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Mitch McConnell seeks to limit transparency in surveillance reform bill

Senate majority leader's new gambit would strip USA Freedom Act's mandate to 'make publicly available' novel interpretations of law before secret Fisa court

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The Senate's top Republican renewed his quest to gut surveillance reform on Monday, this time removing a measure that would disclose major reinterpretations of surveillance law made by a secret court.

Privacy-minded legislators, fresh off what appeared to be a victory after the Senate agreed on Sunday night [to advance the USA Freedom Act](#), said that the latest legislative gambit by Mitch McConnell of Kentucky would leave the public vulnerable to what Senator Ron Wyden of Oregon has called "secret law".

McConnell's amendment would strip the bill of its mandate to "make publicly available" novel interpretations of the law before the secret Fisa court – a measure that advocates consider [an early warning system](#) to alert Congress and the public of efforts by the intelligence agencies to expand their powers.

"Republican leaders lost the fight to continue mass surveillance of Americans through the Patriot Act and now they want to water down the commonsense reforms that have overwhelming bipartisan support in the House and Senate," Wyden, a Democrat on the intelligence committee, told the Guardian on Monday.

"There's a strong bipartisan coalition ready to slam the door shut on this latest attempt to prolong the dragnet and strip out new rules on transparency from the USA Freedom Act."

Senate aides said on Monday that McConnell was already running into headwinds, however, making it unclear if the version of the bill without the transparency requirement will come up for a vote.

Privacy campaigners, some of whom consider the USA Freedom Act to be an insufficient fix for widespread government surveillance, denounced McConnell's amendment. Some believe it would end up costing the compromise bill its remaining support in the House of Representatives

– which would ensure that portions of the Patriot Act that expired at midnight would not be restored, via passage of the USA Freedom Act.

Without the transparency provisions “there’s a very high likelihood this bill goes down in flames in the House”, said Patrick Eddington of the Cato Institute, a former House staffer.

In a statement, Constitution Project attorney Rita Siemion said: “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](#) [Fisa] court – and send the bill to the president’s desk without any additional delays and without weakening the bill.”

McConnell also seeks to pass other amendments to the USA Freedom Act, which ends the NSA’s bulk collection of US phone data, a move by the majority leader which would delay the end of the phone-data dragnet for a year. These amendments would require the top US intelligence official to certify the implementation of the new phone-records regime; demand notification of changes made by telecoms companies to the kinds of call records they generate; and revise the creation of a new public-interest advocate before the Fisa court, which currently only hears from the government.

The amendments would only need a simple majority to pass – all but ensuring their adoption by the GOP-led Senate, where the majority of Republicans oppose surveillance reform and have advocated renewing the Patriot Act in its entirety.

But the amendments are being met with opposition from most Democrats as well as libertarian-minded Republicans, who view them as so-called “poison pills” designed to weaken the product of marathon negotiations between Congress, the [Obama administration](#) and the intelligence community. It is also unlikely that the provisions would pass muster in the House, where GOP leaders have sought to retain pressure on the Senate to pass their bill as is.

“The USA Freedom Act is a good, strong bill,” Kevin McCarthy, the Republican House majority leader, said in a statement on Monday. “It protects civil liberties. It provides for the capabilities our intelligence agencies need to keep the homeland safe. And it passed with a veto-proof majority of 338 votes in the House. Now is not the time to be playing games with our national security. The Senate should act quickly and send the USA Freedom Act to the president’s desk.”

Adam Schiff, the top Democrat on the House intelligence committee, warned McConnell that changing the USA Freedom Act would imperil House passage of the revised bill, and increase the amount of time during which three sections of the Patriot Act that expired at midnight on Sunday are no longer available to the FBI.

“Any departure from this carefully crafted compromise will undoubtedly reduce support for it in the House and prolong the expiration of these intelligence tools, and I urge the Senate to pass the USA Freedom Act as is and without any further delay,” Schiff said on Monday.

The White House spokesman, Josh Earnest, dismissed the one-year transition period as “completely unnecessary” and continued to push for the passage of the House version of the USA Freedom Act.

“We believe that six months is enough,” Earnest told reporters on Monday. “The Senate should not start getting into a game where it passes amendments that require House consideration again.

“They have had a year and a half to exercise that prerogative and, now that they have blown through that deadline, most people would acknowledge that is a privilege they should relinquish ... rather than get into additional political gamesmanship.”

On the Senate floor on Monday, the chairman of the Senate intelligence committee, Richard Burr of North Carolina, said he hoped a final vote on the USA Freedom Act could proceed by lunchtime on Tuesday.

“I don’t believe that the threat level has dropped to a point where we can remove some of the tools – if anything, the threat level has gotten higher, and you would think we’d be talking about an expansion of tools,” Burr said.

“But I accept the fact that this debate has gotten to a point where a bulk data storage capacity within the government is not going to be continued long term.”