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SOMETHING ON YOUR MIND?

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THE FRONT BURNER

Extend Patriot Act domestic spying?

No: Extension is a vote for unconstitutional snooping

BY MICHELLE RICHARDSON | Guest columnist

When you hear the phrase "Patriot Act," if you think of massive government surveillance, top-secret data collection, and the enormous National Security Agency program gathering information about Americans' phone calls, then you're likely thinking of Section 215.

Section 215 is known as the "business records" provision of the 321-page Patriot Act. On paper, it allows federal agencies to obtain secret court orders to compel third parties to turn over "any tangible thing" that is "relevant" to foreign intelligence or terrorism investigations. In practice, the phrase "any tangible thing" has meant almost anything surveillance agencies want it to, while the word "relevant" has meant almost nothing at all.

And so it is Section 215 that is used to run the broadest-reaching domestic spying programs ever launched against the American public — including the NSA dragnet that for years has been sweeping up a record of almost every phone call made or received by Americans. Early this month, a federal appeals court found that the call-records program was never even authorized by Congress.

As a former ACLU lobbyist in Washington D.C., and a congressional staffer of a committee overseeing these programs, I was assured for a decade that the Patriot Act wasn't used to spy on everyday Americans. Yet now we know that Section 215 is used for precisely that purpose, and despite America's outrage about these programs, they have continued for two years since the Snowden revelations.

The administration has been clear that although it agrees the program really isn't necessary, it will continue until Congress rewrites the law. Because Congress provided an automatic expiration in Section 215 for June 1 of this year, Congress is debating whether to do that rewrite now, let Section 215 expire, or continue domestic spying unabated.

Like many issues, Florida and its congressional delegation are influential in this debate. In fact, its senators could determine whether mass surveillance continues in the U.S. Last year, the U.S. House passed a modest, bipartisan reform bill. When the Senate scheduled its vote, Sens. Bill Nelson and Marco Rubio both voted to filibuster the reform bill, a filibuster that survived by — you guessed it — two votes. Florida's senators are quite literally the last obstacle to ending mass surveillance on Americans.

What our senators need to understand is that the government simply does not have the right to spy on you without a legitimate reason to believe you've done something wrong. This principle, built into the backbone of our country as the Constitution's Fourth Amendment, has always been a core principle of the American justice system. The use of Section 215 of the Patriot Act to collect huge amounts of data on all of us has turned this foundational idea on its head.

The question before Congress and the American people now is whether that provision should be renewed. The answer is a clear and resounding no.

The sunset provisions were built into the Patriot Act precisely to force Congress, and the American public, to reconsider the surveillance powers the law granted once more was known about their impact on civil liberties. The truth about how Section 215 is being interpreted has been laid bare — Congress can no longer pretend not to know how the Patriot Act is being used against Americans.

This year is the first clear up-and-down vote on Section 215 since the Edward Snowden revelations. Florida's senators need to side with the Fourth Amendment and our constitutional right to privacy. Voting for reauthorization of Section 215 now would not just be a missed opportunity for a serious debate about the role of government surveillance in our democracy; it would be an endorsement of the unconstitutional surveillance programs we already know exist, and a tacit endorsement of those we're still in the dark about.

Michelle Richardson is public policy director of the ACLU of Florida and a former legislative counsel for the ACLU's Washington legislative office, where she focused on national security, privacy and surveillance issues.

Senators must understand government cannot spy on you without a legitimate reason to believe you've done something wrong.



Today's moderator



DARRYL E. OWENS
Editorial Writer

Kentucky Sen. Rand Paul might well be mainlining throat lozenges today after Wednesday's marathon quasi-filibuster opposing the Patriot Act.

Paul spoke for more than 11 hours against the law, highlighting Section 215 of the act, which sunsets June 1 unless Congress renews it. Section 215 authorizes the government — with an order from the Foreign Intelligence Surveillance Court — to collect "tangible things" including business records. Its most controversial application has been in collecting and storing Americans' phone-dialing records, known as metadata.

Paul's opposition to renewing Section 215 echoes one of today's columnists, who argues Uncle Sam is wrong to "seek and peek" without solid justification.

Others favor extension. To that end, Senate Majority Leader Mitch McConnell and Senate Intelligence Chairman Richard Burr introduced a bill that continues Section 215 until 2020.

Likewise, today's other columnist argues that Section 215 is essential to America's counterterrorism strategy.

Coincidentally, a review issued Thursday by the Justice Department's Inspector General noted the FBI's surging use of Section 215 to gather "hard copy reproductions of business ledgers and receipts to gigabytes of metadata and other electronic information." The FBI's proclivity for the tool owes, in part, the report says, to a lower legal bar for its use.

BY THE NUMBERS

- **1952:** The year a President Harry Truman order established the National Security Agency.
- **60:** The percentage of Americans in an April ACLU poll who agree the Patriot Act should be overhauled "to limit government surveillance and protect Americans' privacy."
- **34:** The percentage of Americans in the same poll who feel the Patriot Act is perfect as-is for protecting America.

Yes: Section 215 critical to counterterrorism strategy

BY RYAN VOGEL | Guest columnist

Section 215 of the Patriot Act, which amended Section 501 of the Foreign Intelligence Surveillance Act, is one of the most controversial and misunderstood provisions in the law. Understandably, many citizens have become concerned with reports of the government listening in on their private phone calls and collecting their information. Yet, while Section 215 is broadly and ambiguously worded, it operates far differently than how critics characterize it or in how the public perceives it. Given the current threat landscape, the law strikes a reasonable balance between liberty and security. Failing to renew Section 215 could needlessly hinder the government's ability to protect the country from terrorist attacks.

Part of the concern over the activities authorized by Section 215 may be related to confusion over the nature and role of intelligence. In contrast to evidence used in a criminal setting that focuses on proving a past act in order to punish an individual, intelligence is prospective and aims to prevent future acts. Making effective use of intelligence depends on obtaining a wide variety of sources, both big and small, over time to paint a more complete picture. Removing any one source or string of sources alters the picture and could present officials with critical deficiencies in information that may leave the country vulnerable to attack.

This country has not suffered a major attack since 9-11. That is in large part due to the zealous efforts of the intelligence community



Section 215 permits the government to collect certain types of information only where it is able to prove to the Foreign Intelligence Surveillance Court that there is reasonable, articulable suspicion that the records are relevant and related to terrorist activity. Under this authority, the government acquires telephone metadata (telephone records of who called whom, when, and for how long) in bulk, but only after it obtains an order from the FISC. That order must then be reviewed and reapproved every 90 days by the FISC, and the government must file reports with the court every 30 days. The government does not review the content (what was said) of any of the phone calls from the collection and only keeps the metadata for five years.

Even after the government obtains the telephone metadata, the law requires multiple oversight mechanisms, including procedures that seek to restrict the use and retention of certain classes of data. The House and Senate Intelligence Committees, which are regularly briefed by the involved government agencies, provide another level of oversight. And both Democrat and Republican administrations and Congresses have consistently reviewed and decided to continue the telephone metadata collection program. Indeed, while there are certainly opponents and critics of the program, there is widespread support across the political spectrum.

One might reasonably ask why the government needs to collect and hold onto telephone records when the telephone companies are already doing it. This was one of the primary modifications to Section 215 proposed in the USA Freedom Act. But phone companies keep data for less time (typically around 18 months) than the government does, and they do not collate and organize the data the way the government does. Relying on telephone company records could have the effect of hampering the intelligence community's ability to produce timely, reliable, and actionable intelligence for critical counterterrorism decisions.

This country has not suffered a major attack since 9-11. That is in large part due to the zealous efforts of the intelligence community, working with the tools given them by the law, including Section 215. The NSA is doing exactly what we should want it to do — casting a wide net to ensure maximum collection coverage — but submitting to rigorous requirements on the use or application of information obtained in the collection. It would be a mistake to now remove something that has worked so well and is subjected to as much oversight as this provision.

Ryan Vogel is a visiting assistant professor of law at the Chicago-Kent College of Law.

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The Needle

President Obama broke a world record after he reached a million followers on Twitter in just five hours. The only guys not following Obama? His Secret Service agents. They lost track months ago.
— Jimmy Fallon

We are now 11 weeks away from the first Republican presidential debate. The debate will be held in a 300-seat theater, so there'll be almost enough seats for all the candidates.
— Seth Meyers



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A Tribune Publishing Company, LLC. USPS 412100, ISSN 0744-6055. Published every morning by Orlando Sentinel Communications Company, LLC, 633 N. Orange Ave., Orlando, FL 32801. Periodical postage paid at Orlando, FL POSTMASTERS. Send address changes to Orlando Sentinel, PO Box 2833, MP224 Orlando, FL 32802. For customer service call, 1-800-359-5353.