

September 28, 2022

The Honorable Jack Reed  
Chairman  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

The Honorable James Inhofe  
Ranking Member  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 2051

The Honorable Adam Smith  
Chairman  
House Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

The Honorable Mike Rogers  
Ranking Member  
House Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

**Re: Preserve Jacobs-Davidson Amendment to the National Defense Authorization Act for Fiscal Year 2023**

Dear Chairman Reed, Ranking Member Inhofe, Chairman Smith, and Ranking Member Rogers:

We write to urge you to preserve in the National Defense Authorization Act for Fiscal Year 2023 (NDAA) an amendment offered by Representatives Jacobs and Davidson, which the House of Representatives adopted en bloc without opposition, and which Senators Wyden and Daines have offered in the Senate. This amendment brings critical transparency to a vital public debate.

**This amendment would provide Congress and the public with only the information necessary to assess the profound privacy consequences of the Department of Defense buying its way around the Fourth Amendment. Specifically, it requires the Department of Defense to disclose which components are purchasing smartphone location and internet activity records about people in the United States without court orders.**

Government agencies have yet to be transparent about their purchase of Americans' sensitive information without court orders — and yet this policy debate is already long overdue. Investigations by members of Congress and the media have already produced disturbing details. Most recently, Vice's Motherboard revealed that "multiple branches of the US military and a civilian law enforcement agency have bought access to a powerful internet monitoring tool that claims to cover over 90 percent of the world's internet traffic," including "people's email data, browsing history," and other types of information that experts describe as "everything."

These investigations and reports have also revealed: (1) government claims that data brokers are not bound by the Electronic Communications Privacy Act's carefully crafted privacy protections,

which otherwise prohibit the government from buying this information; (2) the Defense Intelligence Agency's conclusion that it may purchase location information in bulk, even when that information includes Americans' data, despite the Supreme Court's holding in *Carpenter v. US*; and (3) the agencies exploiting the loopholes in question include at least the Department of Homeland Security, the Drug Enforcement Administration, the Internal Revenue Service, and the Federal Bureau of Investigation. Most relevant to the Jacobs-Davidson amendment is the Department of Defense's ongoing refusal to disclose information that it has already determined *is not classified*: which Defense components are buying information about Americans' smartphone location and internet activity.

The purchase of information that would otherwise require a court order to obtain has critical implications for Americans' constitutional rights. Quite simply, despite having no Congressional or judicial authorization, the executive branch has taken the position that if it buys data, Americans have no privacy rights at all.

Transparency is crucial to ensuring the exploitation of this loophole does not further outpace Congressional, judicial, and public oversight. Accordingly, we urge you to ensure the Jacobs-Davidson amendment remains in the NDAA by including the Wyden-Daines amendment to the Senate NDAA and retaining this language in conference.

Sincerely,

Advocacy for Principled Action in Government  
American Civil Liberties Union  
Americans for Prosperity  
Brennan Center for Justice at NYU School of Law  
Center For Democracy & Technology  
Council on American-Islamic Relations  
Demand Progress Action  
Due Process Institute  
Electronic Frontier Foundation  
Fight for the Future  
Freedom House  
FreedomWorks  
Free Press Action  
Government Information Watch  
Muslim Justice League  
National Association of Criminal Defense Lawyers  
Project for Privacy & Surveillance Accountability  
Project On Government Oversight

Restore The Fourth  
Surveillance Technology Oversight Project  
Wikimedia Foundation  
X-Lab