



Forty-two Senators Block USA Freedom Act to Limit NSA Surveillance

A November 18 vote to allow the USA Freedom Act to proceed to the floor of the Senate for debate fell two votes short of the 60 required to end a Republican-led filibuster and failed by a margin of 58-42. Only four Republicans — Ted Cruz of Texas, Dean Heller of Nevada, Mike Lee of Utah, and Lisa Murkowski of Alaska — voted “Yea” with 52 Democrats and two independents. One Democrat, Bill Nelson of Florida, voted “Nay.”



The official summary of the legislation, S. 2685, sponsored by Sen. Patrick Leahy (D-Vt.) read: “To strengthen privacy protections, accountability, and oversight related to domestic surveillance conducted pursuant to the USA PATRIOT Act and the Foreign Intelligence Surveillance Act of 1978.”

In contrast to the firm GOP opposition to the bill in the Senate, a related version of the bill, (H.R. 3361) sponsored by Rep. Jim Sensenbrenner (R-Wis.), passed the Republican-controlled House on May 22 by a 303-121 vote. Cosponsors of the House bill included steadfast constitutionalists Justin Amash (R-Mich.) and Paul Broun (R-Ga.).

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Sensenbrenner was the principal author of the Patriot Act but in recent years has had severe reservations about how that legislation has been applied. He expressed his concerns about it in a June 6, 2013, letter he sent to Attorney General Eric Holder, which was prompted by the FBI’s “application for a top secret court order to collect the phone records of essentially every call made by millions of Verizon customers.”

“As the author of the Patriot Act, I am extremely troubled by the FBI’s interpretation of this legislation,” wrote Sensenbrenner. He continued: “The Bureau’s broad application for phone records was made under the so-called business records provision of the Act. I do not believe the broadly drafted FISA [Foreign Intelligence Surveillance Court] order is consistent with the requirements of the Patriot Act. Seizing phone records of millions of innocent people is excessive and un-American.”

Sensenbrenner introduced The USA PATRIOT Act in the House on October 23, 2001, and it was signed into law by President George W. Bush on October 26, 2001. The authors of the act attempted to justify its limitations of Americans’ privacy rights by asserting that it was a necessary response to the terrorist attacks of September 11 that year.

In a summary of the USA Freedom Act posted on his website, Sensenbrenner stated that it would end the bulk collection of Americans’ communications records under Section 215 of the Patriot Act; that it would strengthen the prohibition on “reverse targeting” of American (that is, targeting a foreigner with the goal of obtaining communications involving an American); and would require the government to more aggressively filter and discard information about Americans accidentally collected through PRISM and related programs. PRISM is a clandestine, mass electronic surveillance data-mining program



Written by [Warren Mass](#) on November 20, 2014

launched in 2007 by the National Security Agency (NSA) for the stated purpose of combating terrorism. In a statement posted on his website about the Republican filibuster that blocked the USA FREEDOM Act from coming to a vote in the Senate, Leahy noted that the act was, “strongly supported by privacy advocates, technology leaders, and reformers from across the political spectrum, [and] would usher in the most significant surveillance reforms since the USA PATRIOT Act was enacted in 2001.”

“Tonight, Senate Republicans have failed to answer the call of the American people who elected them, and all of us, to stand up and to work across the aisle. Once again, they reverted to scare tactics rather than to working productively to protect Americans’ basic privacy rights *and* our national security,” said Leahy. (Emphasis in original.)

As noted, four Republicans — Ted Cruz, Dean Heller, Mike Lee, and Lisa Murkowski — voted to end the filibuster and vote on the bill.

That Rand Paul (R-Ky.) was not among them is somewhat surprising, given that his father, former Representative Ron Paul, has expressed strident opposition to the type of government spying the bill would have curtailed. However, Paul opposed the Leahy bill for different reasons than most other Republicans who denied it a vote on the floor. Paul said that he voted against further consideration of the USA Freedom Act because it currently extends key provisions of the Patriot Act until 2017. He posted the following statement of explanation on his Senate website:

In the aftermath of the Sept. 11 terrorist attacks, Americans were eager to catch and punish the terrorists who attacked us. I, like most Americans, demanded justice. But one common misconception is that the Patriot Act applies only to foreigners — when in reality, the Patriot Act was instituted precisely to widen the surveillance laws to include U.S. citizens.... As Benjamin Franklin put it, “those who trade their liberty for security may wind up with neither.” Today’s vote to oppose further consideration of the Patriot Act extension proves that we are one step closer to restoring civil liberties in America.

Paul’s explanation, therefore, was that he was not against the parts of the USA Freedom Act that would have limited NSA surveillance, but against those parts that would have extended parts of the Patriot Act until to 2017. In that, he is correct. Section 701 of the act, entitled “Sunsets” states:

(a) USA PATRIOT Improvement and Reauthorization Act of 2005- Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (50 U.S.C. 1805 note) is amended by striking ‘June 1, 2015’ and inserting ‘December 31, 2017’.

Cruz had a different take on the USA Freedom Act and said, last July, when the bill was introduced:

Republicans and Democrats are showing America that the government can respect the privacy rights of law-abiding citizens, while at the same time, giving law enforcement the tools needed to target terrorists.... The USA FREEDOM Act of 2014 ends the government’s bulk record collection program and implements other necessary surveillance reforms.

In his statement, Cruz acknowledged that “the bill isn’t perfect.”

The contrasting viewpoints of Paul and Cruz illustrate the problem even constitutionalists may have in trying to correct the limitations on our freedom, once imposed. Should they take the piecemeal approach favored by Cruz that chips away at bad programs, or hold out for something better, as Paul obviously seeks to do?

Another approach to accomplish what both senators seek to do, in their own ways, is the course that



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Representative Justin Amash (R-Mich.) took last year when he proposed an amendment to the Defense Appropriations bill for 2014 that sought to remove funding in the bill for some of the NSA programs. Paul's father, former Representative Ron Paul, commented on Amash's attempt:

Had Amash's amendment passed, it would have been a significant symbolic victory over the administration's massive violations of our Fourth Amendment protections. But we should be careful about believing that even if it had somehow miraculously survived the Senate vote and the President's veto, it would have resulted in any significant change in how the Intelligence Community would behave toward Americans. The US government has built the largest and most sophisticated spying apparatus in the history of the world.

Constitutionalists and libertarians worried about the NSA's spying on Americans clearly have a difficult road ahead of them if they want to safeguard our right to privacy as guaranteed by the Fourth Amendment. We can only hope that those of a similar mindset, such as senators Cruz and Paul, can put together legislation that will satisfy the concerns of all Americans concerned about government spying.



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