

The Liberty Bell is centered in the background of the blue banner, partially obscured by the text.

THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

The Free State Foundation's TENTH ANNIVERSARY GALA LUNCHEON

**December 7, 2016
National Press Club
Washington, DC**

MODERATOR:

Randolph May, President, The Free State Foundation

OPENING REMARKS:

Congresswoman Marsha Blackburn – Chairman, House Energy and Commerce Committee’s Subcommittee on Communications and Technology (as of January 5, 2017); Vice Chairman, House Energy and Commerce Committee, Republican Deputy Whip, and Trump Transition Team Executive Committee Member (on December 7, 2016).

* This transcript has been edited for purposes of correcting obvious syntax, grammar, and punctuation errors, and eliminating redundancy. None of the meaning was changed in doing so.

P R O C E E D I N G S

MR. MAY: I'm Randy May, I think most of you know that, president of the Free State Foundation. And wow, what a crowd!

So here's what we're going to do. I'm going to do a brief welcome and then I'm going to introduce our speaker, Congresswoman Marsha Blackburn, who is going to lead off with some remarks.

So, wow!!! That's the word I used before. But with three exclamation points this time. That's what keeps coming to mind when I think about the Free State Foundation celebrating its tenth anniversary.

The FSF launched in June 2006, so the celebration is just a little late. But nevertheless, we're still in our anniversary year, which is what I wanted to do.

The think tank that started really as a gleam in my eye -- isn't that what we often say about our offspring? -- is now an adolescent and on its way to its teenage years. I'm proud that what was really an ambitious dream, with determination and lots of hard work, has led the Free State Foundation to its eminent position as one of the nation's leading free market-oriented think tanks. And I am confident that in its next decade, the Free State

Foundation's work will become even more influential and impactful than it already is. Perhaps even in the next year that could happen.

Now, only a brief overarching word about our purpose and focus, because I know that most of you attending this anniversary celebration are familiar with our work.

As our website has proclaimed from the very beginning, our purpose is "to promote, through research and educational activities, understanding of free market, limited government and rule of law principles." More specifically, we declare, FSF "focuses on eliminating unnecessary and counterproductive regulatory mandates, especially those applicable to the communications and other high tech industries, and on reducing overly burdensome taxes, protecting individual and economic liberty, including property rights, in making government more effective, efficient and accountable."

We've never wavered from those principles or from that focus since day one. And, by the way, when we speak of individual liberty as I just did, that includes, of course, First Amendment free speech rights.

Many of you have heard me say before that I always feel right at home in the First Amendment Room, and it's

true. Now, I wish I had been able to get a larger room today. But I nevertheless feel comfortable in the First Amendment Room.

Of course, FSF could not have accomplished all that it has without the hard work of its staff and the many contributions of its adjunct and visiting scholars, its board of academic advisers and its board of directors. Without at all diminishing the contributions of others, I especially want to single out for thanks right now long-term staff members Senior Fellow Seth Cooper and Communications and Events Coordinator Kathee Baker. Their dedication has been instrumental.

(Applause.)

MR. MAY: Their dedication has been instrumental to FSF's success.

I also want to acknowledge the contributions of Research Fellow Mike Horney and Visiting Fellow Greg Vogt, both of whom are in the room, so we can do another round for them.

(Applause.)

MR. MAY: And without my wife Laurie's active contribution to several facets of our work, not to mention her unwavering support for that gleam in my eye that turned into the ambitious dream that turned into the Free State

Foundation, none of this would have been possible. So also thank Laurie with me, if you would.

(Applause.)

MR. MAY: And, of course, thanks to all of you for your support and personal friendship.

Finally, one short personal note. To celebrate our tenth anniversary, originally I had planned to hold a gala dinner in June in a ballroom someplace close to the actual June 2006 anniversary date. But as some but certainly not all of you know, last April, my daughter, Brooke Taylor, a brilliant lawyer with three children, was involved in an automobile accident in Seattle, and she suffered very serious injuries. She was in the ICU for 18 days and on the acute care ward for another 25 days after that. Since then, Brooke has spent nearly six months in leading rehabilitation facilities in Denver and Omaha.

So all I want to say is this. Brooke's recovery is progressing, and every day Laurie and I are truly inspired by the way she continues to fight for further progress. She always followed everything we did. Sometimes I thought even too closely, in terms of what we were doing, including everything from the website to some paper that we had written. But she followed our work closely, even though she was a busy lawyer.

So I want to dedicate this tenth anniversary program to my daughter, Brooke, and I want to thank her for the way she truly inspires me every single day to look onward and upward with much hope for the future.

Okay, with that said --

(Applause.)

MR. MAY: If I had looked over at Laurie, I think I would have been crying, but she did it for both of us.

So with that, we want to turn to the program. And I am delighted that Congresswoman Marsha Blackburn is here with us today to deliver some remarks as we open the program.

You've got these brochures with long biographies, and so I will just point out a couple of things for everyone, I think, in the interest of time.

Congresswoman Blackburn, of course, is Vice Chair of the House Energy and Commerce Committee, Republican Deputy Whip, and a Trump Transition Team Executive Committee member.

Now, this is true and she can vouch for it. When I invited her, this was before the election, of course. I didn't know what was going to happen or that there would be a Trump Transition Team. But I am delighted that you're going to spill the beans with everything you know today.

That's nice.

About Representative Blackburn, I will just say, without all the biographical details, that she has long been a leader, as most of you know, in the telecom policy area, fighting for sound, market-oriented communications policy. And she is also a leader -- and this is relevant to our work at the Free State Foundation as well -- a leader in working to secure intellectual property rights, especially of musicians, songwriters, and the recording industry. I know she is a founder and chairperson, I believe, of the Congressional Songwriters Caucus.

So I'm grateful that Congresswoman Blackburn has participated in so many previous Free State Foundation events. I appreciate that. And you may not remember, Congresswoman Blackburn, but you were also present at our fifth anniversary celebration. She says she does, which is very nice.

But here's the deal. As soon as I get a date for the fifteenth anniversary celebration, maybe I'll do it earlier this time, I'm going to get it on your schedule.

So with that, please welcome Congresswoman Blackburn.

(Applause.)

CONG. BLACKBURN: Thank you all. And, yes indeed,

I am thrilled to be here with you and to mark this tenth anniversary, to celebrate Brooke's ongoing recovery, and the medical progress and the technological progress that makes that possible. So we join you in delighting that she is progressing every day.

I am also thrilled to be joined by two of our FCC commissioners, and know that they are looking forward to having some change taking place, because we have had an FCC chairman that, I like to say, has been stretching the confines of law and, in some instances, ignoring it altogether. And many of you have heard me say more than once that he has been the regulatory bull in the china shop.

And I think that the central issue surrounding the FCC's behavior is not that it has chosen to tackle difficult issues, but that it has embraced controversial solutions to those issues. And sometimes it was as if they had the solution they wanted to get to out there so they created this problem that was in search of getting to that solution. And that's not a very expedient way to go about regulatory action.

Republicans must seize the opportunity before them to roll back Chairman Wheeler's overreach. However, I think that it is appropriate that we exercise caution and

be very thoughtful and very cautious in our approach. We should resist utilizing what I call the "because we can" justification that seemed to be the approach that oftentimes Chairman Wheeler would adopt. Because I do think that that is an approach that poisons the well when you want to have a policy discussion.

Republicans must work with Democrats to achieve meaningful consensus. Moreover, the House Energy and Commerce Committee is well positioned to move forward on these issues with Greg Walden as our new chairman. Chairman Walden has worked diligently and has worked very hard to earn the gavel that he now holds. And he will use that to accomplish pro-business, pro-consumer victories on behalf of the American people. I'm looking forward to being a part of his team.

Let's go through some of the issues that are going to be in front of us as we turn the page on 2017. And I just couldn't stand before you and not talk about one of my favorites. And I bet if I went around the room, a lot of you would guess it. And that is the Net Neutrality issue. And I have to tell you, the February 26, 2015, Open Internet Order that looked at regulating the Internet like a utility and utilizing a 1930s era law, it is something that has not been helpful. And as you all know, the story

pretty much can write itself.

Even Progressive Policy Institute forecasted \$11 billion in taxes and fees and rate regulation to come. And I think you will see us address a Net Neutrality fix early in the next Congress. I also believe that you are going to see a legislative solution, as opposed to a regulatory solution to this issue. A legislative fix is going to give those of you in the industry the certainty that you need, so that you know what the rules of the road are for standards of Internet conduct.

Obviously, a potential starting point may be the Thune-Upton Discussion Draft, which has been circulated around Congress. So that is something that I think you can put on your agenda to start watching as we gavel back in at noon on January 3.

Privacy. Many of you worked with me -- and I thank you for having worked with Congressman Peter Welch and me, as we have driven the privacy discussions at our committee, and chaired the task force together in a bipartisan basis, so that we would have a working group focused on how we wanted to drill down on this. It's interesting to me.

This is something that our constituents want to see us address. They want to know what the standards are

and they want to know how businesses can work to improve transparency and consumer choice and consumer protection for consumer data. An important, important piece of the infrastructure is that data.

The FCC decided to adopt broadband consumer privacy rules on October 27 of this year. Its entry into the online arena as a privacy regulator is, in my opinion, problematic and it's troubling. The three reasons that I think exist, first, the FTC has traditionally been our government's sole Internet privacy regulator. Having dual entities if the FCC comes in alongside the FTC, having those dual entities regulate that space will create confusion, as pieces of the Internet ecosystem would potentially be subject to different types of regulations. Some would be subject to dual regulations.

Second, the FCC's perceived grant of authority to enforce consumer privacy pursuant to Section 222 was done unilaterally. Republicans routinely voiced concerns about Title II reclassification and the sweeping regulatory powers the Commission would have at its disposal throughout the Net Neutrality rulemaking process.

And third, the FCC does not have the requisite technical expertise to regulate privacy.

Joshua Wright, one of our FTC commissioners, was

before the House Judiciary Committee, and he addressed this and talked about, in his words, and I'm quoting, "the unique expertise in enforcing broadband service providers' obligations to protect the privacy and security of data security." That unique expertise rests with the FTC, not the FCC.

So the FCC is arguing for a solution that is one sided. In essence, the FCC's privacy rulemaking is focused on the one part of the Internet ecosystem that doesn't actually have broad visibility into consumers' information online, and that's the ISPs.

These concerns are not just Republican concerns. I have quoted before Professor Peter Swire at Georgia Tech, who served in the Clinton administration as a policy expert, privacy expert, and who also served President Obama. He released a study on what companies have access to consumer information in the Internet ecosystem. His report clearly showed that the ISPs, the target of Chairman Wheeler's new privacy rules, do not have the level of visibility into consumers' online activities that most edge providers have.

That's why I offered an amendment to the FSGG approps bill prohibiting funding for the FCC's privacy rules last July. That passed the House with a 232 to 187

vote. So we were very pleased in that, and very pleased with the recognition that this was an area where the FCC did not need to move.

Next, let's look at the set-top box. That has just been -- and I am causing Commissioner Pai to get all choked up --

(Laughter.)

CONG. BLACKBURN: -- as I start talking about the set-top box. I guess I have just driven him to the edge on this issue.

And it's fair to say that I have probably been behind this issue every single step of the way. My constituents in Nashville, Tennessee, that are content producers, let me tell you, they are not for this thing. And so they have stayed in behind me, so I have been behind these guys when it comes to this set-top box. And I have had a lot of lawmakers that have joined me in the concern for this, as they would hear from some of the independent producers that live in their districts. And they have expressed their concerns over what was happening with this and how the set-top box would allow those third parties to go in and scoop up this content and use it in their services in ways that violate licensing terms and without consent from the content creator.

So it's -- like one of my constituents said, sounds like a fairly useful way to steal my content. So they are concerned about this.

I tell you, in the TV marketplace that we have right now, which is producing more video content than ever, why would the government go in and support this kind of intervention into the system and this kind of intellectual property theft? To me, it does not make good sense.

And Chairman Wheeler committed that his set-top box proposal was going to honor copyright law and programming agreements. I asked him specifically about that in a hearing that we had. And so then I sent it over to the -- it actually was a bipartisan letter that I sent over to the Copyright Office and requested their analysis. And that office shared many of the concerns that I had expressed and questions that I had asked for answers on, shared my concerns on those as we had gone through that hearing.

And the FCC has modified their proposal but I still don't think this is a good idea. I think it is a road that we are not wise to travel on. And I am quite concerned about what would transpire with that.

Encryption. I do think lawmakers do have a role to play in encryption. It has value. We cannot weaken

encryption technology, as that will only lead to more breaches and create problems with back doors into systems for cyber-criminals. This is an area, data security and encryption is an area that, just like privacy, our constituents bring up. They have concerns over this. They want to know, who is going to be out there protecting, as I call it, their virtual you, which is them and their presence online, their data, their information.

Cyber-crimes are costing consumers \$100 billion annually. And it has a jobs impact. The estimates are 508,000 jobs that it impacts every single year in the United States. And I think as we move into the arena of the Internet of Things and people are relying on smart phones and other devices that are going to be transmitting their data, they want assurances that that data is going to be protected, and that is where encryption comes into play.

And there are various types of encryption. There's actual encryption of the data. There's encryption of an actual device, which was the case that we saw this past year with Apple and the FBI. And unfortunately, we also know that criminals and terrorists like to take advantage of encryption technology to conduct their activities. So this is an area that is going to be worthy of a thoughtful discussion. It is going to be an area that

we will need to be certain we are communicating with law enforcement, with the industry, and look at some standards and applications.

Congress is going to have an incredible 2017, we really are. We are going to have the opportunity to address some issues that have been kind of batted around a little bit. Cans have been kicked down the road.

The issues that I've mentioned, I think also you are going to, in addition, see media ownership rules and definitely some spectrum policy discussions. And we are looking forward to getting to those.

In the lame duck, we know that the Senate is looking at reconsidering confirming Commissioner Rosenworcel and President-Elect Trump should be the one who we think should be there to make that next appointment to the FCC. And I know that a deadlock at the FCC and Democrat control of the commission, if Chairman Wheeler fails to resign, is not something that would serve the policies well that President-Elect Trump is going to want to push forward.

So we hope that you all are going to stay in touch with us as we prepare for an active year. I think that you're going to enjoy coming to these hearings, coming to committee, watching the work that we're doing. I do hope

you'll stay in touch with me. And Chuck Flint, who does our technology policy, is here with me today.

We are gearing up for just a terrific, terrific year. And we look forward when the commissioners come before us that we're saying, "Welcome, Mr. Chairman, please begin your remarks," to someone different than Tom Wheeler.

So thank you all so much. I've enjoyed being with you today.

(Applause.)

MR. MAY: Congresswoman Blackburn, thank you so much for those remarks. And, you know, we have this videotaped, I have to say, so in 2000 and -- no, I don't want to do the math. But on our fifteenth anniversary, when you do come back, see, we will be able to see what you said about what was going to be done and make that comparison. And I'll bet there are a lot of people here that are going to want to stay in touch, that's just my suspicion, with you and Charles. So I leave it to you. Sometimes we do have a tradition of answering one question or so.

CONG. BLACKBURN: Sure.

MR. MAY: Do you want to take a question and then we'll -- that's about all we have time for.

I'm going to ask -- I'm going to look at the press

and any of you -- we have time for only one or two questions. And identify yourself, please.

MR. KIRBY: Paul Kirby with TR Daily.

Some folks said that you may want to be the chairman of the Communications Subcommittee. I wanted to get your -- if that's something you were going to try for next month?

And then you mentioned the President-Elect Trump, when he's president, should make the next appointment. Do you mean you would think the Senate should not confirm Rosenworcel and he should make that nomination? Or are you saying that once the chairman leaves, obviously he would nominate someone for that seat?

CONG. BLACKBURN: I would like to see Mr. Trump be able to put his imprint on the FCC commission, so that the commission is able to work with him.

As I mentioned, spectrum, the spectrum issues that are coming up, the lack of available spectrum as we move to the Internet of Things, some of the issues that are there, maybe even addressing the Net Neutrality order. Of course, we have ICANN and IANA issues that we're wanting to address.

Rural broadband, you know, and I think that the expansion of rural broadband, when you talk about 21st

century infrastructure, for much of what people on the East Coast and the West Coast call "flyover country," that is the number one infrastructure issue, is having access to high-speed Internet. You've got to do that before you can have economic development and before you can expand education in many rural counties. And when we are out and about, you take a district like mine with 19 rural counties, 10,000 square miles, this is one of the number of things that people talk about.

So technology policy and infrastructure is going to be important in this next administration. And I would like to see the President-Elect have the opportunity to address that.

And when it comes to me, you know, we'll just -- we'll just see. As my old neighbor Minnie Pearl used to say, I'm just proud to be here.

(Laughter.)

MR. MAY: Just one quick one and one quick answer and this will have to be it.

Scott.

MR. CLELAND: Yes, Congresswoman, thank you very much for that indication that Net Neutrality will be high in the priority. How would that fit into a Comm Act update?

CONG. BLACKBURN: You know, let's cross that bridge when we get to it, if you will. I think Chairman Walden is going to have a way that he will choose to move forward. I know that he is going to want to give the President and the transition team, with the administration that is going to lead on these issues, time to focus in. So I think, as far as laying out time tables and path forward, let's give them time, let that be their news to share.

Thank you all.

(Applause.)

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