

June 10, 2015

The Honorable John Boehner  
Speaker  
United States House of Representatives

The Honorable Nancy Pelosi  
Minority Leader  
United States House of Representatives

The Honorable Kevin McCarthy  
Majority Leader  
United States House of Representatives

The Honorable Steny Hoyer  
Democratic Whip  
United States House of Representatives

The Honorable Steve Scalise  
Majority Whip  
United States House of Representatives

The Honorable Hal Rogers  
Chairman, Appropriations Committee  
United States House of Representatives

The Honorable Nita Lowey  
Ranking Member, Appropriations Committee  
United States House of Representatives

The Honorable Rodney Frelinghuysen  
Chairman, Defense Appropriations Subc.  
United States House of Representatives

The Honorable Pete Visclosky  
Ranking Member, Defense Appropriations Subc.  
United States House of Representatives

**RE: Massie-Lofgren Amendment to the Department of Defense Appropriations Act of 2016, H.R. 2685**

Dear Speaker Boehner, Majority Leader McCarthy, Majority Whip Scalise, Chairman Rogers, Chairman Frelinghuysen, Democratic Leader Pelosi, Democratic Whip Hoyer, Ranking Member Lowey, and Ranking Member Visclosky:

We write to urge your support for an amendment that Representatives Massie and Lofgren will offer to H.R. 2685, the Department of Defense Appropriations Act of 2016. In previous years, the amendment garnered the broad support of a majority of members of the House of Representatives. It addresses two critical issues necessary for the protection of Constitutional principles and the digital economy.

First, the amendment would defund warrantless government searches of the database of information collected under Section 702 of the Foreign Intelligence Surveillance Act of 1978 using U.S. person identifiers, absent certain circumstances. Although Section 702 prohibits the government from intentionally targeting the communications of U.S. persons, it does not explicitly restrict deliberately querying communications of Americans that were “inadvertently” or “incidentally” collected under Section 702. Moreover, following an apparent change in the NSA’s internal practices in 2011, the NSA now is explicitly permitted under certain

circumstances to conduct searches using U.S. person names and identifiers without a warrant.<sup>1</sup> In March, James Clapper, the Director of the Office of National Intelligence, confirmed in a letter to Senator Wyden that such warrantless queries of U.S. person communications are being conducted.<sup>2</sup>

Second, the amendment would prohibit the use of appropriated funds to require or request that United States persons and entities build security vulnerabilities into their products or services in order to facilitate government surveillance, except as provided for by the Communications Assistance for Law Enforcement Act.

This amendment is identical to the Massie-Lofgren amendment that passed the House of Representatives by an overwhelming 293-vote majority in 2014, although it was not included in the omnibus appropriations bill that ultimately was enacted into law.

Today, this amendment enjoys overwhelming, bipartisan support, both from the public and from the undersigned groups. In addition to supporting these necessary steps forward by voting in favor of this amendment to H.R. 2685, we also respectfully ask you work to ensure it is included in any legislation sent to the President.

We welcome the opportunity to discuss this with you further. Please contact Demand Progress policy director Daniel Schuman at [daniel@demandprogress.org](mailto:daniel@demandprogress.org) or 202-577-6100; FreedomWorks legislative affairs manager Josh Withrow at [jwithrow@freedomworks.org](mailto:jwithrow@freedomworks.org) or 202-783-3870; or Sunlight Foundation federal policy manager Sean Vitka at [svitka@sunlightfoundation.com](mailto:svitka@sunlightfoundation.com) or 845-558-2507.

Sincerely,

American Civil Liberties Union  
Arab American Institute  
Bill of Rights Defense Committee  
Campaign for Liberty  
The Constitution Project  
Constitutional Alliance  
Council on American-Islamic Relations  
CREDO Mobile  
Defending Dissent Foundation  
Demand Progress  
DownsizeDC.org, Inc.  
Fight for the Future  
Free Press Action Fund

FreedomWorks  
Friends Committee on National Legislation  
Media Alliance  
New America's Open Technology Institute  
OpenMedia.org  
OpenTheGovernment.org  
Project On Government Oversight (POGO)  
Restore The Fourth  
RootsAction.org  
Student Net Alliance  
Sunlight Foundation  
TechFreedom  
X-Lab

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<sup>1</sup> <http://www.dni.gov/files/documents/Minimization%20Procedures%20used%20by%20NSA%20in%20Connection%20with%20FISA%20SECT%20702.pdf>

<sup>2</sup> [http://www.wyden.senate.gov/download/?id=130BFF88-A3C0-4315-A23B-C4F96C499D9D&do\\_wload=1](http://www.wyden.senate.gov/download/?id=130BFF88-A3C0-4315-A23B-C4F96C499D9D&do_wload=1)