



Written by [Joe Wolverton, II, J.D.](#) on September 5, 2013

NRA Files Brief Supporting ACLU Suit Challenging NSA Surveillance

“Misery acquaints a man with strange bedfellows,” [Shakespeare wrote in *The Tempest*](#). The misery — of many sorts — that has surfaced in the wake of this summer’s National Security Agency (NSA) surveillance revelations has brought together two erstwhile political enemies.

On Wednesday, September 4, the American Civil Liberties Union (ACLU) [authored a blog post reporting](#) that “an impressive array of organizations and individuals are expected to file amicus briefs today in support of the ACLU’s constitutional challenge to the government’s collection of the call records of virtually everyone in the United States.”

Perhaps the most unlikely member of the coalition is the National Rifle Association (NRA).

In its brief filed in support of the ACLU’s legal challenge to the NSA’s broad surveillance activity, the NRA identified the federal government’s search and seizure of the electronic communications of Americans as a threat to their liberty that could ultimately aid in the backdoor creation of a national gun owner registry. Specifically, [the NRA’s brief argues](#):

The mass surveillance program raises both issues, potentially providing the government not only with the means of identifying members and others who communicate with the NRA and other advocacy groups, but also with the means of identifying gun owners without their knowledge or consent, contrary to longstanding congressional policy repeatedly reaffirmed and strengthened by Congresses that enacted and reauthorized the legislation at issue in this case. The potential effect on gun owners’ privacy is illustrative of the potential effect of the government’s interpretation of the statute on other statutorily protected privacy rights.

In response to the flurry of filings from groups backing its efforts to thwart the growth of the surveillance state, the ACLU called the briefs “a real testament to the fact that the government’s dragnet surveillance practices are offensive to Americans from across the political spectrum.”

Other groups uniting with the ACLU include the Reporters Committee for Freedom of the Press, the PEN American Center, and the Electronic Frontier Foundation (EFF). The ACLU reports that the EFF’s brief will be submitted on behalf of “members of Congress, including Representative Jim Sensenbrenner (R-Wis.), one of the authors of the Patriot Act.”

On its website, [the EFF summarized](#) the content of Sensenbrenner’s brief, writing:

In the brief, Sensenbrenner argues that Congress never intended the Patriot Act to permit the NSA’s collection of the records of every telephone call made to, from and within the United States. Sensenbrenner urges the court to deny the NSA’s motion to dismiss and grant the ACLU’s motion





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for a preliminary injunction, which would halt the program until the case is decided.

In a statement supporting his participation in the ACLU's lawsuit, Sensenbrenner said:

I stand by the Patriot Act and support the specific targeting of terrorists by our government, but the proper balance has not been struck between civil rights and American security. A large, intrusive government — however benevolent it claims to be — is not immune from the simple truth that centralized power threatens liberty. Americans are increasingly wary that Washington is violating the privacy rights guaranteed to us by the Fourth Amendment.

Sensenbrenner has been in the news after accusing the Obama administration of misinterpreting the Patriot Act and exceeding the authority granted by that measure to the executive branch.

After meeting with the president in the Oval Office last month, [Sensenbrenner issued the following statement](#):

It is becoming increasingly apparent the balance between security and liberty has been tainted. Amidst public outcry, the President invited members from both sides of the debate to discuss this important issue. The conversation was productive and everyone agreed something must be done.

Washington must ensure our homeland is protected, as is our right to privacy. Therefore, following the August recess, I intend to introduce legislation to ensure Section 215 of the Patriot Act is properly interpreted and implemented. The bill will ensure the dragnet collection of data by the NSA is reined in, safeguards are established to significantly increase the transparency of the FISA Court and protections are put in place for businesses who work with the government.

If the Wisconsin congressman were serious about protecting the security of the homeland, he would abandon half measures and call for an outright and immediate defunding of the NSA and for hearings to hold all those accountable who have nurtured the growth of the surveillance state.

The suit in which the briefs of the NRA, EFF, and others are being filed is [ACLU v. Clapper](#). In that suit, filed in June, the ACLU "challenges the government's ongoing collection, under Section 215 of the Patriot Act, of the details of every single phone call made by every American."

Although scant, there have been a handful of congressional attempts to curtail the federal government's monitoring of all real and virtual communications. The [ACLU reports](#):

Currently there are 19 bills pending in Congress with more expected to be introduced. The legislation can be broken down into four broad categories: 1) substantive reforms to the laws the NSA believes allow it to conduct its surveillance programs, 2) disclosure of the FISA Court opinions that determined the programs were legal, 3) general reporting of the number and types of surveillance orders received by recipients and how many users affected, and 4) reforms to the FISA Court.

One notable example of one of the people's representatives trying and failing to beat back the expansion of the scope of federal surveillance is the so-called Amash Amendment.

[As was reported by The New American](#), the House of Representatives narrowly defeated an amendment to the defense appropriations sponsored by Republican Congressman Justin Amash of Michigan and Democratic Congressman John Conyers, also of Michigan.

The [Amash Amendment](#) would have revoked authority "for the blanket collection of records under the Patriot Act. It would also [have barred] the NSA and other agencies from using Section 215 of the



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Patriot Act to collect records, including telephone call records, that pertain to persons who are not subject to an investigation under Section 215” of the Patriot Act.

Amash’s measure failed by a vote of 205-217.

The Amash Amendment, as valiant and necessary as it was, did not, for example, do anything to undo the PRISM program.

Using PRISM, readers will remember, the NSA and the FBI are “tapping directly into the central servers of nine leading U.S. Internet companies, extracting audio, video, photographs, e-mails, documents, and connection logs that enable analysts to track a person’s movements and contacts over time,” as reported by the *Washington Post* and the *Guardian* (U.K.).

This particular weapon of mass collection relies on Section 702 of the Foreign Intelligence Surveillance Act (FISA) for justification of the surveillance of Internet activity. Amash’s amendment made no mention of Section 702 and thus would have left PRISM completely intact.

Unfortunately, the ACLU’s suit contains that same flaw.

For his part, President Obama is softening his hard line in the face of European opposition to the surveillance his administration has conducted of the continent’s citizens.

During a press conference in Sweden on Wednesday, President Obama took a new tack on the NSA scandal, saying there are “legitimate questions” about the NSA’s use of its purported authority to monitor communication.

[As reported Wednesday by the Guardian](#), the president said that “existing laws may not be sufficient to deal with advances in technology that have allowed the NSA to gather much more data than before.”

Proving, however, that any feint toward reining in the NSA was nothing more than hollow rhetoric aimed at ameliorating the damage the surveillance story has done in Europe, President Obama repeated the lies he and his water carriers have told many times since the surveillance scandal broke in June. The *Guardian* reports that the president said during an appearance with the Swedish prime minister:

What I can say with confidence is that when it comes to our domestic operations, the concerns that people have back home ... we do not surveil the American people or persons within the United States. There are a lot of checks and balances in place designed to avoid a surveillance state.

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