

June 13, 2019

RE: Vote “YES” on Amash-Lofgren Amendment #24 to Minibus Appropriations Bill (H.R. 2740)



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The American Civil Liberties Union strongly urges you to vote “YES” on Amendment #24 offered by Representatives Lofgren (CA) and Amash (MI) to H.R. 2740. This amendment will restore constitutional protections and civil liberties for Americans by prohibiting use of funds for certain types of unlawful, warrantless surveillance by the NSA. The amendment prohibits the use of funds for surveillance under Section 702 of the Foreign Intelligence Surveillance Act (FISA) in cases where (1) neither party to a communication is a foreign surveillance target; (2) a communication is entirely domestic; or (3) a significant purpose is to collect communications of a particular U.S. person reasonably believed to be in the United States (often referred to as “reverse-targeting”). **While we do not take a position on the overall legislation, the ACLU will score this vote.**

Section 702 is interpreted by the government to permit surveillance that extends far beyond national security needs or counterterrorism. Under Section 702, the government is permitted to target any foreigner if a significant purpose of the surveillance is to collect “foreign intelligence” information – a term defined so broadly that it could include communications between international organizations and government whistleblowers; diplomats; or even journalists and sources. The FISA court has a limited role in overseeing Section 702 surveillance and does not approve individual targets.

The government has repeatedly justified surveillance under Section 702 by claiming that it is only used to target foreigners outside the U.S. Since passage of Section 702, however, we have learned that the government has abused this authority to conduct surveillance that goes far beyond this stated justification. This amendment would help to rein in these abuses and we urge you to support it for the following reasons:

It is unconstitutional for the government to use Section 702 to collect wholly domestic communications or to target U.S.

persons’ communications for surveillance without a warrant.

Generally, to target an American for foreign intelligence surveillance, the government must demonstrate probable cause to believe they are a “foreign power” or “agent of a foreign power” (member of a foreign government, terrorist organization, etc.).

Section 702 imposes a far lower standard – permitting surveillance without individualized judicial approval and for broad “foreign intelligence” purposes. The amendment makes clear that the government cannot use Section 702 to target Americans for surveillance, and would put a stop to current practices that result in the collection of wholly domestic communications in violation of the law.

Section 702 was never intended to permit the warrantless collection of purely domestic communications, targeting of U.S. persons, or collection of communications that are not to or from an overseas target. The clear text of Section 702 only permits the collection of communications “to” or “from” a foreign surveillance target. Notwithstanding this limit, the government has wrongly interpreted Section 702 to allow the collection of communications that are merely “about” a particular target, including purely domestic communications. In 2011, the FISA court estimated that the government collected as many as tens of thousands of domestic communications each year.¹ The amendment addresses these abuses by ending the collection of purely domestic communications and those that are not to or from an overseas target. It also prevents the government from engaging in future abuses and targeting Americans for surveillance.

The government believes it can restart “about” collection, despite the fact that it was halted following a five-year period where the government failed to comply with court-imposed privacy protections. In April 2017, the government halted collection of communications that were not to or from a surveillance target. This decision followed a period of five years where the government failed to comply with court-imposed privacy protections, raising significant Fourth Amendment concerns. Nevertheless, the government maintains that it has the legal authority to restart this collection without affirmative Congressional approval.

We urge you to vote “YES” on the Amash-Lofgren amendment. If you have any questions, please contact Neema Singh Guliani, Senior Legislative Counsel at nguliani@aclu.org.

Sincerely,



Ronald Newman
National Political Director



Neema Singh Guliani
Senior Legislative Counsel

¹ Privacy and Civil Liberties Oversight Board, “Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act,” 39 (June 2, 2014) <https://www.pclob.gov/library/702-Report-2.pdf>.