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## **Amash opposes latest USA FREEDOM Act**

Washington, D.C. 6 Rep. Justin Amash released the following statement regarding Section 215 of the Patriot Act and H.R. 2048 - USA FREEDOM Act of 2015:

Last week, the U.S. Court of Appeals for the Second Circuit ruled that the bulk telephone metadata program run by the National Security Agency (NSA) is not authorized by Section 215 of the Patriot Act and is thus unlawful. The ruling is a big win for privacy and civil liberties advocates who have long argued that Section 215 clearly does not contemplate the type of mass collection we now know is occurring. But the win will be short-lived if H.R. 2048, the latest version of the USA FREEDOM Act that's scheduled to be considered by the House of Representatives this afternoon, becomes law.

Section 215 authorizes the government to collect records and other "tangible things" that are "relevant" to a terrorism or foreign intelligence investigation. To support the bulk collection of data pertaining to millions of law-abiding Americans, the government has effectively claimed that all records everywhere are potentially relevant to a current or future investigation, and thus all records are fair game for collection. In its ruling, the Second Circuit had little choice but to reject the government's broad interpretation of "relevant," given that the rest of the statute gives no indication Congress ever contemplated collection on such a mass scale.

So far, so good.

But H.R. 2048 threatens to undo much of the progress resulting from the Second Circuit's opinion. The bill's sponsors, and unfortunately some outside advocacy groups, wrongly claim that H.R. 2048 ends "bulk" collection. It's true that the bill ends the phone dragnet as we currently know it - by having the phone companies themselves hold, search, and analyze certain data at the request of the government, which is worse in many ways given the broader set of data the companies hold - but H.R. 2048 actually expands the statutory basis for the large-scale collection of most data.

H.R. 2048 does this by authorizing the government to order the production of records based upon a "specific selection term" (i.e., like a search term used in a search engine). The records sought still must be relevant to an investigation, so it's possible the court's ruling will continue to restrain the government in some fashion. But it's more likely a court looking at H.R. 2048's language will see the "specific selection term" as defining the outer limits of what Congress considers acceptably "relevant" under Section 215.

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Indeed, the Second Circuit encouraged Congress in reforming Section 215 to make a "congressional judgment as to what is reasonable under current circumstances." Unfortunately, "specific selection term" is defined so broadly under the bill as to have little effect on narrowing the scope of items the government may obtain through a 215 order.

A "specific selection term" may be a specific person (including a corporation, such as Western Union), account, address, or personal device, but it also may be "any other specific identifier," and the bill expressly contemplates using geographic regions or communication service providers (such as Verizon) to define the records sought, so long as it's not the only identifier used as part of the specific selection term. In other words, the bill doesn't let the government require Verizon to turn over all its records without limitation, but nothing appears to prevent the government from requiring Verizon to turn over all its records for all its customers in the state of New York. Only a politician or bureaucrat wouldn't call that "bulk."

H.R. 2048 gives our intelligence agencies, for the first time, statutory authority to collect Americans' data in bulk. In light of the Second Circuit's opinion that the NSA has been collecting our information in bulk without statutory authority for all this time, it would be a devastating misstep for Congress to pass a bill that codifies that bulk collection and likely ensures no future court will ever again be positioned to rule against the government for over-collecting on statutory grounds.

H.R. 2048 falls woefully short of reining in the mass collection of Americans' data, and it takes us a step in the wrong direction by specifically authorizing such collection in violation of the Fourth Amendment to the Constitution. Americans, and members of Congress, should demand that Congress instead pass the original, bipartisan version of the USA FREEDOM Act from 2013, which strengthened "not weakened" Section 215's relevance standard to end bulk collection, while still allowing the government the flexibility it needs to pursue genuine threats against the United States.

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