



Sen. Paul's Great Surveillance 'Filibuster' and What to Expect Next

By [Patrick Eddington](#) and [Jennifer Granick](#)

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Senator Rand Paul, joined by Senator Wyden and other surveillance reform advocates, as well as five members of the House of Representatives, spent much of last night on the Senate floor, making history. He used the platform of a *de facto* filibuster to name drop privacy and civil liberties advocates like EFF's Mark Jaycox, former NSA whistleblowers like cryptographer William Binney, and of course America's Founders, to make his case for surveillance reform. He was joined by Senator Mike Lee with a history lesson on The North Briton No. 45, and Senator Martin Heinrich giving a dramatic reading of the Fourth Amendment from the floor.

Paul filibustered a bill offered by Majority Leader Mitch McConnell that would reauthorize section 215 of the USA PATRIOT Act. Section 215 is the purported legal basis for the NSA's dragnet collection of American's phone records, and is scheduled to sunset, or expire, June 1.

However, by filibustering yesterday, Paul all but ensured that section 215 will not be reauthorized. The reason why is the arcane legislative procedures of the Senate. In brief, Senate Majority leader Mitch McConnell can't bring his reauthorization bill to a vote without cloture, a procedural vote required to end debate and move to a vote on the underlying measure and any related amendments. After a cloture vote, the Senate gets 30 hours before the bill can be voted on up or down and to address any amendments offered. That brings us into, or even past, the weekend. But the House goes on recess after last votes today (expected to be completed by 3pm), and doesn't come back until June 1, after section 215 sunsets.

So, by Paul filibustering up till midnight, and with time so tight, the Senate is left with a choice: either sunset 215 or pass USA Freedom as it is. But ... and this is where Senator Paul diverges from some of his colleagues in the filibuster ... Paul wants a robust discussion and amendment process for USA Freedom Act. Again, a variation on USA Freedom can't be passed before the House leaves.

Through his filibuster, Paul has all but assured that 215 will sunset — at least until Congress returns from its Memorial Day recess in early June. At that point, some surveillance reform

advocates fear that USA Freedom will be weakened further in a new negotiating round, or that McConnell and his allies will attempt again to extend 215 authorities unaltered.

But the political and legal landscape has shifted, particularly in light of the Second Circuit ruling that bulk collection under 215 is illegal and fresh polling that shows Americans are more supportive of ending bulk surveillance than ever before. Rand Paul realizes this, which is why he appears to be even more unwilling to accept what he clearly views as an uncertain and watered down reform that's been on the table for months. He's changing the conversation.

But what happens in June when Congress returns after these Sec. 215 authorities have expired?

A resumption of the fight over their efficacy, legality and political legitimacy seems the most likely outcome, with fresh attempts to reinstate some version of the telephone metadata program a virtual certainty.

And if that does happen, proponents should be forced to explain why the American people should continue to be subjected to the kind of indiscriminate mass surveillance our country denounces when authoritarian or totalitarian regimes like Russia, China, Iran and North Korea employ it against their own populations. Proponents of mass surveillance in America need to be forced to explain why they believe treating the American people as suspects first and citizens second is remotely a constitutionally or politically acceptable “mainstream” approach to upholding the Bill of Rights or defending the nation. We suspect their answers — and their proposed policy prescriptions — will be found wanting.

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