



Written by [Bob Adelman](#) on July 30, 2014

Leahy Offers Weak Bill to Curb NSA Eavesdropping on Americans

On Tuesday, Senator Patrick Leahy (shown, D-Vt.), Chairman of the Senate Judiciary Committee, [introduced](#) his version of the USA Freedom Act intended to strengthen a similar bill passed by the House last May. It's scarcely an improvement and likely won't be taken up before November, if at all in this congress.



But Leahy was optimistic nonetheless, saying that his bill, if enacted, "would represent the most significant reform of government surveillance authorities since ... the USA Patriot Act 13 years ago." That was easy for this hard-left Democrat to say, as there has been no reform of the unconstitutional Patriot Act since it was passed. In fact, without revelations provided by whistleblower Edward Snowden, even these modest "reforms" would never have been presented. Without Snowden, the NSA would have continued collecting every last piece of communications data it could and storing it for future reference at one or more of its vast collection facilities around the country. Since the bill was presented so late in this Congress, it is virtually certain no action will be taken on it.

The House bill that was passed back in May was so full of loopholes and modifications by last minute amendments as to make the effort essentially ludicrous. Although offered jointly in October 2013 by Leahy and his House counterpart, Jim Sensenbrenner of Wisconsin (the author of the Patriot Act), only the House bill ever saw the light of day. At the time, Sensenbrenner expressed great hopes for his bill:

Following 9/11, the USA Patriot Act ... has helped keep Americans safe by ensuring information is shared among those responsible for defending our country and by enhancing the tools the intelligence community needs to identify and track terrorists.

But somewhere along the way, the balance between security and privacy was lost.... Washington must regain Americans' trust in their government. The USA Freedom Act [I am offering] is an essential first step.

That first step was more like a stumble. Under the bill, according to *The Guardian*, "the government will still be able to collect phone data on Americans, pending a judge's individualized order based on



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‘reasonable articulable suspicion’ — the standard preferred by the NSA (National Security Agency) — of wrongdoing.” This is a far cry from the “probable cause” requirement demanded in the Fourth Amendment, but that’s only the beginning.

The bill purports to modify Section 715 of the Patriot Act while saying nothing about Section 702, which allows worldwide surveillance by the NSA. The bill allows for the continuous collection of Americans’ telephone records, according to the Open Technology Institute. Most grievously, the bill extended the Patriot Act until December of 2017.

Once the House passed its USA Freedom Act, 303 to 121, those opposed, including Republicans Darrell Issa, Ted Poe, and Raul Labrador and Democrat Zoe Lofgren expressed their disappointment with it. Said Lofgren, “[This] bill will actually not end bulk collection, regrettably.” It shifts collection responsibilities from the NSA to the telephone companies to which the NSA has virtually unlimited access, so it’s a cosmetic change only. The bill requires the NSA to get permission from the FISA Court, but FISA is not known for having a high regard for the freedoms protected by the Bill of Rights.

When Senator Ron Wyden (D-Ore.) saw what the House had wrought, he said he was “gravely concerned that the changes that have been made to the House version of this bill have watered it down so far that it fails to protect Americans from suspicionless mass surveillance.”

Not surprisingly, the White House endorsed the watered-down version of the bill:

The Administration strongly supports ... the USA Freedom Act.... The Administration applauds and appreciates the strong bipartisan effort that led to the formulation of this bill, which heeds the President’s call on this important issue.

The bill ensures our intelligence and law enforcement professionals have the authorities they need to protect the Nation, while further ensuring that individuals’ privacy is appropriately protected.

Especially grievous is the power that continues to be granted to the so-called FISA “court.” This is the secret court that first came to light when Edward Snowden in 2013 leaked a top-secret order issued by the court requiring a subsidiary of Verizon to provide a daily, on-going feed of all call detail records — including those for domestic calls — to the NSA. As Jennifer Granick, director of civil liberties at Stanford Law School, explained,

The Administration and the intelligence community believe they can do whatever they want, regardless of the laws Congress passes, so long as they can convince one of the judges appointed to the secretive Foreign Intelligence Surveillance Court (FISC) to agree. This isn’t the rule of law. This is a coup d’etat.

Leahy’s bill allegedly will tighten up the House bill somewhat, creating a “special advocate” for liberty at the FISA courts, and limiting the NSA from vacuuming up data from an entire zip code or all the records from a communications service provider. It also declassifies some of those FISA court orders which have remained sealed and protected from public view. In its tentative support for Leahy’s new offering, Nadia Kayyall of the Electronic Frontier Foundation (EFF), said,

The legislation may not completely end suspicionless surveillance ... it allows the NSA to get a second set of records (a second “hop”) with an undefined “direct connection” to the first specific selection term.

Because the “direct connection” standard is vague, the government may seek to construe that phrase to mean less than reasonable suspicion.



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Translation: The NSA, under Leahy's new stronger, tighter, more restrictive language, may continue to do whatever it pleases in collecting and storing for later use all private communications from Americans.

Leahy's bill will probably never see the light of day in this congress and will have to be reintroduced in the next session if anything is to be done to rein in the NSA's collection of data. In the meantime, the NSA's vacuuming of innocent Americans' private communication continues unabated.

Photo of Sen. Patrick Leahy (D-Vt.): AP Images

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