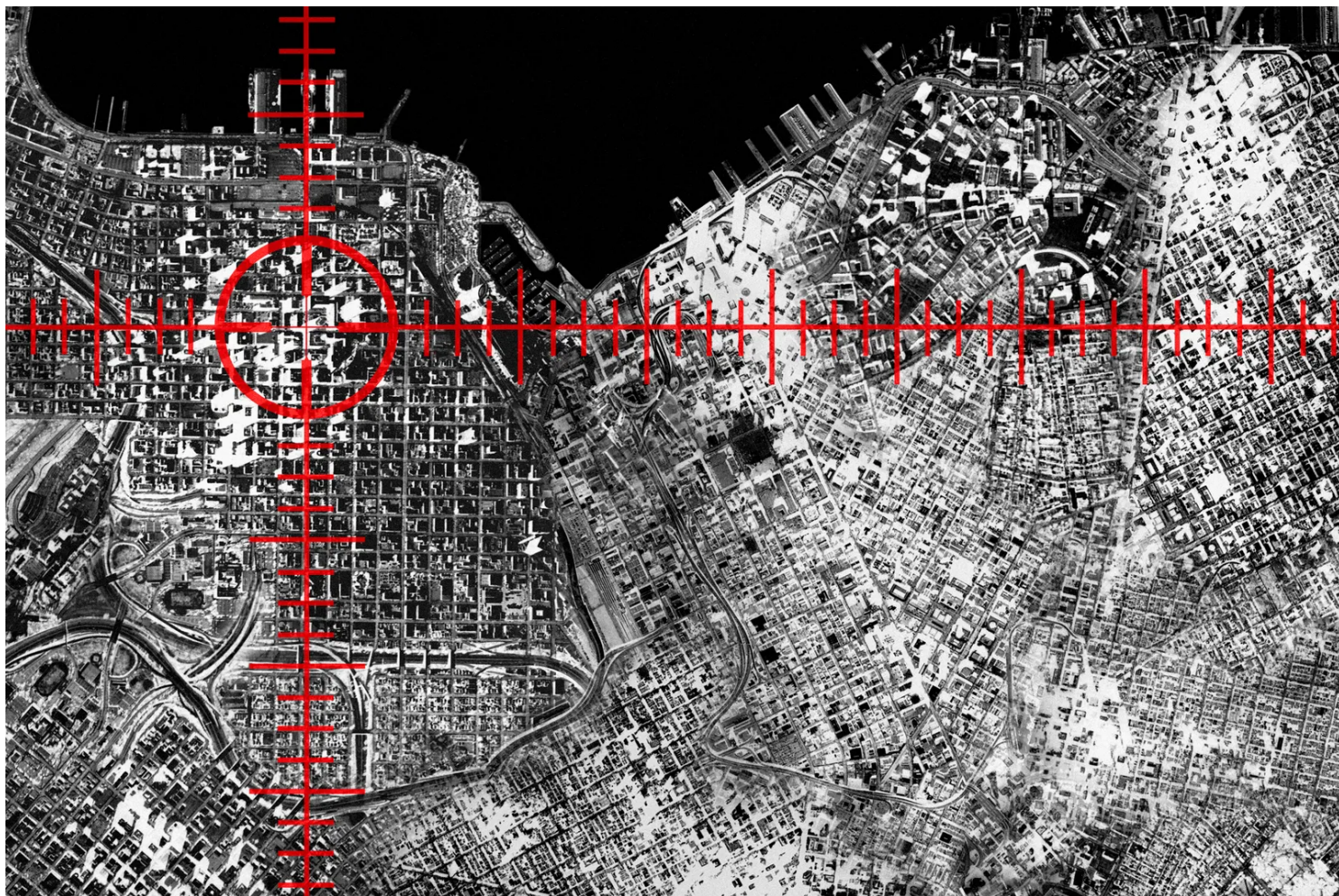


DELL CAMERON

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# US Spies Are Buying Americans' Private Data. Congress Has a New Chance to Stop It

An amendment to the National Defense Authorization Act would forbid government entities from buying Americans' search histories, location data, and more.



PHOTOGRAPH: JOHN LUND/GETTY IMAGES



A **“MUST-PASS” DEFENSE** bill wending its way through the United States House of Representatives may be amended to abolish the government practice of buying information on Americans that the country’s highest court has said police need a warrant to seize. Though it’s far too early to assess the odds of the legislation surviving the coming months of debate, it’s currently one of the relatively few amendments to garner support from both Republican and Democratic members.



WIRED Security



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Introduction of the amendment follows a report declassified by the Office of the Director of National Intelligence—the nation’s top spy—which last month revealed that intelligence and law enforcement agencies have been buying up data on Americans that the government’s own experts described as “the same type” of information the US Supreme Court in 2018 sought to shield against warrantless searches and seizures.

A handful of House lawmakers, Republicans and Democrats alike, have declared support for the amendment submitted late last week by representatives Warren Davidson, a Republican from Ohio, and Sara Jacobs, a California Democrat. The bipartisan duo is seeking stronger warrant requirements for the surveillant data constantly accumulated by people’s cellphones. They argue that it shouldn’t matter whether a company is willing to accept payment from the government in lieu of a judge’s permission.

“Warrantless mass surveillance infringes the Constitutionally protected right to privacy,” says Davidson. The amendment, he says, is aimed chiefly at preventing

the government from “circumventing the Fourth Amendment” by purchasing “your location data, browsing history, or what you look at online.”

A copy of the Davidson-Jacobs amendment reviewed by WIRED shows that the warrant requirements it aims to bolster focus specifically on people’s web browsing and internet search history, along with GPS coordinates and other location information derived primarily from cellphones. It further encapsulates “Fourth Amendment protected information” and would bar law enforcement agencies of all levels of jurisdiction from exchanging “anything of value” for information about people that would typically require a “warrant, court order, or subpoena under law.”

The amendment contains an exception for anonymous information that it describes as “reasonably” immune to being de-anonymized; a legal term of art that would defer to a court’s analysis of a case’s more fluid technicalities. A judge might, for instance, find it unreasonable to assume a data set is well obscured based simply on the word of a data broker. The Federal Trade Commission’s Privacy and Identity Protection Division noted last year that claims that data is anonymized “are often deceptive,” adding that “significant research” reflects how trivial it often is to reidentify “anonymized data.”

The amendment was introduced Friday to defense legislation that will ultimately authorize a range of policies and programs consuming much of the Pentagon’s nearly \$890 billion budget next year. The National Defense Authorization Act (NDAA), which Congress is required to pass annually, is typically pieced together from hundreds, if not thousands, of amendments.

This year negotiations are particularly contentious, given the split chamber and a mess of interparty strife, and only one in six NDAA amendments introduced so far have apparent bipartisan support.

Republican members Nancy Mace of South Carolina, Kelly Armstrong of North Dakota, and Ben Cline of Virginia have backed the Davidson-Jacobs amendment, according to the House Rules Committee website. They’re joined by Democrats Pramila Jayapal of Washington, Zoe Lofgren of California, and Veronica Escobar of Texas.



Jacobs previously coauthored a related amendment with Davidson that attempted to compel the US military to disclose annually how often its various spy agencies purchase Americans' smartphone and web-browsing data. The amendment was stripped from the final version of last year's NDAA.

The data broker report declassified last month by the US director of national intelligence, Avril Haines, stressed that neither presently, nor at any point in the past, would the government be permitted to force “billions of people to carry location-tracking devices on their persons at all times.” That is, nevertheless, what is happening today, independent of the government's actions. The unceasing explosions of new technologies are clashing more and more frequently with the nation's antiquated privacy laws, giving the Department of Homeland Security, Defense Intelligence Agency, and others like them an unmistakable loophole through which virtually anyone can be surveilled without a reason.

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Demand Progress senior policy counsel Sean Vitka, whose group has spent years lobbying for privacy reform in the face of the government's growing and often secret reliance on data brokers, says the relatively untracked purchases—up to and including “turnkey lists of everyone who has gone to an abortion clinic, a place of worship, a rehab facility, or a protest”—represent an “existential threat” to the right to privacy. The Davidson-Jacobs amendment marks a “critical opportunity to get [federal lawmakers] on the record,” adds Vitka.

The American Civil Liberties Union intends to score how lawmakers vote on the amendment, WIRED has learned. The lawmakers' effort is also being supported by the Electronic Frontier Foundation, National Association of Criminal Defense Lawyers, FreedomWorks, and the Brennan Center for Justice at NYU School of Law, among dozens of similar civil society organizations.

Congressional staffers and others privy to ongoing conferencing over privacy matters on Capitol Hill say that regardless of whether the amendment succeeds, the focus on data brokers is just a prelude to a bigger fight coming this fall over the potential sunset of one of the spy community's powerful tools, Section 702 of the Foreign Intelligence Surveillance Act, the survivability of which is anything but assured.

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