



June 24, 2008

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the hundreds of thousands of members of People For the American Way, we urge you to oppose the Foreign Intelligence Surveillance Act of 1978 (FISA) Amendments Act of 2008 (H.R. 6304). Not only does H.R. 6304 open the door to immunity for telecommunications companies (telecoms), but it has no substantial guarantee for individualized warrants, which is a critical protection against the abuse of our Fourth and Fifth Amendment due process rights.

The so-called “Protect America Act” (PAA), which passed in August, created a legal infrastructure under which American citizens might unwittingly be subject to daily, repeated invasions of privacy or violations of other constitutional rights. These liberties are not abstract or optional. Freedom from government spying on our private lives is at the core of what it means to be an American – the kind of personal liberty that hundreds of thousands of Americans have died to protect. We all want increased security, and Congress can do this without undermining core American values. To that end, in order to maintain our constitutional liberties, you must take a stand against H.R. 6304 and instead insist on FISA reform that includes individualized warrants and does not protect telecoms that knowingly violated the law by giving them immunity.

The PAA authorized the National Security Agency (NSA) to spy, without individualized warrants, on anyone “reasonably believed to be outside of the United States.” Incredibly, this means that there is now no need to show that the target has any connection to terrorist activity, and there are no real protections against interceptions of communications of American citizens inside the United States. FISA reform must guarantee that surveillance on Americans is protected by individualized warrants, but H.R. 6304 does no such thing. The original FISA pre-PAA did allow the government to conduct domestic surveillance without a warrant under certain situations for a short period of time before going to court. This time period was subsequently increased to 72 hours under the USA PATRIOT Act in order to address Administration concerns. Yet, instead of utilizing these congressionally approved provisions, the Administration unilaterally authorized secret wiretapping without any court order for an unknown length of time, and later used the PAA to remove FISA’s minimal due process protections and government oversight mechanisms put in place to check the government’s power to spy on its own citizens. Sanctioning this abuse of power by the Administration is an unacceptable consequence of H.R. 6304.

Additionally, all parties involved must be held accountable for any illegal activity. FISA currently provides sufficient mechanisms to allow telecoms to proceed lawfully with requests for information about private communications. Every American should have the confidence that our

judicial system will ensure that telecoms will not be permitted to circumvent this established process and undermine our fundamental right to privacy. Hence, FISA reform must not provide blanket immunity to telecoms for their own role in furthering illegal wiretapping – H.R. 6304 leans too far in that direction. The standard on which a grant of immunity is based has been set in such a way that the district courts would most likely be forced in all cases to rule in favor of the telecoms.

As part of its oversight responsibility, Congress must be made aware of what types of actions are being considered for immunity. If the telecoms never have to testify about their alleged complicity, Americans may never know the true extent to which they have been targeted for surveillance. We have a right to know what's been done and how far the overreaching went. At a minimum, the Administration should not be given the power, as in H.R. 6304, to bury these secrets by tying the hands of the district courts on the question of immunity.

While sunset provisions enable review within a specific timeline, H.R. 6304 puts off a rewrite until 2012 – too long a delay for the next administration to review the law's application or respond to continually voiced concerns regarding government surveillance. It is critical that you weigh the benefits of even temporary legislation that is still lacking critical protections. Ultimately, a principled decision must be based on whether the consequences of such a bill are worse than allowing the PAA to remain expired, returning to the original protections within FISA (except as authorized under the PAA's transition provisions) with appropriate permanent fixes to be subsequently enacted.

Although People For the American Way is recommending a “no” vote on H.R. 6304, we do want to stress the importance of the audit language that has been included. The Administration should not be allowed to continually withhold information in its direct dealings with Congress. As demonstrated by the Church Committee hearings of the 1970's, which unearthed critical facts that later drove important legislative fixes (including the creation of FISA) addressing the Nixon-era civil liberties scandals, a full investigation and understanding of the Administration's surveillance activities is necessary before any meaningful resolution can be reached. But two years after news of its existence first broke, Congress is yet unable to conduct an open and thorough investigation of the so-called “Terrorist Surveillance Program” (TSP). Through its audit provisions concerning the TSP, or post 9/11 surveillance, H.R. 6304 recognizes that oversight can increase accountability without jeopardizing national security and exposing classified documents.

Even so, the House should err on the side of our Constitution and not bow to political pressure by signing off on H.R. 6304. Americans deserve nothing less.

Sincerely,



Kathryn Kolbert
President



Tanya Clay House
Director, Public Policy