



Dec. 21, 2021

The Honorable Jerry Nadler  
Chair, House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Nadler:

We appreciate the leadership you have shown over the years in protecting Americans from surveillance abuse. When unconstitutional surveillance programs like the NSA's bulk collection of Americans' phone records have been revealed, you have spoken out strongly. We once again need your leadership, this time to counter another form of government surveillance abuse by holding hearings for your bill, The Fourth Amendment Is Not For Sale Act (H.R. 2738).

This legislation enjoys bipartisan support in both chambers for a good reason – what the government is doing is alarming. Intelligence and law enforcement agencies, from the Internal Revenue Service to the Drug Enforcement Administration, the Federal Bureau of Investigation, and Customs and Border Protection, allege they can lawfully avoid the constitutional requirement for probable cause warrants by simply buying our personal information from commercial data brokers. They can do this, they claim, because the relevant federal statutes were written at a time when apps and digital brokers did not exist and therefore do not specifically prohibit such actions.

As a result, data from apps most Americans routinely use are open to warrantless examination by the government. Data sources that the government has exploited include gaming apps that produce data that can be used to target children and a Muslim prayer app that can be used to target Americans by their religion. Communities of color, more reliant on cell phones for access to the internet, are disproportionately impacted. Moreover, the data in question include geolocation information and other details that the government can use to determine Americans' activities, associations, and even beliefs. As the Supreme Court held in the context of cell phones in *Riley v. California* (2014), digital technologies “hold for many Americans ‘the privacies of life.’”

Despite a few media reports, most Americans are still unaware that our government can obtain our most personal information by simply opening the federal wallet. If they knew this, they would undoubtedly find this practice offensive to the spirit of the Constitution.

They would see it as a threat to the First and Fourth Amendment rights of every American. But without a hearing to drive the news, most Americans will never know how seriously their privacy has been compromised.

We believe hearings in the House Judiciary Committee in early 2022 – underscoring these disturbing facts and perhaps uncovering new ones – would inform the American public and create the momentum needed to turn your bill into law. We urge you to hold hearings on The Fourth Amendment Is Not For Sale Act in the coming session.

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: Rep. Zoe Lofgren