



Written by [Warren Mass](#) on December 21, 2017

Warrantless Surveillance Bills Face Opposition in Both Houses

Bills introduced in both houses of Congress that would authorize a long-term extension of warrantless searches of American citizens face strong bipartisan opposition from civil libertarians opposed to such surveillance. The objectionable legislation would make permanent Section 702 of the Foreign Intelligence Surveillance Amendments Act of 2008, which gives the National Security Agency (NSA) the authority to collect e-mails and other communications of overseas foreign targets from U.S. companies.



A report in the *Washington Post* on December 20 summarized what is at stake:

Absent congressional action, the Section 702 program will expire at the end of the year — a worst-case scenario for the intelligence community, which has ranked an extension of the program as its highest legislative priority for 2017. But Republican members of the Freedom Caucus, as well as members of the House Judiciary Committee, have insisted that Congress place more-significant restrictions than GOP leaders were planning to impose on the FBI's ability to access information about Americans who may have been in touch with foreign targets.

Pro-extension legislators, called "surveillance hawks" by critics, have introduced the FISA Amendments Reauthorization Act of 2017 (H.R. 4478) in the House and "A bill to make title VII of the Foreign Intelligence Surveillance Act of 1978 permanent" (S. 1297) in the Senate. H.R. 4478 was introduced by Representative Devin Nunes (R-Calif.) on November 29 before the House Permanent Select Committee on Intelligence. A writer for the Electronic Frontier Foundation (EFF) said that the bill "allows warrantless search of American communications, expands how collected data can be used, and treats constitutional protections as voluntary."

In a December 19 article, EFF treated the stopping of H.R. 4478 as an urgent matter, expected a House vote as early as the next day, and urged their readers to use social media to contact their representatives asking that they vote against the bill. However, Representative Mark Meadows (R-N.C.), the chairman of the House Freedom Caucus, was more optimistic about stopping it: "There isn't any chance that a long-term FISA reauthorization has the support of the overall conference," Meadows told the *Washington Post* on December 20.

By afternoon on December 20, Nunes told reporters that the reauthorization effort was dead "for now" and that decisions about how to proceed were being made "above my pay grade." The House Rules Committee also canceled plans to review the proposed legislation that same afternoon.

The *Post* noted that members of Congress are expected to approve a short-term extension of the surveillance authority in its current form, keeping it in place until January 19 — the same date the short-term budget extension pending before Congress this week is set to expire.

Libertarian-minded senators are also ready to stand in opposition to any legislation that would make the



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surveillance authority found in FISA permanent. While, at this point, it is uncertain whether the Senate might take up S. 1297 or vote on H.R. 4478 if the House passes it and sends it to the Senate, either bill will face strong opposition. “I will actively oppose and filibuster any long term extension of warrantless searches of American citizens,” Senator Rand Paul (R-Ky.) tweeted on December 20.

Senator Ron Wyden (D-Ore.) — who, with Paul, introduced bipartisan legislation entitled the “USA RIGHTS Act” (S. 1997) on October 24 to ban warrantless searches of private databases by the NSA and other federal agencies — issued a statement on the morning of December 20 that was critical of H.R. 4478. “This bill is an eleventh-hour attempt to sneak an unchecked warrantless surveillance program through Congress,” said Wyden.

“The legislation posted late yesterday is a clear step backward for Americans’ rights. It does nothing to check the warrantless backdoor searches of Americans’ communications,” he added. “The bill also fails to codify the current prohibition on ‘abouts’ collection, in which communications entirely among innocent Americans can be swept up if they reference a target’s email address.”

Paul and Senator Mike Lee (R-Utah) are also prepared to head off any government spending bill that includes permanent reauthorization of FISA.

“I would vote against any spending bill that has permanent reauthorization,” Paul was quoted by the *Washington Examiner* on December 19. He added that the intelligence community “needs more oversight, not less” of the provision.

Lee said anything more than a year-long extension of FISA Section 702, as the law stands right now, would also put his spending bill vote in jeopardy.

“A permanent reauthorization of Section 702 would be completely unacceptable,” Lee said.

The *Examiner* reported that the Senate is expected to consider a short-term spending bill to keep the government open past this week, but Lee said it seems unlikely that permanent 702 language would be added to that bill, although it could be part of a full-year spending bill in January.

Senators Paul, Lee, and Wyden were joined by Senators Patrick Leahy (D-Vt.) and Steve Daines (R-Mont.) in calling for only a short-term reauthorization of FISA Section 702 to allow for more debate in the new year.

“We need serious, meaningful reforms to Section 702 to protect our privacy,” Leahy said. He added that there is a bipartisan effort to resist permanent reauthorization.

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