

ONLY REMAINING SENATOR PERSONALLY TARGETED BY TERRORIST ATTACK STILL BELIEVES IN CONSTITUTION

The Senate just voted down cloture on the USA Freedom Act, 58-42. Even while we disagreed on the bill, I extend sincere condolences to civil liberties allies who worked hard to pass this in good faith. I know you all have worked hard in good faith to pass something viable.

Several things about the vote were predictable (in fact, I predicted them in June). Just as one example, I noted to allies that if Jeff Flake – who had a great record on civil liberties while he was still in the House – did not support the effort, it would fail. Four Senators – cosponsors Mike Lee, Ted Cruz, and Dean Heller, plus Lisa Murkowski voted for cloture; Rand Paul did not. Bill Nelson voted against cloture as well (there are reports he is claiming it was a mistake, but given how closely this bill was whipped that would be ... telling).

Equally predictable was the fear-mongering. GOP Senator after GOP Senator got up and insisted if the phone dragnet ended, ISIL would attack the country. None noted, of course, that the phone dragnet had never succeeded in preventing a terrorist attack. Pat Leahy made that point but it's one opponents of the dragnet need to make in more concerted fashion.

Then there was a piece of news that neither side – supporter or opponent – seemed to want to mention. Dianne Feinstein revealed that at first 2 of 4 providers (presumably the fourth is T-Mobile though it could even be Microsoft, given that Skype is a more important phone carrier for international traffic) had refused to keep phone

records, but that they had voluntarily agreed to do so for a full two years (this is at least a 6 month extension for Verizon, though may be significantly longer for cell calls).

The most dramatic part of the debate came after everyone left, when a frustrated Pat Leahy made the case for defending the Constitution. He recalled the anthrax letter addressed to him, on September 18, 2001, that killed a postal worker who processed it (~~another letter killed a Tom Daschle aide~~ see Meryl Nass' correction). "13 years ago this week, a letter was sent to me, addressed to me. It was so deadly, with the anthrax in it that one person who touched the envelope—addressed to me, that I was supposed to open—They died!" Leahy reminded that the FBI had still not caught all the culprits for the attack. (That he believes that was first reported here in 2008; I believe FBI has, in fact, caught none of the culprits.) That attack targeting him personally, Leahy noted, did not convince him he had to abrogate the Constitution. "This nation should not let our liberties to be set aside by passing fears." Leahy said. "If we do not protect our Constitution we do not deserve to be in this body."

Senators like Marco Rubio got up and screamed about terrorists. But unless I'm mistaken, Pat Leahy is the only one remaining in the Senate who was personally targeted by a terrorist.

Maybe we ought to highlight that point?

Updated w/additions from Leahy's comments.