January 27, 2026

To Chairman Grassley, Ranking Member Durbin, and Members of the Senate Judiciary Committee,

As privacy and civil liberties advocates, we write to express the need for reform to surveillance, in particular Section 702 of the Foreign Intelligence Surveillance Act ("FISA 702"). FISA 702 is a warrantless surveillance authority that collects the private communications of a huge number of Americans. It has been repeatedly misused, and lacks the independent oversight that serves as a foundational check for government surveillance of Americans. Without significant reform, FISA 702 could be weaponized and abused in the future.

In particular, we believe the following four reforms are critical policies to include in any extension of FISA 702:

1) Close the Backdoor Search Loophole: The most significant danger from FISA 702 surveillance is warrantless U.S. person queries. These queries enable government personnel to conduct "backdoor searches," circumventing the need for court approval to deliberately seek out and read Americans' communications. U.S. person queries have been repeatedly misused: Peaceful protesters, campaign donors, Members of Congress, Congressional staff, journalists, state lawmakers and judges, and dating app matches of intelligence community analysts have all been subject to improper FISA 702 queries in recent years. Self-policing by agencies has failed to stop these harms in the past, and cannot be trusted to prevent them in the future. The only way to reliably protect Americans is to establish a warrant rule, and require U.S. person queries to be approved by a judge based on a probable cause standard. An effective model for doing so can be based on the Biggs amendment (H.Amdt.876) and Durbin amendment (S.Amdt.1841) offered during the 2024 FISA 702 floor debates; these proposals contain a robust warrant requirement, as well as carefully tailored exceptions that account for the limited scenarios where U.S. person queries have provided value.

2) Close the Data Broker Loophole: Intelligence agencies and law enforcement should only be able to collect Americans' sensitive records with court approval. Yet all too often this basic protection is evaded by exploiting the Data Broker Loophole, with agencies ignoring courts and instead buying Americans' data. Electronic location records, communications metadata, web browsing activity, transaction and purchase records, online search data, and many other forms of data can reveal individuals' most intimate beliefs, activities, and interactions. The government should not be able to to collect and stockpile this sensitive information en masse with no restraints other than a price tag. The Data Broker Loophole undermines one of the most significant FISA reforms Congress has enacted this century: In 2015 Congress voted overwhelmingly to ban domestic bulk collection, requiring that collection of Americans' data be individualized, and based on evidence and investigative need. Closing this loophole is vital to ensuring prior FISA reforms are upheld, and that Americans' data is safe from unfettered collection. The Fourth Amendment Is Not For Sale Act (H.R.4639; S.2576, 2024) would effectively address this issue and protect Americans' privacy.

3) Fix the Overbroad Expansion of Electronic Communications Service Providers: Prior to the last reauthorization of FISA 702, the FISA Court ruled that a certain (still not publicly disclosed) type of entity the government sought to issue directives to did not fit within the definition of "electronic communication service provider" ("ECSP"), prompting Congress to broaden this definition. Unfortunately because this topic was addressed in a rushed manner and the underlying issue was kept shrouded in secrecy, the new definition is dangerously overbroad. Absent reform, the new ECSP definition could be abused to broadly force commercial real estate entities — such as those providing office space for media headquarters, advocacy organizations, campaign offices, and law firms — to facilitate warrantless surveillance of their buildings' internet systems. Congress should restore reasonable bounds to the ECSP definition to prevent this, such as by including language offered in the 2024 Senate Intelligence Authorization Act.

4) Facilitate Better Access to Information and Amici Engagement at the FISA Court: The establishment of amici to present views in support of privacy and civil liberties has been a valuable improvement to the FISA Court. The amici provide much-needed oversight and ensure the FISA Court has access to different legal perspectives amid deliberations that have huge impact on Americans' rights but are cut off from public engagement. However the amici are still overly restricted in ability to access critical materials and proceedings. Congress should act to remove these obstacles, ensuring the amici receive access to all necessary materials, are able to communicate with each other to review legal issues effectively, and are involved in cases critical to Americans' civil rights and civil liberties. The Lee-Welch amendment (S.Amdt.1836) offered during the 2024 FISA 702 floor debate would accomplish this.

With less than five months until FISA 702 is set to expire, we urge you to use this moment to advance commonsense measures that will protect all Americans, privacy, civil rights, and civil liberties. We hope to work with you in developing and advancing policies, in particular those outlined above, in support of this goal. If you have any questions, please contact Jake Laperruque at jlaperruque@cdt.org.

Sincerely,

Access Now
ACLU
Advocacy for Principled Action in Government
Americans for Prosperity
Asian Americans Advancing Justice (AAJC)
The Brennan Center for Justice
Center for Democracy & Technology
Center for Security, Race and Rights
Chinese for Affirmative Action
Consumer Choice Center
Defending Rights & Dissent

Demand Progress
Due Process Institute
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
Fight For The Future
Free Press Action
Freedom of the Press Foundation
Government Information Watch
Muslim Advocates
National Association of Criminal Defense Lawyers
New America's Open Technology Institute
Project for Privacy and Surveillance Accountability
Project On Government Oversight
Reporters Committee for Freedom of the Press
Restore The Fourth
Stop AAPI Hate
Surveillance Technology Oversight Project
X-Lab