



Written by [Bob Adelman](#) on May 14, 2015

Freedom Act Passes House, 338-88; Senate Likely to Ignore it

On Wednesday the House [overwhelmingly approved](#) the USA Freedom Act, 338-88, putting pressure on the Senate to approve it before the offensive Section 215 of the PATRIOT Act — the one that the government says allows unlimited surveillance of Americans' communications metadata — expires on June 1.



The government's interpretation of that law was ruled illegal by a federal court a few days earlier, putting more pressure on senators who support the surveillance state.

The current House bill is substantially weaker than one with a similar overall purpose that the House passed in the last Congress, which never made it out of the Senate before the November midterm elections. The new bill doesn't end snooping. It merely shifts the responsibility for collecting that metadata from the National Security Agency to companies such as AT&T, Sprint, and Verizon, which already keep customer records for as long as five years. All the NSA or the FBI would need to do to access that data is obtain permission from the secret FISA court — which nearly always grants it.

The FISA court will be held to much lower standards than that provided by the Founders when they added the Fourth Amendment to the Constitution. Under the Constitution, searches and seizures are allowed only under "probable cause," with the specific items to be seized to be named in advance. In other words, under the Fourth Amendment no indiscriminate "hoovering" of everyone's personal information is allowed. Under the revised Freedom Act, the FISA court judge may allow snooping if it is based on "reasonable articulable suspicion" of criminal behavior.

In the Senate a group of Democrats and Republicans, favoring the surveillance state despite lack of evidence that it is protecting Americans from terrorists (as if that justified neutering the Fourth Amendment), aren't interested in considering the House bill. It's a political maneuver to pressure the House to pass something even weaker. Senator Majority Leader Mitch McConnell, firmly in the surveillance state camp, stated that the House bill "will neither keep us safe nor protect our privacy," adding that the modest restrictions would be "tying the hands" of those agencies tasked with protecting the nation from attacks.

The USA Freedom Act has also been derided by three NSA whistleblowers because, according to them, the act will have no impact whatsoever on the federal government's ability to obtain all the information it wants and because the information currently collected is vastly more in-depth than just the metadata from phone calls. As Thomas Drake expressed it, "There's a whole lot more [information] being collected [than just the metadata from phone calls], including a 'staggering' amount of American communications." The three claim that's why the Obama administration and the NSA are accepting the Freedom Act, claiming that it strikes a "balance" between security and freedom. Drake says instead that the Freedom Act is a ploy "to keep the status quo in place."



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There's also the likelihood that three lawsuits pending against the NSA, one of which might wind up at the Supreme Court, would be hobbled by the new law. Defendants could claim that Congress has already spoken on the matter, and so the Court wouldn't have to. This would neatly eliminate the threat of further rulings against the NSA such as those that courts have recently made elsewhere.

Even if the Freedom Act were to pass the Senate unscathed, and by some miracle be signed into law by President Obama, it would make legal that which is now illegal, and it would still be unconstitutional. Wrote Ron Paul on Sunday:

Illegality and unconstitutionality are really two very different things. Even if Congress explicitly authorized the government to collect our phone records, that law would still be unconstitutional because the Constitution does not grant government the power to access our personal information without a valid search warrant.

There is a bill — the Surveillance State Repeal Act — that would repeal not only the entire PATRIOT Act and its supplements but also Executive Order 12333 which has served the surveillance state as justification for the expansion of data collection on Americans outside congressional approval. Unfortunately it is gaining little traction in either the House or the Senate as all attention has been focused there on the tinkering around the edges with the Freedom Act.

Observers are positing that the Senate will hold off until the very last moment and then point out the dangers of having Section 215 of the PATRIOT Act disappear altogether under the just-passed House bill, thus frightening uninformed constituents into pressuring their representatives into weakening the Freedom Act even further, to the delight of surveillance staters such as McConnell and his coterie.

A graduate of an Ivy League school and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.

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