Speech at Georgetown Law
Chairman F. James Sensenbrenner
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Good morning. I would like to thank Georgetown Law for inviting me here today.

Following September 11, as Chairman of the House Judiciary Committee, I was the primary author of the USA PATRIOT Act. Our goal was to ensure that our intelligence community had the proper tools to combat terror in a post 9/11 world.

I stand by the original intent of the law, but it has been misinterpreted by both the Bush and Obama administrations. Congressional oversight has also fallen short. And the balance between civil liberties and national security we felt we struck has been tainted.

Senate Judiciary Chairman Patrick Leahy and I introduced the USA FREEDOM Act to rein in abuse and put an end to spying on innocent Americans while maintaining the necessary tools to ensure our security.

The PATRIOT Act had 17 provisions. I insisted that all 17 be sunset so that they would expire automatically if they weren't reauthorized. Congress later determined that 14 of those provisions were noncontroversial, and they are now permanent law. Three remaining provisions sunset in 2015 and will expire if they are not reauthorized.

One of those provisions is Section 215, the so-called business records provision. Section 215 allows the government to apply to the FISA Court, or FISC, for an order to obtain tangible things if they are relevant

to an authorized investigation into international terrorism. The administration has used this provision to justify the bulk collection of records of innocent Americans.

The administration argues that a request for every phone record is relevant because the universe of every call undoubtedly contains relevant information. In her original decision authoring bulk collection, the FISC judge wrote: "Analysts know that terrorists' e-mails are located somewhere in the billions of data bits; what they cannot know ahead of time is exactly where."

We recently learned that the administration has used similar logic to justify the collection of records related to every financial transfer that Americans make. The government collects and stores these records and then accesses them based on criteria it established with the FISC—a standard adopted in secret and unrelated to anything debated or voted on by Congress.

The administration's argument isn't even a reasonable reading of Section 215. If everything is relevant, then the term "relevance" ceases to have any legal significance. If Congress intended to allow bulk collection, it would have authorized bulk collection. Instead, we attempted to set limits on what the government could obtain.

The administration's approach also subverts Congressional intent because the FISC has abrogated its responsibility to determine whether the administration is entitled to access records. The court was meant to be a neutral arbiter that determined whether collection was lawful. Instead, the administration collects everything and decides for itself whether it has the authority to access those records.

Exacerbating these violations is the fact that the FISC changed the law in secret. We talk a lot about striking the proper balance between civil liberties and national security, but without transparency there is no balance. The legal standard devolves to nothing more than "trust us."

Senator Leahy and I proposed the FREEDOM Act, not only because the intelligence community has lost our trust, but because we believe that the American people are the custodians of their government and have a fundamental right to know what is done in their name.

Title one of the FREEDOM Act directly addresses business records reforms—ending dragnet collection under Section 215. Title one raises the standard the government must meet to obtain a court order for tangible things and ensures that the records the government obtains are in fact relevant to the government's investigations.

Titles two and five adopt a uniform standard for federal collection by applying the heightened standard to pen register and trap and trace devices and national security letters. Taken together, the provisions will force a fundamental shift in how the intelligence community collects data. Rather than allowing the government to collect everything and then determine what they need, the FREEDOM Act requires them to show a need for records before they obtain them.

Not only will this protect civil liberties and restore trust in our intelligence community, the changes will focus national security professionals on actual threats. The administration has never made the case that it needs the bulk collection programs to keep us safe.

Intelligence professionals should pursue actual leads—not dig through haystacks of our private data.

Section 702 of FISA allows the government to wiretap foreigners outside the United States without a court order. Title three of the FREEDOM Act will close the NSA's "back door" access to Americans' communications by requiring the government to obtain a warrant before searching for Americans' communications inadvertently obtained under Section 702. Title three also strengthens prohibitions on reverse targeting to ensure the administration does not target foreigners as a pretext for collecting data on Americans who make calls internationally.

As we have all seen, tighter standards are meaningless without better oversight, so the FREEDOM Act also addresses the origins of the problem.

The FISC currently operates entirely *ex parte*—ruling in secret after hearing only from proponents of requests. Our judicial system is based on an adversarial model, and the FREEDOM Act brings this safeguard to the FISC by creating the Office of the Special Advocate. The special advocate is charged with protecting individual rights and civil liberties and ensures that judges on the FISC benefit from opposing viewpoints.

Title three also ends secret laws by requiring publication of FISC decisions that contain a significant construction or interpretation of law to the greatest extent possible.

Title six helps ensure companies who work with the government are protected. Private companies are currently barred from disclosing basic

information about the requests for information and assistance they receive from the government.

With the support of many of the tech giants, the FREEDOM Act increases transparency by giving Internet and telecom companies the ability to publicly disclose the number of FISA orders and national security letters received, as well as how many orders were complied with. It will also allow companies to divulge how many users or accounts on whom information was demanded under the FISA orders and national security letters.

In a joint letter, Microsoft, Apple, Yahoo, Facebook, AOL, Google and LinkedIn wrote, "Transparency is a critical first step to an informed public debate, but it is clear that more needs to be done. Our companies believe that government surveillance practices should also be reformed to include substantial enhancements for privacy protections and appropriate oversight and accountability mechanisms for those programs. "

On October 31st, the Senate Intelligence Committee voted for the first time in our country's history to allow unrestrained spying on Americans. The committee created to conduct oversight on these programs has abdicated leadership and responsibility.

But I am committed to a different approach. With over 100 cosponsors in the House and Senate covering the political spectrum, I am confident my colleagues will work pragmatically to continue towards the balanced approach supported by Americans, businesses and our friends abroad by passing the USA FREEDOM Act into law.

Thank you.

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