

January 10, 2018

Dear Representative:

We, the undersigned 44 civil liberties, civil rights, and transparency organizations, urge you to vote “YES” on the USA RIGHTS amendment and “NO” on the FISA Amendments Reauthorization Act if the USA RIGHTS amendment does not pass.

Many of our organizations have long opposed Section 702 of the Foreign Intelligence Surveillance Act because it has been used by the government to unconstitutionally collect Americans’ communications without a warrant or individualized approval from a judge. Our concerns regarding this collection are compounded by the government’s routine searches of Section 702 data for the information of U.S. citizens and residents despite the fact that Section 702 explicitly prohibits the targeting of such persons (a practice commonly referred to as “backdoor searches”).

The government conducts backdoor searches in broadly defined “foreign intelligence” investigations that may have no nexus to national security, in criminal investigations that bear no relation to the underlying purpose of collection, and even in the course of determining whether to open an assessment, which is a preliminary phase of investigations where there are no facts to believe someone has committed a criminal act.

The proposed FISA Amendments Reauthorization Act exacerbates, rather than resolves, these concerns.

The bill does not meaningfully reform the government’s practice of performing backdoor searches. It would require the government to obtain a warrant only during a “predicated” (i.e., latter-stage) criminal investigation—a narrow formulation that even the FBI has stated will almost never be used. That’s because the government could continue to search and access Americans’ sensitive information without a warrant during the earlier, “assessment” or “pre-assessment” stages — which is when the FBI conducts these searches as a matter of routine.

In addition, the bill would allow warrantless searches for US person information for broad foreign intelligence purposes, which could include information about foreign affairs that are unrelated to national security, as well as for searches related to national security, or if the information sought could mitigate a threat to life or of serious bodily harm, irrespective of imminence. These searches violate the Constitution and undermine Americans’ privacy.

By contrast, **the USA RIGHTS Act enacts meaningful reforms to Section 702, which are imperative given our government’s historical abuse of surveillance authorities,**

contemporary noncompliance with this authority, and the danger posed by potential future abuses.¹

The USA RIGHTS Act would:

- **Create a search warrant requirement** that closes the so-called “backdoor search loophole” through which the government searches—without first obtaining a court-issued warrant based on probable cause—for information about U.S. persons or persons inside the U.S. It provides an exception for emergencies, but requires a court warrant afterward.
- **Prohibit the collection of domestic communications and permanently end “about” collection**, an illegal practice the National Security Agency recently stopped because of persistent and significant compliance violations that allowed for warrantless collection of communications that merely mention an intelligence target. Collections would be limited to communications that are “to” or “from” a target. The bill would also prohibit the intentional collection of wholly domestic communications.
- **Make clear the government must give notice** when it uses information obtained or derived from Section 702 surveillance in proceedings against U.S. persons or people on U.S. soil. Notice allows a defendant to assert his or her constitutional rights, and is a necessary backstop to ensure that foreign intelligence surveillance is not being misused, including in contexts that do not involve national security.
- **Establish a 4-year sunset of Section 702**, which would terminate the surveillance authority unless Congress reauthorizes it again in 2021. This helps to ensure regular Congressional and public oversight of how the law has worked and what reforms or changes may be necessary.
- **Provide transparency around the number of U.S. persons surveilled under Section 702**, unless the government says that conducting such an estimate is not feasible, and if it is not, the bill would require the government to provide a public explanation. Understanding the number of people surveilled under Section 702 is critical to gauging the intrusiveness of the law and how broadly the authorities are being used. The USA RIGHTS Act amendment would help to ensure we have an accurate count.

¹ For further discussion, see “Institutional Lack of Candor: A primer on recent unauthorized activity by the Intelligence Community,” Demand Progress (Sept. 21, 2017), available at https://s3.amazonaws.com/demandprogress/reports/FISA_Violations.pdf; “A History of FISA Section 702 Compliance Violations,” Open Technology Institute at New America (Sept. 28, 2017), available at <https://www.newamerica.org/oti/blog/history-fisa-section-702-compliance-violations/#>; Letter to Chairman Goodlatte and Ranking Member Conyers on the risk of overbroad domestic law enforcement use of Section 702 (July 10, 2017), available at https://www.openthegovernment.org/sites/default/files/702-Coalition-Letter_July2017.pdf.

We urge you to vote “YES” on the USA RIGHTS amendment, and “NO” on the FISA Amendments Reauthorization Act if the USA RIGHTS amendment does not pass.

Sincerely yours,

Advocacy for Principled Action
American Association of Law Libraries
American Civil Liberties Union
American Library Association
Association of Research Libraries
Brennan Center for Justice at NYU School of Law
Campaign for Liberty
Center for Democracy & Technology
Center for Human Rights and Privacy
Color Of Change
Constitutional Alliance
CREDO
Daily Kos
Defending Rights and Dissent
Demand Progress Action
Democracy for America
DownsizeDC.org, Inc.
Electronic Frontier Foundation
Essential Information
Free Press Action Fund
Free the People
Freedom of the Press Foundation
FreedomWorks

Government Information Watch
Indivisible
National Association of Criminal Defense Lawyers
National Center for Transgender Equality
National Coalition Against Censorship
National Immigration Law Center
National Security Counselors
New America's Open Technology Institute
Oakland Privacy
Open the Government
PEN America
People for the American Way
Restore The Fourth, Inc.
RootsAction.org
Sunlight Foundation
TechFreedom
The Constitution Project at POGO
UltraViolet
Wikimedia Foundation
Win Without War
X-Lab