Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On Introduction of the USA FREEDOM Act of 2014
July 29, 2014

More than a year ago, the world first learned startling details about the massive scope of the National Security Agency's (NSA) surveillance programs. Since then, the American people and all three branches of government have been debating the same fundamental questions about the extent of government power that the Framers considered when crafting the Constitution. When and how should the government be permitted to gather information about its citizens? How do we protect our country while preserving our fundamental principles and constitutional liberties?

These questions are even more relevant – and more complex – as technology develops rapidly, and as more and more data is created by all of us every minute. Should our government be allowed to collect and use *all* of that data? To what extent does the massive collection of data improve our national security – and at what cost to our privacy and free expression?

The Senate Judiciary Committee considered those and other important questions during the course of six public hearings held over the past year. During this deliberative process, the Committee considered whether the bulk collection of Americans' phone records has been effective in preventing terrorist attacks, the privacy implications of the program, and the effect on the U.S. technology industry. Those hearings helped to demonstrate the need for additional limits on the government's surveillance authorities.

As these hearings continued, the call for an end to bulk collection under Section 215 of the USA PATRIOT Act grew louder and more persistent. The President's own Review Group on Intelligence and Communications Technology testified before the Judiciary Committee to call for an end to bulk collection, concluding that "[t]he information contributed to terrorist investigations by the use of section 215 telephony meta-data was <u>not essential to preventing attacks</u> and could readily have been obtained in a timely manner using conventional section 215 orders." The Privacy and Civil Liberties Oversight Board also called for an end to bulk collection, concluding that the program "lacks a viable legal foundation under Section 215." And technology executives, legal scholars and privacy advocates called for an end to bulk collection. These witnesses also proposed meaningful reforms to other government authorities, such as Section 702 of the Foreign Intelligence Surveillance Act (FISA), the pen register and trap and trace authorities under FISA, and the national security letter statutes.

Then, earlier this year, President Obama himself embraced the growing consensus that the bulk collection of phone records should not continue in its current form.

Just this week, two new reports highlight the costs of <u>not</u> placing reasonable limits on government surveillance – not just the significant economic costs, but also the impact on journalistic freedom and the right to counsel. This is why the technology industry and the privacy and civil liberties community are unified in their support for this bill. Now it is time for Congress to act.

Today, I am introducing the USA FREEDOM Act of 2014, which builds on the legislation passed by the House of Representatives in May, as well as the original bicameral, bipartisan legislation that I introduced with Congressman Jim Sensenbrenner last October.

Although I continue to prefer the original version of the USA FREEDOM Act, we are running short on time in this Congress. Since passage of the House version in May, I have been working to address concerns that the text of the House bill, though clearly intended to end bulk collection, did not do so effectively. I have spent the past several months in discussions with the Intelligence Community and a wide range of stakeholders, including other Senators, privacy and civil liberties groups, and the U.S. technology industry. The bill I introduce today is the result of those negotiations.

First, and most importantly, this bill ensures that the ban on bulk collection is effective. It ensures that the government cannot rely on Section 215 of the USA PATRIOT Act, the FISA pen register and trap and trace device statute, or the national security letter statutes to engage in the indiscriminate collection of Americans' private records.

Under this legislation, when the government uses these authorities to collect information, it must narrowly limit its collection based on a "specific selection term" that identifies the focus of the collection. "Specific selection term" is carefully defined. For Section 215 and the pen register statute, the definition ensures that the government must use a term that is narrowly limited to the greatest extent reasonably practicable consistent with the purpose for seeking the information. The bill further specifies that the term cannot be a broad geographic region, such as a city, state, zip code, or area code, nor can it be a service provider. For national security letters, the government must specifically identify the target about whom it seeks information. These provisions preclude the government from seeking large swaths of information that it does not need – and that might very well include private details about the lives of law-abiding Americans.

As a backstop, the bill also mandates additional minimization procedures when the government's collection under Section 215 is likely to be overbroad. It requires the government to destroy data unrelated to its investigation within a reasonable time frame.

Second, this bill enhances transparency regarding the government's use of surveillance tools. FISA and other national security laws provide law enforcement with an extraordinary amount of power. The American people have a right to know how that power is exercised.

Among other things, this bill requires the government to report to the public key information about the scope of collection under a range of national security authorities – including the number of queries about Americans that it conducts in databases collected under Section 702. It also allows private companies more leeway to disclose the numbers of FISA orders and national security letters they receive. I want to take a moment to thank Senator Franken in particular for his leadership in helping to draft and improve these transparency provisions.

Likewise, I want to thank Senator Blumenthal for his work on the bill's key reforms to the FISA Court. The bill requires the FISA Court and FISA Court of Review, in consultation with the

Privacy and Civil Liberties Oversight Board, to appoint a panel of special advocates who are to advance legal positions supporting individual privacy and civil liberties. The FISA Court would be required to appoint one of these advocates whenever it confronts a significant or novel issue of law, or it must issue a written finding that appointment of an advocate is not appropriate. The bill also requires the FISA Court to report the number of times that it appoints and declines to appoint an advocate when confronting a novel or significant issue of law. This bill additionally provides a certification mechanism for appellate review of FISA Court decisions when the government prevails, and it provides a declassification process for significant FISA Court decisions.

Finally, this bill improves the judicial review procedures for nondisclosure orders that accompany Section 215 and national security letters. These changes respond to decisions by Federal courts finding that these provisions violate the First Amendment.

While this bill contains significant reforms and improvements, it does not fix every problem, and there is more work to be done – in particular with regard to Section 702 of FISA and other broad government surveillance authorities that implicate the privacy rights of Americans. The bill provides for public reporting on Section 702 that will help set the stage for reforms, but transparency alone is not enough. I look forward to working with other Senators and outside experts to continue our work on these other issues.

In developing this legislation, I have consulted closely with the Office of the Director of National Intelligence, the NSA, the FBI, and the Department of Justice – and every single word of this bill was vetted with those agencies. I am grateful for their receptiveness to the public's concerns and their constructive participation in this process. Together, we worked hard to ensure that this bill enacts significant and meaningful reforms to protect individual privacy, while providing the Intelligence Community with operational flexibility to safeguard this country. I am glad that the executive branch supports this bill and agrees with me that it should be enacted as soon as possible.

If enacted, this bill would represent the most significant reform of government surveillance authorities since Congress passed the USA PATRIOT Act 13 years ago. This is an historic opportunity, and I am grateful that the bill has earned the support of the administration, a wide range of privacy and civil liberties groups, and the technology industry.

I am also pleased to be joined by a bipartisan group of cosponsors, including Senators Lee, Durbin, Heller, Franken, Cruz, Blumenthal, Tom Udall, Coons, Heinrich, Markey, Hirono, Klobuchar, and Whitehouse. And I want to note in particular the contributions over many years of Senators Wyden and Mark Udall, who have worked tirelessly to protect Americans' privacy from their posts on the Intelligence Committee.

I am introducing this revised version of the USA FREEDOM Act today because we cannot afford to wait any longer to end the bulk collection of Americans' records. I am concerned that we are running out of time on the legislative calendar. Typically, my strong preference would be to take up the bill in the Judiciary Committee and mark it up. But given the need to act quickly, I am willing to forego regular order and take this bill directly to the Senate Floor.

The stakes are high. This is a debate about Americans' fundamental relationship with their government – about whether our government should have the power to create massive databases of information about its citizens. I believe strongly that we must impose stronger limits on government surveillance powers – and I am confident that most Vermonters, and most Americans, agree with me. We need to get this right, and we need to get it done without further delay.

I ask unanimous consent that the text of bill be printed in the Record.

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