



VOTE YES on Poe-Lofgren-Nadler Amendment to the Section 702 Reauthorization Bill: Meaningful Reform 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 Representatives Poe, Lofgren, and Nadler would address the most serious of our concerns and enact meaningful and necessary reforms. OTI strongly supports this amendment, and if it were attached to S. 139, we would withdraw our opposition to the bill and recommend its passage. The Poe-Lofgren-Nadler amendment 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 Poe-Lofgren-Nadler amendment would resolve this problem by requiring the government, before it conducts a search for Americans’ data collected under Section 702, to obtain a warrant from the FISA Court under a probable cause standard to access the contents of Americans’ communications. To access Americans’ metadata, the government would have to meet the legal standard that would have applied if the government sought to access those data under ordinary circumstances. The amendment provides exceptions to these requirements if there is an emergency. A similar amendment has [overwhelmingly passed](#) the [House of Representatives twice](#) in the past. **Members of Congress should approve this necessary protection again when this amendment comes up for a vote.**
- **Prohibit “abouts” collection.** “Abouts” 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 Poe-Lofgren-Nadler amendment would prohibit it. The amendment would make clear that, during the term of the reauthorization of Section 702, collection under that authority 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.**

The Poe-Lofgren-Nadler Amendment makes essential improvements to the House Intelligence Committee’s bill. Without this Amendment, the bill would be worse than a clean reauthorization of Section 702 with a sunset. Members should vote “YES” on the Poe-Lofgren-Nadler amendment. Unless this amendment’s necessary reforms are adopted, they should vote “NO” on the underlying bill.