

118TH CONGRESS
1ST SESSION

H. RES. 577

Expressing the sense of the House of Representatives that authorities under section 702 of the Foreign Intelligence Surveillance Act of 1978 should be allowed to expire.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2023

Mr. GAETZ (for himself, Ms. GREENE of Georgia, Mr. GOSAR, Mr. MASSIE, Mr. CRANE, Mr. ROSENDALE, Mr. BIGGS, and Mrs. LUNA) submitted the following resolution; which was referred to the Committee on the Judiciary, and in addition to the Permanent Select Committee on Intelligence, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

RESOLUTION

Expressing the sense of the House of Representatives that authorities under section 702 of the Foreign Intelligence Surveillance Act of 1978 should be allowed to expire.

Whereas section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a) was added by the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2438);

Whereas the FISA Amendments Reauthorization Act of 2017 extended section 702 authorities until December 31, 2023;

Whereas absent congressional action, section 702 authorities will sunset at the end of the year;

Whereas the Intelligence Community has not been forthright about its use of section 702 authorities over the 15 years that section 702 has been authorized;

Whereas both Houses of Congress have repeatedly sought to exercise their constitutional, article I authority to conduct oversight of executive branch use of section 702 authorities, and the Department of Justice, including the Federal Bureau of Investigation (FBI), has repeatedly and over multiple Congresses, failed to produce lawfully requested documents and witnesses to both Houses of Congress;

Whereas what information Congress has related to section 702 authorities is often obtained from news reports, whistleblower materials, and even when produced is often heavily redacted;

Whereas what data Congress have on section 702 practice are often incomplete, in part due to the Department of Justice itself failing for 21 months to comply with the plain language of section 112 of the FISA Amendments Reauthorization Act of 2017, mandating that the agency keep a count of its section 702 queries of United States person data, until two Federal courts held that they were required to do so;

Whereas this Congress is aware of multiple abuses of the section 702 data collection process through released court decisions and aggregated data, which in itself is an adequate basis to sunset the program;

Whereas the National Security Agency acquires more than 250,000,000 internet communications every year pursuant to section 702;

Whereas the FBI itself has conducted 702 queries with callous disregard of the privacy rights of Americans, as evidenced by a redacted Foreign Intelligence Surveillance Court (FISC) opinion of April 21, 2022, including—

(1) by conducting queries using 6,800 Social Security numbers;

(2) by running a batch query in June 2020 of unminimized FISA information using identifiers of 133 individuals arrested “in connection with civil unrest and protests between approximately May 30, and June 18, 2020” without “any specific potential connections to terrorist related activity” known to those who conducted the queries;

(3) by conducting a batch query for over 19,000 donors to a congressional campaign;

(4) by “regularly” querying unminimized FISA information using identifiers of individuals listed in local police homicide reports, including victims, family members, witnesses, and suspects with no evidence of criminal activity;

(5) by conducting batch queries consisting of 23,132 separate queries, using presumed United States-person query terms, and running said queries against unminimized section 702 information, although the FBI analyst conducting the queries had no indications of foreign influence related to the query terms used; and

(6) by conducting “in excess” of 278,000 noncompliant queries of raw FISA-acquired information;

Whereas that FISC court opinion concluded that “[a]cross the FBI, the government has reported queries of raw FISA-acquired information as ‘a part of routine baseline checks in order to determine whether there was any information regarding the subject [of the query] in FBI holdings,’ without a specific factual basis to believe the query was reasonably likely to return foreign intelligence information or evidence of a crime.”;

Whereas current oversight work of the 118th Congress does evidence that this pattern of abuses, in particular by the FBI, are not incidental, but rather a pattern of behavior warranting the sunset of section 702;

Whereas even FISC Judge James E. Boasberg in a 2018 ruling observed that a “large number of [702] queries evidence[ed] a misunderstanding of the querying standard—or indifference toward it”;

Whereas numerous American intelligence, law enforcement, academic, and civil liberties groups have expressed sustained concern over the law and practice of section 702 collection;

Whereas there is no indication that traditional FISA authorizations, requiring a warrant, are not up to the task of protecting American national security while also protecting American civil liberties;

Whereas traditional FISA authorities are more protective of American civil liberties, including—

- (1) by requiring close involvement of article III judges;
- (2) by requiring approval both of the Attorney General and a judge;

(3) by requiring an attestation that ordinary methods of information collection would not work, prior to having a warrant approved; and

(4) by having time limits on surveillance; and

Whereas no government component has ever provided evidence that section 702 has produced better outcomes than traditional FISA: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 resentatives that the authorities under section 702 of the
3 Foreign Intelligence Surveillance Act of 1978 should be
4 allowed to expire at the end of this calendar year.

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