

Floor Statement on Patriot Act Deal

Mr. President, I understand that some of my friends and colleagues in this body have come to an agreement with the White House on reauthorizing the Patriot Act.

While I respect these Senators greatly, I am gravely disappointed in this so-called deal. The White House agreed to only a few minor changes to the Patriot Act conference report that could not get through the Senate back in December. These changes do not address the major problems with the Patriot Act that a bipartisan coalition has been trying to fix for the past several years. We've come too far and fought too hard to agree to reauthorize the Patriot Act without fixing those problems. A few insignificant changes just doesn't cut it. I cannot support this deal, and I will do everything I can to stop it.

I understand the pressure that my colleagues have been under on this issue, and I appreciate all the hard work that they have done on the Patriot Act. It has been very gratifying to work on a bipartisan basis on this issue. It is unfortunate that the White House is so obviously trying to make this into a partisan issue, because it sees some political advantage to doing so. Whether the White House likes it or not, this will continue to be an issue where both Democrats and Republicans have concerns, and we will continue to work together for changes to the law. I am sure of that.

But I will also continue to strongly oppose any reauthorization of the Patriot Act that does not protect the rights and freedoms of law-abiding Americans with no connection to terrorism. This deal does not meet that standard – it doesn't even come close.

The Patriot Act conference report, combined with the few changes announced today, does not address the core issues that our bipartisan group of Senators have been concerned about for the last several years. The modest but critical changes we have been pushing are not included. I am not talking about new issues. We are talking about the same issues that concerned us when we first introduced the SAFE Act more than two years ago to fix the Patriot Act. And we have laid them out in detail in several different letters over the past few months.

First, and most importantly, the deal does not ensure that the government can only obtain the library, medical and other sensitive business records of people who have some link to suspected terrorists. This is the Section 215 issue, which has been at the center of this debate over the Patriot Act. Section 215 of the Patriot Act allows the government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records, but also medical records and various other types of business records. The Senate bill that this body passed by unanimous consent back in July would have ensured that the government cannot use this power to go after someone who has no connection whatsoever to a terrorist or spy or their activities. The conference report replaces the Senate test with a simple relevance standard, which is not adequate protection against a fishing expedition. And the deal struck today leaves that provision of the conference report unchanged.

Second, the deal does not provide meaningful judicial review of the gag orders placed on recipients of Section 215 business records orders and National Security Letters. Under the deal, such review can only take place after a year has passed and can only be successful if the recipient proves that that government has acted in bad faith. The deal ignores the serious First Amendment problem with the gag rule under current law. In fact, it arguably makes the law worse in this area.

And third, the deal does not ensure that when government agents secretly break into the homes of Americans to do a so-called “sneak and peek” search, they tell the owners of those homes in most circumstances within seven days, as courts have said they should, and as the Senate bill did.

As I understand it, this deal only makes a few small changes. It would permit judicial review of a Section 215 gag order, but under conditions that would make it very difficult for anyone to obtain meaningful judicial review. It would state specifically that the government can serve National Security Letters on libraries if the library comes within the current requirements of the NSL statute, a provision that as I read it, just restates current law. And it would clarify that people who receive a National Security Letter would not have to tell the FBI if they consult with an attorney. This last change is a positive step, but it is only one relatively minor change.

So this deal comes nowhere near the significant, but very reasonable, changes in the law that I believe are a necessary part of any reauthorization package. We weren't asking for

much, Mr. President. We weren't even asking for changes that would get us close to the bill that this body passed without objection last July. But the White House would not be reasonable and has forced a deal that is not satisfactory in an effort to serve their partisan purposes. I will oppose it, and I will fight it.

I yield the floor.