



June 10, 2015

**RE: Massie-Lofgren Amendment to the Department of Defense
Appropriations Act of 2016, H.R. 2685**

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Dear Representative,

On behalf of the American Civil Liberties Union, please find attached our vote recommendation for the anticipated amendment from Reps. Massie and Lofgren to the Department of Defense Appropriations Act of 2016, H.R. 2685. This amendment would:

- Defund warrantless government searches of the database collected under Section 702 of the Foreign Intelligence Surveillance Act using U.S. person identifiers, absent certain circumstances.
- Prohibit the use of funds to require or request that United States persons and entities build security vulnerabilities into their products or services in order to facilitate government surveillance

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We urge a YES vote on the Massie-Lofgren amendment. If there is a roll call we plan to score this vote.

Please contact Legislative Counsel Neema Guliani with any questions at (202) 675-2322 or nguliani@aclu.org.

Regards,

Michael W. Macleod-Ball
Acting Director

Neema Singh Guliani
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**ACLU Vote Recommendation for Massie- Lofgren Amendment to the Department of
Defense Appropriations Act of 2016, H.R. 2685**

The anticipated Massie-Lofgren amendment is a significant step toward reining in warrantless government surveillance. The amendment would:

- Defund warrantless government searches of the database collected under Section 702 of the Foreign Intelligence Surveillance Act using U.S. person identifiers, absent certain circumstances.
 - Under Section 702, the government intercepts — without a warrant — the contents of Americans' electronic communications with individuals abroad and stores them in a database.
 - Though the statute prohibits the government from intentionally targeting Americans, as a result of an apparent change in the NSA's internal practices in 2011, the NSA has asserted the authority to conduct searches of the 702 database using U.S. person names and identifiers without a warrant.¹
 - Through this so-called “backdoor search” loophole, the government has transformed Section 702 into a tool that can be used to conduct warrantless surveillance of Americans.
- Prohibit the use of appropriated funds to require or request that United States persons and entities build security vulnerabilities into their products or services in order to facilitate government surveillance, except as provided for by the Communications Assistance for Law Enforcement Act.
 - The adoption of encryption technologies has yielded significant benefit to consumers, businesses, and government agencies, providing enhanced protection from the ever-increasing threat posed by cyber criminals and foreign governments. Despite these benefits, leaked documents have revealed that the NSA consistently takes steps to weaken the encryption efforts of private entities.²
 - Efforts to request or require companies to build “backdoors” and other vulnerabilities into products harms national security and privacy.

1 OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, MINIMIZATION PROCEDURES USED BY THE NATIONAL SECURITY AGENCY IN CONNECTION WITH ACQUISITION OF FOREIGN INTELLIGENCE INFORMATION PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE ACT OF 1978, AS AMENDED (Jan. 8, 2007), *available at* <http://www.dni.gov/files/documents/Minimization%20Procedures%20used%20by%20NSA%20in%20Connection%20with%20FISA%20SECT%20702.pdf>.

2 SPIEGEL Staff, *Prying Eyes: Inside the NSA's War on Internet Security*, DER SPIEGEL (Dec. 28, 2014), <http://www.spiegel.de/international/germany/inside-the-nsa-s-war-on-internet-security-a-1010361.html>

- As technical experts have repeatedly said, it is impossible to build law enforcement access into products that cannot also be exploited by criminals, hackers, and malicious foreign governments.
- Such proposals place an improper burden on private entities to build the government's surveillance infrastructure, and are unnecessary given current law enforcement access to electronic information.

This amendment is identical to the 2014 Massie-Lofgren amendment to the House Department of Defense Appropriations Bill (H.Amdt. 935 to H.R. 4870) that passed the House of Representatives by an overwhelming 293-vote majority. This amendment has significant support from members of Congress as well as the public, private industry, and privacy and civil liberties groups.

The American Civil Liberties Union recommends a YES vote on the Massie-Lofgren amendment.

Please contact Legislative Counsel Neema Guliani with any questions at (202) 675-2322 or nguliani@aclu.org.