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Senate

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. HATCH).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of all mercies, in whose love and wisdom lies all our hope, still our anxious hearts as we bring our weakness to Your might, our failure to Your perfection, and our smallness to Your greatness. From a world with its tragedies and setbacks, we turn for this hallowed moment to be still and know that You are God.

Continue to sustain our lawmakers. Save them from the dangers that lurk in a flawed judgment of confused reckoning and a narrow outlook. Bless the members of their staffs who labor with them to keep our Nation strong.

And, Lord, comfort the Biden family and all those who are grieving the loss of Beau Biden.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. HELLER). The majority leader is recognized.

USA FREEDOM ACT

Mr. McCONNELL. Mr. President, last night the Senate voted to advance the House-passed FISA bill. We will have a vote on that legislation as soon as we

can. On our way there, we should take some commonsense steps to ensure the new system envisioned by that legislation—a system we would soon have to rely upon to keep our country safe—will, in fact, actually work. The amendments filed last night would help do just that.

For example, one amendment would ensure that there is adequate time to build and test a system that doesn't yet exist. One amendment would ensure that there is adequate time to build and test a system that doesn't even exist yet. Another would require that once the new system is actually built, the Director of National Intelligence reviews it and certifies that it actually works. I will say that again. The second amendment would require that once the new system is actually built, the Director of National Intelligence reviews the new system and certifies that it will actually work. Amendment No. 3 would require simple notification if the providers decide to change their data-retention policies. It will just require them to notify us if the providers decide to change their data-retention policies. Three amendments to improve the bill.

These fixes are common sense, and whatever one thinks of the proposed new system, there needs to be basic assurance that it will function as its proponents say it will. The Senate should adopt these basic safeguards.

I had hoped to see committees working hard to advance bipartisan, compromise FISA legislation this week, which is why I had offered several temporary extensions of the existing program to allow the space for that to occur. But these proposed short-term extensions were either voted down or objected to, including a very narrow extension of some of the least controversial tools contained within the program that we are considering.

So this is where we are. It now falls on all of us to work diligently and responsibly to get the American people

the best outcome that can be reasonably expected in this reality with which we are confronted. That is my commitment, and I know many of my colleagues share it as well.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GARDNER). Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. JOHNSON). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Florida.

REMEMBERING BEAU BIDEN

Mr. NELSON. Mr. President, I wish to speak about the FISA bill, but before I do, I want to express what is in every one of our hearts—our grieving with the JOE BIDEN family. That family has had more than its share of tragedy, but what it has produced is, in the case of Beau Biden, an extraordinary public servant who served his country not only by elected office but by serving in uniform as well.

Most of us in this Chamber know the Biden family. The dad and the now mom, JOE and Jill, are extraordinary human beings who have contributed so much. It is not necessarily easy to be in public service as long as the Vice

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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President has been and still raise a family that is so extraordinarily accomplished and contributes so much. Then to have that eldest son taken from him is like a dagger into our hearts.

So we grieve with the family. We grieve for them and with the Nation. I just wish to put that on the record.

NATIONAL SECURITY LEGISLATION

Mr. NELSON. Mr. President, we are here because the Senate is not functioning. We were here last night because the Senate is not functioning. Oh, it is functioning according to the rules, which say that you have to go through this arcane procedure of cloture on the motion to proceed and get 60 votes before you can ever get to the bill. Once you get to the bill, then you file another motion for cloture. The Senate rules say that there are 30 hours that have to run unless, as has been typical of Senate business, there is comity, there is understanding, and there is bipartisanship. But one Senator can withhold unanimous consent, and that has been done—so the 30 hours.

Now, normally that may be standard procedure for the Senate, but it is getting in the way of our national security. At midnight last night the law that allows our intelligence community to track the emails and the phone calls of the terrorists evaporated. It won't be reenacted until sometime later this week because of the lack of unanimous consent.

But this Senator from Florida is not putting it at the feet of just the one Senator who is withholding the unanimous consent. This Senator from Florida is saying that this should have been planned on over a week ago. This Senator is saying that we should have gone through the laborious procedures—not assuming that we were going to have the votes last night, not assuming that there was going to have comity and unanimous consent. This Senator thinks that we should have done this because of the urgency of national security.

It is interesting that this Senator from Florida comes to the floor with mixed feelings. I voted for the Leahy bill, which is identical to the House bill, but I did that because we didn't have any other choice. When I had another choice, I voted for Senator BURR's—the chairman of the Senate Intelligence Committee—version, which was to continue existing law. I did so because I clearly thought that was in the interests of our national security.

But since that is not the prevailing vote of the Senate, we need to get on with it and pass the House bill. Then I would urge the chairman of the Intelligence Committee, who is on the floor, that—down the line—the 6-month transitional period from the old law to the new law be extended with a greater transition time to 12 or 18 months. I

would further urge the chairman of the Intelligence Committee that as to a major flaw in the bill passed by the House, which we will eventually pass this week, we add to it a requirement for a certain amount of time that the telephone companies would have to keep those telephone business records, so that if there is an urgency of national security going through the FISA Court, those records would be available to the intelligence community to trace the telephone calls of the terrorists. That would be my recommendation, and I see the chairman nodding in somewhat agreement.

I hope we will get on. I hope better hearts and minds will prevail and that we can collapse this period of darkness where there is no law governing emails, phone calls, cell phones, et cetera, as we try to protect ourselves from the terrorists.

I would hope that this would be collapsed into a much shorter time instead of having to wait until late Tuesday or Wednesday or Thursday of this week.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

ORDER OF PROCEDURE

Mr. BURR. Mr. President, I ask unanimous consent that all morning business time be yielded back and the Senate resume consideration of H.R. 2048.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

USA FREEDOM ACT OF 2015

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2048, which the clerk will report.

The senior assistant legislative clerk read as follows:

A bill (H.R. 2048) to reform the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes, and for other purposes.

Pending:

McConnell/Burr amendment No. 1449, in the nature of a substitute.

McConnell amendment No. 1450 (to amendment No. 1449), of a perfecting nature.

McConnell amendment No. 1451 (to amendment No. 1450), relating to appointment of amicus curiae.

McConnell/Burr amendment No. 1452 (to the language proposed to be stricken by amendment No. 1449), of a perfecting nature.

McConnell amendment No. 1453 (to amendment No. 1452), to change the enactment date.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I rise while my good friend from Florida is on the floor to say that I wish I could have a magic wand with which I could collapse this time. But as he knows, under Senate rules, one Member can demand for the full 30 hours, and we are in a process like that. My hope is that there will be accommodation as we go through this because I think most Members would like to resolve this.

Let me say specifically to his two points that there is a substitute amendment that has the USA FREEDOM language with two additional pieces. Those two pieces are a 6-month notification to NSA by any telecom company that intends to change its retention program. As my good friend from Florida knows, in part, trying to move a bill is making sure we move a bill that can be passed and accepted by the House of Representatives. Mandatory retention right now does not meet that threshold. But I hope they will accept this requirement of notification of any change in their retention program, as well as a DNI certification at the end of whatever the transition period is.

Now, there will be a first-degree and a second-degree amendment, in addition to that, made in order and germane. The first-degree amendment will be to extend the transition period to 12 months. So we would go from 6 months—not to 2 years, as my colleague from Florida and I would prefer, and not to 18 but to 12. I think that is a happy spot for us to agree upon.

Then there will be a second-degree amendment to that to address some language that is in the bill that makes it mandatory on the part of the Justice Department that they get a panel of amicus individuals. What we have heard from the Justice Department and gotten a recommendation on is that that be voluntary on the part of the courts. We will second-degree that first-degree amendment with that language provided to us by the courts.

I would like to tell my colleague that by tomorrow afternoon, I hope, we can have this complete and send it to the House, and by the time we go to bed tomorrow night this might all be back in place.

I remind my colleagues that any law enforcement case that was in progress is not affected by the suspension of the roving or "lone-wolf" provisions. They are grandfathered in so those investigations can continue. But for the 48 hours we might be closed, it means they are going to delay the start of an investigation, if in fact they need those two tools.

From the standpoint of the bulk data program, it means that is frozen. It can't be queried for the period of time, but it hasn't gone away. Immediately, as we reinstitute the authorities in this program, that additional data will be brought in and the process that NSA would go through to query the data