USA Freedom Act Gutted Before House Passage; Heads to Senate

The USA Freedom Act — written in its original form by Rep. James Sensenbrenner (R-Wis.) and designed to ban the omnipresent collection of private U.S. citizens' data by the NSA without a judicial warrant — was passed in gutted form May 22. The act is likely to be further watered down as it heads to the Senate, as senators have generally been less skeptical of warrantless surveillance of Americans than have members of the House.

The House passed the bill by a 303-121 vote, with a majority in both parties in favor of it.

According to the Electronic Privacy Information Center (EPIC), the bill was amended and "no longer prohibits bulk collection of communications records. Other key provisions were also removed."

A majority of both Republican and Democrat co-sponsors of the bill actually voted against it. Former co-sponsor Mark Sanford (R-S.C.) lamented in a press release, "Today was the first time since returning to Congress I voted against a bill I co-sponsored — the USA Freedom Act." Generally speaking, the Republicans who scored highest on *The New American's* "Freedom Index" voted against the revised bill. (Sanford's cumulative Freedom Index score is 85 percent.)

But Sensenbrenner (Freedom Index score: 77 percent) defended the mangled remains of his bill in a speech on the House floor May 22:

> I don't blame people for losing trust in their government, because the government violated their trust.
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> Let me be clear, I wish this bill did more. To my colleagues who lament changes, I agree with you. To privacy groups who are upset about lost provisions, I share your disappointment. The negotiations for this bill were intense, and we had to make compromises, but this bill still deserves support.
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> Don't let the perfect be the enemy of the good. Today, we have the opportunity to make a powerful statement: Congress does not support bulk collection.

On his Facebook page Justin Amash (R-Mich.), who has taken up the mantle from the now-retired Congressman Ron Paul as America's premier defender of civil liberties in Congress, stated that the bill actually codifies into law practices that would legally sanction massive data-mining of Americans without either the judicial warrant, probable cause, or particularity required by the Fourth Amendment:

> I was and am proud of the work our group, led by Rep. Jim Sensenbrenner, did to promote this legislation, as originally drafted. However, the revised bill that makes its way to the House floor this morning doesn't look much like the Freedom Act. This morning's bill maintains and codifies a

> large-scale, unconstitutional domestic spying program.

Amash (Freedom Index score: 92 percent) decried the way the original bill was removed and replaced by the watered-down version in committee without letting the full House vote. He declared that it "mocks our system of government that they worked to gut key provisions of the Freedom Act behind closed doors." He acknowledged, however, that the bill made a "few modest improvements to current law."

Amash —a two-term Michigan Republican who is facing a tough reelection primary battle against the deep-pockets Establishment, pro-surveillance challenger Brian Ellis — vowed to continue his crusade to restore the Fourth Amendment: "The American people demand that the Constitution be respected, that our rights and liberties be secured, and that the government stay out of our private lives," he asserted.

Amash's lamentations about the back-room substitute bill reveal how far the leadership of Congress has drifted from the original intent of the Fourth Amendment in just a generation. Back on August 13, 1975, President Ford's Attorney General Edward Levi noted in an address to the American Bar Association in Montreal that he had eliminated even modest warrantless surveillance of Americans:

> Last June the Department reported the number of such telephone and microphone surveillances for the year 1974. The number of subjects of telephone surveillances was 148; the number of microphone surveillances was 32. On July 9, commenting on the Department's practice, I publicly stated, "there are no outstanding instances of warrantless taps or electronic surveillance directed against American citizens and none will be authorized by me except in cases where the target of the surveillance is an agent or collaborator of a foreign power."

Levi noted that the FBI — which had engaged in most of the domestic surveillance in the 1950s-'70s — had in the past two decades "improperly disseminated information from its files to discredit individuals, or arranged for the sending of anonymous letters, or the publication of material intended to create opposition. I have described such activities as foolish and sometimes outrageous. They were done in the name of diminishing violence. The proposed guidelines accept the proposition that in limited circumstances carefully controlled FBI activity which directly intercedes to prevent violence is appropriate."

Today, universal government surveillance of the American people's electronic traffic without a warrant or probable cause is deemed a necessary ingredient of national security by the power brokers in Congress, in particular the intelligence committees of both houses of Congress. But back in 1976, the Senate Select Committee on Intelligence reported that they had enacted legislation to rein in intelligence agencies and return to the Fourth Amendment: "Since the early 1930s, intelligence agencies have frequently wiretapped and bugged American citizens without the benefit of judicial warrant. Recent court decisions have curtailed the use of these techniques against domestic targets. But past subjects of these surveillances have included a United States Congressman, a Congressional staff member, journalists and newsmen, and numerous individuals and groups who engaged in no criminal activity and who posed no genuine threat to the national security, such as two White House domestic affairs advisers and an anti-Vietnam War protest group. While the prior written approval of the Attorney General has been required for all warrantless wiretaps since 1940, the record is replete with instances where this requirement was ignored and the Attorney General gave only after-the-fact authorization."

History reveals that people in elected governments get the worst government they are willing to

tolerate. And as long as Americans continue to return to office congressmen who excuse universal surveillance of the American people without warrants, their government will know all their secrets. And the abuses of the 1970s will inevitably revisit themselves upon the American people in exponentially exaggerated form, as the universal surveillance of present-day Americans is far more widespread than the several hundred wiretaps used annually back in the 1950s-'70s.