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Rand doesn't stand

The Kentucky senator helped block NSA reform. Now civil liberties groups are feeling betrayed.

By [David Nather](#)

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Rand Paul says he wants surveillance reform. Instead, he helped sink it.

And now he's under fire from the civil liberties groups who have been his strongest allies in his war on the NSA's domestic spying program.

If Paul really wanted to help the cause of reining in the NSA, critics say he could have broken with his party and voted to let the bill move ahead — a headline-grabbing moment that would make him stand out from the rest of the Republican presidential field.

Instead, the Kentucky senator — the GOP's most famous libertarian — voted to block the bill from even being debated.

“He could have voted against the bill on final passage. That would have been a completely different thing than shutting down the debate,” said Laura Murphy of the American Civil Liberties Union, one of Paul's strongest allies on the issue. Both have filed lawsuits against the NSA surveillance programs.

This type of criticism may become a recurring theme as Paul's presidential campaign blossoms — the purist libertarian beliefs that built the Paul brand are going to keep crashing into traditional Republican standards, especially on national security.

His “no” vote on NSA reform even raised suspicions that Paul just didn't want to have the debate.

“Even if Senator Paul had problems with the text he still should have voted to advance the bill, offer an amendment to fix his problem, and then vote against the final bill if it wasn't adopted,” said Mark Jaycox of the Electronic Frontier Foundation. By voting against the procedural motion, he said, “Senator Paul made clear that he didn't even want to debate the bill.”

Paul's response Wednesday: It was a vote of principle, and no, it didn't kill the bill because the legislation didn't have that much of a chance of making it to President Barack Obama's desk anyway.

“I think NSA reforms are necessary and I will continue to fight against bulk data collection,” Paul said in a statement. “Last night, I stood on principle by opposing a bill that that included a provision reauthorizing elements of the Patriot Act that violate the Bill of Rights. I have always been steadfast against the Patriot Act and I will continue to do all I can to prevent its extension.”

Team Rand also doesn't think the bill was derailed solely because of his vote. Paul spokesman Brian Darling said there was “no realistic scenario where an acceptable bill that included meaningful and necessary reforms to the NSA would have passed the the Senate, then passed the House, in the very limited time we have remaining in this Congress.”

The result, however, could end up working out conveniently for Paul: He can keep speaking out against intrusive surveillance practices, and maintain his unique brand within the Republican Party, without having to go through the kind of lengthy debate that would have highlighted his tensions with Republican national security hawks.

The aborted Senate debate already gave a taste of how divisive the surveillance issue is likely to be in the Republican presidential primaries. Even if Paul and the other possible Republican contenders avoided a drawn-out debate this time, there's no way they'll be able to avoid the topic for the whole primary season — especially during the GOP debates.

Ted Cruz, another senator who's likely to jump into the race, supported Judiciary Committee Chairman Patrick Leahy's bill — also on civil liberties grounds. On the Senate floor Tuesday night, Cruz said the bill is “not perfect” and could be improved, but that “it is imperative that we stand together united to protect the Bill of Rights.”

Meanwhile, Sen. Marco Rubio, another possible White House contender, threw his support to the GOP hawks and said the NSA bill would have weakened national security.

The debate isn't going away anytime soon — especially as new revelations about the surveillance programs continue to surface, like the [Associated Press report](#) Wednesday that an internal NSA dissent in 2009 briefly led the Obama administration to consider scrapping the collection of phone records.

Paul was all set for a starring role in the Senate debate on the bill by Leahy to rein in the bulk collection of phone records. If the debate had actually happened, Paul was ready to talk about how the bill needed to be stronger on civil liberties.

And his team did have a plan for the debate. He would have gone to the floor on Thursday to offer his amendments, including one that would have allowed Americans to sue the NSA over privacy violations. Another, to be co-sponsored with Democratic Sen. Ron Wyden, would have taken away the agency's ability to conduct “[back door](#)” searches, where the NSA and other agencies monitor communications by Americans through a legal authority that's only supposed to be used for foreigners.

Both Democrats and Republicans knew all day that the vote would be close. The Senate fell short by just two votes Tuesday night on a procedural motion to take up the bill. The only

Democratic “no” vote was from Sen. Bill Nelson, a former Intelligence Committee member who opposed the bill because he believed it would have undermined efforts to prevent terrorist attacks, according to spokesman Ryan Brown.

Paul’s vote wasn’t a surprise — he had been saying for days that he’d vote against the motion because he thought the bill should have been stronger. But if Paul had voted to start the debate, and one more senator had switched sides, the Senate would be debating Leahy’s bill now, and Paul would have his best platform to talk about civil liberties since his filibuster last year in protest of drone strikes.

Harley Geiger, senior counsel at the Center for Democracy and Technology, said the failure to start the Senate debate “virtually guarantees that the NSA’s mass domestic surveillance of Americans will continue for the time being.”

But those weren’t the biggest objections he had been raising in the days leading up to the vote. Instead, his main complaint was that the bill would have extended the Patriot Act, which he considers an expansion of surveillance against American citizens, until December 2017. That was why he [insisted](#) after the Tuesday night vote, “It’s hard for me to vote for something I object to so much.”

Leahy says the point of the bill was to build in new privacy protections in exchange for extending the law, and civil liberties groups say they’re puzzled by Paul’s stance because the Leahy bill only would have renewed three provisions, and only one of them mattered: Section 215, the part the bill would have rewritten to end the bulk collection of phone data.

“Of these, to our knowledge, only Section 215 was used as the basis for mass domestic surveillance, and the USA FREEDOM Act would have made significant reforms to rein in that authority,” said Geiger.

“He makes it sound like he wants to get rid of the entire Patriot Act, and that’s just not going to happen,” said Murphy of the ACLU. “He’s carved out a position that’s kind of an all-or-nothing position, and I just don’t think that’s the way our government works.”

Julian Sanchez, an intelligence policy expert at the Cato Institute, says the failure of the Leahy bill won’t be the end of the road for efforts to restrict the bulk collection of Americans’ phone records. He says Congress will have to address the issue again, one way or another, next spring, because it will have to reauthorize Section 215 and the other Patriot Act provisions that expire in June.

Still, Sanchez isn’t convinced that the chances for a strong intelligence reform bill will get any better next year. By that point, both the Senate and the House will be under Republican control, and while some civil-liberties-minded Republicans will want to keep pushing for surveillance restrictions, Tuesday’s vote makes it clear that national-security hawks still dominate the party.

“I just think it’s a mistake to think that blocking this admittedly flawed legislative vehicle is going to help you come back with something better,” said Sanchez.

