



Congress Enacted the NSA Laws, but Will They Change Them Now?

Congress voted for The Patriot Act and the FISA Amendments Act, now some members want a more open debat

By: Lauren Fox – June 10, 2013

In the years since the terrorist attacks in New York City, Washington and Shanksville, Pa., Congress enacted a myriad of laws aimed at keeping America safe. Now that it's clear the government believed these laws included the authority to collect millions of American phone records and scoop up Internet data of foreign nationals, it may be up to Congress to fix what many perceive to be aggressive, intrusive and perhaps even unconstitutional dragnet searches.

The National Security Agency has cited the Patriot Act, a law that gave them the power to collect phone records and the FISA Amendments Act, a bill that gave them the ability to intercept electronic communications of foreigners, as a legal basis for its actions. And NSA Director James Clapper has said Congress is fully aware of the agency's programs.

But the author of the landmark legislation told U.S. News he thinks the NSA actions went too far.

"I was shocked," says Rep. F. James Sensenbrenner, R-Wis. "The FBI has filed petitions with the FISA court that go far far beyond what we intended with the law."

Sensenbrenner says he was even more surprised that the same senator who had given such fiery speeches on the Senate floor in opposition to the Patriot Act, referring to then-Sen. Barack Obama, D-Ill., who was a vocal critic of the Bush administration's terrorism fighting methods, was giving directives from the White House as president to allow such blanket data collection.

Congress reauthorized the Patriot Act in 2011 and the FISA Amendments Act in December of 2012, without limiting the laws even as a decade had passed since 9/11, the terrorism attack that sparked the laws in the first place.

"Congress is responsible," says Jim Harper, the director of information policy studies at the Cato Institute. "It passed the Patriot Act and Congress reauthorized FISA in December in a rush. Rather than scheduling a serious debate in the summer and the fall, [congressional leaders] put together a kangaroo debate between Christmas and New Years."

Now, Congress is at a crossroads. While many leaders in the intelligence community including Intelligence Committee heads Sen. Dianne Feinstein, D-Calif., and Rep. Mike Rogers, R-Mich., have come out in support of the NSA's practices, adding they supported them, others are increasingly calling for action.

Sunday Sen. Mark Udall, D-Colo., told CNN he would urge his colleagues in Congress to "reopen" the Patriot Act now that Americans were more fully aware of how much the government was accessing their personal communication.

"I'm calling for a wholesome debate across the country," Udall said. "Maybe Americans think this is OK, but I think the line has been drawn too far toward 'We're going to invade your privacy,' versus 'We're going to respect your privacy.'"

A Rasmussen poll over the weekend showed the majority of Americans weren't so keen on the government sweeping up their phone records. Nearly 60 percent surveyed said they were opposed.

Udall along with fellow Democratic Sens. Ron Wyden and Jeff Merkley, both of Oregon, have been warning that the FISA court, the entity that provides as a checkpoint for NSA, has been broadly interpreting the Patriot Act and FISA laws all along, but have been unable to voice their concerns on the Senate floor because of the classified nature of the information.

Sen. Rand Paul, R-Ky., also says he will take action to limit NSA's ability to collect American citizens' communications.

Paul announced he may file a lawsuit against the government for violating the Fourth Amendment, which protects Americans against unreasonable searches.

The most straightforward approach might be to repeal pieces of the Patriot Act or the FISA Amendments Act, but with such strong defenses of the legislation in Congress coming from Feinstein and Rogers, that also appears to be the most difficult course to chart.

Amie Stepanovich, director of the domestic surveillance project at the Electronic Privacy Information Center, says short of repealing the laws entirely, her group is urging Congress to conduct oversight hearings and order an unclassified inspector general's report on NSA practices and the secret FISA court's interpretation of the law.

"Congress may have granted authority to the executive branch, but the way the laws have been interpreted is unprecedented, and it was not anticipated," Stepanovich says.

Stepanovich adds, however, that how much Congress does will be a direct reflection of the public's outcry.

"Before this, it has been very difficult for the public or any other oversight entity to comment meaningfully because these programs were classified and kept secret," Stepanovich says. "Hopefully now the tide will change on that."

Harper says voters, especially progressive Democrats, will have to show their frustration at the polls to force Congress's hand.

"You have a common feeling that collecting all American's phone numbers isn't relevant. Grandma isn't relevant to any terrorism investigation," Harper says. "The Republican Party is challenged and required to do better by its tea party wing. Progressives need to be ready to tea party their Democrats."