

May 18, 2020

Speaker Pelosi, Minority Leader McCarthy, Chairman McGovern, Ranking Member Cole, Chairman Nadler, and Ranking Member Jordan:

On May 13, a bipartisan majority of 59 Senators — 24 Republicans and 35 Democrats — voted in support of the Wyden-Daines amendment to H.R. 6172, the USA FREEDOM Reauthorization Act of 2020. Though two more Democratic Senators supported the measure, one being a cosponsor, they were unable to be present for the vote.

Thankfully, support for the underlying policy is now abundantly clear, both within Congress and among the public: the FBI should not be allowed to use the PATRIOT Act to surveil Americans' online activity without a warrant. Internet search and browsing history is extremely revealing in nature and the Fourth Amendment requires a warrant to obtain this information. As the Supreme Court in *Riley* noted, "An Internet search and browsing history, for example, can be found on an Internet-enabled phone and could reveal an individual's private interests or concerns — perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD."^[1] Section 215 was never intended to allow the government to collect such information, and the Wyden-Daines amendment would make this prohibition crystal clear. Given the government's failure to disclose whether it believes it can collect this information under Section 215 already, the bright-line rule reflected in the Wyden-Daines amendment is sorely needed.

Accordingly, we urge you to only move H.R. 6172 with the inclusion of the Wyden-Daines amendment, or to provide an opportunity to vote on the amendment on the floor. This is particularly critical because, unlike the Senate, members of the House were denied any opportunity to debate amendments to cure the deficiencies in H.R. 6172. Additionally, reports released since House passage of H.R. 6172 have revealed additional surveillance abuses, which further underscore the need for additional reforms.^[2]

After H.R. 6172 moved through the House without the opportunity to amend it or cure its defects, and after both of its original sponsors announced support for more significant privacy reforms, 136 members voted against the measure. 65 Republicans, 70 Democrats, and 1 Independent voted against it because it failed to sufficiently protect privacy. Therefore, with the Wyden-Daines amendment, it is likely that the USA FREEDOM Reauthorization Act would pass with more support than before. This would be a welcome moment of bipartisan agreement, in defense of all Americans' liberties, during a trying period in our history.

This reform is precisely designed to stave off the kind of scandals that led to a dramatic loss of trust in United States intelligence agencies over the past two decades.

Indeed, this would help address serious concerns among the public that civil liberties are at a heightened risk during this time of crisis. This is an acute concern for the many groups that the FBI has wrongfully targeted in the past, including activists, communities of color, and the press.

With ample support for this measure secured in the Senate, the decision to seize this moment in defense of Americans' civil liberties is exclusively in your hands.

Sincerely,

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American Booksellers for Free Expression
American Civil Liberties Union
American Family Voices
American Society of Journalists and Authors (ASJA)
American-Arab Anti-Discrimination Committee
Arab American Civic Council
Arab American Institute
Center for Biological Diversity
Center for Democracy & Technology
Common Defense
Constitutional Alliance
Council on American-Islamic Relations
Courage California
Defending Rights & Dissent
Demand Progress
DuckDuckGo
Due Process Institute
Equality Labs
Fight for the Future
Free Press Action
Free Speech Coalition
Freedom of the Press Foundation
FreedomWorks
Government Accountability Project
Government Information Watch
Human Rights Watch
Just Foreign Policy
Kurt Vonnegut Museum and Library
MediaJustice
Movement Alliance Project
MPower Change
MSA West
Muslim Justice League
National Association for the Advancement of
Colored People (NAACP)
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
New America's Open Technology Institute
PEN America
People For the American Way
Poligon Education Fund
Presente Action
Progress America
Restore The Fourth
RootsAction.org
Secure Justice
Society of Professional Journalists
TechFreedom
Union of Concerned Scientists
X-Lab
Yemeni Alliance Committee

Cc: Chairman Schiff
Ranking Member Nunes
House of Representatives

^[1] *Riley v. California*, 573 U.S. 373, 395-96 (2014).

^[2] OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF JUSTICE, MANAGEMENT ADVISORY MEMORANDUM FOR THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION REGARDING THE EXECUTION OF WOODS PROCEDURES FOR APPLICATIONS FILED WITH THE FOREIGN INTELLIGENCE SURVEILLANCE COURT RELATING TO U.S. PERSONS, at 3 (March 2020), <https://oig.justice.gov/reports/2020/a20047.pdf>.