

May 11, 2015

The Honorable Thomas Massie
314 Cannon House Office Building
Washington, DC 20515

The Honorable Zoe Lofgren
1401 Longworth House Office Building
Washington, DC 20515

The Honorable Ted Poe
2412 Rayburn House Office Building
Washington, DC 20515

RE: In support of H.R. 2233, which addresses government surveillance

Dear Representatives Massie, Lofgren, and Poe:

We write in strong support of your legislation to close backdoors that allow the National Security Agency to conduct surveillance of electronic communications. The legislation is similar to another measure you introduced, House Amendment 935 to the Department of Defense Appropriations Act for FY 2015, which received overwhelming support. It additionally addresses warrantless searches conducted under an Executive order. The ongoing revelations about the intrusive nature and broad scope of government surveillance have badly damaged the trust users have in the security of their Internet communications. This legislation would help begin to restore that trust in three ways.

First, the bill would address the "backdoor search loophole," which refers to the government's practice of searching for information about U.S. persons in databases of communications collected under Section 702 of the Foreign Intelligence Surveillance Act (50 U.S.C. § 1881a). This bill would address that loophole by prohibiting searches of those databases for communications of a U.S. person absent a court order or special circumstances. Those circumstances include when consent is given, the person is the subject of the (aforementioned) order or emergency authorization that authorizes electronic or physical search, or the entity carrying out the search has reasonable belief that the life or safety of the person is threatened and the information is sought for the purpose of assisting the person. Although Section 702 prohibits the government from intentionally targeting the communications of U.S. persons, the government asserts the authority to query those communications in other circumstances under Section 702. In response, the legislation prohibits the intentional targeting of a person outside the United States if "a purpose" is to target a particular, known person reasonably believed to be in the U.S.

Second, the bill generally prohibits the searching of communications of a known U.S. person collected without a court order under an Executive order. As with searches under Section 702, exceptions include when consent is given, the person is the subject of an order or emergency authorization that authorizes electronic or physical search, or the entity carrying out the search has reasonable belief that the life or safety of the person is threatened and the information is sought for the purpose of assisting the person. This will help ensure surveillance undertaken

pursuant to an Executive order does not become a subterfuge to avoid the court order requirement that would apply if a U.S. person were targeted directly.

Finally, the bill would prohibit the government from requiring or requesting that any person or entity build back doors into its products or services that would facilitate electronic surveillance of users of such products or services. This is a sensible limitation that not only improves transparency of surveillance practices, but also promotes security by avoiding the creation of potential vulnerabilities that can later be exploited by criminals and other bad actors. Notably, this particular provision would exempt any mandates or requests that are made with regard to products and services that are covered under the Communications Assistance for Law Enforcement Act (CALEA).

All three of these measures would make appreciable changes that would advance government surveillance reform and help rebuild lost trust among Internet users and businesses, while also preserving national security and intelligence authorities. We urge the Congress to move speedily to enact this legislation.

Sincerely,

Advocacy for Principled Action in Government
American Association of Law Libraries
American Civil Liberties Union
Arab American Institute
Bill of Rights Defense Committee
Brennan Center for Justice at New York
University School of Law
Campaign for Liberty
Center for Democracy and Technology
Competitive Enterprise Institute
CREDO
Data Foundry
Defending Dissent Foundation
Demand Progress
Electronic Frontier Foundation

Fight for the Future
Free Press Action Fund
FreedomWorks
Golden Frog
Government Accountability Project
National Security Counselors
New America's Open Technology Institute
OpenTheGovernment.org
Restore The Fourth
RootsAction.org
Sunlight Foundation
TechFreedom
The Constitution Project
X-Lab