AMENDMENT TO H.R. ___
Offered by Mr. Biggs of Arizona

Page 14, strike line 15 and all that follows through line 17 on page 15, and insert the following:

(a) Prohibition on Warrantless Queries for the Communications of United States Persons.—

Section 702(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(f))—

(1) in paragraph (1)(A) by inserting “and the limitations and requirements in paragraph (2)” after “Constitution of the United States”;

(2) by redesignating paragraph (3) as paragraph (7); and

(3) by striking paragraph (2) and inserting the following:

“(2) Prohibition on Warrantless Queries for the Communications and Other Information of United States Persons.—

“(A) In General.—Except as provided in subparagraphs (B) and (C), no officer or employee of the United States may conduct a query of information acquired under this section for the purpose of finding communications
or information the compelled production of which would require a probable cause warrant if sought for law enforcement purposes in the United States, of a United States person.

“(B) EXCEPTIONS FOR CONCURRENT AUTHORIZATION, CONSENT, EMERGENCY SITUATIONS, AND CERTAIN DEFENSIVE CYBERSECURITY QUERIES.—

“(i) IN GENERAL.—Subparagraph (A) shall not apply to a query related to a United States person if—

“(I) such person is the subject of an order or emergency authorization authorizing electronic surveillance or physical search under section 105 (50 U.S.C. 1805) or section 304 (50 U.S.C. 1824) of this Act, or a warrant issued pursuant to the Federal Rules of Criminal Procedure by a court of competent jurisdiction;

“(II)(aa) the officer or employee conducting the query has a reasonable belief that—
“(AA) an emergency exists involving an imminent threat of death or serious bodily harm; and

“(BB) in order to prevent or mitigate the threat described in subitem (AA), the query must be conducted before authorization described in subclause (I) can, with due diligence, be obtained; and

“(bb) a description of the query is provided to the Foreign Intelligence Surveillance Court and the congressional intelligence committees and the Committees on the Judiciary of the House of Representatives and of the Senate in a timely manner;

“(III) such person or, if such person is incapable of providing consent, a third party legally authorized to consent on behalf of such person, has provided consent to the query on a case-by-case basis; or
“(IV)(aa) the query uses a known cybersecurity threat signature as a query term;

“(bb) the query is conducted, and the results of the query are used, for the sole purpose of identifying targeted recipients of malicious software and preventing or mitigating harm from such malicious software;

“(cc) no additional contents of communications acquired as a result of the query are accessed or reviewed; and

“(dd) each such query is reported to the Foreign Intelligence Surveillance Court.

“(ii) LIMITATIONS.—

“(I) USE IN SUBSEQUENT PROCEEDINGS.—No information acquired pursuant to a query authorized under clause (i)(II) or information derived from the information acquired pursuant to such query may be used, received in evidence, or otherwise disseminated in any trial, hearing, or
other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, except in a proceeding that arises from the threat that prompted the query.

“(II) ASSESSMENT OF COMPLIANCE.—Not less frequently than annually, the Attorney General shall assess compliance with the requirements under subclause (I).

“(C) MATTERS RELATING TO EMERGENCY QUERIES.—

“(i) TREATMENT OF DENIALS.—In the event that a query for communications or information, the compelled production of which would require a probable cause warrant if sought for law enforcement purposes in the United States, of a United States person is conducted pursuant to an emergency authorization described in sub-paragraph (B)(i)(I) and the subsequent application for such surveillance pursuant
to section 105(e) (50 U.S.C. 1805(e)) or section 304(e) (50 U.S.C. 1824(e)) of this Act is denied, or in any other case in which the query has been conducted in violation of this paragraph—

“(I) no information acquired or evidence derived from such query may be used, received in evidence, or otherwise disseminated in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof; and

“(II) no information concerning any United States person acquired from such query may subsequently be used or disclosed in any other manner without the consent of such person, except in the case that the Attorney General approves the use or disclosure of such information in order to prevent death or serious bodily harm to any person.
“(ii) ASSESSMENT OF COMPLIANCE.—
Not less frequently than annually, the Attorney General shall assess compliance with the requirements under clause (i).

“(D) FOREIGN INTELLIGENCE PURPOSE.—
Except as provided in subparagraph (B)(i)(II)-(IV), no officer or employee of the United States may conduct a query of information acquired under this section for the purpose of finding information of a United States person unless the query is reasonably likely to retrieve foreign intelligence information.

“(3) DOCUMENTATION.—No officer or employee of the United States may conduct a query of information acquired under this section for the purpose of finding information of or about a United States person, unless an electronic record is created that includes the following:

“(A) Each term used for the conduct of the query.

“(B) The date of the query.

“(C) The identifier of the officer or employee.
“(D) A statement of facts showing that the use of each query term included under subparagraph (A)—

“(i) falls within an exception specified in paragraph (2)(B)(i); and

“(ii) is—

“(I) reasonably likely to retrieve foreign intelligence information; or

“(II) in furtherance of an exception described in subclauses (II) through (IV) of paragraph (2)(B)(i).

“(4) QUERY RECORD SYSTEM.—The head of each agency that conducts queries shall ensure that a system, mechanism, or business practice is in place to maintain the record described in paragraph (3). Not later than 90 days after enactment of this paragraph, the head of each agency shall report to Congress on its compliance with this procedure.

“(5) PROHIBITION ON RESULTS OF METADATA QUERY AS A BASIS FOR ACCESS TO COMMUNICATIONS AND OTHER PROTECTED INFORMATION.—If a query of information acquired under this section is conducted for the purpose of finding communications metadata of a United States person and the query returns such metadata, the communications
content associated with the metadata may not be re-
viewed except as provided under paragraph (2)(B)(i)
of this subsection.

“(6) FEDERATED DATASETS.—The prohibitions
and requirements under this subsection shall apply
to queries of federated and mixed datasets that in-
clude information acquired under this section, unless
each agency has established a system, mechanism, or
business practice to limit the query to information
not acquired under this section.”.