



Written by [Joe Wolverton, II, J.D.](#) on November 2, 2013

Sen. Udall Leads Bipartisan Coalition Trying to Corral the NSA

Senator Mark Udall (D-Colo.) voted October 31 against a bill purporting to “reform” the National Security Agency (NSA) and the Foreign Intelligence Surveillance Act (FISA). In an e-mail to *The New American*, Udall said he believed the bill did not go far enough, failing to deliver real, substantive reform.



During the Senate Intelligence Committee’s markup of the measure earlier this week, Udall offered amendments to beef up the bill’s privacy protections, but a majority voted down his proposals.

Udall’s amendment would have ended the NSA’s bulk collection of phone record “metadata” and would have replaced the original bill with a bipartisan plan co-authored by Udall that would have thwarted the rapid construction of the surveillance apparatus.

“The NSA’s ongoing, invasive surveillance of Americans’ private information does not respect our constitutional values and needs fundamental reform — not incidental changes. Unfortunately, the bill passed by the Senate Intelligence Committee does not go far enough to address the NSA’s overreaching domestic surveillance programs,” Udall said.

“I fought on the committee to replace this bill with real reform, and I will keep working to ensure our national security programs show the respect for the U.S. Constitution that Coloradans tell me they demand. As part of this effort, I will partner with other reform-minded colleagues from both political parties, like Senators Leahy, Wyden, and Paul to continue pushing on the Senate floor for real bipartisan reform that will help keep our nation safe while better protecting our privacy rights.”

Evidence of the bipartisan commitment to reigning in the surveillance is Udall’s joining with Judiciary Committee Chairman Patrick Leahy (D-Vt.) in introducing a bipartisan, bicameral surveillance reform legislation package.

This legislation is nearly identical to a proposal Udall introduced in September with Senators Ron Wyden (D-Ore.), Richard Blumenthal (D-Conn.), and Rand Paul (R-Ky.).

A [press release from Udall’s office](#) described the goals of the two surveillance-stifling measures:

That Udall/Wyden/Blumenthal/Paul bill would rein in the dragnet collection of phone records, provide safeguards for warrantless wiretapping under the FISA Amendments Act, and create a constitutional advocate to protect privacy rights in cases before the Foreign Intelligence Surveillance Court. The bill introduced this week by Leahy and Udall would also expand safeguards on the use of national security letters and impose new and shorter sunset periods on controversial surveillance authorities. The bill is cosponsored in the U.S. House of Representatives by the original author of the PATRIOT Act, Republican Congressman James Sensenbrenner.



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The bipartisan proposal “would end the bulk collection of phone records of law-abiding Americans, close the “back-door searches” loophole that allows the government to search for Americans’ communications without a warrant and create an independent constitutional advocate to argue significant cases before the Foreign Intelligence Surveillance Court.”

Paul Lewis, [writing for The Guardian](#), disclosed key provisions of the bill:

If made law, the act would require a “constitutional advocate” to be introduced into the opaque court process, so that the government could be challenged on privacy grounds in significant or precedent-setting cases. It would insert an adversarial dimension to a court process that is currently one-sided in favour [sic] of the government.

The bill would also prevent a similar data trawl of internet communication records, which was stopped in 2011, and definitively close a so-called “backdoor” that potentially enables the NSA to intercept the internet communications of Americans swept up in a program protected by Section 702 of the of the Fisa Amendments Act.

Senator Udall’s consistent commitment to corralling the NSA is unusual among his colleagues.

With very few exceptions, the people’s elected representatives have been AWOL in the battle to preserve the Constitution and the fundamental liberties it was designed to protect.

In July of 2011 and again in May 2012, Senators Udall and Ron Wyden (D-Ore.) wrote a letter to Director of National Intelligence James R. Clapper, Jr., asking him a series of four questions regarding the activities of the NSA and other intelligence agencies regarding domestic surveillance.

In one of the questions, Udall and Wyden asked Clapper if “any apparently law-abiding Americans had their communications collected by the government pursuant to the FISA Amendments Act” and if so, how many Americans were affected by this surveillance.

In a response to the inquiry dated June 15, 2012, I. Charles McCullough III informed the senators that calculating the number of Americans who’ve had their electronic communications “collected or reviewed” by the NSA was “beyond the capacity of his office and dedicating sufficient additional resources would likely impede the NSA’s mission.

In other words, the NSA is too busy illegally recording our private e-mails, texts, Facebook posts, and phone calls to figure out how many of us are already caught in their net. And, furthermore, there is nothing Congress can do about it.

Naturally, Senators Udall and Wyden didn’t take kindly to Inspector General McCullough’s brush off. In a response to the response, the senators told McCullough that they just wanted a “ballpark estimate” of the number of American citizens who have been monitored under the authority of the FISA. In an additional statement released by Senator Wyden he expressed concern that the figure is likely very high:

I am concerned, of course, that if no one has even estimated how many Americans have had their communications collected under the FISA Amendments Act, then it is possible that this number could be quite large. Since all of the communications collected by the government under section 702 are collected without individual warrants, I believe that there should be clear rules prohibiting the government from searching through these communications in an effort to find the phone calls or emails of a particular American, unless the government has obtained a warrant or emergency authorization permitting surveillance of that American.



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Given the intelligence community's disdain for not only the Constitution but for congressional oversight, it is unlikely that the information requested by Senators Udall and Wyden will ever be forthcoming.

Various bills designed to reveal and reverse the NSA's wholesale surveillance of everyone in the world are working their way through the two houses of Congress.

Taken together, the roster of snooping programs in use by the federal government places every American under the threat of constant surveillance. The courts, Congress, and the president have formed an unholy alliance bent on obliterating the Constitution and establishing a country where every citizen is a suspect and is perpetually under the never-blinking eye of the government.

The establishment will likely continue construction of the surveillance until the entire country is being watched around the clock and every monitored activity is recorded and made retrievable by agents who will have a dossier on every American.

The fight can yet be won, though. Americans can attack the sprawling surveillance state on several fronts. First, we must elect men and women to federal office who will honor their oaths of office to preserve, protect, and defend the Constitution. Then, once in office, each of them must be held immediately accountable for each and every violation of that oath.

Photo of Sen. Mark Udall: AP Images

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