RISAA: 56 “Reforms” that Preserve the Status Quo

FISA Section 702 is a foreign intelligence authority that was intended to make it easier for the government to monitor foreign terrorists overseas. Instead, it has been repeatedly abused to spy on Americans. The law will expire on April 19 unless reauthorized by Congress.

On Thursday, the House will vote on the Reforming Intelligence and Securing America Act. Speaker of the House Mike Johnson claims that RISAA reflects a compromise between the bipartisan Protect Liberty and End Warrantless Surveillance Act (H.R. 6570), offered by reformers on the House Judiciary Committee, and the FISA Reform and Reauthorization Act of 2023 (H.R. 6611), offered by those on the House Permanent Select Committee on Intelligence who prefer the status quo. Speaker Johnson says that RISAA includes 56 “reforms” to protect Americans’ rights. In reality, this bill is not a “compromise,” and its 56 “reforms” codify the unacceptable status quo.

- Of the 56 “reforms” that supposedly represent a middle ground between the HPSCI and HJC bills:
  - 45 (80%) come directly from HPSCI’s bill;
  - 8 (14%) are not from either HPSCI’s or HJC’s bill;
  - 2 (4%) are from HJC’s bill; and
  - 1 (2%) is consistent with both HPSCI and HJC’s language.

- Of the 56 “reforms” Speaker Johnson highlights, at least 13 (23%) either codify existing practice and procedures (under which abuses are continuing to occur), or actively weaken existing protections.
  - 9 of these changes are waivable by the FISA Court; and
  - 1 “reform” weakens FISA Court oversight by limiting the arguments that can be raised by FISA amici.

- The remaining 43 “reforms” include:
  - 3 special protections for Members of Congress;
  - 1 sham “reform” of U.S. person queries—the prohibition on “evidence-of-a-crime only” queries—that would have prevented the FBI from accessing Americans’ communications in only two instances in 2022 (out of a total of 204,090 backdoor searches by the FBI that year);
  - 13 reporting or related requirements that do not rein in surveillance;
  - 10 provisions related to accuracy procedures for traditional FISA applications (i.e., unrelated to Section 702); and
  - 6 changes that enhance criminal and civil penalties for noncompliance, but will have no practical effect because they do nothing to remove existing barriers to enforcement.

- Even in the rare instances where provisions drawn from the HPSCI bill are useful, they are substantially weaker than analogous provisions in HJC’s bill.

Making 56 ineffective tweaks to a fundamentally broken law is not reforming it. Absent significant amendment, RISAA will do nothing to prevent the government’s repeated abuses of Section 702 to spy on Americans.