



Surveillance reform déjà vu

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Congressional surveillance reform advocates are attempting to use the annual National Defense Authorization Act (NDAA) to rein in post-9/11 warrantless mass surveillance programs. If the recent past is any guide, the House GOP leadership will do everything it can to ensure their amendments never get a vote on the House floor.

This year's bipartisan House surveillance reform effort is led by Reps. Justin Amash (R-Mich.), Zoe Lofgren (D-Calif.), Ted Lieu (D-Calif.), and Suzan DelBene (D-Wash.). The quartet of lawmakers are offering three amendments to the NDAA (#343, #344, #345) that would not only prohibit warrantless searches of Americans' data under the soon-to-expire FISA Amendments Act (FAA) Sec. 702, but bar the government from mandating that software manufacturers build-in defective encryption into their products to facilitate NSA or FBI snooping.

Amash and Lofgren have been partners in this effort since July 2013, when an Amash-sponsored surveillance reform amendment designed to shut down the illegal telephone metadata collection program exposed by NSA contractor-turned-whistleblower Edward Snowden lost by a handful of votes.

The next year, Amash joined Lofgren, then-Rep. Rush Holt (D-N.J.), and Rep. Thomas Massie (R-Ky.) in offering an amendment to the FY 2015 DoD spending bill to prevent "back door" warrantless searches of American's emails, text messages, and other digital content collected pursuant to the FISA Amendments Act. The amendment's sponsors organized their effort well in advance of the vote, taking the House GOP leadership by surprise and achieving an overwhelming, veto-override level of support on passage, 293-123. (Note: the author worked for Rep. Holt at the time and was directly involved in the legislative drafting and whip operation in support of the amendment). But the victory was short-lived. The House leadership stripped out the amendment during negotiations with the Senate over the NDAA conference report. The cycle repeated itself in 2015, with Massie, Amash, and Lofgren winning again on the House floor, only to have the amendment removed in conference with the Senate.

And then came the Pulse nightclub shooting in Orlando.

The vote on the 2016 version of the Massie-Lofgren amendment came just days after the ISIS-inspired massacre, leading to a 198-222 loss on the House floor after a scurrilous and inaccurate letter authored by House Intelligence Committee Chairman Devin Nunes (R-Calif.) suggested that members who supported the amendment would be denying American intelligence and law enforcement agencies access to vital counterterrorism information.

And earlier this year, the House leadership completely forestalled any attempt to use the Pentagon spending bill as a vehicle for surveillance reform by disallowing any amendments to the bill.

The new wildcard in the surveillance reform debate is the ongoing “Russiagate” scandal and its multiple investigations.

Nunes himself admitted in May 2017 that the revelations about the “unmasking” of the identities of American officials and citizens whose communications had been collected by NSA had put Sec. 702 reauthorization in jeopardy.

"Right now, there's not the votes for it. I don't know where you would find 218 votes today to reauthorize 702," Nunes said to the *Washington Examiner*.

Rep. Nunes’s own role in the “Russiagate” saga has certainly badly damaged his credibility on surveillance issues with his GOP colleagues, but the reality is that House Speaker Paul Ryan (R-Wis.) and Majority Leader Kevin McCarthy (R-Calif.) remain unwavering supporters of NSA surveillance programs, including FAA Sec. 702. House Intelligence Committee ranking member Adam Schiff (D-Calif.) has voted repeatedly in favor of the FAA and its renewal, as has House Judiciary Committee Chairman Bob Goodlatte (R-Va.). And Speaker Ryan controls the House Rules Committee through his friend and chairman Pete Sessions (R-Texas), also a long-standing FAA Sec. 702 supporter. Finally, the Trump administration has made it clear it wants the controversial law reauthorized unchanged.

Late on the afternoon of July 12, the House Rules Committee will meet to determine which amendments to the FY18 NDAA will be made in order. Amash, Lofgren, Lieu and DelBene deserve great credit for making the effort, but if the past year’s events are any indication, their attempt to restore the privacy and civil liberties of Americans against warrantless searches will likely be sabotaged by a GOP leadership that does not share their reverence of the Constitution. That’s the bad news. The good news is that because the FAA expires on Dec. 31, they’ll almost certainly get another chance.

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