



May 26, 2020

Key Vote YES on the Lofgren-Davidson Amendment to the USA FREEDOM Act Reauthorization Act, H.R. 6172

On behalf of FreedomWorks' activist community, I urge you to contact your representative and ask him or her to vote YES on the Lofgren/Davidson Amendment to H.R. 6172. Introduced, as the name suggests, by Reps. Zoe Lofgren (D-Calif.) and Warren Davidson (R-Ohio), this amendment would bar the government from accessing the internet search and browser history data of US persons under the Section 215 business records authority without a probable cause warrant.

In the information age, your internet history is among the most revealing data sets about you - it's one of the closest things to actually knowing what you're thinking. So most Americans would probably be startled to know that Section 215 of the USA PATRIOT Act could actually allow a government agency to collect that information under a very minimal standard of proving that it may be "relevant to" a foreign intelligence investigation, rather than having to prove probable cause as they would have to in a criminal context.

The government's aggressively broad interpretation of "relevant to" was what they claimed allowed the mass collection of nearly every American's phone metadata, as we've known since 2013. As there is far less transparency with respect to the business records part of Section 215, we're left to guess how often it is used to collect these sensitive internet records. What is clear is that based on the past history of mass surveillance abuses, affirmatively moving to a probable cause warrant standard for these records is a necessary safeguard.

Lofgren-Davidson also attempts to address the problem of "incidental collection," wherein a FISA order targeted at collecting all visitors to a specific website could end up collecting US persons' IP addresses in the dragnet. The amendment requires a warrant for such an order unless the government can prove that US persons will not be affected.

There is some question as to how intelligence agencies may categorize web traffic coming from the US and whether they may be able to grab Americans' data via "bulky" surveillance orders, but to do so would be very specifically against the letter and intent of the amendment. In addition, the increased participation of *amici curiae* during the FISA process, as provided by the Lee-Leahy amendment also attached to this bill, should make it far more likely that such abuses would be caught and reported.

The talking points that were circulated against the prior version of this amendment in the Senate are patently absurd. Probable cause warrants are routinely sought and very nearly always granted by law enforcement in all manner of urgent investigations. This amendment merely assures that something more like proper due process (as much as is possible in an *ex parte* proceeding in a secret court) is followed in the course of collecting some of the most important, detailed, intimate information that one could obtain about any person.

FreedomWorks strongly supports the Lofgren-Davidson amendment and will count the vote when calculating our 2020 Congressional Scorecard and reserves the right to score any related procedural votes, as well as to weight any votes. The scorecard is used to determine eligibility for the FreedomFighter Award, which recognizes Members of the House and Senate who consistently vote to support economic freedom and individual liberty.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Brandon', with a stylized, flowing script.

Adam Brandon
President, FreedomWorks