

over the title, I know that, but it was somewhat comforting.

If you read on down—this was as we were trying to amend it and as the Justice Department under President Bush was pushing—it says, “An investigation conducted under this section shall,” and then it has, “(A) be conducted under guidelines . . . (B) not”—and there’s an “and,” so this is important; you can’t go without (B)—“and (B) not be conducted of a United States person solely upon the basis of activities protected by the First Amendment to the Constitution of the United States.”

There were some concerns during this debate over amending section 215 of the PATRIOT Act back in the 109th Congress that we don’t want the administration gathering intel about someone if it is all having to do with their activity that is protected by the First Amendment to the Constitution of the United States.

So, for example, if someone were burning a United States flag or burning a Holy Bible, the Supreme Court tells us those are protected activities protected by the First Amendment, and therefore you could not use those to go gather intelligence data about an American who was doing those things.

Now, of course, we have the U.N. and former Secretary Clinton and President Obama and others saying, We like what the U.N. is saying.

Basically, if we adopted what the U.N. said, it would still be true, our Supreme Court would allow you to burn a Bible and a flag, but you could never, ever do anything like that to a Koran, which then would allow our radical Islamist friends who want an international caliphate to check the box that they created and was discovered during a raid some years back, that one of their 10-year goals was to subjugate the United States Constitution to shari’a law; and as soon as we adopt a law that says you can destroy a Bible and a flag but not a Koran, they can check that box. But under the proposed amendment in 2005 to the PATRIOT Act, or the official title under title 50, War and National Defense, chapter 36, “Foreign Intelligence Surveillance”; chapter IV, section 1861, so paragraph (3) after (2), that says, “An investigation conducted under this section shall . . . (B) not be conducted of a United States person solely upon the basis of activities protected by the First Amendment”—we get to paragraph (3). And this was an issue that was very contentious. There were groups boycotting and demonstrating and saying, Hey, this is all about library books, we don’t want the Bush administration being able to go in and get a list of books we’ve read.

Well, I contended then and still contend now that to do such a thing of an American citizen you should have to have probable cause that an American citizen has violated the law and get a warrant to do that. But this didn’t require a warrant. This is allowed under

the PATRIOT Act if it was for foreign intelligence purposes and for international terrorism investigations, according to the title. But unfortunately, in the law itself, it said, “or to protect against international terrorism or clandestine terrorism activities.”

And I told people at the time: I’m a little uncomfortable with that, because “clandestine intelligence activities,” what is that? What if it’s just somebody going somewhere asking questions, not doing it in public but going privately to individuals and saying, “I’m really concerned about what the administration is doing on this or that; what do you know about what this administration is doing? What have they done to you?” Would that be considered as somebody doing clandestine or private intelligence activities?

I was told: You’re being paranoid here, GOHMERT. Look at the title again. It’s “international terrorism.” It’s “foreign intelligence.” This is not about American citizens. Look at the overall context.

But those words hanging out there after a disjunctive “or,” it was a little uneasing. But I had enough people in the Justice Department, on my committee, with the administration at that time that said: No, gosh, no. You’re looking for things where there aren’t any. This is not an issue.

But this paragraph (3), “In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person”—wow, that’s kind of scary when you consider that entire list of things that the Justice Department might be going after.

But it says, “the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security. The Deputy Director or the Executive Assistant Director may not further delegate such authority.”

So they wanted to assure us that only people that were looking at foreign intelligence and foreign terrorism who had the big picture, not some low-level rogue agent, would be pursuing anything like this, and we were told repeatedly: But it’s all tied to foreign terrorism.

□ 1315

When you go down under subparagraph (b)(2) under each application under this section, it says:

Shall include a statement of fact showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation, other than a threat assessment, conducted in accordance with (a)(2) of this section to obtain foreign intelligence information not concerning a

United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of facts that they pertain to (i) a foreign power or an agent of a foreign power.

Now, that gave me comfort. Okay. All right. If it pertains to a foreign power or to an agent of a foreign power, okay. That’s not an American citizen, and if it is, there is certainly an agent for a foreign power:

(ii) the activities of a suspected agent of a foreign power who is the subject of an authorized investigation or (iii) an individual in contact with or known to a suspected agent of a foreign power who is the subject of such authorized investigation.

It talks about minimization procedures. Then under (c)(2), it gives this order, this direction, to a judge who may be asked to issue an order:

An order under this subsection: (A) shall describe the tangible things that are ordered to be produced with—and get this—sufficient particularity to permit them to be fairly identified.

Now, that gave me comfort. The Foreign Intelligence Surveillance Court judges, who are judges nominated by the United States President and confirmed by the United States Senate, thoroughly investigated by the FBI, are the only people, when they’re assigned to the FISA court, who could issue an order like this, and the law says that their orders have to be with sufficient particularity.

We know from the law under the Constitution that, if you want to go after specific private information about people, you have to have a warrant, and that warrant has to be based on probable cause, and the probable cause must be established by a sworn statement, and there must be sufficient specificity so that we don’t just have blanket orders to go get information.

I know, when I was an assistant DA up in northeast Texas, that we had a deputy come in one time. It was the policy, if you wanted to get a warrant signed by the district judge, you needed to go through the DA’s office first so that we could help you and make sure you had probable cause and make sure there was proper specificity. Bless his heart. He was a great gentleman, an older deputy, and he was always after this tiny, little community in our county.

He said, I know they’re smoking dope out there. I just know it. I’ve sat out there and surveilled their house. I haven’t seen them with dope, but I know they’ve got it.

So he came in one day, and he said, I’ve got them. I can get a warrant now.

What have you got, Deputy?

Well, you know our little convenience store out there in our community was broken into, and one of the things they stole was potato chips.

Okay. So what does that have to do with a warrant to go after marijuana?

Well, of the place I’ve been surveilling and watching, I found out absolutely, for sure, that they’re having a party Friday night, and they’re

going to have potato chips there. So all I need is a warrant to go look for potato chips, and while I'm there, I'll find the dope.

I said, Is there anything identifiable on the potato chip packages that would allow you to determine that these were the potato chips stolen from the convenience store?

He said, Well, no, no. These are just potato chips.

Deputy, I'm sorry, but that's not sufficient specificity.

I mean, I've known since law school, since I was a DA, since my years as a judge, and as a chief justice that you've got to have specificity. The Constitution requires it. So, basically, that's what this provision is requiring. You've got to describe with sufficient particularity that people can identify the specific items that you're demanding to be produced.

That's why, when we all looked and saw in public information sources that a FISA Court judge had granted an application for a warrant for every phone call made by anybody in America, whether outside the U.S. or inside the U.S., I couldn't believe they'd find a judge who would sign that. I mean, sure, you might find some judge in some jurisdiction in that location, in that court, who didn't have to go to law school and who really didn't understand the Constitution, but the justices of the peace I know would know you've got to have some specificity here. You can't just come in and ask for everybody's phone records in the country.

So I have to say about my friends on the far left of the political spectrum who were suspicious back when we were pushing—and being pushed, really—for an extension of the PATRIOT Act that they had concerns that somebody might come in and get library records without adequate probable cause. It turns out their concerns about library records didn't even come close to the danger that this act would pose for an administration that felt like it should have everybody's information.

I've talked to people on both sides of the aisle—and this may be one of the few rare issues. My sense is that everybody truly wants the same thing, but when you look at what is being gathered, this was never, ever anticipated. I can't remember if it were publicly or privately in our conversations when we were discussing this extension of the PATRIOT Act, and when I was demanding sunset so we could still have some accountability and demand answers when we wanted them, but either privately or publicly, we were told, Look, we don't even have the capability—this was in 2005—to gather the data for every single phone call that's made by everybody in the United States, and even if we did, we would never do that.

But anyway, that was one of those statements that was made either in private or in public, and that assuaged some of our concerns.

The truth is, I just couldn't imagine a judge who had been nominated by any President—liberal, conservative, confirmed by the Senate, a judge who had obviously gone to law school—who would sign an order saying, Yeah, go get every phone call made by every person everywhere.

I know the hearts of the people on both sides of the aisle who voted against and spoke against JUSTIN AMASH's amendment, and I know this is one of those issues—I can feel it, and I've talked to people on both sides of the aisle in depth and privately—where we really all want the same things here. We want to be safe, but we want to protect our liberty.

It seems that those who have dealt directly with the intelligence agencies and information—the classified information—have said, We really do need this because you don't know how much trouble we're really in if we don't have this. This stuff is critical. We need this information.

Unfortunately, it brings us back to other problems. One, for example, is: when you have open borders and when you know there are people coming in the country who want to harm us, hurt us, destroy our way of life, take away our liberties, then you need to, perhaps, give up some liberty in order to have security.

I don't want to give up liberty. I don't think we should have to, but when you have open borders—as open as ours are right now—and when people want to be secure and safe more than anything else, people are going to give up the very liberty that so many people gave their lives for us to have.

John Adams had that amazing quote. I don't have it verbatim, but it is in essence:

If people in future generations give up liberty, then I will regret from Heaven that I sacrificed so much for them to get it and have it.

We owe it to those who went before us not to so easily give up our liberties.

In one of our hearings, we were told, Oh, it's only the metadata; it's only the numbers. We don't get who has what number and then look at what calls they've made. It's the metadata so we can run the algorithms and look for patterns.

When you have the numbers—and I asked the question—our intelligence agencies, which are the NSA, the CIA, the FBI, are obviously entitled without a warrant to go to the public sector and gather information that any American could get. That means, if any American can get what someone's phone number is, then the CIA, the NSA, the FBI, the Secret Service—anybody—can get that, and then all you have to do is pull up those numbers and say, Well, I wonder who this person called? and start looking.

I want to say this as respectfully as possible: for those who say we can justify this because it has probably saved us from some terrorist activities, don't forget John Adams and the thoughts of

the Founders and of those who gave their lives, their fortunes—everything they had—for us to have liberty when they said, Don't give up your liberty.

I would humbly submit, back in those days of the Revolution, before the Revolution, that it would have been very easy for King George to have taken it a step even beyond what he did where he could quarter soldiers in people's homes without their permission. It was one of the things that frustrated our Founders, that the King, without anyone's permission, could send a soldier in to stay in your home—or more than one soldier.

That's why they wanted to be assured that nobody—no government in America—could ever do that kind of thing again, that they could send a soldier just to live in your house and watch everything and take notes on what you're doing. If they suspected, Gee, we don't have any hard evidence, but I don't trust that guy, so let's send a soldier to stay in that home, then they could do that, and the soldier, certainly, hypothetically, could have taken notes of every activity.

Then it would have been very easy for King George to say, Look, I know you're concerned about my putting a soldier in every home that we are concerned about even though there is no evidence you violated the law or no evidence you're a threat, but I want to point out to you—and this is hypothetical—that since we put soldiers in all of these homes to monitor everything going on in the home, we actually found a handful of terrorist plots by some of the revolutionaries, and we've been able to stop those, so we have actually saved American lives by having a soldier in every home of people we don't trust.

People could have said back at the time, Wow, the King is really thinking about us and our safety because he has saved people from being killed here in America because, by having soldiers in every home and by monitoring all this activity, they were actually able to find some people who were troublemakers who would have harmed Americans.

□ 1330

Yes, it's worth it. Okay, King George, you keep monitoring everything anybody is doing, even when you don't have probable cause. There's some similarity here.

When the government can put that big Orwellian eye in your home that you call your computer, your avenue, your network to the world, they can watch everything you're doing in your home. They can watch every purchase you make. We find out now this Consumer Financial Protection Bureau that was created under Speaker PELOSI, well, they want to protect Americans from egregious credit card companies, and so they're gathering people's financial information.

I go back to 2002, when a CIA attorney at one of our judicial conferences

said, Gee, banks have all your financial information. Why shouldn't the government? I was aghast and said because the banks can't come to your home, bust down the door, throw you to the ground, put a boot on your back, and put you in handcuffs and drag you off. But the government can and does. So we've got to be very careful to make sure that the government does not overreach what they're allowed to do.

Yes, banks and third parties may have financial information, but it does not mean the government is entitled to it. In fact, it's just the opposite. They're strictly forbidden to have that kind of information until Speaker PELOSI's House and HARRY REID's Senate passed a bill that said, Oh, yeah, we'll create this financial bureau, and now we're finding out they're gathering the financial information of people. Then we're assured you don't have to worry about ObamaCare, even though we're hiring all these investigators and we're not going to check their background, we're not going to make sure that they're not a problem or have a criminal record; but we'll make sure, or try to, that they finished high school, and they may need to review your medical records to see what kind of government-mandated insurance policy you need.

Where does this stop? The government under ObamaCare will have every American's medical records. The financial bureau thinks they can have everybody's financial information. That's the government having that. Then we find out the NSA has gotten orders so they can get every single call that we have made to somebody. There is no specificity in an order like that. This has to stop. This is an issue where both sides of the aisle have a kindred spirit. We want to protect people's liberty; but some that are so close to this issue have seen how much can be gleaned from people's complete phone records and they say, Look, this is really dangerous in America. I know how dangerous it is. I've been sounding the alarm for years now.

The Muslim Brotherhood has profound influence in this country and in this administration and in this government. As we've already seen, the largest demonstration in the history of the world in Egypt, they figured it out: we don't want the radical Islamists, the Muslim Brotherhood running our country. Well, I don't want them running ours either, but they're there. Secretary Napolitano couldn't even tell me how many Muslim Brotherhood members she had giving her advice. She didn't even know. At least she said she didn't.

This is a dangerous situation. We are in danger. There are people who want to take our liberty and destroy our country, but that's no reason for us to voluntarily give up all our liberty, give up all our privacy in the hope that maybe we can stop others from taking it from us. When you give up liberty, you've given it up. We're supposed to

have the government protecting us from these kinds of intrusions, not demanding all of the most private aspects of our lives. If somebody wants to disclose private information or private pictures about themselves, that's their business; but the government shouldn't be able to come in and get a picture of your most private information about your life and spread it around the government. That is happening, and there is so much more potential for it to continue to happen and to get worse.

The PATRIOT Act seemed like a good thing if we could have adequate oversight and make sure that the kinds of things we've now found out are going on, make sure they weren't going on. Now we know they are. I've been surprised. I've talked to some of my liberal friends across the aisle that expressed concerns about giving authority to the government to get this kind of information, and I was surprised some of them voted "no" against JUSTIN AMASH's amendment. But that's the thing: the NSA and CIA put pressure on Republicans. They say, Hey, you're conservative. We're with you. You've got to help us have these tools. We're preventing people from being killed. You've got to let us have all this private information about everybody. We promise that we're not abusing it. And it persuades people on our side and then on the other side. I talked to a friend who showed me a printout that he had been given, and it said, Well, no, I think exactly like you do. I don't want them having that much information. But, see, Louis, it says the law says that this can only be done—and it quoted—to protect against international terrorism and foreign intelligence information. I said that's right, that's what the law says, but that's not what they're doing. Really? I mean, it said this. I said, Right, that's what the law allows, but they're going so far beyond that. This is something we need to work on together. This is an issue where the left and the right can come together.

Look, we want to secure people's safety and security, but we can't keep giving up private liberty. Let those that want to tweet out their most intimate details do so. Fine. Go for it. Be a fool. But for those who just want to be Americans and live their private lives and be left alone, the government should not be watching everything they do through their computers, through their debit and credit card purchases and transactions, through every phone call they make. I thought I was being rather cute when I told my colleagues across the aisle who were very concerned that the government might get more than just information about contacts with foreign terrorists because that's what we were told. Look, the only way we gather information about who you're calling, who's calling you, is if you make a call to a known foreign terrorist or you get a call from a known foreign terrorist or you make a call to a member of a

known terrorist organization or you get a call from a member of a known terrorist organization. That comforted me. So I told my friends publicly that if you're worried about having the government gather information on who you're calling, who's calling you, then when you call your foreign terrorist friends, use somebody else's phone. It was amusing at the time, but now it turns out this government is gathering everybody's information and they're storing it and they'll have it and there's no indication they're ever going to get rid of it.

When I was in college, I was required to read Kafka's book "The Trial." I thought it was the silliest novel I had ever read because it was one circumstantial, just crazy event after another. The poor man never knew who was charging him, what he was charged with. I thought this is just somebody creating a nightmare scenario, but thank God we live in America and this can never happen here. Yet I see the seeds of a Kafka novel unfolding before us.

I hope and pray, Mr. Speaker, that we will come together on both sides of the aisle and say let's secure our borders so only people that are legally coming in come in. Then once that's done, we can get an immigration bill done. Then, because we're doing that, we don't have to keep giving up liberty to have security. Then let's clean up this law so that some judge who's completely forgotten what the Constitution really means doesn't go off and sign an order to give the government every single phone call that's made to every single individual in and outside the United States. Otherwise, John Adams will look from Heaven, and he will be regretting that he sacrificed so much for us to have the liberty that we're squandering.

I yield back the balance of my time.

THE SHINING CITY ON A HILL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2013, the Chair recognizes the gentleman from Iowa (Mr. KING) for 30 minutes.

Mr. KING of Iowa. Mr. Speaker, it's my privilege to be recognized by you here on the floor of the House of Representatives, and it's my privilege to follow the gentleman from Texas as we close out this legislative week and a lot of the Members are on their way to the airport, or at the airport now, going back to serve their constituents. I'll be there myself, and I trust Mr. GOHMERT will be too.

I wanted to come to the floor and talk about this country that we have, this civilization that we have, the foundations of our civilization, and what's required to retain them and enhance them and move this country beyond the shining city on the hill and to a place beyond there onward and upward. Ronald Reagan often described the shining city on the hill. He described it as an America that is. An