



Written by [Michael Tennant](#) on August 17, 2022

Repeal Espionage Act and Its Threat to Free Speech, Urges Rand Paul

Senator Rand Paul (R-Ky.) says it's time to do away with the Espionage Act of 1917, one of the laws under which the Biden administration appears to be considering prosecuting former President Donald Trump.

"The espionage act was abused from the beginning to jail dissenters of WWI," Paul [tweeted](#) Saturday. "It is long past time to repeal this egregious affront to the 1st Amendment."

The timing of Paul's tweet does not appear to be coincidental. On Friday, the Federal Bureau of Investigation (FBI) [released the search warrant](#) it used to justify its recent raid on Trump's Mar-a-Lago estate, revealing that, among other things, it was searching for evidence that Trump had violated the World War I-era statute by removing classified documents from the White House.



Sen. Rand Paul (AP Images)

"This would be the first time in U.S. history that a former president has been known to be investigated under the Espionage Act," reported [NPR](#).

In his tweet, Paul linked to a 2019 [article](#) by Jacob Hornberger, president of the Future of Freedom Foundation, in which Hornberger called for repealing the "tyrannical" Espionage Act.

"The law converted anyone who publicly criticized the draft or attempted to persuade American men to resist the draft into felons," wrote Hornberger. "And make no mistake about it: U.S. officials went after such people with a vengeance, doing their best to punish Americans for doing nothing more than speaking."

Among those prosecuted under the Espionage Act was socialist Eugene Debs, who had criticized U.S. participation in the Great War and urged men to resist the draft. During a stop in the Bluegrass State Monday, Paul told reporters that "even though he was no fan of socialists, he supported their right to free speech," according to [Reason](#).

George Mason University history professor Sam Lebovic told NPR that the "harshest censorship sections of the law" were repealed in 1920. However, the sections dealing with illegal possession of classified information remain in force and have been used increasingly in recent years to punish whistleblowers rather than to safeguard national security.

"Government officials leak classified information to the press all the time. That's how huge amounts of journalism happen," said Lebovic. "Most of it is let go and allowed to happen. Only the instances that



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really upset the government in power are the ones that are prosecuted.”

Paul echoed these sentiments Monday, saying, “We have had people who have been whistleblowers. Probably the most well-known whistleblower we’ve had is Edward Snowden.... He showed people that the American government was breaking the law, that they were retrieving all of our information. And so for a long time, I thought the Espionage Act is something that could be used to stifle dissent and freedom of speech.”

Of course, as *Reason* points out, both Paul and Trump have been somewhat inconsistent in their support of whistleblowers. In 2015, both men thought Snowden should be punished — Paul less so than Trump — only to change their minds five years later, when Trump considered pardoning Snowden and Paul supported the idea. Trump prosecuted nearly as many people under the Espionage Act as all-time record-holder President Barack Obama, and he [signed a law](#) quintupling the maximum potential sentence for absconding with classified data. Paul voted against that bill, which “shows that there’s some consistency in his positions,” observed *Reason*.

At the very least, the Espionage Act should be reformed so that it only applies to people genuinely aiding enemies of the United States, not those merely leaking information that reflects badly on the government. Senator Ron Wyden (D-Ore.) and Representatives Ro Khanna (D-Calif.) and Thomas Massie (R-Ky.) have [introduced legislation](#) to do just that; Paul has not signed onto Wyden’s bill as of this writing.

Perhaps better still, the whole law, as Paul suggested, should be stricken from the books. “Americans need to start demanding repeal rather than simply pleading with the Justice Department to enforce it in a more judicious manner,” penned Hornberger.

As for Trump, he may have little to fear from the Espionage Act, assuming it is applied as written. Former Trump administration official Kash Patel told [Breitbart News](#) that the supposedly classified documents the FBI seized from Mar-a-Lago were declassified by Trump before he left office.



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