



Civil Libertarian(Ish) Groups Cry Foul Over FISA Reauthorization

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January 11, 2018

Civil libertarian(ish) groups on both sides of the aisle aren't happy with the House's approval of the new FISA authorization. FreedomWorks heaped loads of criticism on the House, with Vice President of Legislative Affairs Jason Pye saying the Constitution doesn't matter to supporters.

It's a dark day for the Bill of Rights. Sadly, a majority of the House Republican Conference and many Democrats chose to ignore the Fourth Amendment in today's votes. The erosion of the civil liberties protected by the Bill of Rights is clearly a bipartisan problem. We thank Reps. Justin Amash, Andy Biggs, Jim Jordan, Thomas Massie, Jim Sensenbrenner, and others who took a stand today for the Fourth Amendment.

Pye is also promising FreedomWorks will do all it can to support Senators Rand Paul and Mike Lee in their fights to rein in the NSA. The ACLU is also promising to help kill the FISA bill in the Senate because they believe it gives the presidency too much power. Cato Institute policy analyst Patrick Eddington, who was heavily featured in my piecelast Sunday looking at the bill, emailed me to say he's still hopeful there will be Senate reform.

[T]he House of Representatives voted to not only reauthorize the Foreign Intelligence Surveillance Act Section 702 mass surveillance program, but to effectively expand it. It's literally no stretch to say that the bill the House just approved effectively gives greater privacy protections to criminal suspects than to innocent Americans. It allows the federal government to continue to collect, store, and search the communications of Americans with no connection to criminal activity. This program has never been properly audited for its constitutionality, effectiveness, or costs, and the House leadership clearly has no interest in doing so. The surveillance reform battle now moves to the Senate, where the issue is very much in doubt.

It appears the focus on killing the bill will be in the Senate, where Paul, Lee, and Oregon Democrat Ron Wyden have been fighting for reforms for years. Paul and Wyden have promised to filibuster, while Lee is teaming up with Vermont Senator Patrick Leahy on the USA Liberty Act. The latter are hoping Mitch McConnell will let them offer amendments to the bill, including their bill.

Ed pointed out this morning that Senate leadership may do their best to avoid another messy fight on FISA by connecting it with the omnibus spending bill. It's good strategy but shows just what's wrong with Washington by using cheap tactics to get something passed. Before people

say, “Drain the swamp! Only Trump can save us!”), it should be pointed out the president endorsed the bill this morning despite an earlier tweet suggesting he wasn't in favor of it. My guess is Chief of Staff John Kelly got in Trump's ear and told him how “important” the bill was to Trump's campaign promise of keeping terrorists out, even if it's debatable whether NSA spying has really saved America from attack.

I understand why the spying bill has support from defense hawks but they're misguided in their belief that it's worth sacrificing a little bit of the Constitution to keep America safe. The problem with watch lists, data collection, and spying is the fact that innocent Americans get caught up in the very flawed system. The government doesn't go after individuals but the telecom industry, and it doesn't behoove the industry to actually fight the government because they're dependent on various different cronyistic pieces of legislation to help their bottom line (and, no, I'm not talking about lowering corporate tax breaks, I'm talking about specific pieces of “stimulus” legislation). Then there's the fact that the list is sitting in some government database, leaving it open to attack from hackers. No server is every truly “safe” and the hacks from the last few years have proven it.

The big issue with the FISA bill is the fact that it violates the Constitution, specifically the Fourth Amendment. Supporters point out federal courts have ruled before that “third party data” doesn't violate the Constitution, but the courts erred in their thinking (which, frankly, isn't surprising given that petitioners are asking the government to rule the government broke its own rules). There actually is a case on the issue making its way through the courts right now. It'll be interesting to see what happens at the Supreme Court.

The good news: The fight over FISA isn't over, and there's a chance the reauthorization bill will die in the Senate.

The bad news: It'll probably pass anyway.

But this is another example of what happens when the government decides it needs to get its sticky fingers into everyone's business. Benjamin Franklin once wrote, “those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.” He may have been talking about a tax dispute but he's still right.