

Review and Reform: The Foreign Intelligence Surveillance Act and Executive Accountability

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Committee on the Judiciary

United States Senate

January 28th, 2026

Dear Chair Grassley, Ranking Member Durbin, and Members of the Committee:

On behalf of the Consumer Choice Center (CCC), we write to you regarding the urgent need for comprehensive reform of Section 702 of the Foreign Intelligence Surveillance Act (FISA). Over the past year, I have had the honor of testifying twice before the House Judiciary Committee to both the subcommittee and full committee as a witness for the majority on these very issues. As the 2026 reauthorization deadline rapidly approaches, Congress must address the systemic abuses that have undermined the constitutional rights of American citizens.

At the Consumer Choice Center, we believe that national security and constitutionally protected rights are not mutually exclusive; protecting our nation must never come at the expense of personal liberties. However, years of documented abuses have revealed a pattern of government surveillance that erodes privacy, chills free speech, and undermines faith in our institutions.

While Section 702 was intended to target foreign threats abroad, it has increasingly blurred the line between foreign and domestic surveillance that routinely bypasses the Fourth Amendment. In 2022 alone, the FBI conducted approximately 200,000 warrantless searches of American citizens' communications using Section 702 data. The FISA Court has revealed troubling instances of misuse, including improper queries targeting:

- Individuals present at the U.S. Capitol on January 6, 2021.
- Black Lives Matter protesters during the summer of 2020.
- Over 19,000 donors to a congressional campaign.
- Elected officials, including a sitting U.S. Senator.

Despite these revelations, recent legislative efforts, specifically the Reforming Intelligence and Securing America Act (RISAA), have largely failed to implement substantive change.

Instead, RISAA dangerously expanded the definition of an Electronic Communications Service Provider (ECSP), potentially deputizing a wider array of private businesses into the surveillance apparatus without adequate oversight.

To restore public trust, protect their civil liberties under the Fourth Amendment, and maintain the national security of our nation, any future reauthorization must include the following reforms:

1. **Closing the Backdoor Search Loophole:** Congress must require government agencies to obtain a warrant before intentionally searching Section 702 databases for the communications of people in the United States.
2. **Closing the Data Broker Loophole:** The government should be prohibited from circumventing the Fourth Amendment by purchasing sensitive personal data—such as location or internet records—from private data brokers without a warrant. We strongly support the principles of the *Fourth Amendment Is Not for Sale Act*.
3. **Strengthening Third-Party Oversight:** The role of neutral, third-party *amici* within the FISA Court should be expanded to ensure that sensitive investigative matters involving Americans' rights are subject to independent legal counterarguments.
4. **Narrowing the ECSP Definition:** Congress should roll back the overly broad definition of communication providers to prevent the unchecked expansion of the surveillance dragnet into the private sector

Finally, we urge the Committee to consider how "modernization" can become a euphemism for the unchecked expansion of surveillance. From biased facial recognition algorithms that lead to wrongful arrests, to the risks posed by biometric data stored by companies like 23andMe, the government's use of technology must be bound by strict guardrails.

Liberty should never be the trade-off for security. It's time for Congress to take meaningful action to address surveillance rather than trying to manage the optics of it with piecemeal reforms. We stand ready to work with you and the committee to ensure that the next reauthorization of Section 702 of FISA is not a missed opportunity, but a constitutional victory worth celebrating that keeps Americans safe and secure.