IN THE SENATE OF THE UNITED STATES

Mr. Edwards (for himself and Mr. Schumer) introduced the following bill; which was read twice and referred to the Committee on ______________

A BILL

To establish a commission to evaluate investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Security and Liberty Preservation Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The terrorist attacks of September 11, 2001, and the continuing threat of further attacks,
are an assault on the safety and security of all Americans.

(2) The threat of further acts of terrorism has necessitated an expansion of the authority of government to conduct surveillance and collect data.

(3) While recognizing the need for additional security measures, Americans remain deeply committed to the individual dignity, liberty, and privacy rooted in United States history and protected by the Constitution of the United States.

(4) Different investigative technologies and methods can achieve the same security goals in ways that have substantially different impacts on individual rights.

(5) The government should conduct investigations and surveillance in a manner that fully addresses law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established the Commission on Enhancing Security and Preserving Freedom (in this Act referred to as the “Commission”).

(b) MEMBERSHIP.—
(1) COMPOSITION.—The Commission shall be composed of 17 members of whom—

(A) five shall be representatives of the Federal Government, including—

(i) the Attorney General, or the Attorney General’s designee;

(ii) the Secretary of the Treasury, or the Secretary’s designee;

(iii) the Secretary of Commerce, or the Secretary’s designee;

(iv) the Director of Central Intelligence, or the Director’s designee; and

(v) the Director of Homeland Security, or the Director’s designee;

(B) four shall be appointed by the Majority Leader of the Senate;

(C) two shall be appointed by the Minority Leader of the Senate;

(D) four shall be appointed by the Speaker of the House of Representatives; and

(E) two shall be appointed by the Minority Leader of the House of Representatives.

(2) LIMITATION ON DESIGNEES.—An individual may not be designated for membership on the Commission under paragraph (1)(A) unless the indi-
individual holds a position in the United States Government by appointment of the President, by and with the advice and consent of the Senate.

(3) APPOINTMENTS BY CONGRESSIONAL LEADERSHIP.—

(A) REQUIREMENTS.—Of the individuals appointed under subparagraphs (B) through (E) of paragraph (1)—

(i) at least one shall be an officer or employee of a State law enforcement agency; and

(ii) at least one shall be an officer or employee of a local law enforcement agency.

(B) LIMITATION.—No individual may be appointed under subparagraphs (B) through (E) of paragraph (1) if the individuals is an officer or employee of the Federal Government or an active member of the uniformed services.

(C) SENSE OF CONGRESS.—It is the sense of Congress that in making appointments to the Commission under subparagraphs (B) through (E) of paragraph (1) the Members of Congress referred to in such subparagraphs should seek to appoint individuals with varying viewpoints.
on and areas of expertise in the matters to be covered by the Commission, including individuals from the technology industry, non-profit entities, and academia.

(c) Period of Appointment; Vacancies.—Members of the Commission shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) Security Clearances.—

(1) In general.—Each individual appointed to the Commission under subparagraphs (B) through (E) of subsection (d)(1) shall possess a security clearance appropriate for the work of the Commission under this Act.

(2) Failure to secure clearance.—

(A) Initial appointments.—If an individual initially appointed under subparagraphs (B) through (E) of subsection (d)(1) without a security clearance does not secure a security clearance by the commencement of the work of the Commission, the appointment shall be deemed vacant.

(B) Appointments to vacancies.—If an individual appointed to a vacancy in a position
under subparagraphs (B) through (E) of subsection (d)(1) without a security clearance does not does not secure a security clearance within a reasonable period (as determined by the Commission), the appointment shall be deemed vacant.

(3) PROCESSING OF CLEARANCES.—The Attorney General shall seek to ensure the timely processing of any applications for security clearances for purposes of this subsection.

(e) CHAIRMAN.—The Commission shall select a Chairman from among its members.

(f) INITIAL MEETING.—Not later than 30 days after the date on which nine members of the Commission have been appointed, the Commission shall hold its first meeting.

(g) MEETINGS.—The Commission shall meet at the call of the Chairman.

(h) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

SEC. 4. DUTIES OF COMMISSION.

(a) INVESTIGATION.—The Commission shall conduct a thorough investigation of the following:
(1) Standards for using, selecting, and operating investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

(2) The advisability of establishing within the Government one or more entities or procedures to ensure that the Government uses investigative and surveillance technologies to meet law enforcement and national security needs in the manner that best preserves the personal dignity, liberty, and privacy of individuals within the United States.

(b) REPORT.—

(1) IN GENERAL.—Not later than 18 months years after the date of the initial meeting of the Commission, the Commission shall submit to the President and Congress a report which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

(2) FORM OF REPORT.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.
(c) Investigative and Surveillance Technologies Defined.—In this section, the term “investigative and surveillance technologies” means technologies that may be used by the Federal Government, and by State and local governments, to monitor and collect information about individuals in the absence of reasonable, articulable suspicion of criminal activity, including—

(1) Internet surveillance technologies;

(2) data mining technologies;

(3) surveillance camera technologies;

(4) x-ray body scan technologies;

(5) biometric technologies; and

(6) other technologies identified by the Commission for purposes of this Act.

SEC. 5. POWERS OF COMMISSION.

(a) Hearings.—

(1) In General.—The Commission or, at its direction, any subcommittee or member of the Commission, may, for the purpose of carrying out this Act—

(A) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and
the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials, as the Commission or such subcommittee or member considers advisable.

(2) PUBLIC MEETINGS.—To the maximum extent practicable, the meetings of the Commission shall be open to the public.

(3) CLOSED MEETINGS.—

(A) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(B) ADDITIONAL AUTHORITY.—In addition to the authority under subparagraph (A), paragraphs (1) and (3) of section 10(a) of the Federal Advisory Committee Act shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.
(4) **Public Summary of Closed Proceedings.**—Whenever practicable, the Commission shall maintain and make available for public inspection an unclassified summary of any classified information considered by the Commission and of any classified meeting or proceeding conducted by the Commission.

(b) **Issuance and Enforcement of Subpoenas.**—

(1) **Issuance.**—Subpoenas issued under subsection (a) shall bear the signature of the Chairman of the Commission and shall be served by any person or class of persons designated by the Chairman for that purpose.

(2) **Enforcement.**—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of court.
(c) Witness Allowances and Fees.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Commission. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Commission.

(d) Procedures.—The Commission may adopt procedures for the work of the Commission under this Act. Any portion of such procedures relating to the treatment of confidential or classified information shall not go into effect until jointly approved by the Attorney General and the Director of Central Intelligence.

(e) Information from Federal Agencies.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(f) Postal Services.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property.
SEC. 6. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Members of the Commission shall serve without compensation for their service as member of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to
chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) Security clearances.—The executive director and any other personnel of the Commission shall possess security clearances appropriate for the work of the Commission.

(d) Detail of government employees.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) Procurement of temporary and intermittent services.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.
SEC. 7. TERMINATION OF COMMISSION.

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 4(b).

SEC. 8. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2003, 2004, and 2005 such sums as may be necessary for the Commission to carry out this Act in such fiscal year.

(b) TRANSFER OF FUNDS.—If no funds are appropriated to the Commission by the end of the session of Congress ending in a fiscal year specified in subsection (a), the Secretary of Commerce shall, from amounts appropriated or otherwise available to the Secretary for such fiscal year, transfer to the Commission an amount necessary to permit the Commission to carry out this Act in such fiscal year.

(c) AVAILABILITY.—Any amounts appropriated to the Commission under subsection (a), or transferred to the Commission under subsection (b), shall remain available, without fiscal year limitation, until expended.