

THE WHITE HOUSE

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## House FISA Legislation is the Wrong Direction for Our National Security

*Instead of Making the Protect America Act Permanent, House Legislation Would Weaken It*

"Congress must make a choice: Will they keep the intelligence gap closed by making this law permanent? Or will they limit our ability to collect this intelligence and keep us safe, staying a step ahead of the terrorists who want to attack us? ... The Protect America Act is a vital tool in stopping the terrorists – and it would be a grave mistake for Congress to weaken this tool."

– President George W. Bush, 10/10/07

### The Protect America Act Has Helped Make Our Nation Safer By Closing A Dangerous Intelligence Gap

**The Protect America Act modernized the Foreign Intelligence Surveillance Act (FISA) of 1978 by strengthening our ability to collect foreign intelligence on terrorists outside the United States, thereby allowing us to close a dangerous gap in our intelligence collection.** This Act was passed with bipartisan support and signed into law by President Bush in August 2007.

- ◆ **The tools provided by the Protect America Act will expire in early February 2008, but instead of making these tools permanent, H.R. 3773 would make our Nation less safe by weakening them.** Keeping the authority to collect foreign intelligence under the Protect America Act is essential to America's security. Congress must also provide meaningful liability protection to companies facing multi-billion dollar lawsuits only because they are believed to have assisted in the efforts to defend our Nation following the 9/11 attacks.
- ◆ **The President remains willing to work with Congress to reach agreement on a bill that, unlike the legislation being considered by the House, ensures our Intelligence Community continues to have the tools it needs in the ongoing War on Terror.** Any bill must:
  - Give our intelligence professionals the certainty, tools, and flexibility they need to protect our country;

- Keep the intelligence gap firmly closed and ensure that protections intended for the American people are not extended to terrorists outside the United States who are plotting to harm us; and
- Grant meaningful liability protection to companies facing massive lawsuits for assistance they allegedly provided in the aftermath of the 9/11 attacks.

**The House Bill Falls Far Short Of Providing The Intelligence Community The Tools It Needs To Collect Foreign Intelligence Effectively From Foreign Intelligence Targets Outside The United States**

**The House bill would impose unacceptable limitations on our ability to collect foreign intelligence on persons outside the United States and would expire in December 2009.** This failure to provide permanent modernization to FISA denies our intelligence professionals the certainty and permanence they need to protect Americans from terrorism and other threats to national security.

**The House bill does nothing to aid companies facing multi-billion dollar lawsuits for assistance they allegedly provided following the 9/11 attacks.** It is a matter of basic fairness that companies alleged to have helped America following terrorist attacks of unprecedented scale should not face a flood of lawsuits.

**The House bill would impose burdensome oversight requirements that would hamper the ability of the Intelligence Community to focus on protecting America.** The additional resources that the bill authorizes to meet its audit and reporting requirements would not help alleviate the need for the limited number of trained linguists and analysts to spend time compiling the information rather than tracking current threats to the Nation.

**Congress Should Reject The House Bill And Instead Make the Protect America Act Permanent**

- 1. Unlike the Protect America Act, the House bill would limit intelligence collection against foreign targets outside the United States.**

<b><u>Protect America Act</u></b>	<b><u>H.R. 3773</u></b>
The PAA permits the collection of foreign intelligence when the target is reasonably believed to be outside the United States. It also provides for court review of the procedures that are used to determine whether a target is outside the United States, without unnecessary and time-	The House bill imposes a court approval requirement that risks hindering the collection of <u>foreign</u> intelligence information from <u>foreign</u> intelligence targets outside the United States.

consuming individualized review of these targets.	
The PAA permits the collection of foreign intelligence to continue while any court appeals, including review by the U.S. Supreme Court, are pending.	The House bill contains no mechanism permitting the collection of foreign intelligence to continue while court appeals are pending.

**2. Unlike the Protect America Act, the House bill would also place new limits on the types of foreign intelligence information that may be collected.**

<b><u>Protect America Act</u></b>	<b><u>H.R. 3773</u></b>
The PAA does not limit the types of foreign intelligence information that can be collected from foreign targets; instead, it consistently applies the definition of foreign intelligence information contained in the 1978 Foreign Intelligence Surveillance Act.	The House bill would exclude collection of foreign intelligence information related to conduct of the foreign affairs of the United States from foreign intelligence targets located outside the United States.
	The House bill could put the FISA Court in the position of making judgments about what falls within the restrictive definition of foreign intelligence information used by the bill.

**Many Measures Are In Place Under The Protect America Act To Protect The Rights Of Persons In The United States**

**The Protect America Act provides a role for the FISA Court in reviewing the procedures the Intelligence Community uses to ensure that surveillance efforts target persons located outside the United States.** The Attorney General has submitted to the FISA Court the procedures used by intelligence professionals to determine that the acquisitions of foreign intelligence authorized under the Protect America Act are directed only at persons reasonably believed to be outside the United States.

**Strong oversight mechanisms for all intelligence collection authorized by the Protect America Act have been established within the executive branch.**

- ◆ **The internal compliance office of any agency that collects intelligence under the Protect America Act must perform regular reviews to ensure the agency is complying with the Act.** Agencies will be under an ongoing obligation to report

immediately any incidents of noncompliance by its personnel to the Justice Department and to the Office of the Director of National Intelligence (ODNI).

- ◆ **Within 14 days of beginning to collect foreign intelligence under the Protect America Act, the Justice Department and ODNI performed a review to assess compliance with the Act.** This included a review of the procedures used to determine that information acquisition is targeted at persons located outside the United States and a review to ensure that procedures are in place to minimize the collection of information concerning individuals in the United States.
- ◆ **The Justice Department and ODNI will perform subsequent reviews of intelligence collection under the Protect America Act at least once every 30 days.** Reviews will be conducted by attorneys of the Justice Department's National Security Division with experience reviewing the use of FISA and other national security authorities, in consultation with the Department's Privacy and Civil Liberties Office, as appropriate, and ODNI's Civil Liberties Protection Office.

**The Attorney General will provide semiannual reports to Congress on intelligence collection under the Protect America Act.** These reports must include:

- Incidents of non-compliance by executive branch agencies with the procedures used to ensure targets of intelligence collection are located outside the U.S.
- Incidents of non-compliance by recipients of a directive to provide the information, facilities, and assistance necessary to conduct the acquisition of foreign intelligence from targets outside the United States.
- The number of certifications made during the reporting period to authorize new collections of foreign intelligence.

**The Justice Department has committed to substantial reporting to Congress beyond what is required by the Protect America Act.** In the six months before vital provisions of the Protect America Act expire, the Justice Department will provide:

- Briefings to Members and their staff on the results of regular compliance reviews;
- Copies of the written reports of these reviews, with redactions as necessary to protect sources and methods; and
- Updated briefings every month on compliance matters and the implementation of authority in general.

**More information about the Protect America Act can be found at [www.protectamericaact.gov](http://www.protectamericaact.gov).**

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