

Orwell in the Electronic Age: Phone Calls, Facebook, Emails. Congress Extends Warrantless Spying

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Congress plunged another spike into freedom. On September 12, the House passed HR 5949: FISA Amendments Reauthorization Act of 2012. The measure carried 301 – 118. Seventy-four Democrats joined 227 Republicans.

Nancy Pelosi voted Yea. So did Steny Hoyer, Howard Berman, Brad Sherman, Gary Ackerman, Nita Lowey, and Marcy Kaptur.

On December 28, the Senate followed suit. With little debate, it overwhelmingly renewed warrantless spying 73 – 23. Thirty Democrats and Independent Joe Lieberman joined 42 Republicans.

Congressional profiles in courage don't exist. America's Secretary of State designee, John Kerry, voted Yea. So did Democrats Reid, Levin, Conrad, Cardin, Mikulski, Feinstein, Stabenow, and Schumer.

Perhaps before yearend, Obama will sign it into law. He may have already done so quietly. He calls the measure a national security priority.

New Year's eve enactment would repeat last year's December 31 disgrace. Indefinite detention harshness became law. US citizens and permanent residents are as vulnerable as others.

Unpopular measures slip under the radar when few notice. Weekends and holiday breaks conceal blows to freedom.

Warrantless spying is extended another five years. Overseas phone calls, emails, and other communications of US citizens and permanent residents may be monitored without court authorization.

Probable cause isn't needed. Electronic eavesdropping will look for "foreign intelligence information." Virtually anything qualifies. Vague language is all-embracing.

The [Electronic Frontier Foundation](#) (EFF) asked why is warrantless domestic spying important? Key FISA Amendments Act provisions were challenged before the Supreme Court (Clapper v. Amnesty International).

Months after 9/11, Bush secretly authorized the NSA to eavesdrop on Americans lawlessly. Sweeping surveillance followed without court-approved warrants. Doing so violates core constitutional protections. Conditions now are worse than then.

On October 29, High Court oral arguments were heard. Justices will decide if lawyers, journalists, labor, media, human rights organizations, and others may challenge the constitutionality of warrantless spying.

In March 2011, the Second US Circuit Court of Appeals ruled they and others the law affects have legal standing to challenge. ACLU spokeswoman Rachel Myers called it “a really big victory.”

It means potentially affected parties “don’t have to prove (they’ve) been spied on to challenge an unlawful spy act.”

The Court overruled a district judge claiming otherwise. [It said](#) “plaintiffs have good reason to believe that their communications in particular, will fall within the scope of the broad surveillance that they can assume the government will conduct.”

Their jobs entail overseas phone, email and other communications. Warrantless spying targets these activities. Government officials claim they may “be associated with terrorist activities.” Corroborating evidence isn’t needed.

“Political and human rights activists” opposed to governments Washington supports are vulnerable. So are individuals and groups targeted by US “counterterrorism or diplomatic efforts.”

Plaintiff concerns are “reasonable.” Government arguments don’t wash.

At issue is fake national security concerns v. inviolable constitutional rights. The Supreme Court gets final say.

The Senate rejected proposed greater transparency/oversight amendments. Modest ones were dismissed out of hand. National security trumps rule of law inviolability.

Senators had months to consider the stakes and act responsibly. Instead, they waited until the 11th hour. Days before yearend expiration, they passed what demanded rejection.

Senator Ron Wyden’s (D-OR) amendment eliminated no NSA powers. It would have forced intelligence agencies to report annually to Congress on how their surveillance affects ordinary Americans.

Senators dismissed it out of hand. They chose unconstitutional lawlessness.

Senator Jeff Merkley’s (D-OR) amendment would have encouraged Attorney General declassification of some secret FISA court opinions. Summaries alone would suffice.

Obama promised to do it three years ago. Instead, he hardened Bush administration policies. He elevated rogue government to a higher level. He institutionalized massive national security spying. He wants victims denied their day in court.

Last July, the [Wall Street Journal](#) headlined “Spy Agency Activities Violated Fourth Amendment Rights, Letter Discloses,” saying:

NSA spying violates constitutional protections against unreasonable searches and seizures. A “ruling by the US’s secret national security court” admitted it.

Doing so “represented the first time the government has acknowledged US spy activities violated the constitution since the passage of a 2008 law that overhauled surveillance laws following the uproar over the NSA’s warrantless wiretapping program in the (Bush) administration.”

Obama officials provided no details about Fourth Amendment violations, when they occurred, or if anyone at NSA was held accountable.

The agency’s spokesman, Michael Birmingham, said its director is committed to “transparency, compliance, and oversight.”

He lied. Privacy experts say what’s known is troubling. ACLU legal director, Jameel Jaffer said:

“If the government is engaged in surveillance that violated the Fourth Amendment, that is something that ought to be disturbing to not just legislators, but to the American public more generally.”

Ahead of the vote, [Wyden](#) urged restraint, caution, and concern for constitutional protections.

“This is the last opportunity for the next five years for the Congress to exercise a modest measure of real oversight over this intelligence surveillance law,” he stressed.

“It is not real oversight when the United States Congress cannot get a yes or no answer to the question of whether an estimate currently exists as to whether law abiding Americans have had their phone calls and emails swept up under the FISA law.”

Senator [Rand Paul](#)’s (R-KY) Fourth Amendment Protection Act would have protected personal emails from warrantless searches and seizures.

Privacy in America is threatened, he said. “Our independence and the Fourth Amendment go hand in hand.”

“Somewhere along the way we became lazy and haphazard in our vigilance.” Congress and US courts subvert constitutional protections.

Senators dismissed his measure 79 – 12. Eyes now await how Supreme Court justices will rule. EFF actively challenges lawless legislation in federal courts.

In mid-December, it targeted NSA’s “dragnet warrantless surveillance program.” The Supreme Court will rule on whether ACLU’s FISA Amendments Act constitutional challenge will go forward.

It’s involved in *Clapper v. Amnesty International*. It [filed suit](#). It challenges FISA Amendments Act of 2008 constitutionality. As explained above, the Second US Circuit Court of Appeals let plaintiffs’ challenge the law.

It rejected the Obama administration’s catch-22 argument. It claimed no need to identify whose communications are monitored. Only those targeted may do so, it said. Secrecy, of course, prevents disclosure.

Moments after George Bush signed the 2008 FISA Amendments Act, ACLU filed suit. Doing so challenged the law's constitutionality.

Ahead of Friday's vote, [ACLU](#) "call(ed) on Congress to Fix FISA by prohibiting dragnet surveillance, mandating more transparency about the government's surveillance activities, and strengthening safeguards for privacy."

Tell your senators to fix FISA, it stressed.

On December 28, an [ACLU press release](#) headlined "Senate Reauthorizes Warrantless Wiretapping," saying:

Unconstitutional spying was extended another five years. Dragnet surveillance is institutionalized. Legislative counsel Michelle Richardson said:

"It's a tragic irony that FISA, once passed to protect Americans from warrantless government surveillance, has mutated into its polar opposite due to the FISA Amendments Act."

"The Bush administration's program of warrantless wiretapping, once considered a radical threat to the Fourth Amendment, has become institutionalized for another five years."

Congress abdicated its responsibility. It's become habitual. Carte blanche spying is policy.

Amendments to soften unaccountability were dismissed out of hand. Freedom took another body blow. It hangs by a thread. Perhaps the new year will eliminate it altogether.

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