

ORDER FOR ADJOURNMENT

Mr. McCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of Senators TOOMEY, WYDEN, and BROWN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. TOOMEY. Thank you, Mr. President.

(The remarks of Mr. TOOMEY pertaining to the introduction of S. 3100 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. TOOMEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

INTELLIGENCE AUTHORIZATION BILL

Mr. WYDEN. Mr. President, I want to take a few minutes tonight to discuss the Intelligence authorization bill for fiscal year 2017. The Senate has been asked to provide unanimous consent to move forward on this legislation, and I have objected to doing that and want to take just a few minutes to outline why I feel very strongly about this.

The reality is, this legislation contains a number of valuable provisions, but once again it is being driven by the same issues the Senate looked at last week, and that was the McCain amendment, which involved a major change with respect to national security letters. My colleague is a valuable member of the Intelligence Committee and knows what I am talking about.

But to set the backdrop is again, I want it understood how important it is to make clear that it is a very dangerous time. Those of us who sit on the Intelligence Committee are acutely aware of that. A couple of times a week we go into that special room and come away with a very clear recognition that there are people out there who do not wish our country well. So that is not in question. This is a dangerous time. Given these dangers, it is especially important—critically important—that law enforcement and intelligence authorities have the tools they need to protect the American people.

Tonight, I wish to start with where we really left off with the amendment from the Senator from Arizona, the McCain amendment involving national security letters, because that amendment deals with the very same concern that has led me to object to the Intelligence authorization bill tonight.

I don't take a back seat to anybody—not anybody—in terms of making sure our intelligence and law enforcement officials have the tools they need to protect our country at a dangerous time. That is why in 2013, I began working for it then, and we got it into the USA FREEDOM Act. I wrote the provision that became section 102 of the USA FREEDOM Act. It said that

when our government—the FBI or our intelligence and law enforcement community—believed it has to move quickly and it has to move immediately, our government could do that. It could go get the information that has been in question—the email materials, the text message logs, the chat records, and all of these digital communications. Under section 102, the government could move immediately to get this information and then come back after the fact and settle up with the court. Never once has the court denied the government.

I recall that during the debate over the McCain amendment, the distinguished chairman of the Intelligence Committee said that he was concerned that the FBI might have to wait around for a month—no way, absolutely no way, out of the question. Under section 102, there is not going to be any dawdling. There is not going to be waiting around. The government can move and move immediately to protect the American people.

Given that the government has those tools for the FBI and intelligence officials—making sure that we have the tools needed to protect the security and well-being of the American people—that is a reason for being very careful about thinking through big changes in these national security letters and what the changes would be, specifically. This was in the McCain amendment. It is in the Intelligence authorization bill. An FBI field office could issue a national security letter, in effect, administratively. It is an administrative subpoena without any court oversight. For example, the national security letters could be used to collect what are called electronic communication transaction records. This would be email, chat records, and text message logs.

I have had Senators come up to me to ask me about whether this could be true. When I was responding to questions at home about that this weekend, folks or people asked: Does this really mean that the government can get the Internet browsing history of an individual without a warrant, even when the government has the emergency authority if it is really necessary?

The answer to that question is: Yes, the government can. The government can get access to Web browsing history under the Intelligence authorization legislation, under the McCain amendment, and they can do it without getting a warrant—even when the government can go get it without a warrant when there is an emergency circumstance.

The reality is Web browsing history can reveal an awful lot of information about Americans. I know of little information that could be more intimate than that Web browsing history. If you know that a person is visiting the Web site of a mental health professional or a substance abuse support group or a particular political organization or a particular dating site, you know a tremendous amount of private, personal,

and intimate information about that individual. That is what you get when you can get access to their Web browsing history without a warrant, even, as I have said, when the government's interest is protected in an emergency.

The reality is that getting access to somebody's Web browsing history is almost like spying on their thoughts. This level of surveillance absolutely ought to come with court oversight. As I have spelled out tonight, that is possible in two separate ways. There is the traditional approach with getting a warrant. Then under section 102, which I wrote as part of the USA FREEDOM Act, the government can get information when there is an emergency and come back later after the fact and settle.

The reality is the President's surveillance review group has said that they believe court oversight should be required for this kind of information.

In effect, now we have some law enforcement and intelligence officials saying that we ought to go in exactly the opposite direction. By the way, George W. Bush agreed that we ought to be careful about gathering this information. He didn't want this particular power.

Maybe somebody could argue that, well, intelligence and law enforcement officials ought to be able to do this because it is more convenient for them. To tell you the truth, if we were talking about convenience or protecting the American people in an emergency, I would be pretty sympathetic to the government's argument. But that is not the choice. As to the government's interest, given the safety of the American people being on the line, the government goes to get that information immediately—the Web browsing history, the chat records, and the email. The government gets it immediately under the specific language of section 102.

What this really comes down to is that we have had this horrible tragedy in Orlando. So we are all very concerned about the safety and the well-being of the American people. When we are home, there is no question—as I am sure it is in the case of the Presiding Officer of the Senate, my colleague from Ohio, and myself—that the American people want policies that protect their security and their liberty. They want policies that do both. Frankly, they don't think they are mutually exclusive. They think the government ought to be doing both.

After a tragedy—and you can almost set your clock by it—increasingly, proposals are being brought up that really don't do much of either. They don't do much to advance security. In this case, you protect people's security with that emergency authority when the well-being of our people is on the line and the public wants their liberties protected. They are certainly going to be very concerned about someone being able to see their Web browsing history with an administrative subpoena and no court oversight.