

Jan. 26, 2022

The Honorable Dick Durbin
Chair, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jerry Nadler
Chair, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member, House Judiciary Committee
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Durbin, Ranking Member Grassley, Chairman Nadler, and Ranking Member Jordan:

As you plan for committee hearings in the early weeks of 2022, we hope that you will prioritize the issue of government surveillance abuse. In particular, we urge you to hold hearings on the Fourth Amendment Is Not For Sale Act (S.1265/H.R. 2738).

This legislation enjoys bipartisan support in both chambers for a good reason – what the government is doing is alarming. Intelligence and law enforcement agencies, from the Internal Revenue Service to the Drug Enforcement Administration, the Federal Bureau of Investigation, and Customs and Border Protection, allege they can lawfully avoid the constitutional requirement for probable cause warrants by simply buying our personal information from commercial data brokers. They can do this, they claim, because the relevant federal statutes were written at a time when apps and digital brokers did not exist and therefore do not specifically prohibit such actions.

As a result, data from apps most Americans routinely use are open to warrantless examination by the government. Data sources that the government has exploited include gaming apps that produce data that can be used to target children and a Muslim prayer app that can be used to target Americans by their religion. Communities of color, more reliant on cell phones for access to the internet, are disproportionately impacted. Moreover, the data in question include geolocation information and other details that the government can use to determine Americans' activities, associations, and even beliefs. As the Supreme Court held in the context of cell phones in *Riley v. California* (2014), digital technologies “hold for many Americans ‘the privacies of life.’”

Despite a few media reports, most Americans are still unaware that our government can obtain our most personal information by simply opening the federal wallet. If they knew this, they would undoubtedly find this practice offensive to the spirit of the Constitution. They would see it as a threat to the First and Fourth Amendment rights of every American. But without a hearing to drive the news, most Americans will never know how seriously their privacy has been compromised.

We believe hearings in the Senate Judiciary Committee and House Judiciary Committee in early 2022 – underscoring these disturbing facts and perhaps uncovering new ones – would inform the American public and create the momentum needed to turn your bill into law. We call on you to urgently hold hearings on the Fourth Amendment Is Not For Sale Act this session.

Sincerely,

Access Now
Advocacy for Principled Action in Government
Afghans for a Better Tomorrow
American Civil Liberties Union
American Muslim Empowerment Network
Americans for Prosperity
Brennan Center for Justice at NYU School of Law
CAIR Minnesota
Center for Democracy & Technology
Center for Human Rights and Privacy
Constitutional Alliance
Defending Rights & Dissent
Demand Progress
Due Process Institute
Electronic Frontier Foundation
Electronic Privacy Information Center
Fight for the Future
Free Press Action
FreedomWorks
Global Network Initiative
Government Information Watch
Indivisible Plus Washington
Indivisible Washington's 8th District
Just Futures Law
Kairos Action

Media Alliance
Muslim Justice League
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
New America's Open Technology Institute
OCA Greater Chicago
Oakland Privacy
Open Media
Open the Government
PEN America
ProgressNow New Mexico
Project for Privacy and Surveillance Accountability
Project On Government Oversight
R Street
Ranking Digital Rights
Restore the Fourth
RootsAction.org
S.T.O.P. – The Surveillance Technology Oversight Project
Secure Justice
United We Dream
Wallingford Indivisible
Woodhull Freedom Foundation
X-Lab