

Senate may have the votes to limit surveillance of browser history

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A bipartisan effort to block warrantless surveillance of web browser search history came up one vote short of adoption in the Senate on Wednesday, but the supporters might still have sufficient support to

adopt it.

A total of 59 senators backed the effort, offered as an amendment by Republican Sen. Steve Daines of Montana and Ron Wyden of Oregon, to a broader overhaul of the Foreign Intelligence Surveillance Act. Under a prior agreement, 60 votes were required for adoption of the amendment.

But at least one absent senator, Democrat Patty Murray of Washington, would have supported the amendment. An aide said the senator was flying back to Washington, D.C.

The amendment could be the first test of how flexible the Senate will be in respecting the wishes of senators who miss votes during the coronavirus pandemic but could have affected the outcome if present.

Speaking on the floor ahead of the vote on his amendment, Daines said that the changes to surveillance authorities contained in the base bill already were not sufficient.

"We can and must protect our national security and protect our [civil liberties](#) by making targeted reforms that will keep everyday Americans, and their privacy secure, and continue to allow the government to go after the bad guys. The House bill does not go far enough," he said.

"Montanans sent me to Congress to get government off their backs, and I'm working not only to get government off their backs, but to get government out of their phones, out of their computers and out of their private lives."

Speaking specifically about the amendment that came up short Wednesday, Daines argued that privacy rights should win out when it comes to browsing history on the internet.

"Browser data is some of the most personal and revealing information

that can be collected on private citizens. Your internet search history can reveal extremely intimate information including personal health data, religious beliefs, political beliefs"" Daines said. "I don't think the government should have access to such private information without a warrant."

Supporters of the House bill have been warning that adopting any amendments could interfere with the ability to reauthorize three surveillance powers that have already lapsed. The House passed the full authorization measure, while the Senate passed an extension in March. The two chambers never reconciled.

"The problem is this passed the House overwhelmingly," Sen. Lindsey Graham, R-S.C., told reporters on Tuesday. "Sending it back to the House could shut things down, I'm afraid, when it comes to reauthorizing the surveillance programs we need."

Graham, the chairman of the Senate Judiciary Committee, said he wanted to make clear to supporters of stronger protections that he would revisit the issue.

"We're going to do a deep dive on the Carter Page event, and try to find ways to make sure that never happens again," Graham said, referring to the use of warrants from the Foreign Intelligence Surveillance Court against the former Trump campaign foreign policy adviser.

Senate Majority Leader Mitch McConnell echoed Graham's concerns about adopting amendments during floor remarks Wednesday morning.

"There is certainly no guarantee that another new version of this legislation would necessarily pass the House or earn the president's support. This version has already done both," the Kentucky Republican said. "We cannot let the perfect become the enemy of the good when

key authorities are currently sitting expired and unusable."

Wyden said concerns about browser history should be paramount.

"The warrantless collection of Americans' web browsing history offers endless opportunities for abuse. Donald Trump has called for investigations of his political enemies. Attorney General (William Barr) has injected himself into investigations that affect the personal or political interests of Donald Trump," Wyden said in a floor speech ahead of the vote. "All it would take is for some innocent American's web browsing history to be deemed relevant to one of those investigations, and the government could start collecting it."

"This isn't even a partisan proposition. Any administration could be tempted to collect the web browsing and internet search history of political enemies—politicians, activists, journalists," Wyden said.

The amendment attracted what's become a typical mix of supporters from the right and left of the political spectrum, senators who often come together around civil liberties issues.

In addition to Murray, the other absent senators Wednesday were Republicans Lamar Alexander of Tennessee and Ben Sasse of Nebraska, as well as Independent Bernie Sanders of Vermont.

None of the four offices immediately responded to questions about support for the amendment from Daines and Wyden.

In a statement to *CQ Roll Call* after the vote, Daines said he would continue working to try to secure passage of the limitations on surveillance of search data.

"This is about securing our most basic 4th Amendment rights to protect

our citizens' most personal data. The Senate was closer than it has ever been before with over half the senate—59 senators—voting to protect Americans' privacy," Daines said.

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