

[Salutation]

We urge you to support the passage of the NDO Fairness Act.

This bill, H.R. 7072, passed by a unanimous, bipartisan voice vote in the House Judiciary Committee on April 6. Once enacted into law, this measure will rein in the widespread practice by the government in surveilling Americans' email and internet records and then obtaining a non-disclosure order (NDO) to block service providers from notifying their customers that their personal information has been searched.

Under current practice, thousands of Americans – including many who are not even under investigation or suspected of any wrongdoing – will never know that records that could potentially reveal their health status, financial transactions, and personal relationships have been disclosed to the government. Recent media reports reveal that federal agencies have obtained non-disclosure orders when demanding the private data of Members of Congress, journalists at major news outlets, and law-abiding companies. If powerful individuals and institutions can be targeted in secret, just imagine how little power the average individual has in the face of such actions.

People who have been subject to surveillance should have a right to know that their personal information has been obtained by the government. Among other things, the secrecy imposed by a non-disclosure order has the effect of denying the person being investigated the ability to challenge such an order in court. In such cases, there may be no way to hold the government accountable for unlawful surveillance—a state of affairs that only increases the likelihood of improper conduct by the government.

The NDO Fairness Act is an important first step toward bringing balance to this system by amending 18 U.S.C. 2705 to require prosecutors to justify their non-disclosure orders in court and limit both initial orders and any extensions to a reasonable time period of 60 days. It would also require notice to customers 72 hours after these orders expire, including what information was disclosed.

This Act is not a comprehensive solution to the problem of notice. There are service providers who do not provide notice to their customers when the government obtains their data. In many of those cases, the targets of surveillance will continue to be unaware of the surveillance, as the government's own legal obligations to notify the targets are far too weak. Nonetheless, the NDO Fairness Act makes a significant improvement to the status quo and could serve as a model for further efforts to contain secret government surveillance and data collection.

That is no doubt why the NDO Fairness Act enjoys wide, bipartisan support in the Judiciary Committee. It was introduced by Chairman Jerry Nadler and Rep. Scott Fitzgerald, and the committee markup session featured enthusiastic support from Ranking Member Jordan as well as other leading members of both parties.

The NDO Fairness Act is an important curb on governmental power that will help protect our rights without weakening the government's ability to identify wrongdoers. We urge you to support the Act. And we stand ready to support and amplify your efforts.

Thank you.

Sincerely,

Advocacy for Principled Action in Government
American Civil Liberties Union
Americans for Prosperity
Brennan Center for Justice at NYU School of Law
Demand Progress
Due Process
Free Press Action
FreedomWorks
Government Information Watch
Muslim Justice League
Project for Privacy and Surveillance Accountability
Restore The Fourth