Senate passes spying bill without search and browsing history protections [Updated]

Enlarge / Sen. Steve Daines (R-Mont.), Sen. Rand Paul (R-Ky.), Sen. Ron Wyden (D-Ore.) and Sen. Patrick Leahy (D-Vt.) speak in January. The four men are leading advocates for limiting government surveillance powers.
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Update (3:15pm ET): The Senate has passed legislation extending FBI spying powers by an 80-16 vote. Because it was amended, it must go back to the House of Representatives for another vote.

Original story (12:30pm ET) follows:

An effort to protect Americans' browsing and search histories from warrantless government surveillance failed by a single vote in the Senate on Wednesday. The privacy measure, sponsored by Sen. Ron Wyden (D-OR) and Sen. Steve Daines (R-MT) got 59 votes, one vote fewer than was needed to overcome a filibuster.

The vote was over a section of federal surveillance law that was originally part of the USA Patriot Act in 2001. That provision, known as Section 215, gave the FBI the power to obtain "any tangible thing," including "books, records,

papers, documents, and other items," without a warrant. The provision was only supposed to be used for foreign intelligence investigations, not ordinary criminal investigations. Civil liberties groups have long criticized it for its breadth and weak judicial oversight.

Section 215 expired back in March, and the Senate is working on legislation to re-authorize it. The current Senate draft prohibits the FBI from using the provision to obtain cell phone location data—though the Supreme Court has already ruled that this information is constitutionally protected, so this may have little practical impact.

Support from 59 senators wasn't enough

On Wednesday, Wyden and Daines offered an amendment to the reauthorization bill that would stop the FBI from obtaining "Internet website browsing information or Internet search history information" using the Patriot Act. That would force the agency to use other processes—with stricter judicial oversight—to obtain that kind of information.

A majority of senators—59 out of 100—supported the amendment. But under the Senate's dysfunctional rules, it takes a 60-vote supermajority to end debate on a proposal like this and move to a vote. So even though a majority of senators supported the amendment, it did not become part of the reauthorization bill.

Four senators—Lamar Alexander (R-Tenn.), Patty Murray (D-Wash.), Bernie Sanders (I-Vt.), and Ben Sasse (R-Neb.) missed the vote. The amendment would have passed if any of them had voted "yes."

Senate requires privacy watchdogs inside the FISA Court

The Senate did approve a different amendment to the re-authorization bill. Civil liberties groups have long portrayed the secretive FISA Court, which oversees the government's foreign intelligence surveillance activities, as a rubber stamp for intelligence agencies. Those arguments gained increased traction in recent years as some Republicans have accused the court of too readily approving applications to spy on associates of the Trump campaign during the 2016 presidential election.

On Wednesday, a bipartisan group of senators led by Sen. Mike Lee (R-Utah) offered an amendment that would appoint a friend of the court with "privacy and civil liberties expertise" to participate in some of the court's secretive deliberations. This person would ensure that the court considers pro-privacy arguments and would have the opportunity to seek the declassification of significant court rulings. The Senate approved that change by a generous 77-19 margin.

An earlier version of the legislation passed the House in March, but yesterday's amendment means the House must pass it again before it can be sent to Donald Trump's desk for his signature.

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