

The Protect Liberty Act (Section 702): Myths and Facts

The Protect Liberty and End Warrantless Surveillance Act (“Protect Liberty Act”), a bipartisan bill that passed the House Judiciary Committee by a vote of 35-2, would protect Americans’ civil liberties while leaving the government’s ability to monitor foreign threats untouched. Opponents of reform, however, are spreading myths about the bill—myths that are easily refuted by the facts.

- ❖ **Myth:** The Protect Liberty Act was hastily drafted by Reps. Jim Jordan and Andy Biggs.
- ❖ **Fact:** Much of the Protect Liberty Act is taken from the Government Surveillance Reform Act, which took almost a year to draft and was sponsored by Senators Ron Wyden and Mike Lee and by Representatives Warren Davidson and Zoe Lofgren.

- ❖ **Myth:** The Protect Liberty Act has a provision that would terminate Section 702.
- ❖ **Fact:** The bill expressly reauthorizes Section 702; indeed, it would make no changes whatsoever to the government’s ability to collect and review the communications of foreigners located overseas. The provision in question includes a technical error that is easily fixed, but even if it were not fixed, no court would read a law that expressly reauthorizes Section 702 as simultaneously terminating it.

- ❖ **Myth:** The Protect Liberty Act is “unprecedented” because it requires warrants or Title I orders to search for the communications of people inside the United States, including foreign nationals.
- ❖ **Fact:** Since 1978, FISA has required the government to obtain a Title I probable cause order when conducting wire surveillance of “a person in the United States,” regardless of their nationality. The Fourth Amendment similarly requires warrants when conducting surveillance of people inside the United States. If a known foreign terrorist or high-level target (like an Iranian official) were inside the U.S., the government could easily get a Title I order to surveil them.

- ❖ **Myth:** Obtaining a warrant for backdoor searches would be “unworkable” because Title I applications take too long to prepare.
- ❖ **Fact:** The Protect Liberty Act has an exception for emergencies to protect against imminent threats. As [explained](#) by David Aaron, a former National Security Division attorney, a warrant requirement that includes an exception for imminent threats is both workable and appropriate.

- ❖ **Myth:** Every court to address the issue has upheld the constitutionality of warrantless backdoor searches, because there are no Fourth Amendment restrictions on lawfully collected data.
- ❖ **Fact:** A unanimous panel of the Second Circuit squarely [rejected](#) this argument, citing several cases which have held that “lawful collection alone is not always enough to justify a future search.” The Second Circuit reversed the district court’s holding in favor of the government and remanded with instructions to conduct a new analysis.

- ❖ **Myth:** Under the Protect Liberty Act, the government would no longer be able to use Section 702 data to prosecute crimes unrelated to national security.
- ❖ **Fact:** According to the government itself, Section 702 has *never* been used to prosecute crimes unrelated to national security. This concern is based on purely hypothetical scenarios that have not actually occurred in the entire 15 years the program has been in effect.

- ❖ **Myth:** Even the three-member majority of the Privacy and Civil Liberties Oversight Board rejected a warrant for backdoor searches.
- ❖ **Fact:** All three members said they [would support a warrant requirement](#) for searches for both evidence-of-a-crime only cases and mixed-motive cases (in which the government seeks both foreign intelligence and evidence of a crime).