

March 5, 2008

Dear Representative,

We the undersigned organizations commend the House for refusing to yield to administration fear-mongering by passing the worst possible surveillance legislation – S. 2248, the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2007. This bill would grant the administration unfettered access to all communications coming into or out of the United States without any meaningful court review or finding of wrongdoing and grant complete immunity to companies that cooperated with illegal wiretapping over the last several years.

As you go forward with negotiations, we ask that you leave the Protect America Act exactly as it is -- sunsetted. As House Majority Leader Steny Hoyer and the Cato Institute noted, America is in no danger from the expiration of this unconstitutional law. Orders issued since last August remain in effect until their internal cease date, up to a year after issuance, ensuring that current surveillance programs will continue, in some cases, into 2009. These programmatic orders are not limited to individuals or facilities so that new targets can be tapped under existing orders. Of course, the government always has the option of tapping targets immediately and returning to court within 72 hours to obtain a court order under the FISA procedures that have served our intelligence community for nearly 30 years.

Congress should take the time to craft a bill that gives the intelligence community only the narrow authority it needs to track terrorists abroad while protecting the privacy of people in the United States. It is critical that Congress does not repeat the mistakes made last August when it gave the executive branch the ability to conduct mass, untargeted surveillance, unconnected to suspected terrorists, with no limit on how American information can be used. If you must revise our intelligence laws, we ask that any new statutory authority include the following protections and principles:

- Require Court Authorization Before Surveillance Begins. Except in emergency situations, surveillance should never be conducted solely on the basis of the executive branch's discretion. Courts must have a meaningful role in approving or denying wiretaps.
- Prevent Bulk Collection of U.S. Communications. No one disagrees that the government should be able to collect in bulk foreign to foreign communications, whether or not incidentally routed through the U.S. However, when one of the parties is American or located in the U.S., government should only be able listen in if the surveillance is specifically targeted at an individual.
- Protect Communications of People in the U.S. Capture of foreign communications can, and should, be conducted in a manner that protects people on U.S. soil. That includes allowing targeting of suspects abroad, but heightening restrictions on the use of information to which a U.S. person is a party. U.S. communications should be used and disseminated only when there is an emergency or a link to terrorism. The government should always be required to return to

the FISA court to obtain an individualized order if listening to someone in the U.S. ever becomes a significant purpose of the lawful surveillance of a foreigner.

- Exclude Retroactive Immunity for Telecommunication Providers. Neither Congress nor the American public has yet to receive a full accounting of what telecommunication providers did with Americans' most intimate communications or the legal basis for doing so. Without this information, Congress should not even consider denying Americans their day in court to vindicate their rights.
- Provide for Robust Congressional Oversight. Any new authorities must be carefully scrutinized by Congress to ensure that American privacy is protected. Congress has the duty to ensure that the executive branch does not overreach in the name of national security.
- Minimize Sunset Provision. The recent sunset of the Protect America Act is a perfect example of how such reasonable expiration dates for laws that implicate basic constitutional principles force the administration and Congress to review whether authorities are truly needed and whether they are narrowly crafted to protect Americans' rights. Any new authority should again include a reasonably short sunset.

Indeed, the House of Representatives has already taken the first step towards restoring our rights by letting the Protect America Act sunset. It would be a travesty, if after making this courageous move, Congress ultimately decided to pass a bill that substantially replicated that overreaching authority. We fully appreciate the intense pressure you are experiencing from the fear-mongering of this administration, but your resolution in the face of such tactics is truly the patriotic action.

Sincerely,

American-Arab Anti-Discrimination Committee

American Booksellers Foundation for Free Expression (ABFFE)

American Civil Liberties Union

American Humanist Association

American Library Association

Arab American Institute

Asian American Justice Center

Association of Research Libraries

Bill of Rights Defense Committee

Citizen Outreach Project

Common Cause

Congressman Bob Barr

Council on American-Islamic Relations

Defending Dissent Foundation

Democracy for America

Doctors for Open Government

DownsizeDC.org, Inc.

Electronic Frontier Foundation

Friends Committee on National Legislation

Government Accountability Project

Grassroots America

Japanese American Citizens League

League of Women Voters

Liberty Coalition

Muslim Public Affairs Council

National Association of Criminal Defense Lawyers

National Immigrant Solidarity Network

National Lawyers' Guild--National Office

No2Torture

OMB Watch

OpenTheGovernment.org

PEN American Center

People For the American Way

Privacy Activism

Privacy Rights Clearinghouse

Republican Liberty Caucus

September Eleventh Families for Peaceful Tomorrows

Sikh American Legal Defense and Education Fund (SALDEF)

The New Grady Coalition

The Student Health Integrity Project

U.S. Bill of Rights Foundation

Unitarian Universalist Service Committee

Utility Consumers' Action Network