



Written by [C. Mitchell Shaw](#) on January 5, 2016

Rubio Flip-Flops on Surveillance, Immigration, Constitutional Convention

Senator and presidential candidate Marco Rubio (shown, R-Fla.) is being touted by some as the frontrunner for the GOP nomination. Compared to other GOP candidates, he seems balanced and palatable. The reality is that he is undecided. A better word would be fickle. His position on a variety of important issues depends on which way the political winds are blowing.



Rubio, the 44-year-old son of Cuban immigrants, has condemned the U.S. government's surveillance of allies. He seems especially bothered by the fact that Washington has aimed its spying apparatus at Israel. Oddly, though, he has never shown any concern over the mass surveillance of American citizens. In fact he has defended and supported it.

As the chairman of the [Foreign Relations Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights and Global Women's Issues](#) and a member of the [U.S. Senate Select Committee on Intelligence](#), Rubio should be expected to stand up against the abuses of mass surveillance and defend the rights of citizens to enjoy privacy and freedom in the ways they communicate and use technology. Instead, he has, time and again, defended the status quo of the NSA and other federal agencies vacuuming up phone records, text messages, e-mails, and other communications *in toto* and without the protections afforded by the Constitution. He has actually denied that such abuses exist, [claiming](#), "The next time any politician — Senator, Congressman, talking head, whatever it may be — stands up and says that the U.S. government is listening to your phone calls or going through your phone records, they're lying."

Last year Rubio wrote an op-ed piece for Fox News [calling](#) on Congress to *permanently* extend "the counterterrorism tools our intelligence community relies on to keep the American people safe." Now that it has been revealed that those tools have been used to monitor not only the communications of American citizens, but also those of allies, including Israel, Rubio has said he agrees with those who are "concerned about the fact that while some leaders around the world are no longer being targeted, one of our strongest allies in the Middle East, Israel, is." He appears to believe that Israel deserves to be protected from NSA surveillance while the American people do not.

One would expect Rubio — to be consistent with his mantra of doing whatever is needed "to keep the American people safe" — to support defending the border against the unchecked flow of illegal immigration. In 2013 he helped write, and voted for, an immigration reform bill that would grant amnesty and create a "pathway to citizenship" for millions of illegal immigrants. He defended that bill



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and voted against amendments to it that would have weakened its amnesty features. More recently, as his campaign has moved forward, he has reversed that position, going as far as to imply that it was never *his* position.

In a town hall meeting last week in New Hampshire, candidate Rubio attempted to distance himself from the voting record of Senator Rubio and cast himself as the best choice for president for those who are concerned about illegal immigration. He told the assembled crowd, “I don’t support amnesty. There has to be real consequences for violating our immigration laws, so if you are a criminal you’re going to be immediately deported,” adding, “if you violated our immigration laws there will be substantial consequences for having done so.” His aide, Alex Conant, told the press after the debate in Las Vegas, “The provisions in the 2013 bill were the product of compromise and not what we would have done if we’d written the bill on our own,” adding that any action undertaken by President Rubio would reflect the same attitude of candidate Rubio and “would not be the same as what the Senate passed in 2013.”

So, here’s a candidate who told CBS’s *Face the Nation*, “If you’re going to attack someone on a policy issue, you need to be clear where you stand on the issue, and where you stood in the past,” who is now expecting voters to ignore where he stood in the (not-so-distant) past.

The solution to America’s problems could be found by elected officials who would apply the Constitution. The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” by requiring that a warrant for any searches or seizures be issued based “upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” That means that the actions of the NSA and the myriad other three-letter agencies spying on Americans are unconstitutional. Article IV of the Constitution requires the federal government to “guarantee to every State in this Union a Republican Form of Government, [and] protect each of them against Invasion.” Since the unchecked flow of illegal immigrants — many of whom may well be terrorists — is an invasion, the answer is simple: Washington has a responsibility to stop that invasion.

Having failed (read: refused) to do his constitutional duty in these and other areas, Rubio has now joined the disparate chorus of those calling for a new Constitutional Convention to amend that founding document. Speaking to supporters in Iowa, he said, “As president, I will put the weight of the presidency behind a constitutional convention of the states.”

There are a couple of important points to his statement.

First, as recently as October, Rubio said that [there are real dangers to such a plan](#). “If you open up the Constitution, you are also opening it up to people that want to reexamine the First Amendment, people that want to reexamine the Second Amendment, people that want to reexamine some other fundamental protections that are built into the constitution,” Rubio stated while campaigning in New Hampshire. He observed that if the people want a Constitutional Convention, he would support it, but warned, “Just be aware that the same groups that are trying to pass legislation that violates the Constitution are the same groups of people that are going to try to change that Constitution, and we are going to fight them at that convention.” What he did not mention is that he is part of those “groups that are trying to pass legislation that violates the Constitution.” Now he says, “One of the things I’m going to do on my first day in office: I will announce that I am a supporter” of a “constitutional convention.”

Second, it appears he shifted gears on this so quickly that he hasn’t yet got the talking points straight. He is *not supposed* to call it a Constitutional Convention. Groups and individuals such as The



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Convention of States Project, Micheal Farris, Mark Levin, and others [deny that a convention called by Congress under Article V is a Constitutional Convention](#). They realize that calling it that points to warnings such as that issued by Rubio himself in October. They prefer to call it a “Convention of States,” or an amendments convention — as if there is a difference. This writer suspects that Rubio will adjust his verbiage in the coming days and weeks and drop any reference to a Constitutional Convention as he continues to advocate for changing the Constitution instead of abiding by it.

Running for president is like a masquerade ball, where everyone chooses the best disguise to hide his true identity. In that analogy, Rubio is having such a difficult time choosing what he will wear to the ball that he may well miss the event entirely. That’s probably just as well.

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