

Know when the government tracks you

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If we continue to be under secret surveillance by our government, the next generation and those that follow will regard this lack of privacy as normal. If that is the case, will this then still be a self-governing republic with individual constitutional liberties?

Two members of Congress who are familiar with — and committed to — the Constitution have introduced a bill of pivotal historic significance: the Geolocation Privacy and Surveillance ("GPS") Act. They are Sen. Ron Wyden, D-Ore., and Rep. Jason Chaffetz, R-Utah.

These lawmakers say that "new technologies — like cell phones, smart phones, laptops and navigation devices (GPS) — are making it increasingly easy to track and log the location of individual Americans, yet federal laws have not kept pace with the technology"

Adds Chaffetz: "I think it's great that GPS and tracking technology exists. What isn't great is the idea that this technology can be used to track somebody without their knowledge. It is the job of Congress to protect and defend the United States Constitution and the personal liberties provided to American citizens under the Fourth Amendment."

Readers, do you agree, as Chaffetz says, that "the government and law enforcement should not be able to track somebody indefinitely without their knowledge or consent, or without obtaining a warrant from a judge"?

Here we go along with Wyden and Chaffetz on the path to becoming fully American again. The GPS Act: "requires the government to show probable cause and get a warrant before acquiring the geolocational information of a U.S. person, while setting out clear exceptions." I'll address more about the exceptions later on, but it's important to know that the GPS Act "prohibits unlawfully intercepted geolocation information from being used as evidence."

So, when would law-enforcement agencies have to get a warrant to track where you are? When they "want to monitor individuals' movements directly, using covertly installed tracking devices or similar means. In emergency situations, it would allow law enforcement officers to obtain the information that they need immediately and then get a warrant for their actions later."

And what follows is important because so many of us use cell phones and other communications devices that we buy from private companies. The act would "require law enforcement agencies to get a warrant when they want to acquire an individual's geolocation information from a private company."

But what about the tracking that private companies do in the normal course of business? The GPS Act — this cell phone user is glad to say — "makes it clear that these companies are only allowed to share or sell customers' data with the consent of individual customers."

Hey, but will smart-phone apps continue to be allowed to access individual users' locations? Yes, "if the customer has given consent for his or her geolocation information to be shared for these purposes."

I have heard supporters of government national security surveillance insist that when an individual is in a public space, he or she has no expectation of privacy. On Jan. 26, Wyden — at a Policy Forum at Washington's Cato Institute, where I am a senior fellow — answered them:

"I agree that if you drive from your home to the grocery store you obviously expect that other people might see you. But tracking someone's movements 24/7 for an extended period of time is qualitatively different than observing them on a single trip to the store.

"If you monitor a person's movements for several weeks, you can find out if they regularly visit a particular doctor or psychiatrist, or attend meetings of a locally unpopular political organization, or visit a particular house of worship, or often go to an AIDS clinic. And you won't just find out one of these things — you'll find out all of these things. ... Tracking someone's movements with a GPS device or by monitoring their cell phone is already cheap and easy, and it is getting cheaper and easier."

Wyden added: "You can't tell me — as some government lawyers have argued in the past — that secretly tracking a person's movements 24/7 isn't a significant intrusion on their privacy, and can be done by meeting a lower standard of evidence, or even no standard at all. I believe that if you put this question to most members of the American public, they would consider it a no-brainer."

Do you?

Wyden also put this question to Congress as they consider the GPS Act: "If government agencies want to secretly monitor all of a person's movements, they should meet the requirements spelled out in the Fourth Amendment and go get a probable cause warrant, just as they would do if they were searching that person's home or secretly recording their phone calls."

Meanwhile, the justly respected Library of Congress Congressional Research Service reminds us in its "Legal Standard for Disclosure of Cell-Site Information (CSI) and

Geolocation Information" that, "as noted by scholars, advances in cellular phone technology 'are occurring so rapidly that they blur distinctions made by legislatures and courts as to what is required to investigate, track, and/or search and seize a cellular telephone."

Or to protect a private citizen using a cell phone.

What progress is being made toward enacting this quintessentially constitutional legislation? And, if passed, will President Barack Obama or a Republican president veto it?

During all the attention now being paid to leading Republicans so eagerly jousting for the presidential nomination, I haven't heard "personal privacy" mentioned once. Have you?

Obama couldn't be clearer that you have next to no expectation of privacy. Do you care?

To be continued.