



September 28, 2006

**Re. Oppose S. 3931, Which Authorizes the Warrantless Surveillance of American Residents and Pardons the President and Others**

Dear Senator:

On behalf of the American Civil Liberties Union, and its hundreds of thousands of activists and members, and fifty-three affiliates nationwide, we write to express our strong opposition to S. 3931, styled as the "Terrorist Surveillance Act of 2006." This bill by Majority Leader Bill Frist combines the worst parts of S.2453—the warrantless wiretapping bill that Senator Specter negotiated with Vice-President Cheney—with its House counterpart, H.R. 5825, proposed by Congresswoman Wilson. It would ratify the president's claimed authority to sweep up Americans' communications without proof to any court that the Americans surveilled are aiding al Qaeda. We urge you to do everything in your power to stop S. 3931 from passing.

This bill dramatically rewrites the Foreign Intelligence Surveillance Act (FISA) at the administration's request to allow warrantless surveillance of Americans and strip away important protections for privacy. Despite efforts to characterize S. 3931 as merely "updating" FISA, the truth is that the bill fundamentally alters statutory protections that have been the cornerstone of checks and balances on electronic surveillance in the US for almost three decades. S. 3931 makes unjustifiable changes to FISA to expand who could be subject to secret warrantless surveillance in the US, broaden the purposes of such surveillance, and restrict the ability of judges to control this surveillance and prevent governmental abuse. The bill's complex changes would legalize the illegal warrantless surveillance President Bush has admitted and much more. If passed, these amendments would be catastrophic for Americans' civil liberties. Our five main objections to this grossly overreaching legislation are explained in a forthcoming memorandum and are summarized below. The bill:

- **Deletes FISA Warrant Requirements for Americans' Calls and e-Mails Without Requiring Any Link to al Qaeda.**
- **Allows the Attorney General to Secretly Demand Access to Communications in the US Without Warrants.**
- **Decriminalizes Warrantless Wiretapping in the US by the Administration and Any Companies that Are Aiding It.**
- **Allows the FISA Court to Approve Entire Programs of Surveillance of Americans Without Individual Warrants.**
- **Prevents State and Federal Courts From Enforcing Critically Important Privacy Rights of People in the US.**

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Few Members of Congress have had an opportunity to study the legislation and consider its intended as well as unintended consequences. Plus, the legislation is not only badly conceived, it is poorly written. To cite one of many examples, its definition of “weapons of mass destruction” is so broad that possession of swimming pool chemicals or gunpowder could result in warrantless surveillance of people in the US. The bill’s everything-but-the-kitchen-sink approach to immunizing the president would destroy FISA’s checks and balances that help ensure the government is focused on foreign terrorists and not wasting precious time or money monitoring innocent people in the US. For example, under current law, an intelligence wiretap can be started in an emergency if an American is conspiring with al Qaeda so long as a warrant is later sought. The administration, however, wants Congress’ blessing to skip real court review and allow the monitoring of Americans’ communications unilaterally, secretly, and indefinitely. This bill would help accomplish that ignoble goal.

The bill is a breathtakingly overbroad response by Congress to revelations that the president was secretly and willfully breaking the law in the first place. Without mandatory judicial review to protect individual rights, there is no way to enforce our fundamental Fourth and First Amendment freedoms against government abuses of power through secret surveillance. Such unchecked power is itself inherently abusive. As the highly respected bipartisan Church Committee found, the “NSA’s vast technological capability . . . if not properly controlled . . . could be turned against the American people at great cost to liberty.” Book III of the Final Report on Intelligence Activities and the Rights of American, Apr. 23, 1976, at p. 736. The NSA’s electronic surveillance power is indeed a very powerful weapon that should not be turned against the American people without strong checks to protect individual rights, the very checks S. 3931 eliminates.

The bill would authorize more wiretapping of Americans without court oversight of individual wiretaps than any Congress in US history has ever tried to legitimize. This is not “surveillance we can live with” as Senator Specter has claimed; it is surveillance that violates fundamental American values of privacy and due process. We urge you in the strongest terms to uphold the Constitution by stopping this bill from becoming law.

Sincerely,



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Lisa Graves,  
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