



Written by [Thomas R. Eddlem](#) on May 21, 2014

Rep. Amash Introduces Next Round of Anti-Snooping Amendments

Representative Justin Amash (R-Mich.) has introduced two [amendments](#) to the National Defense Authorization Act for Fiscal 2015 that would ban bulk NSA surveillance of Americans. The bill funds all of America's military programs, and the Amash amendments would prevent use of the funds in the bill for warrantless collection of data on Americans' phone or electronics records outright.



The technically-worded amendments by the Michigan Republican would require a “reasonable, articulable suspicion” that the person is associated with a foreign government and requires that “No collection of tangible things made pursuant to this order is authorized without the use of the specific selection terms,” which is defined as “a term used to uniquely describe a person, entity, or account.”

In a constitutional sense, the Amash amendments possibly don't go far enough: They don't mention “warrant” or “probable cause.” But the word “reasonable” is a term taken directly from the Fourth Amendment to the U.S. Constitution, which defines searches as “unreasonable” unless they have a warrant from a judge, supported under oath, “probable cause” evidence, and a description of what the searcher is looking for and where it will be found.

A similar amendment Amash offered in 2013 narrowly failed passage in the House by a [205-217 vote](#) that made national — even global — news. This year's vote has an excellent chance of passage, as the 2013 vote occurred just at the beginning of the revelations by Edward Snowden. Former NSA contractor-turned-whistleblower Snowden revealed to the world, in collaboration with civil liberties journalist Glenn Greenwald, a variety of massive warrantless intrusions by the NSA into the privacy of Americans. As a result of the NSA's attempt to vacuum up every morsel of information about Americans, more congressmen have swung over to the NSA-skeptic side of the issue. “Congressman Amash has had personal conversations with a number of members since the vote on the Amash amendment last month,” spokesman Will Adams [told](#) *U.S. News and World Report* back on August 20, 2013, shortly after the vote. “A number of them, particularly since going back home for the August recess, have a new perspective on the issue.”

An [Obama White House “White Paper”](#) published on August 9, 2013 claimed that universal surveillance of the American people's telephone and Internet records without a warrant was legal because Americans have no “reasonable expectation of privacy” on their phones or Internet:

The telephony metadata collection program also complies with the Constitution. Supreme Court precedent makes clear that participants in telephone calls lack a reasonable expectation of privacy for purposes of the Fourth Amendment in the telephone numbers used to make and receive their calls.

Interestingly enough, the White House “White Paper” was [removed](#) from the *Washington Post* website after the White House exercised a “copyright” claim against it.



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Of course, if there's no reasonable expectation of privacy in personal data related to telephone calls, then anyone can do it. Thus, it should not be surprising that an increasing number of state and local law enforcement agencies are already taking in bulk data from telephones (and — possibly — Internet traffic). The *Detroit News* found that cellphone tracking devices are being used by state and local law enforcement agencies across the nation, reporting May 12 that “the Oakland County Sheriff's Office is one of about two dozen forces nationwide — and the only one in Michigan — with the \$170,000 machine.” The number is almost certain to grow unless the limits on surveillance imposed by the Fourth Amendment are put back into place.

The collection of bulk data — if the White House is serious about asserting that there's no legal claim to privacy — could theoretically also embrace electronic surveillance by private corporations or individuals, including anything from banks to employers to jilted lovers who are willing to buy the equipment.

Photo of Rep. Justin Amash (R-Mich.): AP Images



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