



The House just overwhelmingly voted to rein in the NSA

By: Timothy B. Lee
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The House of Representatives just overwhelmingly voted to rein in the National Security Agency. By a vote of 293 to 123, the House approved a proposal by Reps. James Sensenbrenner (R-WI), Thomas Massie (R-KY), Zoe Lofgren (D-CA), and others that would limit "backdoor searches," a method of spying on Americans despite legal safeguards designed to prevent it.

What's a backdoor search?

In 2008, Congress passed the [FISA Amendments Act](#) (FAA), which expanded the government's warrantless surveillance powers.

Ordinarily, the Fourth Amendment requires an individualized warrant before the government can engage in surveillance on American soil. But the FAA created an alternative process where a judge can authorize entire surveillance programs without necessarily knowing which specific people will be surveillance targets. The [PRISM program](#), which the NSA uses to obtain private information from companies such as Google and Facebook, was authorized under this provision of the FAA.

The George W. Bush administration argued that it needed this new power to spy on terrorists whose communications passed through the United States. The FAA included a provision barring the government from using the surveillance facilities to "target" Americans. The problem, civil liberties groups argue, is that "targeting" is defined in a way that doesn't actually protect Americans. There are ways for the NSA to effectively spy on Americans without technically "targeting" them.

One example is what's known as a backdoor search. In this technique, the NSA engages in wide surveillance of communications that involve both Americans and foreigners. So long as the foreigners are the official "target," this is permitted under the FAA. The NSA sometimes stores the information it has collected in a giant database. And the agency has taken the position that it

can search this database for information about Americans without running afoul of the no-targeting-Americans rule.

What does the amendment do?

Congress is considering a bill to fund the military for the 2015 fiscal year, and that includes funding for the National Security Agency. The [amendment](#) offered by Sensenbrenner and his colleagues and Lofgren prohibits the NSA from using any funds provided in the bill to "query a collection of foreign intelligence information" acquired under the FAA "using a United States person identifier.

In other words, it would ban the use of federal funds to conduct backdoor searches. In practice, that would make it illegal for the NSA to engage in backdoor searches during the 2015 fiscal year.

The legislation does allow such searches in cases where another court order has authorized surveillance of the American being targeted.

The legislation also effectively bars the NSA or the Central Intelligence Agency from forcing device manufacturers to install technical "backdoors" in their products.

Is that a big deal?

By itself, the amendment falls short of the kind of sweeping NSA reforms some civil liberties groups support. But the vote represents the first time a house of Congress has voted to curtail the controversial practices revealed by Ed Snowden last year. It will give NSA critics renewed political momentum and may force President Obama to make further concessions to critics of the NSA.

In August, Rep. Justin Amash (R-MI) offered an amendment to *last year's* defense funding bill that would have shut down a different NSA program: the collection of Americans' phone records. That vote failed in a razor-thin 205 to 217 vote. The surprising closeness of the vote was [widely interpreted](#) as a sign of congressional anger over the NSA's actions.

Julian Sanchez, a senior fellow at the Cato Institute, argues that the vote is a rebuke to the House Permanent Select Intelligence Committee. That body is supposed to serve as a watchdog over NSA surveillance, but in recent years it has more often acted as a defender of NSA policies. The vote, Sanchez says, "demonstrates pretty dramatically that the gatekeepers in the Intelligence Committee are out of synch with the sentiment of the broader House."

Sanchez also notes that similar language was stripped from the USA FREEDOM Act, legislation intended to rein in the NSA that wound up being substantially weakened during the legislative process.

Who supported the amendment?

The vote for the amendment was bipartisan. Democrats supported it 158 to 29, while Republicans supported it 135 to 94.

The amendment was supported by Democratic leader Rep. Nancy Pelosi (D-CA), but opposed by Rep. Eric Cantor (R-VA), the House Majority Leader. Speaker John Boehner (R-OH) generally does not vote.

What happens now?

There are still a number of steps that must occur before the amendment could become law. The amended bill needs to be approved by the House, companion legislation needs to be approved by the Senate, and President Obama would need to sign the legislation. The Senate could refuse to approve the amendment, or President Obama could veto legislation that included it.

But the vote is significant less because of the details of the amendment but as a barometer of Congressional dissatisfaction with the NSA. The surprisingly strong vote will energize NSA critics and could force the agency to trim its sails.

Correction: This story originally described an [amendment](#) offered by Reps. Massie and Lofgren. However, the version actually passed by the House was a [slightly different amendment](#) with several additional sponsors. I've updated the story to reflect the modified version of the amendment.