA, FBI, and other intelligence agencies do as they stand sentry in cyber space stopping

attacks. People act like that is all NSA does. They haven't even bothered to educate themselves as to legality and constitutionality.

Congress passed the Patriot Act. President George W. Bush told us it was constitutional. We need good intelligence. In a world of ISIL, Nusra Front, and al Qaeda, the NSA is our front line of defense and the people of NSA make up that front line.

There is no evidence of abuse by NSA employees. The men and women of NSA have adhered to the law. They have submitted to oversight, audits, checks and balances, and reviews from Congress and the courts.

The employees of NSA know that everything has to be constitutional, legal, and authorized. They thought they were implementing the law, but some in the media and even some in this body have made them feel like they were wrongdoers. I find this infuriating and insulting. Morale has been devastated at NSA. Families have been harassed for working at the NSA and their kids are bullied at school.

They have also been devastated by actions of their own government. First, by sequester—then, by the government shutdown. Now, by Congress's failure to reform national security authorities that help them keep our country safe.

It is wrong. I want people to remember that tonight as we discuss important reforms. Let us not let them down, once again, with our own failure to act.

Mrs. FEINSTEIN. Mr. President, it is greatly disappointing that the Senate is in session today to reconsider a vote we took before the Memorial Day recess to extend the three expiring provisions of the Foreign Intelligence Surveillance Act.

Instead of passing the USA FREEDOM Act a week ago and sending it to the President, we are now poised to take the measure up this coming week, after the FISA authorities have expired. The result is that our intelligence agencies will lose important tools to protect against terrorist attacks. This is a self-inflicted harm, and one that was totally unnecessary.

As I did a week ago, I will vote to invoke cloture on the motion to proceed to the USA FREEDOM Act, and I intend to vote for the legislation through the upcoming procedural votes. The bill is not perfect, but it extends the business records, lone wolf, and roving wiretap provisions and it institutes some important reforms to FISA.

Unfortunately, what we have on the floor of the Senate tonight is political gamesmanship at its worst. We should have had this debate weeks or months ago, not up against the deadline. Failing that, the majority should not have defeated this motion last week when it is prepared today to pass it.

We should skip the unnecessary delay of voting separately on the motion to proceed, cloture on the bill, and on the bill itself. Clearly there are 60 votes in

this chamber to pass the USA FREEDOM Act, whether we do it today or if we do it next week.

So the question comes: why not pass this bill today, reform the business records provision of FISA, and keep important intelligence authorities in effect? Unfortunately, the answer is that one Senator is holding this process hostage for his own political benefit. It is a travesty, and it is unconscionable.

We remain a nation under threat of terrorism. Our allies remain under threat of terrorism.

This is not hypothetical. The Islamic State in Iraq and the Levant—ISIL—is seeking to recruit individuals to conduct attacks against the United States. Tens of thousands of foreign fighters have entered Iraq and Syria to join ISIL. There are hundreds of people inside the United States right now that ISIL is seeking to inspire, direct, and assist in carrying out an attack.

Al Qaeda in the Arabian Peninsula—AQAP—is developing non-metallic, undetectable bombs for use on U.S. airliners and is teaching people how to make such devices themselves. These groups are competing to be worst of the worst in international terrorism and they are coming after us.

We aren't sending thousands of troops to confront ISIL in Iraq and Syria or to stop AQAP in Yemen. We aren't going to diminish their threats through partnership with local governments.

The only way we are going to stop attacks against the United States and our people is by collecting good intelligence. To me, that means we need to do everything lawful and effective in intelligence to identify and thwart those attacks.

The roving wiretap provision is important. It says that the FBI doesn't have to stop surveillance against a terrorist or a foreign spy when he buys a new cell phone or changes his email account. Having to do so in today's world would be ridiculous.

The "lone wolf" provision is important. To be clear—it hasn't been used. But to be equally clear, never before have we faced the exact threat that this provision was written to address: the threat of an individual, inside this country, plotting to kill Americans without traveling abroad and training with a terrorist group first.

The business records provision is important. It includes both routine requests for records—hotel bills, car rentals, travel information—that are regular parts of law enforcement and national security investigations. It also authorizes the NSA's phone metadata program. Under this provision, the NSA gets information about phone calls to include the numbers on either end of the line, the time, and the duration of the call. It does not include the words that are spoken as part of the phone conversation, the identities of the people involved, or their location.

What it does is help the Intelligence Community know more about people for whom there is a "reasonable articulable suspicion" of being tied to terrorist groups. If there is a terrorist in Syria talking to Americans at home, we want to know that. If a phone number, for example, in Garland, TX, is in touch with an ISIL operations chief, we need to know. That information allows the FBI to go to a court for a probable cause warrant to conduct electronic and physical surveillance of a suspect.

This program is conducted under strict oversight and operational limitations. The number of people at NSA with access to the data is small—it was 22 in 2013. They have to get approval each time they do a query of the phone records; today that approval comes from the FISA Court. The query only returns information on what numbers were called by, and called, the phone number in question, and then a second hop from that number. There were 288 phone numbers approved for queries in 2012, and those queries led to 12 probable cause warrants by the FBI.

The program is overseen within the NSA by multiple officials, including the inspector general and the privacy and civil liberties officer. It is overseen by the Department of Justice, which reviews every single query, and by the Office of the Director of National Intelligence. It is overseen by the Intelligence and Judiciary Committees of the House and the Senate, and it is overseen for compliance purposes by the FISA Court.

So these are important tools that, because of Senate inaction and recalcitrance, will expire tonight. As a result, we make ourselves more vulnerable.

I very much regret this situation that the Senate has created, and I urge my colleagues to vote for cloture and to quickly enact the USA FREEDOM Act.

The PRESIDING OFFICER (Mr. GRASSLEY). The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I also regret that we are where we are.

REMEMBERING BEAU BIDEN

I would also like to defer for just a moment, before I make my remarks that I came to the floor to make, to add my condolences to Vice President BIDEN, his wife, and his family. I just learned the tragic news this morning. Some may have known that Beau was dealing with a form of cancer. I did not know that. It came as a shock to hear that information.

Having served with the current Vice President in the U.S. Senate and having gotten to know him and his family, establishing a relationship—a professional relationship as well as a friendship—I still cannot begin to comprehend the grief that comes from the loss of a child. I know there are Members in this body who have experienced that. I am fortunate that Marsha and I have not experienced that. But any parent's perhaps deepest fear is that

they will outlive their children. That is not the natural order of things. It is not how we think. And the grief that comes from the death of a child, the death of a son or a daughter, is truly deep and has significant impact.

It was impossible not to feel the emotion and shed tears early this morning in our home in Indianapolis when we heard the news. Our condolences and deep sharing of grief that we can't even begin to fully comprehend because we haven't had to deal with it—all of that comes across. I think every Member of this body reaches out to them with our thoughts and our prayers as they go through this very tragic situation.

Mr. President, I am a little surprised to hear the Senator from Vermont talking about how the Senate ought to just completely concede to whatever the House sends to the Senate. The fact is that we had a very significant discussion and debate on this issue all week before the Memorial Day break and it had gone on for months, if not years, before in the Intelligence Committee on which I serve and among Members generally.

This is one of the most important pieces of legislation we will have to deal with. It was drafted and spawned as a result of 9/11 when the American people said: Are we doing everything we possibly can to prevent something such as this from happening again?

Congress debated extensively the PATRIOT Act and the tools the intelligence community suggested we give them the authority to use to try to prevent that catastrophe from ever happening again and doing everything we could to prevent terrorist attacks. Along the way, there have been modifications, and there have been changes.

Recently, there has been significant national debate over whether one of these many essential tools that help us gather the intelligence to try to prevent and to understand the nature of the threat should be used. There clearly is a difference of opinion among Members here in the Senate and even in the House of Representatives. Yes, the Senate did pass a reform measure that I think is flawed, personally. I think it diminishes—it doesn't eliminate, but it diminishes and some even believe it eliminates the usefulness of this particular program. We went back and forth on that for a significant part of the week before we adjourned.

The Senator from Vermont comes to the floor and basically says: Look, the House passed this; so therefore we ought to just go ahead and pass it. He said there was no other alternative presented, but that is not the case. We had a procedural vote on the House bill, and we had a vote on the bill to extend this program, so we can come spend a little more time to try to figure out how best to deal with this issue. Neither of those passed, indicating that the Senate did not have the same consensus the House reached, which was a partial consensus. That is what the Senate is all about. We are not just a rubberstamp for the House.

What is really ironic is the fact that for 4 years, under Democratic leadership of this Senate, the House, under Republican leadership, sent us hundreds of pieces of legislation, and if we followed the admonition to us of the Senator from Vermont, we would have just rubberstamped those. The House passed it, so why wouldn't we go forward? I don't think that argument makes a lot of sense.

Senators are here to address issues in the U.S. Senate. Are there many bills the House passes that I agree with? Yes. My party controls the House. Are there bills here that I don't agree with that they have passed? Yes. We, as Senators, use our prerogative in terms of where we stand, and ultimately we take a vote and we either win or we lose. Sometimes it coordinates with the House of Representatives and other times it doesn't, so then we go to conference and we pass an alternative. But to say there hasn't been debate relative to this program in the House-passed bill is simply not true.

Unfortunately, there has been such a significant misrepresentation of what this program is and what this program isn't, and that has caused a lot of angst which we are trying to deal with. Much of the public—at least some portion of the public—is convinced that the government is listening to every phone call they make. It has been said on this floor that they are listening to all our phone calls, that they are collecting all kinds of data. They know everything about us. That is the furthest from the point of this program and the operation of this program that we can conceive of. Yet, a portion of the public has been led to believe that Big Government is in their bedroom, in their house, in their car, in their phone, and tracks them wherever they go; that they are collecting everything about people, including what they buy at Costco and the movies people rent through Netflix. Private industry does collect that kind of stuff, but it is not the government. It is not done under this program.

As a member of the Intelligence Committee, I can tell my colleagues that we have spent hundreds of hours dealing with this program to ensure that it doesn't violate anyone's privacy. It has more oversight through all three branches of government. The executive branch, the judicial branch, and the legislative branch oversee this program. There are six layers within NSA itself that it has to go through, that attorneys have to look at, that legal experts have to look at before they can even proceed to suspect and then take that suspicion to a court to have a judge say: Yes, you might have something here.

It has been said and it is true that unless a person's phone number is in communication with a foreign phone number that is at least strongly suspected of belonging to a terrorist organization—and ultimately the court has to make that decision—a member of Al

Qaeda, ISIS, or some group overseas that is attempting to do harm to the United States—why is this particular phone number—not the name of the person who owns the phone number—why is this particular phone number being called by someone in Yemen or being called by what we strongly suspect is a foreign operative through ISIS, Al Qaeda, Yemen, or other points where we know terrorist activity is rampant?

There is a signal that comes up that matches phone numbers, and they say: We better look into this. But before they can look into it, it has to be vetted by a court. It has to be taken to a FISA Court or an intelligence court and judged by that court as something viable to pursue. At that point, it is similar to what a court would order if there were a warrant to go and find more information to see whether this suspicion actually is reality.

We read about it every day and we watch it on television—"Law and Order" and all the shows and so forth—about how law enforcement suspects that this particular activity is a criminal organization or this is a drug house or they have reason to believe the perpetrator of the crime is this individual. They can't go raiding their house. They can't go downloading information about them until they go to a court and receive approval from a judge saying: Yes, here you are, here is your warrant. You can go and check this out.

Well, this intelligence program is based on the same principle; that is, nobody can collect any information on anybody unless that court approves that operation. Then it is turned over to the FBI, and they look to see if it is the real thing. It is a tool that has been of importance and has been a contribution to our ability to address the potential of terrorist threats and to thwart them before they happen. It has always been used as a way of proving the negative; that is, no, this is OK, we don't need to follow up on this.

The best example is the Boston bombing. When the Tsarnaev brothers' phone was accessed and it was run against the numbers, there was some suspicion that additional terrorist activity would take place in New York. It was proven that was not the case because there were no connections made. So it became a valuable tool in that regard. Instead of shutting down New York, putting them on a high terrorist alert—perhaps the Nation's largest economy in operation there—we were able to quickly determine that wasn't the case.

In response to those who basically say this has never stopped a terrorist attack, two things: No. 1, this is one of the many methods we use to collect the threads of intelligence that come from different sources to try to put together a mosaic or a puzzle as to whether this is something we need to deal with and take seriously. It is a major piece of that puzzle we obtain

from the 215 program, which is the collection of phone numbers. We do not collect the names of people who own those numbers. It is the collection of what is called metadata. It has been described as simply the same data that is on our telephone bills that the Supreme Court has said is not a breach of the Fourth Amendment. It is not privileged for privacy purposes. It shows the date the call was made, the duration of the call, the number that was called, and that is it. And those numbers are put into a system whereby we can check against that a number that suspiciously is talking to a foreign operative in a foreign country. That then automatically triggers that you better look at this—it is kind of a ping—you better look at this one. Nobody has access, at this point, to any content related to the name of the individual until it reaches a level of suspicion that is vetted through six layers of oversight and then is sent to a court that looks at it to say: We agree with you or we don't agree with you. And if we agree with you, then it is the FBI who is alerted that they better look into this.

Now, there has never been a time since 9/11 when we have dealt with a higher threshold than we currently are dealing with. You hear about it every day. You read about it every day. ISIS has recruited more than 20,000, it is estimated—significantly more than that are those from 90 different foreign countries. It has made a direct threat toward the United States and its citizens. It is sponsoring and encouraging individuals to not only come over and train and join ISIS and then come back here and wreak havoc on the American people; it is also inspiring those, saying if you don't want to travel over here, just go out and kill somebody. Join the jihad from afar. You can be a part of what we are trying to accomplish simply by doing your own thing. We saw that happen down in Texas. We will see that in other places as people are inspired through ISIS, for whatever sick reason, to take up arms, to cause destruction, and to randomly kill and wreak havoc on the American public.

It has been offered that the House fix—the reform, which did have bipartisan support and did pass the House without a lot of debate—is the solution to this problem. Some agree it goes too far; some agree it doesn't go far enough. But there are problems with that particular FREEDOM Act, which the Senator from Vermont says is the golden grail here and will solve all the problems.

It is clear, and it is the testimony we have received from numerous officials in the counterterrorism business and in the intelligence business, that there are issues with this so-called FREEDOM Act fix that could render—well, No. 1, that do render the program less effective and could render it totally inoperative.

The fact that the NSA has not yet been able to come up with a program

which would ensure that we could have the kind of collection we need in the timeframe we need it—some of this is urgent, some of this is pending, some of this is imminent, and it already goes through layers that delay coming to a conclusion and this adds more.

Also, they have indicated the system is untested and exists in name only. We don't know how the new program would be implemented and we don't know how it would be operated. That is why many of us said: Look, for whatever reason, yes, we are at this point, and, yes, it expires at midnight. What we were trying to do before we left was get a short-term extension. We were negotiating. We think it should have been for a significant amount of time, until NSA could test out its program, but we were willing to go much less than that so we could have an opportunity to come back and debate this further and get to the bottom of some of the misrepresented information that has been sent out to the American people and have an opportunity to counter that and also work together to find ways, through working with the House of Representatives, to come up with a more effective bill that wouldn't put the country in more jeopardy or, as some experts have said, would undermine the entire program.

We obviously will be less agile with the House bill. It requires an expansive regulatory system to amass the level of oversight over the current program. I think the real problem is it requires no data retention mandate. The USA FREEDOM Act does not require companies to hold the data sought by the government. Therefore, the USA FREEDOM Act could be operationally useless as companies update their business model in response to changes in technology or market demand. The telephone companies—all 1,400 of them—many don't want to go through the expensive process of the oversight they need to have in the process. They want to sell phones. And they are hearing a lot from customers who basically say: I don't want to buy your phone if it is going to be subject to them listening to everything I do and say—being collected.

Well, first of all, that is factually wrong, but it is an error that has been said over and over on this floor by some Members. That is absolutely wrong. It is false. If we are going to go forward here, we need intellectual honesty about what the program is and what it isn't, and it shouldn't be labeled as something it isn't. I will address that at a later point in time.

But the USA FREEDOM Act, by not allowing retention for a fixed period of time, also lessens our ability to make this program effective. So I have much more to say on this, and I know we are going into caucus as a party to see how we might go forward, given where we are.

It was not necessary that we be here on a Sunday with the clock ticking toward midnight. We could have contin-

ued or we could have gone forward without getting to this particular point in time. But now we will have the opportunity—and, unfortunately, what it looks like is we will have the opportunity to debate this while the program expires.

That is a bet I didn't want to take—the bet being that nothing will happen if we don't have this tool in the amount of time that is going to be taken to now address this. That is running a risk I am not sure Members want to take. I don't want to be part of somebody who says this isn't important enough; therefore, we will let it expire and we will not extend it for a day or an hour or a month or a sufficient amount of time to come to a reasonable conclusion as to how we retain this very important intelligence-gathering tool to keep us safe from terrorists. To go dark on this is a risk that we are taking, and we are going to be responsible for our vote, whatever that vote is. I, personally, don't want the responsibility of saying: Oh, don't worry. Nothing is going to happen out there. The hundreds of hours that I spend in the Intelligence Committee tells me there is a lot that can happen out there.

Members have every right, if they are not on that committee—every right to access what we access. We have invited people to come down and see it for themselves, so they at least understand what it is and what it isn't. To my knowledge, only two have taken us up on that. There may be more I have missed. But some of those who have stated this program in a totally false way have the siren song to the people out there who think Big Government is in their bedroom, Big Government is taking every piece of information they have about themselves, and Big Government is storing this and "listening to all your phone calls." That is a bunch of hokum and it is wrong.

And for those who refuse to stand up and acknowledge that—because they have had access to the program and refused to take that access—have to bear the responsibility of sowing this wild theory and idea about Big Government in your bedroom and Big Government in your car and Big Government on your phone and Big Government collecting your emails and Big Government doing everything and storing it until the time that Big Government will come and take everything away from you.

I didn't come here to do that and this Senate isn't here to do that and we will not do that. That is why this program has more oversight than any other program in the entire United States Government, and we will put more oversight on there if that is necessary. I will stay up all night and stand over at NSA and make sure they are not listening to your phone calls. But it is irresponsible misrepresentation—irresponsible misrepresentation—to factually state a falsity and not tell the truth.

It is time we told the truth and it is time we stood up to this thing and make sure we are doing everything we can to protect Americans from threats of a lot of people and a lot of organizations that want to kill us all, that would like to see our heads on the chopping block. This is real in our country, as people who are trained by ISIS not only flock back here from Syria, but they inspire people here to pick up weapons and do harm to the American people.

I know the Senator from Arizona has a question.

Mr. PAUL addressed the Chair.

Mr. COATS. I have not yielded the floor.

Mr. PAUL addressed the Chair.

Mr. McCAIN. Mr. President, I ask for the regular order, and I want to ask the Senator from Indiana a question.

The PRESIDING OFFICER. The Senator from Indiana has the floor.

Mr. COATS. I would be happy to yield to the Senator from Arizona for a question.

Mr. McCAIN. Maybe the Senator from Kentucky should know the rules of the Senate, that the Senator from Indiana has the floor and the gentleman is open to respond to a question.

My question to the Senator from Indiana—and I want to say that his words are powerful and accurate.

Mr. PAUL. Mr. President, how much time remains on the clock for the Republican side?

Mr. McCAIN. I would ask the Senator from Indiana if he has seen—

Mr. PAUL. Mr. President, how much time is remaining?

Mr. McCAIN. I ask for the regular order.

The PRESIDING OFFICER. I think the Chair has made very clear that the Senator from Indiana has the floor.

Mr. COATS. Mr. President, I thank you.

I know the Senator from Kentucky understands that when a Senator has the floor, they are entitled to speak because he has used that rule himself.

Mr. McCAIN. Twice the Senator from Kentucky has not observed the rules of the Senate.

I would ask the Senator from Indiana, you have seen the events lately that are transpiring. ISIS has taken Palmyra. They are in the streets burning bodies, killing people, going to destroy 2,000-year-old antiquities, and at the same time Ramadi has fallen with thousands of innocent men, women, and children being massacred. At this time, isn't this program as critical as it has ever been since its inception, given the fact that the Middle East is literally on fire and we are losing everywhere?

Mr. COATS. It is more essential than ever, in response to the question from the Senator from Arizona. It is more necessary than ever, as we have seen a higher threat level since 9/11. Of course, we didn't know what the threat was in 9/11, so I don't know how far we have to

go back. But our intelligence today, whether it is any aspect of any of our intelligence agencies, they are sounding the alarm that we need to be as vigilant as possible. We need to, within the law—and we are operating within the law—use every tool possible to try to stop an attack on the American people. What happened on 9/11 was a catastrophe that none of us could have comprehended. A 9/11 with the possession of nuclear, radioactive, biological or chemical weapons would make New York look like just a small incident. It would be 3 million people instead of 3,000 people. I think we have an obligation to do what we can without invading anyone's privacy.

What we are trying to find is this balance between protecting privacy and protecting ourselves from terrorist attacks—protecting Americans from terrorist attacks. We have done this with this program. If what has been said about this program were true, if the falsehoods that have been said were true, I would be the first to line up and say: No, we can't breach the privacy of the American people by doing what they are doing. But the fact is none of it is true. There has not been one act of abuse of this program over the years it has been in place. It has more oversight and layers of oversight. As former Attorney General Mukasey said: For the government to violate and bypass this, it would make Watergate look like kindergarten activity. It would be a conspiracy that would include hundreds of people, and they would all have to swear that they would not breach their conspiratorial process here—a program that is overseen by the Judiciary Committee, by the Senate Intelligence Committee, the House Intelligence Committee, the body of the Senate has access to this and the body of the House—that is 535 people—by the executive branch, a program that was endorsed by Barack Obama, until he changed his mind, apparently, because the public was going the other way based on false information. People are out here basically making the accusations that they are making to try to take this program down and all we are trying to do is work with the House to find a reasonable way of keeping this tool alive—keeping Americans safe.

Mr. McCAIN. Will the Senator yield for a further question?

The PRESIDING OFFICER. Would the Senator suspend?

Under the previous order, all time for debate has expired.

Mr. PAUL. Mr. President, my understanding is there is still 5 minutes remaining on the opposition side. I request that time.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. I object.

Mr. PAUL. Mr. President, how can we have an objection when we already have a consent agreement that says we have 30 minutes of equally divided time and you still have 5 minutes remaining on the opposite side?

The PRESIDING OFFICER. The time was divided in the usual form, and the time for debate has expired.

Mr. PAUL. Mr. President, the time could not have been divided equally, because apparently somebody must have given one side more time than the other.

The PRESIDING OFFICER. The 5 minutes of time that was allotted to the Democratic side was unused, and it was equally divided at 23 minutes apiece.

Mr. PAUL. Mr. President, I was here for 30 minutes of the Republican side speaking. I sat at my seat for 30 minutes. It was not 23 minutes of equally divided time.

Mr. McCAIN. Mr. President, regular order—obviously people don't know the rules of the Senate. Maybe they should learn them.

Mr. PAUL. Mr. President, I request the remaining 5 minutes of time on the opposite side.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kentucky?

Mr. McCAIN. I object.

Mr. PAUL. Mr. President, I challenge the ruling of the Chair and request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. PAUL. I request a live quorum call.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. PAUL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PAUL. Mr. President, I ask unanimous consent to speak for 5 minutes—the 5 minutes that was remaining on the opposition side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PAUL. Mr. President, let us be very clear about why we are here this evening. We are here this evening because this is an important debate. This is a debate over the Bill of Rights. This is a debate over the Fourth Amendment. This is a debate over your right to be left alone. Justice Brandeis said that the right to be left alone is the most cherished of rights. The right to be left alone is the most prized to civilized men.

Let us be clear. We are here tonight because the President continues to conduct an illegal program. The President has been rebuked by the court. In explicit terms, the President has been told that the program he is conducting is illegal. Now, the President opines on television. The President wants to blame—he says: Anybody but me.

But you know what. The President started this program without congressional permission. Even the authors of the PATRIOT Act say that the PATRIOT Act in no way gives authority

to the President to collect all of your phone records all of the time. If there ever was a general warrant, if there ever was a generalized collection of information from people about whom there is no suspicion, this is it.

We are not collecting the information of spies. We are not collecting the information of terrorists. We are collecting all American citizens' records all of the time. This is what we fought the Revolution over. Are we going to so blithely give up our freedom? Are we going to so blithely go along and just say: Take it. Well, I am not going to take it anymore. I do not think the American people are going to take it anymore.

Eighty percent of those under 40 say we have gone too far—that this whole collection of all of our records all the time is too much. The court has said: How can records be relevant to an investigation that has not started? The court has said that even under these lower standards, even under these standards of saying that it would be relevant, all of the stuff they are collecting is precisely irrelevant.

Now people say: Well, they are not looking at it. They are not listening to it. It is the tip of the iceberg, what we are talking about here. Realize that they were dishonest about the program until we caught them. They kept saying over and over: We are not doing this. We are not collecting your records.

They were. The head of the intelligence agency lied to the American people, and he still works there. We should be upset. We should be marching in the streets and saying: He has to go. We cannot allow this. We cannot allow the rule of law to be so trod upon that we live in an arbitrary governmental world where they collect anything they want anytime they want.

This is the tip of the iceberg. They are collecting records through Executive order. They are collecting records through section 702. People say: How will we protect ourselves without these programs? What about using the Constitution? What about using judicial warrants? About the Tsarnaev boy, the Boston Bomber, they say: How will we look at his phone records? Get a warrant. Put his name on it. You can get a warrant. There is no reason in the world—the guy had already bombed us. Do you think anybody was going to turn down a warrant? We should have gotten a warrant before.

Get warrants on people we have suspicion on. The Simpson guy that was shot in Garland had already been arrested. We had suspicion.

Let's hire 1,000 more FBI agents. Let's hire people to do the investigation and quit wasting time on innocent American people. Let's be very clear why we are here: President Obama set up this program, the President Obama who once was against the PATRIOT Act. President Obama once said: You know what; we should have judges write warrants.

President Obama, who once believed in the Fourth Amendment, is the President who is now scooping up all of your records illegally. Then he feigns concern and says: Oh, we need to pass this new bill. He could stop it now. Why won't someone ask the President: Why do you continue? Why won't you stop this program now? The President has every ability to do it. We have every ability to keep our Nation safe. I intend to protect the Constitution.

The PRESIDING OFFICER. The Senator's time has expired.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess subject to the call of the Chair.

Thereupon, the Senate, at 5:11 p.m., recessed subject to the call of the Chair and reassembled at 6:14 p.m. when called to order by the Presiding Officer (Mr. WICKER).

USA FREEDOM ACT OF 2015— MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The majority leader.

Mr. MCCONNELL. Mr. President, before the recess, I tried to get a short-term extension of three provisions that will expire at midnight tonight: section 215, business records; section 206, roving wiretap authority; and the “lone wolf” provision. Unfortunately, those efforts were unsuccessful.

“Lone wolf” and roving wiretap are not—I repeat, not—the subject of controversy with the House bill. So I would propose that we extend at least the “lone wolf” and the roving wiretap authorities while we continue to litigate the differing views on section 215. More specifically, I would propose that we extend those two provisions—“lone wolf” and roving wiretaps—for up to 2 weeks.

UNANIMOUS CONSENT REQUEST

Mr. President, having said that, I ask unanimous consent that the Senate proceed to the immediate consideration of a bill, which is at the desk, to extend the expiring provisions relating to “lone wolf” and roving wiretaps for 2 weeks, and that the bill be read a third time and passed, and the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Kentucky.

Mr. PAUL. Mr. President, reserving the right to object, one of the promises that was given when the PATRIOT Act was originally passed was that, in exchange for allowing a less than constitutional standard, we would only use the actions against—

The PRESIDING OFFICER. Is there objection?

Mr. PAUL. Terrorists and against foreigners. We found that 99 percent of

the time, section 213 is used for domestic crime. I believe that no section of the PATRIOT Act should be passed unless our targets are terrorists—not Americans.

Mr. CORNYN. Mr. President, regular order.

The PRESIDING OFFICER. The Senator from Kentucky—

Mr. COTTON. Regular order.

Mr. PAUL. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, last week, I proposed giving the Intelligence Committee the time it would need to work toward the kind of bipartisan legislative compromise Americans deserve—a compromise that would preserve important counterterrorism tools necessary to protect American lives. That effort was blocked.

Just now, I proposed an even narrower extension that would have only extended some of the least controversial—least controversial—but still critical tools to ensure they do not lapse as Senators work toward a more comprehensive legislative outcome. But even that very narrow offer was blocked. I think it should be worrying for our country because the nature of the threat we face is very serious. It is aggressive, it is sophisticated, it is geographically dispersed, and it is not—not—going away.

As the LA Times reported, “the Obama administration has dramatically stepped up warnings of potential terrorist attacks on American soil after several years of relative calm.” The paper reported that this is occurring in the wake of “FBI arrests of at least 30 Americans on terrorism-related charges this year in an array of ‘lone wolf’ plots.”

So these aren’t theoretical threats. They are not theoretical threats. They are with us every day. We have to face up to them. We shouldn’t be disarming unilaterally as our enemies grow more sophisticated and aggressive, and we certainly should not be doing so based on a campaign of demagoguery and disinformation launched in the wake of the unlawful actions of Edward Snowden, who was last seen in Russia.

The opponents of this program have not been able to provide any—any—examples of the NSA abusing the authorities provided under section 215. And the record will show that, in fact, there has not been one documented instance of abuse of it.

I think it is also important to remember that the contents of calls are not captured. That is the general view, but it is an incorrect one. I will say it again: The contents of calls are not captured. I say this to the American people: If you have been told that, that is not correct. That is what I mean about a campaign of disinformation. The only things in question are the number dialed, the number from which the call was made, the length of the call, and the date. That is it. That is it. Detailed oversight procedures have

been put in place, too, in order to protect the privacy of Americans.

Now, I believe this is a program that strikes a critical balance between privacy on the one hand and national security on the other. That doesn’t mean the Senate still shouldn’t have the opportunity to make some changes to it. That is precisely the outcome I had been hoping to facilitate by seeking several short-term extensions. And considering all that has come to light about the House-passed bill in recent weeks, I believe this was more than reasonable.

The administration’s inability to answer even the most basic questions about the alternate bulk data system it would have to build under that legislation is, to say the least, pretty troubling—pretty troubling. And that is not just my view. That is the view of many in this body, including colleagues who have been favorably predisposed to the House bill.

In particular, I know Senators from both parties have been disturbed by the administration’s continuing inability to guarantee whether the new system would work as well as the current one or whether there would even be any data available to analyze. While the administration has let it be known that this nonexistent system could only be built in time if telephone providers cooperated in building it, providers have made it abundantly clear that they are not going to commit to retaining the data. They are not going to commit to retaining the data for any period of time unless legally required to do so, and there is no such requirement in the House-passed bill—none at all.

Here is how one provider put it: “[We are] not prepared to commit to voluntarily retain documents for any particular period of time pursuant to the proposed USA Freedom Act if not required by law”

Now, these are just a few of the reasons I thought it prudent to try to give the Senate more space to advance better legislation through committee consideration and regular order, with input from both sides. But, my colleagues, it is now clear that will not be possible in the face of a determined opposition from those who simply wish to end the counterterrorism program altogether. No time to try to improve the House-passed bill will be allowed because some would like to end the program altogether.

So this is where we find ourselves. This is the reality. So it essentially leaves us with two options. Option one is to allow the program to expire altogether without attempting to replace it. That would mean disarming completely and arbitrarily, based on a campaign of disinformation, in the face of growing, aggressive, and sophisticated threats—growing, aggressive, and sophisticated threats. That is a totally unacceptable outcome—a completely and totally unacceptable outcome. So we won’t be doing that.