

The FISA Section 702 Debate: Myth vs. Reality

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BACKGROUND: Section 702 of the Foreign Intelligence Surveillance Act (FISA) grants the government the authority to compel U.S. electronic communication service providers to cooperate with surveillance programs that target non-U.S. persons outside the United States, but this surveillance also “incidentally” captures the communications of Americans. Prior to Section 702 authority sunset on June 12, 2026, Congress was unable to agree to reauthorize the authority. **The debate on reauthorization has been pervaded by myths to obscure the reality. We address some of those myths below.**

MYTH: FISA Section 702 surveillance will go dark now that the statute has sunset.

REALITY: In March 2026, the Foreign Intelligence Surveillance Court (FISC) certified 702 surveillance until March 2027. **The statute is clear that an active FISC certification authorizes surveillance even if the statute lapses, and companies are required to comply or risk large fines.**

MYTH: The Pulte appointment to Acting-DNI is the only reason Section 702 was not reauthorized, and nominating Clayton clears the path for reauthorization.

REALITY: Pulte’s temporary appointment only further highlighted the risks of not passing substantive reforms of Section 702. Clayton’s nomination does nothing to change these risks. **Prior to Pulte’s appointment, Congress couldn’t pass long-term reauthorization because there is strong bipartisan support for meaningful reforms of Section 702.**

MYTH: Democrats and Republicans who want to reform Section 702 to add greater privacy protections are the ones obstructing its reauthorization.

REALITY: Both Republican and Democrat legislators have introduced bills that would renew Section 702 and protect Americans’ communications from warrantless government searches. However, **Congressional leadership has blocked votes on any reforms, while trying to strong-arm members to vote for a clean reauthorization—preventing the renewal of Section 702.**

MYTH: There is no need for additional reforms because previous reforms are adequate.

REALITY: Previous reforms have done little to address the risks of Section 702 surveillance. Now the government wants to use AI on potentially millions of Americans’ sensitive information obtained without a warrant from data brokers and Section 702 surveillance. **A recent FISC ruling found significant compliance problems related to Americans’ Constitutional rights.**

FURTHER READING:

- [Section 702 Surveillance Will Continue Until March 2027 Even if the Statute Lapses](#)
- [Wyden Statement on Revelation of Major Compliance Problems With FISA Section 702 Surveillance](#)
- [Stop the FISA Fearmongering and Allow Fair Votes on Reforms](#)
- [Government AI Is Coming for Your Data](#)
- [We Disagree on a Lot. But We Know This Law Must Change.](#)
- [Beyond Pulte, Congress cannot renew spy law without reforms](#)

EPIC is eager to engage with journalists and legislators on FISA. For more information, contact Jeramie Scott, Director of EPIC’s Surveillance Oversight Program, at scott@epic.org.