July 29, 2014

Majority Leader Harry Reid Minority Leader Mitch McConnell United States Senate

Speaker John Boehner Minority Leader Nancy Pelosi United States House of Representatives

The undersigned organizations are writing in support of the compromise version of the USA FREEDOM Act introduced by Senator Patrick Leahy (D-VT) today. We ask that you allow a floor vote on the bill, without changes to the text that would weaken the bill's requirements.

We did not support the version of the USA FREEDOM Act passed by the House of Representatives, in part because the bill's most important transparency provisions were deleted before it came to the floor. Instead of requiring the Director of National Intelligence (DNI) to provide annual reports or good faith estimates of the number of individuals and U.S. persons whose communications were collected under the Foreign Intelligence Surveillance Act (FISA), the House bill required reports only on the number of "orders issued" under and "targets affected" by various sections of FISA. We feared and subsequent government and newspaper reports have confirmed—that these statistics would understate the scope of government surveillance by orders of magnitude.

The Senate bill, however, requires the government to report on the total number of individuals or unique accounts—not only the number of "targets"—whose information is collected under different surveillance authorities. It also requires a report on the number of those who were likely U.S. persons, or, if that is not technically feasible to determine, the number who were likely located in the United States.

The bill, negotiated during two months with extensive input from the intelligence community, and civil society, is a true compromise and a crucial step in the right direction. The negotiated bill does not, however, fully restore the provisions that the House bill omitted, or take all the steps needed to restore democratic accountability to NSA surveillance.

At the intelligence community's apparent insistence, there are some loopholes in the reporting requirements. The Director of National Intelligence can avoid providing an estimate on the number of U.S. persons whose communications are collected under section of 702 of FISA by certifying to Congress that such an estimate "cannot be determined accurately, including through the use of statistical sampling" and explaining why he considers an accurate estimate impossible. The bill contains useful new provisions requiring a report on the number of "back door searches" for Americans' communications under section 215, section 702, and other authorities—but exempts the

FBI from this requirement even though the FBI likely conducts more back door searches for Americans' information than any other agency.

The bill also does not guarantee public access to decisions of the Foreign Intelligence Surveillance Court. It requires a declassification review of significant FISC decisions, but the government can choose to release a summary or redacted version that omits essential information about the court's ruling. It does not address other forms of secret law, or provide any public information about surveillance conducted under Executive Order 12333, the surveillance authority that a government whistleblower recently said was the greatest threat to Americans' privacy.

For those reasons, we believe this version of the USA FREEDOM Act is a beginning, not an ending, to the necessary transparency reforms. But if signed into law, it will be the most important step Congress has taken to reform surveillance, and secrecy about surveillance, since the passage of the PATRIOT Act in 2001. We believe that this carefully crafted compromise, unlike the House-passed bill, has the support of transparency and privacy groups and the votes needed to pass both chambers of Congress. We ask you to bring it to the floor.

Sincerely,

Access

American Association of Law Libraries American Civil Liberties Union American Library Association Association of Research Libraries Bill of Rights Defense Committee Center for Democracy and Technology Center for Effective Government The Constitution Project **Defending Dissent Foundation** Free Press Action Fund FreedomWorks Government Accountability Project (GAP) James Madison Project Liberty Coalition National Security Counselors New America Foundation's Open Technology Institute OpenTheGovernment.org **PEN** American Center Project On Government Oversight (POGO) The Sunlight Foundation

Cc: Senator Patrick Leahy