Written by **Warren Mass** on October 25, 2017

Senators Ron Wyden and Rand Paul Lead Bipartisan Effort to Rein in NSA Spying

On October 24, Senators Ron Wyden (D-Ore.), shown on left, introduced — with Rand Paul (R-Ky.), shown on right, being the first of 13 senators to cosponsor — bipartisan legislation entitled the "USA RIGHTS Act" (S. 1997) to protect the privacy rights of Americans by banning warrantless searches of private databases by the NSA and other federal agencies. The list of senators spanned the political spectrum and included eight Democrats, four Republicans, and one independent, Bernie Sanders (I-Vt.)

The group of senators comprised such an unlikely amalgam of political philosophies that Brian Darling, who was once Paul's counsel and senior communications director, started his *Observer* article about the legislation: "Who said bipartisanship is dead in Washington, D.C.?"

A summary of the USA Rights Act posted by Wyden notes that Section 702 of the Foreign Intelligence Surveillance Act (FISA), which expires on December 31, 2017, allows the federal government to compel American companies to assist in the warrantless surveillance of foreigners. Though presumably directed at foreigners, the current law results in the collection of an unknown number of Americans' private calls, e-mails, and other communications. Wyden's summary contains a bullet list of what the bill is designed to accomplish that includes, in part:

> • End the back door searches: Under current law, the government can conduct unlimited, warrantless searches through the vast data collected under Section 702 for private communications to, from and about Americans. The bill requires a warrant for those searches.
>
> • End reverse targeting: With no limits to the warrantless backdoor searches of Americans or the amount of information on Americans that gets reported around the government, there are no checks in place to prevent "reverse targeting" of Americans communicating with foreign targets. The bill requires a warrant when a significant purpose of targeting foreigners is to collect the communications of Americans….
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> • Prohibit the collection of domestic communications: Section 702 is intended to collect foreign communications. The bill clarifies that it should not authorize the collection of communications known to be entirely domestic.
>
> • Prevent the misuse of information on Americans: The bill prohibits the use of information on Americans collected under Section 702, except for foreign intelligence and crimes directly related to national security, such as terrorism and espionage….
>
> • Establish a four-year sunset: The bill requires congressional reauthorization in 4 years.

Wyden said, concerning the legislation: "Without common-sense protections for Americans' liberties,

this vast surveillance authority is nothing less than an end-run around the Constitution. Our bill gives intelligence agencies the authority they need to protect our country, but safeguards our essential freedoms with new provisions requiring judicial oversight and pushing back on the creeping expansion of secret law."

Paul also weighed in on the bill, stating: "Congress must not continue to allow our constitutional standard of 'innocent until proven guilty' to be twisted into 'If you have nothing to hide, you have nothing to fear.' The American people deserve better from their own government than to have their Internet activity swept up in warrantless, unlimited searches that ignore the Fourth Amendment. Our bill institutes major reforms that prove we can still protect our country while respecting our Constitution and upholding fundamental civil liberties."

In direct contrast to the USA RIGHTS Act (S. 1997) is another bill, S. 1297, "A bill to make title VII of the Foreign Intelligence Surveillance Act of 1978 permanent, and for other purposes." That bill was sponsored by Senator Tom Cotton (R-Ark.) and has 13 Republican cosponsors, including Marco Rubio (R-Fla.), John McCain (R-Ariz.), and Lindsey Graham (R-S.C.)

Darling observed in his article:

> The Cotton-Graham proposal would be a terrible development if passed, because that bill removes any opportunity to reform these programs that have been used for investigations that have nothing to do with national security. If Congress were to rubber stamp the federal government's authority for warrantless spying, they would be violating the letter and spirit of the founding of our nation that some rights can't be abridged by the federal government.
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> Sec. 702 of FISA expires on December 31, 2017, and there is expected to be a fight between the Cotton-Graham wing of the Republican Party, who hold privacy rights with lower regard, and the libertarian members of the House and Senate, who are expected to stand up against the federal government as it seeks to spy on its own citizens.

Writers in *The New American* have warned about the dangers to our freedoms posed by the NSA's warrantless surveillance operations for years. In one such article, written in 2014, Joe Wolverton stated:

> After years of denial — much of which likely constituted perjury — officials of the National Security Agency (NSA) admitted to having conducted unwarranted surveillance of Americans, a violation of the protections against such searches provided by the Fourth Amendment.

Wolverton cited a letter from Director of National Intelligence James Clapper to Senator Wyden that was released by Wyden's office in April 2014, which revealed that Americans were being directly targeted for monitoring. Along with the release of that letter, Wyden and Senator Mark Udall (D-Colo.) issued a joint statement complaining, "Intelligence agencies have indeed conducted warrantless searches for Americans' communications."

The article noted that Udall and Wyden had joined to write an op-ed published in November 2013 in the *New York Times*, in which they stated:

> [The] framers of the Constitution declared that government officials had no power to seize the records of individual Americans without evidence of wrongdoing, and they embedded this principle in the Fourth Amendment. The bulk collection of Americans' telephone records — so-called metadata — by the National Security Agency is, in our view, a clear case of a general warrant that violates the spirit of the framers' intentions. This intrusive program was authorized under a secret

> legal process by the Foreign Intelligence Surveillance Court, so for years American citizens did not have the knowledge needed to challenge the infringement of their privacy rights.

Not surprisingly, Udall is one of the cosponsors of the "USA RIGHTS Act."

There is a common belief that Democrats in Congress are prone to taking liberties with the Constitution and that all Republicans are constitutional conservatives. The issue of whether or not our federal government should be allowed to run roughshod over the Fourth Amendment has provided at least one conspicuous exception to that belief. Wyden and Udall have reached across the aisle and are working with Paul, Mike Lee, and other Republicans in the Senate to preserve our right to privacy, while (as Darling put it) "the Cotton-Graham wing of the Republican Party … hold privacy rights with lower regard."

A similar battle is lining up in the House, as Democrats Zoe Lofgren (Calif.) and Beto O'Rourke (Texas) have put party loyalty aside to join up with Republicans Ted Poe (Texas), and Justin Amash (Mich.) to introduce the "USA RIGHTS Act" there.

There is still a long way to go, but this issue is a sign there are some members of Congress who value the Constitution and the freedoms it guarantees more than their party affiliations.

Image: Screenshot of from CATO interview of senators

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