

April 1, 2024

The Honorable Mike Johnson
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Speaker Johnson and Leader Jeffries:

We write to express our strong opposition to the Reforming Intelligence and Securing America Act (RISAA), H.R.7320, and to urge you to oppose its consideration on the House Floor *unless members have the opportunity to vote on amendments that were critical components of this legislation's negotiated introduction*. House Members across the political spectrum are eager to vote for legislation that reforms Section 702 of the Foreign Intelligence Surveillance Act (FISA), and moving forward with only a vote on RISAA would deprive them of that opportunity. Blocking off votes on critical issues that have been central to the past year's debate over FISA would harm Americans' privacy, as well as needlessly threaten Section 702's future viability.

RISAA was introduced after a months-long discussion between the House Committee on the Judiciary and the House Permanent Select Committee on Intelligence (HPSCI) over their competing bills, the Protect Liberty and End Warrantless Surveillance Act, H.R.6570, and the FISA Reform and Reauthorization Act, H.R.6611. These negotiations ultimately failed to produce consensus legislation that both sides could support, but they did offer a path forward for the House to consider reauthorizing FISA Section 702. That agreed upon path was to bring RISAA to the floor — with the Judiciary and Intelligence committees both having the opportunity to offer three amendments for each side.

RISAA on its own, therefore, must not be mistaken as a compromise. Members of the Judiciary Committee agreed to support it only if members had the opportunity to vote on key amendments, including those to 1) close the backdoor search loophole that agencies use to perform warrantless searches for Americans' private communications in Section 702 databases, and 2) close the data broker loophole that intelligence and law enforcement agencies use to buy their way around constitutional and statutory protections for Americans' sensitive information.

In total, more than three quarters of provisions in RISAA come directly from HPSCI's legislation, and less than a quarter from Judiciary's, even though the Judiciary Committee has primary jurisdiction. Provisions taken from HPSCI's legislation include:

- Special privacy protections exclusively for members of Congress;
- A sham "reform" of U.S. person queries that would have prevented the FBI from accessing Americans' communications in only two instances in 2022, a year in which the

FBI conducted 204,090 backdoor searches, and which would not cover any of the most egregious known misuses of backdoor searches;

- Codifications of existing procedures that have already proven unable to prevent thousands of non-compliant searches each year, including wrongful queries on a U.S. Senator, a state senator, and a state court judge who contacted the FBI to report civil rights violations by a local police chief; and
- Provisions that would actually *weaken* accountability and oversight by the FISA Court amici, whose ability to raise civil liberties issues would be limited.

And although some of RISAA's other measures might improve FISA Title I and Title III applications, these provisions are unrelated to the warrantless surveillance Section 702 authorizes, and in almost every instance are weaker than the parallel provisions in the Judiciary Committee's legislation, which was reported out of committee on a 35-2 vote.

As you are aware, the reforms proposed by the Judiciary Committee enjoy overwhelming bipartisan support — not just in Congress, but also among the American people. Recent polling by YouGov demonstrates that 76% of Americans support a warrant requirement for backdoor searches and 80% support requiring agencies to get a warrant before purchasing sensitive information about people in the United States from data brokers. Even more Americans support robust Congressional debate over new privacy protections.¹ This level of support for surveillance reforms is unsurprising given the repeated abuses of Section 702 and other under-regulated surveillance authorities by intelligence and law enforcement agencies. Intelligence agents have performed tens of thousands of baseless backdoor searches of the Section 702 databases, including searches for:

- 19,000 donors to a congressional campaign;
- Members of Congress;
- A local political party;
- Tens of thousands of people involved in “civil unrest” over a one-year period; and
- The communications of protesters from across the ideological spectrum.

By hewing closely to HPSCI's legislation, RISAA is carefully crafted to preserve the status quo, not to enact the serious privacy protections for which most Americans and members of Congress are calling. We therefore urge you to oppose Floor consideration of any legislation, including RISAA, that would reauthorize Section 702 without providing votes on key amendments, including those to close the backdoor search and data broker loopholes.

¹ <https://demandprogresseducationfund.org/new-polling-as-mass-surveillance-debate-reaches-final-stages-in-congress-americans-demonstrate-overwhelming-support-for-increased-privacy-protections/>

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New America's Open Technology Institute

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