



Dec. 1, 2021

The Honorable Jack Reed, Chairman
The Honorable James Inhofe, Ranking Member
U.S. Senate Committee on Armed Services
Russell Senate Office Building, Room 228
Washington, DC 20510

The Honorable Mark Warner, Chairman
The Honorable Marco Rubio, Vice Chairman
U.S. Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

The Honorable Richard Durbin, Chair
The Honorable Chuck Grassley, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairs and Ranking Members:

As a broad coalition of civil liberties organizations, we urge you to join the bipartisan effort to support Sen. Patrick Leahy and Sen. Mike Lee's amendment, #4705, to the National Defense Authorization Act of 2022. This amendment would require the declassification of significant decisions, orders and opinions issued by the Foreign Intelligence Surveillance Court (FISC) and the Foreign Intelligence Surveillance Court of Review (FISCR) before the passage of the USA Freedom Act of 2015.

Congress included declassification requirements for FISC opinions in the USA Freedom Act because of strong bipartisan support for creating transparency around secret legal conclusions. This has helped produce a better understanding by the American public of the reasoning of the two FISA courts and the programs they oversee. Unfortunately, the executive branch has declined to apply these requirements to opinions that predate enactment of the USA Freedom Act in June 2015. This is why Congress must act again to clarify that older FISC opinions with interpretations and conclusions must also be declassified.

This amendment gives the Director of National Intelligence one year to complete the review required under section 602 of the Foreign Intelligence Surveillance Act “to the greatest extent practicable” within the requirements of existing law. The executive branch will retain the ability to redact any information that would harm national security. These safeguards, in place for recently released opinions, have allowed such disclosures to occur without any evidence that they have compromised the ability of the government to protect the American people. Indeed, by virtue of being older, these pre-2015 opinions are even less likely to contain currently sensitive information.

The secret surveillance courts that oversee FISA have issued legal opinions for years that impact the civil liberties of millions of Americans. Given their lack of transparency and oversight, these two courts are at best outliers in our constitutional system. Sen. Leahy and Sen. Lee’s amendment would help restore the principle of transparency in government operations without sacrificing national security.

For these reasons, we urge you to support this amendment to the NDAA.

Sincerely,

American Civil Liberties Union

Americans for Prosperity

Brennan Center for Justice

Demand Progress

Due Process Institute

Free Press Action

FreedomWorks

Project for Privacy and Surveillance Accountability

cc: Senate Majority Leader Charles Schumer
Senate Majority Whip Richard Durbin
Senate Minority Leader Mitch McConnell
Senate Minority Whip John Thune
House Speaker Nancy Pelosi
House Majority Leader Steny Hoyer
House Majority Whip James Clyburn
House Republican Leader Kevin McCarthy
House Republican Whip Steve Scalise
Members of the Senate Armed Services Committee
Members of the Senate Select Committee on Intelligence
Members of the Senate Judiciary Committee