

June 5, 2026

The Honorable Mike Johnson  
Speaker of the House  
H-232, United States Capitol  
Washington, DC 20515

The Honorable Steve Scalise  
House Majority Leader  
H-107, United States Capitol  
Washington, DC 20515

The Honorable Hakeem Jeffries  
House Minority Leader  
H-204, United States Capitol  
Washington, DC 20515

The Honorable John Thune  
Senate Majority Leader  
S-230, United States Capitol  
Washington, DC 20510

The Honorable Charles E. Schumer  
Senate Minority Leader  
S-221, United States Capitol  
Washington, DC 20510

***Re: In Support of The NDO Fairness Act (H.R. 6048 and S. 3663)***

Dear Speaker Johnson, Majority Leader Thune, Majority Leader Scalise, Minority Leader Jeffries, and Minority Leader Schumer:

We, the undersigned, write to urge swift passage of the NDO Fairness Act (H.R. 6048 and S. 3663) and to ask that the bill be sent to President Trump for his signature at the earliest possible opportunity. Introduced in the House by Representatives Scott Fitzgerald (R-Wis.) and Jerrold Nadler (D-N.Y.) and in the Senate by Senators Mike Lee (R-Utah) and Chris Coons (D-Del.), the legislation restores meaningful judicial review to the issuance of non-disclosure orders (“NDOs”) under the Stored Communications Act, 18 U.S.C. § 2705(b). The need for reform is urgent, the legislation is narrowly drawn, and it enjoys broad bipartisan support.

NDOs prohibit electronic communications providers from notifying their customers that the federal government has obtained the customer’s emails, text messages, location data, and other private records. Originally conceived as a narrow exception for the limited set of investigations genuinely requiring temporary secrecy, NDOs have become the rule rather than the exception. Major providers now receive thousands of NDOs every year, the great majority supported by conclusory boilerplate applications with no factual showing, and such NDOs are then routinely extended for years without end. The consequence is a sprawling regime of surveillance overreach in which the targets of the searches never learn that the searches occurred and therefore cannot contest them. This represents a massive departure from the way law enforcement traditionally gathered physical evidence. Law enforcement would serve warrants or subpoenas directly on targets for information, allowing those impacted to assert any constitutional rights or privileges they may have.

The recent revelations surrounding former Special Counsel Jack Smith’s “Arctic Frost” investigation make the cost of inaction impossible to ignore. Special Counsel Smith obtained the telephone records of sitting United States Senators and Members of Congress, then concealed those searches behind boilerplate NDOs. Over the course of the investigation, Special Counsel Smith issued 197 subpoenas

seeking testimony, communications, and records concerning at least 430 named Republican individuals and entities. None of the affected lawmakers or citizens was permitted to know that the government had taken their data, much less to challenge the seizure.

As Senator Mike Lee put it, “The government should not be able to hide domestic spying activities behind Non-Disclosure Orders, especially outrageous partisan abuses like Arctic Frost.” Whatever one’s view of the underlying investigation, the principle is plain: NDOs should not be pro forma; they should be applied for, and granted, on a deliberate, as-necessary basis. A surveillance tool that can be used to silently sweep up the communications of United States Senators—who occupy a separate branch of government—is a tool that is too easily abused against ordinary Americans, journalists, religious leaders, and anyone else the government finds inconvenient.

The NDO Fairness Act addresses these abuses without compromising the legitimate needs of law enforcement. Drawing from the bill’s amendments to the Stored Communications Act, the legislation:

- Requires the government to make written findings of fact that an NDO is necessary to prevent a specifically enumerated adverse result—flight from prosecution, destruction of evidence, witness intimidation, danger to life, or serious jeopardy to an ongoing investigation—rather than rely on conclusory boilerplate assertions without any facts or evidence proffered;
- Requires that NDOs be narrowly tailored, with no less restrictive alternative available—the same standard judges already apply when an NDO is challenged in court after its issued;
- Requires the issuing court to review the underlying legal demand, ending the prevalent practice of “blanket” or “prospective” NDOs that purport to cover unspecified future demands where the judge does not even know what targets will be impacted and under what circumstances;
- Requires the application to disclose whether the targeted account holder is already aware of the investigation and whether the account holder is a suspect or a victim;
- Limits NDOs to ninety days initially, with ninety-day extensions available only upon a renewed showing of necessity (with an exception in cases involving child sexual exploitation that would allow for one year with one-year extensions);
- Provides for limited notice to affected users upon the expiration of an NDO, on the model of the existing notice requirement for delayed-notice physical search warrants under Federal Rule of Criminal Procedure 41; and
- Requires the Attorney General to report annually on the number of NDOs sought, issued, extended, and the categories of users affected—a basic transparency measure long applied to comparable surveillance authorities, including “sneak-and-peek” delayed-notice warrants.

These reforms are modest and overdue. This proposal would not abolish nondisclosure orders; it would restore it to its proper, narrow role. Each provision tracks the standards courts already apply when an NDO is actually litigated and is consistent with basic Constitutional principles. Importantly, the legislation preserves every legitimate investigative interest of federal law enforcement, including a special accommodation for cases involving the sexual exploitation of children. And the legislation does not change the factors under which law enforcement can obtain an NDO, such as when there is concern for harm to an individual, flight from prosecution, or the destruction of evidence.

The legislative momentum is real. In the 118th Congress, the House passed an earlier version of this bill, H.R. 3089, by a roll call vote of 412 to 0. In November 2025, the House Judiciary Committee approved H.R. 6048 unanimously, and Senators Lee and Coons introduced the Senate companion the following January. The Trump administration has also signaled its support. What remains is a floor vote in each chamber and a presidential signature.

We respectfully urge House and Senate leadership to bring the NDO Fairness Act to the floor without further delay, and we urge President Trump to sign it the moment it reaches his desk. Restoring meaningful judicial review to the federal government's secret surveillance of Americans' private communications is among the most basic responsibilities of this Congress, and it is one this Congress can discharge today.

Sincerely,

Ashley Baker, Executive Director, The Committee for Justice

Jeffrey Depp, Senior Counsel, The Committee for Justice

Saulius "Saul" Anuzis, President, American Association of Senior Citizens

Patrick M. Brenner, President & CEO, Southwest Public Policy Institute

Robert H. Bork Jr.

Jon Caldara, President & CEO, The Independence Institute

Bob Carlstrom, President, The Carlstrom Group

Daniel Castro, President, Information Technology and Innovation Foundation

Will Chamberlain, Senior Counsel, Article III Project

James Czerniawski, Head of Emerging Technology Policy, Consumer Choice Center

Mike Davis, President & Founder, Article III Project

Jon Decker, Senior Fellow, Parkview Institute

James Edwards, Founder & Executive Director, Conservatives for Property Rights

James Erwin, Executive Director, Digital Liberty

Brent Gardner, Chief Government Affairs Officer, Americans for Prosperity

Josh Hammer, Senior Counsel, Internet Accountability Project

Otto Heck, Chief Operating Officer, Internet Accountability Project

Luke Hogg, Senior Fellow, Foundation for American Innovation\*

Douglas Holtz-Eakin, President, American Action Forum\*

Tim Jones, Fmr. Speaker, Missouri House; Founder, Leadership for America Institute

Karen Kerrigan, President & CEO, Small Business & Entrepreneurship Council

George Landrith, President, Frontiers of Freedom

James L. Martin, Founder/Chairman, 60 Plus Association

Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action

Wade Miller, Executive Director, Citizens for Renewing America

Lisa B. Nelson, CEO, ALEC Action

Yaël Ossowski, Deputy Director, Consumer Choice Center

Kevin Riffe, Chairman, West Virginia Center-Right Coalition

Charles Sauer, President, Market Institute

Paul Steidler, Senior Fellow, Lexington Institute

Stephen Stepanek, President, Pine Tree Public Policy Institute

John Tamny, President, Parkview Institute

Marshal Trigg, Junior Counsel, Restoring Integrity & Trust in Elections

Rebecca Weber, CEO, AMAC – Association of Mature American Citizens

Tony Woodlief, Senior Executive Vice President & Senior Fellow, Center for Practical Federalism

*\*Organization listed for affiliation purposes only.*

Cc: Senators Lee and Coons, Representatives Fitzgerald and Nadler