REAUTHORIZING SECTION 215 OF THE PATRIOT ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2019, the gentleman from Texas (Mr. GOHMERT) is recognized for 60 minutes as the designee of the minority leader.

Mr. GOHMERT. Madam Speaker, today in our Judiciary Committee was quite interesting. For some people, it was quite a role reversal.

We had a hearing on the potential reauthorization of the FISA courts and discussion about powers of our DOJ, FBI, and NSA under what is often referred to as section 215.

It was interesting in the way of role reversals because, for years, we have been told that Democrats are the real civil libertarians. They are the ones who are trying to defend privacy rights, rights of Americans to think what they want, do what they want, and without being interrupted or spied upon by the Federal Government.

Yet, today, over and over, we heard apologies basically from our Democratic friends to the representative of the Department of Justice, the FBI, and National Security Administration for comments of some Republicans.

There really was no need to apologize. We weren't attacking these three individual witnesses, but there are issues that are still unresolved that many of my friends across the aisle used to be concerned about, privacy and Fourth Amendment rights that are supposed to protect us from improper search and seizure or spying, or surveillance being one of the more important. So we had these witnesses.

It was interesting, and if I were our friend Israel, I would be very concerned, because I asked these representatives, first of all, does the Department of Justice, the FBI, or the NSA consider Russia to be a known terrorist organization under section 215. Each of the representatives indicated, in turn, that they could not answer that question.

Well, the silence seemed to speak volumes to me. It should have been an easy question to answer.

I asked about Israel. Does the DOJ, FBI, or NSA consider the Ambassador from Israel to be a representative of a terrorist organization, and they couldn't answer that question.

That is quite interesting.

But my concern arose out of reading and hearing, in prior years, about how apparently Jeff Sessions was surveilled because he was speaking to a Russian Ambassador, and there were reports that the Ambassador from Israel had been surveilled.

So, under 215, they are supposed to be part of either a known terrorist or an ally, someone who identifies with a known terrorist organization.

So it is interesting that things have evolved the way they have so that our own intelligence can't tell us whether Russia or Israel is considered a terrorist organization. It is quite alarming.

But ever since I first got here, my first term, when we took up reauthorization of the PATRIOT Act—and I understood when the PATRIOT Act was passed, it was just days after, maybe a week or so after 9/11, and we didn't know who had hit us, were they about to hit us again, were 3,000 or more people going to be dying any day again and again.

So I wasn't here, but Congress passed this overarching bill that gave way too much power to the government, but I understand the atmosphere here at the time.

Then section 215 came up for reauthorization, as has the FISA courts in recent years. It is important that we continue to take a look at those. I think it is extremely important that we have sunsets; otherwise, if there is not the chance that these powers will go away, then we always have trouble, no matter whether it is a Democrat or a Republican administration, always have trouble getting people to come up and speak frankly or get records so we know what may have occurred, whether it was abused or not.

But I go to section 215, and I have been concerned about some of this language since I first got here.

As a former litigator, prosecutor, judge, chief justice, I know words mean things. This section says that, basically, the FBI can make an application for an order requiring production of tangible things for an investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activity.

Now, I asked this several years ago when this was being pushed for reauthorization: What does ''clandestine intelligence activity'' mean? What does that mean? Because, to me, if I am the judge, you come to me and you want a warrant and you say, ''We have caught somebody engaged in clandestine intelligence activities,'' wow, that is so broad.

So the question I asked today I asked years ago: Could that mean that, if my neighbor is peering, watching my yard from behind his or her curtain—well, that is clandestine. They are hiding behind a curtain. They are trying to see what is going on. That is gathering intelligence. So would that justify a warrant from the FISA court?

Well, they couldn't answer that question, and they never have. They never have attempted to answer that question.

In fact, years ago, when it was reauthorized, the representatives of DOJ, CIA, NSA, they were all saying:

''Look, that really doesn't come into play, particularly.''

''Oh, well, good. Then let's eliminate it.''

''Well, no. We don't want to eliminate our ability to get a warrant based on clandestine intelligence activities.''

''Well, what does that mean? How has it been used?''

Couldn't get an answer, but they sure wanted to keep it in there.

What does that mean? It doesn't say ''foreign clandestine intelligence.'' It doesn't say ''terrorist clandestine intelligence.''

So words mean things. Why do they keep wanting that language in there?

It used to be not as big of a concern until we find out that the FISA courts, basically—we might call them the RS courts instead of the FISA courts. The FISA courts are basically RS courts, rubberstamp courts because, basically, when the Federal Government comes in, they get what they want.

I was one, having, again, been a judge, I had law officers come before me many times. Sometimes they would come to my house at 2 or 3 in the morning. They would need a warrant quickly, and the requirements of the Constitution are very clear.

I just happen to have a copy of the Constitution. Amendment IV says: ''The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.''

That particular description, those words, are very important, as are the two words, ''probable cause.''

□ 1430

We were taught, and as a judge I applied it, that if a law officer wants a warrant—sometimes there were FBI who would come and sometimes they would come with other law officers—but they knew, under the Constitution—they normally did a very good job—you have to have an affidavit that establishes there is probable cause to believe a crime was committed and probable cause to believe the person whose records were sought to be seized had probably committed the crime. It is not enough to just allege we have probable cause to believe a crime was committed and this person committed it. That is not enough. The affidavit must describe facts—not conclusions, but facts—that establish that, yeah, probably a crime was committed and probably this person did it and that is why we need this record, that is why we need this search warrant, and that is why we need to be able to go look for those specific records, specific things.

Imagine my surprise when a FISA court order was leaked—and it was an order by the FISA court here in Washington—and it says, it orders, it was ordered:

> The custodian of records shall produce to the NSA on service of this order and continue production on an ongoing daily basis thereafter for the duration of this order, unless otherwise ordered by the court, all call detail records or telephoning metadata created by Verizon for communications 1) between the United States and abroad, or 2) wholly within the United States, including local telephone calls. This order does not require Verizon to produce telephone and metadata for communications wholly originating and terminating in foreign countries.

That was interesting to me because, first of all, what this order is going after, supposedly, under section 215, trying to monitor terrorist activity, it only wanted calls by Americans. Whereas, if you are an American in the United States, you have constitutional rights, including the Fourth Amendment, that this certainly appears to violate. There is no allegation of probable cause a crime is committed, no allegation that Verizon or the records of the people being sought had committed a crime, the application apparently said ''must have'' because that is the way the order reads: We want everybody's records that Verizon has if they are protected by the Fourth Amendment, but we don't want anybody's records, foreign records, even though they are not protected by the Constitution and Fourth Amendment rights against unfair search and seizure.

That is really an interesting role reversal right here. You are protecting the people who have no protection and going after the people who are protected by the Fourth Amendment.

It has caused a lot of concerns about, well, what else does the FISA court rubber stamp? It seems kind of silly, but we have been told that section 215—that I have read from here—was reformed and that the NSA ended their program of gathering records. But the thing is, as long as there is a FISA court and as long as there is a section 215 that is even half as broad as it currently is, any of our law enforcement can go back into the FISA court and get a warrant rubber stamped, which is basically what happened, it appears, in the FISA orders regarding the Trump campaign.

The thing, as a former judge, that really grieves me most about the FISA court is that we have not had a FISA judge who had sufficient righteous indignation to demand Comey, Rosenstein, or McCabe—if he participated—any of those participants, to come in before them and show cause as to why they should not go to jail for committing a fraud upon the court, which it sure appears they did.

They were not truthful about the Russia hoax, about the so-called Russian dossier that a discredited, dishonest former MI6 agent in England put together based on representations by Russian agents, that he now admits they could have worked for Putin, I don't know. And that were being purchased, paid for, by the DNC and the Clinton campaign through Fusion GPS, which included Nellie Ohr, who is married to Bruce Ohr, who kept bringing material from them that had been purchased by the FBI to the DOJ.

This, more than anything else, causes me to think maybe we need to do away with the FISA court and go back to the way that things were, because we didn't have a FISA judge involved in this with enough morality, enough righteousness, and enough honesty, to recognize that a fraud against their court was committed and to be offended by it.

If somebody came in and got a warrant from me and they did not provide me the true facts, and they knew their source could not be verified and they swore that this was verified, somebody would be going to jail. That is so dishonest. People in those kinds of positions that we trust with so much power, they need to be honest, and especially before a judge.

But, apparently, we have one or more FISA judges who are not offended to be lied to. Maybe it is because they saw it was going for a good cause to try to stop the Donald Trump campaign or get him thrown out as President, that is a worthy cause. Even though it was a dishonest application affidavit and warrant, that is okay with the FISA judge.

I would really like to have the FISA judges come before our committee and testify about their lack of morality, their lack of integrity, and their not caring that people would come in and submit lies and verify something they knew, and intentionally deceived about, being unverifiable.

We have some work to do. I am very grateful to Congresswoman ZOE LOFGREN. I believe she was sincere today in a hearing when she looked down the dais at me and my Republican friends and said, we know there are reforms that need to be made, we know that there are amendments that need to occur regarding the system, and we look forward to working with our friends on the other side of the aisle.

I hope that is true because this little experiment in a constitutional Democratic Republic is in jeopardy. I know people want to talk about climate change, but 12 years from now when we are told the world may end if we don't do something about climate change, this little constitutional Democratic Republic will have ceased to be based on the Constitution, which has already set a record for being the longest basis for a country in the history of the world. So we have work to do, and I hope that we can do it in a bipartisan manner.

Even if you read in the Bible about King David, what you learn is that even the finest people in the world, if they are not held accountable, if there is not some accountability, can do some really egregious things. That is our obligation here in Congress. Let's have some accountability.

Madam Speaker, I yield back the balance of my time.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 39 minutes p.m.), the House stood in recess.

□ 1830

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. CARSON of Indiana) at 6 o'clock and 30 minutes p.m.

ADJOURNMENT

Mrs. LOWEY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 31 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, September 19, 2019, at 10 a.m. for morning-hour debate.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

2170. A letter from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting the Administration's proposed rule — Implementation of the Current Expected Credit Losses Methodology for Allowances, Related Adjustments to the Tier 1/Tier 2 Capital Rule, and Conforming Amendments (RIN: 3052-AD36) received September 5, 2019, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Agriculture.

2171. A letter from the Secretary, Department of Defense, transmitting a letter on the approved retirement of Rear Admiral William F. Moran, United States Navy, and his advancement to the grade of admiral on the retired list, pursuant to 10 U.S.C. 1370(c)(1); Public Law 96-513, Sec. 112 (as amended by Public Law 104-106, Sec. 502(b)); (110 Stat. 293); to the Committee on Armed Services.

2172. A letter from the President and Chairman, Export-Import Bank, transmitting the Bank's statement with respect to transactions involving exports to Mozambique, pursuant to 12 U.S.C. 635(b)(3); July 31, 1945, ch. 341, Sec. 2 (as added by Public Law 102-266, Sec. 102); (106 Stat. 95); to the Committee on Financial Services.

2173. A letter from the Acting Assistant Secretary for Legislation, Department of Health and Human Services, transmitting the 2018 National Healthcare Quality and Disparities Report, pursuant to 42 U.S.C. 299b-2(b)(2); Public Law 106-129, Sec. 2(a); (113 Stat. 1658); to the Committee on Energy and Commerce.

2174. A letter from the Deputy Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, transmitting the Commission's final rule — Implementing Kari's Law and Section 506 of RAY BAUM'S Act [PS Docket No.: 18-261]; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems [PS Docket No.: 17-239]; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules [GN Docket No.: 11-117] received September 10, 2019, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Energy and Commerce.

2175. A letter from the Secretary, Department of Homeland Security, transmitting notification that all state, territory Governors, and the Mayor of the District of Columbia, received letters outlining their individual REAL ID program implementation status and offering guidance to help ensure a smooth transition to full REAL ID enforcement. A copy of that letter is attached, pursuant to 8 U.S.C. 1778(b); Public Law 109-13,