

65 2010 HOUSE FRESHMEN RE- AUTHORIZED PATRIOT WITH NO NOTICE OF SECTION 215 DRAGNET

The White Paper claims that the Section 215 dragnet is legal, in large part, because Congress has twice extended the PATRIOT Act without changing the terms of Section 215. A key part of that argument rests on the Administration's claim that it gave notice to Congress about the dragnet.

Moreover, information concerning the use of Section 215 to collect telephony metadata in bulk was made available to all Members of Congress, and Congress reauthorized Section 215 without change after this information was provided. It is significant to the legal analysis of the statute that Congress was on notice of this activity and of the source of its legal authority when the statute was reauthorized.

But as I noted, the White Paper actually suggests that a big group of Congressmen – most of the 93 members elected in 2010 – got no notice. While the Administration provided House Intelligence Chair Mike Rogers with a description of the program, he appears not to have invited all members of the House to read it, as Dianne Feinstein invited all members of the Senate to do.

Since I wrote that post, Justin Amash confirmed that his class did not get an invitation to read the notice.

Less than two weeks ago, the Obama administration released previously classified documents regarding NSA's

bulk collection programs and indicated that two of these documents had been made available to all Members of Congress prior to the vote on reauthorization of the Patriot Act. I can now confirm that the House Permanent Select Committee on Intelligence did NOT, in fact, make the 2011 document available to Representatives in Congress, meaning that the large class of Representatives elected in 2010 did not receive either of the now declassified documents detailing these programs.

I double checked via Twitter, and Amash confirmed that Rogers just never invited the House to read it.

Just 7 2010 freshmen (Sandy Adams, Trey Gowdy, Tim Griffin, Joe Heck, Tom Marino, Ben Quayle, and Dennis Ross) were on either the House Intelligence Committee or the House Judiciary Committee at the time, and therefore presumably had the opportunity to learn about the dragnet there.

The PATRIOT Act Reauthorization passed by a broad 250-153 margin.

But by my calculation, 65 of those yes votes were freshmen who had never had opportunity to learn about the dragnet. Many of them would have presumably voted to reauthorize it knowing about the dragnet (and Mike Pompeo, who played a key role in defeating Amash-Conyers, was a non-vote who would clearly vote yes). But in theory at least Mike Rogers chose not to inform a sufficiently large group that it could have swung the vote.

The Administration claims it informed Congress about the dragnet. But whether acting on his own or at the behest of the Administration, Mike Rogers left a sufficiently large group in the dark so as to negate the validity of that claim.