

Foreign Intelligence Surveillance Act (FISA)

Background

- The 4th Amendment prohibits unreasonable searches and seizures; the gov't has to go to a court and obtain a warrant before they can search you or your property; American citizens have a right to privacy.
- FISA was established by Congress in 1978
- Arose out of Pres. Nixon's abuse of wiretapping; purpose was to limit power of government to spy on US citizens
- Established a "FISA Court" of judges who issue subpoenas so that wiretapping can occur

Recent History

- After 9/11, Bush issued an Executive Order giving his administration the power to wiretap and obtain phone/email records if they felt it was a "matter of national security"; he felt that the Pres. has a constitutional right to do whatever necessary to win a war (in this case, against terrorism);
- Many phone/email records of US nationals were obtained; some of these folks have sued the phone companies, claiming that their right to privacy had been violated
- Last January, a judge on the FISA Court notified the administration that portions of the Pres' Executive Order were illegal; specifically, eavesdropping without warrants on foreign suspects whose messages were being routed through US communications carriers, including Internet sites.

The "Protect America Act"

- The current "Protect America Act" modifies FISA to permit the National Security Agency to "intercept phone calls, emails and other communications involving foreign nations reasonably believed to be outside the US—without obtaining a warrant and without any review or oversight by any body outside of the administration.
- FISA already allowed us to wiretap foreign nationals without a warrant; what's new here is that US citizens who receive communications from foreign nationals can now be eavesdropped upon without a warrant as well.
- All that's required is for the Atty General and the Dir. Of National Intelligence to decide that surveillance is needed (Bush had wanted for it to be just the Atty General!); but there's no oversight; no review—and nobody ever knows that the decision was made or the surveillance was conducted.
- The bill also protects communication companies from lawsuits when they are forced to hand over records.
- Bush describes the effort as an anti-terrorist program, but the bill is not limited to terror suspects and could have wider applications.
- According to Rep. Zoe Lofgren, D-Calif., "This bill will grant the attorney general the ability to wiretap anybody, any place, any time without court review, without checks and balances."

How the Legislation got passed

- Bush proposed it just 48 hours before August break, when there were a lot of other bills on the floor.
- He threatened to “not let Congress go home until he had a bill to sign” and waved the “national security flag.”
- He wanted this bill to be open ended, but the Dems at least limited it to 6 months (so it’ll be brought back to the floor next Feb.).
- In the Dem-controlled House, 41 Dems voted for the measure (only 2 Repubs voted against it).
- Dems who voted for it included Jason Altmire in the House and Bob Casey in the Senate.
- In an interview on NPR, Casey explained that he voted for it as a national security act and necessary for the war against terror. But he also said that he had wanted more time to talk about it and look at all of the ramifications. He plans to take that time when it comes up for renewal in 6 months.

What to do about it

- Contact Congress and let them know that YOU care about your constitutional protections---that you don’t trust this or any administration to peek into your private life without having proven due cause.
- Let your Democratic leaders know that you trust them to be strong on security and that you EXPECT them to be equally strong on liberty.
- Tell them that there can be no trade-off between fundamental liberties and security...we can’t lead on freedom around the world when we’re actively undermining the rule of law at home!
- Go to www.moveon.org and sign their petition.
- Join MoveOn’s new “American Free Campaign” to keep the pressure on Congress and make sure they fix this mess instead of making these powers permanent.
- Congress needs to know that we’re watching them and we’re demanding real accountability for this overreaching president.