



June 19, 2008

Vote NO on H.R. 6304, the FISA Amendments Act – Oppose Warrantless Surveillance and Immunity for Telecommunications Companies

Dear Member of Congress,

The American Civil Liberties Union strongly urges you to vote “NO” on H.R. 6304, the FISA Amendment Acts of 2008. This bill unconstitutionally and unnecessarily permits the government to scoop up Americans’ international communications, even when they have no connection to terrorism whatsoever. While there is a presumption of prior review by the Foreign Intelligence Surveillance Court, the effectiveness of that review is almost completely eviscerated. H.R. 6304 also grants complete retroactive immunity to companies that facilitated warrantless wiretapping over the last seven years. For these reasons, we ask you to stand with the Constitution and vote no on this overreaching legislation. Because this bill essentially eviscerates the Foreign Intelligence Surveillance Act and many of the Fourth Amendment protections it contained, we will be scoring this vote.

Our major concerns with this legislation include:

- H.R. 6304 ensures the dismissal of all cases pending against the telecommunications companies that facilitated the warrantless wiretapping programs over the last 7 years. The test in the bill is not whether the government certifications were actually legal – only whether they were issued. Because it is public knowledge that they were, all the cases seeking to find out what these companies and the government did with our communications will be killed. This not only denies justice to those who were spied on in the last seven years, but undercuts the entire incentive structure in FISA and will encourage telecommunications company law breaking in the future.
- H.R. 6304 permits the government to conduct mass, untargeted surveillance of all communications coming into and out of the United States, without any individualized review, and without any finding of wrongdoing. That the “targets” of the surveillance are overseas is of little comfort to the Americans who are on the other end of those communications. Americans do not lose their Fourth Amendment rights just because they participate in international communications.

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- H.R. 6304 permits only minimal court oversight. The Foreign Intelligence Surveillance Court (FISA court) only reviews general procedures for targeting and minimizing the use of information that is collected. The court may not know who, what, or where will actually be tapped, thereby undercutting any meaningful role for the court and violating the Fourth Amendment.
- H.R. 6304 contains a general ban on reverse targeting. However, it lacks stronger language that was contained in prior House bills that included clear statutory directives about when the government should return to the FISA court and obtain an individualized order if it wants to continue listening to a US person's communications. The trigger for individualized warrants will instead be negotiated between the administration and the secret FISA court.
- H.R.6304 contains an "exigent" circumstance loophole that thwarts the prior judicial review requirement. The bill permits the government to start a spying program and wait to go to court for up to 7 days every time "intelligence important to the national security of the US may be lost or not timely acquired." By definition, court applications take time and will delay the collection of information. It is highly unlikely there could be a situation where this exception would not swallow the rule. Certainly, if the administration had no qualms about violating the law outright, it would have no problem exploiting this loose language to circumvent the FISA court.
- H.R. 6304 further trivializes court review by authorizing the government to continue a surveillance program even after an application is denied by the court. The government has the authority to wiretap through the entire appeals process, and then keep and use whatever it gathered in the meantime. Because these programs are vast dragnets, the two months it may take to obtain a final ruling to stop the surveillance may yield huge amounts of American information that can be used to the administration's desire.
- Members of Congress not on Judiciary or Intelligence Committees are not guaranteed access to prospective reports from the Attorney General, Director of National Intelligence, and Inspector General.

When the Protect America Act passed in August of last year, congressional leaders promised to fix that unconstitutional authority. We are dismayed that the resulting product writes many of those overreaching authorities into law for the next four years. We therefore ask you to stand up for the U. S. Constitution and vote 'NO' on H.R. 6304, the FISA Amendments bill, and take any and all action necessary and possible to scuttle this unprecedented extension of governmental surveillance over Americans.

Sincerely,



Caroline Fredrickson
Director



Michelle Richardson
Legislative Counsel