



## **VOTE YES on Amash Amendment to the Section 702 Reauthorization Bill: USA Rights Act Provides Robust and Meaningful Reforms to Protect Americans' Privacy**

On Thursday, the House of Representatives will likely vote on a modified version of the FISA Amendments Reauthorization Act of 2017 ([H.R. 4478](#); now [S. 139](#)) to reauthorize Section 702 of the Foreign Intelligence Surveillance Act for six years. The bill was reported out of the House Intelligence Committee on a party line vote, where [at least four members voted “no”](#) because of privacy concerns. [OTI](#) and a coalition of dozens of leading [privacy groups](#) strongly oppose the bill. [OTI also strongly opposes](#) the version of the bill [posted to the House Rules website](#) as the modifications are wholly insufficient to address the many concerns it raises. **The [amendment](#) proposed by Representative Amash would replace the text of the House Intelligence Committee’s bill with that of the USA Rights Act, which would reform Section 702 and reauthorize it for four years. [OTI](#), joined by [41 civil society organizations](#), strongly supports this amendment. If it were attached to S. 139, we would withdraw our opposition to the bill and recommend its passage. The USA Rights Act would:**

- **Close the “backdoor search” loophole that is currently exploited to warrantlessly search through 702 data for Americans’ communications.** The underlying bill would codify the current [FBI, NSA, CIA, and NCTC practice](#) of warrantlessly – and for the [FBI, routinely](#) – searching for and accessing the contents and metadata associated with Americans’ communications that have been [collected incidentally](#) through Section 702 surveillance. The current bill adds a warrant process that would [apply only in rare circumstances](#), and thus, would [provide no meaningful protection](#). The USA Rights Act amendment would resolve this problem by limiting the types of investigations and prosecutions the government in which the government could use Section 702 data, and requiring the government to obtain a warrant based on probable cause before searching databases containing Section 702 information for Americans’ communications. The amendment provides for an exception to this requirement if there is an emergency. A similar amendment has [overwhelmingly passed the House of Representatives twice](#) in the past. **Congress should vote to adopt these necessary protections again.**
- **Prohibit “abouts” collection.** “About” collection is part of upstream surveillance where the government collects not only communications that are “to” and “from” a target, but also those that are “about” a target. This type of collection results in the collection of [substantial quantities of Americans’ communications](#). The FISA Court has found that this type of collection raises serious constitutional concerns because it is so privacy-invasive and has forced the government to [shut it down twice](#), most recently because the government consistently failed to comply with mandatory minimization procedures to protect Americans’ privacy. Whereas the underlying bill would codify, and could even be read to expand this practice, the USA Rights Act amendment would prohibit it. The amendment would make clear that collection under Section 702 could only be of communications that are “to” or “from” a target of surveillance. **Given the NSA’s [long track record](#) of [substantial non-compliance](#) with FISA Court-mandated procedures for “abouts” collection, this provision of the amendment provides an essential protection for Americans’ privacy.**
- **Prohibit the collection of communications known to be wholly domestic.** Section 702 prohibits the government from intentionally collecting wholly domestic communications. Though the government may not be *intentionally* collecting such communications, it may be *knowingly* collecting them. Senator Wyden has engaged in a prolonged exchange with the Office of the Director of National Intelligence to determine whether this is the case, but DNI Coats has [refused to provide a straight-forward answer](#). This amendment would address the concern that the government’s refusal to deny the practice is an admission of such conduct, by prohibiting the knowing collection of wholly domestic communications.
- **Enhance government and third party transparency.** The USA Rights Act would require additional government transparency reporting on national security and foreign intelligence surveillance authorities, including a requirement to provide a public estimate of the number of Americans’ whose communications have been collected under Section 702. It would also allow third parties to report on the national security demands they receive with more granularity.

**The Amash Amendment to strike the House Intelligence Committee’s bill and replace it with the USA Rights Act makes essential improvements to Section 702. Without substantial improvements such as those in this amendment, the bill would be worse than a clean reauthorization of Section 702 with a sunset. Members should vote “YES” on the Amash amendment. Unless these necessary reforms are adopted, they should vote “NO” on the underlying bill.**