

July 7, 2008

Re: Opposition to the FISA Amendments Act, H.R. 6304

Dear Senator:

As organizations that are deeply committed to both civil liberties and effective intelligence-gathering, we strongly urge you to oppose the FISA Amendments Act, H.R. 6304. This bill unreasonably and unnecessarily authorizes broad surveillance of Americans' international communications without meaningful Fourth Amendment protections: no individualized warrant issued by a court, no determination of probable cause of wrongdoing, and no specification of the location or means of the surveillance.

The bill would threaten Americans' privacy by doing too little to restore judicial review and failing to include other reasonable civil liberties protection. The administration has not made a persuasive case that these sweeping new powers are needed or that existing authorities are inadequate to ensure the effectiveness of U.S. intelligence-gathering activities.

In addition, this legislation would use the federal courts to rubber stamp a grant of immunity to telecommunications companies that assisted with unlawful warrantless surveillance.

The proposal incorporates a few important improvements, such as an audit of illegal warrantless surveillance, a reaffirmation that FISA is the exclusive means by which foreign intelligence surveillance can lawfully be conducted in the United States, a presumption of prior court review, a probable cause requirement for Americans over seas and a sunset of four years. We appreciate the efforts of House and Senate negotiators, but these modest concessions do not offset the virtually unchecked surveillance powers the bill confers on the government.

Among the most important reasons to oppose this bill are the following:

\* The bill would authorize massive warrantless surveillance. The bill allows the government to intentionally acquire millions of Americans' international communications with no individualized warrant or determination of probable cause, so long as the surveillance is targeted at people or organizations believed to be located abroad and the purpose is to gather foreign intelligence. However, the bill's avowed purpose is the collection of Americans' communications with persons over seas.

\* The bill would require no individualized warrant even when an American's communications clearly are of interest to the government. The bill requires an individualized warrant only if and when the government decides to "target" a particular American by using the person's phone number or e-mail address to select his or her communications for acquisition. While the legislation provides for judicial review of

targeting and other guidelines, the court procedures are inadequate to meet Fourth Amendment requirements.

\* The bill would curtail effective judicial review of surveillance. While the bill contains provisions for FISA court review of targeting and other guidelines, those provisions do not provide a meaningful role for the court in ensuring that the government does not seize and data-mine the private communications of law-abiding Americans. Moreover, the bill contains an exception for “exigent circumstances” that could be misused to circumvent even the limited court review provided by the bill with respect to new surveillance programs.

\* The bill would grant retroactive immunity for wrongdoing. The bill would give blanket immunity to companies that aided the government in conducting warrantless electronic surveillance of Americans. Like S. 2248, the bill would direct the court to dismiss privacy lawsuits against telecommunications providers if they received written assurances that the President had authorized the surveillance—assurances which in fact they received.

\* The bill would not provide a reasonable sunset. While the bill shortens the sunset period to four years, this would leave the bill in place far longer than is necessary to determine whether it is operating effectively without adversely affecting the civil liberties of Americans.

The proposed bill would grant unnecessary and unconstitutional powers to the Executive Branch. We urge you to vote no, and to vote against any legislation that contains the defects described above.

Thank you for considering our views.

American Civil Liberties Union  
Bill of Rights Defense Committee  
Bob Barr 2008 Presidential Committee  
Bob Barr, Former Congressman  
Center for American Progress Action Fund  
Center for National Security Studies  
Common Cause  
DownsizeDC.org, Inc.  
Electronic Frontier Foundation  
Equal Justice Alliance  
Fairfax County Privacy Council  
Friends Committee on National Legislation  
Government Accountability Project (GAP)  
International Association of Whistleblowers (IAW)  
Justice Through Music  
League of Women Voters of the United States  
Libertarian National Committee

Liberty Coalition  
MAS Freedom  
National Lawyers Guild--National Office  
OMB Watch  
OpenTheGovernment.org  
People For the American Way  
Privacy Lives  
Republican Liberty Caucus  
The Multiracial Activist  
The Rutherford Institute  
U.S. Bill of Rights Foundation  
Velvet Revolution