

Turtle Mountain tribes in my home State of North Dakota.

This bill has undergone many thoughtful efforts on the part of many people and plenty of thoughtful consideration, and it has gone through regular order in the Senate. It passed unanimously out of the Senate Committee on Indian Affairs on February 4, 2015. I am pleased this bill now has passed the full Senate so these children can receive the protection they deserve.

With that, I yield the floor.

Ms. HEITKAMP. Mr. President, I today can say that I am elated that the Senate unanimously passed my legislation that would create a commission on the status of Native American children.

This bipartisan bill, which was first introduced when I came to the Senate—in fact, it was my first bill—will study the challenges facing Native American kids, including poverty, crime, high unemployment, substance abuse, domestic violence, and dire economic opportunities, as well as making recommendations on how to make sure Native American youth receive the tools and educational resources they need to thrive.

This is not a new issue for me. This is an issue I worked on when I was North Dakota's attorney general and I saw the challenges for so many of our children living in Indian Country. I saw that sometimes they are the most forgotten children in America. I fought for Native families all during my time as North Dakota's attorney general, pledging to improve the lives of Native American youth once I was positioned to do so.

So this is truly an important day for tribes and Native communities, as well as Native children and their families. But we can't stop the momentum. I look forward to working with my colleagues in the House of Representatives to uphold the Federal Government's trust responsibility to Indian tribes and to pass this bill, because standing up for Native children is an issue on which we should all agree.

The Commission on Native Children will work to identify complex challenges faced by Native kids in North Dakota and across the United States. The comprehensive and first-of-its-kind commission would conduct an intensive study on issues affecting Native American youth.

The 11-member commission will issue a report to provide recommendations ensuring Native kids have access to sustainable wraparound systems, as well as the protection, economic resources, and educational tools necessary for success in both academia and in their careers.

In addition to the Commission on Native Children, the subcommittee will also provide advice in order to ensure that those in Washington don't lose sight of these children.

I thank all of my colleagues who have joined me in this effort, but I par-

ticularly want to single out Senator LISA MURKOWSKI from Alaska. She has been a co-champion and a copartner. She sees the same issues among Alaska Natives as I see among the Plains Indians in my State. And we have named this bill after two great educational and spiritual leaders of our States.

In my case, my bill is named after Alyce Spotted Bear, former tribal chairwoman of the Mandan, Hidatsa, and Arikara Nation in North Dakota. Alyce was a passionate advocate for Native children and a recognized leader in education. Unfortunately, she passed away much too soon, but I know her spirit is here in this bill.

I look forward to getting this bill passed in the House of Representatives. I look forward to the report, and I look forward to all of us pulling in the same direction to make sure all of our children are protected, all of our children are loved, and all of our children are given equal opportunity, including those children in Native American homes and those children in Indian Country.

I yield the floor.

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USA FREEDOM ACT OF 2015—  
Continued

The PRESIDING OFFICER. The majority whip.

Mr. CORNYN. Mr. President, I would ask the Senate's indulgence. I actually have three topics that I need to discuss here today. One topic involves the historic flooding that we have experienced in Texas and the consequences of that, also the President's signing the Justice for Victims of Trafficking Act, and lastly, the bill that is before us on the floor today, which is another tool in the toolbox of the national security apparatus in this country to help keep Americans safe.

TEXAS FLOODS

First, Mr. President, let me talk about the flooding and storm damage that has affected Texas this last week or so. Over the course of a month, Texas has faced a deluge of storms and rain, and according to Texas A&M climatologists, May was the wettest month on record. Texas has been in a drought for a number of years now, and we are glad to get the rain, but we just wish that Mother Nature had spread it out over a longer period of time. The National Weather Service reported yesterday that in May Texas skies shed 37.3 trillion gallons of water, which translates into almost 8 inches of water covering the entire State—a state more than 268,000 square miles large.

Unfortunately, this historic volume of water quickly turned into tragedy and massive destruction. Many Texans have experienced great loss. Some have lost their homes as the rivers came down without any warning and washed their houses from their foundation. But, of course, losing your home does not compare to the heartbreak of losing a loved one, and tragically, at least

24 people have lost their lives in the floods.

As usual, despite the direst of circumstances, the Texas spirit remains alive, and we see many volunteers continuing to dedicate their time and efforts to lend a helping hand. In Wimberley, in central Texas, a town hit particularly hard by flooding and the overflowing Blanco River, a group of students and adults helped to organize a makeshift market in the high school gym. This same group helped consolidate and coordinate donations to give to those most in need. Locals in the town of about 2,500 people have come to refer to this as the "Wimberley Walmart."

Fortunately, stories such as these of Texans helping one another are not isolated—far from it, in fact. Communities across the State are organizing donation drives to help those who have lost all their material possessions, and many individuals have selflessly risked their own lives to help rescue strangers from the floodwaters and the rubble. To these volunteers, and to the many first responders who are working tirelessly, we all thank you from the bottom of our heart. During these hard times, you not only provided relief but you also provided perhaps something more important, and that is hope.

I spoke to several local officials over the last couple of days, including Nim Kidd, who is chief of the Texas Department of Emergency Management. Nim is doing a terrific job in this very difficult position, and he is performing like the experienced public servant that you would come to expect, particularly in dealing with disasters such as this. Nim has said there is a lot of work to be done. He told me that the rivers may not actually be within their banks for 2 more weeks, assuming that we don't get more rain.

This weekend, with recovery efforts in full swing and Texans beginning the painstakingly slow process of answering the painful question of what now, several Texas rivers remain at flood stage in more than 100 different locations. So as we start to recover, we are reminded that we need to remain vigilant.

I was encouraged to hear Nim's report that the assistance of FEMA and other Federal agencies has been making a big difference. He was highly complimentary of their contributions. FEMA, as just one example, has rapidly deployed resources to help assess the damage done in local communities, and we were both glad to see the President quickly grant Governor Abbott's request for a major disaster declaration on Friday night, which will help Texans get the resources they need. I promised Nim and others I spoke to that I would continue to work with Governor Abbott and our State's congressional delegation to make sure that the Federal Government provides all the help Texans deserve during this difficult time.

So, to those suffering today, I want to offer my deepest condolences and

prayers. We will continue to do everything we can here in Washington, in Austin, and in local communities that have been so severely affected, to give Texans the help they need. We have no time to lose in getting these communities back on their feet. I know the people of Texas will continue to help their neighbors across the State during their time of need to ensure that each affected community will make the fullest and fastest recovery possible.

JUSTICE FOR VICTIMS OF TRAFFICKING ACT

Mr. President, on the second topic, on Friday, the President signed into law the Justice for Victims of Trafficking Act. I know I speak for all those involved in the long journey on which this legislation has led us when I say that I am thrilled that we are able to mark this milestone. This is a perfect example of Congress working together in a bipartisan way along with the President to try to do something to help the most vulnerable people in our society—the victims of human trafficking. This is an important day, as it shows to both the victims of human trafficking as well as to the predators who exploit them that Congress, on both sides of the Capitol and on both sides of the aisle, takes this issue seriously.

I want to express my gratitude to the organizations and the people who have helped get this done, lending countless hours and endless expertise to this cause. Without their advocacy and their determination, this would not have been possible. I thank in particular groups such as Rights4Girls, Shared Hope International, the National Association to Protect Children, the Coalition Against Trafficking Women, and End Child Prostitution and Trafficking.

It is also important to remember whom this bill is for, and of course, it is for the victims—typically, a young girl between the ages of 12 and 14 who may have left home expecting some adventure or something else other than what they ultimately experienced. Many of them find themselves victims of modern day slavery and victims of habitual sexual abuse. This is for women such as Melissa Woodward, whom I have met. She is from the Dallas-Fort Worth area. At just 12 years old, Melissa was sold into the sex trade by a family member—as hard as that is to conceive of. Her life became a prison. She was chained to a bed in a warehouse and endured regular beatings and was raped. She was forced to sexually serve between 5 and 30 men every day. Melissa said that at one point she wished she was dead. As heartbreaking as her story is—and it is heartbreaking—it is good to know that strong people such as Melissa—along with the help we can give and others who care for them can give and with those who can help them from living a life of victimhood—can be transformed by their experience and regain a new and productive life. So with this law we begin to provide for people such as Me-

lissa the help they need to heal, and, importantly, to treat her and others as the victims they are and not as criminals. While I am thankful for what will be accomplished through this legislation, my hope is that we continue to fight the scourge of human trafficking using this law as the first step of many.

Mr. President, I want to speak about the effort to reauthorize the critical provisions of the PATRIOT Act that expired at midnight last night.

As others have observed, there has been a lot of misleading rhetoric and downright demagoguery about this topic. The issue is pretty straightforward and simple. This is about how we use all of the tools available to us to keep our Nation safe amidst pervasive and growing threats, while at the same time preserving our essential liberties. This is not about trading one for the other. This is about how we achieve the correct balance.

Despite our efforts last night, this Chamber was unable to come up with even a short-term solution to ensure that the key provisions—including section 215—of the PATRIOT Act did not expire. We know that any single Senator could object to this extension that would allow us to continue our work without allowing this program to expire. Unfortunately, three of our colleagues chose to object to the common-sense unanimous consent request to allow those temporary extensions while the Senate and the House continued their work.

It is important to remember that these provisions of the law were created after September 11 and were designed to equip those investigating terrorism with the basic tools used by ordinary law enforcement. Why in the world would we want to deny law enforcement the investigatory tools they need to keep America safe from terrorist attacks? That is what section 215 did and does and will do again once we resurrect it.

Before it expired at midnight, these provisions helped our intelligence and law enforcement officials keep the country safe. As I think about this, and in discussing it with Chairman BURR and others who are very concerned about the safety and security of our country and who are determined to protect the country by making sure that our counterterrorism efforts maintain every available legal tool consistent with our civil liberties, I think what has happened is we have fallen victim again to the pre-9/11 mentality of considering counterterrorism efforts to be a law enforcement matter alone. Of course, the Fourth Amendment to the Constitution, which prohibits unreasonable searches and seizures, was designed primarily in a criminal law enforcement context to make sure that American citizens' privacy was protected. But what many of those who object to using these provisions fail to acknowledge is that our intelligence community has to be able

to investigate and detect threats to the American homeland before they occur.

After 9/11, where almost 3,000 people lost their lives, there was plenty of time to do a criminal investigation and law enforcement action, but we had failed in our most essential obligation, which is to detect these threats ahead of time and to prevent them from ever occurring.

Importantly, as we discussed the week before last, section 215 in particular included vigorous oversight measures. It is important for people to understand that the executive branch—in other words, the White House—and the legislative branch, which is both Houses of Congress, and the courts are all very much engaged in the vigorous oversight of these tools used to protect the American people. By taking this tool away from those investigating the constant threat stream to American citizens, we have unfortunately given terrorists an advantage right here in our own backyard.

As we have reiterated over and over that these threats to our homeland are real and they are growing. Why in the world would we take time to gamble with our national security?

Secretary of Homeland Security Jeh Johnson said that our country has entered “a new phase in the global terrorism threat” as the so-called Islamic State or ISIL continues to encourage people right here at home to take up the cause of global jihad. Perhaps, to me, the best and most concrete examples are events such as what happened in Garland, TX, just a few weeks ago, when two people who had been communicating overseas with representatives of the Islamic State were incited to take up arms against their fellow citizens here in the United States of America. Why in the world would we want to deny our law enforcement and intelligence authorities lawful tools available to them to be able to identify people plotting threats against the homeland and to prevent those threats from actually being carried out?

Thank goodness, due to the vigilance of local police and other law enforcement authorities, what could have been a bloodbath in Garland, TX, was averted. Why in the world would we want to take away a tool available to our intelligence and law enforcement authorities and raise the risk that an attack here in the homeland be successful rather than thwarted?

This is not just something that happened in Garland. A few weeks ago, FBI Director James Comey described the widespread nature of the threats—so widespread, in fact, that he said all 56 field divisions of the FBI have opened inquiries regarding suspected cases of homegrown terrorism. So let me repeat. Every FBI field division in the country is currently investigating at least one suspected case of homegrown terrorism.

As my colleagues must know, we do not have to go very far to find other examples like the one I mentioned that

manifested itself in Garland. We read about examples regularly. Just 2 weeks ago, also in my home State of Texas, the FBI arrested a man who had reportedly pledged his allegiance to the leader of ISIL. According to the FBI, he is but one of hundreds of ISIL sympathizers here in the United States, which ought to alarm all of us, ought to be a call to vigilance and to make sure we maintain every available legal tool consistent with civil liberties to protect our citizens.

So I think it is obvious that section 215 and the two noncontroversial national security provisions at issue should not have been allowed to expire, but unfortunately they were, and now it is our responsibility to fill that gap by passing this legislation and taking up the important amendments, which will actually strengthen the House bill.

We know our country and our people are the target of terrorists again, and we need to do everything we can to stop them. Well, my initial preference was to extend these portions of the PATRIOT Act for a short period of time so we could begin the debate and discuss the next best move to address these issues without giving the terrorist any advantage by handicapping the men and women committed to protecting our homeland.

At a time when the threats to our country are increasing, we should be enabling our intelligence officials and law enforcement with the tools they need and not stripping them of the authorities they require in order to protect us. Clearly a full extension of section 215, which was easily extended in 2011, is not possible at this time. But the last thing any one of us should do is allow this program to continue to remain dark.

I encourage our colleagues to join me in quickly working together to reauthorize these critical provisions. Every day we allow these authorities to remain expired, our intelligence officials are forced to act with one hand tied behind their back.

We plan to make minor improvements to the House-passed bill, and I think they make a lot of sense, things such as actually getting a certification by the Director of National Intelligence and this plan to let the telecoms continue to hold this information and then, after a court order is provided, allow that search. But certainly we should want to know whether this actually will work in a way that is consistent with our national security.

So, essentially, the House provisions are the base bill here, but I think Chairman BURR and others on the Intelligence Committee have recommended some very positive, commonsense improvements which will make this bill better. Working together, the Senate and the House, I think we can make sure these necessary authorities are restored.

As elected representatives of the American people, it is our duty to make sure the balance between phys-

ical safety and civil liberties is struck. We will do that again. We can do that responsibly by extending these authorities and coming together to find a long-term solution that keeps these invaluable tools in place.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I thank the majority whip for his comments and for his support of the extension of 215 and for what I think are some very reasonable changes to it. Some of what the Senator from Texas said took me back to some of the hearings I know the Presiding Officer was in where intelligence officials were asked about this transition. They were asked very simply “Will it work?” and the answer they gave was “I think so.” To an institution such as Congress, where our No. 1 responsibility is the defense of the country, “I think so” is not the answer on which you base the change of a program. Therefore, that is why there is a debate in Washington right now—now in the Senate, soon to be with the House—as to whether 6 months is sufficient time to be able to address it.

I know the Presiding Officer of the Senate heard individuals from the Justice Department say: Well, if this does not work, we will get back to you on changes.

One of the reasons this tool is in place is because we identified shortcomings in our capability to identify terrorists post-9/11.

Let me revert back—and I hate to go to history, but on 9/11, as the majority whip said, there was the loss of almost 3,000 lives, American and international lives. Washington, New York—could have been this building had some brave passengers not found out what they were up to and stopped them.

I remember those days and weeks and months right after 9/11 as a member of the House Intelligence Committee. There are not many of us left who were here. I think only 40 percent of the Senate was here on 9/11. What were the questions that went through our minds? Who did this? Why did they do it? How wide was the plan to attack us? We had to start from a dead stop and try to figure out the answer to all of those questions. It is amazing that in a very short period of time we were able to construct tools that made sure that America would never be faced with questions such as those again and that if we were, it would be a very short period of time, not weeks and months and in some cases years to connect the dots and try to figure out how to keep this from happening again. Section 215 was one of the tools that was created as a result of 9/11.

I revert back to the Director of the FBI, who said last year that had section 215 been in place prior to September 11, the likelihood is that we could have connected the dots between a known terrorist we lost track of by the name of Al Mihdhar, who traveled from Kuala Lumpur to San Diego be-

fore we had a no-fly list, who communicated via cell phone with a terrorist cell operating out of Yemen—we had the numbers out of Yemen; we just did not have the number of Al Mihdhar. Had 215 been in place, we could have tested the terrorist cell phones against the database we had. The FBI Director’s own words: We probably would have stopped that component of 9/11.

Al Mihdhar and his roommate, I believe, were the two who flew the plane into the Pentagon. Would it have captured everybody? Possibly not. Would identifying two individuals incorporated in a cell inside the United States have allowed the FBI to work through traditional means of investigation and find the rest of that cell, those planes directed—two planes toward New York and that fourth plane directed to the Capitol? Maybe. Maybe it would have.

Maybe when are you trying to stop something, it is good, but when you are talking about eliminating something, “I think we can do it” does not meet my test. That is why one of the amendments I will ask my colleagues to vote on is an amendment to make the transition period not 6 months but 12 months. It is to make sure we have allowed the NSA a sufficient amount of time to technologically prepare the telephone companies to be able to search their data in a timeframe that we need to get in front of an attack versus in back of an attack.

It is very simple: If it happens in front, it is intelligence. If it happens in back, it is an investigation. It is a legal investigation. It has already happened. We are trying to make sure we stay in front.

I would like to take a moment to go over some myths about the PATRIOT Act.

Here is myth No. 9: The President put in place two panels—a review panel and another one called the Privacy and Civil Liberties Oversight Board—and, interestingly, both panels told him the same thing: that what he was doing was illegal.

Fact: President Obama’s review panel never opined on the legality of the metadata program. It said the question of the program’s legality under the Fourth Amendment “is not before us,” and it is not the review panel’s job to resolve these questions of whether the program was statutorily authorized.

Myth. Fact.

Myth No. 8: The national security letter is similar to what we fought the Revolution over.

I am not a lawyer, but given what we have been faced with since September 11, I think it would have been easier to go to law school than to try to figure out some of these things. The national security letter, despite its ominous-sounding name, is nothing more than an administrative subpoena. It has the authority equivalent to the authority postal inspectors employ to investigate mail fraud or IRS agents use to investigate tax fraud. Postal inspectors and

IRS agents do not need judicial authorization to issue an administrative subpoena. Our Framers would likely be embarrassed if the post office had more authority to investigate postal fraud than the Federal Government had to protect us from terrorism.

Before 215, the FBI would issue a national security letter that gave them expansive investigatory tools. Now, they could not do it in a timely fashion, but eventually they could not only get to a search of telephone numbers, they could search financial records, and they could search anything about an individual.

Let me remind my colleagues that what we are talking about in section 215, the metadata program—we have never identified an American. All we have is a pool of telephone numbers with no person's name attached to them, and we collect the date the call was made, the duration of the call, and the telephone number that it talked to. The only time that information can be queried is when we have a foreign telephone number that we know to be the telephone number of a terrorist. Where we were before was much more expansive with a national security letter, but it was not timely, and if you want to be in front of an act, you have to be timely. That is how 215 was created.

Myth No. 7: NSA collects your address book, buddy lists, call records, et cetera, and then they put them into a data—I think the program is called SNAC—they put it all into this data program and they develop a network of who you are and who your friends are.

Myth.

Here is fact: SNAC is the National Security Agency Systems and Network Attack Center, which, among other things, publishes a configuration guide to assist entities in protecting their networks from intrusion. Its work could not be further from the allegation made.

Myth No. 6: Executive Order 12333 has no congressional oversight.

Boy, that is a strange one to the Intelligence Committee, which spends a lot of time on oversight of 12333. It is simply wrong. S. Res. 400 of the 94th Congress created the Select Committee on Intelligence. CRS—the Congressional Research Service—points out that the President has a statutory responsibility to “ensure that the intelligence committees are kept fully and currently informed of the intelligence activities of the United States.” The committee routinely receives reports on such matters, including reports on NSA activities under Executive Order 12333. It is a part of the committee's mandate that we do successful oversight, and it is a requirement of any President that they make sure their administration fully cooperates and reports to both the Senate select committee and the House select committee.

Myth No. 5: The President started this program by himself. He did not tell us about it. Maybe one or two people knew about it.

Again, that is factually incorrect. Every Senator was put on notice of the program's existence in 2010 and again in 2011. My gosh, it has been a national—international debate over the last several weeks.

Myth No. 4: The PATRIOT Act goes from probable cause, which is what the Constitution had, to articulable suspicion, down to relevance.

This statement conflates issues. Articulable suspicion and relevance are not two different standards for the same thing. They both must be present—both must be present—in the metadata program.

FISA, as amended by section 215 of the PATRIOT Act, allows the government to seek a court order requiring the production of “tangible things” upon a statement—articulation—of facts showing “there are reasonable grounds to believe” those things are “relevant” to an authorized investigation. This allows the government to seek call records from telecommunications companies. Then, when those records have been compiled into a database, that database can only be queried upon a reasonable articulable suspicion that the number to be queried is associated with a particular foreign terrorist organization.

We keep getting back to this, and of all the conversations that are had on this floor about intrusion into privacy—one, let me state the obvious fact again. It is hard for me to believe we have invaded anyone's privacy when we have done nothing but grab a telephone number and we have no earthly idea to whom it belongs. And the only reason we would be concerned with that telephone number is if we pull a foreign terrorist telephone number and we search it and find somebody in America they have talked to. That is it. That is the entirety of the program, and it is all predicated on the fact that we don't search any—we don't query any data unless we have a foreign terrorist telephone number known, and that is what triggers the program to begin to meet the threshold of the court for a query of the information.

Myth No. 3: The FISA Court has somewhat become a rubberstamp for the government.

First, if that characterization is correct, then the Federal criminal wiretap process is even more of a rubberstamp for the government. The approval rate for title III criminal wiretaps is higher than the approval rate for FISA applications.

Second, this claim does a disservice to the practice of the FISA Court, where there is often a back-and-forth between the government as applicant and the court. Again, this is not unlike the criminal wiretap process. The government often proposes to make an application before making its final application. The chief judge of the FISA Court has said it returns or demands modifications on these proposed applications 25 percent of the time. In this respect, the high approval rate of FISA

applications does not “reflect the fact that many applications are altered prior to final submission or even withheld from final submission entirely, often after an indication that a judge would not approve them” because it had not met the threshold.

Third, the government has every interest in self-selecting only meritorious applications to bring to the court. The government is a repeat player at the FISA Court. It has a well-earned reputation as a broker of candor before the court, and there would be significant reputational costs to bringing nonmeritorious applications to the court.

Let me sort of put in layman's terms what that is. The current wiretap standard—equivalent to going to a FISA Court—approves at a 25-percent higher rate than the FISA Court. And the FISA Court is the court that expedites time-sensitive investigations and time-sensitive intelligence requests.

Myth No. 2: The problem in the FISA Court is that when they take you to this court, it is secret.

True, it is secret, but so are any other judicial hearings where classified information is before to the court, and that court shuts down and goes into a nonpublic setting, just the way this institution does. We will do it as we get into the appropriations bills, and when we get into classified, sensitive appropriations, these doors will shut, the Gallery will be cleared, the TVs will be cut off, and we will do our business on secret, classified information.

It is only realistic to believe that the court—especially the court that hears the most sensitive cases—would only hear those cases in secret because the cases cannot be presented in public.

The last, No. 1: The bulk collection of all Americans' phone records all of the time is a direct violation of the Fourth Amendment.

The Fourth Amendment protects against unreasonable searches. A search occurs when the government intrudes upon “a reasonable expectation of privacy.” The Supreme Court has noted “that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.”

The Court has also squarely determined that a person does not have a Fourth Amendment-protected privacy interest in the numbers he dialed on his phone. Telephone companies keep call records for billing purposes. When the government obtains those records from a third-party telecommunications provider, a search has not taken place for constitutional purposes, and therefore a warrant is not required.

This program has been approved over 40 times by the FISA Court to exist. The program was instituted by the executive branch. The executive branch could end the program today. Why don't they? They don't because this program is effective. This program has thwarted attacks here and abroad.

I know individuals have come on the floor and they have said: There is absolutely nothing that shows that section 215 has contributed to the safety of America.

I can only say that they are factually challenged in that. You would not have the majority of the Intelligence Committee on floor lobbying for this program to continue in its current form. Now we know that is not going to happen, so we are trying to reach a modification of the current language so, in fact, we have a greater comfort level that the intelligence community can be in front of attacks and not behind them.

I remind my colleagues that hopefully tomorrow afternoon we will be at a point where we are ready to vote on amendments. There will be three amendments to the USA FREEDOM Act.

The first one will be a full substitute. It will take all the identical language of USA FREEDOM with two changes:

One, it will require the telephone companies to notify the U.S. Government 6 months in advance of any change they make in their retention policy of the data, the telephone numbers. I think it is a very reasonable request that they give us 6 months' notice if, in fact, they are going to reduce the amount of time they keep that data.

The second piece is that we direct the Director of National Intelligence to certify at the end of the transition period that we can successfully make the transition and that the technology is in place at the telephone companies, provided by the government, that they can query those numbers—in other words, that they can search it and take a foreign terrorist telephone number and figure out whether they talked to an American.

In addition to that substitute amendment, there will be two additional amendments.

The first one will take the transition period that is currently 6 months in the bill and will simply make it 12 months. If I had my preference, it would be 24 months, but I think this is a fair compromise. And my hope is that, matched with the certification of the DNI, we will be prepared to transfer this data but to continue the program in a seamless fashion, although it will add some time—yet to be determined—to how quickly we can make the identification of any connection of dots.

The second amendment very specifically will be addressing the amicus provision in the USA FREEDOM Act. I am going to talk about amicus a little later, but let me just say for my colleagues that in the USA FREEDOM Act, in numerous places, it says that the courts shall provide a friend of the court.

I am not a lawyer, but my understanding from those who are lawyers is that “shall” is an indication of “you must.” The courts have told us that

will be cumbersome and difficult and delay the ability of this process to move forward. So the courts have provided for us language that changes it to where the FISA Court can access a friend of the court when they feel it is necessary but not be required to have a friend of the court regardless of what their determination is.

We will talk about that over the next just shy of a day, but it is my hope to all the Members that all three of these amendments can be dealt with before 24 hours is up and that passage of the USA FREEDOM Act as amended by the Senate can be passed to the House for quick action by the U.S. House and hopefully by the end of business tomorrow can be signed by the President and these very important programs can be back in place.

I would make one last note—that I am sure Americans find it troubling that this program is going to be suspended for roughly 48 hours. In the case of investigations that are currently underway, they are grandfathered and the “lone wolf” and roving wiretap can still be used, but new investigations have to wait for the reauthorization of this bill. From the standpoint of the metadata program, last night at 8 o'clock it could no longer be queried, and it won't be able to be queried until this is reauthorized.

There is time sensitivity on us passing this, just as there is time sensitivity in getting the language of this bill correct so that, in fact, we can query it, we can connect the dots, and we can get in front of an attack prior to the attack happening.

I urge my colleagues in the Senate to spend the next 24 hours understanding what is in the USA FREEDOM Act. Look at the amendments. They are reasonable. They don't blow up this piece of legislation. They provide us the assurance that we can make this transition and that after we make the transition, the program will still work.

I urge my colleagues to support all three amendments.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. ERNST). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McCONNELL. Madam President, it is time to get the job done on FISA. It is time to get the job done.

From the beginning of this debate, I had aimed to give Senators a chance to advance bipartisan compromise legislation through the regular order. That is why I offered extension proposals that sought to create the space needed to do that. But as we all know, by now, every effort to temporarily extend important counterterrorism tools—even non-controversial ones—was either voted down or objected to.

So here is where we are. We find ourselves in a circumstance where important tools have already lapsed. We need to work quickly to remedy this situation. Everyone has had ample opportunity to say their piece at this point. Now is the time for action.

That is why, in just a moment, I will ask for unanimous consent to allow the Senate to consider cloture on the House-passed FISA bill, along with amendments to improve it, today—not tomorrow but today.

There is no point in letting another day lapse when the endgame is clear to absolutely everyone—we know how this is going to end—when we have seen such a robust debate already, a big debate, not only in the Senate but across the country, and when the need to act expeditiously could not be more apparent.

Madam President, I ask unanimous consent that at 6 p.m. today, the Senate vote on the pending cloture motion on H.R. 2048, the U.S. FREEDOM Act, and that if cloture is invoked, that all postcloture time be yielded back and the Senate proceed to vote on the pending amendments under the regular order; that upon disposition of the amendments, the bill be read a third time, as amended, if amended, and the Senate proceed to vote on passage of the bill, as amended, if amended.

The PRESIDING OFFICER. Is there objection?

The Senator from Kentucky.

Mr. PAUL. Madam President, reserving the right to object, I would be happy to agree to dispensing with the time and having a vote at the soonest possibility, if we were allowed to accommodate amendments for those of us who object to the bill. I think the bill would be made much better with amendments. If we can come to an arrangement to allow amendments to be voted on, I would be happy to allow my consent. But at this point, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. McCONNELL. Madam President, without consent to speed things up, the cloture vote will occur an hour after the Senate convenes tomorrow, on Tuesday. Therefore, Senators should expect the cloture vote at 11 a.m. tomorrow.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Madam President, before the recess, there was an attempt to try to bring finality before this bill expired. At that time, I reached out to my friend and colleague from Kentucky, Senator PAUL, and offered him my assurance, as manager of the bill, that we would take up his amendments. But as the President of the Senate knows, if any one Senator objects to a vote, then a vote does not happen. I consented at that time that I would initiate a tabling of his amendment so that there could actually be a vote. There has been every attempt to try to accommodate amendments. I think that given the short time that we are

dealing with, where we are trying to make sure that the expiration of these needed tools is as limited as we can, the leader is exactly right. You cannot go outside of the processes that were already triggered prior to this.

I think we have made every attempt to try to accommodate the current Senate rules, but unfortunately, there were objections to that as we departed town over a week ago, and we are where we are.

For my colleagues' sake, let me restate where we are. We have had the expiration as of midnight last night of section 215. Section 215 has many pieces to it, but there are three that are highlighted. One is the "lone wolf" provision, an individual who has no direct tie to a terrorist organization but could be radicalized in some type of communication, and "lone wolf" provides us the ability to target them without a direct association to a terrorist group. And roving wiretaps are the ability to target an individual and not a specific phone.

These two are noncontentious, and there was a request by unanimous consent yesterday before the expiration to extend those two pieces. There was an objection. The Senate operates by rules. When one Senator objects, everything stops. For that reason, those two provisions expired last night.

Let me say for the benefit of my colleagues and for the American people that any investigation that was currently under way as of 12 o'clock last night can continue to use those two tools. What is affected while we are in this expiration period is that you cannot open a new investigation and use those two tools to investigate that individual. So we are limited on anything that might have opened since 12:01 this morning.

My hope is that the Senate will dispose of all of the 215 provisions by 3 o'clock tomorrow. We can turn the faucet back on, and law enforcement can use those two tools.

But the third piece has been the focus of contention in the Senate and in the country, and it deals with a program called the metadata program. It is a scary word. Let me explain what the metadata program is.

The NSA receives from telephone companies a telephone number with no identity whatsoever. We refer to it as a deidentified number. They put all of that into one big database. The purpose of it is that when we find a known terrorist outside of the country and we have his telephone number, then we want the ability to query or search that big database to see if that known terrorist talked to anybody in the United States. We actually have to go to court—to the FISA Court—to get permission, and we have to have articulate, reasonable suspicion that there is a connection, that that known terrorist's telephone number can be tested against this database. We collect the telephone number, we collect the date the call was made, and we collect

the duration of time of the call. There is absolutely zero—zero—content. There is zero identifier. There is not a person's name to it. People have questioned whether the program is legal. It is legal because the Supreme Court has said that when we turn over our data to a third party, we have no reason to believe there is a privacy protection. Therefore, when we get that telephone number from a telephone company, we throw it into a pool, and the only person who should ever be worried is somebody who is in that pool that actually carried on a conversation with a terrorist. And if we connect those two dots—a person in America and a known terrorist abroad—and they communicate, then it is immediately turned over to the FBI for an investigation. It is a person of suspicion. We turn it over to law enforcement. Law enforcement then goes through whatever court procedures they need to do to investigate that individual.

That is the metadata program. That is the contentious thing that has bogged this institution down to where we have let it expire—in most cases because people have suggested it is something other than what I have just described.

I have read a lot of the myths. Let me just go back through some of them again. I think it is important.

**Myth No. 1:** The NSA listens to Americans' phone calls and tracks their movement.

The NSA does not and cannot indiscriminately listen to Americans' phone calls, read their emails or track their movement. The NSA is not targeting or conducting surveillance of Americans. Under the Foreign Intelligence Surveillance Court—FISA Court—order, the only information acquired by the government from telephone companies is the time of call, the length of call, and the phone number involved in the call. The government does not listen to the call. It does not acquire the personal information of the caller or the person who is called, which is obtained only through a separate legal process including, if necessary, a warrant based on probable cause, which is the highest standard that the judicial system has.

Frankly, there is more information available in a U.S. phonebook than what the NSA puts in the metadata base. There is more privacy information that Americans share with their grocery store when they use their discount card to get groceries. There is more data that is collected at the CFPB on the American people than the NSA ever dreamed about, but there is nobody down here trying to eliminate the CFPB, although I would love to do it tomorrow. But the fact is, if this is about privacy, how can we intrude on anybody's privacy when we do not know who the individuals are of the phone numbers that we have? And there is the fact that the Supreme Court has said that when you relinquish that information to your phone company, you have no right of privacy.

**Myth No. 2:** The NSA program is illegal.

There have been some who have come to the floor and said that. The Supreme Court held in *Smith v. Maryland* and in *U.S. v. Miller* that there is no reasonable expectation of privacy in telephone call records, such as those obtained under section 215. Those records are not protected by the Fourth Amendment.

Under the current 215 program, the judges of the FISA Court must approve any request by the FBI to obtain information from the telephone companies. Congress has reauthorized the PATRIOT Act seven times. The FISA Court reviews the act in an application every 90 days, and the FISA Court has approved the reauthorization of those 90-day extensions over 41 times.

This is not a car on cruise control. This is a program that every 90 days the court looks at and assesses whether for another 90 days we have the right to run the program. Put on top of that, the congressional oversight of the program is probably the second-most or third-most looked at program by the Senate and House Intelligence Committees of any program within our intelligence community.

**Myth No. 3:** The NSA dragnet repeatedly abuses government authority.

The government does not acquire content or personal information of Americans under the section 215 program. The names linked to the telephone numbers are not available unless the government obtains authorization through a separate legal process, including, if necessary, a warrant based on probable cause.

Careful oversight of the program reveals no pattern of government abuse whatsoever. In fact, after more than a decade, critics cannot cite a single case of intentional abuse associated with FISA authorities. That is a far cry from the debate that we have listened to and, I might say, that has been covered on some of the national media.

**Myth No. 4:** The government stopped only one plot using section 215.

For anybody that was listening earlier to me, I described four specific things that I can talk about in public. There were four plots. A plot is something that you get to before an act is done.

We even talked about the Tsarnaev brothers, who committed a violent act that killed and maimed a number of people in the Boston Marathon. We had the ability because we had a foreign telephone number that we thought was tied to the Tsarnaevs, and even after the fact, we were able to go back and use 215 to see if there was a foreign nexus to an act that had already been committed. In this case, we could not find that nexus, but we had the tools available so that law enforcement could responsibly look at the American people and say we have done everything to make sure that there are not additional participants in this act who

might carry it out at the next marathon or the next race or the next festival. That is what our ability is supposed to be if, in fact, our oath of office as a Member of Congress is to defend the country, number one.

Myth No. 5: The FISA Court is a rubberstamp.

Despite all the claims that the FISA Court approves 99 percent of the government's applications, the FISA Court often returns or demands modifications to about 25 percent of the applications before they are even filed with the court. According to the FISA Court chief judge, the 99-percent figure does not reflect—does not reflect—the fact that many applications are altered prior to the final submission or even withheld from final submission entirely, often after an indication that a judge would not approve them.

Let me put this in perspective. Twenty-five percent more of the wiretap applications are approved than of FISA. I mean, that says enough right there. In comparison to Federal court documents which include wiretap applications as instructed, of the 13,593 wiretap applications filed from 2008 to 2012, the Federal district court approved 99.6.

The only reason that FISA is at 99 percent is because when the government sees that they are not going to be approved, they withdraw the application. That seldom happens in wiretap applications.

Myth No. 6: There is no oversight of the NSA.

The NSA conducts these programs under the strict oversight of three branches of government, including a judicial process overseen by Senate-confirmed judges appointed to the FISA Court and a chief judge of the United States. Republicans and Democrats in Congress together review, audit, and authorize all activities under FISA. There are few issues that garner more oversight attention by congressional Intelligence Committees than this program, as well as the responsibilities imposed on the executive branch to make sure that the Federal agencies in a timely fashion share all information with the select committees in the Senate and the House for the purposes of oversight of our intelligence community. Now, some have suggested that because the Director of the NSA says we think we can do this, we should just trust them. Please understand that the reason we are having this debate is because some have suggested that the NSA cannot be trusted.

Once again, I will state for my colleagues that we are going to do everything we can to wrap this up by 3 p.m. tomorrow. The debate about whether the data is going to transfer from the metadata program at NSA to the telephone companies has been decided. It will transfer. Over the next 24 hours, we will attempt to take up the USA FREEDOM Act—the exact language that was passed by the House—with a substitute amendment that embraces

all of the House language with the exception of two issues. We will make two changes. One of the changes will require the telephone companies to provide a 6-month notice of any change in their data retention policy. In other words, if one telephone company has an 18-month retention program currently in place and they decide they are only going to hold the data for 12 months, they have to notify the Federal Government 6 months in advance of that change.

The second change will require the Director of National Intelligence to certify that on the transition date, that the government has provided the technology for the telephone companies to be able to search the data in a timely fashion for us to stay in front of attacks.

In addition to that substitute amendment, which I hope my colleagues will support because there are minimal changes, there will be two amendments to the bill.

The first amendment will change the transition period from 6 months to 12 months. So when the Director of the NSA says “I think we can do it in 6 months,” to the Intelligence Committee, “I think we can do it” is not a good answer. So what we are asking is that we go from 6 months to 12 months so we can make sure the technology is in place for this program to continue.

The last piece is a change in the amicus language of the bill or the friend-of-the-court language in the bill. The bill itself uses the words that the courts shall—which means must—have a friend of the court, and that is not needed in all cases. If that is applied to all cases, it will put in place a very cumbersome and untimely process.

When we are dealing with trying to get in front of an attack and dealing with individuals who are linked to known terrorists abroad, we want to have a way to query that data, to search that data as quickly as we possibly can with the approval of the court. So what we have done is taken language that has already passed out of the Intelligence Committee and has been signed off by the courts that changes “shall” to “must.” It basically says that the court has the opportunity, anytime they need a friend of the court’s advice, to turn to it and to get it, but it doesn’t require that they have a panel set up that automatically sits in on every consideration, because a judge doesn’t always need that.

As the Presiding Officer of the Senate knows, the FISA Court operates in secret, which is another criticism of many people. Well, I don’t want to share any secrets, but sometimes the Senate operates in secret. Most of the time, the Intelligence Committee operates in secret. Believe it or not, some titans of the courts in our country operate in secret. They have the authority to do it anytime there is secret or classified information that can’t be shared publicly.

Well, that is all the FISA Court does. That is the reason it is in secret. It is

not because we don’t want the American people to know that there is a FISA Court or that there is an application or a decision made by the FISA Court, but everything the FISA Court takes up is secret or classified, so it has to be done in secret, just like some of the budgets and some of the authorizations we do in the Senate that are classified. We shut these doors, we empty the Gallery, we cut off the TV, we hash out our differences, we come together, and we have a piece of legislation that only those people who are cleared can read. That is part of functioning. And part of functioning from a standpoint of getting in front of terrorism is to make sure the tools are in place to allow not only intelligence but law enforcement to do their job.

I think when the American people understand how simple this program is—we take the telephone numbers, we take the date the call was made, we take the duration of the call, and if it connects to a known foreign terrorist number, then we turn it over to the Federal Bureau of Investigation and they go to court to figure out whether this is an individual they need to look at. It is no longer a part of the intelligence community. It is a valuable tool. It has helped us to thwart attacks in the past. My hope is that after we get through with business tomorrow at about 3 p.m., that this will continue to be a useful tool.

I urge my colleagues to expeditiously consider not only the base language but the substitute and both amendments.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### REMEMBERING BEAU BIDEN

Ms. MIKULSKI. Madam President, I rise to speak about where we are as we debate the various aspects of the USA FREEDOM Act. However, before I proceed with my statement on the current issue before the Senate, I really wish to note the very sad passing of our Vice President’s son, Beau Biden, who passed away at age 46 of brain cancer.

Of course, the world knows this now because of the news announcement. Standing on the Senate floor, where I served with the Vice President when he was a U.S. Senator, I just personally want to express my condolences to him on behalf of myself, his friend in the U.S. Senate and his colleague on so many issues, as well as the people of Maryland.

Once the news broke over the weekend, many people asked me in my home State: Did you know him? Had you ever met him? There is just a general outpouring of sadness for his family, his wife, his two children, and, of

course, the Vice President and his step-mother Jill. So, Mr. Vice President, if you have the opportunity to listen, know that the U.S. Senate is sending our thoughts and our prayers to you during this difficult time.

Madam President, I wish to speak now about where we are in terms of our parliamentary situation. Once again, here we are in the Senate where, when all is said and done, more is getting said than is getting done. I am a very strong proponent of the oath I took to defend the Constitution of the United States against all enemies. By that I mean we have to be able to protect this country. We need to have a sense of urgency about it.

I am not only disappointed, I am deeply, deeply, deeply frustrated that the key authorities of the PATRIOT Act expired last night, when we had a path forward on legislation that would be constitutionally sound, would be legal, and would be authorized. But what did we do? We got ourselves into a parliamentary quagmire with the filibuster of one individual, which now has left us exposed in the world's eyes.

Major authorities were given to our intelligence community to be able to pursue the surveillance of potential terrorists, and they have expired. Those authorities included "lone wolf," the roving wiretap, and some other aspects involving surveillance, and we have just let them expire at midnight. Right now, I hope we do what we can to pass the USA FREEDOM Act without delay. We need to get these authorities restored. Do we need reform? Absolutely. But let's not delay. Let's get it going.

Others are going to speak later on today on the merits of the USA FREEDOM Act. I believe it is our best opportunity to protect the Nation, while balancing privacy and constitutionally approved surveillance. I do support reforming the PATRIOT Act, but I don't support unilateral disarmament. I don't want to throw the PATRIOT Act away. I don't want to throw away our ability to place potential terrorists under surveillance. I don't want to give in under the guise of some false pretense about privacy where we say, Well, gee, I worry about my privacy, so the terrorists don't need to worry about us being able to pursue them.

Our Nation needs to know that when bad guys with predatory intent are plotting against the United States of America, we are going to know about it and we are going to stop it. We are going to know about it because we have the legal authority to track them, put them under surveillance, and we are going to stop them before they do very bad things to our country.

The purpose of my comments today is to stand up not only for the ability to have a law but also for the men and women who are working for the intel agencies—for the people who work at the National Security Agency in my own State, the FBI, and other agencies within our intel community who are

essential to protecting our country against terrorist attacks, whether it is a "lone wolf" or State-sponsored terrorism.

These dedicated, patriotic, intelligence professionals want to operate under a rule of law. They want to operate under a rule of law that is constitutional, that is legal, and that is authorized by the U.S. Congress. They are ready to do their job, but they are wondering when we are going to do our job.

Congress needs to pass a bill, as promptly as it can, that is constitutional, legal, and authorized.

We on the Intelligence Committee have worked long and hard on such a legislative framework. We have cooperated with members of the Judiciary Committee, including Senators GRASSLEY of Iowa and LEAHY of Vermont, who have also worked on this. We worked together putting our best ideas forward, doing the targeted reform that was essential, not pursuing unilateral disarmament, and we now have legislation called the USA FREEDOM Act. Is it a perfect bill? No, it is not perfect, but it is constitutional. If we pass it, it will be legal, and it will be authorized.

I know the Presiding Officer is a military veteran and I support her for her service. The Presiding Officer knows what it is like when people try to trash America.

Ever since Eric Snowden made his allegations, the wrong people have been vilified. The men and women of our intelligence agencies have been vilified as if they were the enemy or the bad guys.

I have the great honor to be able to represent the men and women who work at the National Security Agency and some other key intelligence agencies located in my State. They work a 36-hour day. Many times they have worked a 10-day week. When others have been eating turkey or acting like turkeys, they were on their job, doing their job, trying to protect America.

Let me tell my colleagues, these people who work for the National Security Agency, for the FBI, and other intelligence agencies are patriots. They are deserving of our respect, and one way to respect them is to pass the law under which they can then operate in a way that is again appropriate. At times, these men and women, ever since Eric Snowden, have been wrongly vilified by those who don't bother to inform themselves about national security structures and the vital functions they perform. Good one-liners and snarky comments have been the order of the day.

Now, the National Security Agency is located in my State, but I am not here because it is in my State. I am here because it is located in the United States of America. Thousands of men and women serve in silence without public accolades, protecting us from cyber attacks, against terrorist attacks, as well as supporting our war fighters. I wish the Presiding Officer

would have the opportunity to come with me to meet them sometime. They are linguists. They are Ph.D.s. the National Security Agency is the largest employer of mathematicians in America. They are the cyber geeks. Many of them are whiz kids. They are the treasured human capital of this Nation. If they had chosen to go to work in dot-com agencies, they would have stock options and time off and financial rewards far beyond what government service can offer. We need to be able to support them, again, by providing them with the legal authority necessary.

Remember, that section 215 is such a small aspect of what these intelligence agencies do as they stand sentry in cyber space protecting us. People act as though that is all NSA does. They haven't even bothered to educate themselves as to the legality and constitutionality of where we are.

Now, let's say where we are and let's say where we have been. Much has been said about the PATRIOT Act. It has been sharply criticized. There has been no doubt that it does require reform. That is why the Congress, in its wisdom, when it passed the bill right after 9/11, put in the safeguard of periodic sunsets so we could take a breather and reexamine the law to make sure what we did was appropriate and necessary.

Congress did pass the PATRIOT Act so the men and women at the intelligence agencies worked under what they thought was the rule of law that Congress supported. President George Bush also told us and his legal advisors told us that it was constitutional, so people believed it. Those men and women at the intelligence agencies thought they were working under legislation that was constitutional, legal, and authorized because we passed it. Well, now others say it wasn't. Others even want to filibuster about it. They want to quote the Founding Fathers. Well, I don't know about the Founding Fathers, but I know what the "founding mothers" would have said. The "founding mothers" would have said get off the dime and let's pass this legislation.

We do need good intelligence in a world of ISIL, al-Nusra Front, and Al Qaeda. NSA is one of our key agencies on the frontline of defense, and the people of the National Security Agency make up the frontline. As they looked at audits, checks and balances, and oversight, there was no evidence ever of any abuse of inappropriate surveillance on American citizens. We need to know that and we need to recognize that. Those employees thought they were implementing a law, but some in the media—and even some in this body—have made them feel as though they were the wrongdoers. I find this insulting and demeaning.

The morale at the National Security Agency was devastated for a long time. People were vilified, families were harassed for even working at the NSA,

and, in some instances, I heard even their children were bullied in school. This isn't the way it should be. They thought they were patriots working for America. When the actions of our own government have placed these workers where they feel under attack—they were attacked by sequester and they felt under attack by a government shutdown because many of them were civilian employees at DOD—they were not paid—and now Congress's failure to reform national security has further then said: We can take our time. What you are doing is important, but we have to talk some more.

Gee, we have to talk some more. What do you mean we have to talk some more? The only person in the Chamber is my very distinguished colleague, the distinguished colleague from Indiana, whom I work with in such a wonderfully cooperative way on the Intelligence Committee. You know we are not bipartisan, we are non-partisan for the good of the country.

Where is everybody who wanted to speak? Do we see 10, 20, 30, 40, 50 Senators lined up waiting to speak? No. We have to kill time. I don't want to kill time. I am afraid Americans will be killed. We have to get on this legislation and we have to get our act together and we have to pass it. I want the people to know we cannot let them down by our failure to act and to act promptly.

I come to the floor to say let's pass the USA FREEDOM Act and let's do it as soon as we can. I know a vote has been set for 11 o'clock tomorrow. That means that it will be almost 35 or 36 hours since the authorities expired, and then it has to go over to the House. So let's move it and let's keep our country safe and let's get our self-respect back.

For those who looked at our country, there were three attitudes toward America: One was great respect for who we are, our rule of law; the other was our fear, because we were once the arsenal of democracy; and, third, the yearning to be in a country that worked under a Constitution, a Congress that worked to solve the problems of our Nation. Can we get back to that? I know the Presiding Officer wants to get back to that. I know my colleague here wants to be part of that.

Let's get back together, where shoulder to shoulder we shoulder our responsibilities, pass the legislation we need to, protect our country, respect the men and women who work there, and say to any foe in the world that the United States of America stands united and is willing to protect us, and to the men and women who work for us in national security, we will support you by passing legislation promptly that is constitutional, legal, and authorized.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Madam President, I want to thank my colleague from Maryland, a member of the Senate In-

telligence Committee. It is obvious this is a bipartisan effort in dealing with the security of the American people. The Senator from Maryland is not from my party. Together, we serve on the Intelligence Committee. We have served hundreds of hours on that committee together doing everything we can to provide our country with the opportunity to protect Americans from harm.

The threat to Americans today has never been greater. We are dealing with fires raging in the Middle East and terrorist groups forming as we speak, targeting the United States and Americans, and inspiring Americans to take up arms against their fellow citizens for whatever jihadist cause they are using as the basis for the brutality that is spreading throughout the Middle East and that can happen here if they respond to these inspirational social media requests from organizations such as ISIS, Al Qaeda, and many others.

I understand Americans' frustrations and concerns about their civil liberties and privacy. Those concerns have been bolstered by acts of government that can hardly be explained. Look at what has taken place with the IRS. Talk about targeting people, invading their privacy and civil rights and using the organization of government for political purposes is outrageous. Of course, people are up in arms about all of this, the debacle of Benghazi and Fast and Furious and on and on over the years. One can go into what has happened to instill distrust in the minds of the American people.

When a program such as this comes along and, unfortunately, the American people are told by Members of this Congress falsehoods as to what this program is and what it isn't, it just feeds the narrative that Washington is in their bedroom, Washington is in their home, it is in their phone, it is listening to their calls—Washington is monitoring everything they do—their locations.

This simply is not true. We have an organization and tools put in place with that organization, the National Security Agency, following the tragic events of 9/11 that the American people insisted on putting in place. Let's use the tools that we can to try to prevent another 9/11 from happening, to try to identify terrorist attacks before they happen, not to clean up after they happen.

The frustration for those of us on the Intelligence Committee is we are not able to come down and refute statements that are false that are made here without breaching our oath not to release classified information. We have had briefings with all of our Members. Some don't choose to attend, and therefore their narrative continues without any ability to publicly challenge what is being said. It has been said on this floor that Big Government is listening to everyone's phone calls. That is patently false.

First of all, it is impossible. There are trillions of phone calls made every day throughout the world. The calculation is that it would take 330 million employees sitting there monitoring Americans' phone calls to be able to listen to everyone's phone calls. It is an impossibility, No. 1.

No. 2, it is guaranteed that this is not happening because the authorities given to the National Security Agency prevent that from happening. There are layers and layers of attorneys and others who oversee this process, including those of us in the Intelligence Committees in the Senate and the House, the Justice Department, and the executive branch. All three branches of government are so concerned that this program could potentially be abused that the oversight is such that it would take a monumental conspiracy, involving hundreds and hundreds of people, to all agree that, yes, let's do this and breach the law.

If what has been said on this floor about the nature of this program was correct, I would be the first to line up and say I am here to defend the liberties that are being abused by the government. I guarantee to my constituents that this is a high priority for me, that I do not support anything that would violate their civil rights or violate their privacy. That is true of those of us on the Intelligence Committee, whether we are a Democrat or Republican.

We have heard today from Senator KING, who is on the committee. We have heard from Senator MIKULSKI of Maryland, who spoke. We heard from Senator NELSON, who was formerly on the committee on the Democratic side. On the Republican side, our leader of the committee, Senator BURR, has laid out in great detail how this works.

The tragedy is that in being forced to describe what the program is and what it isn't, we have had to declassify information. Guess who is listening.

I hope a lot of the American people are listening because they need to understand that much of what they have heard is simply a falsity. It is factually incorrect.

I am not going to go into why this has happened, why some Members choose to say things like—and I am stating what has been said on this floor—"Big Government is looking at every American's records, all Americans' phone records all the time. They have said the NSA collects Americans' contacts from address books, buddy lists, calling records, phone records, emails, and do we want to live in a world where the government has us under constant surveillance?"

None of us want to live in that kind of world. That is why we live in America. That is why America is what it is. This is not Stasi Germany. This is not a Communist regime. This is not a totalitarian society. We would not allow that here. Our Constitution guarantees privacy and we cherish that privacy and we protect that privacy. But to

come down to this floor and make statements such as those is irresponsible, and it is a narrative that is just not the case.

Poor Ben Franklin has been dragged into this because the quote that has been attributed to Franklin that should drive our decision on this point was: “Those who would give up essential Liberty to purchase a little temporary Safety deserve neither Liberty nor Safety.”

I agree with that, but the key word here is “essential.” This matter has come before the Supreme Court, and the Supreme Court has said that what the NSA is doing in storing phone numbers only—not names, not collecting information—is not essential to liberty. They have declared it as a necessary, effective tool that is open. The only information that is in your phone record is the date of the call, the number called, the duration, and the time of the call—nothing more than that.

Why is this done? It is done so that when we determine the phone number of a known terrorist in a foreign country, we can go into that haystack of phone numbers and say, Was that phone number connected to a phone number held by someone in America?

In fact, the former Director of the CIA said that we likely would have prevented 9/11 because we now know that a phone number in America was connected to a phone number of a terrorist group—Al Qaeda—and we could have taken that information to the FISA Court or to a court and gotten permission to check into that to see if that was leading to some kind of terror attacks.

It doesn’t take much to recall the images of what happened on 9/11, where we were, what horror we stood and watched coming over the airwaves, and the tragedy and the loss of life that took place, changing the face of America.

So it is important that we tell the American people what it is and what it isn’t. It is important that Members take responsibility to understand this is an issue that rises above politics. This is an issue that cannot be used and should not be used for political gain, whether it is monetary gain or whether it is feeding a base of support that responds to the scare tactics of America listening to all of your calls, Big Government in all of your business.

This is too important an issue. This is about the safety of America. This is about preventing us from terrorist attacks. The threat is real, and it is more real than it has been in a long, long time.

So I talked yesterday about the existing program, what it was and what it isn’t. It has been talked about by my colleagues on the floor. We have moved to a point where we have to choose between the better of two bad choices.

One choice is that we eliminate the program. One of our Members in the Senate has publicly indicated that is what he wants to do. He claims it is

unconstitutional. Unfortunately, he doesn’t have the support of the Supreme Court that has dealt with this issue, nor the constitutional lawyers. That is a case that just simply cannot be made because it doesn’t impede on anyone’s liberty.

Again, I would say, if it did impede on Americans’ liberty, I would be the first in line to state that and to fight against it. But it is a solution to something that is not a problem.

But secondly, because one individual would not grant even the shortest of extensions, even an extension on two noncontroversial parts of this program that no one has challenged, to allow that to go forward so that we could keep something in place to address a potential threat that could happen—even that was denied us last evening as the clock was ticking toward midnight, and the program expired. Someone who is so determined to eliminate this entire program, who has misrepresented this program to the American people, so determined to stay with his narrative that he would not even allow an hour, not even allow a day, not even allow minutes for us to try to reconcile the differences here with the House of Representatives—and those differences are pretty small.

Senator BURR has been in negotiations with the House and with Members of the Senate relative to some changes and modifications in the USA FREEDOM Act, which was supported by a significant bipartisan majority in the House of Representatives. I think that is a step in the right direction. It does not solve all of the problems. My concern with the FREEDOM Act is a concern of many; that is, the act has some major flaws, some of which I thought were fatal. But I have to measure that against nothing.

Thanks to the procedural maneuvering by one Member here, we have been left with only two choices. The Senate majority leader laid those out with some clarity yesterday and today. The choices are completely eliminate the program, go completely dark, take away this tool, and put Americans more at risk—thanks very much, but it is over and try something else—or a provision that has been passed by the House of Representatives that moves collection of the phone numbers from NSA to the telephone companies. The problem with the bill is that it does not mandate that movement. It is a voluntary act that the phone companies are most likely not going to want to adhere to, primarily because they now have to set up a situation where they potentially could be liable for breaches of the people who are overseeing their program.

There are 1,400 telephone companies in the United States. Many of them are small. But to move this program, which has six layers of oversight at NSA, which has the oversight of the Senate Intelligence Committee and the House Intelligence Committee, which has the oversight of the Department of

Justice and the administration, and which has the oversight of the Federal intelligence court called FISA—all of that security oversight—to make sure there is no breach will now get transferred over to up to 1,400 telephone companies.

The people who oversee this program—it is a very small number at NSA who operate this program—have had intensive background checks and security clearances. They have proven their commitment to make sure—to do everything possible not to abuse this program. There has never been a documented case, never one case of an abuse of this program—again, a solution to something that is not a problem.

All of a sudden, now we will have dozens, if not hundreds, if not more than 1,000 phone companies all putting their own programs in place. This is not something they would like to do, No. 1, because it is going to be very costly, and, No. 2, they cannot guarantee that every one of their people is going to have the same kind of background check and security check NSA has. They will not have the oversight of the Intelligence Committees, of the Justice Department, of the executive branch.

We are trusting a private entity to do the kinds of things that multiple agencies do. And you can just count on probably some breaches of security there as people want to use the capability to abuse that program for whatever reason—maybe checking up on their wife or their girlfriend or their business partner or who knows for what possible reasons they could use it. So it really does not add privacy protections; it detracts from privacy protections.

Secondly, the retention of records is voluntary. Now, if we have some amendments that are passed by this body and accepted by the House, we will get notification if a company does not want to retain those records. But there is no retention authority granted here to us to ensure that those companies will keep any phone numbers, and then the capability of the program will be significantly reduced.

We are having to look at a very sophisticated program that the NSA says: We are not sure it is going to work. We are not sure if this process that the FREEDOM Act requires to replace what we have now is going to be effective.

It is going to take many months to determine if that is the case. So it is an untested program that we are putting a bet on that this is going to work. It would be nice to know we had something in place we can easily replace this with. So we are going from the known to the unknown. We are making a bet that this is going to be more effective and provide more privacy for the American people. It is a diminishment and a significant degradation of the current program. It will not be as effective as the program that is currently in place. Nevertheless, we have

to weigh this against nothing. That is the position we have been put in because one Senator would not allow an extension of time for us to have a more lengthy debate and reasonable negotiation in consultation with the House of Representatives to arrive at something that will give us more assurance that we have a program in place that does not breach privacy but allows us to detect potential terrorist attacks and stop those attacks before they take place.

Having had to go through all of this and raise these kinds of issues here and talk about a fellow colleague is not fun. It is not something I hoped I would ever have to do. But I could not stand by and watch a program that is helping protect American people from known terrorist threats and let their safety be jeopardized by falsehoods that are being said about what this program is and is not.

It looks like we are coming together on something that is far from what we need, that is going to significantly degrade our capability, but it is the only choice that we have. We are going to have to weigh that decision. Is something that is far less better than nothing? Ultimately, given the fact that these threats have never been greater, something—even if it is not what we now have—something is better than nothing.

But we have been put in this situation unnecessarily by misrepresentations and a public that has not been informed. It is not their fault. We have not been able to because so much of this has been classified. Now, much of it is. Our adversaries, the terrorist groups, know a lot about the program they did not know about before. Thanks to Edward Snowden and thanks to some misrepresentations, we are left with the devil's bargain, and that is to choose the best of the worst.

We will talk this through today. We will have a vote tomorrow. In my mind, it is absolutely essential that the modifications that are being made, that are being presented—I will not go into depth about those. It has already been talked about here. It is essential that those be passed by this body. It is, of course, essential that the House accept them. I know a lot of negotiation has gone on back and forth, and it will continue. But it is the only way to keep a program in place. Even as degraded as it is, even as compromised as it is, it is the only way to keep a program in place.

So I will be supporting those tweaks, those changes, even though I think they are far short of what we need to do to fix the issue that was rushed through the House without much deliberation. But to make it stronger, to put it in a better position, I will support those. If those amendments can be passed, then I will reluctantly choose to vote for something that is better than nothing, as degraded as it is, in order to keep this program as one of the essential tools—one of many—as

we collect information, keep that in place.

I know my colleague from Ohio has been seeking the floor for some time. I apologize for taking too long.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Madam President, I ask unanimous consent that following my remarks, Senator BLUMENTHAL be recognized.

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

Mr. BROWN. Madam President, I ask unanimous consent to speak as in morning business.

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

CONDOLENCES TO THE BIDEN FAMILY

Mr. BROWN. Madam President, first, I want to offer my deepest sympathy and condolences to Vice President BIDEN and the entire Biden family. The Vice President has been met with more personal tragedy than any person should have to endure in any lifetime. He has faced it all with remarkable grace. He has persevered to accomplish so much good for his family, for his State, and now for his country. We are all indebted to him for that. I know he and Jill and the whole family are in our thoughts and prayers today.

EXPORT-IMPORT BANK

Madam President, turning to the business before the Senate this month—business that should be in front of the Senate this month—the Senate banking committee will hold two hearings beginning tomorrow on the Export-Import Bank. It is urgent that the Senate move to reauthorize the Ex-Im Bank before the charter expires on June 30.

Frankly, I find it both curious and alarming and also troubling that we seem to be doing this over and over. We do a transportation bill only for a few weeks or a few months. We do the Ex-Im Bank for only a few weeks or a few months. When we act that way, it is wasteful, it is alarming to many, and it makes it almost impossible for companies and State departments of transportation and State development agencies to plan. It means that far too many companies simply cannot attract the investment they need because of the uncertainty.

When I hear people complain in this body about the uncertainty of government and of government acting, and then it is those same people who so often block the Export-Import Bank, who want to stumble along for a few weeks of reauthorization or block a transportation bill—that clearly undermines the ability for our economy to grow and clearly undermines and erodes any kind of investment and planning we should be doing.

In today's global economy, we should provide American businesses with predictability and support to sell their products around the globe. This should not be controversial. Like the Transportation bill, the Export-Import

Bank—at least it used to be this way—there was almost unanimity. There was consensus. For instance, in 2006 the Export-Import Bank was passed by unanimous consent. For those obviously not necessarily conversant with Senate-speak, unanimous consent means nobody comes to the floor and objects. That means unanimous. It means that we move together as one to try to do something which obviously adds to our GDP, helps our workers, and helps our community.

In places such as Columbia and in Mahoning County in Ohio, in places such as Dayton and Toledo, I know what globalization has done for our economy. I know that when we can do some things like the Export-Import Bank and a long-term transportation bill and actual planning, it helps the economy grow.

I know what the plant closings in those communities have meant to places such as Mansfield and Gallopolis and Lima and Hamilton. When a plant closes, it not just hurts that family or the employee, it hurts the business, it hurts the community, and it hurts the local hardware store and everybody else.

We know the Ex-Im Bank supports thousands of businesses, large and small, and hundreds of thousands of American jobs. According to the Ex-Im Bank's estimates, it supported \$27 billion in exports and 160,000 American jobs. It is supporting \$250 million in deals in just Ohio alone, my State, 60 percent of which went to small business.

Opponents who like to talk about corporate welfare—the same people who by and large vote for trade agreements and tax cuts for the wealthy and trickle-down economics—those same people say this is corporate welfare.

No, really, it isn't. Our government actually makes money on this, and it is aimed primarily at small businesses. The Ex-Im Bank fills gaps in private export plans. It charges fees, and it charges interest on loan rate-related transactions. The Ex-Im Bank covers its operating costs and its loan costs. Last year, Ex-Im returned \$600-plus million to our Treasury. So it doesn't cost taxpayers; it actually brings money to our country—money that otherwise might go to foreign imports. If we don't have a big enough trade deficit, this would make it worse.

We know that our competitors have their own export-import banks. There are some 60 of these around the world. Why should we unilaterally disarm and put our manufacturers and exporters at a competitive disadvantage? That is what we will do if the Bank's authorization expires at the end of this month. We need to give our companies, our businesses, and our workers the same leg up as they compete around the world. This should be about as obvious as it gets.

Leader McCONNELL is committed to giving us a vote on Ex-Im reauthorization before it expires. I hope that he

can manage it better than he managed the PATRIOT Act, FISA, the most recent issue, the NSA, which has been in front of the Senate, and better than he managed the trade bill that pushed all of this into this week and, as Senator COATS said rightly, caused this law to expire, which was a mistake.

We should be planning here better. We should be coming together on issues where we can come together. We could have come together earlier on NSA. We could have come together earlier on trade a little bit better. We can certainly come together on a transportation bill and an Ex-Im Bank bill.

I urge my colleagues in the House to act to reauthorize the Bank. Supporting U.S. exports should be a cause we all get behind. We have seen too many issues come out of this Senate with bipartisan support, only to watch them die a partisan death in the House. We can't let that happen with the Export-Import Bank.

Once again, I hope my colleagues will join in pressing our counterparts in the House to get this done. We need to do it. The House needs to do it. We need to provide American workers the support they need to sell our products around the globe.

I yield the floor.

The PRESIDING OFFICER (Mr. COATS). The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I feel my speaking at this moment is appropriate because much of what I have to say follows logically from the last words of the Presiding Officer when he spoke recently on the USA FREEDOM Act because I agree with the Presiding Officer when he said we need a bill. We need to move forward and approve reforms and changes in the law that are contained in the USA FREEDOM Act. We may be in disagreement about some of the specifics. We may be in contention about the extent of the changes made. But there is a general consensus that this decade-and-a-half old law is in some need of revision.

The USA FREEDOM Act contains many important and genuinely worthwhile changes in the rules that will apply as the United States helps to protect our security but also to safeguard and preserve essential rights and liberties. That is the balance which needs to be struck. It is a difficult balance in a democracy, one of the most difficult in an area where secrecy has to be maintained because surveillance is more useful if it is done in secret, but at the same time, rights need to be protected in an open society that prides itself on transparent and accessible courts.

Changes in the rules are welcome, such as the end to the present system of bulk collection of phone data. We may disagree on that point. Changes in the rules that I support may not be supported by many of my colleagues. I believe the USA FREEDOM Act goes in the right direction on bulk collection of phone data by ending the current practice in its present form.

What brings me to the floor is not so much a discussion about the rules as the method of enforcing those rules and implementing and assuring that they are faithfully executed, which is the role and the responsibility of the Foreign Intelligence Surveillance Court in the first instance. There are means of appeal from that court, but, as with many courts in our system, that one is likely to be the end destination on most issues, particularly since it operates in secret.

The USA FREEDOM Act goes in the right direction by making it more transparent and requiring the disclosure of significant decisions and opinions when it is appropriate to do so and under circumstances that in no way should involve compromising our national security—striking, again, a good balance.

But this Court, we have to recognize, is an anomaly in an open, democratic system. Its secrecy makes it an anomaly. It works in secret, it hears arguments in secret, and it issues opinions in secret. Its decisions are almost never reviewable. It is, unlike most of our institutions, opaque and unaccountable—understandably so because it deals with classified, sensitive information, protecting our national security against threats that cannot be disclosed when they are thwarted in many instances. The success of actions resulting from the FISA Court are most valuable when they are known to most American people.

So this court is special. It is different. But let's not forget that if we were to say to the Founders of this country that there will be a court that works in secret, has hearings in secret, issues opinions that are kept secret, and its decisions will have sweeping consequences in constitutional rights and liberties, they would say: That sounds a lot like the courts that were abhorrent to us, so much so that we rebelled against the Crown, who said in the Star Chamber, in courts that England had at the time, that there was no need for two sides to be represented or for openness. Secret, one-sided courts were one of the reasons we rebelled. Men and women laid their lives on the line. They lost their homes, treasures, families, and paid a price for open and democratic institutions.

So we should be careful about this anomalous court. It may be necessary, but we should try to make it work better, and we have.

Transparency in the issuance of opinions is very much a step in the right direction where the issues are significant and the transparency of those decisions is consistent with our security at the moment. There may be a delay, but we should remember that the bulk collection of phone data, which the U.S. Court of Appeals for the Second Circuit said was illegal, persisted for so many years because the decision itself was never made known to the American people.

There is another reform that I think is equally if not more significant.

Courts that are secret and one-sided are likely to be less accessible not only because they are secret but because they are one-sided. So as a part of this reform, I have worked hard and proposed, in fact, for the first time a bill that would create an adversarial process—two sides represented before the court.

A bill that I sponsored in 2013 to reform the Foreign Intelligence Surveillance Court was joined by 18 cosponsors. I thanked them for their support, both sides of the aisle. The basic structures that I proposed are reflected in the USA FREEDOM Act today.

Colleagues worked with me—and have since—on formulating that bill and in arriving at this moment where the central goals would be accomplished by section 401 of the USA FREEDOM Act, which provides for the appointment of individuals to serve as *amicus curiae*—friends of the court—in cases involving a novel or significant interpretation of the law.

That provision would be egregiously undercut—in fact, gutted—by McConnell amendment No. 1451 because it would prevent these lawyers—the *amicus curiae* who would be selected by the court—from obtaining the information and taking the actions they need to advance and protect the strongest and most accurate legal arguments, and that is really eviscerating the effectiveness of this provision as a protection. It is a protection of our rights and liberties because these *amicus curiae* would be public advocates protecting public constitutional rights, and they would help safeguard essential liberties not just for the individuals who might be subjects of surveillance, whether it be by wiretap or by other means, but for all of us, because the Foreign Intelligence Surveillance Court is a court. Its decisions have the force of law. Its members are article III judges selected to be on that court, sworn to uphold the law, both constitutional law and statutory law.

So this provision, in my view, is fundamental to the court as a matter of concept and constitutional integrity. That integrity is important because it is a court, but it is also important to the trust and confidence the people have in this institution.

I was a law clerk to the U.S. Supreme Court—specifically to Justice Blackmun—and I well recall one of the Justices saying to me: You know, we don't have armies; we don't have police forces; we don't have even the ability to hold press conferences. What we have is our credibility and the trust and confidence of the American people.

That is so fundamental to the courts of this Nation that consist of judges appointed for life, without any real direct accountability, as we can be held to through the election process.

The Foreign Intelligence Surveillance Court has taken a hit in public

trust and confidence. There is a question about whether the American people will continue to have trust and confidence and whether that sense of legitimacy and credibility will continue. The best way to ensure it is, is to make the court's process as effective as possible not just in the way it operates but in the way it is seen and perceived to operate, the way the American people know it should operate, and the way they can be assured that their rights are protected before the court by an advocate, an *amicus curiae* who will protect those rights of privacy and liberty that are integral to our Constitution—and the reason why the Founders rebelled against the English.

But there is another reason an advocate presenting the side opposing the government is important to the Foreign Intelligence Surveillance Court; that is, everybody makes better decisions when they hear both sides of the argument. Judges testified at our hearings in the Judiciary Committee about the importance of hearing both sides of the argument, whether it is a routine contract case or a criminal trial—where, by the way, often a judge's worst nightmare is to have the defendant represent himself because the judge is deprived, and so is the jury, of an effective argument on the other side of the government. And so, too, here we were told again and again and again by the judicial officers who testified before our committee—and I have heard it again and again and again as I have litigated over the last 40 years—that judges and courts work best when they hear both sides.

I have no doubt the judges of the FISA Court believe as strongly in constitutional rights and implementation of the Constitution as anyone in this body, including myself. I have no doubt government litigators who appear before the court representing the intelligence agencies seeking warrants or other actions and approval by the court have a commitment no less than anybody in the United States Senate, including myself, to those essential values and ideals. But courts are contentious. They are places where people argue, where sides—different sides—are represented with different views of complex questions, and these issues before the court are extraordinarily complex. They also involve technology that is fast changing and often difficult to explain and comprehend and is easily minimized in the consequences that may flow from approval of them.

So the USA FREEDOM Act would provide for, in effect, a panel of advocates and experts with proper security clearances that the court can call upon to give independent, informed opinions and advocacy in cases involving a novel or significant interpretation of law, not in every case, not every argument but where there is, for example, the issue of whether the statute authorizes the bulk collection of phone records.

I tend to think the outcome would have been different in that case if the

court had been given the opposing side of the argument, the argument that eventually prevailed in the U.S. Court of Appeals for the Second Circuit by a unanimous bench.

So the court really deserves this expertise. It deserves the other side and it deserves to hear both sides of the argument. Just to clarify, those two sides of the argument should not be in any way given so as to detract from the time necessary. If it is an urgency, the warrant should be issued and the arguments heard later, just as they are in criminal court. When there is an exigency of time—and I have done it myself as a prosecutor—the government's lawyer should go to the judge, be given approval for whatever is necessary to protect the public or gain access to records that may be destroyed or otherwise safeguard security, public safety, and that should be the rule here too.

Now, in the normal criminal setting, at some point, a significant issue of law is going to be litigated if the evidence is ever used, and that is the basic principle here too. If there is a novel or significant issue of law, it should be litigated at some point, and that is where the *amicus curiae* would be involved. Security clearance is essential, timing is important, and there should be no compromise to our national security in the court hearing the argument that the advocate may present on the other side. It can only make for better decisions. In fact, it will benefit all of our rights.

These provisions were written in consultation with the Department of Justice attorneys who advocate before the FISA Court. They are supported by the Attorney General and the National Director of Intelligence. They reflect the balance and compromise that appear throughout the USA FREEDOM Act. Amendment No. 1451 would upset this balance. It would strike the current provisions providing for the appointment of a panel of *amicus curiae*—the provisions that represent a carefully crafted balance—and it would compromise those provisions in a way that need not be done because this balance has the support of numerous stakeholders, from civil liberties groups to the intelligence community, and it would replace this balance, this institution, with an ineffective, far less valuable advocate.

There is no need to water down and undercut and eviscerate the role of the independent experts by removing requirements for the court to appoint a panel of experts to be on call, for the experts to receive briefings on relevant issues, and significantly to provide those experts with access to relevant information. Those provisions are unnecessary and unwise and, therefore, I oppose strongly amendment No. 1451 because it does unnecessarily and unwise weaken the role of these experts and *amicus curiae*.

Equally important, amendment No. 1451 would limit access and signifi-

cantly restrict the experts in their going to legal precedents, petitions, motions or other materials that are crucial to making a well-reasoned argument. It would restrict their access unnecessarily and unwise; thereby, endangering those rights and liberties the public advocates are there to protect. It would also restrict their ability to consult with one another and share insights they may have gained from related cases as government attorneys are currently able to do.

By undercutting these essential abilities and authorities, this amendment would hamstring any independence, both in reality and in perception; thereby, also undercutting the trust and confidence this act is designed to bolster and sustain.

In short, I know many people of good conscience may disagree over the best way to reform this law. I accept and I welcome that fact. I welcome also my colleagues' recognition that an *amicus curiae* procedure in some form would benefit this court, but I urge my colleagues to reject an amendment that would lessen its constructive and beneficial impact.

We have already delayed long enough. This amendment would not only weaken the bill, it would exacerbate the delay by sending this bill back to the House. We all want to avoid a very potentially troubling delay in approving this measure. I have been dismayed by the divisions and delays that have prevented us from finally approving the USA FREEDOM Act before the existing law expires. We should move now. We should act decisively. We should adopt the USA FREEDOM Act without amendment No. 1451, which would simply further erode the trust and confidence, the legitimacy, and credibility of the Foreign Intelligence Surveillance Court.

I urge my colleagues to join me in voting against this amendment, passing the USA FREEDOM Act in its current form, avoiding the delay of sending it back to the House and then potentially having it come back to the Senate, so we can tell the American people we are protecting the strongest, greatest country in the history of the world from some of the most pernicious and perilous terrorist forces ever in the world's history.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. If the Senator will withhold his request, we may have a Member who would like to seek the floor.

Mr. BLUMENTHAL. I will withhold my request, and I will just add, while we are waiting for my colleague to take the floor, that I want to join a number of my colleagues and speak on another matter.

#### REMEMBERING BEAU BIDEN

Mr. President, I join many of my colleagues in our feelings and expressing deep sadness on the loss of Beau Biden, one of our Nation's greatest public servants, one whom I was privileged to

join in serving with as attorney general—he as the attorney general of Delaware and I of Connecticut.

I knew Beau Biden well and, in fact, sat next to him at many of our meetings of the National Association of Attorneys General. There was no one I met as attorney general who was more dedicated to the rule of law, to protecting people from threats to public safety, and respecting their rights and liberties in doing so.

His loss is really a loss to our Nation as well as to the Vice President's family and my heart and prayers go out to them. I know how deeply the Vice President loved Beau Biden and how much, as a dad, his death will unspeakably and unimaginably affect him.

So, again, I want to express, on behalf of Cynthia and myself, our thoughts and prayers which are with the Vice President and his family at this time.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from North Dakota.

**ARTIFACTS TO HONOR NORTH DAKOTA SOLDIERS WHO LOST THEIR LIVES IN VIETNAM**

**Ms. HEITKAMP.** Mr. President, since March, I have been speaking on the Senate floor about the 198 North Dakotans who died while serving in the Vietnam war. But today I want to talk about something a little different. I want to talk about projects that were made by the Bismarck High School juniors in commemoration of these servicemen who gave the ultimate sacrifice in Vietnam.

Three Bismarck High teachers, Laura Forde, Sara Rinas, and Allison Wendle, are working with their history and English class students to research the lives and deaths of North Dakota's fallen servicemen in Vietnam. I am partnering with these high school students to learn about and to honor these men.

In addition to conducting research, contacting families, and writing essays about these North Dakotans who died in Vietnam, the Bismarck High students took this information and created artifacts to further honor these men. It is their goal to place these artifacts by the soldiers' names at the Vietnam Memorial wall when these students come to Washington, DC, this fall.

Over 150 students worked in groups or individually to create some truly amazing artifacts. It was difficult to single out a few to share with you today on the Senate floor but know that the artifacts I describe today are truly examples of this wonderful project that has connected these young students with the stories and the families of the young men who gave their lives for our country almost 50 years ago.

The first artifact I will show you is for John Lundin.

McKenzie Rittel, Emily Schmid, Brittany Hawkinson, and Shelby Wittenberg are Bismarck High School juniors who reached out to John

Lundin's son and daughter-in-law, Ray and Cheri Lundin. The girls learned that John wanted to be a farmer after completing his Army service and painted a farm scene on the scoop of a shovel. On the shovel's handle, they wrote John's dates of birth and death in purple to represent his Purple Heart Medal. Also on the handle, they painted a Bronze Star and a Silver Star—medals that John earned while in service.

John's family worked with the students to commemorate John's service. They mailed the students soil from the Kansas land where John intended to farm and a small John Deere tractor. The students placed the Kansas soil in a jar with North Dakota soil and put the tractor on the lid.

If it works out, John's son and daughter-in-law may try to join the students in visiting the Vietnam Veterans Memorial wall in November to place these artifacts by John's name.

Hunter Lauer and Kyra Wetzel paired up to research the life and death of Roy Wagner, who was a student at Bismarck High School about 50 years before them.

In high school, Roy was a lineman on the football team and wore No. 62. Hunter and Kyra decorated a Bismarck High School football jersey with Roy's last name and wrote his dates of birth, deployment, and death in the numeral "6" and the medals received for his service and sacrifice in the numeral "2." Hunter and Kyra compared Roy's football position as a guard to his Army position on the battlefield protecting his comrades and his friends.

Hoping that his tribute to Navy seaman Mitchell Hansey will last a long time, Bismarck High School student Logan Mollman decided to carve Mitchell's name into a piece of wood. Learning that Mitchell served on the Navy APL 30 barge during his entire tour, Logan hand-carved the full APL 30 emblem into the wood and then protected the project with a coat of lacquer. The emblem consists of the Stars and Stripes on the left, three bars on the right, and an apple in the middle for APL, or Auxiliary Personnel Lighter. Logan is looking forward to the placement of his project in honor of Mitchell at the Vietnam Veterans Memorial wall.

Ashley Erickson, Kaleb Conitz, and Sam Stewart are the three students who researched the life and death of Marine Corps Capt. Ernest Bartolina.

Ernest was flying a Chinook helicopter on a medevac mission when his helicopter was shot down and he was killed. To honor him, the students placed a small Purple Heart Medal on a model Chinook helicopter. They decorated the board that holds the helicopter with music notes, because Ernest played the French horn, and with the Marine Corps and Purple Foxes emblems to represent that he belonged to the HMM-364 Squadron.

Kadon Freeman also created an artifact to commemorate the life of Ernest

Bartolina. Kadon drew Ernest's Chinook medevac helicopter and a jungle setting of Vietnam. In the helicopter, he incorporated photos of men who served in Vietnam, stating:

The reason I made this CH-46 collage of soldiers in Vietnam was to represent Ernest Bartolina and the fallen heroes of the war with the medevac which he died in. I think that this is a good representation of him because he volunteered to be in the war.

Bismarck High School student Shaydee Pretends Eagle and PFC Roger Alberts are both from the Spirit Lake Sioux Reservation in North Dakota. It is this connection that led Shaydee to research Roger's life and decide to make by hand a "God's eye" for a lost son of the Sioux Tribe. She hand-wove the yarn of her God's eye in red and yellow. She hand-beaded "37E," the panel location of Roger's name on the Vietnam Veterans Memorial wall, in black and white. These four colors are the colors of the medicine wheel—very important colors to the Native American culture.

Let me read what Shaydee said in her own words about honoring Private First Class Alberts:

I decided to make a God's Eye because as Native Americans, we believe that everything belongs to the Creator; the land, the animals, the food we eat, and ourselves. We believe that this life on earth is only temporary. We believe we were put here to grow, love and learn, and then we return home. Our culture has made most Natives artists. Some of the things we do consist of bead work, feather work, quill work, cloth work, buckskin work, painting and dentalium work. All is made by hand, which means whatever we decide to make, we put our mind, heart, and time into. Our elders say, "always do things with a good heart," because the energy and vibes we have at the time stay with whatever we are making, which is why I hope I put my best into the God's Eye.

Taylor Anderson, Austin Wentz, and Miriah Leier are 11th graders who created a large F4D Phantom plane to leave at the Vietnam Veterans Memorial wall in honor of Air Force Lt. Col. Wendell Keller.

The students contacted Wendell's family, who shared mementos and photos of Wendell and told them about Wendell's life, the 1969 plane crash, and the 2012 identification of his remains. The family even mailed the students items recovered from Wendell's crash site, including pieces of a zipper and air tube.

Taylor, Austin, and Miriah built and decorated the plane with images of Wendell and the medals he was awarded in recognition of his extraordinary service. The students named the plane the Carol II, in honor of Wendell's wife.

Brenna Gilje and Courtney Hirvela learned that CPT Thomas Alderson was a multisport athlete and lettered in tennis, basketball, and track when he was a student at Grand Forks Central High School.

Brenna and Courtney contacted the school to obtain the school letters and had a dog tag made with Tom's information on it. In their report, these girls noted:

This letter represents Alderson's high school years and it can easily be related to a lot of teenage boys today. The letter with the dog tag shows how quickly he had to grow up and mature in such a short amount of time. As Alderson joined the military, he turned in his letter, along with his childhood, for a dog tag.

When McKayla Boehm began her project, she looked at different soldiers' names to find the right person to research. She noticed one of the killed-in-action had the same last name as hers, and she started to look into the soldier's family tree and her own family tree. McKayla found that Army SGT Richard Boehm was a cousin to her grandfather. McKayla decided to draw a family tree to show how she was related to Sergeant Boehm. This connection made the project that much more meaningful to McKayla. She had no idea she was related to a soldier who was killed in action in Vietnam.

McKayla added some information about Richard by his name on her family tree and wrote a note to him, thanking him for his service and expressing her desire that he were still with us so she could have gotten to know him. This project also emphasized for McKayla the importance of appreciating family and friends because you never know when the people who are closest to you may be taken away.

Nicole Holmgren, Tiffani Friesz, Brandi Bieber, and Georgia Marion looked for Gerald "Gerry" Klein's family members and spoke on the phone with Gerry's brother Bob.

Bob told the students about Gerry's life growing up in rural North Dakota, about being the oldest of five kids and working on the family farm. In fact, Bob explained to the girls that Gerry made the farm his priority, choosing to spend all of his free time there.

The four students created a farm complete with grass, tractors, rocks, and farm animals to represent the place where Gerry felt happiest—on the farm where he planned to return and make his life with his fiancee after serving in the Army.

Jaycee Walter and Kambri Schaner decorated a fishing hat to commemorate Thomas Welker, a staff sergeant who served in Vietnam in the Army.

The students learned that prior to being drafted, Thomas enjoyed spending his free time fishing with his young family. On the fishing hat, Jaycee and Kambri wrote Thomas' name and dates of birth and death. On eight fishing lures they hung from the hat, they wrote the names of Thomas' family members and the awards he received during his service to our country.

Bailee McEvers, Teagan McIntyre, Shandi Taix and Maisie Patzner filled a fishing tackle box with items that were important to Michael Meyhoff who served in the Army during the Vietnam war.

These four students communicated with Michael's family, who described Michael's interest in baseball, rock collecting, hunting, and fishing. The stu-

dents filled the tackle box with a baseball, rocks, shotgun shells, and fishing lures to represent his hobbies. They also decorated the box with pictures of Michael and the baseball field in Center, ND, that is named after him.

Finally, the final photo I will show you today is of a young man who was impacted in a very meaningful way in his research. Zach Bohlin is a talented student who carved a piece of wood into the shape of North Dakota. Zach added a peace sign, the soldier's name, and then expressed his own feelings about the sacrifice made by the Vietnam soldier he researched.

I would like to share the beautiful sentiment expressed by Zach through his project at Bismarck High School.

The empty chair,

The absence of one voice in the air.

Emotions take over with fear.

You're all I can't hear.

Damn the opinions of the world,

It's only filled with selfish words.

Scream and never be heard,

Keep quiet, carry on Sir.

Bring with you your heartfelt rhymes,

From the uncharted waters of your mind.

Take your wounded skin and fly.

It takes true love to sacrifice your life.

This project has meant so much to the families of the soldiers who have been researched. This project has meant so much to these young students who are connected in a way where, without these three great teachers, they would never have been connected to those who were killed in action in Vietnam. They would never have appreciated the sacrifice, and, in many ways, these soldiers would never be remembered.

I can't say how proud I am, as their Senator, of the wonderful students of Bismarck High School and the great teachers who have taken on this project. It has meant so much to me, it has meant so much to the families, and I think it has really meant so much to so many of the Vietnam veterans of my State who are still with us, who see this period of commemoration—as dictated by the President—as an important time to heal the wounds of Vietnam.

The PRESIDING OFFICER. The Senator from Rhode Island.

#### COMMENDING SENATOR GRAHAM

Mr. WHITEHOUSE. Mr. President, I understand that the majority leader is on his way here to close out the Senate very shortly. I want to take 1 minute to recognize a significant milestone in the life of one of our colleagues here on the floor. That colleague is our friend Senator LINDSEY GRAHAM, and that milestone is his retirement from the U.S. Air Force and Reserve, which he has served for more than 30 years. I think that 30 years of service—particularly 30 years of service overlapping with the responsibilities of being a U.S. Senator—is something that is worth a kind word.

The quality of Senator GRAHAM's service was impeccable. He has been awarded the Bronze Star Medal for his service. He has been recognized for his

loyalty to the Air Force by being appointed to the U.S. Air Force Academy Board of Visitors. Clearly, his contribution to the U.S. Air Force has been real. But I think Senator GRAHAM would also be the first one to say that he believes the U.S. Air Force made more of a contribution to him than he did to the U.S. Air Force. I think that is one of the reasons he was such a good U.S. Air Force and Reserve officer, and it is also one of the reasons that we have such affection for him here in the Senate.

I have to say that I disagree with Senator GRAHAM about a great number of things. He is a very, very conservative Member of the Senate. But we get to know one another in this body. I like Senator GRAHAM. I respect Senator GRAHAM, and I am pleased to come to the floor today to commend Senator GRAHAM for what must be a somewhat emotional milestone as he steps down from the uniform that he has now worn for more than 30 years for our country.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### REMEMBERING JOHN G. HEYBURN II

Mr. McCONNELL. Mr. President, on Friday, May 8, I had the honor of paying tribute to a dear friend, John Heyburn, who passed away on April 29 after a long illness.

I ask unanimous consent that the remarks I gave during the celebration of his life at St. Francis in the Fields Episcopal Church in Harrods Creek, KY, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[May 8, 2015]

LEADER McCONNELL'S EULOGY OF JOHN HEYBURN

We lost John just a few days ago, but it's been a long goodbye.

And so Martha, as we celebrate John this morning, we honor you too.

Because through it all, you were his most faithful companion, his fiercest advocate, and a cherished lifeline to those of us who loved him dearly.

And we're grateful.

Scripture tells us that heaven is a city. And I like to think that even in life John