



**ELECTRONIC FRONTIER FOUNDATION**  
DEFENDING YOUR RIGHTS IN THE DIGITAL WORLD

## First Unitarian Church of Los Angeles v. NSA

06-2013

Nineteen organizations including Unitarian church groups, gun ownership advocates, and a broad coalition of membership and political advocacy organizations filed suit against the National Security Agency today for violating their First Amendment right of association by illegally collecting their call records. The coalition is represented by EFF.

At the heart of *First Unitarian Church of Los Angeles v. NSA* is the bulk telephone records collection program that was confirmed by the publication of an order from the Foreign Intelligence Surveillance Court (FISC) in June of 2013. The Director of National Intelligence (DNI) further confirmed that this formerly secret document was authentic, and part of a broader program to collect all major telecommunications customers' call history. The order demands wholesale collection of every call made, the location of the phone, the time of the call, the duration of the call, and other "identifying information" for every phone and call for all customers of Verizon for a period of three months. Government officials further confirmed that this was just one of series of orders issued on a rolling basis since at least 2006. *First Unitarian v. NSA* argues that this spying violates the First Amendment, which protects the freedom to associate and express political views as a group.

### Frequently Asked Questions About *First Unitarian v. NSA*:

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### Why the focus on associations?

Our goal is to highlight one of the most important ways that the government collection of telephone records is unconstitutional: it violates the First Amendment right of association. When the government gets access to the phone records of political and activist organizations and their members, it knows who is talking to whom, when, and for how long. This so-called "[metadata](#)," especially when collected in bulk and aggregated, tracks the associations of these organizations.

After all, if the government knows that you call the Unitarian Church or Calguns or People for the American Way or Students for Sensible Drug Policy regularly, it has a very good indication that you are a member and it certainly knows that you associate regularly. The law has long recognized that government access to associations can create a chilling effect—people are less likely to associate with organizations when they know the government is watching and when the government can track their associations.

### **What is the factual basis for the case?**

The case challenges the mass telephone records collection that was [confirmed](#) by the [FISA Order](#) that was [published](#) on June 5, 2013 and [confirmed](#) by the Director of National Intelligence (DNI) on June 6, 2013. The DNI confirmed that the collection was “broad in scope” and conducted under the “business records” provision of the Foreign Intelligence Surveillance Act, also known as section 215 of the Patriot Act and 50 U.S.C. section 1861.

The facts have long been part of EFF’s [Jewel v. NSA](#) case.

The case does not include section 702 programs, which includes the recently made public and called the [PRISM program](#) or the fiber optic splitter program that is included (along with the telephone records program) in the [Jewel v. NSA](#) case.

### **Background: First Amendment right of association**

The First Amendment right of association is a well established doctrine that prevents the government “interfering with the right to peaceably assemble or prohibit the petition for a governmental redress of grievances.” The most famous case embracing it is a 1958 Supreme Court Case from the Civil Rights era called *NAACP v. Alabama*. In that case the Supreme Court held that it would violate the First Amendment for the NAACP to have to turn over its membership lists in litigation.

The right stems from the simple fact that the First Amendment protects the freedom to associate and express political views as a group. This constitutional protection is critical because, as the court noted “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association[.]” *NAACP v. Alabama*, 357 U.S. at 460. As another court noted: the Constitution protects freedom of association to encourage the “advancing ideas and airing grievances” *Bates v. City of Little Rock*, 361 U.S. 516, 522-23 (1960).

### **What harm does the First Amendment right of association seek to protect against?**

The collection and analysis of telephone records give the government a broad window into our associations. The First Amendment protects against this because, as the Supreme Court has recognized, “it may induce members to withdraw from the association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of their exposure.” *NAACP v. Alabama*, 357 U.S. at 462-63. *See also Bates*, 361 U.S. at 523; *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963).

Privacy in one's associational ties is also closely linked to freedom of association: "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP v. Alabama*, 357 U.S. at 462.

### **What legal tests apply when the First Amendment is at issue?**

The Supreme Court has made clear that infringements on freedom of association may survive constitutional scrutiny only when they "serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984); *see also NAACP v. Button*, 371 U.S. at 341; *Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2291 (2012)

Here, the wholesale collection of telephone records of millions of innocent Americans' communications records, and thereby collection of their associations, is massively overbroad, regardless of the government's interest. Thus, the NSA spying program fails under the basic First Amendment tests that have been in place for over fifty years.

### **Is that all you're arguing?**

No. The new case will also argue the basic First and Fourth Amendment arguments that we're also raising on behalf of individual AT&T customers in *Jewel v. NSA*. It will also raise a claim under section 215 of the PATRIOT Act since we believe the government is misinterpreting the statute—it does not allow bulk collection and searching without individual judicial approval. We also raise a Fifth Amendment claim for informational privacy and for vagueness, since the secret court rulings by the court overseeing the spying, the Foreign Intelligence Surveillance Court, give neither the public nor law enforcement clear rules and limits on their ability to surveil Americans.

### **What are the specific legal claims?**

1. First Amendment
2. Fourth Amendment
3. Fifth Amendment right to informational privacy and vagueness
4. 50 U.S.C 1861 (also known as Patriot Act section 215)
5. Return of property

There may also be other legal claims added later.

### **Where is the case being filed?**

The case is filed in the Northern District of California federal court and will likely be related to the *Jewel v. NSA* case and the *Shubert v. Obama* case currently pending there.

### **How does this case compare to *Jewel v. NSA*?**

This case is a companion case to our long pending one, [Jewel v. NSA](#), where the court—in July 2013—rejected the government’s claim of state secrets privilege. The Jewel case also addresses the phone records collection, but on behalf of individual AT&T customers in a class action. It also includes the claims of direct access by the NSA to the Internet content and records of our communications carried on the fiberoptic cables of AT&T. Those were first revealed by Mark Klein and recently confirmed in the secret NSA slides [released](#) by the *Guardian* and the *Washington Post*.

### **Why such strange bedfellows?**

The First Amendment especially is designed to protect people in their associations without regard to what those associations are doing, so it’s not surprising that groups from across the political spectrum and whose focus is on a range of issues, some of which may conflict, all agree on the need for the protections of the First Amendment against government access to the records of who they associate with, when, for how long and at what frequency.

<https://www.eff.org/cases/first-unitarian-church-los-angeles-v-nsa>