



Rand Paul allies plan new surveillance reforms to follow USA Freedom Act

By Guardian Web

June 4, 2015

Several of Rand Paul's allies in the US House of Representatives are seeking to capitalize on the momentum of surveillance reform as the USA Freedom Act continues through the Senate by attempting to stop the National Security Agency from undermining encryption and banning other law enforcement agencies from collecting US data in bulk.

Thomas Massie, a libertarian-minded Kentucky Republican, has authored an amendment to a forthcoming appropriations bill that blocks any funding for the National Institute of Science and Technology to "coordinate or consult" with the NSA or the Central Intelligence Agency "for the purpose of establishing cryptographic or computer standards that permit the warrantless electronic surveillance" by the spy agencies. He is joined in the effort by Democrat Zoe Lofgren of California.

Massie and Lofgren will place the amendment on the bill funding the Justice Department as early as Tuesday. Their move is part of the first wave of follow-up measures by privacy advocates to supplement the USA Freedom Act, a bill already passed by the House which, although it would limit some NSA powers, many civil libertarians consider insufficient.

"The USA Freedom Act is definitely not the last word. Whenever a program expires or whenever funding is required, those are must-pass pieces of legislation that present opportunities for refinement," Massie told the Guardian on Tuesday.

Lofgren and another civil libertarian, Republican Ted Poe of Texas, will propose an amendment to the same appropriations bill that would block the Federal Bureau of Investigation from inserting vulnerabilities into encryption on mobile devices.

The FBI director, James Comey, is currently campaigning against tech companies that are expanding encryption for their commercial products.

“Privacy is a constitutional right, whether the FBI likes it or not,” Poe told the Guardian on Tuesday.

Another congressional privacy advocate, Democrat Jared Polis of Colorado, will push a further amendment to the appropriations bill that would in effect block the Drug Enforcement Agency from collecting Americans’ phone data in bulk – a recently exposed surveillance program that preceded the NSA’s now-shuttered bulk collection. The Guardian has acquired the text of all these amendments.

Polis told the Guardian he wanted to “rein in” the DEA’s “unwarranted and unconstitutional program”, calling the Freedom Act “the beginning of a reform process, not the conclusion of one”.

The Senate is slated on Tuesday to debate the USA Freedom Act, a bill to ban bulk collection of US phone records by the NSA that would have the effect of restoring provisions of the Patriot Act that expired at midnight on Sunday.

Passage is expected, but the GOP majority leader, Mitch McConnell, is pushing amendments that civil libertarians in the House reject and which would require a new House vote on the overall bill.

“We still don’t know what the Senate’s going to do. If they start changing what we sent them, we’re going to be looking to do further improvements in the bill,” Lofgren told the Guardian before the Senate vote. “We’re not giving up.”

Extensive compromise with the NSA and the White House, as well as clever legislative strategy, ensured House passage of the Freedom Act last month. But it also siphoned enthusiasm and even support from the chamber’s most fervent privacy advocates. Massie championed a different bill, the Surveillance State Repeal Act, that would have rolled back many more NSA and FBI spy powers.

The more technologically sophisticated privacy campaigners have warned that neither the White House nor the US Congress has addressed government efforts to secretly undermine encryption standards.

The Guardian, thanks to whistleblower Edward Snowden, revealed in September 2013 that the NSA and its British partner GCHQ routinely insert vulnerabilities into commercial encryption software that permit the agencies to access protected data. But the vulnerabilities, commonly called “backdoors”, also leave software that banks, businesses, internet service providers and others rely upon as prey for hackers.

The National Institute of Science and Technology issues encryption standards. But a document leaked by Snowden showed that in 2006, the NSA secretly worked with the institute to become the “sole editor” of a draft security standard that the institute issued.

“It’s bad for business. It’s bad for privacy and bad for civil rights,” Massie recently told a business conference in Louisville.

Last year, Lofgren unsuccessfully attempted to place a ban on undermining encryption in the USA Freedom Act. But this time, she and her allies will attempt to hang their amendments on to as many must-pass bills as necessary. Should their efforts fail this week, Poe confirmed that their next step will be to add the amendments to the must-pass Defense Department appropriations bill that the House will debate soon.

If that doesn’t work, they intend to move on to the next available bill and employ the same strategy. Massie indicated the coalition is already looking towards the June 2017 expiration of another broad surveillance power, Section 702 of the Foreign Intelligence Surveillance Act, to force additional rollbacks, much as the USA Freedom Act authors used the expiration of parts of the Patriot Act as leverage to pass their bill.

“We’re going to have multiple opportunities going forward. In fact, the 702 provisions expire in 2017, so those will have to be renewed, and there’ll be a great debate then about the even more invasive spying on American citizens that’s going on,” Massie said.

Lofgren added: “We will continue to make efforts to attach those improvements to every vehicle that moves through the body.”

Massie, Poe and Lofgren’s efforts come as the FBI and NSA have launched a public campaign against commercial encryption. While advocating in favor of backdoors and denouncing new mobile-device encryption – which companies describe as a market-driven response to Snowden’s disclosures – they insist they can create vulnerabilities they alone can exploit. Engineers consider the effort to be technologically illiterate.

“House members are sending two clear messages with these amendments to the Department of Justice funding bill. The first is to Senators Mitch McConnell and Richard Burr, and the message is: ‘Surveillance law reform is continuing; deal with it,’” said Patrick Eddington of the Cato Institute.

“The second is to Attorney General Loretta Lynch and FBI director Jim Comey, and the message is: ‘We’re not going to let you make every American vulnerable to hackers and foreign spies by subverting public key encryption.’”

Massie is among the leading House allies of Senator Rand Paul, the Kentucky Republican and presidential candidate who is making opposition to mass surveillance a cornerstone of his campaign. He and their comrade Justin Amash, a Michigan Republican, stood guard in the House last week to ensure surveillance advocates did not exploit a parliamentary maneuver to drive a weaker version of the USA Freedom Act through a recessed House.

On Sunday, Massie and Amash were photographed leaving the Capitol after Paul succeeded in briefly forcing the expiration of portions of the Patriot Act. Twitter users turned their progression into a meme, superimposing it on to the poster for Quentin Tarantino's Reservoir Dogs.

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