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MARKUP OF:

H.R. 4478, FISA AMENDMENTS

REAUTHORIZATION ACT OF 2017

Friday, December 1, 2017

U.S. House of Representatives,

Permanent Select Committee on Intelligence,

Washington, D.C.

The committee met, pursuant to call, at 9:00 a.m., in Room 1100, Longworth House Office Building, the Honorable Devin Nunes (chairman of the committee) presiding.

Present: Representatives Nunes, Conaway, King, LoBiondo, Rooney, Ros-Lehtinen, Turner, Wenstrup, Stewart, Crawford, Gowdy, Stefanik, Hurd, Schiff, Himes, Sewell, Carson, Speier, Swalwell, Castro, and Heck.

The Chairman. The committee will come to order.

The Permanent Select Committee on Intelligence is pleased to be out in the public for a rare appearance.

To our guests in the audience, welcome. We appreciate you being here. Please be advised that proper decorum must be observed at all times and that disruptions during today's proceedings will not be tolerated.

As a reminder to our members, we are here and will remain in open session. This markup will address only unclassified matters.

Pursuant to Committee Rule 6(c) and House Rule XI, clause 2, subsection (h)(4), the chair announces that he may postpone further proceedings today on any question of approving any measure or any matter adopting an amendment on which a recorded vote or the yeas or nays are ordered. And without objection, the chair is authorized to declare a recess at any time.

The item for consideration today is H.R. 4478, the FISA Amendments Reauthorization Act of 2017, and the clerk will designate the bill clerk.

The Clerk. H.R.4478, to amend the Foreign Intelligence Surveillance Act of 1978 to improve foreign intelligence collection and the safeguards, accountability, and oversight of acquisition of foreign intelligence, to extend title VII of such Act, and for other purposes.

The Chairman. I ask unanimous consent that the bill be considered as read and open for amendment at any point. Without objection, so ordered.

[The bill follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

.....  
(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

**H. R.**

To amend the Foreign Intelligence Surveillance Act of 1978 to improve foreign intelligence collection and the safeguards, accountability, and oversight of acquisitions of foreign intelligence, to extend title VII of such Act, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. NUNES introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

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**A BILL**

To amend the Foreign Intelligence Surveillance Act of 1978 to improve foreign intelligence collection and the safeguards, accountability, and oversight of acquisitions of foreign intelligence, to extend title VII of such Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “FISA Amendments Reauthorization Act of 2017”.(b)

1 TABLE OF CONTENTS.—The table of contents for this Act  
2 is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

TITLE I—ENHANCEMENTS TO FOREIGN INTELLIGENCE  
COLLECTION

- Sec. 101. Section 705 emergency provision.
- Sec. 102. Modification to definitions of foreign power and agent of a foreign power.

TITLE II—SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT

- Sec. 201. Querying procedures required.
- Sec. 202. Use and disclosure provisions.
- Sec. 203. Congressional review and oversight of abouts collection.
- Sec. 204. Publication of minimization procedures under section 702.
- Sec. 205. Compensation of amici curiae and technical experts.
- Sec. 206. Additional reporting requirements.
- Sec. 207. Procedures regarding dissemination of nonpublicly available information concerning United States persons.
- Sec. 208. Improvements to Privacy and Civil Liberties Oversight Board.
- Sec. 209. Privacy and civil liberties officers.

TITLE III—EXTENSION OF AUTHORITIES, INCREASED  
PENALTIES, REPORTS, AND OTHER MATTERS

- Sec. 301. Extension of title VII of FISA; effective dates.
- Sec. 302. Increased penalty for unauthorized removal and retention of classified documents or material.
- Sec. 303. Comptroller General study on the classification system and protection of classified information.
- Sec. 304. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.
- Sec. 305. Severability.

3 **SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE**  
4 **SURVEILLANCE ACT OF 1978.**

5 Except as otherwise expressly provided, whenever in  
6 this Act an amendment or repeal is expressed in terms  
7 of an amendment to, or a repeal of, a section or other  
8 provision, the reference shall be considered to be made to  
9 a section or other provision of the Foreign Intelligence  
10 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

1 **TITLE I—ENHANCEMENTS TO**  
2 **FOREIGN INTELLIGENCE**  
3 **COLLECTION**

4 **SEC. 101. SECTION 705 EMERGENCY PROVISION.**

5 Section 705 (50 U.S.C. 1881d) is amended by adding  
6 at the end the following:

7 “(c) EMERGENCY AUTHORIZATION.—

8 “(1) CONCURRENT AUTHORIZATION.—If the  
9 Attorney General authorized the emergency employ-  
10 ment of electronic surveillance or a physical search  
11 pursuant to section 105 or 304, the Attorney Gen-  
12 eral may authorize, for the effective period of the  
13 emergency authorization and subsequent order pur-  
14 suant to section 105 or 304, without a separate  
15 order under section 703 or 704, the targeting of a  
16 United States person subject to such emergency em-  
17 ployment for the purpose of acquiring foreign intel-  
18 ligence information while such United States person  
19 is reasonably believed to be located outside the  
20 United States.

21 “(2) USE OF INFORMATION.—If an application  
22 submitted to the Court pursuant to section 104 or  
23 304 is denied, or in any other case in which the ac-  
24 quisition pursuant to paragraph (1) is terminated  
25 and no order with respect to the target of the acqui-

1       sition is issued under section 105 or 304, all infor-  
2       mation obtained or evidence derived from such ac-  
3       quisition shall be handled in accordance with section  
4       704(d)(4).”.

5       **SEC. 102. MODIFICATION TO DEFINITIONS OF FOREIGN**  
6                                   **POWER AND AGENT OF A FOREIGN POWER.**

7       (a) FOREIGN POWER.—Subsection (a) of section 101  
8       (50 U.S.C. 1801) is amended—

9               (1) in paragraph (6), by striking “; or” and in-  
10       serting a semicolon;

11              (2) in paragraph (7), by striking the period at  
12       the end and inserting “; or”; and

13              (3) by adding at the end the following new  
14       paragraph:

15              “(8) an entity not substantially composed of  
16       United States persons that is engaged in inter-  
17       national malicious cyber activity, or activities in  
18       preparation therefor, that threatens the national de-  
19       fense or security of the United States.”.

20       (b) AGENT OF A FOREIGN POWER.—Subsection  
21       (b)(1) of such section (50 U.S.C. 1801) is amended—

22              (1) in subparagraph (D), by striking “; or” and  
23       inserting a semicolon; and

24              (2) by adding at the end the following new sub-  
25       paragraph:

1           “(F) engages in international malicious  
2           cyber activity that threatens the national de-  
3           fense or security of the United States, or activi-  
4           ties in preparation therefor, for or on behalf of  
5           a foreign power, or knowingly aids or abets any  
6           person in the conduct of such international ma-  
7           licious cyber activity or activities in preparation  
8           therefor, or knowingly conspires with any per-  
9           son to engage in such international malicious  
10          cyber activity or activities in preparation there-  
11          for; or”.

12          (c) INTERNATIONAL MALICIOUS CYBER ACTIVITY  
13          DEFINED.—Such section (50 U.S.C. 1801) is further  
14          amended by adding at the end the following new sub-  
15          section:

16          “(q) The term ‘international malicious cyber activity’  
17          means activity on or through an information system (as  
18          defined by section 102 of the Cybersecurity Information  
19          Sharing Act of 2015 (6 U.S.C. 1501)—

20                 “(1) originating from, or directed by persons lo-  
21                 cated, in whole or in substantial part, outside the  
22                 United States;

23                 “(2) that seeks to compromise or impair the  
24                 confidentiality, integrity, or availability of com-  
25                 puters, information systems or communications sys-

1       tems, networks, physical or virtual infrastructure  
2       controlled by computers or information systems, or  
3       information resident thereon; and

4               “(3) that is not authorized by the United States  
5       Government or otherwise carried out in accordance  
6       with Federal law.”.

7       **TITLE II—SAFEGUARDS, AC-**  
8       **COUNTABILITY, AND OVER-**  
9       **SIGHT**

10      **SEC. 201. QUERYING PROCEDURES REQUIRED.**

11      (a) QUERYING PROCEDURES.—

12           (1) IN GENERAL.—Section 702 (50 U.S.C.  
13      1881a) is amended—

14           (A) by redesignating subsections (f)  
15           through (l) as subsections (g) through (m), re-  
16           spectively; and

17           (B) by inserting after subsection (e) the  
18           following new subsection:

19      “(f) QUERIES.—

20           “(1) PROCEDURES REQUIRED.—

21           “(A) REQUIREMENT TO ADOPT.—The At-  
22           torney General, in consultation with the Direc-  
23           tor of National Intelligence, shall adopt  
24           querying procedures consistent with the require-  
25           ments of the fourth amendment to the Con-



1           stitution of the United States for information  
2           collected pursuant to an authorization under  
3           subsection (a).

4           “(B) RECORD OF UNITED STATES PERSON  
5           QUERY TERMS.—The Attorney General, in con-  
6           sultation with the Director of National Intel-  
7           ligence, shall ensure that the procedures adopt-  
8           ed under subparagraph (A) include a technical  
9           procedure whereby a record is kept of each  
10          United States person query term used for a  
11          query.

12          “(C) JUDICIAL REVIEW.—The procedures  
13          adopted in accordance with subparagraph (A)  
14          shall be subject to judicial review pursuant to  
15          subsection (j).

16          “(2) COURT ORDERS FOR ACCESS OF CONTENTS  
17          FROM CERTAIN QUERIES.—

18          “(A) DISCRETION TO APPLY FOR COURT  
19          ORDER.—Before accessing the contents of com-  
20          munications acquired under subsection (a) that  
21          were retrieved using a United States person  
22          query term that was not designed to find and  
23          extract foreign intelligence information, the  
24          Federal Bureau of Investigation may apply for  
25          an order of the Court under subparagraph (C).

1           “(B) JURISDICTION.—The Court shall  
2           have jurisdiction to review an application and to  
3           enter an order approving the access described  
4           in subparagraph (A).

5           “(C) APPLICATION.—Each application for  
6           an order under this paragraph shall be made by  
7           a Federal officer in writing upon oath or affir-  
8           mation to a judge having jurisdiction under  
9           subparagraph (B). Each application shall re-  
10          quire the approval of the Attorney General  
11          based upon the finding of the Attorney General  
12          that the application satisfies the criteria and re-  
13          quirements of such application, as set forth in  
14          this paragraph, and shall include—

15                 “(i) the identity of the Federal officer  
16                 making the application; and

17                 “(ii) an affidavit or other information  
18                 containing a statement of the facts and  
19                 circumstances relied upon by the applicant  
20                 to justify the belief of the applicant that  
21                 the contents of communications described  
22                 in subparagraph (A) covered by the appli-  
23                 cation would provide evidence of—

24                         “(I) criminal activity;

1                   “(II) contraband, fruits of a  
2                   crime, or other items illegally pos-  
3                   sessed by a third party; or

4                   “(III) property designed for use,  
5                   intended for use, or used in commit-  
6                   ting a crime.

7                   “(D) ORDER.—Upon an application made  
8                   pursuant to subparagraph (C), the Court shall  
9                   enter an order approving the access of the con-  
10                  tents of communications described in subpara-  
11                  graph (A) covered by the application if the  
12                  Court finds probable cause to believe that such  
13                  contents would provide any of the evidence de-  
14                  scribed in subparagraph (C)(ii).

15                  “(3) QUERY DEFINED.—In this subsection, the  
16                  term ‘query’ means any instance in which informa-  
17                  tion the United States Government has acquired is  
18                  searched using one or more specific terms for the  
19                  purpose of discovering or retrieving unminimized  
20                  contents or noncontents of the communications of  
21                  United States persons.”.

22                  (2) APPLICATION.—Subsection (f) of section  
23                  702 of the Foreign Intelligence Surveillance Act of  
24                  1978 (50 U.S.C. 1881a), as added by paragraph (1),  
25                  shall apply with respect to certifications submitted

1 under subsection (h) of such section to the Foreign  
2 Intelligence Surveillance Court after January 1,  
3 2018.

4 (b) CONFORMING AMENDMENTS.—

5 (1) AMENDMENTS TO SECTION 702 OF FISA.—

6 Such section 702 is further amended—

7 (A) in subsection (a), by striking “with  
8 subsection (i)(3)” and inserting “with sub-  
9 sections (j)(3)”;

10 (B) in subsection (c)—

11 (i) in paragraph (1)(B), by striking  
12 “with subsection (g)” and inserting “with  
13 subsection (h)”;

14 (ii) in paragraph (2), by striking “to  
15 subsection (i)(3)” and inserting “to sub-  
16 section (j)(3)”;

17 (iii) in paragraph (3)—

18 (I) in subparagraph (A), by strik-  
19 ing “with subsection (g)” and insert-  
20 ing “with subsection (h)”;

21 (II) in subparagraph (B)—

22 (aa) by striking “to sub-  
23 section (i)(1)(C)” and inserting  
24 “to subsection (j)(1)(C)”;

1 (bb) by striking “under sub-  
2 section (i)” and inserting “under  
3 subsection (j)”;

4 (C) in subsection (d)(2), by striking “to  
5 subsection (i)” and inserting “to subsection  
6 (j)”;

7 (D) in subsection (e)(2), by striking “to  
8 subsection (i)” and inserting “to subsection  
9 (j)”;

10 (E) in subsection (h), as redesignated by  
11 subsection (a)(1)—

12 (i) in paragraph (2)(A)(iii), by strik-  
13 ing “with subsection (f)” and inserting  
14 “with subsection (g)”;

15 (ii) in paragraph (3), by striking  
16 “with subsection (i)(1)(C)” and inserting  
17 “with subsection (j)(1)(C)”;

18 (iii) in paragraph (6), by striking “to  
19 subsection (i)” and inserting “to sub-  
20 section (j)”;

21 (F) in subsection (j), as redesignated by  
22 subsection (a)(1)—

23 (i) in paragraph (1)—

24 (I) in subparagraph (A), by strik-  
25 ing “targeting and minimization pro-

1 cedures adopted in accordance with  
2 subsections (d) and (e)” and inserting  
3 “targeting, minimization, and  
4 querying procedures adopted in ac-  
5 cordance with subsections (d), (e),  
6 and (f)(1)”;

7 (II) in subparagraph (B), by  
8 striking “targeting and minimization  
9 procedures adopted in accordance with  
10 subsections (d) and (e)” and inserting  
11 “targeting, minimization, and  
12 querying procedures adopted in ac-  
13 cordance with subsections (d), (e),  
14 and (f)(1)”;

15 (III) in subparagraph (C), by  
16 striking “targeting and minimization  
17 procedures adopted in accordance with  
18 subsections (d) and (e)” and inserting  
19 “targeting, minimization, and  
20 querying procedures adopted in ac-  
21 cordance with subsections (d), (e),  
22 and (f)(1)”;

23 (ii) in paragraph (2)—

1 (I) in subparagraph (A), by strik-  
2 ing “with subsection (g)” and insert-  
3 ing “with subsection (h)”;

4 (II) by adding at the end the fol-  
5 lowing:

6 “(D) QUERYING PROCEDURES.—The  
7 querying procedures adopted in accordance with  
8 subsection (f)(1) to assess whether such proce-  
9 dures comply with the requirements of such  
10 subsection.”;

11 (iii) in paragraph (3)—

12 (I) in subparagraph (A)—

13 (aa) by striking “with sub-  
14 section (g)” and inserting “with  
15 subsection (h)”;

16 (bb) by striking “targeting  
17 and minimization procedures  
18 adopted in accordance with sub-  
19 sections (d) and (e)” and insert-  
20 ing “targeting, minimization, and  
21 querying procedures adopted in  
22 accordance with subsections (d),  
23 (e), and (f)(1)”;

24 (II) in subparagraph (B), in the  
25 matter before clause (i)—

1 (aa) by striking “with sub-  
2 section (g)” and inserting “with  
3 subsection (h)”;

4 (bb) by striking “with sub-  
5 sections (d) and (e)” and insert-  
6 ing “with subsections (d), (e),  
7 and (f)(1)”;

8 (iv) in paragraph (5)(A)—

9 (I) by striking “with subsection  
10 (g)” and inserting “with subsection  
11 (h)”;

12 (II) by striking “with subsections  
13 (d) and (e)” and inserting “with sub-  
14 sections (d), (e), and (f)(1)”;

15 (G) in subsection (m), as redesignated by  
16 subsection (a)(1)—

17 (i) in paragraph (1), in the matter be-  
18 fore subparagraph (A)—

19 (I) by striking “targeting and  
20 minimization procedures adopted in  
21 accordance with subsections (d) and  
22 (e)” and inserting “targeting, mini-  
23 mization, and querying procedures  
24 adopted in accordance with sub-  
25 sections (d), (e), and (f)(1)”;



1 (II) by striking “with subsection  
2 (f)” and inserting “with subsection  
3 (g)”; and

4 (ii) in paragraph (2)(A)—

5 (I) by striking “targeting and  
6 minimization procedures adopted in  
7 accordance with subsections (d) and  
8 (e)” and inserting “targeting, mini-  
9 mization, and querying procedures  
10 adopted in accordance with sub-  
11 sections (d), (e), and (f)(1)”; and

12 (II) by striking “with subsection  
13 (f)” and inserting “with subsection  
14 (g)”.

15 (2) AMENDMENTS TO FISA.—The Foreign In-  
16 telligence Surveillance Act of 1978 (50 U.S.C. 1801  
17 et seq.) is further amended—

18 (A) by striking “section 702(h)” each  
19 place it appears and inserting “section 702(i)”;

20 (B) by striking “section 702(g)” each  
21 place it appears and inserting “section 702(h)”;

22 and

23 (C) in section 707(b)(1)(G)(ii), by striking  
24 “subsections (d), (e), and (f)” and inserting  
25 “subsections (d), (e), (f)(1), and (g)”.

1           (3) AMENDMENTS TO FISA AMENDMENTS ACT  
2           OF 2008.—Section 404 of the Foreign Intelligence  
3           Surveillance Act of 1978 Amendments Act of 2008  
4           (Public Law 110–261; 50 U.S.C. 1801 note) is  
5           amended—

6           (A) in subsection (a)(7)(B)—

7                   (i) by striking “under section  
8                   702(i)(3)” and inserting “under section  
9                   702(j)(3)”; and

10                   (ii) by striking “of section 702(i)(4)”  
11                   and inserting “of section 702(j)(4)”;  
12           (B) in subsection (b)—

13                   (i) in paragraph (3)—

14                           (I) in subparagraph (A), by strik-  
15                           ing “to section 702(h)” and inserting  
16                           “to section 702(i)”; and

17                           (II) in subparagraph (B)—

18                                   (aa) by striking “section  
19                                   702(h)(3) of” and inserting “sec-  
20                                   tion 702(i)(3) of”; and

21                                   (bb) by striking “to section  
22                                   702(h)” and inserting “to section  
23                                   702(i)”; and

24                   (ii) in paragraph (4)—

1 (I) in subparagraph (A), by strik-  
2 ing “and sections 702(l)” and insert-  
3 ing “and sections 702(m)”; and

4 (II) in subparagraph (B)(iv), by  
5 striking “or section 702(l)” and in-  
6 serting “or section 702(m)”.

7 **SEC. 202. USE AND DISCLOSURE PROVISIONS.**

8 (a) **END USE RESTRICTION.**—Section 706(a) (50  
9 U.S.C. 1881e(a)) is amended—

10 (1) by striking “Information acquired” and in-  
11 serting the following:

12 “(1) **IN GENERAL.**—Information acquired”; and

13 (2) by adding at the end the following:

14 “(2) **UNITED STATES PERSONS.**—

15 “(A) **IN GENERAL.**—Any information con-  
16 cerning a United States person acquired under  
17 section 702 shall not be used in evidence  
18 against that United States person pursuant to  
19 paragraph (1) in any criminal proceeding un-  
20 less—

21 “(i) the Federal Bureau of Investiga-  
22 tion obtained an order of the Foreign In-  
23 telligence Surveillance Court to access such  
24 information pursuant to section 702(f)(2);

25 or

1                   “(ii) the Attorney General determines  
2                   that—

3                   “(I) the criminal proceeding af-  
4                   fects, involves, or is related to the na-  
5                   tional security of the United States;  
6                   or

7                   “(II) the criminal proceeding in-  
8                   volves—

9                   “(aa) death;

10                   “(bb) kidnapping;

11                   “(cc) serious bodily injury,  
12                   as defined in section 1365 of title  
13                   18, United States Code;

14                   “(dd) conduct that con-  
15                   stitutes a criminal offense that is  
16                   a specified offense against a  
17                   minor, as defined in section 111  
18                   of the Adam Walsh Child Protec-  
19                   tion and Safety Act of 2006 (34  
20                   U.S.C. 20911);

21                   “(ee) incapacitation or de-  
22                   struction of critical infrastruc-  
23                   ture, as defined in section  
24                   1016(e) of the USA PATRIOT  
25                   Act (42 U.S.C. 5195c(e));

1           “(ff) cybersecurity, including  
2           conduct described in section  
3           1016(e) of the USA PATRIOT  
4           Act (42 U.S.C. 5195c(e)) or sec-  
5           tion 1029, 1030, or 2511 of title  
6           18, United States Code;

7           “(gg) transnational crime,  
8           including transnational narcotics  
9           trafficking and transnational or-  
10          ganized crime; or

11          “(hh) human trafficking.

12           “(B) NO JUDICIAL REVIEW.—A determina-  
13          tion by the Attorney General under subpara-  
14          graph (A)(ii) is not subject to judicial review.”.

15          (b) INTELLIGENCE COMMUNITY DISCLOSURE PROVI-  
16          SION.—Section 603 (50 U.S.C. 1873) is amended—

17           (1) in subsection (b)—

18           (A) in paragraph (1), by striking “good  
19           faith estimate of the number of targets of such  
20           orders;” and inserting the following: “good faith  
21           estimate of—

22           “(A) the number of targets of such orders;

23           “(B) the number of targets of such orders  
24           who are known to not be United States persons;  
25           and

1           “(C) the number of targets of such orders  
2           who are known to be United States persons;”;

3           (B) in paragraph (2)—

4           (i) by redesignating subparagraphs  
5           (A) and (B) as subparagraphs (B) and  
6           (C), respectively;

7           (ii) by inserting before subparagraph  
8           (B), as so redesignated, the following:

9           “(A) the number of targets of such or-  
10          ders;”;

11          (iii) in subparagraph (B), as so redesi-  
12          gnated, by striking “and” at the end; and

13          (iv) by adding at the end the fol-  
14          lowing:

15          “(D) the number of instances in which the  
16          Federal Bureau of Investigation has received  
17          and reviewed the unminimized contents of elec-  
18          tronic communications or wire communications  
19          concerning a United States person obtained  
20          through acquisitions authorized under such sec-  
21          tion in response to a search term that was rea-  
22          sonably designed to find evidence of a crime  
23          that would not be considered foreign intel-  
24          ligence information; and

1           “(E) the number of instances in which the  
2           Federal Bureau of Investigation opened, under  
3           the Criminal Investigative Division or any suc-  
4           cessor division, an investigation of a United  
5           States person (who is not considered a threat to  
6           national security) based wholly or in part on an  
7           acquisition authorized under such section;”;

8           (C) in paragraph (3)(A), by striking “or-  
9           ders; and” and inserting the following: “orders,  
10          including—

11           “(i) the number of targets of such or-  
12          ders who are known to not be United  
13          States persons; and

14           “(ii) the number of targets of such or-  
15          ders who are known to be United States  
16          persons; and”;

17          (D) by redesignating paragraphs (4), (5),  
18          and (6) as paragraphs (5), (6), and (7), respec-  
19          tively; and

20          (E) by inserting after paragraph (3) the  
21          following:

22          “(4) the number of criminal proceedings in  
23          which the United States or a State or political sub-  
24          division thereof provided notice pursuant to sub-  
25          section (c) or (d) of section 106 (including with re-

1 spect to information acquired from an acquisition  
2 conducted under section 702) or subsection (d) or  
3 (e) of section 305 of the intent of the government  
4 to enter into evidence or otherwise use or disclose  
5 any information obtained or derived from electronic  
6 surveillance, physical search, or an acquisition con-  
7 ducted pursuant to this Act;” and

8 (2) in subsection (d)—

9 (A) in paragraph (1), by striking “(4), or  
10 (5)” and inserting “(5), or (6)”;

11 (B) in paragraph (2)(A), by striking  
12 “(2)(A), (2)(B), and (5)(C)” and inserting  
13 “(2)(B), (2)(C), and (6)(C)” and

14 (C) in paragraph (3)(A), in the matter  
15 preceding clause (i), by striking “subsection  
16 (b)(2)(B)” and inserting “subsection  
17 (b)(2)(C)”.

18 **SEC. 203. CONGRESSIONAL REVIEW AND OVERSIGHT OF**  
19 **ABOUTS COLLECTION.**

20 (a) IN GENERAL.—Section 702(b) (50 U.S.C.  
21 1881a(b)) is amended—

22 (1) in paragraph (4), by striking “and” at the  
23 end;

24 (2) by redesignating paragraph (5) as para-  
25 graph (6); and



1           (3) by inserting after paragraph (4) the fol-  
2           lowing:

3           “(5) may not intentionally acquire communica-  
4           tions that contain a reference to, but are not to or  
5           from, a facility, place, premises, or property at  
6           which an acquisition authorized under subsection (a)  
7           is directed or conducted, except as provided under  
8           section 203(b) of the FISA Amendments Reauthor-  
9           ization Act of 2017; and”.

10          (b) CONGRESSIONAL REVIEW AND OVERSIGHT OF  
11          ABOUTS COLLECTION.—

12           (1) DEFINITIONS.—In this subsection:

13           (A) The term “abouts communication”  
14           means a communication that contains reference  
15           to, but is not to or from, a facility, a place,  
16           premises, or property at which an acquisition  
17           authorized under section 702(a) of the Foreign  
18           Intelligence Surveillance Act of 1978 (50  
19           U.S.C. 1881a(a)) is directed or conducted.

20           (B) The term “material breach” means  
21           significant noncompliance with applicable law or  
22           an order of the Foreign Intelligence Surveil-  
23           lance Court concerning any acquisition of  
24           abouts communications.

25           (2) SUBMISSION TO CONGRESS.—

1           (A) REQUIREMENT.—Notwithstanding any  
2           other provision of law, and except as provided  
3           in paragraph (4), if the Attorney General and  
4           the Director of National Intelligence intend to  
5           implement the authorization of the intentional  
6           acquisition of abouts communications, before  
7           the first such implementation after the date of  
8           enactment of this Act, the Attorney General  
9           and the Director of National Intelligence shall  
10          submit to the Committee on the Judiciary and  
11          the Select Committee on Intelligence of the  
12          Senate and the Committee on the Judiciary and  
13          the Permanent Select Committee on Intelligence  
14          of the House of Representatives a written no-  
15          tice of the intent to implement the authoriza-  
16          tion of such an acquisition, and any supporting  
17          materials in accordance with this subsection.

18          (B) CONGRESSIONAL REVIEW PERIOD.—  
19          During the 30-day period beginning on the date  
20          written notice is submitted under subparagraph  
21          (A), the Committee on the Judiciary and the  
22          Select Committee on Intelligence of the Senate  
23          and the Committee on the Judiciary and the  
24          Permanent Select Committee on Intelligence of  
25          the House of Representatives shall, as appro-

1           appropriate, hold hearings and briefings and other-  
2           wise obtain information in order to fully review  
3           the written notice.

4           (C) LIMITATION ON ACTION DURING CON-  
5           GRESSIONAL REVIEW PERIOD.—Notwith-  
6           standing any other provision of law, and subject  
7           to paragraph (4), unless the Attorney General  
8           and the Director of National Intelligence make  
9           a determination pursuant to section 702(c)(2)  
10          of the Foreign Intelligence Surveillance Act of  
11          1978 (50 U.S.C. 1881a(c)(2)), the Attorney  
12          General and the Director of National Intel-  
13          ligence may not implement the authorization of  
14          the intentional acquisition of abouts commu-  
15          nications before the end of the period described  
16          in subparagraph (B).

17          (3) WRITTEN NOTICE.—Written notice under  
18          paragraph (2)(A) shall include the following:

19                 (A) A copy of any certification submitted  
20                 to the Foreign Intelligence Surveillance Court  
21                 pursuant to subsection section 702 of the For-  
22                 eign Intelligence Surveillance Act of 1978 (50  
23                 U.S.C. 1881a), or amendment thereto, author-  
24                 izing the intentional acquisition of abouts com-  
25                 munications, including all affidavits, proce-

1           dures, exhibits, and attachments submitted  
2           therewith.

3           (B) The decision, order, or opinion of the  
4           Foreign Intelligence Surveillance Court approv-  
5           ing such certification, and any pleadings, appli-  
6           cations, or memoranda of law associated with  
7           such decision, order, or opinion.

8           (C) A summary of the protections in place  
9           to detect any material breach.

10          (D) Data or other results of modeling, sim-  
11          ulation, or auditing of sample data dem-  
12          onstrating that any acquisition method involv-  
13          ing the intentional acquisition of abouts com-  
14          munications shall be conducted in accordance  
15          with title VII of the Foreign Intelligence Sur-  
16          veillance Act of 1978 (50 U.S.C. 1881 et seq.),  
17          if such data or other results exist at the time  
18          the written notice is submitted and were pro-  
19          vided to the Foreign Intelligence Surveillance  
20          Court.

21          (E) Except as provided under paragraph  
22          (4), a statement that no acquisition authorized  
23          under subsection (a) of such section 702 shall  
24          include the intentional acquisition of an abouts

1 communication until after the end of the 30-day  
2 period described in paragraph (2)(B).

3 (4) EXCEPTION FOR EMERGENCY ACQUISITION.—  
4

5 (A) NOTICE OF DETERMINATION.—If the  
6 Attorney General and the Director of National  
7 Intelligence make a determination pursuant to  
8 section 702(c)(2) of the Foreign Intelligence  
9 Surveillance Act of 1978 (50 U.S.C.  
10 1881a(c)(2)) with respect to the intentional ac-  
11 quisition of abouts communications, the Attor-  
12 ney General and the Director of National Intel-  
13 ligence shall notify the Committee on the Judi-  
14 ciary and the Select Committee on Intelligence  
15 of the Senate and the Committee on the Judici-  
16 ary and the Permanent Select Committee on  
17 Intelligence of the House of Representatives as  
18 soon as practicable, but not later than 7 days  
19 after the determination is made.

20 (B) IMPLEMENTATION OR CONTINU-  
21 ATION.—

22 (i) IN GENERAL.—If the Foreign In-  
23 telligence Surveillance Court approves a  
24 certification that authorizes the intentional  
25 acquisition of abouts communications be-

1           fore the end of the 30-day period described  
2           in paragraph (2)(B), the Attorney General  
3           and the Director of National Intelligence  
4           may authorize the immediate implementa-  
5           tion or continuation of that certification if  
6           the Attorney General and the Director of  
7           National Intelligence jointly determine that  
8           exigent circumstances exist such that with-  
9           out such immediate implementation or con-  
10          tinuation intelligence important to the na-  
11          tional security of the United States may be  
12          lost or not timely acquired.

13                 (ii) NOTICE.—The Attorney General  
14           and Director of National Intelligence shall  
15           submit to the Committee on the Judiciary  
16           and the Select Committee on Intelligence  
17           of the Senate and the Committee on the  
18           Judiciary and the Permanent Select Com-  
19           mittee on Intelligence of the House of Rep-  
20           resentatives notification of a determination  
21           pursuant to clause (i) as soon as prac-  
22           ticable, but not later than 3 days after the  
23           determination is made.

1           (5) REPORTING OF MATERIAL BREACH.—Sub-  
2           section (m) of section 702 (50 U.S.C. 1881a), as re-  
3           designated by section 201, is amended—

4                   (A) in the heading by striking “AND RE-  
5                   VIEWS” and inserting “REVIEWS, AND REPORT-  
6                   ING” ; and

7                   (B) by adding at the end the following new  
8                   paragraph:

9           “(4) REPORTING OF MATERIAL BREACH.—

10                   “(A) IN GENERAL.—The head of each ele-  
11                   ment of the intelligence community involved in  
12                   the acquisition of abouts communications shall  
13                   fully and currently inform the Committees on  
14                   the Judiciary of the House of Representatives  
15                   and the Senate and the congressional intel-  
16                   ligence committees of a material breach.

17                   “(B) DEFINITIONS.—In this paragraph:

18                           “(i) The term ‘abouts communication’  
19                           means a communication that contains ref-  
20                           erence to, but is not to or from, a facility,  
21                           a place, premises, or property at which an  
22                           acquisition authorized under subsection (a)  
23                           is directed or conducted.

24                           “(ii) The term ‘material breach’  
25                           means significant noncompliance with ap-

1           pllicable law or an order of the Foreign In-  
2           telligence Surveillance Court concerning  
3           any acquisition of abouts communica-  
4           tions.”.

5           (6) APPOINTMENT OF AMICI CURIAE BY FOR-  
6           EIGN INTELLIGENCE SURVEILLANCE COURT.—For  
7           purposes of section 103(i)(2)(A) of the Foreign In-  
8           telligence Surveillance Act of 1978 (50 U.S.C.  
9           1803(i)(2)(A)), the Foreign Intelligence Surveillance  
10          Court shall treat the first certification under section  
11          702(g) of such Act (50 U.S.C. 1881a(g)) or amend-  
12          ment thereto that authorizes the acquisition of  
13          abouts communications as presenting a novel or sig-  
14          nificant interpretation of the law, unless the court  
15          determines otherwise.

16 **SEC. 204. PUBLICATION OF MINIMIZATION PROCEDURES**  
17 **UNDER SECTION 702.**

18          Section 702(e) (50 U.S.C. 1881a(e)) is amended by  
19 adding at the end the following new paragraph:

20               “(3) PUBLICATION.—The Director of National  
21 Intelligence, in consultation with the Attorney Gen-  
22 eral, shall—

23                       “(A) conduct a declassification review of  
24 any minimization procedures adopted or amend-  
25 ed in accordance with paragraph (1); and



1           “(B) consistent with such review, and not  
2           later than 180 days after conducting such re-  
3           view, make such minimization procedures pub-  
4           licly available to the greatest extent practicable,  
5           which may be in redacted form.”.

6 **SEC. 205. COMPENSATION OF AMICI CURIAE AND TECH-**  
7 **NICAL EXPERTS.**

8           Subsection (i) of section 103 (50 U.S.C. 1803) is  
9 amended by adding at the end the following:

10           “(11) COMPENSATION.—Notwithstanding any  
11 other provision of law, a court established under  
12 subsection (a) or (b) may compensate an amicus cu-  
13 riae appointed under paragraph (2) for assistance  
14 provided under such paragraph as the court con-  
15 siders appropriate and at such rate as the court con-  
16 siders appropriate.”.

17 **SEC. 206. ADDITIONAL REPORTING REQUIREMENTS.**

18           (a) ELECTRONIC SURVEILLANCE.—Section 107 (50  
19 U.S.C. 1807) is amended to read as follows:

20 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

21           “(a) ANNUAL REPORT.—In April of each year, the  
22 Attorney General shall transmit to the Administrative Of-  
23 fice of the United States Courts and to the congressional  
24 intelligence committees and the Committees on the Judici-  
25 ary of the House of Representatives and the Senate a re-

1 port setting forth with respect to the preceding calendar  
2 year—

3 “(1) the total number of applications made for  
4 orders and extensions of orders approving electronic  
5 surveillance under this title;

6 “(2) the total number of such orders and exten-  
7 sions either granted, modified, or denied; and

8 “(3) the total number of persons who were sub-  
9 ject to electronic surveillance conducted under an  
10 order or emergency authorization under this title,  
11 rounded to the nearest 500, including the number of  
12 such individuals who are United States persons, re-  
13 ported to the nearest band of 500, starting with 0–  
14 499.

15 “(b) FORM.—Each report under subsection (a) shall  
16 be submitted in unclassified form, to the extent consistent  
17 with national security. Not later than 7 days after the date  
18 on which the Attorney General submits each such report,  
19 the Attorney General shall make the report publicly avail-  
20 able, or, if the Attorney General determines that the re-  
21 port cannot be made publicly available consistent with na-  
22 tional security, the Attorney General may make publicly  
23 available an unclassified summary of the report or a re-  
24 dacted version of the report.”.

1 (b) PEN REGISTERS AND TRAP AND TRACE DE-  
2 VICES.—Section 406 (50 U.S.C. 1846) is amended—

3 (1) in subsection (b)—

4 (A) in paragraph (4), by striking “; and”  
5 and inserting a semicolon;

6 (B) in paragraph (5), by striking the pe-  
7 riod at the end and inserting “; and”; and

8 (C) by adding at the end the following new  
9 paragraph:

10 “(6) a good faith estimate of the total number  
11 of subjects who were targeted by the installation and  
12 use of a pen register or trap and trace device under  
13 an order or emergency authorization issued under  
14 this title, rounded to the nearest 500, including—

15 “(A) the number of such subjects who are  
16 United States persons, reported to the nearest  
17 band of 500, starting with 0–499; and

18 “(B) of the number of United States per-  
19 sons described in subparagraph (A), the num-  
20 ber of persons whose information acquired pur-  
21 suant to such order was reviewed or accessed by  
22 a Federal officer, employee, or agent, reported  
23 to the nearest band of 500, starting with 0–  
24 499.”; and

1           (2) by adding at the end the following new sub-  
2           section:

3           “(c) Each report under subsection (b) shall be sub-  
4           mitted in unclassified form, to the extent consistent with  
5           national security. Not later than 7 days after the date on  
6           which the Attorney General submits such a report, the At-  
7           torney General shall make the report publicly available,  
8           or, if the Attorney General determines that the report can-  
9           not be made publicly available consistent with national se-  
10          curity, the Attorney General may make publicly available  
11          an unclassified summary of the report or a redacted  
12          version of the report.”.

13   **SEC. 207. PROCEDURES REGARDING DISSEMINATION OF**  
14                   **NONPUBLICLY AVAILABLE INFORMATION**  
15                   **CONCERNING UNITED STATES PERSONS.**

16          (a) PROCEDURES.—

17           (1) IN GENERAL.—Title V of the National Se-  
18          curity Act of 1947 (50 U.S.C. 3091 et seq.) is  
19          amended by adding at the end the following new sec-  
20          tion:

21   **“SEC. 512. PROCEDURES REGARDING DISSEMINATION OF**  
22                   **NONPUBLICLY AVAILABLE INFORMATION**  
23                   **CONCERNING UNITED STATES PERSONS.**

24          “(a) PROCEDURES.—The head of each element of the  
25          intelligence community, in consultation with the Director

1 of National Intelligence, shall develop and maintain proce-  
2 dures for that element to respond to covered requests.

3 “(b) REQUIREMENTS.—The procedures under sub-  
4 section (a) shall ensure, at a minimum, the following:

5 “(1) The originating element documents in  
6 writing each covered request received by the element,  
7 including—

8 “(A) the name or title of the individual of  
9 the requesting element who is making the re-  
10 quest;

11 “(B) the name or title of each individual  
12 who will receive the United States person iden-  
13 tity information sought by the covered request;  
14 and

15 “(C) a fact-based justification describing  
16 why such United States person identity infor-  
17 mation is required by each individual described  
18 in subparagraph (B) to carry out the duties of  
19 the individual.

20 “(2) A covered request may only be approved  
21 by the head of the originating element or by officers  
22 or employees of such element to whom the head has  
23 specifically delegated such authority.

1           “(3) The originating element retains records on  
2 covered requests, including the disposition of such  
3 requests, for not less than 5 years.

4           “(4) The records described in paragraph (3) in-  
5 clude, with respect to approved covered requests, the  
6 name or title of the individual of the originating ele-  
7 ment who approved such request.

8           “(5) The procedures include an exception  
9 that—

10           “(A) allows for the immediate disclosure of  
11 United States person identity information in  
12 the event of exigent circumstances or where a  
13 delay could result in the loss of intelligence; and

14           “(B) requires that promptly after such dis-  
15 closure the requesting element makes a covered  
16 request with respect to such information.

17           “(6) If a covered request is made during a pe-  
18 riod beginning on the date of a general election for  
19 President and ending on the date on which such  
20 President is inaugurated—

21           “(A) the documentation under paragraph  
22 (1) includes whether—

23           “(i) the individual of a requesting ele-  
24 ment who is making the request knows or  
25 believes that any United States person

1 identity sought by the request is of an in-  
2 dividual who is a member of the transition  
3 team of the President-elect and Vice-Presi-  
4 dent-elect; or

5 “(ii) based on the intelligence commu-  
6 nity report to which the request pertains,  
7 the originating element knows or reason-  
8 ably believes that any United States person  
9 identity sought by the request is of an in-  
10 dividual who is a member of the transition  
11 team of the President-elect and Vice-Presi-  
12 dent-elect;

13 “(B) the approval made pursuant to para-  
14 graph (2) of a covered request that contains a  
15 United States person identity described in sub-  
16 paragraph (A) is subject to the concurrence of  
17 the general counsel of the originating element  
18 (or, in the absence of the general counsel, the  
19 first assistant general counsel) that the dissemi-  
20 nation of such identity information is in accord-  
21 ance with the procedures under subsection (a);  
22 and

23 “(C) consistent with due regard for the  
24 protection from unauthorized disclosure of clas-  
25 sified information relating to sensitive intel-

1 intelligence sources and methods or other exception-  
2 ally sensitive matters, the head of the origi-  
3 nating element notifies the chairmen and rank-  
4 ing minority members of the congressional in-  
5 telligence committees of any approval described  
6 in subparagraph (B) by not later than 14 days  
7 after the date of such approval.

8 “(c) ANNUAL REPORTS.—Not later than April 30 of  
9 each year, the head of each element of the intelligence  
10 community shall submit to the congressional intelligence  
11 committees a report documenting, with respect to the year  
12 covered by the report—

13 “(1) the total number of covered requests re-  
14 ceived by that element;

15 “(2) of such total number, the number of re-  
16 quests approved;

17 “(3) of such total number, the number of re-  
18 quests denied; and

19 “(4) for each number calculated under para-  
20 graphs (1) through (3), the number listed by each  
21 requesting element.

22 “(d) CERTAIN PROCEDURES REGARDING CONGRES-  
23 SIONAL IDENTITY INFORMATION.—

24 “(1) REQUIREMENTS.—With respect to the dis-  
25 semination of congressional identity information, the



1 head of each element of the intelligence community  
2 shall carry out this section in accordance with annex  
3 A of Intelligence Community Directive 112, or suc-  
4 cessor annex or directive.

5 “(2) NOTIFICATION.—The Director of National  
6 Intelligence may not modify or supersede annex A of  
7 Intelligence Community Directive 112, or successor  
8 annex or directive, unless—

9 “(A) the Director notifies the congressional  
10 intelligence committees of the proposed modi-  
11 fications or new annex or directive; and

12 “(B) a period of 30 days elapses following  
13 such notification.

14 “(e) EFFECT ON MINIMIZATION PROCEDURES.—The  
15 requirements of this section are in addition to any mini-  
16 mization procedures established pursuant to the Foreign  
17 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
18 seq.), Executive Order No. 12333 (50 U.S.C. 3001 note),  
19 or successor order, or other relevant provision of law or  
20 executive order.

21 “(f) DEFINITIONS.—In this section:

22 “(1) The term ‘covered request’ means a re-  
23 quest by a requesting element to an originating ele-  
24 ment for nonpublic identifying information with re-  
25 spect to a known unconsenting United States person

1 that was omitted from an intelligence community re-  
2 port disseminated by the originating element.

3 “(2) The term ‘originating element’ means an  
4 element of the intelligence community that dissemi-  
5 nates an intelligence community report that contains  
6 a reference to a known unconsenting United States  
7 person but omits nonpublic identifying information  
8 with respect to such person.

9 “(3) The term ‘requesting element’ means an  
10 element of the United States Government that re-  
11 ceives an intelligence community report from an  
12 originating element and makes a covered request  
13 with respect to such report.

14 “(4) The term ‘United States person’ has the  
15 meaning given the term in section 101 of the For-  
16 eign Intelligence Surveillance Act of 1978 (50  
17 U.S.C. 1801).”.

18 (2) CLERICAL AMENDMENT.—The table of con-  
19 tents in the first section of the National Security  
20 Act of 1947 is amended by inserting after the item  
21 relating to section 511 the following new item:

“Sec. 512. Procedures regarding dissemination of nonpublicly available infor-  
mation concerning United States persons.”.

22 (b) DEVELOPMENT OF PROCEDURES.—The head of  
23 each element of the intelligence community shall develop  
24 the procedures required by section 512(a) of the National

1 Security Act of 1947, as added by subsection (a)(1), by  
2 not later than 90 days after the date of the enactment  
3 of this Act.

4 (c) REPORT.—Not later than December 31, 2018, the  
5 Director of National Intelligence shall submit to the Per-  
6 manent Select Committee on Intelligence of the House of  
7 Representatives and the Select Committee on Intelligence  
8 of the Senate a report assessing the compliance with the  
9 procedures required by section 512(a) of the National Se-  
10 curity Act of 1947, as added by subsection (a)(1).

11 **SEC. 208. IMPROVEMENTS TO PRIVACY AND CIVIL LIB-**  
12 **ERTIES OVERSIGHT BOARD.**

13 (a) APPOINTMENT OF STAFF.—Subsection (j) of sec-  
14 tion 1061 of the Intelligence Reform and Terrorism Pre-  
15 vention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

16 (1) by redesignating paragraphs (2) and (3) as  
17 paragraphs (3) and (4), respectively; and

18 (2) by inserting after paragraph (1) the fol-  
19 lowing new paragraph:

20 “(2) APPOINTMENT IN ABSENCE OF CHAIR-  
21 MAN.—If the position of chairman of the Board is  
22 vacant, during the period of the vacancy, the Board,  
23 at the direction of the unanimous vote of the serving  
24 members of the Board, may exercise the authority of  
25 the chairman under paragraph (1).”.

1 (b) MEETINGS.—Subsection (f) of such section (42  
2 U.S.C. 2000ee(f)) is amended—

3 (1) by striking “The Board shall” and inserting  
4 “The Board”;

5 (2) in paragraph (1) by striking “make its” and  
6 inserting “shall make its”; and

7 (3) in paragraph (2)—

8 (A) by striking “hold public” and inserting  
9 “shall hold public”; and

10 (B) by inserting before the period at the  
11 end the following: “, but may, notwithstanding  
12 section 552b of title 5, United States Code,  
13 meet or otherwise communicate in any number  
14 to confer or deliberate in a manner that is  
15 closed to the public”.

16 **SEC. 209. PRIVACY AND CIVIL LIBERTIES OFFICERS.**

17 Section 1062(a) of the Intelligence Reform and Ter-  
18 rorism Prevention Act of 2004 (42 U.S.C. 2000ee–1(a))  
19 is amended by inserting “, the Director of the National  
20 Security Agency, the Director of the Federal Bureau of  
21 Investigation” after “the Director of the Central Intel-  
22 ligence Agency”.

1 **TITLE III—EXTENSION OF AU-**  
2 **THORITIES, INCREASED PEN-**  
3 **ALTIES, REPORTS, AND**  
4 **OTHER MATTERS**

5 **SEC. 301. EXTENSION OF TITLE VII OF FISA; EFFECTIVE**  
6 **DATES.**

7 (a) EXTENSION.—Section 403(b) of the FISA  
8 Amendments Act of 2008 (Public Law 110–261; 122 Stat.  
9 2474) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “December 31, 2017” and  
12 inserting “December 31, 2021”; and

13 (B) by inserting “and by the FISA  
14 Amendments Reauthorization Act of 2017”  
15 after “section 101(a)”; and

16 (2) in paragraph (2) in the matter preceding  
17 subparagraph (A), by striking “December 31, 2017”  
18 and inserting “December 31, 2021”.

19 (b) CONFORMING AMENDMENTS.—Section 404(b) of  
20 the FISA Amendments Act of 2008 (Public Law 110–261;  
21 122 Stat. 2476), as amended by section 201, is further  
22 amended—

23 (1) in paragraph (1)—

1 (A) in the heading, by striking “DECEM-  
2 BER 31, 2017” and inserting “DECEMBER 31,  
3 2021”; and

4 (B) by inserting “and by the FISA  
5 Amendments Reauthorization Act of 2017”  
6 after “section 101(a)”;

7 (2) in paragraph (2), by inserting “and by the  
8 FISA Amendments Reauthorization Act of 2017”  
9 after “section 101(a)”;

10 (3) in paragraph (4)—

11 (A) by inserting “and amended by the  
12 FISA Amendments Reauthorization Act of  
13 2017” after “as added by section 101(a)” both  
14 places it appears; and

15 (B) by inserting “and by the FISA  
16 Amendments Reauthorization Act of 2017”  
17 after “as amended by section 101(a)” both  
18 places it appears.

19 (c) EFFECTIVE DATE OF AMENDMENTS TO FAA.—  
20 The amendments made to the FISA Amendments Act of  
21 2008 (Public Law 110–261) by this section shall take ef-  
22 fect on the earlier of the date of the enactment of this  
23 Act or December 31, 2017.

1 **SEC. 302. INCREASED PENALTY FOR UNAUTHORIZED RE-**  
2 **MOVAL AND RETENTION OF CLASSIFIED DOC-**  
3 **UMENTS OR MATERIAL.**

4 Section 1924(a) of title 18, United States Code, is  
5 amended by striking “one year” and inserting “five  
6 years”.

7 **SEC. 303. COMPTROLLER GENERAL STUDY ON THE CLASSI-**  
8 **FICATION SYSTEM AND PROTECTION OF**  
9 **CLASSIFIED INFORMATION.**

10 (a) STUDY.—The Comptroller General of the United  
11 States shall conduct a study of the classification system  
12 of the United States and the methods by which the intel-  
13 ligence community (as defined in section 3(4) of the Na-  
14 tional Security Act of 1947 (50 U.S.C. 3003(4))) protects  
15 classified information.

16 (b) MATTERS INCLUDED.—The study under sub-  
17 section (a) shall address the following:

18 (1) Whether sensitive information is properly  
19 classified.

20 (2) The effect of modern technology on the  
21 storage and protection of classified information, in-  
22 cluding with respect to—

23 (A) using cloud storage for classified infor-  
24 mation; and

25 (B) any technological means to prevent or  
26 detect unauthorized access to such information.

1           (3) Any ways to improve the classification sys-  
2           tem of the United States, including with respect to  
3           changing the levels of classification used in such sys-  
4           tem and to reduce overclassification.

5           (4) How to improve the authorized sharing of  
6           classified information, including with respect to sen-  
7           sitive compartmented information.

8           (5) The value of polygraph tests in determining  
9           who is authorized to access classified information  
10          and in investigating unauthorized disclosures of clas-  
11          sified information.

12          (6) Whether each element of the intelligence  
13          community—

14                (A) applies uniform standards in deter-  
15                mining who is authorized to access classified in-  
16                formation; and

17                (B) provides proper training with respect  
18                to the handling of classified information and  
19                the avoidance of overclassification.

20          (c) REPORT.—Not later than 180 days after the date  
21          of the enactment of this Act, the Comptroller General shall  
22          submit to the Committee on the Judiciary and the Perma-  
23          nent Select Committee on Intelligence of the House of  
24          Representatives and the Committee on the Judiciary and



1 the Select Committee on Intelligence of the Senate a re-  
2 port containing the study under subsection (a).

3 (d) FORM.—The report under subsection (c) shall be  
4 submitted in unclassified form, but may include a classi-  
5 fied annex.

6 **SEC. 304. TECHNICAL AMENDMENTS AND AMENDMENTS TO**  
7 **IMPROVE PROCEDURES OF THE FOREIGN IN-**  
8 **TELLIGENCE SURVEILLANCE COURT OF RE-**  
9 **VIEW.**

10 (a) TECHNICAL AMENDMENTS.—The Foreign Intel-  
11 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
12 is amended as follows:

13 (1) In section 103(b) (50 U.S.C. 1803(b)), by  
14 striking “designate as the” and inserting “des-  
15 ignated as the”.

16 (2) In section 302(a)(1)(A)(iii) (50 U.S.C.  
17 1822(a)(1)(A)(iii)), by striking “paragraphs (1)  
18 through (4)” and inserting “subparagraphs (A)  
19 through (D)”.

20 (3) In section 406(b) (50 U.S.C. 1846(b)), by  
21 striking “and to the Committees on the Judiciary of  
22 the House of Representatives and the Senate”.

23 (4) In section 604(a) (50 U.S.C. 1874(a))—

24 (A) in paragraph (1)(D), by striking “con-  
25 tents” and inserting “contents,”; and

1 (B) in paragraph (3), by striking “comply  
2 in the into” and inserting “comply into”.

3 (5) In section 701 (50 U.S.C. 1881)—

4 (A) in subsection (a), by striking “The  
5 terms” and inserting “In this title, the terms”;  
6 and

7 (B) in subsection (b)—

8 (i) by inserting “In this title:” after  
9 the subsection heading; and

10 (ii) in paragraph (5), by striking “(50  
11 U.S.C. 401a(4))” and inserting “(50  
12 U.S.C. 3003(4))”.

13 (6) In section 702(h)(2)(A)(i) (50 U.S.C.  
14 1881a(h)(2)(A)(i)), as redesignated by section 201,  
15 by inserting “targeting” before “procedures in  
16 place”.

17 (7) In section 801(7) (50 U.S.C. 1885(7)), by  
18 striking “(50 U.S.C. 401a(4))” and inserting “(50  
19 U.S.C. 3003(4))”.

20 (b) COURT-RELATED AMENDMENTS.—The Foreign  
21 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
22 seq.) is further amended as follows:

23 (1) In section 103 (50 U.S.C. 1803)—

24 (A) in subsection (b), by striking “imme-  
25 diately”; and

1 (B) in subsection (h), by striking “the  
2 court established under subsection (a)” and in-  
3 serting “a court established under this section”.

4 (2) In section 105(d) (50 U.S.C. 1805(d)), by  
5 adding at the end the following new paragraph:

6 “(4) A denial of the application made under section  
7 104 may be reviewed as provided in section 103.”.

8 (3) In section 302(d) (50 U.S.C. 1822(d)), by  
9 striking “immediately”.

10 (4) In section 402(d) (50 U.S.C. 1842(d)), by  
11 adding at the end the following new paragraph:

12 “(3) A denial of the application made under this sub-  
13 section may be reviewed as provided in section 103.”.

14 (5) In section 403(c) (50 U.S.C. 1843(c)), by  
15 adding at the end the following new paragraph:

16 “(3) A denial of the application made under sub-  
17 section (a)(2) may be reviewed as provided in section  
18 103.”.

19 (6) In section 501(c) (50 U.S.C. 1861(c)), by  
20 adding at the end the following new paragraph:

21 “(4) A denial of the application made under  
22 this subsection may be reviewed as provided in sec-  
23 tion 103.”.

1 **SEC. 305. SEVERABILITY.**

2       If any provision of this Act, any amendment made  
3 by this Act, or the application thereof to any person or  
4 circumstances is held invalid, the validity of the remainder  
5 of the Act, of any such amendments, and of the applica-  
6 tion of such provisions to other persons and circumstances  
7 shall not be affected thereby.

The Chairman. Today our committee will consider the FISA Amendments Reauthorization Act of 2017, a bill that will reform and renew surveillance authorities, including section 702 of the FISA Act.

In preparing the bill, the House Intelligence Committee held an in-depth discussion with the House Judiciary Committee and adopted numerous ideas based on their efforts. We also drew upon ideas from the bill produced by the Senate Intelligence Committee. I would like to thank both of those committees for the hard work and careful consideration they put into this issue.

Without congressional action, section 702 authorities will expire at the end of the year. The loss of these authorities would be a dangerous blow to the counterterrorism efforts of the Intelligence Community. Decisive congressional action is needed to help American citizens and troops safe from terror attacks at home and abroad.

Section 702 allows for the targeting of foreigners located in foreign nations. It is an effective program that has helped thwart potentially devastating terror plots, such as the 2009 New York City subway bombing plot. It has also led to the elimination of critical terror suspects, such as Haji Imam, the second in command of ISIS, who was located through section 702 activities and was killed by U.S. forces in 2016.

Testimony to this committee from throughout the Intelligence Community, as well as declarations from the bipartisan Privacy and Civil Liberties Oversight Board, an executive branch civil liberties watchdog, indicate beyond any doubt the program's effectiveness in locating and tracking foreign terrorists.

Although section 702 is subject to numerous layers of oversight from all three branches of government, the program's operation should be subject to regular adjustments as necessary to ensure Americans' privacy and civil liberties are being fully protected.

While analyzing the program's current operation, this committee has identified several areas that should be updated. After careful consideration of the best way to strengthen privacy protections without hindering the program's effectiveness, the committee devised several key reforms to section 702 and other surveillance authorities that are included in this bill.

These include, briefly: requiring specific FISA section 702 query procedures separate from the existing minimization procedures, which must be reviewed by the Foreign Intelligence Surveillance Court every year; adding an optional warrant requirement for the FBI to view query returns and codifying restrictions on the use of FISA section 702 communications in critical prosecutions against Americans; mandating new procedures and reporting requirements related to unmasking of Americans in Intelligence Community reporting; temporarily codifying an end to the NSA's FISA section 702 "about" collection until the government develops new procedures and briefs the congressional Intelligence and Judiciary Committees; improving transparency by mandating the publication of section 702 minimization procedures, as well as requiring additional reporting to Congress on how the Intelligence Community is using other FISA authorities.

The bill will renew these authorities for 4 years, providing greater opportunity for scrutiny and oversight during that time. It strikes a careful balance between security and privacy that should give the American people confidence that the Intelligence Community is working hard to keep them safe while faithfully respecting their privacy and civil liberties.

I would like to thank all the members of this committee who have cosponsored this bill. I would also like to thank Chairman Rodney Frelinghuysen of the Committee on Appropriations, a former member of this committee, for cosponsoring the bill, as well as Chairman Mac Thornberry of the Committee on Armed Services. I also extend thanks to

Chairman Kay Granger of the Defense Appropriations Committee and Representative Ken Calvert. All of these three members who serve as nonvoting members of the Intelligence Community, all for cosponsoring this bill.

Finally, I would like to thank the ranking member of this committee, Mr. Schiff, for his work that was incorporated in this bill, particularly the idea of a permissive warrant requirement for the FBI to view section 702 query returns.

At this point, I want to yield the remainder of my time to Mr. Rooney, who chairs the NSA and Cyber Subcommittee.

Chairman Rooney.

Mr. Rooney. Thank you, Mr. Chairman.

As the chairman mentioned, this bill reauthorizes FISA section 702, which is a critical intelligence-gathering program targeting foreigners located overseas.

This legislation was carefully crafted based on our committee's extensive outreach to Members of the House, the Senate, and the administration over the last 2 years. We provided information sessions both on the Hill and at the NSA. And we have also reached to the Member-to-Member level to discuss the authorities and protections related to section 702 that are currently in place.

H.R. 4478 strengthens our national security by adding an emergency provision to FISA section 705. The bill also adds a new foreign power to FISA covering international malicious cyber actors that threaten our national security.

This bill also makes key privacy reforms, including restrictions on the use of FISA section 702 against U.S. people in criminal prosecutions, codification of unmasking procedures, enhancements to the Privacy and Civil Liberties Oversight Board, and various new congressional reporting requirements.

These privacy protections strengthen congressional oversight of the IC, as well as

transparency of FISA section 702, without any operational impact to the program. This is an ideal outcome given the effectiveness of FISA section 702 in U.S. counterterrorism efforts.

Most important, this bill reauthorizes FISA section 702 for 4 years, which ensures the continued use of this critical program in protecting U.S. national security.

As the chairman of the NSA and Cyber Subcommittee, I am keenly aware of the responsibility we have keep the American people -- to have the American people -- to ensure the Intelligence Community has the tools it needs to keep America safe.

I can vouch for the importance of this bill, and I hope you will support it.

I yield back

The Chairman. Thank you, Mr. Rooney.

I will now yield to Ranking Member Schiff for any opening comments he would like to make.

Mr. Schiff. Thank you, Mr. Chairman.

I want to take this opportunity to address my colleagues in the hope that we can change this hearing from the path that it is on at the moment, which is to a party-line vote on this proposal, and see if we can still produce an almost completely bipartisan work product.

What we had suggested when we engaged in the early discussions over the bill was a way of resolving the most difficult issue around 702, and that is how should we deal with queries of the database that is created by 702.

702, as we all know, is a program that has been enormously important to the Intelligence Community and law enforcement. It targets foreigners on foreign soil. But there are times when we target foreigners on foreign soil where information -- because a foreigner is talking about an American or talking to an American



is, nonetheless, captured within the database.

And so the question is, under what circumstances should law enforcement be able to query that database that may contain some information about Americans? Should there always be a warrant requirement? Should there be a warrant requirement under certain circumstances? And how do we make sure this database just doesn't become a vehicle for fishing expeditions?

And what we proposed and what we arrived at, I think, was a sensible conclusion that built on what the Judiciary Committee put together but did so in a way that was more operationally viable. And that is, we would allow queries of the database, but in cases of criminal matters not involving national security or serious violent crimes, we would require there be a warrant or the evidence could not be used in court.

That, I think, is a workable construct for the Intelligence Community. It also addresses the gravement of the privacy concerns that we not have this large and growing database that includes information about Americans that could be used just to fish for evidence of a tax crime or a fraud.

That language is now in the bill, as well as other privacy protections we have added to the bill, and I think we have fairly broad agreement on that. What we do not have broad or even any bipartisan agreement on, however, is the unmasking language in the bill.

As the members are aware from the extensive time we spent on this issue, we have uncovered not a scintilla of evidence that there was ever any improper unmasking of anything in the 702 program. So the unmasking issue, to the degree that it exists at all, does not exist with respect to the 702 program that we have been able to see.

For that reason, this language is not only unnecessary, but in our view is simply an effort to politicize the 702 bill and to further a political narrative. And for that reason, of

course, we can't support it.

And I am sure if the shoe was on the other foot and we were offering language in this bill -- and we could have offered language in this bill to make a point on collusion if we wanted to, and you would have said that is politicizing the bill, we are not going to include your language on collusion. We haven't sought to do that. This is too important a program.

And what we have asked you to do is not to do the same. Let's not mix up the unmasking stuff, which has nothing to do with this program, and defeat what is otherwise a very bipartisan work product.

Because I can tell you what the result will be if we go forward with the way we are now teed up to go forward, and that is we will have a party-line vote on this bill. It will go nowhere. The Judiciary bill will go nowhere either. And we will have completely abdicated to the Senate. And the Senate will cobble together whatever they will, and they will attach it to must-pass legislation at the end of the year, and all our efforts will be for naught.

And I would rather see us not abdicate in that way. And I would just urge that we come to agreement. We offered a compromise even on the unmasking legislation language, which we don't think belongs in here at all, but we did offer at least offer a compromise. But I would urge that we reconsider this and not simply go forward with one or two party-line votes.

And with that, Mr. Chairman, I will yield back.

The Chairman. The gentleman yields back.

Other members wish to be heard?

Mr. Conaway.

Mr. Conaway. Well, thank you, Mr. Chairman.

I find my good friend's arguments to be less than persuasive. Whether there is any evidence of wrongdoing or not, Americans' personal identity should be protected. And what we are trying to do with this unmasking provision is just to make sure that that happens.

We have seen instances in the record that we have been collecting so far where appears to be perhaps reckless or certainly an inordinate number of unmaskings of Americans' identity, and without good proof and without establishing why the analysts or whoever is asking for the unmask to happen.

And to hear the argument that we should be less concerned about the privacy of Americans than what this attempts to do is pretty shocking, quite frankly. This does not hamper the ability of the Intelligence Community to use this tool. It just simply protects Americans' identities, those Americans whose identities should be protected. And there should be a really high bar to cross in order to unmask someone's identity from a collection tool that has not gone through the normal privacy protections of the Fourth Amendment that we are afforded across everything else.

So this tool is too important to not put in place. But by the same token, it is powerful, and its power can be used inappropriately. Whether that is the case or not, we need these audit procedures to be able to understand who has been unmasked over what period of time. We need these procedures to make sure that future transitional administrations, either coming in or leaving, particularly the leaving administration, doesn't misuse this.

And just because we don't have a, as you said, a scintilla, which I think is a bit of a stretch, of evidence, nonetheless, this is important protections for the American public to be able to say, okay, we will trust the Intel agencies with this tool, but we also want to make sure that Americans are treated fairly and that their confidentiality is protected in

all instances where that is the case.

If an American is involved in some wrongdoing, there are ways to get that identity known to the people who should know it. But if it is simply the local pizza man that was being called to deliver pizza, his or her identity should never be unmasked, and they ought to be confident that that is the case.

So I am really concerned with a lot of logic that my good colleague has put forth as to why this should not be in here. It should be in here. And if we are going to gain the broad support of the American public on maintaining the use of this tool, I think being able to look at them and say we are going to require that whoever gets unmasked, that is tracked, require the ability for Congress to have immediate oversight, and all the other things that this does, does not hinder anything in any way. And I don't think it is a politicalization of anything but just good governance and a protection of American privacy.

So I am fully supportive of what we have done so far and would hope my colleagues on both sides of the aisle would see the wisdom of protecting Americans' privacy.

And with that, I yield back.

The Chairman. Thank you, Mr. Conaway.

Mr. Himes.

Mr. Himes. Thank you, Mr. Chairman.

I ask for time really in a state of mind of real sadness. Sadness, really, because I love this committee's work, and I like every single member. And I like what we do, because what we do is really important.

We are the only people, really, who oversee a roughly \$80 billion operation which does essential, critical, and important things, dangerous things, controversial things.

And theoretically we could have had a really good debate and conversation about a controversial program that we all understand is critical, but we all understand at its heart gets to the terms on which the government gets to go through the private communications of American citizens.

And I am sad because, historically, this committee has operated in a bipartisan way. Instead, where we are today is a bill that was presented to us about 36 hours ago, a bill that has had exactly zero hearings associated with it.

And as much as I like and respect the chairman of the NSA and Cybersecurity Subcommittee, I consider him a friend, I am the ranking member of that subcommittee, NSA and Cybersecurity Subcommittee.

My friend said there had been extensive outreach. I am the ranking member of the NSA and Cybersecurity Subcommittee. I have been invited to zero hearings on 702. I have been asked for zero opinions on 702 in that subcommittee. We have had no discussions about this.

I offered my friend the chairman a letter with some thoughts on 702 hoping to start that conversation, and I received no response. We have had not one hearing on this topic. We saw this bill for the first time 36 hours ago. We haven't even talked about it within the Democratic Caucus.

So what could have been a process around one of the most essential things we do is now going to be scuppered by a nakedly political continuation of the unmasking issue. We all know where it came from. The President, in one of his early morning tweets, accused Barack Obama of wiretapping him, double "p," in Trump Tower. And since that tweet, my friends on the other side have been engaged in a feverish attempt to justify that tweet.

Now, let's be clear. I have looked at every single unmasking. I have sat in every

hearing -- Sam Power, Susan Rice, people who were casually accused of violating the rights of American citizens -- I sat in every one of those hearings through the whole hearing. I have looked at every single unmasking. There is not a shred of evidence that there was an illegal unmasking.

Now, that doesn't mean that we couldn't tighten up the process. I think we could. I have looked at that process. It should be better documented. I would love to have that conversation.

But let's not kid ourselves about what is happening this morning. What is happening this morning, and I say this with great sadness, is an attempt to feed the beast of this idea that Barack Obama's administration officials illegally unmasked American citizen information.

Let's have a hearing about that. Let's at least talk about it. No, we are not going to do that. Instead, we are going to scupper an essential conversation about the terms on which the Federal Government gets to look at the private communications of American citizens, something I would relish doing, in favor of a nakedly partisan thing which would codify the fantasies of FOX News into United States Code.

Let's at least have a hearing before we do that. Let's at least present the evidence that we heard from Susan Rice, that we heard from Sam Power. Let's actually let people see how unmasking is done before we betray the expectations and responsibility that this essential committee has.

So I don't have an amendment. I just have a lot of sadness. And I guess I will join in the ranking member's plea that let's engage, let's do what our constituents expect us to and have a conversation. Let's at least have a hearing. Let's take this seriously.

I will yield the remainder of my time to the ranking member.

Mr. Schiff. I thank the gentleman.

I would just say, because it has been suggested that my statement that there is not a scintilla of evidence that there was any improper unmasking under 702, I would ask any of my colleagues whether in closed session after this hearing they would be willing to sit down with me and show me any evidence under 702 of an improper unmasking.

Okay. I will look forward to that.

Mr. Turner. If the gentlemen will yield. I would be glad to have that discussion with you. And I think almost every member on this side would be glad to that discussion with you.

Mr. Schiff. Okay. I think you will be very surprised at how you may have been misled as to --

Mr. Turner. I assure you I have not been misled. I assure you that I have seen the same things you have seen. And I can assure you that it is absolutely evidence of improper access and that if it was reversed and the Bush administration had been accessing the Obama administration in the manner in which we have seen and had testimony, there would be outrage on your side.

And also, the other thing that is interesting, this is just about providing oversight. That is all we are doing, is oversight.

Mr. Himes. Reclaiming my time.

I yield back.

The Chairman. Mr. Himes' time has expired.

Just for the record, for the audience to know, that we have had countless hearings and meetings regarding 702. I know that there is not a day that goes by that me or my colleagues don't get phone calls from someone within the IC who is briefing us on the importance of this program.

We have held, actually, for all the Members of the -- both Republicans and

Democrats, with the heads of most of the agencies in a classified setting. We have had an educational program put together for the Republicans to come to on our side that of course you guys on the Democrat side were welcome to do that. And you can still continue to educate the rest of our colleagues, because as you all know, dealing with FISA is quite complicated.

But at this time, I want to go to Mr. Rooney -- oh, and just a clarification. We will have time for amendments for those of who want to offer amendments.

Mr. Rooney.

Mr. Rooney. Thank you, Mr. Chairman.

I too am sad because it is unfortunate that the ranking member of the subcommittee has brought up our relationship as far as what we have talked about privately as what our game plan or how we are going to move forward. And it has been very difficult and frustrating with everything else that has been going on in this committee, I agree with you, over the last year with the investigation that we are engaged in now.

But that, I don't think, has disrupted the fact that you and I have both seen the importance of reauthorizing this hugely important tool that keeps this country safe and how we are going to go about doing that.

I got your letter. The reason I didn't respond is because I didn't feel the need to respond, because I agreed with what you said in your letter.

And we talked about -- you said that we never talked about -- we did talk about what was going to happen with 702 at some point in the future. We didn't really know when this day was going to be here.

But my job is to make sure that I educate the Members on our side of the aisle, and your job, I think, is to educate the Members on your side of the aisle why this



program is important.

We have, as the chairman said, have had countless meetings on our side to try to educate -- which is, by the way, as you know, very difficult on my side of the aisle to try to get everybody to agree that this tool is not sacrificing their civil liberties or their Fourth Amendment protections that we are looking at people's emails or phone calls without a warrant or without Fourth Amendment protections, that what we are doing in this bill is within the constitutional yet balanced by the national security guidelines that they would expect, that our Founding Fathers would expect. That is not an easy chore on our side of the aisle.

And so when you talk about our relationship and our communication or lack thereof, as you say, that does make me sad as well.

But I will just say this. If trying to tighten the screws on unmasking, which is the one thing I think in this investigation that I thought that we are in agreeance -- there was a huge disparity on how people that were either in the administration -- and I don't care what side of the aisle they were on -- how some people were asking for names to be unmasked with literally "I want this name unmasked because I want it unmarked" versus other people that would get a full page explanation as to why.

And our attempt to make it more uniform and use more strict scrutiny as to how people would get a United States citizen's name unmasked, that we could possibly be having an argument on this committee, in this room, that trying to do a better job and make those screws tighter is somehow political, that somehow that is playing politics, that we are trying to make a political statement by doing a little bit better job to make sure there is uniformity within the administration on how United States citizens' names are unmasked, how that is political, I have no idea.

But that just goes to show how this committee has devolved with something as

simple as trying to get unmasking right, how you could potentially vote no on a bill that keeps this country safe because you think that we are playing politics with regard to unmasking in the last administration or transition period.

Even if that is true, the next administration might be a Democrat. And guess what? It is still in place. So if you want it to be in place for a Democratic nominee and a Republican Congress, then you get those assurances too.

All we are trying to do is tighten the screws to make sure that the language for people that are trying to unmask U.S. citizens' names in an intelligence report is done with the strictest scrutiny and has to be justified down to the last letter, that it is reasonable or justified. And how you can say that that is political and how you could vote no for that, I hope you sleep well at night on that one, because that is absurd.

I yield back.

The Chairman. The gentleman yields back.

Ms. Sewell.

Ms. Sewell. Thank you. I yield my time to the ranking member.

Mr. Schiff. I thank the gentlewoman for yielding.

I think it is apparent from the comments of my colleagues, and I hope this is just a misunderstanding and not something more deliberate, the critique that you are making of unmasking, you have every right to make, but it is not about 702. All the comments you have made have not been about this program. And I assume that you know that. I hope that you know that. And if you don't know that, when we sit down, Mr. Turner, my colleagues, you will find out that the concerns you are expressing are not --

Mr. Turner. Will the gentleman yield since he is questioning my level of knowledge on the bill in front of us?

Mr. Schiff. I would be happy to yield. I would be happy to yield.

Mr. Turner. Because I look forward to us, as you said, when we are in our classified briefing, going through what you and I have both already read, which are testimonies where, actually a couple of them, that we were in attendance and both questioned the witnesses, where they related to us what I believe are absolute abuses by the Obama administration where they did use the process of unmasking I think to the detriment of the rights of U.S. citizens.

Now, this is a process that I believe needs to be addressed.

Mr. Schiff. And reclaiming my time. Reclaiming my time.

Mr. Turner. And by addressing in this vehicle we are protecting American citizens.

Mr. Schiff. Are you talking about under program 702, sir?

Mr. Turner. We are protecting American citizens in the bill that is in front of you --

Mr. Schiff. Then I guess the answer is no.

Mr. Turner. -- on the issue and unmasking

Mr. Schiff. Then I guess your answer is no, we are not talking about 702. That is precisely my point. We are not talking about 702. The comments my colleague has just made --

Mr. Turner. As you are aware, we are talking about 702 and --

Mr. Schiff. -- Mr. Rooney and himself, are not pertaining to this program. That is my point.

Now, if you wish to nonetheless interfere with our progress on this issue with this program because of concerns about other things, then at least be open about what you are doing, okay? We happen to think this program is too important to be potentially dragged down by a debate over something else. But, nonetheless, that is where we are.

Mr. Rooney. Will the gentleman yield?

Mr. Schiff. I would be happy to yield.

Mr. Rooney. Mr. Schiff, you know that this is the vote that we have in front of us today. I understand what you are saying about the differences. But this is the vehicle by which we are going to make the reforms in the problems that we are faced with today.

The reality of the situation, on both sides of our aisle, forget about all the politics and Russia and all that, the reality is, is that this is the vehicle that is moving the reforms that we want to do. And that is true on your side of the aisle, and it is true on our side of the aisle. If we are going to get this passed --

Mr. Schiff. Reclaiming my time then, are we --

Mr. Rooney. If we are going to get this passed, we have to do this today.

Mr. Schiff. -- are we in agreement then, Mr. Rooney, that the concerns you are raising are not implicated by anything we have seen on 702? Are we in agreement then on that?

Mr. Rooney. I am in agreement that today is the day that we have the chance to make the reforms. And if we miss this opportunity, then we are making the country weaker.

Mr. Schiff. I reclaim my time.

I assume we are, therefore, in agreement, that the problems that you are talking about are not pertaining to this program, and we are merely using this vehicle. And my plea to you is don't use 702. It is too important. If we want to --

Mr. Rooney. Than what?

Mr. Schiff. If you want to have a standalone bill, you are in the majority. You can take it up any time you want. And the Speaker can schedule it for the House floor any time you want. It doesn't have to be with this program. And you know the IC is

not in favor of this language in the bill. You know that. We know that. And yet you are insisting on it for a political reason unrelated to 702.

And with that, Mr. Chairman, I will yield to my colleague, Mr. Himes.

Mr. Himes. Thank you, Mr. Schiff.

People watching this debate might arrive at an accurate conclusion, which is that there is a debate to be had over unmasking. I said that in my original statement. I have looked at every single unmasking, and I am very much looking forward to the meeting with Mr. Turner, and I have been in every single hearing on this issue.

There is a debate to be had. But this is not the vehicle. And it is not the vehicle because the number of hearings we have had on unmasking is zero. The number of meetings that we have had in a bipartisan way on unmasking is zero. The number of presentations that we have made to the American public on this issue is zero.

We have lots of classified information. We have a difference of opinion. If we were responsible, we would come together, try to resolve this difference of opinion, as Mr. Turner and Mr. Schiff have attempted to do, and then we would share our conclusions with the people who sent us here.

So, no, this is not the vehicle. It is an important issue. You see the debate. Let's do this right. Let's not jam it through.

With that, I yield back to the ranking member.

The Chairman. Okay. The gentleman's time has expired.

Just for the record, this does not only the unmasking provision, it covers 702, but all of FISA, because unmaskings occur across all of FISA. So to try to bifurcate that is quite the interesting point since we put in other provisions that have absolutely, I would say, even less to do with 702 into this bill, like some of the PCLOB provisions and other provisions. So is the gentleman wanting to pull some of those out also?

Mr. Schiff. Will the gentleman yield?

The Chairman. I will yield for a little while.

Mr. Schiff. We did it, Mr. Chairman, because we had bipartisan agreement on that. We don't have bipartisan --

The Chairman. But you can't make the argument -- you can't make the argument that one thing applies to 702 because you want it to, but something that our side wants in doesn't --

Mr. Schiff. No, Mr. Chairman --

The Chairman. -- when it actually does.

Mr. Schiff. Mr. Chairman, my point is, since this is not a problem with 702 and there is no bipartisan agreement on it, why insert it and bring the bill down on something that does not relate to 702?

The Chairman. Reclaiming my time. The bill is not going to go down.

Mr. Stewart is recognized.

Mr. Stewart. Thank you, Mr. Chairman.

And it is interesting this is an open hearing, and I think there is something that is apparent, and that is our Democratic colleagues feel badly about something that I feel badly about as well, and that is one of the things that I most appreciated about this committee was it was bipartisan. And I looked across the aisle, and some of you I have traveled with and many of you I have considered friends. It was bipartisan while we had a Democratic President.

And now it is not bipartisan. And what changed? What changed was on November 20. And I would argue the first week of November everything changed. And suddenly this committee was not bipartisan, because we had a Republican nominee or a Republican President.

And you are exactly right. This committee has changed because we have a Republican President now.

And some of the things that I have heard some of you that I respected and some of the accusations that you have made against private citizens and the innuendo and the cloud you put over people, with laughable evidence, and then come and complain about being bipartisan.

The ranking member asked for evidence. He said there was no scintilla of evidence. I will give you evidence right here, not in a closed session. I will give you evidence right now.

Three hundred times, more than 300 times, the Ambassador to the United Nations, Samantha Power, requested unmasking, which is astronomically higher than anything we saw before that. It is higher than National Security Advisor Rice. It is higher than Director of the CIA Brennan. Much, much higher. They had 70. She had hundreds and hundreds. And are you going to go say to the American people that that is okay?

A political appointee in a political and a powerful position takes American citizens who are not under investigation, they are private citizens, they have been accused of no wrongdoing, and this political appointee demands that those citizens' identities be not only unmasked, but in far too many cases their identities were released and leaked to the press. And you think that is okay. And you are going to go tell the American people we are okay with that. Because I think if you are going to make that political argument, good luck with that.

The American people demand and expect and they deserve their identity and their privacy to be protected. That is the only thing we are trying to do here. And if you think that is partisan, I don't know what to say to you, because it seems to me that is

something that Republicans and Democrats could agree on. If you are not under investigation, you deserve and have a right to privacy.

And if you would vote against this bill because you want to go to the American people and say we don't want to assure you of that or we are going to make it harder for you to have that privacy, once again, good luck with that, because I think it is a nutty political argument to make.

With that, I will yield back.

The Chairman. The gentleman yields back.

Any member wish to be heard before we offer amendments? Move on to amendments?

Mr. Carson.

Mr. Carson. Thank you, Chairman.

Thank you, Ranking Member, as well.

You know, since becoming a member of this committee I have seen exactly why our overseas surveillance programs are so critically important. We need the ability to target and track individuals who we have reason to suspect are plotting against the United States.

My time on this committee has illustrated clearly just how valuable it is to be able to quickly collect, store, and analyze intel on overseas suspects. It has and will continue to save lives.

So I support section 702 and believe strongly that it should be reauthorized before it expires later this year.

All of that being said, I have concerns that this bill has not gone far enough to narrow the authorities in section 702 of FISA. We need to go further to address many of the civil liberties concerns raised since our last reauthorization of 702. We should be



stronger on "about" collections and ensure that the NSA can only turn this collection back with the approval of Congress. There is enough ambiguity about "about" collection that the decision to turn its back on needs to be heavily debated.

The bill also lacks a strict warrant requirement in order for the FBI to search the section 702 database for information on specific Americans and to be utilized in criminal proceedings.

I am aware that each and every year the program is approved it must be found consistent with the Fourth Amendment by the Attorney General and Director of National Intelligence, which it has already been.

However, having worn a law enforcement uniform, I think that the way we gather and are able to use evidence is critically important. I think that there are additional protections which we should implement in this program when we are dealing with the information of U.S. persons.

Now, to be clear, I am not soft on terrorism. I believe that robust intelligence collection is critical to our national security and that our intel officials need all possible tools to do their jobs well. But sitting on this very esteemed committee has shown me that we collectively could address these provisions. We could and should protect the Fourth Amendment rights of Americans in a stronger and more forceful way.

So as the bill is currently drafted, and particularly with the politically motivated unmasking language, I oppose this bill. I hope that we can work with our colleagues on the House Judiciary and in the Senate to reauthorize and reform this authority in a very thoughtful way before it expires.

Thank you. I yield back, Chairman.

The Chairman. Thank you, Mr. Carson.

Mr. Gowdy.

Mr. Gowdy. Thank you, Mr. Chairman.

I have worked for, I guess, the better part of the last 9 months with my friend from Connecticut. He is always prepared. He is thorough. He is every bit as effective as a questioner in private as he is in public.

But I would tell my friend from Connecticut there were Republicans who told President Trump that he was wrong when he accused President Obama of wiretapping Trump Tower. There were Republicans who said it contemporaneous with the claim.

So I would just ask my friend from Connecticut, no matter how heated the political debate may get, don't ever lose side of that fairness. And don't lump everyone together. There were Republicans who said there is no evidence to support that, and if there is, produce it immediately.

To my friend from California, I would say, you are correct. You are correct. We have spent the better part of the last 9 months looking at issues unrelated with this precise reauthorization.

But my friend from California is also experienced and bright enough to know that if the problems can manifest themselves in one surveillance program, they can certainly manifest themselves in another, because it is the same techniques, it is the same principles, it is the same players. So why would we wait until similar problems manifest themselves? Why not fix it before it happens?

The issues, the word "illegal" was used in connection with unmasking. There is no illegal unmaskings. They may violate policy. They may be improper. It is not against the law to do it.

But we have both been in the room, all three of us have been in the room when principals with almost precisely the same job description had wildly disparate unmasking numbers. That doesn't mean a crime was committed. It doesn't even mean the

motive was nefarious. What it does mean is there are different policies and paradigms being applied to the request to unmask.

And what was most troubling to me, and I know it was to my two friends on the other side of the aisle, is in some instances the principal, himself or herself, was not even aware that the unmasking request had been made. That is not what we want.

If we are going to trust a national security advisor, we are going to trust an attorney general with the power to unmask a fellow citizen's name, at least make sure it is the principal doing it. And we were all there, and we were all, I think, surprised at the testimony.

So my question to my friends would be this: Why wait until similar problems manifest themselves?

Mr. Schiff. Will the gentleman yield?

Mr. Gowdy. This President, unless he is going to mirror Grover Cleveland, is never going to go back through another transition.

Mr. Schiff. Will the gentleman yield?

Mr. Gowdy. Unless we have another nonsuccessive Presidency, he is not going to go back through transition. So this has nothing to do with President Trump. He is not going to go back through it. It has to do with the next Democrat administration, the next Republican one.

And more than that, it has to do -- it wasn't 10 months ago we sat in this room with Admiral Rogers and Director Comey and we put them on notice that this agreement, this tacit agreement that we have between government and the American people, that we are going to empower you, but you have to be good stewards of that power. And we put them on notice that there were issues.

And here we are in December, 8 months later, discussing those very issues. And

if they have taken steps to resolve them, those steps have been lost on me. So it is our responsibility to do it.

And, yes, I will yield to my friend from California. But what I would ask him is, why would we wait until similar issues manifest themselves in this surveillance program?

Mr. Schiff. And I would ask my colleague, why did you wait? You are in the majority. You could have introduced an unmasking bill. You could have taken it up at any time. Why wait until this program is about to sunset and try to jam it in the bill if you think this is such a good and important idea?

And I will tell you the answer: Because this is a political messaging tool that, if it were in a standalone bill --

Mr. Gowdy. I would tell my friend --

Mr. Schiff. -- it would not get bipartisan support. But by putting it in a must-pass program --

Mr. Gowdy. This is the first reauthorization that I have participated in since I have been on HPSCI. As my friend from California knows, this is my first time on HPSCI. So you are welcome to query my colleagues as to why they haven't done it in the past, but this is my first opportunity to do it.

So I am not a Johnny-come-lately to it. I was talking about it to Comey and Rogers, having been on this committee for a month. So you can query my colleagues, but you and I both know this is the first time I have been through a reauthorization on this program.

Mr. Schiff. And I am not questioning my colleague's good faith here. I am just saying, if this was as pressing an issue as my colleagues on the majority make out, there was nothing preventing them over the last 6 months from introducing a bill on the subject. But by putting it in a must-pass bill, a must-pass program, the effort is to

shoehorn bipartisan support for a partisan narrative, and that is simply not what this should be used for.

The Chairman. The time has expired.

Anybody wish to be heard over here before we get to amendments?

Ms. Speier.

Ms. Speier. Mr. Chairman, thank you.

You know, I must say that I really every value member of this committee. And I do think we are all people of good will. And I think this dialogue we are having right now would be really constructive if we could talk about it separate from 702.

Because Mr. Gowdy is making some good points. There are many things that I think we could come to an agreement on. But I do worry that separate and distinct from that, we have not fully dealt with this measure in a manner that is consistent with what the American people would want.

Since 2012, there have been a significant number of Americans who have been improperly swept up in surveillance activities that the law says must not target Americans, and that this information is retained for years. This improperly obtained information has been used in court against Americans charged with crimes that have nothing to do with national security, with no warrants and without the required notification to the defense.

Leaving aside the unmasking language also included in the bill, civil liberty groups have assessed that the so-called fixes in this bill would be worse than no fixes at all. There is no reason for this to be the case. There have been numerous other FISA authorization, reauthorization bills introduced in both Chambers of Congress, many of which contain elements with merit that should receive debate on the floor.

This is far too serious of a matter to ram a renewal of these authorities through on

a ridiculously short timeline. This bill was shared with my office less than 24 hours ago. And here we are marking up legislation that has incredibly profound constitutional implications for all Americans -- and business implications, I might add.

My concerns are shared widely by both sides of the aisle, and there is no reason that we can't work together to fix these problems. We could be sitting here thoughtfully debating the precarious balance between security and civil liberties and the best path forward. But instead, the majority has decided to do otherwise.

Waiting until the authorities are about to expire and then jamming this bill through committee with no time for debate and discussion is the very definition of undemocratic, and it is disrespectful to all Americans and to the Constitution.

I do believe that section 702 authorities are critical to our national security, and there is a true balance to be struck here. We are all here because we love our country. And we all driven to protect it both from external national security threats and from internal weakening of our constitutional protections. This bill fails to balance those concerns, and so I must oppose it.

I would like to yield the rest of my time to Mr. Himes.

Mr. Himes. Thank you, Ms. Speier.

And I just want to honor Congressman Gowdy's observations. I agree with him wholeheartedly. He is right, there have been Republicans who have taken risks, to acknowledge what you said about the tweet. And this is not fundamentally, I think, a partisan thing and shouldn't fundamentally be a partisan thing.

And I want to reassure Mr. Rooney, though I am unhappy with the process that has led us here today, and though we have had some heated words, I think the personal relationships on this committee are really important.

I really want to distill the issue down to two points, though. Number one -- and I

think these are sort of unarguable. We all know what we do, and we all know that are there certain issues that are political dynamite. There just are. Unmasking is one of them. Benghazi is one of. The possibility of collusion is one of them.

And every time one of these items of political dynamite get put out there, MSNBC does what it does, FOX does what it does. We try our best, usually, to be staid and careful in talking about these. But they are political dynamite. We know that.

My problem is we know that and we are moving forward on a change to United States Code on an issue that we all know is political dynamite without educating the American people one bit.

Look, I am open-minded. I think I have seen as much of the evidence as anybody up here. I am open-minded. I am not closed-minded to the possibly that there were improper unmaskings. But I am not ready to jump to a conclusion, because haven't had the conversation. We haven't had that hearing, publicly or privately.

And we have got disagreements. If we are disagreeing, how are we going to try to reduce the temperature on this issue of political dynamite for the American people.

So my plea is not that Republicans be better or anything else. My plea is simply that we know this issue is political dynamite. Let's deal with it. But let's deal with it in a way that does justice to what we should be doing for the American people.

Yield back.

The Chairman. Mr. Wenstrup.

Dr. Wenstrup. Thank you, Mr. Chairman.

We all know that the 702 tool is subject to unmasking. And if this foreign intelligence tool has the potential to be abused, I feel it is up to us to protect that and to provide oversight. And in some way stating that you want to restrict the oversight, I think it tells the American people that maybe we shouldn't be trusted. Why would we

want to restrict our oversight as representatives of the people over a tool that we are supposed to have oversight on?

Let's not wait any longer. Why wait any longer? Let's let the American people know that we intend to provide oversight and make sure that they are protected and that we are doing things right. It is just one more opportunity for us on a very important committee to do what they used to say on "Superman": Fight for truth, justice, and the American way.

And I yield back.

The Chairman. Anyone else want to be heard before we get to amendments?

Mr. Swalwell.

Mr. Swalwell. Thank you, Mr. Chairman.

As we debate this here today, our enemies are toiling away abroad plotting to carry out what could be the next attack against our allies or, God forbid, here in the United States. And our constituents at home are counting on us to do all we can to ensure that as we seek to prevent the next attack, understand the next attack, thwart the next attack, that we also respect their civil liberties.

And what a message it would send to them if this committee could produce a bipartisan piece of legislation. And I think you have heard today that there is a commitment from all of the Democrats that if the unmasking part of this legislation is taken out you will have a unanimous 702 reauthorization that would show our enemies a resolve to understand what they are doing and to fight it and the American people a resolve to respect their civil liberties and their God-given right to privacy.

I implore my colleagues across the aisle, pull the unmasking piece. Let's have a conversation about it. Mr. Schiff, in public and in private, has pleaded for us to just sit down in an informal manner and talk about the Russia investigation, to talk about the



unmasking concerns, and it has fallen on deaf ears. The invitation has never been taken up.

I think so much can be accomplished, and so much has been accomplished, when we just talk informally. Mr. Stewart mentioned the foreign travel that we have done. We have gone to some of the roughest places in the world and some of the tightest bonds among us have been made. And I think we can do that again.

But let's informally meet and address these concerns. And then let's have a hearing on improper unmasking. And then if there is a standalone bill to be had to address some of the concerns that Mr. Gowdy has and that Mr. Himes has brought up, I think we could probably find bipartisan support for that.

But to our enemies and to the people at home who are counting on us to produce a bipartisan bill today, they are not going to get that. They are going to get a partisan bill that addresses claims that have not yet been proven. And it is going to be just one more setback that we have seen, ironically, that started back on March 20 in this room, which I would submit was the day that the wheels came off the bipartisan spirit that this committee has always shown.

So I hope my colleagues will pull this part of the legislation and allow us to show the American people that we are united in fighting the threats that we face and protecting the civil liberties that we depend upon.

I yield back.

The Chairman. On Republican side?

Mr. Castro.

Mr. Castro. Thank you, Chairman.

The Chairman. Oh, I am sorry. I skipped Mr. Turner.

Mr. Turner.

Mr. Turner. I am just going to speak briefly.

The partisan tone that you are hearing is the partisan characterization of this bill by the Democrats on this committee. There is not one partisan word in this bill. There is no word "Donald Trump." There is no word "Obama administration." There is no word "Trump Tower."

In fact, if you read this bill, which is the only reason why I asked for time, is to make the clarity of the issue of what we are debating, it is an issue merely of oversight. There is no prohibition that is included in this bill. There is no restriction that is included in this bill. There is an issue of oversight.

Open government and our responsibility in our role of oversight is essential to the functions of this committee. When you argue against these provisions, you are merely arguing against oversight. When you make it partisan, you make it partisan. There is not one word in this bill that is partisan. It applies to Democrats. It applies to Republicans. And it applies, basically, to the obligation of oversight.

And what is that oversight? Of protecting American citizens' constitutional rights. You can't have something more important in this committee than that.

To take it down to Trump Tower, when the word Trump Tower doesn't exist in this bill, is just absolutely to cast aside our obligations constitutionally to protect American citizens and to make this partisan. And then when you turn to members of this committee and personally attack them, you are the ones who are destroying the bipartisan aspects.

Now, there hasn't been one person on this side who has pointed one finger over there except to respond to the attacks of partisanship on the other side.

Let's get back to our job. Read the bill, look at its oversight provisions, understand that it protects Americans, that it would protect the operations of our

government, and that it would strengthen the functions of this committee.

I yield back.

The Chairman. The gentleman yields back.

Mr. Castro.

Mr. Castro. Thank you.

Regarding this bill, I still have concerns about the privacy issue, about the inclusion of the unmasking language, and about the short timeframe in which we have had to consider this legislation. So I am going to vote no.

I yield back.

The Chairman. Any other Republican wish to be heard before we get to amendments?

Mr. Heck.

Mr. Heck. Thank you, Mr. Chairman. And thanks for having this open committee hearing. Coming up out of the SCIF is a delightful change from our past practice. They say sunshine is the best disinfectant. I think we are getting a bit of a ray of sunshine here today.

I also want to add my voice of appreciation to the staff on both sides. I know that there was a fairly furious run-up to today and a lot of effort expended. And even though we clearly did not get there finally, it wasn't for failure of a lot of effort on a lot of people's parts.

I am going to vote no today but not for most of the reasons that have been expressed today. People have suggested that they are going to vote no because of the process and the fairly short timeline, 36 hours to examine this bill.

I share that concern, as a matter of fact. I think there are questions that we have not had time to actually explore and fully understand, such as the expansion of the scope

of collection to include civilian groups not associated with terrorist organizations or state actors that is found in section 102.

That is new language and it is expansive and I don't understand who it is aimed at and is it appropriately scoped. I don't understand how it interacts, for example, with the EU Privacy Shield. New questions kept popping up about this yesterday and even into the night.

I also don't think we had enough time to understand how this bill defines malicious cyber activities. It gives a different definition than that which was included in the CFIUS bill that was introduced just 2 weeks ago. The chair was a sponsor. I was a cosponsor. And I am not sure why it is that these differ in that definition and how that interrelationship might be of importance or not.

But at the end of the day, these are not the reasons I am voting no. They are concerns. I share the concerns that there has been a devolution of bipartisanship here and it is fully on display here today. I don't think we are actually moving the chains down the field by accusing one another of partisanship in any way. But, again, that is not the reason I am voting no.

There have been concerns expressed here today about inclusion of the unmasking part. I think for the first time in my 11 months of grateful service on this committee I must disagree with my dear friend from California, Mr. Swalwell. You could take this out and I would still vote no, because I have other concerns, as a matter of fact.

RPTR KEAN

EDTR CRYSTAL

[10:01 a.m.]

Mr. Heck. Indeed, I think the questions about unmasking are fair and that we need to explore some of this as we go forward.

No, I am voting no because I believe that this bill sets up a false choice between whether or not we can be secure or whether or not we can protect our rights to privacy, especially under the Fourth Amendment. Benjamin Franklin famously quipped, and I am amazed that he has not yet been quoted today, that those who would trade privacy for security deserve neither. And I find that the weight of this bill trades off privacy for security, and I believe that that is a false choice because I believe we can have both.

We have the issue of "about" collection, which was never envisioned by this committee, and it was never specifically authorized, yet the text of this bill implicitly approves "about" collection. And I find that unacceptable without continuing work on our part to address "about" collection in a clear way that leaves no ambiguity for what can and cannot be collected about us. That is the Fourth Amendment protection and right to privacy that I think is not upheld sufficiently in this legislation.

We have the issue of U.S. persons queries that has been referred to. This does not close the door on U.S. persons queries, it merely oils the hinges. We do have constitutional rights. We do include, among them, the Fourth Amendment to be secure in our houses and papers and effects. And we need to close the back door search loophole and lock the door.

So at the end of the day, I am voting no not because of the process, although concerned, or the timeline, although concerned, or the lack of bipartisanship, although

concerned, or the inappropriate inclusion, in my humble opinion, of the unmasking provision in the 702. I am voting no because I do not think we have struck the right balance and secured both our privacy and our security. And I believe we can achieve both, but not in this legislation.

And with that, I yield back. And thank you, Mr. Chairman.

The Chairman. The gentleman yields back.

We are ready to start the amendment process, and I have an amendment. I offer an amendment in the nature of a substitute. The clerk will designate the amendment.

The Clerk. Amendment No. 1, offered by Mr. Nunes of California.

The Chairman. Without objection, the amendment will be considered as read.

[The amendment of The Chairman follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4478  
OFFERED BY M . \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “FISA Amendments Reauthorization Act of 2017”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

**TITLE I—ENHANCEMENTS TO FOREIGN INTELLIGENCE  
COLLECTION**

Sec. 101. Section 705 emergency provision.

Sec. 102. Modification to definitions of foreign power and agent of a foreign power.

**TITLE II—SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT**

Sec. 201. Querying procedures required.

Sec. 202. Use and disclosure provisions.

Sec. 203. Congressional review and oversight of abouts collection.

Sec. 204. Publication of minimization procedures under section 702.

Sec. 205. Compensation of amici curiae and technical experts.

Sec. 206. Additional reporting requirements.

Sec. 207. Procedures regarding dissemination of nonpublicly available information concerning United States persons.

Sec. 208. Improvements to Privacy and Civil Liberties Oversight Board.

Sec. 209. Privacy and civil liberties officers.

Sec. 210. Briefing on notification requirements.

**TITLE III—EXTENSION OF AUTHORITIES, INCREASED  
PENALTIES, REPORTS, AND OTHER MATTERS**

Sec. 301. Extension of title VII of FISA; effective dates.



Sec. 302. Increased penalty for unauthorized removal and retention of classified documents or material.

Sec. 303. Report on challenges to the effectiveness of foreign intelligence surveillance.

Sec. 304. Comptroller General study on the classification system and protection of classified information.

Sec. 305. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.

Sec. 306. Severability.

1 **SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE**  
2 **SURVEILLANCE ACT OF 1978.**

3 Except as otherwise expressly provided, whenever in  
4 this Act an amendment or repeal is expressed in terms  
5 of an amendment to, or a repeal of, a section or other  
6 provision, the reference shall be considered to be made to  
7 a section or other provision of the Foreign Intelligence  
8 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

9 **TITLE I—ENHANCEMENTS TO**  
10 **FOREIGN INTELLIGENCE**  
11 **COLLECTION**

12 **SEC. 101. SECTION 705 EMERGENCY PROVISION.**

13 Section 705 (50 U.S.C. 1881d) is amended by adding  
14 at the end the following:

15 “(c) EMERGENCY AUTHORIZATION.—

16 “(1) CONCURRENT AUTHORIZATION.—If the  
17 Attorney General authorized the emergency employ-  
18 ment of electronic surveillance or a physical search  
19 pursuant to section 105 or 304, the Attorney Gen-  
20 eral may authorize, for the effective period of the  
21 emergency authorization and subsequent order pur-

1       suant to section 105 or 304, without a separate  
2       order under section 703 or 704, the targeting of a  
3       United States person subject to such emergency em-  
4       ployment for the purpose of acquiring foreign intel-  
5       ligence information while such United States person  
6       is reasonably believed to be located outside the  
7       United States.

8               “(2) USE OF INFORMATION.—If an application  
9       submitted to the Court pursuant to section 104 or  
10      304 is denied, or in any other case in which the ac-  
11      quisition pursuant to paragraph (1) is terminated  
12      and no order with respect to the target of the acqui-  
13      sition is issued under section 105 or 304, all infor-  
14      mation obtained or evidence derived from such ac-  
15      quisition shall be handled in accordance with section  
16      704(d)(4).”.

17 **SEC. 102. MODIFICATION TO DEFINITIONS OF FOREIGN**  
18 **POWER AND AGENT OF A FOREIGN POWER.**

19       (a) FOREIGN POWER.—Subsection (a) of section 101  
20 (50 U.S.C. 1801) is amended—

21               (1) in paragraph (6), by striking “; or” and in-  
22       serting a semicolon;

23               (2) in paragraph (7), by striking the period at  
24       the end and inserting “; or”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(8) an entity not substantially composed of  
4 United States persons that is engaged in inter-  
5 national malicious cyber activity, or activities in  
6 preparation therefor, that threatens the national de-  
7 fense or security of the United States.”.

8           (b) AGENT OF A FOREIGN POWER.—Subsection  
9 (b)(1) of such section (50 U.S.C. 1801) is amended—

10           (1) in subparagraph (D), by striking “; or” and  
11 inserting a semicolon; and

12           (2) by adding at the end the following new sub-  
13 paragraph:

14           “(F) engages in international malicious  
15 cyber activity that threatens the national de-  
16 fense or security of the United States, or activi-  
17 ties in preparation therefor, for or on behalf of  
18 a foreign power, or knowingly aids or abets any  
19 person in the conduct of such international ma-  
20 licious cyber activity or activities in preparation  
21 therefor, or knowingly conspires with any per-  
22 son to engage in such international malicious  
23 cyber activity or activities in preparation there-  
24 for; or”.

1 (c) INTERNATIONAL MALICIOUS CYBER ACTIVITY  
2 DEFINED.—Such section (50 U.S.C. 1801) is further  
3 amended by adding at the end the following new sub-  
4 section:

5 “(q)(1) The term ‘international malicious cyber activ-  
6 ity’ means activity on or through an information system—

7 “(A) originating from, or directed by, persons  
8 located, in whole or in substantial part, outside the  
9 United States;

10 “(B) that seeks to compromise or impair the  
11 confidentiality, integrity, or availability of com-  
12 puters, information systems or communications sys-  
13 tems, networks, physical or virtual infrastructure  
14 controlled by computers or information systems, or  
15 information resident thereon; and

16 “(C) that is not authorized by the United  
17 States Government or otherwise carried out in ac-  
18 cordance with Federal law.

19 “(2) In paragraph (1), the term ‘information system’  
20 has the meaning given that term in section 102 of the  
21 Cybersecurity Information Sharing Act of 2015 (6 U.S.C.  
22 1501), and includes national security systems (as defined  
23 in section 11103 of title 40, United States Code).”.

1 **TITLE II—SAFEGUARDS, AC-**  
2 **COUNTABILITY, AND OVER-**  
3 **SIGHT**

4 **SEC. 201. QUERYING PROCEDURES REQUIRED.**

5 (a) QUERYING PROCEDURES.—

6 (1) IN GENERAL.—Section 702 (50 U.S.C.  
7 1881a) is amended—

8 (A) by redesignating subsections (f)  
9 through (l) as subsections (g) through (m), re-  
10 spectively; and

11 (B) by inserting after subsection (e) the  
12 following new subsection:

13 “(f) QUERIES.—

14 “(1) PROCEDURES REQUIRED.—

15 “(A) REQUIREMENT TO ADOPT.—The At-  
16 torney General, in consultation with the Direc-  
17 tor of National Intelligence, shall adopt  
18 querying procedures consistent with the require-  
19 ments of the fourth amendment to the Con-  
20 stitution of the United States for information  
21 collected pursuant to an authorization under  
22 subsection (a).

23 “(B) RECORD OF UNITED STATES PERSON  
24 QUERY TERMS.—The Attorney General, in con-  
25 sultation with the Director of National Intel-

1           ligence, shall ensure that the procedures adopt-  
2           ed under subparagraph (A) include a technical  
3           procedure whereby a record is kept of each  
4           United States person query term used for a  
5           query.

6           “(C) JUDICIAL REVIEW.—The procedures  
7           adopted in accordance with subparagraph (A)  
8           shall be subject to judicial review pursuant to  
9           subsection (j).

10          “(2) COURT ORDERS FOR ACCESS OF CONTENTS  
11          FROM CERTAIN QUERIES.—

12                 “(A) DISCRETION FOR FBI TO APPLY FOR  
13                 COURT ORDER.—Before the Federal Bureau of  
14                 Investigation accesses the contents of commu-  
15                 nications acquired under subsection (a) that  
16                 were retrieved using a United States person  
17                 query term that was not designed to find and  
18                 extract foreign intelligence information, the Bu-  
19                 reau may apply for an order of the Court under  
20                 subparagraph (C).

21                 “(B) JURISDICTION.—The Court shall  
22                 have jurisdiction to review an application and to  
23                 enter an order approving the access described  
24                 in subparagraph (A).

1           “(C) APPLICATION.—Each application for  
2           an order under this paragraph shall be made by  
3           a Federal officer in writing upon oath or affir-  
4           mation to a judge having jurisdiction under  
5           subparagraph (B). Each application shall re-  
6           quire the approval of the Attorney General  
7           based upon the finding of the Attorney General  
8           that the application satisfies the criteria and re-  
9           quirements of such application, as set forth in  
10          this paragraph, and shall include—

11                   “(i) the identity of the Federal officer  
12                   making the application; and

13                   “(ii) an affidavit or other information  
14                   containing a statement of the facts and  
15                   circumstances relied upon by the applicant  
16                   to justify the belief of the applicant that  
17                   the contents of communications described  
18                   in subparagraph (A) covered by the appli-  
19                   cation would provide evidence of—

20                           “(I) criminal activity;

21                           “(II) contraband, fruits of a  
22                           crime, or other items illegally pos-  
23                           sessed by a third party; or

1                   “(III) property designed for use,  
2                   intended for use, or used in commit-  
3                   ting a crime.

4                   “(D) ORDER.—Upon an application made  
5                   pursuant to subparagraph (C), the Court shall  
6                   enter an order approving the access of the con-  
7                   tents of communications described in subpara-  
8                   graph (A) covered by the application if the  
9                   Court finds probable cause to believe that such  
10                  contents would provide any of the evidence de-  
11                  scribed in subparagraph (C)(ii).

12                  “(E) RULE OF CONSTRUCTION.—Nothing  
13                  in this paragraph may be construed to prohibit  
14                  the Federal Bureau of Investigation from  
15                  querying information acquired under subsection  
16                  (a), or accessing the results of such a query, re-  
17                  gardless of whether the Bureau applies for or  
18                  receives an order under this paragraph.

19                  “(3) QUERY DEFINED.—In this subsection, the  
20                  term ‘query’ means the use of one or more terms to  
21                  retrieve the unminimized contents (as defined in sec-  
22                  tion 2510(8) of title 18, United States Code) or non-  
23                  contents located in electronic and data storage sys-  
24                  tems of communications of or concerning United



1 States persons obtained through acquisitions author-  
2 ized under subsection (a).”.

3 (2) APPLICATION.—Subsection (f) of section  
4 702 of the Foreign Intelligence Surveillance Act of  
5 1978 (50 U.S.C. 1881a), as added by paragraph (1),  
6 shall apply with respect to certifications submitted  
7 under subsection (h) of such section to the Foreign  
8 Intelligence Surveillance Court after January 1,  
9 2018.

10 (b) CONFORMING AMENDMENTS.—

11 (1) AMENDMENTS TO SECTION 702 OF FISA.—

12 Such section 702 is further amended—

13 (A) in subsection (a), by striking “with  
14 subsection (i)(3)” and inserting “with sub-  
15 sections (j)(3)”;

16 (B) in subsection (c)—

17 (i) in paragraph (1)(B), by striking  
18 “with subsection (g)” and inserting “with  
19 subsection (h)”;

20 (ii) in paragraph (2), by striking “to  
21 subsection (i)(3)” and inserting “to sub-  
22 section (j)(3)”;

23 (iii) in paragraph (3)—

- 1 (I) in subparagraph (A), by strik-  
2 ing “with subsection (g)” and insert-  
3 ing “with subsection (h)”;
- 4 (II) in subparagraph (B)—  
5 (aa) by striking “to sub-  
6 section (i)(1)(C)” and inserting  
7 “to subsection (j)(1)(C)”;
- 8 (bb) by striking “under sub-  
9 section (i)” and inserting “under  
10 subsection (j)”;
- 11 (C) in subsection (d)(2), by striking “to  
12 subsection (i)” and inserting “to subsection  
13 (j)”;
- 14 (D) in subsection (e)(2), by striking “to  
15 subsection (i)” and inserting “to subsection  
16 (j)”;
- 17 (E) in subsection (h), as redesignated by  
18 subsection (a)(1)—  
19 (i) in paragraph (2)(A)(iii), by strik-  
20 ing “with subsection (f)” and inserting  
21 “with subsection (g)”;
- 22 (ii) in paragraph (3), by striking  
23 “with subsection (i)(1)(C)” and inserting  
24 “with subsection (j)(1)(C)”;

1 (iii) in paragraph (6), by striking “to  
2 subsection (i)” and inserting “to sub-  
3 section (j)”;

4 (F) in subsection (j), as redesignated by  
5 subsection (a)(1)—

6 (i) in paragraph (1)—

7 (I) in subparagraph (A), by strik-  
8 ing “targeting and minimization pro-  
9 cedures adopted in accordance with  
10 subsections (d) and (e)” and inserting  
11 “targeting, minimization, and  
12 querying procedures adopted in ac-  
13 cordance with subsections (d), (e),  
14 and (f)(1)”;

15 (II) in subparagraph (B), by  
16 striking “targeting and minimization  
17 procedures adopted in accordance with  
18 subsections (d) and (e)” and inserting  
19 “targeting, minimization, and  
20 querying procedures adopted in ac-  
21 cordance with subsections (d), (e),  
22 and (f)(1)”;

23 (III) in subparagraph (C), by  
24 striking “targeting and minimization  
25 procedures adopted in accordance with

1 subsections (d) and (e)” and inserting  
2 “targeting, minimization, and  
3 querying procedures adopted in ac-  
4 cordance with subsections (d), (e),  
5 and (f)(1)”;

6 (ii) in paragraph (2)—

7 (I) in subparagraph (A), by strik-  
8 ing “with subsection (g)” and insert-  
9 ing “with subsection (h)”;

10 (II) by adding at the end the fol-  
11 lowing:

12 “(D) QUERYING PROCEDURES.—The  
13 querying procedures adopted in accordance with  
14 subsection (f)(1) to assess whether such proce-  
15 dures comply with the requirements of such  
16 subsection.”;

17 (iii) in paragraph (3)—

18 (I) in subparagraph (A)—

19 (aa) by striking “with sub-  
20 section (g)” and inserting “with  
21 subsection (h)”;

22 (bb) by striking “targeting  
23 and minimization procedures  
24 adopted in accordance with sub-  
25 sections (d) and (e)” and insert-

1 ing “targeting, minimization, and  
2 querying procedures adopted in  
3 accordance with subsections (d),  
4 (e), and (f)(1)”; and  
5 (II) in subparagraph (B), in the  
6 matter before clause (i)—  
7 (aa) by striking “with sub-  
8 section (g)” and inserting “with  
9 subsection (h)”; and  
10 (bb) by striking “with sub-  
11 sections (d) and (e)” and insert-  
12 ing “with subsections (d), (e),  
13 and (f)(1)”; and  
14 (iv) in paragraph (5)(A)—  
15 (I) by striking “with subsection  
16 (g)” and inserting “with subsection  
17 (h)”; and  
18 (II) by striking “with subsections  
19 (d) and (e)” and inserting “with sub-  
20 sections (d), (e), and (f)(1)”; and  
21 (G) in subsection (m), as redesignated by  
22 subsection (a)(1)—  
23 (i) in paragraph (1), in the matter be-  
24 fore subparagraph (A)—

1 (I) by striking “targeting and  
2 minimization procedures adopted in  
3 accordance with subsections (d) and  
4 (e)” and inserting “targeting, mini-  
5 mization, and querying procedures  
6 adopted in accordance with sub-  
7 sections (d), (e), and (f)(1)”; and

8 (II) by striking “with subsection  
9 (f)” and inserting “with subsection  
10 (g)”; and

11 (ii) in paragraph (2)(A)—

12 (I) by striking “targeting and  
13 minimization procedures adopted in  
14 accordance with subsections (d) and  
15 (e)” and inserting “targeting, mini-  
16 mization, and querying procedures  
17 adopted in accordance with sub-  
18 sections (d), (e), and (f)(1)”; and

19 (II) by striking “with subsection  
20 (f)” and inserting “with subsection  
21 (g)”.

22 (2) AMENDMENTS TO FISA.—The Foreign In-  
23 telligence Surveillance Act of 1978 (50 U.S.C. 1801  
24 et seq.) is further amended—

1 (A) by striking “section 702(h)” each  
2 place it appears and inserting “section 702(i)”;

3 (B) by striking “section 702(g)” each  
4 place it appears and inserting “section 702(h)”;

5 and

6 (C) in section 707(b)(1)(G)(ii), by striking  
7 “subsections (d), (e), and (f)” and inserting  
8 “subsections (d), (e), (f)(1), and (g)”.

9 (3) AMENDMENTS TO FISA AMENDMENTS ACT  
10 OF 2008.—Section 404 of the Foreign Intelligence  
11 Surveillance Act of 1978 Amendments Act of 2008  
12 (Public Law 110–261; 50 U.S.C. 1801 note) is  
13 amended—

14 (A) in subsection (a)(7)(B)—

15 (i) by striking “under section  
16 702(i)(3)” and inserting “under section  
17 702(j)(3)”;

18 (ii) by striking “of section 702(i)(4)”  
19 and inserting “of section 702(j)(4)”;

20 (B) in subsection (b)—

21 (i) in paragraph (3)—

22 (I) in subparagraph (A), by strik-  
23 ing “to section 702(h)” and inserting  
24 “to section 702(i)”;

25 (II) in subparagraph (B)—

1 (aa) by striking “section  
2 702(h)(3) of” and inserting “sec-  
3 tion 702(i)(3) of”; and

4 (bb) by striking “to section  
5 702(h)” and inserting “to section  
6 702(i)”; and

7 (ii) in paragraph (4)—

8 (I) in subparagraph (A), by strik-  
9 ing “and sections 702(l)” and insert-  
10 ing “and sections 702(m)”; and

11 (II) in subparagraph (B)(iv), by  
12 striking “or section 702(l)” and in-  
13 serting “or section 702(m)”.

14 **SEC. 202. USE AND DISCLOSURE PROVISIONS.**

15 (a) **END USE RESTRICTION.**—Section 706(a) (50  
16 U.S.C. 1881e(a)) is amended—

17 (1) by striking “Information acquired” and in-  
18 serting the following:

19 “(1) **IN GENERAL.**—Information acquired”; and

20 (2) by adding at the end the following:

21 “(2) **UNITED STATES PERSONS.**—

22 “(A) **IN GENERAL.**—Any information con-  
23 cerning a United States person acquired under  
24 section 702 shall not be used in evidence  
25 against that United States person pursuant to



1 paragraph (1) in any criminal proceeding un-  
2 less—

3 “(i) the Federal Bureau of Investiga-  
4 tion obtained an order of the Foreign In-  
5 telligence Surveillance Court to access such  
6 information pursuant to section 702(f)(2);  
7 or

8 “(ii) the Attorney General determines  
9 that—

10 “(I) the criminal proceeding af-  
11 fects, involves, or is related to the na-  
12 tional security of the United States;  
13 or

14 “(II) the criminal proceeding in-  
15 volves—

16 “(aa) death;

17 “(bb) kidnapping;

18 “(cc) serious bodily injury,  
19 as defined in section 1365 of title  
20 18, United States Code;

21 “(dd) conduct that con-  
22 stitutes a criminal offense that is  
23 a specified offense against a  
24 minor, as defined in section 111  
25 of the Adam Walsh Child Protec-

1 tion and Safety Act of 2006 (34  
2 U.S.C. 20911);

3 “(ee) incapacitation or de-  
4 struction of critical infrastruc-  
5 ture, as defined in section  
6 1016(e) of the USA PATRIOT  
7 Act (42 U.S.C. 5195c(e));

8 “(ff) cybersecurity, including  
9 conduct described in section  
10 1016(e) of the USA PATRIOT  
11 Act (42 U.S.C. 5195c(e)) or sec-  
12 tion 1029, 1030, or 2511 of title  
13 18, United States Code;

14 “(gg) transnational crime,  
15 including transnational narcotics  
16 trafficking and transnational or-  
17 ganized crime; or

18 “(hh) human trafficking.

19 “(B) NO JUDICIAL REVIEW.—A determina-  
20 tion by the Attorney General under subpara-  
21 graph (A)(ii) is not subject to judicial review.”.

22 (b) INTELLIGENCE COMMUNITY DISCLOSURE PROVI-  
23 SION.—Section 603 (50 U.S.C. 1873) is amended—

24 (1) in subsection (b)—

1 (A) in paragraph (1), by striking “good  
2 faith estimate of the number of targets of such  
3 orders;” and inserting the following: “good faith  
4 estimate of—

5 “(A) the number of targets of such orders;

6 “(B) the number of targets of such orders  
7 who are known to not be United States persons;  
8 and

9 “(C) the number of targets of such orders  
10 who are known to be United States persons;”;

11 (B) in paragraph (2)—

12 (i) by redesignating subparagraphs  
13 (A) and (B) as subparagraphs (B) and  
14 (C), respectively;

15 (ii) by inserting before subparagraph  
16 (B), as so redesignated, the following:

17 “(A) the number of targets of such or-  
18 ders;”;

19 (iii) in subparagraph (B), as so redesi-  
20 gnated, by striking “and” at the end; and

21 (iv) by adding at the end the fol-  
22 lowing:

23 “(D) the number of instances in which the  
24 Federal Bureau of Investigation has received  
25 and reviewed the unminimized contents of elec-

1           tronic communications or wire communications  
2           concerning a United States person obtained  
3           through acquisitions authorized under such sec-  
4           tion in response to a search term that was not  
5           designed to find and extract foreign intelligence  
6           information; and

7           “(E) the number of instances in which the  
8           Federal Bureau of Investigation opened, under  
9           the Criminal Investigative Division or any suc-  
10          cessor division, an investigation of a United  
11          States person (who is not considered a threat to  
12          national security) based wholly or in part on an  
13          acquisition authorized under such section;”;

14          (C) in paragraph (3)(A), by striking “or-  
15          ders; and” and inserting the following: “orders,  
16          including—

17                 “(i) the number of targets of such or-  
18                 ders who are known to not be United  
19                 States persons; and

20                 “(ii) the number of targets of such or-  
21                 ders who are known to be United States  
22                 persons; and”;

23          (D) by redesignating paragraphs (4), (5),  
24          and (6) as paragraphs (5), (6), and (7), respec-  
25          tively; and

1 (E) by inserting after paragraph (3) the  
2 following:

3 “(4) the number of criminal proceedings in  
4 which the United States or a State or political sub-  
5 division thereof provided notice pursuant to sub-  
6 section (c) or (d) of section 106 (including with re-  
7 spect to information acquired from an acquisition  
8 conducted under section 702) or subsection (d) or  
9 (e) of section 305 of the intent of the government  
10 to enter into evidence or otherwise use or disclose  
11 any information obtained or derived from electronic  
12 surveillance, physical search, or an acquisition con-  
13 ducted pursuant to this Act;” and

14 (2) in subsection (d)—

15 (A) in paragraph (1), by striking “(4), or  
16 (5)” and inserting “(5), or (6)”;

17 (B) in paragraph (2)(A), by striking  
18 “(2)(A), (2)(B), and (5)(C)” and inserting  
19 “(2)(B), (2)(C), and (6)(C)”;

20 (C) in paragraph (3)(A), in the matter  
21 preceding clause (i), by striking “subsection  
22 (b)(2)(B)” and inserting “subsection  
23 (b)(2)(C)”.

1 **SEC. 203. CONGRESSIONAL REVIEW AND OVERSIGHT OF**  
2 **ABOUTS COLLECTION.**

3 (a) IN GENERAL.—Section 702(b) (50 U.S.C.  
4 1881a(b)) is amended—

5 (1) in paragraph (4), by striking “and” at the  
6 end;

7 (2) by redesignating paragraph (5) as para-  
8 graph (6); and

9 (3) by inserting after paragraph (4) the fol-  
10 lowing:

11 “(5) may not intentionally acquire communica-  
12 tions that contain a reference to, but are not to or  
13 from, a facility, place, premises, or property at  
14 which an acquisition authorized under subsection (a)  
15 is directed or conducted, except as provided under  
16 section 203(b) of the FISA Amendments Reauthor-  
17 ization Act of 2017; and”.

18 (b) CONGRESSIONAL REVIEW AND OVERSIGHT OF  
19 ABOUTS COLLECTION.—

20 (1) DEFINITIONS.—In this subsection:

21 (A) The term “abouts communication”  
22 means a communication that contains reference  
23 to, but is not to or from, a facility, a place,  
24 premises, or property at which an acquisition  
25 authorized under section 702(a) of the Foreign

1 Intelligence Surveillance Act of 1978 (50  
2 U.S.C. 1881a(a)) is directed or conducted.

3 (B) The term “material breach” means  
4 significant noncompliance with applicable law or  
5 an order of the Foreign Intelligence Surveil-  
6 lance Court concerning any acquisition of  
7 abouts communications.

8 (2) SUBMISSION TO CONGRESS.—

9 (A) REQUIREMENT.—Notwithstanding any  
10 other provision of law, and except as provided  
11 in paragraph (4), if the Attorney General and  
12 the Director of National Intelligence intend to  
13 implement the authorization of the intentional  
14 acquisition of abouts communications, before  
15 the first such implementation after the date of  
16 enactment of this Act, the Attorney General  
17 and the Director of National Intelligence shall  
18 submit to the Committee on the Judiciary and  
19 the Select Committee on Intelligence of the  
20 Senate and the Committee on the Judiciary and  
21 the Permanent Select Committee on Intelligence  
22 of the House of Representatives a written no-  
23 tice of the intent to implement the authoriza-  
24 tion of such an acquisition, and any supporting  
25 materials in accordance with this subsection.

1           (B) CONGRESSIONAL REVIEW PERIOD.—  
2           During the 30-day period beginning on the date  
3           written notice is submitted under subparagraph  
4           (A), the Committee on the Judiciary and the  
5           Select Committee on Intelligence of the Senate  
6           and the Committee on the Judiciary and the  
7           Permanent Select Committee on Intelligence of  
8           the House of Representatives shall, as appro-  
9           priate, hold hearings and briefings and other-  
10          wise obtain information in order to fully review  
11          the written notice.

12          (C) LIMITATION ON ACTION DURING CON-  
13          GRESSIONAL REVIEW PERIOD.—Notwith-  
14          standing any other provision of law, and subject  
15          to paragraph (4), unless the Attorney General  
16          and the Director of National Intelligence make  
17          a determination pursuant to section 702(e)(2)  
18          of the Foreign Intelligence Surveillance Act of  
19          1978 (50 U.S.C. 1881a(e)(2)), the Attorney  
20          General and the Director of National Intel-  
21          ligence may not implement the authorization of  
22          the intentional acquisition of abouts commu-  
23          nications before the end of the period described  
24          in subparagraph (B).



1           (3) WRITTEN NOTICE.—Written notice under  
2 paragraph (2)(A) shall include the following:

3           (A) A copy of any certification submitted  
4 to the Foreign Intelligence Surveillance Court  
5 pursuant to section 702 of the Foreign Intel-  
6 ligence Surveillance Act of 1978 (50 U.S.C.  
7 1881a), or amendment thereto, authorizing the  
8 intentional acquisition of abouts communica-  
9 tions, including all affidavits, procedures, exhib-  
10 its, and attachments submitted therewith.

11           (B) The decision, order, or opinion of the  
12 Foreign Intelligence Surveillance Court approv-  
13 ing such certification, and any pleadings, appli-  
14 cations, or memoranda of law associated with  
15 such decision, order, or opinion.

16           (C) A summary of the protections in place  
17 to detect any material breach.

18           (D) Data or other results of modeling, sim-  
19 ulation, or auditing of sample data dem-  
20 onstrating that any acquisition method involv-  
21 ing the intentional acquisition of abouts com-  
22 munications shall be conducted in accordance  
23 with title VII of the Foreign Intelligence Sur-  
24 veillance Act of 1978 (50 U.S.C. 1881 et seq.),  
25 if such data or other results exist at the time

1 the written notice is submitted and were pro-  
2 vided to the Foreign Intelligence Surveillance  
3 Court.

4 (E) Except as provided under paragraph  
5 (4), a statement that no acquisition authorized  
6 under subsection (a) of such section 702 shall  
7 include the intentional acquisition of an abouts  
8 communication until after the end of the 30-day  
9 period described in paragraph (2)(B).

10 (4) EXCEPTION FOR EMERGENCY ACQUISITION.—  
11

12 (A) NOTICE OF DETERMINATION.—If the  
13 Attorney General and the Director of National  
14 Intelligence make a determination pursuant to  
15 section 702(c)(2) of the Foreign Intelligence  
16 Surveillance Act of 1978 (50 U.S.C.  
17 1881a(c)(2)) with respect to the intentional ac-  
18 quisition of abouts communications, the Attor-  
19 ney General and the Director of National Intel-  
20 ligence shall notify the Committee on the Judi-  
21 ciary and the Select Committee on Intelligence  
22 of the Senate and the Committee on the Judici-  
23 ary and the Permanent Select Committee on  
24 Intelligence of the House of Representatives as

1           soon as practicable, but not later than 7 days  
2           after the determination is made.

3           (B) IMPLEMENTATION OR CONTINU-  
4           ATION.—

5           (i) IN GENERAL.—If the Foreign In-  
6           telligence Surveillance Court approves a  
7           certification that authorizes the intentional  
8           acquisition of abouts communications be-  
9           fore the end of the 30-day period described  
10          in paragraph (2)(B), the Attorney General  
11          and the Director of National Intelligence  
12          may authorize the immediate implementa-  
13          tion or continuation of that certification if  
14          the Attorney General and the Director of  
15          National Intelligence jointly determine that  
16          exigent circumstances exist such that with-  
17          out such immediate implementation or con-  
18          tinuation intelligence important to the na-  
19          tional security of the United States may be  
20          lost or not timely acquired.

21          (ii) NOTICE.—The Attorney General  
22          and Director of National Intelligence shall  
23          submit to the Committee on the Judiciary  
24          and the Select Committee on Intelligence  
25          of the Senate and the Committee on the

1                   Judiciary and the Permanent Select Com-  
2                   mittee on Intelligence of the House of Rep-  
3                   resentatives notification of a determination  
4                   pursuant to clause (i) as soon as prac-  
5                   ticable, but not later than 3 days after the  
6                   determination is made.

7                   (5) REPORTING OF MATERIAL BREACH.—Sub-  
8                   section (m) of section 702 (50 U.S.C. 1881a), as re-  
9                   designated by section 201, is amended—

10                   (A) in the heading by striking “AND RE-  
11                   VIEWS” and inserting “REVIEWS, AND REPORT-  
12                   ING”; and

13                   (B) by adding at the end the following new  
14                   paragraph:

15                   “(4) REPORTING OF MATERIAL BREACH.—

16                   “(A) IN GENERAL.—The head of each ele-  
17                   ment of the intelligence community involved in  
18                   the acquisition of abouts communications shall  
19                   fully and currently inform the Committees on  
20                   the Judiciary of the House of Representatives  
21                   and the Senate and the congressional intel-  
22                   ligence committees of a material breach.

23                   “(B) DEFINITIONS.—In this paragraph:

24                   “(i) The term ‘abouts communication’  
25                   means a communication that contains ref-

1           erence to, but is not to or from, a facility,  
2           a place, premises, or property at which an  
3           acquisition authorized under subsection (a)  
4           is directed or conducted.

5           “(ii) The term ‘material breach’  
6           means significant noncompliance with ap-  
7           plicable law or an order of the Foreign In-  
8           telligence Surveillance Court concerning  
9           any acquisition of abouts communica-  
10          tions.”.

11           (6) APPOINTMENT OF AMICI CURIAE BY FOR-  
12          EIGN INTELLIGENCE SURVEILLANCE COURT.—For  
13          purposes of section 103(i)(2)(A) of the Foreign In-  
14          telligence Surveillance Act of 1978 (50 U.S.C.  
15          1803(i)(2)(A)), the Foreign Intelligence Surveillance  
16          Court shall treat the first certification under section  
17          702(g) of such Act (50 U.S.C. 1881a(g)) or amend-  
18          ment thereto that authorizes the acquisition of  
19          abouts communications as presenting a novel or sig-  
20          nificant interpretation of the law, unless the court  
21          determines otherwise.

22       **SEC. 204. PUBLICATION OF MINIMIZATION PROCEDURES**  
23                               **UNDER SECTION 702.**

24          Section 702(e) (50 U.S.C. 1881a(e)) is amended by  
25          adding at the end the following new paragraph:

1           “(3) PUBLICATION.—The Director of National  
2 Intelligence, in consultation with the Attorney Gen-  
3 eral, shall—

4           “(A) conduct a declassification review of  
5 any minimization procedures adopted or amend-  
6 ed in accordance with paragraph (1); and

7           “(B) consistent with such review, and not  
8 later than 180 days after conducting such re-  
9 view, make such minimization procedures pub-  
10 licly available to the greatest extent practicable,  
11 which may be in redacted form.”.

12 **SEC. 205. COMPENSATION OF AMICI CURIAE AND TECH-**  
13 **NICAL EXPERTS.**

14           Subsection (i) of section 103 (50 U.S.C. 1803) is  
15 amended by adding at the end the following:

16           “(11) COMPENSATION.—Notwithstanding any  
17 other provision of law, a court established under  
18 subsection (a) or (b) may compensate an amicus cu-  
19 riae appointed under paragraph (2) for assistance  
20 provided under such paragraph as the court con-  
21 siders appropriate and at such rate as the court con-  
22 siders appropriate.”.

23 **SEC. 206. ADDITIONAL REPORTING REQUIREMENTS.**

24           (a) ELECTRONIC SURVEILLANCE.—Section 107 (50  
25 U.S.C. 1807) is amended to read as follows:

1 **“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.**

2 “(a) ANNUAL REPORT.—In April of each year, the  
3 Attorney General shall transmit to the Administrative Of-  
4 fice of the United States Courts and to the congressional  
5 intelligence committees and the Committees on the Judici-  
6 ary of the House of Representatives and the Senate a re-  
7 port setting forth with respect to the preceding calendar  
8 year—

9 “(1) the total number of applications made for  
10 orders and extensions of orders approving electronic  
11 surveillance under this title;

12 “(2) the total number of such orders and exten-  
13 sions either granted, modified, or denied; and

14 “(3) the total number of persons who were sub-  
15 ject to electronic surveillance conducted under an  
16 order or emergency authorization under this title,  
17 rounded to the nearest 500, including the number of  
18 such individuals who are United States persons, re-  
19 ported to the nearest band of 500, starting with 0–  
20 499.

21 “(b) FORM.—Each report under subsection (a) shall  
22 be submitted in unclassified form, to the extent consistent  
23 with national security. Not later than 7 days after the date  
24 on which the Attorney General submits each such report,  
25 the Attorney General shall make the report publicly avail-  
26 able, or, if the Attorney General determines that the re-

1 port cannot be made publicly available consistent with na-  
2 tional security, the Attorney General may make publicly  
3 available an unclassified summary of the report or a re-  
4 dacted version of the report.”.

5 (b) PEN REGISTERS AND TRAP AND TRACE DE-  
6 VICES.—Section 406 (50 U.S.C. 1846) is amended—

7 (1) in subsection (b)—

8 (A) in paragraph (4), by striking “; and”  
9 and inserting a semicolon;

10 (B) in paragraph (5), by striking the pe-  
11 riod at the end and inserting “; and”; and

12 (C) by adding at the end the following new  
13 paragraph:

14 “(6) a good faith estimate of the total number  
15 of subjects who were targeted by the installation and  
16 use of a pen register or trap and trace device under  
17 an order or emergency authorization issued under  
18 this title, rounded to the nearest 500, including—

19 “(A) the number of such subjects who are  
20 United States persons, reported to the nearest  
21 band of 500, starting with 0–499; and

22 “(B) of the number of United States per-  
23 sons described in subparagraph (A), the num-  
24 ber of persons whose information acquired pur-  
25 suant to such order was reviewed or accessed by



1 a Federal officer, employee, or agent, reported  
2 to the nearest band of 500, starting with 0–  
3 499.”; and

4 (2) by adding at the end the following new sub-  
5 section:

6 “(c) Each report under subsection (b) shall be sub-  
7 mitted in unclassified form, to the extent consistent with  
8 national security. Not later than 7 days after the date on  
9 which the Attorney General submits such a report, the At-  
10 torney General shall make the report publicly available,  
11 or, if the Attorney General determines that the report can-  
12 not be made publicly available consistent with national se-  
13 curity, the Attorney General may make publicly available  
14 an unclassified summary of the report or a redacted  
15 version of the report.”.

16 **SEC. 207. PROCEDURES REGARDING DISSEMINATION OF**  
17 **NONPUBLICLY AVAILABLE INFORMATION**  
18 **CONCERNING UNITED STATES PERSONS.**

19 (a) PROCEDURES.—

20 (1) IN GENERAL.—Title V of the National Se-  
21 curity Act of 1947 (50 U.S.C. 3091 et seq.) is  
22 amended by adding at the end the following new sec-  
23 tion:

1 **“SEC. 512. PROCEDURES REGARDING DISSEMINATION OF**  
2 **NONPUBLICLY AVAILABLE INFORMATION**  
3 **CONCERNING UNITED STATES PERSONS.**

4 “(a) PROCEDURES.—The head of each element of the  
5 intelligence community, in consultation with the Director  
6 of National Intelligence, shall develop and maintain proce-  
7 dures for that element to respond to covered requests.

8 “(b) REQUIREMENTS.—The procedures under sub-  
9 section (a) shall ensure, at a minimum, the following:

10 “(1) The originating element documents in  
11 writing each covered request received by the element,  
12 including—

13 “(A) the name or title of the individual of  
14 the requesting element who is making the re-  
15 quest;

16 “(B) the name or title of each individual  
17 who will receive the United States person iden-  
18 tity information sought by the covered request;  
19 and

20 “(C) a fact-based justification describing  
21 why such United States person identity infor-  
22 mation is required by each individual described  
23 in subparagraph (B) to carry out the duties of  
24 the individual.

25 “(2) A covered request may only be approved  
26 by the head of the originating element or by officers

1 or employees of such element to whom the head has  
2 specifically delegated such authority.

3 “(3) The originating element retains records on  
4 covered requests, including the disposition of such  
5 requests, for not less than 5 years.

6 “(4) The records described in paragraph (3) in-  
7 clude, with respect to approved covered requests, the  
8 name or title of the individual of the originating ele-  
9 ment who approved such request.

10 “(5) The procedures include an exception  
11 that—

12 “(A) allows for the immediate disclosure of  
13 United States person identity information in  
14 the event of exigent circumstances or where a  
15 delay could result in the loss of intelligence; and

16 “(B) requires that promptly after such dis-  
17 closure the requesting element makes a covered  
18 request with respect to such information.

19 “(6) If a covered request is made during a pe-  
20 riod beginning on the date of a general election for  
21 President and ending on the date on which such  
22 President is inaugurated—

23 “(A) the documentation under paragraph  
24 (1) includes whether—

1           “(i) the individual of a requesting ele-  
2           ment who is making the request knows or  
3           believes that any United States person  
4           identity sought by the request is of an in-  
5           dividual who is a member of the transition  
6           team of the President-elect and Vice-Presi-  
7           dent-elect; or

8           “(ii) based on the intelligence commu-  
9           nity report to which the request pertains,  
10          the originating element knows or reason-  
11          ably believes that any United States person  
12          identity sought by the request is of an in-  
13          dividual who is a member of the transition  
14          team of the President-elect and Vice-Presi-  
15          dent-elect;

16          “(B) the approval made pursuant to para-  
17          graph (2) of a covered request that contains a  
18          United States person identity described in sub-  
19          paragraph (A) is subject to the concurrence of  
20          the general counsel of the originating element  
21          (or, in the absence of the general counsel, the  
22          first assistant general counsel) that the dissemi-  
23          nation of such identity information is in accord-  
24          ance with the procedures under subsection (a);  
25          and

1           “(C) consistent with due regard for the  
2           protection from unauthorized disclosure of clas-  
3           sified information relating to sensitive intel-  
4           ligence sources and methods or other exception-  
5           ally sensitive matters, the head of the origi-  
6           nating element notifies the chairmen and rank-  
7           ing minority members of the congressional in-  
8           telligence committees of any approval described  
9           in subparagraph (B) by not later than 14 days  
10          after the date of such approval.

11          “(c) ANNUAL REPORTS.—Not later than April 30 of  
12          each year, the head of each element of the intelligence  
13          community shall submit to the congressional intelligence  
14          committees a report documenting, with respect to the year  
15          covered by the report—

16               “(1) the total number of covered requests re-  
17               ceived by that element;

18               “(2) of such total number, the number of re-  
19               quests approved;

20               “(3) of such total number, the number of re-  
21               quests denied; and

22               “(4) for each number calculated under para-  
23               graphs (1) through (3), the number listed by each  
24               requesting element.

1       “(d) CERTAIN PROCEDURES REGARDING CONGRES-  
2 SIONAL IDENTITY INFORMATION.—

3               “(1) REQUIREMENTS.—With respect to the dis-  
4 semination of congressional identity information, the  
5 head of each element of the intelligence community  
6 shall carry out this section in accordance with annex  
7 A of Intelligence Community Directive 112, or suc-  
8 cessor annex or directive.

9               “(2) NOTIFICATION.—The Director of National  
10 Intelligence may not modify or supersede annex A of  
11 Intelligence Community Directive 112, or successor  
12 annex or directive, unless—

13                       “(A) the Director notifies the congressional  
14 intelligence committees of the proposed modi-  
15 fications or new annex or directive; and

16                       “(B) a period of 30 days elapses following  
17 such notification.

18       “(e) EFFECT ON MINIMIZATION PROCEDURES.—The  
19 requirements of this section are in addition to any mini-  
20 mization procedures established pursuant to the Foreign  
21 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
22 seq.), Executive Order No. 12333 (50 U.S.C. 3001 note),  
23 or successor order, or other relevant provision of law or  
24 executive order.

25       “(f) DEFINITIONS.—In this section:

1           “(1) The term ‘covered request’ means a re-  
2           quest by a requesting element to an originating ele-  
3           ment for nonpublic identifying information with re-  
4           spect to a known unconsenting United States person  
5           that was omitted from an intelligence community re-  
6           port disseminated by the originating element.

7           “(2) The term ‘originating element’ means an  
8           element of the intelligence community that dissemi-  
9           nates an intelligence community report that contains  
10          a reference to a known unconsenting United States  
11          person but omits nonpublic identifying information  
12          with respect to such person.

13          “(3) The term ‘requesting element’ means an  
14          element of the United States Government that re-  
15          ceives an intelligence community report from an  
16          originating element and makes a covered request  
17          with respect to such report.

18          “(4) The term ‘United States person’ has the  
19          meaning given the term in section 101 of the For-  
20          eign Intelligence Surveillance Act of 1978 (50  
21          U.S.C. 1801).”.

22          (2) CLERICAL AMENDMENT.—The table of con-  
23          tents in the first section of the National Security  
24          Act of 1947 is amended by inserting after the item  
25          relating to section 511 the following new item:

“Sec. 512. Procedures regarding dissemination of nonpublicly available information concerning United States persons.”.

1           (b) DEVELOPMENT OF PROCEDURES.—The head of  
2 each element of the intelligence community shall develop  
3 the procedures required by section 512(a) of the National  
4 Security Act of 1947, as added by subsection (a)(1), by  
5 not later than 90 days after the date of the enactment  
6 of this Act.

7           (c) REPORT.—Not later than December 31, 2018, the  
8 Director of National Intelligence shall submit to the Per-  
9 manent Select Committee on Intelligence of the House of  
10 Representatives and the Select Committee on Intelligence  
11 of the Senate a report assessing the compliance with the  
12 procedures required by section 512(a) of the National Se-  
13 curity Act of 1947, as added by subsection (a)(1).

14 **SEC. 208. IMPROVEMENTS TO PRIVACY AND CIVIL LIB-**  
15 **ERTIES OVERSIGHT BOARD.**

16           (a) APPOINTMENT OF STAFF.—Subsection (j) of sec-  
17 tion 1061 of the Intelligence Reform and Terrorism Pre-  
18 vention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

19                   (1) by redesignating paragraphs (2) and (3) as  
20 paragraphs (3) and (4), respectively; and

21                   (2) by inserting after paragraph (1) the fol-  
22 lowing new paragraph:

23                   “(2) APPOINTMENT IN ABSENCE OF CHAIR-  
24 MAN.—If the position of chairman of the Board is



1       vacant, during the period of the vacancy, the Board,  
2       at the direction of the unanimous vote of the serving  
3       members of the Board, may exercise the authority of  
4       the chairman under paragraph (1).”.

5       (b) MEETINGS.—Subsection (f) of such section (42  
6 U.S.C. 2000ee(f)) is amended—

7           (1) by striking “The Board shall” and inserting  
8       “‘The Board’”;

9           (2) in paragraph (1) by striking “make its” and  
10       inserting “shall make its”; and

11          (3) in paragraph (2)—

12           (A) by striking “hold public” and inserting  
13       “‘shall hold public’”; and

14           (B) by inserting before the period at the  
15       end the following: “, but may, notwithstanding  
16       section 552b of title 5, United States Code,  
17       meet or otherwise communicate in any number  
18       to confer or deliberate in a manner that is  
19       closed to the public”.

20   **SEC. 209. PRIVACY AND CIVIL LIBERTIES OFFICERS.**

21       Section 1062(a) of the Intelligence Reform and Ter-  
22       rorism Prevention Act of 2004 (42 U.S.C. 2000ee–1(a))  
23       is amended by inserting “, the Director of the National  
24       Security Agency, the Director of the Federal Bureau of

1 Investigation” after “the Director of the Central Intel-  
2 ligence Agency”.

3 **SEC. 210. BRIEFING ON NOTIFICATION REQUIREMENTS.**

4 Not later than 180 days after the date of the enact-  
5 ment of this Act, the Attorney General, in consultation  
6 with the Director of National Intelligence, shall provide  
7 to the Committee on the Judiciary and the Permanent Se-  
8 lect Committee on Intelligence of the House of Represent-  
9 atives and the Committee on the Judiciary and the Select  
10 Committee on Intelligence of the Senate a briefing with  
11 respect to how the Department of Justice interprets the  
12 requirements under sections 106(c), 305(d), and 405(c)  
13 of the Foreign Intelligence Surveillance Act of 1978 (50  
14 U.S.C. 1806(c), 1825(d), and 1845(e)) to notify an ag-  
15 grieved person under such sections of the use of informa-  
16 tion obtained or derived from electronic surveillance, phys-  
17 ical search, or the use of a pen register or trap and trace  
18 device. The briefing shall focus on how the Department  
19 interprets the phrase “obtained or derived from” in such  
20 sections.

1 **TITLE III—EXTENSION OF AU-**  
2 **THORITIES, INCREASED PEN-**  
3 **ALTIES, REPORTS, AND**  
4 **OTHER MATTERS**

5 **SEC. 301. EXTENSION OF TITLE VII OF FISA; EFFECTIVE**  
6 **DATES.**

7 (a) **EXTENSION.**—Section 403(b) of the FISA  
8 Amendments Act of 2008 (Public Law 110–261; 122 Stat.  
9 2474) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “December 31, 2017” and  
12 inserting “December 31, 2021”; and

13 (B) by inserting “and by the FISA  
14 Amendments Reauthorization Act of 2017”  
15 after “section 101(a)”; and

16 (2) in paragraph (2) in the matter preceding  
17 subparagraph (A), by striking “December 31, 2017”  
18 and inserting “December 31, 2021”.

19 (b) **CONFORMING AMENDMENTS.**—Section 404(b) of  
20 the FISA Amendments Act of 2008 (Public Law 110–261;  
21 122 Stat. 2476), as amended by section 201, is further  
22 amended—

23 (1) in paragraph (1)—

1 (A) in the heading, by striking “DECEM-  
2 BER 31, 2017” and inserting “DECEMBER 31,  
3 2021”; and

4 (B) by inserting “and by the FISA  
5 Amendments Reauthorization Act of 2017”  
6 after “section 101(a)”;

7 (2) in paragraph (2), by inserting “and by the  
8 FISA Amendments Reauthorization Act of 2017”  
9 after “section 101(a)”;

10 (3) in paragraph (4)—

11 (A) by inserting “and amended by the  
12 FISA Amendments Reauthorization Act of  
13 2017” after “as added by section 101(a)” both  
14 places it appears; and

15 (B) by inserting “and by the FISA  
16 Amendments Reauthorization Act of 2017”  
17 after “as amended by section 101(a)” both  
18 places it appears.

19 (c) EFFECTIVE DATE OF AMENDMENTS TO FAA.—  
20 The amendments made to the FISA Amendments Act of  
21 2008 (Public Law 110–261) by this section shall take ef-  
22 fect on the earlier of the date of the enactment of this  
23 Act or December 31, 2017.

1 **SEC. 302. INCREASED PENALTY FOR UNAUTHORIZED RE-**  
2 **MOVAL AND RETENTION OF CLASSIFIED DOC-**  
3 **UMENTS OR MATERIAL.**

4 Section 1924(a) of title 18, United States Code, is  
5 amended by striking “one year” and inserting “five  
6 years”.

7 **SEC. 303. REPORT ON CHALLENGES TO THE EFFECTIVE-**  
8 **NESS OF FOREIGN INTELLIGENCE SURVEIL-**  
9 **LANCE.**

10 (a) REPORT.—Not later than 270 days after the date  
11 of the enactment of this Act, the Attorney General, in co-  
12 ordination with the Director of National Intelligence, shall  
13 submit to the Committee on the Judiciary and the Perma-  
14 nent Select Committee on Intelligence of the House of  
15 Representatives and the Committee on the Judiciary and  
16 the Select Committee on Intelligence of the Senate a re-  
17 port on current and future challenges to the effectiveness  
18 of the foreign intelligence surveillance activities of the  
19 United States authorized under the Foreign Intelligence  
20 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

21 (b) MATTERS INCLUDED.—The report under sub-  
22 section (a) shall include, at a minimum, the following:

23 (1) A discussion of any trends that currently  
24 challenge the effectiveness of the foreign intelligence  
25 surveillance activities of the United States, or could  
26 foreseeably challenge such activities during the dec-

1       ade following the date of the report, including with  
2       respect to—

3               (A) the extraordinary and surging volume  
4               of data occurring worldwide;

5               (B) the use of encryption;

6               (C) changes to worldwide telecommuni-  
7               cations patterns or infrastructure;

8               (D) technical obstacles in determining the  
9               location of data or persons;

10              (E) the increasing complexity of the legal  
11              regime, including regarding requests for data in  
12              the custody of foreign governments;

13              (F) the current and future ability of the  
14              United States to obtain, on a compulsory or  
15              voluntary basis, assistance from telecommuni-  
16              cations providers or other entities; and

17              (G) any other matters the Attorney Gen-  
18              eral and the Director of National Intelligence  
19              determine appropriate.

20              (2) Recommendations for changes, including, as  
21              appropriate, fundamental changes, to the foreign in-  
22              telligence surveillance activities of the United States  
23              to address the challenges identified under paragraph  
24              (1) and to ensure the long-term effectiveness of such  
25              activities.

1           (3) Recommendations for any changes to the  
2 Foreign Intelligence Surveillance Act of 1978 (50  
3 U.S.C. 1801 et seq.) that the Attorney General and  
4 the Director of National determine necessary to ad-  
5 dress the challenges identified under paragraph (1).

6           (c) FORM.—The report under subsection (a) may be  
7 submitted in classified or unclassified form.

8 **SEC. 304. COMPTROLLER GENERAL STUDY ON THE CLASSI-**  
9 **FICATION SYSTEM AND PROTECTION OF**  
10 **CLASSIFIED INFORMATION.**

11           (a) STUDY.—The Comptroller General of the United  
12 States shall conduct a study of the classification system  
13 of the United States and the methods by which the intel-  
14 ligence community (as defined in section 3(4) of the Na-  
15 tional Security Act of 1947 (50 U.S.C. 3003(4))) protects  
16 classified information.

17           (b) MATTERS INCLUDED.—The study under sub-  
18 section (a) shall address the following:

19               (1) Whether sensitive information is properly  
20 classified.

21               (2) The effect of modern technology on the  
22 storage and protection of classified information, in-  
23 cluding with respect to—

24                       (A) using cloud storage for classified infor-  
25 mation; and

1 (B) any technological means to prevent or  
2 detect unauthorized access to such information.

3 (3) Any ways to improve the classification sys-  
4 tem of the United States, including with respect to  
5 changing the levels of classification used in such sys-  
6 tem and to reduce overclassification.

7 (4) How to improve the authorized sharing of  
8 classified information, including with respect to sen-  
9 sitive compartmented information.

10 (5) The value of polygraph tests in determining  
11 who is authorized to access classified information  
12 and in investigating unauthorized disclosures of clas-  
13 sified information.

14 (6) Whether each element of the intelligence  
15 community—

16 (A) applies uniform standards in deter-  
17 mining who is authorized to access classified in-  
18 formation; and

19 (B) provides proper training with respect  
20 to the handling of classified information and  
21 the avoidance of overclassification.

22 (c) REPORT.—Not later than 180 days after the date  
23 of the enactment of this Act, the Comptroller General shall  
24 submit to the Committee on the Judiciary and the Perma-  
25 nent Select Committee on Intelligence of the House of



1 Representatives and the Committee on the Judiciary and  
2 the Select Committee on Intelligence of the Senate a re-  
3 port containing the study under subsection (a).

4 (d) FORM.—The report under subsection (c) shall be  
5 submitted in unclassified form, but may include a classi-  
6 fied annex.

7 **SEC. 305. TECHNICAL AMENDMENTS AND AMENDMENTS TO**  
8 **IMPROVE PROCEDURES OF THE FOREIGN IN-**  
9 **TELLIGENCE SURVEILLANCE COURT OF RE-**  
10 **VIEW.**

11 (a) TECHNICAL AMENDMENTS.—The Foreign Intel-  
12 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
13 is amended as follows:

14 (1) In section 103(b) (50 U.S.C. 1803(b)), by  
15 striking “designate as the” and inserting “des-  
16 ignated as the”.

17 (2) In section 302(a)(1)(A)(iii) (50 U.S.C.  
18 1822(a)(1)(A)(iii)), by striking “paragraphs (1)  
19 through (4)” and inserting “subparagraphs (A)  
20 through (D)”.

21 (3) In section 406(b) (50 U.S.C. 1846(b)), by  
22 striking “and to the Committees on the Judiciary of  
23 the House of Representatives and the Senate”.

24 (4) In section 604(a) (50 U.S.C. 1874(a))—

1 (A) in paragraph (1)(D), by striking “con-  
2 tents” and inserting “contents,”; and

3 (B) in paragraph (3), by striking “comply  
4 in the into” and inserting “comply into”.

5 (5) In section 701 (50 U.S.C. 1881)—

6 (A) in subsection (a), by striking “The  
7 terms” and inserting “In this title, the terms”;  
8 and

9 (B) in subsection (b)—

10 (i) by inserting “In this title:” after  
11 the subsection heading; and

12 (ii) in paragraph (5), by striking “(50  
13 U.S.C. 401a(4))” and inserting “(50  
14 U.S.C. 3003(4))”.

15 (6) In section 702(h)(2)(A)(i) (50 U.S.C.  
16 1881a(h)(2)(A)(i)), as redesignated by section 201,  
17 by inserting “targeting” before “procedures in  
18 place”.

19 (7) In section 801(7) (50 U.S.C. 1885(7)), by  
20 striking “(50 U.S.C. 401a(4))” and inserting “(50  
21 U.S.C. 3003(4))”.

22 (b) COURT-RELATED AMENDMENTS.—The Foreign  
23 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
24 seq.) is further amended as follows:

25 (1) In section 103 (50 U.S.C. 1803)—

1 (A) in subsection (b), by striking “imme-  
2 diately”; and

3 (B) in subsection (h), by striking “the  
4 court established under subsection (a)” and in-  
5 serting “a court established under this section”.

6 (2) In section 105(d) (50 U.S.C. 1805(d)), by  
7 adding at the end the following new paragraph:

8 “(4) A denial of the application made under section  
9 104 may be reviewed as provided in section 103.”.

10 (3) In section 302(d) (50 U.S.C. 1822(d)), by  
11 striking “immediately”.

12 (4) In section 402(d) (50 U.S.C. 1842(d)), by  
13 adding at the end the following new paragraph:

14 “(3) A denial of the application made under this sub-  
15 section may be reviewed as provided in section 103.”.

16 (5) In section 403(c) (50 U.S.C. 1843(c)), by  
17 adding at the end the following new paragraph:

18 “(3) A denial of the application made under sub-  
19 section (a)(2) may be reviewed as provided in section  
20 103.”.

21 (6) In section 501(c) (50 U.S.C. 1861(c)), by  
22 adding at the end the following new paragraph:

23 “(4) A denial of the application made under  
24 this subsection may be reviewed as provided in sec-  
25 tion 103.”.

1 **SEC. 306. SEVERABILITY.**

2       If any provision of this Act, any amendment made  
3 by this Act, or the application thereof to any person or  
4 circumstances is held invalid, the validity of the remainder  
5 of the Act, of any such amendments, and of the applica-  
6 tion of such provisions to other persons and circumstances  
7 shall not be affected thereby.



The Chairman. Can you disperse the amendment? Okay, everyone should have it. It is at the desk.

Okay. It is in tab 2.

The amendment in the nature of a substitute, a copy of which is in the binder before you, incorporates the changes made since the bill was introduced.

Most of the changes are minor and technical in nature and have been signed off on by the DNI, and I appreciate their quick turnaround on that.

But furthermore I want to point out that in this amendment we have three bipartisan provisions, all of which, ironically, are not directly related to 702, but we felt it was important to listen to our friends on the other side of the aisle and incorporate these into the bill.

The first is a requirement that the Department of Justice brief the congressional Judiciary and Intelligence Committees on their interpretation of "derived from" and "used" in FISA.

Second, a reporting requirement for the Attorney General and the Director of National Intelligence to outline to Congress current and future challenges to the effectiveness of foreign intelligence surveillance activities under FISA.

And the third provision put in is the whistleblower protections for contractors.

Do any other members wish to be heard on this amendment?

Seeing none, no further members wish to be heard, the previous question is ordered. The question is on the amendment.

Those in favor will say aye.

Those opposed will say no.

In the opinion of the chair, the ayes have it. The amendment is adopted.

Do any members wish to be heard -- recognized for an amendment?

Mr. Schiff. Mr. Chairman, I have an amendment to this.

The Chairman. Mr. Schiff has an amendment at the desk.

The clerk will designate the amendment.

The Clerk. Amendment No. 2, offered by Mr. Schiff of California.

The Chairman. Without objection, the amendment shall be considered as read.

[The amendment of Mr. Schiff follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 4478  
OFFERED BY M. \_\_\_\_\_**

Strike section 207 (and redesignate the subsequent sections accordingly).



The Chairman. I now recognize Mr. Schiff to speak on his amendment.

Mr. Schiff. Mr. Chairman, members, this amendment is in the nature of a substitute to the manager's amendment. It is the text of the bill without the unmasking provisions. And I would offer this as a last-ditch effort to see if there is some accommodation we can reach to keep this process moving forward.

There are a couple options that we have here. We can have a party-line vote today. And when I said the bill would go nowhere, that is where we will go. It will, yes, pass out of committee, but it won't go anywhere beyond that.

We can do a couple things. We can adopt this amendment in the nature of a substitute and at the same time we take up this bill on the floor take up a standalone bill on unmasking. That would give members the ability to vote no or yes on the unmasking challenge, and it will give us all the ability to vote yes in favor of a reauthorization of 702, in which case the work product of the committee would be much more likely to go forward.

The other alternative, which we would once again offer to my colleagues, but my colleagues may not have all been aware of the offer, we don't think unmasking language belongs in this bill at all, as we have made clear, but we did express a willingness in the interest of compromise to adopt the unmasking language that the Judiciary Committee put out.

We are still willing to do that if the majority is. That would maintain the bipartisan character of the bill. And if there is interest in exploring that, we can recess briefly and we can take that up as an amendment.

So I do want to make sure that all the members are aware that we have offered that as a way of compromise and see if there is any interest in that. And if there is, I would be happy to yield to any of my colleagues.



The Chairman. Is the gentleman yielding back his time?

Mr. Schiff. No, I was making the offer to my colleagues, if there was interest in adopting the Judiciary Committee language as a compromise, that we might move forward.

And seeing none, in that case I will offer this amendment in the nature of a substitute, which would preserve a bipartisan work product of the committee and give us a chance of having a role in the final shape of this legislation. Otherwise, I think we are simply going to abdicate to the Senate.

And with that, Mr. Chairman, I would urge and I vote on the amendment in the nature of a substitute.

The Chairman. The gentleman's time has expired.

Does anybody else wish to be heard on the amendment. Mr. Conaway.

Mr. Conaway. Just briefly. As we understand the gentleman's amendment, that he would strike, among other things, section 207 of the amendment, which puts in section 512 to the underlying base document, which is titled "Procedures Regarding Dissemination of Nonpublicly Available Information Concerning U.S. Persons."

The base of this section basically gives Americans protections. They are identity protections. It sets up the requirements by which someone within the administration has to go through the hoops they have to go through in order to unmask a U.S. citizen's name to be used within the Intelligence Community.

As you look through here, the originating element documents -- the originating element, i.e., the entity -- documents in writing each covered request for the document, give the name and title of the person asking for the request, the reasons why, and would go through -- just good governance, and sets up the oversight.

So as I understand the gentleman's amendment, it would strike all of those

protections for U.S. citizens in whatever timeframe that we are doing this in, however it does. Nevertheless, if we put this in law, those good governance and oversight protections would be struck under your amendment. Is that the understanding?

Mr. Schiff. Mr. Conaway, the amendment in the nature of a substitute strikes the problematic unmasking language.

Mr. Conaway. Okay. So I will take that as a yes, that in fact all of the protections, however quickly they came together, whatever, whatever timeframe should have done. I got all that. But today we have the opportunity to put these in place, and the gentleman's amendment strikes that. And for that, I will oppose the gentleman's amendment.

And I yield back.

The Chairman. Does anyone else wish to be heard on Mr. Schiff's amendment?

All right. Seeing no further members wish to be heard, without objection, the previous question is ordered. The question is on the amendment.

Those in favor of the amendment, please say aye.

Those opposed, say no.

In the opinion of the chair, the noes have it. The amendment is not adopted.

Are there any further amendments to the bill?

Seeing none, the question is now on the adoption and favorably reporting H.R. 4478, as amended, to the House of Representatives.

All those in favor, signify by saying aye.

Those opposed, say no.

In the opinion of the chair, the ayes have it.

Mr. Schiff. Mr. Chairman, on that, I request a recorded vote.

The Chairman. Without objection, the previous question is ordered, and the

clerk will call the roll.

The Clerk. Chairman Nunes?

The Chairman. Aye.

The Clerk. Chairman Nunes, aye.

Mr. Conaway?

Mr. Conaway. Aye.

The Clerk. Mr. Conaway, aye.

Mr. King?

Mr. King. Aye.

The Clerk. Mr. King, aye.

Mr. LoBiondo?

Mr. LoBiondo. Aye.

The Clerk. Mr. LoBiondo, aye.

Mr. Rooney?

Mr. Rooney. Aye.

The Clerk. Mr. Rooney, aye.

Mr. Ros-Lehtinen?

Ms. Ros-Lehtinen. Aye.

The Clerk. Ms. Ros-Lehtinen, aye.

Mr. Turner?

Mr. Turner. Aye.

The Clerk. Mr. Turner, aye.

Dr. Wenstrup?

Dr. Wenstrup. Aye.

The Clerk. Dr. Wenstrup, aye.

Mr. Stewart?

Mr. Stewart. Aye.

The Clerk. Mr. Stewart, aye.

Mr. Crawford.

Mr. Crawford. Aye.

The Clerk. Mr. Crawford aye.

Mr. Gowdy?

Mr. Gowdy. Aye.

The Clerk. Mr. Gowdy, aye.

Ms. Stefanik?

Ms. Stefanik. Aye.

The Clerk. Ms. Stefanik, aye.

Mr. Hurd?

Mr. Hurd. Aye.

The Clerk. Mr. Hurd, aye.

Ranking Member Schiff?

Mr. Schiff. No.

The Clerk. Ranking Member Schiff, no.

Mr. Himes?

Mr. Himes. No.

The Clerk. Mr. Himes, no.

Ms. Sewell?

Ms. Sewell. No.

The Clerk. Ms. Sewell, no.

Mr. Carson?

Mr. Carson. No.

The Clerk. Mr. Carson, no.

Ms. Speier?

Ms. Speier. No.

The Clerk. Ms. Speier, no.

Mr. Quigley?

[No response.]

Mr. Swawell?

Mr. Swalwell. No.

The Clerk. Mr. Swalwell no.

Mr. Castro?

Mr. Castro. No.

The Clerk. Mr. Castro, no.

Mr. Heck?

Mr. Heck. No.

The Clerk. Mr. Heck, no.

Mr. Chairman, there are 13 ayes and 8 noes.

The Chairman. Thank you. The bill will be reported to the House of Representatives. Without objection, pursuant to clause 2(l) of House Rule XI, members will have 2 days to submit views on the bills considered today.

I ask unanimous consent that the staff be allowed to make necessary technical and conforming changes to the bill ordered reported today, subject to the approval of the minority. Hearing no objection, so ordered.

If there is no further business, without objection, the committee stands adjourned.

[Whereupon, at 10:13 a.m., the committee was adjourned.]