SENATE NARROWLY AVOIDS VOTING THEMSELVES TO BECOME "TYPOS"

The McCain (Cornyn) amendment to the Judiciary Appropriations bill that would let them get Electronic Communication Transaction Records with a National Security Letter just narrowly failed to get cloture, with Dan Sullivan flipping his vote to yes near the end but Mike Crapo, a likely no vote, not voting. The final vote was 59-37.

The floor debate leading up to the vote featured a few notable exchanges. Richard Burr was an absolutely douchebag, saying Ron "Wyden is consistently against providing LE the tools it needs to defend the American people." He did so in a speech admitting that, "My colleague says this wouldn't stop SB or Orlando. He's 100% correct."

Burr also insisted that we can't let the Lone Wolf provision, which allegedly has never been used, expire. It was extended just last year and doesn't expire until 2019.

More interesting though was the debate between Burr and Leahy over whether the FBI can't obtain ECTRs because of a typo in the law as passed in 1993. Leahy basically described that Congress had affirmatively decided not to include ECTRs in NSLs (implicit in this, Congress also did not decide to include it in the 2001 expansion). Burr claimed that Congress meant to include it but didn't in some kind of oversight.

Here's how Mazie Hirono and Martin Heinrich described the debate in the report on the Intelligence Authorization, which has a version of the ECTR change.

> The FBI has compared expanding these authorities to fixing a "typo" in the

> Electronic Communications Privacy Act (ECPA).
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> However, during consideration of ECPA reform legislation in 1993, the House Judiciary Committee said in its committee report that "Exempt from the judicial scrutiny normally required for compulsory process, the national security letter is an extraordinary device. New applications are disfavored."
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> The House Judiciary Committee report also makes clear that the bill's changes to Section 2709(b) of ECPA were a "modification of the language originally proposed by the FBI."
>
> This does not support claims that the removal of the ECTR language was a "typo."

Burr effectively argued that because law enforcement wanted ECTRs to be included back in 1993, they were meant to be included, and Congress' exclusion of them was just a typo.

In short, a member of the Senate just argued that if Congress affirmatively decides not to capitulate to every demand of law enforcement, it must be considered a "typo" and not legally binding law.

For the moment, the Senate voted down making itself a "typo," but Mitch McConnell filed a motion to reconsider, meaning he can bring the vote back up as soon as he arm twists one more vote.