



Written by [Thomas R. Eddlem](#) on May 25, 2011

Rand Paul Efforts May Lead to Temporary Patriot Act Lapse

Senate Majority Leader Harry Reid tabled a bill renewing three controversial provisions of the Patriot Act and instead dropped the Patriot Act into the Small Business Authorization bill to circumvent efforts by Paul (R-Ky.) and other senators to offer amendments to curb the Patriot Act attacks on the Fourth Amendment to the U.S. Constitution. Reid's procedural maneuver was designed to prevent Paul and Senators Mark Udall (D-Colo.) and Ron Wyden (D-Ore.) from offering amendments to the bill.



When the Senate passed a three-month extension of the same three provisions of the Patriot Act back in February, Senate Majority Leader Harry Reid promised a full debate on the measure. But Reid waited until the final week of the three-month extension of the Patriot Act to call up his bill, and this week Reid conducted procedural maneuvers that precluded amendments. "I'm not at the luxury of waiting for a better time," Reid [said](#) on the Senate floor. "We cannot let the Patriot Act expire. I have a responsibility to try to get this bill done as soon as possible."

"Instead of honoring statements he made in February regarding allowing amendments and debate on the bill, Sen. Reid went through procedural hoops to go back on his word. By hurriedly attaching the extensions to the privileged small business bill as an amendment, Sen. Reid denied the Senate the opportunity to debate the constitutionality of its provisions," Sen. Paul [charged](#). "Today's events further underscore the U.S. government's lack of transparency and accountability to the American people."

Senator Paul had sought several amendments to wedge pro-Second Amendment politicians from the Patriot Act by offering an amendment to exempt gun purchases from the "financial records" provision of the Patriot Act. The amendments will all fail. That much is a political certainty. But Paul would get everyone on record about how the Patriot Act impacts the Second Amendment. So many politicians who are pro-gun will be obliged (or at least feel pressured) to vote against the Patriot Act.

"Many conservatives argue that well they love the second amendment," Senator Paul [argued](#) on the floor of the Senate March 23. "If you don't protect the entire Bill of Rights, you're not going to have any of it." The gun-exemption amendment had won the backing of [Gun Owners of America](#).



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The Washington, D.C., beltway publication *The Hill* [reported](#) May 24 that "if Paul insists on using all 30 hours of post-cloture debate he is entitled to under Senate rules, he could force the Patriot Act to lapse for a day." Under rules of cloture, Paul is entitled to up to 30 hours of debate, though amendments under the floor rules of the Small Business Reauthorization Act would be limited.

The three [Patriot Act](#) provisions set to sunset May 27 include:

- 1) the "roving wiretap" provision, which allows the federal government to wiretap any number of telephone/internet connections on a suspect without specifying what they will find or how many phones they will tap;
- 2) the "financial records" section, which allows the feds to seize "any tangible thing" related to an investigation, even if the owner of the data is not accused of doing anything illegal; and
- 3) the "lone wolf" provision, which grants virtually unlimited surveillance of any "non-U.S. person" inside the United States who "engages in international terrorism or activities in preparation therefor."

President Obama [complained](#) as a Senator of the same Senate rush to rubber-stamp the demands of the executive branch. "In the last week of the session, the Senate is being asked to reauthorize the Patriot Act without adequate opportunity for debate," Obama wrote in a ["dear colleague" letter](#) signed with seven other Senators December 14, 2005. "We should not just make permanent or, in the case of three provisions, extend for another four years the most controversial provisions of the Patriot Act. The sunsets this year provide our best opportunity to make the meaningful changes to the Patriot Act that the American public has demanded. Now is the time to fix these provisions."

Senators Mark Udall and Ron Wyden have also sought a handful of amendments to the act. Udall told his fellow Senators May 24 that:

In *Federalist* #51, James Madison, [whom] we venerate, who was the author of many of the documents of that structure, the way in which we organize and operate our democracy, he wrote: "In framing the government which is to be administered by men over men, the great difficulty lies in this, you must first enable the government to control the governed and then in the next place oblige it to control itself." The bill before us does not live up to that standard. And I believe it seriously risks the constitutional freedoms of our people.

Udall [said](#) without the amendments he plans to vote against renewal of the Patriot Act, and [voted against](#) Harry Reid's measure to drop the previous question (ending the possibility of amendment) May 24. On Tuesday evening, Reid asked the Senate to table a previous motion to proceed to the Patriot Act. The Senate did by a [vote](#) of 74-13.

The three provisions of the Patriot Act violate the particularity clause of the Fourth Amendment, which requires all searches to describe "the place to be searched, and the persons or things to be seized" in a warrant in order to be "reasonable" under the Constitution. The [Fourth Amendment reads](#):

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

That the three provisions of the Patriot Act violate the Fourth Amendment is obvious upon an honest reading of the document. As the *Baltimore Sun* [reported](#) May 24, "In Paul's view, you don't have to be a



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constitutional scholar to understand the above stanza. You just have to be able to read."

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