



Today in Liberty: Intel agencies conducted warrantless searches for Americans' communications, Halbig case could gut Obamacare

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"I think that you can't start to pick apart anything out of the Bill of Rights without thinking that it's all going to become undone. If you take one out or change one law, then why wouldn't they take all your rights away from you?" — Bruce Willis

— **Intelligence agencies conducted thousands of backdoor searches:** Using the powers provided by Section 702 of the Foreign Intelligence Surveillance Act (FISA), intelligence agencies conducted thousands of backdoor, warrantless searches for Americans' communications, according to a letter from the Office of the Director of National Intelligence (DNI) to Sen. Ron Wyden (D-OR). "The queries in question are lawful, limited in scope, and subject to oversight as approved by the Foreign Intelligence Surveillance Court (FISC)," DNI Legislative Affairs Director Deirdre Walsh told Wyden in the letter (PDF). "Contrary to some claims, there is no loophole in the law, nor is the Intelligence Community conducting unlawful or 'backdoor searches' of the communications of U.S. persons." Section 702 allows intelligence agencies to target communications of foreign individuals, but not American citizens. "I and other reformers in Congress have argued that intelligence agencies should absolutely be permitted to search for communications pertaining to counterterrorism and other foreign threats, but if intelligence officials are deliberately searching for and reading the communications of specific Americans, the Constitution requires a warrant," Wyden said in response to the latest revelation. "The bipartisan, bicameral legislation that I and other reformers have supported would permit the government to conduct these searches pursuant to a probable cause warrant or emergency authorization, and it would include an exception for searches for individuals who are believed to be in danger." There were some 11,400 "U.S. person queries" using Section 702 powers between the NSA and the CIA. The FBI, however, didn't know how many queries it made under Section 702.

— **Dick Cheney is trying to make up with the GOP establishment:** It looks like his daughter's now-abandoned primary challenge to Sen. Mike Enzi (R-WY) hurt Dick Cheney's standing with the Republican establishment, and the former vice president is now working to repair relationships. "Top GOP operatives and former Reagan and Bush officials were invited to a friendly, off-the-record dinner with the former vice president recently at the Hay-Adams Hotel in Washington that several attendees said was billed as

a ‘fence-mending’ affair. The guest list included Republicans who backed incumbent Sen. Mike Enzi against Liz Cheney last year. The former vice president warmly greeted guests and talked about his latest political activities but steered clear of last year’s acrimonious primary, several people said,” *Politico* reports. “Dick and Liz Cheney have also reached out to some of Enzi’s key supporters, though not the senator himself. Ohio Sen. Rob Portman, vice chairman of the party’s Senate campaign arm, said he’s spoken to Liz Cheney a ‘number’ of times since she abandoned her bid in January, and told her she has “a lot to offer the party.” And Dick Cheney has ‘offered to be helpful’ in Senate races that could tip the majority this fall, the senator said.” Liz Cheney’s campaign didn’t receive a warm welcome from Wyoming Republicans, trailing Enzi by as much as 52 points. Republicans would do well to decline the former vice president’s offer to campaign in competitive states this fall. He may still be popular with the Old Guard, but most voters don’t reflect fondly on the Bush-era.

— **So, Elizabeth Warren is campaigning Dems in two red states:** She stumped for Alison Lundergan Grimes in Kentucky over the weekend and will swing through West Virginia to campaign for Natalie Tennant in July. “Candidates from West Virginia and Kentucky, states where a visit by President Obama could doom Democrats’ prospects, are calling after Warren. Sure, she is an unabashed supporter of Obama and Democratic leaders in Congress,” Real Clear Politics explains. “But it’s Warren’s brand of economic populism that candidates are after. Her Wall Street vs. Main Street message resonates particularly well with working-class voters in these states, and anywhere per capita income is lower than the national average, Democrats say.” That “populist” message may resonate with some, but there are some things about Warren that aren’t going to play well in these two traditionally red states, particularly her contempt for religious liberty, which was on display yesterday when she tweeted this about the *Hobby Lobby* decision: “Can’t believe we live in a world where we’d even consider letting big corps deny women access to basic care based on vague moral objections.” So, religious beliefs are “vague moral objections.” Yeah, that’s going to play well in Kentucky and West Virginia.

— **Rand Paul on the *Hobby Lobby* decision:** Sen. Rand Paul (R-KY) was among the first politicians to send out a statement (well, the first one we received, at least) on the decision in the *Hobby Lobby* case. “[T]he Supreme Court ruled in favor of religious freedom by taking a stand with Hobby Lobby. Religious liberty will remain intact and all Americans can stay true to their faith without fear of big government intervention or punishment,” Paul said in a press release. “Our nation was founded on the principle of freedom, and with this decision, America will continue to serve as a safe haven for those looking to exercise religious liberty.”

— **Senate Dems already eyeing a legislation to address *Hobby Lobby*:** The annoying “war on women” meme from the 2012 presidential election may be making comeback. Senate Democrats are looking to address the Supreme Court’s decision on Obamacare’s contraceptive mandate through legislation. “If the Supreme Court will not protect women’s access to health care, then Democrats will,” Senate Majority Leader Harry Reid (D-NV) said, according to *Roll Call*. “We will continue to fight to preserve women’s access to contraceptive coverage and keep bosses out of the examination

room.” The White House has indicated that the administration wouldn’t address the issue through regulation, preferring that Congress act. That puts Republicans in a potentially uncomfortable spot, especially due to the misleading information being peddled about the decision, in an election year.

— **Hobby Lobby, old and busted — Halbig, the new hotness:** With the *Hobby Lobby* case out of the way, it’s worth pointing out that there is another case working its way through the federal courts that poses an even bigger threat to Obamacare. At issue in *Halbig v. Burwell* (formerly *Halbig v. Sebelius*) is whether the Obama administration can legally provide tax subsidies to residents of states that haven’t established exchanges. This is a scenario that lawmakers didn’t anticipate when Obamacare passed in March 2010. They didn’t expect state resistance to the law, and didn’t foresee the creation of a federal exchange. “The D.C. Circuit Court is expected to rule any day now on the *Halbig* case, and supporters of the Affordable Care Act are growing nervous. In January, an Obamacare advocate described the Halbig case to a reporter for the Hill as ‘probably the most significant existential threat to the Affordable Care Act. All the other lawsuits that have been filed really don’t go to the heart of the ACA, and this one would have.’ And in a fraught oral argument before the D.C. Circuit Court, the administration seemed to struggle to defend its interpretation,” Jonathan Turley, a law professor at Georgetown University, explains at the *Los Angeles Times*. “If the ruling goes against the White House, it’s hard to overstate the impact. Without subsidies, consumers in 34 states would face huge additional costs and, because of those costs, potential exemptions from the law. And voters — a substantial percentage of whom have never liked Obamacare — would be further alienated from the Democratic Party just in time for midterm elections.” Turley notes that a ruling against the administration “could allow a mass exodus from” Obamacare and “lead to another showdown in the Supreme Court.”

— **Jobs lost because of Obama’s war on coal are “collateral damage”:** Well, that’s how environmentalists view it, anyway. “The offensive comments were issued by William S. Becker, the head of the Climate Action Project, a well-funded environmental group,” Stephen Moore notes via The Daily Signal. “In his piece in the Huffington Post praising the new Environmental Protection Agency regulations to stop climate change, he lamented that ‘there is nothing explicit in the [Obama] plan to mitigate or adapt to the economic disruption the clean energy transition will cause for coal and oil-country families.’” In the interest of context, here’s what Becker wrote: “There is nothing explicit in the plan to mitigate or adapt to the economic disruption the clean energy transition will cause for coal- and oil-country families. We know that economic disruptions are part of progress. They are the collateral damage of every evolutionary step in technology or the economy. Everyone from the makers of typewriters to dial telephones has gone through it.” Yeah, except that those “evolutionary steps” weren’t forced by regulatory fiat, but rather the free market at work.

— **Cato Institute did well at the Supreme Court this term:** Ilya Shapiro, senior fellow in Constitutional Studies at the Cato Institute, notes that the libertarian think tank lost only one case in which it filed a brief. The Cato Institute was on the winning

side in ten cases, including *Burwell v. Hobby Lobby Stores*, *Riley v. California*, and *NLRB v. Noel Canning*. Per Shapiro, *Kaley v. United States*, which dealt with asset forfeiture before a trial, was the only case in which Cato was on the losing side. You can check out the Cato Institute's legal filings [here](#).

— **And Obama had didn't do so well at SCOTUS:** Though he did get some wins, President Obama experienced a number of setbacks at the Supreme Court in recent months. “[I]n the past month alone, the White House has suffered a series of embarrassing losses at the Supreme Court, where it failed to prevail on issues ranging from the scope of the Fourth Amendment to the limits of executive power,” Damon Root notes at *Reason*. “To make matters worse, the president lost all but one of those cases by a vote of 9-0.” Ilya Shapiro notes that the White House went 11-9 at the Supreme Court this term in cases on which it took a position.

— **Oh, Kim Jong-un, you have no sense of humor:** The North Korean dictator is losing his shit over *The Interview*, a film starring James Franco and Seth Rogen. The movie is about two journalists who score an interview with Kim Jong-un and are ordered by the CIA to assassinate him. North Korea has threatened to go to war with the United States if the movie is released. But this isn't the first time that Hollywood has poked fun at North Korea, Doug Bandow explains while mocking the brutal dictator. Naturally, we're more interested in the mocking. “To be both a boy-god and the sexiest man alive would be an incredible burden for anyone. But especially for someone so committed to his people's welfare that he feels the need to eat all the time, lest any of his starving subjects be insulted by him rejecting their offer of hospitality,” Bandow writes. “While world peace hangs in the balance, the Hollywood parasites are leading the attack on the true tribune of all the peoples of the world. The mocking must stop, as the boy-god prepares to lead the human race to an even greater future.”

Other items we're reading this morning:

- Hobby Lobby Sparks Twitter Outrage on the Left (*National Review*)
- Liberty at the High Court: Not Just (A) Hobby (*Cato at Liberty*)
- Seven reasons birth control pills shouldn't require a prescription (*Vox*)
- Court gave NSA broad leeway in surveillance, documents show (*Washington Post*)
- Immigration Bill Officially Dead: Boehner Tells Obama No Vote This Year (*Roll Call*)
- Rand Paul hires former Iowa GOP head Steve Grubbs (*Politico*)
- Google May Soon Ban Ads for Toy Guns for Being Too Dangerous (*Reason*)
- Newspaper Apologizes for 2008 Obama Endorsement (*Free Beacon*)
- Poll: Confidence in government plummets (*Politico*)
- Obama likes secrets -- including yours (*Washington Examiner*)
- A Win, But a Major Missed Opportunity: *NLRB v. Canning* (*Cato at Liberty*)
- The 2014 Running Of The Interns (*BuzzFeed*)

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