



## **Officials warn against letting surveillance powers expire as FISA bill stalls in Senate**

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Three surveillance powers that U.S. officials say are vital to national security may expire Sunday night after Senate Republicans backed off plans to vote on a reauthorization bill under an apparent veto threat from President Donald Trump.

Despite vocal support for the USA Freedom Reauthorization Act from the Justice Department, Trump tweeted Thursday that some Republican senators were urging him to veto the bill “until we find out what led to, and happened with, the illegal attempted ‘coup’ of the duly elected President of the United States,” presumably a reference to the FBI’s investigation of his 2016 presidential campaign’s ties to Russian interference efforts.

Many Republican Senators want me to Veto the FISA Bill until we find out what led to, and happened with, the illegal attempted “coup” of the duly elected President of the United States, and others!

DOJ Inspector General Michael Horowitz concluded that investigation was legally justified, though special counsel Robert Mueller ultimately did not establish any conspiracy between the campaign and Russia. However, Horowitz’s investigators identified numerous problems with the FBI’s applications to surveil former Trump campaign adviser Carter Page under the Foreign Intelligence Surveillance Act.

The law enforcement powers set to expire Sunday have nothing to do with the authorities used to monitor Page, but the legislation has become a vehicle for moderate reforms to the FISA process. Civil libertarians and the president’s allies say those changes do not go far enough, but Trump’s top law enforcement official disagrees.

"It is of the utmost important that the Department's attorneys and investigators always work in a manner consistent with the highest professional standards, and this overall package will help

ensure the integrity of the FISA process and protect against future abuses going forward," Attorney General William Barr said Wednesday, urging Congress to pass the bill.

The House passed the USA Freedom Reauthorization Act on a bipartisan basis Wednesday, but the Senate adjourned for the weekend Thursday without taking action. Sens. Mike Lee (R-Utah), Ron Paul (R-Ky.), and Ron Wyden (D-Ore.) objected to passing the legislation in its current form, but Republican leadership rejected a 45-day extension of current authority while lawmakers debate it.

"I hope none of our colleagues choose to force these important national security tools to temporarily lapse for the sake of making a political point which will not change the result," Senate Majority Leader Mitch McConnell said Thursday.

The expiring provisions allow the FBI to collect business records of subjects of national security investigations, continue surveillance after a subject changes devices, and monitor subjects who have not been linked to international terrorist organizations. Brian O'Hare, president of the FBI Agents Association, said Thursday those powers are "essential" to protect the nation.

"This is not a partisan or political issue, it is a matter of safety and national security. Allowing the roving wiretaps, business records and lone wolves provisions to lapse, even for a short period of time, is reckless and unnecessary," O'Hare said in a statement.

Some experts dispute that assertion, arguing a temporary expiration would have no impact on surveillance already approved and investigators can use other methods to get new warrants if necessary.

"The operational impact of three authorities (one of which has literally never been used) 'expiring' on paper for a few weeks is nil. [Senate Intelligence Committee Chairman] Richard Burr talking about 'going dark' is utter nonsense," said Julian Sanchez, a senior fellow at the libertarian Cato Institute, on Twitter.

In addition to reauthorizing those powers, the legislation includes several measures aimed at discouraging the kind of abuses seen in the Carter Page case. The inspector general found FBI agents provided the court with incomplete information about evidence against Page, withheld exculpatory evidence, and, in at least one instance, apparently altered a document to strengthen their application.

The FBI has acknowledged mishandling the Page warrants, recognizing that two of the four applications agents submitted lacked proper probable cause. The agency has instituted several changes to the process and implemented new training and oversight policies, but the bill passed by the House goes further.

It would require that officers responsible for a FISA application certify that the Justice Department has been provided with any information that undercuts the evidence against a subject and impose criminal penalties for making false statements to the Foreign Intelligence Surveillance Court. It would also require the attorney general to personally sign off on any investigation of an elected official or candidate.

The FISA reauthorization debate has created some unusual alliances on Capitol Hill. The House legislation was negotiated by Speaker Nancy Pelosi, D-Calif., and Minority Leader Kevin McCarthy, R-Calif., and supported by Democrats who recently led the impeachment charge against President Trump and some Republicans who served as his most aggressive defenders.

Members of both parties acknowledged the reforms proposed did not go as far as they would have liked in shoring up civil liberties protections. Some saw them as a good start, while others argued the legislation was wholly insufficient to prevent future abuses.

“This sham bill represents the latest lazy authorization of completely unchecked bureaucratic power,” Carter Page complained in a text message to a Fox News reporter earlier this week, calling the effort to address the misconduct in his case “a historic failure of epic proportions.”

Adam Schiff “strongly” supports the fake FISA reforms. @realDonaldTrump- do you need any more evidence they are selling you a bill of goods? Real reform or VETO.

However, William Banks, founding director of the Syracuse University Institute for Security Policy, said the changes to the FISA process in the bill would increase accountability for abuses of the system and require the FBI to disclose more information to the court.

“They’re the kind of thing most of us have wanted to see since these issues came to light,” he said.

Banks expects the House bill will be passed by the Senate soon after it resumes work next week. With lawmakers focused on responding to the coronavirus pandemic and partisanship raging in Washington, he commended House leaders for finding common ground on a relatively contentious subject.

“Given the political climate and everything else going on right now, it’s nothing short of amazing they were able to get this far with a fairly decent and substantive FISA bill,” he said.

Some Senate Republicans remain unimpressed, though, promising to delay passage of the bill even if they do not have the votes to stop it entirely.

"We're not a rubber stamp for the House of Representatives," Sen. Lee said on the Senate floor Thursday. "We're certainly not a rubber stamp for the Deep State."

What happens next is ultimately up to President Trump. Banks said he hopes Trump's veto tweet was "an empty threat" and the president will sign the bill once it passes the Senate. After the coronavirus crisis has passed, Congress and the DOJ can go back and work on additional reforms if necessary.

"If the president signs it, when the world returns to some semblance of normal, you can pay some attention to clean up," he said.