

## United Liberty

### Senate committee passes measure legalizing NSA bulk data collection

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Sens. Saxby Chambliss (R-GA) and Dianne Feinstein (D-CA), both supporters of the NSA's privacy invasive surveillance program, sent out a press release[1] yesterday touting the Senate Intelligence Committee's passage of the FISA Improvements Act and claiming the measure 'increases privacy protections and public transparency of the National Security Agency call-records program.'

But what this measure[2] would actually do, once you get past the fluff in the release, is legalize bulk data collection. They still want the haystack to find the needle, as Rep. James Sensenbrenner (R-WI) put it earlier this month[3] in a speech at the Cato Institute. The release states that FISA Improvements Act '[p]rohibits the collection of bulk communication records under Section 215 of the USA PATRIOT Act except under specific procedures and restrictions set forth in the bill.' It also says that the measure '[p]rohibits any review of bulk communication records acquired under Section 215 of the USA PATRIOT Act unless there is a 'reasonable articulable suspicion' of association with international terrorism.' The wording there is tricky, but a reading of the bill shows that it authorizes the NSA program and allows the embattled agency to retain five years worth of data records, though the intelligence agency would have to get permission from the Attorney General to view records more than three years old. One may say that the NSA has to get a court order to obtain this information, in the first place. But the problem with that is the Foreign Intelligence Surveillance Court (FISC) has largely rubber-stamped[4] the bulk data collection programs. Moreover, there has been very little in terms of substantive congressional oversight[5], and it doesn't seem that this bill changes that. The release says that the measure '[p]rohibits the bulk collection of the content of communications under Section 215 of the USA PATRIOT Act.' Well, that hasn't been a big part of the complaints about the NSA programs. In fact, some believe that metadata collection is more of a threat to privacy[6] than the actual content of a phone call or a text message. We asked a very direct question to Lauren Claffey, a spokesperson for Chambliss, about whether essentially authorizes the NSA programs. 'The bill codifies key privacy protections and procedures for the conduct of this bulk collection activity under Section 215. The bill makes numerous changes to Section 215, including imposing criminal penalties for unauthorized access to call-records data and greater transparency to the FISA Court,' wrote Claffey in an email to United Liberty. 'However, the bill does not eliminate bulk data collection, but prohibits the bulk collection of the content of communications,' she added. To this point, the Justice Department has relied on a broad interpretation of Section 215 as justification for the NSA bulk data collection program. Sensenbrenner, the primary sponsor of the PATRIOT Act, has blasted this interpretation of the anti-terrorism law, noting that this provision was never intended for such purposes. 'As the administration explains it, all of our phone records are relevant because the connections between individual data points are of potential value,' said Sensenbrenner at the Cato Institute. 'But these private collections are only of value if they in some way relate to terrorism. To the extent that they don't, the government has no right to collect them.' The FISA Improvements Act cannot be construed as reform; to even hint at that is blatantly misleading. It doesn't end the bulk data collection programs; in fact, it ostensibly authorizes them for the first time.

The proposed civil liberties advocate on the FISC is meaningless, providing only a 'friend of the court' status, rather giving the position some teeth. Additionally, the privacy protections are specious. 'The NSA's ongoing, invasive surveillance of Americans' private information does not respect our constitutional values and needs fundamental reform — not incidental changes,' said Sen. Mark Udall (D-CO)[7], a member of the Senate Intelligence Committee. 'Unfortunately, the bill passed by the Senate Intelligence Committee does not go far enough to address the NSA's overreaching domestic surveillance programs.' 'I fought on the committee to replace this bill with real reform, and I will keep working to ensure our national security programs show the respect for the U.S. Constitution that Coloradans tell me they demand,' he continued, adding that he will continue to working with 'reform-minded colleagues from both political parties.' Udall was one of four members of the Senate Intelligence Committee who voted against the FISA Improvements Act. Thankfully, bipartisan measures have been introduced in Congress that would substantively reform surveillance programs, among them are the Intelligence Oversight and Surveillance Reform Act[8], sponsored by Sen. Ron Wyden (D-OR), and the USA FREEDOM Act[9], sponsored by Sensenbrenner in the House and Sen. Patrick Leahy (D-VT) in the upper chamber.

[1]: <http://www.peachpundit.com/2013/10/31/not-a-bad-start-fisa-edition/> [2]: [http://www.intelligence.senate.gov/pdfs113th/113fisa\\_improvements.pdf](http://www.intelligence.senate.gov/pdfs113th/113fisa_improvements.pdf) [3]: <http://www.unitedliberty.org/articles/15268-patriot-act-author-introduces-measure-to-end-nsa-bulk-data-collection> [4]: <http://www.techdirt.com/articles/20131011/16065524845/fisa-court-rubber-stamps-continued-collection-metadata-every-single-phone-call.shtml> [5]: <http://www.techdirt.com/articles/20131014/17191824879/even-dianne-feinstein-admits-that-nsa-oversight-is-often-game-20-questions.shtml> [6]: <http://www.newyorker.com/online/blogs/newsdesk/2013/06/verizon-nsa-metadata-surveillance-problem.html> [7]: [http://www.markudall.senate.gov/?p=press\\_releaseid=3821](http://www.markudall.senate.gov/?p=press_releaseid=3821) [8]: <http://www.unitedliberty.org/articles/15094-senators-roll-out-nsa-surveillance-reform-measure> [9]: <http://www.unitedliberty.org/articles/15436-sensenbrenner-to-introduce-usa-freedom-act-today>