

July 29, 2014

Majority Leader Harry Reid
Minority Leader Mitch McConnell
United States Senate

Speaker John Boehner
Minority Leader Nancy Pelosi
United States House of Representatives

The undersigned organizations are writing in support of the compromise version of the USA FREEDOM Act introduced by Senator Patrick Leahy (D-VT) today. We ask that you allow a floor vote on the bill, without changes to the text that would weaken the bill's requirements.

We did not support the version of the USA FREEDOM Act passed by the House of Representatives, in part because the bill's most important transparency provisions were deleted before it came to the floor. Instead of requiring the Director of National Intelligence (DNI) to provide annual reports or good faith estimates of the number of individuals and U.S. persons whose communications were collected under the Foreign Intelligence Surveillance Act (FISA), the House bill required reports only on the number of "orders issued" under and "targets affected" by various sections of FISA. We feared—and subsequent government and newspaper reports have confirmed—that these statistics would understate the scope of government surveillance by orders of magnitude.

The Senate bill, however, requires the government to report on the total number of individuals or unique accounts—not only the number of "targets"—whose information is collected under different surveillance authorities. It also requires a report on the number of those who were likely U.S. persons, or, if that is not technically feasible to determine, the number who were likely located in the United States.

The bill, negotiated during two months with extensive input from the intelligence community, and civil society, is a true compromise and a crucial step in the right direction. The negotiated bill does not, however, fully restore the provisions that the House bill omitted, or take all the steps needed to restore democratic accountability to NSA surveillance.

At the intelligence community's apparent insistence, there are some loopholes in the reporting requirements. The Director of National Intelligence can avoid providing an estimate on the number of U.S. persons whose communications are collected under section 702 of FISA by certifying to Congress that such an estimate "cannot be determined accurately, including through the use of statistical sampling" and explaining why he considers an accurate estimate impossible. The bill contains useful new provisions requiring a report on the number of "back door searches" for Americans' communications under section 215, section 702, and other authorities—but exempts the

FBI from this requirement even though the FBI likely conducts more back door searches for Americans' information than any other agency.

The bill also does not guarantee public access to decisions of the Foreign Intelligence Surveillance Court. It requires a declassification review of significant FISC decisions, but the government can choose to release a summary or redacted version that omits essential information about the court's ruling. It does not address other forms of secret law, or provide any public information about surveillance conducted under Executive Order 12333, the surveillance authority that a government whistleblower recently said was the greatest threat to Americans' privacy.

For those reasons, we believe this version of the USA FREEDOM Act is a beginning, not an ending, to the necessary transparency reforms. But if signed into law, it will be the most important step Congress has taken to reform surveillance, and secrecy about surveillance, since the passage of the PATRIOT Act in 2001. We believe that this carefully crafted compromise, unlike the House-passed bill, has the support of transparency and privacy groups and the votes needed to pass both chambers of Congress. We ask you to bring it to the floor.

Sincerely,

Access

American Association of Law Libraries

American Civil Liberties Union

American Library Association

Association of Research Libraries

Bill of Rights Defense Committee

Center for Democracy and Technology

Center for Effective Government

The Constitution Project

Defending Dissent Foundation

Free Press Action Fund

FreedomWorks

Government Accountability Project (GAP)

James Madison Project

Liberty Coalition

National Security Counselors

New America Foundation's Open Technology Institute

OpenTheGovernment.org

PEN American Center

Project On Government Oversight (POGO)

The Sunlight Foundation

Cc: Senator Patrick Leahy