Comparison of Key Provisions of FISA Reauthorization Amendments Act (S. 139) and Amash/USA RIGHTS Act Amendment

Issue	FISA Amendments Reauth. Act (S. 139)	USA RIGHTS amendment
Does the bill restrict the government's ability to target foreigners overseas and to collect all of their communications without a warrant?	**NO.** Both bills leave this core functionality of Section 702 intact. This is the part of Section 702 that has been used successfully to identify terrorists and thwart their plots.	
Does the bill protect Americans' privacy by requiring a warrant to access Americans' phone calls and e-mails?	**NO.** The bill actually *authorizes* warrantless searches—a practice that is not expressly authorized in current law—except in "predicated criminal investigations" unrelated to national security or foreign intelligence. A "predicated" investigation is one that has reached a certain stage of fact-finding. The government remains free under S. 139 to conduct warrantless searches during the earlier phases of the investigation—which is when backdoor searches routinely occur, according to the Privacy and Civil Liberties Oversight Board. In practice, therefore, a warrant would almost never be necessary, as the FBI itself has acknowledged.	**YES.** The bill requires the government to obtain a warrant before querying Section 702 data to obtain Americans' communications, with commonsense narrow exceptions—including an emergency exception that allows the government to proceed without a warrant if someone's life or safety is in danger (for instance, a kidnapping situation).
Does the bill prohibit "abouts" collection (collecting communications not just to or from foreign targets, but communications that merely reference them)?	**NO.** The bill actually *authorizes* "abouts" collection—which is not expressly authorized in current law—as long as the FISA Court approves it (which would have to happen anyway). The government must give Congress 30 days' notice before restarting the practice.	**YES.** The bill clarifies that the government may not collect communications that are not to or from the target of surveillance.
Does the bill prohibit the government from collecting wholly domestic communications (namely, those with Americans on both	**NO.** Recent exchanges between Sen. Wyden and intelligence officials strongly suggest that the government is knowingly	**YES.** The bill clarifies that the government may not acquire communications it knows to be wholly domestic under Section 702.

ends of the call or e-mail) under Section 702?	collecting wholly domestic communications under Section 702. S. 139 would do nothing to halt this practice.	
Does the bill meaningfully limit the ways in which Section 702 communications can be used against Americans?	**NO.** The bill contains *no limits* on the use of Americans' communications in investigations, or in legal proceedings other than criminal prosecutions (such as immigration actions). It also allows the use of Americans' communications as evidence in criminal cases if the Attorney General makes a determination—which cannot be challenged or reviewed by any court—that the case relates to or affects national security, or that it involves death, kidnapping, serious bodily injury, specified offenses against minors, critical infrastructure, cybersecurity, transnational crime, or human trafficking.	**YES.** Section 702 allows the warrantless collection of hundreds of millions of communications each year based on the government's certification that it is targeting only foreigners and has a significant "foreign intelligence" purpose. To prevent this law from becoming a source of warrantless access to evidence against Americans in ordinary criminal cases, the bill would limit the use of Americans' communications to cases involving terrorism, espionage, WMDs, cybersecurity threats, critical infrastructure, and threats against US or allied armed forces.
Does the bill ensure that people will be notified if the government uses Section 702-derived information against them in domestic legal proceedings? Does it allow Americans who have reason to think their communications were obtained under Section 702 to challenge the surveillance?	**NO.** Current law requires the government to provide notification to people when 702-derived information is used against them in legal proceedings, but the government has reportedly interpreted this requirement extremely narrowly and is not giving notification in many cases. Moreover, when Americans have tried to challenge Section 702 surveillance, courts have held that they aren't "injured" by Section 702 surveillance, and therefore can't challenge it, unless they can prove that their communications have been incidentally collected—which is an impossible Catch 22, given the secrecy of the surveillance. This bill would not address either problem.	**YES.** The bill would clarify that the government must notify parties to legal proceedings when it uses information against them that it would not have acquired without Section 702 surveillance. It also clarifies that someone has been "injured" by Section 702 surveillance, for purposes of being allowed to bring a court challenge, if they reasonably believe their communications have been collected and if they have taken objectively reasonable steps to avoid the surveillance. **Contrary to one disinformation campaign, the bill would not authorize terrorists and spies to sue the United States for violating their privacy.**
How many years before the next sunset?	Six	Four