



March 13, 2008

Hon. John Conyers, Jr., Chairman  
House Judiciary Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Hon. Silvestre Reyes, Chairman  
House Permanent Select Committee on Intelligence  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Conyers and Chairman Reyes:

On behalf of the Center for American Progress Action Fund, I write to thank you for introducing the amendment in the nature of a substitute to H.R. 3773, the FISA Amendments Act of 2008 (the “Substitute”), and to express our support for this legislation. The Substitute represents a reasonable compromise between the RESTORE Act, which was passed by the House last fall, and the Senate alternative.

Like the RESTORE Act, the Substitute is a responsible, balanced measure which would enhance the government’s ability to monitor foreign terrorists and spies while restoring the safeguards that are critical to ensuring that the freedoms of law-abiding Americans are not infringed.

Among its salient provisions are the following:

- *Foreign-to-Foreign.* The Substitute makes clear that the government is not required to obtain an individualized court order to conduct surveillance of “foreign-to-foreign” communications that merely pass through the United States.
- *Prior Court Approval.* The Substitute requires the government to obtain an order from the Foreign Intelligence Surveillance Court (the “Court”) to target Americans, whether they are in the U.S. or abroad. The measure does not require a court order for surveillance targeting non-Americans reasonably believed to be outside the U.S. Instead, such surveillance may be authorized jointly by the Attorney General (the “AG”) and the Director of National Intelligence (the “DNI”), for up to one year. However, the surveillance may not begin (except in emergencies) unless the Court has given its prior approval to targeting and minimization procedures designed to ensure that Americans are not targeted and their communications are not improperly disseminated. In this respect, the Substitute diverges from the RESTORE Act, which requires that the surveillance be authorized by the Court, rather than by executive branch officials. This is a significant concession, but we believe the requirement of prior judicial approval of the procedures that govern the surveillance will provide an adequate safeguard against abuse. Moreover, the Substitute provides for the Court not only to approve the procedures but to exercise continuing oversight to ensure that they are being complied with.

- *Reverse Targeting.* The Substitute prohibits “reverse targeting,” defined as the “intentional targeting of a person reasonably believed to be located outside the United States in order to target a particular, known person reasonably believed to be in the United States.” The Substitute requires the AG and the DNI to adopt guidelines that ensure compliance with the prohibition, and mandates Inspector General reports to Congress as to whether the guidelines are being followed.
- *Exclusive Means.* The Substitute reaffirms that FISA is the exclusive means by which surveillance may be conducted in the U.S. for foreign intelligence purposes, and that Congress can provide for additional means only through an express statutory authorization.
- *Sunset.* The Substitute provides for the surveillance authorities to sunset on December 31, 2009—the same date that expiring provisions of the PATRIOT Act are due to run out. This will ensure that Congress takes another look at the subject once it has had an opportunity to assess how well the legislation has operated.
- *Reports and Investigations.* The Substitute requires agency Inspectors General to prepare a report to Congress regarding the warrantless surveillance program authorized by the president after 9/11. It also establishes a bipartisan commission to investigate the program and report to Congress and the president on its conclusions.
- *Prospective Immunity.* The Substitute declines to grant blanket, retroactive immunity to telecommunications companies facing lawsuits for their alleged cooperation with the warrantless surveillance program. Instead, it preserves the current FISA provisions that provide accountability by giving immunity from suit to companies that obey the law, not those that break it. The substitute provides relief to companies that complied with the law but are precluded from proving this in court by the government’s invocation of the state secrets privilege. Under the bill, companies would be permitted to present their evidence for review by a federal district court under appropriate procedures to protect classified information.

Taken together, these provisions would enhance both our security and our liberty, giving the intelligence community the tools it needs to protect America while preserving the freedoms we cherish.

Sincerely,



Mark D. Agrast, Senior Fellow  
Center for American Progress Action Fund