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Senate

The Senate met and was called to order by the Honorable LAPHONZA R. BUTLER, a Senator from the State of California.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, we find our refuge in You. You have been our help in ages past. You have been our shelter from life's storms, filling our hearts with Your divine peace as You provide us with an inheritance for eternity. You are our hope for the years to come.

Today, use our Senators for Your glory. May they remember that You weigh their motives, direct their steps, and make even their enemies be at peace with them. Lord, permit Your power to work in them to accomplish Your purposes on Earth.

And Lord, as we approach the Passover season, we praise You for Your redemptive power in our world.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mrs. MURRAY).

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 18, 2024.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable LAPHONZA R. BUTLER, a Senator from the State of California, to perform the duties of the Chair.

PATTY MURRAY,
President pro tempore.

Ms. BUTLER thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning Business is closed.

LEGISLATIVE SESSION

REFORMING INTELLIGENCE AND SECURING AMERICA ACT—MOTION TO PROCEED—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 7888, which the clerk will report.

The senior assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 365, H.R. 7888, a bill to reform the Foreign Intelligence Surveillance Act of 1978.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

MAYORKAS IMPEACHMENT

Mr. SCHUMER. Madam President, yesterday, the Senate set a very important precedent that impeachment should be reserved only for high crimes and misdemeanors and not for settling policy disagreements.

That is what is the impeachment against Alejandro Mayorkas was from the start: a policy dispute, frankly, to help Donald Trump on the campaign

trail. It did not meet the high standard required by the Constitution to remove someone from office. I am very glad the Senate worked its will to set these charges aside. The prudence and cool judgment the Senate showed yesterday is what the Framers would have wanted. They didn't want impeachment to be used for every policy dispute—when you don't agree with a Cabinet minister or Cabinet secretary, you impeach them. That would have created chaos in the executive branch and here in the Senate, because the House could just throw over impeachment after impeachment; and if you have to have a whole big trial on every one of them, the Senate could be ground to a halt.

So let me repeat what I said yesterday. We felt it was very important to set a precedent that impeachment should never—never be used to settle policy disagreements. We are supposed to have debates on the issues, not impeachments on the issues.

Let me repeat that; it is such an important concept, and I am so glad we stood firm yesterday: We are supposed to have debates on the issues, not impeachments on the issues. We are not supposed to say that whenever you disagree with someone on policy, that that is a high crime and misdemeanor. Can you imagine the kind of chaos and damage that would create? As I said, the House could paralyze the Senate with frivolous trials, particularly when one party had the House and the other had the Senate. It would degrade Government, and it, frankly, degrades impeachment which is reserved—rarely—for high crimes and misdemeanors.

To show how unprecedented what the House did was, no Cabinet Secretary has been impeached for over—since—I think it was 1867. And even in that case, he resigned before the trial. It was never intended to happen. But, unfortunately, the hard, radical right in the House is just so intent on paralyzing government, creating chaos in government, even destroying government, that they don't care. But we in

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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the Senate on our side of the aisle did care. My guess is a lot of my colleagues on the other side of the aisle cared too.

If my colleagues on the other side want to talk about immigration, Democrats welcome that debate—welcome it. We should debate border bills, like the ones Republicans blocked here on the floor. That is how you fix the border—with bipartisan legislation. Impeachment would have accomplished nothing.

H.R. 7888

Now, Madam President, on FISA, today, the Senate will vote on cloture on the motion to proceed to the FISA reauthorization bill sent by the House earlier this week. This is a very important procedural vote. I urge my colleagues on both sides to show strong support for moving forward on this bill.

Now, we obviously don't have a lot of time left before FISA authorities expire—in fact, less than 2 days—but we will try as hard as we can to get FISA reauthorization done today. If not, Members should expect we will have votes tomorrow.

NATIONAL SECURITY SUPPLEMENTAL FUNDING

Madam President, on the supplemental and on Ukraine, today, the House will keep working on national security supplemental funding. Yesterday, the House released legislative text, and I will continue to monitor closely what our House colleagues do in the coming days. I hope that President Biden will soon have on his desk long-awaited funding to support our friends in Ukraine and Israel and the Indo-Pacific and aid for innocent civilians in need of humanitarian aid in Gaza and around the world.

Senator BOOKER has told us stories about the starvation in Darfur and how much worse it would become if we don't get the aid. So the time for House inaction has long been over.

This afternoon, it will be my honor to meet with Ukrainian Prime Minister Denys Shmyhal, who is here to push for more funding for Ukraine. I will tell the Prime Minister the same thing I told President Zelenskyy when I was in Ukraine about a month ago: America will not abandon you. Your cause is our cause, and we are working day and night to finally deliver to you the aid you need to defeat Vladimir Putin's evil forces.

The one word to describe what the House needs right now is urgency—urgency. I remember, during my visit to Ukraine, standing in front of the cemetery in Lviv dedicated to the war dead. Not long before our visit, that grave site was a parking lot in the middle of Lviv, but it was converted to a cemetery after the city ran out of space to bury casualties. And even as we stood there—even as we observed a moment of silence—a few yards away, I could see workers digging even more holes in the ground to prepare for more casualties they knew would come. Worst of all, many of these brave soldiers died because they didn't have the supplies and ammunition they needed.

I wish I could say the Ukraine war effort has not suffered due to American inaction, but that would not be true. As the Wall Street Journal noted yesterday, "Ukraine's Chances of Pushing Russia Out Look Increasingly Grim." And why did they say that? Well, it is because the House has continued to drag its feet in sending funding for ammo and air defenses and other basic supplies. I hope that changes, at last, in the coming days.

MICRON

Now, Madam President, on the good news front—my front—today is the dawn of a new day in Syracuse and in all of Upstate New York. I am proud to announce that Micron is expected to receive \$6.1 billion from my Chips and Science law to support its chip megafab project in Central New York and its expansion in Idaho.

This multibillion-dollar award is one of the largest single, direct Federal investments in Upstate New York's history. It is a landmark announcement for Syracuse and all of Upstate New York and for the Nation. It will create 50,000 new, good-paying jobs in New York alone and propel Micron to reach its goal of investing over \$100 billion to make advanced memory chips here in the United States.

We have had other chip fab announcements—they are all good; I welcome all of them—but this one is the first for memory chips, and memory chips are becoming more and more important because they are the basic chip used in AI, and AI is expanding all over the place.

So I am glad about this announcement. We are rebuilding Upstate New York with good-paying middle-class jobs one microchip at a time.

Micron is the leading manufacturer of memory chips, which are critical to everything from cell phones to cars to AI. And this major chips investment is making possible the largest and one of the most advanced memory chip projects in the United States and even in the world, and it is critical to our national security and competitiveness. With this investment and the hundreds of billions of other transformational chips investments by Intel, TSMC, Samsung, GlobalFoundries, and more, we are bringing manufacturing back to America. We are shoring up our supply chains to prevent shortages and high prices, and we are strengthening our national security.

I worked really hard to write and pass the Chips and Science Act into law, with the goal of bringing advanced manufacturing to the United States as my guiding light—and not just communities in New York but communities everywhere: Arizona, Idaho, Texas, Ohio. These are the places where the story of American innovation will be written this century.

And speaking about my own home State—and I am wearing my orange tie today for Syracuse—I had communities like Syracuse and other Upstate New York communities in mind when I

wrote Chips and Science, and I made sure they would be the ones celebrating these types of investments, not far off places in countries like China. We want these chips made in Syracuse, not in Shanghai.

I am proud that this \$6 billion investment delivers on my promise to Micron and makes the promise of the Chips and Science Act a reality. It is not just a once-in-a-generation investment; it is a once-in-a-lifetime investment. It was a long, hard-fought battle to get Chips and Science done. It took us 4 years, as we had to persuade the House of Representatives how important it was, but this announcement proves that the hard work and persistence is paying off. We still have a long way to go, but we are one step closer to securing America's future as a leader in the global semiconductor industry.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The Republican leader is recognized.

NATIONAL SECURITY SUPPLEMENTAL FUNDING

Mr. MCCONNELL. Madam President, I would like to begin by addressing the urgent national security supplemental that is still pending over in the House of Representatives.

Opponents of this urgent investment in American strength have taken to clothing their objections in the false mantle of realism, and, at first glance, this would appear to be a rhetorically savvy move. After all, who would admit to being unrealistic? Who would willingly say that their policies and their world view don't reflect the world as it is? But, as our Nation faces the most dangerous moment in a generation, it is worth examining this claim in a bit more detail.

The concept of realism has an academic meaning that refers to a specific set of assumptions about how states interact. The realist school of thought, at its core, contends that states act alone in a perpetual competition, constantly assessing the balance of power with their adversaries and seeking to maximize their own security and relative influence.

As the ancient Athenians put it, "the strong do what they can, and the weak suffer what they must."

In a sense, as some of the most vocal opponents of the supplemental like to point out, realists don't have time for morality tales or sappy appeals to universal values. The world is an uncaring place, and so-called realists are concerned with cold, hard national interests. Well, as luck would have it, so am I.

None of the tenets of academic realism actually preclude our colleagues

from vigorously supporting the supplemental—quite the opposite. Consider the investments we are talking about making: rebuilding American hard power and growing our domestic industrial capacity to sustain it; in the process, helping to decimate the hard power of a major adversary at almost no risk to U.S. forces; deterring further challenges to a balance of power favorable to American interests; preserving and expanding our relative influence with other states; helping our friends and hurting our enemies; and successfully rallying these friends and allies to share the burden of balancing against competitors who seek to undermine the United States and the West.

Academic realism doesn't conflict with our efforts in the supplemental, and neither does simple reality. Being realistic and rejecting fanciful idealism means recognizing that we are facing the greatest, most coordinated security challenges since the Cold War.

In Europe, a neo-Soviet imperialist is threatening the stability of some of America's closest allies. Europe is the largest consumer of American products and the largest foreign direct investor in America. Instability in Europe is bad for business.

In the Middle East, backward theocrats are orchestrating terrorist attacks on Americans as well as our friends and racing to produce a nuclear weapon. Their vassals are disrupting the freedom of navigation—the lifeblood of our economy—with near impunity.

And in the Pacific, the People's Republic of China is pulling every lever to undermine America's power and dominate its hemisphere and beyond, from massive military expansion and predatory economic coercion to psychological manipulation, intellectual property theft, and the supply chain that pumps lethal poison across our borders.

So it would be utterly unrealistic to pretend that America can afford to delay an urgent, comprehensive investment in the hard power required to meet all these threats. The mushy moralism here is pretending to care more about brave Ukrainian war dead than the Ukrainian people do themselves.

The naive ideology is thinking that Russian revanchism is somehow connected to Christian values, in spite of clear evidence that Putin has corrupted the Russian Orthodox Church and is actively repressing Christians both at home and in conquered territories. The plain fantasy is saying that the challenges we face abroad will wait patiently while we attend to our own domestic affairs.

Here is the diplomatic reality: Putin has said publicly there is no sense negotiating with an opponent who is running out of ammunition.

Anyone who wants a negotiated end to this conflict should also want Ukraine to have as much negotiating leverage as possible.

Here is the political reality: If you think the fall of Afghanistan was bad, the fall of a European capital like Kyiv to Russian troops will be unimaginably worse. And if stalled American assistance makes that outcome possible, there is no question where the blame will land—on us.

Neglecting threats doesn't make them go away; it just guarantees unpreparedness when they strike.

I am reminded of the late Republican from Michigan, Arthur Vandenberg, a staunch anti-interventionist in the years leading up to the Second World War. As Senator Vandenberg wrote in his diary after the attack on Pearl Harbor, "That day ended isolationism for any realist."

Needless to say, it shouldn't take an attack on the homeland for American leaders to uphold their responsibilities and provide for the common defense. The clear and present danger is just that: It is clear; it is present; and it will grow if we do not act.

For those of us who see the world clearly, this isn't a question of realism versus idealism. Right now, what America should do also happens to be what we can do. We can grow a defense industrial base capable of sustaining both U.S. forces and our allies and partners. We can help degrade one adversary while strengthening deterrence against others. We can start investing seriously in rebuilding the hard power that a secure and prosperous nation requires—not only can we; we must.

ANTI-SEMITISM

Madam President, now on another matter, the past 6 months have shown an uncomfortably bright light on the moral rot festering on America's university and campuses.

Just yesterday, the president of Columbia hedged when asked whether chants of "from the river to the sea" and "long live the intifada" are properly considered anti-Semitism. This comes after numerous incidents on her campus, including a student club president issuing an email that read:

White Jewish people . . . today and always have been the oppressors of all brown people. [And] when I say the Holocaust wasn't special, I mean that.

Of course, the light of truth doesn't discriminate, and it has uncovered much more than an alarming taste for the world's oldest form of hate.

Last month, a Federal judge found that an assistant professor at Harvard Medical School had committed plagiarism in a report submitted on behalf of plaintiffs in a class action lawsuit.

If this weren't enough, Harvard's office for Equity, Diversity, Inclusion, and Belonging recently announced they will host racially segregated "affinity celebrations" during their 2024 commencement.

These are the institutions that President Biden wants working Americans to underwrite? These are the degrees that President Biden wants taxpayers to subsidize?

Last summer, the Supreme Court ruled that the President's initial at-

tempt at student loan socialism was unconstitutional. Nevertheless, Washington Democrats continue to double down.

Earlier this week, the Biden administration proposed yet another nearly \$150 billion round of student loan transfers. That is on top of more than \$150 billion they have already rolled out. At a most basic level, the proposal betrays a staggering disdain for working Americans—both those who have paid off their debt and those who opted not to take on the debt in the first place. It will transfer the loans of the highest earning members of Washington Democrats' base to working taxpayers. And it has already driven up tuition costs for future students.

But the Biden administration has made it pretty clear that they don't care about future students. Just look at the way they are handling the current round of FAFSA applications. Last week, the Education Department admitted that its own data and processing errors had compromised up to 30 percent of the Federal financial aid applications.

Just as prospective students and their families are facing enrollment deadlines, Washington Democrats apparently couldn't care less whether prospective students make informed decisions. Apparently, hefty tuition costs don't matter much if taxpayers will be the ones ultimately footing the bill. Well, I expect that working Americans across the country will have something to say about this in the fall.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT

Mr. WARNER. Madam President, I ask unanimous consent that the mandatory quorum call with respect to the cloture motion on the motion to proceed to H.R. 7888 be waived.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

H.R. 7888

Mr. WARNER. Madam President, I have come back to the floor today to reprise some of the things I said yesterday but, hopefully, to add some more color on an issue that has literally popped up in the last few days.

I start with the premise that we have a big, big question in front of us this afternoon and tomorrow: whether we are going to go ahead and continue maintaining the intelligence community and its most powerful tool, section 702. So I rise in support of the Reforming Intelligence and Securing America Act, H.R. 7888, which we will be voting for cloture on in a few short moments.

As I shared with my colleagues yesterday, no other law is more important

to the work of the intelligence community than section 702 of the Foreign Intelligence Surveillance Act. Section 702—I enumerated all of the ways it has been used, whether that is thwarting terrorist attacks, dealing with weapons of proliferation, stopping foreign cyberattacks, dealing with fentanyl trafficking; but the key point to remember is that 60 percent of the intelligence that is provided in the President's daily brief—not only under this President but former Presidents as well—comes from products of 702.

It is hard to overstate either the importance of this law or, frankly, the gravity of allowing it to sunset. Yet we are 36 hours away from that happening.

Now, I understand that some of my colleagues would like to amend the House-passed bill and continue the process of debate and negotiation. Listen, there are things I would like to change in the House bill as well, but the reality is that we are out of time. The choice before us—and as we think about amendments, this is the case—is pass this bill or allow 702 to sunset.

I have to tell you, as we follow all of the ups and downs of the House, if anyone thinks that amending this bill and returning it to the House will somehow yield a better agreement that has eluded us, literally, for the last 5 or 6 years on this very contentious issue, I don't think that is a realistic assumption. But what it will do if we send it back to a House that is entwined with leadership issues and the whole question of whether the national security provisions will be voted on and dealt with this weekend—what it will do if we were to amend and send it back to the House: It will invite a sunset, an unspeakable outcome that the President's own Intelligence Advisory Board has said will be remembered as one of the worst intelligence failures of our time.

We all know, as we assemble here today, Israel is at war with Hamas, we potentially have not only a regional but, potentially, a global conflict with Iran, our allies in Ukraine endure repeated Russian military bombardments. I just came from a broadly bipartisan biotech roundtable where expert after expert pointed out what China was doing and how much we have got to do to keep up and catch up. The idea that we would, in effect, almost go out of the intelligence business at this moment in time is extraordinarily dangerous.

So I know we will have the overall bill discussions and we will have discussions about why something that sounds, on its surface—a warrant provision, which I have said yesterday and I will repeat for colleagues—over half the times an American is queried in the 702 database, they are a victim of a crime—not someone that you would show probable cause has done something wrong but, oftentimes, the victim of a cyber crime.

Or if not, the question I raised yesterday, we arrest a terrorist in Paris, we have got a different Presiding Offi-

cer, and that terrorist has a 213 area code number in their pocket—we don't know whether that is a real phone number. We don't know if it goes to an American, goes to a foreign person. But the warrant requirement would require, before you could even query—and I get my friend the Senator from Illinois, DICK DURBIN. He has a slightly different variation on this—you would be allowed to query that phone number. Remember, this comes off of a known terrorist. But you wouldn't be able to look at the results unless you could show probable cause.

They will say that we can have an expediency requirement, but the idea that we would potentially put this into a FISA proceeding that could take days or weeks, I think, is very dangerous.

But I would like, again, to use the remainder of my time to discuss one provision of the bill—a technical amendment that was added in the House to the definition of an “electronic communication service provider”—that has drawn considerable scrutiny and has been the focus of many of my colleagues' appropriate questions. It is important that the Members have a complete understanding of this provision that is grounded in fact and not distorted by, frankly—with some of the outside groups—what are, frankly, absurd distortions being raised by some of its opponents.

The amendment does not, as some have suggested, allow the government to spy on Americans at coffee shops or bars or restaurants or residences or hotels, libraries, recreational facilities, and a whole litany of other similar establishments. It would absolutely not, as some critics have maintained, allow the U.S. Government to somehow compel, for example, a janitor working in an office building in northern Virginia to spy for the intelligence community or for your housekeeper to somehow access your laptop at home. Nor would it ever allow, as some have absurdly claimed, States to use 702 to target women in terms of their healthcare choices.

If Members have questions about this amendment, I urge them to take time to go through some of the classified information down in Senate Security. And the Department of Justice will be on hand later today to walk folks through why this technical amendment was added.

But let me talk about—my business for 25 years was in the telecom sector. I know a little bit about what is trying to be accomplished here. The law that was set up in 2008 was one world of telecommunications and telecommunications networks. The world we live in today, in 2024, is dramatically different. I said yesterday, in 2008, a cloud was something you had to worry about that might rain, not a network of computer operations. As technology has evolved, so must we.

The truth is, this amendment does not change the scope of 702; it simply

accounts for new technological advances since the law was first written in 2008. It is not the first time we have had to amend certain laws to account for new technologies, nor will it be the last.

As a reminder one more time, section 702 authorizes the intelligence community to collect critical foreign intelligence about foreign targets located outside the United States. Some of the ways we do that is with compelled assistance of United States—American—electronic communications service providers, or ECSPs.

Now, why has this suddenly now become such an issue? Well, one of these communication providers—remember I talked about clouds, data centers, how these networks come together and how network traffic is intertangled at these data centers? One of these entities that controlled one of those new enterprises that didn't exist in 2008 said: Well, hold it. You can't compel us to work with the American Government because we don't technically fit the definition of an electronic communication service provider. And the fact was, the company that raised that claim won in court. So what happened was, the FISA Court said to Congress: You guys need to close this loophole; you need to close this and change this definition. So that is where a lot of this debate has come from.

Yesterday, as White House National Security Advisor Jake Sullivan explained in a statement he released, the amendment is “directly responsive to encouragement from a federal appellate court to update the definition of the private-sector companies with which the U.S. Government can work, under supervision of federal judges and with extensive oversight by four congressional committees, to obtain the communications of non-Americans abroad.”

The National Security Advisor urged Members to “reject mischaracterizations” of the amendment. He also reiterated that “nothing in this amendment changes the fundamentals of Section 702, which can be used to target for collection only the communications of non-Americans located outside the United States.”

Now, one, I think the amendment could have been drafted better.

I have a letter here from the Attorney General which shares the view and memorializing DOJ's narrow interpretation of this amendment.

Madam President, I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, April 18, 2024.

Hon. CHARLES E. SCHUMER,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR LEADER SCHUMER AND LEADER MCCONNELL: As I testified yesterday, I urge

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.