



Should the NSA ‘Spying’ Program Be Illegal? What 2016 Contenders Say.

[Ken McIntyre](#)

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Should the U.S. government continue to capture and hold massive amounts of telephone and Internet data as a way to thwart possible terrorists? Or should it be harder for government officials to detect patterns in who suspects communicate with?

That decision may be a worthy of a president, but only five of nearly 20 candidates for president from either major party actually will be able to vote on relevant legislation, including the Patriot Act and the rival USA Freedom Act.

They are all members of the Senate, and right now they are trying to influence their Republican and Democratic colleagues’ imminent decision on what to do.

Senate and the Patriot Act

The deliberation comes on the heels of a U.S. Court of Appeals ruling that the wording of Section 215 of the Patriot Act, which expires May 31, doesn’t allow the National Security Agency’s bulk collection of telephone and Internet data—and the program is therefore illegal.

“This issue will be decided before the next election,” homeland security consultant [Paul Rosenzweig](#) told The Daily Signal. “For those who are in the Senate, they need to decide what—if anything—they will do to save some portion of the 215 program [in the Patriot Act]. For those outside, the decision by the court actually helps since it takes a contentious issue off the table for debate.”

On the left is Sen. Bernie Sanders, I-Vt., a presidential candidate who caucuses with Democrats and is a vocal opponent of the government’s bulk collection of phone or other personal records.

On the right are four Republican senators, who disagree on reauthorizing the National Security Agency’s metadata collection program: Ted Cruz of Texas and Rand Paul of Kentucky oppose it

while Lindsey Graham of South Carolina and Marco Rubio of Florida support it. Graham continues to mull a race for the White House; the others are declared candidates.

The split of GOP presidential hopefuls is a reprise of a Senate tangle earlier this year over increasing defense spending without paying for it with cuts elsewhere, which saw Graham and Rubio for the increase and Cruz and Paul opposed.

The Divide Over Reauthorization

The divide also reflects uncertainty among senators on whether to reauthorize the Patriot Act, first passed 13 years ago to help uncover terror plots in the wake of the 9/11 attacks, or to replace it with what some consider the more “transparent” [USA Freedom Act](#). The House overwhelmingly [passed](#) that measure May 13.

President Obama, a former senator from Illinois who carried on most of President Bush’s anti-terrorism programs, has endorsed the new legislation.

A new [Rasmussen Reports](#) national survey [found](#) that 44 percent of likely voters now favor the NSA’s tracking of phone calls and emails made by millions of Americans. Just as many (43 percent) oppose the practice, while 13 percent are not sure.

Support for the NSA’s data collection was up from 35 percent in November and is the highest measured since news of the practice broke in 2013, Rasmussen said. Opposition is down from a high of 59 percent at that time. Rubio, who favors reauthorization, and Paul, who wants to repeal the Patriot Act but hasn’t committed to the USA Freedom Act, have raised their profiles over the issue. Each has made speeches on the Senate floor about the NSA’s data collection program.

“There is not a single documented case of abuse of this program,” Rubio wrote in an op-ed in USA Today. “Internet search providers, Internet-based email accounts, credit card companies and membership discount cards used at the grocery store all collect far more personal information on Americans than the bulk metadata program.” Rubio added:

FBI Director James Comey [warned](#) ... that potentially, thousands of terrorist sympathizers in the United States are being self-radicalized online by foreign terrorists associated with the Islamic State who are urging them to conduct attacks against Americans in our cities and towns. Given these threats, now is not the time to end this program, which remains essential to our security.

“A monumental victory,” Paul declared of the court decision in one of a string of tweets in which the libertarian-leaning conservative pointed to it as a win for “lovers of liberty.”

“Congress must repeal the Patriot Act’s Section 215 provision that is used as the justification for the [data collection] program’s legality,” Paul said in an email to The Daily Signal. “Without congressional authorization for the program’s expiration at the end of the month, the government’s warrantless collection, as the court puts it, was never legal.”

Although the appeals court did not rule on whether the program is unconstitutional, Paul told The Daily Signal it was “an important victory for the Fourth Amendment” although “the fight for liberty must continue in the Supreme Court and Congress until this grave miscarriage of justice is completely repealed.” Paul added:

I sponsored the Fourth Amendment Preservation and Protection Act to block federal, state and local governments obtaining information on individuals or groups of individuals held by a third party in a system of records without a warrant. Congress should pass this bill immediately. I will also continue to fight for our civil liberties in the courtroom as part of a class action lawsuit filed on behalf of all Americans in protest of this unconstitutional program.

Except for presidential candidates who can help shape the outcome, the debate is largely an opportunity to score points or stay relatively silent, Rosenzweig says.

Even so, New Jersey Gov. Chris Christie is among several White House hopefuls who have not shied away from weighing in. Christie on May 8 told reporters that he favors reauthorizing the entire Patriot Act without changes, as Senate Majority Leader Mitch McConnell, R-Ky., proposes.

“I’m probably the only person in these discussions who actually used it,” Christie said. “And I know how important the Patriot Act is to help to prevent terrorism, to intercede before a terrorist act occurs. And I’m not someone who is going to back off at all from the Patriot Act. It’s important and should be extended as is.”

Rubio, like other advocates, stresses that government officials don’t listen to or read private conversations but look for patterns in “metadata” on time, length of call and location that suggest the existence of communications networks among possible terrorists.

If authorities pursue such leads, this argument goes, they must do so under judicial oversight to uphold Fourth Amendment protections against unreasonable searches or seizures.

Paul and other opponents on the left as well as the right insist that the government can fulfill legitimate security purposes without exposing individual privacy to potential abuse.

Liberals tend to oppose the NSA program, which was exposed in 2013 by agency subcontractor Edward Snowden. Conservatives have differing views, as represented by such scholars as [Gary J. Schmitt](#) (for) at American Enterprise Institute and [Julian Sanchez](#) at Cato Institute (against).

The Daily Signal asked major announced and unannounced candidates for president two questions in the wake of the appeals court decision: Do you agree with the court’s ruling that the NSA “spying” program is illegal? What should the president and Congress do next—and how would that action strike a balance between security and privacy?

“Yes,” retired neurosurgeon Ben Carson emailed through a spokeswoman, he agrees with the ruling. “The court’s decision confirms the mass collection of data is an intrusion of the Fourth

Amendment rights of all Americans. There is no reason to monitor the activities of everyday Americans.”

On what to do next, Carson said:

There are currently ways for our government to monitor the activities of suspicious individuals. You can get a court order very quickly when necessary. The security and privacy of our citizenry is paramount—one of the central [tenets] of our Constitution. But we can protect our national security without invading the rights of law-abiding citizens.

Cruz, who [welcomed](#) the court ruling, pointed to a substitute for the Patriot Act that has his support. Called the [USA Freedom Act](#) and sponsored by Sens. Mike Lee, R-Utah, and Patrick Leahy, D-Vt., it would authorize many of the same anti-terrorism efforts but shut down the NSA data collection program.

“Congress should immediately pass the USA Freedom Act ... to strike the right balance between privacy rights and national security interests,” Cruz said, adding:

The USA Freedom Act ends the NSA’s unfettered data collection program once and for all, while at the same time preserving the government’s ability to obtain information to track down terrorists when it has sufficient justification and support for doing so.

A spokesman for Graham pointed to an [audio clip](#) in which a reporter asked the South Carolina Republican whether he was for a “straight” reauthorization of the Patriot Act, including the surveillance provisions.

Graham replied by saying his “number one goal ... is to make sure we have the tools necessary to prevent another 9/11,” although he is open to “reforms to programs that make them more transparent without helping the enemy.”

“I will not vote for a Patriot Act that is compromised to the point that we can’t have the best defense against another 9/11,” Graham said. Here are other replies from Republican 2016 hopefuls received by a May 12 deadline:

John Bolton: The former ambassador for the United Nations was out of the country, but through an aide referred The Daily Signal to his defense of the NSA program in a [commentary](#) posted on the website of the American Enterprise Institute, where he is a senior fellow. In it, Bolton writes:

The critics can say whatever their imaginations conjure up, but NSA and its defenders are significantly limited in how they can respond. By definition, the programs’ success rests on the secrecy fundamental to all intelligence activities. Frequently, therefore, explaining what is not happening could well reveal information about NSA’s methods and capabilities that terrorists and others, in turn, could use to stymie future detection efforts. This is not the time to cripple our intelligence-gathering capabilities against the rising terrorist threat. Congress should unquestionably reauthorize the NSA programs, but only for three years. That would take us into

a new presidency, hopefully one that inspires more confidence, where a calmer, more sensible debate can take place.

Jeb Bush: A spokeswoman cited the former Florida governor's April 21 remarks on Michael Medved's radio show, in which Bush said continuing the NSA program was the right move by Obama "even though he never defends it." "I would say the best part of the Obama administration would be his continuance of the protections of the homeland using the big metadata programs, the NSA being enhanced. Advancing this—even though he never defends it," Bush said, adding:

Even though he never admits it, there has been a continuation of a very important service, which is the first obligation of our national government, which is to keep us safe. And the technology that now can be applied to make that so, while protecting civil liberties, are there and he's not abandoned them even though there was some indication that he might.

Chris Christie: Aides to the New Jersey governor, who like Bush has not announced for president, referred The Daily Signal to Christie's comments earlier this month. Asked about the NSA program, he said it "should continue," especially "in this really dangerous time." When a reporter asked whether the collection of telephone metadata was a form of government overreach, Christie said:

I don't believe it is. I believe there can be appropriate oversight by Congress and we have people in the Justice Department who can oversee where the law is being followed and where the law is being violated. I'm not one of these folks that believe that we should bring our guard down, especially during this really dangerous time. I think that it can be done in a way that is not only constitutional, but protects national security. I think that the Congress without delay should extend the program.

Mike Huckabee: "[The] good news is that a court agrees with what so many Americans already knew, that this program has gone too far," the former Arkansas governor said in a spokeswoman's email to The Daily Signal. Huckabee, who announced a second run for president May 5, added:

There's no doubt that intelligence gathering is vital to the security of all Americans, but there should be a balance between that protection and our privacy. However, Obama's warrantless NSA spying program is more than just illegal, it's an unconstitutional, criminal assault on our freedoms as Americans. As president, I will repeal this program and protect the privacy and civil liberties of all Americans.

Rick Perry: An aide to the former Texas governor, who is pondering a second run, said in an email that with Patriot Act provisions set to expire at the end of May, Perry "believes that Congress needs to have a vigorous debate on the balance between security and civil liberties." The Perry aide added:

The debate between liberty and security has existed since our country's founding, and as the threats to our nation have evolved it has become even more challenging for our intelligence

community to strike an appropriate balance between the two. As the threat of Islamic terror continues at home and abroad, Gov. Perry believes we should not seek to handicap our intelligence-gathering capabilities, while also ensuring that Americans' freedoms are protected.

Donald Trump: The real estate magnate, who says he is seriously mulling the race, told The Daily Signal that he supports the court ruling. With an eye for "proper oversight," Trump said, Obama and top congressional Republicans "should work together to make a program which the public can support." Trump added:

I support legislation which allows the NSA to hold the bulk metadata. For oversight, I propose that a court, which is available any time on any day, is created to issue individual rulings on when this metadata can be accessed.

Scott Walker: A spokeswoman for the Wisconsin governor said his trip to Israel prevented her providing a timely reply to The Daily Signal's questions. However, in an interview Tuesday with Walker, Bret Baier of Fox News asked whether he would vote to reauthorize the NSA metadata collection program if he were a senator. Walker did not directly answer the question, but said "we have to have access to the information" in a constitutional manner. (His answer begins at the 5-minute mark [here](#).)

As for the Democrats: Sanders, the Vermont independent who so far is the only declared challenger to front-runner Hillary Rodham Clinton for the Democratic nomination for president, did not reply to The Daily Signal's questions.

However, Sanders, who calls himself a "democratic socialist," has a long record of opposing anti-terrorism measures that he believes impinge on individual liberties—including voting against the original Patriot Act passed in the wake of the 9/11 attacks.

In a press release on his Senate website welcoming the court ruling, Sanders said:

Clearly we must do everything we can to protect our country from the serious potential of another terrorist attack, but we can and must do so in a way that also protects the constitutional rights of the American people and maintains our free society. We can do that without living in an Orwellian world where the government and private corporations know every telephone call that we make, every website we visit, everyplace we go.

Clinton, a former senator from New York as well as first lady and secretary of state, also remained silent on The Daily Signal's specific questions, although she tweeted once about the issue.

Also not weighing in were Vice President Joe Biden and two other possible Democratic challengers: Jim Webb, the former senator from Virginia, and Martin O'Malley, the former governor of Maryland.

The Daily Signal did not receive direct responses from Rubio or Carly Fiorina. Also silent were Louisiana Gov. Bobby Jindal, Ohio Gov. John Kasich and Rick Santorum, the former Pennsylvania senator.