

# The Sun

## Bipartisan Group Proposes Changes to Law Giving Feds Permission for Warrantless Searches

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Senators Lee and Wyden are spearheading a bipartisan effort to reauthorize Section 702 of the Foreign Intelligence and Surveillance Act with what they say are “important protections for Americans’ constitutional rights.”

Section 702 broadly allows law enforcement to collect information on communications concerning foreign nationals. While proponents say it does not allow for the surveillance of American citizens, critics say that the law is ripe for abuse and allows law enforcement to violate Americans’ Fourth Amendment rights, prohibiting unreasonable search and seizure.

As recently as this past spring, Section 702 made headlines when the FBI was found to have used it to search for information relating to 133 Americans arrested during the protests following the murder of George Floyd. The section also enabled some of the FBI’s efforts to investigate ties between officials involved with President Trump’s 2016 campaign and the Russian government.

The section will need to be reauthorized by the end of the year if it’s to remain in effect, and a fight over what to change in the section has been brewing in Congress for months.

Now, a bipartisan coalition of seven senators and ten representatives are pushing for a new version of Section 702. Mr. Wyden said that the new version will maintain “broad authority to collect information on threats at home and abroad” but “creates much stronger protections for the privacy of law-abiding Americans, and restores the warrant protections that are at the heart of the Fourth Amendment.”

“Americans know that it is possible to confront our country’s adversaries ferociously without throwing our constitutional rights in the trash can,” Mr. Wyden said in a statement. “But for too long surveillance laws have not kept up with changing times.”

One major change in the proposed version of the bill would require law enforcement to obtain a warrant to search databases for information on Americans, something civil liberties groups have advocated for for years.

“These reforms are urgently needed to address the countless abuses of Section 702 and protect our Fourth Amendment rights,” the American Civil Liberties Union said in a statement following the bill’s proposal.

In a statement, Mr. Lee called on Congress to move on the proposed changes and “enact real reforms to protect our civil liberties, including warrant requirements and statutory penalties for privacy violations, in exchange for reauthorizing Section 702.”

Other proposed changes to the law include requiring warrants to surveil Americans’ location data, web browsing, search history, and vehicle data. The bill would also place limits on the acquisition of Americans’ data as part of large datasets purchased from data brokers.

Location data, in particular, has become a frequent tool of law enforcement, with authorities using a technique called geofencing to identify people who were near the scene of a crime when it happened.

Last year, a federal judge ruled that geofencing was a violation of the Fourth Amendment because the technique relies on collecting data on people who were in an area regardless of whether they have any connection with the crime in question.

A senior fellow in homeland security and civil liberties at the Cato Institute, Patrick Eddington, tells the Sun that the bill is an improvement on the current version of Section 702.

“It’s clear most privacy and civil liberties advocates believe the bill is a huge step in the right direction, and from a certain, tactical point of view, it is,” Mr. Eddington says. “In the larger, strategic picture, however, the bill concedes the necessity of the program without mandating a completely independent review of its actual need and efficacy by the Government Accountability Office.”

Mr. Eddington advocates that the bipartisan sponsors of this bill should not concede that Section 702 is necessary and instead use the end-of-year expiration date to push for “more sweeping surveillance reform” targeting federal agencies and their “largely unexamined surveillance programs.”

While Mr. Eddington did not have an opinion on the bill’s prospects in Congress, he did say that the bill contains “veto bait” in the form of a measure that eliminates “state secrets privilege,” a Supreme Court-created legal precedent that allows the head of executive agencies to refuse to produce evidence on the grounds that doing so would harm national security.

“I absolutely love and fully endorse the idea [of eliminating state secrets privilege] but no administration is going to accept a bill with such a provision in it,” Mr. Eddington says. “We’re going to see a lot of drama on this issue between now and the end of the year.”