



## Rand Paul is getting way too much credit for killing 3 Patriot Act powers

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June 1, 2015

When three controversial provisions of the Patriot Act expired at midnight on Sunday, May 31, 2015, news organizations put Rand Paul (R-KY) front and center. We at Vox did that ourselves, with a [story](#) titled "Rand Paul has forced three Patriot Act powers to expire."

This isn't wrong — it's true that Paul's obstructionist tactics helped ensure that the Patriot Act powers would lapse before the Senate had time to pass a replacement. And Paul's dramatic 10-hour speech two weeks ago made for a good story, which is why it got so much media attention. But the media's focus on Paul has led to the Kentucky Republican getting way too much credit for the ultimate outcome of this week's surveillance fight.

The fight is likely to result in the passage of the [USA Freedom Act](#) — which seeks to place stricter limits on NSA surveillance but which some privacy advocates say doesn't go far enough — later this week. Paul has opposed this legislation. And if Paul hadn't engaged in his theatrics, the most likely outcome would have been exactly the same. The only difference is that the USA Freedom Act might have passed a few days earlier.

If the USA Freedom Act passes in the Senate, credit (or blame) should go to the 57 senators — [mostly Democrats](#) — who supported the legislation a week ago, and to the 54 senators — again [mostly Democrats](#) — who voted down a straight renewal of the Patriot Act during the same Friday-night session. Rand Paul's filibuster was wildly successful at getting Rand Paul's name in headlines. But it ultimately had little effect on the outcome of the legislative fight.

The Republican leadership of the House also deserves a lot of credit for reining in the NSA. If the lower House had not passed the USA Freedom Act several weeks ago, Mitch McConnell might have convinced a majority of the Senate that renewing the Patriot Act was the only realistic option.

## **The Patriot Act powers died because 54 senators wanted them to die**

The crucial moment in the Patriot Act fight wasn't Rand Paul's filibuster on Wednesday, May 20. It was a series of votes taken two days later, on Friday, May 22. Senate Majority Leader Mitch McConnell (R-KY) wanted to force the Senate to renew the Patriot Act without changes. His plan was to bring the USA Freedom Act up for a vote, let it fail, and then tell senators their only alternative was a short-term renewal of the Patriot Act with no changes.

The first part of this plan worked. The USA Freedom Act got 57 votes, just short of the 60 votes required to overcome a filibuster. But when McConnell then called a vote on extending the Patriot Act for two months, the senators didn't flinch — 54 of them voted no.

At this point the question was who would blink first. Would pro-privacy senators agree to extend the Patriot Act without changes? Or would pro-surveillance senators agree to support the USA Freedom Act? On Sunday night, it was McConnell himself who blinked, concluding that the USA Freedom Act he had opposed a week earlier was now "the only realistic way forward." This time 77 senators voted for the USA Freedom Act.

"The Senate will pass a reform that just got 77 votes," says Julian Sanchez a privacy advocate at the Cato Institute (where I worked from 2003 to 2005). He notes that Paul joined "16 of the most hardcore NSA cheerleaders in the Senate" in opposing the legislation.

McConnell's capitulation was a real victory for pro-privacy senators. But Paul deserves little, if any, credit for it. After all, if Paul had backed the USA Freedom Act and convinced two of his fellow Republicans to join him, the legislation could have moved forward sooner. Paul's decision to break with the overwhelming majority of pro-privacy senators and oppose the USA Freedom Act delayed the legislation's passage and created a risk that McConnell would be able to stampede the Senate into renewing the Patriot Act.

Even if Paul's defiant tactics didn't change the outcome of the debate, Sanchez says they helped illustrate that "scaremongering" by surveillance hawks no longer works. "Americans aren't afraid of the dark anymore," he says. "A sunset can't be used to coerce legislators into capitulation with unchecked surveillance powers."

## **Other members of Congress deserve more credit than Rand Paul**

Rand Paul's tactics have gotten him a lot of press attention — and, therefore, a lot of undeserved credit — for the outcome of the legislative fight. But a larger share of the credit should go to other senators. Sanchez points to Senators Ron Wyden (D-OR), Patrick Leahy (D-VT), and Mike Lee (R-UT) as three examples of senators who did the hard work of building a consensus for the USA Freedom Act in the Senate.

And even more credit should go to House leaders such as Rep. James Sensenbrenner (R-WI) who passed the USA Freedom Act in a lopsided, bipartisan vote several weeks ago. The fact that the House had already passed the USA Freedom Act made it a lot easier for pro-privacy senators to position it as a reasonable alternative to renewing the Patriot Act.

"It is valuable that Paul is using his platform as a presidential candidate to drive attention to this issue," Sanchez says. But "Paul hasn't ultimately done much to drive the substantive policy outcome."