

AMENDMENT TO H.R. 8035
OFFERED BY MR. FITZGERALD OF WISCONSIN

At the end of the bill add the following new section:

1 **SEC. 3. PRECLUSION OF NOTICE.**

2 (a) **SHORT TITLE.**—This section be cited as the
3 “NDO Fairness Act of 2026”.

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

6 “(b) **PRECLUSION OF NOTICE.**—

7 “(1) **APPLICATION.**—

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

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

3 “(i) for a period of not more than 1
4 year if the nature of the offense for which
5 the governmental entity is seeking a war-
6 rant, order, or subpoena pertains to child
7 pornography, as defined in section 2256,
8 sexual exploitation of children under sec-
9 tion 2251, or any Federal, State, Tribal,
10 or military offense that is the substantial
11 equivalent; or

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

14 “(C) OTHER REQUIREMENTS.—

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

22 “(I) is aware of the warrant,
23 order, subpoena, or underlying inves-
24 tigation; and

1 “(II) is suspected of involvement
2 in the commission of the crime under
3 investigation.

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

11 “(2) DETERMINATION.—

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

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

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

25 “(II) flight from prosecution;

1 “(III) destruction of or tam-
2 pering with evidence;

3 “(IV) intimidation of potential
4 witnesses; or

5 “(V) otherwise seriously jeopard-
6 izing an investigation or unduly delay-
7 ing a trial; and

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

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

21 “(B) NATURE OF THE OFFENSE.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii), the court may consider the nature of
24 the offense in issuing a determination
25 under subparagraph (A).

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

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

21 “(4) NOTIFICATION OF CHANGED CIR-
22 CUMSTANCES.—If the need for the order issued
23 under paragraph (2) changes materially, the govern-
24 mental entity that requested the order shall notify
25 the court within a reasonable period of time (not to

1 exceed 14 days) of the changed circumstances, and
2 the court shall reassess the order and modify or va-
3 cate as appropriate.

4 “(5) OPPORTUNITY TO BE HEARD.—

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

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

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

17 “(B) STAY OF DISCLOSURE OF NAMED
18 CUSTOMER OR SUBSCRIBER COMMUNICATIONS
19 OR RECORDS.—A provider’s obligation to dis-
20 close the information requested in the warrant,
21 order, or subpoena to which the order in para-
22 graph (1) applies is stayed for a period of 72
23 hours upon the filing of the application, peti-
24 tion, or motion under this paragraph, unless the
25 court with jurisdiction over the challenge deter-

1 mines based on a showing by the provider or
2 the governmental entity that the stay should be
3 extended or lifted in whole or in part prior to
4 resolution of the application, petition, or mo-
5 tion.

6 “(C) FINALITY OF ORDER.—The decision
7 of the court resolving an application, petition,
8 or motion under this paragraph shall constitute
9 a final, appealable order.

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

16 “(A) those persons to whom disclosure is
17 necessary in order to comply with the warrant,
18 order, or subpoena;

19 “(B) an attorney in order to obtain legal
20 advice or assistance regarding the order issued
21 under paragraph (2) or the warrant, order, or
22 subpoena to which the order applies; and

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

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

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

18 “(9) EXPIRATION OF ORDER PRECLUDING NO-
19 TICE.—Upon expiration of an order issued under
20 paragraph (2) or, if an extension has been granted
21 under paragraph (3), expiration of the extension, the
22 governmental entity shall deliver to the named cus-
23 tomer or subscriber, by at least 2 methods, which
24 shall be personal service, registered or first-class
25 mail, electronic mail, or other means approved by

1 the court as reasonably calculated to reach the
2 named customer or subscriber within 5 business
3 days of the expiration of the order—

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

6 “(B) notice that informs the named cus-
7 tomer or subscriber—

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

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

17 “(iii) that notification of such cus-
18 tomer or subscriber was precluded by court
19 order;

20 “(iv) of the identity of the court au-
21 thORIZING the preclusion of notice;

22 “(v) of the provision of this chapter
23 under which the preclusion of notice was
24 authorized; and

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

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

19 “(A) with a copy of the information that
20 was disclosed in response to the warrant, order
21 or subpoena except—

22 “(i) illicit records;

23 “(ii) records or materials pertaining
24 to child pornography, as defined in section
25 2256, or sexual exploitation of children, as

1 described in section 2251, or any Federal,
2 including military, State, tribal, or offense
3 that is the substantial equivalent; or

4 “(iii) other illegal material; or

5 “(B) in the event that no information was
6 disclosed, a written certification that no infor-
7 mation was disclosed.

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

13 (c) ADDITIONAL PROVISIONS REGARDING DELAYED
14 NOTICE.—Section 2705 of title 18, United States Code,
15 is amended by adding at the end the following:

16 “(c) ANNUAL REPORT.—

17 “(1) IN GENERAL.—On an annual basis, the
18 Attorney General shall provide to the Committee on
19 the Judiciary of the House of Representatives, the
20 Committee on the Judiciary of the Senate, and the
21 Director of the Administrative Office of the United
22 States Courts, which the Attorney General shall
23 publish on the website of the Department of Justice,
24 in a manner consistent with protection of national
25 security, a report setting forth with respect to the

1 preceding calendar year, for each Federal judicial
2 district—

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

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

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

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

21 “(E) the aggregate number of arrests,
22 trials, and convictions, resulting from investiga-
23 tions in which orders under this section were
24 obtained, including the offenses for which indi-
25 viduals were arrested, tried, or convicted.

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

