



Written by [Warren Mass](#) on May 1, 2015

USA Freedom Act to End NSA Records Collection Clears Committee

On April 30, the House Judiciary Committee approved the USA Freedom Act by a vote of 25-2. A description of the legislation on the Judiciary Committee website notes that it would prohibit bulk collection of all records under Section 215 of the PATRIOT Act, prevent government overreach, and establish procedures for individual companies to challenge nondisclosure orders. The vote allows the bill, H.R. 2048, to go to the House floor for a vote, where passage is expected later this month.



Identical legislation (S. 1123) was introduced in the Senate on April 28 by Senator Mike Lee (R-Utah). That bill has bipartisan support and its nine cosponsors span the political spectrum, from conservatives Lee and Ted Cruz (R-Texas) to liberals Patrick Leahy (D-Vt.) and Charles Schumer (D-N.Y.).

The *New York Times* reported the unusual lineup of congressional supporters and opponents of the legislation, with House Speaker John A. Boehner (R-Ohio), the White House, the Tea Party, and a bipartisan majority in the House all supporting it. On the other side of the Capitol, Senate Majority Leader McConnell (R-Ky.), Intelligence Committee chairman Richard Burr (R-N.C.), and what the *Times* described as “a small group of defense hawks,” oppose restricting the government’s bulk data-collection activities.

On April 21, McConnell introduced legislation to extend expiring portions of the act through 2020. Burr was the bill’s only cosponsor. The bill, S. 1035, would “extend authority relating to roving surveillance, access to business records, and individual terrorists as agents of foreign powers under the Foreign Intelligence Surveillance Act of 1978 and for other purposes.”

Of course, exactly who is and who is not “a terrorist” is entirely subjective and subject to the government’s arbitrary definitions.

The Hill reported that McConnell fast-tracked the bill, so it could be placed on the Senate’s calendar without having to go through the committee process.

Senator Leahy called McConnell’s effort a “tone-deaf attempt to pave the way for five and a half more years of unchecked surveillance” and added it “will not succeed.”

During the press briefing by White House Press Secretary Josh Earnest on April 29, a reporter asked Earnest if President Obama was in agreement with McConnell’s objective of reauthorizing the Patriot Act. Earnest replied that the president has been calling on Congress for a year “to enact important changes to the FISA Act — the Foreign Intelligence Surveillance Act — that enhance privacy and better safeguard our civil liberties while keeping our nation safe.”

Earnest also said that Obama believes that “we should end the Section 215 bulk telephony metadata program as it currently exists by creating an alternative mechanism that would preserve the program’s



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essential capabilities without the government being responsible for holding the bulk data.”

The reporter then went a step further and asked Earnest if McConnell’s bill were to be passed, would Obama veto it. Earnest replied, in somewhat vague language:

Well, I think at this point, you should see that as the President and the administration seeking to work in bipartisan fashion with members of the House and members of the Senate to incorporate reforms that protect the civil liberties of the American people while ensuring that our intelligence and national security officials have the tools that they need to keep us safe.

In his introductory statement to the Judiciary Committee before the vote on the USA Freedom Act, Committee Chairman Bob Goodlatte (R-Va.) noted that the purpose of the bill was to “to reform certain national security programs operated under the Foreign Intelligence Surveillance Act or FISA.”

Goodlatte explained:

Under current law, the FISA business records provision — often referred to as Section 215 of the PATRIOT Act — allows the government to access business records in foreign intelligence, international terrorism and clandestine intelligence investigations.

The 2013 unauthorized disclosures by Edward Snowden revealed to the American people that the National Security Agency is collecting bulk telephony “metadata” under Section 215. Since the revelation of this program, many Members of Congress and their constituents have expressed concern about how the program is operated and whether it poses a threat to Americans’ civil liberties and privacy.

The credit given to Snowden — who fled the United States in 2013 after being charged by the Justice Department with violating the Espionage Act and is currently living in Russia after receiving asylum there — by the chairman of an important House Committee is remarkable.

In February 2014, former Representative Ron Paul (R-Texas) began a petition urging the Obama administration to grant Snowden clemency. Paul released a video on his website saying, “Edward Snowden sacrificed his livelihood, citizenship, and freedom by exposing the disturbing scope of the NSA’s worldwide spying program. Thanks to one man’s courageous actions, Americans know about the truly egregious ways their government is spying on them.”

The principal sponsor of H.R. 2028, Representative Jim Sensenbrenner (R-Wisc.), said, “The bill ends bulk collection, it ends secret law. It increases the transparency of our intelligence community and it does all this without compromising national security.”

Sensenbrenner was the principal author of the Patriot Act in the House, 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. However, Sensenbrenner later came to regret his actions and expressed his concerns about the act in a June 6, 2013, letter to Attorney General Eric Holder. His letter 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,” Sensenbrenner told Holder. “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 Act] order is consistent with the requirements of the Patriot Act. Seizing



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phone records of millions of innocent people is excessive and un-American.”

Sensenbrenner sponsored a version of the USA PATRIOT Act in the last Congress that passed last May 22 by a 303-121 vote. However, the measure was never voted on by the Senate, because 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. 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.

Rand Paul (R-Ky.) was a surprising hold-out, 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 bill for different reasons than most other Republicans who denied it a vote on the floor. He said 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 reviewing the text of H.R. 2028, it appears that — should it come up for a vote in the Senate, Paul may again have the same reservations. It apparently extends parts of the PATRIOT Act to 2019:

- 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 15, 2019”.

It is very likely that Senator Paul’s concerns expressed last year were legitimate. In that case, the best solution would be to repeal, not reform, the PATRIOT Act.

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