



# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

FOR IMMEDIATE RELEASE - May 13, 2015

Contact: Larry Akey, Director of Communications, (202)580-6922 [o] or (202)580-9313 [c]  
[lakey@constitutionproject.org](mailto:lakey@constitutionproject.org)

## House Passage of USA Freedom Act "Important First Step," TCP Says

*Sloan: Strongly bipartisan vote in the House should spur the Senate to quickly follow suit*

WASHINGTON, D.C. -- Virginia Sloan, president of The Constitution Project, a bipartisan legal watchdog group, offered the following comment in response to the passage of the USA FREEDOM Act of 2015 in the House earlier today:

"Today's vote is an overwhelming signal that the American people do not want the NSA to continue amassing a database of the phone records of millions of innocent Americans.

Although the legislation adopted by the House today does not go as far as we would like, it is an important first step toward protecting fundamental civil liberties and privacy, while still preserving the ability of the intelligence community to gather the targeted information it needs to help keep us safe. The strongly bipartisan vote in the House should spur the Senate to quickly follow suit in passing this vital reform. Congress should then turn to other critical surveillance issues such as closing the 'backdoor search' loophole."

As passed by the House, the [USA FREEDOM Act of 2015](#) (H.R. 2048) would:

- end the bulk collection of Americans' records, including records collected under Section 215 of the Patriot Act, the FISA pen register statute, or National Security Letters by requiring the government to narrowly tailor its collection;
- increase transparency by allowing communications providers to disclose in more detail the number of surveillance orders they receive;
- require declassification of significant opinions issued by the secretive Foreign Intelligence Surveillance Court (FISC), or preparation of a summary for the public if declassification is not possible; and

- require the FISC to appoint a panel of security-cleared lawyers to advise the Court in cases involving novel or significant interpretations of law. Among other duties, these "friends of the court" may present legal arguments that advance the protection of individual privacy and civil liberties. The Constitution Project [released a report](#) in May 2014 urging the appointment of such an advocate and setting forth requirements for making the advocate effective.

Late last week, a three-judge panel at the Second Circuit Court of Appeals [ruled](#) that the National Security Agency's indiscriminate collection of Americans' telephone records exceeds the legal authority the government claims to have under the USA PATRIOT Act's controversial section 215, which is set to expire at the end of May. In [separate reports](#), both the independent Privacy and Civil Liberties Oversight Board and the President's Review Group on Intelligence and Communications Technologies found that the bulk collection of nearly all call detail records for calls made in the United States had not contributed to preventing terrorist attacks.

Earlier in the week, a coalition of technology companies and advocacy organizations, including TCP, [called on Congress](#) to support H.R. 2233, closing the warrantless "backdoor search" loophole in the Foreign Intelligence Surveillance Act (FISA) by requiring the National Security Agency to obtain permission from a court before examining communications of U.S. persons obtained under Section 702 of FISA.

The current law authorizes foreign surveillance of online and telephone communications, but explicitly prohibits the NSA from intentionally targeting U.S. residents. Ordinarily, the Fourth Amendment requires an individualized warrant before the government can engage in surveillance on American soil. However, the current law does not prohibit the agency from querying databases for U.S. communications inadvertently gathered under a foreign surveillance program, so-called "incidental collection." H.R. 2233 would address that loophole by prohibiting searches of those databases for communications of a U.S. person absent a court order or special circumstances. The legislation would also extend the same protection to data collected under an executive order. In its [2012 report](#) on the FISA Amendments Act, The Constitution Project Liberty and Security Committee called for closing the loophole and restoring Fourth Amendment protections.

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*Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.*

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