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Finally, Congress Stands Up

David Broder (op-ed)

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When Lindsey Graham and John Sununu joined the ranks of Republican senators, the last thing the White House expected was that they would start challenging administration policies on national security.

Graham, 50, came to the Senate in 2002 after a career as an Air Force officer and lawyer and as a member, for eight years, of the House, where his most notable service was on the team pressing impeachment charges against Bill Clinton.

Sununu, who is 41, also won his first term in 2002, after six years in the House. An engineer by training, he learned politics from his father and namesake, who served as governor of New Hampshire and later as chief of staff to the first President Bush.

Both of them had shown early streaks of independence. Graham led an abortive conservative rebellion against House Speaker Newt Gingrich and supported John McCain over George Bush in the 2000 South Carolina primary. Sununu challenged and defeated incumbent Republican Sen. Bob Smith in a hard-fought primary before beating Democratic Gov. Jeanne Shaheen in the general election.

Graham and Sununu have been supportive of most Bush policies, but their current objections illustrate the way in which some of the president's anti-terrorism methods have caused grave concerns among libertarian conservatives.

Sununu has taken the lead in a group of senators pressing for changes in the Patriot Act, the legislation expanding FBI powers that the administration rushed through Congress after the attacks of Sept. 11, 2001. Many of the changes they wanted were made in the Senate bill, but administration objections have stymied their acceptance in a House-Senate conference.

Sununu and the others, who range from senators as conservative as Larry Craig of Idaho to those as liberal as Russ Feingold of Wisconsin and Dick Durbin of Illinois, have threatened a filibuster to force further negotiations.

What Graham, Sununu and their brethren are looking for is specific and significant: a requirement that the government convince a judge that a search of records has a direct connection, not just vague "relevance," to a suspected terrorist; a right of judicial appeal to challenge gag orders on such searches; a requirement that targets of "sneak-and-peek" searches be notified within seven days of their occurrence; and a four-year "sunset" clause for these special powers.

Sununu and his allies have been discussing these points with the Justice Department and the White House for two years. What is frustrating, he told me in an interview, "is that they will not debate these specific changes; they respond only with sweeping generalizations that we need to reauthorize the Patriot Act. That's not good enough."

For Graham, the issue is the treatment of detainees at Guantanamo Bay and other (still secret) overseas facilities. Like 89 other senators, he supported McCain's legislation barring the use of torture or the extreme measures publicized at Abu Ghraib.

When Vice President Cheney lobbied the House to kill the McCain restriction, Graham jumped in to offer additional leverage to the administration's critics. He first framed an amendment -- welcomed by the White House -- to bar enemy combatants held at Guantanamo Bay from taking their cases into U.S. courts, then enlisted liberal Democratic Sen. Carl Levin of Michigan and conservative Republican Sen. Jon Kyl of Arizona in a bipartisan resolution to provide automatic judicial review of all military trial sentences of at least 10 years. The resulting compromise gained 84 votes and, Graham told me, sends a strong message to the House that both the McCain language and this compromise must be included in the final legislation -- the White House notwithstanding.

What came through most clearly to me, in talking with both senators, was their sense that Congress as an institution must assert itself and take responsibility for setting policy on these national security issues.

For too long, they both said, it has been too easy to say -- or imply -- that it's the president's job alone to decide how to protect the nation's safety and vital interests. That complacent attitude may have been tolerable during the false lull after the end of the Cold War, but it cannot be accepted during a time of war and continuing terrorist threats.

Last month the Senate asserted itself by passing a meaningful, bipartisan declaration that 2006 must be a "year of transition" in which Iraqis take over major responsibility for the security and stability of their own country.

That younger senators such as Graham and Sununu are organizing bipartisan coalitions on such corollary national security issues as the Patriot Act and treatment of detainees is good news for the country. It is time for a similar effort in the House.