

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. _____
OFFERED BY MR. FITZGERALD OF WISCONSIN

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “NDO Fairness Act
3 of 2025”.

4 SEC. 2. PRECLUSION OF NOTICE.

5 (a) IN GENERAL.—Section 2705(b) of title 18,
6 United States Code, is amended to read as follows:

7 “(b) PRECLUSION OF NOTICE.—

8 “(1) APPLICATION.—

9 “(A) IN GENERAL.—A governmental entity
10 that is seeking a warrant, order, or subpoena
11 under section 2703, when it is not required to
12 notify the customer or subscriber, or to the ex-
13 tent that it may delay such notice pursuant to
14 subsection (a), may apply to a court for an
15 order, subject to paragraph (6), directing a pro-
16 vider of electronic communications service or re-
17 mote computing service to which a warrant,
18 order, or subpoena under section 2703 is di-

1 rected not to notify any other person of the ex-
2 istence of the warrant, order, or subpoena.

3 “(B) LENGTH.—An order granted under
4 subparagraph (A) shall be in effect—

5 “(i) for a period of not more than one
6 year if the governmental entity notifies the
7 court of a material change in cir-
8 cumstances, as set forth in paragraph (4),
9 if the nature of the offense pertains to
10 child pornography, as defined in section
11 2256, or sexual exploitation of children, as
12 described in section 2251, or any Federal,
13 including military, State, or tribal offense
14 that is the substantial equivalent; or

15 “(ii) for a period of not more than 90
16 days for all other investigations.

17 “(C) OTHER REQUIREMENTS.—

18 “(i) IN GENERAL.—An application for
19 an order under subparagraph (A) shall
20 state, to the best of the applicant’s knowl-
21 edge, whether the named customer or sub-
22 scriber whose information is sought by the
23 warrant, order, or subpoena under section
24 2703—

1 “(I) is aware of the warrant,
2 order, subpoena, or underlying inves-
3 tigation; and

4 “(II) is suspected of involvement
5 in the commission of the crime under
6 investigation.

7 “(ii) ORDERS.—An order granted
8 under this paragraph may not direct, or
9 otherwise require, a provider of electronic
10 communications service or remote com-
11 puting service to provide notification of the
12 expiration of order to the court or govern-
13 ment entity that sought the order.

14 “(2) DETERMINATION.—

15 “(A) IN GENERAL.—The court may not
16 grant a request for an order made under para-
17 graph (1), or an extension of such order re-
18 quested by the governmental entity pursuant to
19 paragraph (3), unless—

20 “(i) the court issues a written deter-
21 mination, based on specific and articulable
22 facts, and including written findings of
23 fact and conclusions of law, that it is likely
24 that not granting the request will result
25 in—

1 “(I) endangering the life or phys-
2 ical safety of an individual;

3 “(II) flight from prosecution;

4 “(III) destruction of or tam-
5 pering with evidence;

6 “(IV) intimidation of potential
7 witnesses; or

8 “(V) otherwise seriously jeopard-
9 izing an investigation or unduly delay-
10 ing a trial; and

11 “(ii) the order is narrowly tailored
12 and there is no less restrictive alternative,
13 including notification to an individual or
14 organization within or providing legal rep-
15 resentation to the named customer or sub-
16 scriber, that is not likely to result in an
17 adverse result as described in subclauses
18 (I) through (V) of subparagraph (A)(i);
19 and

20 “(iii) the court has reviewed the indi-
21 vidual warrant, order, or subpoena under
22 section 2703 to which the order issued
23 under this paragraph applies.

24 “(B) NATURE OF THE OFFENSE.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), the court may consider the nature of
3 the offense in issuing a determination
4 under subparagraph (A).

5 “(ii) PRESUMPTION.—If the court de-
6 termines there is a reasonable belief the
7 nature of the offense pertains to child por-
8 nography, as defined in section 2256, or
9 sexual exploitation of children, as described
10 in section 2251, or any Federal, including
11 military, State, or tribal offense that is the
12 substantial equivalent, the court may pre-
13 sume that one or more of the adverse re-
14 sults described in subclauses (I) through
15 (V) of subparagraph (A)(i) are met and
16 may issue an order consistent with this
17 subsection without a written decision under
18 subparagraph (A)(i).

19 “(3) EXTENSION.—A governmental entity may
20 request one or more extensions of an order granted
21 under paragraph (2) of not more than 90 days for
22 each such extension. The court may only grant such
23 an extension if the court makes a written determina-
24 tion required under paragraph (2)(A).

1 “(4) NOTIFICATION OF CHANGED CIR-
2 CUMSTANCES.—If the need for the order issued
3 under paragraph (2) changes materially, the govern-
4 mental entity that requested the order shall notify
5 the court within a reasonable period of time (not to
6 exceed 14 days) of the changed circumstances, and
7 the court shall reassess the order and modify or va-
8 cate as appropriate.

9 “(5) OPPORTUNITY TO BE HEARD.—

10 “(A) IN GENERAL.—Upon an application,
11 petition, or motion by a provider of electronic
12 communications service or remote computing
13 service or person acting on behalf of the pro-
14 vider to which an order under paragraph (2)
15 (or an extension under paragraph (3)) has been
16 issued, the court may modify or vacate the
17 order if—

18 “(i) the order does not meet require-
19 ments provided in paragraph (2) or (3); or

20 “(ii) compliance with the order is un-
21 reasonable or otherwise unlawful.

22 “(B) STAY OF DISCLOSURE OF NAMED
23 CUSTOMER OR SUBSCRIBER COMMUNICATIONS
24 OR RECORDS.—A provider’s obligation to dis-
25 close the information requested in the warrant,

1 order, or subpoena to which the order in para-
2 graph (1) applies is stayed upon the filing of
3 the application, petition, or motion under this
4 paragraph pending resolution of the application,
5 petition, or motion, unless the court with juris-
6 diction over the challenge determines based on
7 a showing by the governmental entity that the
8 stay should be lifted in whole or in part prior
9 to resolution.

10 “(C) FINALITY OF ORDER.—The decision
11 of the court resolving an application, petition,
12 or motion under this paragraph shall constitute
13 a final, appealable order.

14 “(6) EXCEPTION.—A provider of electronic
15 communications service or remote computing service
16 to which an order under paragraph (2) applies, or
17 an officer, employee, or agent thereof, may disclose
18 information otherwise subject to any applicable non-
19 disclosure requirement to—

20 “(A) those persons to whom disclosure is
21 necessary in order to comply with the warrant,
22 order, or subpoena;

23 “(B) an attorney in order to obtain legal
24 advice or assistance regarding the order issued

1 under paragraph (2) or the warrant, order, or
2 subpoena to which the order applies; and

3 “(C) any person the court determines can
4 be notified of the warrant, order, or subpoena.

5 “(7) SCOPE OF NONDISCLOSURE.—Any person
6 to whom disclosure is made under paragraph (6)
7 (other than the governmental entity) shall be subject
8 to the nondisclosure requirements applicable to the
9 person to whom the order is issued. Any recipient
10 authorized under this subsection to disclose to a per-
11 son information otherwise subject to a nondisclosure
12 requirement shall notify the person of the applicable
13 nondisclosure requirement.

14 “(8) SUPPORTING DOCUMENTATION.—Upon
15 serving a provider of electronic communications serv-
16 ice or remote computing service with an order grant-
17 ed under paragraph (2), or an extension of such
18 order granted under paragraph (3), the govern-
19 mental entity shall include a copy of the warrant,
20 order, or subpoena to which the nondisclosure order
21 applies.

22 “(9) EXPIRATION OF ORDER PRECLUDING NO-
23 TICE.—Upon expiration of an order issued under
24 paragraph (2) or, if an extension has been granted
25 under paragraph (3), expiration of the extension, the

1 governmental entity shall deliver to the named cus-
2 tomer or subscriber, by at least 2 methods, which
3 shall be personal service, registered or first-class
4 mail, electronic mail, or other means approved by
5 the court as reasonably calculated to reach the
6 named customer or subscriber within 5 business
7 days of the expiration of the order—

8 “(A) a copy of the warrant, order, or sub-
9 poena; and

10 “(B) notice that informs the named cus-
11 tomer or subscriber—

12 “(i) of the nature of the law enforce-
13 ment inquiry with reasonable specificity;

14 “(ii) that information maintained for
15 such customer or subscriber by the pro-
16 vider of electronic communications service
17 or remote computing service to which the
18 warrant, order, or subpoena under section
19 2703, was directed was supplied to or re-
20 quested by the government entity;

21 “(iii) that notification of such cus-
22 tomer or subscriber was precluded by court
23 order;

24 “(iv) of the identity of the court au-
25 thorizing the preclusion of notice;

1 “(v) of the provision of this chapter
2 under which the preclusion of notice was
3 authorized; and

4 “(vi) that the government will, upon
5 request by the customer or subscriber
6 made within 180 days after receiving noti-
7 fication under this paragraph, provide the
8 named customer or subscriber with a copy
9 of the information that was disclosed in re-
10 sponse to the warrant, order or subpoena,
11 or in the event that no information was
12 disclosed, a written certification that no in-
13 formation was disclosed.

14 “(10) COPY OF INFORMATION DISCLOSED.—
15 Upon expiration of the order precluding notice
16 issued under paragraph (2) or (3) of this subsection,
17 and at the request of the named customer or sub-
18 scriber made within 180 days of receiving notifica-
19 tion under paragraph (9), the governmental entity
20 shall promptly provide the named customer or sub-
21 scriber—

22 “(A) with a copy of the information that
23 was disclosed in response to the warrant, order
24 or subpoena except—

25 “(i) illicit records;

1 “(ii) records or materials pertaining
2 to child pornography, as defined in section
3 2256, or sexual exploitation of children, as
4 described in section 2251, or any Federal,
5 including military, State, tribal, or offense
6 that is the substantial equivalent; or

7 “(iii) other illegal material; or

8 “(B) in the event that no information was
9 disclosed, a written certification that no infor-
10 mation was disclosed.

11 “(11) REDACTIONS.—Any information disclosed
12 pursuant to paragraphs (9) and (10) may be re-
13 dacted only if a court finds such redactions nec-
14 essary to preserve the secrecy or integrity of an in-
15 vestigation.”.

16 (b) ADDITIONAL PROVISIONS REGARDING DELAYED
17 NOTICE.—Section 2705 of title 18, United States Code,
18 is amended by adding at the end the following:

19 “(c) ANNUAL REPORT.—

20 “(1) IN GENERAL.—On an annual basis, the
21 Attorney General shall provide to the Committee on
22 the Judiciary of the House of Representatives, the
23 Committee on the Judiciary of the Senate, and the
24 Director of the Administrative Office of the United
25 States Courts, which the Attorney General shall

1 publish on the website of the Department of Justice,
2 in a manner consistent with protection of national
3 security, a report setting forth with respect to the
4 preceding calendar year, for each Federal judicial
5 district—

6 “(A) the number of named customers or
7 subscribers with respect to whom, in that cal-
8 endar year, a warrant, subpoena, or court order
9 was issued pursuant to section 2703;

10 “(B) the aggregate number of applications
11 requesting delay of notification pursuant to
12 subsection (a)(1), preclusion of notice pursuant
13 to subsection (b)(1), and extensions pursuant to
14 subsection (b)(3);

15 “(C) the aggregate number of orders under
16 this section either granting, extending, or deny-
17 ing a request for delay of notification or pre-
18 clusion of notice;

19 “(D) the aggregate number of orders
20 under this section affecting a member of the
21 news media, including any conduct related to
22 activities protected under the First Amendment;
23 and

24 “(E) the aggregate number of arrests,
25 trials, and convictions, resulting from investiga-

1 tions in which orders under this section were
2 obtained, including the offenses for which indi-
3 viduals were arrested, tried, or convicted.

4 “(2) PROCESS.—The Attorney General shall in-
5 clude in the report under this subsection a descrip-
6 tion of the process and the information used to de-
7 termine the numbers for each of subparagraphs (A)
8 through (E) or paragraph (1).”.

