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## House Committee Considers PATRIOT Reform (UPDATED)

Deeplink by [Kevin Bankston](#)

The House Judiciary Committee has recessed its meeting to "mark-up" Chairman Conyers' PATRIOT renewal and reform bill, the USA Patriot Amendments Act of 2009 ([HR 3845](#)), so that the committee members can attend a vote on the House floor. We don't know when they'll be back — we'll try to tweet via [@EFF](#) if and when they do return — but in the meantime, here are the major developments that you missed if you weren't watching the [live webcast](#). Julian Sanchez of the Cato Institute also has a great blow-by-blow with characteristic snark via [@Normative](#).

The mark-up got off to a somewhat worrisome start when Chairman Conyers introduced a "manager's amendment" making numerous changes to the bill to address concerns raised by the Obama Administration about some of the bill's reforms. We have [a copy of the amendment](#) and [a description of the changes it makes to the bill](#). Based on a *very* quick review, most of the changes seem relatively minor, but they are definitely not an improvement from a civil liberties perspective. So, [once again](#), the Obama Administration is quietly working to stop reforms to the PATRIOT Act even though Senator Obama was one of the PATRIOT Act's staunchest critics.

On a brighter note, the first and only vote of the morning went very well. That vote was on an amendment offered by Representative Gallegly (R-CA) to eliminate the bill's special protections for library and bookseller records. The original Conyers bill would have flatly prohibited the government from using PATRIOT [Section 215](#) orders to obtain library and bookseller records. Unfortunately, at the behest of the Administration, Conyers' manager's amendment weakened that provision to allow Section 215 orders for such records, but only where the government can show specific and articulable facts linking the records suspected terrorists or spies. Gallegly's amendment would have removed even that protection, allowing the government to use PATRIOT Section 215 to obtain the library and book records of Americans without any link to terrorism or foreign intelligence. After spirited debate, the amendment from Gallegly failed on what appeared to be a party line vote, with 21 committee members voting "no" and 13 voting "yes."

Hopefully, the failure of the Gallegly amendment bodes well for the action we'll see when the Committee reconvenes after the current floor vote, and we can expect the bill to pass through the committee with its strongest reforms intact. But we're not out of the woods yet, so if your representative is on the House Judiciary Committee and you haven't yet voiced your support for PATRIOT reform, please visit [EFF's action center](#) now!

**UPDATE:** The Committee reconvened around 3:30 p.m. EST and got back down to work but didn't get to a final vote on the bill; the committee will reconvene tomorrow at 10 a.m. EST. In the meantime, here's what happened when the Committee came back from the House floor:

Representative Lungren (R-Ca) introduced the second amendment of the day to weaken the reforms in the PATRIOT bill — in particular, to eliminate the bill's requirement that the government "minimize" the

data that it obtains using national security letters (NSLs) to better protect the privacy of U.S. persons without any link to foreign intelligence. Unfortunately, as with the previous issue raised by Representative Gallegly's amendment, Conyers' manager's amendment *already* watered down the minimization provision in the bill at the request of the Obama administration. The original version would have thankfully required that the government *destroy* records collected using NSLs when those records are about persons that are no longer of interest in an authorized investigation, and the new manager's amendment eliminated that important new reform. Thankfully, the bill's minimization provision wasn't further watered down by Representative Lungren — his amendment failed by a vote of 8 to 18.

Then, another Republican representative offered an amendment to weaken the bill's reforms to the NSL power. This time, it was Representative Chaffetz from Utah seeking to reduce the bill's strong standard for the issuance of NSLs. The bill would require the government to have a written statement of specific and articulable facts demonstrating that the records they seek with an NSL pertain to suspected spies or terrorists; Chaffetz wanted to weaken that standard by only requiring the government to have a statement of facts demonstrating that the records are relevant to a government investigation. That amendment failed like the ones before, on a voice vote.

The Committee then voted on Conyers' manager's amendment, which disappointingly weakens the original bill in a variety of ways (see, e.g., the weakening of NSL and Section 215 protections mentioned above). That amendment, unfortunately but unsurprisingly, passed by a vote of 19 to 11.

Finally, on another ominous note, one of the *Democrats* — Schiff of California — offered his own amendment to weaken the bill's reforms of PATRIOT Section 215. Like Chaffetz with NSLs, Schiff wanted to remove the requirement that the government support its application for a 215 order with "specific and articulable facts," and with the unfortunate support of Chairman Conyers, that amendment *passed* by a vote of 19 to 12. The only consolation is that it could have been worse — Representative Lungren had offered a "second-degree" amendment to the Schiff amendment to make it even worse, but that second-degree amendment failed 13 to 19.

So, it's a mixed bag so far as we head into our second day of the House Judiciary Committee's PATRIOT mark-up. The supporters of reform have done a good job of beating back bad amendments from the Republican camp, but we're also starting to see Chairman Conyers and other Democrats working to weaken their own bill in a number of ways at the request of the Administration. It looks like they could use some shoring up before tomorrow's meeting from folks like you who care about civil liberties and privacy. If you haven't already, please visit [EFF's action center](#) today!

Attachment	Size
<a href="#">MGR-AMDT_001_xml.pdf</a>	44.45 KB
<a href="#">Managers amendment description Nov 3.pdf</a>	101.21 KB

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