



Marco Rubio Misleads on U.S. Spying to Jab Ted Cruz

Sen. Marco Rubio has built his presidential campaign around his foreign policy credentials. So why is he now undercutting this reputation by misstating the NSA surveillance reforms passed this year? Two words: Ted Cruz.

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Sen. Marco Rubio may have framed himself as an expert in national security—and among the Republican presidential field, he is.

But in the wake of the San Bernardino attacks he has been remarkably misleading about American surveillance, even suggesting that those who have tried to rein in the National Security Agency may be responsible for a future terrorist attack.

The in-the-weeds nature of NSA surveillance gives Rubio the ability to mislead without being called out for it. The issue also provides a way to jab his closest rival, Sen. Ted Cruz, who voted in support of NSA reforms, and, at the same time, bolster his tough-on-national-security credentials.

“I know this, if God forbid there’s an attack tomorrow morning in another major U.S. city, the first question everyone is going to have is: Why didn’t we know about them, and how come we didn’t stop it? And the answer better not be: Because a tool we once had that could have allowed us to identify them is no longer available to us,” Rubio said Sunday on Fox.

The “tool” he’s referring to is the government’s mass collection of American phone records. This year Congress passed a law called the USA Freedom Act, which ended the bulk collection of American phone records. Under the new law, government investigators must specifically request records from telecommunications companies for individuals they suspect to be involved with terrorism.

Ironically, the loudest voices that contradict Rubio come from within the NSA itself, as The Daily Beast reported when the USA Freedom Act first became law. Intelligence officials said that the records system the government had to maintain was expensive and cumbersome, and

didn't contribute many leads on terrorists. Most damningly, the database helped prevent few—if any—attacks.

“People should understand that more isn't always better,” said Rep. Jim Sensenbrenner (R-WI), who championed the USA Freedom Act in the House of Representatives. “Drowning our intelligence agents in endless records means we miss the most important pieces. We have seen this again and again. Remember the Boston bombings, the Paris attacks, and even the San Bernardino attacks happened with bulk collection in place.”

But that hasn't stopped Rubio from using the law to paint a very scary picture of an intelligence agency flying blind, during a [recent interview on CBS](#).

There, Rubio said the USA Freedom Act “took away the right to collect metadata, which means that we can now not access the phone records of individuals that we either suspect of being involved in terrorism or who carry out an attack to see who they were coordinating or talking to.”

Wrong, Sensenbrenner said.

The bill “did not take away the ‘right to collect metadata from terrorist suspects,’” Sensenbrenner told The Daily Beast. “It stopped the bulk collection of innocent Americans’ records and established an efficient process for obtaining records from suspects... USA FREEDOM simply requires the government to obtain a lawful order to access information from the phone companies.”

The USA Freedom Act also puts the onus of record keeping on telecommunications companies, eliminating the U.S. government's role in keeping a massive database of records.

Rubio said on Fox this week that there are a “large and significant number of companies that have already said, ‘We are either not going to collect records at all.’”

Asked which companies this might be, neither the Rubio campaign nor his Senate office responded.

“I know of no phone company that says they are not going to collect phone records—under FCC rules, companies must keep billing information for 18 months,” said Neema Singh Guliani, a legislative counsel with the American Civil Liberties Union. “In fact, in many cases, companies keep phone records for longer than two years. T-Mobile, for example, has said that they keep records for seven to 10 years.”

The San Bernardino shootings last week brought terrorism to the forefront of the campaign once again, and in its aftermath Rubio argued that the USA Freedom Act only gave investigators two to three years of phone records.

“You can only see them up to two years to three years,” Rubio said.

“This is incorrect,” Guliani responded. The length of records would determine on how long the phone company was keeping records, he said: “The government would be able to obtain an order from the FISA court for any records that the phone company had related to the individuals that conducted the attack.”

Cato Institute policy analyst Patrick Eddington, who specializes in homeland security and civil liberties issues, added that “as the Director of National Intelligence noted in his testimony, anything over 18 months old is pretty much useless.”

It could be that Rubio just isn't very familiar with how the law works; after all, he's been spending a lot of time on the campaign trail. Much has been made about Rubio's poor Senate attendance record—he has missed nearly 30 percent of votes this year, more than any other senator has had.

Sen. Ron Wyden, a Democrat who also sits on the Senate Intelligence Committee, questioned Rubio's grasp of the facts on American surveillance.

“When it comes to security and liberty, the American people expect their elected officials to produce policies that protect both. Policies like the mass collection of millions of Americans' phone records, according to prominent anti-terrorism specialists, did neither,” Wyden told *The Daily Beast*. “If you want to be president you have a responsibility to get the facts right when it comes to national security. Too often in this campaign that hasn't been the case.”

There are no public records of Senate Intelligence Committee regular private briefings, usually held Tuesdays and Thursdays on weeks that the Senate is in session. But of the three public hearings the Senate Intelligence Committee has held this year, Rubio has only attended one, according to transcripts.

Neither Rubio's Senate office nor his campaign responded to a detailed list of questions. His Senate office did not respond at all, and his campaign referred to an interview he did with CNN for his position on surveillance.

Rubio's statements about the NSA and the USA Freedom Act have become a deeply political issue between his campaign and that of competitor Ted Cruz's.

“Particularly inaccurate is the assertion that we couldn't target someone who carries out an attack,” said Chad Sweet, the Cruz National Campaign Chairman who has also served in the CIA and as chief of staff at the Department of Homeland Security. “The USA Freedom Act preserves America's ability to track down, kill or prosecute America's enemies, particularly those who have carried out attacks.”

Rubio has made the charge against Cruz pointed and personal.

“At least two of my colleagues in the Senate aspiring to the presidency, Senator Cruz in particular, have voted to weaken the U.S. intelligence programs just in the last month and a half,” Rubio said at the *Wall Street Journal* CEO Council annual meeting last month.

But Rubio himself was not always so pro-NSA surveillance. In 2013, Rubio told Fox News that privacy concerns over the mass government collection of phone records were a “legitimate issue.”

“I understand, when we have a government that has targeted people—the IRS has targeted Americans because of their political views—of course Americans are concerned about government and how it's going to use information that it has about them,” Rubio said.

Two years later on the same network, Rubio dismissed these types of concerns as “ideological silliness,” adding that “we need every tool at our disposal. We’re fighting an enemy here in radical Islam and homegrown extremists.”