

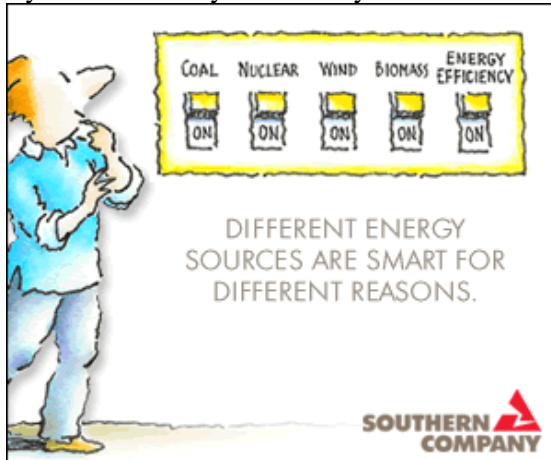


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## Plan to regulate pre-paid cell phones may violate First Amendment

By Amanda Carey - The Daily Caller 06/16/10 at 11:46 AM



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Two senators hoping to restrict the ability of terrorists and criminals to communicate are now seeking to regulate pre-paid cell phones, which can often be purchased anonymously with cash.

Last month, Sens. Chuck Schumer (D-NY) and John Cornyn (R-TX) announced a bipartisan effort to keep track of the users of these phones. According to their press release, “buyers of pre-paid cell phones would be required to present identification at the point of sale, and phone companies would have to keep the buyers’ information on file.”

The proposal comes in the wake of the uproar over the Times Square bombing attempt by Islamic radical Faisal Shahzad earlier this year. Authorities found that Shahzad had used a pre-paid phone.

Though Schumer and Cornyn believe restricting the purchase of pre-paid cell phones may help prevent terrorists from communicating, some argue that the bill, which awaits hearings in the Judiciary Committee, could run into legal difficulty.

In 1995, the Court upheld in *McIntyre v. Ohio Elections Commission* that anonymous speech — one of the major draws of using prepaid phones — is protected by the First Amendment. But the bill would require that phone companies keep each phone user’s information in a database for up to a year and a half after the phone is deactivated.

“It clearly implicates our right to speak anonymously if the government requires that our communications be traceable to them for purposes of identifying who said what,” Lee Tien, an attorney at the Electronic Frontier Foundation, told the Daily Caller in an e-mail.

“There’s a bit of a regulatory trap here. A simple requirement that you must ‘register’ is easily evaded. People can resell their prepaid phones...so it seems to me it could be both constitutionally suspect and practically ineffective,” said Tien.

But some aren’t so sure a free speech case against the bill makes sense. Peter Scheer, Executive Director of the First Amendment Coalition, is one of them.

“Total anonymity is a capability clearly of value to criminals and terrorists. Who would legitimately want this capability?” said Scheer. “If there are legitimate users, then you do have to ask questions about weighing that group’s right against the magnitude of the dangers of terrorism.”

David Rittgers, a Legal Policy Analyst at the Cato Institute, agrees that a legal challenge to the bill may not be the best course of action.

“I think this is a battle better fought in the legislature than the courts, but it is a bad policy call.”

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