

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.**<sup>1</sup>

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.

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<sup>1</sup> 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](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](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