



## How to Fight for NSA Reform

By Patrick Eddington

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The traditional civil-liberties advocacy model, in which nonprofit public-interest groups wage lobbying campaigns and file lawsuits in defense of the Bill of Rights, is facing its greatest challenge since the domestic-spying scandals of the 1970s.

The continued drumbeat of government officials' terrorism-related fear mongering has largely succeeded in blocking any reforms to the NSA programs exposed by Edward Snowden. And this has happened despite relatively well-funded, and often innovative, campaigns by nonprofit organizations, old and new. The outcome of this struggle will determine whether the post-9/11 surveillance state will become merely an unpleasant memory or a permanent fact of life.

The generation that won the Revolutionary War ensured that the new government was forbidden to engage in the kinds of warrantless searches and seizures that had sparked the rebellion in the first place. For over 170 years, that protection -- embodied in the Fourth Amendment -- acted as a shield against unreasonable government surveillance. That started to change in the 1960s and 1970s through a series of ill-considered federal court rulings. But those erosions were mild compared with the full-on assault that took place after 9/11, when Congress in haste and fear pushed through the PATRIOT Act and, several years later, the FISA Amendments Act.

Simply stated, civil-liberties advocates are at a disadvantage because they are fighting on their opponents' terms. National-security bureaucrats feed politicians and the press a steady stream of untruths about the effectiveness and scope of these programs and the perils of allowing citizens to protect their private communications. These assaults on the Fourth Amendment are being fought every step of the way in Congress, the courts, and the press by a vast array of organizations and citizens, but the NSA's mass-surveillance programs continue.

The executive branch's fear-based campaign has caused a congressional paralysis that many argue can be overcome only by a countervailing, more intense, electorally focused campaign by citizen activists. Two competing measures proposed last year help highlight this reality.

As I've written elsewhere, those measures -- the USA Freedom Act and the Massie-Lofgren amendment to the 2015 Defense Department spending bill -- failed to become law. But whereas the USA Freedom Act was legislatively neutered in the House and failed even to clear a procedural hurdle in the Senate, the Massie-Lofgren amendment actually passed the House by a veto-override majority of 293-123.

The key difference was the decision by FreedomWorks, which has become a major political player in GOP congressional races, to score the vote on the Massie-Lofgren amendment. The victory was undone in a post-election back-room deal orchestrated by the congressional leadership, but FreedomWorks' involvement showed what was possible when an electorally focused group with an active political-action committee engages in defending the Fourth Amendment.

Traditional advocacy tools remain essential in this struggle. This is particularly true in light of the FBI's attacks on efforts by companies and consumers to take advantage of private encryption technology to protect themselves not only from unwarranted NSA surveillance, but also from other malicious online actors. Public education and digital-security campaigns are vital components in the overarching campaign to restore the Fourth Amendment to its pre-9/11 shape. But recent history strongly suggests those tools are most effective when used in tandem with electorally focused forms of action.

The FreedomWorks and Progressive Change Campaign Committee models offer advocates a powerful new means to advance their agenda. As my Cato colleague John Samples has noted, "Studies show high spending on negative ads increases voter knowledge and turnout." Ensuring the public understands the truth about politicians who worked to thwart surveillance-reform efforts is absolutely essential if there is to be any hope in overcoming the surveillance state and the political stasis it has engendered.

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