

The Intelligence Oversight and Surveillance Reform Act - introduced by U.S. Senators Ron Wyden (D-Ore.), Mark Udall (D-Colo.), Richard Blumenthal (D-Conn.), and Rand Paul (R-Ky) - will preserve constitutional liberties while maintaining the government's ability to protect national security. It will amend the Foreign Intelligence Surveillance Act to end dragnet domestic surveillance and other unjustified intrusions on Americans' constitutional rights, make improvements to the Foreign Intelligence Surveillance Court (FISC), and provide for greater transparency from government entities and the private sector.

What Does the Intelligence Oversight and Surveillance Reform Act do?

Reforms Surveillance Law

Title V of FISA: amended to *prohibit bulk collection of Americans' records*. This is the authority currently being used to conduct bulk phone records collection. The government would still be able to obtain records of anyone suspected of terrorism or espionage, and anyone in contact with a suspected terrorist or spy, however, the bulk collection of records of law-abiding Americans with no connection to terrorism or espionage will no longer be legal.

Title IV of FISA: amended to *prohibit bulk collection of Americans' communications records*. This is the authority that was used for bulk email records collection until 2011. Reform legislation can also amend FISA's emergency pen-trap provision to permit the government to collect phone records quickly in emergency situations and seek court approval after the fact.

National Security Letters: various National Security Letter statutes are amended to *prohibit National Security Letters from being used for bulk collection*, and to *require more public reporting about how the government has used National Security Letters*.

Section 702

Section 702 of FISA also contains provisions that have led to serious breaches of constitutional liberty. The Intelligence Oversight & Surveillance Reform Act reforms Section 702 to:

1. *Close the "back door searches" loophole* by prohibiting the government from searching through communications collected under 702 to deliberately conduct warrantless searches for the communications of specific Americans. This is known as the "back door searches" loophole, because it effectively authorizes intelligence agencies to circumvent the constitutional requirement to get a warrant before deliberately searching for the phone calls or emails of individual Americans.
2. *Prohibit the government from collecting communications that are "about the target"* rather than to or from the target, in non-terrorism contexts.

3. *Strengthen the prohibition against “reverse targeting,”* or targeting a foreigner in order to warrantlessly acquire the communications of an American who is known to be communicating with that foreigner.

4. *Place stronger statutory limits on the use of unlawfully collected information.* The FISC has sometimes imposed restrictions on the government’s use of unlawfully collected information, but stronger restrictions should be codified in the law itself.

Reforms the Surveillance Court

Disclosures of the bulk collection programs and the legal interpretations that have allowed them to proliferate have illustrated the anachronistic nature of the Foreign Intelligence Surveillance Court (FISC).

Constitutional Advocate: This Court issues its rulings in secret and almost always hears only the government’s side of any case. While this is not unusual for routine warrant applications, it is extremely unusual when a court is issuing major interpretations of the law and the US Constitution. The Intelligence Oversight & Surveillance Reform Act creates *a Constitutional Advocate to argue against the government when the FISC is considering significant legal and constitutional questions.* This advocate will be independent and protected from interference from the executive branch.

Declassification of Significant FISC Opinions: This bill requires the U.S. Attorney General to declassify FISC opinions that contain significant interpretations of the law or the Constitution, and give the Constitutional Advocate the ability to directly petition the Court for more transparency.

Permitting Constitutional Challenges: This bill gives law-abiding Americans who have been professionally impacted by the US government’s collection of communications *the ability to challenge the government’s claims that this surveillance is constitutional, and not prevented from seeking redress through US courts.* Federal judges have previously upheld this principle, and Congress should do so as well.

Increases Transparency

Disclosure by Private Companies of Their Cooperation with Government Surveillance: The disclosure of these secret domestic surveillance programs has had a negative effect on U.S. companies that have been required to provide their customers’ records and communications to the U.S. government. In an effort to increase transparency and to ensure that U.S. companies are not damaged by government surveillance operations, the Intelligence Oversight & Surveillance Reform Act *permits private companies to disclose more information about their cooperation with government surveillance, and also requires more public reporting on surveillance from the government.*

Privacy and Civil Liberties Oversight Board Issuance of Subpoenas: PCLOB is an oversight body designed to ensure that government policies are not breaching constitutional liberties. The PCLOB does not currently have the authority to issue subpoenas for officials to provide testimony before the board. This bill will give this important advisory board the ability to compel testimony with the force of law.