

NEWS RELEASE

Pat Roberts

UNITED STATES SENATOR ■ KANSAS



CONTACT: Sarah Ross Little (202) 224-4774

FOR IMMEDIATE RELEASE

April 19, 2005

Chairman Roberts Issues Statement on the USA PATRIOT Act

WASHINGTON, DC – U.S. Senator Pat Roberts, Chairman of the Senate Select Committee on Intelligence today issued the following remarks at a hearing on the USA PATRIOT Act:

“On September 11, 2001, 19 terrorists hijacked four flights over the United States,” Senator Roberts said. “We all remember the events of that day. The images of the collapse of the World Trade Center, the burning Pentagon, and the crash site of United Flight 93 in Shanksville, Pennsylvania should never be forgotten.

“But, the story of that day was written well before September 11th, and it was written by the terrorists that lived and trained within the United States. They rented apartments, bought cars, made telephone calls, sent e-mails, surfed the Internet, received wire transfers, and attended flight schools. The terrorists hid in the open -- their sinister plans and intentions camouflaged by millions of innocent, lawful transactions that occur every day in the United States.

“The activities of the hijackers went largely unnoticed by our intelligence and law enforcement agencies. As this Committee and the 9/11 Commission have pointed out, systemic flaws in our national security agencies prevented full cooperation that might have stopped these attacks.

“But, in addition to these systemic flaws, our national security agencies were operating under obsolete authorities. Their hands were tied by inaccurate interpretations of existing law that restricted common-sense sharing of intelligence information.

“The USA PATRIOT Act was the first legislative effort by Congress and the President to reform our national security apparatus in response to the attacks of September 11th. The Act brought intelligence tools into the information age. Collection authorities that had been enacted during the era of the rotary phone had not kept pace with the new world of e-mail, the Internet, and mobile phones. The Act also tore down ‘walls’ erected by overly cautious lawyers that had prevented information sharing and coordination between law enforcement and intelligence officials.

“The USA PATRIOT Act was drafted and passed by overwhelming majorities in both the Senate and the House and signed by the President on October 26, 2001. But, to describe the Act as a rash response to a horrific attack would be a mistake. Many of the provisions in the Act had been the subject of deliberation for years. The provisions were enacted with an acute awareness of rights guaranteed by the Constitution and applicable judicial precedents. The USA PATRIOT Act reflected a careful balancing of national security and the privacy rights of U.S. persons.

“Nonetheless, some of the more important provisions in the Act were passed subject to a ‘sunset’ provision. Sixteen provisions in the Act -- and the recently enacted ‘lone wolf’ amendment to the Foreign Intelligence Surveillance Act -- will expire on December 31, 2005.

“The danger posed by terrorism and other national security threats, however, will not expire on that date.

“Today, the Senate Select Committee on Intelligence continues its on-going oversight of the USA PATRIOT Act. This open hearing will be the first in a series of three hearings designed to educate Members and the public as the Senate considers the repeal of the ‘sunset’ provision and modifications to other intelligence authorities. On Thursday, the Committee will hold a closed hearing on operational matters relating to the Act. Next Wednesday, we will hear from the Attorney General, Director of the Federal Bureau of Investigation, and the Director of Central Intelligence.

“This is not the Committee’s first review of the USA PATRIOT Act or the Foreign Intelligence Surveillance Act (FISA). The Committee regularly holds hearings, conducts briefings, and receives information regarding the activities of the Intelligence Community. The Committee conducted a closed hearing on the USA PATRIOT Act during the last Congress. We receive detailed reports from the Department of Justice every six-months regarding FISA collection and annual reports on the use of other surveillance tools.

“The Committee is also in the final stages of completing its second audit of the procedures, practices, and use of FISA. This comprehensive, classified analysis will represent one of the most thorough reviews of Executive branch activities under FISA since the USA PATRIOT Act was enacted.

“Today, we have invited a panel of outside experts to provide their views of the USA PATRIOT Act and their opinions on those provisions of the Act that will expire later this year.

“Before I recognize the Vice Chairman, I want to set out some fundamental principles that will inform my consideration of the USA PATRIOT Act reauthorization and any other modifications to law or policy governing intelligence activities.

“First, our intelligence agencies need flexible authorities to confront terrorists, spies, proliferators, and other national security threats.

“Second, as we seek to protect national security, we must also ensure that civil liberties and privacy are not sacrificed in the process. This is not a zero-sum game, however. As former Supreme Court Justice Arthur Goldberg noted, “While the Constitution protects against invasions of individual rights, it is not a suicide pact.”

“Third, these are not matters of ‘first impression.’ Interpreting the Constitution and the President’s responsibility to protect national security, Federal courts have wrestled with many of these issues before. They have recognized the authority of the President to conduct warrantless electronic surveillance of foreign powers and their agents. Well-established judicial precedents also make clear that certain records -- even of the most private information -- lose their Constitutional protection when voluntarily exposed publicly or to a business or other third party.

“Finally, I will support reasonable modifications to USA PATRIOT Act provisions or other authorities that clarify legal uncertainties, but I will oppose modifications that place unnecessary hurdles in the path of lawful intelligence investigations.

“I would like to note one particular example of an authority that has been questioned by some in the context of the USA PATRIOT Act.

“Everyday, we expose our personal information to businesses – when we buy milk from the grocery store with a credit card; when we open an e-mail account over the Internet; when we apply for a mortgage. This information we have voluntarily exposed to others is no longer private. Federal courts have clearly established that this record trail is not ‘protected’ by the warrant requirement of the Fourth Amendment.

“I have said before that the 9/11 hijackers conducted numerous transactions while living within the United States. It should not be surprising that the records of these transactions would have been useful to the Intelligence Community before the attacks. Records from flight school, cell phone companies, rental car dealers, or internet service providers might have revealed crucial information about the activities of these terrorists.

“To gain access to these types of transactional records, the FBI uses a FISA ‘business records’ order. A FISA ‘business records’ order allows the FBI to access records for investigations of international terrorists and spies.

“Before the USA PATRIOT Act, the authority to access ‘business records’ under FISA was limited to certain

types of business – like storage facilities, rental car companies, airlines, hotels, and the like. Section 215 of the USA PATRIOT Act expanded the types of entities that were subject to a FISA ‘business records’ order and the types of items that could be sought with such an order.

“Armed with a FISA ‘business records’ order, the FBI can now go to a flight school to ask for records about a student they believe to be a terrorist. They can ask an internet service provider for the subscriber information of a possible spy. They can ask for transactional records from a fertilizer company, a chemical company, and a car dealership if those records will support an investigation to stop a car bomb attack by al Qaeda.

“Libraries, booksellers, and others have raised great concern about this provision.

“In law enforcement investigations, the government can obtain the same types of records -- from all types of businesses, including libraries and bookstores -- with a grand jury subpoena. These subpoenas are issued without a court order and are subject to judicial review only after they are issued.

“A FISA ‘business records’ order -- on the other hand -- can be issued only upon the approval of a Federal Judge serving on the Foreign Intelligence Surveillance Court. The judge can direct the FBI to modify the scope of the order. No similar pre-issuance review exists in the context of grand jury subpoenas.

“Still, there is concern that the provision infringes privacy interests.

“A FISA ‘business records’ order also cannot be sought if the investigation is based solely on activities protected by the First Amendment. This prohibition dovetails with existing restrictions in Executive Order 12333 on the collection of foreign intelligence concerning the domestic activities of U.S. persons.

“Finally, I note that the FISA ‘business records’ provision is a relatively non-intrusive means of collecting intelligence for a national security investigation. Analysis of these business records can help solidify investigative leads or clear innocent names before more intrusive FISA techniques such as electronic surveillance or physical search are ever employed.

“And, there are limitations in the USA PATRIOT Act, along with requirements for judicial review, the Congressional reporting obligations, and the prohibitions in Executive Order 12333.

“While I recognize that some clarifying modifications to Section 215 may be necessary, I will oppose modifications that increase the standard for an order above “relevance” or place unreasonable barriers between these business records and intelligence officials.

“Section 215 is just one example of the numerous tools that the USA PATRIOT Act provided to the men and women protecting us from further attack. These tools are currently helping our intelligence agencies identify terrorists, track their movements, and disrupt their plots. The provisions are subject to review by courts and the oversight of Congress.

“Those provisions of the USA PATRIOT Act subject to expiration at the end of the year must be reauthorized. The alternative is a return to failed, outdated, and illogical limits on national security investigations that tied our hands prior to the 9/11 attacks. The dangers are real, and we should give our people every Constitutional tool available to fight and defeat terrorism.”

###