



Written by [Joe Wolverton, II, J.D.](#) on April 27, 2013

Senate Committee Passes Bill Restricting Wireless E-mail Searches

A Senate committee Thursday signed off on a bill that would make it harder for federal agents to conduct warrantless surveillance of e-mail and other forms of electronic communication, including Facebook posts and other online expressions.

The bill - [S. 607 - amends the Electronic Communications Privacy Act \(ECPA\) enacted in 1986](#). Cosponsored by Senators Patrick Leahy (D-Vt.) and Mike Lee (R-Utah), the measure would make critical changes to the authority granted by the ECPA to government agents to bypass warrant requirements before snooping through a person's private electronic correspondence.

After seeing their bill garner bipartisan support from the Senate Judiciary Committee, Leahy and Lee praised their colleagues for their action.

"All Americans — regardless of political party affiliation or ideology — care about their privacy rights," said Leahy, an author of the original 1986 ECPA law. "That is why Senator Lee and I are joined in this effort by a broad coalition of more than 100 privacy, civil liberties, civil rights and tech industry leaders from across the political spectrum in supporting the privacy updates contained in this bill." □□

"Reforming ECPA to protect legitimate privacy rights is not a partisan issue," said Senator Lee. "I'm pleased to be working closely with Chairman Leahy to help ensure that all Americans can be confident that the government may not access their email or other electronic communications without a warrant."

The Leahy-Lee amendments would require government agents to obtain a search warrant before rifling through the electronic communications of Americans that are stored by a third-party service provider (read: Google, Apple, Facebook, Yahoo, etc.).

The bill shores up this aspect of privacy and the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by stripping ECPA of the "180-day rule." This provision in the 1986 version of the law (the version currently in force) set up separate rules for giving government agents access to e-mail and other electronic communication stored for longer than 180 days.

Section 3(b) of the Leahy-Lee bill would mandate that:

not later than 10 business days in the case of a law enforcement agency, or not later than 3 business days in the case of any other governmental entity, after a governmental entity receives the contents of a wire or electronic communication of a subscriber or customer from a provider of electronic communication service or remote computing service under subsection (a), the governmental entity shall serve upon, or deliver to by registered or first-class mail, electronic mail,





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or other means reasonably calculated to be effective, as specified by the court issuing the warrant, the subscriber or customer... a copy of the warrant; and a notice that includes the information” agents are seeking to collect.

While it is about time that the Senate do something to protect the Fourth Amendment rather than repeal it, this isn’t the first time Congress has tried to fix the ECPA.

In recent years, two separate committees have tried to enact changes to the ECPA. Last November, the Senate Judiciary Committee even passed a bill substantially similar to the one offered by Leahy and Lee.

Earlier this year Leahy, who was one of the original authors of the ECPA, said that bringing the measure up to date was his top privacy priority for the 113th Congress. □□

“When I led the effort to write ECPA 27 years ago, email was a novelty,” noted Leahy. “Three decades later, we must update this law, so that the law protects our privacy rights and keeps pace with innovation and the challenging mission of law enforcement. I look forward to the Senate now considering this important legislation.”

Praising his cosponsor’s leadership on the issue, Senate Lee [echoed Leahy’s call for change](#):

Updating the Electronic Communications Privacy Act is an essential step to protect Americans’ Fourth Amendment rights. Chairman Leahy led the original effort to pass ECPA back in 1986, and I am very happy to join with him here to provide these essential updates. For centuries, Americans sent some of their most personal correspondence to each other through the U.S. Postal Service. It is well settled that government agencies should not have warrantless access to such private correspondence.

Modern technology has evolved to the point where third party storage and “cloud computing” are now the norm. Many people use Google, Yahoo, and other remote services to host and coordinate electronic communications. Due to the conflicts of older legislation and modern technology, private email correspondence over 180 days old is not afforded full Fourth Amendment protection. Today, we finally move to change that.

Advocates of the purpose of the legislation recognized the progress made by the Senate Judiciary Committee in restoring the right of people to be free from unwarranted searches and seizures of even their electronic communication.

“For the first time since the creation of the World Wide Web, Congress has made it clear that all private communications online require a search warrant based on probable cause,” said ACLU attorney Christopher Calabrese, [as quoted in the Guardian \(UK\)](#). “This important step forward would mean that police are held to the same standard whether they search someone’s house or their inbox.”

On its website, [the ACLU praised the support](#) of groups from across the political spectrum.

After the vote, messages of support poured in from [libertarians](#), consumer groups, privacy advocates, [civil rights](#) organizations, groups such as the [Americans for Tax Reform](#) and the [Heritage Foundation](#), [librarians](#), [tech policy groups](#), [media trade groups](#), Internet industry organizations, and more. Such a robust coalition of “strange bedfellows” is rare in Washington, and it was this diversity that convinced the powerful Senate Judiciary Committee that the time had come for an update.

Of course, there were those lawmakers who pushed to maintain the status quo and preserve the power currently given to law enforcement and intelligence agencies to skirt around the Constitution.



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As reported by the *Guardian*:

Senator Chuck Grassley (R-Iowa) said that his fellow senators were setting aside the concerns of law enforcement officials. "Instead it seems a growing distrust of government is driving a significant amount of public opinion these days," he said. Grassley claimed the email debate was part of a wider concern among the public about government accountability, gun rights and civil liberties.

Grassley said Congress would be "abdicating our responsibilities" if it did not take into consideration the concerns of regulators and law enforcement.

Senator Jeff Sessions (R-Ala.) said major city chiefs of police, FBI groups, district attorneys and others had expressed grave concerns about the bill. "It seems to me these concerns are very real," he said. "In the real world agents sometime have to do 30, 40, 50 pages [of] documents to get a warrant. It intimidates them and they just don't try. [Some] cases, particularly terrorism cases, may never be followed up on simply because of that burden."

He said "privacy is very real" but that email was similar to bank records, which can be obtained without a warrant, and that people had a similarly "diminished expectation of privacy" with email.

What the people have is a diminished expectation that Congress will do anything other than violate their oaths of office and continue along the path of consolidating all power in Washington and article by article, amendment by amendment, dismantling the Constitution. For this reason, there is genuine reason to praise the vote Thursday to restore a little bit of the liberties we've lost at the hands of lawmakers.

The Leahy-Lee Electronic Communications Privacy Act Amendments Act of 2013 has been placed on the Senate calendar and will soon be deliberated by the full body.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com.



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