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The Patriot Act Is Not Fit for Purpose. Nor Is Its Replacement.

By Patrick G. Eddington

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Perhaps nowhere on earth is the will to ignore facts stronger than in America's Capitol. The ongoing debate over whether to reauthorize three expired provisions of the [2001 Patriot Act](#) is a perfect case in point. And the proposed reforms in the [USA Freedom Act](#) hardly fare better.

Senate Majority Leader [Mitch McConnell](#), [Senate Intelligence Committee Chairman Richard Burr](#) and presidential hopeful Senator [Marco Rubio](#) have repeated more times than I can count that these Patriot Act provisions are “vital” to preventing another 9/11.

But they are objectively wrong. Last month the [Department of Justice Inspector General](#) (DoJ IG) released a partially declassified version of a long overdue [Patriot Act compliance report](#).

With respect to Sec. 215 of the Patriot Act, which encompasses the controversial telephone metadata program as well as a much larger business records dragnet that just expired, the report found that, “The agents we interviewed did not identify any major case developments that resulted from the records obtained in response to Section 215 orders ...”

Nearly 14 years of using this provision—which has swept up tens of millions of records of innocent Americans in the process—has resulted in zero terrorist plots against America being uncovered, much less disrupted.

And this applies not simply to the telephone metadata program exposed by Edward Snowden two years ago, but to every Sec. 215-related program since the Patriot Act was enacted in October 2001. The DoJ IG report's findings mirror those of President Obama's own Review Group on Intelligence and Communications Technologies, which issued its own report over 18 months ago.

This is exactly the same dismal record [uncovered](#) by *The New York Times*'s Charlie Savage with respect to the once-illegal [Stellar Wind](#) warrantless surveillance program initiated by then-NSA Director Michael Hayden three days after the 9/11 attacks. And both programs have cost millions to run and to store the personal data of every American who has ever used a phone, computer, or tablet—a de facto “mass surveillance tax.”

Yet this Patriot Act national security boondoggle is held up by senior congressional leaders, and even President Obama himself, as critical to protecting the nation when all available data says exactly the opposite.

In his [weekly address](#) the day before a fresh Senate debate over renewing the useless authorities, President Obama engaged in the kind of fear-mongering and proffering of demonstrable falsehoods we routinely see from neoconservatives.

“Terrorists like al Qaeda and ISIL [ISIS] aren’t suddenly going to stop plotting against us at midnight tomorrow,” Obama said in a statement. “And we shouldn’t surrender the tools that help keep us safe. It would be irresponsible. It would be reckless. And we shouldn’t allow it to happen.”

The president and hundreds of members of Congress in both chambers are supporting the maintenance of mass surveillance authorities that don’t work, cost millions annually and have been found either [unconstitutional](#) (by one federal district court judge) or [illegal](#) (as the Second Circuit Court of Appeals ruled in early May).

Obama and many of these same members of Congress, along with some privacy and civil liberties groups, have spent weeks claiming that these same illegal and ineffective Patriot Act authorities can be “reformed” through the House-passed USA Freedom Act. House sponsors of that bill admit it would simply narrow, not end, the NSA telephone metadata program.

What the president, Congressional supporters and outside interest groups have been unable to credibly explain is why Americans should tolerate even the theoretically reduced level of mass surveillance offered by the USA Freedom Act.

As Spencer Ackerman of the *Guardian* [noted](#) in a June 1 story, there is a long, well-documented history of the NSA and Department of Justice either lying to the courts about the scope of Patriot Act surveillance or government lawyers engaging in “creative” interpretations of words like “relevance” to justify the most expansive interpretation of surveillance powers granted by Congress.

There is no reason to believe that pattern will change under the USA Freedom Act, assuming it survives the Senate amendment process now underway, repasses the House and goes to Obama for his signature.

If mass surveillance is ineffective, expensive and unconstitutional, who actually gains from continuing it?

The telecommunications companies, to take one example. They get compensated for complying with government orders issued under the USA Freedom Act, and will claim to their customers and investors that their support of USA Freedom Act proves they are “pro-privacy” and not simply corporate extensions of the NSA.

The [National Security State](#) contractors also benefit. They get paid to help the NSA and the FBI store your personal communications. The extension of these Patriot Act authorities through 2019 means support contracts will be assured of government funding.

And last but not least, the politicians who chose to vote to continue mass surveillance in the name of “protecting national security”—the same mass surveillance programs that failed to detect or stop the “shoe bomber,” the “underwear bomber,” the Ft. Hood shooter, the Tsarnaev brothers or the Garland, Texas would-be shooters. They benefit too.

Real Patriot Act “reform” should substantively bar the government from indiscriminate bulk surveillance. Anything less risks laying the groundwork for another decade of abuse.

[Patrick G. Eddington](#) is a policy analyst in homeland security and civil liberties at the [Cato Institute](#).