

# TRANSPARTISAN ARGUMENTS THE GOVERNMENT WON'T WANT TO SUCCEED

Justin Amash, Paul Broun, Tulsi Gabbard, Morgan Griffith, Rush Holt, Walter Jones, Barbara Lee, Zoe Lofgren, Thomas Massie, Tom McClintock, Eleanor Holmes Norton, Beto O'Rourke, Steve Pearce, Matt Salmon, Mark Sanford, Ted Yoho.

Well, that's got to be a group of people the Powers That Be don't want to see joining together?

Captain Tulsi Gabbard, Physics PhD Rush Holt, Appalachian Trail Hiker Mark Sanford, and Paleocon Walter Jones. With my libertarian Congressman, Justin Amash apparently leading the bunch.

All on a court motion together, calling for the court to release the FISC opinion explaining why the government's Section 702 collection was unconstitutional because without it they can't do their job. Which includes, in part, informing the American people.

As important, whatever information Members of Congress learn about secret FISC opinions and orders, they are unable publicly to discuss or debate them because any disclosure is still subject to secrecy requirements.

[snip]

In light of recent disclosures regarding the existence of a "classified intelligence program," related to the "business records" section of FISA, the Director of National Intelligence has acknowledged that "it is important for the American people to understand" the limits of the program and the principles behind it.

[snip]

Notwithstanding the compelling public interest in an open debate about the scope and propriety of government surveillance programs authorized under FISA, even the amici – Members of the U.S. Congress – cannot meaningfully participate in that public debate so long as this Court’s relevant decisions and interpretations of law remain secret. They cannot engage in public discussion on the floor of the Senate and the House about the government’s surveillance programs. And they cannot engage in dialogue with their constituents on these pressing matters of public importance.

[snip]

Informed, public debate is central to Congress’s role as a coequal branch of the federal government. The Constitution acknowledges the unique importance of open debate to Congress’s role in the Speech or Debate Clause. Debate in Congress serves not only the institution’s internal goal of creating sound public policy. Courts have recognized a second crucial purpose of informed, public debate in Congress: to inform the American people about the issues affecting their government.

~~Now, I think they may overestimate the degree to which this opinion pertains to the Section 215 collection (indeed, if it pertains to Internet metadata collection, it pertains to Section 214 of PATRIOT instead). [Update, 9/13/13: I’m mistaken here—it was exclusively Section 215.]~~

And I think their Speech or Debate argument has confused people about whether these members of Congress have seen what’s in the opinion. Holt used to be on the House Intelligence Committee, but no longer is, so I assume none of the

Members on this brief know what the opinion is.  
In any case, the House has much more restrictive  
rules about who can access intelligence secrets  
than the Senate.

But I am rather fond of the argument that  
Congress can't do its job with all the secrecy  
the Executive is operating under.