

There is a key question here: who should be forced to help their government spy?

The legislation coming from the House gives the government unchecked authority to order millions of Americans to spy on behalf of the government.

Under current law - section 702 of the Foreign Intelligence Surveillance Act - the government can order the telephone companies and email and internet service providers to hand over communications.

This bill expands that power dramatically. It says that the government can force cooperation from, quote, “any other service provider who has access to equipment that is being or may be used to transmit or store wire or electronic communications.”

Now, if you have access to any communications, the government can force you to help it spy. That means anyone with access to a server, a wire, a cable box, a wifi router, a phone, or a computer. Think about the millions of Americans who work in buildings and offices in which communications are stored or pass through.

After all, every office building in America has data cables running through it. These people are not just the engineers who install, maintain and repair our communications infrastructure; there are countless others who could be forced to help the government spy, including those who clean offices and guard buildings. If this provision is enacted, the government could deputize any one of these people against their will, and force them to become an agent for Big Brother.

For example, by forcing an employee to insert a USB thumb drive into a server at an office they clean or guard at night.

This could all happen without any oversight. The FISA Court won't know about it. Congress won't know about it. The Americans who are handed these directives will be forbidden from talking about it. And unless they can afford high priced lawyers with security clearances who know their way around the FISA Court, they will have no recourse at all.

Supporters of this provision will say that this doesn't change the fact that Section 702 only targets foreigners overseas. But if the government thinks that those targets are communicating with people in the United States they could go right to the source – the wifi, the phone lines, the servers that transmit or store those communications. If the government has an interest in those foreign targets, well, the Americans whose communications get collected are out of luck.

Supporters of this provision will also say this was necessary because of a FISA Court opinion. I disagree. That opinion did not gut Section 702. This provision is not necessary. And there certainly is no justification for this vast expansion of surveillance authorities.

Supporters also claim that the provision has a narrow purpose and that the government does not intend to start tapping into every American's phone line or wifi. But that's not how this provision is written. And I would say respectfully that anyone who votes to give the government vast powers under the premise that intelligence agencies won't actually use it is being shockingly naive.

Supporters also point to a handful of exceptions that were tacked on to this provision, excluding things like hotels and coffee shops. Anyone who reads the text will see that these provisions clearly aren't designed to work. Even the coffee shop exception is meaningless because it wouldn't cover a company that maintains the coffee shop's

wifi. And the fact that there are a couple random exceptions further proves my point: this provision will force a huge range of companies and individuals to spy for the government.

Supporters have even argued that this bill had to be broadly written because what the government actually wants to do is secret. I don't accept that Alice-in-Wonderland logic. First, the American people deserve to know when the government can spy on them and when it can't. If you can't clearly explain to American voters why you need new powers, then you should not have them. Second, it doesn't matter what the government might be secretly intending to do with these authorities at the moment. This is a statutory authority that will be in place for years, during which time the government may very well decide to dramatically expand its surveillance activities.

Some of my colleagues say that they are not worried about President Biden abusing these authorities. In that case, how about President Trump? Imagine these authorities in his hands. If you are worried about having a president who lives to target vulnerable Americans, to pit Americans against each other, to find every conceivable way to punish his perceived enemies, you should find this bill terrifying.

This bill expands 702 authorities in other ways. For example, it includes a dramatic increase in the use of Section 702 in vetting travelers to the United States. It requires that the Attorney General enable searches on all travelers – tens of millions of people who come to the United States annually. This is a dragnet search of every work colleague, neighbor and classmate who is here on a visa, every grandparent visiting for a wedding or a funeral.

These are just some of the ways in which this bill expands warrantless surveillance authorities. On top of all that, it fails to reform Section 702 in any meaningful way.

I'll start with warrantless searches of Americans' communications swept up in Section 702 collection. Those searches have gone after American protesters, political campaign donors, even people who simply reported crimes to the FBI. The abuses have been extensive and well documented.

Supporters of this bill will argue that the FBI has cleaned up its act. But, even after the FBI made changes to its internal policies, abuses continued, including searches for a U.S. Senator, a state senator, and a state judge who had complained to the FBI about police abuses.

But the broader concern is that without checks and balances, there is nothing preventing a rapid increase of abuses after reauthorization. Supporters of this bill will say that it codifies the FBI's internal changes. But without checks and balances, what good are those changes?

Reformers have put forward extremely modest, common sense solutions. Warrants would not be required for all U.S. person searches. Reform proposals allow the government to see whether an American was communicating with foreign targets. A warrant is required only when the government wants to read the content of those communications, a situation that arises less than two percent of the time. Our provision also allows for emergency searches and has exceptions for imminent threats of death or injury, pre-existing law enforcement or FISA warrants, consent, and access to malware in cyberattacks.

This modest reform should be debated and voted on in the Senate.

There are other common sense reforms to Section 702 that are not in this bill. For example, it does not protect Americans against reverse targeting and it does not prohibit the collection of domestic communications.

Finally, this bill should have been an opportunity to pass meaningful protections for Americans' privacy from abusive government subpoenas, targeted at the most vulnerable groups in our society, including women, religious

and racial minorities, and LGBTQ+ people.

Fifteen states have now banned abortion, with more on the way. When states enforce bans on reproductive health access, they'll use everything from location data generated by connected cars and the smartphone in the patient's pocket, to the google search that the patient used to find the reproductive health facility or online telemedicine service. All of that can be obtained without a court order.

Congress needs to safeguard Americans' privacy, not give the President NEW surveillance powers. Congress has the time to draft comprehensive privacy and cybersecurity legislation, including 702 reauthorization. Chair Durbin's SAFE Act and my Government Surveillance Reform Act are both bipartisan reform bills that are ready for consideration.

I want to close with this: This chamber has time to do the right thing. Senators do not need to rubber stamp a disastrous surveillance bill, just because we are once again considering it at the last possible moment.

The FISA Court recently renewed the court's annual 702 certifications, which authorize surveillance until April 2025. This means there is no need for Congress to rush.

If members insist on extending the authorization, I am even prepared to accept a short-term extension of the existing 702 authority by unanimous consent.

But under no circumstances should the United States Senate be cowed by those who say senators have no choice except to sign off on whatever piece of paper the executive branch requests. Reformers have stood ready and willing since last fall to have this debate. And yet, the status quo crowd wouldn't pick up the phone until the last possible moment, to ensure this body wouldn't have time for anything but a last-second vote on this dangerous bill.

The only way this body will have a real debate about reforming government surveillance is by rejecting the House bill and standing up for the Senate's independence and Americans' Constitutional rights. Ben Franklin got it right: Americans don't have to sacrifice liberty for security - The Congress has a duty to deliver laws that give us both.