

the Senate to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA) before it expires on Friday. Section 702 is indispensable to our work to protect the American people from cyber, nation state, terrorist, and other threats.

Section 25 of H.R. 7888 includes language modifying the definition of “electronic communication service provider” (ECSP). As I testified yesterday, this is a technical amendment to address the changes in internet technology in the 15 years since Section 702 was passed. It is narrowly tailored and is in response to the Foreign Intelligence Surveillance Court’s identification of a need for a legislative fix.

The attached April 17, 2024, letter from Assistant Attorney General Carlos Felipe Uriarte, including the Department of Justice’s representations regarding the ECSP provision, reflects my views and my strong support for the passage of H.R. 7888.

Sincerely,

MERRICK B. GARLAND,
Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC.

Hon. MARK WARNER,
*Chairman, Select Committee on Intelligence,
U.S. Senate, Washington, DC.*

DEAR CHAIRMAN WARNER: We are grateful that the Senate is continuing to work on a bipartisan basis to extend Title VII of the Foreign Intelligence Surveillance Act (FISA), including Section 702, for an additional two years. Section 702 provides critical and unique foreign intelligence at a speed and reliability that the Intelligence Community cannot replicate with any other authority. The Intelligence Community relies on Section 702 in almost every aspect of its work, and the authority is essential to our national security.

We urge the Senate to pass H.R. 7888 by Friday, April 19. Doing so will prevent the lapse of this critical national security tool and will impose the most comprehensive set of reforms in the history of the Section 702 program.

As you are aware, Section 25 of H.R. 7888 includes technical language modifying the definition of “electronic communication service provider” (ECSP) to address unforeseen changes in electronic communications technology. As Attorney General Merrick Garland testified, this change “is a technical change. It’s a consequence of internet technology changing in the 15 years since FISA 702 was passed. It’s narrowly tailored. It is actually a response to a suggestion from the FISA court to make—to seek this kind of legislative fix. It does not in any way change who can be a target of Section 702.” This definition has not been updated since 2008 when Congress first enacted Section 702. The technical modification is intended to fill a critical intelligence gap—which was the subject of litigation before the Foreign Intelligence Surveillance Court (FISC)—regarding the types of communications services used by non-U.S. persons outside the United States.

To address concerns some have raised about this amendment to the ECSP definition, the Department of Justice (Department) provides the following representations:

1. This technical change to the definition of ECSP does not affect the overall structure of Section 702 or the protections imposed on all aspects of the 702 program, including the court-imposed legal procedures. The targeting procedures under Section 702 strictly prohibit targeting persons or entities inside the United States or Americans anywhere in the world. The procedures further prohibit “reverse targeting,” which is collecting on

foreigners outside the United States for the purpose of obtaining the communications of a person inside the United States or of a U.S. person. Accordingly, it would be unlawful under Section 702 to use the modified definition of ECSP to target any entity inside the United States including, for example, any business, home, or place of worship. It would also be unlawful to compel any service provider to target the communications of any person inside the United States, regardless of whether such a person is in contact with a non-U.S. person outside the United States. Some critics have falsely suggested that the amended definition of ECSP could be used to conduct surveillance at churches or media companies in the United States—this activity would be legally barred under the rules governing targeting under Section 702 and the prohibition against targeting anyone inside the United States.

2. Further, the Department commits to applying this definition of ECSP exclusively to cover the type of service provider at issue in the litigation before the FISC—that is, technology companies that provide the service the FISC concluded fell outside the current definition. The number of technology companies providing this service is extremely small, and we will identify these technology companies to Congress in a classified appendix. To protect sensitive sources and methods, the ECSP provision in H.R. 7888 was drafted to avoid unnecessarily alerting foreign adversaries to sensitive collection techniques.

3. As you are aware, the government provides Congress with a copy of all Section 702 directives issued to U.S. electronic communication service providers. To facilitate appropriate oversight and transparency of the government’s commitment to apply any updated definition of ECSP only for the limited purposes described above, the Department will also report to Congress every six months regarding any applications of the updated definition. This additional reporting will allow Congress to ensure the government adheres to our commitment regarding the narrow application of this definition.

Congress plays a critical role in the ongoing oversight of the government’s use of Section 702. We look forward to continuing to work with Congress to reauthorize this critical national security tool to protect our national security while safeguarding privacy and civil liberties.

Sincerely,

CARLOS FELIPE URIARTE,
Assistant Attorney General.

Mr. WARNER. In that letter, the Attorney General said:

[I]t would be unlawful under Section 702 to use the modified definition of ECSP to target any entity inside the United States including, for example, any business, home, or place of worship.

Continuing:

It would also be unlawful to compel any service provider to target the communications of any person inside the United States—

And here we even go because 702 can’t even be used to target foreigners inside the United States. So, clearly, this provision would not allow any communication provider to target a person inside the United States, whether or not that person is in contact with a non-U.S. person outside the United States.

Any of these tools are used to target foreigners outside the boundaries of the United States. Let me be clear. The Department of Justice has docu-

mented, in writing, that it would be unlawful to use the ECSP definition to target any business, home, or place of worship or to compel any provider to target communications of U.S. persons inside the United States.

The letter goes on to state:

[T]he Department commits to applying this definition of ECSP exclusively to cover the type of service provider at issue in the litigation before the FISC—

That is the court that reviews these proceedings—

that is, technology companies that provide the service the FISC concluded fell outside the current definition.

I also continue to quote from the Attorney General. This was needed:

To facilitate appropriate oversight and transparency of the government’s commitment to apply any updated definition of ECSP only for the limited purposes described above, the Department will also report to Congress every six months regarding any applications of the updated definition.

So, despite arguments that you may have heard, Congress is going to continue to have complete oversight of any use of this provision, and any interpretation of the revised definition of ECSP must still be approved by the FISA Court, an article III court comprised of independent Federal judges. And the opinions of that court will be available to Congress.

In addition, the legislation we are considering today reauthorizes—again, we have to remember, what we are dealing with today in reauthorizing section 702 is only for a mere 2 years. If Members have a concern with how this law is implemented by the DOJ or interpreted by the court, we will have the opportunity in just 24 months to address it further.

I will also make clear that I am committed to working with any of my colleagues who still have a concern with this provision to see if we can improve the definition of the ECSP before the next sunset, including through any legislative vehicle between now and then.

One thing we cannot do, however, is blind ourselves to the many national security threats facing our country now. I think we will blind ourselves if we amend this bill and send it back to the House, expecting us not to go dark by Friday night, not knowing what the House may even look like after the furious debate about the supplemental is concluded.

So I urge my colleagues to join me in voting to pass H.R. 7888 without amendment and ensure that these vital authorities are reauthorized.

SIGNING AUTHORITY

Mr. WARNER. Mr. President, I ask unanimous consent that the junior Senator from Washington be authorized to sign duly enrolled bills or joint resolutions from April 18, 2024, through April 19, 2024.

The PRESIDING OFFICER (Mr. KING). Without objection, it is so ordered.

Rubio
Schatz
Schumer
Shaheen
Sinema
Smith

Stabenow
Sullivan
Thune
Tillis
Warner
Warnock

Welch
Whitehouse
Wicker
Young

leum products, including gasoline, while simultaneously exporting more than 10 million barrels a day.

But do you want to hear something? Do you know who we were importing oil from? Saudi Arabia, Iraq, Oman. And what does this proposal do that the Republicans want to propound here? It is to say: No, we are not going to move to an electric vehicle future. No, we don't want to, in any way, send a signal that we are a technological giant, as the United States, and we are going to back out that imported oil so that we are not contributing those petrodollars to those nations which are ultimately intent on undermining stability.

So this dependence on fossil fuels, traded on the global market and imported into our country, puts drivers at the whim of those who are driven by profiteering. It allows Big Oil CEOs to turn drivers upside down at the pump and shake money out of their pockets.

Why do we continue this? We are technological giants. We have an all-electric vehicle future, a hybrid future for our Nation and for the world. Are we going to lead on that or retreat, because that is what is being proposed here?

Gas guzzling cars aren't just bad for drivers; they are bad for all of us. According to the EPA, the transportation sector accounts for 29 percent of U.S. greenhouse gas emissions, contributing to global warming—actually, the largest single source of climate warming emissions in the United States. And the EPA has a legal, statutory responsibility to set strong clean power standards to help us put this crisis in the rearview mirror.

The final clean car rules are estimated to avoid more than 7 billion metric tons of carbon pollution, equivalent to four times the emissions from the entire transportation sector. This is the single most significant rule we have ever seen in our fight to tackle the climate crisis—more than any other rule in the history of the United States. That is a big deal. That is something to be proud of, and that is something that is worth protecting from political attacks.

In addition to building a livable future, this rule will also save lives right now, providing \$13 billion in annual health benefits as a result of reduced air pollution. The clean cars rule isn't banning gas cars, but it is expected to help supercharge our already booming sales of hybrid and all-electric vehicles. These final rules are technically feasible, economically achievable, and technologically neutral, increasing vehicle choice for Americans. This means that families and individuals will still be able to choose from a wide range of vehicle options, including more than 100 different plug-in hybrid and battery electric vehicles here in the United States.

Automakers are innovating and driving us closer toward a clean energy future. That is why Big Oil hates these

REFORMING INTELLIGENCE AND SECURING AMERICA ACT—Motion to Proceed—Continued

ORDER OF BUSINESS

Mr. WARNER. Mr. President, for the information of the Senate, following the cloture vote on the motion to proceed to the FISA bill, we expect to execute the order with respect to the Crapo tailpipes emissions bill, S. 4072, and vote on passage of the bill at 2:30 today.

The PRESIDING OFFICER. Duly noted.

Mr. WARNER. With that, I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant executive clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 365, H.R. 7888, a bill to reform the Foreign Intelligence Surveillance Act of 1978.

Charles E. Schumer, Mark Kelly, Tammy Duckworth, Catherine Cortez Masto, Robert P. Casey, Jr., Jack Reed, Debbie Stabenow, Sheldon Whitehouse, Mazie Hirono, Benjamin L. Cardin, Angus S. King, Jr., Margaret Wood Hassan, Michael F. Bennet, Mark R. Warner, Richard Blumenthal, Gary C. Peters, Jeanne Shaheen.

The PRESIDING OFFICER. By unanimous consent, the question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 7888, a bill to reform the Foreign Intelligence Surveillance Act of 1978, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior executive clerk called the roll.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Oklahoma (Mr. MULLIN).

The result was announced—yeas 67, nays 32, as follows:

[Rollcall Vote No. 141 Leg.]

YEAS—67

Bennet	Cramer	Klobuchar
Blumenthal	Crapo	Lankford
Booker	Duckworth	Lujan
Boozman	Durbin	Manchin
Britt	Ernst	McConnell
Budd	Fetterman	Moran
Butler	Fischer	Murkowski
Capito	Gillibrand	Murphy
Cardin	Graham	Murray
Carper	Grassley	Ossoff
Casey	Hassan	Peters
Cassidy	Hickenlooper	Reed
Collins	Hoeven	Ricketts
Coons	Hyde-Smith	Risch
Cornyn	Kaine	Romney
Cortez Masto	Kelly	Rosen
Cotton	King	Rounds

NAYS—32

Baldwin
Barrasso
Blackburn
Braun
Brown
Cantwell
Cruz
Daines
Hagerty
Hawley
Heinrich

Hirono
Johnson
Kennedy
Lee
Lummis
Markey
Marshall
Menendez
Merkley
Padilla
Paul

Sanders
Schmitt
Scott (FL)
Scott (SC)
Tester
Tuberville
Van Hollen
Vance
Warren
Wyden

NOT VOTING—1

Mullin

The ACTING PRESIDENT pro tempore. On this vote the yeas are 67, the nays are 32.

Three-fifths of Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The majority leader.

UNANIMOUS CONSENT AGREEMENTS—S. 4072 AND H.R. 7888

Mr. SCHUMER. Madam President, I ask the chair to execute the order of March 22, 2024, with respect to S. 4072, and I ask unanimous consent that the time count postcloture on the motion to proceed to H.R. 7888.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

PROHIBITING THE USE OF FUNDS TO IMPLEMENT, ADMINISTER, OR ENFORCE CERTAIN RULES OF THE ENVIRONMENTAL PROTECTION AGENCY

The ACTING PRESIDENT pro tempore. Pursuant to the order of March 22, 2024, the Senate will now proceed to the consideration of Calendar No. 350, S. 4072, which the clerk will report.

The senior assistant executive clerk read as follows:

A bill (S. 4072) to prohibit the use of funds to implement, administer, or enforce certain rules of the Environmental Protection Agency.

ORDER OF BUSINESS

Mr. SCHUMER. For the information of Senators, we expect to yield back time and vote on passage of the bill at about 2:30 p.m.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

S. 4072

Mr. MARKEY. Madam President, I am here today to defend the Environmental Protection Agency's vehicle emissions standards—standards that will cut air pollution to tackle the climate crisis, protect public health, and save drivers money at the pump. These standards for passenger vehicles, cars, SUVs and light trucks will help us accelerate toward our climate targets and put the brakes on our dependence on fossil fuels.

Last year, we imported 8.5 million barrels of oil every single day, of petro-