



House Committee to Study USA Freedom Act to End NSA Surveillance

House Judiciary Committee Chairman Rep. Bob Goodlatte (shown, R-Va.) announced May 5 that on May 7 the committee will mark up the USA Freedom Act (H.R. 3361). The legislation was introduced last October 29 by Rep. Jim Sensenbrenner (R-Wis.), chairman of Judiciary's Crime, Terrorism, Homeland Security, and Investigations Subcommittee, to reform the federal government's intelligence-gathering programs — especially those conducted by the National Security Agency, or NSA — operated under the Foreign Intelligence Surveillance Act (FISA).



The process of marking up bills in House committees resembles that of amending bills on the House floor, with committee members offering their amendments to each section of the bill after it is read. The committee does not conclude a markup by voting on the bill as a whole, but by voting on a motion to order the bill reported to the House with whatever amendments the committee has approved.

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At the markup, an amendment will be offered by Sensenbrenner on behalf of Goodlatte, Ranking Member John Conyers (D-Mich.), Crime Subcommittee Ranking Member Bobby Scott (D-Va.), and Reps. Jerrold Nadler (D-N.Y.) and Randy Forbes (R-Va.). An explanation on the Judiciary Committee website notes that these representatives issued the statement below:

As the Committee of primary jurisdiction, we have conducted robust oversight of the intelligence-gathering programs operated under FISA and have come to the conclusion that these programs are in need of reform to protect our privacy, including prohibiting bulk collection under Section 215. Over the past several months, we have worked together across party lines and with the Administration and have reached a bipartisan solution that includes real protections for Americans' civil liberties, robust oversight, and additional transparency, while preserving our ability to protect America's national security. We look forward to taking up this legislation on Wednesday and continuing to work with House leaders to reform these programs.

FISA, or the Foreign Intelligence Surveillance Act of 1978, prescribed procedures for the physical and electronic surveillance and collection of "foreign intelligence information" between "foreign powers" and "agents of foreign powers," which includes U.S. citizens and permanent residents suspected of espionage or terrorism. The act was amended in 2001 by the USA PATRIOT Act to include terrorism on behalf of groups that are not specifically backed by a foreign government. Public attention was focused on the act following publication by the *New York Times* on December 16, 2005, of an article that described a program of warrantless domestic wiretapping ordered by the Bush administration and carried out by the National Security Agency (NSA) since 2002.



Written by [Warren Mass](#) on May 6, 2014

National Journal reports that the “bipartisan substitute” offered by Goodlatte, Conyers, and the others would “prohibit the bulk collection of data under Section 215 of the Patriot Act but keep intact the ‘relevancy’ standard for collection authority” while “the original Freedom Act had sought to completely rewrite the relevancy standard.”

As explained by an article in the *Fordham Law Review*, the NSA’s Metadata Collection Program

... derives its authority from Section 215 of the USA PATRIOT Act, codified as 50 U.S.C. § 1861. The statute requires that there be reasonable grounds to believe the data collected is “relevant to an authorized investigation.” The government deems all these records “relevant” based on the fact that they are used to find patterns and connections in preventing terrorist activity. Critics of the program, however, assert that billions of records cannot possibly be relevant when a negligible portion of those records are actually linked to terrorist activity. This Note examines the conflicting interpretations of “relevant,” and concludes that while the current state of the law permits bulk data collection, the power of the NSA to collect records on such a large scale must be reined in.

Basically, those most concerned about the NSA’s abuses of citizens’ privacy sought to end the agency’s *carte blanche* authority to define the relevancy of the data it wants to collect. The latest amendments likely to be proposed for the Freedom Act would allow the NSA to keep such authority, thus making it a weaker piece of legislation than the original version. It is still stronger than an alternative piece of legislation, however.

As Judiciary readies H.R. 3361 for consideration by the entire House, an alternate bill — the FISA Transparency and Modernization Act, H.R. 4291 — will be marked up by the House Intelligence Committee on Thursday.

“The details still need to be hammered out, but the [amended Freedom Act] bill is certainly better than the one that the House Intelligence Committee will be considering this week, which is a non-starter,” asserted Laura Murphy, director of the American Civil Liberties Union’s legislative office in Washington, in a statement quoted by the *National Journal*.

While the ACLU more often than not has waged a war that few constitutionalists can agree with (including trying to remove all references to God and religion from the public sphere by utilizing a phony “separation of church and state” argument), the organization does sometimes live up to its name by actually defending civil liberties, including those protected by the Fourth Amendment.

There is much irony in the fact that Sensenbrenner, whose legislation is geared to rein in the abuses authorized by the PATRIOT Act, was the congressman who introduced the USA PATRIOT Act, H.R. 3162, in the House on October 23, 2001. Title II of the legislation, “Enhanced Surveillance Procedures,” authorized (among other things) the intercepting of “wire, oral, and electronic communications relating to terrorism.” The USA PATRIOT Act was passed by the House on October 24, 2001, by the Senate on October 25, and signed into law by President Bush on October 26.

On May 26, 2011, President Obama signed the PATRIOT Sunsets Extension Act of 2011, a four-year extension of three key provisions in the USA PATRIOT Act — roving wiretaps, searches of business records (aka, the “library records” provision”), and surveillance of “lone wolves” or individuals suspected of terrorist-related activities who cannot be linked to terrorist groups.

Coincidentally, the most vocal opponent of the PATRIOT Act was also from Wisconsin. Senator Russ Feingold, a Democrat with a generally quite liberal record, was the only member of the Senate to vote against the bill. It might be concluded from this that when it comes to defending our freedom and the



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Bill of Rights, personal commitment is more important than party affiliation. It might also serve to illustrate that it is not being “conservative” or “liberal” that is most essential to safeguarding our freedoms, but being “constitutionalist.”

Sensenbrenner earned a 90-percent score on *The New American's* last “Freedom Index,” a scorecard of members of Congress based on faithfulness to the Constitution. In recent years, he has voiced criticism of some of the more egregious government abuses that originated in the PATRIOT Act. For example, in June 2013, he objected to the FBI and NSA’s use of the PATRIOT Act to routinely collect phone records from millions of Americans without any suspicion of wrongdoing.

In a statement posted on his congressional webpage on June 6, 2013, Sensenbrenner wrote:

As the author of the Patriot Act, I am extremely troubled by the FBI’s interpretation of this legislation. While I believe the Patriot Act appropriately balanced national security concerns and civil rights, I have always worried about potential abuses. 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 order is consistent with the requirements of the Patriot Act. Seizing phone records of millions of innocent people is excessive and un-American.

Americans who have always been troubled by the PATRIOT Act’s open-ended grant of power to the federal government at the expense of the Bill of Rights will be glad to learn that the act’s principal sponsor has had an apparent change of heart. But it will take more than a change of heart to undo the damage; it will take a complete repeal of the PATRIOT Act and all other unconstitutional usurpations of power that took place following the attacks of September 11, 2001.

Photo of House Judiciary Committee Chairman Rep. Bob Goodlatte (R-Va.): AP Images



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