

September 28, 2006 - Republicans Move to Legalize Spying on Americans

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The Republican Vision of National Security:
Republicans Move to Legalize Spying on Americans
Rules Committee Rejects Sensible Substitute that Would Have Protected Security and Defended Basic Liberties

Washington, DC - Rep. Louise M. Slaughter (D-NY-28), Ranking Member of the House Rules Committee, today expressed her opposition to H.R. 5825, the Electronic Surveillance Modernization Act, a bill that would greatly expand the President's authority to wiretap innocent Americans without a warrant and without probable cause.

The legislation seemed poised to pass the House on Thursday evening.

"No law enforcement agency ever came before Congress and said new wiretapping powers were needed to secure the homeland," Rep. Slaughter said. "And yet, this Republican Congress has taken it upon itself to roll over on some of our most basic constitutional rights so that the President can have even more power. Today, Republicans are poised to rubber stamp the Administration's latest efforts to legalize spying on American citizens."

"The Republican line is, trust us - we're from the government," Rep. Slaughter continued. "But after so many lies and distortions, why should we trust this Administration? It has sullied our reputation around the world as the torch-bearer of

democracy by authorizing secret prisons, planting propaganda at home and abroad, and fighting attempts to ban torture. The last thing Congress should be granting it is more unchecked power."

Rep. Slaughter raised special objection to a provision of the legislation which would terminate all pending cases challenging the legality of past wiretapping activities, including those involving private telephone companies, many of whom turned over private user information to government investigators.

"If Republicans don't have the conviction to defend these activities in a court of law, why should we believe they are defensible?" she said.

REPUBLICANS REJECT A SAFE AND SENSIBLE ALTERNATIVE

On Thursday afternoon, the House Rules Committee considered a bi-partisan substitute bill offered by Representatives Adam Schiff (D-CA-29) and Jeff Flake (R-AZ-06) in the Judiciary Committee by a vote of 6 to 4. The vote was along party lines.

The Schiff-Flake-Harman-Inglis amendment gives the government's intelligence agencies the tools necessary to pursue al Qaeda and other terrorists, but also ensures that the executive branch acts in compliance with the law and does not violate the constitutional rights of innocent American citizens.

"Republicans in the Rules Committee ignored the overwhelming majority of Americans who are concerned about the sanctity of our Constitution," Rep. Slaughter said. "By silencing debate on a bipartisan bill that would focus our energies on terrorists, not ordinary citizens, this Republican Leadership again showed that it answers to Presidential power first and the Constitution second. "

BACKGROUND ON BIPARTISAN SUBSTITUTE TO THE REPUBLICAN ELECTRONIC SURVEILLANCE MODERNIZATION ACT

The Republican leadership rejected a bipartisan amendment to the Electronic Surveillance Bill submitted to the Rules Committee by Reps. Schiff, Flake, Harman, and Inglis. The amendment gives the government's intelligence agencies the tools necessary to pursue al Qaeda and other terrorists, but also ensures that the executive branch acts in compliance with the law and does not violate the constitutional rights of innocent American citizens.

Specifically, the Schiff-Flake-Harman-Inglis substitute would:

Reiterate Exclusivity of FISA and Clarify Military Force Statute - reiterate that FISA is the exclusive means by which domestic electronic surveillance for foreign intelligence purposes may be conducted, unless Congress amends the law or passes additional laws regarding electronic surveillance. Makes clear that the AUMF does not constitute an exception to that rule.

Require Congressional Oversight of TSP and Other Programs in Existence - require a report to Intel on the Terrorist Surveillance Program (TSP) and any program involving electronic surveillance of U.S. persons in the U.S. for foreign intelligence purposes that is outside FISA. Provide access to members of the Judiciary Committee.

Increase Speed and Agility of FISA Process - authorize the FISC, DOJ, FBI, and NSA to hire more staff (to supplement, not supplant) for the preparation and consideration of FISA applications and orders. Authorize the appointment of additional FISC judges to provide for the prompt and timely consideration of FISA applications and require a 24-hour turnaround for emergency applications.

Extend Warrantless Electronic Surveillance Authority to Prevent Attacks - extend from 72 hours to 7 days the amount of time allowed to initiate surveillance in an urgent situation before going to the FISA court for a warrant. This authority can be used to thwart imminent attacks.

Enhance Electronic Surveillance Authority after an Attack - provide that in addition to a "declaration of war by the Congress" that an "authorization for the use of military force" can also trigger the FISA "wartime exception" for purposes of allowing 15 days of warrantless surveillance if it explicitly authorizes such surveillance.

Clarify that Foreign-to-Foreign Communications are Outside FISA - make clear that foreign-to-foreign communications are outside of FISA and don't require a court order.

Permit Continued Surveillance Where Targets Travel Internationally - provide that a FISA order for electronic surveillance shall continue to be in effect for the authorized period notwithstanding the absence of the target from the U.S.

Streamline FISA Application Process - remove redundant requirements in the application process and streamlines some of the current detailed requirements in order to permit information to be drafted in summary form.

BACKGROUND ON THE REPUBLICAN ELECTRONIC SURVEILLANCE BILL (H.R. 5825)

H.R. 5825, Heather Wilson's bill, makes sweeping changes to FISA - the statute that governs the surveillance of foreign powers, terrorist organizations and their agents. These changes would dramatically expand the ability of the Administration to wiretap and gather information on innocent Americans without court approval or legal recourse.

Authorizes Warrantless Surveillance of Americans' Phone Calls and E-Mails - by changing the definition of "electronic surveillance," H.R. 5825 permits electronic surveillance of Americans' international communications (communication which is either from the U.S. to overseas, or from overseas into the U.S.) without a court order so long as the government is not intentionally targeting a known person in the U.S.

Authorizes Warrantless Surveillance and Searches of Americans for 90 Days - H.R. 5825 allows for warrantless electronic surveillance and physical searches of Americans after an "armed attack," a "terrorist attack" or in anticipation of an "imminent attack." None of these triggering terms are defined. For example, the armed attack on the U.S. embassy in Syria earlier this month could trigger 90 days of warrantless surveillance of innocent Americans in the U.S.

Expands Scope and Duration of Warrantless Surveillance - H.R. 5825 expands a limited exception in FISA that permitted warrantless electronic surveillance for up to a year when the communications were exclusively between or among foreign powers and there was no substantial likelihood that the surveillance will acquire the contents of a U.S. person's communication. The bill would expand this limited exception to permit warrantless electronic surveillance for up to one year as long as it is directed at the acquisition of communications of an agent of a foreign power (now defined as any non-U.S. person reasonably expected to possess foreign intelligence information), even if the communications of Americans are likely to be implicated.

Expands Retention of Americans' Communications - the changes in H.R. 5825 will increase the capture of domestic communications and electronic records of innocent Americans. This is even more problematic since the bill changes existing minimization requirements in order to allow the NSA to retain the communications and electronic records of U.S. persons which may have been inadvertently acquired under these new authorities. Current procedures forbid the NSA to disclose, disseminate, use or retain any communication in which a U.S. person is a party, except under very narrow circumstances.

Strips Courts of Jurisdiction - H.R. 5825 would terminate pending cases challenging the President's controversial warrantless surveillance program and the provision of personal records and information to the intelligence community.

In summation, H.R. 5825 does not impose any limits on the President's warrantless surveillance of innocent Americans in violation of FISA and permits vastly expanded government wiretapping of innocent Americans without a warrant and without probable cause.

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