



## Senate to consider renewal of surveillance laws

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The Senate is expected to vote on whether to extend three surveillance authorities as senators of both parties express concerns that the laws infringe on Americans' rights.

The surveillance provisions expired in March, the month lawmakers fled Washington because of the coronavirus pandemic. House lawmakers passed a bipartisan compromise bill just before leaving town, but Senate Majority Leader Mitch McConnell has not yet been able to push the legislation through the Senate. And it's unclear if he will be able to do so as he tries again on Thursday.

The House legislation also has the backing of President Donald Trump, Attorney General William Barr and House Speaker Nancy Pelosi, D-Calif. The compromise would renew the three surveillance authorities and impose new restrictions to try and appease civil liberties advocates in both parties.

But the House legislation does not make enough changes for a bipartisan coalition of senators who have long sought to curb federal law enforcement's ability to surveil. Two amendment votes on Wednesday won solid majorities of senators and complicated McConnell's efforts to send the bill to the president's desk for signature.

The expired provisions of the Foreign Intelligence Surveillance Act allow the FBI to get a court order for business records in national security investigations, to conduct surveillance on a subject without establishing that they're acting on behalf of an international terrorism organization, and to more easily continue eavesdropping on a subject who has switched cell phone providers to thwart detection.

Lacking enough support to pass the House measure, McConnell instead pushed through a simple extension of the surveillance laws in March. But Pelosi never took up that legislation in the House, and McConnell is trying again to pass the compromise House bill this week.

"The attorney general and members of Congress have worked together to craft a compromise solution that will implement needed reforms while preserving the core national security tools," McConnell said on the Senate floor Wednesday. "These intense discussions have produced a strong bill that balances the need for accountability with our solemn obligation to protect our citizens and defend our homeland."

McConnell urged senators to vote against three amendments to the bill, two of which came up for votes on Wednesday. He said the legislation was already a “delicate balance” and warned changing it could mean the underlying provisions won’t be renewed.

“We cannot let the perfect become the enemy of the good when key authorities are currently sitting expired and unusable,” McConnell said on the Senate floor before the vote.

Still, 59 senators voted for the first amendment — one short of the 60 votes needed — and the second amendment was adopted with 77 votes, more than three-fourths of the chamber. Both were overwhelmingly bipartisan votes.

The first amendment, by Democratic Sen. Ron Wyden of Oregon and Republican Sen. Steve Daines of Montana, would have prevented federal law enforcement from obtaining internet browsing information or search history without seeking a warrant.

“Should law-abiding Americans have to worry about their government looking over their shoulders from the moment they wake up in the morning and turn on their computers to when they go to bed at night?” Wyden asked. “I believe the answer is no. But that’s exactly what the government has the power to do without our amendment.”

An aide to Sen. Patty Murray, D-Wash., said after the vote that she would have supported the amendment if she had been present — meaning it would have passed. Murray was in her home state and is expected to be in the Senate for Thursday’s vote.

Julian Sanchez, a senior fellow at the Cato Institute, a think tank, said it was striking that the amendment failed by only one vote. He said the vote total would have been “inconceivable” five years ago.

“It suggests a sea change in attitudes” following revelations in problems with how the FBI has used its secret surveillance powers, Sanchez said. “It goes to the sort of collapse in trust in the intelligence community to deploy these authorities in a restrained way.”

The second amendment, by Republican Sen. Mike Lee of Utah and Democratic Sen. Patrick Leahy of Vermont, would boost third-party oversight to protect individuals in some surveillance cases. It was adopted 77-19.

If the Senate passes the legislation with the amendments intact, the bill would then have to go back to the House for approval.

A third amendment, by Sen. Rand Paul, R-Ky., a longtime skeptic of surveillance programs, is expected to be considered Thursday before a final vote. Paul’s amendment would require the government to go to a traditional federal court, instead of the secretive Foreign Intelligence Surveillance Court, to get a warrant to eavesdrop on an American.

The congressional debate coincides with internal efforts by the FBI and Justice Department to overhaul its surveillance procedures after a harshly critical inspector general report documented a series of problems in the FBI’s investigation into ties between Russia and the 2016 Trump campaign.

The report identified significant errors and omissions in applications that were submitted in 2016 and 2017 to monitor the communications of former Trump campaign adviser Carter Page.

The Justice Department inspector general has since said that it has identified additional problems in applications. The FBI has announced steps designed to ensure that the application process is more accurate and thorough, and that information that cuts against the premise of the requested surveillance is disclosed to the court.

Trump has frequently railed against the surveillance laws and the Russia investigation. But with encouragement from Barr and congressional Republicans, he said he will support the House-passed legislation.