



A New Standoff Has Emerged as the Future of Patriot Act Is in Flux

By [Colleen Curry](#)

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The wildly controversial [Patriot Act](#) — one of the lasting legacies of President George W. Bush and a catalyst for Edward Snowden's leaks — is set to expire on June 1, taking with it some of the more notorious powers of the National Security Agency (NSA) to collect massive amounts of data on Americans' private communications. But a move by Senate Majority Leader Mitch McConnell may thwart that.

The Patriot Act was quickly crafted and signed in the weeks after September 11, 2001, in order to broaden the ways the US government could collect intelligence to try and stop future terror attacks from happening. But in the ensuing decade, information began to leak about how the government and its intelligence agencies were using the act, and in particular, one controversial element known as Provision 215, to collect in bulk the phone records of ordinary Americans.

"Provision 215 made it very easy for the government to obtain any tangible thing in a foreign investigation, as long as it could show a FISA [Foreign Intelligence Surveillance Act] court that it was relevant to a foreign intelligence investigation. And as we all know now, that relevance standard was stretched beyond all reasonable understanding to allow the government to collect all telephone records," Elizabeth Goitein, co-director of the Liberty and National Security Program at the Brennan Center for Justice, told VICE News today.

Now, Provision 215 and other key portions of the Patriot Act are scheduled to sunset, allowing lawmakers the chance to end the program altogether, reform it, or reauthorize it completely based on the past 14 years of evidence about how successful the law has been.

Privacy advocates hope to see the Act ended altogether. But Goitein and others warn that without comprehensive reforms, the government may be able to continue its broad surveillance through other means.

"If in fact the provision expired, that would end the NSA's bulk collection of records," Goitein said. "But whether the government would then find another legal authority... is an important question."

Over the next four weeks, lawmakers will struggle over how the Patriot Act should look in the future, as rival bills offering reforms and reauthorization move through the Senate. McConnell, who sponsored the bill to reauthorize the Patriot Act, will ultimately decide whether either of the bills go to a vote before the Memorial Day holiday weekend and the recess begin, on May 22.

Both the [Obama administration](#) and Director of National Intelligence [James Clapper](#) have said they support ending the bulk collection of phone data, and a review group said the program had [limited results](#) preventing terrorism during its tenure. Patrick Eddington, a policy analyst in Homeland Security and Civil Liberties at the CATO Institute, said it was senseless for Congress to reauthorize an act that the current administration and intelligence agencies had said was futile.

"So Congress is on brink of reauthorizing a program that is useless and costs billions, and I haven't been able to have anyone give me a credible answer as to why that needs to happen," Eddington said. "It underscores how broken Washington remains and how broken the political process remains. It's critically important for the country because we have been living under a surveillance state now for 14-plus years."

The reform bill, on the other hand, is a bipartisan proposal called the USA Freedom Act that was voted through the House Judiciary Committee last week and could go to a vote in the House this week. Obama and Clapper both support it.

"If enacted, our bill will be the most significant reform to government surveillance authorities since the USA PATRIOT Act [which stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act] was passed nearly 14 years ago," Senator Patrick Leahy of Vermont said in a statement. "Most importantly, our bill will definitively end the NSA's bulk collection program under Section 215. It also guarantees unprecedented transparency about government surveillance programs, allows the FISA Court to appoint an amicus to assist it in significant cases, and brings the national security letter statutes in line with the First Amendment."

Despite broad support from lawmakers in the House and Senate, the USA Freedom Act may never see a vote to become law, according to Eddington and Goitein.

"Supporters of the legislation are hoping it will move through the House and get over to the Senate, but the complicating factor is McConnell," said Eddington. "It's unlikely the Senate would take up the act before the end of May, and some are beginning to think he's beginning to play chicken on this issue."

Critics charge McConnell, who wants to reauthorize the Patriot Act through 2020, with avoiding a vote on the issue and passing a short-term extension.

"It's very clear [McConnell] is trying to run out the clock," Goitein said. "What he's hoping to do is say, 'Oops we didn't have enough time,' and then ram through an extension, perhaps a short term extension. And clearly this is a ploy, because to say they didn't have enough time, they've known for four years this is the expiration date."

McConnell, when asked about the expiration of the Patriot Act, told Capitol Hill reporters Tuesday that there were "time constraints" that were limiting the possibilities for a vote on the Patriot Act this month.

"I think, most likely, the outcome is some kind of extension. Chairman Burr and I consulted and we agree that the underlying bill would be a simple extension. But it will be open for amendment, whenever we're able to really fully turn to it. The question is whether we can do all that between now and Memorial Day. And I can't tell you right now," he said, according to a record of the comments his office provided to VICE News.

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The possibility that McConnell could circumvent the reform bill is disturbing to many reform advocates, including Oregon Sen. Ron Wyden, a co-sponsor of the reform bill.

"Republican Senate leaders think they can renew mass surveillance by pushing us against a deadline," Wyden said in a statement to VICE News. "They're wrong. I will fight with everything I can against any extension of the Patriot Act that does not end mass surveillance and make other reforms. Mass surveillance violates core American rights without making our country any safer, and it is time for it to end."

Goitein notes that McConnell has a lot of control here.

"The leadership of Congress has tremendous amounts of power that far exceed what's necessary to run their caucuses, and they sometimes have life or death control over legislation," Goitein said. "So the outcome of this particular showdown right now is completely unclear."

Still, some privacy advocates say neither McConnell's nor Leahy's bills go far enough in ending mass surveillance on Americans. Leahy, who despite his support of the USA Freedom Act, said it is only the beginning of reining in the federal governments' surveillance powers.

"Some will say that this bill does not go far enough. I agree," Leahy said in a statement. "But in order to secure broader support for reform legislation that can pass both the House and Senate and be signed into law, changes had to be made to the bill that I introduced last year. This new bill does not contain all the reforms that I want... but we should pass it and continue fighting for more reform."

The American Civil Liberties Union (ACLU) said in an open letter to Congress on Wednesday that it wants to see the Patriot Act end altogether, and that it opposes McConnell's reauthorization act. The group listed more than 50 organizations, including civil rights, academic and media groups, and even a gun rights group, as co-signers of the letter. Neema Guliani, an attorney with the ACLU, stressed today that the group does not oppose or support the USA Freedom Act reform bill, but wants to see the Patriot Act end altogether.

"We now know 215 is being used in ways no one ever intended, including the members of Congress who wrote the bill. It's what the government uses to justify collecting every call Americans make... and what that boils down to is the government having access to some of most intimate details of Americans lives," Giuliani said.

"Given that, and the recent oversight board's conclusion that the mass call records program under 215 hasn't stopped an act of terrorism, it's time to put that bill to rest," she said. "We think it's time to sunset 215."