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THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Senate Must Reject Amendments Weakening USA Freedom Act, TCP Says

WASHINGTON, D.C. -- Rita Siemion, senior counsel at The Constitution Project, a bipartisan legal watchdog group, offered the following comment on the Senate's decision last evening to proceed with debate on the USA Freedom Act:

"The Senate's decision to move forward with the USA Freedom Act, which would reform the NSA's bulk telephone records program, begins the process of restoring some of the fundamental rights surrendered in the rush to improve counterterrorism capabilities in the aftermath of 9/11. The Senate should reject the harmful and unnecessary amendments proposed by Majority Leader McConnell -- especially those designed to keep the American people in the dark about the Foreign Intelligence Surveillance Court -- and send the bill to the president's desk without any additional delays and without weakening the bill.

"However, Congress should not think the job of surveillance reform is done. Congress must close the 'backdoor search loophole' in the Foreign Intelligence Surveillance Act, which allows for warrantless spying on US persons, and must address overly broad surveillance conducted under a range of other authorities. Congress should also ensure that a special advocate with a strong mandate to advance privacy and civil liberties will be present at the FISA court."

The USA Freedom Act would end the bulk collection of Americans' records -- including records collected under Section 215 of the Patriot Act, the FISA pen register statute, and National Security Letters -- but still provide an alternative way for intelligence agencies to acquire more narrowly tailored information from communications providers if a judge at the Foreign Intelligence Surveillance Court finds a reasonable suspicion that the data would contribute to a terrorism investigation. It also increases transparency by allowing communications providers to disclose in more detail the number of surveillance orders that they receive, and by requiring the government to disclose more information to the public and to Congress.

In addition, the legislation requires the secretive FISA court to appoint a panel of security-cleared lawyers to advise the court in cases involving novel or significant interpretations of law, including offering input regarding privacy and civil liberties concerns. It also requires the court to declassify significant opinions it issues, or prepare a summary for the public if declassification is not possible.

After the Senate voted 77 to 17 to advance the USA Freedom Act in yesterday's rare Sunday session, Senate Majority Leader Mitch McConnell (R-Ky.) proposed four amendments aimed at weakening the legislation, using a procedural maneuver intended to block efforts by other senators to offer additional amendments. Chief sponsors of the USA Freedom Act have [indicated](#) that the House will not support a watered-down version of the bill.

Last month, a coalition of technology companies and advocacy organizations, including TCP, [called on Congress](#) to pass [legislation](#) 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 "incidentally collected" under Section 702 of FISA.

The Constitution Project also [released a report](#) in May, 2014 urging the appointment of a special advocate with an unconditional right to participate in any case in which the FISC is asked to approve certain broad surveillance authorizations, and setting forth requirements for making the advocate effective.

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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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