

**AMENDMENT TO RULES COMMITTEE PRINT 118-**

**27**

**OFFERED BY MR. BIGGS OF ARIZONA**

Page 14, strike line 8 and all that follows through line 10 on page 15, and insert the following:

1       (a) PROHIBITION ON WARRANTLESS QUERIES FOR  
2 THE COMMUNICATIONS OF UNITED STATES PERSONS.—  
3 Section 702(f) of the Foreign Intelligence Surveillance Act  
4 of 1978 (50 U.S.C. 1881a(f))—

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

8           (2) by redesignating paragraph (3) as para-  
9 graph (7); and

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

12           “(2) PROHIBITION ON WARRANTLESS QUERIES  
13 FOR THE COMMUNICATIONS AND OTHER INFORMA-  
14 TION OF UNITED STATES PERSONS.—

15           “(A) IN GENERAL.—Except as provided in  
16 subparagraphs (B) and (C), no officer or em-  
17 ployee of the United States may conduct a  
18 query of information acquired under this sec-

1           tion for the purpose of finding communications  
2           or information the compelled production of  
3           which would require a probable cause warrant  
4           if sought for law enforcement purposes in the  
5           United States, of a United States person.

6           “(B) EXCEPTIONS FOR CONCURRENT AU-  
7           THORIZATION, CONSENT, EMERGENCY SITUA-  
8           TIONS, AND CERTAIN DEFENSIVE CYBERSECU-  
9           RITY QUERIES.—

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

13           “(I) such person is the subject of  
14           an order or emergency authorization  
15           authorizing electronic surveillance or  
16           physical search under section 105 (50  
17           U.S.C. 1805) or section 304 (50  
18           U.S.C. 1824) of this Act, or a war-  
19           rant issued pursuant to the Federal  
20           Rules of Criminal Procedure by a  
21           court of competent jurisdiction;

22           “(II)(aa) the officer or employee  
23           conducting the query has a reasonable  
24           belief that—

1                   “(AA) an emergency exists  
2 involving an imminent threat of  
3 death or serious bodily harm; and

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

11                   “(bb) a description of the query  
12 is provided to the Foreign Intelligence  
13 Surveillance Court and the congress-  
14 sional intelligence committees and the  
15 Committees on the Judiciary of the  
16 House of Representatives and of the  
17 Senate in a timely manner;

18                   “(III) such person or, if such  
19 person is incapable of providing con-  
20 sent, a third party legally authorized  
21 to consent on behalf of such person,  
22 has provided consent to the query on  
23 a case-by-case basis; or

1                   “(IV)(aa) the query uses a  
2 known cybersecurity threat signature  
3 as a query term;

4                   “(bb) the query is conducted, and  
5 the results of the query are used, for  
6 the sole purpose of identifying tar-  
7 geted recipients of malicious software  
8 and preventing or mitigating harm  
9 from such malicious software;

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

14                  “(dd) each such query is reported  
15 to the Foreign Intelligence Surveil-  
16 lance Court.

17                  “(ii) LIMITATIONS.—

18                   “(I) USE IN SUBSEQUENT PRO-  
19 CEEDINGS.—No information acquired  
20 pursuant to a query authorized under  
21 clause (i)(II) or information derived  
22 from the information acquired pursu-  
23 ant to such query may be used, re-  
24 ceived in evidence, or otherwise dis-  
25 seminated in any trial, hearing, or

1 other proceeding in or before any  
2 court, grand jury, department, office,  
3 agency, regulatory body, legislative  
4 committee, or other authority of the  
5 United States, a State, or political  
6 subdivision thereof, except in a pro-  
7 ceeding that arises from the threat  
8 that prompted the query.

9 “(II) ASSESSMENT OF COMPLI-  
10 ANCE.—Not less frequently than an-  
11 nually, the Attorney General shall as-  
12 sess compliance with the requirements  
13 under subclause (I).

14 “(C) MATTERS RELATING TO EMERGENCY  
15 QUERIES.—

16 “(i) TREATMENT OF DENIALS.—In  
17 the event that a query for communications  
18 or information, the compelled production of  
19 which would require a probable cause war-  
20 rant if sought for law enforcement pur-  
21 poses in the United States, of a United  
22 States person is conducted pursuant to an  
23 emergency authorization described in sub-  
24 paragraph (B)(i)(I) and the subsequent  
25 application for such surveillance pursuant

1 to section 105(e) (50 U.S.C. 1805(e)) or  
2 section 304(e) (50 U.S.C. 1824(e)) of this  
3 Act is denied, or in any other case in which  
4 the query has been conducted in violation  
5 of this paragraph—

6 “(I) no information acquired or  
7 evidence derived from such query may  
8 be used, received in evidence, or other-  
9 wise disseminated in any trial, hear-  
10 ing, or other proceeding in or before  
11 any court, grand jury, department, of-  
12 fice, agency, regulatory body, legisla-  
13 tive committee, or other authority of  
14 the United States, a State, or political  
15 subdivision thereof; and

16 “(II) no information concerning  
17 any United States person acquired  
18 from such query may subsequently be  
19 used or disclosed in any other manner  
20 without the consent of such person,  
21 except in the case that the Attorney  
22 General approves the use or disclosure  
23 of such information in order to pre-  
24 vent death or serious bodily harm to  
25 any person.

1                   “(ii) ASSESSMENT OF COMPLIANCE.—

2                   Not less frequently than annually, the At-  
3                   torney General shall assess compliance  
4                   with the requirements under clause (i).

5                   “(D) FOREIGN INTELLIGENCE PURPOSE.—

6                   Except as provided in subparagraph (B)(i)(II)-  
7                   (IV), no officer or employee of the United  
8                   States may conduct a query of information ac-  
9                   quired under this section for the purpose of  
10                  finding information of a United States person  
11                  unless the query is reasonably likely to retrieve  
12                  foreign intelligence information.

13                  “(3) DOCUMENTATION.—No officer or employee  
14                  of the United States may conduct a query of infor-  
15                  mation acquired under this section for the purpose  
16                  of finding information of or about a United States  
17                  person, unless an electronic record is created that in-  
18                  cludes the following:

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

21                         “(B) The date of the query.

22                         “(C) The identifier of the officer or em-  
23                         ployee.

1           “(D) A statement of facts showing that the  
2           use of each query term included under subpara-  
3           graph (A)—

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

6                   “(ii) is—

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

9                                   “(II) in furtherance of an excep-  
10                                  tion described in subclauses (II)  
11                                  through (IV) of paragraph (2)(B)(i).

12           “(4) QUERY RECORD SYSTEM.—The head of  
13           each agency that conducts queries shall ensure that  
14           a system, mechanism, or business practice is in place  
15           to maintain the record described in paragraph (3).  
16           Not later than 90 days after enactment of this para-  
17           graph, the head of each agency shall report to Con-  
18           gress on its compliance with this procedure.

19           “(5) PROHIBITION ON RESULTS OF METADATA  
20           QUERY AS A BASIS FOR ACCESS TO COMMUNICA-  
21           TIONS AND OTHER PROTECTED INFORMATION.—If a  
22           query of information acquired under this section is  
23           conducted for the purpose of finding communica-  
24           tions metadata of a United States person and the  
25           query returns such metadata, the communications



1 content associated with the metadata may not be re-  
2 viewed except as provided under paragraph (2)(B)(i)  
3 of this subsection.

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

