

# The Washington Post

## Patriot Act author: ‘There has been a failure of oversight.’

By [Andrea Peterson](#)

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*Rep. Jim Sensenbrenner (R-Wis.) authored the original Patriot Act after the September 11, 2001, terrorist attacks, and previously served as chair of the House Judiciary Committee. Recently, he has become a [vocal critic](#) of how that legislation has been used to justify broad National Security Agency spying powers since they came to light due to documents from former NSA contractor Edward Snowden. Sensenbrenner is introducing legislation called the USA FREEDOM Act with Sen. Patrick Leahy (D-Vt.) and Rep. John Conyers (D-Mich.) to try to reform those programs. I spoke to the congressman Thursday afternoon about the proposal, congressional oversight over the NSA, and how opposition to the spying programs is building alliances in a time of bitter partisanship. This interview has been lightly edited for length and clarity.*

### **Andrea Peterson: What is the USA Freedom Act?**

Sensenbrenner: It does several things. First of all, it stops the collection of metadata by the NSA and has some restrictions on section 215 of the Patriot Act — essentially, the suggestions made by Senator Leahy in the 2005/2006 reauthorization act which were rejected during the negotiations. It restricts section 215 to bring it back to the original intent, which was that the Justice Department would identify a non-U.S. person who is engaged in a terrorist organization, get a Foreign Intelligence Surveillance Act (FISA) order to be able to find out who that person was in contact with, and be able to try to spread that spiderweb to see who was involved in a plot that might target people either domestically or internationally.

### **And it also deals with reforming the FISA Court?**

The two other things are that we are proposing reform of the FISA Court, where we recognize there are things that have got to be classified. But if the FISA Court changes policy or attempts to reinterpret the law, we require the publication of that so it is not a secret decision when basically the FISA Court allows the NSA to shift gears. The other thing we do is create an office of public advocate to represent the public and privacy interests in particular — and also give the public advocate authority to appeal a decision of the FISA court the advocate feels does not comport with the law or comport with policies.

One of the former FISA Court judges who is retired wrote an op-ed — I think it was in the Wall Street Journal, but I'm not sure about that. It said judges sit on the bench and they listen to advocates on both sides argue the case and then decide based upon the facts and the law is argued. But in the FISA Court, they only hear one side and they don't hear the other. I think the creation of the public advocate would allow a judge to be a judge rather than hearing one side of the argument and making a guesstimate of what the law and the regulations require.

The other thing that the Freedom Act does is that it gives the Internet providers and phone companies the authority to petition the FISA Court not to release whose phone records have been ordered to be turned over to the NSA, but how many FISA orders or national security letters they have received and how many they have complied with.

**I know you had some very interesting, and I thought quite amusing comments, about other proposals at the Cato Institute event — I already reported on the "[fig leaf](#)" comment ...**

I read that.

**Do you have any other thoughts about the proposals?**

I have not seen the proposals, and I don't think that the Intelligence Committee people — and specifically Congressman Mike Rogers (R-Mich.) and Senator Feinstein (D-Calif.) are as far along as we have been in terms of drafting legislation that would correct the abuses that have occurred in the NSA and have come to light in the last few months. Let me say that both of them have been very strong in their defense of what the NSA has been doing, and despite their advocacy I think that their arguments have gotten less and less support in Congress and among the American public as more and more abuses of the NSA have come to light — particularly during the august recess of Congress.

**I know you were a supporter of the Amash Amendment and spoke for it — do you think there's been enough of a shift in Congress since that vote that some of these more comprehensive reform packages might be successful?**

Well, there was an inspector general's report that showed that there have been thousands of violations of their own regulations that came out in August. And there were also published reports that NSA employees were actually getting into people's Facebook sites, particularly what their social status was. And in my opinion that is outrageous, and I have found an awful lot of support for making sure that never happens again.

**Since you were the author of the Patriot Act, you were at least at one point supportive of greater powers going to the intelligence community. Were the programs it has now been revealed the Patriot Act was used to justify particularly surprising to you? How else did you expect it to be implemented?**

Clearly, they were very surprising to me. I can say that if Congress knew what the NSA had in mind in the future immediately after 9/11, the Patriot Act never would have passed, and I never would have supported it. We have to have a balance of security and civil liberties. What the NSA

has done, with the concurrence of both the Bush and Obama administrations, is completely forgotten about the guarantees of civil liberties that those of us who helped write the Patriot Act in 2001 and the reauthorization in 2005 and 2006 had written the law to prevent from happening.

What I can say is during my six years as chair of the Judiciary Committee, both Mr. Conyers and I were very vigorous in sending pointed letters to the attorney general, who under the FISA law is the official that sends petitions to the court for approval, to find out exactly what they were doing, and a couple times we had to act like crabby professors when students send incomplete answers and tell them to redo it. I think that things were relatively under control and along the spirit of the Patriot Act until I left in January of 2007 as chair of the Judiciary Committee. And looking at the timeline of when I think they rapidly expanded their powers was when they knew I would not be sending oversight letters.

**Do you agree with Rep. Amash's assertion that congressional oversight of the NSA is broken?**

Absolutely I do. The oversight that was contained in the Church Commission Reports not just by the Congress but by the FISA Court was designed to put brakes on potential abuses by the NSA that came to light in the '60s and '70s — I am specifically referring to the war in Vietnam as well as the COINTELPRO investigations that were going on at that time. Now, instead of putting the brakes on NSA excesses, both the FISA Courts and the two intelligence committees have stepped on the gas and there has been a failure of oversight. I think there needs to be much more rigorous oversight, which is something I tried to do when I was chair of the Judiciary Committee.

**It's been somewhat of a politically contentious time, especially with the shutdown and the looming debt ceiling debate, but do you see the surveillance issue as one that breaches that partisan divide?**

It certainly does. I'm going to be introducing this bill with Senator Leahy and Congressman Conyers. Maybe a few people have quarreled about my credentials as a conservative Republican and a few people have quarreled with their credentials as liberal Democrats. But the answer to the question is yes. While other people have been dealing with issues like the shutdown and the debt ceiling, we have been working on bipartisan and bicameral legislation which will hopefully be passed and signed into law. So while there's a lot of screaming across the aisles by others, there are some of us that have been working across the aisle so that once the current issues get past us we can work on something we genuinely think is necessary and is needed to protect the constitutional rights of U.S. citizens.