

June 15, 2016

The Honorable Paul Ryan
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

RE: Massie-Lofgren Amendment to the Department of Defense Appropriations Act of 2017, H.R. 5293.

Dear Speaker Ryan, Majority Leader McCarthy, Majority Whip Scalise, Democratic Leader Pelosi, and Democratic Whip Hoyer:

We write to urge your support for an amendment that Representatives Massie and Lofgren will offer to H.R. 5293, the Department of Defense Appropriations Act of 2017. In previous years, the same 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, the government argues it does not explicitly restrict deliberately querying communications of Americans that were “incidentally” collected under Section 702. Moreover, following an apparent change in the NSA’s internal practices in 2011, the NSA now explicitly claims the authority under certain circumstances to conduct searches using U.S. person names and identifiers without a warrant.¹ 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.²

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.

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

² <http://www.wyden.senate.gov/download/?id=130BFF88-A3C0-4315-A23B-C4F96C499D9D&download=1>

This amendment is identical to the Massie-Lofgren amendment that passed the House of Representatives by an overwhelming 293-vote majority in 2014 and again by a wide margin in 2015, 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. 5293, 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 or 202-577-6100.

Sincerely,

Advocacy for Principled Action in Government
American Civil Liberties Union
American-Arab Anti-Discrimination Committee (ADC)
Arab American Institute
Bill of Rights Defense Committee/Defending Dissent Foundation
Campaign for Liberty
Center for Democracy & Technology
Constitutional Alliance
Demand Progress
Electronic Frontier Foundation
Fight for the Future
Free the People
FreedomWorks
Government Accountability Project
National Association of Criminal Defense Lawyers
New America's Open Technology Institute
Niskanen Center
R Street Institute
Restore The Fourth
The Sunlight Foundation
X-Lab