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VOTE YES ON THREE CRITICAL PRIVACY AMENDMENTS TO H.R. 6172, THE USA FREEDOM REAUTHORIZATION ACT OF 2020; OPPOSE IF THEY FAIL

May 12, 2020

Senate Minority Leader Schumer and Democratic Senators:

The Senate will soon consider three hard-won amendments to strengthen privacy protections in H.R. 6172, the USA FREEDOM Reauthorization Act of 2020, which was rammed through the House in an effort to prevent members of Congress from voting in favor of serious Foreign Intelligence Surveillance Act (FISA) reform. The underlying bill would reauthorize three surveillance authorities—Section 215 of the USA PATRIOT Act, as well as the “lone wolf” and “roving wiretap” authorities—that expired on March 15.

We urge you to support the three privacy-protecting amendments to be offered by Senators Lee and Leahy, Senator Paul, and Senators Daines and Wyden. If these critical reforms are not adopted, we urge you to oppose the USA FREEDOM Reauthorization Act.

Majority Leader McConnell may also offer three “side-by-side” amendments. We urge you to oppose the McConnell amendments if they undermine the already weak privacy protections in H.R. 6172.

- **Sens. Lee and Leahy’s amendment** strengthens the role of “amici curiae,” who are special independent advisors to the FISA Court, by increasing their access to information and power to raise issues with the Court. It would also encourage their appointment for surveillance applications that involve political or religious leaders and organizations, as well as the domestic news media. Finally, it would require the FBI and DOJ to provide all material evidence, including exculpatory evidence, to the Court.
- **Sen. Paul’s amendment** prohibits the use of FISA, as well as surveillance conducted under claimed Article II power, against people in the United States or in proceedings against them.
- **Sens. Daines and Wyden’s amendment** prohibits the use of Section 215 for warrantless surveillance of people in the United States’ internet search and browsing history.

These amendments are as reasonable as they are necessary. On March 30, the DOJ Inspector General [issued an advisory](#) to FBI Director Wray, updating him on the office’s follow-up audit of FISA surveillance after the Crossfire Hurricane report. His findings are disturbing:

“We believe that the repeated weaknesses in the FBI’s execution of the Woods Procedures in each of the 29 FISA applications we reviewed to date—including the 4 applications for which the FBI could not furnish an original Woods File—raise significant questions about the extent to which the FBI is complying with its own requirement that FISA applications be supported by documentation in the Woods File as part of its efforts to ensure that applications are ‘scrupulously accurate.’”

To be clear, we would oppose extension of these overreaching authorities under any administration absent major reform. However, it is particularly dangerous for Democrats to extend them to Trump when we have seen leak after leak revealing that this administration is unlawfully targeting communities of color and racial justice protesters. The FBI has manufactured the designation of “Racial Identity Extremist” to use expanded powers to target Black organizers and activists. And report after report have documented the systemic failure of checks that safeguard the rights of people in the United States. The civil liberties community has decried the government’s abuse of its surveillance powers for decades, in particular Section 215, and this administration poses a heightened threat to the most policed communities in America.

For most of the three decades since the first time Bill Barr was Attorney General, the government has conducted unlawful mass surveillance of people in the United States. This includes the Drug Enforcement Administration’s bulk metadata dragnet that Barr personally approved in 1992 without first conducting a review of whether it was legal, and which operated in complete secrecy from the public until 2015. It includes the Stellarwind program, another secret, mass surveillance program that unlawfully acquired information for over five years after 9/11—explicitly in spite of FISA. It includes the bulk telephone metadata dragnet, founded on a secret interpretation of Section 215, which operated from 2006-2015. It even includes the replacement for that program, the Call Detail Records program, which was shuttered after it produced 434 million call detail records in pursuit of 11 targets—in 2018 alone. This history of violations leads to an inescapable conclusion: Congress must do more.

Democrats who are rightfully afraid of what this lawless administration is capable of should be especially concerned about what AG Barr’s *second* attempt at launching a mass surveillance program might look like.

Further proving that Congressional oversight of intelligence agencies is in desperate need of a revival, the last time the Senate considered the USA FREEDOM Reauthorization Act, Senate Select Committee on Intelligence Chairman Burr claimed that in the absence of these authorities the president has the inherent authority to “do all of this, without Congress’s permission, with no guardrails.” Opponents of these reasonable reforms support dangerous and radical legal theories like this, which incorrectly presume that the President has the inherent authority to surveil people’s call, medical, purchase, and other records.

That’s why Attorney General Bill Barr, Majority Leader McConnell, and Chairman Burr are the primary Senate supporters of the USA FREEDOM Reauthorization Act, and the primary opponents to these reasonable amendments.

- Senators who support independent oversight of the Trump administration’s surveillance and judicial access to exculpatory information will **support Sens. Lee and Leahy’s amendment.**
- Senators who do not believe that secret foreign intelligence surveillance should be used in court against people in the United States will **support Sen. Paul’s amendment.**
- Senators who oppose the warrantless surveillance of people in the United States’ internet browsing and search histories will **support Sens. Daines and Wyden’s amendment.**

We urge you to join us and your constituents in support of the critical reforms.

Sincerely,

