

May 12, 2020

United States Senate

RE: CDT urges you to VOTE YES for the Leahy/Lee and Wyden/Daines Amendments to H.R. 6172 USA FREEDOM Reauthorization Act

Dear Senator:

The Center for Democracy & Technology¹ urges you to vote for H.R. 6172 the USA FREEDOM Reauthorization Act, and the amendments to it offered by Senators Leahy and Lee, and Senators Wyden and Daines. As amended, this bill will help protect the privacy, civil rights and civil liberties of your constituents. It outlaws invasive and ineffective warrantless surveillance, introduces greater accountability and transparency into the use of Foreign Intelligence Surveillance Act (FISA) authorities, and responds effectively to many of the raised concerns about the use of FISA that have surfaced in recent months, including the surveillance of Carter Page, an advisor to the campaign of Donald Trump.²

H.R. 6172³ removes the statutory authority for the ineffective and invasive National Security Agency Call Detail Records program;⁴ precludes the use of Section 215 orders to secure sensitive records for which a warrant would be required in the criminal context including, explicitly, GPS and cell site location records, and improves transparency and accountability in the FISA process.⁵ These significant reforms are complemented and bolstered by the amendments below that we urge you to support.

Senators Leahy and Lee’s amendment strengthens and expands the role of the amicus—independent advisors to the Foreign Intelligence Surveillance Court (FISC)—by encouraging their appointment for surveillance applications that involve political or religious leaders and organizations, the domestic news media, other similar types of sensitive matters, and in applications that raise significant concerns with respect to the activities of a United States person that are protected by the 1st Amendment. It also

¹ The Center for Democracy & Technology is a non-profit dedicated to advancing privacy, civil liberties and civil rights in the digital age. We’ve long sought to advance FISA reform including the USA FREEDOM Act of 2015. <https://cdt.org/>.

² Greg Nojeim, *FBI Records Do Not Substantiate Factual Assertions in FISA Applications*, Ctr. For Democracy & Tech (March 31, 2020), <https://cdt.org/insights/fbi-records-do-not-substantiate-factual-assertions-in-fisa-applications/>.

³ Greg Nojeim & Mana Azarmi, *Revised USA FREEDOM Reauthorization Act of 2020 Improves FISA; More Improvements Are Needed*, Ctr. For Democracy & Tech (March 11, 2020), <https://cdt.org/insights/revised-usa-freedom-reauthorization-act-of-2020-improves-fisa-more-improvements-are-needed/>.

⁴ Mana Azarmi, *The NSA Shuttered the Call Detail Records Program. So Too Must Congress.*, Ctr. For Democracy & Tech (Aug. 16, 2019), <https://cdt.org/insights/the-nsa-shuttered-the-call-detail-records-program-so-too-must-congress/>.

⁵ Greg Nojeim & Mana Azarmi, *Revised USA FREEDOM Reauthorization Act of 2020 Improves FISA; More Improvements Are Needed*, Ctr. For Democracy & Tech (March 11, 2020), <https://cdt.org/insights/revised-usa-freedom-reauthorization-act-of-2020-improves-fisa-more-improvements-are-needed/>.

1401 K Street NW, Suite 200 Washington, DC 20005

grants the amici greater access to information necessary for their work, and more power to raise issues with the FISC and to have issues considered on appeal. It would additionally require the Department of Justice and Federal Bureau of Investigation to disclose to the FISC information the FISC needs in order to decide whether to issue an surveillance order, including information tending to cast doubt on the government's claims.

In reviewing the FISA application to surveil Carter Page the Inspector General identified a litany of inaccuracies and omissions unchallenged by the FISC.⁶ A follow up investigation has demonstrated that these problems are systemic. These reports make a compelling case for the need to inject more of an adversarial process in FISC proceedings in order to surface the truth and guard against unwarranted surveillance. The Leahy/Lee amendment responds to this need.

Senators Wyden and Daines's amendment would prohibit the government from using Section 215 to obtain the internet search and browsing history of individuals in the United States. Section 215 permits the collection of sensitive information under a showing of mere "relevance." This is insufficient protection for information that is as sensitive as internet search and browsing history. Some courts have already determined that law enforcement officers must have a warrant to compel disclosure of this information in the criminal context. This amendment makes it clear that, like location information, a Section 215 order cannot be used to obtain internet search history and browsing information.

H.R. 6172 and the Leahy/Lee and Wyden/Daines amendments to it offer significant reforms to FISA to safeguard the rights of your constituents. We urge you to support them. If you have any questions please feel free to contact the Center for Democracy & Technology's Gregory Nojeim at gnojeim@cdt.org (202.407.8815) or Mana Azarmi at mazarmi@cdt.org (202.407.8828).

Sincerely,

Gregory Nojeim
Senior Counsel & Director, Freedom Security and Technology Project

Mana Azarmi
Policy Counsel

⁶ Office of the Inspector General, U.S. Dep't of Justice, Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation (December 2019), at vii, <https://www.justice.gov/storage/120919-examination.pdf>.